GREENLAND MINERALS A/S

CLAIMANT

AND

GOVERNMENT OF GREENLAND

(*NAALAKKERSUISUT*)

FIRST RESPONDENT

GOVERNMENT OF THE KINGDOM OF DENMARK

SECOND RESPONDENT

CLAIMANT'S STATEMENT OF CLAIM

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19 JULY 2023

PLESNER

CLIFFORD CHANCE

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PART 1. THE DISPUTE

A. INTRODUCTION

1. This is a case about an Australian-owned mining company, Greenland Minerals A/S, that invested in Greenland to develop the Kvanefjeld rare earths project. In its work on the Project, GM [1] was actively supported by successive Greenlandic and Danish Governments. Through GM's efforts and investment of over US$150 million over the course of more than a decade, the Kvanefjeld Project has been proven to be one of the largest undeveloped deposits of rare earth elements in the world and is currently valued at US$7.5 billion. In the independent valuation that GM has commissioned for the purposes of this arbitration, it is estimated that the total economic benefits that would flow to Greenland (in royalties and taxes) if the Kvanefjeld Project was allowed to proceed would be US$22.8 billion over a 37-year expected life of mine (amounting to over US$400,000 for every member of the population of Greenland).

2. The legal framework for mining in Greenland is based on a combination of a general law (the Mineral Resources Act) and a specific agreement between the Government and the project proponent. GM's agreement with the Government was an exploration licence based on the Greenlandic Standard Terms – this agreement is a concession ("*koncession*") that creates rights under both private law and administrative law. Both through the general mining legislation and through its contract, GM was guaranteed an exploitation licence if it satisfied certain conditions. In April 2020, the Greenlandic Government formally acknowledged that GM had satisfied these conditions. GM's case is that, as from that date, and by 1 December 2021 at the latest, GM had obtained an unconditional legal right to be granted an exploitation licence for all of the minerals that were covered by its Exploration Licence (rare earths, zinc, fluorspar and uranium) and at the very least an exploitation licence for all such non-radioactive minerals (rare earths, zinc, and fluorspar).

3. However, the Greenlandic authorities effectively shut the Project down after 1 December 2021 through the enactment of politically-motivated, targeted and scientifically unfounded legislation banning all mining activities in Greenland involving uranium at concentrations above the seemingly random and wholly inappropriate threshold of 100 parts per million (Act No. 20, otherwise known as the "*Uranium Act*").

4. In this arbitration, the Respondents have accepted that Act No. 20 does not apply if its application would constitute expropriation of a protected property right. There is no doubt that, under Danish and Greenlandic law, the right to an exploitation licence constitutes such a protected property right. The central question in this arbitration is, therefore, the existence and content of GM's legal rights to be granted an exploitation licence for the Project as of 1 December 2021, which was the day immediately prior to

[1] Capitalised terms used in this introduction and in Section A.1 (Requests for Relief) are defined below.

the entry into force of Act No. 20 (2 December 2021). If the Tribunal finds that GM did have a right to an exploitation licence on that date, it follows that Act No. 20 cannot apply to GM's Exploration Licence or exploitation licence application.

5. In addition, GM asks that the Tribunal determine that the Respondents, through their statements and conduct, have committed breaches (actual and anticipatory) of the Exploration Licence. These questions fall squarely within the jurisdiction of the Tribunal to decide "*disputes* […] *regarding questions arising out of the licence*" and are clearly capable of settlement by arbitration under Danish law.

A.1 Requests for Relief

6. Greenland Minerals A/S therefore requests that the Tribunal grant the following relief, and that the Tribunal consider such relief in the sequence described below:

Claim 1 (Rights): The Respondents shall – individually and/or jointly – acknowledge that, as of 1 December 2021 (at the latest), Greenland Minerals A/S had an unconditional right under Section 14 of the Standard Terms (incorporated into Exploration Licence 2010/02, as renewed and amended), Section 29(2) of the Greenlandic Inatsisartutlov no. 7 of 7 December 2009 on mineral resources and related activities (the Mineral Resources Act) (as amended), and/or under legitimate expectations, to be granted an exploitation licence in respect of Exploration Licence 2010/02 (as renewed and amended), with the specific terms for exploitation under such exploitation licence to be agreed between Greenland Minerals A/S and the First Respondent in accordance with Section 16 of the Mineral Resources Act, for the:

(i) Exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc, fluorspar as well as uranium with thorium to be handled as a residual impurity only (i.e., products for disposal and non-commercial use) (**Claim 1A**); or, subsidiarily,

(ii) Exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc and fluorspar with uranium and thorium to be handled as residual impurities only (i.e., products for disposal and non-commercial use) (**Claim 1B**).

Claim 2 (Applicability of Act No. 20): The Respondents shall – individually and/or jointly – acknowledge that Greenlandic Inatsisartutlov no. 20 of 1 December 2021 on the prohibition of prospecting, exploration and exploitation of uranium etc. (Act No. 20) does not apply to Exploration Licence 2010/02 (as renewed and amended), or to Greenland Minerals A/S's applications to be granted an exploitation licence in respect of Exploration Licence 2010/02 (as renewed and amended), with the specific terms for exploitation under such exploitation licence to be agreed between Greenland Minerals

A/S and the First Respondent in accordance with Section 16 of the Mineral Resources Act, for the:

(i) Exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc, fluorspar as well as uranium with thorium to be handled as a residual impurity only (i.e., products for disposal and non-commercial use) (**Claim 2A**); or, subsidiarily,

(ii) Exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc and fluorspar with uranium and thorium to be handled as residual impurities only (i.e., products for disposal and non-commercial use) (**Claim 2B**).

Claim 3 (Breach of contract): The Respondents shall – individually and/or jointly – acknowledge that the Government of Greenland has committed the following breaches of Exploration Licence 2010/02, and/or Greenland Minerals A/S's legitimate expectations in that regard, which individually and/or jointly constitute material breach of contract ("*væsentlig misligholdelse*"):

(iii) Breach of its obligation under Sections 1401-1408 of the Standard Terms (incorporated into Exploration Licence 2010/02, as renewed and amended) to grant Greenland Minerals A/S an exploitation licence in respect of Exploration Licence 2010/02 (as renewed and amended), with the specific terms for exploitation under such exploitation licence to be agreed between Greenland Minerals A/S and the First Respondent in accordance with Section 16 of the Mineral Resources Act, for the exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc, fluorspar as well as uranium.

(iv) Anticipatory breach, as of 19 July 2023, of its obligation under Sections 1401-1408 of the Standard Terms (incorporated into Exploration Licence 2010/02, as renewed and amended) to grant Greenland Minerals A/S an exploitation licence in respect of Exploration Licence 2010/02 (as renewed and amended), with the specific terms for exploitation under such exploitation licence to be agreed between Greenland Minerals A/S and the First Respondent in accordance with Section 16 of the Mineral Resources Act, for the exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc and fluorspar with uranium and thorium to be handled as residual impurities only (i.e., products for disposal and non-commercial use).

Claim 4 (Damages): The Respondents shall pay damages to Greenland Minerals A/S on an individual (pro rata) and/or joint basis for an amount to be proven in this arbitration.

Claim 5 (Costs): The Respondents shall bear their own arbitration costs, including legal fees, fees and expenses of the Tribunal and any experts, as well as any other costs. The Respondents shall reimburse Greenland Minerals A/S for its arbitration costs, including legal fees and expenses, fees and expenses of the Tribunal and any experts, as well as internal costs, with addition of interest in accordance with Sections 5(1)-(2) of Danish Act no. 459 of 13 May 2014 on interest and other matters concerning delayed payment (the Interest Act) from the date of the Tribunal's final award in this arbitration until payment in full.

Claim 6 (Jurisdiction): The Tribunal shall assume jurisdiction with respect to both Respondents, subsidiarily with respect to the First Respondent only, concerning the present dispute.

Claim 7 (Other Relief): The Tribunal shall order any other relief which the Tribunal considers appropriate in order to support the relief sought by Greenland Minerals A/S under Claims 1-6.

7. Claim 1 (Rights) concerns the main issue in this arbitration, namely the extent to which GM had a right, as of 1 December 2021 (i.e., the day before entry into force of Act No. 20), to be granted an exploitation licence for certain minerals. Claim 1A is the primary claim ("*principale påstand*"), while Claim 1B is the subsidiary claim ("*subsidiære påstand*"). As explained and documented extensively in the present pleading, Claim 1 is necessary because the Government of Greenland has so far denied that GM holds any unconditional right to be granted an exploitation licence in respect of its Exploration Licence. The Government of Greenland has stated that this view is regardless of whether or not Act No. 20 applies to the Exploration Licence and/or GM's application for an exploitation licence. Accordingly, there is an actual and specific legal dispute between the Parties concerning the existence and scope of GM's rights to be granted an exploitation licence.

8. With Claim 1 (as formulated) and the aforementioned nature of the Parties' dispute on GM's rights to exploitation, the Tribunal is *not* requested or required to in any way assess whether or not Act No. 20 is applicable to the Exploration Licence and/or GM's exploitation licence applications, including whether its application would result in expropriation. Similarly, the Tribunal is not requested or required to in any way order the Government of Greenland to issue or amend any licence to GM or otherwise to do or omit doing something in relation to the Exploration Licence or GM's applications for an exploitation licence. Finally, the Tribunal is not requested or required to in any way assess or interfere with any decision of the Government of Greenland in any administrative process.

9. Claim 2 concerns the purported application of Act No. 20. The Parties agree, and it is also clear from its preparatory works, that if the application of Act No. 20 would result in an expropriation in the present case, Act No. 20 cannot be applied to the Exploration Licence and/or GM's exploitation licence applications because the Act contains no legal

basis for expropriation. By contrast, as explained and documented herein, the Parties disagree on whether Act No. 20 applies to GM's Exploration Licence and/or to its applications for an exploitation licence. If Act No. 20 does *not* apply, the Government of Greenland either acted with intent or negligently in applying this Act to GM's Exploration Licence and its exploitation licence application of 17 June 2019, and so its breach of contract (under Claim 3) in this respect would be either wilful or negligent. By contrast, if the Act *does* apply, the Government of Greenland would not be at fault for having applied it, and so its breach of contract (under Claim 3) would be a breach without fault in this respect. Depending on the Tribunal's assessment and subject to the other breaches of contract invoked by GM, the distinction of fault/no-fault is relevant in relation to Claim 4 (Damages). For these reasons, GM considers it necessary that the Tribunal render a decision on the applicability of Act No. 20 (Claim 2).

10. Claim 3 (Breach of Contract) is closely related to Claim 1 (Rights) because to the extent that the Tribunal finds that GM held certain legal rights as of 1 December 2021 to be granted an exploitation licence in respect of its Exploration Licence, such rights have been breached by the Government of Greenland in the period thereafter or, at least, have been breached on an anticipatory basis in that period and as at the date of this Statement of Claim (19 July 2023). Claim 3 is necessary for two reasons. *First*, the Parties disagree as to whether the Exploration Licence constitutes a legal instrument holding rights and obligations of the parties thereto that may be subject to breach ("*misligholdelse*"). *Second*, the Parties disagree as to whether the Government of Greenland has breached any obligation in the Exploration Licence. As should be clear from the above, if the Tribunal agrees with GM that it held certain rights as of 1 December 2021 to be granted an exploitation licence, those rights have been breached. As mentioned above, Claim 3 is also related to Claim 2 in relation to the specific nature of the contract breach: the Tribunal's decision on Claim 2 will determine whether the Government's breach of contract (in applying Act No. 20 to GM's exploitation licence application) is wilful or negligent, or, alternatively, whether it was a breach without fault.

11. In respect of Claim 1 (Rights) and Claim 3 (Breach of Contract), the Tribunal is *only* requested to assess, as a matter of fact and law, the extent to which GM had a legal right to transition from exploration activities into exploitation activities at Kvanefjeld as of 1 December 2021 or at any time prior to that, and whether the Government of Greenland's corresponding obligation to grant an exploitation licence (expediently) has been breached. The factual and legal question of GM's rights concerns the very nature and scope of the licence and is thus clearly within the scope of the arbitration agreement, which covers "*questions arising out of the licence*". Similarly, the factual and legal questions of the Government of Greenland's breaches of contract, i.e., breaches of obligations under the Exploration Licence, are clearly "*questions arising out of the licence*". Therefore, the questions of GM's rights and the Government of Greenland's contract breaches clearly do not concern any discretionary decision or other decision of government or administrative process, contrary to what the Respondents would have the Tribunal believe.

12. At the present stage of the proceedings, GM is not requesting that the Tribunal quantify Claim 4 (Damages), which GM requests be assessed in a separate phase. The reason is that it is premature at present for GM to submit an exact claim for payment of damages because the Government of Greenland has yet to decide on GM's outstanding exploitation licence application for the exploitation of rare earth elements, zinc and fluorspar, with uranium and thorium to be handled as residual impurities only (i.e., products for disposal and non-commercial use). Further, GM is optimistic that if the Tribunal were to grant Claims 1-3 in whole or in part, the Parties would be in a position to reach an amicable solution on the fate of the Kvanefjeld Project, thereby leaving the issue of remedies to be dealt with between the Parties. Indeed, the Deputy Minister of Mineral Resources Mr Hammeken-Holm recently told the press that, if the Tribunal finds that the Government has interpreted the law incorrectly, "*that means that the case processing must start from the place where it was just finished last*." The Deputy Minister further confirmed that GM "*may be able to get an exploitation permit if they meet all applicable rules, conditions and requirements*".[2]

13. However, in the absence of such amicable solution following the Tribunal's decision on Claims 1-3, the Tribunal's assessment of the quantification of damages for the purposes of Claim 4 would be necessary. Hence, Claim 4 and the related argumentation on liability in Section J below is included here on a preliminary basis only and GM requests that the Tribunal determine the quantification of damages under Claim 4 in a separate proceeding. GM reserves its right to introduce an exact claim for payment of damages in due course, and to further expand on its argumentation in this respect.

14. As noted above, Claims 1 and 2 contain primary and subsidiary claims as indicated in the claims themselves, while Claim 3 concerns multiple independent claims ("*sideordnede påstande*").

15. All the claims should generally be understood in the way that they may be granted to a lesser extent than claimed if the Tribunal is not satisfied that the full claim can be granted ("*det mindre i det mere*").

A.2 Executive Summary

16. GM invested in Greenland in 2007 on the basis that, if it delineated a commercially viable resource at the Kvanefjeld rare earths project (**Kvanefjeld Project** or **Project**), it was guaranteed an exploitation licence for that resource. This guarantee is both statutory and contractual. It was conceived by the Greenlandic and Danish Governments as a way of attracting mining investors to Greenland. Section 1401 of GM's Exploration Licence is the contractual form of this licensing guarantee and is at the centre of this dispute.

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[2] C. B. Thomsen, *Bombs can hit Greenland's economy*, Politiken, 10 May 2023, at **(C-195)**; C. B. Thomsen, *Bombs can hit Greenland's economy*, Politiken, 10 May 2023, at **(C-195E)**.

17. GM worked in good faith, in close cooperation with the Greenlandic and Danish authorities, for 14 years. The record shows that both Governments took active steps to encourage GM to continue with its work and investment, and to advance the Project into production. This Project has been keenly anticipated by the Greenlandic and Danish Governments for over a decade and has been the centrepiece of their international marketing campaign to promote Greenland as a safe and stable destination for mining investment.

18. The Project has the potential to deliver enormous social and economic benefits to Greenland and Denmark. As shown in the table below, on the basis of the expert evidence provided by Mr Milburn and submitted with this Statement of Claim, GM's financial modelling demonstrates that Greenland will receive almost US$23 billion in taxes, royalties and other benefits if the Kvanefjeld Project is allowed to proceed.[3]

Description	Total Payments ($ millions)
Corporate Income Tax	$ 16,132
Royalties (uranium, zinc, and REE)	5,721
Personal Income Tax	963
Total payments to Greenland	**$ 22,816**

19. This equates to more than US$400,000 for every member of the population of Greenland. In addition, the Project has the potential to deliver jobs, infrastructure, services and lasting opportunities to the local people.

20. The Kvanefjeld Project is one of the largest undeveloped rare earths deposits in the world.[4] Rare earths are required to produce the permanent magnets on which electric vehicles and wind turbines depend, meaning they are critical to the clean energy transition. The Project therefore has the potential to play an important role in this energy transition. This is what is at stake.

21. In addition to being a globally significant rare earths deposit, the Kvanefjeld area also has naturally elevated levels of uranium. It makes economic and environmental sense to mine the uranium at the same time as the rare earths, and to export uranium as a carbon-free and reliable energy source. The Project was therefore developed on the basis that uranium would be exploited as a commercial by-product. This development plan was endorsed by the Greenlandic Government, which insisted that the chemical refining of uranium (to yellowcake) take place in Greenland. With that being said, the Kvanefjeld Project is so valuable that it is economically viable without exploiting

[3] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure A6-1, para. A6.14.

[4] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 39, 53.

uranium, meaning that it would be possible to instead treat uranium as a residual impurity.[5]

22. Over the course of many years, the Danish and Greenlandic Governments undertook a major joint regulatory exercise to establish a legal framework to govern the exploitation and export of uranium. The purpose of this exercise was principally to facilitate the export of uranium from the Kvanefjeld Project. GM actively engaged with the two governments on the development of this framework. Needless to say, these efforts by the two governments to facilitate GM's development plan supported GM's legitimate expectations that it would be entitled to exploit both rare earths and uranium from Kvanefjeld (provided GM could establish this would be safe, which it did).

23. After many years of investment and development, in June 2019, GM formally applied for an exploitation licence for the Kvanefjeld Project, including rare earths, zinc, fluorspar and uranium. Following this formal application, in April 2020, the Government confirmed in writing that GM had satisfied the conditions of Mineral Resources Act (**MRA**) Section 29(2) with respect to the Kvanefjeld deposit, including rare earths and uranium.[6] Shortly thereafter, the Minister of Mineral Resources advised the Parliament that, in the context of GM's licence, under Section 29(2), "*a rightholder has the right to be granted an exploitation permit if the licensee has identified and delimited deposits that it intends to exploit*".[7]

24. From this point, GM had an unconditional right to an exploitation licence for the Kvanefjeld Project under MRA Section 29(2) and Section 14 of the Standard Terms. There was no longer any question of whether (or *if*) GM would be granted an exploitation licence. Rather, all that remained to be determined were the terms and conditions of that exploitation licence (*how* the exploitation activities would be carried out) under MRA Section 16.

25. By late 2020, the Greenlandic and Danish authorities had approved GM's EIA and SIA for public consultation, and in December 2020, these documents were formally approved by the Greenlandic Government. This marked the beginning of the public consultation on GM's EIA and SIA. The Government announced that the purpose of this process was "*to provid*[e] *the authorities with all the necessary information for determining the conditions for notification of an exploitation permit in accordance with Section 16 of the Minerals Act*".[8] This puts beyond doubt that GM had already passed

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5 First Witness Statement of J. Mair, at **(CWS-3)**, para. 52.

6 First Witness Statement of J. Mair, at **(CWS-3)**, para. 823; Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

7 §37 Parliamentary Questionnaire No. 77/2020, 13 May 2020, at **(C-196)**, answer on 18 May 2020.

8 First Witness Statement of J. Mair, at **(CWS-3)**, para. 843; Letter from the MLSA to hearing participants, subject: "*Consultation letter regarding Greenland Minerals A/S' application for utilization*", 11 January 2021, at **(C-197)**.

through the gate of MRA Section 29(2) and was in the final stage of the licensing process under MRA Section 16. Indeed, concurrently with this Government announcement, the Minister of Mineral Resources publicly stated that GM would be entitled to exploit rare earths and uranium within a year.[9]

26. It was at this juncture, when GM's right to an exploitation licence was unconditional, that the Project was blocked for political reasons.

27. Before explaining the political process by which the Project was blocked, it is important to make it clear that this is not a case about a project failing to comply with environmental protection requirements. As will be explained below, GM's EIA demonstrated clearly that the Kvanefjeld Project could be conducted in accordance with international best practice. This EIA was supported by over 120 documents including studies and technical reports. It was subject to a robust and exhaustive five-year review process by the Greenlandic and Danish authorities and their advisers. By approving the EIA for public consultation, the Government accepted that the Project impacts and risks had been accurately described therein.

28. The environmental credentials of the Project were confirmed by Greenland's Chief Medical Officer, who presented at a public meeting in Narsaq alongside the Danish environmental authorities in 2019, and stated: "*we do not believe that there will be an impact on the population of Narsaq*" and "*there is nothing to indicate, a spread of either radioactivity or other dangerous substances in the city of Narsaq itself.*"[10] The Chief Medical Officer indicated that there were no radiological pathways of concern, stating "*I can't see where the radioactivity is coming from*" and that "*nothing will come that has any health significance here and now in Narsaq city*".[11] The Minister of Nature, Environment and Science subsequently advised the Parliament that the statements made by the Chief Medical Officer were "*objective and concrete*" and that "*in relation to a specific question about radiation and the spread of dust that, based on the existing knowledge, neither radiation nor dust can be assumed to reach Narsaq town to an extent that will have health significance for the population.*"[12] The Minister further advised that the Danish Environmental Protection Agency for Mineral Resources had confirmed that the Chief Medical Officer's statements were "*based on public and scientifically quality-assured information and data, existing knowledge, research and studies available in the area*". He subsequently provided the Parliament with a

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9 First Witness Statement of J. Mair, at **(CWS-3)**, para. 845; The Editorial Staff, *Kuannersuit: A flourishing Narsaq or environmental disaster?*, Sermitsiaq, 20 January 2021, at **(C-198E)**.

10 See A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**, as cited by S. Gisler (IA) in §37 Parliamentary Questionnaire No. 122/2019, 25 February 2019, at **(C-200)**, p. 1 (Danish), 3 (English).

11 A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**.

12 §37 Parliamentary Questionnaire No. 142/2019, 11 March 2019, at **(C-201)**, per S. K. Heilmann (Atassut)'s answer on 25 March 2019, pp. 5 (Danish), 8 (English).

comprehensive list of more than 30 sources that supported the Government's position that the Project was safe.[13]

29. As the Minister of Environment confirmed, the scientific evidence supports the position that the Project is safe. That is why the Greenlandic and Danish authorities accepted GM's EIA. Pursuant to MRA Sections 1(2) and 83, the Government is obliged to ensure that mining activities are performed in accordance with environmental best practice. The Government therefore always has the power to prevent a project that would not be performed in an environmentally sound manner. However, this was not the case here. The Kvanefjeld Project was not blocked for environmental reasons. It was blocked for political reasons.

30. Despite the extensive scientific evidence underpinning the Kvanefjeld Project, as with all major projects, there were those people who were opposed to it, including those who are ideologically opposed to nuclear energy. In the lead-up to the election in April 2021, misinformation about the Project was spread by anti-uranium lobby groups and members of the IA Party. The current Premier of Greenland, Múte Egede, campaigned to stop the Project, telling the Greenlandic public that he could do this without any liability to GM.[14] This is despite the fact that the IA Party had previously admitted to the Parliament that if the Government used legislation to block the Project, the Government may be liable to compensate GM for "*broken assumptions*"[15] and "*a loss of rights*".[16]

31. After the IA Party was elected, the new IA Party government considered its options. The evidence shows that, at this point in time, the Greenlandic Government realised that there were no grounds on which it could reject GM's exploitation licence application under the then-existing legal framework: GM was entitled to a licence. This is proven definitively by an internal government summary of GM's rights from the time period, which states: "*the rights holder has found a limited and commercially exploitable deposit, cf. former section 29(2) of the Mineral Resources Act*" and confirms that the next step was "*the preparation of an exploitation permit pursuant to Section 16 of the Mineral Resources Act*".[17]

32. Unable to find a legal basis to reject GM's application, the Greenlandic Government turned to Poul Schmith, the Respondents' counsel in this arbitration, to *change* the legal

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[13] §37 Parliamentary Questionnaire No. 142/2019, 11 March 2019, at **(C-201)**, per S. K. Heilmann (Atassut)'s answer on 25 March 2019, pp. 3-5 (Danish), 6-8 (English).

[14] First Witness Statement of J. Mair, at **(CWS-3)**, para. 866.

[15] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**, p. 2.

[16] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

[17] Document titled "*Greenland Minerals A/S - The permission at a glance*", by Government of Greenland, 16 August 2021, at **(C-204E)**.

framework. This is the genesis of Act No. 20, which banned all mining activities of mineral deposits containing uranium at concentrations above 100 ppm (the "**uranium ppm threshold**"). The bill that became Act No. 20 was drafted by counsel for the Respondents, who presented it to the Government. It was sent to Parliament for consultation that same day, with a covering letter that stated: "*The background to the proposal is a political desire to introduce the zero tolerance policy by law*."[18]

33. The Government's uranium ppm threshold is purely political and cannot be scientifically justified. Indeed, recently disclosed internal Government documents reveal that advice received by the Government at this time did not support the use of a uranium ppm threshold. Rather, the advice stated that radiation protection should be managed according to international best practice using radiation dosage limits.[19] This is the approach the Government had previously said would be applied in Greenland, and to Kvanefjeld specifically, and which GM's independent experts used in their radiological studies for GM's EIA.

34. There is no evidence that, in proposing the uranium ppm threshold, the IA Party Government was legitimately concerned about safeguarding public health or the environment. Indeed, in the Explanatory Notes to the bill, the Government stated that it had "*a political wish to stop uranium extraction in Greenland*", and that it was "*not the aim of this Bill to lay down rules on health and safety, the environment, resource utilisation, etc., as these considerations are covered by the Mineral Resources Act*".[20]

35. The consultation on Act No. 20 coincided with the public consultations on GM's EIA and SIA, which had been extended multiple times. These public meetings were hosted by the Greenlandic Government. While they had originally been planned as a legitimate process, involving experts from the Danish Centre for Environment and Energy **(DCE**), shortly before they were due to commence, the Government abandoned any semblance of an objective scientific process. Instead, the Government cancelled the presentation by the DCE, and invited an anti-uranium NGO to present. In light of the Government's obvious hostility towards the company, GM notified the Government it would not participate.

36. Act No. 20 was debated in the Greenlandic Parliament. Records show that the Greenlandic Government was acutely aware that the legislation was potentially expropriatory, and many members of Parliament were concerned about compensation claims. The Parliament was particularly concerned about a claim being brought by GM, as everyone was aware that GM had made a massive investment in Greenland over the

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[18] Consultation Letter, "*Hearing on the proposal for the Inatsisart Act on the ban on preliminary investigation, exploration and exploitation of uranium*", 1 July 2021, at **(C-205)**; "*Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation*", 22 June 2023, at **(CL-7)**.

[19] Document titled: "*Radioactive minerals and consequences*", Government of Greenland, 9 July 2021, at **(C-206E)**.

[20] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 17.

previous 14 years. Nevertheless, the Greenlandic Government assured the Parliament that the proposed law was not expropriatory because "*the special conditions of existing licences already stipulate that no licensee is entitled to the exploitation of uranium*".[21] This is a reference to Addendum No. 1 to GM's exploration licence for the Kvanefjeld Project (including its amendments, **Exploration Licence**) (discussed below). The Greenlandic Government further assured the Parliament that, if the law was expropriatory, it would not apply.

37. After the Greenlandic Government secured the passage of Act No. 20 on 1 December 2021, meetings took place at which GM, the Greenlandic Government, and the Respondents' legal counsel were present. The Respondents informed GM that its exploitation licence application would be rejected because of Act No. 20. When GM's legal representatives questioned whether Act No. 20 was even applicable to the Kvanefjeld Project, given that its application clearly would result in an expropriation of GM's rights under its Exploration Licence, the Respondents informed GM that the legislation did apply because GM never had a right to anything, meaning that there was nothing to expropriate. The Respondents then tried to trick GM into abandoning its legal rights by withdrawing its exploitation licence application voluntarily. GM refused to do so.

38. Following these meetings, GM commenced arbitration to seek clarity on its rights and the operation of Act No. 20.

39. In the discussions and proceedings that have followed, it has become clear that the Respondents' entire legal case hinges on Addendum No. 1 to GM's Exploration Licence. Indeed, the Respondents' counsel Mr Fruerlund has submitted that the addendum is the "*crux of this case*".[22] The background to this agreement is discussed below.

40. Addendum No. 1 was negotiated in late 2011 between GM and the former Government, which was then led by Premier Kuupik Kleist and Minister of Mineral Resources Ove Karl Berthelsen. At the time, there was a so-called "*zero-tolerance policy*" (**ZTP**) on uranium exploration and mining in Greenland. As explained below, this policy never had any legislative or other legal basis. Nevertheless, the policy was sometimes referred to in Government communications.

41. Since 2007, the Greenlandic and Danish Governments had been investigating uranium mining, with a view of lifting the ZTP. This was an extensive process, including information-gathering trips to Canada and Australia, various reports and analyses, a joint Danish/Greenlandic expert working group report, a legal report, an economic report, a parliamentary committee report, a fact book, TV reports and public meetings.

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[21] Resolution of 2nd hearing, "*Proposal for: Inatsisartut Act prohibiting exploration, exploration and exploitation of uranium, etc.*", EM2021/23, 1 November 2021, at **(C-207E)**, p. 1.

[22] Transcript of Hearing held on 7 September 2022, at **(C-134)**, p. 101.

42. While this process was underway, the Kvanefjeld Project was advancing rapidly. GM's investors told the company that they needed clarity on what was happening with the ZTP. In late 2011, GM representatives advised the Government that, without clarity on its rights and the ZTP, they would have no choice but to walk away from their investment in Greenland. The Greenlandic Government were keen for GM to continue its development of the Project. GM and the Government therefore negotiated an addendum to GM's licence (Addendum No. 1), which gave GM the right to explore for uranium, and to apply to exploit it. This was a departure from the so-called ZTP.

43. The Government knew that, if they gave GM an unconditional right to explore for uranium and GM delineated a commercially viable deposit, GM would have an automatic right under MRA Section 29(2) and Section 14 of the Standard Terms to an exploitation licence for uranium. Premier Kleist and Minister Berthelsen indicated to GM that they were working to lift the ZTP, but this may take some time. In these circumstances, the Government was not prepared to guarantee GM an exploitation licence for uranium. The parties therefore agreed to caveats that would apply while the ZTP remained in place and allowed the Government to reject an application "*to exploit radioactive elements*" (the **Addendum No. 1 Caveats**). These would serve to protect the Government from liability if GM delineated a commercially viable deposit but could not obtain a licence for uranium because the ZTP was still in place. The caveats were only intended to apply while the ZTP was in place and did not affect GM's rights in relation to the exploitation of non-radioactive elements. This interpretation has been confirmed by GM's witness Dr Mair, who negotiated the addendum, and the two Government officials who led the drafting on the Government side: Deputy Minister Jørn Skov Nielsen and the BMP lead lawyer.[23]

44. Following these negotiations and Addendum No. 1, Premier Kleist and Minister Berthelsen made public statements that they intended to lift the ZTP. GM therefore had the reassurance it needed to continue its investment in the Project.

45. Following further detailed investigations into uranium mining, in October 2013, the Parliament voted to formally abolish the ZTP. During the parliamentary discussions around the lifting of the ZTP, the Premier of Greenland Kim Kielsen confirmed that Addendum No. 1 "*already granted permission for uranium mining in Greenland*". The Minister of Mineral Resources Jens-Erik Kirkegaard stated that the addendum "*is a deviation from the previous zero-tolerance policy*."[24]

46. Shortly before the parliamentary vote on the ZTP, GM representatives met with the Government to discuss the licensing situation after the ZTP was lifted. GM and the Government discussed the possibility that Denmark and Greenland would set up a regulatory system to administer the exploitation and export of uranium. Additionally,

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[23] First Witness Statement of J. Mair, at **(CWS-3)**, section XI.F; Greenland Minerals Ltd, Minutes of Board Meeting, 29 April 2021, at **(C-208)**.

[24] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

the Government would amend Section 101 of the Standard Terms to provide for exploration for uranium.[25]

47. The Government proceeded to lift the ZTP on 24 October 2013. Five days later, Dr Mair met with Deputy Minister Nielsen. Deputy Minister Nielsen advised that (i) the Government would amend the Standard Terms to include uranium (rendering Addendum No. 1 redundant), but that this would not happen straight away as the Danish and Greenlandic Governments needed time to set up the regulatory framework to administer the exploitation and export of uranium, and (ii) that the Addendum No. 1 Caveats would become redundant. As set out in Dr Mair's contemporaneous notes, both the Danish and Greenlandic Governments supported the Project, and their "*overall aim*" was to set up a regulatory framework so as "*to keep driving Kvanefjeld forward and to complete a mining license application*".[26] The Deputy Minister noted that the delay in amending the Standard Terms was to GM's advantage because GM would have "*access to pursuing uranium*", whereas other companies would not.

48. As foreshadowed at these meetings, the two governments proceeded to set up the regulatory framework for the exploitation and export uranium, in consultation with GM. This framework was tested in 2017 when the Danish authorities gave GM permission to export ore from Kvanefjeld to China.[27] All parties proceeded on the basis that the Project would include rare earths and uranium. The Addendum No. 1 Caveats were not discussed again.

49. As demonstrated in the submission that follows, the evidence conclusively shows that the Addendum No. 1 Caveats were null and void years before GM applied for an exploitation licence for non-radioactive elements and uranium. Moreover, the caveats were invalid from inception (including insofar as they purport to authorise the Greenlandic Government to act without regard to fundamental norms of Danish administrative law).

50. In this arbitration, the Respondents' case is that the Addendum No. 1 Caveats allow the Greenlandic Government to reject GM's exploitation licence application for any reason whatsoever. This was also the position the Respondents argued at the hearing on interim measures on 7 September 2022. At the hearing, Mr Fruerlund argued that:

> "*in respect of the zero tolerance policy* [Addendum No. 1] *made sure to underline that Claimants still have no right to mine uranium or other radioactive materials. This was known to all parties when the exploration licence and the addenda were granted. In essence, Claimant bought a very expensive lottery ticket; a ticket with a massive grand prize, as well as a massive*

[25] See paragraph 288 – 295 below.

[26] See Section C.30 below; Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

[27] See Section C.44 below.

risk. Later, the zero tolerance policy was formally abolished. However, the zero tolerance policy was kept as an intricate part of the exploration licence, as well as later exploration licences. In other words, the change in political policy did not entail any changes in the granted licences"[28] (emphasis added).

51. Mr Fruerlund further submitted that the Addendum No. 1 Caveats empowered the Government to reject GM's application to exploit rare earths and uranium because the "*mining of radioactive elements would be the consequence of granting an exploitation licence in this case*".[29]

52. As demonstrated below, the Respondents' lottery ticket characterisation of GM's investment is legally and factually incorrect. GM had clear rights under the legal framework that the Respondents created, and it was induced to continue investing in reliance upon those rights for over a decade. The Respondents' attempt to now walk away from their obligations on the basis that GM supposedly "*lost*" the lottery is unlawful, and would cause GM to suffer billions of US dollars in losses.

53. Moreover, even if (*arguendo*), the Addendum No. 1 Caveats were not null and void, the evidence demonstrates that the Greenlandic Government has known since before it enacted Act No. 20 that those caveats do not give it *carte blanche* simply to dismiss an exploitation licence application filed by GM. It follows that the Government has breached the principles of good faith and loyalty by positively asserting that, by application of the Addendum No. 1 Caveats, GM had no rights at all.

54. Ultimately, the result of the Greenlandic Government's political *volte face* in 2021 is that the Greenlandic Government is in breach of its contract with GM – a contract based on the Greenlandic Standard Terms, which were written and offered by the Greenlandic and Danish Governments in 1998. Those same Standard Terms provide that disputes arising out of GM's Exploration Licence are to be resolved by arbitration in Copenhagen. Despite everything that the two governments have said and done to try to stop this dispute being resolved by arbitration, that is the dispute resolution method that they offered GM, and they are legally bound by that choice. It is through arbitration that GM seeks clarification of its rights, and justice for the two governments' clear breaches of contract. GM does not ask the Tribunal to overturn Act No. 20 or interfere in any legitimate government decision-making process. GM seeks only contractual remedies for contractual breaches.

A.3 The Parties

55. The Claimant, Greenland Minerals A/S (**GMAS**), is a company registered in Greenland, with company registration number 12449550. GMAS is a wholly owned subsidiary of Energy Transition Minerals Ltd (formerly Greenland Minerals Limited) (**GML**)

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[28] Transcript of Hearing held on 7 September 2022, at **(C-134)**, pp. 24-25.

[29] Transcript of Hearing held on 7 September 2022, at **(C-134)**, p. 101.

(ACN 118 463 004), a publicly listed company on the Australian Securities Exchange (**ASX**). The Respondents have accepted that the Claimant is, in effect, an Australian company and referred to the two companies collectively as "*Greenland Minerals*" or "*GM*".[30] We refer to GMAS and GML together as "**GM**".

56. The First Respondent is the Government of Greenland (**Greenlandic Government, Government,** or **Naalakkersuisut**).

57. The Second Respondent is the Government of the Kingdom of Denmark (**Danish Government**).

A.4 Witnesses

58. This Statement of Claim is supported by 6 new witness statements from:

(a) Dr John Mair, former Chief Executive Officer (**CEO**) and Director of GML (**CWS-3**);[31]

(b) Mr Garry Frere, Commercial Manager of GML (**CWS-4**);[32]

(c) Mr Miles Guy, Chief Financial Officer of GML and former Director of GML (**CWS-5**);[33]

(d) Mr James Eggins, Manager (Uranium Marketing and Contracts) of GML (**CWS-6**);[34]

(e) Mr Shaun Bunn, former Project Manager of GML (**CWS-7**); [35] and

(f) Dr Douglas Chambers, principal of Arcadis who was responsible for the independent radiological assessment of the Project (**CWS-8**).[36]

59. These witness statements are each given in English.

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[30] Email from P. Fruerlund (Poul Schmith) to Tribunal and Claimant's Counsel, subject: "*SV: [EXT] SV: Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark - Claimant"s First Procedural Submission*", 12 August 2022, at **(C-211)**; Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al., Ad Hoc, Decision on Procedural Issues, 24 November 2022, at **(C-212)**, para. 28.

[31] First Witness Statement of J. Mair, at **(CWS-3)**.

[32] Third Witness Statement of G. Frere, at **(CWS-4)**.

[33] First Witness Statement of M. Guy, at **(CWS-5)**.

[34] First Witness Statement of J. Eggins, at **(CWS-6)**.

[35] First Witness Statement of S. Bunn, at **(CWS-7)**.

[36] First Witness Statement of D. Chambers, at **(CWS-8)**.

A.5 Experts

60. This Statement of Claim is also supported by 6 expert reports:

(a) William Goodfellow (Exponent), environmental expert (**CEWS-1**);[37]

(b) Richard Lambert (SLR), mining expert (**CEWS-2**);[38]

(c) Ryan Castilloux (Adamas), pricing expert (**CEWS-3**);[39]

(d) Chris Milburn (Secretariat), quantum expert (**CEWS-4**);[40]

(e) Professor Michael Hansen Jensen, public and constitutional law expert (**CEWS-5**);[41] and

(f) Professor Bent Ole Gram Mortensen, mining law expert (**CEWS-6**).[42]

61. These expert reports are each given in English.

62. The Statement of Claim is accompanied by new factual exhibits numbered **C-195** to **C-1090** and by new legal authorities numbered **CL-164** to **CL-264**.

B. BACKGROUND

B.1 The Kvanefjeld Project

63. The Kvanefjeld deposit is geologically situated in the northwest of the Ilímaussaq complex, in southern Greenland, with a significant part of the Project area underlain by alkaline rocks.[43] The Kvanefjeld deposit is around 8 km from the town of Narsaq,[44]

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37 Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**.

38 Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**.

39 Expert Report of Ryan Castilloux (Adamas), at **(CEWS-3)**.

40 Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**.

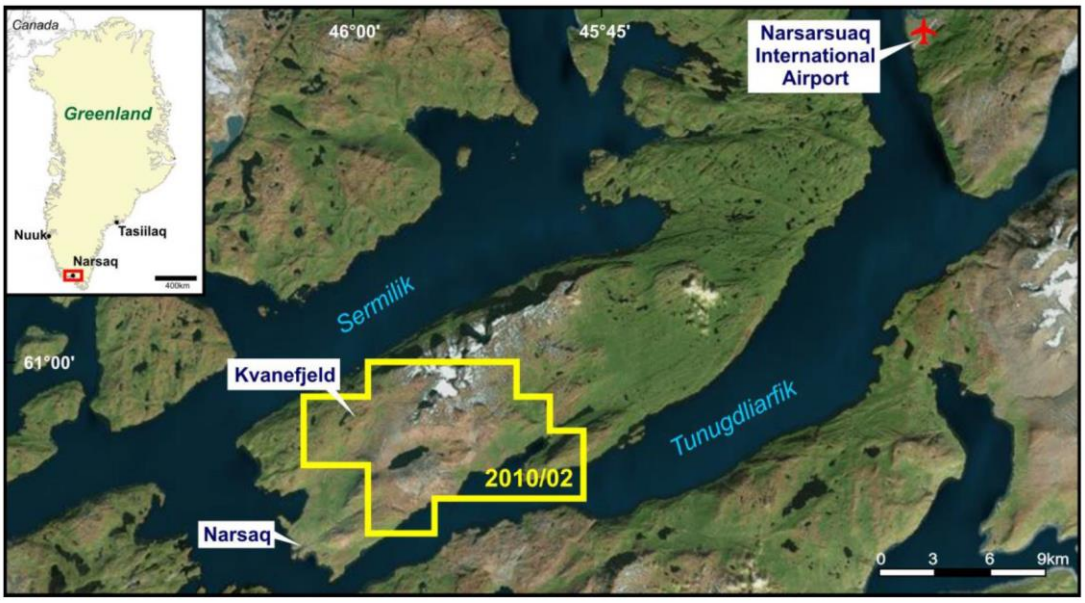
41 Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**.

42 Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**.

43 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 33, 66.

44 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 19.

with the Project location depicted below. The Greenlandic name for Kvanefjeld is "*Kuannersuit*".[45]



64. GM's plan for Kvanefjeld was focused on the exploitation of rare earth elements. The rare earth elements at Kvanefjeld include neodymium, praseodymium, terbium, and dysprosium.[46] These elements are needed in ever-increasing volumes for low-carbon technologies. They are collectively known as the "*magnet metals*", as they are required to produce the permanent magnets upon which electric vehicles and wind turbines depend. They are the subject of intense (and growing) competition amongst major economies, including China and the United States of America. Along with certain other elements (such as lithium), they fall into a broader family known as "*technology metals*".

65. The abundant rare earth elements at Kvanefjeld are co-mingled with other minerals, including zinc and uranium.[47] The deposit at Kvanefjeld contains low levels of uranium (approximately 0.0362% – i.e., 362 ppm).[48] GM planned to exploit the uranium at Kvanefjeld as a commercial by-product of rare earth elements.

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[45] In this Statement of Claim, both the Danish and Inuit names for the site will be used, consistent with the contemporaneous documents (which use both names interchangeably).

[46] See, for example, Report titled "*Kvanefjeld Project Feasibility Study*", produced by Greenland Minerals Ltd, April 2016, at **(C-1090)**, p. 380.

[47] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 24, 66.

[48] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 67.

66. The scale and significance of the Kvanefjeld Project is immense:[49]

(a) The ore body contains a Mineral Resource of over 1 billion tonnes across the Kvanefjeld deposit and satellite resources Zone 3 and Sørensen (which are within the same licence area).[50] The Kvanefjeld deposit has been explored more extensively than the satellite deposits and has 673 million tonnes classified as Mineral Resources[51] and 107 million tonnes classified as Ore Reserves.[52]

(b) The Kvanefjeld Project is currently considered to be at an advanced development stage.[53] In 2015, GM completed a Feasibility Study for the Project, addressing technical and economic aspects of development. GM's Feasibility Study was updated in 2016 and further optimised in 2019, to reduce the Project's footprint and increase rare earths recovery.[54]

(c) The Project is favourably situated, from an international transport infrastructure perspective. Deepwater fjords provide direct shipping access to the Project area, and an international airport is located approximately 35 km away at Narsarsuaq.

67. Due to GM's extensive exploration and feasibility work, it is now known that Kvanefjeld is one of the largest undeveloped deposits of rare earths in the world. The

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49 See, for example, Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 25-26, "Table 1 Project summary".

50 See, for example, Report titled "*Kvanefjeld Project Feasibility Study*", produced by Greenland Minerals Ltd, April 2016, at **(C-1090)**, p. 14. See also Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Figure 3, p. 15.

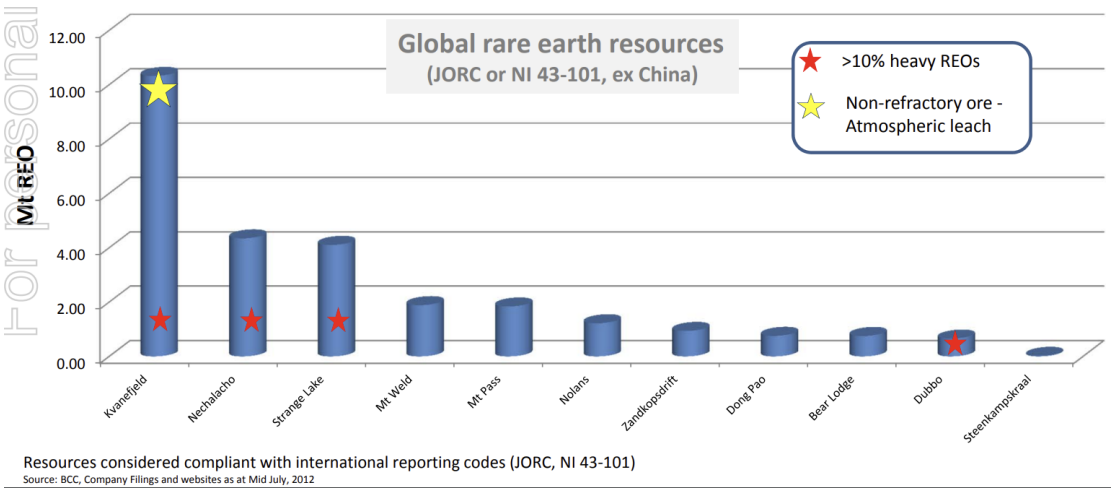
51 Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 4, p. 22.

52 Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 1, p. 4.

53 Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 17.

54 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 8, 24.

chart below shows the rare earth oxides at Kvanefjeld, relative to the world's other major rare earths deposits:[55]



68. If it proceeds, the Kvanefjeld Project will be a major contributor to the economy of Greenland. With an expected initial mine life of more than 37 years, the Project will create over 300 Greenlandic jobs throughout the project cycles and hundreds of millions of dollars in royalty and tax revenue to Greenland annually.[56]

69. The Respondents were and are aware of the significance of the Kvanefjeld Project, both economically and politically, and encouraged GM to pursue the Project for over a decade.

B.2 Introduction to the legal framework

70. The legal framework applicable to this dispute is discussed in detail in Section E below, and in the expert report of Professor Mortensen.

(a) Prior to 1 January 2010, Greenland's mineral resources were jointly managed by the Danish Government and the Greenlandic Government. Mining activities were regulated by the Danish Mineral Resources Act 1991.

(b) In 2009, Greenland moved from home rule to a system of self government. As part of this shift, Greenland assumed responsibility for the mineral resources area, whereas the Danish Government retained responsibility for foreign and security policy matters. As of 1 January 2010, the master statute for mining in

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55 Presentation titled "*Company Presentation March 2013*", by Greenland Minerals Ltd, March 2013, at **(C-215)**, p. 8.

56 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 25-26, "Table 1 Project summary"; see also Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Appendix 6, paras. A6.6-A6.17.

Greenland has been the Mineral Resources Act 2009 (**MRA**). This statute has the same basic structure as the Danish Mineral Resources Act 1991.

(c) The MRA is a framework statute. It contains mostly general rules for mineral resources activities. More specific rules for these activities are set forth in individual licences. This approach, with general regulation by statute and specific regulation by licence terms, is a continuation of the concessionary system that has applied in Greenland since 1932. Exploration licences are granted in accordance with a set of standard terms, which were issued in 1998 and have since been updated through general amendments (**Standard Terms**).

(d) The Government is empowered under MRA Section 16 to fix specific terms of individual licences (subject to the MRA). This section 16 power applies to both exploration licence terms and exploitation licence terms.

(e) The concessionary instruments that are granted pursuant to the MRA for the exploration and exploitation of mineral resources are contracts that exist within an administrative law framework. When it signs an exploration or exploitation licence, the Greenlandic Government becomes bound by its obligations under private law (including contract law) and administrative law. The law of obligations and the norms of administrative law operate in parallel in the concessionary context.

(f) The MRA was specifically intended to encourage mineral resources investment in Greenland and to make the Greenlandic system internationally competitive. This is explained in Professor Mortensen's expert report, discussed in Section E.

(g) Crucially, this system provides that if the holder of an exploration licence delineates a commercially viable deposit, such holder will have a legal right to an exploitation licence. While the Government has discretion in the grant of exploration licences, the legislators made a deliberate decision to exclude this discretion in the transition from exploration to exploitation.

(h) The licensing guarantee is contained in MRA Section 29(2) and expressed in contractual form in the terms of individual licences in Section 1401 of the Standard Terms. Under MRA Section 29(2), the only conditions that must be met in order for the exploration licence holder's entitlement to an exploitation licence to become unconditional are that the licensee must: (i) have discovered and delimited deposits, (ii) have declared its intent to exploit such deposits, and (iii) have otherwise met the terms of the licence (primarily payment of licence fees and having carried out exploration for the minimum cost level required). The conditions are the same under Section 14 of the Standard Terms, except that Section 1402 requires that the licence holder prepare a feasibility study as to commercialisation of the deposits it has delineated.

(i) Once the conditions of MRA Section 29(2) are satisfied, the licensee's entitlement to transition its exploration licence to an exploitation licence becomes unconditional. At this point, there is no longer any question of whether (or *if*) an exploitation licence will be granted. Rather, the only question that remains relates to the conditions on which it will be granted (i.e., *how* the exploitation activities can be conducted). This *how* question is primarily regulated by MRA Section 16, which gives the authorities the power to fix the specific terms of the exploitation licence itself. These terms will be based on: (i) the findings of the Environmental Impact Assessment (**EIA)** (MRA Section 73); and (ii) the Social Sustainability Assessment (**SSA)**, otherwise referred to as Social Impact Assessment (**SIA)** (MRA Section 76). It is only in relation to the *how* question that the Greenlandic Self-Government retains any discretion, and that discretion must be exercised in accordance with norms of administrative law (such as objectivity and proportionality).[57]

(j) In relation to environmental protection, MRA Section 1(2) specifically provides that its objective is to ensure that mining activities "*are carried out in a sound manner as regards safety, health, the environment, resource exploitation and social sustainability as well as appropriately and in accordance with acknowledged best international practices under similar condition*". Similarly, MRA Section 83 requires that mining activities are "*performed in accordance with acknowledged best international practices in the area under similar conditions*" and "*performed appropriately as well as in a sound manner as regards safety, health, the environment, resource utilisation and social sustainability*".

(k) The MRA does not distinguish between mining activities concerning radioactive elements and mining activities concerning non-radioactive elements (except in the context of small-scale mining, which is not relevant here). This has been the case since the first mining legislation for Greenland was enacted in 1965. However, when the Standard Terms were issued in 1998, the default position was that licences did not include exploration for radioactive elements, unless otherwise indicated in the licence (Section 101 of the Standard Terms).

71. The Exploration Licence over the Kvanefjeld area was granted pursuant to the Danish Mineral Resources Act 1991. It is based on the Standard Terms. It has been renewed and extended several times and has been amended by a series of mutually agreed addenda. The title that GM holds over Kvanefjeld is therefore an exploration concession in the Greenlandic tradition. As such, it is subject to principles of private law, including contract law and the law of obligations. In this connection, GM notes that the

[57] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15d, 96-97.

contractual nature of its Exploration Licence was acknowledged by the Tribunal in its Decision on Procedural Issues.[58]

72. GM's Exploration Licence includes the licensing guarantee in Section 1401 of the Standards Terms. This fundamental *quid pro quo* underpinned GM's investment in Greenland, and was relied upon by GM's management.[59]

73. As discussed below, in April 2020 the Government confirmed that GM had satisfied the conditions of MRA Section 29(2). It follows from this that GM's entitlement to an exploitation licence was unconditional. The Government was undertaking public consultations on GM's EIA and SIA. The purpose of this exercise was to determine the terms of GM's exploitation licence under MRA Section 16. The Ministry explicitly stated this in announcing the consultations in January 2021.

B.3 Greenlandic and Danish Government authorities

74. During this period, the organisational structure of the relevant Greenlandic and Danish Government authorities changed numerous times. This is explained in Dr Mair's witness statement.[60] In summary:

(a) The key ministry was the Ministry of Mineral Resources. The Greenlandic minister in charge of the mineral resources portfolio would often have various additional portfolios. This meant the Ministry of Mineral Resources was often joined to other ministries. In this submission, GM refers to the person holding the mineral resources portfolio as the "Minister of Mineral Resources" or "Minister", rather than using their full title. We refer to the ministry that included the mineral resources portfolio as the "Ministry of Mineral Resources" or the "Ministry".

(b) The key authority responsible for licensing and supervision of mining activities was the Bureau of Minerals and Petroleum (**BMP**), within the Ministry of Mineral Resources. The BMP issued recommendations as to the grant of licences to the executive branch (initially the Greenlandic/Danish Joint

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[58] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15d, 96-97. Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al., Ad Hoc, Decision on Procedural Issues, 24 November 2022, at **(C-212)**, para. 287: "*Among the factors pointing to the Danish language as 'appropriate' is that this is the language of the authoritative contract document. Further, the contract is subject to Greenlandic and Danish law, and thus, the language of the relevant legislation, travaux préparatoires, and administrative rules is Danish and Greenlandic. The Parties' dispute relate to possibly delicate and minute interpretation of a large complex of legislation and contracts*".

[59] See First Witness Statement of J. Mair, at **(CWS-3)**: Section 14 "gave mining investors (such as the Company) security in licensing, which encouraged investment" (para. 98). He testifies that section 29(2) "provided for the automatic rollover of an exploration licence into an exploitation licence" (para. 101).

[60] First Witness Statement of J. Mair, at **(CWS-3)**, section III.C.

Committee, and subsequently Naalakkersuisut), which was responsible for the approval of licences.

(c) In 2013, the Greenlandic Government established an independent agency within the Ministry of Environment[61] called the Environmental Agency for Mineral Resources Activities (**EAMRA**), which became responsible for environmental matters relating to mining, including reviewing environmental impact assessments.[62] EAMRA was outside the purview of the BMP and the Ministry of Mineral Resources. Dr Mair explains that the breakup of the BMP "*created challenges for GM in our EIA process, as we were dealing with various Government authorities and were unable to get clarity on processes and timelines (despite repeated requests)*".[63]

(d) In January 2014, the BMP changed to the Mineral Licence and Safety Authority (**MLSA**).[64]

(e) In February 2015, the Ministry of Industry, Labour and Trade (**MILT**) took over some of the MLSA's responsibilities, including social impact assessments (**SIAs**) and impact benefit agreements (**IBAs**) and similar related socio-economic matters.[65] MILT subsequently became the Ministry of Industry and Energy (**MIE**).

(f) In around June 2019, responsibility for SIAs and IBAs moved from the Ministry of Industry and Energy back to the Ministry of Mineral Resources.[66]

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61 The Ministry of Environment had various titles, including the Ministry of Nature, Environment and Research, and the Ministry of Science and Environment.

62 Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, amendment of December 2012 adding section 3a; Email from N. V. Rasmussen (Nanoq) to S. Bunn (GM), subject: "*Link to public consultation portal and PPT*", 21 August 2013, at **(C-216)**; Presentation titled "*Bureau of Minerals and Petroleum (BMP)*", by BMP, 21 August 2013, at **(C-217)**.

63 First Witness Statement of J. Mair, at **(CWS-3)**, para. 84.

64 Email from S. F. Holmgang (Nanoq) to J. Mair (GM); R. McIllree (GM); K. Birkholm (GMAS); A. Heilmann (Greenland Mining Services); J. Kyed (GMAS); I. Laursen (GMAS); S. Bunn (GM), subject: "*The BMP is changing to the MLSA*", 9 January 2014, at **(C-218)**; Letter from the Government of Greenland, subject: "*The Bureau of Minerals and Petroleum (BMP) becomes the Mineral Licence and Safety Authority (MLSA)*", 8 January 2014, at **(C-219)**.

65 Email from M. H. Hansen (MLSA) to undisclosed recipients, subject: "*New Structure of the Mineral Resources Area*", 13 February 2015, at **(C-220)**; Letter from J. S. Nielsen (MILT), J. T. Hammeken-Holm (Acting Deputy Minister of Mineral Resources) and S. H. Møller (Acting Deputy Minister of Nature, Environment and Justice), subject: "*New structure related to administration of the mineral resources area*", 9 February 2015, at **(C-221)**.

66 Email from P. Niclasen (Nanoq) to "Undisclosed recipients", subject: "*Restructuring of socioeconomic affairs - Government of Greenland (Nanoq - ID nr.: 10947533)*", 6 June 2019, at **(C-222)**; Letter from J. T. Hammeken-Holm (Ministry of Mineral Resources and Labour) to Licensee, subject: "*Restructuring of socioeconomic affairs*", 6 June 2019, at **(C-223)**.

(g) The Government referred to all of these organisations collectively as the "*Mineral Resources Authority*". However, in practice, there is no single person in charge of the "*Mineral Resources Authority*", and it does not have its own office or premises. Dr Mair has testified that GM generally always referred to the specific Government bodies, rather than the "*Mineral Resources Authority*".[67]

75. The Greenlandic authorities received considerable support from the Danish authorities.[68] In particular:

(a) The BMP was assisted on the mining and geological aspects of projects by the Geological Survey of Denmark and Greenland (**GEUS**), an advisory institution in the Danish Ministry of Climate, Energy and Utilities.

(b) EAMRA was advised by the DCE, a scientific advisory body based in Aarhus University which was known as the National Environmental Research Institute (**NERI**) until 2011.[69] NERI advised the BMP on the terms of reference for GM's environmental and social impact assessments. Subsequently, the DCE advised EAMRA in the review of GM's EIA, although the DCE was essentially driving this process.[70]

B.4 The licensing process in practice

76. Section 1402 of the Standard Terms (referred to in Section 1401) sets out the process for requesting an exploitation licence: the licensee must submit a request to the BMP (now the MLSA), accompanied by a declaration of commercial viability, a feasibility study, and a proposal for delineation of the exploitation licence area.

77. However, in practical terms, the Governments required much more from GM than what is set out in Section 1402.

78. As a practical matter, the process changed multiple times and there was a lack of clarity with respect to the applicable timeframes. The steps for obtaining an exploitation licence in Greenland are not clearly set out in any document or guideline. This process is discussed in the witness statement of Dr Mair.[71]

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67 First Witness Statement of J. Mair, at **(CWS-3)**, para. 89.

68 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 82, 85; First Witness Statement of S. Bunn, at **(CWS-7)**, section II.G.

69 First Witness Statement of J. Mair, at **(CWS-3)**, para. 85.

70 Another agency involved was the Greenland Institute of Natural Resources (**GINR**). GINR representatives attended some meetings and were on some correspondence with EAMRA and the DCE, although they were essentially observers who were involved mostly to build capacity and learn about mining.

71 See First Witness Statement of J. Mair, at **(CWS-3)**, paras. Section III.I.

79. The process that was applied to GM's exploitation licence application is set out below. As explained, GM went above and beyond the legal licensing requirements to satisfy the Greenlandic Government:

(a) Feasibility study:

(i) As set out in paragraph 70(h) above, MRA Section 29(2) and Section 1402 of the Standard Terms require an applicant to demonstrate the commercial viability of the deposit (although this requirement was removed from the MRA in November 2019). In practice, this meant performing a feasibility study. In Greenland, feasibility studies were submitted to the BMP, which was then replaced by the MLSA.

(ii) As discussed below, GM completed a pre-feasibility study around April 2012, a feasibility study in May 2015 and an updated feasibility study in April 2016. In late 2019, the MLSA required GM to pay for an independent consultant to confirm that it had delimited a commercially viable deposit. GM agreed to this, even though the statutory basis for the requirement was unclear. After the independent consultant reviewed GM's feasibility work, in April 2020, the Ministry of Mineral Resources confirmed by email to GM that it had satisfied the requirements of MRA Section 29(2) for the granting of an exploitation licence.

(b) Terms of Reference for the EIA and the SIA (**ToR**):

(i) One of the most important steps in the licensing process was agreeing the project scope with the Greenlandic Government. It was necessary to have a clear project development plan in order to perform the EIA and SIA studies. This was the purpose of the ToR, which defined the project plan and also outlined the studies that would need to be conducted in the EIA and SIA process.

(ii) In 2014, the Greenlandic Parliament added MRA Section 87a to introduce a requirement for public consultation on the ToR.[72] This required that the ToR be published on an online government portal for public consultations for 35 days (this process was known as "*pre-consultation*"). The purpose of the pre-consultation was to engage stakeholders at an early stage and involve them in the selection of development options. Applicants were required to address all comments received during the pre-consultation in a "*White Paper*" and revise and resubmit the final ToR accordingly.

[72] First Witness Statement of J. Mair, at **(CWS-3)**, para. 103(c)(iv).

(iii) As discussed below, GM prepared its ToR in 2011. Even though this was before the pre-consultation requirement was introduced, GM conducted stakeholder consultations on its ToR as a matter of best practice. The 2011 ToR were approved by the BMP (see paragraph 195 below).[73]

(iv) GM and the BMP/MLSA subsequently held more detailed discussions on the mineral processing options for the Kvanefjeld Project. The Government made it clear that the plan needed to include a refinery in Greenland (to process the mineral steenstrupine to produce rare earth concentrates and a uranium by-product). In 2014 and 2015, GM revised its ToR, conducted a more extensive round of public consultations, and submitted a consultation white paper to the MLSA, following which the revised ToR were approved. GM's second ToR were approved by EAMRA and also by the Government. This meant GM essentially performed steps 1-7 of the EIA Guidelines (discussed below) twice.

(c) <u>EIA and SIA:</u>

(i) Once the project plan was established, the next step was for an applicant to prepare a draft EIA and an SIA. These documents were required under MRA Sections 73 and 76, respectively. The process of preparing GM's draft EIA was protracted, and the Greenlandic Government departed from its own guidelines for the process.

(ii) During the relevant period, the agency responsible for reviewing and approving SIAs for public consultation was MILT (which later became the Ministry of Industry and Energy). In June 2019, responsibility for SIAs was transferred to the Ministry of Mineral Resources.

(iii) During the relevant period, the agency responsible for reviewing and approving EIAs for public consultation was EAMRA (which was established as a separate body to the BMP in 2013). However, in practice, most of the substantive review work was performed by the DCE.

(iv) In 2011, the BMP published the Guidelines for EIA reports for exploitation licences.[74] After the breakup of the BMP, in 2015, EAMRA

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[73] Between April and August 2011, GM submitted to the BMP the ToR for its EIA and SIA, conducted public consultations on the Project scope, and had its ToR (which included the environmental studies we would perform for our EIA) approved by the BMP. See First Witness Statement of J. Mair, at **(CWS-3)**, para. 103(c)(iii), section IV.G.

[74] Report, *"BMP guidelines – for preparing an Environmental Impact Assessment (EIA) Report for Mineral Exploitation in Greenland"*, by BMP, January 2011, at **(C-224)**.

released new EIA Guidelines (**EIA Guidelines**).[75] According to the EIA Guidelines, the EIA review process should have been straightforward. After the approval of the ToR, an applicant would prepare a draft EIA, which it would provide to EAMRA for review (step 8). EAMRA and the DCE would then review the draft EIA and provide feedback (step 9), following which the applicant would send a revised EIA to EAMRA (step 10), which EAMRA would publish for public consultation (step 11). The Ministry, EAMRA and the MLSA provided formal guidance to licence-holders that this review process would take approximately two months.[76]

(v) However, as discussed further below, the Greenlandic Government did not follow the process set out in the EIA Guidelines. After working with the authorities on the ToR for the EIA and SIA for almost four years, GM then spent five years working with the authorities on its EIA, during which time the authorities insisted on reopening issues and questions that had been resolved during the ToR process (which was designed to scope the EIA). Throughout this period, the authorities failed to provide GM with clarity with respect to the procedure or requirements for finalising the EIA.[77]

(vi) As discussed further below, GM's EIA and SIA were approved for public consultation by the Danish and Greenlandic authorities in 2020 and were then submitted by the authorities to the Greenlandic Government for formal approval. The Government formally approved GM's EIA and SIA for public consultation in December 2020.

(d) <u>Public consultation on EIA and SIA:</u>

(i) The next step in the EIA and SIA process involved public consultations. Pursuant to MRA Sections 87b and 87c, the approved draft EIA and SIA must be published on the Government portal for a minimum of eight weeks, and public hearings must be held in relevant towns and settlements. These public consultations are run by the Greenlandic Government authorities.

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75 Document titled "*Guidelines for preparing an Environmental Impact Assessment (EIA) report for mineral exploitation in Greenland*", by EAMRA, 2015, at **(C-225)**; see also, First Witness Statement of J. Mair, at **(CWS-3)** paras. 121-125.

76 First Witness Statement of J. Mair, at **(CWS-3)**, para. 325; Email from N. V. Rasmussen (MLSA) to J. Mair (GM) and S. Bunn (GM), subject: "*Expected processing time for the Greenlandic Mineral Resources Authorities*", 10 June 2014, at **(C-154)**; Letter from J. S. Nielsen (MMR), S. H. Møller (EAMRA) and J. T. Hammeken-Holm (MLSA) to all Licencees in Greenland's minerals sector, subject: "*Expected processing time*", 10 June 2014, at **(C-155)**.

77 First Witness Statement of J. Mair, at **(CWS-3)**, para. 110.

(ii) As discussed below, public consultations for GM's EIA and SIA stretched over an unprecedented period of 38 weeks during 2021. This included two rounds of public consultation meetings in southern Greenland. The consultation period was extended well beyond its original timeframe and there were serious problems with how the meetings were organised and participation managed, particularly during the second round (in particular, because an anti-uranium NGO was formally invited to present and participate, and the DCE was excluded).

(e) White Papers:

(i) Following the period of public consultation described above, an applicant for an exploitation licence would be required to compile all comments received during the public consultations in a White Paper (one each for the EIA and SIA). The White Papers are essentially a formal record of the public consultation, containing: (i) details of every issue raised, question asked, or statement made during the public consultation, (ii) the company's response to each, and (iii) the relevant government authority's response to each.[78] The Greenlandic authorities would then review and provide comments (if any) on the White Papers.

(ii) Following the White Papers process, the applicant would then re-submit its final EIA and SIA to the authorities.

(iii) Following the public consultations in 2021, GM completed White Papers for the EIA and SIA. However, the Government unilaterally aborted this process in May 2022, having sought and failed to obtain GM's consent to do so.[79]

(f) Maritime Safety Study:

(i) There is no requirement in the MRA to perform an analysis of maritime safety. Nevertheless, because of the scope of the Kvanefjeld Project and the fact that it would involve the construction and operation of a port and shipping, GM was required to prepare a Maritime Safety Study (formally known as Navigational Safety Investigation Study). This was prepared in accordance with the Danish Maritime Authority guidelines and submitted to the Danish Maritime Authority.

(ii) The Danish Maritime Authority approved GM's Maritime Safety Study in 2017.

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78 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 43.

79 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 54.

(g) Formal Exploitation Licence Application:

(i) As set out above, Section 1402 provides that an applicant that has delineated a commercially viable deposit, which it intends to exploit, may submit a request for an exploitation licence to the BMP (now the MLSA), accompanied by a feasibility study. There is no legal requirement for the application to attach an EIA and SIA.

(ii) As discussed below, GM had offered to make all the documents required for an exploitation licence application available to the Greenlandic Government, as well as a draft EIA and SIA, by December 2015. However, the Minister subsequently indicated that GM did not have a formal exploitation licence application in the system. GM therefore submitted a formal application to the authorities in June 2019, which attached its EIA, SIA and a Maritime Safety Study (the feasibility study having already been made available).

(h) Impact Benefit Agreement:

(i) After the SIA was substantially complete, the next step was for the applicant to negotiate an IBA with the Government and the relevant local authorities (municipalities/communes). MRA Section 78a refers to an IBA as a "*social sustainability agreement*" and provides that the Greenlandic Government must, as part of the terms of the exploitation licence, specify terms on the extent to which a licensee must enter into and comply with a social sustainability agreement and other socio-economic issues. The IBA was to be informed by the SIA. Negotiation of IBAs was the responsibility of MILT / the Ministry of Industry and Energy until around June 2019, when responsibility moved to the Ministry of Mineral Resources.

(ii) Once the public consultation on GM's SIA was complete, GM turned its attention to the IBA. As explained in the first witness statement of Mr Frere, GM was in the early stages of preparing a draft IBA when Act No. 20 was passed. The Government subsequently stopped cooperating with GM with respect to the licensing process, and unilaterally terminated the process in May 2022.

(i) Exploitation Licence Terms and Conditions:

(i) To be entitled to the issuance of an exploitation licence, the MRA Section 29(2) and Section 1401 of the Standard Terms require that an applicant delimits a commercially viable deposit that the applicant intends to exploit.

(ii) Once these requirements are met, the right to be granted an exploitation licence becomes unconditional and all that remains to be determined is what the terms of the exploitation licence will be. Pursuant to MRA Section 16(1), the Greenlandic Government is empowered to specify these terms of exploitation.

(iii) The MLSA is responsible for preparing the terms of exploitation licences. The environmental and social terms of such licences are based on the outcome of the EIA and SIA process. Consistent with the Greenlandic tradition of mining concessions, the terms of an exploitation licence are established following negotiations between the applicant and the authorities. The licence is signed by the Government and the applicant as the parties.

(iv) As discussed below, GM satisfied the conditions to be entitled to the grant of an exploitation licence, and the Government acknowledged in January 2021 that it was hosting public consultations for the purposes of establishing the terms of GM's exploitation licence under MRA Section 16. Despite this, the Government has rejected GM's exploitation licence application on the basis of Act No. 20, and has otherwise refused to engage with GM in relation to the terms of any exploitation licence.

B.5 Introduction to radiation protection

80. In order to understand the series of events that have led to this dispute, it is necessary to understand radiation protection, which, in turn, requires a basic understanding of radioactivity.

81. An explanation of radioactivity can be found in the witness statement of Dr Douglas Chambers, an independent expert on radiological risk assessment, who was engaged by GM to assess the potential radiological impacts associated with the Project. Dr Chambers explains that radioactivity is measured in Becquerels (Bq), while parts per million (ppm), on the other hand, is used to indicate the:

> "*amount of uranium present in relation to the total mass of a sample. In scientific literature, ppm is ordinarily used to express chemical toxicity, which measures the chemical properties based on its form and solubility (e.g., water-soluble or solid compound), and its toxicity may differ depending on the route of exposure.*
>
> *Uranium is a chemical substance that is also radioactive, however, 'natural uranium is radioactive but poses little radioactive danger because it gives off very small amounts of radiation'. Scientists have never detected harmful*

radiation effects from low levels of natural uranium, although some chemical effects on the kidney may be seen for large exposures to uranium."[80]

82. Therefore, Dr Chambers testifies that "*ppm is not used as a proxy for radiation risk, because radiation risk is assessed in a different way than chemical toxicity*".[81] Mr James Eggins, who has extensive experience in uranium regulation, draws the same distinction between these two units of measurement.[82]

83. The health and environmental risks associated with radioactive materials will depend on the radioactivity of a material, distance from exposure, and duration of exposure. The internationally accepted measure of risk is radiation *dosage*, which refers to the amount of energy absorbed by the body as a result of exposure to radiation. As explained by Dr Chambers, the "*only accepted and appropriate method of regulating the risks of radiation exposure is by assessing and implementing appropriate (typically annual) dosage limits*", which are measured in millisieverts (mSv).[83]

84. Radiation dosage is complicated to measure. As explained by Dr Chambers, radiological studies are needed to identify all the potential pathways by which radioactive materials may enter the environment.[84]

85. As explained in the Arcadis Radiological Assessment report performed by Dr Chambers, radiation is a natural and ever-present phenomenon.[85]

86. As foreshadowed above and by Dr Chambers, radiation refers to energy which is transmitted in the form of waves or streams of particles.[86] As regards natural sources of exposure and radiation, there are numerous naturally occurring radionuclide elements in existence which are widely distributed across the globe. This includes elements such as uranium and thorium.[87] Naturally occurring radionuclides are a source of radiation. These are present in all soils and rocks, which, in turn, create a natural background level of radiation everywhere.[88]

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80 First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 28-29.

81 First Witness Statement of D. Chambers, at **(CWS-8)**, para. 30.

82 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 22-29.

83 First Witness Statement of D. Chambers, at **(CWS-8)**, para. 36. See also, para. 1311 below.

84 First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 38-42.

85 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, pp. 11, 33-36.

86 See also, Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 32.

87 See e.g., Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, pp. 13, 34, 66.

88 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 39.

87. In the area around Narsaq, uranium and thorium are both present in the ore in elevated concentrations, and natural processes (such as glaciation and wind and water erosion) have dispersed radionuclides throughout the Narsaq valley over time.[89] As a result, radioactive material (be it the bedrock itself or the elements within it such as uranium) is already widespread and continues to be spread throughout the area by natural processes.

88. Consequently, there are naturally elevated concentrations of baseline radionuclides around the Kvanefjeld Project area as compared with global average levels, thus leading to a higher level of natural baseline exposure of residents in the area.[90] Background radiation is naturally high in terms of radiation dosage (in mSv). In fact, the natural baseline exposure through food ingestion and radon / thoron inhalation has been calculated to be between 8.5 and 10.5 mSv/year for residents of Narsaq.[91]

89. The above discussion of naturally occurring radioactive elements and natural background radiation gives context to the Project and the potential processing of ore. As regards mining operations, processing ore can involve breaking up or crushing rocks that contain naturally occurring uranium and thorium. This processing means the overall surface area of the rocks increases, which in turn leads to an increase in the amount of radon gas emanating from the ore.[92]

90. When mining radioactive elements, the principal pathway for the release of radioactive materials is through the release of radon gas. The amount of radon gas released will depend on various factors, including the ore grade (i.e., the concentration of uranium in ppm), the ore type, the volume of ore mined per year, ore storage procedures, crushing and grinding operations, tailings and waste rock disposal practices, and the radon and thoron emanation coefficient and/or exhalation rate (which depend on barometric pressure, precipitation and moisture content).[93]

91. Dr Chambers explains that, after determining the amount of radon gas that will be released by a mining operation, it is possible to estimate the radiation dosage to which "critical groups" of people are likely to be exposed.[94] Using the Kvanefjeld Project as

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89 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 19, 39, 159; see also, Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 72.

90 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 39.

91 Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 39.

92 First Witness Statement of J. Mair, at **(CWS-3)**, para. 56.

93 DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, pp. 50, 174.

94 Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 27-36.

an example, one critical group would be the people of Narsaq, and another critical group would be the mine workers. The radiation dosage for the people of Narsaq would depend on various factors, including the amount of radon gas released, the distance between people and the mining operations, and the exposure time.

92. Dr Chambers performed an in-depth radiological assessment of how mining operations at Kvanefjeld would impact the people of Narsaq, looking at all potential radiological pathways (for example, assessment of risks during transportation of yellowcake, the potential exposure of workers to radon gas and the consequences of tailings dam failure). Dr Chambers' radiological studies, which were accepted by the Danish and Greenlandic authorities, confirmed that during operations at Kvanefjeld, safe radiation dosage thresholds would not be exceeded. As Dr Chambers concluded, the radiation exposure would not be significantly different to current conditions (being the current level of background radiation exposure),[95] and would be well below the radiation dosage thresholds set by international organisations (specifically 1 mSv/year).

93. Similarly, it was determined that the Kvanefjeld Project would not have a material radiological impact on workers. For open cut mines such as Kvanefjeld, radon gas dissipates and decays quickly, meaning that the radiation dosage for workers is very low.[96] Dr Chambers concluded that the amount of radon released and the radiation dosage experienced by workers from radon release at the Kvanefjeld Project would be very low.[97] As Mr Bunn notes, a person would experience similar radiation dosage flying return from Nuuk to Copenhagen as they would working in the mine for a month.[98]

94. As explained by Dr Chambers and Mr Eggins, international regulatory best practice is that radiation protection is managed through the implementation of radiation dosage limits (measured in mSv).[99] These dosage limits are set by the International Commission on Radiological Protection (**ICRP**) which "*remains unchanged since*

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95 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 12.

96 First Witness Statement of J. Mair, at **(CWS-3)**, para. 57.

97 Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 36, 44.

98 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 144.

99 First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 30-33, 35-36, 44; First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 22-30.

2007".[100] This is how radiation protection is managed in key mining jurisdictions, including Australia, Canada and the United States.[101]

95. As discussed below, over many years, the Greenlandic and Danish authorities advised that radiation protection in Greenland would be regulated through radiation dosage limits, and this was the framework that would be applied to the Kvanefjeld Project specifically. Accordingly, GM, with the assistance of expert radiological consultant Dr Chambers, set out to establish through radiological studies that the radiation dosage impacts of the Project would be below these well-established thresholds.

96. By suddenly introducing Act No. 20, the Greenlandic Government has violated GM's legitimate expectations with respect to the regulatory framework for radiation protection that would be applicable to the Project. The Government essentially discarded a framework that was based on scientific principles and international best practice, as well as many years of analysis by the Greenlandic and Danish authorities (and their expert advisers), and replaced it with an arbitrary threshold that cannot be justified scientifically.

97. Act No. 20 was passed without any scientific analysis (and in fact in complete disregard of the Greenlandic authorities' own advice that the applicable limits should be based on dosage, as discussed at Sections C.13, C.25, C.43, C.49, C.50 and C.66 below) as to how it was an appropriate way to manage radiation risks (and why it should replace the best practice framework already in place). From 17 August 2022, GM made several requests to the Greenlandic Government pursuant to its entitlement under the Public Administration Act for copies of all of the documents and information related to the processing of its application for an exploitation licence by the Greenlandic Government (and, accordingly, which informed the Greenlandic Government's preparation of its draft decision to reject GM's application). While the Greenlandic Government provided only some of the documents requested by GM, those that it did produce, as well as records of parliamentary exchanges which occurred during the passage of Act No. 20 (see paragraphs 709-713 and 752 and Section C.74), confirm that the Greenlandic Government was aware that implementation of a uranium ppm threshold would be inconsistent with international best practice.

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[100] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 37; see also, Section C.37 below; ICRP, *The 2007 Recommendations of the International Commission on Radiological Protection*, ICRP Publication 103, Annals of the ICRP, Vol. 37, No. 2-4 2007, at **(C-229)**, pp. 98-99.

[101] The Governments have demonstrated a strong preference to rely upon the Australian and Canadian models through their extensive studies into these internationally accepted practices, as can be demonstrated in (but not limited to the following): (i) Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**; (ii) UWG Report, at **(C-231E)**, p. 54; and (iii) DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, pp. 19, 30.

C. DETAILED STATEMENT OF FACTS

C.1 Early exploration at Kvanefjeld

98. The Danish and Greenlandic Governments have long known about the potential of the Kvanefjeld site. The first expedition to explore for uranium took place in 1955.[102] From 1958 to 1980, the Danish Government conducted exploration and test mining for radioactive commodities around the Kvanefjeld deposit, which yielded ore at an average grade of 365 grams of uranium per tonne (i.e., 365 ppm).

99. In 1967, the Danish Geological Survey and the Danish Atomic Energy Commission considered that any uranium exploration and exploitation in the area around Kvanefjeld should be carried out exclusively by the State because of the potential significance of the uranium reserves to Denmark's energy policy.[103]

100. Between 1978 and 1983, the Danish Government developed a plan to exploit uranium at Kvanefjeld. However, it did not ultimately pursue its plan due to a sharp drop in uranium prices, which heralded a period of inactivity at Kvanefjeld.[104]

C.2 The so-called 'Zero Tolerance Policy'

101. In the late 1980s, rising anti-nuclear sentiment drove changes in Danish Government policy *vis-à-vis* uranium. In 1985, the Danish Government decided not to include nuclear energy as an indigenous source of power for Denmark.[105] It was in this period that the so-called "zero-tolerance policy" on uranium exploration and mining in Greenland is said to have emerged.

102. However, as discussed in Section G.2(b) below and in the expert report of Professor Mortensen, the origins of – and, indeed, the very existence of – the ZTP are uncertain. It is undisputed that the ZTP never had any legislative or other legal basis or status.[106] Moreover, it was never defined in any single, official policy document.

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[102] Danish Atomic Energy Commission, "*Report on the Activities of the Danish Atomic Energy Commission up to 31 March 1957*", January 1958, at **(C-232)**, p. 22; see also, H. Nielsen & H. Knudsen, *Cold atoms: Finding and utilizing uranium in Greenland during the Cold War*, Aarhus University Centre for Science Studies, https://css.au.dk/projects/previousprojects/greenland/coldatoms (last accessed 13 July 2023), at **(C-233)**.

[103] Danish Atomic Energy Commission, *Internal Memorandum*, 25 October 1967, at **(C-234)**, p. 1.

[104] Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Multi-Element Project - Pre-Feasibility Study - Interim Report - Market Summary", 1 February 2010, at **(C-235)**, p. 5.

[105] Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, p. 15.

[106] Document titled "*Proposal for a decision by the Parliament of Parliament to accede to the accession of the Parliament with effect from EM13 to: The "zero tolerance" for the mining of uranium and other radioactive substances ceases*", EM 2013/106, 8 August 2013, at **(C-236E)**.

103. Numerous sources have questioned whether the ZTP even ever existed. For example:

(a) The Danish Institute for International Studies (**DIIS**) performed a comprehensive review of historical records and concluded there was no evidence of the Joint Greenlandic-Danish Committee on Mineral Resources in Greenland adopting the ZTP. The DIIS concluded: "*Until the Naalakkersuisut can produce a document to this effect* [that the policy formally existed], *we cannot claim that zero tolerance was ever official policy*."[107]

(b) The Director of the Nuclear Safeguards Program at the Stimson Centre commented that the ZTP had never been put before the Parliament and was "*a policy that had never really existed*."[108]

(c) In late 2012, the Danish and Greenlandic Governments established the Uranium Working Group (**UWG**), led by the Danish Ministry of Foreign Affairs, to investigate the consequences of lifting the ZTP. The UWG produced a report that referred to the ZTP as "*the so-called zero-tolerance policy*".[109]

(d) In 2012, the Minister of Mineral Resources, Ove Karl Berthelsen, referred to the policy as the "*so-called*" ZTP.[110]

104. Nevertheless, while the ZTP had no legal basis and was not reflected or coherently expressed in any policy document, the Greenlandic authorities operated on the assumption that it was in place.

105. As discussed in Section C.29 below, in October 2013, the Greenland Parliament voted to lift the ZTP. This decision was sanctioned by the Danish Government. Thus, the ZTP (if it ever existed) had been abolished for eight years when Act No. 20 was passed.

C.3 Grant of exploration licence to Rimbal (2005)

106. Exploration licence no. 2005/17, including the Kvanefjeld area, was first issued in May 2005 to an Australian company called Rimbal Pty Ltd (**Rimbal**).[111] The exploration licence was issued under the Danish Mineral Resources Act 1991 and incorporated the Standard Terms, including the licensing guarantee in Section 1401.

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[107] Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, p. 17.

[108] See Cindy Vestergaard in Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, p. 17.

[109] Report titled "*Report on the extraction and export of uranium - The Working Group on the Consequences of Repeal of the Zero Tolerance Policy*", by the Government of Greenland, October 2013, at **(C-231)**, p. 10.

[110] See, for example, B. H. Sørensen and V. Hyltoft, *He wants uranium mines opened in Greenland*, Berlingske, 17 June 2012, at **(C-237)**.

[111] "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq in West Greenland*" dated May 2005 and executed 6 July 2005, at **(C-3)**.

107. At this time, the regulation of mining in Greenland was the joint responsibility of the Greenlandic and Danish Governments.[112] The process for the grant of an exploration licence was (and is) set out in the "Application Procedures and Standard Terms for Exploration and Prospecting Licences for Minerals in Greenland" (**Application Procedures**).[113]

108. Pursuant to the Application Procedures, the exploration licence application would have been presented to BMP and then to the Greenlandic/Danish Joint Committee on Mineral Resources and the final decision to grant the licence would have been made by the Danish Minister for Environment and Energy.

109. By way of slight digression, in a recent internal Ministry legal assessment of GM's arbitration case, the Ministry has asserted that "*the Danish state cannot be a party to the case, as it is Naalakkersuisut alone that has issued the research permit*".[114] This is incorrect. When this exploration licence was first issued, the system was such that the decision to issue the licence was taken by the Greenlandic and Danish Governments jointly, under Danish legislation.

110. At this time, both Governments knew of the presence of uranium in the area. As Mr Bunn testifies: "*it was a well-known geological fact that the deposit included uranium and other radioactive minerals*".[115] While it was open to the authorities to exclude certain areas from exploration licence applications,[116] consistent with their strategy of encouraging investment in mineral resources in Greenland, the Danish and Greenlandic Governments chose to grant an exploration licence over the area. By granting an exploration licence, the authorities thus engaged the licensing guarantee in Section 1401 and forfeited any discretion to deny an exploitation licence if the licensee satisfied the licensing requirements. This is discussed in further detail in Section F.2(b) below.

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[112] This was provided for in Section 3 of the Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, which states as follows: "*The granting of prospecting licences under section 6 and exclusive licences under section 7 for exploration for and exploitation of mineral resources in Greenland, cf. sections 11 and 15, are subject to agreement between the Danish Government and the Greenland Home Rule Government*."

[113] Document titled "*Application Procedures and Standard Terms for Mineral Exploration and Prospecting in Greenland*", by Government of Greenland and BMP, 25 June 2013, at **(C-238E)**. The current version of the Application Procedures available on the Naalakkersuisut website are from 1998 and were "*approved by the Government of Greenland and the Danish Minister for Environment and Energy*".

[114] Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**.

[115] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 14.

[116] Document titled "*Application Procedures and Standard Terms for Mineral Exploration and Prospecting in Greenland*", by Government of Greenland and BMP, 25 June 2013, at **(C-238E)**, Section 5.2.

C.4 GM acquired interest in Kvanefjeld licence from Rimbal (2007)

111. Rimbal's exploration licence no. 2005/17 was subsequently split into two new exploration licences (on the same terms), no. 2005/28[117] for the northern section (including Kvanefjeld and satellite deposits) of the area and no. 2005/29 for the southern section.

112. In 2007, GML invested in Greenland by acquiring of 61% of the Kvanefjeld Project from Rimbal (with an option to increase its interest to 100%).[118] As part of this transaction, GMAS was incorporated for the purpose of holding the Kvanefjeld Exploration Licence.[119]

113. On 17 August 2007, GM sent a letter to the BMP requesting approval to transfer Exploration Licence No. 2005/28 from Rimbal to GMAS.[120] This letter attached details of GM's mining experience, financial capability to undertake exploration of the licence area, and plan for the 2007 field season. This letter also attached a detailed prospectus from the capital raising GM had undertaken in 2007 to support the transaction with Rimbal.

114. The Exploration Licence for Kvanefjeld was formally transferred from Rimbal to GMAS on 19 June 2008.[121] The transfer was approved by the Greenland Home Rule Government (as required by Section 27 of the Danish Mineral Resources Act 1991) and consented to by the Danish Government (under Section 3 of the Danish Mineral Resources Act 1991). As a matter of Danish law, therefore, the legal responsibility for the original grant of the Exploration Licence to GM was with both the Greenlandic and Danish Governments. This responsibility continues today.

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117 "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq North in West Greenland*" dated April 2007 and executed 14 June 2007, at **(C-5)**.

118 Greenland Minerals Ltd ASX Announcement titled "Acquisition", 21 May 2007, at **(C-30)**; Greenland Minerals Ltd ASX Announcement titled "Settlement of acquisition transactions and statement for release to the market", 17 August 2007, at **(C-239)**. GML (then known as The Gold Company Limited) acquired 100% of the share capital of Chahood Capital Limited (Chahood) under a share sale deed. Pursuant to a deed of assumption, GML became party to a joint venture agreement between Chahood and Rimbal's parent company, Westrip Holdings Limited. Under this joint venture agreement, GML held a 61% interest in GMAS, which would be incorporated to hold the exploration licence for the Kvanefjeld Project. GML thus acquired a 61% interest in the Kvanefjeld Project, and effective board control of GMAS.

119 Under section 16(3) of the MRA companies must be domiciled in Greenland to be granted exploitation licences: "*An exploitation licence under subsection (1) above may only be granted to a limited liability company; but see section 32(2) below. The company may only perform activities covered by licences granted under this Greenland Parliament Act and must not be taxed jointly with other companies, unless joint taxation is compulsory. As a general rule, the company must have its registered office in Greenland*".

120 Letter from R. McIllree (GM) to the BMP, subject: "*Request for approval of transfer of License No. 2005/28*", 16 August 2007, at **(C-240)**.

121 See "*Addendum No. 1 to Licence No. 2005/28 for an Area at Naakkaalaaq in West Greenland*" dated June 2008 and executed 19 June 2008, at **(C-6)**; see also Greenland Minerals Ltd ASX Announcement titled "Greenland Minerals and Energy Limited Registration of Exploration License titled in subsidiary name", 24 June 2008, at **(C-241)**.

115. The Exploration Licence for Kvanefjeld incorporated the Standard Terms 1998.[122]

C.5 GM's early exploration activity at Kvanefjeld

116. GM commenced drilling and exploration work on the Kvanefjeld Project in the summer field season of 2007.[123] This initial drilling program was recognised as the single largest mineral exploration campaign ever to have occurred in Greenland.[124]

117. From very early in the Project, GM's strategy was focused primarily on rare earths, the market for which was rapidly expanding with the uptake of new technologies.[125]

118. Nevertheless, GM evaluated the deposit holistically, evaluating all of the elements that were present, including uranium.[126] This was known to the Greenlandic authorities from the outset, and GM referred to uranium when announcing the results of its exploration activities.[127]

119. In its exploration activities, GM used uranium as a 'pathfinder' to other minerals at Kvanefjeld.[128] In geochemical mineral exploration, the term 'pathfinder' is used to describe an element that occurs in close association with an element or commodity being sought, but which can be more easily detected by analytical methods. As Mr Bunn explains:

> "*When sampling a deposit, a drill core will be collected. Samples will be taken from the drill core. When the drill core is sitting on the work bench ready for sampling, it is possible to measure radioactivity of the ore, and thus identify the presence of radioactive elements. This real time information can be used to understand a multi-element ore body better and to plan drilling more effectively. We used this 'pathfinder' technique when sampling the Kvanefjeld deposit.*"[129]

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122 "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq North in West Greenland*" dated April 2007 and executed 14 June 2007, at **(C-5)**.

123 The Gold Company Limited (GM) ASX Announcement titled "Commencement of field season", 1 June 2007, at **(C-242)**; The Gold Company Limited (GM) ASX Announcement titled "Commencement of Drilling - Kvanefjeld", 15 June 2007, at **(C-243)**.

124 Greenland Minerals Ltd ASX Announcement titled "Drilling update - Kvanefjeld", 28 August 2007, 28 August 2007, at **(C-244)**

125 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 11.

126 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 24, 25.

127 For example, in May 2008, GML announced an initial JORC-compliant Inferred Mineral Resource estimate for the Project that included 988,000 tonnes of rare earth oxides (90 million tonnes at 1.09%) and 104,000 tonnes of uranium oxide (338 million tonnes at 0.031%). See, Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Multi Element Resource Update", 2 May 2008, at **(C-245)**.

128 Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Multi-element Project - Greenland", 12 October 2007, at **(C-246)**.

129 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 26; see also, First Witness Statement of J. Mair, at **(CWS-3)**, para. 134.

120. GM's work showed that the rare earth elements (and the uranium) at Kvanefjeld were hosted within an unusual phosphor-silicate mineral called steenstrupine.

121. In May 2008, Roderick McIllree (Managing Director of GM at the time) presented at a Greenland Sustainable Mining conference in Copenhagen and explained that data from the deposits in Kvanefjeld indicated that the company intended to extract uranium as a by-product.[130] This conference was attended by representatives of the Greenlandic authorities and Denmark's GEUS.

122. After the success of its first field season, GM began preparations for a second drilling campaign in 2008.

123. Prior to the commencement of the 2008 field season, GM engaged in a dialogue with the BMP about its exploration activities.[131] The BMP asked GM to confirm that it was not exploring for uranium but, rather, was focused on identifying other mineral resources to be exploited and commercially utilised.[132] GM responded that it considered Kvanefjeld promising as a multi-element ore body, while noting that it was well known that the deposit contained uranium (although this was only a minor part of the ore body in terms of value and volume).[133] GM further explained that it was using uranium as a pathfinder to explore the multi-element mineralisation.

124. After receiving this letter from GM, the BMP proceeded to confirm receipt of GM's application activities to take place during the field season and the company's application fee.[134] GM's summer field season accordingly proceeded without any objection from the BMP.[135] Concurrently, GM provided the BMP with information regarding mining uranium as a by-product.[136]

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130 Email from R. McIllree (GM) to J. S. Nielsen (BMP), subject: "*Additional information regarding licence 2005/28*", 8 June 2008, at **(C-247)**; Letter from R. McIllree (GM) to J. Hesseldahl (BMP), subject: "*R.E. Request for additional information on license number 2005/28*", 8 June 2008, at **(C-248)**.

131 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 30.

132 Letter from J. Hesseldalh (BMP) to GM, subject "*Vedr. behandling af boreansøgning 2008 (2005/28 - Kvanefjeldet)"*, 6 June 2008, at **(C-249)**.

133 Email from R. McIllree (GM) to J. S. Nielsen (BMP), subject: "*Additional information regarding licence 2005/28*", 8 June 2008, at **(C-247)**; Letter from R. McIllree (GM) to J. Hesseldahl (BMP), subject: "*R.E. Request for additional information on license number 2005/28*", 8 June 2008, at **(C-248)**.

134 Email from O. F. Kjær (BMP) to R. McIllree (GM), subject: "*Receipt of application and invoice attached*", 21 June 2008, at **(C-250)**.

135 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 33.

136 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 34; Email from R. McIllree (GM) to J. S. Nielsen (BMP), subject: "*additional material on by-product examples*", 21 June 2008, at **(C-251)**; Presentation titled "*Commodity concentration comparison at Kvanefjeld*", R. McIllree (GM), 21 June 2008, at **(C-252)**.

125. In addition to its field activities, in 2007, GM began collecting environmental baseline data, which GM ultimately used for the purposes of preparing its EIA.[137]

C.6 2008 Uranium Report and proposal to lift the ZTP

126. When GM invested in the Kvanefjeld Project, GM was aware of the ZTP, but it was not clear what it entailed.[138] Mr Bunn testifies:

> "*While there was no law against mining uranium (this was not banned in the Mineral Resources Act), exploration licences listed all minerals with the exception of hydrocarbons and radioactive minerals.*
>
> *However, while the ZTP remained in place, societal attitudes had shifted and we knew that there were many politicians in Greenland who believed that this policy should change, and that it was important to open up Greenland to development, including mining*."[139]

127. In 2007, the Greenlandic Government initiated a review of uranium mining.[140]

128. In October 2008, a working group from the Ministry of Mineral Resources and the BMP completed a report on the societal aspects of uranium exploration and mining in Greenland (**2008 Uranium Report**).[141] This report proposed that the Greenlandic Parliament debate whether uranium exploitation should be permitted as a by-product and/or a main product, provided that for the relevant project it was demonstrated that "*exploitation will be able to take place in a safety, health, environmental and safety-politically justifiable manner*".[142]

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137 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 48.

138 See First Witness Statement of J. Mair, at **(CWS-3)**, para. 129. As Dr Mair explains that, when he joined the Company, the ZTP was a grey area. He testifies: "*There was no formal definition of what 'zero tolerance' meant, and so it was not clear what it did and did not allow. We understood that it did not allow companies to explore for uranium in a commercial sense (i.e., to extract, process and sell uranium), although it did not prevent exploration for non-radioactive elements that coexisted with elevated levels of radioactive elements*."

139 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 17-18.

140 See, Investor Presentation titled "*Greenland Minerals and Energy Ltd"*, 11 September 2007, at **(C-253)**; "[l]*aws in Greenland relating to Uranium exploration and exploitation are currently under review in regards to policy, these views are expected later this year*".

141 Presentation Note titled, "*Statement on the societal aspects of uranium exploration and mining in Greenland"*, EM 2008/80, by National board member for Infrastructure, Environment and Raw Materials, 27 October 2008, at **(C-254E)**; Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**.

142 Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, p. 37.

129. The report concluded that there were no particular environmental issues linked to uranium exploration:

> "*The methods used in the exploration of uranium are very similar to the methods used in other types of ore and no information has been found to indicate that there would be special environmental issues linked to the exploration of uranium in relation to the exploration of other minerals*."[143]

130. As for uranium exploitation, the report recommended that Greenland set rules and guidelines based on the International Atomic Energy Agency (**IAEA**) guidelines and international best practice.[144] It stated:

> "*To protect mining employees against health-damaging radioactive radiation, the IAEA has set upper limit values for radioactive radiation, which must not be exceeded. The radioactive radiation measured in the unit 'mSv' must therefore not exceed an average of 20 mSv over 5 years in the total period and must not exceed an average of 50 mSv in a single year.*"[145]

131. It is clear from this report that one of the factors driving the review of Greenland's uranium policy was the economic potential of the Kvanefjeld Project. Indeed, the 2008 Uranium Report highlighted that Kvanefjeld was a well-explored multi-element deposit with uranium content of 300 ppm that could be the subject of commercial exploitation. It noted that, if developed, the Kvanefjeld Project would benefit Greenland through the collection of tax revenue.[146]

132. Owing to the potential for uranium to be used in nuclear weapons, an international uranium export tracking system exists, and uranium-exporting countries are required to have export control regulations.[147] The 2008 Uranium Report noted that in Canada and the United States, export control regulations apply when the uranium content in ore was above 500 ppm, whereas under the European Atomic Energy Community (**Euratom**)

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[143] Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, p. 29.

[144] Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, pp. 30, 32.

[145] Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, p. 30.

[146] Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, section 9, pp. 24-25.

[147] See First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 31-36. As explained by Mr Eggins, it is a requirement for the IAEA member states to uphold its non-proliferation obligations within the European Union "*by verifying that nuclear materials are being used for peaceful purposes, and not diverted for military or other unauthorised purposes*".

Treaty export controls applied when uranium content was above 1,000 ppm.[148] The report concluded that, below these thresholds, there were "*no security policy issues*" linked to the export of uranium.[149] In other words, these major uranium exporting jurisdictions do not even require the tracking of uranium when the concentration is below 500 ppm or 1,000 ppm because it is such a low level as to be immaterial. Indeed, as stated in the report, "*Euroatom defines uranium ore as ore with a higher content of uranium than 0.1%*". As discussed further below, by passing Act No. 20, the Greenlandic Government has set a (100 ppm) threshold that is irrationally low – an order of magnitude lower than accepted thresholds for uranium export controls.

133. The 2008 Uranium Report was presented to the Greenland Parliament on 27 October 2008. The note accompanying the report advised that the Danish Minerals Resources Act 1991 required "*that the exploitation of minerals must be carried out in an environmentally and safety-responsible manner*" and that the environmental and health issues associated with uranium mining were "*similar to the problems and solutions that are known in connection with the extraction of other minerals*".[150] The note stated:

> "*Experience from the uranium mining industry in Canada shows that an internationally acceptable environmental and safety level can be achieved by using the latest technology and complying with the highest applicable standards and guidelines as set by the International Atomic Energy Agency under the UN.*"

134. The note recommended that there be a debate about uranium mining, with a view to exploiting uranium "*either a main product or only as a by-product in connection with exploration and exploitation of other raw materials*".

135. At this time, mining remained an area of joint Greenlandic and Danish responsibility. The presentation note stated that the 2008 Uranium Report had been discussed in the Joint Council on Mineral Resources and circulated to the relevant Danish ministries and authorities.

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148 Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, pp. 33-34, 37.

149 Report titled, "*The societal aspects of exploration and exploitation of uranium in Greenland Volume 1: The National Board's Summary*", produced by K. Kielsen (National Board Member for Housing, Infrastructure and Raw Materials), 27 October 2008, at **(C-230E)**, p. 37.

150 Presentation Note titled, "*Statement on the societal aspects of uranium exploration and mining in Greenland"*, EM 2008/80, by National board member for Infrastructure, Environment and Raw Materials, 27 October 2008, at **(C-254E)**.

136. On 21 November 2008, the Siumut Party (which had a majority in the Government coalition) proposed that Greenland allow the exploitation of mineral deposits, provided the concentration of uranium was less than 1,000 ppm.[151] As explained by Dr Mair:

> "*this proposal was primarily aimed at allowing the Kvanefjeld Project to go ahead, as this was considered to have the potential to be a key project in terms of national development.*"[152]

137. However, the Greenlandic Government ultimately considered the motion to be premature because the matter had not been studied in depth and as a result the proposal was not subject to a vote.[153]

138. On 28 November 2008, the Greenlandic press reported that a majority of the Parliament was "*in favor of mining uranium as a by-product of other minerals and rare earths*", and that a final decision would be taken following a further information campaign.[154] The article noted that the national board member of mineral resources, Kim Kielsen, had presented the 2008 Uranium Report to Parliament and had already visited several cities in Greenland to discuss uranium mining.

139. As Mr Bunn states, "[t]*hese developments in the Greenlandic Parliament gave us confidence that the Parliament would soon vote to lift the ZTP. We believed there was a clear pathway forward to develop the Project.*"[155]

C.7 Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland (January 2009)

140. In January 2009, GM and the head of the BMP (Mr Jørn Skov Nielsen) agreed the text of a document titled "*A Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland*".[156] This document confirmed that "*Greenland Minerals and Energy's exploration programs have been permitted for multi-element mineralisation.*"

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151 Document titled "*Report on the social aspects of uranium exploration and quarrying in Greenland*", by L. E. Johansen (Siumut), 21 November 2008, at **(C-255E)**, pp. 3-4.

152 First Witness Statement of J. Mair, at **(CWS-3)**, para. 130.

153 First Witness Statement of J. Mair, at **(CWS-3)**, para. 132.

154 Netredaktion, *Large majority for uranium as a by-product*, Sermitsiaq, 28 November 2008, at **(C-256E)**.

155 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 40.

156 First Witness Statement of S. Bunn, at **(CWS-7)**, section II.C; Email from J. Telling (BMP) to R. McIllree (GM), subject: "*VS: A Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland*", 16 January 2009, at **(C-257)**; Document titled, "*A Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland*", by R. McIllree (GM) with comments by J. Telling (BMP), 16 January 2009, at **(C-258)**.

141. The document also noted that:

> "*In Greenland, an exploration license automatically leads to the exploitation rights, subject to submitting a feasibility study to the government that demonstrates the viability of the project, and an environment impact assessment report, if all license obligations and requirements by law have been met. The guidelines for these are provided by the Bureau of Minerals and Petroleum*". (emphasis added)

142. Mr Bunn has testified that this agreed document confirmed GM's understanding of the regulatory framework at the time, including that GM's exploration licence gave it an automatic right to an exploitation licence.[157] Thus, even at this relatively early stage, the Greenlandic authorities were actively representing to GM and its investors that GM had a right to develop Kvanefjeld as a multi-element mine.

C.8 Field season 2009

143. In advance of the 2009 summer field season, GM applied to the BMP to take bulk ore samples from Kvanefjeld.[158] As Mr Bunn explains:

> "*We planned to perform pilot tests to develop the metallurgical process for refining ore from the Project. This work was needed to determine how we could extract rare earths with uranium as a by-product or waste product.*"

144. The BMP initially questioned this application as it involved the removal of steenstrupine, which contained uranium.[159] GM responded by explaining that it was not possible to separate the mineral steenstrupine physically, and the Company needed to perform investigations to determine how to separate the rare earths from the uranium using chemical processes.[160] The Danish authorities subsequently considered and approved GM's application.[161]

145. This exchange confirms that, during this period, the Greenlandic and Danish authorities were aware that the Kvanefjeld deposit could only be exploited if uranium was extracted

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157 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 45, 47.

158 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 50.

159 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 51, 52; Letter from O. F. Kjær (BMP) to GM, subject: "*Re: clarificatory questions concerning application for bulk programme, drilling application and access to tunnel at Kvanefjeld (EL 2005/28)*", 30 March 2009, at **(C-259E)**.

160 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 53; Email from R. McIllree (GM) to J. S. Nielsen (BMP), subject: "*Response to BMP letter 30th March 2009*", 16 April 2009, at **(C-260)**; Letter from R. McIllree (GM) to O. F. Kjær (BMP), subject: "*Re: Clarification questions concerning bulk program, drilling application and access to tunnel at Kvanefjeld (EL 2005/28) by Greenland Minerals and Energy A/S (GME or the Company*", 16 April 2009, at **(C-261)**.

161 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 54-55; Email from O. F. Kjær (BMP) to R. McIllree (GM), subject: "*Regarding bulk sample 2009 (Kvanefjeldet)*", 16 June 2009, at **(C-262)**.

and processed (physically and chemically). It further confirms that they supported GM's activities to develop the Project, including the extraction of uranium.

C.9 Political developments (mid-2009)

146. For decades, the Siumut Party had been the main party in the Greenlandic Government. Siumut was a centre-left social democratic party and was typically in favour of economic development.[162] On 2 June 2009, there was an election in Greenland and the Inuit Ataqatigiit Party (**IA Party**) won the most seats and became the main party in the Parliament, in coalition with the Democrats. The Premier was Kuupik Kleist. Ove Karl Berthelsen was appointed as the Minister for Mineral Resources.[163] The IA Party Government continued until 2013.

147. In early August 2009, a Greenlandic Government delegation visited Western Australia for meetings with the Australian mining authorities (facilitated by GM).[164] The purpose of this visit was to learn about Australia's regulatory framework for the management of uranium mining. Mr Bunn notes that "*it was clear that Greenland intended to establish a system based on international best practice*" and the authorities "*were particularly interested in how industry best standards for uranium mining were implemented in Australia and Canada*", including how to monitor workers' exposure to radioactive elements. As Mr Bunn further notes:

> "*The Greenlandic authorities made this visit (as well as visits to Canada) because they were serious about making the Kvanefjeld Project a reality, and they wanted to learn about uranium management and processing. This signified to us that the Government of Greenland fully intended to permit the exploitation of mineral resources containing radioactive elements.*"[165]

C.10 Community engagement

148. In early September 2009, GM representatives, including Dr Mair, participated in a series of meetings in Narsaq that were attended by Minister Berthelsen, the head of the BMP (Mr Jørn Skov Nielsen), the Mayor of South Greenland (Mr Simon Simonsen) and the South Greenland Municipal Council (which represents the three main towns of southern Greenland: Qaqartoq, Nanortalik and Narsaq).[166] In these meetings, GM

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[162] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 36.

[163] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 56.

[164] First Witness Statement of S. Bunn, at **(CWS-7)**, section II.H.

[165] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 66.

[166] First Witness Statement of J. Mair, at **(CWS-3)**, section IV.C.

presented an update on the current status of the Kvanefjeld Project, and a site visit was conducted as shown in the photograph below:

Between meetings held on September 2nd in Narsaq, Greenland, a site visit to the Kvanefjeld project area (above) was conducted. Pictured from left, Greenland's Minister for Commerce and Raw Materials the Hon Mr Ove Karl Berthelsen, Greenland Minerals representative Dr John Mair, the Mayor of South Greenland Mr Simon Simonsen, and the Director of the Bureau of Minerals and Petroleum Mr Jørn Skov Nielson *(Photograph courtesy of John Rasmussen).*

149. A large public meeting took place in the Narsaq town hall, which included a panel discussion, including questions, with Minister Berthelsen, Mayor Simonson, Dr Mair, and spokespersons for groups opposed to mining. At this meeting, Dr Mair presented on the Project and explained that radioactive elements would need to be extracted in order to mine the rare earths.[167] During the meeting, a petition signed by 390 people was presented to Minister Berthelsen, seeking his support for the Kvanefjeld Project, provided all social and environmental requirements were met.[168] Minister Berthelsen's response was that he could see there was genuine interest in the Project, and further work should be done to evaluate whether the IA Party's position against uranium mining should be changed.[169]

150. As Dr Mair recalls:

> "*Being part of this townhall was a powerful experience. It was clear that there was a strong desire in the community for change and to develop new industries.* […] *Overall, there was strong support from the community for the Project to*

[167] First Witness Statement of J. Mair, at **(CWS-3)**, para. 143.

[168] First Witness Statement of J. Mair, at **(CWS-3)**, para. 142.

[169] First Witness Statement of J. Mair, at **(CWS-3)**, para. 147.

> *advance to a feasibility study phase* […]. *The people of Narsaq were comfortable about our activities and wanted them to proceed.*"[170]

151. This demonstration of community support – both from the people of Narsaq and from across the southern Greenland business community – allowed GM to positively engage with the new Greenlandic Government going forward.[171] As announced by GM at the time:

> "*The recent community and council meetings in Greenland were considered as very positive and productive by the Company, and an important step in commencing a positive dialogue with the new Greenland Government moving forward.*"[172]

C.11 Exploration Licence renewal (March – April 2010)

152. While there was clearly public support for the Project, and Minister Berthelsen had indicated his openness to changing the Government's position on uranium mining, the Greenlandic Government's public position was that the ZTP remained in place. This created a problem for GM because the Kvanefjeld Project was reaching a stage where it was becoming constrained by the uncertainty regarding uranium exploration and commercialisation.

153. In March 2010, GM representatives, including Mr Bunn, met with Premier Kleist, Minister Berthelsen and Deputy Minister Jørn Skov Nielsen in Greenland. At these meetings, GM representatives emphasised that the Company needed clarity on what they were allowed to do with uranium, because in order to advance the Project, they needed to perform feasibility studies and environmental and social impact assessments, which necessarily meant studying uranium.[173] As Mr Bunn recalls:

> "*I explained that uranium could be managed and regulated and, if we performed an EIA, we would be able to show that it would not pose a threat to the environment or the people of Narsaq.*
>
> *Both Premier Kleist and Minister Berthelsen stressed that they wanted GM to continue its efforts to develop the Project. They said it was important for Greenland to have investment in development, and to employ and train people in the region. This was a vision that we shared. It was agreed that GM's*

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170 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 141-146.

171 Greenland Minerals Ltd ASX Announcement titled "Update on Activities in Greenland", 30 September 2009, at **(C-263)**.

172 Greenland Minerals Ltd ASX Announcement titled "Update on Activities in Greenland", 30 September 2009, at **(C-263)**.

173 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 69.

exploration licence would be renewed, and we would continue the work we were doing to develop the Project."[174]

154. From these meetings, it was clear that the Project had the support of the highest levels of the Greenlandic Government. Mr Bunn testifies that, at this time, GM was "*confident that the groundwork was being laid for the ZTP to be lifted*".[175]

155. On 24 March 2010, GM announced that its exploration licence renewal had been agreed.[176] This announcement (which was agreed by the head of the BMP[177]) stated that this was "*a clear signal the government of Greenland is committed to resolving the Zero Tolerance issue in a way that is suitable to both Greenland stakeholders and the company*", that we were "*confident that a clear process now exists to resolve this issue in a constructive and positive way for all stakeholders*" and that GM expected the ZTP to be resolved during the November 2010 parliamentary session. Mr Bunn testifies that the BMP agreeing to this announcement "*reinforced our expectation that the ZTP would soon be lifted*".[178]

156. Minister Berthelsen formally signed GM's exploration licence renewal 2010/02 on 21 April 2010.[179]

C.12 2010 Amendment to the Standard Terms

157. On 15 April 2010, Minister Berthelsen issued a press release stating that the Government would be considering a proposal to introduce a maximum limit for uranium mining, and would be listening to citizens, interest groups and impartial experts.[180]

158. Mr Bunn hosted numerous meetings with stakeholders in April 2010.[181] He explains:

> "*We received widespread support from these stakeholder groups. Indeed, shortly after my visit to Greenland, the South Greenland Council submitted a request to the Greenlandic Parliament to change the ZTP to permit the*

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174 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 69-70.

175 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 73.

176 Greenland Minerals Ltd ASX Announcement titled "Greenland Government approves Exploration license under new Greenlandic Mining Act", 24 March 2010, at **(C-264)**.

177 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 75.

178 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 75; see also, First Witness Statement of J. Mair, at **(CWS-3)**, para. 150.

179 Licence No. 2005/28 was renewed as Licence 2010/02, see "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland*" dated February 2010 and executed 21 April 2010, at **(C-7)**.

180 Greenland Minerals Ltd ASX Announcement titled "South Greenland Council to Support Definitive Feasibility Studies On the Kvanefjeld Multi-Element Project", 26 May 2010, at **(C-265)**.

181 First Witness Statement of S. Bunn, at **(CWS-7)**, section II.K.

exploitation of uranium as a by-product. A similar proposal was put forward by a Greenland labour union, the SIK."[182]

159. On 28 June 2010, Minister Berthelsen announced a comprehensive review of the exploration and exploitation of radioactive elements in Greenland.[183] This would be led by Danish agencies, GEUS and NERI, and included visits by Greenlandic Government representatives to major uranium mining jurisdictions. A few days later, Premier Kleist gave a speech in which he expressed that the Government was "*very keen*" to develop Greenland's mineral resources and they were working with Denmark to develop mining regulations.[184]

160. In early August 2010, the Greenlandic press reported that the ZTP remained the IA Party's position.[185] This created negative speculation amongst GM's investors about the future of the Project and caused GM to enter a trading halt on the ASX. This brought the issue of the uranium to a head: community support for GM's Project was continuing to grow, but the political process required to review and repeal the ZTP was not moving fast enough for GM and its investors needed greater certainty to continue with the development of the Kvanefjeld Project.

161. After entering into a trading halt, GM representatives immediately raised the issue of the ZTP with Premier Kleist, Minister Berthelsen and Deputy Minister Nielsen.[186]

162. On 2 August 2010, GM sent an email to Deputy Minister Jørn Skov Nielsen explaining the situation the Company was in and asking for clarity about the ZTP.[187]

163. On 3 August 2010, GM received a letter from Minister Berthelsen.[188] The Minister noted that the Government was conducting a review of the environmental and social impacts of uranium mining, and that this would inform the decision on the ZTP (no

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182 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 79; Greenland Minerals Ltd ASX Announcement titled "South Greenland Council to Support Definitive Feasibility Studies On the Kvanefjeld Multi-Element Project", 26 May 2010, at **(C-265)**.

183 Greenland Minerals Ltd ASX Announcement titled "New Amendment to the Standard Terms for Exploration Licenses Provides Pathway for the Development of Kvanefjeld", 10 September 2010, at **(C-266)**; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 83; First Witness Statement of J. Mair, at **(CWS-3)**, para. 151.

184 First Witness Statement of J. Mair, at **(CWS-3)**, para. 152; Document titled "*Welcoming speech to ICC 11th General Assembly in Greenland*", by K. Kleist (Premier of Greenland), 30 June 2010, at **(C-267)**.

185 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 84-86; First Witness Statement of J. Mair, at **(CWS-3)**, para. 156.

186 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 88-90; First Witness Statement of J. Mair, at **(CWS-3)**, paras. 157-159.

187 Email from R. McIllree (GML) to J. S. Nielsen (BMP), subject: "*Halt of Trading on Australian Stock Exchange*", 2 August 2010, at **(C-268)**; Letter from S. Cato (GM) to E. Harris (ASX), subject: "*RE: TRADING HALT REQUEST*", 2 August 2010, at **(C-269)**; Greenland Minerals Ltd ASX Announcement titled: "TRADING HALT", 2 August 2010, at **(C-270)**.

188 Letter from O. K. Berthelsen (Minister for Industry and Mineral Resources) to R. McIllree (GM), 3 August 2010, at **(C-271)**.

decision had been made at this time). The Minister confirmed that the Company's Exploration Licence was in good standing and that "*the company can continue its exploration activities aimed at understanding the features of the multi-element deposit better*". He also noted that a decision to permit mining would be subject to the information generated in the Company's detailed feasibility studies, with an emphasis on environmental and social impact assessments.

164. On 6 August 2010, GM sent an email to Premier Kleist, explaining that the biggest challenge the Company faced was investors' perceptions arising from the uncertainty around the ZTP.[189] GM requested special dispensation to include uranium in its feasibility study, EIA and SIA. This email noted that such special dispensation would not give the Company a right to mine.

165. Premier Kleist responded on 9 August 2010 declining to provide special dispensation as it was not consistent with regulatory practice and the ZTP.[190] This email stated that there was nothing preventing GM from preparing an EIA and an SIA for the Project.

166. That same day, Mr Bunn sent a letter to Deputy Minister Nielsen, explaining that it was necessary for the ToR for the EIA and SIA to include the extraction of uranium because rare earths and uranium were co-mingled in the deposit.[191] Mr Bunn explained that GM was concerned that, without the special dispensation, the ToR would not be approved because of the ZTP, and that the special dispensation was therefore critical to GM's continued investment in the Project: "*unless this issue is specifically addressed, we cannot continue the detailed studies into the socio-economic, environmental and technical aspects of this project*".

167. This letter also noted that the BMP had expressed concerns about legal claims that may arise if the special dispensation is granted but an exploitation licence was subsequently denied because of the ZTP. GM stated that it was "*willing to discuss some form of indemnity to cover the situation*" and that such an indemnity may apply in circumstances where the lifting of the ZTP was "*not approved by the Parliament at the end of the agreed, and much publicized, review period*".[192] This letter shows that GM and the Government were cognisant of the fact that, if GM performed exploration work and the ZTP was not lifted, there may be legal consequences for the Government. GM

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189 Email from R. McIllree (GM) to K. Kleist (Premier of Greenland), 6 August 2010, subject: "I*nformation in preparation for meeting and media statement*", 6 August 2010, at **(C-272)**.

190 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 91-92; Email from K. Kleist (Premier of Greenland) to R. McIllree (GM), subject: "*SV: Information in preparation for meeting and media statement*", 9 August 2010, at **(C-273)**.

191 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 93-97; Email from S. Bunn (GM) to J. S. Nielsen (BMP), subject: "*On behalf of Greenland Minerals and Energy*", 10 August 2010, at **(C-274)**; Letter from R. McIllree (GM) to J. S. Nielsen (BMP), 9 August 2010, at **(C-275)**.

192 Email from S. Bunn (GM) to J. S. Nielsen (BMP), subject: "*On behalf of Greenland Minerals and Energy*", 10 August 2010, at **(C-274)**; Letter from R. McIllree (GM) to J. S. Nielsen (BMP), 9 August 2010, at **(C-275)**.

had indicated that it was open to providing interim legal assurances to the Government to cover this situation.[193]

168. The next day, on 10 August 2010, GM representatives, including Mr Bunn, met with Minister Berthelsen, Deputy Minister Nielsen and Jens Hesseldahl (head lawyer at the BMP).[194] Mr Bunn testifies that, at this meeting, GM "*stressed that, unless this issue was resolved, we could not continue our studies and we would withdraw from* [its] *investment in Greenland*". Faced with the prospect of GM stopping work at Kvanefjeld (and no doubt appreciating the adverse impact that this would have on the Government's efforts to promote Greenland as a destination for mining investors), the Greenlandic Government offered to amend the Standard Terms for all exploration licences to permit studies into uranium and other radioactive minerals.[195] GM explained the amendments it required, and the BMP proceeded to draft the amendment, which it shared with GM in draft form before it was finalised.[196]

169. The Government's conduct in negotiating the 2010 Amendment with GM is consistent with the Greenlandic mining framework being a concessionary system (rather than a pure administrative framework where there is no negotiation of specific terms with project proponents).

170. On 10 September 2010, the Standard Terms were amended to allow for the approval (by the BMP) of exploration of minerals containing radioactive elements above background levels, for use in feasibility studies (**2010 Amendment**).[197]

171. The 2010 Amendment introduced three new provisions to the Standard Terms: Sections 709, 710 and 711. Relevantly, Section 709 provides as follows:

> "*In order to be able to prepare a complete feasibility study, with assessments of environmental impacts and social sustainability, within the framework provided in section 101, BMP can, upon application, approve that, for use in a feasibility study of a deposit exploration can include minerals containing radioactive elements above normal background radiation. Exploration and feasibility study must emphasise, in particular, the extraction-technical, environmental, and health-and-safety aspects of deposits with a possible content of radioactive elements. The application must contain a description of the studies planned for the period, as stated in section 710.*" (emphasis added)

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193 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 97.

194 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 98-102.

195 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 100; see also, Greenland Minerals Ltd ASX Announcement titled: "Progress report on discussions with Greenland authorities", 7 September 2010, at **(C-276)**.

196 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 101-103.

197 "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Sections 709 to 711, which were inserted by this amendment.

172. The 2010 Amendment allowed the BMP to approve studies of radioactive elements. As Dr Mair testifies: "*The 2010 Amendment set up a framework for poly metallic projects to be evaluated. It was an important step in progressing beyond the ZTP*".[198]

173. GM announced the 2010 Amendment to the ASX on 10 September 2010.[199] This announcement stated that the amendment "*allows for the inclusion of radioactive elements as exploitable minerals for the purpose of thorough evaluation and reporting*" and provided "*a clear path for the continued development of the Kvanefjeld rare earth and uranium project*". The announcement noted that the Government had highlighted the critical importance of GM's feasibility studies, EIA and SIA for deciding its exploitation licence application and had represented that, if they were "*satisfied that all health, safety and environmental requirements can be met, then an exploitation license can be issued to develop an operation that will produce REEs, uranium and zinc*".[200]

174. GML's Managing Director at the time, Mr McIllree, stated that this amendment:

> "*resulted from the government's recognition of the unique potential of the Kvanefjeld project, and the opportunity it represents to Greenland* [and] *confirms that the government of Greenland is committed to working with companies to develop a strong and well-regulated minerals industry in Greenland.*"[201]

175. As a Greenlandic Parliamentary Committee later noted in a report on the potential lifting of the ZTP, the 2010 Amendment demonstrated that the Greenlandic Government had "*made progress on the abolition of zero tolerance*".[202] As is clear from the sequence of events described above, the 2010 Amendment was a direct consequence of GM's negotiations with the BMP.[203]

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198 First Witness Statement of J. Mair, at **(CWS-3)**, para. 163.

199 Greenland Minerals Ltd ASX Announcement titled "New Amendment to the Standard Terms for Exploration Licenses Provides Pathway for the Development of Kvanefjeld", 10 September 2010, at **(C-266)**.

200 Greenland Minerals Ltd ASX Announcement titled "New Amendment to the Standard Terms for Exploration Licenses Provides Pathway for the Development of Kvanefjeld", 10 September 2010, at **(C-266)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 164; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 109; see also, Letter from O. K. Berthelsen (Minister for Industry and Mineral Resources) to R. McIllree (GM), 3 August 2010, at **(C-271)**, which stated: "*It is the position of the Government that environmental impact assessments as well as health assessments are necessary steps in preparing information and data that enables the Government to make a decision on whether to permit mining in the area or not*".

201 Greenland Minerals Ltd ASX Announcement titled "New Amendment to the Standard Terms for Exploration Licenses Provides Pathway for the Development of Kvanefjeld", 10 September 2010, at **(C-266)**; Greenland Minerals Ltd ASX Announcement titled "New Amendment to the Standard Terms for Exploration License Provides Pathway for the Development of Kvanefjeld (Media Release), 10 September 2010, at **(C-277)**.

202 Document titled "*Proposal for Inatsisartut decision that Inatsisartut, with effect from EM13, agrees to the "Zero tolerance" towards the extraction of uranium and other radioactive substances*", Rastof Committee, 21 October 2013, at **(C-278E)**.

203 See, First Witness Statement of S. Bunn, at **(CWS-7)**, para. 107; Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, p. 17.

176. The same day as the 2010 Amendment took effect (10 September 2010), GM lodged an application under the new Section 709 of its Exploration Licence to perform a feasibility study (including EIA and SIA) for Kvanefjeld, which would assess the commercial production of not only rare earths and zinc, but also uranium.[204]

177. GM representatives, including Mr Bunn, met with the Greenlandic and Danish authorities (including the BMP, NERI and the Ministries of Health and Environment) in late October and early November 2010 to discuss GM's application and its plans for its impact assessments, including radiological studies.[205] Following these meetings, on 10 December 2010, the BMP issued GM with a permit to conduct feasibility studies for radioactive elements pursuant to the 2010 Amendment.[206]

C.13 GEUS and NERI Factbook (September 2010)

178. While GM and the Greenlandic Government were negotiating the 2010 Amendment, in September 2010, GEUS and NERI (both Danish Government agencies) released a factbook titled "*Information and facts about extraction of uranium in Greenland*" (**GEUS Factbook**).[207] This was produced at the request of the Greenlandic Government to inform the public and the parliamentary discussion about uranium mining (see paragraph 159 above).[208] The GEUS Factbook stated that one of the reasons for the debate was the Kvanefjeld Project, which would only proceed with uranium being extracted.

179. This GEUS Factbook provided a factual overview of uranium mining and associated risk, and detailed the risks associated with radiation. Importantly, it highlighted that – in all likelihood – mining at Kvanefjeld could be conducted without workers or the community exceeding radiation exposure thresholds.

180. The GEUS Factbook noted that if the ZTP was lifted, the mining of uranium would be contingent on an applicant for a mining licence being able to demonstrate through an EIA and SIA that they could "*carry out the activity in a manner safe to the environment*

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[204] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 110-11; Email from O. Ramlau-Hansen (GM) to J. S. Nielsen (BMP), L. E. Johansen and R. McIllree (GM), 10 September 2010, at **(C-279)**; Document titled "*Application to undertake feasibility studies, inclusive of environmental and social impact assessments at Kvanefjeld, license no. 2010/02*", BY GM, 9 August 2010, at **(C-280)**.

[205] First Witness Statement of S. Bunn, at **(CWS-7)**, section III.F; see also, executive summary in, Email from K. Birkholm (GMAS) to J. S. Nielsen (BMP) & M. Scheuerlein (BMP), subject: "*EIA_SIA_Plan_Exec_Summary*", 1 November 2010, at **(C-281)**.

[206] Email from O. F. Kjær (Nanoq) to R. McIllree (GM); O. Ramlau-Hansen (GM), subject: "*Corrected version of the permit to conduct feasibility studies at Kvanefjeld, license no. 2010/02*", 10 December 2010, at **(C-282)**; Letter from O. F. Kjær (BMP) to R. McIllree (GM) and O. Ramlau-Hansen (GM), subject: "*Permit to conduct feasibility studies at Kvanefjeld, license no. 2010/02*", 9 December 2010, at **(C-283)**.

[207] Report titled, "*Information and Facts about Extracting Uranium in Greenland*", produced by GEUS, 2010, at **(C-284)**.

[208] First Witness Statement of J. Mair, at **(CWS-3)**, para. 154.

and health and minimize the impact on the environment".[209] Mr Bunn testifies that it was clear from the factbook that the mining of uranium would be contingent on GM being able to demonstrate through an EIA and SIA that it could be done safely.[210]

181. With respect to Kvanefjeld specifically, the GEUS Factbook stated that "[i]*n the event of any mining at Kvanefjeld, the Greenlandic authorities will lay down threshold values for the radioactive effect on the miners and the population of Narsaq*" and that residents "*must not be exposed to radiation higher than 1 mSv/year, if the rules to date are applicable*".

182. Thus, by September 2010, GEUS and NERI had determined that radiation protection should be regulated through a radiation dosage threshold measured in millisieverts. This was the regulatory approach that GM subsequently adopted in the preparation of its EIA, and the approach that GM legitimately expected would be followed by the Greenlandic Government when it assessed GM's application for an exploitation licence. As explained by Dr Mair: "*It was clear from the Factbook that radiation protection would be ensured through radiation dosage limits, in line with international best practice*".[211]

183. The GEUS Factbook was published on Naalakkersuisut's website and was used to inform stakeholders about uranium mining for many years.[212]

184. In addition to the factbook, the IA Party Government supported TV broadcasts about uranium mining, which were aired in September 2010 and March 2011.[213] These broadcasts were produced by independent experts, and included inputs from various organisations, politicians, supporters and opponents of uranium mining.

C.14 Naalakkersuisut visit to Canada (September 2010)

185. The Greenlandic Government continued its efforts to build competence with respect to uranium mining and regulation. As part of this, in September 2010, a Government delegation visited Saskatchewan in Canada to learn about uranium mining, meet with regulators, visit a uranium mine and meet with the local Inuit people.[214] This visit was attended by approximately 15 officials, including members of the Business Committee, politicians and representatives of Kujalleq Municipality.

186. In December 2010, the Government produced an internal report of its trip to Canada. According to statements made by Minister Berthelsen to the Parliament, the Canadian

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209 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 124.

210 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 122, 124.

211 First Witness Statement of J. Mair, at **(CWS-3)**, para. 155; see also, First Witness Statement of S. Bunn, at **(CWS-7)**, para. 125.

212 §37 Parliamentary Questionnaire No. 175/2020, 13 October 2020, at **(C-285)**.

213 §37 Parliamentary Questionnaire No. 73/2011, 18 March 2011, at **(C-286)**, answer on 28 March 2011.

214 §36 Parliamentary Questionnaire No. 120/2010, 31 May 2010, at **(C-287)**, answer on 7 May 2010.

authorities had consistently advised the Greenlandic delegation that "*environmental concerns, as well as concerns about the safety and health of miners, could be met if Canadian uranium exploration rules are followed.*"[215] The Minister provided the Parliament with information on how Canada regulated uranium mining, noting that Canada followed IAEA best practice. The Minister emphasised that the "*assessment of a possible environmental, safety and health risk requires that a site-specific environmental, health and safety assessment has been carried out*" (i.e., in order to determine whether a deposit can be mined safely from a health and environmental point of view, it is necessary to prepare an EIA). In this connection, the Minister explained that GM had been granted permission to conduct studies into uranium, but it was too early to determine the results of these studies.

C.15 Community engagement and pre-consultation on ToR

187. Prior to the commencement of the EIA and SIA, it was necessary for GM to conduct a comprehensive scoping phase to establish agreed ToR for those assessments.[216] GM appointed consultants Grontmij/Carl Bro and Orbicon to work on the EIA and SIA for the Project.[217]

188. GM had begun a program of community engagement in its first field season at Kvanefjeld. When GM started work on the ToR, these community engagement activities increased. Mr Bunn and other GM representatives hosted numerous meetings with stakeholders and large public meetings, open days and workshops.

189. These community engagement activities included:

(a) a stakeholder open day in Narsaq in August 2010;[218]

(b) public meetings in Narsaq, Qaqortoq and Nanortalik in February 2011;[219]

(c) workshops in Narsaq, Qaqortoq and Nuuk in late March and early April 2011;[220]

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[215] §37 Parliamentary Questionnaire No. 37/2011, 8 January 2011, at **(C-288)**, answer on 20 February 2011.

[216] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 20.

[217] First Witness Statement of J. Mair, at **(CWS-3)**, para. 166.

[218] First Witness Statement of S. Bunn, at **(CWS-7)**, section III.D.

[219] Greenland Minerals Ltd ASX Announcement titled "Greenland Government Approve 'Terms of Reference' for Environmental and Social Impact Assessments on the Kvanefjeld Project", 2 August 2011, at **(C-36)**.

[220] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 134-139; Greenland Minerals Ltd ASX Announcement titled "Greenland Government Approve 'Terms of Reference' for Environmental and Social Impact Assessments on the Kvanefjeld Project", 2 August 2011, at **(C-36)**. These meetings were summarised in a report which was annexed to the ToR, see, Annex to Draft ToR, SIA, Kvanefjeld Multi-Element Project, Grontmij and GM, 2011, at **(C-289)**, pp. 7-61: "*Draft report from stakeholder workshops*".

(d) a meeting with the BMP in Nuuk in April 2011;[221] and

(e) large meetings and open days in Qaqortoq, Narsaq and Nuuk in May and June 2011.[222]

190. The purpose of these meetings was to provide information to the local community about mining, the feasibility process, the EIA and SIA, and opportunities for the local population. At this time, there was no statutory requirement for "pre-consultation" with stakeholders regarding the ToR;[223] these meetings were held at GM's initiative.

191. At these meetings, Mr Bunn explained that rare earth elements were the primary target of the Project, but that uranium would need to be extracted to exploit the rare earths.[224] Mr Bunn testifies: "*We made it clear that the uranium was commercially viable as a by-product, and it made commercial sense to separate uranium in the processing plant and sell it as a by-product*."[225]

192. At these events, GM distributed a fact sheet about uranium and radiation.[226] The fact sheet explained radiation exposure, how it was measured (in mSv), and that uranium mining caused a negligible amount of radiation exposure. For example, even living near a high-grade uranium mine (which Kvanefjeld would not be, it was a rare earths mine with a low level of uranium), the radiation exposure would be no higher than taking a couple of flights from Greenland to Denmark each year.

193. The fact sheet noted that specific exposure levels at Kvanefjeld were explained as "*very low, less than a third of that experienced on average in Canadian and Australian mines, even less than that recommended for members of the public*". It included the following

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221 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 138; Email from K. Birkholm (GMAS) to J. S. Nielsen (BMP), subject: "*[SPAM] SV:*", 22 March 2011, at **(C-290)**.

222 The Editorial Staff, *Siumut visits South Greenland*, Sermitsiaq, 29 May 2011, at **(C-291E)**; The Editorial Staff, *Citizens' meetings and open house in South Greenland*, Sermitsiaq, 3 June 2011, at **(C-292E)**; O. G. Jensen, *Open day with Greenland Minerals*, Sermitsiaq, 5 June 2011, at **(C-293E)**.

223 The pre-consultation requirement was introduced in 2014. See, Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, s. 87a.

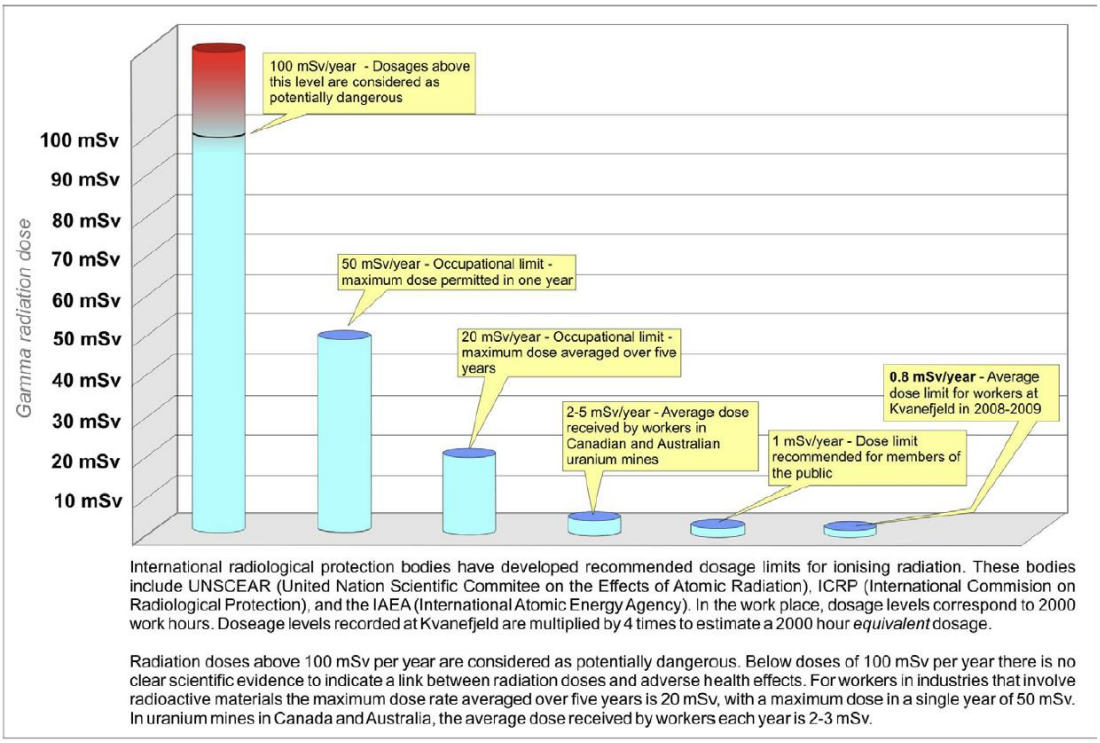
224 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 139-141.

225 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 139.

226 Document titled "*Uranium and Radiation*", by Greenland Minerals Ltd, 2010, at **(C-294)**; First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 114-119; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld - Mining Licence Application Update", 11 August 2015, at **(C-295)**.

graphic about annual radiation dosage limits and the radiation dosage that could be expected at Kvanefjeld.

Figure 1. Comparison of radiation dosage limits and exposure levels measured at Kvanefjeld 2008-2009.



194. At the meetings, Mr Bunn answered questions about radiation, and how the Company would monitor radiation dosage (measured in mSv). Mr Bunn explained that:

> "*Radioactive minerals are often perceived to be more dangerous than they actually are. Uranium is an alpha emitter. Alpha particles are relatively large (compared to beta and gamma particles) and easy to block. For example, you could place a piece of paper over yellowcake, and it would block the alpha particles. I used examples such as this in my presentations to the local people.*
>
> *The radiation exposure from mining operations was expected to be so minimal it would be difficult to measure. You would get more radiation exposure flying return from Nuuk to Copenhagen than working on the mine for a month.*"[227]

[227] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 143-144.

C.16 ToR for the EIA and SIA (2011)

195. In May 2011, GM submitted its ToR for the SIA and EIA for the Project.[228] These ToR were reviewed by Greenland's BMP and Denmark's NERI.[229] They were also made available for public review.[230]

196. The ToR set out the location of key infrastructure items, which had been discussed in the public consultation process. For example, the public feedback GM had received was that the people of Narsaq favoured a development plan with the project infrastructure closer to Narsaq town (with more of the economic benefits accruing to Narsaq), so this was the development plan GM proceeded with.[231]

197. The ToR provided for a flotation circuit, which would produce a mineral concentrate from steenstrupine that would contain rare earths and uranium, as well as zinc concentrate and fluorspar.

198. The ToR identified potential environmental and health issues arising from mining radioactive minerals, and the studies GM proposed to conduct into these issues.[232] GM proposed to conduct its investigations in accordance with international best practice, as set out by the IAEA.

199. As Dr Mair notes:

> "*It was clear to all involved that the EIA/SIA would address the risks associated with the Project, including those risks associated with the presence of radioactive elements. It was clear that these scientific studies would determine whether the Project could proceed safely and consistent with international best practice.*"[233]

200. Following the submission of the ToR, in early June 2011, GM representatives, including Dr Mair, held a series of meetings in Nuuk to discuss the ToR.[234] These meetings were attended by the full range of Government departments (including Finance; Health; Social Affairs; Fishing, Hunting and Agriculture; Business and Workforce; Internal Affairs, Nature and the Environment; Culture, Education and Science; the National Museum; the Institute of Natural Resources; and the National

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228 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 145; First Witness Statement of J. Mair, at **(CWS-3)**, para. 169.

229 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 147.

230 Greenland Minerals Ltd ASX Announcement titled "Greenland Government Approve 'Terms of Reference' for Environmental and Social Impact Assessments on the Kvanefjeld Project", 2 August 2011, at **(C-36)**.

231 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 136; First Witness Statement of J. Mair, at **(CWS-3)**, para. 168.

232 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 146.

233 First Witness Statement of J. Mair, at **(CWS-3)**, para. 167.

234 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 170-172.

Association of municipalities), as well as representatives from the Employees and Employers Unions, and the Fisherman and Hunters Association. These authorities expressed their support for the Project.[235] Concurrently, GM met with Premier Kleist to explain the Project development plan and Greenland's opportunities in the rare earths market.[236]

201. Following feedback from Denmark's NERI, GM revised the ToR, including to include further studies into radiological pathways.[237] The Greenlandic authorities approved GM's ToR in around August 2011.[238] Critically, the ToR provided that uranium would be one of the saleable products from the Project.[239] As Dr Mair notes, "[t]*he finalisation of the ToR effectively approved all planned work programs needed to determine the social and environment impact of the Project*."[240]

C.17 Negotiation of Addendum No. 1

202. As discussed above, since 2007, the Greenlandic Government had been engaged in a review of so-called "zero-tolerance policy". While there is no evidence that the ZTP ever formally existed (see Section C.2 above), it was periodically referred to by politicians and the press, and this caused uncertainty amongst GM's investors as to the future of the Project.

203. Following a press report that referred to the ZTP, on 19 October 2011, GM sent a letter to Premier Kleist and Minister Berthelsen.[241] In this letter, GM explained that investors were concerned that GM would complete the required studies for its exploitation licence

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235 First Witness Statement of J. Mair, at **(CWS-3)**, para. 172.

236 First Witness Statement of J. Mair, at **(CWS-3)**, para. 171; Letter from O. Ramlau-Hansen (GMAS) to K. Kleist (Chairman of Naalakkersuisut), subject: "*Regarding meeting*.", 3 May 2011, at **(C-296)**.

237 First Witness Statement of S. Bunn, at **(CWS-7)**, section III.J; First Witness Statement of J. Mair, at **(CWS-3)**, para. 173; Report titled "*Terms of Reference for the Environmental Impact Assessment Approved July 2011*", by Orbicon and Greenland Minerals Ltd, at **(C-297)**; Report titled "*Terms of Reference for the Social Impact Assessment Approved July 2011*", by Grontmij and Greenland Minerals Ltd, at **(C-298)**.

238 Greenland Minerals Ltd ASX Announcement titled "Greenland Government Approve 'Terms of Reference' for Environmental and Social Impact Assessments on the Kvanefjeld Project", 2 August 2011, at **(C-36)**; Email from M. Scheuerlein (BMP) to O. Ramlau-Hansen (GM), subject: "*SV: EIA, SIA, Annex ToR SIA*", 13 July 2011, at **(C-299)**; see also, First Witness Statement of S. Bunn, at **(CWS-7)**, para. 157; Email from J. S. Nielsen (Nanoq) to O. Ramlau-Hansen (GM), subject: "*RD godkendelse af endelig ToR for EIA + kommentarer på ToR for SIA*", 16 June 2012, at **(C-300)**; attaching Document titled "*Comments to ToR for Social Impact Assessment, Kvanefjeld Multi-Element Project*", by BMP, 16 June 2012, at **(C-301)**.

239 First Witness Statement of J. Mair, at **(CWS-3)**, para. 169. The 2011 ToR for EIA and SIA each state: "*There are also sufficient levels of uranium and zinc in the orebody to produce commercially viable by-products*". See, Report titled "*Terms of Reference for the Environmental Impact Assessment Approved July 2011*", by Orbicon and Greenland Minerals Ltd, at **(C-297)**; Report titled "*Terms of Reference for the Social Impact Assessment Approved July 2011*", by Grontmij and Greenland Minerals Ltd, at **(C-298)**.

240 First Witness Statement of J. Mair, at **(CWS-3)**, para. 174.

241 Letter from R. McIllree (GM) to K. Kleist (Premier of Greenland), 19 October 2011, at **(C-302)**; Mr McIllree forwarded this to Premier Kleist on 20 October 2011: Email from R. McIllree (GM) to J. S. Nielsen (BMP), subject: "*Update*", 20 October 2011, at **(C-303)**.

application and "*the government will still be undecided on their stance on radioactive elements*". This letter made clear that GM could not justify further investment in the Project unless there was "*imminent progress in advancing beyond the current zero tolerance policy*" as "*this risk is seen by investors as prohibitive*". GM also emphasised that the Kvanefjeld Project had huge potential, that the Greenlandic Government and people were the major stakeholders in the Project, and that by-product revenues from uranium would support the Project economics.

204. On 24 October 2011, GM representatives, including Dr Mair, met with Premier Kleist and Minister Berthelsen in Nuuk to discuss the Project and the matters raised in GM's letter.[242] As Dr Mair recalls:

> "*We restated the points made in our letter: that it was critical to be able to give certainty to our investors and financiers about the development of the Project, and without this we would suspend our activities. We said that it would not be an acceptable outcome for GM to invest millions in a detailed assessment of the Project if there was a risk the Government would not allow the Project to proceed because of the presence of low levels of uranium.*
>
> *Premier Kleist and Minister Berthelsen recognised our concerns. They said they wanted the Project to proceed. But they pointed out that the political process of lifting the ZTP may take some time. In response, we said that we would be patient, but in the interim, needed something to give clarity to our investors. They agreed to this.*
>
> *I believe I brought up the possibility of amending our Exploration Licence to include uranium, such that we would be entitled to an exploitation licence for uranium if the outcome of the EIA/SIA process was that the exploitation of radioactive elements was safe and consistent with environmental best practice. To the best of my recollection, Premier Kleist and Minister Berthelsen said we should take this option forward with Mr Nielsen and Mr Hesseldahl at the BMP.*"[243]

205. Following this meeting with the most senior officials in the Greenlandic Government, GM representatives, including Dr Mair, had a separate meeting with Deputy Minister

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[242] Email from R. McIllree (GM) to J. S. Nielsen (Nanoq), subject: "*RE: Meeting with the minister*", 16 October 2011, at **(C-304)**; Email from R. McIllree (GML) to J. S. Nielsen (Nanoq), subject: "*Documentation regarding upcoming meeting*", 19 October 2011, at **(C-305)**; Document titled "*Proposed Agenda 24th October meetings*", by GM, 19 October 2011, at **(C-306)**.

[243] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 187-189, see also, para. 216. This meeting was subsequently referred to in a letter from the subsequent Minister of Mineral Resources, Jens-Erik Kirkegaard, to the Parliament. This letter noted that, at this meeting in October 2011, GM had told the Government that "*it was not possible for the company to raise sufficient funding for the continuation of exploration and possible later development activities, unless a clearer declaration that the company must investigate the occurrence including rare earth metals*." Minister Kirkegaard's letter noted that, at the meeting, an amendment to the licence terms was discussed, the objective of which was to allow GM's project development activities to continue and to allow GM to raise finance. See, Open Letter titled "*Statement on addendum to the Standard Terms of September 2010 on sections 709 - 711 and addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by Government of Greenland, 23 October 2013, at **(C-307)**.

Nielsen and Mr Hesseldahl at the BMP to discuss amending GM's Exploration Licence to include uranium.[244] As Dr Mair testifies:

> "*They agreed that we could discuss an addendum to our Exploration Licence. But they said that the BMP could only offer so much while the ZTP was in place, and that it would not be possible to give GM an exploration licence for uranium which included an entitlement to an automatic rollover into an exploitation licence for uranium. Mr Hesseldahl proposed that the BMP could include uranium in the licence, but they could not give us a guarantee that we could exploit uranium in a commercial sense.*
>
> *We accepted this proposal and that the BMP would prepare a licence amendment in these terms. This amendment would serve as an interim solution for GM (and its investors and financiers), allowing us to continue our investigations into the Kvanefjeld Project with uranium as a saleable by-product.*"[245]

206. On 28 October 2011, Mr Hesseldahl of the BMP sent GM an English version of a draft addendum to its exploration licence.[246] The draft addendum was substantially the same as the final version (which is extracted below).[247]

207. After GM and the Government agreed to the terms contained in Addendum No. 1, GM executed it in December 2011, and Minister Berthelsen executed it on 6 January 2012.[248]

208. The key provision in Addendum No. 1 was Section 1, which was titled "*Minerals covered by the licence*", which extended GM's Exploration Licence to radioactive elements. Section 102 provided that "[d]*uring the licence period for this exploration licence, the licence also covers radioactive elements*". This provision gave GM full exploration rights for radioactive elements, building on GM's rights pursuant to the 2010 Amendment (under which GM had applied for and been granted a right to analyse radioactive elements for the purposes of its studies). Furthermore, Section 301 gave GM the right to apply to exploit radioactive elements. As Dr Mair testifies, "*GM considered this agreement to be a major achievement and the Board congratulated us on what had been negotiated.*".[249]

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244 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 190-195.

245 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 191-192.

246 Email from J. Mair (GML) to R. McIllree (GML), subject: "*FW: Udkast til tillæg til tilladelse 2010/02 (Kvanefjeld)*", 7 November 2011, at **(C-308)**, email dated 28 October 2011; Document titled "*[Unofficial translation] Addendum no. 2 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by the Government of Greenland and BMP, 28 October 2011, at **(C-309)**.

247 The only substantive difference is that the draft of Addendum No. 1 omitted Section 303.

248 "*Addendum No. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*"' dated December 2011 and executed 6 January 2012, at **(C-8)**.

249 First Witness Statement of J. Mair, at **(CWS-3)**, para. 198.

209. As discussed above, in the negotiation of Addendum No. 1, GM had made it clear to the Government that it was unwilling to invest more money while there was uncertainty around the ZTP. In response, Premier Kleist and Minister Berthelsen informed GM that they intended to lift the ZTP, although this would take time to achieve politically. Given the parties' shared objective of seeing the Project proceed, GM and the Government negotiated Addendum No. 1 as an interim solution to cover the period while the IA Party leadership was working on lifting the ZTP.

210. As discussed in paragraph 70(h) above, a key feature of the Greenlandic mineral resources framework is the licensing guarantee, which provides that if the holder of an exploration licence satisfies the licensing conditions, it will have a legal right to an exploitation licence. GM's witnesses have testified that they referred to this as the "*automatic rollover*" from exploration licence to exploitation licence.[250]

211. Neither the Standard Terms nor the MRA exempt radioactive elements from the licensing guarantee. Thus, the addition of uranium to GM's Exploration Licence in combination with the licensing guarantee should have given GM the automatic right to an exploitation licence for uranium. However, as Dr Mair explains, the Government was not prepared to give GM this automatic rollover while the ZTP remained notionally in place: "*the BMP could include uranium in the licence, but they could not give us a guarantee that we could exploit uranium in a commercial sense*".[251] GM and the Government therefore agreed that Addendum No. 1 would provide for radioactive elements to be carved out of the licensing guarantee.

212. This agreement between GM and the Government was reflected in Sections 2 and 3 of Addendum No. 1:

    (a) Section 2 provided that GM did not have an automatic right to a licence for the "*exploitation <u>of radioactive elements</u>*" (Section 201) and was not entitled to be granted a licence "*to exploit <u>radioactive elements</u>*" (Section 202).

    (b) Section 3 provided that, for an application "*to exploit <u>radioactive elements</u>*", the Government was empowered to reject the application "*freely and without any reason or for any reason*" with "*no liability*" (Section 302) and "*freely and without any limitation lay down any term*" for such a licence (Section 303),

    (the Addendum No. 1 Caveats).

213. As discussed in Sections G.2(d) and G.2(e) below, the Addendum No. 1 Caveats are unenforceable or invalid as a matter of both Danish contract law and public law,

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[250] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 98, 101; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 27.

[251] First Witness Statement of J. Mair, at **(CWS-3)**, para. 191

including because these caveats unlawfully purport to modify the licence guarantee that is fundamental to the MRA (a statute).

214. What is clear from the text cited above is that the Addendum No. 1 Caveats were concerned only with the exploitation of radioactive elements. These caveats did not give the Government the power to arbitrarily reject or lay down terms with respect to the exploitation of non-radioactive elements.

215. The Claimant pauses here to note that the current Government of Greenland has repeatedly and deliberately misquoted the Addendum No. 1 Caveats by excluding the underlined language (above).[252] The Government has argued (wrongly) that the caveats mean it can reject GM's application to exploit rare earth elements. This interpretation is clearly contrary to the language of the Addendum No. 1 Caveats and must be rejected. This matter is discussed in detail in Section G.2 below.

216. Addendum No. 1 did nothing to disturb or condition GM's existing entitlement under Section 1401 of the Standard Terms and MRA Section 29(2) to an exploitation licence for the exploitation of *non-radioactive* elements and any incidental extraction of uranium for treatment as a residual impurity (with no commercial utility). Addendum No. 1 was concerned with rights to *exploit* uranium commercially and not with any rights to exploit rare earths commercially. Consistent with GM's request to the Greenlandic Government, and as GM's contemporaneous market announcements show, the purpose of Addendum No. 1 was to grant GM further rights in relation to the exploitation of uranium, and not to take away existing rights.

217. The Claimant's interpretation of the Addendum No. 1 Caveats is supported by the testimony of Dr Mair, who negotiated the agreement. He has explained that, at his meetings with the Government, "*there was never any suggestion that the amendment would limit GM's right to exploit rare earths from the deposit*".[253] For example, with respect to GM's meeting with Deputy Minister Nielsen and Mr Hesseldahl on 24 October 2011, Dr Mair testifies: "*we did not discuss our rights in relation to the exploitation of rare earths. The conversation was focused on including uranium as a commercial by-product within the Project.*"[254]

218. Dr Mair further testifies:

> "*These caveats* [in Sections 201 and 202] *were intended to apply with respect to radioactive elements only. This did not affect GM's existing right to automatically rollover its Exploration Licence into an exploitation licence for*

[252] See Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**, paras. 24, 98-101.

[253] First Witness Statement of J. Mair, at **(CWS-3)**, para. 214.

[254] First Witness Statement of J. Mair, at **(CWS-3)**, para. 193.

non-radioactive elements (i.e., rare earths) if it established a commercially viable deposit and complied with the relevant licence terms."[255]

219. He additionally testifies:

> "*this caveat* [in Section 302] *that the Greenlandic Government had discretion to reject an application was limited to applications to exploit radioactive elements and did not affect GM's right to an exploitation licence with respect to non-radioactive minerals.*"[256]

220. In his witness testimony, Dr Mair also discusses a conversation that he had with former Deputy Minister Nielsen in April 2021 regarding Addendum No. 1. Mr Nielsen told Dr Mair that he had spoken to Mr Hesseldahl about the Addendum No. 1 Caveats, and Mr Hesseldahl "*confirmed the wording of the addendum was due to Greenland's zero tolerance to uranium being in place at the time. It was not intended to give the government freehand discretion to reject an exploitation licence*."[257]

221. Mr Bunn confirms that, once GM had agreed Addendum No. 1, in his view, GM would be entitled to a licence to exploit rare earths and, provided the ZTP was lifted, uranium as a commercial by-product:

> "*At that time, we had permission to include uranium in studies, and with Addendum No. 1, permission to explore for uranium and to apply to exploit uranium (commercially). Our expectation was that we had everything we needed to submit an application to exploit rare earths and uranium. Our understanding was that, while the Government retained the right to reject an application to exploit uranium commercially (as a main product or by-product), we would at a minimum be entitled to a licence to exploit rare earths commercially (and treat the uranium as a tailings product, or put it in drums and put it back in the ground). This, of course, was subject to us demonstrating in our studies that we met all the requirements.*
>
> *Our expectation at this time was that, if we could show in the studies that the Project was sound from an environmental and health perspective and the Project was feasible, we were entitled to a licence for rare earths and (assuming the ZTP was lifted) uranium.*"[258]

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[255] First Witness Statement of J. Mair, at **(CWS-3)**, para. 202.

[256] First Witness Statement of J. Mair, at **(CWS-3)**, para. 204.

[257] First Witness Statement of J. Mair, at **(CWS-3)**, section XI.F; Greenland Minerals Ltd, Minutes of Board Meeting, 29 April 2021, at **(C-208)**.

[258] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 162-163.

222. Mr Bunn also testifies that the intention of the Addendum No. 1 Caveats was to give the Government time to remove the ZTP and set up a framework governing the export of uranium:

> "*Before the Government could give us permission to mine and sell uranium commercially, it needed to work with the Danish Government and international nuclear safety organisations to set up a framework to govern the export and sale of uranium. Before this was done, and the ZTP was removed, the Government could not guarantee GM a right to exploit uranium commercially.*"[259]

C.18 Events following Addendum No. 1

223. On 5 December 2011, GM announced Addendum No. 1 to the market.[260] The wording in this announcement was approved by the BMP in advance.[261] This stated that GM's Exploration Licence "*is now inclusive of uranium*" and that "[t]*he granting of an exploitation license will be dependent on establishing an environmentally and socially sustainable development scenario that is economically robust*."

224. Shortly afterwards, GM published an interview with then Managing Director, Mr McIllree.[262] This stated:

> "*This is one of the most significant developments in the history of the Kvanefjeld Project. The project's licensing conditions are now inclusive of uranium and we have the legal right to apply to exploit it. It represents the first exploration license issued in Greenland to incorporate uranium, and demonstrates that there is now clear political support for the project to advance. We now have the backing of the government which is committed to establishing a strong minerals sector and this is one of the headline projects.*"

225. These ASX announcements, made by GM in accordance with Australian share market regulations, are contemporaneous records of the agreement reached between the parties in Addendum No. 1. Dr Mair testifies that these public statements reflected GM's understanding of the agreement:

> "*Based on our discussions with the Government, we believed we had a clear mandate to proceed with the Project as both a rare earths and uranium project. Based on these discussions, the mandate was broader than simply a right to apply; the spirit of the agreement was that, if we successfully completed the EIA/SIA process, and demonstrated that the Project was consistent with*

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[259] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 164.

[260] Greenland Minerals Ltd ASX Announcement titled "Greenland Government Introduces Uranium Licensing Framework For the Kvanefjeld Multi-Element Project", 5 December 2011, at **(C-311)**.

[261] First Witness Statement of J. Mair, at **(CWS-3)**, para. 206.

[262] Greenland Minerals Ltd ASX Announcement titled "Open Briefing - CEO on Uranium Licence and Royalty Acquisition", 22 December 2011, at **(C-312)**.

> *international best practices, we would be granted a licence for rare earths and uranium*"[263] (emphasis original).

226. Around this same time, on 7 December 2011, Mr Bunn sent emails to existing and potential strategic Project partners advising them that this was "*a major breakthrough and basically means we are exempt from the zero tolerance for uranium exploration/exploitation. Once we have completed the Environmental and Social Impact studies we will be able to obtain our mining licence*".[264] Mr Bunn reassured these strategic partners that "*this means that we need no longer be concerned about political interference in obtaining a mining licence when the time comes to apply.*"

227. Mr Bunn testifies that this email reflected GM's understanding that:

> "*Addendum No. 1 gave us a clear line to a licence for rare earths and removed the potential for political interference* […].
>
> *Our EIA would contain details of how tailings would be managed, and this needed to be approved. Outside of getting the EIA approved, GM did not need a separate permit to dispose of minerals (including uranium) as tailings. We did not need a specific permit to treat uranium as a waste product.*"[265]

228. On 30 December 2011, the press reported that there had been an exchange in the Greenlandic Parliament, and IA Party member Nadja Nathanielsen had asked Minister Berthelsen about Addendum No. 1.[266] According to the article, Minister Berthelsen explained that GM's exploration licence now included uranium, but "*that permit does not entitle the GME to use uranium*". Ms Nathanielsen asked whether GM would include uranium in its feasibility studies, and Minister Berthelsen responded that it would depend on the minerals covered by the application for an exploitation licence. The Minister also stated that Addendum No. 1 had been sent for consultation to the various Greenlandic and Danish Government departments and agencies.

229. On 10 January 2012, GM received from the BMP a copy of Addendum No. 1 signed by Minister Berthelsen.[267]

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263 First Witness Statement of J. Mair, at **(CWS-3)**, para. 208.

264 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 167; Email from A. Driscoll (Grundfos) to S. Bunn (GM), subject: "*Re: Kvanefjeld Update*", 9 December 2011, at **(C-313)**; Email from T. Borup (Vestas) to S. Bunn (GM), subject: "*RE: Kvanefjeld Update*", 8 December 2011, at **(C-314)**; Email from C. Hansen (Maersk) to S. Bunn (GM), subject: "*RE: Meeting follow up [Our Ref:EXF09639]*", 7 December 2011, at **(C-315)**.

265 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 168-169.

266 See First Witness Statement of J. Mair, at **(CWS-3)**, para. 210; The Editorial Staff, *Uranium Permit Does Not Equal Exploitation*, Sermitsiaq, 30 December 2011, at **(C-316E)**.

267 First Witness Statement of J. Mair, at **(CWS-3)**, para. 211; Email from K. Birkholm (GM) to R. McIllree (GM), subject: "*Correspondance between Ole and BMP*", 16 January 2012, at **(C-317)**, pp. 5-6, email dated 10 January 2012; "*Addendum No. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*"' dated December 2011 and executed 6 January 2012, at **(C-8)**.

230. On 30 January 2012, GM issued another ASX announcement regarding Addendum No. 1.[268] This stated: "*Licensing developments provide GMEL with the right to exploit all economic components of the world-class Kvanefjeld resource, pending outcomes of environmental and social impact assessments*". Dr Mair testifies that the text of this announcement was endorsed by the BMP,[269] and reflected GM's expectation that GM "*would be granted exploitation rights if the environmental and social impact studies showed this could be achieved safely and in accordance with international best practice*".[270] He further testifies:

> "*The expectation was that, after the political and intergovernmental issues were resolved, and provided we could establish that the Project was safe in terms of health and the environment, we would be entitled to proceed with the Project, and would be issued a licence to exploit rare earths as the main product and to exploit uranium as a by-product.*"[271]

231. In the years that followed the conclusion of Addendum No. 1, it was widely understood that this agreement (entered into by the IA Party Government) represented a significant step in the lifting of the ZTP.

232. By its terms, Addendum No. 1 was inconsistent with there being any true "zero-tolerance" policy towards uranium, as it gave GM a right to explore for uranium (in a commercial sense), and a pathway to exploit it. Indeed, the subsequent Minister for Mineral Resources, Jens-Erik Kirkegaard, formally advised the Greenlandic Parliament that Addendum No.1 was "*a deviation from the previous zero-tolerance policy.*"[272]

233. As discussed further below, the IA Party, under new leadership, subsequently changed its position on uranium mining and made public statements to the effect that the ZTP should not have been lifted. This is paradoxical, as it was the IA Party Government that represented to GM that they would lift the ZTP and enter into Addendum No. 1 (which permitted uranium exploration and paved the way for uranium mining). These actions specifically induced GM to continue to invest in the Project.

C.19 GM meetings with Government representatives (February – March 2012)

234. While GM considered Addendum No. 1 to be a major breakthrough, many of its investors remained unconvinced as to the Government's support for the Project.

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[268] Greenland Minerals Ltd ASX Announcement titled "December 2011 Quarterly Activities Report", 30 January 2012, at **(C-318)**.

[269] First Witness Statement of J. Mair, at **(CWS-3)**, para. 213.

[270] First Witness Statement of J. Mair, at **(CWS-3)**, para. 212.

[271] First Witness Statement of J. Mair, at **(CWS-3)**, para. 216.

[272] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

235. On 21 February 2012, a GM representative, Mr Ramlau-Hansen, met with Premier Kleist. Mr Ramlau-Hansen subsequently prepared a note from this meeting.[273] At this meeting, Mr Ramlau-Hansen thanked Premier Kleist for Addendum No. 1 but explained that this "*hadn't helped to convince our investors, that the government will support our project, if we can meet the safety and environmental demands*". The note stated that Premier Kleist confirmed that he "*had given the impression, that Naalakkersuisut (government) would grant permission under the above terms.*" Premier Kleist also told Mr Ramlau-Hansen that GM was doing a good job of convincing the public about the benefits of the Project.

236. Mr Ramlau-Hansen encouraged Premier Kleist to abolish the ZTP, noting that this should not be difficult as it was a "policy" rather than a rule of law. Mr Ramlau-Hansen also stressed that even without the ZTP it would be necessary for the Government to assess and approve a Project based on the facts. The note stated that Premier Kleist "*agreed to* [Mr Ramlau-Hansen's] *views*".

237. Mr Ramlau-Hansen advised Premier Kleist that GM did not have the finances to continue past August 2012. While GM had identified a group of South Korean investors, to secure this investment, GM needed the Government to meet with these investors and express their support.

238. On 23 February 2012, Mr Ramlau-Hansen met with Deputy Minister Nielsen and other BMP representatives.[274] Mr Ramlau-Hansen updated the BMP on GM's stakeholder meetings. The Deputy Minister remarked that GM "*did a fantastic effort that* [the BMP] *were very satisfied with*". That same day, Mr Ramlau-Hansen had a follow-up meeting with Deputy Minister Nielsen.[275] According to Mr Ramlau-Hansen's meeting note, Deputy Minister Nielsen said that Naalakkersuisut should take an official position to support the Project, provided GM met all the environmental conditions. He also said that the BMP supported the lifting of the ZTP, and that he would work with GM towards this goal.

239. The following day, Mr Ramlau-Hansen had another meeting with Deputy Minister Nielsen and Mr Hesseldahl. Mr Ramlau-Hansen's notes from this meeting confirmed that the BMP said it would establish a working group to build the capability needed to process applications, including uranium, and would seek advice from the IAEA.[276] At

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[273] Document titled "*Minutes From ORH'S Official Journey to Nuuk Week 8*", by O. Ramlau-Hansen (GM), 26 February 2012, at **(C-319)**, pp. 2-5.

[274] Document titled "*Minutes From ORH'S Official Journey to Nuuk Week 8*", by O. Ramlau-Hansen (GM), 26 February 2012, at **(C-319)**, pp. 8-10.

[275] Document titled "*Minutes From ORH'S Official Journey to Nuuk Week 8*", by O. Ramlau-Hansen (GM), 26 February 2012, at **(C-319)**, pp. 10-12.

[276] Document titled "F*ollow up meeting in Copenhagen Friday, February 24, 6 pm. with director Jørn Skov Nielsen and legal advisor Jens Hesseldahl, both from BMP*", by O. Ramlau-Hansen (GM), 24 February 2012, at **(C-320)**; Email from K. Birkholm (GM) to R. McIllree (GM) et al, subject: "*Minutes of meeting with JSN in Copenhagen*", 7 March 2012, at **(C-321)**.

the meeting, Mr Ramlau-Hansen advised the BMP that the maximum GM could accept for the processing of its exploitation licence application was two years, to which the BMP agreed. Deputy Minister Nielsen reiterated that he would discuss the need to lift the ZTP with Premier Kleist and Minister Berthelsen.

240. Every year, in early March, the Prospectors & Developers Association of Canada (**PDAC**) host a mining industry conference in Toronto. Dr Mair attended this every year. He explains that Greenland always brought a huge delegation comprising dozens of bureaucrats and politicians and hosted a "Greenland Day" event to promote mining investment in Greenland.[277]

241. In early March 2012, Minister Berthelsen gave a speech at PDAC in which he featured the Kvanefjeld Project as one of Greenland's mining projects of the future.[278] During this conference, Dr Mair met with Deputy Minister Nielsen,[279] who advised that the Government planned to lift the ZTP, and that GM would be granted an exploitation licence inclusive of uranium, provided GM met the environmental conditions.[280]

C.20 Completion of pre-feasibility study (April 2012)

242. With Addendum No. 1 in place, GM was able to intensify its work on the Kvanefjeld Project. The next step was for GM to complete a pre-feasibility study for the Project.

243. The preparation of the pre-feasibility study was led by Mr Bunn.[281] He explains:

> "*This involved a lot of technical work, including understanding the metallurgy of the deposit, and developing a process flow sheet. We also analysed the capital and operating costs of the Project, as well as the prices of the various minerals in the market and determined that the Project was economic. Our feasibility work included the sale of uranium as a by-product.*"[282]

244. In the first half of 2012, GM announced positive drill results, which increased the global resource inventory for the Project to the largest independently determined Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (**JORC**) compliant rare earths Mineral Resource globally.[283]

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277 First Witness Statement of J. Mair, at **(CWS-3)**, para.73.

278 First Witness Statement of J. Mair, at **(CWS-3)**, para.217.

279 First Witness Statement of J. Mair, at **(CWS-3)**, para. 218; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: Meeting - Toronto*", 27 February 2012, at **(C-322)**.

280 First Witness Statement of J. Mair, at **(CWS-3)**, para. 218.

281 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 171.

282 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 171.

283 First Witness Statement of J. Mair, at **(CWS-3)**, para. 223; Greenland Minerals Ltd ASX Announcement titled "Greenland Minerals Releases Initial Mineral Resource Estimate for the 'Zone 2' Uranium - Rare Earth Deposit", 21 March 2012, at **(C-323)**; Greenland Minerals Ltd ASX Announcement titled "Zone 3 Mineral

245. In April 2012, GM completed its comprehensive pre-feasibility study for Kvanefjeld, which was based on an initial mine life of 33 years.[284]

246. With the pre-feasibility study completed, the next step was for GM to prepare a definitive feasibility study. Also, with the feasibility work at an advanced stage, it was possible for GM to start more substantive work on its EIA and SIA.[285]

C.21 IA Party Government progress towards lifting ZTP

247. As discussed above, in early 2012, there were ongoing political discussions regarding the abolition of the ZTP. During this period, GM repeatedly explained to the Greenlandic Government that the fact that the ZTP had not yet been abolished was severely limiting GM's ability to raise the capital required for the Project.

248. On 13 June 2012, Mr Ramlau-Hansen of GM had a telephone meeting with Premier Kleist, which he followed up with a letter.[286] In this letter, Mr Ramlau-Hansen noted that Premier Kleist had agreed that the ZTP should be abolished and decisions on licence applications should be based on the findings of EIA and SIA studies. It recorded Premier Kleist's position as follows:

> "*the government will say yes to projects containing uranium as a by-product to rare earth minerals, if production can be established in a safe, environmental acceptable way and workers and people's health are not put at risk and also if uranium is only used for peaceful purposes and production is beneficial to the population.*"

249. On 16 June 2012, GM sent an email to Deputy Minister Nielsen.[287] In this email, GM explained that it was in a capital raising process, but there was a concern that if it invested the funds to complete its exploitation licence application, there was the prospect of being in "*limbo*" for up to two years before there was a decision on the ZTP or exploitation, and that investors had stipulated that their funds could not be spent until

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Resource Estimate Takes Kvanefjeld Project Global Resource Inventory to 575 Mlb's U3O8 10.3 Mt's Total Rare Earth Oxide", 6 June 2012, at **(C-324)**.

[284] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 172; Email from J. S. Nielsen (Nanoq) to R. McIllree (GM), subject: "*SV: information request*", 26 May 2012, at **(C-325)**; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Prefeasibility Study Confirms a Long-Life, Cost Competitive Rare Earth Element - Uranium Project", 4 May 2012, at **(C-38)**.

[285] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 173; First Witness Statement of J. Mair, at **(CWS-3)**, section V.I.

[286] Email from O. Ramlau-Hansen (GM) to R. McIllree (GM), subject: "*Letter to Kuupik (Confidential!)*", 15 June 2012, at **(C-326)**; attaching Letter from O. Ramlau-Hansen (GM) to K. Kleist (Premier of Greenland), 14 June 2012, at **(C-327)**.

[287] Email from J. S. Nielsen (Nanoq) to R. McIllree (GM), subject: "*SV: Items for review*.", 17 June 2012, at **(C-328)**, pp. 1-3, email dated 16 June 2012.

these risks were removed. Deputy Minister Nielsen responded the next day,[288] sympathising with GM's concerns and stating: "*you are always welcome to contact me if there are any matters that you feel needs attention*".

250. On 4 July 2012, GM's local lawyers, Nuna Law Firm, sent a letter dated 28 June 2012 to the BMP.[289] Nuna Law Firm explained that GM needed a legal opinion on its Exploration Licence for the purposes of a capital raising, and asked the BMP to confirm that: "*the Licence includes exploration for all minerals, excluding hydrocarbons and hydropower resources. The Licence also covers radioactive elements under the conditions set out in the Addendum No. 1 to licence 2010/02*." The BMP replied on 4 July 2012, setting out the terms of Addendum No. 1 verbatim.[290] As Dr Mair testifies: "*This confirmed our understanding that our licence covered radioactive elements, but that there was no automatic right to exploit these elements. The BMP's response also confirmed that GM had fulfilled its exploration, reporting and accounting obligations*."[291]

251. Also on 28 June 2012, Minister Berthelsen of the IA Party publicly stated that he "*wants uranium mines opened in Greenland*" and supported "*abandoning the so-called zero tolerance policy*".[292] The Minister was reported as saying that, by the end of 2012 or the first half of 2013, the IA Party Government may already be processing GM's application to exploit rare earths and uranium. Dr Mair testifies: "*We saw this as a confirmation of prior communications between GM representatives and the Government that there was a clear intent to remove the ZTP and move forward, and that GM would ultimately be granted an exploitation licence for both rare earths and uranium*."[293]

252. GM's drill results garnered attention from international investors. Indeed, in mid-2012, delegations from South Korea (including the President of South Korea) and China visited Greenland to discuss investment opportunities, including the Kvanefjeld

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288 Email from J. S. Nielsen (Nanoq) to R. McIllree (GM), subject: "*SV: Items for review*.", 17 June 2012, at **(C-328)**.

289 Email from M. Sheuerlein (BMP) to A. S. Sørensen (Nuna Law), subject: "*Answer: Greenland Minerals and Energy A/S*", 4 July 2012, at **(C-329E)**, p. 3, email dated 28 June 2012; attaching Letter from A. S. Sørensen (Nuna Law) to M. Scheuerlein (BMP), subject: "*Greenland Minerals and Energy (Trading) A/S - licence 2010/02*", 28 June 2012, at **(C-330)**.

290 Letter from the BMP to A. S. Sørensen (Nuna Law), subject: "*Regarding Greenland Minerals and Energy (Trading) A/S - licence 2010/02*", 4 July 2012, at **(C-331)**.

291 First Witness Statement of J. Mair, at **(CWS-3)**, para. 231.

292 B. H. Sørensen and V. Hyltoft, *He wants uranium mines opened in Greenland*, Berlingske, 17 June 2012, at **(C-237)**; B. H. Sørensen and V. Hyltoft, *He wants uranium mines opened in Greenland*, Berlingske, 19 October 2012, at **(C-332E)**.

293 First Witness Statement of J. Mair, at **(CWS-3)**, para. 232.

Project.[294] As Dr Mair testifies, "[t]*he visits by these heavyweights were significant and saw increased momentum behind developing the Project.*"[295]

253. While international investors and financiers were certainly interested in the Project, many remained sceptical on account of the ZTP. On 13 August 2012, GM sent a letter to Premier Kleist and Minister Berthelsen.[296] This stated:

> "*Without the removal of zero tolerance and a clear position of government support we are unable to move. With no resolution to this problem we will have no choice but to release the rest of our Greenlandic employees and put the entire project on a care and maintenance footing. While this is not a position we favour, we will have little choice.*
>
> *For our company to effectively finance and finish the feasibility study and application it has become absolutely essential to have firm assurances from the government that upon receipt of a mining license application and feasibility study, the system will be ready to proceed on processing the application. At present there is no confidence amongst investors that an application, if submitted, could or would be processed, owing to political impediments. If our company can comply with all conditions as setup by the government, we must be sure now that we can get an exploitation license without additional political hurdles. If the government cannot give us full assurance on this matter, then we cannot justify to shareholders spending any further funds on advancing the project, as it will appear as pointless and irresponsible on behalf of managment* [sic]." (emphasis added)

254. These were entirely reasonable statements for a listed Australian public company to make in the circumstances. Regrettably, the contents of this letter were later misrepresented in the Danish press, which suggested that GM had given the Government an ultimatum.[297] While the Government had been on track to lift the ZTP in late 2012, following this negative reporting, the Government instead opted to set up working groups and committees to investigate the consequences of lifting the ZTP.[298] This is described in Section C.23 below.

255. On 23 August 2012, GM representatives, including Dr Mair, met with Premier Kleist and Minister Berthelsen and discussed the challenges GM was facing with investors

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294 First Witness Statement of J. Mair, at **(CWS-3)**, para. 240; Email from S. Lindegaard (Rostra PR) to R. McIllree (GM); S. Bunn (GM), et al., subject: "*Media Report - Denmark: 30th of August 2012 - 31st of August 2012*", 31 August 2012, at **(C-333)**.

295 First Witness Statement of J. Mair, at **(CWS-3)**, para. 240.

296 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 233-234; Letter from R. McIllree (GM) to K. Kleist (Premier of Greenland) and O. K. Berthelsen (Minister for Trade, Industry and Minerals), 13 August 2012, at **(C-334)**.

297 First Witness Statement of J. Mair, at **(CWS-3)**, para. 236.

298 First Witness Statement of J. Mair, at **(CWS-3)**, para. 237.

due to the lack of clarity around the legal framework.[299] At this meeting, Premier Kleist and Minister Berthelsen said that they supported the Project but needed more time before they could lift the ZTP. As Dr Mair recalls:

> "*We believed this was a positive outcome, as we had received reassurances from the highest levels of the Government of Greenland that we were all working towards a common goal of getting Kvanefjeld on a clear development pathway.*"[300]

256. Concurrently, Deputy Minister Nielsen advised Dr Mair that representatives of the Danish Government had said that they would leave any decision as to the ZTP up to the Greenlandic Government.[301] It was subsequently reported that a representative of the Danish People's Party had stated: "*If you can make a lot of money extracting uranium, and you can do it in a responsible way, of course you have to do it.*"[302]

C.22 GM acquisition of 100% of the Project (October 2012)

257. In October 2012, on the back of the successful negotiation of Addendum No. 1, GML acquired the outstanding 39% interest in GMAS, bringing its investment in the Kvanefjeld Project to 100%.[303]

C.23 Establishment of Uranium Working Group and Rastof Committee (late 2012)

258. Throughout this entire period, the Greenlandic Government made it clear to GM that the Kvanefjeld Project was driving internal government discussion with respect to the ZTP. Indeed, in October 2012, the BMP sent an email to GM asking for the schedule of activities for its exploitation licence application, stating "*Naalakkersuisut has said on several occasions that they e.g. would use GME's application to assess the issue of zero tolerance the policy*."[304]

259. GM responded, making it clear that clarity on the ZTP was needed before further activities could be financed, and GM would not submit an application until this issue was resolved.[305] This email stated that "*everyone knows*" the ZTP was a "*political*

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[299] First Witness Statement of J. Mair, at **(CWS-3)**, para. 241; Email from R. McIllree (GM) to J. S. Nielsen (Nanoq), subject: "*RE: Letter from the minister of mineral resources*", 18 August 2012, at **(C-335)**.

[300] First Witness Statement of J. Mair, at **(CWS-3)**, para. 242.

[301] First Witness Statement of J. Mair, at **(CWS-3)**, para. 243.

[302] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 244; V. Hyltoft and B. H. Sørensen, *Predominantly Danish Yes to Greenlandic Adventure*, Berlingske, 30 August 2012, at **(C-336)**.

[303] First Witness Statement of J. Mair, at **(CWS-3)**, section VI.E; Greenland Minerals Ltd ASX Announcement titled "Acquisition of the outstanding 39% of the Kvanefjeld multi element project, completed", 16 October 2012, at **(C-337)**.

[304] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 247-248; Email from K. Birkholm (GM) to H. Stendal (BMP), subject: "*Time schedule*", 19 October 2012, at **(C-338E)**, p. 3, email dated 12 October 2012.

[305] First Witness Statement of J. Mair, at **(CWS-3)**, para. 250; Email from K. Birkholm (GM) to H. Stendal (BMP), subject: "*Time schedule*", 19 October 2012, at **(C-338E)**, p. 2, email dated 19 October 2012.

construction". GM stated that, if the ZTP was lifted, GM would hire people in Narsaq and train people. If not, GM would stand by or shut down.

260. A matter of weeks after this email was sent, significant developments were made in the lifting of the ZTP.

261. On 20 November 2012, the Greenland Parliament Business Committee recommended that the Parliament establish a fast-working, independent group of experts to report on the consequences of abolishing the ZTP, including the division of authority between Denmark and Greenland with respect to security matters, the legal framework that would need to be established, and the environmental and economic impacts of uranium mining. [306] The Business Committee recommendation noted that "*the Mineral Resources Act does not contain any provisions which explicitly forbid the mining of minerals with radioactive content. Zero tolerance on the mining and use of radioactive minerals therefore rests on the political will to forbid such activities*". The recommendation stated that, with respect to uranium mining, "*the decision should be made on objective and well-informed grounds*".

262. As an aside, the Business Committee included two prominent IA Party members. It was chaired by Nadja Nathanielsen, the current Minister of Mineral Resources, and also included Aqqaluaq Egede, who was Minister of Mineral Resources until June 2023. It is ironic that, in late 2012, these IA Party members supported an independent expert investigation into uranium mining, and objective, well-informed decision-making. By contrast, in 2021, these same IA Party members supported the introduction of Act No. 20 without any scientific investigation. This is discussed in Sections C.65 and C.75 below.

263. On 21 November 2012, the Business Committee's proposal was discussed in the Greenlandic Parliament. In his second reading speech, Minister Berthelsen explained that the Government had been investigating uranium mining and had supported GM's activities at Kvanefjeld:

> "*The Government of Greenland has in the meantime conducted a number of activities and public meetings related to further clarification of the uranium issue.*
>
> *We have approved Greenland Minerals and Energy's performance of EIA and SIA studies of the Kvanefjeldet deposit, including uranium-bearing minerals. The purpose of this approval is to obtain specific knowledge about the*

[306] Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 74-80.

consequences of uranium mining, rather than to continue political discussions at a more theoretical level. These studies are not yet complete."[307]

264. During this session, the Greenlandic Parliament unanimously supported the proposal to fast-track an independent review into uranium mining.[308] Dr Mair was in Greenland when the vote took place, and GM announced this development to the market.[309]

265. The review into uranium mining would be conducted by the UWG. The UWG was led by the Danish Ministry of Foreign Affairs, and included representatives from Danish and Greenlandic ministries, expert consultants, representatives of the World Nuclear Association and academics.[310]

266. It was reported that, because of the security implications of exporting uranium, Greenland was required to ask Denmark for permission before lifting the ZTP.[311] Concurrent with the establishment of the UWG, representatives of the Danish Government, including the Danish Foreign Minister, indicated that Denmark would support Greenland in pursuing uranium production, noting that Denmark retained responsibility for ensuring compliance with international conventions.[312]

267. At this time, the Danish and Greenlandic Governments had already generated a solid knowledge base to evaluate and effectively manage uranium production in Greenland,

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[307] Minister Berthelsen's speech of 21 November 2012 is extracted in Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**, para. 19. By letters dated 19 January 2023, 10 February 2023 and 29 March 2023, GM asked the Ministry to provide copies of parliamentary records from this time relating to the abolition of the ZTP, including Minister Berthelsen's second reading speech of 21 November 2012, see: Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provided files and respond to consultation letter*", 19 January 2023, at **(C-340)**; Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provided files and respond to consultation letter*", 10 February 2023, at **(C-341)**; Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Renewed request for access to documents (aktindsigt)*", 29 March 2023, at **(C-342)**. The Ministry refused to provide these records on the basis that the Ministry was not in possession of the records, and otherwise erroneously referred to these documents as having been disclosed to GM, see: Letter from J. T. Hammeken-Holm (Ministry of Mineral Resources) to G. Frere (GM), subject: "*Decision on Extension of Deadline*", 3 February 2023, at **(C-343)**; Document titled "*Document List*", by the Ministry of Mineral Resources, 3 February 2023, at **(C-344)**.

[308] Greenland Minerals Ltd ASX Announcement titled "Political Developments in Greenland Set to Firm the Government's Strategy for Uranium Exploitation from Kvanefjeld", 27 November 2012, at **(C-345)**.

[309] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 251-252; Greenland Minerals Ltd ASX Announcement titled "Political Developments in Greenland Set to Firm the Government's Strategy for Uranium Exploitation from Kvanefjeld", 27 November 2012, at **(C-345)**.

[310] First Witness Statement of J. Mair, at **(CWS-3)**, para. 260.

[311] H. Jacobsen, *Danish U-turn clears way for uranium mining in Greenland*, EURACTIV, 29 January 2013, at **(C-346)**, p. 1.

[312] Greenland Minerals Ltd ASX Announcement titled "Political Developments in Greenland Set to Firm the Government's Strategy for Uranium Exploitation from Kvanefjeld", 27 November 2012, at **(C-345)**; H. Jacobsen, *Danish U-turn clears way for uranium mining in Greenland*, EURACTIV, 29 January 2013, at **(C-346)**.

including the 2008 Uranium Report, GEUS Factbook and report from the Greenlandic delegation's September 2010 trip to Canada. When the UWG was set up, investigations were already underway in Denmark, led by the Ministry of Foreign Affairs, into foreign policy protocols that would be required to facilitate uranium production in Greenland.[313] The purpose of the UWG was to finalise this multi-year information gathering exercise.

268. As explained by Dr Mair:

> "*I considered that the establishment of an independent working group to be extremely constructive. It was clear that the IA Government wanted to de-politicise the issue of uranium and take a scientific approach to regulating it. It was also clear that the Government wanted to enable the development of Kvanefjeld and knew that they needed to upskill and educate themselves about uranium mining and regulation in order to do this properly.*
>
> […]
>
> *We believed that the UWG investigation would demonstrate that uranium mining could be performed safely and would result in the abolition of the ZTP*".[314]

269. Dr Mair's expectations regarding the lifting of the ZTP were confirmed in a speech made by Premier Kleist on 14 January 2013, in which he said that, following elections in the spring, "*the new parliament will have to take the report from this independent body into account and then eventually lift the zero tolerance towards uranium*".[315]

270. Premier Kleist also made positive statements to the press about rare earths mining, stating: "*Greenland is open for investments from the whole world, taking into account that the investors accept the regulations and requirements from Greenland in doing so*".[316]

271. During this same time period, in mid-December 2012, GM representatives, including Dr Mair, joined a Greenlandic Government delegation on a trip to South Korea.[317] This delegation was organised by the Royal Danish Embassy in Korea and the Danish Ministry of Foreign Affairs and was headed by Premier Kleist. During this visit, the

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313 Greenland Minerals Ltd ASX Announcement titled "Political Developments in Greenland Set to Firm the Government's Strategy for Uranium Exploitation from Kvanefjeld", 27 November 2012, at **(C-345)**.

314 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 254-255; see also First Witness Statement of S. Bunn, at **(CWS-7)**, para. 176.

315 First Witness Statement of J. Mair, at **(CWS-3)**, para. 255; EIRDanmark, *Kuupik Kleist IPC press conf. incl. EIR question, Jan. 14, 2013*, 16 January 2013, http://www.youtube.com/watch?v=JeUmpFoKsXY (last accessed 9 May 2023), at **(C-347)**, 56:40.

316 First Witness Statement of J. Mair, at **(CWS-3)**, para. 259; Euractiv with Reuters, *Greenland rejects EU request to limit rare earths exports*, EURACTIV, 15 January 2013, at **(C-348)**.

317 First Witness Statement of J. Mair, at **(CWS-3)**, para. 257.

Government represented that the ZTP would be lifted in the spring sitting of Parliament.[318]

272. In parallel with the establishment of the UWG, a Greenlandic Parliamentary Committee on Mineral Resources was formed to investigate these issues (the **Rastof Committee**).[319]

C.24 Greenland general election (12 March 2013)

273. On 12 March 2013, there was a general election in Greenland. The IA Party lost its position as the largest party in the Parliament, and the Siumut Party formed a coalition government. Aleqa Hammond replaced Kuupik Kleist as Greenland's Premier, and Jens-Erik Kirkegaard replaced Ove Karl Berthelsen as Minister of Mineral Resources. Dr Mair explains that the outgoing IA Party Government leadership had supported the Project and lifting the ZTP, and the incoming Siumut Party had similarly expressed support for formally abandoning the ZTP.[320]

274. The new Government's coalition agreement provided that: "*The 0-tolerance policy for minerals containing uranium will be abolished, though the abolition will be contingent upon securing public health, nature and environment from risks*."[321] It also provided that "*New jobs will be created within the mining industry and royalties will secure an income for society*."

275. Shortly after the election, IA Party member Naaja Nathanielsen submitted questions to Minister Kirkegaard about the consequences of abolishing the ZTP. In his 30 April 2013 response, Minister Kirkegaard explained that environmental impacts would be assessed on a case-by-case basis by reference to EIA studies, and that mining companies would need to demonstrate they were able to comply with radiation limit values.[322] In this connection, he pointed out that "*many responsible democratic countries manage to manage the exploitation of ore containing radioactive substances at levels above what we currently allow in Greenland. Therefore, I am not too worried about whether Greenland can handle this situation*." The Minister emphasised that changing the ZTP was important for the Kvanefjeld Project, which would be "*given the opportunity to get started*". The Minister also noted he was travelling to South Greenland to meet with people about lifting the ZTP.

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318 First Witness Statement of J. Mair, at **(CWS-3)**, para. 258.

319 First Witness Statement of J. Mair, at **(CWS-3)**, para. 266.

320 First Witness Statement of J. Mair, at **(CWS-3)**, section VI.J. The Rastof Committee consisted of Kim Kielsen (Siumut Party), Gerhardt Petersen (Atassut Party), Naaja Nathanielsen (IA Party), Kuupik Kleist (IA Party) and Doris Jakobsen (Siumut Party).

321 Government of Greenland Coalition Agreement 2013-2017, at **(C-349)**.

322 §37 Parliamentary Questionnaire No. 26/2013, 30 April 2013, at **(C-350)**.

C.25 UWG fact-gathering process and Lett Report (2013)

276. The UWG process was extensive and included delegations visiting Canada and Australia to learn about uranium mining, regulation, and social impacts.[323]

277. GM representatives, including Mr Bunn, participated in UWG workshops and provided input. For example, in March 2013, Denmark's GEUS advised GM that Denmark anticipated that the ZTP would be lifted and was preparing regulations for the production and export of uranium. GEUS stated: "*the legislation/control system/set-up it is likely to be a copy-paste version based on existing legislation and regulations from other Western uranium producing countries*." [324] Mr Bunn responded to GEUS's questions. He testifies:

> "*Based on our discussions with the UWG, it was our expectation that Greenland would regulate uranium in the same way as other Western uranium-producing countries. For nuclear safety and radiation protection, this would mean following the IAEA and ICRP guidelines*".[325]

278. In April 2013, the UWG released a report titled: "*Report on matters relating to a possible lifting or changing of the zero-tolerance policy on the exploitation of uranium and other radioactive minerals*", authored by the Lett Law Firm, the DCE and PwC (**Lett Report**).[326]

279. The Lett Report included a memorandum by Lett Law Firm on legal matters concerning the lifting or changing of the ZTP, which stated that ZTP "*is solely a Greenland political decision*" and no major amendments to the MRA would be required if the ZTP was lifted and licences for the exploitation of uranium were granted.[327] This confirmed that the ZTP had no real legal effect other than to inform the drafting of specific terms for exploration and exploitation licences. The Lett Report specifically referred to the Kvanefjeld Project, stating that if the ZTP was changed it would "*be possible to exploit*

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323 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 262-263.

324 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 178-180; Email from K. Per (GEUS) to S. Bunn (GM); D. Krebs (GM), subject: "*SV: Urgent question as to the Kvanefjeld uranium concept*", 20 March 2013, at **(C-351)**.

325 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 180.

326 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**.

327 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 9, 38.

uranium from Kvanefjeld where the concentration of uranium is approximately 0.0365%".[328]

280. The Lett Report included a memorandum by the DCE on the environmental impacts of uranium mining.[329] The DCE report identified (correctly) that radioactivity is measured in Becquerels (Bq) and that radiation dosage is measured in millisieverts (mSv). It stated that health and environmental risks associated with mining radioactive materials depend on radiation dosage, which is a function of a number of factors, including radioactivity, distance, and exposure time.[330] The DCE advised that radiation protection would be ensured through radiation dosage thresholds, with different threshold for mine workers (20 mSv/annum) and members of the public (1 mSv/annum).[331]

281. The DCE report had a specific section titled "*Radiation doses at Kvanefjeldet*".[332] It stated: "*If mining operations were to take place at Kuannersuit (Kvanefjeld), the authorities will set threshold values for radiation doses for the miners and local population.*" The report continued:

> "*Measures must be taken to protect residents of Narsaq against any radiation from the mining operations exceeding 1 mSv/annum. The EIA report by the mining company must contain calculations as to whether the radiation doses for residents of Narsaq will be changed as a result of the mining operations. The main sources are expected to be dust from the ore mining and radon from the tailings depots. The location of the tailings depots in relation to Narsaq, the location of the mining plant and the prevailing wind conditions will be significant factors when assessing environmental and health issues relating to a possible uranium mine at Kvanefjeldet.*"[333]

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328 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, p. 39.

329 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 41-53.

330 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, p. 44.

331 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, p. 45.

332 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 49-52.

333 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, p. 50.

282. Dr Mair reviewed the Lett Report at the time and took it as a clear statement of how the Greenlandic Government would regulate radiation protection generally, and with respect to Kvanefjeld specifically:

> "*Setting radiation dosage thresholds (in mSv) is sensible and in line with international best practice (as the DCE identified). Based on the DCE report, it was my expectation that the environmental and health issues related to the radioactivity of uranium would be managed in this way.*"[334]

283. Mr Bunn also reviewed the Lett Report. He testifies:

> "*Based on this report, it was clear that the authorities would follow international best practice and apply radiation dosage limits to the Kvanefjeld Project. We expected that, provided we could show that mining at Kvanefjeld was safe through our EIA study, and we complied with dosage limits, we would have satisfied the requirements.*"[335]

284. The DCE report did not suggest (or even mention) potentially setting a ppm-based uranium threshold to manage radiation risks. As Dr Mair explains:

> "*The DCE did not even contemplate using a uranium threshold as a proxy for estimating radiation dosage, because the scientific relationship between these factors is so remote. By this time, the conversation was sophisticated and scientific, and had moved past this ppm thresholds. There was a general recognition that environmental, health and safety considerations should be addressed through impact assessments.*"[336]

285. The Lett Report also included a memorandum by PwC on the use of, and market for, uranium and the economic consequences of uranium exploitation in Greenland,[337] and annexed a report by the Danish Ministry of Foreign Affairs dated 8 March 2013 with a preliminary survey of codes of practice for radioactive substances and their validity in Denmark and Greenland.[338]

C.26 GM meetings with the Government (May – August 2013)

286. In late May 2013, GM representatives, including Dr Mair and Mr Bunn, travelled to Greenland for meetings with Premier Aleqa Hammond, the new Minister of Mineral

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334 First Witness Statement of J. Mair, at **(CWS-3)**, para. 276.

335 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 187.

336 First Witness Statement of J. Mair, at **(CWS-3)**, para. 277.

337 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 54-73.

338 Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 81-101.

Resources, Jens-Erik Kirkegaard, and representatives of the BMP.[339] At these meetings, Minister Kirkegaard advised that the Government's aim was to remove the ZTP and then focus their attentions on establishing a regulatory framework to govern the exploitation and export of uranium. Following the meeting, Minister Kirkegaard sent an email to GM thanking the team for the productive meeting and stating: "*it is exciting times for Greenland and the government feels it* [sic] *there's good opportunity to developing a new resource sector*".[340] Dr Mair subsequently gave an interview in which he stated: "*The new government has stated a clear aim to remove the zero-tolerance policy and to prioritise Kvanefjeld's development*".[341]

287. In the northern summer of 2013, Mr Bunn and other GM representatives undertook a tour of eight settlements in southern Greenland to present an overview of the Project, the potential development scenarios and the work programs involved in EIA and SIA, and to answer questions from stakeholders.[342]

288. On 19 August 2013, GM representatives, including Dr Mair and Mr Bunn, hosted a workshop with the Ministry, BMP and EAMRA, including Mr Hammeken-Holm and lawyer Jens Hesseldahl, to discuss various matters, including the next steps in the licensing process. Minutes of this meeting were prepared and circulated with all departments who attended.[343]

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339 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 279-281; First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 189-191; Greenland Minerals Ltd ASX Announcement titled "June 2013 Quarterly Report", 31 July 2013, at **(C-352)**, p. 6; Email from J. Mair (GM) to J. S. Nielsen (Nanoq), subject: "*Visit to Nuuk*", 21 May 2013, at **(C-353)**; Email from J. Mair (GM) to J. Kirkegaard (Minister for Minerals and Industry) J. S. Nielsen (Nanoq), subject: "*GME - Kvanefjeld*", 2 June 2013, at **(C-354)**.

340 Email from J. Kirkegaard (Minister for Minerals and Industry) to J. Mair (GM); J. S. Nielsen (Nanoq), subject: "*SV: GME - correction to previous email*", 4 June 2013, at **(C-355)**.

341 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 283-284; Greenland Minerals Ltd ASX Announcement titled "Open Briefing - Kvanefjeld Project Update", 25 June 2013, at **(C-356)**.

342 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 205; Greenland Minerals Ltd ASX Announcement titled "Greenland Minerals Progress Environmental and Social Impact Assessments on the Kvanefjeld Project", 16 October 2013, at **(C-357)**.

343 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 192-202; First Witness Statement of J. Mair, at **(CWS-3)**, section VI.M; Email from N. V. Rasmussen (Nanoq) to S. Bunn (GM), subject: "*Monday workshop with BMP in Nuuk*", 15 August 2013, at **(C-358)**; Email from N. V. Rasmussen (Nanoq) to S. Bunn (GMAS), subject: "*SV: Minutes of BMP workshop*", 17 September 2013, at **(C-359)**; Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**;Greenland Minerals Ltd ASX Announcement titled "June 2013 Quarterly Report", 31 July 2013, at **(C-352)**, p. 6.

289. There was a discussion of what actions would be taken with respect to GM's Exploration Licence after the ZTP was lifted. The minutes from the meeting state that one of the steps was "*Changes to* [GM's] *licence*":[344]

> 30. After zero tolerance decision change what is process?:
>
> a. *Change position on zero tolerance*
>
> b. *Final discussions with Denmark*
>
> c. *Changes to our license*
>
> d. *Other legislation to follow on Greenland and Denmark front*

290. As Mr Bunn testifies:

> "*We discussed how Denmark and Greenland were working together to develop guidelines and regulations to allow the export of uranium from Greenland. The minutes noted that 'Day to day operation of mine falls under Greenlandic authority' whereas 'Export of uranium will fall under Danish authority' (p. 3).*
>
> *Because Denmark is a signatory to international conventions, including the Non-Proliferation Treaty and IAEA convention, we would have needed to obtain Denmark's permission to export uranium from Kvanefjeld. Page 5 of the minutes state: 'Exporting and reporting conditions will be specified on license in regard to uranium and Denmark likely to be a co-signatory'. This is a reference to our exploitation licence, which would have contained conditions regarding uranium export permits and reporting protocols.*
>
> […] *we talked about the licencing process after the ZTP is lifted.*
>
> […] *The reference* [in the minutes] *to 'Changes to our license' was to remove the exception in section 101 of the Standard Terms (which were incorporated in our Exploration Licence by reference). This section allowed us to explore for all minerals 'except hydrocarbons, radioactive elements and hydro-power'. To the best of my recollection, the plan was that, after the ZTP was officially lifted, the BMP would add radioactive elements to our Exploration Licence by amending section 101.*"[345]

291. Dr Mair explains:

> "*At this meeting, we discussed how, after the ZTP lifted, Greenland and Denmark would work together to develop and advance the system for uranium mining and export. There was a lot of work that still needed to be done to set up the regulatory system. The BMP advised that Denmark needed to support the lifting of the ZTP. As mentioned above, representatives of the Danish Government had previously made public statements that Denmark would*

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344 Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 6.

345 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 198-199, 201-202.

support this. With the lifting of the ZTP by Greenland, the expectation was that Denmark would advance this regulatory process. We also discussed how Denmark would need to authorise all the uranium exporting and reporting conditions that would be included in our exploitation licence and would therefore probably need to be a co-signatory to this licence (see item 22 of the minutes).

As mentioned above, the purpose of the caveats in Addendum No. 1 was to account for a situation in which the ZTP was not lifted. With the ZTP lifted, the regulatory system would be set up, and the caveats would effectively become null and void. This is what was discussed at the meeting. The BMP indicated that they planned to amend the Standard Terms to include the exploration of uranium."[346]

292. At this point in time, GM and the Government were looking beyond the ZTP. As Mr Bunn's and Dr Mair's testimony shows, GM and the BMP considered that, after the ZTP was lifted, the Danish and Greenlandic Governments would set up a regulatory system to manage the exploitation and export of uranium. Assuming that the ZTP was lifted (which it was) and the Danish Government supported the Greenlandic Government's efforts to exploit and export uranium (which it did), the Addendum No. 1 Caveats would become inoperative. Further, the Greenlandic Government would update Section 101 of the Standard Terms so that all companies operating under the Standard Terms would be entitled to explore for uranium and exploit it if they delineated a commercially viable deposit. As discussed above, pursuant to Section 1 of Addendum No. 1, GM already had the right to explore for uranium. It was understood that, when the Standard Terms were updated, this would have the effect of adding uranium to GM's Exploration Licence, which would render Section 1 of Addendum No. 1 redundant, meaning that Addendum No. 1 in its entirety would be redundant. This is consistent with Addendum No. 1 serving as an interim solution only.

293. The minutes from this meeting state: "*Exporting and reporting conditions will be specified on license in regard to uranium and Denmark likely to be a co-signatory*". As Mr Bunn and Dr Mair explain, Denmark is a signatory to international nuclear safety conventions and had an important role to play in administering the exploitation and export of uranium. At the meeting, it was discussed that the Danish Government would have had to authorise the uranium export and reporting conditions of GM's exploitation licence, and it was anticipated that the Danish Government would likely need to be a co-signatory to the licence.[347]

294. At this meeting, there was also a discussion of the Kvanefjeld Project development plan, which included the commercial exploitation of uranium. There was also a discussion of

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[346] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 287-288.

[347] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 287; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 199.

"*Radiation safety (radiation protection programme)*".[348] It was noted that the UWG was working on developing guidelines and regulations on radioactive materials, and that this would follow international standards and conventions.[349] It was noted that there was "*Less uranium and thorium in tailings than in ore*" and that it would be possible to "*manage and engineer solutions*".

295. At this meeting, there was also a discussion of the processing plan, and whether this should include a chemical refining circuit in Greenland.[350] As Mr Bunn testifies, the expectation of the ZTP being lifted "*opened up a more extensive discussion about processing uranium and whether we should do chemical refining in Greenland or offshore.*"[351]

296. During this same visit to Greenland, in late August 2013, GM representatives, including Dr Mair and Mr Bunn, met with Minister Kirkegaard, Deputy Minister Nielsen and BMP representatives.[352] At this meeting, Minister Kirkegaard provided an update on the parliamentary process, explaining to GM that there would be a vote on the ZTP in October 2013, and that the Government had a mandate to abolish the ZTP. Deputy Minister Nielsen followed up this meeting with an email, which confirmed that, once the ZTP was lifted, the Government would proceed with setting up the regulatory and administrative structure to enable the administration to process applications for radioactive materials.[353]

C.27 Parliamentary process for abolition of the ZTP (July to September 2013)

297. For several months in mid-2013, there was a robust and well-informed parliamentary process and discussion concerning the consequences of abolishing the ZTP. Members of Parliament submitted questions about the proposal, which were answered by Minister Kirkegaard. Specifically:

(a) On 23 July 2013, Minister Kirkegaard advised that, after the ZTP was lifted, companies would be permitted to exploit and export radioactive minerals, as

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348 Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 1.

349 For example, in relation to uranium shipping, it was noted that radiation regulations for transport would need to be established that met international regulations and the IAEA guidelines. For tailings and dust, "*GME propose to refer to Australian and Canadian regulations in the absence of Greenlandic standards. Duty of care would be implicit, science would show we can manage, similar to previous work by Riso*". Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 4.

350 Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 3.

351 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 194.

352 First Witness Statement of J. Mair, at **(CWS-3)**, para. 285; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 204; Greenland Minerals Ltd ASX Announcement titled "June 2013 Quarterly Report", 31 July 2013, at **(C-352)**, p. 6.

353 First Witness Statement of J. Mair, at **(CWS-3)**, para.289; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: Upcoming schedule*", 8 September 2013, at **(C-361)**.

both a main product and a by-product.[354] The Minister further advised that the Government intended to follow existing health legislation and IAEA recommendations and guidelines, and he was confident that these regulations provided adequate safeguards for handling radioactive minerals in accordance with international best practice.

(b) On 8 August 2013, Naalakkersuisut tabled its formal motion for abolition of the ZTP.[355] The proposal stated that the "*Justification*" for abolishing the ZTP was that the exploitation of mineral resources was "*crucial for the development of our country towards becoming economically self-sustaining*". It stated that: "*the extraction of uranium can be done responsibly with regard to the environment, safety and health by complying with the best international practice*."[356]

(c) The proposal also noted that the MRA did not restrict the exploitation of radioactive materials, as Parliament had never agreed to the ZTP. It stated that, after the ZTP was lifted, the Greenlandic Government and Parliament, in collaboration with the Danish Government, would proceed to establish the requirements and rules for the exploitation and export of radioactive materials. It confirmed that regulations on the exploitation of radioactive elements would be in accordance with international best practice "*especially IAEA standards and guidelines*".

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354 §37 Parliamentary Questionnaire No. 118/2013, 9 July 2013, at **(C-362)**, answer on 23 July 2013, p. 8.

355 Document titled "*Proposal for a decision by the Parliament of Parliament to accede to the accession of the Parliament with effect from EM13 to: The "zero tolerance" for the mining of uranium and other radioactive substances ceases*", EM 2013/106, 8 August 2013, at **(C-236E)**.

356 Document titled "*Proposal for a decision by the Parliament of Parliament to accede to the accession of the Parliament with effect from EM13 to: The "zero tolerance" for the mining of uranium and other radioactive substances ceases*", EM 2013/106, 8 August 2013, at **(C-236E)**, p. 4; The proposal further stated that: "*More than 30 countries extract uranium worldwide, and experience from other countries shows that the extraction and export of uranium can be carried out in full compliance with international rules and with a country's overall foreign and security policy interests*" (p. 1).

(d) On 13 August 2013, Minister Kirkegaard emphasised that the matter of lifting the ZTP had been properly consulted and provided a list of these consultation activities (extracted below).[357]

Scar	Maned	Activity
2011	March	**TV debate** in KNR, where politicians, experts and citizens debated ready the uranium item and where citizens had the opportunity to ask questions. The tv debate was broadcast media in March 2011.
2011	March	**Radio broadcast** of the information activities held and travel to Canada. The radio debate was broadcast in March 2011.
2010	September	**Travel to Canada for** the purpose of collecting knowledge and experience in uranium mining from the Canadian state of Saskatchewan. Naalakkersuisut had invited members of the Business Committee and the Environment Committee, relevant politicians and officials from The Municipality of Kujalleq and Ra- substance directorate. [1]
2010	September	**KNR radio/TV broadcast**, in which independent experts highlighted relevant social aspects of mining and environmental impacts. The broadcast involved various organizations and citizens who were given the opportunity to speak out for and against uranium mining. The broadcast aired in September 2010 and reissued in March 2011
2010	August	**Booklet on uranium** prepared by GEUS and NERI and selected experts from RIS0, among others. The booklet, "Information and Facts about uranium mining in Gmnland", describes various issues related to exploration/exploitation of minerals, health and safety, etc. The pamphlet has been circulated to municipalities and cities. [2nd]
Ar	Maned	Activity
2010	June	**Business trip** to Southern Denmark.
2009	February	**Citizens' Meeting** in Narsaq and Qaqortoq.
2008	November	**The uranium report was** considered by the Landsting at the autumn meeting. lingen.
2008	September	**Leaflet** on information on general matters relating to uranium mining, environment and health.
2008	September	**Leaflet** about Kuannersuit (Kvanefjeldet).
2008	September	**Citizens' councils** in Narsaq and Qaqortoq.
2008	August	**Citizens of** Sisimiut, Maniitsoq and Paamiut.
2008	August	**Informational theme for the** municipal council of Ittoqqortoormiut. Borgerm0it was cancelled.
2008	June	**Citizen's food** in Nuuk.

(e) On 17 September 2013, Minister Kirkegaard advised that, if the ZTP was lifted, exploitation permits for uranium could be granted in accordance with the MRA "*if the activities can be carried out responsibly and in accordance with recognized good practice*".[358]

(f) On 23 September 2013, Minister Kirkegaard was asked whether, if the ZTP was lifted, the MRA would be amended to restrict mining uranium as the main

[357] §37 Parliamentary Questionnaire No. 127/2013, 30 July 2013, at **(C-363)**, answer on 13 August 2013, pp. 9-10.

[358] §37 Parliamentary Questionnaire No. 167/2013, 17 September 2013, at **(C-364)**, answer on 17 September 2013, p. 6.

product. The Minister responded that the MRA would not be amended but that "*the Government of Greenland will continue to maintain its right to refuse to grant authorization to uranium mines where uranium mining is the main basis for the exploration of an extractive activity*".[359] The corollary of this statement is that, after the ZTP was lifted, the Ministry could not refuse applications to mine uranium as a by-product. The Minister also confirmed that, if a mine was authorised to mine uranium as a by-product and, over time, this became the main product (e.g., due to a change in market price or composition of the deposit), then provided the mine continued to meet the conditions of the MRA, "*Naalakkersuisut cannot make a decision to close a mine*" because it "*must act proportionately and objectively justified*".[360]

(g) On 26 September 2013, Minister Kirkegaard advised that, if uranium mining was to occur at Kvanefjeld, GM would need to comply with international regulations and limit values for radioactivity.[361]

C.28 UWG Report (October 2013)

298. Around the same time as the proposal to lift the ZTP was put to Parliament, the UWG released its report titled "*Report on extraction and export of uranium*" dated October 2013 (**UWG Report**).[362] This was an extensive 184-page report. GM representatives reviewed this report at the time.[363]

299. With respect to the environmental impacts of uranium mining, the UWG Report concluded that, aside from nuclear safety considerations, "*there are basically no extensive environmental aspects that differ from other extraction projects*".[364] It recommended that Greenland set up a regulatory framework similar to other uranium mining countries such as Australia, Canada and the US. It also stated that radiation protection requirements would follow international best practice, specifically, the IAEA's safety standards and the ICRP standards.[365] As explained by Mr Bunn: "*This was consistent with what had been discussed with the BMP at the workshops in August 2013 and with the DCE at meetings in September 2013*".[366]

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359 §37 Parliamentary Questionnaire No. 176/2013, 23 September 2013, at **(C-365)**.

360 §37 Parliamentary Questionnaire No. 176/2013, 23 September 2013, at **(C-365)**.

361 §37 Parliamentary Questionnaire No. 171/2013, 12 September 2013, at **(C-366)**, answer on 26 September 2013, p. 10.

362 UWG Report, at **(C-231E)**.

363 First Witness Statement of J. Mair, at **(CWS-3)**, para. 291; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 208.

364 First Witness Statement of J. Mair, at **(CWS-3)**, para. 292; UWG Report, at **(C-231E)**, pp. 91-92.

365 UWG Report, at **(C-231E)**, p. 54.

366 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 209.

300. Furthermore, Dr Mair confirms that this aligned with GM's expectations:

> "*The UWG Report confirmed my expectation that the Company would need to demonstrate in its EIA that the Project complied with the radiation dosage limits for workers and the public specified by the ICRP. It set us a clear target for how we needed to address radiological impacts in our EIA. The dosage (mSv) approach was what we expected and it was what the UWG said we should be required to adhere to.*"[367]

301. Section 3.5 of the UWG Report dealt specifically with the "*Extraction of uranium at Kvanefjeld*". It noted that the Kvanefjeld Project would involve the treatment of ore including uranium, and mineral concentrate could either be refined offshore or onshore. The UWG noted that GM had not applied for an exploitation licence "*but can be expected to do so if the zero tolerance is lifted*".[368] As Dr Mair testifies: "*the UWG Report clearly indicated that the actions and directions of the UWG were largely focused toward establishing a forward path for the Kvanefjeld Project*".[369]

302. The UWG Report marked the culmination of a major joint effort by the Danish and Greenlandic Governments to gather and disseminate information on uranium mining and regulation. With the work of the UWG complete, the stage was now set for the formal abolition of the ZTP by the Parliament.

C.29 Greenland Parliament decision to lift the ZTP (8-25 October 2013)

303. The first reading of the Government's proposal to abolish the ZTP was on 8 October 2013. Minister Kirkegaard provided a memorandum to the Parliament.[370] In presenting this proposal, the Minister emphasised:

> "*We are in a situation where we have to expect that the raw materials area is Greenland's future. It is here that the most important income to secure Greenland's future will come, and it is here that we have an opportunity to break the unemployment curve.*"

304. The memorandum confirmed that there was no "*legislative basis*" for the ZTP. It explained that Greenland and Denmark had been working together to create the framework for safe mining with uranium, and that "*the requirements that will be set will be according to what is internationally considered best practice*."

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[367] First Witness Statement of J. Mair, at **(CWS-3)**, para. 293.

[368] UWG Report, at **(C-231E)**, p. 13.

[369] First Witness Statement of J. Mair, at **(CWS-3)** para. 294.

[370] Document titled "*Proposal for Inatsisartut decision that Inatsisartut accedes with effect from EM 13, that the "Zero tolerance" towards mining of uranium and other radioactive substances ceases*", EC 2013/106, by Member of Naalakkersuisut for Business and Raw Materials, 8 October 2013, at **(C-367E)**.

305. The Government's proposal to abolish the ZTP explained that the motivation for lifting the ZTP was to enable the exploitation of rare earths. The memorandum further stated:

> "*Naalakkersuisut will, however, continue to maintain its right to refuse to grant permission for uranium mines, where the extraction of uranium constitutes the main basis for the initiation of an extractive activity. On the other hand, Naalakkersuisut cannot see any basis for a fundamental rejection of extraction projects where uranium is included as a by-product, i.e. where there is no question of the main purpose of the mining project is the extraction of uranium.*"[371] (emphasis added)

306. It is important to note that the "*main basis*" for GM's project was the mining of the rare earth elements at Kvanefjeld. On GM's mining proposal, uranium would only be a by-product. GM's Project was, therefore, precisely the type of project that the Greenlandic Government was seeking to enable through the abolition of the ZTP.

307. The proposal was debated in the Parliament. As discussed above, while it was the IA Party Government that, for many several years, had paved the way to lifting the ZTP (including agreeing Addendum No. 1 and setting up the UWG), there were members of the IA Party who opposed the proposal. These objections were refuted by other members of the Parliament. Indeed, on 10 October 2013, Premier Kielsen stated that the IA Party's criticism of the proposal should be "*answered harshly*". The Premier pointed out that the IA Party Government had given GM Addendum No. 1, which meant that it was the IA Party that had "*already granted permission for uranium mining in Greenland*".[372]

308. As mentioned above, concurrent with the establishment of the UWG, the Rastof Committee was set up to consider the consequences of lifting the ZTP.

309. The Rastof Committee submitted various questions to the Government, which Minister Kirkegaard responded to on 16 October 2013.[373] In his response, the Minister stated: "*The goal for Naalakkersuisut is to have the zero-tolerance policy revoked, so that the way is paved for the exploitation of our significant amount of rare earth metals*." He also confirmed that the Premier of Greenland had made statements in a speech at the Arctic Circle Forum about Greenland being a significant uranium exporter, and that this was a reference to GM's Project at Kvanefjeld.

310. The Minister also advised the Parliament that the licensing guarantee had been "*a guiding principle*" of Greenland's mineral resources framework since the Danish

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[371] Document titled "*Proposal for Inatsisartut decision that Inatsisartut accedes with effect from EM 13, that the "Zero tolerance" towards mining of uranium and other radioactive substances ceases*", EC 2013/106, by Member of Naalakkersuisut for Business and Raw Materials, 8 October 2013, at **(C-367E)**.

[372] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

[373] Questionnaire from the Rastof Committee regarding EM13 item 106, repeal of the Zero Tolerance, 16 October 2013, at **(C-368E)**.

Mineral Resources Act 1991, stating: "*A licensee with an exploration permit on standardized terms is thus entitled to be granted exploitation rights for established occurrences. The purpose of this was to promote investments in exploration for minerals by giving a right holder a security to be able to benefit from his investments in exploration by having the right to an exploitation permit*."[374]

311. On 20 October 2013, Naalakkersuisut issued a response to the Rastof Committee questionnaire.[375] This response stated that the Government wanted to lift the ZTP "*to ensure that we can utilize the common earth metals, which are often linked to uranium and/or thorium*", referring specifically to GM's application to mine uranium as a by-product.

312. The Rastof Committee issued its report on 21 October 2013, with the majority of the committee recommending lifting the ZTP. This Rastof Committee report confirmed that the main reason the Government wanted to lift the ZTP was the Kvanefjeld Project, stating "*the intention is first and foremost to open up the opportunity for exploration companies to extract the so-called rare earths, which contain elevated concentrations of radioactive elements*".[376]

313. Concurrently with its discussions regarding the UWG Report, and the ZTP more generally, the Greenlandic Parliament was also discussing the Kvanefjeld Project and GM's legal rights. Indeed, on 15 October 2013, the IA Party submitted a questionnaire to the Government asking it to confirm that Addendum No. 1 "*contained a clear passage stating that this exemption would not automatically result in a licence for uranium mining, and confirm that granting an exemption for expanded exploration was not a lifting of zero tolerance – yes or no*?"[377]

314. Minister Kierkegaard subsequently responded to these questions.[378] In his response, the Minister set out the text of Addendum No.1 verbatim, including the caveats that purported to apply to GM's entitlement to "*an exploitation licence for radioactive elements*". The Minister also referred to Section 101 of the Standard Terms, which (given the fact that it excluded radioactive materials) was the contractual expression of the ZTP, and provided that the licence permitted the exploration of minerals except for hydrocarbons and radioactive elements. The Minister concluded that Addendum No.1

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374 Questionnaire from the Rastof Committee regarding EM13 item 106, repeal of the Zero Tolerance, 16 October 2013, at **(C-368E)**, p. 5.

375 Answer note regarding questions put by the Raw Materials Committee for consultation on Sunday 20 October in ML no. 2, by J. E. Kirkegaard (Minister of Mineral Resources), 20 October 2013, at **(C-369E)**.

376 Document titled "*Proposal for Inatsisartut decision that Inatsisartut, with effect from EM13, agrees to the "Zero tolerance" towards the extraction of uranium and other radioactive substances*", Rastof Committee, 21 October 2013, at **(C-278E)**.

377 §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

378 §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

"*deviates from the applicable Standard Terms by allowing exploration of radioactive elements. This is a deviation from the previous zero-tolerance policy.*"

315. This response attached an open letter from Minister Kirkegaard dated 23 October 2013, which discussed the 2010 Amendment and Addendum No. 1.[379] With respect to the 2010 Amendment, the Minister explained that this amendment allowed companies to apply to perform EIA and SIA studies in areas where there were elevated levels of radioactive elements, which would include those radiological studies needed to demonstrate that the project complied with "*the recognized set limit values for maximum radiation effects.*"

316. In relation to Addendum No. 1, in this letter, the Minister explained that, in October 2011, GM had met with the former Naalakkersuisut (i.e., Premier Kleist and Minister Berthelsen) and informed the Greenlandic Government that "*it was not possible for the company to raise sufficient funding for a continuation of exploration and possible later development activities, unless a clearer statement indicated that the company must explore the deposit, including the rare earth metals*". The Minister noted that, in order to allow GM to raise the money needed to continue its studies, the Government and GM "*agreed*" an addendum to GM's exploration licence.[380]

317. Following these extensive parliamentary discussions of uranium mining and GM's Project in particular, on 24 October 2013, the Greenlandic Parliament voted in favour of abolishing the ZTP. Premier Aleqa Hammond told the press: "*We can't stand by as unemployment rises and the cost of living goes up, while our economy remains stagnant. We need to overturn the ban now*".[381]

318. GM welcomed the repeal of the ZTP. In its ASX announcement the day after the vote to repeal the ZTP, GM stated:

> "*This landmark decision represents a significant moment for Greenland, as it places Greenland on the path to uranium-producer status, and thereby opens up coincident resources of rare earth elements to exploitation. The removal of the zero-tolerance policy is in alignment with Greenland's broader intent to develop mining projects as a core to its future economic prosperity.*"[382]

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379 Open Letter titled "*Statement on addendum to the Standard Terms of September 2010 on sections 709 - 711 and addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by Government of Greenland, 23 October 2013, at **(C-307)**.

380 Open Letter titled "*Statement on addendum to the Standard Terms of September 2010 on sections 709 - 711 and addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by Government of Greenland, 23 October 2013, at **(C-307)**.

381 *Greenland's parliament says yes to uranium extraction*, Nunatsiaq News, 25 October 2013, at **(C-370)**.

382 Greenland Minerals Ltd ASX Announcement titled "Greenland Repeals Zero-Tolerance Uranium Policy Allowing Kvanefjeld to Move into Permitting and Towards Mine Development", 25 October 2013, at **(C-371)**.

319. As Dr Mair recalls:

> "*The removal of the ZTP was highly significant for GM, as we could give our investors certainty that we could exploit uranium as 'coincident resources of rare earth elements', and thus proceed with the Project as a mixed rare earths-uranium project. The policy was clear: we could mine uranium provided we could show that it was safe to do so. That is what we set out to show the authorities.*"[383]

320. For the Greenlandic Government, the removal of the ZTP was a key part in its strategy of promoting Greenland as a destination for mining investors. The abolition of the ZTP attracted widespread media coverage, including reporting by the Financial Times Magazine ("*The grab for Greenland*"),[384] the Wall Street Journal: ("*Race for resources: Warm to investors, Greenland opens up*")[385] and the Financial Times: ("*Greenland looks forward to rare earths bonanza*").[386] The significance of the event for global supply of rare earths, and the economic implications for Greenland, were the leitmotifs of the reporting.

321. The Greenlandic Government's publicly stated intention was to create a framework that would allow Greenland to become a globally significant producer of uranium. Indeed, concurrent with the lifting of the ZTP, Premier Hammond gave a speech at the Arctic Circle Forum at which she said the decision to lift the ZTP "*will pave the way for Greenland to exploit its rare earth elements, the deposits of which are often linked with uranium and other radioactive minerals and it will also pave the way for Greenland in a not-so-distant future to become a significant uranium exporter –among the world's top-10 or possibly top-5*".[387] Premier Aleqa Hammond subsequently reiterated these statements, confirming that the purpose of lifting the ZTP was to allow for uranium exports as a by-product in the mining of rare earths.[388]

322. It was reported that Denmark supported the Greenlandic Parliament's decision to lift the ZTP.[389] This support was critical. Because Denmark retained control over the areas of national security and foreign relations, it was necessary for the two governments to cooperate to ensure that the export of radioactive substances took place in accordance

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383 First Witness Statement of J. Mair, at **(CWS-3)**, para. 299.

384 P. Stephens, *The grab for Greenland*, Financial Times Magazine, 6 December 2013, at **(C-372)**.

385 J. T. Areddy, *Race for Resources: Warm to Investors, Greenland Opens Up*, The Wall Street Journal, 22 August 2013, at **(C-373)**.

386 R. Milne, *Greenland looks forward to rare earth bonanza*, The Financial Times, 31 October 2013, at **(C-374)**.

387 A. Hammond (Premier of Greenland), *ARCTIC CIRCLE Presentation FINAL EN*, Naalakkersuisut, 12 October 2013, at **(C-375)**, p. 5.

388 §37 Parliamentary Questionnaire No. 204/2013, 15 October 2013, at **(C-376)**, answer on 4 November 2013, p. 7.

389 First Witness Statement of J. Mair, at **(CWS-3)**, para. 297; P. Levring, *Greenland End to 25-Year Uranium Mining Ban Gets Danish Backing*, Bloomberg, 25 October 2013, at **(C-377)**.

with Denmark's international obligations. Ultimately, Greenland would only be able to export uranium with Denmark's cooperation.[390]

C.30 Dr Mair meeting with Deputy Minister of Mineral Resources (29 October 2013)

323. The week after the ZTP was formally abolished, on 29 October 2013, Dr Mair met with Mr Jørn Skov Nielsen, the head of the BMP and Deputy Minister of Mineral Resources.[391] At this meeting, Mr Nielsen advised Dr Mair that he was pleased the ZTP had been abolished and that the Danish and Greenlandic Governments had set up a task force to establish a regulatory framework for uranium mining based on international best practice. As set out in Dr Mair's contemporaneous note of the meeting, Mr Nielsen represented that "*the overall aim is to keep driving Kvanefjeld forward and to complete a mining license application*" and that the Greenlandic Government was being "*supportive of this approach and is pushing this agenda*".[392]

324. As set out in Dr Mair's notes, "[t]*he licensing situation was discussed, and specifically modifications to the standard terms, and the removal of any caveats associated with uranium on our current exploration license*".[393] Mr Nielsen advised Dr Mair that the Government would amend the Standard Terms to include uranium, but this would not happen straight away as the Danish and Greenlandic Governments needed time to set up the regulatory framework. Mr Nielsen represented to Dr Mair that this delay in amending the Standard Terms was to GM's advantage as GM had "*access to pursuing uranium*", whereas other companies did not.

325. As Dr Mair testifies:

> "*Based on this discussion and our previous discussion with the BMP, I understood that, given the ZTP had been lifted, the regulatory system would be set up, and the caveats in Addendum No. 1 would effectively become null and void. I expected that the Government would eventually amend section 101 of the Standard Terms to include the right to explore for radioactive minerals. This would make Addendum No. 1 as a whole redundant (not only the caveats that it contained), as we would not need section 1 of the addendum to give us the right to the explore for uranium.*

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390 This is confirmed in the Greenland's 2014-2018 Oil and Mineral Strategy: "*Greenland holds the right to issue uranium exploitation licences, but if uranium export activities are envisaged which may have foreign, defence and national security policy implications, Denmark must be involved.*". See, Document titled "*OUR MINERAL RESOURCES – CREATING PROSPERITY FOR GREENLAND - Greenland's oil and mineral strategy 2014-2018: Quick Read Version*", by Government of Greenland, May 2014, at **(C-378E)**, p. 14.

391 First Witness Statement of J. Mair, at **(CWS-3)**, section VI.Q.

392 Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

393 Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

The key point was that GM had been given the green light to advance the Project and to explore for and exploit uranium as a by-product. Based on what Mr Nielsen told me, I understood that the delay to amending the Standard Terms would be to our benefit. To the best of my recollection, this was the last discussion I had with the Government about the caveats in Addendum No. 1. From this point in time, there was a major effort to set up the uranium export framework".[394]

326. With the ZTP lifted, the Danish and Greenlandic Governments would set up a regulatory system to administer the exploitation and export of uranium, and the Addendum No. 1 Caveats would become redundant. In addition, in time, the Government would update Section 101 of the Standard Terms to include radioactive elements, which would make Section 1 of Addendum No. 1 redundant, and the addendum as a whole redundant. Until this time, GM was in a privileged position as it was entitled to explore for uranium, whereas other companies were not. Both the Danish and Greenlandic Governments supported the Project; their "*overall aim*" was to set up a regulatory framework so as "*to keep driving Kvanefjeld forward and to complete a mining license application*".[395] As Dr Mair testifies: "*The key point was that GM had been given the green light to advance the Project and to explore for and exploit uranium as a by-product*".

C.31 Development of Enabling Legislation for uranium exploitation and export (2013-2016)

327. With the ZTP lifted, the next task was for the Greenlandic and Danish Governments to establish the legal framework required for the exploitation and export of uranium. This process had already been started by the UWG.[396] Now that the ZTP was abolished, this joint legislative process proceeded with new momentum.[397]

328. The UWG set up subgroups to further investigate how to divide responsibility for the exploitation and export of uranium between Denmark and Greenland, as well as complying with various international obligations.[398] The Ministry advised GM that

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394 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 305-306.

395 Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

396 As Minister Kirkegaard explained to the Greenlandic Parliament when the proposal to abolish the ZTP was tabled, the Greenland and Denmark Governments had been working together for the previous six months "to *create the framework for safe mining with uranium*"; Document titled "*Proposal for Inatsisartut decision that Inatsisartut accedes with effect from EM 13, that the "Zero tolerance" towards mining of uranium and other radioactive substances ceases*", EC 2013/106, by Member of Naalakkersuisut for Business and Raw Materials, 8 October 2013, at **(C-367E)**.

397 First Witness Statement of J. Mair, at **(CWS-3)**, para. 300; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 212; see Greenland Minerals Ltd ASX Announcement titled "September 2013 Quarterly Report", 31 October 2013, at **(C-379)**, p. 11.

398 Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, p. 28.

these working groups were developing a regulatory structure "*according to the highest international standards*" and that, with respect to the Kvanefjeld Project specifically, "*a permit will only be granted on the conditions that the exploitation activities must be carried out in accordance with best practice with regard to both safety, health environment and social sustainability*."[399]

329. The Danish and Greenlandic Governments kept GM updated about the development of this regulatory framework. They also sought input from experienced GM personnel on various matters, including radiation protection, nuclear safeguards, and export controls.

330. GM's Manager of Uranium Marketing and Contracts, Mr James Eggins, was actively consulted by both Governments regarding the regulatory framework. He testifies that, from 2014 to 2018, he had meetings and discussions with both Governments regarding the development of a workable regulatory framework for uranium export. In particular, Mr Eggins worked with Ms Ditte Bjerregaard, chief adviser for the Danish Ministry of Foreign Affairs,[400] and Mr Mathias Barfod, a socio-economist for MILT.[401]

331. The engagement between GM and the Danish and Greenlandic Governments with respect to the regulatory framework included the following:

(a) In January 2014, the MLSA advised Mr Bunn that the Danish Working Environment Authority had prepared an executive order for working in and around mines.[402] Mr Bunn testifies: "*The fact that we were being consulted on the regulatory framework for mining reinforced to us that the authorities intended to allow us (subject to the outcome of the EIA and SIA processes) to take the Kvanefjeld Project into the exploitation stage*".[403]

(b) In February 2014, a mine inspection trip to Australia was carried out with members from the Parliamentary Committee.[404]

(c) In June 2014, Mr Eggins and Mr Bunn attended and presented at workshops in Narsarsuaq and Narsaq called the 'Workshop on Uranium Best Practice: The Environment, Safeguards and Security'.[405] These workshops were hosted by the

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399 Email from J. Hesseldahl (Nanoq) to R. McIllree (GM), subject: "*AVG certification.txt*", 4 December 2013, at **(C-380E)**.

400 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 37-46, 48.

401 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 57, 64, 70, 72-74.

402 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 240.

403 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 240.

404 §37 Parliamentary Questionnaire No. 175/2020, 13 October 2020, at **(C-285)**, p. 9.

405 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 253-263; First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 11-21; Email from C. Vestergaard (DIIS) to S. Bunn (GM), et al., subject: "*Thank you, photo, list, and Whiteboard Art*", 25 June 2014, at **(C-381)**; Document titled "*Participation list with emails - Uranium workshop 10-17 June*", by the Danish Institute for International Studies, 25 June 2014, at **(C-382)**.

DIIS and attended by representatives of the two governments, including the Danish Ministry of Foreign Affairs, the Danish Ministry of Defence, the Danish Health and Medicines Authority, the Technical University of Denmark, and Arcadis consultants (then known as SENES). As explained by Mr Eggins, it was evident from these discussions that the Danish authorities were interested in establishing a suitable regulatory framework, based on the Australian model, to enable the export of uranium from Greenland.[406] As explained by Mr Bunn, the authorities agreed preliminary strategy for the development of the framework, which is shown below.[407] This provided radiation protection would follow international standards (including ICRP standards) and that licensing would be governed by the MRA.

Stages of Uranium Production and Trade

	Exploration and Development	Licensing	Construction	Mining and Milling	Tailings/Waste Management	Transport	Export/Trade	Decommissioning/post-decommissioning
Non-proliferation/ export controls	National Uranium/Non-proliferation policy Counter-proliferation strategy			National Uranium/Non-proliferation policy Counter-proliferation strategy	National Uranium/Non-proliferation policy Counter-proliferation strategy	National Uranium/Non-proliferation policy Counter-proliferation strategy Bilateral Nuclear Cooperation Agreements (NCAs) Nuclear Suppliers Group (NSG)	National Uranium/Non-proliferation Policy Counter-proliferation strategy NCAs NSG	National Uranium/Non-proliferation policy Counter-proliferation strategy
Safety (occupational and environmental)	Radiation protection (UNSCEAR, ICRP, ILO Convention, WHO) Environmental Impact Assessment Social Impact Assessment	Greenland Mineral Resources Act EIA, SIA	Building Permits Engineering Standards Health Permits	Radiation protection	Radiation protection	Radiation protection IAEA Safety Guidelines IMDG ERAP (emergency response assistance plan)		Radiation protection
Security		threat assessment process initiated		employee background checks protection of product, securing site CPPNM and IAEA Security Tecdoc need to know' vs 'need to go'	minimal measures against unauthorised recovery and possible sabotage	threat assesment CPPNM	country/threat assessments CPPNM	minimal measures to address unauthorised recovery and possibility of sabotage
Safeguards	Additional Protocol			AP/CSA inventory controls and reporting (natl safeguards)	CSA (report amounts of U and Th going in)	interim storage facilities subject to CSA inventory controls NCAs	CSA - para 34a/b (incl U and Th in REE & other mineral concentrates) NCAs end-user checks export permit UNSC Resolutions	CSA reporting closure 'LOF'
Public outreach	operator and regulator EIA, SIA, IBA	operator and regulator EIA, SIA, IBA	operator and regulator EIA, SIA, IBA	operator and regulator safety, security, safeguards	operator and regulator safety/security	operator and regulator safety, security, safeguards	operator and regulator security/safeguards	operator and regulator safety/security

(d) The Workshop on Uranium Best Practice was a particularly significant event in the progress toward a uranium framework, as highlighted by Mr Bunn:

> "*The presence of key Danish and Greenlandic Government authorities was highly significant as it highlighted to us that the authorities were serious about developing a framework to support the exploitation and exportation of uranium – in particular, to facilitate our Project. It was*

406 First Witness Statement of J. Eggins, at **(CWS-6)**. para. 15.

407 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 260-261; Email from C. Vestergaard (DIIS) to S. Bunn (GM), et al., subject: "*Thank you, photo, list, and Whiteboard Art*", 25 June 2014, at **(C-381)**; Document titled "*Stages of Uranium Production and Trade*", by the DIIS, 25 June 2014, at **(C-383)**.

an important step in bringing together all the relevant parties to discuss the aspects of managing a uranium mine."[408]

(e) Also in June 2014, the Greenlandic Government, in collaboration with independent representatives from DCE and GEUS, held uranium information meetings in Uummannaq, Ilulissat, Aasiaat, Kangerlussuaq and Sisimiut.[409] These information meetings focused on informing the population of all key environmental and safety matters in relation to uranium mining, and were broadcast by KNR, Greenland's national broadcaster.

(f) At this same time, a delegation of Danish parliamentarians travelled to Narsaq to visit GM's operations.[410] The delegation was interested in furthering Denmark's understanding of the Project and related environmental considerations.

(g) Shortly after the Workshop on Uranium Best Practice, on 17 September 2014, Mr Eggins met with senior advisers at the Danish Ministry of Foreign Affairs in Copenhagen to discuss the Kvanefjeld Project.[411]

(h) In September and October 2014, Dr Mair and Mr Bunn had various meetings with the Greenlandic Government, including Minister Kirkegaard and Mr Nielsen, and were advised that the rules and regulations for the exploitation and export of uranium would be in place in early 2016.[412] As explained by Mr Bunn, GM representatives repeatedly emphasised at these meetings the importance of, and GM's reliance on, the authorities' guidance as to the establishment of these rules and regulations, in the development of the Project.[413]

(i) In early March 2015, Dr Mair met with Minister Uldum and Mr Hammeken-Holm.[414] They advised that work on the regulatory framework was progressing, and they aimed for some elements to be consulted later that year.

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408 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 255.

409 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 265; Greenland Minerals Ltd ASX announcement titled "Developments in Greenland Firm Permitting Timeline for Kvanefjeld", 23 June 2014, at **(C-384)**, pp. 1-2; §37 Parliamentary Questionnaire No. 175/2020, 13 October 2020, at **(C-285)**, answer on 26 October 2020, p. 9.

410 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 266; Greenland Minerals Ltd ASX announcement titled "Developments in Greenland Firm Permitting Timeline for Kvanefjeld", 23 June 2014, at **(C-384)**, p. 2.

411 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 41.

412 First Witness Statement of J. Mair, at **(CWS-3)**, section VII.H; First Witness Statement of S. Bunn, at **(CWS-7)**, section V.H; Email from J. S. Nielsen (Nanoq) to S. Bunn (GM), subject: "*SV: Schedule for Mining Licence Application*", 18 September 2014, at **(C-385)**.

413 First Witness Statement of S. Bunn, at **(CWS-7)**, section V.H.

414 First Witness Statement of J. Mair, at **(CWS-3)**, para. 357.

(j) In May/June 2015 and August 2015, independent representatives from GINR, DCE, GEUS and the Aalborg University held uranium information meetings in Maniitsoq, Nuuk, Paamiut, Narsaq, Qaqortoq, Nanortalik, Narsarsuaq, Igaliku and Qassiarsuk.[415]

(k) In June 2015, Mr Nielsen advised Dr Mair that the Government was conducting a public hearing on the international safety conventions associated with the safety and handling of radioactive materials, and that these would be ratified during the same parliamentary sitting as the Government approved GM's updated ToR[416] (as discussed in Section C.33 below, GM's updated ToR included a refining circuit at Kvanefjeld to produce uranium yellowcake).

(l) In August 2015, Greenlandic and Danish Government representatives conducted information tours throughout Greenland with independent uranium experts to learn about the health and environmental issues associated with radioactive materials.[417]

(m) In October and early November 2015, Dr Mair met with Danish Government representatives about the Project, and was advised that they were making good progress on the regulatory framework.[418]

332. This regulatory process ultimately saw Greenland and Denmark take a range of legal steps aimed at enabling the exploitation and export of the uranium at Kvanefjeld. The first regulatory step taken by the Greenlandic Government was in July 2014, when it amended the Standard Terms to introduce a 5% royalty for uranium.[419] Dr Mair testifies that this "*further confirmed GM's legitimate expectation that it would be permitted to exploit uranium, as the introduction of a uranium specific royalty implied future production of saleable uranium products in Greenland*".[420]

333. Subsequently, the Greenlandic and Danish Governments passed a package of measures, which was often referred to collectively as the "**Enabling Legislation**".[421] This included (but was not limited to) the following (see Sections C.37-C.39 below):

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415 §37 Parliamentary Questionnaire No. 175/2020, 13 October 2020, at **(C-285)**, answer on 26 October 2020, p. 9.

416 First Witness Statement of J. Mair, at **(CWS-3)**, section VII.T.

417 First Witness Statement of J. Mair, at **(CWS-3)**, para. 404.

418 First Witness Statement of J. Mair, at **(CWS-3)**, para. 405.

419 Addendum No. 3 to Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland of 1 July 2014, at **(C-2)**, Article 2.01, inserting section 1408.d. The amendment contained detailed terms on the calculation of the royalty (Appendix 3).

420 First Witness Statement of J. Mair, at **(CWS-3)**, para. 326.

421 First Witness Statement of J. Mair, at **(CWS-3)**, para. 295.

(a) In late 2015, the Greenlandic Government committed to ratifying numerous international safety conventions.

(b) In early 2016, the Greenlandic and Danish Governments concluded a series of bilateral uranium export and cooperation agreements.

(c) In May 2016, the Greenlandic Parliament passed resolutions on proposals for export control of dual-use products and the peaceful use of nuclear material.

(d) In June 2016, the Danish Parliament passed legislation on export control of dual-use products and the peaceful use of nuclear material.

C.32 GM becomes the 'poster child' of mining in Greenland (2014-2016)

334. In promoting Greenland as a destination for mining investment, the Greenlandic Government actively sought to leverage GM's expertise and market profile. As a result, in the months and years that followed, the Greenlandic and Danish Governments engaged in a process of close and mutually beneficial cooperation with GM, the international 'poster child' of mining in Greenland.[422] For more than a decade, Dr Mair spoke at events and conferences about the Kvanefjeld rare earths and uranium project, and the investment landscape in Greenland.[423]

335. There are many examples of the Greenlandic and Danish Governments using GM as part of their marketing strategy to international mining industry and, as part of this, making statements in support of uranium mining, and the Kvanefjeld Project in particular. For example:

(a) Greenland's Minerals Strategy 2014-2018 listed the Kvanefjeld Project as one of its target projects to license in the next five years.[424]

(b) In March 2014, Minister Kirkegaard and Mr Nielsen told Dr Mair that the Government wanted to see the momentum of the Project maintained and expected GM's licence application to be approved in the current term of government.[425]

(c) In April 2014, Dr Mair promoted Greenland at the Symposium Investor Roadshow in Sydney and Melbourne, stating in his presentation: "*The project*

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422 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 73-76.

423 See for example, First Witness Statement of J. Mair, at **(CWS-3)**, para. 458.

424 First Witness Statement of J. Mair, at **(CWS-3)**, para. 310; Document titled "*Greenland's oil and mineral strategy 2014-2018*", by Government of Greenland, February 2014, at **(C-386)**, p. 60.

425 First Witness Statement of J. Mair, at **(CWS-3)**, para. 313.

has the clear backing of the Greenland Government. […] *A first-class mining jurisdiction with a supportive Government of Greenland*".[426]

(d) In February 2015, Minister Andreas Uldum gave a presentation to investors that included the Project.[427] Mr Hammeken-Holm advised Dr Mair: "*we will have the opportunity to promote some of the large upcoming exploitation projects in Greenland*".[428]

(e) At Greenland Day at PDAC in March 2015, at the request of the MLSA, Dr Mair presented about the Kvanefjeld Project.[429] As discussed below, Dr Mair spoke at the conference almost every year from this time.

(f) In March 2015, the Greenlandic Government published a newsletter on mineral exploration in Greenland.[430] This newsletter contained a summary of GM's Project and ore reserves, noting that the Kvanefjeld deposit "*is one of the world's largest undeveloped resources of both rare earth elements and uranium*". This newsletter confirmed the Government's position vis-à-vis mining and investment and the ZTP:

> "*Prime Minister Kim Kielsen has emphasized the government's commitment to resource extraction and creation of a stable investment environment in Greenland: 'The coalition will ensure a more stable and continuous mining policy to attract foreign investors.' The Prime Minister also confirmed that the government will maintain the abolition of the uranium 'zero tolerance', which was lifted in October 2013.*"

(g) As Dr Mair testifies: "*This newsletter reflected the clear understanding between GM and the Government that the Project would involve the exploitation of both rare earths and uranium.*"[431]

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426 First Witness Statement of J. Mair, at **(CWS-3)**, para. 314; The Gold News Channel, *April 2014 Investor Update | ASX:GGG | Symposium Investor Roadshow*, 20 April 2014, https://www.youtube.com/watch?v=LPRZpQN6rO8 (last accessed 9 May 2023), at **(C-387)**.

427 First Witness Statement of J. Mair, at **(CWS-3)**, para. 353; Email from J. T. Hammeken-Holm (Ministry of Mineral Resources) to J. Mair (GM), subject: "*Marketing for investors*", 18 February 2015, at **(C-388)**; Letter from J. T. Hammeken-Holm (Ministry of Mineral Resources) to J. Mair (GM), subject: "*Regarding the Ministry of Mineral Resources' presentation at the Natural Resources Symposium in New York*", 17 February 2015, at **(C-389)**.

428 First Witness Statement of J. Mair, at **(CWS-3)**, para. 353.

429 First Witness Statement of J. Mair, at **(CWS-3)**, para. 355.

430 First Witness Statement of J. Mair, at **(CWS-3)**, para. 358; Ministry of Mineral Resources, *Minex Newsletter (47)*, March 2015, at **(C-390)**.

431 First Witness Statement of J. Mair, at **(CWS-3)**, para. 359.

(h) In December 2015, the Government hosted an event in Perth to promote investment in Greenland, at which Dr Mair presented.[432] This was also attended by Denmark's GEUS.

(i) In mid-March 2016, Dr Mair joined a Danish and Greenlandic trade delegation on a visit to South Korea. He gave a presentation about the Project and promoted investment in Greenland.[433] As explained by Dr Mair, during this visit, "*the Government representatives all expressed strong support for the Project*".

(j) In May 2016, Dr Mair presented at the Arctic Circle Forum, a large annual event that in 2016 was hosted in Nuuk. Dr Mair was formally invited to present by Premier Kielsen and the Prime Minister of Iceland. He states:

> "*I considered this a significant vote of support for the Company and what we were doing, especially as I was the only speaker on behalf of the resources industry in Greenland. This was one of the many events at which I spoke to promote Greenland as a mining jurisdiction. In my presentation, I highlighted the importance of developing a Greenland brand in the eyes of international investors, and of setting clear processes and time frames to work towards. I recall that, at this time, there was a ground swell of support for the Project.*"[434]

(k) Dr Mair presented at numerous mining conferences in China to promote mineral resource opportunities in Greenland, alongside representatives of the Greenlandic Government.[435] He also presented to critical minerals forums in Brussels and Washington, DC.[436]

C.33 Revised ToR (mid-2013 to November 2015)

336. As discussed above, GM's first ToR were approved in 2011, having been the subject of extensive consultations between the Company, the BMP, and other stakeholders (see Section C.16 above).

337. In the latter half of 2013 and 2014, there were extensive discussions between GM and the BMP/MLSA about the project development plan.[437] One option discussed was for the mechanical processing of ore in Greenland, with mineral concentrate (including rare earths and uranium) being exported for chemical refining offshore. Another option was to include a chemical refining circuit in Greenland, meaning the export of uranium

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[432] First Witness Statement of J. Mair, at **(CWS-3)**, para. 421.

[433] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 455-456.

[434] First Witness Statement of J. Mair, at **(CWS-3)**, para. 458.

[435] First Witness Statement of J. Mair, at **(CWS-3)**, para. 482.

[436] First Witness Statement of J. Mair, at **(CWS-3)**, para. 484.

[437] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 315-324; First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 194-197, 214-239.

yellowcake. The latter option would see Greenland capture more of the rare earth and uranium processing value chain. However, as explained by Dr Mair, including a chemical refining circuit meant additional environmental impacts to consider, which GM explained to the Government.[438]

338. Ultimately, the Government made it clear that they wanted as much processing and refining as possible to take place in Greenland.[439] GM agreed to include a chemical refining circuit in Greenland, even though it had a negative impact on the project economics.[440] Contemporaneous correspondence from Mr Hammeken-Holm of the MLSA to GM reflects that the Government was treating the revised Kvanefjeld Project development plan as an "*agreement*" between GM and the Government, pursuant to which GM was committed to the refining of rare earth elements and uranium (up to yellowcake).[441] GM similarly viewed this as an agreement, as Mr Bunn states: "*We viewed the final ToR as an agreement with the Government authorities regarding the development plan.*"[442]

339. It goes without saying that the Government telling GM that it was required to refine uranium at Kvanefjeld supported GM's legitimate expectation that, if it satisfied the licensing requirements, it would be entitled to exploit uranium. As Dr Mair testifies:

> "*The fact that the Greenlandic authorities were pushing for us to refine steenstrupine to produce both rare earth and uranium products in Greenland confirmed my expectation that GM would be granted to an exploitation licence for both rare earths and uranium. It showed that, beyond just allowing uranium to be mined, the Government wanted to establish a uranium industry in Greenland.*"[443]

340. Mr Bunn states:

> "*Given that the Government made it clear to us that they wanted uranium processing to occur in Greenland, we naturally had every expectation that we*

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438 First Witness Statement of J. Mair, at **(CWS-3)**, para. 317.

439 See, for example, First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 219, 221-222, 226.

440 See, for example, First Witness Statement of J. Mair, at **(CWS-3)**, paras. 393-395.

441 For example, on 15 May 2014, Mr Hammeken-Holm sent a letter to GM recording the MLSA's understanding that GM "*would like to carry out as much processing as possible in Greenland and is committed to pursue chemical processing (refinery) up until yellow cake*". It stated that GM had "*agreed*" to this approach, meaning that the project plan and studies would need to incorporate the processing of uranium ore in Greenland. The MRA asked GM to confirm this understanding. The letter stated: "*MRA will strive within Greenland law to reach a final agreement beneficial to all parties*". Email from N. V. Rasmussen (Nanoq) to J. Mair (GM), subject: "*Follow up on correspondence and meeting reg. processing in Greenland*", 15 May 2014, at **(C-391)**; Letter from J. T. Hammeken-Holm (MLSA) to J Mair (GM), subject: "*Follow up on correspondence and meeting regarding processing in Greenland*", 15 May 2014, at **(C-392)**; see, First Witness Statement of J. Mair, at **(CWS-3)**, para. 320; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 224.

442 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 238.

443 First Witness Statement of J. Mair, at **(CWS-3)**, para. 321.

would be granted an exploitation licence that included uranium as a by-product."[444]

341. Following these discussions around the project development plan, GM agreed to update its ToR for the EIA and SIA and host another round of public consultations.[445] Finalising the revised ToR was an extensive process involving numerous meetings with the authorities, and updates to GM's financial models. It was not until 5 August 2014 that the revised SIA ToR were formally accepted by the MLSA.[446] In typical fashion, EAMRA delayed the review of the revised EIA ToR and submitted further rounds of comments.[447] It was not until 29 August 2014 that the MLSA formally approved both ToR and commenced the public consultation.[448]

342. When the revised ToR were approved, GM commenced an extensive public consultation process.[449] This ran from August to October 2014. Mr Bunn ran numerous public meetings with stakeholders.[450] As part of the consultation process, an online portal was set up for stakeholders to ask questions about the Project, which Mr Bunn and other GM representatives responded to. In addition, in November 2014, there was a large public debate in Nuuk concerning the Project.[451] Dr Mair was one of the presenters at this debate, which was followed by a Q&A session.

343. The public consultations were not only an integral part of finalising GM's ToR and defining the scope of the Project, but they were also important for informing the

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444 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 238.

445 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 226-229; First Witness Statement of J. Mair, at **(CWS-3)**, para. 322.

446 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 234; First Witness Statement of J. Mair, at **(CWS-3)**, para. 324; Letter from P. H. Holsteen (MLSA) to GM, subject: "*2012/44 - Greenland Minerals and Energy A/S: Terms of Reference – Social Impact Assessment*", 5 August 2014, at **(C-393)**.

447 First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 235-236; see also, Email from P. H. Holsteen (MLSA) to S. Bunn (GM), subject: "*SV: 2012/44 - Greenland Minerals and Energy A/S: Terms of Reference - Environmental Impact Assesment (EIA)*", 14 August 2014, at **(C-394)**; Email from N. V. Rasmussen (Nanoq) to S. Bunn (GMAS), subject "*SV: Comments to ToR EIA from EAMRA*", 28 August 2014, at **(C-395)**, p. 1, email dated 20 August 2014.

448 First Witness Statement of S. Bunn, at **(CWS-7)**, para. 237; First Witness Statement of J. Mair, at **(CWS-3)**, para. 324; Email from E. Neale (GM) to S. Bunn (GM), subject: "*FW: Forhøring af GME projektet (35 dage)*", 29 August 2014, at **(C-396)**.

449 First Witness Statement of S. Bunn, at **(CWS-7)**, section V.I.; First Witness Statement of J. Mair, at **(CWS-3)**, paras. 327-330.

450 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 21.

451 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 336-338.

Greenlandic public on the environmental and health and safety aspects of uranium mining, and the opportunities which it could provide. As Mr Bunn testifies:

> "*People were happy to be consulted about the Project and be involved in these planning stages. In general, I found that the more information that people had, the more receptive to the Project they became*."[452]

344. Following the public consultation process, GM compiled the feedback and responses into a White Paper and updated its ToR.[453] The ToR for the SIA were reviewed by MILT, and the ToR for the EIA were reviewed by EAMRA, with input from the DCE.[454] The ToR were subject to further rounds of comments and meetings with the authorities. As Dr Mair testifies: "*It took a long time for the authorities to approve the white papers and ToR, despite us following up numerous times*".[455]

345. The process that GM went through in finalising the ToR was above and beyond what was set out in the EIA Guidelines, which simply provided that the ToR would be approved by EAMRA (step 4).[456] Indeed, in June 2015, Mr Nielsen advised Dr Mair that, because GM's ToR included the exploitation of uranium, it would be approved by the Parliament, and this approval would be concurrent with the parliamentary consultation on the International Uranium Conventions.[457]

346. He further advised that the Greenlandic Parliament was in the process of consulting on the International Uranium Conventions, to ensure that GM's ToR could be addressed in the autumn sitting of Parliament. As Dr Mair testifies: "*This was a clear example of the coordinated approach taken by the Greenlandic Government to structure the development path for the Project, to allow it to proceed as both a rare earths and uranium project*."[458]

347. GM's final revised ToR and White Paper were forwarded to the Government in October 2015.[459] The ToR included the exploitation, physical processing and chemical refining

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[452] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 288.

[453] First Witness Statement of J. Mair, at **(CWS-3)**, para. 377; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 292.

[454] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 379-380.

[455] First Witness Statement of J. Mair, at **(CWS-3)**, para. 381.

[456] See, EIA Guidelines 2015, at **(C-225)**, p. 6, "*4 The company prepares a final scoping report and terms of reference for approval by MRA*".

[457] First Witness Statement of J. Mair, at **(CWS-3)**, para. 403.

[458] First Witness Statement of J. Mair, at **(CWS-3)**, para. 403.

[459] First Witness Statement of J. Mair, at **(CWS-3)**, para. 382; Report titled "*Terms of Reference for the Social Impact Assessment Approved October 2015"*, by Grontmij and Greenland Minerals Ltd, at **(C-397)**; Report titled "*Terms of Reference for the Environmental Impact Assessment Approved July 2011 Amended October 2015"*, by Orbicon and Greenland Minerals Ltd, at **(C-398)**; Report titled "*White Paper on Public 35-Day Pre-Hearing on the 'Terms of Reference' for the Environmental and Social Impact Assessments Approved October 2015"*, by Greenland Minerals Ltd, at **(C-399)**; Email from J. Kyed (GM) to H. Jensen (GM), I.

of uranium and provided that GM needed to engage an independent consultant to analyse the radiological risks of its operations and to estimate the radiation dosage impact of mining operations on workers and the public.[460]

348. The ToR contained a section titled "*Legislation in Greenland*", which listed the regulations and guidelines "*relevant for the project*", including the MRA and certain international guidelines and standards.[461] This provided that the Project would be regulated by various IAEA Safety Standards, which provided a framework for occupational radiation protection and management, the establishment of uranium mines, and best practice in environmental management of uranium mining.

349. The ToR and White Paper were approved by the Government in late November 2015 and posted on the Government's webpage.[462] This approval was concurrent with the Greenlandic Parliament entering into six international nuclear safety conventions (discussed in Section C.37 below).

350. On any objective measure, the ToR process was extensive and time-consuming, involving two full rounds of public consultations and a significant number of meetings with the authorities. In total, the ToR process took four years. As Dr Mair testifies:

> "*The approval of the ToR by the Government was a significant milestone for the Kvanefjeld Project. It marked the end of a multi-year process of engagement with the Government and public regarding the Project scope. As this time, it was clear that the Government and the Parliament were satisfied with the Project as scoped, and that we had the support of the general public. We viewed the ToR as a mandate from the Government to develop the Project according to the plan and scope that had been laid out in the ToR.*
>
> *This was a strong mandate for GM invest all of our resources into responsibly completing the licensing phase according to the Project scope in the ToR. Our ASX announcement stated that the Project: 'Includes in-country processing to produce a critical rare earth product, uranium oxide, zinc concentrate, lanthanum and cerium by-products and fluorspar.*"[463]

Laursen (GM) and J. Mair (GM), subject: "*ToR and White Paper*", 5 October 2015, at **(C-400)**; Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Vs: GME - ToR and White Paper approvals (Nanoq - ID nr.: 1351810)*", 14 October 2015, at **(C-401)**.

460 Report titled "*Terms of Reference for the Environmental Impact Assessment Approved July 2011 Amended October 2015"*, by Orbicon and Greenland Minerals Ltd, at **(C-398)**; pp. 22, 41-43.

461 Report titled "*Terms of Reference for the Environmental Impact Assessment Approved July 2011 Amended October 2015"*, by Orbicon and Greenland Minerals Ltd, at **(C-398)**; p. 13.

462 First Witness Statement of J. Mair, at **(CWS-3)**, para. 407; Email from J. S. Nielsen (MILT) to J. Mair (GM), subject: "*SV: update*", 24 November 2015, at **(C-402)**; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Update: Government Pre-Hearing Approvals Complete", 25 November 2015, at **(C-37)**.

463 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 409-410; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Update: Government Pre-Hearing Approvals Complete", 25 November 2015, at **(C-37)**.

351. The approval of GM's ToR by the highest levels of Government represented a clear agreement between the Company and the Government as to the project development plan. Critically, this project development plan required the processing and refining of uranium at Kvanefjeld.

352. The importance of the agreed ToR cannot be overstated. It was the foundation stone of the whole Project, and scoped GM's EIA and SIA.[464]

C.34 EIA and SIA submitted (December 2015)

353. Over the course of 2015, in parallel to finalising its ToR, GM accelerated its work on its EIA and SIA, and continued carrying out feasibility and resource definition work.[465]

354. GM prepared its draft EIA with the assistance of Orbicon, a globally recognised consultancy firm with extensive experience of preparing environmental impact assessments and environmental studies that had prepared the original 2011 ToR for the Project and had been responsible for the collection of baseline environmental data at Kvanefjeld since 2007.[466] The EIA was also supported by technical reports from a range of expert consultants (see paragraph 616 below).

355. As to the SIA, GM engaged Grontmij to prepare the preliminary draft.[467] As Mr Frere states, "*the purpose of the SIA is to evaluate the social impact of the Kvanefjeld Project on the local community, the region, and the nation*".[468]

356. In December 2015, GM submitted drafts of its EIA and SIA to the Greenlandic authorities.[469] The EIA was reviewed by EAMRA, and the SIA by MILT. Based on guidance that GM had received from the Greenlandic Government, GM expected that the process for preparing the EIA and SIA would be managed efficiently.

357. In 2015, the Greenlandic Government replaced the existing guidelines on the conduct of environmental impact assignments for mining projects, which had been in place since

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464 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 21, "*The ToRs formed the bases of the EIA and SIA that GM subsequently completed.*"; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 145.

465 For discussion, see First Witness Statement of J. Mair, at **(CWS-3)**, paras. 392-397, 415, 418-420; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 62.

466 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 385-386.

467 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 62.

468 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 62.

469 First Witness Statement of J. Mair, at **(CWS-3)**, para. 418; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Update: Mining License Application Guidance Phase to Commence", 2 December 2015, at **(C-41)**; First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 28; Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 38, 63.

2011.[470] The new guidelines (**EIA Guidelines**),[471] which were "*the only formal guide of the EIA process*",[472] set out a straightforward process for the proponent of a mining company to conduct and seek approval of an EIA. This process spanned preparation of the terms of reference through to the issuance of an exploitation licence, following which the authorities would "*use the EIA as a basis document for defining terms and requirements for approval of the company's exploitation and closure plans*."[473] The entire process is reflected in the excerpt below, which is taken from the EIA Guidelines:[474]

Step	Topic
1	Scoping phase. After preliminary consultations between the company, MRA and MRA's scientific advisors (DCE/GINR[1]) the company prepares a scoping report and forwards the report to MRA.
2	MRA publishes the company's scoping report and terms of reference (ToR) for public pre-consultation for 35 days.
3	The company evaluates the comments received during the public pre-consultation and considers revision of the project.
4	The company prepares a final scoping report and terms of reference for approval by MRA.
5	The company prepares an environmental study programme including a programme for environmental baseline studies, project-related studies and other studies in consultation with MRA and MRA's scientific advisors. This programme shall be prepared and kept updated to secure data necessary to produce the final EIA. The programme shall be approved by MRA involving consultations on a regular basis.
6	The company proposes a table of contents for the EIA to MRA.
7	MRA and MRA's scientific advisors review the proposed table of contents for the EIA and provide feedback.
8	The company forwards an EIA draft to MRA.
9	MRA and MRA's scientific advisors review the EIA draft and provide feedback.
10	The company forwards a revised EIA draft including appropriate revisions to MRA as part of the application for the exploration and the exploitation.
11	MRA publishes the revised EIA draft for public consultation for minimum 8 weeks in accordance with the Mineral Resources Act. During the consultation period, public hearings shall be organized in towns and villages which are particularly affected by the activities.
12	The company prepares a white paper which addresses the questions and comments raised during the public consultation and hearing meetings.
13	MRA and MRA's scientific advisors review and give feedback on the white paper to the company.
14	The company submits a final EIA draft including the white paper to MRA for Naalakkersuisut's approval.
15	If Naalakkersuisut decides to grant an exploitation license, MRA will use the EIA as a basis document for defining terms and requirements for approval of the company's exploitation and closure plans.

358. As the above makes clear, after the project proponent has prepared the terms of reference, it prepares a draft environmental impact assessment and sends it to EAMRA (step 8). EAMRA, the DCE and the GINR review the draft and provide feedback to the project proponent (step 9). The project proponent then sends a revised draft of the environmental impact assessment to EAMRA (step 10), following which EAMRA publishes the EIA for public consultation (step 11). The EIA Guidelines thus contemplate a single round of comments from EAMRA, the DCE and the GINR, which

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[470] Report, *"BMP guidelines – for preparing an Environmental Impact Assessment (EIA) Report for Mineral Exploitation in Greenland"*, by BMP, January 2011, at **(C-224)**.

[471] Document titled "*Guidelines for preparing an Environmental Impact Assessment (EIA) report for mineral exploitation in Greenland*", by EAMRA, 2015, at **(C-225)**.

[472] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 125.

[473] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 121-125; EIA Guidelines 2015, at **(C-225)**, p. 6, step 15.

[474] Document titled "*Guidelines for preparing an Environmental Impact Assessment (EIA) report for mineral exploitation in Greenland*", by EAMRA, 2015, at **(C-225)**, p. 6.

the project proponent incorporates into the draft in order to finalise it for public consultation.

359. The Greenlandic Government also issued guidelines for the preparation of SIAs for mining projects.[475] These guidelines indicated that the entire process of having the SIA approved should take between 4 and 12 months.[476] The SIA guidelines provided that the submission of an SIA as part of an application for an exploitation licence would be followed by a period of public consultations and the incorporation of any comments received during that process into the final SIA. The SIA would then provide the basis for negotiation of an IBA between GM, the local municipality and the Greenlandic Government.

360. As to the timing of the EIA process, the Greenlandic Government provided formal guidance to licence-holders that the entire review process for an exploitation licence application would take approximately 12 months and that the initial review of the licence application components, including the EIA, would take two months.[477] The Government advised that, in circumstances where the processing time would exceed those expectations, the licence-holder would be notified and a new deadline set. These timeframes were subsequently confirmed in 2016, by the head of the MLSA, Mr Hammeken-Holm, who advised GM that this feedback stage on the EIA and SIA would likely take six to eight weeks.[478]

361. However, as discussed in detail below, the Greenlandic Government not only failed to carry out its review of the EIA within two months, but abjectly failed to follow the procedure provided for in the EIA Guidelines. After working with the Greenlandic authorities to finalise the ToR for the EIA and SIA for almost four years, GM then spent another five years in a constant back-and-forth with EAMRA and the DCE to finalise the EIA for public consultation. During that time, EAMRA repeatedly commented on

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[475] Document titled "*Social Impact Assessment (SIA): Guidelines on the process and preparation of the SIA report for mineral projects*", by the Government of Greenland, Ministry of Industry, Labour and Trade, April 2016, at **(C-403)**.

[476] Document titled "*Social Impact Assessment (SIA): Guidelines on the process and preparation of the SIA report for mineral projects*", by the Government of Greenland, Ministry of Industry, Labour and Trade, April 2016, at **(C-403)**, p. 10.

[477] First Witness Statement of J. Mair, at **(CWS-3)**, para.325; Email from N. V. Rasmussen (MLSA) to J. Mair (GM) and S. Bunn (GM), subject: "*Expected processing time for the Greenlandic Mineral Resources Authorities*", 10 June 2014, at **(C-154)**, p 1.

[478] Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Sv Review status (Nanoq - ID nr. 2404512)*", 29 March 2016, at **(C-404)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 434.

and demanded amendments to the EIA and underlying environmental reports, going far beyond the single round of "*feedback*" contemplated in the EIA Guidelines.

362. While the Government had said the entire process of approving the EIA was to take no longer than 12 months, it ultimately took five years,[479] culminating in 2020 with the approval of GM's EIA for public consultation. As Mr Frere comments, the process was far more "*time-consuming and expensive*"[480] and "*significantly more complex*"[481] than the authorities had led GM (and other mining investors) to expect. In fact, the Greenlandic Government's failure to follow the EIA Guidelines appeared to be contrary to its basic obligations under Greenlandic administrative law to provide sufficient and timely guidance and assistance.[482] Moreover, it impeded GM's ability to exercise and safeguard its rights.

C.35 2015 Exploration Licence Renewal (December 2014 – March 2015)

363. GM's Exploration Licence was renewed in early 2015. GM submitted its application in December 2014.[483] This application listed the target minerals as rare earth elements, uranium, zinc and fluorspar.

364. The negotiation of the Exploration Licence renewal is described in Dr Mair's witness statement.[484] The contemporaneous record and Dr Mair's testimony are significant in a number of respects.

365. First, the correspondence shows that GM and the MLSA engaged in a *negotiation* regarding the Exploration Licence renewal:

(a) the MLSA offered terms by way of a draft renewal agreement;[485]

(b) Dr Mair responded, proposing additional terms;

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479 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 434-436; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 36.

480 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 32.

481 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 36.

482 See Greenland Parliament Act No. 8 of 13 June 1994 on case administration in the public administration, 13 June 1994, at **(CL-164)**, s 7.

483 Email from M. Helean (GM) to N. V. Rasmussen (MLSA), subject: "*FW: EL2010-02*", 5 December 2014, at **(C-405)**; Document titled "*Application form A - Application for mineral exploration licence*", by GM, 6 December 2014, at **(C-406)**; Document titled "*Annual Financial Report for the year ended 31 December 2013*", by GM, at **(C-407)**; Document titled "*EL2010-02 GME Map*", by GM, 2014, at **(C-408)**; Document titled "*2014_EL2010-01_Greenland_Minerals_Energy*", by GM, 2014, at **(C-409)**.

484 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 360-376.

485 Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Renewal of exploration licence 2010/02*", 27 January 2015, at **(C-410)**; Document titled "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland, by the MLSA*", January 2015, at **(C-411)**.

(c) the MLSA accepted these terms and sent GM a revised draft of the renewal agreement;

(d) Dr Mair asked for clarifications regarding certain terms;

(e) the MLSA provided these clarifications and asked GM to "*please confirm whether the licence draft then can be accepted?*"; and

(f) GM responded, stating, "*we accept the license renewal draft, and will be happy to sign and execute*".[486]

366. Subsequently:

(a) the MLSA sent the renewal agreement to Naalakkersuisut;

(b) it was "*approved*" by Naalakkersuisut;

(c) it was signed and executed by two GM directors (as is the contracting requirement under Australian law);

(d) it was returned by GM to the MLSA along with a list of authorised signatories; and

(e) it was countersigned by the Minister of Mineral Resources on 8 April 2015 (**2015 Exploration Licence Renewal**).[487]

367. This exchange confirms the concessionary (contractual) nature of the Exploration Licence: there is a clear pattern of offer, counteroffer, acceptance and execution. Indeed, the language the parties used shows that they both understood that they were in a *negotiation*, and (contrary to what the Respondents now contend) not in a classical administrative environment where a permit is simply requested and then issued (or not) by the competent authority.

368. Second, the original terms of the renewal agreement offered by the MLSA referred only to the Standard Terms, such that GM was guaranteed an exploitation licence for non-radioactive elements provided it met the licensing conditions (pursuant to Section 101

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[486] Email from J. Mair (GM) to N. V. Rasmussen (MLSA), subject: "*Question in regard to exploration license renewal*", 12 February 2015, at **(C-412)**; Document titled "*Renewal of exploration license with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland (EL 2010/02)*", February 2015.

[487] Email from N. V. Rasmussen (Nanoq) to J. Mair (GM), subject: "*VS: GME update and query points*", 14 February 2014, at **(C-414)**; Email from J. Mair (GM) to N. V. Rasmussen (MLSA), subject: "*RE: Renewal of exploration licence 2010/02*", 20 March 2015, at **(C-415)**; "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland*" dated March 2015 and executed 8 April 2015, at **(C-15)**.

and the licencing guarantee in Section 1401).[488] It is clear from the fact that the MLSA offered these terms that the parties intended for GM to have an unconditional right to exploit rare earths. Dr Mair has confirmed that this was his understanding.[489] This demonstrates that, contrary to the Respondents' position, the Addendum No. 1 Caveats do not qualify GM's right to an exploitation licence for non-radioactive elements.[490]

369. Third, the original draft renewal agreement offered by the MLSA did not include uranium (as radioactive elements were carved out of Section 101 of the Standard Terms).[491] It was Dr Mair that insisted that the licence terms be amended to include uranium. Dr Mair responded to the MLSA's email emphasising that GM's application included uranium and that it was "*extremely important to GME*" that the licence renewal included uranium.[492] Dr Mair also stressed that GM had just "*worked through such extensive work programs and stakeholder engagement, and the recently the public 'pre-hearing' associated with the Terms of Reference*", which included the production in Greenland of a uranium product for sale (as discussed in paragraphs 351-352 above, GM and the Government were treating the ToR as an agreement). He further noted that the licence should include the July 2014 amendment to the Standard Terms, which introduced a 5% royalty on the exploitation of uranium.[493] The MLSA accepted Dr Mair's proposal to include uranium in the licence, sending a revised draft of the renewal agreement, which stated that the licence included Addendum No. 1 and the addendum to the Standard Terms on royalties.[494]

370. This email exchange shows that both parties understood that Addendum No. 1 added to GM's rights. As Dr Mair testifies:

> "*I insisted on referring to uranium in the licence, because we had a right to explore for uranium <u>in addition to</u> our right to explore for rare earths. At this point I understood that the caveats in the addendum were essentially redundant.*

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488 Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Renewal of exploration licence 2010/02*", 27 January 2015, at **(C-410)**; Document titled "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland, by the MLSA*", January 2015, at **(C-411)**.

489 First Witness Statement of J. Mair, at **(CWS-3)**, para. 375.

490 Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 144; Transcript of Hearing held on 7 September 2022, at **(C-134)**, p. 101.

491 Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Renewal of exploration licence 2010/02*", 27 January 2015, at **(C-410)**; Document titled "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland, by the MLSA*", January 2015, at **(C-411)**.

492 Email from J. Mair (GM) to N. V. Rasmussen (MLSA), subject: "*Question in regard to exploration license renewal*", 12 February 2015, at **(C-412)**, p. 3, email dated 28 January 2015.

493 First Witness Statement of J. Mair, at **(CWS-3)**, para. 364.

494 Email from J. Mair (GM) to N. V. Rasmussen (MLSA), subject: "*Question in regard to exploration license renewal*", 12 February 2015, at **(C-412)**, p. 2, email dated 5 February 2015; Document titled "*Renewal of exploration license with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland (EL 2010/02)*", February 2015.

> *The ZTP was gone, and Denmark was well on the way to establishing the regulatory framework to enable the production and export of uranium.*"[495] (emphasis original)

371. This is consistent with the discussions between GM and the Government at meetings that took place on 19 August 2013 and 29 October 2013 (concurrently with the lifting of the ZTP), which was that the Addendum No. 1 Caveats would become redundant.

372. Indeed, GM's renewal application specifically referred to the lifting of the ZTP as a "*landmark*" regulatory development.[496] The only function that Addendum No. 1 served at this point in time was to add uranium to GM's Exploration Licence (i.e., under Section 1 of Addendum No. 1). This is precisely what the correspondence reflects: Dr Mair asked for the inclusion of uranium in GM's licence, and the Government agreed.

373. At this time, GM legitimately expected that it would be granted an exploitation licence for uranium subject only to demonstrating (in its EIA) that it could safely exploit uranium as a by-product. This is confirmed by the ASX announcement that GM issued on 1 April 2015 regarding the 2015 Exploration Licence Renewal, which stated:

> "*Importantly, license EL 2010/02 features an addendum that allows for the exploration of radioactive elements, which are not otherwise covered by standard exploration licenses in Greenland.*
>
> *GMEL is currently working to complete all the necessary studies that are required to apply for an exploitation license. These include a comprehensive feasibility study, and social and environmental impact assessments. Upon approval by the Greenland government, the exploration license <u>will be</u> converted to exploitation (mining) license.*"[497] (emphasis added)

374. This announcement confirms GM's understanding that the operative provision of Addendum No. 1 was Section 1, which allowed for the exploration of radioactive elements. As Dr Mair testifies, this announcement "*reflected our expectation that, if we satisfied the regulatory requirements, our exploration licence <u>would be</u> converted to an exploitation licence*".[498] He notes that this announcement was the subject of strict disclosure regulations under Australian law, and the content was accepted by the Greenlandic authorities.[499]

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[495] First Witness Statement of J. Mair, at **(CWS-3)**, para. 375.

[496] The renewal application attached a report that noted that the ZTP had been lifted and this "*landmark decision places Greenland on the path to uranium-producer status, and thereby opens up coincident resources of rare earth elements to exploitation*". Document titled "*Annual Financial Report for the year ended 31 December 2013*", by GM, at **(C-407)**, p. 11.

[497] Greenland Minerals Ltd ASX Announcement titled "Exploration License over Kvanefjeld Project Area Renewed", 1 April 2015, at **(C-416)**.

[498] First Witness Statement of J. Mair, at **(CWS-3)**, para. 375.

[499] First Witness Statement of J. Mair, at **(CWS-3)**, para. 376.

375. At this time, the Premier of Greenland was Kim Kielsen, and the Siumut Party was the largest party in the coalition government. Premier Kielsen and the Siumut Party were supportive of the Project.[500] Dr Mair has testified that:

> "*If we had thought that there was any ambiguity about our rights to exploit rare earths and uranium at Kvanefjeld, we would have immediately taken action to resolve it. Given the progress made on uranium regulation, and the level of political encouragement, we genuinely felt that any clauses associated with uranium were simply a legacy from when the ZTP was in place. We did not consider that these clauses could be used in the future for reasons outside what had been intended. We most certainly would not have continued to raise and spend money developing the Project if we had believed that, even if we satisfied all of the regulatory requirements through the impact assessment process, we could be denied a licence. As part of a public company structure, our lawyers and auditors would never have allowed this.*
>
> *I have no doubt that, if we had sought confirmation from the Kielsen Government that we were entitled to exploit rare earth elements and uranium (as a by-product), we would have received it. We never took such action because the terms of our Exploration Licence concerning transition to exploitation were clear and the Government's support for the Project was also clear, and was confirmed by the many actions taken by the Government and the Parliament in support of the Project and uranium mining; for example, the Government approving GM's Project development plan which included the exploitation of uranium.*"[501]

C.36 Feasibility work (2015-2019)

376. As discussed in Section C.20 above, GM completed a pre-feasibility study in April 2012.[502] In the years that followed, GM proceeded to perform significant work in advancing its feasibility studies, including significant metallurgical development work and geochemical test work.[503] After the Government insisted that the project development plan include a refining circuit in Greenland, GM performed additional engineering and design work,[504] and updated its financial model.

377. In May 2015, GM completed its feasibility study.[505] This provided that the Project would produce rare earths, uranium, zinc and fluorspar as saleable products.

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500 First Witness Statement of J. Mair, at **(CWS-3)**, para. 342.

501 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 344-345.

502 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 11.

503 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 351-352, 388.

504 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 315-324, 347-350.

505 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 392-400; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Feasibility Study Completed", 25 May 2015, at **(C-39)**; Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 12.

378. In June 2015, GM announced its maiden Ore Reserve estimate for the Project.[506] This Ore Reserve comprised 108 million tonnes (at 14,300 ppm total rare earth oxides, 362 ppm U3O8 and 2,600 ppm zinc). As explained in the expert report of SLR[507] and the witness statement of Dr Mair,[508] under the JORC code, an "Ore Reserve" is the portion of a Mineral Resource that can be the basis of a technically and economically viable project. An Ore Reserve can only be declared if the necessary pre-feasibility and feasibility studies have been completed and it has been independently verified.[509]

379. The declaration of an Ore Reserve was a major event for GM as a company. As Dr Mair said in the company's ASX announcement at the time:

> "*An initial ore reserve of 108 million tonnes is an outstanding result, and is another really important project milestone. It takes a lot of work across numerous disciplines to achieve this level of confidence. The Ore Reserves reinforce Kvanefjeld's status as one of the most advanced and significant emerging projects in the rare earth and uranium sectors globally*".[510]

380. GM continued to optimise its feasibility work over time by continuing to evaluate the technical and commercial characteristics of the Project, as is standard procedure for any mining company.[511] In April 2016, GM updated its 2015 feasibility study to reflect improvements in the Project design, announcing that the improved net present value (**NPV**) of the Project (post-tax) was US$1.58 billion.[512]

381. In October 2018, GM provided a copy of its 2016 updated feasibility study to the Government but withheld three chapters which contained confidential and commercially sensitive information regarding the Project. GM withheld these chapters as the Government had refused to confirm that if a public access request was made for these documents, then the Government would deny access.[513] In March 2019, GM provided copies of the withheld chapters to the Government and continued to maintain

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506 First Witness Statement of J. Mair, at **(CWS-3)**, para. 399; Greenland Minerals Ltd ASX Announcement titled "Maiden Ore Reserves Estimate for the Kvanefjeld Project", 3 June 2015, at **(C-40)**.

507 Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, paras. 237(a) and (h)-(l).

508 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 32-34.

509 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 17.

510 Greenland Minerals Ltd ASX Announcement titled "Maiden Ore Reserves Estimate for the Kvanefjeld Project", 3 June 2015, at **(C-40)**, p. 1.

511 First Witness Statement of J. Mair, at **(CWS-3)**, para. 400; Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 15.

512 First Witness Statement of J. Mair, at **(CWS-3)**, para. 457; Greenland Minerals Ltd ASX announcement titled "Kvanefjeld Feasibility Study Update: Conservative Assumptions, Robust Metrics, High-Value Rare Earth and Uranium Project", 6 April 2016, at **(C-417)**; Greenland Minerals Ltd Announcement titled "March 2016 Quarterly Report", 29 April 2016, at **(C-418)**.

513 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 13.

that the 2016 updated feasibility study should be exempt from any public access request.[514]

382. The 2016 updated feasibility study also contained a financial model for the Project. On 11 February 2019, GM provided a copy of the financial model to the Government to assess the commercial viability of the Project; however, GM set the inputs of the model to zero to protect the confidentiality of the commercial information contained therein.[515] Although the Government requested that GM provide an unlocked version of the financial model, GM declined to do so, as it was unnecessary for the Government's assessment of GM's application.[516]

383. Thereafter, GM continued to optimise its feasibility studies and its Process Flow Sheet for producing the Project's rare earth intermediate product and uranium oxide.[517]

384. As Mr Frere further explains in his Second Witness Statement, the Process Flow Sheet is an integral part of GM's Optimised Feasibility Study (**OFS**) as it:

> "*illustrates the relationships between the most significant parts of the plant required for the process that will be used to recover the rare earth intermediate and uranium oxide. When read together with the relevant process parameters, the Process Flow Sheet describes the process by which GM will liberate materials of interest from the host rock and then concentrate these materials of interest into products for sale*".[518]

385. In August 2019, GM completed its OFS.[519] GM's optimisation work resulted in a significant increase in the commercial viability of the Project.[520]

386. GM did not provide the Respondents with the OFS or the new Process Flow Sheet.

C.37 Greenlandic Radiation Protection Act and International Uranium Conventions (December 2015 – June 2016)

387. As detailed in Sections C.23 and C.28 above, from late 2012, the Danish and Greenlandic Governments engaged in a major joint effort to establish a framework to regulate the exploitation and export of uranium from Greenland.

388. As part of these efforts, on 9 December 2015, the Greenland Parliament passed the Ionising Radiation and Radiation Protection Act (**Greenlandic Radiation Protection**

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514 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 13.

515 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 14.

516 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 14.

517 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 21-23.

518 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 22.

519 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, para. 16.

520 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 16, 24.

Act).[521] This Act provided the framework for the Greenlandic Parliament to issue further executive orders to regulate radiation protection, including setting annual dose limits to protect workers and members of the public from exposure to ionising radiation.[522] The Greenlandic Radiation Protection Act aligns with the best practices of the IAEA standards and EU-directives. For example, Article 24 of the Greenlandic Radiation Protection Act provides that the Greenlandic Ministry of Health will monitor the operation of radiation protection measures based on the principles of "*justification, optimization and dose limitation*" (reflecting the ICRP's fundamental principles).[523] Similar legislation was enacted by Denmark in 2018.[524]

389. As Dr Chambers explains, the ICRP, the United Nations Scientific Committee on the Effects of Atomic Radiation (**UNSCEAR**) and the IAEA are the main organisations responsible for the development of international best practice for radiation protection.[525] The guidelines produced by these organisations are widely accepted by the international radiological community as "*international best practices, which remains unchanged since 2007*".[526] Dr Chambers testifies that "*the Danish and Greenlandic authorities have accepted these guidelines in their review of Arcadis' radiological assessments of the Project*".[527]

390. In addition to the Greenlandic Radiation Protection Act, the Greenlandic Parliament also committed to implementing six international conventions dealing with nuclear safety, radioactive waste, and the protection of workers from ionising radiation (**International Uranium Conventions**).[528] These six international conventions were already in force for Denmark but did not extend to Greenland (due to territorial reservations).[529] It was agreed that the Danish authorities would arrange with the

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[521] Greenland Parliament Act No. 33 of 9 December 2015 on Ionising Radiation and Radiation Protection, at **(CL-165E)** (the "Greenlandic Radiation Protection Act"). This act came into force on 1 February 2016.

[522] See Article 15 of the Greenlandic Radiation Protection Act, at **(CL-165E)**, which provides the Naalakkersuisut the authority to regulate dose limitations and monitoring rules.

[523] Greenlandic Radiation Protection Act, at **(CL-165E)**, Articles 15, 24.

[524] Danish Parliament Act No. 23 of 15 January 2018 on Ionising Radiation and Radiation Protection, 15 January 2018, at **(CL-166E)**. This act entered into force on 6 February 2018.

[525] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 9.

[526] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 37.

[527] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 37.

[528] Email from J. S. Nielsen (MILT) to J. Mair (GM), subject: "*Regarding the six conventions on radioactive materials*", 21 December 2015, at **(C-419)**.

[529] Due to Greenland's withdrawal from the European Economic Community (including Euratom) in 1985, Denmark and Greenland had different arrangements with the IAEA which resulted in a mixed membership of international safety, security and safeguards in place for both countries. When Denmark delivered the instrument of ratification to the IAEA, territorial reservations were declared for Greenland. See, UWG Report, at **(C-231E)**, pp. 37-38, 41-42.

relevant bodies to remove these territorial reservations in order for Greenland to be bound by these conventions.

391. The International Uranium Conventions comprised:

(a) the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency;[530]

(b) the IAEA Convention on Nuclear Safety;[531]

(c) the International Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the **IAEA Waste Convention**);[532]

(d) the ILO Convention No. 115, Radiation Protection Convention (Convention concerning the Protection of Workers against Ionising Radiations);[533]

(e) the International Convention for the Suppression of Acts of Nuclear Terrorism;[534] and

(f) the Amendment to the IAEA Convention on the Physical Protection of Nuclear Material.[535]

392. It is notable that the International Uranium Conventions consistently refer to radiation *dosage* as the relevant threshold for protection from exposure to radioactive substances. Neither the conventions nor any relevant international standards refer to uranium ore concentration in *ppm* as being a relevant threshold for achieving radiation protection of persons.[536]

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530 IAEA Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 18 November 1986, at **(C-420)**.

531 IAEA Convention on Nuclear Safety, 17 June 1994, at **(C-421)**.

532 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 15 December 2016, at **(C-422)**.

533 ILO Convention No. 115, Radiation Protection Convention 1960, at **(C-423)**.

534 International Convention for the Suppression of Acts of Nuclear Terrorism, 7 July 2007, at **(C-424)**.

535 IAEA Amendment to the Convention on the Physical Protection of the Nuclear Materials, 8 July 2005, at **(C-425)**.

536 See Article 24 of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 15 December 2016, at **(C-422)**; see also, Article 6 of the ILO Convention No. 115, Radiation Protection Convention 1960, at **(C-423)**.

393. The Government promptly informed GM about the International Uranium Conventions.[537] As Dr Mair testifies: "*The ratification of these conventions paved the way for Greenland to become an exporter of uranium*."[538]

C.38 Greenland and Denmark enter into Uranium Export Agreements (early 2016)

394. In January and February 2016, Denmark and Greenland concluded four formal agreements to establish a combined framework to govern the obligations relating to export controls and nuclear safeguards of uranium trade (and dual-use items) in Greenland, specifically:

(a) Joint declaration on export control of dual-use products and technology by Denmark's Ministry of Business and Growth and Greenland's Ministry of Industry, Labour and Trade, last signed on 26 January 2016;[539]

(b) Agreement in accordance with Section 4 of Act No. 473 of 12 June 2009 on Greenlandic Self-Government (**Self-Government Act**) on parts of competence in the area of nuclear safety dated 29 January 2016;[540]

(c) Joint statement between Denmark's Ministry of Foreign Affairs and Greenland's Ministry of Industry, Labour and Trade dated 4 February 2016;[541] and

(d) General cooperation agreement on foreign policy, defence policy and national security policy matters dated 3 February 2016.[542]

395. The Claimant refers to these agreements collectively as the "**Uranium Export Agreements**".

396. Under the Uranium Export Agreements, Greenland retained full authority over its natural resources, Denmark was responsible for nuclear non-proliferation and safeguards, and the two governments committed to establishing a joint structure to share

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537 First Witness Statement of J. Mair, at **(CWS-3)**, para. 411; Email from J. S. Nielsen (MILT) to J. Mair (GM), subject: "*Regarding the six conventions on radioactive materials*", 21 December 2015, at **(C-419)**; Greenland Minerals Ltd ASX Announcement titled "December 2015 Quarterly Report", 29 January 2016, at **(C-426)**.

538 First Witness Statement of J. Mair, at **(CWS-3)**, para. 411.

539 Joint declaration on export control of dual-use products and technology by Denmark's Ministry of Business and Growth and Greenland's Ministry of Industry, Labour and Trade, last signed on 26 January 2016, at **(C-427E)**.

540 Document titled "*Agreement in accordance with s4 of the Self-Government Act on parts of competence in the area of nuclear safety*", by Ministry of Health and the Elderly, R. Vestergaard Evaldsen (Naalakkersuisut for Business, Trade and Labor Market) and V. Qujaukitsoq (Member of Naalakkersuisut for Finance and Raw Materials), 29 January 2016, at **(C-428E)**.

541 Document titled "*Joint statement between Denmark's Ministry of Foreign Affairs and Greenland's Ministry of Industry, Labour and Trade on safety control of nuclear materials*", 4 February 2016, at **(C-429E)**.

542 Document titled "*General cooperation agreement on foreign policy, defence policy and national security policy matters*", 3 February 2016, 3 February 2016, at **(C-430E)**.

aspects of implementation of export controls, inspections and reporting. The joint declaration between the Danish Ministry of Business and Growth and Greenland's MILT stated that the structure would be established based on "*cooperation, mutual respect and equality, where compliance with export control obligations is a joint task for the Ministry of Business and Growth/The Danish Business Authority and the Department for Business, Labor Market and Trade*".

397. As explained in Section C.31 above, GM had been involved in the development of the regulatory framework for uranium export. The Danish and Greenlandic Governments provided GM with updates about the progress on the Uranium Export Agreements before they were formally announced. For example, on 20 January 2016, a senior adviser of the Danish Ministry of Foreign Affairs informed Mr Eggins that they had provided a confidential briefing to the Danish Foreign Policy Committee regarding the Uranium Export Agreements.[543]

398. After the Uranium Export Agreements were formally executed, Deputy Minister Nielsen immediately updated Dr Mair.[544]As Dr Mair testifies: "*The finalisation of the joint Greenlandic and Danish framework for uranium mining and export gave us confidence that we would be entitled to exploit uranium from Kvanefjeld.*"[545] This sentiment is reflected in GM's ASX contemporaneous announcement, which stated that the establishment of this framework was "*a demonstration of the efforts and progress by the Greenland Government to ensure Kvanefjeld can be developed in compliance with international safety conventions and best-practice*".[546]

C.39 Greenlandic and Danish Parliaments pass Enabling Legislation and work continues on regulatory framework (2016 – 2017)

399. Following the execution of the Uranium Export Agreements, the Danish Government put forward two proposals for the extraction and export of uranium from Greenland.[547] These proposals related to the export of dual-use products and the peaceful use of nuclear material in Greenland. The proposals were designed to ensure close cooperation and coordination between the relevant Danish and Greenlandic authorities.

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543 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 45; Email from J. Eggins (GM) to J. Mair (GM), subject: "*FW: Uranium developments*", 20 January 2016, at **(C-431)**.

544 First Witness Statement of J. Mair, at **(CWS-3)**, para. 428; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: Uran PM*", 3 February 2016, at **(C-432)**; Email from J. Mair (GM) to J. S. Nielsen (Nanoq), subject: "*RE: Deal reached between DK and GL on uran - DIIS Comments now online - AGAIN*", 2 February 2016, at **(C-433)**.

545 First Witness Statement of J. Mair, at **(CWS-3)**, para. 429.

546 First Witness Statement of J. Mair, at **(CWS-3)**, para. 430; Greenland Minerals Ltd ASX Announcement titled "December 2015 Quarterly Report", 29 January 2016, at **(C-426)**.

547 Letter from the Danish Ministry of Foreign Affairs, 4 February 2016, subject: "*Consultation on the Proposal for a Law for Greenland on the control of peaceful use of nuclear materials*", at **(C-434E)**.

400. On 30 March 2016, Greenland's MILT published a presentation note for the Greenlandic Parliament recommending that Greenland adopt Denmark's proposals regarding dual-use products and nuclear safeguards.[548] As usual, GM was kept appraised of these legislative developments. In April 2016, Mr Nielsen advised Dr Mair that these proposals were being debated in the Parliament.[549]

401. Denmark's proposals regarding dual-use products and nuclear safety were approved by the Greenlandic Parliament on 25 May 2016.[550] GM issued an ASX announcement regarding this key legislative development.[551]

402. Shortly thereafter, the Danish Parliament passed two pieces of legislation creating the Danish legal framework for Greenland to export uranium, pursuant to which Denmark would be responsible for the application of international safeguards to ensure the peaceful use of uranium exported from Greenland.[552] This legislation was modelled on the international standards practised in Australia and Canada, and by Euratom, and was designed to ensure that Greenland could export uranium in compliance with international best practice.

403. A senior adviser at the Danish Ministry of Foreign Affairs advised Mr Eggins that this legislation had been passed on 3 June 2016.[553] The legislation is officially dated 8 June 2016.

404. The primary objective of this legislation (and the Enabling Legislation as a whole) was to enable commercial exploitation of uranium from the Project. As Mr Eggins explains:[554]

> "*Given* […] *the Project is the only project in either Greenland or Denmark from which uranium could currently be produced, I expected from the passage of the above Acts that GM would, once it had properly submitted its application for an exploitation licence in respect of the Project, be granted an exploitation licence. To my mind, the only reason for Greenland and Denmark to engage in preparing and passing the Enabling Legislation, including the above Acts, was, in these*

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548 Presentation note from Ministry of Industry, Labour and Trade (FM2016/104, 106, 107, 108,), 30 March 2016, at **(C-435E)**.

549 First Witness Statement of J. Mair, at **(CWS-3)**, para. 461; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: contact*", 13 April 2016, at **(C-436)**.

550 See Act for Greenland on Export Control of Dual-Use Items (No. 616), 9 June 2016, at **(CL-167E)**; Act for Greenland on control of the peaceful use of nuclear material (No. 621), 8 June 2016, at **(CL-168E)**.

551 Greenland Minerals Ltd ASX Announcement titled "Greenland and Denmark Pass Uranium Export Legislation, Solid Foundation Set for Kvanefjeld Project", 8 June 2016, at **(C-437)**.

552 See Act for Greenland on Export Control of Dual-Use Items (No. 616), 9 June 2016, at **(CL-167E)**; Act for Greenland on control of the peaceful use of nuclear material (No. 621), 8 June 2016, at **(CL-168E)**.

553 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 48; Email from D. Bjerregaard (Denmark Ministry of Foreign Affairs) to J. Eggins (GM), subject: "*FW: Legislation*", 7 June 2016, at **(C-438)**.

554 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 51.

circumstances, to enable the commercial exploitation of uranium from the Project."

405. On 8 June 2016, GM issued an ASX announcement, which quoted Dr Mair as stating:[555]

> "*The establishment of a regulatory framework within the Kingdom of Denmark to manage uranium exports from Greenland is an important prerequisite for Kvanefjeld's successful development. The parliamentary approvals that have completed this process represent a significant milestone, and set a solid foundation for Kvanefjeld's progress toward development. The developments provide a further demonstration of Greenland's efforts to support the resources industry and attract foreign investment*".

406. As reflected in this announcement, the passage of this legislation by the Greenlandic and Danish Parliaments reinforced GM's legitimate expectations that the two governments supported the development of the Kvanefjeld Project as a rare earths and uranium project, and GM would be granted a licence to exploit uranium.

407. Following the passage of this legislation, the two governments took further steps to establish the regulatory framework for the exploitation and export of uranium. Specifically:

(a) On 15 July 2016, Denmark informed the Secretary General for the International Convention for the Suppression of Acts of Nuclear Terrorism to withdraw Denmark's previous territorial reservations in respect of Greenland, with the result that this convention applied to Greenland in its own right from this point onwards.[556]

(b) In September 2016, Greenland's Minister for Industry, Labour, Trade and Foreign Affairs, Vittus Qujaukitsoq, attended the IAEA General Conference and deposited letters confirming the withdrawal of Denmark's previous territorial reservations with respect to the IAEA's Convention on Nuclear Safety, and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.[557] As Dr Mair testifies: "*This was yet another action taken by Greenland and Denmark to establish a framework that would enable the export of uranium from Greenland. As the only advanced uranium project in Greenland,*

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[555] Greenland Minerals Ltd ASX Announcement titled "Greenland and Denmark Pass Uranium Export Legislation, Solid Foundation Set for Kvanefjeld Project", 8 June 2016, at **(C-437)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 465.

[556] United Nations Treaty Collection, Status of Treaties, "*15. International Convention for the Suppression of Acts of Nuclear Terrorism*" (last accessed on 12 March 2023), at **(C-439)**.

[557] A. Gioia & V. Fournier, *Member States' Commitment to Treaties Strengthens Nuclear Safety and Security Globally*, IAEA, 26 September 2016, at **(C-440)**.

the Kvanefjeld Project was the driving factor in the ratification of these conventions.".[558]

(c) On 15 December 2016, Denmark notified the depositary for the IAEA Waste Convention to ratify Greenland's accession to the convention.[559]

(d) On 24 October 2017, Denmark confirmed that the Amendment to the Convention on the Physical Protection of Nuclear Material also applied to Greenland.[560]

408. The Company continued to work with the Danish and Greenlandic authorities to establish a framework to administer the exploitation and export of uranium in accordance with international best practices.

409. In August 2016, Mr Eggins attended a uranium workshop hosted by the DIIS in Sweden, which was attended by representatives from MILT, the Danish Ministry of Foreign Affairs, the Danish Emergency Management Agency (**DEMA**), GEUS, the Australian Safeguards and Non-Proliferation Office, and the IAEA.[561] The purpose of this workshop was to consider, from a practical perspective, how the safeguards legislation which formed part of the Enabling Legislation would be implemented, including with respect to the bilateral agreements for uranium commercial exports with non-EU countries.

410. In May 2017, the IAEA Director General, Mr Yukiya Amano, travelled to Copenhagen to discuss cooperation between the IAEA, Denmark and Greenland in relation to the Kvanefjeld Project.[562] This visit was organised by the two governments. Meetings were conducted with the Danish Minister for Foreign Affairs, members of the Danish Parliament's Foreign Affairs Committee and officials from the Danish Emergency Management Agency and Danish Health Authority.

411. Dr Mair was in attendance, and took Mr Amano, Premier Kim Kielsen, Mr Nielsen, the Mayor of Southern Greenland and the Danish ambassador to Vienna (which is the headquarters of the IAEA) on a tour of the Kvanefjeld Project site. As Dr Mair explains:

"*At this time, there was a definite sense of excitement amongst all involved about the Project. The sense was that there was no doubt that it was finally going to happen. Mr Amano expressed his view that it was a good site for a project of*

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558 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 498-499.

559 Agreement Status for the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 15 December 2016, at **(C-441)**.

560 Document titled "*Amendment to the Convention on the Physical Protection of Nuclear Material*", by IAEA, 24 October 2017, at **(C-442)**.

561 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 52 - 56

562 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 572-576; Greenland Minerals Ltd ASX Company Announcement titled "IAEA Director General Visits Kvanefjeld Project", at **(C-16)**.

this nature, that it could be done properly, and the IAEA would be available to provide support."[563]

412. Below is a photograph from this visit.

413. It was reported that Premier Kielsen had been pleased with Mr Amano's visit and feedback,[564] stating: "*The Naalakkersuisut sees the IAEA as a guarantor of a high international standard in terms of security and export control of uranium*" and "*Director General Amano's visit to Greenland shows that the IAEA considers Greenland to be a serious partner in terms of the framework we have set for uranium utilization*".

414. In August 2017, Mr Eggins attended a nuclear cooperation workshop organised and hosted by DIIS in Iceland, which was attended by representatives of MILT, and the Danish Ministry of Defence.[565] At this workshop there was a discussion regarding bilateral agreements with non-EU countries for the export of Greenlandic uranium, and regarding how nuclear safeguards were implemented under Euratom.

415. As discussed, the Governments of Denmark and Greenland embarked on a major regulatory exercise during this time period to ensure that the Kvanefjeld Project could proceed. The below diagram reflects the delineation of competencies between the two

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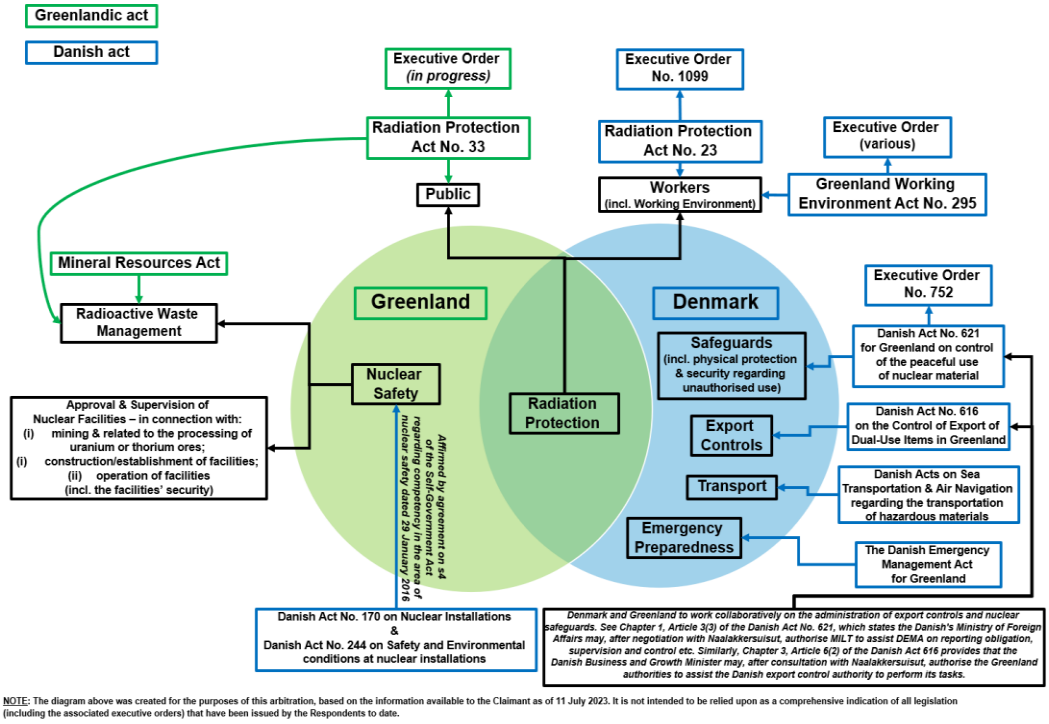
563 First Witness Statement of J. Mair, at **(CWS-3)**, para. 574.

564 First Witness Statement of J. Mair, at **(CWS-3)**, para. 576; W. Turnowsky, *Kim happy for atomic praise*, Sermitsiaq, 19 May 2017, at **(C-443E)**.

565 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 57-59; See Email from M. Barfod (Nanoq) to J. Eggins (GM), J. Mair (GM), G. Thomasen (DIIS), subject: "*Participation in Workshop on Nuclear Cooperation Agreement?*", 11 August 2017, at **(C-444)**.

governments, and the various regulatory instruments passed by these governments to enable the exploitation and export of uranium (i.e., the Enabling Legislation).



416. The above diagram confirms that Greenland will be responsible for:

(a) The implementation of radiation protection measures for the public, which is monitored by reference to dose limitation, as stated in the Greenlandic Radiation Protection Act mentioned in Section C.37 above.[566]

(b) The area of nuclear safety, which involves the approval and supervision of nuclear facilities, and the management of radioactive waste (e.g., waste rock and tailings) under the MRA.[567]

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566 Greenlandic Radiation Protection Act, at **(CL-165E)**; IAEA Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 18 November 1986, at **(C-420)**; IAEA Convention on Nuclear Safety, 17 June 1994, at **(C-421)**; Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 15 December 2016, at **(C-422)**; ILO Convention No. 115, Radiation Protection Convention 1960, at **(C-423)**; IAEA Amendment to the Convention on the Physical Protection of the Nuclear Materials, 8 July 2005, at **(C-425)**.

567 Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, sections 51(3)(iv) and 53(1). Greenland's jurisdiction over the nuclear safety area is affirmed by the Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(CL-4)** , Schedule, List II, "*26) The mineral resource area*".

417. Under the regulatory framework, Denmark will be responsible for:

(a) The implementation of radiation protection measures for workers, which is monitored by reference to dose limitation, as stated in the Ionising Radiation and Radiation Protection Act.[568]

(b) The implementation of nuclear safeguards and export controls in Greenland to comply with its international non-proliferation obligations under the IAEA Conventions and the Euratom Treaty. Although the Danish authorities may, in consultation with the Greenlandic Government, authorise the Greenlandic authorities to assist in reporting and supervising the regime.[569]

(c) The areas of transport and emergency preparedness.

C.40 Government statements about GM's rights and legitimate expectations with respect to the Kvanefjeld Project (2016)

418. At the same time as the Danish and Greenlandic Governments had put the Enabling Legislation before their respective Parliaments, there remained members of the IA Party (then in opposition) who believed that the commercial exploitation and export of uranium should not be permitted. There were various discussions in the Greenlandic Parliament and in the press regarding uranium mining, with the Kvanefjeld Project at the forefront. These parliamentary sessions, which are detailed below, were publicly broadcast and were monitored by GM's team in Greenland.[570] Dr Mair also received updates about political developments from Mr Nielsen and Mr Hammeken-Holm.

419. GM pauses to emphasise that this is a case where the Government denies that GM has (or had) any rights or legitimate expectations protected by the Danish Constitution. As explained in the introduction to this Statement of Claim, the key question for the Tribunal, and the focus of Claim 1 (Rights), is whether GM had such rights. In these circumstances, it is pertinent to reflect on past statements made by representatives of the Greenlandic Government about GM's rights and expectations with respect to the Kvanefjeld Project. The parliamentary discussions that took place throughout 2016 are illuminating in this regard. They prove that, by this point in time (several years before Act No. 20), it was widely recognised that GM's rights with the respect to the Project had already crystallised.

420. In February 2016, IA Party member Múte Egede (the current Premier of Greenland since April 2021) asked Minister Vittus Qujaukitsoq (a senior member of Premier

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568 Danish Parliament Act No. 23 of 15 January 2018 on Ionising Radiation and Radiation Protection, 15 January 2018, at **(CL-166E)**. This act entered into force on 6 February 2018.

569 Act for Greenland on control of the peaceful use of nuclear material (No. 621), 8 June 2016, at **(CL-168E)**, Chapter 1, Article 3(3); Act for Greenland on Export Control of Dual-Use Items (No. 616), 9 June 2016, at **(CL-167E)**, Chapter 3, Article 6(2).

570 First Witness Statement of J. Mair, at **(CWS-3)**, para. 460.

Kielsen's cabinet) what the consequences would be if the Government rejected GM's application to mine uranium (as opposed to an application to mine rare earths).[571] Minister Qujaukitsoq responded that, if the requirements of the MRA had been met and GM's application to exploit uranium was rejected, it would "*mean that Greenland will appear as an untrustworthy cooperation partner in relation to extraction of raw materials*". He noted that the Government had not made any promises to GM in relation to the exploitation of uranium but that "*Naalakkersuisut is obliged to process an application for an exploration* [sic; read: exploitation] *permit from GME pursuant to the rules of the Natural Resources Act and the terms and conditions laid down in the GME exploration permit*".

421. On 3 March 2016, the IA Party submitted a proposal to the Greenland Parliament for a referendum on uranium mining.[572] This proposal stated that, if there was a prohibition on the extraction and export of radioactive minerals:

> "*there may be a possible legal aftermath between the Self-Government and the company in question. GME has used around 500 million DKK on the Kvanefjeld project. It cannot be ruled out that a certain subset of this amount will have to be returned to the company due to broken assumptions*."

422. It is clear from this proposal that, since at least 2016, the IA Party has known that, if the Government banned the extraction and export of uranium, it may be liable to compensate GM for the violation of its legitimate expectations.

423. Following the IA Party's proposal for a referendum, on 10 April 2016, the Atassut Party submitted its own proposal for an indicative referendum. It proposed to set a 500 ppm limit on mining radioactive elements,[573] which it confirmed would not impact the Kvanefjeld Project.[574]

424. Minister Vittus Qujaukitsoq issued a statement on behalf of Naalakkersuisut on 20 April 2016.[575] In this statement, the Minister confirmed that if GM met all the conditions of its Exploration Licence, and delineated a commercially exploitable deposit, it would have a "*right to exploitation*" for the Kvanefjeld Project, and that this right was "*guaranteed*" by law. The Minister pointed out (correctly) that the licensing guarantee was critical in attracting investment to Greenland, and without it companies could not be expected to invest in exploration. He explained that holding a referendum

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571 §37 Parliamentary Questionnaire No. 53/2016, 26 February 2016, at **(C-445E)**.

572 *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**.

573 *Atassut's proposal for a referendum on mining of up to 0.05% radioactive materials (FM 2016/83)*, S. Lynge (Atassut), 10 April 2016, at **(C-446E)**.

574 N. O. Qvist, *Kvanefjeld is protected by referendum*, Sermitsiaq, 13 April 2016, at **(C-447E)**.

575 *Naalakkersuisut's response to referendum proposal on mining of up to 0.05% radioactive materials*, Minister for Business, Labour, Trade and Foreign Affairs, 20 April 2016, at **(C-214E)**.

on uranium mining would call into question this licensing guarantee, and to ban uranium mining would undermine the rule of law and would "*rightly be criticised*".

425. The Democrats also rejected the proposal, stating that a referendum would damage "*the political and economic credibility of our country as a whole*".[576] They pointed out that a majority of the Parliament had decided to support uranium mining and international investors had spent large amounts of money on the basis of this decision. The party stated: "*If we as a country suddenly reverse such decisions, we are also saying that the decisions made in Inatsisartut cannot be trusted*".

426. The Greenlandic Parliament's rejection of the referenda proposals, as well as the discussion regarding the Kvanefjeld Project, triggered a discussion in the Greenlandic press about whether GM would be entitled to compensation if Greenland banned uranium mining. It was reported that a professor at the University of Copenhagen, Peter Pagh, had said that, if the Government changed its position on uranium mining, it could be liable to GM for damages under the Danish Constitution.[577]

427. Shortly thereafter, on 6 May 2016, the press reported that former Premier Kuupik Kleist (who was Premier at the time Addendum No. 1 was concluded) had said that his Government would not be questioned about the ZTP, stating: "*it is crystal clear that with the extension of the exploration permit, the company has not gained access to the extraction of uranium or anything similar*".[578]

428. These statements by former Premier Kleist elicited a response from former Minister Jens-Erik Kirkegaard.[579] Mr Kirkegaard pointed out that GM had been ready to walk away from the Project in 2011 and that, if Premier Kleist's Government had never intended to grant GM an exploitation licence, it could have just stopped the Project then and there. But the IA Party Government did not stop the Project. Quite the opposite (to use the words of the former Minister): "*The IA-led government acted in a direction that paved the way for GME to move forward with their project and spend an additional several million dollars.*" Mr Kirkegaard said it was "*nonsense*" for the IA Party now to change its position on uranium and the Kvanefjeld Project.

429. At the same time as this discourse was taking place in the press, Dr Mair was visiting Nuuk at the invitation of Premier Kielsen to present at the Arctic Circle Forum (17-19

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576 *Democrats' response to referendum proposal on mining and export of uranium (FM 2016/97)*, J. Hansen, 1 April 2016, at **(C-448E)**.

577 H. Nørrelund Sørensen, *URAN The self-governing government risks a compensation case in the case of a uranium deal*, KNR, 28 April 2016, at **(C-449E)**. Professor Pagh was quoted as stating: "*If the self-government is to avoid a compensation case, there must therefore be other weighty reasons than just a sudden, political no to uranium to stop the uranium adventure – for example, that the company does not meet the Minerals Act's requirements for extraction*". See also, N. O. Qvist, *Can GME claim huge damages?*, Sermitsiaq, 27 April 2016, at **(C-450E)**.

578 P. Krarup, *IA has never given permission for uranium production*, Sermitsiaq, 6 May 2016, at **(C-451E)**.

579 The Editorial Staff, *Why did the IAs not just stop the project*, Sermitsiaq, 13 May 2016, at **(C-452E)**.

May 2016). Dr Mair had a discussion about these matters with Jens B. Frederiksen, the former head of the Democrats, which was in coalition with the IA Party at the time Addendum No. 1 was agreed (and who therefore would have been consulted on it). Dr Mair testifies that:

> "*Mr Frederiksen said words to the effect that it was widely known in political circles that it was the IA Government (under Kuupik Kleist) that had opened the door to uranium production. He referred to Addendum No. 1 as a 'quasi-removal' of the ZTP and said that this is how it was understood in the relevant Government departments.*"[580]

430. The same day as former Minister Kirkegaard made his statements to the press, 13 May 2016, there was a discussion in the Parliament about GM's right to compensation if uranium mining were to be banned. Mr Múte Egede asked the Minister for Mineral Resources, Ms Randi Vestergaard Evaldsen, whether Addendum No. 1 to GM's Exploration Licence continued to apply, and about the press reports that the Government may be liable to compensate GM.[581] In response, Minister Evaldsen confirmed that Addendum No. 1 was part of GM's Exploration Licence. She stated that GM "*will not have a justified compensation claim against the Greenlandic authorities, if Naalakkersuisut for example on the basis of a referendum on radioactive elements rejects an application for notification of authorization for the utilization of radioactive elements*." The Minister was very precise in giving her answer and did *not* state that GM would not be entitled to compensation if the Greenland authorities rejected an application for the exploitation of non-radioactive elements.[582]

431. Ultimately, both of these proposals to hold referendums regarding uranium mining were rejected by the Greenlandic Parliament.[583]

432. After the IA Party's proposal of a referendum on uranium mining was rejected, it looked for a new way to try to stop the Kvanefjeld Project. The idea it came up with was to propose legislation to prohibit mining of radioactive substances within 50 km of cities, settlements, and water catchment areas (i.e., to legislate the creation of a buffer zone).[584]

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580 First Witness Statement of J. Mair, at **(CWS-3)**, para. 459.

581 §37 Parliamentary Questionnaire No. 115/2016, 13 May 2016, at **(C-453E)**.

582 The Minister's comments regarding compensation were clearly limited to applications for licences "*for the utilization of radioactive materials*". Indeed, it is clear that, in her answer, the Minister endeavoured to be precise and used this same formulation (licences "*for the utilization of radioactive materials*") four times.

583 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 500-505; N. Hansen, *It looks bleak for the two uranium proposals*, Sermitsiaq, 20 May 2016, at **(C-454E)**.

584 The IA Party sought to advance this proposal despite it being at odds with what the people of Narsaq had said during the 2011 consultation on GM's ToR, when they expressed their preference for the project infrastructure to be closer to Narsaq. See First Witness Statement of S. Bunn, at **(CWS-7)**, para. 136; First Witness Statement of J. Mair, at **(CWS-3)**, para. 168.

433. This proposal for a buffer zone was advanced by IA Party member Mr Aqqaluaq B. Egede. As discussed in paragraph 667, Mr Aqqaluaq Egede has been on a crusade against the Kvanefjeld Project for many years.[585] Although he was appointed as Minister of Mineral Resources in April 2022, he stepped down in June 2023 (i.e., last month) in the wake of widespread dissatisfaction with his handling of the mineral resources portfolio.[586]

434. Mr Aqqaluaq Egede's proposal for a buffer zone was submitted to Parliament on 13 July 2016.[587] In his proposal, Mr Egede claimed that a buffer zone was necessary as otherwise there was no legislation to protect health and environment. However, this claim was not supported by any scientific analysis, or any evidence as to gaps in the legislative framework.

435. Mr Aqqaluaq Egede's proposal was explicitly targeted at the Kvanefjeld Project. In his statement to Parliament, he stated:

> "*it cannot be ruled out that future costs may arise for the Self-Government as a result of permit holders'* [GM's] *possible forfeiture of rights upon adoption of the present proposal. This problem may arise if it turns out that it is not possible in e.g. The Kvanfjelds project to extract the rare earth species without involving radioactive materials1* [sic]. *The value of such a loss of rights cannot, in the nature of the matter, be priced at this time. However, a possible indication can be found in the answer to § 37 question no. 53/2016, where it is stated that GME has used DKK 480 million. DKK in research expenses in the period 2005-2014.*
>
> *It is conceivable that a subset of these expenses must be presumed to have to be reimbursed to the company, if Inatsisartut adopts an actual rights-restricting measure vis-à-vis the company.*"

436. This statement by Mr Aqqaluaq Egede is remarkable. He expressly acknowledged that, if his proposal for a buffer zone made it impossible for GM to mine rare earths from Kvanefjeld, this would result in "*a loss of rights*". He accepted that the Government may be liable to GM for the value of these lost rights. This shows that, since at least 2016, even the most hard-line members of the IA Party (who were staunchly opposed to the development of the Kvanefjeld Project) accepted that GM had valuable legal rights and the deprivation of these rights would give rise to liability on the part of the Greenlandic Government.

437. Despite these express statements made by Mr Aqqaluaq Egede to Parliament in 2016, for the duration of his tenure as Minister for Mineral Resources (April 2022-June 2023), he maintained (at least publicly) that GM had no rights whatsoever to mine at

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585 See First Witness Statement of J. Mair, at **(CWS-3)**, para. 501.

586 M. Lindstrøm, *Aqqaluaq B. Egede hands over the mineral area and takes over Peter Olsen's areas*, Sermitsiaq, 5 June 2023, at **(C-455E)**.

587 *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

Kvanefjeld and did not even have a legitimate expectation of obtaining a mining licence. The inconsistency between these two positions is quite extraordinary.

438. The significance of the concessions made by the IA Party caught the attention of the Greenlandic press. On 1 September 2016, Sermitsiaq reported that Mr Aqqaluaq Egede had made a "*remarkable concession*" and that, while he had previously claimed that the ZTP could be re-introduced without costing the national treasury anything, he had now conceded that "*costs may arise for the self-government in the future as a result of the permitholder's possible forfeiture of rights upon adoption of the present proposal*".[588]

439. Aqqaluaq B. Egede's proposal of a buffer area was forcefully rejected. On 16 September 2016, Minister Evaldsen responded on behalf of Naalakkersuisut, stating that Mr Egede was spreading myths about mining in Greenland, and it was necessary to dispel these myths "*once and for all*".[589] The Minister expressed her frustration with Mr Egede's suggestion that a buffer zone was needed to protect health and the environment, stating: "*So let me make it absolutely clear: Naalakkersuisut only approves exploitation permits if the companies can document that the exploitation takes place in a safety, health and environmentally responsible manner*." She explained that the Government had been legislating to protect the population from radiation, which is precisely what the recent acts on ionising radiation and radiation protection were designed to do.

440. The Minister pointed out that Mr Egede's proposal was arbitrary and devoid of scientific basis, stating: "*The solution is legislation that does not set arbitrary distance requirements. The solution is a law where each individual project is assessed individually. Based on such a concrete assessment of the individual project, we can set solid, sensible and reasonable requirements for safety, health and environmental conditions.*" She also noted that Mr Egede's proposal for a 60 ppm threshold was "*very low*" and would exclude lots of projects. Minister Evaldsen concluded: "*it is incumbent on me to stress that Naalakkersuisut is firm on the fact that the utilization of raw materials must benefit our country and our people*".

441. However, Mr Aqqaluaq Egede was undeterred and continued to agitate the Parliament with his arbitrary and unscientific proposals. On 1 October 2016, he made another proposal to Parliament, this time that there should be a referendum on his buffer zone proposal.[590] As with the previous proposal, this proposal was targeted at the Kvanefjeld Project. In his statement to Parliament, Mr Aqqaluaq Egede stated: "*in Narsaq,* [uranium mining is] *going to happen in the Kuannersuit project. In recent years, the*

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588 First Witness Statement of J. Mair, at **(CWS-3)**, para. 502; N. O. Qvist, *IA acknowledges: New uranium proposal could trigger huge bills*, Sermitsiaq, 1 September 2016, at **(C-456E)**.

589 *Naalakkersuisut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, Minister for Finance and Raw Materials, 16 September 2016, at **(C-457E)**.

590 *Inuit Ataqatigiit's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, M. B. Egede (IA), 1 October 2016, at **(C-458E)**.

door has been opened wide for uranium mining and we know how the companies that want uranium mining intend to do with the door that has been wide open." He said that the Kvanefjeld Project should be rejected because it was not in line with Greenlandic values and the people of Greenland should not "*simply comply with the persistent wishes that people from the outside have in relation to raw materials*". This statement is highly significant and indicates that Mr Aqqaluaq Egede shared GM's expectation that the Company would be entitled to exploit uranium (i.e., the door was "*wide open*" for GM to mine uranium at Kvanefjeld). It also reveals that Mr Aqqaluaq Egede's opposition to the Project stemmed (at least in part) from the fact that GM was a foreign company. This is a strong indication that the IA Party's ideological opposition to the Project, and ultimate deprivation of GM's rights, has its roots in resource nationalism.

442. As with the IA Party's previous proposals, Mr Aqqaluaq Egede's proposal for a referendum on a buffer zone was resoundingly and unanimously rejected by the four other parties in the Greenlandic Parliament. The parties issued the following statements on 3-4 October 2016:

(a) The Democrats expressed their frustration that Mr Aqqaluaq Egede had found a way to have another debate on this issue after the IA Party's proposal to have a referendum on uranium mining had already been rejected.[591] The Democrats noted that all of these proposals were targeted at preventing the Kvanefjeld Project and that this appeared to be "*particularly important*" to the IA Party. In this connection, the Democrats noted that the IA Party had acknowledged that preventing the Kvanefjeld Project would result in liability to GM: "*Inuit Ataqatigiit themselves emphasize in their proposal that an adoption of this proposal could mean that we as a country must pay a larger sum in compensation to GME if this proposal is adopted*". The Democrats expressed their support for mining more generally, stating that this was "*an essential part of our country's economic future*". They pointed out that passing legislation to prevent the Kvanefjeld Project would "*be a signal to outside investors that they must invest their money elsewhere than in Greenland, because here you cannot trust the decisions that are made*". They further stated: "*we must remember that potential investors will keep an eye on whether we, as legislators, can really think of putting an end to a project in which several hundreds of millions of kroner have already been invested. The signal that we would thereby send to the outside world would be profoundly inhibiting for foreign investment*." In conclusion, the Democrats stated that they were satisfied with the existing legal framework on environmental protection (i.e., for an exploitation licence to be granted, there would need to be "*a satisfactory EIA study*" in line with international safety standards).

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[591] *Democrats' response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Hansen (Democrats), 4 October 2016, at **(C-459E)**.

(b) The Siumut Party also rejected the proposal.[592] Former Minister Jens-Erik Kirkegaard made a statement emphasising that Parliament had relied on experts to establish rules and guidelines for the extraction of raw materials, and before mining licences were granted, Naalakkersuisut would be advised by experts, and would conduct public hearings. He stated that Mr Aqqaluaq Egede's proposal was "*not scientifically justified*", noting that the Canadian Nuclear Safety Commission had advised that, based on decades of data collection, "*uranium mines are so safe that they are safer than ordinary mines*".

(c) Partii Naleraq rejected the proposal, stating that the proposal was "*not a rational and well-thought-out starting point, as it will in part exclude a number of* [mining] *companies in advance*".[593] It supported developing a thought-out legislative framework for protecting the environment.

(d) The Atassut Party rejected the proposal, stating "*we already have excellent legislation in this area*".[594] It stated: "*if it is not harmful to human health, the environment and our living resources, then it is okay to mine raw materials that contain radioactive materials*" and that the decision on whether to grant a licence must be based on environmental studies.

443. Dr Mair has testified that the Parliament's rejection of Mr Aqqaluaq Egede's proposals to stop the Kvanefjeld Project "*gave us reassurance that the Government would not tolerate proposals that would interfere with our rights*".[595]

444. At the same time as Mr Aqqaluaq Egede was pushing his proposals in the Parliament, his uncle-in-law and fellow IA Party member, Kalistat Lund, submitted questions to Parliament suggesting that GM's Project was the cause of dead trout found in the Narsaq river.[596] The Minister of Environment, Mala Høy Kúko, rejected Mr Lund's claims, explaining: (i) the DCE and GINR had assessed that "*the activities at Kuannersuit will not lead to increased leaching of either fluoride, heavy metals or other contaminants that can contaminate the water*"; (ii) the DCE and GINR had been assessing GM's activities for many years, and had found that GM had complied with all the relevant guidelines; (iii) water samples taken from the Narsaq river had proven to be normal; and (iv) neither the Government nor the DCE was aware of the aforementioned increase

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592 *Siumut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Kirkegaard (Siumut), 3 October 2016, at **(C-460E)**.

593 *Partii Naleraq's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, H. Enoksen (Partii Naleraq), 3 October 2016, at **(C-461E)**.

594 *Atassut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, S. K. Heilmann (Atassut), 3 October 2016, at **(C-462E)**.

595 First Witness Statement of J. Mair, at **(CWS-3)**, para. 504.

596 §37 Parliamentary Questionnaire No. 246/2016, 28 September 2016, at **(C-463)**, answer on 12 October 2016.

in dead trout, and the Municipality of Kujalleq had advised that there was nothing out of the ordinary.

445. In October 2016, the composition of the coalition government of Greenland changed, with the Siumut Party forming a new coalition with the IA Party and Partii Naleraq. As a consequence of this, Randi Vestergaard Evaldsen was replaced as Minister of Mineral Resources by Múte Bourup Egede (the current Premier of Greenland and leader of the IA Party).[597]

446. Shortly after this change in Premier Kielsen's cabinet, there were numerous statements made to the press and in the Greenlandic Parliament about GM's entitlement to a licence for the Kvanefjeld Project. As discussed in Dr Mair's witness statement Section T,[598] GM was following these developments.

447. On 9 November 2016, the Greenlandic press published an article quoting statements made by former Minister Kirkegaard.[599] In this article, former Minister Kirkegaard was quoted as saying:

> "*The mine for the extraction of uranium and rare earths at Kuannersuit will become a reality if they meet the environmental and safety requirements.*"[600]

448. Mr Kirkegaard pointed out that:

> "*in the applicable guidelines there is a legal requirement of to obtain a permit if you meet the requirements. Admittedly, this legal requirement does not apply to uranium exactly. But since that exception was added, the zero tolerance for uranium has been lifted.*"

449. Mr Kirkegaard concluded by stating: "*I estimate that the process is so far advanced that GME now actually has a legal requirement to obtain a permit*". In relation to this public statement, Dr Mair testifies: "*Mr Kirkegaard's opinion that we had reached a point where we had a legal claim to an exploitation licence, including for uranium, was consistent with my understanding of our situation*".[601]

450. This article confirmed that the Government was committed to processing GM's application according to the legislation and guidelines (as was and is its legal duty). In particular: (i) Premier Kielsen had made it clear that ongoing applications would be processed in accordance with legislation and guidelines; (ii) Mr Kirkegaard stated that

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597 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 506-507.

598 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 506-518.

599 W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464)**.

600 Former Minister Kirkegaard also noted that it was independent experts which assessed whether there was a risk to the environment, and this formed the basis of the recommendation to Naalakkersuisut regarding the grant of a licence. He also stated: "*GME must of course meet all requirements regarding the environment, safety and social sustainability. But if they do, they have every chance of getting an extraction permit*".

601 First Witness Statement of J. Mair, at **(CWS-3)**, para. 510.

Minister Múte Egede was "*forced to follow the legislation, and cannot simply make a political decision when GME comes with its application*"; and (iii) Minister Egede stated: "*we have a set of rules that we have to follow, and we have to ensure that they are followed*".

451. While Minister Múte Egede had indicated that he would follow the law, a couple of days later, on 11 November 2016, the press reported that IA Party leader, Sara Olsvig, had said that the IA Party supported a zero-tolerance policy, including in relation to GM's exploitation licence application.[602]

452. These statements by Ms Olsvig led to a backlash. It was reported that former Minister Kirkegaard had reiterated that "*GME is very close to having a legal claim on a production license, if otherwise they meet the conditions with regard to environment, health, safety and soon*."[603]

453. Similarly, Premier Kielsen said that "*if GME can live up to the environmental requirements, Greenland is legally obliged to grant permission for extraction*".[604] As Dr Mair testifies: "*Consistent with what was stated by Premier Kielsen, our expectation was that we were legally entitled to an exploitation licence if we met the environmental conditions*".[605]

454. Professor Peter Pagh of the University of Copenhagen also weighed in, opining that the Government was bound to follow the MRA and could not make a decision for political reasons.[606] He was quoted as stating:

> "*It's not a question of a gray area, if you say you don't care what the law says and you've made up your mind in advance, then it's very difficult to claim that you're making a balance* [sic] […]
>
> *The problem is, if you make a decision because you have a bias in advance, then the person who is refused will be able to say, with good reason, that it is not an expression of legal administration.*
>
> *It is an expression of abuse of power, because the result has simply been decided in advance*".

455. Following this backlash, on 16 November 2016, Minister Egede walked back from the comments made by Ms Olsvig, confirming (again) that he would follow the legislative

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602 W. Turnowsky, *Media: IA will do anything to stop GME*, Sermitsiaq, 11 November 2016, at **(C-465E)**.

603 W. Turnowsky, *Media: IA will do anything to stop GME*, Sermitsiaq, 11 November 2016, at **(C-465E)**.

604 J. Lyberth, *Law professor Political refusal will be a misuse of power*, KNR, 14 November 2016, at **(C-466E)**

605 First Witness Statement of J. Mair, at **(CWS-3)**, para. 516.

606 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 514-516; J. Lyberth, *Law professor Political refusal will be a misuse of power*, KNR, 14 November 2016, at **(C-466E)**.

process, and evading questions as to whether it would be possible to prevent the Kvanefjeld Project from going ahead.[607]

456. Prompted by the debate in the press about GM's licence application, on 25 November 2016, Minister Múte Egede was asked a question in Parliament whether he agreed with former Minister Evaldsen's comments on 13 May 2016 about Addendum No. 1.[608] As set out in paragraph 430 above, Minister Evaldsen had previously advised that Naalakkersuisut would not be liable to GM if, on the basis of a referendum on radioactive elements, it rejected "*an application for notification of authorization for the utilization of radioactive elements*." Minister Múte Egede responded that Minister Evaldsen's comments were correct. He also stated: "*When Naalakkersuisut decides on the granting of an exploitation permit, Naalakkersuisut attaches importance to the permit conditions*" and that the "*handling of cases and decisions in general must be based on objective administrative criteria and in accordance with the criteria prescribed by law*".

457. At the same time as these public statements were being made, Dr Mair met with Minister Vittus Qujaukitsoq and Mr Nielsen. They advised him that, while there had been a change in the coalition, "*the Government remained supportive of the Project, and it was 'business as usual'*".[609]

458. These comments by Greenlandic politicians – including politicians with direct involvement in the Project and knowledge of GM's Exploration Licence – are highly significant in that they prove that the Government was aware of GM's rights and legitimate expectations vis-à-vis the Project. In summary:

(a) Senior Government representatives confirmed that they were legally obliged to process GM's exploitation licence application according to the terms of the MRA and GM's Exploration Licence. This was expressly stated by Premier Kielsen,[610] Minister Vittus Qujaukitsoq,[611] former Minister Kirkegaard,[612] and Minister Múte Egede (the current Premier of Greenland).[613]

(b) Senior Government representatives stated that if GM met all the conditions of its Exploration Licence it would have a legal right to an exploitation licence for

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607 First Witness Statement of J. Mair, at **(CWS-3)**, para. 517; W. Turnowsky, *Múte vague on political no to GME*, Sermitsiaq, 16 November 2016, at **(C-467E)**.

608 §37 Parliamentary Questionnaire No. 262/2016, 25 November 2016, at **(C-468E)**.

609 First Witness Statement of J. Mair, at **(CWS-3)**, para. 518.

610 W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

611 §37 Parliamentary Questionnaire No. 53/2016, 26 February 2016, at **(C-445E)**.

612 W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

613 W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**; W. Turnowsky, *Múte vague on political no to GME*, Sermitsiaq, 16 November 2016, at **(C-467E)**; §37 Parliamentary Questionnaire No. 262/2016, 25 November 2016, at **(C-468E)**.

the Kvanefjeld Project. This was expressly confirmed by Premier Kielsen,[614] Minister Vittus Qujaukitsoq,[615] and former Minister Kirkegaard.[616]

(c) Senior Government representatives indicated that if the Government rejected GM's application to exploit uranium, it would violate GM's legitimate expectations. See, for example, the statements of Minister Vittus Qujaukitsoq (who stated that, if the Government rejected GM's application to exploit uranium, it would "*appear as an untrustworthy cooperation partner*"[617]) and the Democrats (who stated that, if the Government reversed its decision to support uranium mining it would violate the trust of investors[618]). Indeed, even Mr Aqqaluaq Egede of the IA Party acknowledged that the door was "*wide open*" for GM to mine uranium at Kvanefjeld.[619]

(d) The IA Party and Mr Aqqaluaq Egede expressly acknowledged that, if the Government passed legislation to block the Kvanefjeld Project, it may be liable to compensate GM for "*broken assumptions*"[620] and "*a loss of rights*".[621] This view was shared by the Democrats[622] and Professor Peter Pagh of the University of Copenhagen.[623]

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614 J. Lyberth, *Law professor Political refusal will be a misuse of power*, KNR, 14 November 2016, at **(C-466E)**

615 *Naalakkersuisut's response to referendum proposal on mining of up to 0.05% radioactive materials*, Minister for Business, Labour, Trade and Foreign Affairs, 20 April 2016, at **(C-214E)**.

616 W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

617 §37 Parliamentary Questionnaire No. 53/2016, 26 February 2016, at **(C-445E)**.

618 See *Democrats' response to referendum proposal on mining and export of uranium (FM 2016/97)*, J. Hansen, 1 April 2016, at **(C-448E)**; *Democrats' response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Hansen (Democrats), 4 October 2016, at **(C-459E)**.

619 *Inuit Ataqatigiit's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, M. B. Egede (IA), 1 October 2016, at **(C-458E)**.

620 *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**, "*Proposal for Inatsisartut decision that Naalakkersuisut puts the question of whether uranium or other radioactive minerals should be mined and exported, be it as a by-product or as the main product, to a referendum and that an impartial information process be initiated so that the population gets increased insight before the referendum in the basis of the question*."

621 *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

622 *Democrats' response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Hansen (Democrats), 4 October 2016, at **(C-459E)**.

623 H. Nørrelund Sørensen, *URAN The self-governing government risks a compensation case in the case of a uranium deal*, KNR, 28 April 2016, at **(C-449E)**. Professor Pagh was quoted as stating: "*If the self-government is to avoid a compensation case, there must therefore be other weighty reasons than just a sudden, political no to uranium to stop the uranium adventure – for example, that the company does not meet the Minerals Act's requirements for extraction*". See also N. O. Qvist, *Can GME claim huge damages?*, Sermitsiaq, 27 April 2016, at **(C-450E)**.

459. These contemporaneous statements by Greenlandic Government representatives in 2016 are clearly at odds with the case the Government now presents, which is that GM had no rights or expectations *at all*.

460. It also bears emphasising that, throughout this period, the IA Party made repeated attempts to stop the Kvanefjeld Project specifically. Its *modus operandi* was to propose arbitrary pieces of legislation that would necessarily prevent the Project from proceeding. This is exactly what the IA Party has now sought to achieve with Act No. 20. Considering the events in 2016, there can be no question that the IA Party's objective in passing Act No. 20 was to block the Kvanefjeld Project. It is also clear that the IA Party (and Mr Aqqaluaq Egede in particular) were motivated by ideology (including an opposition to GM as foreign investors), rather than science.

461. As discussed above, in 2016, the IA Party's attempts to block the Kvanefjeld Project attracted harsh criticism from the Greenlandic Parliament. With respect to its proposal for a buffer zone, the Siumut Party said this was "*not scientifically justified*",[624] Minister Randi Evaldsen said it was "*arbitrary*" and accused Mr Aqqaluaq Egede of spreading myths about mining,[625] Partii Naleraq said it was not rational,[626] and the Democrats criticised Mr Aqqaluaq Egede for forcing another debate on this issue even after his previous proposals had been rejected, and highlighted the concerns raised by Mr Aqqaluaq Egede himself as to the possible compensation payable to GM for stopping the Project.[627] Ultimately, Act No. 20 proved to be equally arbitrary, irrational and scientifically unjustifiable.

462. Not only was the IA Party criticised for the substance of its proposals, but it was criticised for changing its political position. As former Minister Kirkegaard pointed out, it was "*nonsense*" for the IA Party to oppose the Kvanefjeld Project when it had been the IA Party Government that had induced GM to continue investing in the Project in 2011.[628] This remains true today. The IA Party Government is seeking to ignore many

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624 *Siumut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Kirkegaard (Siumut), 3 October 2016, at **(C-460E)**.

625 *Naalakkersuisut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, Minister for Finance and Raw Materials, 16 September 2016, at **(C-457)**; *Naalakkersuisut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, Minister for Finance and Raw Materials, 16 September 2016, at **(C-457E)**.

626 *Partii Naleraq's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, H. Enoksen (Partii Naleraq), 3 October 2016, at **(C-461)**; *Partii Naleraq's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, H. Enoksen (Partii Naleraq), 3 October 2016, at **(C-461E)**.

627 *Democrats' response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, J. Hansen (Democrats), 4 October 2016, at **(C-459E)**.

628 The Editorial Staff, *Why did the IAs not just stop the project*, Sermitsiaq, 13 May 2016, at **(C-452E)**. As mentioned above, Jens B. Frederiksen, the former head of the Democratic Party when it had been in coalition with the IA Party, confirmed that it was the IA Party Government that had opened the door to uranium production in 2011. See First Witness Statement of J. Mair, at **(CWS-3)**, para. 459.

years of actions and representations by current and former members of the IA Party in support of uranium mining, the Kvanefjeld Project and the rule of law.

C.41 Continuous Government support for the Kvanefjeld Project (2016 – 2018)

463. By late 2016, the issue of uranium mining was considered settled. It had been exhaustively debated by the Parliament, and both the Danish and Greenlandic Governments had taken significant regulatory steps to enable the exploitation and export of uranium from Kvanefjeld. There was no real question as to whether GM had rights, and whether the Government supported the Project. Nevertheless, it is noteworthy that, during this period, the Government continued to hold GM out as a model investor in Greenland, with a Project that would soon come into fruition. Examples of this supportive conduct include:

(a) In October 2016, the Ministry published its mineral exploration newsletter, which had an entire section on the Kvanefjeld Project.[629] The newsletter noted that the Project was for "*both rare earth elements and uranium*", that the EIA process (discussed below) was "*nearing completion*" and that it was "*expected that GMEL will submit a full exploitation licence application in the near future, which will be followed by a public hearing process*". The newsletter also explained the significant progress made by the Greenlandic and Danish Governments in passing the Enabling Legislation and stated: "*This is a key step that allows GMEL to work toward establishing an off-take agreement for uranium, in close dialogue with the respective governments*." Dr Mair testifies that these statements in an official government publication "*reinforced our expectations that we would be granted a licence to exploit uranium*".[630]

(b) At the PDAC conference in early March 2017, Minister Múte Bourup Egede and Jørgen Hammeken-Holm gave a presentation promoting Greenland as a mining jurisdiction.[631] At their invitation, Dr Mair presented in the session on "*Advanced Projects in Greenland*".[632] On the side of this conference, there was also a meeting between Minister Egede, Mr Hammeken-Holm and selected mining industry representatives, including Dr Mair.[633] Minister Múte Egede told the press that this private meeting was "*a unique chance … to inspire them to think about Greenland as an interesting and attractive opportunity*."[634]

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629 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 519-522; Ministry of Mineral Resources, *Minex Newsletter* (49), October 2016, at **(C-469)**.

630 First Witness Statement of J. Mair, at **(CWS-3)**, para. 522.

631 First Witness Statement of J. Mair, at **(CWS-3)**, para. 553.

632 First Witness Statement of J. Mair, at **(CWS-3)**, para. 554.

633 First Witness Statement of J. Mair, at **(CWS-3)**, para. 555.

634 K. McGwin, *Greenland stumbles in a leading annual mining industry survey*, ArcticToday, 10 March 2017, at **(C-470)**.

(c) Dr Mair continued to present at the Greenland Day event at the annual PDAC conference, including in 2018,[635] 2019,[636] and 2020.[637] The Greenlandic Government published these presentations on its website to promote investment in mining in Greenland (where these presentations are still available). Dr Mair also presented at Greenland Day in Perth in October 2018.[638]

(d) The Government's coalition agreement of May 2018 included support for the Kvanefjeld Project specifically.[639] Following a change of coalition in October 2018, it was reported that "*Siumut and Kim Kielsen are trying to signal investors that they are really committed to their pro-business, pro-mining and pro-uranium platform*".[640]

(e) In August 2018, the Minister of Mineral Resources sent a letter to GM acknowledging "*all the important work that has been done by GME*" and GM's "*consistent efforts and work that has been put in to* [e]*nsure that the environmental and societal impact assessments meets the prober* [sic] *quality standards*".[641] The Minister stated that the Ministry wanted "*to engage in cooperative relations with GME to the fullest extent possible*", including by providing "*the necessary clarity of the timing process and schedules*" and that it would be "*very committed to engage in constructive and hopefully fruitful dialogue on how to cooperate most beneficially*."

C.42 Agreement with Shenghe (September 2016)

464. By 2016, there was no question that GM had rights to the Project and that it had the support of the Government. This was clear to everyone involved, including the most sophisticated investors in the international rare earths industry.

465. As explained by GM's Chief Financial Officer, Mr Miles Guy:

> "*The most significant progress GM made in securing financing for the Project was through its dealings with Shenghe Resources Holding Co., Ltd (Shenghe). Shenghe is a large, global rare earths resources company which is involved in the mining, smelting, separation and processing of rare earths elements.*

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635 First Witness Statement of J. Mair, at **(CWS-3)**, para. 621.

636 First Witness Statement of J. Mair, at **(CWS-3)**, para. 702.

637 First Witness Statement of J. Mair, at **(CWS-3)**, para. 816.

638 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 658-659.

639 K. McGwin, *As Greenland nears uranium decision, opponents fear public won't be heard*, ArcticToday, 16 May 2018, at **(C-471)**.

640 Reuters Staff, *Greenland PM Kielsen forms minority government to end political crisis*, Reuters, 2 October 2018, at **(C-472)**.

641 Email from N. V. Sembach (Nanoq) to J. Mair (GM), subject: "*Letter from Minister of Mineral Resources (Nanoq - ID nr.: 8456841)*", 9 August 2018, at **(C-473)**; Letter from V. Qujaukitsoq (Nanoq) to J. Mair (GM), 9 August 2018, at **(C-474)**.

Shenghe is a publicly-listed company (listed on the Shanghai Stock Exchange) and is not a Chinese state-owned enterprise. Shenghe's market capitalisation is around AU$5 billion, and so Shenghe undoubtedly had the resources and capability to fund the Project, either itself using its own balance sheet, in a syndicate with other financiers or by other means of guaranteeing funding for GM to develop to Project to production."[642]

466. In late 2016, Shenghe acquired a shareholding in GML.[643] Shenghe's current shareholding in GML is 9.3%.[644] Pursuant to GML's agreement with Shenghe, any further investment by Shenghe or material developments would require both shareholder and regulatory approval (i.e., approval from both the ASX and the Greenlandic regulators).[645] Shenghe has no option to acquire a greater stake in GML and no right to offtake from the Project.[646]

467. Shenghe has a track record of partnering with Western companies.[647] For example, it has a 10% shareholding in the Mountain Pass mine, which is the only rare earths mine in the USA.

468. GM was conscious that the Danish and Greenlandic Governments would want to understand the agreement that had been reached with Shenghe. For example, in 2013, Dr Mair had met with representatives of both Governments and discussed potential Chinese investment in the Project. Both Governments had recognised that China had the bulk of the global processing capacity and said that they would support Chinese involvement, provided that not all of the offtake from the Project went to China.[648] Accordingly, prior to entering into the agreement with Shenghe, Mr Eggins of GM briefed the Danish Foreign Ministry regarding the acquisition.[649] Before the acquisition concluded, the Greenlandic authorities met with the Danish Foreign Ministry and the Intelligence Service to discuss the arrangement.[650]

469. Dr Mair explains that Shenghe has been an invaluable partner for GM in the Project; as one of the world's leading rare earths companies and one of the only companies with a

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642 First Witness Statement of M. Guy, at **(CWS-5)**, para. 14.

643 Greenland Minerals Ltd ASX announcement titled "September 2016 Quarterly Report", 31 October 2016, at **(C-475)**; Greenland Minerals Ltd ASX Announcement titled "December 2016 Quarterly Report", 31 January 2017, at **(C-476)**.

644 First Witness Statement of M. Guy, at **(CWS-5)**, para. 21.

645 First Witness Statement of J. Mair, at **(CWS-3)**, para. 491. This has been confirmed by the Greenland Government's lawyers.

646 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 493-494.

647 First Witness Statement of J. Mair, at **(CWS-3)**, para. 488.

648 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 308-309; Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**, p. 3.

649 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 59; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: update*", 13 October 2016, at **(C-477)**.

650 Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: update*", 13 October 2016, at **(C-477)**.

primary focus on the rare earths sector, it has delivered a depth of scientific and technological expertise to improve the ore treatment process for the Kvanefjeld Project.[651]

470. There has also been considerable cooperation between Shenghe and the Danish and Greenlandic authorities. In early November 2017, Shenghe representatives met with representatives of the Greenlandic Ministry of Mineral Resources to discuss the Project.[652] In early December 2019, Shenghe's Chairman presented the keynote speech at the Confederation of Danish Industry's annual Greenland Conference in Copenhagen.[653] On the side of this conference, Shenghe representatives and GM representatives, including Dr Mair, had meetings with Minister of Mineral Resources Vittus Qujaukitsoq, Mr Hammeken-Holm, representatives of the Danish Ministry of Foreign Affairs and the Confederation of Danish Industry. Dr Mair testifies: "*At these meetings, we received strong support from the Danish and Greenlandic Government representatives for the Project.*"[654]

C.43 DCE Report on Environmental Issues (October 2016)

471. As discussed above, radiation risk management was one of the specific areas covered by the law-making process that the Greenlandic and Danish Governments embarked upon following the abolition of the ZTP. It was determined that Greenlandic regulations should follow international best practice, being radiation dosage limits.[655] The two governments proceeded to establish this regulatory framework, with Greenland passing the Radiation Protection Act and ratifying the International Radiation Conventions, and the two governments entering into the Uranium Export Agreements, passing legislation on uranium exports, and thereafter continuing to develop a regulatory framework.

472. The development of this regulatory framework was informed by science and international best practice. As part of this process, in late 2016 or early 2017, Denmark's DCE and Greenland's GINR released a report titled: "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*" dated October 2016 (**DCE Report on Environmental Issues**).[656] This report concluded that the experience of jurisdictions including Canada, Australia and the United States demonstrated that uranium could be

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651 See, for example, First Witness Statement of J. Mair, at **(CWS-3)**, paras. 485, 487, 495.

652 First Witness Statement of J. Mair, at **(CWS-3)**, para. 610.

653 First Witness Statement of J. Mair, at **(CWS-3)**, para. 802.

654 First Witness Statement of J. Mair, at **(CWS-3)**, para. 803.

655 See UWG Report, at **(C-231E)**, Section 9.5.

656 First Witness Statement of J. Mair, at **(CWS-3)**, para. 549; DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**.

mined "*without major environmental problems*" and that most countries had "*developed their regulations and guidelines from IAEA and ICRP recommendations*".[657]

473. The DCE Report on Environmental Issues was a clear statement of how the Greenlandic and Danish authorities would regulate the exploitation of radioactive materials in Greenland. It provided that radiation protection should be regulated through dosage limits and that the annual radiation dosage for members of the public would be limited to 1 mSv/year, and for workers, up to 20 mSv/year (100 mSv over a five-year period).[658] These thresholds were based on ICRP limits.[659]

474. The DCE Report on Environmental Issues emphasised that "*radiation sources and pathways are site and project specific*" and made it clear that licence applicants needed to perform radiation monitoring, modelling and assessments as part of the EIA process, in order to demonstrate to the authorities that radiation dosage limits would be complied with.[660] During operations, the licence holder would need to monitor radiation sources to "*provide confidence that mitigation measures are effective, that health and environmental effects remain acceptably low and that contaminants in the environment do not exceed established threshold levels*".[661]

475. This report confirmed GM's legitimate expectations as to how the environmental issues related to uranium mining would be managed. Dr Mair testifies:

> "*This report was consistent with my understanding of international best practice, and what the Greenlandic and Danish authorities had already said GM needed to do for the Kvanefjeld Project to be approved from a radiation management perspective. This is the approach that we had adopted in our EIA and radiological studies. This report therefore confirmed what we were already doing.*"[662]

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657 DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, pp. 19, 30.

658 DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, pp. 20, 29.

659 ICRP, *The 2007 Recommendations of the International Commission on Radiological Protection*, ICRP Publication 103, Annals of the ICRP, Vol. 37, No. 2-4 2007, at **(C-229)**, pp. 98-99.

660 DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, p. 175. The report explained that, at the licensing stage, an applicant would need to perform a radiation assessment of all sources at the mine site, as well as appropriate mitigations, to demonstrate compliance with dosage limits. A radiation management plan, in accordance with ICRP principles, "*should be prepared by the operator before all mine phases and submitted to the appropriate authority for approval*" (p. 71). This plan would include radiation dosage modelling and management plans for workers and members of the public (p. 79). For example, air dispersion modelling would be used "*to demonstrate that the radiation protection requirements are being met and will be met in the future*" (p. 52).

661 DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, p. 49.

662 First Witness Statement of J. Mair, at **(CWS-3)**, para. 551.

476. Further, Mr Eggins observes that the DCE Report on Environmental Issues "*reflected international best practices for environment and radiation protection*".[663] He noted that "*there was nothing concerning arising out of the DCE Report on Environmental Issues as the draft EIA prepared by GM at the time was already prepared in accordance with international best practice*".

477. GM issued an announcement about the release of the DCE Report on Environmental Issues,[664] emphasising that the DCE had concluded that uranium mining could be managed and regulated safely:

> "*Independent report by the* [DCE] *has concluded that it is possible to operate modern uranium mines without major environmental issues; a significant positive indicator for the Kvanefjeld Project*".

C.44 Denmark grants GM permission to export uranium ore (May – June 2017)

478. One of Shenghe's major contributions to the Project was the optimisation of GM's processing operations. GM and Shenghe set up a technical committee in early 2017.[665] As part of this optimisation work, in May 2017, GM submitted an application to MILT to export 250 kg of ore to China for test work. MILT forwarded this application to the Danish Business Authority and the Danish Emergency Management Agency.[666]

479. On 19 May 2017, the Danish Business Authority advised GM (via MILT) that there was no executive order in place in Denmark for the dual-use export of uranium ore, but that the explanatory notes to the Danish legislation passed as part of the Enabling Legislation stated that these regulations would be based on regulations in the USA, Canada, Australia and the EU.[667]

480. In the USA, Canada, Australia and the EU, ore is only classified as "uranium ore" for the purposes of export controls when the uranium concentration is above a certain threshold. As set out in the Danish Business Authority's letter, in the USA, Canada and Australia this threshold is 500 ppm, and in the EU this threshold is 1,000 ppm. Accordingly, the Danish Business Authority asked GM to advise of the average grade of uranium and thorium in the ore to be exported.

481. GM responded on 23 May 2017, advising of the uranium and thorium levels in the ore sample, and stating: "*This is comfortably below the transport limit of 10 Bq/g for*

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663 First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 60-63.

664 First Witness Statement of J. Mair, at **(CWS-3)**, para. 550; Greenland Minerals Ltd ASX Announcement titled "December 2016 Quarterly Report", 31 January 2017, at **(C-476)**.

665 First Witness Statement of J. Mair, at **(CWS-3)**, para. 577.

666 First Witness Statement of J. Mair, at **(CWS-3)**, para. 578.

667 See Email from M. Barfod (Nanoq) to J. Mair (GM); J. Kyed (GMAS), subject: "*concerning export of 250 kg of lujavrit/syenit*", 20 May 2017, at **(C-478)**; Letter from B. S. Hansen to M. Barfod (Nanoq), subject: "*SV: Vedrørende eksport af ca. 250 kg. lujavrit/Syenit*", 19 May 2017, at **(C-479)**.

naturally occurring ores and materials as outlined by the IAEA. Therefore the material can be transported as general cargo (exempt from regulation) as the radiation emitted is insignificant."[668] This is correct – the radiation emitted from uranium ore at Kvanefjeld is "*insignificant*". Indeed, the uranium content of ore at Kvanefjeld is so low that the ore is not subject to the regulations governing the transport of radioactive materials.[669]

482. The Danish Business Authority responded by letter, attaching a statement from the Danish Emergency Management Agency, and confirming that GM would not require an export licence to ship the ore to China.[670] MILT subsequently confirmed that GM had provided all of the necessary documents and information, and that the Danish and Greenlandic authorities were working on establishing a standard application procedure for exporting radioactive materials out of Greenland.[671] MILT subsequently sent GM a standard form for the export of radioactive materials, which was based on the information GM had provided to the Danish Business Authority and Danish Emergency Management Agency.[672]

483. As Dr Mair testifies:

> "*This confirmed that GM would be permitted to export ore containing uranium and, provided we filled out the correct forms, would be permitted to do so when the Project went into production. The fact that the Danish and Greenlandic authorities developed and were developing systems to facilitate the export of radioactive elements reinforced our existing expectations that we would be permitted to export uranium from Greenland.*"[673]

C.45 Denmark Executive Order for Safeguards (August 2017 – July 2019)

484. As discussed above, in June 2016, the Danish Parliament passed legislation pursuant to which it was responsible for ensuring that uranium exports from Greenland complied

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668 First Witness Statement of J. Mair, at **(CWS-3)**, para. 583; Email from J. Mair (GM) to M. Barfod (Nanoq), subject: "*Sample Information details*", 23 May 2017, at **(C-480)**; Memorandum from J. Mair (GM), subject: "*Concerning Export of 250kg of lujavrit/Syenit*", 23 May 2017, at **(C-481)**.

669 First Witness Statement of J. Mair, at **(CWS-3)**, para. 583.

670 First Witness Statement of J. Mair, at **(CWS-3)**, para. 584; Email from M. Barfod (Nanoq) to J. Mair (GM), subject: "*SV: Concerning export of 250 kg of lujavrit/syenit*", 1 June 2017, at **(C-482)**, p. 2, email dated 31 May 2017; Letter from M. Barfod (Nanoq) to GM A/S, subject: "*Concerning application for exporting 250kg lujavrit/Syenit from Greenland to China*", 30 May 2017, at **(C-483)**; Letter from L. Aggersbjerg (Beredskabs Styrelsen) to Nanoq, subject: "*Vedr.: Eksport af ca. 250 kg. lujavrit/syenit fra Grønland til Kina*", 24 May 2017, at **(C-484)**.

671 First Witness Statement of J. Mair, at **(CWS-3)**, para. 585; Email from M. Barfod (Nanoq) to J. Mair (GM), subject: "*SV: Concerning export of 250 kg of lujavrit/syenit*", 1 June 2017, at **(C-482)**.

672 First Witness Statement of J. Mair, at **(CWS-3)**, para. 586; Email from M. Barfod (Nanoq) to J. Kyed (GM) et al., subject: "*Applicationf form for future reference*", 1 June 2017, at **(C-485)**; Document titled "*Application form for export licence*", by Government of Greenland Ministry of Industry, Labour, Trade and Energy, 1 June 2017, at **(C-486)**.

673 First Witness Statement of J. Mair, at **(CWS-3)**, para. 587.

with international obligations relating to nuclear safeguards. As part of this, the Danish Government prepared an executive order for safeguards, which addressed the potential risks involved in transporting radioactive materials (e.g., the risks of storing radioactive materials at a wharf).

485. As with the previous elements of the Enabling Legislation, GM was expressly consulted on this executive order.

486. The draft executive order was drafted by DEMA and was provided to GM for comments on 15 August 2017.[674] Mr Eggins reviewed the draft executive order and reverted on behalf of GM with no further comments.[675]

487. In late March 2018, Mr Eggins met with several Danish Government officials, including a senior adviser to the Danish Ministry of Foreign Affairs, to discuss the draft executive order.[676] At this meeting, they also discussed the process by which GM would apply to the Danish Government for export permits to transport uranium. The Danish Government wanted to understand how the executive order would impact the Kvanefjeld Project specifically.

488. In these discussions, there was a clear expectation on both sides that, before long, GM would be using this system and applying to the Danish Government to export uranium from Kvanefjeld. Mr Eggins testifies that the engagement between GM and the two governments: "*reinforced my expectation that GM would ultimately be granted an exploitation licence in respect of the Project (once it had properly submitted its application for an exploitation licence)*".[677]

489. The Danish Government ultimately issued the executive order on safeguards on 10 July 2019.[678]

C.46 Denmark Executive Order to Protect Workers Against Ionising Radiation (October 2017 – July 2019)

490. As part of its efforts to ensure that the Kvanefjeld Project could proceed in accordance with international best practice, the Danish Working Environment Authority developed

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674 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 64; Email from M. Barfod (Nanoq) to J. Mair (GM), J. Kyed (GM/AS), J. Eggins (GM), subject: "*Comments to Draft for the Executive Order for Safeguards*", 15 August 2017, at **(C-487)**; Draft Executive Order on the obligation to notify, accounting system, etc. in connection with the peaceful use of nuclear material in Greenland (the "Safety Control Order"), 4 July 2017, at **(C-488E)**.

675 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 65.

676 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 69; Email from J. Eggins (GM) to J. Mair (GM), subject: "*Fwd: SV: Possible Visit*", 2 March 2018, at **(C-489)**

677 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 77.

678 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 76; Executive Order for Security Control Obligations for The Peaceful Use of Nuclear Material, etc. in Greenland, 10 July 2019, at **(CL-169E)**.

an executive order to be issued by Denmark to regulate the protection of workers against ionising radiation in Greenland.

491. As usual, GM was consulted about this element of the regulatory framework. On 12 October 2017, MILT sent GM the draft executive order.[679] MILT explained that this would come into force the following year, and that GM should take it into account in preparing its impact assessments. The draft executive order set a threshold for the radiation exposure of workers of 20 mSv/year.[680] This was consistent with international best practice as set by the ICRP and the International Labour Organisation. Dr Mair explains that this draft executive order confirmed GM's existing understanding that Greenland would implement international standards for protecting workers against radiation.[681]

492. MILT subsequently advised GM that Arcadis's radiological assessments as to the radiation exposure of workers had been forwarded to the Danish Working Environment Authority for review.[682] Notably, Dr Chambers of Arcadis concluded that the amount of radon released and the radiation dosage experienced by workers from radon release at the Kvanefjeld Project would be very low.[683]

493. The final executive order to protect workers against ionising radiation was issued by the Danish Working Environment Authority on 1 July 2022.[684] This provides that the maximum radiation exposure for workers is 20 mSv/year (in line with international best practice).[685]

C.47 Maritime Safety Study (2016 – 2017)

494. As mentioned above, because of the scope of the Kvanefjeld Project and the fact that it would involve the construction and operation of a port and shipping, the authorities

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679 First Witness Statement of J. Mair, at **(CWS-3)**, para. 600; Email from M. Barfod (Nanoq) to J. Mair (GM), subject: "*Letter from the MILTE - 11102017*", 12 October 2017, at **(C-490)**; Letter from MILTE to J. Mair (GML), subject: "*Chapter concerning occupation health and safety in the Draft for the SIA Report*", 11 October 2017, at **(C-491)**; Draft Executive Order on Ionising Radiation and Working Environment in Greenland, 18 November 2015, at **(C-492E)**.

680 Draft Executive Order on Ionising Radiation and Working Environment in Greenland, 18 November 2015, at **(C-492)**, p. 8, Table 1.

681 First Witness Statement of J. Mair, at **(CWS-3)**, para. 601.

682 First Witness Statement of J. Mair, at **(CWS-3)**, para. 602.

683 See Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 36, 44.

684 See Executive Order No. 1099 on Ionising Radiation and Working Environment in Greenland, 1 July 2022, at **(CL-170E)**.

685 See Executive Order No. 1099 on Ionising Radiation and Working Environment in Greenland, 1 July 2022, at **(CL-170E)**, Annex 1.

required GM to prepare a Maritime Safety Study (**MSS**) (formally known as a Navigational Safety Investigation Study).

495. This was not a requirement of the MRA. Rather, the Danish Maritime Authority (**DMA**) had issued guidelines pursuant to the Danish Act on Safety at Sea that required that applicants for exploitation licences in Greenland carry out navigational safety investigations.[686] The BMP agreed to these guidelines.

496. GM's MSS was prepared by expert Danish shipping consultants Blue Water Shipping in accordance with the DMA guidelines.

497. The MSS process is described in the witness statement of Dr Mair.[687] In summary, after GM submitted its draft MSS to the MLSA, the DMA provided comments in February 2016. GM incorporated these comments into its MSS. GM then asked the MLSA whether the authorities had any further comments so GM could finalise its MSS and update its shareholders on this process. The MLSA did not respond to this email. Accordingly, GM submitted a revised MSS in January 2017, to be provided to the DMA. The DMA provided comments in March 2017.

498. On 30 August 2017, GM submitted this final MSS to the DMA.[688]

499. In October 2017, the MLSA informed GM that the DMA had confirmed that the MSS was approved for public consultations.[689] This approval marked an important step in the licensing process. GM issued an ASX announcement which stated that the MSS had been "*a key focus for GM through 2017 along with technical work conducted with strategic partner Shenghe to optimise and align Kvanefjeld with downstream processing*".[690]

C.48 Exploration Licence extension (2018)

500. There was a Greenlandic general election in April 2018.[691] Dr Mair has explained that uranium mining was not an issue in this election as "[t]*he question of uranium mining was considered settled*".[692] The Siumut Party again won the most seats in the Parliament,

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686 Danish Maritime Authority Guidelines, 10 January 2011, at **(C-493)**.

687 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 603-609; See also First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 29.

688 Navigational Safety Investigation Study (Greenlandic translation), Greenland Minerals Ltd, 30 August 2017, at **(C-494)**; Navigational Safety Investigation Study, Greenland Minerals Ltd, 30 August 2017, at **(C-495)**; Navigational Safety Investigation Study, Greenland Minerals Ltd, 30 August 2017, at **(C-495E)**.

689 Email from C. H. Ovesen (Nanoq) to D. Krebs (GM), subject: "*Sv: Version 4 of the Maritime Safety Study (Nanoq - ID nr.: 6284937)*", 2 October 2017, at **(C-496)**.

690 Greenland Minerals Ltd ASX Announcement titled "First of Three Key Studies Approved: Kvanefjeld - Maritime Safety Study", 11 October 2017, at **(C-44)**.

691 First Witness Statement of J. Mair, at **(CWS-3)**, para. 629.

692 First Witness Statement of J. Mair, at **(CWS-3)**, para. 624.

and Premier Kielsen formed a coalition. The coalition agreement included support for the Project.[693]

501. In late 2017, GM applied to extend its Exploration Licence.[694] However, due to the election, this process was delayed. Dr Mair sent a letter to the Deputy Ministers of the three Ministries involved in the processing of GM's licence (Mr Hammeken-Holm, Mr Nielsen and Mr Søren Hald Møller), stressing the importance that foreign investors place on having secure mining rights.[695] This letter stated:

> "*We continue to spend considerable funds on detailed and thorough investigations into establishing a high-quality mining project at Kvanefjeld and continue to pay significant invoices to the Government of Greenland for the review of draft exploitation license application documents. These rigorous studies are funded by shareholders that include sophisticated resource industry funds, and a leading international rare earth company.*
>
> *In consideration of past and future expenditure on license EL 2010/02, it is important for the license to be in good standing, and the renewal process to be completed, in accordance with standard process. Secure tenure is a critically important aspect of establishing a credible reputation for foreign investment and the development of quality mining operations. As part of the audit of any public company operating in the exploration and mining sector, security of tenure of the area where funds are being expended is key point.*" (emphasis added)

502. As Dr Mair testifies:

> "*This letter reflected my expectation that the Government would follow established regulatory procedures in processing our licence and would respect the investment we had made. It also reflected my understanding (and the understanding of our auditors) that we had security of tenure, which (critically) gave us a right to exploit the area where our funds were being expended.*"[696]

503. The Ministry responded to GM on 26 March 2018, advising that the renewal had been delayed because the extension was considered a "*political decision*" to be decided by the incoming administration, and that in the interim, the status of the licence would remain the same.[697]

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693 K. McGwin, *As Greenland nears uranium decision, opponents fear public won't be heard*, ArcticToday, 16 May 2018, at **(C-471)**.

694 First Witness Statement of J. Mair, at **(CWS-3)**, para. 633.

695 Letter from J. Mair (GM) to S. H. Møller (Nanoq), J. T. Hammeken-Holm (Nanoq) and J. S. Nielsen (Nanoq), subject: "*RE: Renewal of Exploration License 2010/02*", 20 March 2018, at **(C-497)**.

696 First Witness Statement of J. Mair, at **(CWS-3)**, para. 637.

697 First Witness Statement of J. Mair, at **(CWS-3)**. 638; Letter from J. T. Hammeken-Holm (Nanoq) to Deloitte (Auditor to GM), subject: "*Information regarding postponement of decisions during the election period*", 26 March 2018, at **(C-498)**.

504. In July 2018, GM's Exploration Licence was renewed.[698] The renewal therefore reflected a conscious "*political decision*" to keep GM in Greenland, working and spending shareholder money on the Project. At this time, the authorities were well aware of the importance that GM and its auditors placed on the strength of GM's legal rights over the Kvanefjeld Project. These legal rights were secured by its Exploration Licence, which critically gave GM a legal right to transition to an exploitation licence. GM relied on this renewal in continuing to invest in the development of the Project.

C.49 DCE Recommendations for EIA Studies (April 2018)

505. In April 2018, EAMRA sent GM a DCE report titled "*Recommendations for establishing EIA guidelines for geochemical test work required for mining projects in Greenland*", dated 18 December 2017 (**DCE Recommendations for EIA Studies**).[699] In this report, the DCE set out its recommendations for geochemical test work for materials containing radioactive minerals. It advised that, when a deposit has more than 81 ppm of uranium, it would be necessary to perform radon release tests to assess the radiological impact, in accordance with the IAEA recommendations.[700]

506. The DCE Recommendations for EIA Studies were consistent with the DCE's previous reports in confirming that radiological risks would be regulated by analysing radiation pathways so as to determine the overall radiation dosage.[701] Dr Mair testifies:

> "*The report recommended that uranium concentration (in ppm) should be used as an indicator of whether radiological testing must be conducted. The ppm, therefore, essentially functioned as a threshold for determining whether further testing was required. There was no suggestion in this report (or other reports) that the uranium concentration in ore (in ppm) would (or could) be used to calculate radiological impact. This report confirmed our existing understanding of the radiological work we were required to do in our EIA studies. Our main advisers, Arcadis, were fully versed in best-practice and had been performing radon release to assess the radiological impact of the Project.*"[702]

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698 First Witness Statement of J. Mair, at **(CWS-3)**, para. 641; "*Addendum no. 4 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy A/S for the area Kuannersuit near in South Greenland*" dated June 2018 and executed 31 July 2018, at **(C-11)**.

699 First Witness Statement of J. Mair, at **(CWS-3)**, para. 614; Email from K. Berantzino-Folnæs (EAMRA) to EAMRA, subject: "*EAMRA consultation request, environmental geochemical test work (Nanoq - ID nr.: 7638325)*", 7 April 2017, at **(C-499)**; DCE Report titled "*Recommendations for establishing EIA guidelines for geochemical test work required for mining projects in Greenland*", DCE and GINR, 18 December 2017, at **(C-500)**

700 First Witness Statement of J. Mair, at **(CWS-3)**, para. 614; DCE Report titled "*Recommendations for establishing EIA guidelines for geochemical test work required for mining projects in Greenland*", DCE and GINR, 18 December 2017, at **(C-500)**, pp. 14, 25-26, 33. The report recommended following the IAEA recommendations "*for measuring radon emanation and diffusion coefficients, radon concentrations and exhalation rates for materials*".

701 First Witness Statement of J. Mair, at **(CWS-3)**, para. 615.

702 First Witness Statement of J. Mair, at **(CWS-3)**, para. 615.

507. The Arcadis team performed a study on radon releases as part of its radiological assessment of the Kvanefjeld Project.[703]

C.50 DCE Report for IAEA Waste Convention and IAEA visit (May – September 2018)

508. Following Greenland's ratification of the IAEA Waste Convention in December 2016, in late May 2018, representatives of the Greenlandic and Danish Governments attended meetings at IAEA headquarters in Vienna. The DCE produced a report for the purpose of these meetings, which was provided to EAMRA, the Ministry of Mineral Resources, the MLSA, MILT and the Ministry of Nature and Environment (**DCE Report for IAEA Waste Convention**).[704]

509. The DCE Report for IAEA Waste Convention confirmed Greenland's authority under the Greenlandic Radiation Protection Act to issue executive orders with respect to radioactive waste management. It stated: "*Executive orders issued under the Act will resemble corresponding Danish legislation and will align with international IAEA standards and EU-directives for best practices*".[705] The report further confirmed that the Greenlandic Ministry of Health would issue executive orders with respect to radiation dosage limits in line with "*international standards and practices*", with specific reference to the ICRP standards (which have been adopted by the IAEA).[706]

510. In this connection, the ICRP has recommended that, for the disposal of radioactive waste, where there is likely to be exposure to multiple radiation sources, there should be a dose constraint of 0.3 mSv/year from a single source, to ensure that the total radiation dosage is below 1 mSv/year.[707]

511. As discussed above, the Kvanefjeld Project was the primary driver of the combined Greenlandic and Danish Government effort to establish a regulatory framework for

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[703] Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**.

[704] Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**.

[705] Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**, p. 58.

[706] Page 67 of the report stated that the Greenlandic Ministry of Health would issue executive orders that would "*regulate dose constraints and limits for the exposure to radioactivity for the medical, educational and industry sectors and for the general public. Constraints and limits will resemble corresponding Danish legislation and international standards and practices*". Specifically, the report noted the operational limits and conditions would be formulated in accordance with the Greenlandic Radiation Protection Act and internationally accepted standards such as the ICRP. Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**, Article 24, p. 67.

[707] Document titled "*ICRP Publication 77: Radiological Protection Policy for the Disposal of Radioactive Waste*", by the ICRP, Vol. 27 (1997), at **(C-502)**, p. 22.

radioactive elements. It is therefore unsurprising that the DCE Report for IAEA Waste Convention referred to the Kvanefjeld Project specifically, stating:

> "*During the operational lifetime of facilities at Kvanefjeld the discharge limits are expressed with reference to a dose constraint of 0.3 mSv/y.*
>
> *Operations at Kvanefjeld mining and mill waste management facilities must be carried out in a manner ensuring that radiation exposures and doses to workers, the public and the environment are below the established regulatory dose limits and kept as low as reasonably achievable (ALARA).*"[708]

512. To be clear, this was a statement made by representatives of the Danish Government to the IAEA in an international setting and in its capacity as a member of the IAEA treaty organisation.

513. It is clear from this statement that the two governments expected the Kvanefjeld Project to proceed. It is also clear that, in accordance with the Enabling Legislation, the two governments intended to manage the radiological impacts at the Kvanefjeld Project in accordance with international standards (i.e., radiation dosage limits).

514. This was the regulatory approach that GM legitimately expected would be applied to the Project. Critically, GM's EIA demonstrated that the Project would comply with international standards regarding radiation protection. The Arcadis Radiological Assessment report (submitted as part of GM's EIA) concluded that: "*The doses to all receptors are well below the dose benchmark for members of the public of 1 mSv, as well as below the dose constraint of 0.3 mSv that is considered by some agencies for members of the public*." Further, Arcadis observed that: "*It is also seen that the doses associated with the project are small fractions of those from natural background, which may range up to approximately 10 mSv*".[709]

515. In late August 2018, a few months after the Greenlandic and Danish Government representatives had visited the IAEA headquarters in Vienna, IAEA representatives travelled to Greenland to inspect the Kvanefjeld Project.[710] This visit was at the invitation of the Danish Government, and IAEA inspectors were joined by representatives of GM, the Danish Emergency Management Agency, GEUS and the Greenlandic Government. The visit was the first formal site inspection to the Project by the IAEA for the purpose of verifying compliance with Denmark's nuclear safeguards

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[708] Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**, p. 68.

[709] Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**.

[710] First Witness Statement of J. Mair, at **(CWS-3)**, para. 652.

obligations.[711] Dr Mair explains: "*This visit by the IAEA was an important part of demonstrating the independent oversight process to Greenland*."[712]

C.51 SIA approval (2017 – 2019)

516. As discussed in Section C.34 above, GM submitted its first draft SIA in late 2015. As Dr Mair testifies:

> "*For the SIA, GM engaged with MILT. Compared with EAMRA, our experience working with MILT was generally positive. The officials working at MILT were experienced and understood their role in the process. MILT provided clear feedback on what we needed to do, which facilitated a relatively efficient process.*"[713]

517. In April 2017, GM engaged an expert on the social impacts of large-scale projects, Ms Liz Wall of Shared Resources Pty Ltd, to continue the process of preparing the SIA.[714] Ms Wall's engagement was a product of challenges that GM was facing in the overall licensing process. As Dr Mair notes: "*I thought it made sense for GM to bring in someone new to look at the impact assessment holistically with a fresh pair of eyes.*"[715] Ms Wall immediately set about conducting extensive in-country consultations with the inhabitants of Narsaq, and prepared an updated draft of the SIA.

518. A further motivation for GM to overhaul its existing SIA was to achieve certain efficiencies by aligning the SIA with the eventual IBA. As Dr Mair explains, "[g]*iven the delays in processing of our EIA, we used the time to modify the structure of our SIA to align it with the structure of an IBA, in the hope that this would make the IBA process more efficient*."[716] Negotiation of an IBA was the next step in the process, so by aligning the SIA with the structure of a future IBA, GM was seeking to streamline this component of the licensing process.

519. On 17 July 2018, GM submitted the updated draft SIA to the Greenlandic authorities in English, with Danish and Greenlandic translations following in October that year.[717] Over the same period, and into early 2019, GM and the Greenlandic Government

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711 First Witness Statement of J. Eggins, at **(CWS-6)**, para. 74.

712 First Witness Statement of J. Mair, at **(CWS-3)**, para. 652.

713 First Witness Statement of J. Mair, at **(CWS-3)**, para. 437.

714 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 63; First Witness Statement of J. Mair, at **(CWS-3)**, paras. 569-571.

715 First Witness Statement of J. Mair, at **(CWS-3)**, para. 569.

716 First Witness Statement of J. Mair, at **(CWS-3)**, para. 548.

717 Email from M. Barford (Nanoq) to J. Mair (GM), subject: "*SV: Updated SIA*", 17 July 2018, at **(C-503)**; Email from G. Frere (GM) to M. M. Henriksen (Nanoq), subject: "*RE: Social Impact Assessment and Feasibility Study - Greenland Minerals (Nanoq - ID nr.: 8963951)*", 15 October 2018, at **(C-504)**.

exchanged comments on the draft,[718] which were, in Mr Frere's words, "*very minor and mostly editorial*".[719]

520. On 18 February 2019, GM submitted the final draft of the SIA for approval.[720] The Greenlandic Government subsequently approved the SIA for public consultation, which (as discussed below) would take place at a later date in parallel with the EIA public consultation.[721] GM announced the approval of the SIA to the market on 28 March 2019,[722] with the approval of the Greenlandic Government.[723] The SIA was ultimately published ahead of the public consultations that took place in 2021 and was produced in English, Danish and Greenlandic,[724] including a non-technical summary.[725]

521. As Mr Frere notes, the process of obtaining approval of the SIA for public consultation was "*far more straightforward*"[726] than for the EIA. This was, in part, a product of GM's relationship with the MILT/MIE, which was "*generally positive*",[727] and also because the officials working at the Ministry were "*experienced and understood their role in the process.*"[728]

522. With the SIA approved for public consultation, GM was well placed to conclude an IBA with the local municipality, Kujalleq Kommune, based on its strong relationship

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[718] Email from M. H. Jørgensen (Nanoq) to J. Mair (GM), G. Frere (GM), subject: "*Comments to the draft SIA Report (Nanoq - ID nr.: 9427001)*", 28 November 2018, at **(C-505)**; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*Re: EAMRA workshop*", 31 January 2019, at **(C-506)**; Email from M. Henriksen (Nanoq) to J. Mair and G. Frere (GM), subject: "*Comments to the draft SIA (submitted 7th January 2019) (Nanoq - ID nr.: 9996380)"*, 6 February 2019, at **(C-507)**.

[719] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 65.

[720] Email from G. Frere (GM) to M. Henriksen (Nanoq) and L. Wall (Shared Resources Pty Ltd), subject: "*SIA feedback*", 18 February 2019, at **(C-508)**; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 65.

[721] See further, sections C.61 and C.68, below.

[722] Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Social Impact Assessment Ready for Public Consultation", 28 March 2019, at **(C-42)**.

[723] Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*Re: Updated - SIA announcement*", 27 March 2019, at **(C-509)**.

[724] Report titled "*Social Impact Assessment*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, November 2020, at **(C-510)**; Report titled "*Social Impact Assessment*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, November 2020, at **(C-511)**; Report titled "*Social Impact Assessment*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, November 2020 (Greenlandic translation), at **(C-512)**.

[725] Report titled "*Social Impact Assessment Non-technical summary*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, December 2020, at **(C-43)**; Report titled "*Social Impact Assessment Non-technical summary*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, December 2020, at **(C-513)**; Repport titled "*Social Impact Assessment Non-technical summary*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, December 2020 (Greenlandic translation), at **(C-514)**.

[726] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 67.

[727] First Witness Statement of J. Mair, at **(CWS-3)**, para. 437. The Ministry of Industry and Energy succeeded MILT and was responsible for processing the SIA.

[728] First Witness Statement of J. Mair, at **(CWS-3)**, para. 437.

with this arm of local government. As Dr Mair explains, Kujalleq Kommune "*had been a strong supporter of the project, with an emphasis being placed on jobs and the economy*".[729]

523. At around the same time as GM obtained approval of the SIA, it entered into a Memorandum of Understanding with Kujalleq Kommune and the Kujalleq Business Council.[730] As Dr Mair notes, "*It was our shared understanding that the Project would be moving into development in the near future, and would deliver major benefits to the local community, including jobs, training, capacity-building, services and infrastructure*."[731] The memorandum of understanding was therefore aimed at initiating negotiations with respect to a participation agreement to benefit the community in the area of the Kvanefjeld Project,[732] as a preliminary step towards the negotiation of the IBA.

C.52 GM's repeated attempts to finalise its EIA (2015 – 2019)

524. GM submitted it first draft EIA to the Greenlandic authorities in December 2015 (as discussed above in Section C.34 above). GM expected that, after receiving comments from the Government, the EIA would quickly be approved for public consultation.[733]

525. Regardless of GM's expectations, it was not until a year later that EAMRA provided GM with a full set of the DCE's comments on the draft EIA.[734] As Mr Frere states, "[i]*t quickly became apparent that my initial expectations of how long the process would take would not be met.*"[735] Mr Frere further comments that "[u]*nfortunately, GM's experience with the first draft of the EIA set the tone for our future interactions with the Greenlandic authorities*."[736]

526. Shortly after GM received the DCE's comments on the draft EIA, in December 2016, representatives from GM met with EAMRA and the DCE to discuss them,[737] following

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729 First Witness Statement of J. Mair, at **(CWS-3)**, para. 712.

730 Memorandum of Understanding between Kommune Kujalleq, Kujalleq Business Council and GMAS on Cooperation in the field of establishing a Participation Agreement, 4 March 2019, at **(C-515)**.

731 First Witness Statement of J. Mair, at **(CWS-3)**, para. 712.

732 Greenland Minerals Ltd ASX Announcement titled: "Tripartite Memorandum for Participation Agreement", 7 March 2023, at **(C-516)**.

733 First Witness Statement of J. Mair, at **(CWS-3)**, para. 420.

734 Email from N. Demant-Poort (EAMRA) to D. Krebs (GM) and J. Mair (GM), subject: "*EAMRA, DCE and GN assessment of the entire draft EIA submitted december 2nd 2016 including advisory reports (Nanoq - ID nr.: 4045748)*", 24 November 2016, at **(C-517)**; Letter from P. Aastrup (DCE) and J. Nymand (GINR) to EAMRA, subject: "*GMEL Kvanefjeld: Draft Environmental Impact Assessment (EIA) for review*", 18 November 2016, at **(C-518)**.

735 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 38.

736 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 42.

737 Greenland Minerals Ltd ASX Announcement titled "December 2016 Quarterly Report", 31 January 2017, at **(C-476)**, p. 5.

up by letter on 31 January 2017 to describe how the company intended to implement the Government's comments.[738] The company then set about addressing the DCE's comments, including by commissioning additional technical studies.[739]

527. Despite these advances, on 17 March 2017, EAMRA sent GM a draft decision on rejecting the draft EIA.[740] Mr Frere describes how he was "*confused by this turn of events*"[741] because (as noted above), "*the Government of Greenland's own guidelines contemplated a single round of comments to which we would presumably have the opportunity to respond before any formal decision was made.*"[742] Likewise, Dr Mair confirms that the draft rejection "*came as a shock*"[743] and that "*we did not see why they were issuing a 'formal' decision, even less a decision rejecting our EIA.*"[744] In fact, no one at GM had considered the November 2015 draft of the EIA to be a formal submission to the Greenlandic authorities.[745] Consequently, GM was not expecting a decision accepting or rejecting the draft.

528. On 24 March 2017, GM wrote to EAMRA to express its view that there had been a misunderstanding, and to request that the draft rejection be withdrawn.[746] GM emphasised its willingness to address the comments that it had received on the EIA and that, given that the EIA remained in draft form, there was no need yet to issue a final decision on it.[747] GM further noted that the draft rejection notice lacked "*specific technical details*", making it "*very difficult for* [GM] *to customise the EIA report to meet the requirements of GoG/DCE*".[748] GM reiterated its commitment to "*work*[ing]

738 Email from J. Mair (GM) to N. Demant-Poort (Nanoq), subject: "*EIA – forward strategy*", 1 February 2017, at **(C-519)**, attaching Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), 30 January 2017, at **(C-520)**, pp. 2-4.

739 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 38.

740 Letter from N. Demant-Poort (EAMRA) to D. Krebs (GM), subject: "*Draft decision regarding acceptance of draft Environmental Impact Assessment (EIA) submitted by Greenland Minerals and Energy Limited (GMEL) under Mineral Exploration Licence no. 2010/02 for public consultation*", 17 March 2017, at **(C-521)**.

741 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 39.

742 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 39.

743 First Witness Statement of J. Mair, at **(CWS-3)**, para. 560.

744 First Witness Statement of J. Mair, at **(CWS-3)**, para. 560.

745 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 39.

746 See, First Witness Statement of J. Mair, at **(CWS-3)**, para. 562; Email from J. Mair (GM) to N. Demant-Poort (Nanoq), subject: "*GMEL - draft response on EIA status*", 24 March 2017, at **(C-522)**, attaching Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), 24 March 2017, at **(C-523)**.

747 See, further, Third Witness Statement of G. Frere, at **(CWS-4)**, para. 40.

748 Email from J. Mair (GM) to N. Demant-Poort (Nanoq), subject: "*GMEL - draft response on EIA status*", 24 March 2017, at **(C-522)**, attaching Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), 24 March 2017, at **(C-523)**.

collaboratively with the GoG and their advisors through the ongoing guidance phase, to ensure the EIA is of acceptable standard".[749]

529. On 30 March 2017, GM attended a call with EAMRA to discuss the EIA, with GM's team at the time observing this to be a "*positive*" development.[750] Notwithstanding, on 7 April 2017, EAMRA persisted with the erroneous course of conduct on which it had already embarked, and it rejected the EIA.[751] In doing so, EAMRA requested that GM update the draft to address its recommendations, which was precisely what GM was already doing, but had not had the opportunity to complete, before EAMRA issued its rejection. EAMRA's decision was completely inconsistent with its own EIA Guidelines. Moreover, it made little sense in circumstances where the EIA was a work in progress and GM was not seeking a final determination as to its suitability for public consultation. As Mr Frere notes, "*we had not been afforded the opportunity to respond to all of the comments that we had received,* […] *the draft EIA at that point in any case remained subject to further technical discussion and clarification, including input from Greenland's own GINR and the DCE.*"[752] EAMRA's rejection of the EIA was therefore plainly inconsistent with the Greenlandic Government's commitment to process the EIA according to the terms of its published EIA Guidelines, including by affording GM the opportunity to address EAMRA's comments.

530. As Dr Mair notes, it appeared that EAMRA was being deliberately obstructive:

> "*During this period, it felt like EAMRA/DCE continued to move the goalposts. The delay in finalising the EIA was holding up everything else GM was doing, at considerable cost. And GM was also paying the costs of EAMRA, the DCE and the GINR, and all the external consultants.*"[753]

531. Following EAMRA's unnecessary rejection of the first draft of the EIA, GM and its consultants continued to receive and implement multiple rounds of comments from the DCE over the course of the next year. As Mr Frere explains, "*we received what seemed to us to be never-ending feedback on and requests for revisions to documents, including the reports from independent experts which informed and supported the conclusions in*

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749 Email from J. Mair (GM) to N. Demant-Poort (Nanoq), subject: "*GMEL - draft response on EIA status*", 24 March 2017, at **(C-522)**, attaching Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), 24 March 2017, at **(C-523)**.

750 Email from D. Krebs (GM) to J. Mair (GM), G. Campbell (GM), J. Eggins (GM), G. Frere (GM), J. Kyed (GM), I. Laursen (GM), subject: "*FW: Comments to DRAFT Minutes of phone meeting on the 30th of March 2017 (Nanoq - ID nr.: 4865880)*", 3 April 2017, at **(C-524)**; forwarding Open letter from N. Demant-Poort (EAMRA), subject: "*Draft minutes of phone meeting 30th March 2017*", 30 March 2017, at **(C-525)**.

751 Letter from N. Demant-Poort (EAMRA) to D. Krebs (GM), subject: "*Decision regarding draft Environmental Impact Assessment (EIA) submitted by Greenland Minerals and Energy Limited (GMEL) under Mineral Exploration Licence no. 2010/02 (Kuannersuit)*", 7 April 2017, at **(R-14)**, p. 3.

752 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 41.

753 See, First Witness Statement of J. Mair, at **(CWS-3)**, para. 567.

the EIA."[754] Throughout this process, EAMRA's role was limited to being a mere conduit for the DCE's comments, rather than providing substantive comments on the EIA itself (as a regulator would ordinarily do). As Mr Frere notes, "*EAMRA seemed, from my observations, to be doing little more than facilitating communications between the DCE and GM*".[755]

532. In August 2018, GM submitted a second draft of the EIA to the Greenlandic authorities.[756] Since the Government's own EIA Guidelines only contemplated a single round of comments before an EIA was approved for public consultation, the need for GM to submit a second draft was already incongruous with the formal guidance under which the company was operating. Nevertheless, GM had proceeded to prepare the second draft with the assistance of GHD Consultants Pty Ltd,[757] following a suggestion by EAMRA's Director that it hire a well-regarded international consultant.[758] In reality, this made little sense, given that GM had already engaged highly regarded international consultants to produce both the first draft of the EIA and all of the underlying reports.[759] Nevertheless, GM did so on the assumption that this would help to smooth the process of having the EIA approved.[760]

533. At around the same time as GM submitted the second draft of its EIA, on 9 August 2018, the Minister of Mineral Resources sent a letter to GM acknowledging "*all the important work that has been done by GME*" and GM's "*consistent efforts and work that has been put in to* [e]*nsure that the environmental and societal impact assessments meets the prober* [sic] *quality standards*".[761]

534. After receiving some initial comments from the DCE, in October 2018, GM provided to EAMRA an updated draft that it considered to be in final form and ready to form the basis of the necessary period of public consultations.[762]

535. In January 2019, EAMRA hosted a workshop on environmental impact assessments at which representatives of GM were present.[763] The purpose of the workshop was to

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754 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 42.

755 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 37.

756 Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 42-43.

757 Email from J. Mair (GM) to N. Demant-Poort (Nanoq), subject: "*EIA, marked up draft document, summary of closure of outstanding issues*", 17 June 2019, at **(C-526)**.

758 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 616-619; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 43.

759 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 33.

760 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 43.

761 Email from N. V. Sembach (Nanoq) to J. Mair (GM), subject: "*Letter from Minister of Mineral Resources (Nanoq - ID nr.: 8456841)*", 9 August 2018, at **(C-473)**; Letter from V. Qujaukitsoq (Nanoq) to J. Mair (GM), 9 August 2018, at **(C-474)**.

762 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 45.

763 Document titled "*Participants at EIA workshop 16 January 2019*", 25 January 2019, at **(C-527)**, p. 11.

inform the proponents of mining projects of the purpose of environmental impact assessments and the Greenlandic Government's procedure for approving them.[764] Notably, the Greenlandic Government confirmed that it "*decides in accordance with the Mineral Resources Act* […] *Approval of Environmental Impact and Social Impact Assessments*."[765] It further confirmed that the MRA, together with the EIA Guidelines, Application Procedures and certain rules applicable to fieldwork, governed the preparation and approval of environmental impact assessments.[766]

536. In stark contrast to the Government's purported commitment to abiding by the EIA Guidelines, just two months later, in March 2019, GM received yet another set of comments on the draft EIA.[767] Despite the assistance of a swathe of international consultants, the seemingly never-ending process of finalising the draft EIA for public consultation therefore continued to drag on.[768] As Mr Frere states: "*Any expectation we may have had that the October 2018 draft of the EIA would be approved for public consultation proved to be without foundation.*"[769]

537. As discussed in Section C.59 below, the EIA was ultimately approved by EAMRA and the DCE in September 2020.

C.53 Issues with the EIA process

538. The Government's conduct of the EIA process was problematic in various respects. As already highlighted above, the most significant issue GM encountered was ongoing uncertainty as to the extent and scope of the process, including applicable timelines. Dr Mair explains GM's repeated attempts to obtain clarity and guidance on the EIA process and timeline in his witness statement,[770] observing in particular:

> "*throughout this period, the authorities refused to provide time estimates or clarity around the procedure and the licensing requirements. I raised this issue in virtually every discussion I had with Government representatives. I probably raised this issue every one to two months for six years. The guidance we received*

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764 Email from J. Mair (GM) to J. Eggins (GM), subject: "*FW: Follow-up on EIA workshop last week (Nanoq - ID nr.: 9887404)*", 25 January 2019, at **(C-528)**, pp. 1-2, per email from K. Berantzino-Folnæs (EAMRA), 24 January 2019.

765 Document titled "*Environmental Impact Assessment Workshop*", by EAMRA and GINR, 23 January 2019, at **(C-529)**, p. 11.

766 Document titled "*Environmental Impact Assessment Workshop*", by EAMRA and GINR, 23 January 2019, at **(C-529)**, p. 12.

767 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 46.

768 See, e.g., Third Witness Statement of G. Frere, at **(CWS-4)**, para. 44.

769 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 46.

770 First Witness Statement of J. Mair, at **(CWS-3)**, section III.J.

was often vague, inaccurate, or unhelpful, and sometimes resulted in further delays."[771]

539. Dr Mair further explains that he told the authorities that the lack of clarity in the process was causing issues for GM's compliance with Australian regulatory requirements, because "*it was a regulatory requirement to provide our shareholders and the market with accurate information as to processing times and costs*".[772] In response, the authorities, including various ministers and key officials Mr Nielsen and Mr Hammeken-Holm, acknowledged the deficiencies in the system, and assured GM that they were working to address these issues, and that Greenland would continue to support mining investment.[773]

540. However, despite such reassurances, the process continued to drag on, without any clarity on how it would be brought to a close. Dr Mair testifies that EAMRA "*operated with complete disregard to our interests as a company investing in Greenland*"[774] and that, while the MLSA was supposed to be overseeing the mining licensing process, "*EAMRA essentially had free rein with respect to the processing of the EIA, which was on the critical path to finalising our mining licence application*".[775] The environmental authorities insisted on studies to evaluate non-material risks and to evaluate alternative project development options that were inconsistent with international best practice and had been excluded during the (extensive) scoping stage.[776]

541. Dr Mair further notes that EAMRA "*appeared grossly under-resourced*", which meant that the substantive review was performed by the DCE. However, GM was forced to communicate with the DCE via EAMRA, which was "*highly inefficient*".[777]

542. In addition to the authorities being inefficient and failing to be transparent as to the EIA process, EAMRA and the DCE consistently failed to act in an objective and reasonable manner. Dr Mair testifies that EAMRA and the DCE "*appeared to be starting from the position that we could not be trusted, and the Project was far riskier than we said it was*".[778] One of the most egregious examples of the authorities' unreasonable and biased

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771 First Witness Statement of J. Mair, at **(CWS-3)**, para. 111, see also paras. 280, 331, 346, 415, 736, 738 and 816.

772 First Witness Statement of J. Mair, at **(CWS-3)**, para. 113.

773 First Witness Statement of J. Mair, at **(CWS-3)**, para. 115, see also paras. 311, 477, 645, 649, 659, 714, 752 and 813.

774 First Witness Statement of J. Mair, at **(CWS-3)**, para. 116, see also section VIII.F and paras. 354, 381, 473, 476, 523, 527, 555, 597, 593, 620, 622, 665, 707, 710, 736, 763 and 816.

775 First Witness Statement of J. Mair, at **(CWS-3)**, para. 438.

776 First Witness Statement of J. Mair, at **(CWS-3)**, para. 442.

777 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 439-441.

778 First Witness Statement of J. Mair, at **(CWS-3)**, para. 442.

conduct was providing NGOs and journalists with GM's draft EIA and internal correspondence between GM and the authorities.

543. In October 2016, EAMRA released GM's draft EIA to the press.[779] GM filed a formal complaint against EAMRA's decision to do so,[780] which led to the Greenlandic Government first suspending and then setting aside EAMRA's decision.[781]

544. However the damage had been done. EAMRA's actions led to a cascade of fearmongering and misreporting by NGOs.[782] This led to Sermitsiaq publishing an article titled: "*Expert fears radioactive mudslide*".[783] Dr Mair explains that: "*This was all complete nonsense, but obviously had the potential to cause alarm and damage public opinion about the Project*".[784] Most concerningly, as Dr Mair highlights: "*there was no appropriate way for us to address this misinformation. We were in the middle of our EIA guidance process, and so could not respond publicly*".[785] Despite requests from GM, throughout the entire period, the Government took little action to address the spread of misinformation by NGOs.[786]

545. The release of GM's EIA to the media was discussed at a meeting of industry representatives and Government officials during the PDAC conference in Canada in March 2018. Representatives of other companies expressed the view that this disclosure was completely at odds with how a regulator should approach the EIA process.[787] However, the Government took no action to prevent further disclosures.

546. Indeed, this disclosure by EAMRA in late 2016 was the start of a pattern by which it continuously provided documents from GM's EIA process to NGOs and journalists,

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779 First Witness Statement of J. Mair, at **(CWS-3)**, section VIII.W.

780 Email from J. Mair (GM) to N. Demant Poort, subject: "RE: Comments to: request for access to EIA drafts submitted to the Greenlandic authorities from DR Nyheder (Nanoq - ID nr.: 3684114)", 5 October 2016, at **(C-180)**; Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), subject: "Release of private documents – your letter file no 2016- 9794 Akt 3684114", 5 October 2016, at **(C-181)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 534.

781 Email from M. S. Pedersen (Nanoq) to J. Mair (GM), 19 October 2016, subject: "*Regarding GME's complaint of 5 October 2016*", 5 October 2016, at **(C-530)**; : Email from N. Demant-Poort (Nanoq) to J. Mair (GM), subject: "*SV: Access to draft EIA Report (Nanoq - ID nr.: 4208981)*", 20 December 2016, at **(C-531)**; Letter from N. Demant-Poort (Nanoq) to GM, subject: "*Access to draft EIA report*", 20 December 2016, at **(C-532)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 534.

782 First Witness Statement of J. Mair, at **(CWS-3)**, para. 538.

783 W. Turnowsky, *Expert fears radioactive mudslide*, Sermitsiaq, 10 March 2017, at **(C-533E)**.

784 First Witness Statement of J. Mair, at **(CWS-3)**, para. 538.

785 First Witness Statement of J. Mair, at **(CWS-3)**, para. 539.

786 See, for example, First Witness Statement of S. Bunn, at **(CWS-7)**, section V.F.

787 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 555-556.

notwithstanding the fact that it had previously been censured for doing precisely that.[788] This occurred throughout late 2018 and into 2019, and resulted in NGOs claiming that the Kvanefjeld Project was dangerous and that the EIA was inadequate merely on the basis that the DCE had requested further supporting documentation.[789] As Dr Mair notes: "*This was not the case. Often these were merely requests for information that had already been provided (in the many technical reports) or for additional studies that did not alter the EIA conclusions.*"[790]

547. What was particularly problematic about EAMRA's disclosures was the fact that, as Dr Mair describes, "*there was a contradiction in EAMRA's position: on the one hand, EAMRA had said the EIA was not ready for public consultation; on the other hand, it was allowing an unofficial public consultation to commence through NGOs and the media.*"[791] In GM's view, it had "*been denied natural justice and procedural fairness in the decision-making process*."[792] Moreover, EAMRA's disclosure of confidential and price-sensitive information potentially compromised GM's ability to comply with its obligations as a publicly listed company on the ASX.[793]

548. To make matters worse, it became clear to GM that EAMRA and DCE personnel were liaising with NGOs and journalists about GM's Project outside of official channels and providing GM's confidential documents that had not even been the subject of public access requests.[794] This included EAMRA providing information to a journalist who was also the wife of a senior officer at the DCE, who was subsequently appointed as the lead coordinator on GM's EIA in January 2020.[795]

549. Some of this misinformation was particularly harmful. For example, in May 2018, an anti-uranium organisation called Urani Naamik (which translates to "Uranium, No Thanks" in Greenlandic) alleged that "*the radioactive dust kicked up by operations there will drift over Narsaq, located some 6 kilometers away, fouling an area that residents promote as an agricultural region and a destination for anglers*".[796] It is unmistakable evidence of the Greenlandic Government's prejudice against the

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788 See discussion above at para. 528; Email from M. S. Pedersen (Nanoq) to J. Mair (GM), 19 October 2016, subject: "*Regarding GME's complaint of 5 October 2016*", 5 October 2016, at **(C-530)**; Email from N. Demant-Poort (Nanoq) to J. Mair (GM), subject: "*SV: Access to draft EIA Report (Nanoq - ID nr.: 4208981)*", 20 December 2016, at **(C-531)**; Letter from N. Demant-Poort (Nanoq) to GM, subject: "*Access to draft EIA report*", 20 December 2016, at **(C-532)**; First Witness Statement of J. Mair, at **(CWS-3)**, para. 534.

789 First Witness Statement of J. Mair, at **(CWS-3)**, para. 672.

790 First Witness Statement of J. Mair, at **(CWS-3)**, para. 672.

791 First Witness Statement of J. Mair, at **(CWS-3)**, para. 682.

792 First Witness Statement of J. Mair, at **(CWS-3)**, para. 682.

793 First Witness Statement of J. Mair, at **(CWS-3)**, para. 686.

794 See, for example, First Witness Statement of J. Mair, at **(CWS-3)**, paras. 674-675, and 684.

795 First Witness Statement of J. Mair, at **(CWS-3)**, para. 675.

796 K. McGwin, *As Greenland nears uranium decision, opponents fear public won't be heard*, ArcticToday, 16 May 2018, at **(C-471)**.

Kvanefjeld Project that in August 2021, the IA Party invited that very same organisation to lead and present the second round of public consultations on GM's EIA.

550. Throughout this period, GM was required to pay significant sums toward the processing of its licence application. In general, the guidance that GM received from the MLSA as to the cost of the application process was inaccurate. Following the submission of GM's EIA and SIA in late 2015, the MLSA sent GM a case processing budget of DKK2,143,500.[797] GM understood this to be the cost of completing the review-revision process of the application and commencing the public consultation.[798] However, the actual amount GM was charged for this process was more than three times this amount.[799]

551. Another issue was that GM was invoiced by the Greenlandic authorities for services of which it had not been notified in advance and to which it had not agreed. This created challenges for GM from a regulatory perspective. As a listed company, GM is required to account for its expenditure to its shareholders and auditors. Those costs included (i) costs incurred in relation to third-party (NGOs and journalists) requests for information about the Project; (ii) costs relating to the retention of legal counsel (Poul Schmith and DLA Piper) to advise the Greenlandic Government regarding GM's complaints about the handling of the application process; and (iii) the attendance of officials at workshops to which GM had invited the authorities to help them develop a better understanding of mining practices.[800] As Dr Mair testifies: "*It was often unclear what we were being billed for, and we sometimes queried these bills and asked for greater clarity about the work done*".[801]

552. For example, Mr Bunn explains that in 2014, he challenged an invoice, after GM received a massive bill of more than DKK 200,000 for a short meeting with the DCE.[802] As part of the discussion around this invoice, the MLSA told GM that: (i) EAMRA/DCE were under no obligation to provide any information about what the invoice related to, (ii) GM was required to pay the invoice immediately, and (iii) GM could not reject any expenses, even if GM was provided with the work product it had been charged for, and irrespective of whether the services concerned GM's exploitation

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797 Email from N. V. Rasmussen (MLSA) to J. Mair (GM), subject: "*Preliminary budget for case processing 2016 (Nanoq - ID nr.: 1845002)*", 22 December 2015, at **(C-534)**; Letter from N. V. Rasmussen (MLSA) to GMAS, subject: "*Preliminary Budget for Case Processing 2016*", 22 December 2015, at **(C-535)**; Document titled "*GME Case Processing Budget 2016*", by the MLSA, 22 December 2015, at **(C-536)**.

798 First Witness Statement of J. Mair, at **(CWS-3)**, para. 422.

799 First Witness Statement of M. Guy, at **(CWS-5)**, para. 43.

800 First Witness Statement of J. Mair, at **(CWS-3)**, para. 425.

801 First Witness Statement of J. Mair, at **(CWS-3)**, para. 425.

802 First Witness Statement of S. Bunn, at **(CWS-7)**, section V.D.

licence application. It was only after a lengthy legal process that the Ministry of Mineral Resources agreed that GM had been overcharged and reduced the amount of the invoice.

553. In relation to the protracted EIA process, Dr Mair explains that GM was also concerned that academics at the DCE were not incentivised to bring the process to a conclusion. Indeed, it appeared that some of these academics were using the Project to further their academic careers, as many of the additional studies that the DCE demanded GM perform "*were purely academic as the results were scientifically incapable of changing the conclusions of* [GM's] *EIA report*".[803]

554. Given the multitude of issues GM was experiencing with the licensing process, it is no surprise that other companies in the industry were also raising the alarm. This was reflected in Greenland's descent in the annual Fraser Institute ranking of mining jurisdictions. In response to this, in March 2019, the current Greenlandic Premier (then Minister of Mineral Resources), Múte Bourup Egede, commented that Greenland needed "*a more flexible process and a more flexible administration and a flexible basis for contacting the public, so that there are not too many doors to go through*".[804] These sentiments were echoed by former Minister Randi Vestergaard Evaldsen, leader of the Democrats, who publicly complained that the "*public service must be more helpful*" in the licensing process. For his part, former Premier and IA Party leader Kuupik Kleist observed that "*the administrative practice is very slow and difficult, and that it takes an unnecessarily long time to communicate with the Self-Government and the authorities*" and argued that the public service should stop "*seeing these companies as potential enemies*" and instead "*look at the places where interests coincide and cooperate so that things can go faster*".[805]

555. At this same time, in March 2019, the Deputy Minister of Industry, Labour and Trade approved an ASX announcement released by GM, which stated: "*A lack of timelines in the EIA regulatory review process introduces delays which have little, if anything, to do with substantive issues*."[806]

556. Around this same time, GM was encouraged by officials and politicians (including the Minister of Industry, Labour, Trade, Energy and Foreign Affairs, the Deputy Minister of Industry, Labour and Trade, and the head of the MLSA, Mr Hammeken-Holm) to complain to EAMRA with the other authorities in copy so as to bring these authorities into the EIA process. On the advice of these officials, in April 2019, Mr Frere and Dr Mair wrote to EAMRA expressing concern at "*the lack of clarity, high costs and*

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803 First Witness Statement of J. Mair, at **(CWS-3)**, para. 426.

804 A. G. Lihn, *Greenland rattles down the list: 'Pity' and 'not good at all'*, KNR, 4 March 2019, at **(C-537E)**.

805 M. H. Toft, *Kuppik V. Kleist looks with concern at new raw material report*, KNR, 1 March 2019, at **(C-538E)**.

806 Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Social Impact Assessment Ready for Public Consultation", 28 March 2019, at **(C-42)**; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*Re: Updated - SIA announcement*", 27 March 2019, at **(C-509)**.

frequent delays in the EIA process."[807] This letter was copied to Mr Hammeken-Holm, the Minister of Mineral Resources, the Minister of Industry, Labour, Trade, Energy and Foreign Affairs, and the head of MILT. However, much to GM's dismay, the environmental authorities responded aggressively. Rather than listening to GM's concerns, the Government rendered a "decision" essentially stating these concerns were not valid.[808]

557. To make matters worse, EAMRA then provided this "decision" to NGOs and the media as evidence that it was right, and GM was wrong. NGOs used this decision to attack the Project.[809] For example, an NGO called NOAH Friends of the Earth alleged that the Government's decision showed that GM "*has systematically undermined Greenland's environmental standards*", that the tailing facility would "*generate health hazards due to unavoidable events*" and that the Project could lead to "*highly toxic*" contamination around the mine area, such that people living in the area would be "*chronically exposed to radioactive and other toxic species via drinking water, food and air*."[810]

558. This spread of misinformation was a direct result of the Government's conduct. Indeed, immediately after these reports surfaced, the CEO of the Greenland Business Association wrote to Dr Mair, stating: "*What an embarrassing attack on GML by the Department/Premier regarding your complaint about the handling of the EIA-process! You just addressed legitimate concerns regarding the process.*"[811]

559. Senior Government officials also shared GM's concerns about EAMRA's conduct. For example, in late June 2019, Dr Mair wrote to the Minister of Industry, Labour, Trade, Energy and Foreign Affairs, Vittus Qujaukitsoq, in the following terms:

> "*We continue to be frustrated by the EAMRA's conduct and handling of the EIA process. We appreciate their independent position, but they seem to interpret the so-called independence as a license to continually ask for further information, discount the validity of the government-approved terms of reference, reinterpret guidelines, and bring about unnecessary delays. Put simply, there is no clear structure to the licensing process.*"[812]

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807 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 46; First Witness Statement of J. Mair, at **(CWS-3)**, section IX.FF. Letter from J. Mair (GM) to N. Demant-Poort (EAMRA), subject: "*EIA Process Regarding the Kvanefjeld Project*", 4 April 2019, at **(C-539)**.

808 First Witness Statement of J. Mair, at **(CWS-3)**, section X.I.

809 First Witness Statement of J. Mair, at **(CWS-3)**, section X.J.

810 N. H. Hooge, *New setback for the Kvanefjeld mining project in Greenland*, Wise International, 4 November 2019, at **(C-540)**.

811 Email from B. Pedersen (Greenland Business Association) to J. Mair (GM), subject: "*Mineral strategy*", 15 November 2019, at **(C-541)**.

812 Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 1, per email from J. Mair to V. Qujaukitsoq dated 26 June 2019.

560. Dr Mair went on to highlight the fact that EAMRA had "*continued to drag the process out, whilst passing information to special interest groups (NGOs)*", which "*allowed negative misinformation to be propagated which is clearly damaging to the project and reflects negatively on Greenland supposedly having a transparent and unbiased licensing process.*" Moreover, Dr Mair confirmed the attendance at recent meetings of members of the IA Party, "*who have looked to hijack the meetings for political purpose*" with the "*the clear intent to be disruptive.*"

561. Minister Qujaukitsoq responded to Dr Mair shortly afterwards. He criticised "*EAMRAs lack of professionalism in this very important stage of your project*", which he considered "*represents a danger in our system, that will jurpidize* [sic] *jobs and growth.*"[813] Minister Qujaukitsoq stated that "*it seems that EAMRA* […] *will never be objective and nonbiased, because they will be attached to special interest groups*."[814] The Minister of Industry, Labour, Trade, Energy and Foreign Affairs thus shared GM's view that EAMRA was deliberately obstructing the EIA process due to a lack of objectivity.

562. GM's grievances about the licensing process were shared by many other companies, business associations, politicians, and officials.[815] In response to the serious criticism it was receiving, in early 2020, the Ministry of Mineral Resources released a new minerals strategy for the period 2020 to 2024.[816] Among the key priority areas of focus were "[e]*fficient, predictable and transparent case administration*" and the "[s]*implified transition from exploration to exploitation*". Significantly, the Government also took a formal position against the (obviously inappropriate) disclosure of EIA documents by EAMRA, highlighting that EAMRA must give the local community "*up-to-date*

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813 Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 1.

814 Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 1.

815 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 475, 622 and 707.

816 Press release titled "*New Mineral Strategy published – Greenland's Mineral Strategy 2020 – 2024*", by Government of Greenland Mineral Resources Authority, 2 March 2020, at **(C-543)**; Document titled "*Greenland's Mineral Strategy 2020-2024, Government of Greenland, February 2020*", by Government of Greenland, at **(C-544)**.

environmental data, but without this being at the cost of the confidential relationship existing in in the mineral resources sector".[817]

563. It is a testament to GM that, despite the difficulties it encountered over the course of the EIA process, it cooperated throughout; ultimately submitting four drafts of the EIA before it was accepted for public consultation (discussed in further detail below).[818]

C.54 Public meeting in Narsaq (February 2019)

564. On 18 February 2019, a public meeting was held in Narsaq about the Project. This was attended by Greenland's Chief Medical Officer, Henrik Hansen, and the DCE's lead coordinator for GM's Project, Violeta Hansen, a radiological pathways specialist.[819] At this meeting, Mr Henrik Hansen advised the public that "*we do not believe that there will be an impact on the population of Narsaq*" and "*there is nothing to indicate, a spread of either radioactivity or other dangerous substances in the city of Narsaq itself.*"[820] He responded to questions about how radiation would impact the population of Narsaq and indicated that there were no radiological pathways of concern, stating: "*I can't see where the radioactivity is coming from*".[821]

565. The Chief Medical Officer noted that there were complex scientific calculations to predict the impacts of dust and, based on the science, "*then nothing will come that has any health significance here and now in Narsaq city*".[822] He made it clear that, if there were any pollution detected, the Project would not be allowed to continue.

566. Shortly after this meeting, there was an exchange in the Greenlandic Parliament about the Chief Medical Officer's comments. Indeed, it seems that members of the IA Party were not happy to hear professional advice that the Project was safe, as it conflicted with its unfounded but entrenched belief that the Project was dangerous. In response to questions from IA Party member Sofia Geisler, the Minister of Nature, Environment and Science, Siverth K Heilmann (Atassut Party), advised the Parliament that the statements made by the Chief Medical Officer were "*objective and concrete*" and that "*in relation to a specific question about radiation and the spread of dust that, based on*

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817 Press release titled "*New Mineral Strategy published – Greenland's Mineral Strategy 2020 – 2024*", by Government of Greenland Mineral Resources Authority, 2 March 2020, at **(C-543)**; Document titled "*Greenland's Mineral Strategy 2020-2024, Government of Greenland, February 2020*", by Government of Greenland, at **(C-544)**.

818 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 28.

819 §37 Parliamentary Questionnaire No. 122/2019, 25 February 2019, at **(C-200)**.

820 *See* A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**, as cited by S. Gisler (IA) in §37 Parliamentary Questionnaire No. 122/2019, 25 February 2019, at **(C-200)**, pp. 1 (Danish), 3 (English).

821 *See* A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**.

822 A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**.

the existing knowledge, neither radiation nor dust can be assumed to reach Narsaq town to an extent that will have health significance for the population."[823] According to the Minister, the Danish Environmental Protection Agency for Mineral Resources had confirmed that the Chief Medical Officer's statements "*were answered based on public and scientifically quality-assured information and data, existing knowledge, research and studies available in the area*".

567. The Minister subsequently provided IA Party member Sofia Geisler with a comprehensive list of more than 30 sources that supported the Government's position that the Project was safe.[824] This list included the MRA itself, various rules and guidelines issued by the Greenlandic and Danish authorities, GM's EIA and SIA, the IAEA's scientific and technical publications, the Canadian Nuclear Safety Commission's scientific and technical publications, information from the Norwegian Institute for Radiation Protection, the Danish Environmental Protection Agency's two inspection reports from its investigations in Narsaq, the UWG Report, information about the Kvanefjeld Project obtained by the UWG, the Greenlandic Government's reports on its visits to Canada, the GEUS Factbook, and the environmental monitoring reports from other mining projects (including the Nalunaq gold mine and the Ivittuut cryolite mine).

568. The Minister concluded by saying that, based on the existing knowledge, the Kvanefjeld Project was not considered to involve pollution or health risks.

569. However, as discussed further below, the IA Party proceeded to ignore the advice of Greenland's Chief Medical Officer, Greenland's Minister of Environment, the Danish Environmental Protection Agency, and various independent experts and scientific organisations. Instead, the IA Party deliberately continued to mislead the Greenlandic public about the Project and the environmental risks.

C.55 Exploitation Licence Application (17 June 2019)

570. By mid-2019, GM had already delimited a commercially viable deposit in accordance with MRA Section 29(2) and Section 1401 of the Standard Terms. Further, GM had already submitted all of the documents that the Government had said were required for its exploitation licence application. However, the licensing process was being held up by EAMRA.

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[823] §37 Parliamentary Questionnaire No. 142/2019, 11 March 2019, at **(C-201)**, per S. K. Heilmann (Atassut)'s answer on 25 March 2019, pp. 5 (Danish), 8 (English).

[824] §37 Parliamentary Questionnaire No. 142/2019, 11 March 2019, at **(C-201)**, per S. K. Heilmann (Atassut)'s answer on 25 March 2019, pp. 3-5 (Danish), 6-8 (English).

571. Dr Mair discussed the situation with Ministers Vittus Qujaukitsoq and Erik Jensen, Deputy Minister Jørn Skov Nielsen and Deputy Minister Jørgen Hammeken-Holm. As he explains:

> "*They agreed that GM had done the work and recommended that we formally file an exploitation licence application. They said that this would have the benefit of bringing other agencies into the process, which may help overcome the inefficiencies of EAMRA.*"[825]

572. Accordingly, on 17 June 2019, GM submitted a formal application to the Minister of Mineral Resources, Erik Jensen, attaching GM's draft EIA, approved SIA and approved Maritime Safety Study.[826] GM had previously made available its Feasibility Study and ore reserve estimates.[827]

573. Following the submission of this application, Dr Mair notified EAMRA, the mayor of Kommune Kujalleq, and Minister Vittus Qujaukitsoq.[828] Minister Qujaukitsoq responded, thanking Dr Mair for the update, and saying he was "*happy to hear about it*" and that GM could speak to him if they were to "*face any obstruction*".[829]

574. Shortly after the application was lodged, in late June 2019, expert consultant Liz Wall conducted stakeholder meetings in southern Greenland to present the key findings from the EIA and SIA and explain the potential benefits that the Kvanefjeld Project would bring to the community, including local participation, training, employment, and taxes.[830] Presentations were also made to Kiista P. Isaksen, the mayor of southern Greenland, members of the municipality, and the Kujalleq Business Council.

575. Members of the IA Party used these meetings as an opportunity to spread misinformation about the Project. Senior IA Party member Aqqaluaq Egede and his wife Naja Lund disrupted the meetings, accusing Ms Wall of bias because she had been paid by GM.[831] Dr Mair testifies: "*I considered this type of criticism to be completely misguided because all independent consultants are necessarily paid for by companies (and GM was also required to pay for EAMRA, the DCE and their advisers).*"[832]

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825 First Witness Statement of J. Mair, at **(CWS-3)**, para. 727.

826 First Witness Statement of J. Mair, at **(CWS-3)**, section X.A; Letter from J. Mair (GM) to E. Jensen (Minister of Mineral Resources and Labour), subject: "Application for an exploitation licence - Kvanefjeld Project - Exploration Licence 2010/02", 17 June 2019, at **(R-15)**.

827 Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 13, 20.

828 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 730-733.

829 Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 2, per email from V. Qujaukitsoq dated 18 June 2019

830 First Witness Statement of J. Mair, at **(CWS-3)**, section X.C; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Mining License Application Formally Lodged", 23 July 2019, at **(C-545)**.

831 First Witness Statement of J. Mair, at **(CWS-3)**, para. 735.

832 First Witness Statement of J. Mair, at **(CWS-3)**, para. 735.

576. Minister Vittus Qujaukitsoq subsequently sent Dr Mair an email about Aqqaluaq Egede and Naja Lund's conduct, stating:

> "*I am not surprised about Aqqaluaq B. Egede and his wife trying to disrupt public meetings. They are immune for any facts. No argument will ever convince them. They have already made a decision not to support your project. They will always be against it. Let them have their conviction, while we move forward to* [c]*reate jobs and prosperity in Narsaq and South Greenland.*"[833]

577. This statement by Minister Qujaukitsoq, a long-time and experienced minister in the Government, perfectly encapsulates the divide in Greenlandic politics with respect to the Kvanefjeld Project. There were those politicians like Minister Qujaukitsoq, who understood the scientific evidence, knew that the Project could be conducted safely, and were striving to deliver opportunities to a struggling region. And then there were those politicians like Mr Aqqaluaq Egede, who ignored the scientific evidence and would go to any lengths to stop the Project, even if it meant misleading the public (as discussed further in Section C.62 below).

C.56 Speculation about Shenghe and US interest in rare earths in Greenland (2019)

578. As discussed in Section C.42 above, in late 2016, Shenghe acquired a stake in GML. Shenghe's current shareholding in GML is 9.3%.[834] Shenghe did not hold an option entitling it to increase its stake in GML and did not have an offtake right to production from the Project. Shenghe was a model partner on the Project and assisted greatly in the technical optimisation of the processing operations. That said, due to Shenghe being a Chinese company (even though it is not a government-controlled entity[835]), its investment in the Project has been the subject of particular scrutiny.

579. There has been misreporting and fearmongering by the IA Party, NGOs and the media about Shenghe. For example, in October 2016, certain media outlets reported that Shenghe had an option to increase its shareholding to 60%, meaning it could take over GM.[836] This was false. Indeed, the Greenlandic Government engaged lawyers to review GM's subscription agreement with Shenghe and confirm that the details that GM had provided were correct.[837]

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833 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 736-737; Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 1, per email from V. Qujaukitsoq dated 26 June 2019.

834 First Witness Statement of M. Guy, at **(CWS-5)**, para. 22.

835 First Witness Statement of J. Mair, at **(CWS-3)**, para. 485.

836 *See*, for example, W. Turnowsky, *Chinese company has option of 60 percent of GME*, Sermitsiaq, 5 October 2016, at **(C-546E)**.

837 See Email from P. V. Pedersen (LETT) to J. Mair (GM) subject: "*FW: Request for an independent assessment of subsciption deed (Nanoq - ID nr.: 3918250)*", 8 November 2016, at **(C-547)**.

580. In mid-2019, the US was showing increasing interest in Greenland, and in rare earths mining specifically. Its interest in Greenland was not new. Since the Cold War, the US has maintained a military presence in north-west Greenland, with the Thule Air Base. This is now the site of a US Space Force base (and has been renamed Pituffik Space Base). Pituffik is also home to critical intelligence and communication infrastructure.[838] In recent years, the US has also been stepping up its efforts to secure supplies of rare earths, as China is the dominant rare earths producer globally.

581. As described in the witness statement of Dr Mair,[839] the US has increased its presence on the ground in Greenland, including by opening a consulate in Nuuk, and the US State Department and Greenland's Ministry of Mineral Resources signing a memorandum to cooperate in rare earths mining. In mid-2019, the Ministry worked with US Government agencies to perform mineral mapping in South Greenland. As part of this, the US Ambassador to Denmark, Carla Sands, visited GM's operations base in Narsaq.

582. Dr Mair has testified that he had a conversation with Ambassador Sands during an event in Nuuk in mid-2019. During this conversation, one of her aides interjected saying: "*Let's cut to the chase – you are the people that brought China to Greenland*".[840] Dr Mair testifies that, after this interjection, he explained to the Ambassador and her aide that Shenghe had made a valuable contribution to the Project in terms of technical expertise. He testifies:

> "*I said that there was no difference between Shenghe's shareholding in GM, and Shenghe's shareholding in the Mountain Pass project in the US, and Shenghe did not have offtake rights for the minerals at Kvanefjeld. They did not seem to be aware of this background with respect to Shenghe, and appeared to have been proceeding on the basis of a misunderstanding of our relationship with Shenghe.*"[841]

583. It was at this time that President Donald Trump famously announced that he was interested in buying Greenland because of its natural resources and geopolitical relevance.[842] While this idea was immediately shut down by Denmark, in the period that followed, Ambassador Sands made numerous visits to Greenland.

584. Ambassador Sands made it clear that the US was interested in rare earth elements for a number of reasons, including because they were uncomfortable with China's dominance

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838 P. W. Wellman, *The northernmost US military base now has a Greenlandic name*, Stars and Stripes, 11 April 2023, at **(C-548)**.

839 First Witness Statement of J. Mair, at **(CWS-3)**, section X.F.

840 First Witness Statement of J. Mair, at **(CWS-3)**, para. 743.

841 First Witness Statement of J. Mair, at **(CWS-3)**, para. 743.

842 *Trump 'expressed interest' in Greenland*, Deutsche Welle, 16 August 2019, at **(C-549)**.

in the global rare earths industry.[843] For example, in April 2020, the Ambassador authored an article titled "*Wake Up To The Arctic's Importance*".[844] In this article, she stated: "*The PRC is also trying to seize upon the region's valuable resources by pursuing dual use, civilian-military infrastructure and securing mining licenses for several mineral deposits throughout the region, including uranium and other rare-earth minerals.*"[845]

585. Also in April 2020, President Trump announced a US$12 million aid package to Greenland. It was reported that this was, in part, to push back on "*China's economic push into the region.*"[846] It was also reported that:

> "*the new funding will allow U.S. agencies to work with the Greenlandic Ministry of Mineral Resources and Ministry of Industry, Energy, and Research to develop its natural resources in a 'competitive' and 'transparent' way and ward off corruption or poor environmental practices, the senior official said, adding U.S. investment was better and safer than Chinese funding for the mineral extraction that they said was inevitable.*"[847]

586. In June 2020, Ambassador Sands stated during an interview that the US was concerned about Chinese involvement in the region:

> "*In Greenland, for instance, they attempted to finance and construct airports in Greenland. And fortunately Denmark stepped in. They also attempted to buy a deep water port and Denmark again, stepped in and reoccupied that port*."[848]

587. As Ambassador Sands mentioned in this interview, during this period, Denmark intervened in certain projects in Greenland after Chinese investors had expressed interest. For example:

(a) In 2016, Denmark put up for sale port facilities located in Kangilinnguit (known as Grønnedal in Danish) in southern Greenland that were originally built by the US and had served as a Danish naval base.[849] An offer was made by a Chinese

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[843] M. Jacobsen, *Kuupik Kleist: The Cold War is Re-Introduced in Greenland*, High North News, 21 October 2019, at **(C-550)**.

[844] C. Sands, *Wake up to the Arctic's Importance*, U.S. Mission Denmark, at **(C-551)**.

[845] C. Sands, *Wake up to the Arctic's Importance*, U.S. Mission Denmark, at **(C-551)**, p. 1.

[846] R. O'Rourke, L. Comay, J. Frittelli et al., *Changes in the Arctic: Background and Issues for Congress*, CRS Report (R41153), Congressional Research Service, 24 March 2022, at **(C-552)** p. 40.

[847] C. Finnegan, *After Trump tried to buy Greenland, US gives island $12M for economic developmen*t, ABC NEWS, 24 April 2020, at **(C-553)**, p .6.

[848] L. Odgaard, *Transcript: Ambassador Carla Sands on Reasserting U.S. Influence in the Artic, 16 June 2020*, Hudson Institute, 17 June 2020, at **(C-554)**, p. 4.

[849] M. Breum, *Did Denmark's prime minister stop a Chinese firm from buying an abandoned military base in Greenland?*, Arctic Today, 23 December 2016, at **(C-555)**.

company (General Nice Group) to purchase the port. However, Denmark then terminated the sale and announced that the port would instead be repurposed.[850]

(b) In 2018, a Chinese State-owned enterprise, China Communications Construction Company (CCCC), was shortlisted by Greenland to carry out an airport expansion and construction project in Greenland (including the Nuuk airport).[851] It was later reported that the US had urged Denmark to step in and finance the project instead. The Danish Government then offered to finance and assist with the construction of the airports project,[852] which prompted CCCC to withdraw its bid, also citing issues with obtaining entrance permits and visas for its personnel.[853] The construction projects were later awarded to Danish and Canadian companies.

(c) In December 2021, the Export-Import Bank of the United States offered up to US$657 million of development finance to Australian company Ironbark's Citronen zinc mining project in north-east Greenland.[854] Ironbark had previously announced that project development finance would come from a Chinese SOE.[855] The proposed US investment in Ironbark was enabled via the "402A program", which was created to help US companies compete with China. When questioned about the proposed US financial support for this project, Ironbark's director, Alexander Downer (former foreign minister of Australia), stated that: "*the 402 program was set up, in a sense, as a way of competing with China's Belt and Road Initiative* […] *It has strategic intention, and it has been legislated by Congress and then implemented by regulation by the EXIM Bank.* [Ironbark] *were the first standalone project to get approval as a 402A project*".[856]

588. It is against this backdrop that there has been continued misreporting regarding GM's relationship with Shenghe. For example, in 2019, representatives of the IA Party misrepresented that Shenghe's investment in the Project may lead to it becoming "*an official Chinese state project*" with the same government entities that created the first

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850 E. Matzen, *Denmark spurned Chinese offer for Greenland base over security: sources*, Reuters, 7 April 2017, at **(C-556)**.

851 First Witness Statement of J. Mair, at **(CWS-3)**, para. 875.b.

852 R. W. Poulsen, *How Greenland's Mineral Wealth Made It a Geopolitical Battleground*, ForeignPolicy, 18 December 2022, at **(C-557)**.

853 The Editorial Staff, *Sermitsiaq.AG: Chinese construction giant withdraws from airport projects*, KNR, 3 June 2019, at **(C-558E)**.

854 Ironbark Zinc Limited ASX announcement titled "*Preliminary Approval for up to US$657m in funding from US EXIM Bank*", 8 December 2021, at **(C-559)**.

855 M. Breum, *A year into Biden's presidency, U.S. military plans for Greenland remain unclear*, ArcticToday, 19 January 2023, at **(C-560)**.

856 H V. Leeuwen, *How an Aussie zinc miner switched horses from China to the US*, Australian Financial Review, 8 December 2021, at **(C-561)**.

Chinese hydrogen bomb.[857] NGOs and the media have repeated these talking points, claiming that "*the Chinese could take over the mining project, if GML is granted a mining license*" and that Shenghe has ties to Chinese bomb manufacturers.[858] A particularly aggressive NGO called NOAH even sent an email to the Ministry alleging that "*GML has been involved in the process that led to the Trump administration's offer to buy Greenland*" (GM obtained a copy of this email through disclosure from the Ministry).[859]

589. While these suggestions are baseless, they are indicative of a broader bias against the Project by certain politicians and special interest groups.[860] It is clear that this agenda has been pushed by individuals who are ideologically opposed to the Project for other reasons (e.g., opponents of nuclear energy).

590. Indeed, while the IA Party claimed in 2019 that there was a risk of the Kvanefjeld Project becoming "*an official Chinese state project*", a review of its previous statements reveals that they knew (or should have known) that these allegations were false. The fact is that when the current Premier of Greenland, Múte Egede, served as Minister of Mineral Resources in late 2016, he confirmed to the Parliament that Shenghe did not have the right to increase its ownership of GM.[861]

C.57 Amendment to Mineral Resources Act (2019)

591. Shortly after GM formally applied to the MLSA for an exploitation licence, the Ministry advised GM that a bill had been submitted to the Greenlandic Parliament to amend MRA Section 29(2) to remove the words "*commercially viable*".[862] The explanatory notes to the bill state:[863]

> "*In the Greenland Self-Government's opinion, it is desirable that the granting of licences for exploitation of mineral resources takes place on as lenient terms as possible without compromising the aims to ensure that the mineral resource activities are carried out in a sound manner as regards safety, health, the*

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857 News, *Has Naalakkersuisut already given China access to Kuannersuit?*, Inuit Ataqatigiit, 26 January 2019, at **(C-562E)**; see also M. Jacobsen, *Kuupik Kleist: The Cold War is Re-Introduced in Greenland*, High North News, 21 October 2019, at **(C-550)**.

858 See, for example, N. H. Hooge, *New setback for the Kvanefjeld mining project in Greenland*, Wise International, 4 November 2019, at **(C-540)**.

859 Email from NOAH (Friends of the Earth Denmark) to NOAH (Friends of the Earth Denmark), subject: "*The owner of Kuannersuit/Kvanefjeld project is under environmental legislation*", 20 September 2019, at **(C-563E)**.

860 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 494, 790.

861 §37 Parliamentary Questionnaire No. 263/2016, 16 November 2016, at **(C-564)**, answer on 30 November 2016.

862 Email from R. B. Kjærgaard (Nanoq) to J. Mair (GM), subject: "*Bill for - Greenland Parliament concerning the amendment of The Mineral ResourceAct.docx;Explanatory notes to the Bill.docx*", 3 September 2019, at **(C-565)**Explanatory Notes to the Bill, EM 2019/xx, 3 September 2019, at **(C-566)**, p. 7.

863 Explanatory Notes to the Bill, EM 2019/xx, 3 September 2019, at **(C-566)**, p. 1.

environment, resource exploitation and social sustainability as well as appropriately and in accordance with acknowledged best international practices under similar conditions. For this reason, unnecessary demands should not be placed on licensees under the Mineral Resources Act."

592. The Ministry also advised GM that the objective of this amendment was "*to ease – and speed up – the general transition from exploration to exploitation*" for project developers.[864] As Mr Frere explains, "[t]*his correspondence with the Ministry reinforced my expectation that it was making every effort to process our exploitation licence application quickly. I therefore expected that, provided we met the environmental and social requirements, our exploration licence would be upgraded to an exploitation licence*."[865]

593. This bill was passed, and the amendment came into effect on 1 January 2020.[866]

C.58 Confirmation GM has satisfied requirements of MRA Section 29(2) (August 2019 – April 2020)

594. Shortly after GM submitted its exploitation licence application, Mr Hammeken-Holm of the MLSA advised GM that he intended to send GM's feasibility study to an independent consultant to confirm that it satisfied the requirements of the MRA, and that GM would be charged for this.[867]

595. Mr Frere and Dr Mair asked what the legal basis for this requirement was.[868] The MLSA said that it was to demonstrate that GM had delimited "commercially exploitable" deposits in accordance with MRA Section 29(2).[869] In response, Dr Mair pointed out that GM had already demonstrated this through its feasibility studies, which were prepared by independent consultants.[870] In his witness statement, he explains that this was "*a duplicative exercise*".[871]

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[864] Email from T. Lauridsen (Nanoq) to G. Frere (GM), subject: "*Sv: Feasibility Study (Nanoq - ID nr.: 11544955)*", 6 September 2019, at **(C-567)**.

[865] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 74.

[866] Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, s. 29(2).

[867] First Witness Statement of J. Mair, at **(CWS-3)**, para. 753; Third Witness Statement of G. Frere, at **(CWS-4)** , para. 72; Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 40-42.

[868] First Witness Statement of J. Mair, at **(CWS-3)**, para. 754; referring to Email from J. Mair (GM) to T. Lauridsen (Nanoq), subject: "*RE: Outstanding invoices (Nanoq - ID nr.: 11491374)*", 30 August 2019, at **(C-568)**, pp. 3-4, email dated 24 August 2019.

[869] First Witness Statement of J. Mair, at **(CWS-3)**, para. 755; Email from J. Mair (GM) to T. Lauridsen (Nanoq), subject: "*RE: Outstanding invoices (Nanoq - ID nr.: 11491374)*", 30 August 2019, at **(C-568)**, p. 2, email dated 30 August 2019.

[870] First Witness Statement of J. Mair, at **(CWS-3)**, para. 757.

[871] First Witness Statement of J. Mair, at **(CWS-3)**, para. 821.

596. Mr Frere pointed out that the Government had proposed to remove this requirement as part of its proposal to amend MRA Section 29(2) and asked whether it was necessary to engage an independent consultant to review the work of another independent consultant.[872] The MLSA responded that GM would remain subject to the existing requirements (i.e., the provisions of Section 29(2) would be grandfathered with respect to GM's exploitation licence application).

597. It is noteworthy that the Greenlandic authorities did not apply this licensing requirement consistently. Tanbreez (which has an exploitation licence over the deposit neighbouring Kvanefjeld) was not required to submit advanced feasibility work and was not required to have its feasibility work independently assessed before it was granted an exploitation licence in August 2020.[873]

598. The Ministry engaged Auralia Mining Consultants to conduct the evaluation. They prepared a memorandum which confirmed GM's JORC-compliant resource estimates for various minerals, including uranium.[874]

599. On 18 March 2020, Minister of Mineral Resources Vittus Qujaukitsoq posted a statement on the Greenlandic Government website, which stated:

> "*The Government of Greenland expects both projects* [Kvanefjeld and Tanbreez's Kringlerne project] *to meet the requirements of the Mineral Resources Act soon, and this will provide an opportunity to establish a mining industry in South Greenland. This would benefit the whole of Greenland, but especially the Kujalleq Municipality in the form of new jobs*".[875]

600. Dr Mair testifies that this public statement by the Minister "*reinforced our expectation that our exploitation licence would be granted in the near future*".[876] GM reported this statement to the ASX.[877] Notably, Tanbreez was granted an exploitation licence for the Kringlerne project five months later, in August 2020.[878]

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872 Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 73-74.

873 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 759, 825-827.

874 Document titled: "*Memorandum Re: Mining Application Review – Greenland Minerals, Kvanefjeld Project*", by Auralia Mining Consulting, 4 December 2019, at **(C-569)**, pp. 7, 10-18.

875 Press release titled "Progress on two rare earth projects in South Greenland", by the Government of Greenland, 19 March 2020, at **(C-138)**.

876 First Witness Statement of J. Mair, at **(CWS-3)**, para. 819.

877 Greenland Minerals Ltd ASX Announcement titled "Company Update and Outlook: Kvanefjeld EIA Studies and Updates to be Completed in March", 24 March 2020, at **(C-570)**.

878 First Witness Statement of J. Mair, at **(CWS-3)**, section X.S.

601. On 23 March 2020, Dr Mair asked Mr Hammeken-Holm to confirm that GM's resource estimates had been completed to JORC standards.[879] He did not respond. After GM followed up twice, on 21 April 2020, the Ministry confirmed by email to GM that it had "*approved that GM has documented mineral resources comprising 16 oxides and one metal in the licence area*" and GM had therefore satisfied MRA Section 29(2) for the granting of an exploitation licence. The Ministry further advised that the remaining steps for the grant of an exploitation licence were approval of the EIA for public consultation, translation of the EIA and SIA, and public consultation on the EIA and SIA.

602. The fact is that GM had delimited a commercially viable deposit many years earlier. Nevertheless, this marked an important milestone for GM as it was official written confirmation that the requirements of MRA Section 29(2) had been satisfied, meaning that GM's right to an exploitation licence had become unconditional.

603. GM announced this to the market on 28 April 2020, stating:

> "*Under Greenland's Mineral Resources Act, one of the main requirements for the granting of an exploitation (mining) license is the effective documentation of a deposit of exploitable minerals in the license area, and that this has been approved by the Greenland Government. Greenland's Ministry of Mineral Resources and Labour has provided written confirmation that GML's documentation (mineral resource and feasibility reports) for the Kvanefjeld Project (exclusive exploration license EL 2010/02) has been approved*."[880]

604. Shortly after GM announced that the Government had confirmed that it had satisfied the conditions of MRA Section 29(2), Sofia Geisler, a member of the IA Party opposed to the Kvanefjeld Project, submitted a series of questions to Parliament about GM's Exploration Licence and Addendum No. 1.[881] It is clear from these questions that Ms Geisler was looking for a way to undermine GM's right to an exploitation licence.

605. Ms Geisler posited that Addendum No. 1 had represented a compromise between the IA Party and its former coalition partner, the Democrats, and that the purpose of the addendum had been to require GM to prepare a report for the purposes of the public debate on uranium mining. Ms Geisler asked the Government to confirm this interpretation, and whether GM had prepared such a report. She also asked whether the Government intended to hold a referendum on uranium mining at Kvanefjeld.

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879 First Witness Statement of J. Mair, at **(CWS-3)**, para. 823; Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

880 Greenland Minerals Ltd ASX Announcement titled "Further Milestone Achieved in Path to Kvanefjeld Mining Licence", 28 April 2020, at **(C-571)**.

881 §37 Parliamentary Questionnaire No. 77/2020, 13 May 2020, at **(C-196)**.

606. These questions reveal a fundamental misunderstanding by members of the IA Party of the circumstances surrounding the negotiation of Addendum No. 1. On 18 May 2020, Minister of Mineral Resources Vittus Qujaukitsoq promptly dismissed Ms Geisler's interpretation of Addendum No.1.[882] The Minister stated that, contrary to the IA Party's suggestions, the purpose of Addendum No. 1 was to allow GM to raise money to continue its studies of Kvanefjeld. The Minister confirmed that GM had not been required under Addendum No. 1 or otherwise to prepare a report for the purposes of a public debate on uranium mining, but that there had nonetheless been several reports, public meetings, and debates in Parliament regarding the exploration and exploitation of uranium (e.g., the UWG Report).

607. As for a referendum, Minister Qujaukitsoq stated that the Government respected the Greenlandic Parliament's May 2016 decision to reject the IA Party's proposal for a referendum on the exploitation of radioactive minerals. The Minister reiterated the reason for rejecting the proposal:

> "*The reasoning is, as stated in 2016, that according to the Mineral Resources Act, a rightholder has the right to be granted an exploitation permit if the licensee has identified and delimited deposits that it intends to exploit. As mentioned in the reply note to paragraph 97 at Inatisartut's spring meeting in 2016, the purpose of the provision is, among other things, to attract mineral resource companies to Greenland. The mineral resource companies can hardly be expected to invest in exploration activities in Greenland if they are not to some extent guaranteed a right to exploit a found resource, provided that they have otherwise met the legal requirements.*
>
> *A referendum would call into question the right to exploitation, since the conditions otherwise fulfilled by the rightholder under the authorisation would not necessarily entail a right to obtain an exploitation licence. A 'no' vote in a referendum could restrict this right. Greenland's position as a constitutional state could thus rightly be criticised. This will undoubtedly make it less attractive to explore for mineral raw materials in Greenland. Naalakkersuisut is of the opinion that referendums are not used indiscriminately. In a historical perspective, referendums have related to major issues such as membership of the then European Community, the introduction of Home Rule and the introduction of Self-Government.*" (emphasis added)

608. This statement by the Minister to the Greenlandic Parliament serves to confirm that, as at this point in time, GM had "*the right to be granted an exploitation permit*" and that to restrict this right would be unconstitutional.

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[882] §37 Parliamentary Questionnaire No. 77/2020, 13 May 2020, at **(C-196)**, answer on 18 May 2020.

C.59 EAMRA and the DCE approve the EIA (mid-2019 – late 2020)

609. As noted above (at paragraph 536), in March 2019, GM had received yet another set of comments from the DCE on the draft EIA.[883] After addressing those comments, in June 2019, GM submitted a third draft of the EIA,[884] despite having considered the previous draft to be in final form.[885] Yet again, EAMRA ordered GM to make amendments to the draft EIA.[886]

610. However, this time, the DCE divided its comments on the EIA into two categories: (i) those that GM was required to address before the EIA could be approved for public consultation (**Type 1 Comments**); and (ii) those that GM could address thereafter (**Type 2 Comments**).[887] Regarding the substance of the Type 1 Comments and Type 2 Comments, Mr Frere explains:

> "*The Type 1 Comments primarily related to the inclusion in the EIA of more detailed information on a range of topics, such as the construction of the tailings storage facility, validation of radon gas emissions calculations, the hydrological impacts of the project, and seismic risks. The Type 2 Comments were aimed at providing further data with respect to environmental baselines and the potential environmental impacts of the Kvanefjeld Project, such as seepage from the tailings facility, biodiversity impacts and the impact of any hydrocarbon spill.*"[888]

611. Over the course of November and December 2019, GM attended a series of teleconferences with EAMRA and the DCE to discuss how GM would address the Type 1 Comments and finalise the EIA for public consultation.[889] It was agreed that GM and its consultants would conduct additional studies, primarily in relation to tailings storage, including, (i) more detailed embankment failure modelling; (ii) seismic studies to validate the long-term stability of tailings structures; and (iii) a proposal to store the tailings in dry form instead of in a tailings dam.[890] Accordingly, GM's

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883 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 46.

884 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 47; First Witness Statement of J. Mair, at **(CWS-3)**, para. 791.

885 As discussed above at para. 354.

886 Email from N. Demant-Poort (Nanoq) to J. Kyed (GME) and J. Mair (GML), subject: "*Re.: draft decision regarding fourth draft EIA and further process (Nanoq - ID nr.: 11832310)*", 11 October 2019, at **(C-572)**; Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 47-49; First Witness Statement of J. Mair, at **(CWS-3)**, paras. 791-795.

887 See, further, Third Witness Statement of G. Frere, at **(CWS-4)**, para. 47.

888 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 48.

889 Greenland Minerals Ltd ASX Announcement titled "Progress Towards Finalising Kvanefjeld EIA", 20 January 2020, at **(C-573)**.

890 First Witness Statement of J. Mair, at **(CWS-3)**, 799; Greenland Minerals Ltd ASX Announcement titled "Progress Towards Finalising Kvanefjeld EIA", 20 January 2020, at **(C-573)**.

consultants, KCB and Arcadis, commenced work in December 2019.[891] Shortly thereafter, EAMRA issued a formal notice to GM that the EIA was still not ready for public consultation.[892]

612. Over the course of May and June 2020, GM provided further technical studies and an updated draft to EAMRA, reflecting the work that GM had completed in order to address the Type 1 Comments.[893] EAMRA subsequently provided limited comments, which GM incorporated into a fourth draft of the EIA, which it submitted in August 2020.[894]

613. On 19 September 2020 – *five years* after GM submitted the first draft of its EIA – the Greenlandic Government finally approved the EIA for public consultation. EAMRA's email approving the EIA stated:

> "*the EIA-draft content in the presently available english* [sic] *(and only) version, is assessed by DCE/GINR to comply with the minimum requirements of the EIA Guidelines, and that it can provide an adequate and correct basis for public consultation.*"[895] (emphasis added)

614. As discussed in Section C.61 below, EAMRA formally approved the EIA two months later, in December 2020, after GM had submitted the Danish and Greenlandic versions for review.[896] As Mr Frere notes, "[t]*his was a hugely significant milestone in the licensing process*."[897] This was the case for two reasons. *First*, approval of the EIA for public consultation was a key step in GM's efforts to obtain an exploitation licence for the Kvanefjeld Project. *Second*, GM had received that approval in spite of the Greenlandic Government having cast aside its own EIA Guidelines to engage in a review process of unprecedented length and complexity. Over the course of that process, GM addressed no less than 80 separate sets of comments from the DCE, including, as Mr Frere notes, "*multiple rounds of comments on a number of the more than 100 studies*

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891 Greenland Minerals Ltd ASX Announcement titled "December 2019 Quarterly Report", 29 January 2020, at **(C-574)**.

892 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 50.

893 Greenland Minerals Ltd ASX Announcement titled "Updated Kvanefjeld EIA Report and Supporting Technical Studies Lodged with Greenland Government", 21 May 2020, at **(C-575)**; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 52.

894 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 52; Email from G Frere (GM) to C. Juncher Jørgensen (BIOS), DCE and Nanoq, subject: "*Greenland Minerals - EIA*", 14 August 2020, at **(C-576)**.

895 Email from K. Berantzino-Folnæs (EAMRA) to G. Frere (GM); J. Mair (GM); J. Kyed (GMAS); D. Krebs (GM); J. S. Nielsen (GMAS), 19 September 2020, subject: "*Vs: DCE/GINR review of 'Kvanefjeld Project. Environmental Impact Assessment. August 2020' by Greenland Minerals A/S. (Nanoq - ID nr.: 14887647)*", at **(C-577)**.

896 First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, paras. 28, 31; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 54; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Rare Earth Project: Public Consultation to Commence", at **(C-45)**.

897 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 54.

prepared by independent experts on which the EIA was based."[898] In particular, these included seven revisions to the air quality report prepared by ERM, and at least three major versions of Arcadis's radiological report.[899] This was far from the relatively straightforward process that GM had originally anticipated, and, lasting five years, was a far lengthier process than the Government had initially led GM to expect the process to take.

615. The EIA was the product of years of hard work. It identified, analysed and proposed mitigation strategies to address a range of potential environmental impacts of the Kvanefjeld Project, including how the project would affect the physical environment, including the atmosphere and water; the likely extent and impact of radiological emissions; the need for adequate waste management; the effects on biodiversity; and the effects of the Kvanefjeld Project on the inhabitants in the area and local cultural heritage.[900] It also included a cumulative impact assessment in respect of all of these factors, assessed on a holistic basis.

616. Supporting the EIA were a number of detailed reports analysing the potential environmental impacts of the Kvanefjeld Project. Those reports were each prepared by internationally recognised consultants who were experts in their fields, thus ensuring that the EIA was prepared to the highest standards and was consistent with international best practice. The contributors included:

(a) Orbicon, environmental experts who prepared multiple reports on matters including hydrology and climate, tailings and waste rock, water quality of tailings water and waste rock run-off, noise, and hydrocarbon spills;

(b) GHD Consultants Pty Ltd, which prepared hydrology and hydrogeology studies, and assisted in drafting the EIA;

(c) Pacific Environment Consulting Ltd, which produced air quality studies;

(d) DHI A/S, which produced water management studies for the fjords around the Kvanefjeld Project;

(e) the Technical University of Denmark, which evaluated the impact of radiation on plant workers and reviewed radiation baseline studies; and

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898 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 55.

899 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 55.

900 See, Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 14-34.

(f) Arcadis, a leading global design, engineering and consultancy firm that was responsible for preparing rigorous radiological studies to the most demanding of international standards.[901]

617. For the purposes of this arbitration, GM has engaged Mr William Goodfellow of US-based scientific consulting firm Exponent, to review and offer his opinion on GM's EIA and its compliance with the EIA Guidelines and international standards and best practice. Mr Goodfellow is a Principal Scientist at Exponent and the Director of Exponent's Ecological and Biological Sciences practice. He has more than 35 years of experience in environmental toxicology and impact assessments. Mr Goodfellow has reviewed the EIA that the Greenlandic Government approved for public consultation in 2020 and evaluated its compliance with the EIA Guidelines: see the Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**. Additionally, Mr Goodfellow has evaluated the extent to which the EIA satisfied international standards and best practice, including the standards reflected in ISO 14001, which sets the criteria for environmental management systems and is designed for organisations from any sector to ensure that the environmental aspects of activities are consistently measured and monitored, [902] and guidance from international governments and organisations relating to mineral extraction and mining or industrial emissions, including the European Commission, the United Kingdom Department for Levelling Up, Housing and Communities, the US Environmental Protection Agency, and USAID.

618. On the basis of his review of the EIA, Mr Goodfellow has confirmed that the EIA satisfies both the EIA Guidelines and international standards and best practice. Mr Goodfellow has concluded, *inter alia*, that:

(a) "*the EIA was adequate and met the requirements of Greenland guidelines*";[903]

(b) "*the EIA and subsequent supporting revisions met all relevant requirements of international standards and best practices*";[904] and

(c) "*the EIA adequately assessed risks of Project-related hazards to humans and wildlife, focusing on physical environmental, atmospheric environment, radioactivity, water environment, waste management, biodiversity, and local use and cultural heritage impacts per the Greenland guidelines for mineral exploitation*".[905]

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[901] Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 33, 35.

[902] Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**, p. 49.

[903] Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**, p. 122.

[904] Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**, p. 126.

[905] Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**, p. 128.

619. When preparing the EIA, GM took particular care to account for the inherent radiological risks of the Kvanefjeld Project, which were unavoidable due to the presence of uranium in the ore body. As Mr Frere explains:

> "*We were cognisant of the sensitivities around the extraction of uranium at the Kvanefjeld Project. For this reason, we took great care to secure the services of respected expert consultants to conduct the radiological studies that would support the EIA. We ultimately selected Arcadis for this role because of their global experience and strong credentials*."[906]

620. By the time the Greenlandic Government approved the EIA for public consultation, GM's consultants had prepared no fewer than 12 separate studies on the issue of radiation.[907] The Greenlandic Government had been closely involved in reviewing and commenting on those studies and had ordered multiple revisions to them over the five years that GM spent preparing the EIA. For example, as Mr Frere notes, "*we had to submit at least three versions of Arcadis's radiological report.*"[908] In its report, Arcadis noted that the area of the Kvanefjeld Project had naturally occurring (baseline) levels of exposure to radioactivity that were three to four times the global average.[909] Furthermore, Arcadis concluded that the likely radiological impacts of the Kvanefjeld Project were "*negligible*",[910] noting that:

> "*the Kvanefjeld Project is expected to release only small amounts of additional radioactivity to the environment and is not expected to result in an adverse effect, or significant harm, to wildlife or people that live or visit the area. It is expected that the radiation exposure will not be significantly different than current conditions (background)*".[911]

621. With respect to the levels of radiation to which members of the public would be exposed due to the Kvanefjeld Project, Arcadis further concluded that:

> "*The doses to all receptors are well below the dose benchmark for members of the public of 1 mSv, as well as below the dose constraint of 0.3 mSv that is considered by some agencies for members of the public*."[912]

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906 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 35.

907 See, for example, Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 123, under the heading 'Radiological emissions'.

908 Third Witness Statement of G. Frere, at **(CWS-4)**, para. 55.

909 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 94.

910 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, pp. 101, 110, 117-118, 123-124, and 127-128.

911 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 12.

912 Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**, p. 117

622. In addition to its report on the radiological impacts of the Kvanefjeld Project, Arcadis produced a separate report analysing the risks of uranium transporting.[913] Arcadis concluded that the doses of radiation to which workers involved in transporting uranium from the Kvanefjeld Project may be exposed would be lower than the recommended dosage for members of the public (1 mSv/year) and much lower than the applicable threshold for workers who come into contact with uranium (20 mSv/y).[914] Even in the unlikely event of a spill exposing a truck driver to yellowcake, Arcadis assessed the risk as being below the 1 mSv per threshold.[915]

623. Mr Goodfellow confirms that GM's EIA adequately addressed the potential radiological impacts of the Project. In his report, Mr Goodfellow provides the following summary of GM's compliance with the EIA Guidelines in this respect:[916]

5.2.1.3 Radiological Impacts

1. *What are the Greenland guidelines' requirements for this impact?*
   - Assess potential contribution of mining activities to radioactivity in the environment and surrounding ecosystems as well as assess radioactivity in dust.
   - Estimate radioactive pollution from ore, tailings, waste rock, and other sources.
   - Determine impacts to local land use and resources resulting from radioactivity from mining activities.
2. *What did Greenland Minerals do in the EIA to address these requirements?*
   - Radon and thoron: Radon and thoron emissions from ore, tailings, waste rock, and other sources were estimated using radon flux and site-specific parameters.
   - Dust: Radioactive dust impact to human and ecological receptors was predicted using the INTAKE model.
   - Spills: Impact of spills related to transport were estimated using the MicroShield Version 9.05 model and a consequence assessment for various scenarios.
   - Embankment failure: Radioactivity from three embankment failure scenarios were assessed via theoretical modelling then risk assessment conducted with the Environmental Risk from Ionizing Contaminants: Assessment and Management (**ERICA**) tool (ecological health) and RESidual RADioactive Onsite (**RESRAD-ONSITE**) codes (human health).
   - TSF aerosol spray: Radioactivity resulting from TSF aerosol spray was estimated via theoretical modelling scenarios.
3. *Did the Greenland Minerals EIA meet these requirements?*
   Yes.

624. For completeness, it bears noting that in their assessment of the August 2020 draft EIA (which was approved for public consultation) the DCE and GINR identified certain "*issues with potential significant environmental uncertainty of a kind that should be*

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913 Report titled "*Uranium Product Transportation Assessment, Kvanefjeld Multi-Element Project, Narsaq Area, Greenland*", by Arcadis, August 2015, at **(C-578)**.

914 Report titled "*Uranium Product Transportation Assessment, Kvanefjeld Multi-Element Project, Narsaq Area, Greenland*", by Arcadis, August 2015, at **(C-578)**, p. 15.

915 Report titled "*Uranium Product Transportation Assessment, Kvanefjeld Multi-Element Project, Narsaq Area, Greenland*", by Arcadis, August 2015, at **(C-578)**, p. 23.

916 Expert Report of William L. Goodfellow, Jr., BCES (Exponent), 5 July 2023, at **(CEWS-1)**, p. 80.

mitigated or solved to meet the requirements of the approval process".[917] However, they assessed that "*the uncertainties can be addressed by a combination of more detailed studies and additional verification of mitigation options (e.g. water treatment) which can be applied if concentrations of various effluents exceed the foreseen and/or approved values*" prior to the grant of an exploitation licence.[918] The issues that the DCE and GINR identified largely correlate with the DCE's Type 2 Comments (discussed above at paragraph 610).[919] In order to begin addressing the Type 2 Comments, GM prepared a scope of work for a program of geotechnical drilling to support its response to one of the identified Type 2 Comments, which was scheduled to occur in the northern summer of 2021, as well as a draft plan for a radon survey and data collection in the area of the Kvanefjeld Project, which was subsequently completed in 2022.[920]

625. GM's success in finally having the EIA approved for public consultation was the product of a lengthy process that substantially exceeded the EIA Guidelines and GM's own expectations. In the end, it is doubtful whether this burdensome process, in terms of both time and expenditure, actually served any genuine purpose in terms of guaranteeing the environmental credentials of the Kvanefjeld Project. As Mr Frere observes:

> "*To me, the Greenlandic authorities had appeared throughout this process to be unconcerned by how much time and money GM was spending for diminishing returns in terms of assessing the environmental impacts of the Kvanefjeld Project. In my view, if the potential environmental impacts of the Kvanefjeld Project described in the 2015 draft EIA were compared with those described in the 2020 EIA which was approved for public consultation, it is unlikely that the difference would be significant. In the 2020 EIA, the risks and/or potential impacts were almost certainly described in more detail and with greater*

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917 Report titled "*Environmental review and technical assessment of: "Kvanefjeld Project: Environmental Impact Assessment" by Greenland Minerals A/S, August 2020*", by DCE and GINR, 17 September 2020, at **(R-17)**, p 3.

918 Report titled "*Environmental review and technical assessment of: "Kvanefjeld Project: Environmental Impact Assessment" by Greenland Minerals A/S, August 2020*", by DCE and GINR, 17 September 2020, at **(R-17)**, p 3.

919 These are regulated under sections 19, 43 and 86 of the Greenlandic Mineral Resources Act.

920 As Mr Frere notes, "*by the time the Government stopped processing GM's licence application, we had already started to address the Type 2 Comments that the Government had provided to us. Regarding the Type 2 Comment relating to radon baseline data, we engaged Arcadis to prepare a proposal to establish a radon monitoring program, at an estimated cost in excess of USD 100,000. I forwarded Arcadis's proposal to the Greenlandic authorities for comment in early July 2022, and we subsequently incorporated the Greenlandic authorities' comments into an updated proposal. With respect to the Type 2 Comment relating to the potential for seepage from the tailings facility into the groundwater, GM will need to undertake a program of Geotech drilling, which is a more involved process and is estimated to cost between USD 4 million and USD 5 million to complete. In light of the present arbitration and the uncertainty as to whether GM will ever be able to develop the Kvanefjeld Project, the company is not currently in a position to authorise the expenditure that would be required for it to address this issue.*", see, Third Witness Statement of G. Frere, at **(CWS-4)**, para. 61.

precision, but there would be little difference in the assessment of the Kvanefjeld Project's overall environmental impact."[921]

C.60 Financing the Project

626. The size, uniqueness and quality of the Project have been manifestly demonstrated in the feasibility work that was carried out by GM during its development of the Project. On the back of the strong technical and economic fundamentals demonstrated in GM's feasibility studies, the evidence makes it clear that GM would have secured project financing but for the Greenlandic Government's wrongful conduct.

627. Strong investor interest dates back to 2016 with GM's dealings with Shenghe, a major, global rare earths business. Mr Guy explains:

> "*The most significant progress GM made in securing financing for the Project was through its dealings with Shenghe Resources Holding Co., Ltd (Shenghe). Shenghe is a large, global rare earths resources company which is involved in the mining, smelting, separation and processing of rare earths elements. Shenghe is a publicly-listed company (listed on the Shanghai Stock Exchange) and is not a Chinese state-owned enterprise. Shenghe's market capitalisation is around AU$5 billion, and so Shenghe undoubtedly had the resources and capability to fund the Project, either itself using its own balance sheet, in a syndicate with other financiers or by other means of guaranteeing funding for GM to develop to Project to production.*"[922]

628. While Mr Guy details the nature of Shenghe's interest in the Project, and co-operation with GM to develop the Project, Mr Guy is nevertheless clear that GM was not wholly reliant on Shenghe to secure financing for the Project. Indeed, as Mr Guy explains, GM's directors had obligations to ensure that GM sought the best funding arrangement available:

> "*Although Shenghe was the most realistic and attractive financing partner at the time GM started its dealings with Shenghe in 2016, the Project's technical and economic feasibility continued to develop and become more attractive as time passed. By 2019, with GM having made further advances in its Optimised Feasibility Study, GM was confident that there would be a number of alternative financing arrangements available with other funders. Accordingly, GM considered Shenghe to be one of a number of potential financing options and GM was actively exploring financing with other funders. GM had an obligation to explore alternative funding proposals to ensure that any funding arrangement entered into was the best option available to the company and its shareholders.*"[923]

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[921] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 56.

[922] First Witness Statement of M. Guy, at **(CWS-5)**, para. 14.

[923] First Witness Statement of M. Guy, at **(CWS-5)**, para. 26.

629. Mr Guy describes GM's efforts, beginning in 2019, to seek financing from European automakers (e.g., Porsche and Volkswagen) and the promising discussions that were being carried out. However, these efforts prematurely ceased due to the outbreak of the COVID-19 pandemic, as well as, later on, the Greenlandic Government's unlawful actions in preventing the Project from proceeding.[924]

630. The approval of the EIA for public consultation in September 2020 was a major milestone for GM and attracted considerable interest from investors. In November 2020, GM raised AU$30 million in capital to take the Project to the next phase.[925] As Dr Mair notes: "*The interest in the capital raising was such that we could have raised more than twice this amount*."[926]

631. These funds were to be used to complete the permitting process, ramp up a team, convert the optimised Feasibility Study to a Definitive Feasibility Study, and advance offtake and project funding discussions.

632. Dr Mair testifies that, at this time, GM was looking beyond the formal grant of an exploitation licence to the next phase, and was working hard on partnerships, financing, detailed engineering and design, recruiting, and off-take agreements.[927]

633. Although project financing was never ultimately secured by the date of the Consultation Bill, Mr Guy is rightly confident that GM would have, without doubt, been able to secure project financing. Mr Guy states:

> "*Ultimately, however, had we been able to proceed with the Project, the ability of GM to secure financing was a foregone conclusion. The Project's economics (I am aware that current independent estimates of the Project's NPV prepared for the purposes of this arbitration are in the order of US$8 billion were such that they would have allowed GM to seek alternative competitive bids from financiers at the lowest cost to GM (or otherwise on the most suitable terms). The Project's estimated NPV, is significantly higher than most other mining projects that are in a similar stage of development and are seeking or have obtained funding in recent times.*"[928]

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924 First Witness Statement of M. Guy, at **(CWS-5)**, paras. 27–29.

925 First Witness Statement of J. Mair, at **(CWS-3)**, para. 836; Greenland Minerals Ltd ASX Announcement titled "Greenland Minerals Raises A$30 Million in Strongly Supported International Institutional Placement", 25 November 2020, at **(C-579)**.

926 First Witness Statement of J. Mair, at **(CWS-3)**, para. 836.

927 First Witness Statement of J. Mair, at **(CWS-3)**, para. 844.

928 First Witness Statement of M. Guy, at **(CWS-5)**, para. 29.

C.61 First round of public consultations on the EIA and SIA (December 2020 – February 2021)

634. As discussed above, in late 2020, GM submitted the final EIA in English, Danish and Greenlandic.[929] It was supported by over 100 documents, including studies and technical reports.[930] Each of the EIA[931] and the SIA[932] included non-technical summaries.

635. The submission of GM's final EIA prompted a discussion in the Greenlandic Parliament about the Kvanefjeld Project. Minister Jens-Frederik Nielsen advised the Parliament that there was nothing to fear with the Kvanefjeld Project, and that Greenland could rely on its mineral resources law.[933] Subsequently, IA Party member Mariane Paviasen asked the Minister whether GM's EIA could be trusted. The Minister responded that GM's EIA had been subject to strict legislative and regulatory requirements and had been the subject of comprehensive discussions and rigorous evaluation by the Danish environmental authorities. As discussed further below, it is clear that IA Party members such as Mariane Paviasen ignored the advice of the Danish authorities and the Minister, and the IA Party continued to make baseless claims that GM's EIA could not be relied upon.

636. On 12 December 2020, GM was advised that EAMRA had approved GM's EIA in three languages, and that the Ministry of Mineral Resources had approved GM's SIA in three languages.[934] The authorities provided the relevant documents and approvals to the Greenlandic Government.

637. On 18 December 2020, the Government formally approved GM's EIA and SIA for public consultation.[935] The Government issued a press release on its website announcing the start of the consultation, including identifying the towns where the

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929 First Witness Statement of J. Mair, at **(CWS-3)**, para. 837; Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**; Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S (Danish translation), 13 December 2020, at **(R-18)**; Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S (Greenlandic translation), 13 December 2020, at **(C-580)**.

930 Greenland Minerals Ltd ASX Announcement titled "GGG Submits Responses for Kvanefjeld Project White Paper", 2 November 2021, at **(C-52)**.

931 Report titled "Environmental Impact Assessment Non-Technical Summary", produced by Greenland Minerals Ltd, December 2020, at **(C-46)**.

932 Report titled "*Social Impact Assessment Non-technical summary*", produced by Shared Resources Pty Ltd and Greenland Minerals Ltd, December 2020, at **(C-43)**.

933 §37 Parliamentary Questionnaire No. 189/2020, 4 November 2020, at **(C-581)**.

934 First Witness Statement of J. Mair, at **(CWS-3)**, para. 838.

935 First Witness Statement of J. Mair, at **(CWS-3)**, para. 839; Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Rare Earth Project: Public Consultation to Commence", at **(C-45)**.

public meetings would be held, and that it would run for 12 weeks.[936] The website included a link to the consultation documents, including all the reports and the over 120 technical reports, studies and reference documents supporting the EIA.

638. The Government's announcement included the following statement by Minister Jens-Frederik Nielsen:

> "*The start of the public consultation marks an important step for all of Greenland, which has long been awaited. In the consultation phase all interested parties are invited to comments and raise concerns. All comments will be processed and answered in a white paper, which forms a basis for the further update to the EIA and SIA reports.*"[937] (emphasis added)

639. Minister Jens-Frederik Nielsen also made a statement to the Greenlandic Parliament.[938] He advised that GM's EIA had been assessed by the Danish environmental authorities and they had determined that it met the requirements for public consultation, in accordance with the Greenlandic Mineral Resources Act.

640. The consultation process for the Kvanefjeld Project officially started on 18 December 2020.

641. Dr Mair testifies that GM's belief was that it would be granted an exploitation licence at the end of the consultation process:

> "*Our understanding was that, assuming that no new material environmental issues were raised during the public consultations, there was no basis on which the Government could refuse to grant an exploitation licence. We understood that the actual granting of the exploitation licence would at that point be a formality. Given the vast body of information in technical reports, we assumed that the main purpose of the public meetings was to explain the EIA and SIA to the public*."[939]

642. This understanding was reflected in GM's ASX announcement, which stated that when the White Papers were complete: "*The Greenlandic Government will then formally process the application for an exploitation permit for the Kvanefjeld Project*."[940]

643. As GM had already satisfied the conditions of MRA Section 29(2) and Section 1401 of the Standard Terms, the only questions that remained to be determined were the

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936 First Witness Statement of J. Mair, at **(CWS-3)**, para. 840; Press release titled "*Public consultation of EIA and SIA reports for Kuannersuit begin*s", Government of Greenland, 17 December 2020, at **(C-582)**.

937 Press release titled "*Public consultation of EIA and SIA reports for Kuannersuit begin*s", Government of Greenland, 17 December 2020, at **(C-582)**.

938 §37 Parliamentary Questionnaire No. 207/2020, 3 December 2020, at **(C-583)**, answer on 17 December 2020.

939 First Witness Statement of J. Mair, at **(CWS-3)**, para. 842.

940 Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Rare Earth Project: Public Consultation to Commence", at **(C-45)**.

conditions on which an exploitation licence would be granted to GM pursuant to MRA Section 16, and the plan for the commencement of development activities and production in accordance with Sections 1409-1410 of the Standard Terms.

644. On 11 January 2021, the Ministry of Mineral Resources announced that the public consultation on the Kvanefjeld Project had begun and confirmed that GM's EIA, SIA and supporting material had been posted to a Government portal, where the public could submit questions.[941] This announcement stated that the purpose of the EIA and SIA were "*to provid*[e] *the authorities with all the necessary information for determining the conditions for notification of an exploitation permit in accordance with Section 16 of the Minerals Act*". Dr Mair testifies: "*This confirmed our understanding that the purpose of the impact assessments and the consultations were to determine the conditions that would apply to our exploitation licence*."[942]

645. On 20 January 2021, Minister Jens-Frederik Nielsen told the press that GM would be entitled to exploit rare earths and uranium within a year.[943] He stated:

> "*Greenland Minerals will be able to start extracting rare earths and uranium a few kilometers from Narsaq over the next six months or a whole year*" and "*I am a supporter of the project*" and "[t]*he time to get started is just right. There are good prices on rare earths. They must be used in the green transition. They are in demand because the rare earths found in Kuannersuit can be used for magnets in wind turbines and batteries in electric cars.*"

646. This statement by the Minister of Mineral Resources is consistent with GM having an unconditional right to a licence for both rare earths and uranium. Dr Mair testifies: "*This statement came as no surprise to me. It was our expectation that we would be given a licence for both rare earths and uranium and would move to the next phase very soon.*"[944]

647. The public consultation process in Greenland is run by the Government, with the project's proponent on the sidelines.[945] It involves hosting a series of meetings in the region of the project and affording the opportunity for interested parties to make written submissions directly to the Government at any point in the period. In accordance with administrative law principles, the Government has an obligation to present the Project EIA and SIA objectively (due to the contractual nature of the Exploration Licence, the Government also owed GM various other duties, including the duties of good faith and

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941 First Witness Statement of J. Mair, at **(CWS-3)**, para. 843; Letter from the MLSA to hearing participants, subject: "*Consultation letter regarding Greenland Minerals A/S' application for utilization*", 11 January 2021, at **(C-197)**.

942 First Witness Statement of J. Mair, at **(CWS-3)**, para. 843.

943 First Witness Statement of J. Mair, at **(CWS-3)**, para. 845; The Editorial Staff, *Kuannersuit: A flourishing Narsaq or environmental disaster?*, Sermitsiaq, 20 January 2021, at **(C-198E)**.

944 First Witness Statement of J. Mair, at **(CWS-3)**, para. 845.

945 First Witness Statement of J. Mair, at **(CWS-3)**, para. 850.

loyalty, in this process). Naturally this should include dispelling misconceptions and responding to misinformation. GM relied on the Government to uphold these obligations.[946] Unfortunately, the Greenlandic Government failed to do this.

648. The first issue was the spread of misinformation about the Project. As Dr Mair explains:

> "*During this period, NGOs were continuing to run an increasingly aggressive misinformation campaign about the Project, and the authorities were allowing this to go unchecked. It was blatant fearmongering. They made out that they had uncovered various project 'issues', even though they were issues that had been the subject of years of consultations and extensive studies, which had been accepted by EAMRA and the DCE. None of the 'issues' being raised were new, and all had been addressed thoroughly. NGOs also claimed that the EIA process was tainted because GM was paying for it. The MLSA should have explained that it was a statutory requirement that GM pay for the process, but they never said anything in our defence.*"[947]

649. These efforts by NGOs intensified in the days leading up to the public meetings. Anti-uranium group Urani Naamik ("*Uranium, No Thanks*") held two meetings to drum up opposition.[948]

650. The next issue was attendance of representatives of the Greenlandic Government. It had been planned that Premier Kielsen, Minister of Mineral Resources Jens-Frederik Nielsen (leader of the Democrats), the Minister of Environment and a representative of the DCE would present at the consultations, and then take part in a panel discussion.[949] However, shortly prior to the meetings, it was reported that Naalakkersuisut had received death threats against these senior politicians and a bomb threat if the meetings proceeded.[950] These threats were seized upon by members of the IA Party as a reason to delay the consultation process. For example, Naja Lund, the wife of senior IA Party member Aqqaluaq Egede, published an open letter insisting that the public consultations should be deferred.[951] While these threats were later shown to be a hoax, they meant that senior politicians did not attend the consultations. As discussed below, this compromised the process from the outset.

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946 First Witness Statement of J. Mair, at **(CWS-3)**, para. 859.

947 First Witness Statement of J. Mair, at **(CWS-3)**, para. 855.

948 First Witness Statement of J. Mair, at **(CWS-3)**, para. 856; M. Lindstrøm, *Urani Naamik has taken an advance on the citizens' meetings*, Sermitsiaq, 2 February 2021, at **(C-584E)**.

949 First Witness Statement of J. Mair, at **(CWS-3)**, para. 852.

950 K. Kristensen, *Kuannersuit: Naalakkersuisut receives bomb threats*, Sermitsiaq, 29 January 2021, at **(C-585E)**.

951 J. Schultz-Nielsen, *Threats can extend the consultation period*, Sermitsiaq, 31 January 2021, at **(C-586E)**.

651. Another issue was that GM was also unable to arrange for its own technical experts to attend these meetings due to COVID-19 travel restrictions.[952]

652. Before the first of the planned public meetings on the EIA had even taken place, on 3 February 2021, the Ministry announced that the consultation process would be extended to 1 June 2021.[953]

653. The public meetings were held in three major towns in southern Greenland (Narsarsuaq, Qaqortoq and Narsaq) between 5 and 9 February 2021.[954] Some meetings were also broadcast on TV.[955]

654. Unfortunately, the Government allowed the public consultation process to be overtaken by anti-uranium protest groups. Urani Naamik organised an anti-uranium rally outside the meeting in Narsaq, where Urani Naamik supporters intimidated GM employees.[956] They deliberately sought to disrupt the meeting and make it difficult for people to hear the presentations.[957]

655. As senior politicians were no longer attending because of the threats, the public meetings were instead run by Mr Hammeken-Holm. The absence of these prominent supporters of the Project had a negative impact on public perceptions. Dr Mair testifies: "*These senior politicians supported the Project. I believe that, if they had attended, they would have highlighted the major benefits for the community that would come from the Project and would have used their strong voices to counter misinformation*."[958] He further explains that he was disappointed at how GM's EIA was presented. Dr Mair's expectation had been that EAMRA and the DCE "*would make it clear that the studies had been approved, and that the environmental impacts set out in the EIA were accurately described and manageable*".[959] However, what actually happened was that the authorities "*allowed the public consultation process to be hijacked by questions from Urani Naamik and failed to address misinformation about the Project disseminated by NGOs and the media*."[960] This meant that, despite GM's EIA having been exhaustively reviewed by the Greenlandic and Danish authorities and their expert

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952 First Witness Statement of J. Mair, at **(CWS-3)**, para. 863.

953 Greenland Minerals Ltd ASX Announcement titled "Extension to Kvanefjeld Public Consultation Period", 5 February 2021, at **(C-48)**.

954 First Witness Statement of J. Mair, at **(CWS-3)**, para. 851.

955 First Witness Statement of J. Mair, at **(CWS-3)**, para. 851; J. Schultz-Nielsen, *KNR live broadcaster live from citizen meetings*, Sermitsiaq, 5 February 2021, at **(C-587E)**.

956 First Witness Statement of J. Mair, at **(CWS-3)**,para. 856; Greenland Minerals Ltd ASX Announcement titled: "Update on Kvanefjeld Public Meetings", 24 August 2021, at **(C-588)**.

957 First Witness Statement of J. Mair, at **(CWS-3)**, para. 856.

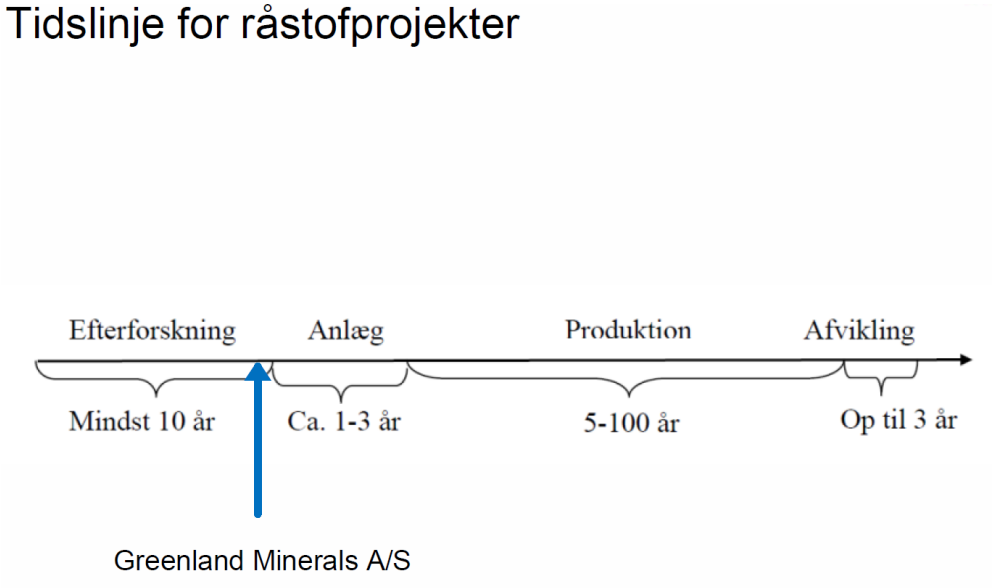
958 First Witness Statement of J. Mair, at **(CWS-3)**, para. 853.

959 First Witness Statement of J. Mair, at **(CWS-3)**, para. 857.

960 First Witness Statement of J. Mair, at **(CWS-3)**, para. 858.

advisers, many people left the public meetings questioning whether GM's EIA was factually accurate.[961] This should not have been the case.

656. Mr Hammeken-Holm gave a presentation at the meetings.[962] His presentation included a timeline for the Project (extracted below), which showed that GM had almost completed the "*Efterforskning*" (Investigation) stage and was about to move to the "*Anlæg*" (Construction) phase, which would take one to three years before the "*Produktion*" (Production) phase:



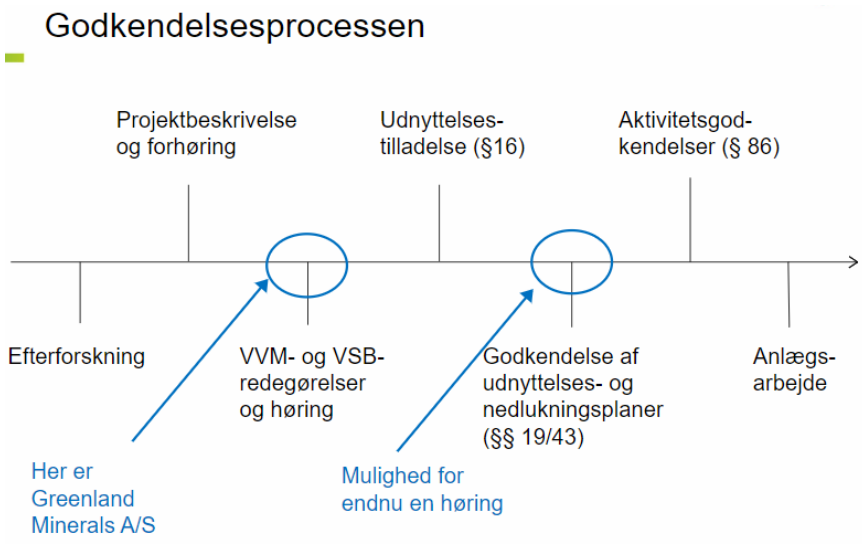
657. This presentation also included a slide outlining the licensing process (extracted below).[963] This showed that GM had completed its EIA and SIA (i.e., the project description), and was now at the EIA and SIA public consultation stage. The next step was "*Udnyttelses-tilladelse (§16)*" – the actual issuance of an exploitation permit under MRA Section 16. As discussed above, GM had already satisfied the conditions of MRA Section 29(2) and Section 1401 of the Standard Terms and was therefore legally entitled to an exploitation licence. The only questions that remained to be determined were the conditions on which an exploitation licence would be granted to GM pursuant to MRA Section 16, and the plan for the commencement of development activities and production in accordance with MRA Section 19 and Sections 1409-1410 of the

961 First Witness Statement of J. Mair, at **(CWS-3)**, para. 859.

962 First Witness Statement of J. Mair, at **(CWS-3)** para. 860; Document titled "*Consultation meetings on Kuannersuit project*", by J. T. Hammeken-Holm (Ministry of Mineral Resources), 5-9 February 2021, at **(C-589E)**.

963 First Witness Statement of J. Mair, at **(CWS-3)**, para. 861.

Standard Terms. As Dr Mair testifies: "*These slides confirmed my expectation that, following the consultation, GM would be granted an exploitation licence*".[964]



C.62 Greenland general election (February – April 2021)

658. While the consultation process was ongoing, there was a breakdown in the Siumut Party-led coalition and, in mid-February, the Greenlandic Government called a snap election.[965]

659. By around this time, public perceptions about the Project had been distorted by misinformation (discussed above) and the Government's failure to manage the public consultations diligently, fairly and loyally. The Kvanefjeld Project became an election issue, along with airports and fishing quotas.[966]

660. It was around this time that the Ministry prepared an internal legal assessment on the consequences of banning uranium mining. This legal assessment has not been made public. Indeed, its existence only became known in March 2022 because it was discussed in the Greenlandic Parliament.[967] It is likely that any legal assessment would almost certainly have discussed GM's rights in relation to the Kvanefjeld Project.

661. Despite the rampant misinformation, all the most experienced politicians with knowledge of the Kvanefjeld Project maintained their support. Premier Kielsen stated that he supported the Project, provided that it met Greenland's regulatory

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964 First Witness Statement of J. Mair, at **(CWS-3)**, para. 862.

965 First Witness Statement of J. Mair, at **(CWS-3)**, para. 865; M. Lindstrøm, *Naalakkersuisut: There is no liability*, Sermitsiaq, 17 February 2021, at **(C-590E)**, see p. 1: *"In any case, disagreements about the project contributed to Demokraatit leaving the coalition and to Siumut's internal disputes coming to light, leaving the new chairman Erik Jensen without playmates in Inatsisartut."*

966 First Witness Statement of J. Mair, at **(CWS-3)**, para. 865.

967 §37 Parliamentary Questionnaire No. 48/2022, 18 February 2022, at **(C-591)**, answer on 1 March 2022.

requirements.[968] Similarly, Erik Jensen, the newly elected leader of the Siumut Party, told the press: "*If the raw materials law, which has been passed by the entire Inatsisartut (parliament, ed.), is complied with, then the raw materials activities that are around must be initiated*".[969] Acting Minister of Mineral Resources Vittus Qujaukitsoq shared this same view, stating that if Greenlanders suddenly decided they do not want the Project, "*we'll make a fool of investors. The credibility of the whole country is at stake*."[970]

662. Concurrent with the election campaign, on 19 March 2021, the Ministry published its *Minex* newsletter.[971] This stated that the Kvanefjeld Project "*will create hundreds of jobs and generate significant revenues for Greenland through tax and royalties*".[972]

663. The IA Party campaigned on a platform of stopping the Kvanefjeld Project specifically, rather than uranium mining generally. The leader of the party, Múte Egede, told the press: "*Our goal in Inuit Ataqatigiit is that there should be no raw material extraction in Kuannersuit, therefore no one should be in doubt that Inuit Ataqatigiit will vote to stop the project*".[973] He claimed that the Government could stop the Project without any liability to GM because of the Addendum No. 1 Caveats.[974]

664. As explained in this submission, the IA Party's interpretation of the Addendum No. 1 Caveats is incorrect as a matter of law. The IA Party (and Múte Egede specifically) misled the Greenlandic public into thinking that the Greenlandic Government could terminate the Project with no legal consequences. This is despite the fact that, in 2016, the IA Party *expressly* acknowledged on at least two occasions that, if the Government

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968 First Witness Statement of J. Mair, at **(CWS-3)**, para. 868.

969 Nord.News, *Greenlandic governing party now supports controversial mining project*, Nord News, 3 March 2021, at **(C-592)**.

970 J. Gronholt-Pedersen and E. Onstad, *Mining magnets: Arctic island finds green power can be a curse*, Reuters, 2 March 2021, at **(C-593)**

971 Email from R. Christensen (Nanoq) to "undisclosed recipients", subject: "*Minex Newsletter (Nanoq - ID nr.: 16368664)*", 19 March 2021, at **(C-594)**; Ministry of Mineral Resources, *Minex Newsletter (53)*, January 2021, at **(C-595)**, p. 6.

972 Ministry of Mineral Resources, *Minex Newsletter (53)*, January 2021, at **(C-595)**, p. 6.

973 I. Kristiansen & A. Wille, *IA will stop the Kuannersuit project if they get power after the election*, KNR, 26 February 2021, at **(C-596E)**.

974 First Witness Statement of J. Mair, at **(CWS-3)**, para. 866.

passed legislation to block the Kvanefjeld Project, it may be liable to compensate GM for "*broken assumptions*"[975] and "*a loss of rights*".[976]

665. The IA Party's position against the Project is hardly surprising. There are numerous members of the IA Party who have been irrationally yet steadfastly opposed to the Kvanefjeld Project for many years. Many of these individuals are opposed to uranium mining on an ideological level, not because of demonstrated environmental risks.

666. There are also those members of the IA Party who have ties to anti-uranium lobby groups. For example, Mariane Paviasen, who had previously challenged the Minister on the trustworthiness of GM's EIA, is a spokesperson for Urani Naamik and, when in this role, told the press that the Kvanefjeld Project was "*potentially most polluting industrial project in the history of Greenland and the Commonwealth*".[977] Following the election, Ms Paviasen was appointed as the chairperson of the Committee on Business and Raw Materials. As discussed further below, a few months after the snap election in August 2021, the IA Party invited Urani Naamik to present at the public consultations on GM's EIA. The DCE was not invited to present. This is clear evidence of the IA Party Government disregarding scientific evidence, deliberately seeking to tilt the balance of public opinion against the Kvanefjeld Project, and denying due process to GM.

667. Probably the most prominent opponent of the Project has been Mr Aqqaluaq Egede (who went on to serve in the IA Party Government as Minister of Mineral Resources from April 2022 to June 2023). Mr Aqqaluaq Egede and his relatives have been on a crusade against the Project for many years. There are many examples of this:

(a) As discussed above, in 2016, Mr Aqqaluaq Egede spearheaded efforts by the IA Party to block the Kvanefjeld Project through a series of legislative proposals. These proposals were resoundingly criticised by all political parties, with members saying that his proposals were "*not scientifically justified*", "*arbitrary*" and not rational, and accused him (quite rightfully) of spreading myths about mining.[978]

(b) In his exchanges with other members of the Parliament, Mr Aqqaluaq Egede acknowledged that the door was "*wide open*" for GM to mine uranium at

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[975] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202)**, p. 2: "*Proposal for Inatsisartut decision that Naalakkersuisut puts the question of whether uranium or other radioactive minerals should be mined and exported, be it as a by-product or as the main product, to a referendum and that an impartial information process be initiated so that the population gets increased insight before the referendum into the basis of the question*."

[976] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

[977] W. Turnowsky, *Environmental organizations : GML undermines environmental legislation, Sermitsiaq*, 22 September 2019, at **(C-597E)**.

[978] See references at footnotes 592 and 625.

Kvanefjeld,[979] and acknowledged that blocking the Project may result in the Government being liable to GM for "*a loss of rights*".[980] Nevertheless, despite acknowledging the implications that stopping the Project may have for Greenland, Mr Egede maintained that the Project should be terminated because GM were "*people from the outside*".[981] Indeed, there can be no question that Mr Egede was hostile to GM because they were foreign investors, even though the whole purpose of Greenland's mineral resources framework was to attract foreign investors like GM.

(c) At the same time as Mr Egede made this statement in the Parliament, his uncle-in-law, Kalistat Lund, suggested to the Parliament that the Project was the cause of dead trout in the Narsaq river. These claims were debunked by the Minister of Environment, who said that the municipality had confirmed there were no abnormal dead fish in the river, and that the Danish authorities had found that all GM's activities were compliant, and that mining activities would not cause pollution.[982]

(d) Two years after Mr Aqqaluaq Egede's unsuccessful attempts to block the Kvanefjeld Project in Parliament, in September 2018, he again took aim at GM. As with his previous remarks, Mr Aqqaluaq Egede exhibited a hostility towards GM as a company, stating: "*why Naalakkersuisut cannot dictate requirements to GME and cannot politically put them in place?*".[983] In response, Minister Vittus Qujaukitsoq told Mr Aqqaluaq Egede that the Government was able to include conditions on the Kvanefjeld Project in its exploitation licence and IBA.[984]

(e) Around a year after this exchange in Parliament, in mid-2019, Mr Aqqaluaq Egede and his wife Naja Lund disrupted public meetings about the Project.[985] Minister Vittus Qujaukitsoq subsequently sent Dr Mair an email stating: "*They*

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979 See references at footnote 619.

980 *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

981 See footnotes above 590, 980.

982 §37 Parliamentary Questionnaire No. 246/2016, 28 September 2016, at **(C-463)**.

983 Document titled "*§37 Parliamentary Questionnaire No. 229/2018*" by V. Qujaukitsoq (Nanoq), 3 September 2018, at **(C-598)**, 17 September 2018, Vittus Qujaukitsoq answer.

984 Document titled "*§37 Parliamentary Questionnaire No. 229/2018*" by V. Qujaukitsoq (Nanoq), 3 September 2018, at **(C-598)**, 17 September 2018, Vittus Qujaukitsoq answer.

985 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 734 and 735.

are immune for any facts. No argument will ever convince them. They have already made a decision not to support your project."[986]

(f) In March 2020, Naja Lund published an open letter in which she alleged that, if the Project went ahead, "*sheep herds will be hit hard, and the local fishing at Narsaq will be hit as well*" and that to pursue the Project would be "*to sacrifice the health of the citizens*".[987] Ms Lund's allegations were unsubstantiated and were contrary to the clear advice of Greenland's Chief Medical Officer. Nevertheless, despite having no evidentiary basis for her claims, she called on people to rally against the Project: "*If we are to be able to stop the obviously coming permit, then we as a society must react.*".[988]

(g) In January 2021, Naja Lund published another open letter insisting that the public consultation on the Project should be deferred because of bomb threats.[989] As discussed above, these bomb threats were shown to be a hoax.

668. In sum, there is considerable evidence that Mr Aqqaluaq Egede and the Lund family have gone to great lengths to block the Project. They are prominent residents of Narsaq and have used their political profiles to spread false information about the environmental and social impacts of the Project.

669. As discussed below, recent events show that Mr Aqqaluaq Egede and his IA Party colleagues were unable to find any legal or environmental basis in the MRA to reject GM's exploitation licence application. Undeterred by the law, but determined to stop the Project, the IA Party then resorted to the passage of expropriatory legislation (i.e., Act No. 20). There can be no question that, to borrow the words of Mr Aqqaluaq Egede, the purpose of Act No. 20 was to "*politically put them* [GM] *in place*".[990]

670. Concurrent with the election campaign, on 2 March 2021, Reuters reported that the US State Department had issued a statement asking its partners, including Denmark, to

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986 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 736 and 737; Email from V. Qujaukitsoq (Nanoq) to J. Mair (GM), subject: "*SV: Update*", 26 June 2019, at **(C-542)**, p. 1, email from V. Qujaukitsoq dated 26 June 2019.

987 "*Inuit Ataqatigiit in the Municipality of Kujalleq say no to extraction of rare earths with uranium content in Kuannersuit*", Inuit Ataqatigiit, 25 March 2020, https://ia.gl/da/2020/03/25/inuit-ataqatigiit-i-kommune-kujalleq-siger-nej-til-udvinding-af-sjaeldne-jordarter-med-uranindhold-i-kuannersuit/ (last accessed 5 July 2023), at **(C-599E)**.

988 "*Inuit Ataqatigiit in the Municipality of Kujalleq say no to extraction of rare earths with uranium content in Kuannersuit*", Inuit Ataqatigiit, 25 March 2020, https://ia.gl/da/2020/03/25/inuit-ataqatigiit-i-kommune-kujalleq-siger-nej-til-udvinding-af-sjaeldne-jordarter-med-uranindhold-i-kuannersuit/ (last accessed 5 July 2023), at **(C-599E)**.

989 J. Schultz-Nielsen, *Threats can extend the consultation period*, Sermitsiaq, 31 January 2021, at **(C-586)**.

990 Document titled "*§37 Parliamentary Questionnaire No. 229/2018*" by V. Qujaukitsoq (Nanoq), 3 September 2018, at **(C-598)**, 17 September 2018, Vittus Qujaukitsoq answer.

review investments that could give China access to their economies.[991] This same article noted that Denmark had "*in the past headed off Chinese involvement in infrastructure projects*".[992] Dr Mair explains that he saw this article at the time and noted that it was consistent with what he had observed "*with increasing US direct interest in Greenlandic affairs and presence on the ground*".[993] Dr Mair also notes that he was aware of Denmark previously blocking Chinese investment in a port and in an airports project (see paragraphs 586-587 above).

671. Dr Mair explains that, based on comments made by the US Ambassador's aide in mid-2019, he was aware that the US Government was not entirely comfortable with Shenghe's shareholding in GM.[994] He testifies:

> "*As set out in this Reuters article, the US and Denmark had publicly stated their desire to exclude China from the Arctic region. It struck me that, if the US and Denmark were not comfortable with Shenghe's interest in the Project, they would probably view it as convenient if the Project were stalled by local Greenlandic politicians. This would conveniently delay the US and Denmark having to initiate a public conversation about the potential implications of Chinese investment in Greenland.*
>
> *As I have already explained, we had a very positive working relationship with Shenghe. It is my view that any concerns that the US and Denmark may have had about our partnership were unfounded. Nevertheless, there was enough misreporting about our relationship with Shenghe (and misunderstandings on the part of the US embassy) to make me worry that the reality might get lost in the politics.*"[995]

672. It was against this backdrop – misinformation about the Project spreading and geopolitics being reported in the press – that Greenland's general election took place.

673. The election was held on 6 April 2021.[996] The IA Party received the largest number of votes and formed a coalition government with the Naleraq Party. The two parties entered into a coalition agreement which stated:[997]

> "*The coalition agrees that uranium should not be mined in Greenland. The mineral project at Kuannersuit must be stopped. During this election period,*

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991 J. Gronholt-Pedersen and E. Onstad, *Mining magnets: Arctic island finds green power can be a curse*, Reuters, 2 March 2021, at **(C-593)**.

992 J. Gronholt-Pedersen and E. Onstad, *Mining magnets: Arctic island finds green power can be a curse*, Reuters, 2 March 2021, at **(C-593)**.

993 First Witness Statement of J. Mair, at **(CWS-3)**, para. 874.

994 First Witness Statement of J. Mair, at **(CWS-3)**, para. 876.

995 First Witness Statement of J. Mair, at **(CWS-3)**, paras. 878 and 879.

996 First Witness Statement of J. Mair, at **(CWS-3)**, para. 880.

997 Government of Greenland Coalition Agreement, 16 April 2021, at **(C-19E)**, p. 12.

work will be done to legislate on a ban on mineral extraction that contains radioactive material".

674. Múte Egede became Premier of Greenland and Naaja Nathanielsen was appointed as Minister for Mineral Resources.

675. Dr Mair testifies that, even though the IA Party was anti-uranium, he believed it would be open to a constructive dialogue with GM about the future of the Project, especially as the development plan was flexible, and could be modified to reduce the extent of uranium processing in Greenland.[998] He explains that it would have been relatively straightforward to modify the development plan to move to offshore refining, especially as this had been GM's original preference before the Greenlandic Government had insisted on onshore processing.[999] Alternatively, GM could have removed the commercialisation of uranium, instead treating it safely as a residual impurity.[1000] Dr Mair testifies: "*We could have run a proper public consultation on alternative development strategies, dispelled misconceptions about the Project, and found a solution.*"[1001]

C.63 Investigations into Addendum No. 1 (April 2021)

676. Shortly after the election, on 15 April 2021, Danwatch published a profile on the new Premier Múte Egede.[1002] He was quoted as saying: "*We want to stop the Kvanefjelds project*" and "*It's not going to happen*".[1003]

677. Premier Egede was quoted as stating that the Addendum No. 1 Caveats allowed the Government to reject GM's exploitation licence application:[1004]

> "*The application can be rejected for any reason, including for a political or administrative reason, or for no reason at all. It also follows directly from the addendum to the permit that a rejection of an application for the granting of a permit for the utilization of radioactive elements entails neither obligations nor responsibility for the Greenlandic authorities, including liability for damages*".

678. As discussed at length above, this interpretation of the Addendum No. 1 Caveats is wrong as a matter of law, including because the caveats were designed and intended to

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998 First Witness Statement of J. Mair, at **(CWS-3)**, para. 885.

999 First Witness Statement of J. Mair, at **(CWS-3)**, para. 886.

1000 First Witness Statement of J. Mair, at **(CWS-3)**, para. 887.

1001 First Witness Statement of J. Mair, at **(CWS-3)**, para. 887.

1002 L. Voller, *This man wants to stop a mining project worth hundreds of millions. We asked five lawyers whether it can even be done*, Danwatch, 15 April 2021, at **(C-600E)**.

1003 L. Voller, *This man wants to stop a mining project worth hundreds of millions. We asked five lawyers whether it can even be done*, Danwatch, 15 April 2021, at **(C-600E)**, pp. 1 and 4.

1004 L. Voller, *This man wants to stop a mining project worth hundreds of millions. We asked five lawyers whether it can even be done*, Danwatch, 15 April 2021, at **(C-600E)**, p. 2.

operate only as a bridging solution while the ZTP was still in place and, even during this interim period, would not have allowed the Government to reject an application to exploit non-radioactive elements.

679. This interpretation of Addendum No. 1 has been endorsed by numerous legal professors. Indeed, the same Danwatch article that profiled Premier Egede cited several legal professors and academics who opined that the Government could not reject GM's application if it had met all the legal requirements.[1005]

680. As discussed in paragraphs 204 and 205 above, Addendum No. 1 had been substantially negotiated at two meetings on 24 October 2011. Those meetings were attended by GM representatives including Dr Mair. The first meeting was with Premier Kuupik Kleist and Minister Ove Karl Berthelsen, and the second meeting was with Deputy Minister Jørn Skov Nielsen (the head of the BMP) and Jens Hesseldahl (the head of BMP legal). It was at the second meeting that GM and the Government negotiated the terms of Addendum No. 1. Following this meeting, Mr Hesseldahl drafted Addendum No. 1.

681. In late April 2021, Mr Nielsen met with Mr Hesseldahl to discuss Addendum No. 1. Mr Nielsen subsequently relayed the contents of this meeting to Dr Mair.[1006] As Dr Mair testifies:

> "*According to Mr Nielsen, Mr Hesseldahl had been ushered out of his role (which was unusual for Greenlandic civil servants). Also, Mr Hesseldahl had said that the Government's interpretation of Addendum No. 1 was not correct, and that the caveats were only supposed to serve as an interim solution while the ZTP was still in place. This was consistent with my understanding of the caveats when we negotiated the addendum opposite Mr Hesseldahl and Mr Nielsen.*"[1007]

682. Dr Mair subsequently relayed his conversation with Mr Nielsen to the GM Board. This is recorded in the minutes of the 29 April 2021 Board meeting:

> "*John Mair stated that Jørn Skov Nielsen had spoken to the government lawyer who drafted the addendum to include uranium on the Company's exploration licence, who confirmed the wording of the addendum was due to Greenland's zero tolerance to uranium being in place at the time. It was not intended to give the government freehand discretion to reject an exploitation licence*." [1008] (emphasis added)

[1005] L. Voller, *This man wants to stop a mining project worth hundreds of millions. We asked five lawyers whether it can even be done*, Danwatch, 15 April 2021, at **(C-600E)**.

[1006] First Witness Statement of J. Mair, at **(CWS-3)**, para. 892.

[1007] First Witness Statement of J. Mair, at **(CWS-3)**, para. 892.

[1008] Greenland Minerals Ltd, Minutes of Board Meeting, 29 April 2021, at **(C-208)**, p. 1.

683. There is therefore strong evidence from both sides of the negotiating table that the Addendum No. 1 Caveats cannot be interpreted as giving the Government "*freehand discretion*" to reject GM's exploitation licence application.

684. At the same time as Dr Mair reached out to Mr Nielsen about Addendum No. 1, the IA Party Government was doing its own investigations into the addendum. While Premier Egede had told the public during his election campaign that the Addendum No. 1 Caveats allowed the Government to reject GM's exploitation licence application, it was not until after the election that the IA Party received any legal assessment of this issue.[1009]

685. This legal assessment was prepared by law firm Poul Schmith (Kammeradvokaten), the Respondents' legal counsel in this arbitration.[1010] Based on the series of events that followed, it can be inferred that this legal assessment did not support the IA Party's position that Addendum No. 1 would allow them to stop the Kvanefjeld Project. The evidence to support this inference includes:

(a) Addendum No. 1 states that GM does not have an automatic right to a licence for the "*exploitation of radioactive elements*" (Section 201) and is not entitled to be granted a licence "*to exploit radioactive elements*" (Section 202). Even if these caveats are valid (contrary to GM's position set out in Section G.2 below), it is obvious that they do not affect GM's right to a licence for the exploitation of non-radioactive elements (treating uranium as a residual impurity).

(b) Any objective legal assessment would conclude that the Addendum No. 1 Caveats are invalid or unenforceable as a matter of Danish law. There are multiple grounds of invalidity that infect the caveats, including that the caveats purport to authorise the Greenlandic Government to act without regard to fundamental norms of Danish administrative law. This is obviously unlawful. The invalidity of the Addendum No. 1 Caveats is confirmed by two eminent professors of Danish law (as discussed in Sections G.2(d), G.2(e) and G.2(f) below).

(c) The long-time head of the MLSA, Mr Hammeken-Holm, has acknowledged, in the context of GM's exploitation licence application, that the Government is

[1009] On 7 May 2021, Minister Nathanielsen publicly stated that the Government was assessing its options for blocking the exploitation of uranium for the Project within the framework of the MRA. Press release titled "*Greenland says yes to mining but no to uranium*", by Mineral Resources Authority, 7 May 2021, at **(C-601)**, p. 2; §37 Parliamentary Questionnaire No. 033/2021, 10 May 2021, at **(C-602)**.

[1010] On 29 November 2021, Minister Nathanielsen advised the Parliament that: "*In connection with the preparation of the Uranium Act, Naalakkersuisut has had legal assessments prepared by The Law Firm Poul Schmith.*", §37 Parliamentary Questionnaire No. 157/2021, 17 November 2021, at **(C-603)**, p. 6. Poul Schmith also provided formal legal advice to the Government on this same issue on 8 October 2021 (see Section C.72 above).

uncertain about the meaning of the term "*exploitation*".[1011] He told the press that it was not clear whether "*exploitation*" referred to the processing and sale of minerals, or whether it was "*exploitation*" as soon as ore was dug out of the ground. He stated: "*Exploitation and extraction are words in the same category, but it is not 100 percent clear in the law*". Mr Hammeken-Holm is not a lawyer, and it stands to reason that his public comments are based on formal legal advice to the effect that it is uncertain whether the Addendum No. 1 Caveats affect GM's right to exploit rare earths with uranium extracted and treated as a residual impurity.

(d) It should be assumed that Mr Hesseldahl was consulted about Addendum No. 1, either as part of the Ministry's internal investigations (see paragraph 660 above), or as part of Poul Schmith's investigations, or both. Based on the information of Mr Nielsen, Mr Hesseldahl would have told them that their interpretation of the caveats was not correct.

(e) As mentioned above, numerous legal professors and academics opined at this time that the Government could not reject GM's application if it had met all the legal requirements.[1012]

(f) Finally, and most importantly, if the IA Party Government truly believed that Addendum No. 1 meant GM had no legal rights, they would simply have rejected GM's exploitation licence application on this basis. But the Government did not do this. Indeed, it went through an entire legislative process to block the Kvanefjeld Project. The fact is that Act No. 20 was only ever necessary because GM had pre-existing property rights.

686. Thus, assuming that Poul Schmith's legal assessment of Addendum No. 1 did not support the Government's position that GM had no legal rights, it was at this time that the IA Party Government realised that it was in a predicament. It was not possible to reject GM's exploitation licence application within the framework of the MRA and GM's Exploration Licence. At the same time, the IA Party had campaigned on the platform of stopping the Kvanefjeld Project, and the new Premier Múte Egede had told the Greenlandic public during his election campaign that the Project could be stopped with no liability for Greenland.[1013] Also, they were under pressure from elements within the IA Party itself to stop the Project as soon as possible.

687. Faced with this predicament, the IA Party Government called on Poul Schmith to devise legislation to block the Project outside the legal framework of the MRA and GM's

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[1011] M. Lindstrøm, *Kuannersuit: The dispute continues – final rejection ready in a few weeks,* Sermitsiaq, 28 March 2023, at **(C-604E)**.

[1012] L. Voller, *This man wants to stop a mining project worth hundreds of millions. We asked five lawyers whether it can even be done*, Danwatch, 15 April 2021, at **(C-600E)**.

[1013] First Witness Statement of J. Mair, at **(CWS-3)**, para. 866.

Exploration Licence. As discussed in Section C.65 below, Poul Schmith proceeded to draft the legislation that would become Act No. 20.

688. Before diving into the detail of this time period, it is worth highlighting an important theme that emerges. What is remarkable about the IA Party Government's decision-making during this period is that it is clear that it had no interest whatsoever in the environmental and scientific merits of the legislation it proposed. The political decision to stop the Kvanefjeld Project had been made, and the Government and its lawyers came up with a way to achieve this. As GM will show in the submissions below, any suggestion that Act No. 20 was necessary to protect health and environment is a smokescreen for a purely political agenda to dispossess GM of its legal rights.

C.64 Minister for Mineral Resources press release (7 May 2021)

689. On 7 May 2021, the new Minister for Mineral Resources, Naaja Nathanielsen, issued a press release.[1014] This release stated that the Project was a "*special case*" because of Addendum No. 1 and that the new Government was "*assessing what opportunities the Self Government has within the framework of the Mineral Resources Act and the exploration licence to achieve the government's goal of avoiding exploitation of uranium – also for the Kuannersuit project*".[1015] This is a reference to the Government working with Poul Schmith to find a way to block the Project.

690. The Minister also stated that GM "*has the right to have the public consultation process conducted as part of their application for exploitation and I will of course help to complete it*".[1016] Dr Mair testifies that he "*took comfort in this reassurance*"[1017] and GM "*continued to work towards advancing the permitting process*".[1018]

691. That same day, the Minister issued a second public announcement, which repeated some of the points in the press release.[1019] This announcement stated that GM's licence "*will be processed in accordance with the Mineral Resources Act and the special terms issued to the company*" and that the Government would comply with the MRA and the terms of GM's Exploration Licence.

[1014] First Witness Statement of J. Mair, at **(CWS-3)**, para. 896; Press release titled "*Greenland says yes to mining but no to uranium*", by Mineral Resources Authority, 7 May 2021, at **(C-601)**.

[1015] Press release titled "*Greenland says yes to mining but no to uranium*", by Mineral Resources Authority, 7 May 2021, at **(C-601)**, p. 2.

[1016] Press release titled "*Greenland says yes to mining but no to uranium*", by Mineral Resources Authority, 7 May 2021, at **(C-601)**, p. 2.

[1017] First Witness Statement of J. Mair, at **(CWS-3)**, para. 897.

[1018] First Witness Statement of J. Mair, at **(CWS-3)**, para. 901.

[1019] First Witness Statement of J. Mair, at **(CWS-3)**, para. 898; Government of Greenland Public Announcement "*Government of Greenland supports mining activities, despite no to uranium*" (Minister Naaja Nathanielsen), 7 May 2021, at **(C-20)**.

692. In her announcement, Minister Nathanielsen referred to GM having been issued "*special terms*" (i.e., Addendum No. 1). She said that Addendum No. 1 had "*been about the fact that we as an authority have needed to install an emergency brake in the projects, as exploitation of radioactive elements requires quite a lot of the authorities in relation to control and supervision, and as there may be special environmental, health and societal conditions in this regard*."

693. In relation to this statement, Dr Mair testifies:

> "*While it is correct that the authorities had the power to block projects if the environmental, societal and health conditions were not objectively satisfied, that was not the case for our Project. We had demonstrated through many years of rigorous studies (which the Danish and Greenlandic authorities and the Greenlandic Government approved) that the Project did meet all of the conditions.*"[1020]

694. During this period, GM tried to set up meetings with the new IA Party Government to obtain clarity on the public consultation process and its exploitation licence application. However, the Government was not cooperative, and these meetings did not take place.[1021]

695. At this same time, GM informed the MLSA that due to COVID-19 and the political uncertainty, GM would be suspending its drilling program planned for the summer of 2021.[1022]

696. A few days after the Minister's press release, Mariane Paviasen (IA Party member and Urani Naamik spokesperson) asked questions to Minister Nathanielsen in Parliament, including whether the Kvanefjeld Project would be stopped, and why the consultation had not been stopped already.[1023]

697. Minister Nathanielsen responded on 26 May 2021, stating that the Project would be treated in accordance with the MRA and licence terms, and that, under the MRA, GM was entitled to have the public consultation on its application completed.[1024] The Minister explained that the Government was assessing its legal options for blocking the Project and stated that "[h]*ow the issue regarding the mining project in Kuannersuit will be handled in concrete terms will depend on the conclusions reached by Naalakkersuisut in studies of what options we have*."

[1020] First Witness Statement of J. Mair, at **(CWS-3)**, para. 900.

[1021] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 902 and 903.

[1022] First Witness Statement of J. Mair, at **(CWS-3)**, para. 895.

[1023] §37 Parliamentary Questionnaire No. 033/2021, 10 May 2021, at **(C-602)**.

[1024] §37 Parliamentary Questionnaire No. 033/2021, 10 May 2021, at **(C-602)**, p. 7.

698. As set out above, the consultations on GM's EIA and SIA had previously been extended to 1 June 2021. On 28 May 2021, the Government announced via a post on its website that these consultations would be further extended to 13 September 2021, and a second round of public consultation meetings would be held in late August 2021 in six towns in southern Greenland.[1025]

C.65 Preparation of Act No. 20 by Poul Schmith (June 2021)

699. The draft bill to block the Kvanefjeld Project (which ultimately became Act No. 20) was drafted by the Respondents' legal counsel in this arbitration, Poul Schmith.[1026] The draft bill was provided to Ministry lawyer Bo Simmelsgaard, who sent it for translation on 22 June 2021.[1027] GM received copies of these documents from the Ministry in January 2023, along with other documents that provide a picture (albeit incomplete) of the events that ultimately led to the passage of Act No. 20.[1028]

700. It is not clear whether the Danish Government was formally or informally consulted on the draft bill. It would seem the best person to answer this question is counsel for the Respondents, Paw Fruerlund, who drafted the bill. According to Mr Fruerlund, Poul Schmith is "*the primary legal adviser of the Danish State*" and the firm's "*main objective is to provide solutions for both the public and the private sector*".[1029]

701. As with the final act, the draft bill purported to ban uranium prospecting, exploration and exploitation (Section 1(1)), and provided that prospecting, exploration and exploitation for minerals other than uranium would be permitted only if the average uranium content of the total resource was less than 100 ppm by weight (Section 1(2)). In short, it set a "**uranium ppm threshold**". However, unlike the final act, the draft bill included a section that provided that "*Naalakkersuisut can grant a dispensation from the prohibition S 1*".[1030]

702. On 1 July 2021, an internal Government meeting was held to discuss the draft bill. This was attended by Minister Nathanielsen, Mr Hammeken-Holm (head of the MLSA), the Committee for Business and Raw Materials (chaired by Mariane Paviasen) and lawyers

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[1025] Press release titled "*The Kuannersuit extension hearing period on 13 September 2021*", Government of Greenland, 28 May 2021, at **(C-605)**.

[1026] Naalakkersuisut Response to Question 056 2022 under section 37 of the Rules of Procedure of the Inatsisartut regarding Potential Claims for Damages as a Result of the Uranium Act (English translation), 21 March 2022, at **(C-24)**.

[1027] Email chain between F. Lynge (Nanoq) to B. Simmelsgaard (Nanoq), subject: "*Re: Hasteoversættelse af kort lov (Nanoq - ID nr.: 17147549)*", 22 June 2021, at **(C-606)**; "*Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation*", 22 June 2023, at **(CL-7)**.

[1028] The circumstances surrounding this disclosure are explained in Sections C.82 and C.89.

[1029] LinkedIn, *Paw Fruerlund*, 2023, https://www.linkedin.com/in/paw-fruerlund-4766aa39/, at **(C-607)**, p. 3.

[1030] Document titled "*Proposal for: Inatsisartut Act No. [X] of [dd mm 2021] prohibiting preliminary investigation, exploration and exploitation of uranium*", 22 June 2021, at **(C-608)**.

for Poul Schmith.[1031] According to an internal email from Mr Hammeken Holm, the structure of this meeting was as follows:

(a) Minister Nathanielsen presented the law (10 minutes);

(b) Poul Schmith presented the law in detail (30 minutes);

(c) There were questions from the Committee (30 minutes); and

(d) Minister Nathanielsen provided concluding remarks (10 minutes).

703. Poul Schmith's presentation from this meeting is titled: "*Presentation of proposals for the Inatsisartut law on uranium*" dated 29 June 2021.[1032] This presentation was authored by Paw Fruerlund, partner Jens Teilberg Søndergaard and associate Mads Mygind Bojsen.

704. The Ministry has not disclosed information regarding the discussions that took place at this meeting. It appears that there was little, if any, discussion of the scientific merits of a uranium ppm threshold. Indeed, the meeting was not even attended by representatives of the relevant environmental and scientific agencies .This stands in stark contrast to the extensive investigative process that the Government undertook in the period 2007-2013 before lifting the ZTP, which concluded that uranium mining in Greenland could be conducted safely and in accordance with international best practice (see paragraph 297 above). It also is contrary to the approach advocated by Minister Nathanielsen who, as the chairperson of the Greenland Parliament Business Committee, recommended setting up the UWG in late 2012. At this time, she told the Parliament that "*the decision* [with respect to uranium mining] *should be made on objective and well-informed grounds*".[1033] Similarly, former IA Party leader Sara Olsvig previously told the press that a threshold should not be "*a number they have just plucked out of thin air*" and there was "*a need for a thorough identification of the consequences of such a threshold limit value. A thorough analysis must be conducted, before we decide on a specific figure*."[1034] The irony is that, in 2021, the IA Party plucked a number out of thin air without any scientific analysis.

705. It also appears that a decision was made to remove the provision that allowed the Government to grant exemptions from the act, making it mandatory, and removing any discretion on the part of the Government. GM can only speculate as to why this

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[1031] Email from J. T. Hammeken-Holm to K. Folnæs-Berantzino, subject: "*Materials for a meeting with the Committee for Industry and Raw Materials*", 30 June 2021, at **(C-609E)**.

[1032] Document titled: "*Presentation of proposals for the Inatsisartut law on uranium*", by Poul Schmith, 29 June 2021, at **(C-610E)**.

[1033] Report titled "*Report on matters relating to a possible lifting or changing of the zero tolerance policy on the exploitation of uranium and other radioactive minerals*", Lett Law Firm, DCE and PwC, April 2013, at **(C-339)**, pp. 74-80.

[1034] *Greenland Oil & Minerals*, Sermitsiaq (Issue 12, 2015), at **(C-611)**, pp. 32-33.

provision was removed. Again, it would seem the best person to answer this question is counsel for the Respondents.

706. Following the meeting, the Ministry of Mineral Resources sent the amended draft bill (**Consultation Bill**) to the Parliament.[1035] The covering letter stated: "*The background to the proposal is a political desire to introduce the zero tolerance policy by law*." Predictably, the covering letter made no mention of safeguarding public health or the environment.

C.66 Consultation Bill for Act No. 20 (July 2021)

707. On 2 July 2021, the Government published the Consultation Bill to set a uranium ppm threshold.[1036] It was opened to public comments for one month, during the height of the Greenland's summer holiday period.[1037]

708. Dr Mair testifies:

> "*I was extremely surprised by the use of a ppm threshold. The use of this as a measure of radiation risk is fundamentally flawed because it had no clear relationship to the potential environmental or human impacts from mining ore enriched with uranium* […]. *It also defied logic in that in mineral exploration results cannot be pre-empted, and if uranium is not a target for potential exploitation, it still may be elevated above an arbitrary concentration threshold in a number of mineral deposit types. It was clear to me that the Act was designed for purpose to address one project – Kvanefjeld. The IA Party had made it clear that this was their political agenda.*
>
> […] [F]*ollowing extensive investigations, the Greenlandic Government had in 2013 abandoned the ZTP in favour of the EIA process and radiation dosage limits, which involved thorough and extensive radiological studies. It was recognised that this was a scientific and sophisticated way to analyse and mitigate environmental, health and safety risks. Conversely, a threshold did not confront these risks in any meaningful way. The Consultation Bill wound back the clock ten years, abandoning all the progress and learning since that time.*"[1038]

709. The Ministry's recent disclosure of internal Government documents reveals that advice received by the Government at this time did not support the use of a uranium ppm threshold. The Ministry has disclosed a document dated 9 July 2021 titled: "*Radioactive*

[1035] Consultation Letter, "*Hearing on the proposal for the Inatsisart Act on the ban on preliminary investigation, exploration and exploitation of uranium*", 1 July 2021, at **(C-205)**; "*Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation*", 22 June 2023, at **(CL-7)**.

[1036] "*Bill: Greenland Parliament Act no. [X] of [dd mm 2021] to ban uranium prospecting, exploration and exploitation*", 22 June 2023, at **(CL-7)**.

[1037] First Witness Statement of J. Mair, at **(CWS-3)**, para. 909.

[1038] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 905-906.

minerals and consequences" (**Redacted Advice**).[1039] The author of this advice is not clear, but it appears to have been prepared by someone with scientific knowledge of mining radioactive elements. The word "*hdal*" which appears at the top of each page to the Redacted Advice may indicate that the Redacted Advice was prepared by Mr Henrik Stendal, Head of Geology Department at the Ministry.

710. The Redacted Advice has a section on "*Radiation*", which explains how radioactivity is measured in becquerels and radiation dosage is measured in millisieverts, and that to estimate radiation dosage "*requires models that make use of advanced algorithms*" and that "[s]*uch modelling tools have been developed and can e.g.* [be] *used to predict doses to populations in the event of releases of radioactive substances*".[1040] The Redacted Advice indicates that radiological models should be used to ensure the protection of health and the environment. It does not suggest that radiation protection could or should be regulated through the use of a uranium ppm threshold.

711. The Redacted Advice provides a summary of uranium concentrations at various mining projects in Greenland, including the Kvanefjeld Project, and confirms that the imposition of the threshold would block the Kvanefjeld Project. Remarkably, the conclusion of the advice has been redacted.[1041] On 27 June 2023, GM sent a letter to the Ministry requesting provision of the complete advice.[1042] GM has not received a response from the Ministry in respect of that request.

712. The Redacted Advice is consistent with previous advice received by the Government regarding radiation protection. As outlined above, the Danish and Greenlandic authorities (including the DCE, the Danish Ministry of Foreign Affairs and GEUS) have performed extensive studies into uranium mining which have shown that the only appropriate way to assess and regulate radiation risks was through radiation dosage limits (measured in mSv). Indeed, the previous Government expressly advised the Parliament that ppm thresholds should not be used to regulate uranium mining because "*limit values are hardly relevant*".[1043]

713. The Redacted Advice shows that the information available to the IA Party Government at the time showed that the use of a uranium ppm threshold would be inconsistent with international best practice. The only explanation is that the Government chose to use a

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[1039] Document titled: "*Radioactive minerals and consequences*", Government of Greenland, 9 July 2021, at **(C-206E)**.

[1040] Document titled: "*Radioactive minerals and consequences*", Government of Greenland, 9 July 2021, at **(C-206E)**, p. 2.

[1041] Document titled: "*Radioactive minerals and consequences*", Government of Greenland, 9 July 2021, at **(C-206E)**, pp. 8-9.

[1042] Letter from G. Frere (GM) to N. Nathanielsen (Minister for Mineral Resources and Justice) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Access to the public files, request for production of memorandum dated 9 June 2021 in unredacted form*", 27 June 2023, at **(C-612)**.

[1043] *Naalakkersuisut's response to referendum proposal on mining of up to 0.05% radioactive materials*, Minister for Business, Labour, Trade and Foreign Affairs, 20 April 2016, at **(C-214E)**, p. 2.

scientifically inappropriate approach because it suited its political objective of stopping the Kvanefjeld Project.

714. Shortly after the Consultation Bill was published, on 13 July 2021, former Premier, Kim Kielsen, issued a press release titled "*IA has revealed its election lie*".[1044] In this statement, Mr Kielsen pointed out (quite rightly) that the IA Party had been running a "*scare campaign*" against the Kvanefjeld Project, including by making false allegations that "[r]*adioactive dust will make our country uninhabitable*", people "*will not be able to hunt or fish for anything*" and "*radioactive minerals can never be mined safely*". He explained that the uranium ppm threshold was not about protecting citizens, as they were already protected by Greenland's robust environmental legislation, rather the Consultation Bill "*shows that IA is stuck in the 1970s fight against nuclear weapons instead of fighting today's fight against climate change and for an economically independent Greenland*". Mr Kielsen further pointed out that the IA Party proposal did not ban the extraction of minerals that contain other radioactive substances (such as thorium, plutonium and radon), only uranium.

715. The following day, Greenlandic news outlet Sermitsiaq published a report criticising the Consultation Bill for harming Greenland's economic prosperity, creating regulatory confusion and politicising the uranium issue.[1045] The Greenland Business Association was reported as stating that the bill "*will negatively affect the investment climate, as the proposal creates uncertainty about the framework for investing in mineral exploration in Greenland*."

C.67 Submissions on the Consultation Bill (July – August 2021)

716. After publishing the Consultation Bill on 2 July 2021, the Government received comments from a range of parties, some supportive and others opposed.

717. GM made a submission on the Consultation Bill on 2 August 2021.[1046] This was prepared by Messrs Eggins and Frere.[1047] In its submission, GM explained the arbitrariness of the uranium ppm threshold. GM also pointed out that the proposal did not distinguish between uranium mining projects and poly-metallic projects with uranium in low concentrations.[1048] GM further explained that it would be impractical to apply a uranium ppm threshold to prospecting and exploration activities because it

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[1044] Press release titled "*IA has revealed its election lie*", by K. Kielsen member of Inatsisartut for Siumut, 13 July 2021, at **(C-613E)** (English translation).

[1045] The Editorial Staff, *Tough ride for uranium proposals*, Sermitsiaq, 14 July 2021, at **(C-614E)**.

[1046] Document titled "Comments on the draft law 'prohibiting prospecting, exploration and exploitation of uranium'", by Greenland Minerals Ltd, 2 August 2021, at **(C-59)**.

[1047] First Witness Statement of J. Eggins, at **(CWS-6)**, para. 80; see also First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, paras. 50-52.

[1048] First Witness Statement of J. Mair, at **(CWS-3)**, para. 910.b.

was not possible to know whether an ore body had less than 100 ppm uranium until it has been drilled.[1049]

718. On 10 August 2021, the Greenlandic press reported that the Consultation Bill was "*facing harsh criticism from a large number of mining companies, which have submitted worrying consultation responses. The Greenland Chamber of Commerce supports the criticism: The law has the character of an expropriation law*".[1050]

C.68 Second round of public consultations on the EIA and SIA (late August 2021)

719. Whereas GM was involved in and informed of the first round of public consultations on its EIA and SIA, after the IA Party took power in the Greenlandic Government, GM was kept in the dark.

720. GM has recently received through disclosure a copy of the original draft program for the second round of public consultations dated 9 June 2021.[1051] This program provides that the consultations would include a presentation by Minister Nathanielsen, a presentation by GM, a presentation by the DCE and questions with a panel, including Minister Nathanielsen, the Minister of Environment, the Minister of Health and a GM representative. This was the type of process GM legitimately expected,[1052] and to which it was entitled, both under the MRA and Section 14 of the Standard Terms.

721. However, subsequent events reveal that, sometime after this draft program was prepared, the IA Party Government decided to abandon any semblance of an objective scientific process and instead to use these meetings to turn the public against the Kvanefjeld Project and push the IA Party's political agenda.[1053] What is clear is that the change in approach took place around the same time as the 1 July 2021 meeting regarding the Consultation Bill, which was attended by Minister Nathanielsen, Mr Hammeken-Holm, the Committee for Business and Raw Materials (chaired by Urani Naamik spokesperson Mariane Paviasen) and lawyers for Poul Schmith. There is therefore good reason to believe that the Government's decision-making regarding the conduct of the public consultations on GM's EIA and SIA was being driven by the same political agenda as the Consultation Bill.

722. On 7 July 2021, Mr Frere sent a letter to Mr Hammeken-Holm asking for details of the second round of public consultations, including who would be attending and who would

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[1049] First Witness Statement of J. Mair, at **(CWS-3)**, para. 910.a.

[1050] The Editorial Staff, *Massive concern over bill,* Sermitsiaq, 10 August 2021, at **(C-615)**.

[1051] Document titled "*Udkast til program for offentlighøring*", 9 June 2021, at **(C-616)**.

[1052] First Witness Statement of J. Mair, at **(CWS-3)**, para. 916.a

[1053] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 39.

be responding to questions.[1054] Mr Hammeken-Holm did not reply. Mr Frere sent a follow up email on 22 July.[1055] Mr Hammeken-Holm replied on 28 July with the dates of the meetings.[1056] However, he did not provide details of who would be attending the meetings, or who would be responding to questions. His email stated: "*The Ministry cannot and will not be responsible for the EIA, the SIA nor GM's responses in relation thereto*".[1057] Dr Mair testifies: "*This response was quite shocking. The whole purpose of this exercise was for the Government to stand behind the EIA and SIA that they had approved and confirmed was accurate*."[1058]

723. Following this response from Mr Hammeken-Holm, Mr Ib Laursen of GM expressed his concerns about the process in an internal email to the team.[1059] He pointed out that GM had already presented in the first round of consultations "*without the presence of the political representatives*" and it was therefore the Government's "*turn to step up and explain themselves for the public*", including how the process works and that the DCE had approved GM's EIA. He said he was worried that the IA Party politicians were "*turning* [the consultations] *into a IA road show*" and would "*spend all the*[ir] *time trashing our SIA and EIA*" and would then push GM representatives in front of the public, effectively "*setting us up*". Mr Laursen said that, as he was to be the GM representative, he wanted to know what the plans were for security.

724. In mid-August 2021, GM sought information from the MLSA about how the public consultations would be run. Five days before the consultations were due to commence, Messrs Kyed and Laursen attended a meeting with the offices of the Ministry of Mineral Resources in Nuuk and received information about the format of the consultations.[1060]

725. The Ministry informed GM that the DCE would no longer be part of the panel discussion, and instead the meetings would be led by Urani Naamik, the anti-uranium lobby group that had intimidated GM representatives at the first round of meetings.[1061] At the meetings, Minister Nathanielsen would give an introduction (but no presentation),

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[1054] Email from G. Frere (GM) to J. T. Hammeken-Holm (Nanoq), subject: "*Public consultation - Kvanefjeld project*", 7 July 2021, at **(C-617)**; Letter from G. Frere (GM) to J. T. Hammeken-Holm (Ministry of Minerals Resources, Labour and Interior), 7 July 2021, at **(C-618)**.

[1055] Email from J. T. Hammeken-Holm (Nanoq) to G. Frere (GM), subject: "*Sv: Public consultation - Kvanefjeld project (Nanoq - ID nr.: 17462320)*", 28 July 2021, at **(C-619)**.

[1056] Document titled "*Draft program for GM consultation meetings*", by J. T. Hammeken-Holm (Ministry of Minerals Resources, Labour and Interior), 28 July 2021, at **(C-620)**.

[1057] Email from J. T. Hammeken-Holm (Nanoq) to G. Frere (GM), subject: "*Sv: Public consultation - Kvanefjeld project (Nanoq - ID nr.: 17462320)*", 28 July 2021, at **(C-619)**, p. 2.

[1058] First Witness Statement of J. Mair, at **(CWS-3)**, para. 914.

[1059] Email from G. Frere (GM) to I. Laursen (GMAS), subject: "RE: Public consultation - Kvanefjeld project (Nanoq - ID nr.: 17462289)", 30 July 2021, at **(C-621)**, p. 1, email dated 29 July 2020; First Witness Statement of J. Mair, at **(CWS-3)**, para. 915.

[1060] First Witness Statement of J. Mair, at **(CWS-3)**, para. 916.

[1061] First Witness Statement of J. Mair, at **(CWS-3)**, para. 916.

and then a presentation would be made by Urani Naamik. As noted above, Urani Naamik had previously spread misinformation about the Project, including that "*the radioactive dust kicked up by operations there will drift over Narsaq, located some 6 kilometers away, fouling an area that residents promote as an agricultural region and a destination for anglers*".[1062] While the February 2021 public meetings had been attended by security, there would not be a proper security presence at the second-round meetings.

726. Dr Mair testifies:

> "*It was immediately clear to me the Government had no intention of making these meetings a balanced discussion about the Project and GM's impact assessments. Rather, the IA Party planned to use these meetings as a platform to drum up support for their anti-uranium policy platform. The Government was turning these meetings into anti-uranium rallies.*"[1063]

727. The fact that the DCE was not presenting came as a particular shock to GM's personnel. Dr Mair explains:

> "*This shocked me because they had been the most important group in reviewing and approving the EIA and were the only group with any real expertise. Our expectation had been that the meetings would be a structured process around the scientific impact assessments, and that a representative of the DCE would give a presentation on the various aspects of GM's EIA, and would address questions concerning the EIA, standing behind their decision to approve the EIA. This was not the case.*"[1064]

728. The Government's decision that there would be no security at the meetings was also particularly concerning, especially given what had happened at the first meetings.

729. On 19 August 2021, GM sent a letter to Mr Hammeken-Holm and Minister Nathanielsen advising that GM would not be attending the consultations in person or via video-link.[1065] This letter stated:

> "*We have decided to withdraw primarily because of our genuine concern for the safety and security of our employees and representatives. There was evidence of intimidation at the first round of public meetings, and the overt politicisation of these second round of meetings has created an environment where the*

[1062] K. McGwin, *As Greenland nears uranium decision, opponents fear public won't be heard*, ArcticToday, 16 May 2018, at **(C-471)**.

[1063] First Witness Statement of J. Mair, at **(CWS-3)**, para. 917.

[1064] First Witness Statement of J. Mair, at **(CWS-3)**, para. 916.a.

[1065] First Witness Statement of J. Mair, at **(CWS-3)**, para. 919; Email from G. Frere (GM) to J. T. Hammeken-Holm (Nanoq), subject: "*RE: Public Meetings Kvanefjeld Project (Nanoq - ID nr.: 17666181)*", 20 August 2021, at **(C-622)**, p. 2, email dated 19 August 2021; Letter from GM to J. T. Hammeken-Holm (Ministry of Minerals Resources, Labour and Interior) and N. H. Nathanlielsen (Minister for Housing, Infrastructure, Raw Materials and Gender Equality), 19 August 2021, at **(C-623)**.

wellbeing of our people cannot be guaranteed. We have therefore directed our employees and consultants not to attend any of the scheduled meetings on safety grounds.

The Company's initial willingness to attend this second round of public meetings was based on the presumption that the meetings would be focussed on the impact assessments and would provide an opportunity to listen and to address the genuine public interest in the Kvanefjeld Project. The impact assessments are supported by the work of global independent experts and have been approved, after extensive reviews, by the EAMRA, the DCE and GINR. In our opinion there are indications that the purpose of these meetings is not 'consultation' in the decision by the DCE that they will not present to the meeting. EAMRA, the DCE and GINR are fully aware that the EIA and SIA are data driven reports in which all conclusions and assertions are supported by the work of global independent experts. Those agencies approved the release of the impact assessments for public consultation." (emphasis added)

730. In this letter, GM also said it was open to discussing alternative development plans and noted that the current plan "*was adopted at the insistence of the Government after extensive pre-consultations*".

731. On 24 August 2021, GM announced that it had decided not to participate in this second round of public consultation meetings, explaining that there had been a lack of transparency and procedural fairness from the Government, and it was clear that, in the circumstances, a balanced discussion about the Project and development options was not possible.[1066]

732. The second round of consultation meetings took place between 24 and 30 August 2021.[1067] As Dr Mair explains: "*Based on what we were told about the process, it was not conducted objectively, and was hijacked by NGOs and politicians pushing a political agenda (with no foundation in science).*"[1068]

733. In all of the circumstances, there can be no question that the Government's conduct of the consultations on GM's EIA and SIA was inconsistent with its contractual obligations under Section 14 of the Standard Terms (including its duties of good faith or loyalty) and its obligations under administrative law (including its obligations of objectivity and proportionality). GM notes that, as explained in the Legal Claims section below, the concessionary nature of the Exploration Licence is such that the Greenlandic Government was subject to these contract law and administrative law obligations simultaneously.

[1066] Greenland Minerals Ltd ASX Announcement titled: "Update on Kvanefjeld Public Meetings", 24 August 2021, at **(C-588)**.

[1067] First Witness Statement of J. Mair, at **(CWS-3)**, para. 922.

[1068] First Witness Statement of J. Mair, at **(CWS-3)**, para. 924.

734. The public consultation period officially ended on 13 September 2021, 38 weeks after it had commenced. This was the longest public consultation period for any mining project in Greenland.[1069]

735. Although GM did not attend the second round of meetings, the GM team reviewed the transcripts of the meetings, as well as all the submissions and questions received through the online portal.[1070] GM prepared responses to these questions, and compiled questions and answers in an EIA White Paper and an SIA White Paper. As Dr Mair testifies: "*We concluded that all of the issues raised had already been comprehensively covered in the EIA or the supporting reports, and there had been no issues raised that could not be addressed.*" [1071] GM formally submitted the White Papers to the Greenlandic authorities in December 2021 (see Section C.76 below).

C.69 Government Summary of GM Permission

736. The Ministry has recently disclosed an internal Government document titled "*Greenland Minerals A/S – The permission at a glance*" (**Government Summary of GM Permission**).[1072] This document is dated 16 August 2021 but refers to the public consultation meetings that took place at the end of August 2021, so it must have been prepared or updated after that time. The document was disclosed to GM by the Greenlandic Government as a standalone word file, without any metadata.

737. The Government Summary of GM Permission contains a table setting out key information about the Kvanefjeld Project, including the history of the site, key licensing developments, targeted minerals, key personnel, the approval of GM's ToR, the approval of GM's EIA and SIA, and the consultation on the EIA and SIA.

738. In the section on GM's Exploration Licence, it explains the grant, transfer and renewal of the licence, and states that the targeted minerals are: "*Rare earth elements, but zinc, fluorspar and uranium are also included in the mineral deposit*". It makes no mention of Addendum No. 1, indicating that the Government did not consider this instrument material to GM's rights.

739. The document confirms that independent consultants Auralia had conducted a review of GM's feasibility work and concluded that "*the rights holder has found a limited and commercially exploitable deposit, cf. former section 29(2) of the Mineral Resources Act*." The document notes the "*Outstandings*" (i.e., the remaining actions to be taken were that GM would perform studies around the tailings facility (i.e., to address the

[1069] First Witness Statement of J. Mair, at **(CWS-3)**, para. 926.

[1070] First Witness Statement of J. Mair, at **(CWS-3)**, para. 925; First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 40.

[1071] First Witness Statement of J. Mair, at **(CWS-3)**, para. 925.

[1072] Document titled "*Greenland Minerals A/S - The permission at a glance*", by Government of Greenland, 16 August 2021, at **(C-204E)**.

Type 2 comments)). It stated that these investigations "*must be carried out in connection with the preparation of an exploitation permit pursuant to Section 16 of the Mineral Resources Act and an exploitation and decommissioning plan pursuant to Section 19/43 of the Mineral Resources Act*."

740. The Government Summary of GM Permission is definitive proof that, at this time, GM had fulfilled the requirements of MRA Section 29(2) for the grant of an exploitation licence, and the next step was to negotiate the content of this exploitation licence under MRA Section 16.

C.70 Letter to Minister Nathanielsen (1 October 2021)

741. According to press reports, at the public consultation meetings in late August 2021, people were asking what the future of the region would look like without the Project. Minister Nathanielsen responded that it may be possible for the Kvanefjeld Project to proceed: "*If Greenland Minerals chooses to make a new project for the mine without uranium as a by-product, then it must be treated according to the raw materials legislation in accordance with their exploration permit*".[1073]

742. As indicated in Minister Nathanielsen's statement, one alternative development option for the Project is to exploit non-radioactive elements only. As mentioned above, GM was open to alternative development plans for the Project, including exploiting rare earths, zinc and fluorspar, and treating uranium as a residual impurity. This was (and is) a viable alternative development plan.

743. Accordingly, on 1 October 2021, Dr Mair wrote to Minister Nathanielsen explaining that there was flexibility regarding the development plan and noting that it was the Government that had insisted that GM perform the chemical refining of uranium in Greenland.[1074] Dr Mair pointed out that "*public opposition to the Project seems largely focussed on uranium production that represents a minor component of the project*". The letter requested a cooperative discussion regarding the potential modification of the Project, stating:

> "*GML is unaware if Government policy is simply directed to prohibiting any mining or processing activity on the Kvanefjeld exploration licences regardless of objective environmental impacts, or whether there are specific points of concern which have not been raised by the EAMRA or the DCE*."

[1073] M. Lindstrøm, *Naaja Nathanielsen: We must have a debate about suburban mines*, Sermitsiaq, 26 August 2021, at **(C-624)**, p. 1.

[1074] First Witness Statement of J. Mair, at **(CWS-3)**, para. 928; Letter from J. Mair (GM) to N. H. Nathanielsen (Minister for Housing, Infrastructure, Minerals and Gender Equality), subject: "*Kvanefjeld Rare Earth Project – Exploitation Licence Application*", 1 October 2021, at **(C-625)**.

C.71 Presentation of bill for Act No. 20 to Parliament (5 October 2021)

744. The bill for Act No. 20 was presented to Parliament on 5 October 2021. The final form of the bill was substantively the same as the Consultation Bill.[1075] This is despite the various concerns that were raised by stakeholders during the public consultation process.

745. The bill was accompanied by the Explanatory Notes, which provided information on the feedback received through the consultation on the bill.[1076] There are several points to be made with respect to the Explanatory Notes.

746. First, it is clear from the Explanatory Notes that the objective of Act No. 20 was not to protect health and the environment, and the IA Party Government was not concerned with the absence of a scientific foundation for the law it proposed.

747. For example, in its submission, the Greenland Business Association pointed out that "*uranium is no more harmful to the environment than other elements, and that lead and fluorine, for example, are more difficult to manage in environmental terms*", and recommended that the Government not set a uranium ppm threshold but "*rather focus more on health and safety, the environment and resource utilisation as well as social sustainability*". In its response, the IA Party Government simply stated that it had "*a political wish to stop uranium extraction in Greenland*", and that it was "*not the aim of this Bill to lay down rules on health and safety, the environment, resource utilisation, etc., as these considerations are covered by the Mineral Resources Act*".[1077]

748. Similarly, there was a suggestion by another mining exploration company that the Government consult an international team of independent specialists on the proposed threshold. In response, the Government stated that "[s]*etting the threshold at 100 ppm is a political choice*".[1078]

749. Thus, it is beyond doubt that the bill was not for environmental purposes, but rather for the political purpose of ending the Kvanefjeld Project. Nevertheless, while this was the case, the IA Party Government did include in the Explanatory Notes a statement that the purpose of the proposed law was to eliminate the risk of "*high-risk uranium leaks, e.g. from yellow cake,* [that] *may occur in connection with production, transport, process water spills, etc*". This is disingenuous.

750. In fact, that statement reveals a fundamental disregard for the actual risks associated with radioactive elements. As Dr Chambers explains, the principal radiation impacts arise from the release of radon and thoron gases, which are emitted from various sources

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[1075] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 52.

[1076] "*Explanatory notes to the Bill*", at **(CL-6)**.

[1077] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 17.

[1078] "*Explanatory notes to the Bill*", at **(CL-6)**, pp. 18-19.

during mining, processing and tailings management.[1079] These exposures can be managed very effectively and can be reduced by controlling the sources of emissions (e.g., implementing dust collectors as proposed by GM).[1080]

751. The Arcadis Transportation Assessment Report (part of the EIA that the Government approved) concluded that the risk of a spill accident causing a radiation hazard would be extremely low.[1081] Uranium is predominantly an alpha emitter. Alpha radiation can only travel a few centimetres in the air (alpha particles can be effectively blocked by something as thin as a piece of paper).[1082] By effectively transporting yellowcake inside metal drums (as is the standard practice[1083]), the risk of "*uranium leaks*" is virtually nil.

752. Second, it is clear the bill had no genuine basis in regulatory practice. The Explanatory Notes state that the 100 ppm uranium threshold "*corresponds to the threshold that applies in Nova Scotia, Canada, which introduced a similar uranium ban in 2009*".[1084] However, any suggestion that Nova Scotia's regulatory framework provides a sound basis for Act No. 20 is plainly misconceived.

(a) First, while the IA Party Government has ostensibly based its ppm threshold on the Nova Scotia threshold, the documents tell a different story: none of the documents disclosed by the Ministry surrounding the preparation of the Consultation Bill provide supporting analysis as to application of a threshold in line with the Nova Scotia threshold. Indeed, there is no evidence that there was any analysis whatsoever of this threshold. In fact, the opposite is true. The Danish and Greenlandic authorities performed comparative analyses of uranium regulatory frameworks around the world and specifically excluded Nova Scotia. For example, the DCE Report on Environmental Issues included an entire section and two appendices concerning Canada's experience and regulatory

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[1079] See Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 27-34.

[1080] See Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 35-36.

[1081] See above para. 622; Report titled "*Uranium Product Transportation Assessment, Kvanefjeld Multi-Element Project, Narsaq Area, Greenland*", by Arcadis, August 2015, at **(C-578)**, p. 23.

[1082] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 143.

[1083] See, further, Report titled "*Uranium Product Transportation Assessment, Kvanefjeld Multi-Element Project, Narsaq Area, Greenland*", by Arcadis, August 2015, at **(C-578)**, p. 6: "*At the refinery plant site, the uranium product, which may be referred to as yellowcake, will be packaged in sealed 200-litre steel drums meeting IP-1 industrial package requirements as specified in the IAEA Regulations for the Safe Transport of Radioactive Material (IAEA 2012). The drums are securely loaded into standard (ISO) dry sea containers (20 foot standard sizing) before being transported to the port on flatbed trucks. The packed freight containers are monitored, placarded, inspected and sealed.*"

[1084] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 6. During the meeting held between GM and the Greenland Government on 15 December 2021, Paw Fruerlund (Counsel for the Respondents) stated: *"The 100 ppm limit is also inspired by foreign legislation e.g. legislation enacted in Nova Scotia"*, see Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, pp. 4.

framework.[1085] That report does not even mention Nova Scotia's regulatory framework, indicating that the DCE believed this framework to be irrelevant and/or not to represent international best practice. Notably, the DCE concluded that "*the Canadian government actively supports uranium mining*" and that "*a joint federal-Saskatchewan study found that the benefits of mining outweighed the adverse impacts and that the negative effects of any impacts could be minimized*" (p. 185).

(b) Second, the Nova Scotia threshold is subject to an exception which permits exploitation of other minerals even if uranium concentration is above 100 ppm, provided that uranium in concentrations above 100 ppm is not "*removed from the land*".[1086] In other words, the threshold permits exploitation of other minerals as long as uranium is treated as a residual impurity and remains on site, and the uranium content in the mineral concentrate removed from the project area is below 100 ppm.

(c) Third, the Interdepartmental Uranium Committee which made the recommendations which led to implementation of the Nova Scotia threshold expressly recognised that a concentration threshold for uranium cannot be scientifically defended. In 1985, the Nova Scotia provincial government established an Interdepartmental Uranium Committee to "*establish a regulatory requirement for a uranium threshold value*", and make other recommendations to the Minister of Mines and Energy regarding Nova Scotia's uranium regulatory framework. When the Interdepartmental Uranium Committee commenced formal meetings in May 1985, however, it identified that:[1087]

(i) "*there are no uranium concentration levels that can be linked to health risk assessments. The abundant volumes of medical studies that deal with aspects of health risk assessment for radioactive substances always deal in terms of radiation thresholds not concentration thresholds. Thus a concentration threshold for uranium cannot be scientifically defended*";

(ii) "*a uranium concentration threshold does not take into account the environmental and health impacts due to important uranium progeny such as radon and radium. Radiation dosimetry (measurement of*

[1085] DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, Section 3.12 and Appendixes A and E.

[1086] Nova Scotia Act on Uranium Exploration and Mining Prohibition (S.N.S 2009, c. 6), at **(CL-171)**, s 5(3).

[1087] Open File Report ME 1994-6, "*The Activities, Conclusions and Recommendations of the Interdepartmental Uranium Committee Concerning the Uranium Exploration and Mining Industries*", by the Interdepartmental Uranium Committee. July 1994, at **(C-626)**, p. 35.

radiation levels) accounts for radiation from all sources, not just uranium"; and

(iii) "*A uranium concentration level is subject to the problem of sample size selection and therefore situations such as high-grading and diluting would have to be considered. These problems do not come to play in radiation dosimetry as a work site would simply be monitored for its ambient radiation levels regardless of the source element(s) of the radioactivity*".

(d) Given the impossibility of establishing a scientifically defensible uranium concentration threshold, the Interdepartmental Uranium Committee recommended implementation of an "*economic concentration threshold for uranium*", which was "*determined solely on economic grounds to: (1) provide the Government with a cut-off criteria by which they may determine areas of specific uranium mineralization that will remain closed for the term of the moratorium; (2) provide an estimate of uranium concentration below which a deposit would be non-economic to mine even under the most optimistic of circumstances* [….] *(3) assure the public that any particular non-uranium mine is not mining an ore which has an elevated uranium content and that uranium is simply being disposed of in the waste tailings*"."[1088]

(e) When the Nova Scotia threshold was the subject of a scientific review by the Nova Scotia Interdepartmental Uranium Committee in 1994, the Committee recommended that it be lifted.[1089]

753. The Government's attempt to use the Nova Scotia threshold as a justification for its political decision to block the Kvanefjeld Project must be seen for what it really is: a smokescreen. Under the Nova Scotia approach, the Kvanefjeld Project would be permitted to go ahead as a rare earths, zinc and fluorspar project (treating uranium as a residual impurity for tailings).

754. Third, the Explanatory Notes confirmed that, if applied, the uranium ppm threshold would deprive certain companies of their right to a mining licence under MRA Section 29(2):

"*In specific cases, the Bill may lead to a departure from certain principles of the Mineral Resources Act. Under section 29(2) of the Mineral Resources Act, a licensee under an exploration licence who has discovered and delineated*

[1088]Open File Report ME 1994-6, "*The Activities, Conclusions and Recommendations of the Interdepartmental Uranium Committee Concerning the Uranium Exploration and Mining Industries*", by the Interdepartmental Uranium Committee. July 1994, at **(C-626)**, p. 36.

[1089] Open File Report ME 1994-6, "*The Activities, Conclusions and Recommendations of the Interdepartmental Uranium Committee Concerning the Uranium Exploration and Mining Industries*", by the Interdepartmental Uranium Committee. July 1994, at **(C-626)**, Recommendation 8-1, p. 75.

deposits which the licensee intends to exploit and who has otherwise complied with the terms of the licence is entitled to be granted an exploitation licence. A licensee under an exploration licence which includes uranium is not entitled to be granted an exploitation licence for uranium after the effective date of this Bill, regardless that the licensee has discovered and delineated a uranium deposit. The same applies to the grant of an exploitation licence for other discovered deposits which are in violation of the ban in section 1. This also applies to deposits of any radioactive elements for which the Government of Greenland has set provisions, cf. section 2 of the Bill."[1090] (emphasis added)

755. As explained in Section C.69, around this time, the Government prepared the Government Summary of GM Permission, which confirmed that GM's project included uranium and that GM had delineated a deposit in accordance with MRA Section 29(2). There can therefore be no question that the Kvanefjeld Project was one of the "*specific cases*" referred to in the Explanatory Notes, and the IA Party Government understood that the application of the uranium ppm threshold to GM's Project would be a "*departure*" from the licensing guarantee in the MRA. In other words, the IA Party Government knew that the law would result in a deprivation of GM's existing legal rights.

756. The expropriatory nature of Act No. 20 was raised during the consultation on the proposed law. For example, the Greenland Business Association submitted that the proposed law was a compulsory acquisition because companies with rights under MRA Section 29(2) would be deprived of these rights.[1091] Similar concerns were expressed by other parties, including Nuna Law Firm (which suggested that a compensation scheme should be considered). It seems that these submissions were essentially ignored.

757. The Explanatory Notes show that the Government was alive to the issue of the law being expropriatory and sought (unsuccessfully) to find a way out of this legal conundrum. The result of the Government's legal acrobatics is that the position articulated in the Explanatory Notes is deeply contradictory:

(a) The Explanatory Notes expressly state that the law applies to "*the grant of exploitation licences in continuation of an existing exploration licence*" and to licensees who "*held an exploration licence comprising uranium*" (i.e., GM).[1092] There can be no question that the application of the law to existing exploration licences is retroactive. Nevertheless, the notes state (incongruously) that the law "*neither has nor will have any retroactive effect*" and "*licences already granted, standard terms, etc. will not be affected*".

(b) The law deprives licensees of pre-existing legal rights. This is confirmed in the notes, which state that the law "*applies regardless that the licensees would*

[1090] "*Explanatory notes to the Bill*", at **(CL-6)**, pp. 6-7.

[1091] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 23.

[1092] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 23.

ordinarily have a conditional right under section 29(2) of the current Mineral Resources Act to obtain an exploitation licence for uranium deposits discovered".[1093] Nevertheless, the notes suggest that the law does not have an expropriatory character, which is why it does not provide for the payment of compensation,[1094] and does not include provisions on compensation for expropriation.[1095]

(c) Having stated that the law applies even when licensees are entitled to a licence under MRA Section 29(2), the notes then go on to state that a licence application may not be refused if this would "*constitute an intrusion on property protected by section 73 of the Danish Constitution*."[1096] These propositions are clearly contradictory. As explained in paragraphs 861-862 below, in this arbitration, the Parties have agreed that, based on this language in the Explanatory Notes, Act No. 20 does not apply if its application would constitute the expropriation of a protected property right. As discussed in the Legal Claims section below, GM had various property rights protected by Section 73 of the Danish Constitution, including its right to an exploitation licence under MRA Section 29(2) and Section 1401 of the Standard Terms.

758. What is apparent from the Explanatory Notes is that the Government was seeking to have it both ways: on the one hand, to force the surrender of GM's entitlement to an exploitation licence for the Project, and on the other hand, to avoid the legal consequences of that surrender.[1097] This outcome is manifestly impermissible under Danish and international law (see Section H).

759. Fourth, it is clear from the Explanatory Notes that the IA Party Government knew that application of Act No. 20 to GM's Exploration Licence would give rise to legal claims but decided to proceed anyway. The Explanatory Notes state: "*it cannot be ruled out that such affected licensees may bring an action against the Self-Government to obtain damages or other compensation on other grounds*."[1098] This is exactly what the IA Party said five years earlier when, in 2016, it twice acknowledged that blocking the

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[1093] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 23.

[1094] The Explanatory Notes state: "*The Bill does not provide for the payment of damages or other compensation to licensees whose projects may be affected by the prohibitory regime*."; see "*Explanatory notes to the Bill*", at **(CL-6)**, p. 8.

[1095] The Explanatory Notes state: "*The Bill is not a compulsory acquisition act and therefore does not provide for the compulsory acquisition of protected property rights. The Bill therefore does not include any provisions on compensation for expropriation. The Government of Greenland also sees no reason to introduce a compensation scheme on any other basis*."; see "*Explanatory notes to the Bill*", at **(CL-6)**, p. 23.

[1096] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 7.

[1097] See Request for Arbitration on behalf of Claimant, 22 March 2022, at **(CS-1)**, para. 1.5.

[1098] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 8.

Kvanefjeld Project could see the Government liable to compensate GM for "*broken assumptions*"[1099] and "*a loss of rights*".[1100]

760. Fifth, it is clear from the Explanatory Notes that the Government was deliberately seeking to create ambiguity regarding the meaning of the term "*exploitation*". The Explanatory Notes state:

> "Exploitation activities are not defined in the Mineral Resources Act, but exploration and exploitation activities include all activities which are carried out by or on behalf of the licensee under the licence, including the establishment of the necessary infrastructure and activities in support of exploration or exploitation activities."[1101]

761. This statement suggests that an exploitation licence is required for "*all activities which are carried out by or on behalf of the licensee under the licence*". This interpretation leads to the (Government's) conclusion that a licensee required an exploitation licence to handle uranium as a residual impurity. This interpretation is consistent with the Government's stated objective that "*no uranium is to be extracted in Greenland*".[1102]

762. In its submission on the Consultation Bill, the Department of Business, Trade, Foreign Affairs and Climate argued that this statement in the Explanatory Notes should be reconsidered because it was inconsistent with the meaning of the term "*exploitation*".[1103] The Department noted that:

> "The Minerals Act is a framework law that lays down the most important principles for the management of mineral and underground activities, but in the same way as previous mineral laws since Act No. 166 of 12 May 1965 on mineral resources in Greenland, it has been a known main principle that exploitation in the Minerals Act meaning must be understood as commercial exploitation, which means that an exploitation permit for the minerals listed in an exploration permit gives the right to mine and process ore, produce minerals as stipulated in the exploration permit and transport and sell these.
>
> *This means that* exploitation activities are the total activities which are linked to a commercial exploitation and which must be carried out on the terms and conditions laid down in the standard conditions for exploration permits relating to mineral raw materials. In the standard conditions for exploration permits relating to mineral raw materials, it is stipulated that a rights holder who has

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[1099] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202)**, p. 2.

[1100] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**, p. 2.

[1101] "*Explanatory notes to the Bill*", at **(CL-6)**, section 2.2, p. 4.

[1102] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 1.

[1103] Document titled "*Consultation response to proposals for: Inatsisart Agreement on prohibition of preliminary investigation, exploration and exploitation of uranium.*", J. Hesseldahl (Department for Business, Trade, Foreign Affairs and Climate), at **(C-627E)**.

fulfilled the conditions stated in the permit will be entitled to be granted an exploitation permit for an established and delimited commercially exploitable deposit on terms specified in the standard conditions for Exploration and Exploitation Permits for Minerals in Greenland, §§ 1402-1408.

For uranium, it also applies that exploitation activities within the meaning of the Natural Resources Act, including production and export, must take place in such a way that the Kingdom of Denmark complies with international obligations with regard to safety and export control.

*It should be reconsidered whether the w*ording in the above excerpt of comments contributes to the understanding of the applicable legislation and thus the basis for assessing the bill, when it is otherwise clear in all other contexts <u>what is meant by exploitation activities in the sense of the Natural Resources Act, including extensive production, sale and export of minerals</u>." (emphasis added)

763. The metadata of the document reveals that the submission by the Department of Business, Trade, Foreign Affairs and Climate was prepared by Jens Hesseldahl. Mr Hesseldahl had previously been responsible for preparing Addendum No. 1. Consequently, the submission by the Department reveals that the Greenlandic Government knew when it prepared the Consultation Bill that the term "*exploitation*" means:

(a) "*commercial exploitation*";

(b) "*the total activities which are linked to a commercial exploitation*"; and

(c) "*the right to mine and process ore, produce minerals as stipulated in the exploration permit and transport and sell these*".

764. By the Greenlandic Government's own definition, a licensee therefore only requires an exploitation licence in order to *commercialise* minerals, and *not* in order to handle elements as residual impurities. Therefore, when the Greenlandic Government enacted Act No. 20, it did so with full knowledge of the meaning of "*exploitation*", and did so with complete disregard to the legal meaning of that term.

765. Despite the clear advice of the Department of Business, Trade, Foreign Affairs and Climate that "*exploitation*" meant "*commercial exploitation*", the Greenlandic Government issued the Explanatory Notes to the Parliament without amending the relevant language. This is consistent with the pattern of government conduct by which it has deliberately misrepresented the meaning of the term "*exploitation*" to deny GM's rights in relation to the Kvanefjeld Project. Indeed. Deputy Minister Hammeken-Holm recently told the press that "[e]*xploitation and extraction are words in the same*

category, but it is not 100 percent clear in the law. We clearly believe that exploitation is as soon as you dig something out of the ground."[1104]

766. Sixth, in the Explanatory Notes, the Government did not substantiate its claims with respect to the ZTP. In its submission on the Consultation Bill, the Department of Business, Trade, Foreign Affairs and Climate pointed out that the Government had "*assumed that a zero-tolerance policy had previously been adopted*" and was repealed in 2013, but that "*no further information in the comments on what this assumption is based on, including reference to specific political decisions, both before and after the Self-Government took over the case area regarding mineral raw materials in 2010*."[1105] The Department argued that the Government should provide evidence to support its assumptions, especially because, in 2015, the DIIS had determined that there was no evidence that the ZTP existed or was ever an official policy. The Explanatory Notes ignored this recommendation.

767. Seventh, the Explanatory Notes state that the abandonment of the ZTP had not "*given rise to any written rules on prospecting, exploration or exploitation of radioactive elements or other minerals containing radioactive elements*".[1106] This is incorrect. As discussed at length above, the Danish and Greenlandic authorities have established a regulatory framework for the exploitation and export of uranium based on international best practice. This framework was tested in 2017 when the Danish authorities gave GM permission to export ore from Kvanefjeld to China (see Section C.44 above). In its submission, the Department of Business, Trade, Foreign Affairs and Climate included a section titled "*Legislation in the area*", which set out the various rules, guidelines and international conventions adopted by the two governments since 2013 to administer the exploitation and export of uranium.[1107] The Department further stated that, pursuant to MRA Section 83, uranium mining activities needed to be carried out "*in accordance with recognized good international practice in the field under similar conditions and in an appropriate manner*". It argued that the Explanatory Notes should "*contain a more complete mention of legislation, including practice and international conventions, which regulate the production and export of uranium*". Again, this recommendation was not implemented, and the Explanatory Notes were issued to Parliament representing (incorrectly) that the regulatory framework established by the Danish and Greenlandic Governments to administer uranium mining did not exist.

[1104] M. Lindstrøm, *Kuannersuit: The dispute continues – final rejection ready in a few weeks*, Sermitsiaq, 28 March 2023, at **(C-604E)**.

[1105] Document titled "*Consultation response to proposals for: Inatsisart Agreement on prohibition of preliminary investigation, exploration and exploitation of uranium.*", J. Hesseldahl (Department for Business, Trade, Foreign Affairs and Climate), at **(C-627E)**.

[1106] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 3.

[1107] Document titled "*Consultation response to proposals for: Inatsisart Agreement on prohibition of preliminary investigation, exploration and exploitation of uranium.*", J. Hesseldahl (Department for Business, Trade, Foreign Affairs and Climate), at **(C-627E)**.

C.72 Poul Schmith legal assessment is provided to the Government (8 October 2021)

768. A few days after the bill was presented to Parliament, on 8 October 2021, the IA Party Government received an external legal assessment from Poul Schmith in relation to "*whether it would constitute expropriation if applications for exploitation licences filed by two specific rightsholders would be rejected*".[1108]

769. This legal opinion has not been made public. Indeed, the IA Party Government was subsequently accused by a member of the Democrats of concealing its existence from the Parliament, even though it was asked several times whether it had performed a legal assessment of these issues.[1109] Further, this legal assessment was not included in the Ministry's January 2023 disclosure to GM, even though it would have been responsive to GM's request, and the Government has disclosed to the public other legal assessments regarding this case.

770. If this legal assessment provided support for the Respondents' case in the present arbitration, it would have been publicly disclosed.

C.73 Minister Nathanielsen's responses to questions in Parliament (20 October 2021)

771. During October and November 2021, the bill was debated in the Greenlandic Parliament. Records of the parliamentary discussions show that the IA Party Government was acutely aware that the legislation it had proposed was potentially expropriatory, and many members of Parliament were concerned about compensation claims. The Parliament was particularly concerned about a claim being brought by GM, as everyone was aware that GM had made a massive investment in Greenland over the previous 14 years.

772. On 20 October 2021, Minister Nathanielsen responded to questions about the bill.[1110] Most of these questions related to the Kvanefjeld Project specifically. The Minister's statements touch upon many relevant issues in this case:

(a) The Minister confirmed that GM "*has carried out research over many years and has demonstrated an exploitable resource*" (i.e., GM had satisfied the conditions of MRA Section 29(2)). She further noted that GM had de-risked the Project commercially.

(b) The Minister advised the Parliament that, based on GM's SIA, the "*total average of corporation tax, dividend tax, royalties and direct A taxes is expected to be*

[1108] This advice has not been disclosed but has been referred to in exchanges in the Parliament; see Naalakkersuisut Response to Question 056 2022 under section 37 of the Rules of Procedure of the Inatsisartut regarding Potential Claims for Damages as a Result of the Uranium Act (English translation), 21 March 2022, at **(C-24)**.

[1109] §37 Parliamentary Questionnaire No. 56/2022, 2 March 2022, at **(C-628)**.

[1110] Naalakkersuisut Answers to §37 Parliamentary Questionnaire No. 23/2021, 20 October 2021, at **(C-629E)**.

DKK 1.52 billion. per year". GM notes that, as set out in paragraph 18 above, the Project is expected to generate taxes, royalties and other benefits in an amount of around US$22.8 billion over the life of mine.[1111]

(c) The Minister confirmed that the Kvanefjeld Project "*will be immediately affected by the law's ban*" as the uranium concentration was above the 100 ppm threshold.

(d) The Minister was asked whether the Government could refuse to grant GM an exploitation licence because of Addendum No. 1. The Minister evaded the question. In her response, she simply set out the terms of the addendum and stated that it was "*still valid*".

(e) The Minister was asked whether the IA Party Government had performed a legal assessment of whether refusing GM an exploitation licence would be considered expropriation.[1112] In her response, the Minister did not say whether a legal assessment had been performed (even though she had received an assessment from Poul Schmith two weeks earlier) and did not say whether GM's application could be refused on the basis of Addendum No. 1. Instead, she simply repeated the IA Party line that the bill was "*not an expropriation law and therefore does not authorize expropriation of protected property rights*". Further, she advised the Parliament that a licence application could not be refused if this would constitute expropriation under Section 73 of the Danish Constitution, noting that this would depend on "*a wide range of other circumstances*".

(f) The Minister was also asked whether the IA Party Government had performed a legal assessment of whether, if refusing GM an exploitation licence was found to constitute expropriation, GM would bring a compensation claim and the size of this claim. Again, the Minister did not say whether a legal assessment had been performed. She responded that "*it cannot be ruled out that affected rights holders bring proceedings against the Self-Government*" on the basis that a licence application refusal "*constitutes expropriation*". She said that, in such a situation, "*the compensation claim will depend on the specific rights holder, the specific project and a wide range of other circumstances*". The Minister evaded the question whether the Government believed GM would bring a claim and the size of this claim.

(g) The Minister stated that GM would "*be allowed to seek to prepare proposals for exploration/exploitation that do not include uranium*". As discussed further in Section C.88 below, following these statements by Minister Nathanielsen, in

[1111] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure A6-1, paras. A6.14, see also para. A6.25.

[1112] GM notes that the relevant question of the questionnaire (question 5) does not refer to GM specifically, but cross-refers to question 4, which was directed at GM's Project and Addendum No. 1. It can therefore be deduced that question 5, and the following questions, are referring to GM.

December 2022, GM submitted an alternative development proposal to not include the exploitation of uranium.

773. In addition to these comments about the Kvanefjeld Project specifically, Minister Nathanielsen also made various comments about mining in Greenland more generally:

(a) The Minister noted that rare earths are "*minerals for green technology*" and are often comingled with uranium.

(b) The Minister stated: "*For many years, Greenland has promoted precisely the potential for rare earth species. The promotion is due, among other things, to the fact that China is all-dominant on the world market and increasing interest and demand from both the EU and North America due to Greenland's potential*." This is absolutely correct. As explained above, the Kvanefjeld Project has been at the centre of Greenland's efforts to promote rare earths mining in Greenland.

(c) The Minister acknowledged the risks involved in mineral exploration, stating: "*The uncertainty for exploration projects is generally very high. There is one rule of thumb, which says that only 1 in 100 projects turn into a real one mining activity*." This is actually an understatement, and the figure is actually more like 1 in 1,000.[1113] But the Minister's message is otherwise absolutely correct. As explained in Section D.1below, investing in mineral exploration is risky as the chances of discovering a deposit that is commercially viable are extremely low (this is the *real* "lottery ticket", to use the Respondents' terminology). It is because of this uncertainty that jurisdictions such as Greenland offer investors licensing guarantees if they discover a deposit. Otherwise, no one would invest in exploration, and there would be no mining. It is precisely because of the uncertainty of exploration that Greenland's mining framework was specifically designed to offer investors the guarantee that, if they found a commercially viable deposit, they could automatically transition their exploration licence into an exploitation licence.

C.74 Minister Nathanielsen's letter to GM (28 October 2021)

774. As set out above, on 1 October 2021, GM sent a letter to Minister Nathanielsen requesting a cooperative discussion regarding the potential modification of the Project. Minister Nathanielsen responded on 28 October 2021, advising that GM's exploitation licence application "*will be processed on the basis of the Mineral Resources Act, the terms of the exploration license and, expectedly, the proposed bill on uranium mining, should this in fact be enacted into law*".[1114] Dr Mair testifies that this letter provided

[1113] First Witness Statement of J. Mair, at **(CWS-3)**, para. 42.

[1114] Email from J. T. Hammeken-Holm (Nanoq) to J. Mair (GM), subject: "*Sv: Communication re: Kvanefjeld Project (Nanoq - ID nr.: 18342572)*", 29 October 2021, at **(C-630)**; Letter from N. H. Nathanielsen (Minister for Housing, Infrastructure, Minerals, Justice and Gender Equality) to J. Mair (GM), subject: "*Letter about the GoG Kvanefjeld Project*", 28 October 2021, at **(C-631)**.

some reassurance to GM, as it confirmed that the Government would continue with the formal consultation process and the completion of the White Papers.[1115]

775. The letter continued:

> "*the Government welcomes any project or modified project that can adhere to the legislative framework. However, I wish to underline that the Government stands firmly on the belief that future mining in Greenland must adhere to the principles of the proposed bill on uranium mining.*
>
> *Thus, the Government is disposed to discuss modifications to the project with GML within a cooperative and practical framework and within the legislative framework in force at any given time.*" (emphasis added)

776. Dr Mair testifies that he was confused by this response as it was not clear from the letter whether the Ministry was open to a real discussion about an amended Project development plan. He testifies:

> "*It was not clear to me what the Minister meant by this. If the reference to 'the principles of the proposed bill on uranium mining' was a reference to addressing the risks of mining areas enriched with uranium, then there was certainly a path forward, as these risks could be properly mitigated (as provided for in our EIA). If the reference to 'the principles of the proposed bill on uranium mining' was a reference to the arbitrary 100 ppm threshold, then it would not be possible to modify the Project to fit within the legislative framework (which the Government well knew).*"[1116]

777. As discussed further below, it later became clear to GM that the Government was determined to stop the Project and had no real interest in the outcomes of GM's EIA or potential development plan modifications.

C.75 Parliament passes Act No. 20 (30 October – 9 November 2021)

778. On 30 October 2021, the Parliamentary Committee on Business and Mineral Resources presented a report to Parliament on the bill.[1117] This committee was chaired by Mariane Paviasen, a spokesperson for Urani Naamik, and four of the seven members were from the IA Party. Unsurprisingly, the four members of the IA Party voted to support the bill. They said that Greenlandic independence should not be built on uranium mining and should instead be built on tourism.

779. Conversely, the other three members of the committee wanted to reject the bill. The minority of the committee was scathing in their criticism of the IA Party committee

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[1115] First Witness Statement of J. Mair, at **(CWS-3)**, para. 932.

[1116] First Witness Statement of J. Mair, at **(CWS-3)**, para. 934.

[1117] Report titled "*Suggestions for: Inatsisartut Act on the prohibition of preliminary investigation, investigation and exploitation of uranium amber*", produced by Committee on Business and Mineral Resources, 30 October 2021, at **(C-632E)**

members and how they had conducted their investigations. The minority stated that the majority's work "*has no basis*" in the parliamentary process and was "*rather about individual members of the committee and their preconceived attitudes, which otherwise do not seem to have any coating*".[1118] The minority stated that the majority's report "*has not been worked on based on a factual and informed basis*". They also pointed out that the proposal "*will have major consequences for our country's development and economy*" and "*very big consequences for our society's further path towards independence*".

780. The report noted that the Siumut Party opposed the proposal, pointing out that the existing regulations provided protection for human health and the environment.[1119] The Siumut Party explained that the proposal would negatively impact investment in mining, leaving Greenland with only income from fishing.

781. Notably, the Committee recognised that the law may give rise to legal claims against the Government. In its report, the Committee asked the Government: "*will the permit holders be able to demand that these* [exploration expenses] *be reimbursed by the Self-Government if, after a possible adoption of the proposal, it will not be possible to obtain an exploitation permit?*"[1120] It is implicit in the question that the Committee recognised that, if the Government refused to grant exploitation licences, exploration licence holders should be entitled to the return of their costs (at least). As discussed above, the IA Party had acknowledged back in 2016 that if it blocked the Kvanefjeld Project it may need to reimburse GM for its costs.

782. On 1 November 2021, the IA Party Government provided its answers to questions posed by the Parliamentary Committee.[1121] In response to the Committee's question about the reimbursement of exploration costs, the IA Party Government stated that the bill does not provide compensation to rights-holders because the Government "*assumes that rightholders do not have access to seek compensation for exploration costs incurred*", because "*the rightholders do not have a legal right to an exploitation licence*", because "*the special conditions of existing licences already stipulate that no licensee is entitled to the exploitation of uranium*".[1122] This response is, in a nutshell, an articulation of the

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[1118] Report titled "*Suggestions for: Inatsisartut Act on the prohibition of preliminary investigation, investigation and exploitation of uranium amber*", produced by Committee on Business and Mineral Resources, 30 October 2021, at **(C-632E)**, p. 13.

[1119] Report titled "*Suggestions for: Inatsisartut Act on the prohibition of preliminary investigation, investigation and exploitation of uranium amber*", produced by Committee on Business and Mineral Resources, 30 October 2021, at **(C-632E)**, p. 3.

[1120] Report titled "*Suggestions for: Inatsisartut Act on the prohibition of preliminary investigation, investigation and exploitation of uranium amber*", produced by Committee on Business and Mineral Resources, 30 October 2021, at **(C-632E)**, p. 5.

[1121] Resolution of 2nd hearing, "*Proposal for: Inatsisartut Act prohibiting exploration, exploration and exploitation of uranium, etc.*", EM2021/23, 1 November 2021, at **(C-207E)**.

[1122] Resolution of 2nd hearing, "*Proposal for: Inatsisartut Act prohibiting exploration, exploration and exploitation of uranium, etc.*", EM2021/23, 1 November 2021, at **(C-207E)**, p. 1.

Government's case in this arbitration, which is that Addendum No. 1 means that GM does not have any legal rights whatsoever. However, as discussed at length in this Statement of Claim, the IA Party Government's position on Addendum No. 1 is wrong. The fact is that GM does have legal rights, meaning that IA Party Government's "assumption" is wrong, and GM is entitled to compensation (both as a matter of principle and law).

783. In its report, the Parliamentary Committee had also asked the Government to explain an appendix which contained certain monetary amounts (DKK 145,943,572 and DKK 35,452,315). The Committee asked what these amounts related to and why the Government had not specified what they were.[1123] In its 1 November 2021 response, the IA Party Government explained that these amounts were the exploration costs incurred by licence holders.[1124] The following day, Mr Hammeken-Holm sent an email to a journalist that also explained the same.[1125] He advised the journalist that the first figure (DKK146 million, US$21.5 million) was the amount that GM had spent on exploration, and the second figure (DKK35.5 million, US$5 million) was the total amount spent on the 12 other exploration permits that would be affected by the uranium ppm threshold. These figures are quite extraordinary as they show that, quantitatively, the impact of the law on GM was far in excess of other mining companies, as GM's investment was 50 times greater than the average exploration company.

784. GM pauses here to note that the amount it has spent developing the Kvanefjeld Project is significantly more than the figure stated in Mr Hammeken-Holm's email. The actual costs incurred by GM from 2008 to 2021, which have been independently verified by GM's quantum expert, Mr Chris Milburn, are approximately US$154 million (expressed in real 2021 US dollars).[1126]

785. On 2 November 2021, the second reading of the bill for Act No. 20 took place in the Greenlandic Parliament.

786. On 6 November 2021, the Business and Tourism Committee formally recommended amendments to the bill, including that the law would only enter into force if approved

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[1123] Report titled "*Suggestions for: Inatsisartut Act on the prohibition of preliminary investigation, investigation and exploitation of uranium amber*", produced by Committee on Business and Mineral Resources, 30 October 2021, at **(C-632E)**, p. 5.

[1124] Resolution of 2nd hearing, "*Proposal for: Inatsisartut Act prohibiting exploration, exploration and exploitation of uranium, etc.*", EM2021/23, 1 November 2021, at **(C-207E)**, p. 1.

[1125] Email from J T. Hammeken-Holm (Nanoq) to M. Brøns (Journalist - KNR), subject "*Efterforskningsudgifter*", 2 November 2021, at **(C-633)**.

[1126] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Section 9, para. 95; Figure 9-1. See also para. 9.7: "*I have reviewed the financial reports provided by GMAS to the Government of Greenland for the years 2008 to 2021 as well as the Government of Greenland's confirmation letters and noted that the total exploration expenditures reported to and confirmed by the Government of Greenland amounted to approximately $121.1 million, which is materially consistent with the amounts recorded in GML's audited financial statements.*"

in a referendum on uranium mining.[1127] These recommendations were rejected by the IA Party Government.

787. On 9 November 2021, the third reading of the bill took place in the Greenlandic Parliament, and Act No. 20 was passed.

788. The next day, GM went into a trading halt on the ASX.

789. On 12 November 2021, GM issued an ASX announcement communicating to the public and the Government that it was seeking dialogue with the Government in relation to the proposed new law.[1128] GM stated that it was "*seeking clarity as to how the new legislation will effectively modify existing approvals or authorizations*".

790. In this announcement, GM provided the following background to the situation:

> "*Greenland Minerals commenced operating in Greenland in 2007 to explore the broader Kvanefjeld area and evaluate a multi-element mining operation. In November 2011, GGG's exploration licence over the Kvanefjeld Project, which covers 'all mineral resources except hydrocarbons, radioactive elements and hydropower resources', was amended by the government of the time to add a conditional right for the Company to apply for an exploitation licence to include 'radioactive elements', which provided the Company with a regulatory framework to effectively evaluate a multi-element mine development. This marked an important step in the evolution of the Project, as it placed a clear emphasis on rigorous scientific evaluation regarding a decision to mine.*
>
> *The granting of an exploitation licence then became dependent on establishing an environmentally and socially sustainable development scenario that is economically robust. The addition of 'radioactive elements' to the exploration licence in 2011 did not affect, or qualify, the right of the Company to apply for an exploitation licence for any other mineral resources (except hydrocarbons and hydropower resources). Similarly, a denial of exploitation licence for 'radioactive elements' is irrelevant to the rights which are granted by the Standard Terms for the exploration licence*."[1129]

[1127] 3rd reading, "*Proposal for: Inatsisartutlov on the prohibition of prospecting, exploration and exploitation of uranium etc.*", 6 November 2021, at **(C-634E)**; 3rd reading, "*Inatsisartutlov on the prohibition of prospecting, exploration and exploitation of uranium, etc.*", Annex A & B, 6 November 2021, at **(C-635E)**.

[1128] Greenland Minerals Ltd ASX Announcement titled "GGG seeks advice on Kvanefjeld strategy following Greenland's new uranium legislation", 12 November 2021, at **(C-60)**.

[1129] Greenland Minerals Ltd ASX Announcement titled "GGG seeks advice on Kvanefjeld strategy following Greenland's new uranium legislation", 12 November 2021, at **(C-60)**, p. 2.

791. In this announcement, GM also confirmed that it was "*not aware of any technical, radiological, or health and safety reasons why the Greenland Government has selected a threshold level of 100ppm uranium for the legislation*".[1130]

792. On 17 November 2021, Jens-Frederik Nielsen, the head of the Democrats, asked the Government whether it had received a legal opinion in relation to the risks of being held liable to pay damages if companies were unable to obtain exploitation licences because of the uranium ban.[1131] Mr Nielsen pointed out that the IA Party Government had made various statements that companies would not be entitled to compensation, but he had not seen the legal opinion to support this. He stated: "*I am therefore interested to know whether Naalakkersuisut's assessment has been made on the basis of gut feelings or on the basis of an actual legal opinion*." He asked that any such legal opinion to be made available to the public.

793. On 29 November 2021, Minister Nathanielsen advised the Parliament that: "*In connection with the preparation of the Uranium Act, Naalakkersuisut has had legal assessments prepared by The Law Firm Poul Schmith*."[1132] The reference to "*legal assessments*" in the plural indicates there was more than one assessment. Based on GM's understanding of the timeline of events, it would seem the first assessment was prepared after the election but before the first draft of the Consultation Bill (i.e., between mid-April and mid-June 2021), and the second was prepared in October 2021.

794. In her response, Minister Nathanielsen told the Parliament that the assessments were exempt from disclosure because they contained matters that "*could potentially be the subject of legal proceedings*", and that she could provide no further comment.

795. Following this exchange in Parliament, on 2 December 2021 the press reported that Mr Jens-Frederik Nielsen had stated: "*Firstly, we are smashing the investment climate in this country, and secondly, the Minister can not guarantee that there will be no expensive aftermath*".[1133] Minister Nathanielsen told the press that she would seek to have a dialogue with GM. She was reported as stating: "*At the moment there is no prospect of a trial*". The Minister apparently made these comments despite the fact that, three days earlier, she had told the Parliament that Poul Schmith's legal assessments could not be disclosed because of potential legal proceedings.

796. The Government continues to withhold these legal assessments. GM reiterates that, if these assessments supported the Respondents' case, the Government would have disclosed them. GM intends to request those documents during the document production phase of the present arbitration. As discussed in Section C.87 below, the

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[1130] Greenland Minerals Ltd ASX Announcement titled "GGG seeks advice on Kvanefjeld strategy following Greenland's new uranium legislation", 12 November 2021, at **(C-60)**, p. 1.

[1131] §37 Parliamentary Questionnaire No. 157/2021, 17 November 2021, at **(C-603)**

[1132] §37 Parliamentary Questionnaire No. 157/2021, 17 November 2021, at **(C-603)**, pp. 3, 6.

[1133] T Munk Viruses, *Note on uranium replacement remains secret*, Sermitsiaq, 2 December 2021, at **(C-25)**.

Government recently volunteered the public disclosure of a legal assessment it prepared in December 2022 regarding this arbitration.

797. On 1 December 2021, Act No. 20 was signed by the Premier of Greenland, and it came into force the next day, on 2 December 2021.[1134] The Act applies to all licences issued after this date (Section 5(2)).

798. In relation to the passage of Act No. 20, Dr Mair testifies:

> "*In my view, the passing of Act No. 20 was essentially taking ten years of good faith cooperation between GM and the Government and throwing it in the face of both the Company, and significantly our shareholders who have invested in the Project and Greenland. For the investment brand of Greenland, it is a very unfortunate outcome*."[1135]

C.76 Steps to prepare the White Papers and IBA (December 2021)

799. Despite the political developments that had been taking place, GM had been working hard to complete the public consultation process on its EIA and SIA.

800. On 29 October 2021, GM sent Mr Hammeken-Holm of the MLSA its formal white paper responses to the queries raised during EIA and SIA consultation.[1136] GM also made these responses available on its website. Subsequently, the Government requested that GM prepare separate White Papers for the EIA and SIA, which GM submitted on 1 December 2021.[1137]

801. From this time, GM's role in the preparation of the White Papers was essentially completed, and it was for the Government to review the White Papers, advise GM if any further comments or clarifications were needed, and then compile all the materials into the final version of the White Papers.[1138]

802. In parallel with completing the White Papers, GM started communicating with the Government regarding the impact benefit agreement (**IBA**) for the Project. This IBA

[1134] Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc., at **(CL-1)**.

[1135] First Witness Statement of J. Mair, at **(CWS-3)**, para. 949.

[1136] First Witness Statement of J. Mair, at **(CWS-3)**, para. 936.

[1137] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)** para. 44; First Witness Statement of J. Mair, at **(CWS-3)**, para. 937; Letter from G. Frere (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), 1 December 2021, at **(C-51)**Report titled "*White Paper Social Impact Assessment - Hearing Reponses*", produced by Greenland Minerals A/S, December 2021, at **(C-53)**Report titled "*White Paper Environmental Impact Assessment - Hearing Responses*", produced by Greenland Minerals A/S, December 2021, at **(C-54)**.

[1138] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 44.

would be a tripartite agreement between GM, the local municipality Kujalleq Kommune, and the Greenlandic Government. As Mr Frere explains:

> "*The purpose of an IBA is to address certain local social impacts once an exploitation licence is granted. An IBA is required to cover various project-specific aspects, including local content and employment, training and educational initiatives, and other areas of economic contribution*."[1139]

803. In November 2021, the Government provided GM with a precedent for an IBA and a template, and GM used these materials to commence drafting an IBA.[1140] However, GM later suspended work on the IBA because this was related to the outcome of the White Paper process, and the Government failed to engage regarding the White Papers.[1141] As discussed in paragraphs 836-838 below, on 6 May 2022, GM received a letter notifying that the Government planned to halt the licensing process entirely.

C.77 Meetings between GM and the Government (December 2021 – February 2022)

804. The events following the passage of Act No. 20 are described in the first witness statement of Mr Frere.[1142]

805. As set out above, on 2 December 2021, Minister Nathanielsen told the press that she would seek to have a dialogue with GM about the new law and the Project.[1143]

806. On 6 December 2021, the Ministry emailed GM, proposing a meeting on 15 December 2021. This email stated that:

> "*the act will apply to all licenses to be issued from now on. Consequently, the act applies to the processing of Greenland Minerals' application for an exploitation license for the Kuannersuit-project. As requested in your company announcement of 12 November 2021, the Ministry of Mineral Resources would like to invite representatives of Greenland Minerals to a meeting to discuss how the act impacts the Kuannersuit-project.*"[1144]

[1139] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 46.

[1140] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)** paras. 47-48; Email chain between P. Niclasen (Head of Department Ministry of Mineral Resources and Justice) and G. Frere (Greenland Minerals Ltd), 4 November 2021 to 29 November 2021, subject: "*Sv: Impact and benefits agreement (Nanoq - ID nr.: 18622305)*", at **(C-56)**; Letter from G. Frere (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), 4 November 2021, at **(C-57)**; Letter from G. Frere (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), 25 November 2021, at **(C-58)**; Document titled "*Template for Appendix*", by Ministry of Mineral Resources and Justice, 29 November 2021, at **(C-92)**.

[1141] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 48.

[1142] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, paras. 49-71.

[1143] T Munk Viruses, *Note on uranium replacement remains secret*, Sermitsiaq, 2 December 2021, at **(C-25)**.

[1144] Email chain between Greenland Ministry of Mineral Resources to Greenland Minerals dated 4 November 2021 to 13 December 2021, at **(C-26)**, p. 4.

807. The first meeting between GM and the Greenlandic Government took place by videoconference on 15 December 2021. Both parties were represented by external counsel: the Government by Poul Schmith and GM by Clifford Chance. The meeting began with an explanation of the background to Act No. 20, provided by Mr Hammeken-Holm. Counsel for Greenland (Mr Paw Fruerlund) then explained the Government's position on the effect of Act No. 20. Mr Hammeken-Holm then said:

> "*It all depends on how you wish to move forward. Your current application is based on a project description where uranium is to be exploited as a by-product. Because of s 1(1)* [of Act No. 20], *GML cannot expect to be granted a uranium licence for such a project description. This leaves GML with a choice between two options: (1) maintain the application – the process will run its course but you can expect a refusal; and (2) recall the application and as a result the authorities will not make a decision on the current application. You can then decide how you would like to move from here*".[1145]

808. Mr Hammeken-Holm asked GM's representatives if they had anything to say. GM's new Managing Director, Daniel Mamadou, said that GM would revert after the meeting with any clarifications or questions.

809. Before the meeting closed, Mr Hammeken-Holm raised the issue of the White Papers and asked whether the Ministry should put its work on the White Papers "*on hold*". Mr Fruerlund then elaborated that:

> "*no matter the content of the white paper, it will not change the fact that, the way it is intended to exploit the resource under the application, it is simply not possible to grant an exploitation licence under the current legislation. No matter how the white paper is transformed, it will not be able to lead to an exploitation licence because the uranium ban Act is in force*."[1146]

810. Mr Mamadou responded that GM wished to continue the White Paper process to completion, acknowledging the cost implications for GM but saying: "*My preference is*

[1145] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**pp. 4-5; "*Minutes from meeting regarding the Kuannersuit-project*", 15 December 2021, at **(C-27)**, p. 6.

[1146] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, p. 6; "*Minutes from meeting regarding the Kuannersuit-project*", 15 December 2021, at **(C-27)**, p. 7 ("*Jørgen T. Hammeken-Holm and Paw Fruerlund proposed and explained that the process regarding the white paper could be put on hold while GM considers the information provided at this meeting. It was explained that the white paper process is costly, that GM will be charged for the costs incurred by the authorities in this regard, and that no matter the contents of the white paper, GM could not expect to be granted an exploitation license with the current project description*").

that, when we start processes, we finish them".[1147] Mr Hammeken-Holm responded: "*We will continue until you decide something different*".[1148]

811. As Mr Frere explains:

> "*I was concerned by what the Government and its legal adviser said at this meeting about Act No. 20, but I was comforted by Mr Hammeken-Holm's confirmation that the Government would continue to perform its role in the White Paper process*".[1149]

812. When this meeting took place, GM had very little understanding of the process by which the IA Party Government developed Act No. 20. It is now clear that Poul Schmith drafted Act No. 20 and, as set out in Section C.65, legal assessments performed at the time did not support the IA Party's stated position that GM did not have any rights. In this light, the Government's invitation to GM at this meeting (and later meetings) to voluntarily withdraw its exploitation licence application was clearly an attempt to trick GM into forfeiting its rights. If GM had followed the Government's advice, GM would have weakened its legal position. These invitations by Mr Hammeken-Holm and counsel for the Respondents for GM to withdraw its application were made in breach of the principles of good faith and loyalty, and in breach of the Government's administrative law duty to provide reasonable and accurate guidance to GM as a licensee.

813. Shortly after the meeting, on 18 December 2021, Mr Niclasen sent an email to Mr Frere saying that, at the meeting, "*there was some confusion regarding the status of the White Paper*", and that, according to the Government, GM's White Paper had not been finalised.[1150] Mr Frere responded saying that there was no confusion on GM's part, that GM's understanding was that the authorities were "*reviewing the company's responses and preparing their own*" (as had been the case since GM first submitted its White Papers in October 2021). Moreover, Mr Frere provided a full rebuttal to each of the matters that the Greenlandic Government sought to characterise insufficiencies with the submitted White Papers (by showing that those matters had already been addressed).[1151]

[1147] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, p. 6; "*Minutes from meeting regarding the Kuannersuit-project*", 15 December 2021, at **(C-27)**, p. 7 ("*Daniel Mamadou explained that GM would prefer that the white paper process continued* […] *Daniel Mamadou maintained that the white paper process should continue*").

[1148] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, p. 6.

[1149] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 64.

[1150] Email chain between Greenland Ministry of Mineral Resources and GM, 18 December 2021 to 20 December 2021, subject: "*RE: Memo - White Paper process (Nanoq - ID nr.: 18768439)*", at **(C-636)**.

[1151] Email chain between Greenland Ministry of Mineral Resources and GM, 18 December 2021 to 20 December 2021, subject: "*RE: Memo - White Paper process (Nanoq - ID nr.: 18768439)*", at **(C-636)**.

814. A further meeting took place between representatives of GM and the Greenlandic Government on 8 February 2022.

815. At this meeting, Mr Mamadou communicated that GM would not withdraw its exploitation licence application and that GM expected the rest of the application process to be completed, referring to the White Papers and IBA steps.[1152] He said that GM's view was that Act No. 20 did not apply to its licence application because this would be expropriatory.

816. Counsel for the Respondents, Mr Fruerlund, made several claims and arguments regarding the legal framework applicable to GM's licence application.[1153] Specifically:

(a) Counsel said that GM did not have a right to an exploitation licence because of Addendum No. 1.

(b) Counsel claimed that Addendum No. 1 "*needs to be seen in light of the then zero tolerance policy*". Counsel asserted that the ZTP "*was law under the law of Greenland and Denmark*" and would "*bind the administration until changed*". This assertion is incorrect. Indeed, as discussed above, the Greenlandic Government's proposal to abolish the ZTP confirmed that the ZTP had no legal status.[1154] Professor Mortensen confirms in his expert report that "*never before 2 December 2021* [Act No. 20] *have there been any statutory rules or other sources of law laying down a prohibition concerning mining activities involving radioactive elements*".[1155]

(c) Counsel continued to state: "*It was not then even possible for the Greenland Government to enact an addendum that went further than that* [the ZTP] *because of the zero tolerance policy*." Again, this is incorrect. As discussed above, the ZTP did not have any legal basis, and Section 101 of the Standard Terms explicitly empowered the Government to indicate in the terms of a licence that a licensee was entitled to explore for radioactive elements. As set out above, when the ZTP was lifted, the Premier of Greenland confirmed to the Parliament that Addendum No. 1 "*already granted permission for uranium mining in Greenland*",[1156] and the Minister of Mineral Resources formally

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[1152] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 66.

[1153] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**.

[1154] Document titled "*Proposal for a decision by the Parliament of Parliament to accede to the accession of the Parliament with effect from EM13 to: The "zero tolerance" for the mining of uranium and other radioactive substances ceases*", EM 2013/106, 8 August 2013, at **(C-236E)**.

[1155] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 132.

[1156] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

advised that the addendum "*is a deviation from the previous zero-tolerance policy*."[1157]

(d) Counsel suggested that the Addendum No. 1 came about because GM discovered uranium at Kvanefjeld, stating: "*At that point in time, it was uncovered that there was uranium in the earth. That would have rendered it illegal to explore further. It was not allowed to explore in areas that had an enhanced source of uranium.*" Counsel also stated: "*At that* point [without the addendum] *it* [the Project] *would have ended and the terms that were extended to uranium* […]". This is incorrect. The Danish and Greenlandic Governments granted and renewed GM's Exploration Licence while fully aware that the ore body is enriched with uranium,[1158] and knowing that uranium would need to be extracted and treated if *any* mining activity was to occur at Kvanefjeld.[1159]

817. At the meeting, counsel for GM pointed out that these claims were incorrect. Counsel for GM also explained that, if counsel for the Respondents' interpretation of Addendum No. 1 "*was legally correct, this Act would not have been necessary and it is very clear that the government caused the promulgation of the Act to stop the project.*" Mr Fruerlund then said: "*You have a point but your conclusion is invalid*". He then went on to assert that Act No. 20 was necessary because it was a general law and not targeted at the Kvanefjeld Project. As set out above, the evidence clearly shows this was not the case.

818. Counsel for the Respondents then explained that GM's Exploitation Licence Application could and would be refused on the basis that GM did not have an entitlement to an exploitation licence for the Project and/or because of Act No. 20. Significantly, Counsel stated:

> "*it is not possible for you to be given an exploitation licence which will fulfill the requirements of the Act* [No. 20]. *That is why we are suggesting you withdraw, even though there is no way to make an official decision until the application is processed.*"[1160]

819. Mr Hammeken-Holm then reiterated that GM had two options, saying:

> "*The solutions are those that we had at the first meeting: (1) you can continue the application and the government will make a decision, probably a negative*

[1157] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

[1158] As discussed in Section C.1, the Danish and Greenlandic Governments have known that Kvanefjeld is enriched with uranium since the 1950s. This was known when the Exploration Licence for Kvanefjeld was first granted (see Section C.3 above).

[1159] See, for example, paragraphs 121 and 144 above.

[1160] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**, pp. 4-5.

one, or (2) you can withdraw your application and then you still have your exploration licence at hand."[1161]

820. In light of the evidence that has emerged regarding the preparation of Act No. 20, it is clear that these statements by Mr Hammeken-Holm and counsel for the Respondents were not accurate and were not made in good faith. The Government was trying to trick GM into abandoning its legal rights, because otherwise the Government would have to deal with the legal consequences of its political decision to stop the Project.

821. Following this meeting, GM wrote to the Greenlandic Government, formally protesting the position that the Government had taken at the two meetings. GM confirmed that it declined the Government's invitation to withdraw its Exploitation Licence Application and stated that GM "*expects Naalakkersuisut to progress with the outstanding tasks on the White Paper process and the Impact and Benefit Agreement, with all due expedition*."[1162]

C.78 DCE comments on EIA White Paper (18 March 2022)

822. In March 2022, the DCE and GINR provided to EAMRA their comments on GM's EIA White Paper.[1163] Their conclusions are succinctly summarised in the report as follows:

> "*DCE/GINR assess that the Company* [GM] *has provided answers to all questions included in the White Paper.*
>
> *DCE/GINR assess that all major environmental issues raised in the white paper have been described in the summary EIA report and/or supporting background studies. However, DCE/GINR assess that a number of key environmental topics, which DCE/GINR previously assessed to be adequately dealt with in the supporting background studies, are not efficiently and clearly summarized and communicated to non-experts in the EIA-report.*"[1164]

823. The DCE and GINR's only substantive comments on the EIA White Paper were therefore that it had not been "*summarized and communicated*" in a way that a non-expert would understand. As Mr Frere confirms, the "*general comments from the DCE and GINR* […] *appeared to me to be limited to comments of an editorial nature*

[1161] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**, p. 6.

[1162] Letter from D. Mamadou-Blanco (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) and N. Nathanielsen (Minister of Mineral Resources and Justice), 15 February 2022, subject: "Response to position taken by Naalakkersuisut at recent meetings with Greenland Minerals and record of protest", at **(C-63)**, p. 3.

[1163] Document titled "*DCE/GINR - Overall comments and recommendations to 'WHITE PAPER Environmental Impact Assessment - Hearing Responses by Greenland Minerals A/S March 2022'*", Danish Centre for Environment and Energy, 18 March 2022, at **(C-74)**

[1164] Document titled "*DCE/GINR - Overall comments and recommendations to 'WHITE PAPER Environmental Impact Assessment - Hearing Responses by Greenland Minerals A/S March 2022'*", Danish Centre for Environment and Energy, 18 March 2022, at **(C-74)**, p. 4 (references omitted).

aimed at simplifying the language of the EIA to make it more accessible to a lay reader."[1165]

824. Moreover, the comments confirmed that "*DCE/GINR do not find that the EIA hearing submissions have identified significant errors in the Company's assessment of potential environmental impacts from the mine project*."[1166] This is significant because the public consultations were the final phase in the process of the EIA being approved. The DCE and GINR had already confirmed the accuracy of the content of the EIA over an extensive five-year period. As a consequence of the public consultations failing to reveal anything that the DCE and GINR had missed, there was no reason that the EIA could not have been finally approved for the purposes of issuing GM's exploitation licence for the Kvanefjeld Project.

825. The Greenlandic Government did not make the DCE and GINR's comments immediately available to GM. Rather, it was only after GM's Commercial Manager, Mr Frere, repeatedly requested the Government's comments that the Government provided the DCE and GINR's comments to GM on 16 May 2022.[1167] Mr Frere subsequently requested a copy of the DCE's full comments on the EIA White Paper, since, as noted above, those that the Greenlandic Government had provided before were in summary form only. The Government provided those comments on 24 June 2022.[1168] As Mr Frere notes:

> "*My review of the Government's comments on the White Book confirmed what I had initially thought: they were mainly editorial in nature. There was nothing in the comments that led me to believe that final approval of the EIA would not be forthcoming (subject to the resolution of the Type 2 Comments)*."[1169]

826. By mid-2022, GM had therefore progressed the EIA as far as it possibly could. Furthermore, there were no indications that there was any basis upon which the Greenlandic Government might decline to approve the EIA for the purposes of GM's application for an exploitation licence. Indeed, that the EIA complied with all of the relevant requirements has been confirmed both by the Claimant's independent environmental expert (Mr Goodfellow) and by the EAMRA's own advisers, the DCE and GINR. Accordingly, provided that GM is afforded the opportunity to make some relatively minor amendments to simplify the language in the EIA for lay readers, the

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[1165] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 58.

[1166] Document titled "*DCE/GINR - Overall comments and recommendations to 'WHITE PAPER Environmental Impact Assessment - Hearing Responses by Greenland Minerals A/S March 2022'*", Danish Centre for Environment and Energy, 18 March 2022, at **(C-74)**, p. 5.

[1167] Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 57-58.

[1168] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 59.

[1169] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 60.

only step left in the EIA process is for the Greenlandic Government to formally approve the document.

C.79 Minister Nathanielsen responds to questions about Poul Schmith legal assessment (21 March 2022)

827. As mentioned above, during the parliamentary debates concerning Act No. 20, Minister Nathanielsen was directly asked about what legal assessments had been performed. Minister Nathanielsen did not disclose to the Parliament that the IA Party Government had received legal assessments from Poul Schmith.

828. In March 2022, Jens-Frederik Nielsen, the leader of the Democrats, asked the Minister about Poul Schmith's legal assessment of 8 October 2021, and why it had been concealed from the Parliament, making express reference to the numerous times this question had been asked.[1170] Minister Nathanielsen's response was evasive, and she denied any concealment.

C.80 Request for Arbitration (22 March 2022)

829. On 22 March 2022, GM commenced arbitration under Section 20 of the Exploration Licence, by issuance of a Request for Arbitration to the Greenlandic Government and the Danish Government.

830. The next day, the IA Party Government issued a press release, attacking GM for referring the dispute to arbitration:

> "*Naalakkersuisut finds it striking that Greenland Minerals wants to take the case out of Greenland and outside Greenlandic law. Arbitration is a form of private litigation where disputes can be settled outside the ordinary public courts.*"[1171]

831. GM was surprised by the tone and content of this statement, not least because, in referring the questions that arose from Act No. 20 to arbitration, GM was simply following the arbitration clause that the Greenlandic Government (and the Danish Government) decided to include in the Standard Terms. According to this clause, "*disputes arising between the Government of Greenland and the licensee regarding questions arising out of the licence will be finally decided upon by a board of arbitration*".

[1170] §37 Parliamentary Questionnaire No. 56/2022, 2 March 2022, at **(C-628)**.

[1171] Document titled "Greenland Minerals initiates arbitration proceedings against Greenland", by Naalakkersuisut, 23 March 2022, at **(C-65)**.

832. Nevertheless, it was clear from the IA Party Government's statement that they would strongly contest the jurisdiction of the arbitral tribunal. Minister Nathanielsen continued to state this position to the Greenlandic media.[1172]

C.81 Government purports to terminate licensing process (April – June 2022)

833. In April 2021, the coalition between the IA Party and Naleraq Party broke down. Subsequently, the Naleraq Party, which had supported Act No. 20 as part of its coalition agreement with the IA Party, proposed a referendum to repeal Act No. 20.[1173]

834. Following the change to the coalition, Naaja Nathanielsen was replaced as Minister of Mineral Resources by Aqqaluaq Egede, a staunch opponent of the Kvanefjeld Project (see paragraph 667 above).[1174] The press reported that the "*great opponent of uranium mining*" was "*happy*" to have been moved to this role.[1175] The appointment of Mr Aqqaluaq Egede as Minister signalled the start of an even more aggressive strategy by the IA Party Government to stop the Kvanefjeld Project. Minister Egede proceeded to abandon the reassurances made by Minister Nathanielsen about adhering to the MRA and the terms of GM's Exploration Licence.[1176]

835. On 22 April 2022, the Greenlandic Mineral Resources Authority published a post on its website titled "*The ban on uranium*", which set out the background to Act No. 20 and the provisions of the act.[1177] This stated that Act No. 20 "*applies regardless that the licensees will usually have a conditional right to obtain an exploitation licence for uranium deposits discovered under section 29(2) of the current Mineral Resources Act*." This signalled that the IA Party Government was intending to apply Act No. 20 even if this would result in the expropriation of protected property rights. This was contrary to what the IA Party had told the Parliament when the bill was passed.

[1172] T. Munk Veirum, *Former Supreme Court judge to represent Self Rule in arbitration*, Sermitsiaq, 27 May 2022, at **(C-78)**; T. Munk Veirum, *Naaja about Greenland Minerals: They must stand in a Greenlandic courtroom*, Sermitsiaq, 25 March 2022, at **(C-637E)**; H. Nørrelund Sørensen, *Naalakkersuisoq on Greenland Minerals' wish: Arbitration case is completely out of the question*, KNR, 28 March 2022, at **(C-66)**.

[1173] T. Munk Veirum, *Broberg is upset: Uranium vote rejected*, Sermitsiaq, 13 September 2022, at **(C-638)**

[1174] M. Lindstrøm, *New Naalakkersuisut: Siumut gets fisheries and foreign affairs*, Sermitsiaq, 5 April 2022, at **(C-639E)**; A. Petersen, *Aqqaluaq B. Egede on farewell to fisherman and trapper post: Of course it is difficult*, KNR, 8 April 2022, at **(C-640)**.

[1175] A. Petersen, *Aqqaluaq B. Egede on farewell to fisherman and trapper post: Of course it is difficult*, KNR, 8 April 2022, at **(C-640)**.

[1176] Email from J. T. Hammeken-Holm (Nanoq) to J. Mair (GM), subject: "*Sv: Communication re: Kvanefjeld Project (Nanoq - ID nr.: 18342572)*", 29 October 2021, at **(C-630)**; Letter from N. H. Nathanielsen (Minister for Housing, Infrastructure, Minerals, Justice and Gender Equality) to J. Mair (GM), subject: "*Letter about the GoG Kvanefjeld Project*", 28 October 2021, at **(C-631)**.

[1177] Document titled "The ban on uranium", by Mineral Resources Authority, 22 April 2022, at **(C-86)**, p. 1.

836. On 6 May 2022, GM received a letter dated 5 May 2022 from Deputy Minister Hammeken-Holm on behalf of the Government (**Notification Letter**). In the Notification Letter, Mr Hammeken-Holm informed GM, relevantly, that:

> "*the Government of Greenland has decided to stop informing the matter of your application for an exploitation licence and start making a decision on whether or not to grant an exploitation licence, based on the material currently available*".[1178]

837. The Notification Letter informed GM that a "*final decision from the Government of Greenland will presumably be rendered within the next 6 months*".[1179] The Government then confirmed this in a press release issued the same day (**Press Release**).[1180]

838. In each of the Notification Letter and the Press Release, the IA Party Government stated that, in making a decision on GM's Exploitation Licence Application, it would assess whether granting an exploitation licence "*conflicts with*" Act No. 20.[1181] The Greenlandic Government did this despite the fact – or precisely *because* – it knew that the question of whether Act No. 20 applies to GM's Exploration Licence (and Exploitation Licence Application) is the very first question that GM put to the Tribunal for determination.

839. On 16 May 2022, GM received a letter from the Ministry which enclosed documents prepared in relation to the processing of GM's exploitation licence application, including the DCE's comments on the EIA White Paper (discussed above), and the Ministry's working version of its comments on the SIA White Paper.[1182]

840. As regards the Government working version of the SIA White Paper, Mr Frere observes that:[1183]

[1178] Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to Greenland Minerals A/S, 5 May 2022, subject: "Notification, Naalakkersuisut-decision", at **(C-70)**

[1179] Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to Greenland Minerals A/S, 5 May 2022, subject: "Notification, Naalakkersuisut-decision", at **(C-70)**.

[1180] First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 76.

[1181] Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to Greenland Minerals A/S, 5 May 2022, subject: "Notification, Naalakkersuisut-decision", at **(C-70)**; Document titled "Naalakkersuisut vil træffe afgørelse om Kuannersuit inden for 6 måneder", by Ministry of Minerals and Justice, 6 May 2022, at **(C-71)**; Document titled "Naalakkersuisut will decide on Kuannersuit within 6 months", by Ministry of Minerals and Justice, 6 May 2022, at **(C-72)**.

[1182] Letter from B. Simmelsgaard (Legal Advisor to Permanent Secretary Ministry Mineral Resources and Justice) to Greenland Minerals A/S, 16 May 2022, subject: "Material prepared or procured in relation to the processing of your application", at **(C-73)**; Document titled "*DCE/GINR - Overall comments and recommendations to 'WHITE PAPER Environmental Impact Assessment - Hearing Responses by Greenland Minerals A/S March 2022'*", Danish Centre for Environment and Energy, 18 March 2022, at **(C-74)**; Report titled "White Paper Social Impact Assessment - Hearing Responses", with comments by Government of Greenland, June 2022, at **(C-75)**.

[1183] First Witness Statement of G. Frere, dated 24 June 2022, at (**CW-1**), para. 80.

"*The document contains a significant number of pending Government contributions, comprising tracked changes, open comments and internal notes. I see that the Government made no edits to this document beyond mid-April 2022. The incomplete state of this document demonstrates to me that the Government completely stopped work on the SIA White Paper at around this time*".

841. On 3 June 2022, GM sent a letter to the Government formally objecting to the purported termination of White Papers process (**Protest Letter**). GM pointed out the Government was under a duty to maintain the status quo and not aggravate the dispute. GM asked the Government to confirm (*inter alia*) that it would uphold these obligations and refrain from this course of action.[1184]

842. On 14 July 2022, the Greenlandic Government sent GM a letter stating that it would make a "*final consideration of GM's application*" and asserted that this was not a breach of its obligations to GM as the Tribunal did not have jurisdiction over the dispute.[1185]

843. Accordingly, on 24 June 2022, GM applied to the Tribunal for interim measures of protection under Section 17 of the Danish Arbitration Act (2005).[1186] GM noted in its interim measures application that the Greenlandic Government appeared to be stopping the licensing process (before completion of the White Papers and IBA) and making a decision on GM's Exploitation Licence Application for strategic reasons. Namely, the Government was seeking to: (i) prevent GM from completing the steps required for the issuance of an Exploitation Licence, and (ii) manufacture a basis for invoking Section 2001 of the Standard Terms to challenge the Tribunal's jurisdiction, by making a "*decision*" which the Government can argue is excluded from arbitration (an argument that is misconceived, for reasons explained in the Jurisdiction section below).

844. Upon receipt of GM's application, the Tribunal (in accordance with GM's request), recommended to the Parties that, "*until further notice, they refrain from taking any action that would aggravate the dispute*".[1187]

845. The Greenlandic Government ignored the Tribunal's recommendation, and informed GM that it intended to imminently issue a decision on GM's exploitation licence application. In light of this, GM applied to the Tribunal for a temporary order to

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[1184] Letter from D. Mamadou-Blanco (Greenland Minerals Ltd) to Permanent Secretary of Ministry of Mineral Resources and Justice, 3 June 2022, subject: "Protest against Naalakkersuisut notification regarding proposed decision on Greenland Minerals' exploitation licence application", at **(C-79)**, p. 3.

[1185] Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to D. Mamadou-Blanco (Greenland Minerals Ltd), 14 July 2022, subject: "Reply on 'Protest against Naalakkersuisut notification regarding proposed decision on Greenland Minerals' exploitation licence application'", at **(C-104)**.

[1186] Claimant's Application for Interim Measures, 24 June 2022, at **(CS-2)**, paras. 81-100.

[1187] Email from T. Iversen to counsel for the Claimant and the Respondents, 29 June 2022, subject: "Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark - Motion for Immediate Temporary Measure", at **(C-95)**.

maintain the status quo while its application for interim measures was pending before the Tribunal. By a majority decision, this application for a temporary order was declined by the Tribunal on 21 July 2022.

C.82 Draft Decision on Exploitation Licence Application (22 July 2022)

846. The day after the Tribunal declined GM's application for a temporary order, on 22 July 2022, the Greenlandic Government issued a draft decision on GM's Exploitation Licence Application of 17 June 2019. The Government proposed to reject the application on the basis of Act No. 20 (**Draft Decision**).[1188] GM's position is that this was an anticipatory breach of contract, for reasons explained further in the Legal Claims section below.

847. In its decision, the Greenlandic Government repeatedly misquoted the Addendum No. 1 Caveats, stating that these caveats allowed the Government to reject GM's application for "*an exploitation licence*", rather than its application for "*an exploitation licence for radioactive elements*". There are a total of five misquotes in the decision.[1189] For example, paragraph 99 states:

> "*The Addendum* [No. 1] *thereby explicitly states that the granting of a licence for the exploration of radioactive elements does not give rise to the right to be granted an exploitation licence. GM did not thereby acquire, by virtue of the Addendum to the exploration licence, a property right protected under section 73 of the Constitution*."[1190]

848. It is clear that the Government has deliberately misquoted the clear language of Addendum No. 1 to justify its conclusion that GM did not have any rights at all, and therefore that the Government's application of Act No. 20 to GM's application would not constitute expropriation.

849. By misquoting Addendum No. 1 to support its legal position, the Government has breached its duty of good faith and its duty of loyalty. This is discussed further in the Legal Claims section below.

[1188] Letter from Ministry of Mineral Resources and Justice to Greenland Minerals A/S, 22 July 2022, subject: "Consultation on draft decision on application of 17 June 2019 for an exploitation licence at Kuannersuit in South Greenland", at **(C-126)**; Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**.

[1189] Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**, paras. 24, 29, 98, and 99.

[1190] Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**, para. 99.

850. The Government provided GM four weeks to comment on the Draft Decision, but later agreed to extend this after GM requested access to documents that informed the decision.[1191]

C.83 DCE Recommendations for Radioactive Waste (June 2022)

851. Notably, while the Greenlandic Government had banned uranium mining through an arbitrary ppm threshold, the Danish Government authorities continued their work in developing a sophisticated regulatory framework for uranium mining. Indeed, in June 2022, the DCE published a report titled "*Recommendations for Guidelines for the Safe Management of Radioactive Waste Generated from the Mineral and Hydrocarbons Industries in Greenland*" (**DCE Recommendations for Radioactive Waste**).[1192] This report was produced at EAMRA's request.

852. As with previous reports, the DCE Recommendations for Radioactive Waste dealt with radiation protection and set out the radiation dose limits applicable in Greenland: 1 mSv for the public, and 20 mSv for workers (in accordance with the ICRP recommendations).[1193]

853. The report advised that, in order to demonstrate compliance with dosage limits, the licence applicants needed to perform radiological studies using internationally recognised radiological models.[1194] Arcadis had used one of the recommended models (ERICA) in their radiological assessment of the Kvanefjeld Project.[1195]

854. This report is consistent with what the Danish and Greenlandic authorities have been advising GM for more than a decade: that radiation protection in Greenland would be regulated through dosage limits. This report makes no mention of ppm limits and does not suggest that radiological impacts could or should be regulated through a uranium concentration threshold.

[1191] Letter from G. Frere (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), 19 August 2022, subject: "Case No. 2022-5070 - Preliminary Response to Draft Decision", attaching letter from G. Frere (Greenland Minerals Ltd) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), 17 August 2022, subject: "Re: Case no. 2022-5070 - Request for extension of time limit, access to the public files, submission of specified observations and guidance from the authorities", at **(C-130)**, pp. 10-14; Letter from G. Frere (GM) to J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice), subject: "*Re: Case no. 2022-5070*", 18 October 2022, at **(C-641)**; Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to G. Frere (GM), subject: "*Re: Case no. 2022-5070*", 26 October 2022, at **(C-642)**.

[1192] DCE Report, "*Recommendations for Guidelines for the Safe Management of Radioactive Waste Generated from the Mineral and Hydrocarbons Industries in Greenland*", DCE, at **(C-643)**.

[1193] DCE Report, "*Recommendations for Guidelines for the Safe Management of Radioactive Waste Generated from the Mineral and Hydrocarbons Industries in Greenland*", DCE, at **(C-643)**, p. 16.

[1194] DCE Report, "*Recommendations for Guidelines for the Safe Management of Radioactive Waste Generated from the Mineral and Hydrocarbons Industries in Greenland*", DCE, at **(C-643)**, p. 16.

[1195] Report titled, "*Radiological Assessment for the Kvanefjeld Multi-Element Project*", produced by Arcadis, May 2019, at **(C-226)**.

C.84 Application to renew Exploration Licence (26 July 2022)

855. On 26 July 2022, GM submitted an application to renew its Exploration Licence, which was due to expire on 31 December 2022.[1196] As with previous applications, this listed the target minerals as rare earth elements, uranium, zinc and fluorspar. The application also described planned field activities for the 2023 season, including radon monitoring. The Greenlandic Government confirmed registration of the application on 28 July 2022 and indicated that the application would be processed by 26 October 2022.[1197]

C.85 Interim Measures phase (July – September 2022)

856. As mentioned above, in late June 2022, GM applied to the Tribunal for interim measures. Following this application there were multiple rounds of submissions, which culminated in a hearing in Copenhagen on 7 September 2022.

857. During the interim measures phase, the Parties made submissions regarding various matters, including the applicability of Act No. 20 (a key question raised by GM in its Request for Arbitration).

858. As noted in paragraph 757 above, the Explanatory Notes to the Act state:

> "*The Bill is not a compulsory acquisition act and therefore does not provide for the compulsory acquisition of protected property rights. A licence may therefore not be refused, restricted or revoked if this is deemed to constitute an intrusion on property protected by section 73 of the Danish Constitution*."[1198]

859. However, the text of Act No. 20 itself does not explicitly state that it does not apply if its application would constitute the expropriation of a protected property right.

860. Thus, based on the text of Act No. 20 and the Explanatory Notes, it was not clear whether it would apply to GM's exploration licence and application for an exploitation licence for the Kvanefjeld Project.

861. In the Respondents' Reply on Interim Measures, they submitted:

> "*The Uranium Act does not provide for compulsory acquisition and is therefore not applicable if any refusal of an application constitutes a compulsory acquisition of a protected proprietary right under the Constitutional Act of the Kingdom of Denmark.*"[1199]

[1196] Letter from G. Frere (GM) to R.J.F. Lindholm (MLSA), 26 July 2022, subject: "Application for renewal of exploration licence (MEL 2010-02), at **(C-116)**.

[1197] Letter from R.J.F. Lindholm (Special Advisor, Mineral Licence and Safety Authority) to Greenland Minerals A/S, 28 July 2022, subject: "Registration of Application - application for renewal of MEL 2010-02", at **(C-125)**.

[1198] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 7.

[1199] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 92.

862. Since the Respondents made this submission, the Parties have been in agreement that Act No. 20 does not apply if its application would constitute the expropriation of a protected property right.

863. Hence, the primary question for the Tribunal is whether, as at 1 December 2021, GM had property rights capable of expropriation.

C.86 Renewal of Exploration Licence (December 2022 – February 2023)

864. As set out above, in late July 2022, GM applied to renew its Exploration Licence. GM only received confirmation from the Greenlandic Government that its application had been approved on 6 December 2022 when the Greenlandic Government provided an addendum stipulating renewal of the licence to GM by email for execution.[1200]

865. Significantly, the renewal document that the Greenlandic Government provided attempted to exclude GM's right to explore for radioactive elements by not incorporating Addendum No. 1 by reference, even though GM's renewal application had expressly included uranium.

866. Following further correspondence between GM and the Government, on 9 February 2023, the Greenlandic Government acknowledged that it had "*discovered that the* [renewal document] *had some errors, in the sense that addendum made it look like that it was no longer possible to explore radioactive minerals*", and attached an amended addendum for signature (which was ultimately signed and countersigned by 16 March 2023).[1201]

867. The renewal itself lists documents that have been incorporated by reference, including the Standard Terms and Addendum No. 1. It does not refer to Act No. 20. Indeed, in the Ministry's email attaching the renewal, it expressly stated that Act No. 20 "*does not apply to this renewal of exploration license 2010-02, cf. section 5(2) of the Act*".[1202]

[1200] Email from R. J. F. Lindholm (MLSA) to G. Frere (GM), subject: "*[EXT] Sv: License renewal (Nanoq - ID nr.: 21941459)*", 6 December 2022, at **(C-644)**; attaching "*Addendum no. 9 to on renewal of exploration license with exclusive exploration rights for Greenland Minerals A/S for an area near Kuannersuit in Sought Greenland"* dated December 2022, at **(C-645)**.

[1201] Email from R. J. F. Lindholm (MLSA) to M. Guy (GM), subject: "*Sv: License renewal (Nanoq - ID nr.: 22831035)*", 16 March 2023, attaching "*Addendum no. 9 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals A/S for an area near Kuannersuit in South Greenland*", dated 15 March 2023, at **(C-646)** , p. 4.

[1202] Email from R. J. F. Lindholm (MLSA) to M. Guy (GM), subject: "*Sv: License renewal (Nanoq - ID nr.: 22831035)*", 16 March 2023, attaching "*Addendum no. 9 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals A/S for an area near Kuannersuit in South Greenland*", dated 15 March 2023, at **(C-646)**

C.87 Internal Government Legal Assessment (15 December 2022)

868. GM has recently received from the Ministry a copy of an internal legal assessment performed by Ministry lawyer Bo Simmelsgaard dated 15 December 2022.[1203] This legal assessment sets out the Ministry's position on the current arbitration and the merits of GM's case. It is manifestly self-serving. Moreover, it was likely prepared for the purposes of public disclosure, so as to bolster the Government's narrative that GM's case is without merit. Indeed, when the Government received a public access request for documents related to the arbitration, it immediately volunteered to disclose this legal assessment. Conversely, it has refused to disclose: (i) the Ministry's internal legal assessment commissioned before the April 2021 election, (ii) Poul Schmith's legal assessment prepared shortly after the election, or (iii) Poul Schmith's legal assessment dated 8 October 2021.

869. Although this legal assessment is, in reality, a Government public relations exercise, it is still illuminating in several respects.

870. First, the legal assessment states that Act No. 20 "*does not apply if a refusal of an application with reference to the law would constitute expropriation. It will therefore not be possible for Naalakkersuisut to refuse with reference to the law in such a case*".

871. It further states:

> "*Whether a refusal will constitute expropriation must be concretely assessed in connection with the processing of the individual application. If it is assessed that refusal with reference to the Uranium Act will constitute expropriation, the Act does not apply. Naalakkersuisut will then not be able to announce a refusal with reference to the Uranium Act. Naalakkersuisut will then have to issue the permit if the other conditions for this (in the Natural Resources Act, conditions, etc.) are met*."[1204]

872. This confirms what the Respondents stated in their submissions on interim measures, that Act No. 20 cannot apply if it would have expropriatory effect.

873. Significantly, the Ministry's legal assessment does not contain any analysis with respect to GM's right to an exploitation licence for non-radioactive elements (rare earths, zinc and fluorspar).[1205] Much like the Draft Decision, this legal assessment ignores (or

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[1203] Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**.

[1204] Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**, p. 6.

[1205] The legal assessment states that GM did not have a right to a licence for uranium, but does not suggest that GM did not have a right to a licence for rare earths. It states: "*As far as the issue of utilization of uranium is concerned, it must be emphasized that at no time has the company had the right to be granted a permit for the utilization of radioactive minerals*" Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**, p. 1.

deliberately avoids) any discussion of this class of rights – the existence of which is, on its own, enough to render Act No. 20 non-applicable to GM's application.

874. Remarkably, this legal assessment contains the following conclusion regarding the Respondents' liability under principles of private law:

> "*That there should have been a breach of legal principles, such as that agreements must be observed, would require that the company had a right according to the law or the permit or that Naalakkersuisut had entered into an agreement with the company, which is not the case*."[1206]

875. This conclusion, that the Government had no agreement with GM, is absurd. There can be no serious question that GM's Exploration Licence with the Government is an agreement, and that Addendum No. 1 is an agreement. The Exploration Licence is a concession (a form of administrative contract). As discussed in Section C.35 above and in the Legal Claims section below, the Exploration Licence and Addendum No. 1 contain clear contractual hallmarks and were concluded through negotiations and executed in accordance with contract formation norms. And, to remove any doubt on their legal character, the Government has expressly described these instruments (and others) as "*agreements*" (see paragraphs 315-316 above).

876. This legal assessment also confirms that Denmark is bearing one third of the costs of the present arbitration.[1207]

C.88 Amended exploitation licence application (16 December 2022)

877. As discussed above, on 28 October 2021, Minister Nathanielsen sent a letter to GM stating: "*the Government welcomes any project or modified project that can adhere to the legislative framework*".[1208] The Minister subsequently told the press that she would seek to have a dialogue with GM about the new law and the Project.[1209]

878. After 14 years spent developing a world-class Project, GM was not prepared to give up, and wanted to find a way to work with the Government to make the Project a reality. As Dr Mair has testified, even when the law was first proposed, GM believed that the

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[1206] Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**, p. 2.

[1207] Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**, p. 4.

[1208] Email from J. T. Hammeken-Holm (Nanoq) to J. Mair (GM), subject: "*Sv: Communication re: Kvanefjeld Project (Nanoq - ID nr.: 18342572)*", 29 October 2021, at **(C-630)**; Letter from N. H. Nathanielsen (Minister for Housing, Infrastructure, Minerals, Justice and Gender Equality) to J. Mair (GM), subject: "*Letter about the GoG Kvanefjeld Project*", 28 October 2021, at **(C-631)**.

[1209] T. Juncher Jørgensen, *Naaja Nathanielsen: Not agreeing with Greenland Minerals' interpretation*, Sermitsiaq, 14 January 2022, at **(C-647E)**.

Government would be open to having a dialogue with GM about alternative development options.[1210]

879. During 2022, GM went to work preparing an alternative project development proposal in which uranium would not be exploited and would instead be treated as a residual impurity.

880. On 16 December 2022, GM submitted an amendment to its existing exploitation licence application (**Amended Application**).[1211] As Mr Frere explains:

> "*we ultimately took the decision to submit an amended exploitation licence application based on an alternative flow sheet in which uranium would be treated as an impurity, separated from the rare earths, and subsequently deposited in the tailings storage facility* […] *I submitted the Amended Application to the Government of Greenland, and requested that the Government process it together with the original application*."[1212]

881. GM's motivation for submitting the Amended Application was simple: "*to improve the chances that the Kvanefjeld Project would have the opportunity to proceed*."[1213] The company undertook this course of action, notwithstanding the fact that "*GM had always had a right to exploit uranium at the Kvanefjeld Project, and* […] *had always proceeded on that basis*".[1214]

882. The Amended Application attached a memorandum prepared by Arcadis, GM's external radiological consultants.[1215] This memorandum concluded that the radiation doses associated with the Project will not materially change whether uranium is recovered as a product or is stored as waste.[1216]

883. In submitting its Amended Application, GM stated that it maintained its position that it has an acquired right to an exploitation licence as covered by its original licence application. GM requested that the Minister assess GM's original licence application in any final decision, and in addition, also assess GM's Amended Application in any final decision as a supplementary basis for granting an exploitation licence to GM. GM notes

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[1210] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 928-933.

[1211] Letter from G. Frere (GM) to J.T. Hammeken-Holm (Ministry of Minerals Resources, Labour and Interior), subject: "*Case no. 2022-5070 Supplementation of exploitation licence application filed 17 June 2019 to include alternative licence solution in addition to exploitation licence application as originally framed*", 16 December 2022, at **(C-648)**; Third Witness Statement of G. Frere, at **(CWS-4)**, para. 87.

[1212] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 87.

[1213] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 87.

[1214] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 87.

[1215] Memorandum from Arcadis to GM, subject: "*Radiological Impact of Not Producing Uranium*", 9 December 2022, at **(C-649)**.

[1216] Memorandum from Arcadis to GM, subject: "*Radiological Impact of Not Producing Uranium*", 9 December 2022, at **(C-649)**, p. 3.

that, in its Final Decision of 1 June 2023, the Government stated that it had "*not decided GM's alternative application for an exploitation licence of 16 December 2022*" and would "*make a separate decision in this regard after having conducted a clarification of the matter and a prior consultation*".[1217]

884. At the same time as GM submitted its Amended Application, Mr Hammeken-Holm (head of the MLSA) met with a Greenlandic business industry representative to discuss the Kvanefjeld Project. One of the topics discussed was GM's studies concerning an alternative development scenario in which uranium would not be exploited and would instead be treated as a residual impurity.

885. The Ministry has recently disclosed to GM Mr Hammeken-Holm's meeting note from this meeting.[1218] At this meeting, Mr Hammeken-Holm told the business industry representative that he was "*reasonably sure that the described exploitation of digging the minerals incl. Uranium up and putting the uranium back as waste could not be done in relation to current legislation*". This indicates that, even at this time, the Government was uncertain as to the interpretation of the term "*exploitation*" (used in Addendum No. 1) and the implications that this would have in relation to the application of Act No. 20 to GM's exploitation licence application.

C.89 Response to Draft Decision (January – February 2023)

886. As set out above, in October 2022, the Government agreed to provide GM with access to the documents that informed the Draft Decision.[1219]

887. On 28 December 2022, without prior notice, the Ministry provided GM with 1,589 documents.[1220] These documents were transmitted by way of a document platform that did not contain metadata and did not allow bulk downloads and were not able to be accessed by GM until January 2023. These documents were received during the height of the Australian holiday season. The Ministry instructed GM that it had only four weeks to review these documents and prepare a response. This was patently unreasonable, and part of a broader strategy of aggressive conduct by the Ministry towards GM.

[1217] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, para. 2.

[1218] Meeting Note from J. Hammeken-Holm, subject "*Informal and confidential inquiry from Greenland Minerals*", 15 December 2022, at **(C-651E)**.

[1219] Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to G. Frere (GM), subject: "*Re: Case no. 2022-5070*", 26 October 2022, at **(C-642)**.

[1220] Letter from B. Simmelsgaard (Department for Mineral Resources and Justice) to G. Frere (ETM), subject: "*Decision, Request for Public Access of 17 August 2022*", 28 December 2022, at **(C-652)**; attaching Document titled "*Documentlist*", Naalakkersuisut, 28 December 2022, at **(C-653E)**. The index of documents exported from the data room shows the full list of the 1,589 documents provided: Document titled "*Data Room Index: Government of Greenland, public access, GME*", Clifford Chance, 3 January 2023, at **(C-654)**.

888. It became apparent to GM that the documents disclosed were not a complete record of the documents that informed the Draft Decision. Indeed, there were documents referred to in the Draft Decision that the Ministry had not disclosed. Following four separate requests for further documents and more time, the Ministry agreed to provide GM a short extension to 17 February 2023.[1221]

889. GM was therefore forced to file its response to the Draft Decision under protest. In its response, GM pointed out the many factual and legal errors in the Draft Decision, including that it erroneously asserted that GM had no rights or legitimate expectations capable of expropriation.[1222]

C.90 Final Decision on Exploitation Licence Application (1 June 2023)

890. On 1 June 2023, the Greenlandic Government issued its final decision on GM's Exploitation Licence Application (**Final Decision**).[1223] The text of the decision was largely unchanged, despite the detailed comments provided by GM. There are, however, several significant amendments.

891. First, in its Final Decision, the Government corrected the (deliberate) misquotations of Addendum No. 1 that it had made in the Draft Decision (and which GM pointed out in its comments on the Draft Decision). An example is paragraph 99, which was amended as follows:

[1221] Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provide files and respond to consultation letter*", 10 January 2023, at **(C-655)**; Letter from J. T. Hammeken-Holm (Ministry of Mineral Resources and Justice) to G. Frere (GM); subject: "*Response to request for extension of time / decision on access to documents, Extension of time for submission of comments*", 18 January 2023, at **(C-656)**; Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provided files and respond to consultation letter*", 19 January 2023, at **(C-340)**; Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provided files and respond to consultation letter*", 24 January 2023, at **(C-657)**; Letter from J. T. Hammeken-Holm (Ministry of Mineral Resources) to G. Frere (GM), subject: "*Decision on Extension of Deadline*", 3 February 2023, at **(C-343)**; Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Request for extension of time to review provided files and respond to consultation letter*", 10 February 2023, at **(C-341)**.

[1222] Letter from G. Frere (GM) to A. B. Egede (Minister for Mineral Resources) and J. T. Hammeken-Holm (Ministry of Mineral Resources), subject: "*Preliminary response to Draft Decision*", 17 February 2023, at **(C-658)**; Document titled "*Response to Draft Decision - Consolidated Statement of Facts*", ETM, 17 February 2023, at **(C-659)**.

[1223] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**.

> ~~99.~~ The Addendum thereby explicitly states that the granting of a licence for the exploration of radioactive elements does not give rise to the right to be granted ~~an exploitation~~a licence for exploitation of radioactive elements. GM did not thereby acquire, by virtue of the Addendum to the exploration licence, a property right protected under section 73 of the Constitution.

892. In making these changes, the Government has seemingly recognised that the Addendum No. 1 Caveats do not limit or condition GM's right to an exploitation licence for non-radioactive elements under the MRA and the Standard Terms. Indeed, the consequence of these amendments is that the Final Decision contains no objective assessment (express or implied) of GM's rights with respect to non-radioactive elements.

893. Despite this, the Final Decision reaches the same conclusion as the Draft Decision, which is that GM did not have any rights or legitimate expectations at all. It states:

> "[…] *refusal of the application for an exploitation licence does not constitute an intrusion on property protected by section 73(1) of the Danish Constitution. This is because there is no intrusion on an existing right. Furthermore, there is no legitimate expectation that the application of 17 June 2019 would be granted*".[1224] (emphasis added)

894. The Final Decision subsequently concludes:

> "*In the light of the above, it can therefore be concluded that GM has not obtained a property right protected under section 73 of the Constitution, even by virtue of the subsequent course of events.*"[1225]

895. Thus, the Government has maintained its position that Act No. 20 applies to GM's application because GM, in the Government's view, did not hold *any* acquired exploitation rights, including by way of *any* legitimate expectation. Not only is this conclusion obviously wrong in its own terms, but it is irreconcilable with the Government's other amendments to the decision (specifically, its amendments to correctly state the terms of the Addendum No. 1 Caveats).

896. Finally, it is notable that the Final Decision expressly states that it is exclusively a decision based upon Act No. 20, and not a decision under the MRA:

> "*The Government of Greenland therefore refuses the application of 17 June 2019, as the granting of a licence is contrary to section 1(1) of the Uranium Act.*
>
> *The Government of Greenland has hereby not taken a position on whether the application could be granted on the basis of the rules of the Mineral Resources Act on environmental protection, climate protection and nature conservation as*

[1224] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)6)**, para. 112.

[1225] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, para. 119.

well as GM's EIA report and SIA report with consultation responses received."[1226]

897. As noted above, there is no discretionary element in Act No. 20 (as this was removed from the draft law at meeting of 1 July 2021). It follows that there is no credible basis to describe the Final Decision as a discretionary decision.

898. For the avoidance of doubt, in this Statement of Claim, GM does not ask that the Tribunal conduct any judicial review of the Final Decision. GM only asks that the Tribunal rule upon the questions arising out of the Exploration Licence that GM submitted to arbitration more than 14 months before the Final Decision was handed down, which are elaborated upon below.

C.91 Naaja Nathanielsen replaces Aqqaluaq Egede as Minister (5 June 2023)

899. On 31 May 2023, the Greenland Parliament adopted a new Mineral Activities Act which will come into force on 1 January 2024.[1227] Minister of Mineral Resources Aqqaluaq Egede was widely criticised for his handling of the new Act, and the mineral resources portfolio more generally.[1228]

900. On or about 5 June 2023, Minister Egede stepped down and was replaced with the former Minister, Naaja Nathanielsen. This change took place only three days after the Government rendered the Final Decision on GM's exploitation licence application. It cannot be ruled out that there was an internal disagreement within the IA Party Government as to the content of this decision and the amendments from the Draft Decision.

C.92 Limitation of liability clause in Tribunal's Terms of Appointment (December 2022 - present)

901. In December 2022, the Tribunal circulated to the Parties a draft Terms of Appointment for the arbitration. During the case management conference on 20 January 2023, counsel for the Respondents, Mr Paw Fruerlund, raised (for the first time) an issue with the inclusion of an ordinary immunity from suit provision in the Tribunal's Terms of Appointment.[1229]

[1226] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, para. 121.

[1227] Greenland Parliament Act No. 2023/49 on Mineral Activities, at **(CL-172)**, p. 47.

[1228] M. Lindstrøm, *Aqqaluaq B. Egede hands over the mineral area and takes over Peter Olsen's areas*, Sermitsiaq, 5 June 2023, at **(C-455E)**; H. Vestergaard Hvid, *Aqqaluaq B. Egede survives vote of no confidence*, KNR, 31 May 2023, at **(C-660)**;H. Vestergaard Hvid, *Aqqaluaq B. Egede survives vote of no confidence*, KNR, 31 May 2023, at **(C-660E)**; T. Munk Veirum, *Chaos characterizes the third reading ofthe Minerals Act - distrust of naalakkersuisoq*, Sermitsiaq, 31 May 2023, at **(C-661)**; T. Munk Veirum, *Chaos characterizes the third reading ofthe Minerals Act - distrust of naalakkersuisoq*, Sermitsiaq, 31 May 2023, at **(C-661E)**

[1229] Final Minutes of Preparatory Meeting (Case Management Conference No. 2), 3 February 2023, at **(C-662)**, p. 9.

902. Subsequently, by email dated 1 February 2023, counsel for the Respondents reiterated his reluctance as to inclusion of a limitation of liability clause and asked the Tribunal to provide its motivations for such a clause. After this was discussed at length at the case management conference held on 9 February 2023, the Tribunal agreed to provide the motivation requested by the Respondents.

903. The Tribunal's motivation was provided on 16 March 2023.[1230] The Tribunal pointed out that "*it is customary that the arbitrators are under some protection against lawsuits from the parties to the arbitration case*", such clauses "*are commonplace in institutional arbitration rules*", and there was a "*general acceptance of such clauses*" as the alternative could be "*potentially devastating for arbitrators*". The Tribunal noted that the wording of the proposed clause was "*identical to the wording used in Article 51 in the Rules of the Danish Institute of Arbitration*" and had "*been accepted by state entities in other arbitrations*". The Tribunal concluded: "*There are no reasonable alternatives to a clause on limitation of liability, accepted by all parties to an arbitration*".

904. On 17 May 2023, GM requested an update from the Respondents. The Respondents did not reply. Accordingly, on 31 May 2023, the Tribunal directed the Respondents to provide an update by no later than 6 June 2023. The Respondents failed to provide an update within the time directed, and on 7 June 2023, the Respondents' counsel said that he would revert by no later than 30 June 2023.[1231] However, yet again, the Respondents did not provide an update.

905. Subsequently, after GM made attempts to contact counsel for the Respondents and again asked for an update, on 6 July 2023, counsel for the Respondents advised that he did not expect an answer to this question before the end of August, and that it would not "*be in anyone's interest forcing a rushed answer on this question*".[1232]

906. It is now seven months since the Terms of Appointment were circulated, and four months since the Tribunal provided their motivation to the Respondents. The Respondents' continued delay with respect to inclusion of an ordinary limitation of liability provision in the Terms of Appointment is, plainly, a mere tactic to undermine

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[1230] Final Minutes of Preparatory Meeting (Case Management Conference No. 3), 23 February 2023, at **(C-663)**; Email from K. Steensgaard to counsel for the Claimant and Respondents, subject: *"[EXT] Ad hoc arbitration - Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark"*, 16 March 2023, at **(C-664)**; attaching Document titled *"Motivation for the Inclusion of a Limitation of Liability Clause in the Terms of Appointment on the ad hoc arbitration case Greenland Minerals A/S vs. the Government of Greenland and the Government of the Kingdom of Denmark*", 14 March 2023, at **(C-665)**, p. 2.

[1231] Email from P. Fruerlund to members of the Tribunal and counsel for the Claimant, subject: "*SV: [EXT] Ad hoc arbitration – Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark [PLSNR-ACTIVE.FID2243507] [PS-ACTIVE.FID1291114]*", 7 June 2023, at **(C-666)**.

[1232] Email from P. Fruerlund to members of the Tribunal and counsel for the Claimant, subject: "*SV: [EXT] Ad hoc arbitration - Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark [PLSNR-ACTIVE.FID2243507] [PS-ACTIVE.FID1291114]*", 6 July 2023, at **(C-667)**.

the arbitration process, by way of a thinly veiled threat to the Tribunal with respect to related personal suits.

907. At each available opportunity, the Respondents have sought to undermine the arbitration process (going well beyond mere jurisdictional objections). The Tribunal should see the Respondents' conduct for what it is – a manifestation of the Respondents' desperation to avoid the consequence of its expropriatory conduct.

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908. As the foregoing illustrates, GM has made substantial investments in the Kvanefjeld Project over the course of more than a decade. Recognising the benefits that the Kvanefjeld Project could bring to Greenland, the Greenlandic and Danish Governments once actively encouraged GM's investment and sought to facilitate the Project. However, the Greenlandic Government brought the Project to a screeching halt with the enactment of Act No. 20, in complete disregard for GM's rights and legitimate expectations. It is to the Respondents' breaches of those rights and expectations that GM now turns.

PART 2. LEGAL CLAIMS

D. OVERVIEW OF LEGAL ARGUMENTS

909. Having set out the detailed factual background of this dispute, GM now turns to plead its claims against the Respondents. GM will begin with a brief response to a proposition that is at the heart of the Respondents' case theory: that GM bought a "*lottery ticket*" and lost.

D.1 The *real* "lottery ticket" and the rule of law

910. As detailed in the Detailed Statement of Facts above, GM has been working and spending on the Kvanefjeld Project for more than 14 years, with the support and encouragement of successive governments in both Denmark and Greenland. As the evidence clearly establishes, throughout this 14-year period, GM relied upon the terms of the Exploration Licence, particularly Section 14 (in which the right to an exploitation licence is conferred upon GM) as a basis for its continued investment in the Kvanefjeld Project.[1233]

911. From the pleadings they have filed to date, it is apparent that the Respondents seek to revise this history. The Respondents would have the Tribunal believe that GM's Exploration Licence confers no rights whatsoever in relation to exploitation of the minerals it covers, and that the Greenlandic Government is at liberty to simply deny GM's Exploitation Licence Application without any obligation to compensate GM for its losses. The Tribunal will recall that, at the hearing on interim measures that took place on 7 September 2022, the Respondents' counsel characterised the Exploration Licence as "*a very expensive lottery ticket*."[1234] In the words of the Respondents' counsel:

> "*In essence, Claimant bought a very expensive lottery ticket; a ticket with a massive grand prize, as well as a massive risk. Later, the zero tolerance policy was formally abolished. However, the zero tolerance policy was kept as an intricate part of the exploration licence, as well as later exploration licences. In other words, the change in political policy did not entail any changes in the granted licences.*"[1235]

912. Given that GM's Exploration Licence is the product of a decades-long legislative process that was intended to promote Greenland as a safe and attractive place for mining investors, it is shocking to see that the Greenlandic and Danish Governments now assert, in circumstances of a dispute with one such investor, that the terms they offered to mining investors are nothing more than a political "*lottery ticket*". This idea is especially

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[1233] First Witness Statement of J. Mair, at **(CWS-3)**, para. 344.

[1234] Transcript of Hearing held on 7 September 2022, at **(C-134)**, pp. 24-25.

[1235] Transcript of Hearing held on 7 September 2022, at **(C-134)**, pp. 24-25.

offensive for GM, whom, as Dr Mair explains, the Greenlandic and Danish Governments used to promote this very system and attract other investors.

913. Ultimately, as absurd as the Respondents' "*lottery ticket*" thesis is, it is simply wrong. It is based upon a gross mischaracterisation of the nature and content of the Exploration Licence, GM's claims thereunder, and indeed of the entire body of Greenlandic mining law and practice.

914. The truth is that, like every mineral exploration undertaking, there is a "lottery ticket", but it is a geological lottery ticket. When a company embarks upon an exploration project, there is of course no guarantee that the exploration activities (which are expensive) will lead to the finding of any commercially exploitable deposits of minerals. As Dr Mair explains, "*in the international mining industry, it is generally said that the odds of an exploration project leading to a commercial scale mine are around 1 in 1,000*."[1236] It is precisely because exploration is so risky that so many mining laws around the world are structured to give exploration licence holders comfort that, if they make a commercially viable discovery – once they *win* the geological *lottery* – they will have a right to mine the minerals they have found. *That* is the system which the legislature put in place in Greenland. And *that* is the system which GM is relying on in this case. The executive branch – the Respondent governments – are of course legally bound by this system. Such is the principle of the rule of law.

915. The crux of this case is that there is *no* administrative discretion with respect to the *existence* of GM's rights to an exploitation licence for rare earths, zinc and fluorspar. In other words, once GM has satisfied the conditions of Section 1401 of its Exploration Licence (as it did by April 2020 at the latest), there is *no* discretion as to *whether* an exploitation licence is to be granted to GM. At this point, the only discretion which the Greenlandic Government has relates to *how* exploitation shall take place in practice, i.e., *how* GM utilises the exploitation licence through specific exploitation activities. Under the combined system of the MRA and the Exploration Licence, it is only in relation to such specific physical activities that the Greenlandic Government retains discretion, and it is only in this context that any environmental concerns (valid or not) can be addressed. The same system applies in respect of an exploitation licence for radioactive elements such as uranium.

916. The fact that the Greenlandic Government did not have a discretionary power to decline to grant GM an exploitation licence is self-evident from the fact that the Greenlandic Government considered it necessary to propose legislation (Act No. 20) to stop the Kvanefjeld Project. If what the Greenlandic Government says now about its discretion were legally correct, there would have been no need for this radical piece of legislation.

917. It is important to clarify that the present case only concerns GM's right to an exploitation licence as such and does *not* concern the specific exploitation activities to be carried

[1236] First Witness Statement of J. Mair, at **(CWS-3)**, para. 42.

out thereunder (which *are* subject to governmental discretion and approval). It follows that, with its amended requests for relief, GM is *not* asking the Tribunal to interfere with or second-guess any administrative decision that is subject to governmental discretion (such as the process of determining the terms of GM's exploitation licence in accordance with MRA Section 16). For political reasons only, the Respondents seek to misguide the Tribunal here by conflating different statutory mechanisms and processes and suggesting that there is government discretion to decide a legal issue which has already been decided by legislators (in the MRA) and by the Parties in their specific contract (the Exploration Licence). GM trusts that the Tribunal will see through this erroneous strategy and the lack of substance and coherence in the Respondents' arguments.

918. It has always been and remains GM's primary case that, by 1 December 2021 (the day before Act No. 20 came into effect), the Exploration Licence and underlying statutory regime had conferred upon GM an unconditional right to receive a licence to commercially exploit the minerals covered by its Exploration Licence. The Respondents do not dispute that, as of 1 December 2021 (and indeed by April 2020), GM had met the requirements of MRA Section 29(2) and Section 14 of the Exploration Licence by demonstrating that it had found a commercially exploitable mineral resource and declaring its intent to exploit the resource. As there is no dispute that GM complied with the terms (its obligations) under the Exploration Licence, this general condition was also satisfied.

919. It follows from these undisputed basic facts that there can be no debate that, by 1 December 2021, GM had acquired an unconditional right to receive an exploitation licence for rare earths, zinc and fluorspar at Kvanefjeld. This right rests on a clear statutory and contractual basis, enshrined in MRA Section 29(2) and Section 14 of the Exploration Licence. GM's rights are further based on legitimate expectations that the Respondents created and induced through their long pattern of supportive conduct towards GM and the Kvanefjeld Project. Furthermore, based on contract, statute and legitimate expectations, GM had also acquired a right to have its licence cover the exploitation of uranium.

920. Despite having earlier accepted that GM had met the statutory and contractual requirements to be entitled to an exploitation licence, the Greenlandic Government had yet to grant and deliver any exploitation licence to GM when Act No. 20 came into effect. At that point in time, all that remained was for the authorities to determine the terms of GM's exploitation licence under MRA Section 16. Indeed, it was this very exercise that the authorities were undertaking when Act No. 20 came into effect, and which they unilaterally aborted in May 2022.

D.2 The scope of this arbitration (GM's modified requests for relief)

921. The Tribunal will recall that GM's RfA contained questions concerning the effect of Act No. 20, namely whether the application of Act No. 20 in the case at hand would

amount to an expropriation of rights protected by Section 73 of the Danish Constitution. GM also asked for relief in the form of an order that the Greenlandic Government should issue an exploitation licence to GM.

922. However, as mentioned above, GM has modified its request for relief to reflect the new delimitation of the issues at stake in this arbitration following the Respondents' confirmation that Act No. 20 does *not* apply if a prior legal right exists. At the time the RfA was lodged, it was not clear whether the Respondents accepted this, but the Respondents made it clear that they do in their submissions during the interim measures phase of these proceedings. At paragraph 92 of the Respondents' Submission on Interim Measures, the Respondents stated:

> "*The Uranium Act does not provide for compulsory acquisition and is therefore not applicable if any refusal of an application constitutes a compulsory acquisition of a protected proprietary right under the Constitutional Act of the Kingdom of Denmark*".[1237]

923. Thus, the Parties now agree that there is no basis to carry out expropriation under Act No. 20, and that it would constitute expropriation if rights acquired by 1 December 2021 were eliminated or restricted by way of application of Act No. 20 in this specific case.

924. As a result, the issues to be determined by the Tribunal have narrowed considerably since the RfA was lodged. The fundamental question to be answered now is whether GM had a right (or rights) under the Exploration Licence as at the day before Act No. 20 came into effect, i.e., as of 1 December 2021. It is this question that is the subject of Claim 1, set out below.

925. The logic of Claim 1 reflects the legislative design of Act No. 20: if the Tribunal grants Claim 1, confirming that a relevant right (or rights) existed, Act No. 20 should be rendered inapplicable *automatically*. Hence, GM seeks a ruling on Claim 1 in a partial award.

926. In relation to an exploitation licence for rare earths, zinc and fluorspar, such confirmation merely requires the Tribunal to review Section 1401 of the Exploration Licence and MRA Section 29(2) because, as noted above, the Parties agree that, as a matter of fact, GM satisfied the conditions that these provisions stipulate must be met for a licensee to be entitled to an exploitation licence. In other words, the task is simply to interpret a contract and apply its terms to agreed facts.

927. In relation to GM's right to an exploitation licence also covering uranium, the legal analysis is somewhat broader (and includes, for example, Addendum No. 1). Additionally, because the determination of this right requires an assessment of whether GM had legitimate expectations regarding the exploitation of uranium, the Tribunal will be required to undertake a considerably broader assessment of the facts, as outlined

[1237] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 92.

herein. However, the result of the Tribunal's analysis should be the same, i.e., that by 1 December 2021, GM had acquired the right to an exploitation licence also covering uranium.

928. In the following sections, GM will comprehensively explain the source and content of these rights.

929. Regarding Claim 2, this claim is for an order requiring the Respondents to acknowledge that Act No. 20 does not apply. Although, for reasons of legislative design outlined above, this claim should not be necessary. It is included out of an abundance of caution to cover a situation where, despite the Tribunal granting Claim 1, the Greenlandic Government does not make the acknowledgement of rights ordered by the Tribunal. GM emphasises that it is only because of the flagrant disregard that the Greenlandic Government has shown for its legal obligations, and the dismissive attitude it has displayed towards these arbitral proceedings, that GM has concluded it is necessary to include Claim 2.

930. As to Claim 3, this claim is for breach of contract. GM seeks a ruling on this claim concurrently with Claim 1. GM raises the question of remedies (including for breach of contract) in Claim 4, which GM proposes be addressed by the Tribunal in a subsequent phase of these proceedings.

D.3 Overview of GMs' legal arguments

931. In the following sections, GM will demonstrate that, as of 1 December 2021, GM had acquired rights under contract and statute as well as based on legitimate expectations to transition from exploration into exploitation for all minerals covered by the Exploration Licence.

932. GM will first show that the legal framework for mining in Greenland has been specifically tailored to attract foreign investment in the mining industry. This was done by providing legal certainty to successful investors in the form of an explicit, automatic right to exploit any mineral resources discovered. This ensured that foreign investors would be permitted to make a return on the investments made exploring for mineral resources on Greenlandic territory. As will be demonstrated below, the increasingly investor-friendly approach that the Greenlandic and Danish Governments took is reflected in how the legal system for mining evolved. It evolved gradually into a hybrid system in which mining licences are based on both private (contract) law and administrative law. In this carefully crafted system of reciprocal contractual and statutory rights and obligations, the legal certainty for investors is ensured by the fact that, once an exploration licence is issued and it has been determined that an economically viable mine can be opened, the administration no longer has discretion to decide *if* a mine can be opened, but only *how* it will be operated. These issues are addressed in Section E below.

933. In Section E.3(e) below, GM demonstrates that its Exploration Licence is an *administrative contract*. Under this contract, the MRA, and legitimate expectations that the Respondents induced, GM was clearly entitled, as of 1 December 2021, to be granted a licence to exploit rare earths, zinc and fluorspar. From the beginning, under GM's Exploration Licence, the handling of radioactive minerals (uranium) as non-exploitable residual minerals (impurities) was necessarily accepted by the Respondents and allowed as part of this conditional right to exploitation. The fact the Exploration Licence as originally granted excluded radioactive elements did not change this. This is confirmed by Professor Mortensen in his expert report, discussed below.

934. In late 2011, the scope of GM's Exploration Licence – and thus the automatic right to transition from exploration into exploitation – was expanded through Addendum No. 1 to include radioactive elements (uranium). From this point, these radioactive elements were placed within the scope of Section 1401 of the Exploration Licence. The right to an exploitation licence that covered radioactive elements also arose from GM's legitimate expectations, which the Greenlandic and Danish Governments created through a pattern of conduct that began (at the latest) in 2013. These issues are addressed in Section G below.

935. As noted above, the Respondents' position appears to be that GM never acquired rights to exploit *any* minerals at all at Kvanefjeld. This view was expressed by the Respondents' representatives in the meetings they had with GM shortly after Act No. 20 came into force, in the hearing on interim measures on 7 September 2022, and in the Draft Decision and the Final Decision. It is primarily based on a misconception of the scope of Addendum No. 1 and the mandate of the Greenlandic Government under the MRA in relation to this addendum. It is also based on the ZTP, which the Respondents rely upon to deny that GM had any rights *vis-à-vis* Kvanefjeld. Even if (*arguendo*) the ZTP ever had the true status of "*policy*", it was never a source of *law* capable of affecting the rights granted to GM under the Exploration Licence, in accordance with a statutory framework (the MRA). In any event, the ZTP was abolished in 2013, more than eight years before the relevant point in time for assessing GM's rights (1 December 2021).

936. The Parties agree that Act No. 20 is inapplicable to the extent that GM had acquired legal rights as of 1 December 2021 to be granted an exploitation licence. Thus, if it is found that GM had such a right (or rights), Act No. 20 cannot form the basis of any Greenlandic Government action that is inconsistent with the acknowledgment of this right (or rights). These issues are addressed in Section H below.

E. LEGAL FRAMEWORK

E.1 Overview

937. In their contract, the Parties have submitted the material aspects of their dispute to both Greenlandic and Danish law. The Parties have designated Denmark as the legal seat of arbitration and have thereby also designated the Danish Arbitration Act of 2005

(**DAA**)[1238] as the *lex arbitri* governing various procedural aspects of their dispute (as discussed in detail in Section L.1 below). In the assessment of GM's rights, the nature of the Greenlandic mining law system is of capital importance. In Section B above, GM briefly addressed the historical development of Greenland's mining legislation and the concessionary approach to the conferral of mineral rights upon private enterprises. In Section E.3 below, GM will further address the legal nature of the current mining system, which rests on an interplay of private law, statutory law (in the form of the MRA), and administrative law in general.

938. It will also be shown that licences (for exploration and for exploitation), once granted, are contracts that exist within an administrative law framework. Finally, GM will show that the Exploration Licence in dispute in this case has an independent legal character giving rise to independent rights that are similar to those enshrined in the MRA.

939. This framework is relevant to GM's rights with respect to rare earths and zinc (Section F.3) as well as radioactive materials (Section G), i.e., the rights which GM requests that the Tribunal confirm through the granting of Claim 1.

E.2 The general legal framework

(a) Preliminary remarks

940. In their pleadings before the Tribunal, the Parties have agreed that "*the laws of Denmark and Greenland apply to the case*."[1239] Since the governing law is not a matter of controversy between the Parties, GM will only briefly outline the relevant contractual provisions and the broader relationship between Danish and Greenlandic law in this Section.

(b) The parties have submitted their substantive relationship to Danish and Greenlandic law

941. Pursuant to Section 1901 of the Standard Terms,[1240] the laws of Greenland and Denmark apply to the Exploration Licence:

> "*The licence is subject to the laws of Greenland and Denmark in force at any time. The licence does not exempt the licensee from obtaining such approvals and permits as are required pursuant to the MRA and other legislation.*"

[1238] Danish Parliament Act No. 553 of 24 June 2005 on Arbitration, at **(CL-9)**.

[1239] Respondents' Pleadings on Procedural Issues, 15 July 2022, at **(RP-1)**, para. 31; Respondents' Rejoinder on Interim Measures, 29 August 2022, at **(RP-3)**, para. 11.

[1240] Standard conditions for exploration permits regarding mineral raw materials (excluding hydrocarbons), 25 June 2013, at **(R-1)**, see English translation, "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1901.

942. GM notes that the Tribunal expressly recognised the Parties' choice of law with respect to the Exploration Licence in its decision of 24 November 2022 on procedural issues, noting that: "*the contract is subject to Greenlandic and Danish law*".[1241]

943. It further follows from Section 2003 of the Standard Terms[1242] that the Tribunal "*will apply Danish law*" in its decision. The Tribunal took note of the Parties' choice of law with respect to the resolution of disputes in Section 6 of the First Procedural Order dated 27 March 2023 concerning "*Applicable substantive law*", whereby:

> "*Pursuant to the governing law clause set forth in Clause 20 of the Standard Terms (cf. para. 3 above), the substantive law to be applied is Danish law.*"[1243]

944. Accordingly, while both bodies of law (Greenlandic and Danish) are relevant to the Parties' relationship, Danish law is the *preponderant* choice of law for the resolution of disputes under the Exploration Licence. The Tribunal must therefore resolve the present dispute in such a way that the relevant Greenlandic legislation (namely the MRA) is applied and construed in accordance with Danish law, which has a gap-filling function *vis-à-vis* Greenlandic law. This is due to Greenland's status as an autonomous territory within the Kingdom of Denmark (commonly referred to as the "Realm").

945. This understanding and application of the choice-of-law clauses in the Exploration Licence is consistent both with the Parties' intentions/expectations and the reality of the legal relationship between Denmark and Greenland in that Danish law is the "common law" of the Realm.

946. This relationship, as well as the division of competencies in the field of mineral resources, will be elaborated upon in more detail in Section L.6 below concerning the Tribunal's jurisdiction over the Danish Government (Second Respondent). For present purposes, it suffices to note that the Greenlandic and Danish legal systems are intricately connected. As Professor Mortensen explains in his expert report:

> "*'Danish law' herein is meant as a reference to the joint law of the Realm, i.e., joint legislation, case law, and general (uncodified) principles of law etc., which thus also applies in Greenland simply because it is also part of the Realm. In practice, law passed by the legislator of the Realm, i.e., the Parliament located in Copenhagen (in Danish: 'Folketinget'), will often exclude Greenland and the Faroe Islands from the scope of application, but such law is not addressed herein. Where specific legislation applies in Greenland pursuant to legislation from the Greenlandic Self-Government (and is thus not applicable elsewhere*

[1241] Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al., Ad Hoc, Decision on Procedural Issues, 24 November 2022, at **(C-212)**, para. 287.

[1242] Standard conditions for exploration permits regarding mineral raw materials (excluding hydrocarbons), 25 June 2013, at **(R-1)**, see English translation, "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2003.

[1243] Procedural Order No.1 on General Procedural Matters and Procedural Timetable, 27 March 2023, at **(PO-1)**, section 6.1.

within the Realm), I have labelled that as 'Greenlandic law' or used equivalent phrasing. These distinctions are important to keep in mind."[1244]

947. In the same way, GM's references to "*Danish law*" herein are effectively references to the common law of the Realm, whereas references to "*Greenlandic law*" connote the specific items of legislation and regulation enacted or adopted by the Greenlandic Self-Government in specific replacement of the common law of the Realm.[1245]

948. Denmark, Greenland and the Faroe Islands together constitute a unitary, sovereign state, and thus they are all subject to the Constitution of the Realm ("*Grundloven*"). Greenland obtained a measure of autonomy in 1979 by virtue of Act No. 577 of 29 November 1978 (known as the "*Home Rule Act*") adopted by the Parliament ("*Folketinget*").[1246] The Home Rule Act was replaced by the Self-Government Act,[1247] which was also adopted by the Danish Parliament, and which conferred upon Greenland "*extensive delegations of legislative competence*" [1248] ("*vidtgående delegationer af lovgivningskompetence*") in certain areas, including mineral resources.[1249]

949. Pursuant to the Self-Government Act, within the areas of competence transferred to Greenland ("*hjemtagne områder*"), legislative powers are vested in the Greenlandic Parliament and executive powers are vested in Naalakkersuisut (the Greenlandic Government). In other words, the legislative and executive powers of the Greenlandic institutions originate in an act of the Parliament of the Realm, the members of which are directly elected in Denmark, Greenland and the Faroe Islands.

950. The Danish Parliament retains legislative powers in all areas not expressly transferred to the Greenlandic Self-Government, while the common executive branch of the Realm (located in Denmark) retains executive powers in all such areas. As such, any statute (*lov*) or executive order/decree (*bekendtgørelse*) or other relevant source of law outside the scope of the transferred areas will apply in Greenland, unless Greenland is specifically excepted. Where relevant, a territorial provision (*territorialbestemmelse*) is included in the law or executive order exempting Greenland from the scope of

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[1244] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 24.

[1245] The descriptive expression "common law" used here is not to be confused with common law applied in common law countries such as United Kingdom and Australia.

[1246] Danish Parliament Act no. 577 of 29 November 1978 on Greenland Home Rule Act, at **(CL-173)**; English translation, Danish Parliament Act no. 577 of 29 November 1978 on Greenland Home Rule Act, at **(CL-173E)** ("**Home Rule Act**").

[1247] Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(RL-14)**; English translation, Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(CL-4)** ("**Self-Government Act**").

[1248] P. Christensen, J. Albæk Jensen and M. Hansen Jensen, *Dansk Statsret* (3rd ed., 2020), at **(CL-174)**, p. 175.

[1249] Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(RL-14)**; see, English translation, Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(CL-4)**, Schedule List II.

application.[1250] Greenlandic legislation within the transferred areas of competence is largely based on the corresponding Danish legislation.

951. Regarding the judicial branch, the Greenlandic court system is still part of the common court system of the Realm, with the Supreme Court (located in Denmark) as the highest judicial authority in the Realm, i.e., the judgments of the Supreme Court are also binding on the lower courts of Greenland. The Danish Parliament also issues legislation relating to courts that applies to Greenland.

952. As such, although Greenland enjoys a large degree of autonomy in certain areas, Danish law (including Danish legal principles of interpretation), as the common law of the Realm, continues to play a significant role in Greenland, including with respect to the interpretation of Greenlandic statutes, such as the MRA.

953. The methodology of interpretation is addressed in more detail in Section L below regarding the Tribunal's jurisdiction. For now, it suffices to note that Danish law is part of the broader Scandinavian legal tradition. As such, it is common to interpret legal provisions (whether statutory or contractual) by reference to case law and doctrine from other Scandinavian countries. In general, Danish law is not formalistic in its approach to contract interpretation and squarely focusses on the intentions of the parties (as derived from contemporaneous documents and party conduct).[1251] As part of the Danish approach to contract interpretation, it is established that, to the extent that the words of a contract are ambiguous, those words should be construed against the interests of the party that drafted them (*contra proferentem*).

954. When interpreting statutes, the intent of the legislature (as derived from preparatory works) constitutes a significant – and usually decisive – factor in determining the proper meaning and scope of the statute and any related instruments (such as executive orders). As noted by Professor Mortensen:

> "*Greenlandic law is thus based on a Danish law tradition and is as such part of a Scandinavian law tradition, being closer to civil law than common law. The general approach to interpretation of legislation in Greenland is the same as the approach to interpretation of Danish law, which is a substantial focus on identifying the intent of the legislator with the legislation and specific wording used. This is ordinarily identified by reviewing the preparatory works (in Danish: 'forarbejder') of the legislation in question, including in particular explanatory notes (in Danish: 'bemærkninger til et lovforslag') for the bill/law in question, as an essential source for understanding legislation in question.*"[1252]

[1250] Justitsministeriet, *Lovkvalitetsvejledningen*, dated June 2018, at **(CL-175)**, section 2.6.1.1.

[1251] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 25.

[1252] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 30.

955. Therefore, to the extent there is no special legislation under Greenlandic law, Danish law applies in Greenland. Danish law also applies in relation to the content and scope of contractual rights and obligations, and legal principles derived from case law (such as legitimate expectations).

(c) International law also applies to the dispute

956. In addition to Greenlandic and Danish law, certain principles of international law are also applicable to the Parties' dispute. For the reasons set out below, it is appropriate for the Tribunal to apply principles of international law, or at least to construe the relevant domestic provisions in a manner that is consistent with relevant international standards and norms (or both).

957. First, in their pleadings to date, the Parties have each relied extensively upon international legal authorities, including the decisions of arbitral tribunals constituted under international law, such as decisions of the International Court of Justice and tribunals at the International Centre for Settlement of Investment Disputes (**ICSID)**. Most recently, and entirely of their own volition, the Respondents have relied upon international law jurisprudence (including ICSID decisions) in their Application for Security for Costs.[1253] Having consciously elected to bring a security for costs application based upon international case law, the Respondents should now be estopped or precluded from denying the applicability of principles of international law to the substance of this dispute – *allegans contraria non est audiendus*. Moreover, the jurisprudence of international tribunals (on which the Respondents themselves have relied) confirms the very proposition that the Respondents are seeking to deny – that a party that argues its case on the basis of international law impliedly accepts its applicability.[1254]

958. The relevant principles of international law include the right to property as enshrined in the European Convention on Human Rights, which has been ratified by both Denmark and Greenland and which therefore forms part of the law chosen in Section 1901 and Section 2003 of the Standard Terms.

[1253] See for example, Respondents' legal exhibits, *PNG Sustainable Development Program Ltd v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Claimant's Request for Provisional Measures, 21 January 2015, at **(RL-22)**; *Tokios Tokelės v Ukraine*, ICSID Case No. ARB/02/18, Order No. 3, 18 January 2005, at **(RL-36)**; *Mainstream Renewable Power and others v. Federal Republic of Germany*, ICSID Case No. ARB/21/26, Procedural Order No. 3 (Decision on Bifurcation), 7 June 2022, at **(RL-59)**; *RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands*, ICSID Case No. ARB/21/4, Procedural Order No. 2, Decision on Bifurcation, 25 February 2022, at **(RL-60)**.

[1254] *See, e.g.*, *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, at **(CL-177)**, para. 20 (finding that the conduct of the parties "*demonstrate*[d] *their mutual agreement*" to the application of international law); *Compañia del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, at **(CL-178)**, para. 63 (confirming that, in the case of the ICSID Convention, the applicable law "*does not require that the parties' agreement as to the applicable law be in writing or even be stated expressly*").

959. For the purposes of the present dispute, the international law principle that is most relevant is *pacta sunt servanda*. As Spiermann explains, "[n]*o foreign investor engaged in a state contract can be presumed to have abandoned this principle*."[1255] He adds:

> "*There is a strong presumption that the principle pacta sunt servanda is available to an arbitral tribunal for purposes of internationalizing the applicable law, and a presumption that is rebutted only by an explicit choice of national law combined with an unequivocal indication against internationalization.*"[1256]

960. The international principle of *pacta sunt servanda* is applied in Claim 3 (Breach of contract). However, in Claim 3, the international law principle of *pacta sunt servanda* will only require application by the Tribunal if the application of Danish law (including the Danish principle of *pacta sunt servanda*) does not result in observance of the sanctity of the parties' contract. The international principle of *pacta sunt servanda* in this scenario is triggered because there would be a conflict between the law of the host state (Greenlandic/Danish law) and the terms of a contract that the host State has entered into with a foreign investor (the Exploration Licence). Applying the *pacta sunt servanda* doctrine as developed in the concession cases of the 20th century, the result in this scenario would be that the international law principle prevails, and the concessionaire (GM) has a right to claim damages for breach of contract, at the very least.

961. Second, GM's Exploration Licence is based on the Standard Terms, which the Respondents (jointly) offered to the world at large, in English, through online publication and other promotional activities. The Standard Terms were intended to result in long-term contractual relationships between the Greenlandic Government and foreign investors with expertise in mining, such as GM. Indeed, the Standard Terms may properly be characterised as a form of economic development agreement. Economic development agreements are agreements to develop a host State by delegating some of its sovereign rights – such as the right to utilise part of its territory to extract the state's natural resources – to a private enterprise in return for an injection of capital, expertise and resources on a scale that will ultimately produce long-term economic and social benefits for the state and its population. The legislative history of the MRA shows that this was very much what the Respondents had in mind when they issued the Standard Terms.

962. Lord McNair identified the law applicable to an economic development agreement as follows: "*the legal system appropriate to* [an economic development agreement] *is not public international law but shares with public international law a common source of*

[1255] O. Spiermann, *Applicable Law*, in P. Muchlinkski et al. (eds), *The Oxford Handbook of International Investment Law* (2008), at **(CL-100)**, p. 6.

[1256] O. Spiermann, *Applicable Law*, in P. Muchlinkski et al. (eds), *The Oxford Handbook of International Investment Law* (2008), at **(CL-100)**, p. 8.

recruitment and inspiration, namely, 'the general principles of law recognized by civilized nations'."[1257]

963. In his seminal award in *TOPCO v Libya*, Professor René-Jean Dupuy provided a detailed statement of his reasons for deciding that principles of international law were applicable to the dispute under TOPCO's concession. Professor Dupuy stated:

> "*because of the purpose of the cooperation in which the contacting party must participate with the State and the magnitude of the investments to which it agreed, the contractual nature of this type of agreement is reinforced: the emphasis on the contractual nature of the legal relation between the host State and the investor is intended to bring about an equilibrium between the goal of the general interest sought by such relation and the profitability which is necessary for the pursuit of the task entrusted to the private enterprise. The effect is also to ensure to the private contracting party a certain stability which is justified by the considerable investments which it makes in the country concerned. The investor must in particular be protected against legislative uncertainties, that is to say the risks of the municipal law of the host country being modified, or against any government measures which would lead to an abrogation or recission of the contract.*"[1258]

964. Third, GM's Exploration Licence contains an arbitration agreement which selects a location outside of Greenland (Copenhagen) as the seat. This arbitration agreement was authored by the Respondents. As a result of the Respondents' stipulation of Copenhagen as the seat of arbitration, the DAA is the *lex arbitri*. As discussed in the Jurisdiction section below, the DAA is based on the 1985 UNCITRAL Model Law (**Model Law**) – a standard form law prepared by a United Nations body. The Respondents' choice of a Model Law seat signals that, at the time they formed their agreement with GM, it was their intention to resolve future disputes in accordance with international norms. This confirms the inherently international nature of the Respondents' legal relationship with GM.

965. Numerous tribunals and scholars have accepted that the inclusion of an international arbitration clause is an indicator of internationalisation. In the words of the sole arbitrator in *TOPCO v Libya*, a "*reference to international arbitration is sufficient to internationalize a contract, in other words, to situate it within a specific legal order – the order of the international law of contracts*."[1259] The international intentions of the

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[1257] A McNair, "The General Principles of Law Recognized by Civilized Nations", 33 Brit. Y.B. Int'l L. 1 (1957), at **(CL-179)**, p. 7.

[1258] *Texaco Overseas Petroleum Co. and California Asiatic Oil Company v. Libya*, ad hoc, Arbitral Award (Merits), 19 January 1977 (FRE), at **(CL-180)**; see English translation, *Texaco Overseas Petroleum Co. and California Asiatic Oil Company v. Libya*, ad hoc, Arbitral Award (ENG), at **(CL-180E)**, p. 17.

[1259] *Texaco Overseas Petroleum Co. and California Asiatic Oil Company v. Libya*, ad hoc, Arbitral Award (Merits), 19 January 1977 (FRE), at **(CL-180)**; see English translation, *Texaco Overseas Petroleum Co. and California Asiatic Oil Company v. Libya*, ad hoc, Arbitral Award (ENG), at **(CL-180E)**, p. 16. As observed by Norwegian scholar Ivar Alvik: "*the law applicable to resolve disputes under such contracts depends*

arbitration clause of the Exploration Licence are further confirmed by the fact that, for two out of three members of the arbitral tribunal, no nationality restriction is stipulated (only the president of the Tribunal must be a Danish national).

966. Fourth, there would be a fundamental imbalance in the legal relationship that was established by the Exploration Licence if general principles of international law did not apply (at least in a reserve/corrective manner). The Standard Terms stipulate that they are subject to Greenlandic and Danish law (Section 1901). The Respondents, as governments, have an ability to influence the content of the applicable law (such as by proposing legislation) in a way that GM (a private entity) does not. This creates an obvious power imbalance that international tribunals have long recognised justifies the application of principles of international law.

967. For example, in the *Sapphire* arbitration, the sole arbitrator addressed the inequality between the parties by taking the view that the foreign claimant's investments, responsibilities, and considerable risks taken in Iran "*should be assured of some legal security. This could not be guaranteed to it by the outright application of Iranian law, which it is within the power of the Iranian State to change*."[1260]

968. Similarly, in *BP v Libya*, the sole arbitrator (Swedish jurist Gunnar Lagergren), held that the "*principles of the law of Libya*" did not bestow power on the Libyan state to the extent that it could change as it desired the obligations it owed towards an alien:

> "*it can hardly have been the intention of the Parties that 'the principles of law of Libya' should include provisions specifically directed against the other Party. The fact that one of the Parties to the BP Concession is in sole control of the legislative machinery of Libya and thus is in a position to mould the law of Libya after its will, makes it doubtful what in fact should be regarded as 'the principles of law of Libya' as that expression is used in Clause 28.*"[1261]

969. The legal logic of these awards, which remains compelling today, has been recognised by eminent Danish practitioners in recent years. As observed by Ole Spiermann: "*Subjecting a contract with a foreign investor in its entirety to the national legal system*

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crucially on whether the contract is made subject to international arbitration instead of the ordinary procedure of litigation in the courts of the host country […] *the choice of international arbitration not only carries practical significance, but is also bound to shape the required attitude towards the applicable law as a matter of principle. The legal framework of international arbitration acts as a displacement of the normally "closed" operation of the host country's law, and entails that law operating at a variety of levels, including international law, becomes essential to the outcome of any dispute under the contract*." See I. Alvik, *Arbitration in Long-Term International Petroleum Contracts: The "Internationalization" of the Applicable Law*, (2013) *Yearbook on International Investment Law and Policy* 2011-2012, 387-418, at **(CL-102)**, pp. 2-3.

[1260] *Sapphire International Petroleums Ltd. v. National Iranian Oil Company*, ad hoc, Arbitral Award, 15 March 1963, at **(CL-99)**, p. 34.

[1261] *BP Exploration Company (Libya) Limited v Government of the Libyan Arab Republic*, ad hoc, Arbitral Award (Merits), 10 October 1973, at **(CL-181)**, para. 120.

of the state party would subordinate the investor to the free will of its co-contractor. This has resulted in a need for internationalization."[1262]

970. Fifth, Article 28(4) of the Model Law, which is replicated at Section 24(4) of the DAA, provides: "*In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction*." The *travaux préparatoires* to the Model Law confirm that this provision is based on Article 35(3) of the UNCITRAL Arbitration Rules 1976. As explained in the *Handbook of UNCITRAL Arbitration*: "*The requirement in art. 35(3) that the Tribunal decide in accordance with the terms of the contract reflects one of the fundamental principles in international arbitration, which is pacta sunt servanda*".[1263] Thus, under the *lex arbitri*, the Tribunal has the obligation to apply the principle of *pacta sunt servanda*, first in its municipal form (Danish law) and, if that fails to ensure the sanctity of the Exploration Licence terms, then in its international (immutable) form.

971. Sixth, GM is the subsidiary of an Australian public company and received capital and technology from Australia which it then applied to the Kvanefjeld Project. The Respondents were aware of this and indeed sought to benefit from GM's Australian ownership in their use of GM as a "*poster child*"[1264] for mining in Greenland. When a government uses a foreign investor to its advantage on the international plane, that government should be taken as having consented to the principles of law that bind actors on that international plane. By using GM and its Project as examples of how Greenland is a safe and friendly jurisdiction for foreign investors, the Respondents confirmed that their relationship with GM was not just subject to their own law but also to norms of international contract law.

972. Seventh, Greenland and Denmark are adherents to the OECD Declaration on International Investment and Multinational Enterprises (**OECD Declaration**). Under Article II of the OECD Declaration, adhering governments commit to "*accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government* […] *treatment under their laws, regulations and administrative practices, consistent with international law*" [1265] (emphasis added). GM is an enterprise "*owned or controlled directly or indirectly by nationals of another adhering government*" (i.e., Australia). Given their adherence to the OECD Declaration, the Respondents should have no objection to the reserve/corrective application of principles of international law.

[1262] O. Spiermann, *Applicable Law*, in P. Muchlinkski et al. (eds), *The Oxford Handbook of International Investment Law* (2008), at **(CL-100)**, p. 4.

[1263] Thomas H. Webster, *Handbook of UNICTRAL Arbitration* (3rd ed., Sweet & Maxwell, 2019), p. 559, at **(CL-182)**, para. 35-71.

[1264] See Section C.32 above. See also, First Witness Statement of J. Mair, at **(CWS-3)**, paras. 72-76.

[1265] OECD, "*Declaration on International Investment and Multinational Enterprises*", OECDLEGAL0144, downloaded on 9 July 2023, at **(CL-183)**, Article II(1).

973. Eighth, there is evidence that, in practice, the Greenlandic authorities accept that principles of international law are part of the legal framework for mining. For example, the Greenlandic authorities have included express choices of international law in their contracts with other mining companies, including recently. One example is the IBA for the Tanbreez project, adjacent to Kvanefjeld. Under Section 5.1 of the Tanbreez IBA, it is provided that: "*The Licensee, the Municipality and the Greenlandic Government shall each act in accordance with and comply with Greenland law, Danish law and international law and agreements applicable in Greenland at any tim*e."[1266]

974. Ninth, the Greenlandic authorities, and the Danish authorities, had extensive interactions with GM in the context of the treaty-based framework for nuclear materials and safety. These interactions are described further below in Section L.6. For example, representatives of the Danish Government made formal statements to the IAEA, as a member of this treaty organisation, about how the two governments would regulate radiation protection at the Kvanefjeld Project specifically using radiation dosage limits.[1267] The fact that the Project was to include the exploitation and export of uranium meant that the legal framework for the parties' relations *necessarily* included elements of international law. As Professor Mortensen explains: "*uranium, being a dual-use good (energy and weapons), is nevertheless governed not only by Greenlandic law, the Self-Government Act, and the Constitution, Danish law and international law also governs this particular mineral*". [1268] This is a further, powerful factor in favour of internationalisation in this case.

975. Tenth, and lastly, GM's Exploration Licence is a creature of a legal framework that was influenced by various bodies of foreign law and by international practice. This is evidenced by legislative documents going back to the 1963 Commission Report, which record that the Mining Law Commission was mandated to consider, as part of its deliberations, the mining legislation of other countries: "*primarily Finland, Norway, Sweden, Canada and the United States*." [1269] It is also confirmed by Professor Mortensen in his expert report, where he explains that "[t]*he Greenlandic mining legislation, which has existed since at least 1935 and continues to be in place today, has been influenced by Norwegian and English law and also by the practice of*

[1266] Document titled "*Impact Benefit Agreement concerning the Tanbreez (Killavaat Alannguat) project between Tanbreez A/S, Kommune Kujalleq and the Government of Greenland under Mineral Exploration License no. 2020-54*", 2020, at **(C-668)**, para. 5.1.

[1267] Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**, p. 58.

[1268] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 35.

[1269] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184)**; see English translation, Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 5.

concessions in the international petroleum industry."[1270] The systemic origins of the Exploration Licence justify the internationalisation of its applicable law.

E.3 The *sui generis* legal framework of the Kvanefjeld Project

(a) Preliminary remarks

976. The general legal framework for mining in Greenland described above operates subject to a *sui generis* legal framework for the Kvanefjeld Project.

(b) The legal framework has been specifically tailored to attract foreign investment

977. As discussed above,[1271] the rights that GM holds with respect to Kvanefjeld by virtue of its Exploration Licence have their origins in the long-standing tradition under Danish and Greenlandic law of treating mining licences as *concessions*, i.e., as contracts between a private entity and the State. As explained further below, in Greenland, the legal regime for mining is fundamentally rooted in a contractual framework. The key features of this framework are:

(a) the *exclusivity* of the title over the project contemplated by a licence;

(b) an *automatic* right of transition from exploration to exploitation where the exploration activities are successful, and the terms of the licence have otherwise been met; and

(c) a *hybrid* system of tenure, consisting of a contract (an exploration or exploitation licence) situated within an administrative law framework.

978. The Greenlandic system that is in place today emerged from a deliberate and continuous effort by successive governments of the Realm and, from 2009 onwards, by the Greenlandic Government in its own right, to develop and promote an internationally competitive investment environment tailored specifically to attract international mining companies.

979. The statutory regime that exists today has developed under a range of foreign and international influences, as well as national (Danish) legislation and related standard terms. As noted by Professor Mortensen:

> "*In March 1988, the Home Rule Government and the central Government agreed on the split of the revenues from mineral resources, and a new Mineral Resources Act was adopted.*

[1270] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 15.a.

[1271] See Section B.2 above.

> *Yet another Mineral Resources Act was adopted in 1991. Although the underlying concession system was continued, the 1991 legislation introduced fundamental changes to the licensing terms, particularly for the exploitation of hard minerals, in order to be able to offer terms that were competitive with those of other countries. The Act was inspired by the Subsoil Act from 1981.*
>
> *The Subsoil Act from 1981 was mainly based on the Norwegian experiences with the corresponding legislation as well as previous Danish experiences with exclusive licence rights. The Subsoil Act has also been inspired by British legislation. The sub-soil legislation can be regarded as a middle-ground between a Norwegian highly centralized and state-controlled system and a British more market-oriented and industry-oriented system. There is some similarity between Danish, Norwegian and British legislation in this area. This is partly an expression of the fact that all countries have implemented the EU's concession directive. Even though Greenland is no longer a member of the EU, the 'North Sea tradition' in respect of mineral legislation has thus 'rubbed off' on Greenlandic law*".[1272] (emphasis added).

980. Prior to the enactment of Act No. 20, the focus of all legislative changes since 1965 had been to improve Greenland's standing as a destination for mining investors. This was done, *inter alia*, by assuring prospective investors that their investments in exploration activities would lead automatically and exclusively to an exploitation licence (if their exploration activities were successful).

981. This clear and constant political agenda is what led to the formation of the concessionary system which has been in place in Greenland for decades: first through the system of Crown grants and then, from 1965, through the modernised, three-stage system, consisting of (1) prospecting (preliminary investigation), (2) exploration (investigation), and (3) exploitation (mining).

982. The Danish Mineral Resources Act 1965 (**1965 Act**) expressly conferred upon licensees a *preferential* right to have their exploration licence replaced by a concession. The 1963 Mining Law Commission explained that:

> "*exploration licenses and exploitation licenses must be granted separately, but in such a way that the holder of an exploration license has a preferential right to have his exploration license replaced by an actual concession, or to have certain of his outlays covered if, after the end of the investigation period, the concession is given to others.*"[1273]

983. Almost all the provisions in the 1965 Act that concern exploration and exploitation licences use the term "concession".[1274] In 17 out of 28 provisions, this term was used

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[1272] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 50-52.

[1273] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 18.

[1274] Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185)**.

(several times). For example, the 1965 Act contained the following provisions (emphasis added):

> "*§ 8. Eneretsbevilling til efterforskning af mineralske råstoffer (koncession) kan meddeles til ansøgere, der efter ministerens skøn råder over de fornødne pengemidler og den fornødne sagkundskab.*
>
> *Stk. 2. Koncessionen meddeles for et nærmere bestemt område og for et tidsrum, der i Vestgrønland højst kan udgøre 8 år og i Nord- og Østgrønland høist 12 år.*"
>
> […]
>
> "*§ 15. Eneretsbevilling til udnyttelse af mineralske råstoffer (koncession) kan som hovedregel kun meddeles til aktieselskaber, der er registreret her i riget, og kun til ansøgere, der efter ministerens skøn råder over de fornødne pengemidler og den fornødne sagkundskab. Forinden koncessionen meddeles, skal sagen forelægges det i henhold til § 2, stk. 1, i lov nr. 181 af 8. maj 1950 om efterforskning og indvinding af råstoffer i kongeriget Danmarks undergrund nedsatte folketingsudvalg, ligesom der skal indhentes en udtalelse fra Grønlands landsråd.*
>
> *Stk. 2. Koncessionen meddeles for et nærmere bestemt område og for et tidsrum af indtil 50 år. Det kan bestemmes, at koncessionen kun giver ret til udnyttelse af nærmere angivne råstoffer, eller at visse råstoffer skal være undtaget fra udnyttelsen.*"

In English (unofficial translation):

> "*§ 8. An exclusive grant for the exploration of mineral resources (concession) can be granted to applicants who, at the Minister's discretion, have the necessary funds and the necessary expertise.*
>
> *(2) The concession is granted for a specified area and for a period of time, which in West Greenland can be a maximum of 8 years and in North and East Greenland a maximum of 12 years.*
>
> […]
>
> *§ 15. As a general rule, exclusive rights for the exploitation of mineral resources (concession) can only be granted to joint-stock companies that are registered here in the kingdom, and only to applicants who, at the minister's discretion, have the necessary funds and the necessary expertise. Before the concession is announced, the case must be submitted to the parliamentary committee appointed pursuant to § 2, subsection 1, in Act No. 181 of 8 May 1950 on exploration and extraction of raw materials in the Kingdom of Denmark's underground, and an opinion must also be obtained from Greenland's National Council.*
>
> *(2) The concession is granted for a specific area and for a period of up to 50 years. It can be determined that the concession only gives the right to*

exploit specified raw materials, or that certain raw materials must be exempt from exploitation."[1275]

984. When a new Mineral Resources Act was introduced in 1978, the concessionary system was preserved. As Dalgaard-Knudsen explains, "*the concessional regime itself was not at stake in connection with the adoption of the 1978 Act*."[1276] The 1978 legislation laid down the framework for shared administration and responsibility between Denmark and Greenland within the area of mineral resources.[1277] This framework contained a mutual right of veto for specific mining projects, which remained in force until Greenland attained self-government in 2009. The effect of this veto system was that, until 2009, a mineral resources project – whether exploration or exploitation – could not proceed unless it had the approval of both the Danish Government and the Greenlandic Government. This was also the case for the exploration licence originally granted for the Kvanefjeld Project in 2005, and when GM acquired the Exploration Licence in 2007. The significance of this for the Tribunal's jurisdiction over the Danish Government is discussed further in Section L.6 below.

985. When the first Mineral Resources Act for Greenland was enacted by the Danish Parliament in 1991 (Parliament Act No. 335 of 6 June 1991), the intention was to make the legal framework for exploration in Greenland more "*investor-friendly*" by changing from the "*preferential right*" approach under the 1965 Act to a system where the licence holder has an exclusive and *automatic* right to transition from exploration to exploitation. As set out in the explanatory notes to Section 15 of the Danish Mineral Resources Act 1991, Section 15(2) established a "*right*" for the licence holder to "*obtain an exploration authorisation where exploration has led to the identification and delimitation of commercially exploitable deposits, which* [the licence holder] *intends to exploit*" and the conditions in the exploration licence have been met, including a "*right to obtain exploitation rights under standardised conditions for established occurrences*."[1278]

986. Thus, in the 1991 legislation, the system changed such that the Danish and Greenlandic Governments only had discretion at the stage of deciding whether to grant (or veto) an exploration licence.[1279] If the governments decided to grant the exploration licence,

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[1275] Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185E)** pp. 1-3.

[1276] F. Dalgaard-Knudsen, *Mineral Concessions and Law in Greenland*, (1st ed., 1991), at **(CL-186)**, p. 114.

[1277] Danish Parliament Act No. 585 of 29 November 1978 on Mineral Resources in Greenland, at **(CL-187)**.

[1278] Explanatory notes on Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland, 2 May 1991, at **(CL-105E)**, pp. 15-16.

[1279] The decision to change system such that the Danish and Greenlandic Governments only had discretion at the stage of deciding whether to grant (or veto) an exploration licence is clear from the explanatory notes to the Danish Mineral Resources Act 1991, which stated: "*In accordance with the provisions of the current Mineral Resources Act, hard minerals have taken specific decisions pursuant to the joint decision-making powers of the Greenland Home Rule Government and the Minister for Energy both in the granting of exploration concessions and in the granting of exploitation concessions. The right of veto has thus been invoked at both*

they committed to the *automatic* grant of an exploitation licence if the conditions were met. Section 15 of the Danish Mineral Resources Act 1991 prescribed that the granting of permission for exploitation, when the specific agreed terms were met, was to be *automatic*. As noted by Professor Mortensen:

> "*Section 29(2) of the 2009 Mineral Resources Act continues the principles of an automatic right for an exploration licence holder to be granted an exploitation licence, provided that the licence holder has demonstrated the presence of mineral resources deposits which it intends to exploit and has complied with its licence obligations. This automatism is inherently exclusive in itself.*"[1280]

987. The removal of discretion was a deliberate choice. This is confirmed by a 2004 mineral strategy paper published by the Greenlandic Mineral Resources Directorate:

> "*The Greenlandic rules confirm the right to obtain an exploitation permit if the licensee has complied with the conditions of the exploration permit. Experience shows however, that some mining companies fear that the system of separate exploration and exploitation permits implies access to discretionary decisions about allocation of a exploitation permit*"[1281] (emphasis added).

988. Further, the broader strategy to make the legal framework for exploration in Greenland more "*investor-friendly*" by changing from the "*preferential right*" approach under 1965 Act to a system of where the licence holder has an exclusive and *automatic* right to transition from exploration to exploitation was expressly acknowledged by the Greenlandic Mineral Resources Directorate, as follows:

> "*Det overordnede mål for strategien var at opnå en forøgelse af aktivitetsniveauet i Grønland med hensyn til efterforskning og udnyttelse. Dette krævede, at der på kortere og længere sigt skulle tiltrækkes kapital og teknologi til råstofvirksomhed i Grønland. For at understøtte det mål blev administrations- og tildelingsprocedurer for mineraltilladelser ændret. De væsentligste ændringer var en mere udstrakt anvendelse af standardvilkår for tilladelser til efterforskning og en forenkling af overgangen fra en efterforskningstilladelse til en udnyttelsestilladelse. Rettighedshavere til efterforskningstilladelser har i dag ret til at blive meddelt en 30-årig udnyttelsestilladelse, forudsat at vilkårene for efterforskningstilladelsen er*

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these stages. The provisions of this bill, which, as described above, include a right to obtain exploitation rights under standardised conditions for established occurrences, mean that the granting of exploitation authorisations when the conditions are met is automatic. No decision is required under the joint decision-making power, and the reciprocal veto rights of the Landsstyre and the Energy Minister will therefore not be applicable at this stage. The veto can continue to be used in connection with the granting of an investigation licence." See the Explanatory notes on Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland, 2 May 1991, at **(CL-105E)**, p. 16.

[1280] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 73.

[1281] Report titled, "*Mineralstrategi 2004: Mål og planer for mineralefterforskningen i Grønland*", produced by the Directorate of Mineral Resources, at **(C-669)**; Report titled, "*Mineral Strategy 2004: Goals and plans for mineral exploration in Greenland*", produced by the Directorate of Mineral Resources, at **(C-669E)**, p. 40.

opfyldt og at der er tale om en kommercielt udnyttelig forekomst, dokumenteret i et lønsomhedsstudie."

In English (unofficial translation):

"*The overall objective of the strategy was to achieve an increase in the level of activity in Greenland with regard to exploration and exploitation. This required attracting capital and technology for mineral resources activities in Greenland in the short and long term. To support this goal, the administration and allocation procedures for mineral permits were amended. The main changes were a wider use of standard exploration licence conditions and a simplification of the transition from an exploration licence to an exploitation licence. Rights holders of exploration permits currently have the right to be granted a 30-year exploitation permit, provided that the conditions for the exploration permit are met and that the occurrence is commercially exploitable, documented in a profitability study.*"[1282] (emphasis added)

989. In addition to these enhancements of the exploration-to-exploitation transition mechanism, the Danish Mineral Resources Act 1991 further accentuated the concessional/contractual nature of the regime by introducing arbitration as the main dispute resolution mechanism. This was done through Section 29. As Professor Mortensen explains:

"*Section 29 of the 1991 Act introduced a provision according to which it could be stated in a licence that disputes about whether terms in the licence had been met could be subjected to arbitration. It appears from the explanatory notes that the purpose of this provision was partly a faster resolution of disputes, partly providing for a composition of special experts as decision makers in disputes. With the preferential system, disputes could arise between an exploration licence holder, government and a third party getting an exploitation licence instead of the exploration licence holder, and such a third-party dispute could ordinarily not be subjected to arbitration because arbitration would have to be agreed between all of them (and it likely would not once a dispute had arisen). With the exclusivity system, it became practically possible for a licence holder and the relevant authority to agree to arbitration in an exploration licence (and other mining documents). In the absence of such an arbitration provision, the dispute would have to be brought before the domestic courts. The inspiration for the provision came from the Subsoil Act. This provision had been continued in the 2009 Mineral Resources Act section 90.*"[1283]

990. The Danish Mineral Resources Act 1991 applied at the time the Exploration Licence was issued in 2005 and at the time the Exploration Licence was transferred to GM in

[1282] Report titled, "*Mineralstrategi 2004: Mål og planer for mineralefterforskningen i Grønland*", produced by the Directorate of Mineral Resources, at **(C-669)**; Report titled, "*Mineral Strategy 2004: Goals and plans for mineral exploration in Greenland*", produced by the Directorate of Mineral Resources, at **(C-669E)**, p. 7.

[1283] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 57.

2007. Section 7(1) of the Danish Mineral Resources Act 1991 explicitly stated that exploration and exploitation licences constituted *concessions*:

> "*The Greenland Home Rule Government may, cf. section 3, for a specific area and on specially stipulated terms grant an exclusive licence (concession) for exploration for and exploitation of one or more mineral resources. Licences may be granted separately for exploration and exploitation, respectively*"[1284] (emphasis added).

991. The provision is equivalent to Section 16(1) of the current MRA, which gives the Greenlandic authorities the power to determine the specific terms of exploration and exploitation licences.

992. In both the 1965 and 1991 Danish Mineral Resources Acts, and in the preparatory works for the latter, a clear distinction was drawn between prospecting ("*forundersøgelser*"), exploration ("*efterforskning*") and exploitation ("*Udnyttelse*"). Only exploration and exploitation would be subject to a concession, whereas prospecting activities would be authorised through an administrative approval alone.[1285]

993. The preparatory works for the Danish Mineral Resources Act 1991 also confirmed how many exploitation licences were in force at the time, again describing them as *concessions*:

> "*Et antal forundersøgelsestilladelser (7) og efterforskningskoncessioner (21) er i kraft eller under meddelelse pr. 1. april 1991 og danner basis for fortsat aktivitet.*"[1286]

In English (unofficial translation):

> "*A number of prospecting licences (7) and exploration concessions (21) are in force or pending notification as of 1 April 1991 and form the basis for continued activity.*" (emphasis added)

[1284] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**.

[1285] See Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**.

[1286] Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**, p. 8.

994. It was further stated that the 1991 legislative amendments were needed primarily to materially amend and improve the concession terms in exploration and exploitation licences:

> "*Behovet for lovændringer knytter sig især til indstillingerne om at skabe grundlag for væsentligt ændrede koncessionsvilkår vedrørende andre mineralske råstoffer end kulbrinter (hårde mineraler).*"[1287]

In English (unofficial translation):

> "*The need for legislative changes is particularly linked to the proposals to create a basis for significantly changed concession terms regarding mineral resources other than hydrocarbons (hard minerals).*" (emphasis added)

995. As noted above, the 1998 Standard Terms which formed the basis of GM's Exploration Licence were adopted under the Danish Mineral Resources Act 1991. The terms of GM's Exploration Licence are, therefore, a reflection of the enhancements made when the Danish Mineral Resources Act 1991 was enacted.

996. In 2009, the current MRA was adopted. It entered into force on 1 January 2010. The MRA retained the principle of exclusivity of the rights conferred under the Act (see MRA Sections 16(1) and 29(4)) as well as the automatism in the transition from exploration to exploitation (see MRA Section 29(2)).

997. The explanatory notes to the MRA make multiple references to the concessionary nature of the regime. These include the express confirmation that "[l]*icences and concessions* […] *granted at the time when the Greenland Parliament Act takes effect remain valid*."[1288] GM's Exploration Licence was one such concession.

998. The explanatory notes also clearly articulate the governmental strategy of attracting foreign mining investors through further optimisation of the legal framework.[1289] The explanatory note to Section 29(2) of the MRA specifically acknowledges the automatic nature of exploitation rights, and that the guarantee of such rights was necessary to give exploration investors the confidence to invest:

> "*The purpose of the provision is to avoid that proven, commercially exploitable deposits are left unexploited and to attract exploration activities. Enterprises can hardly be expected to invest in exploration activities if they are not guaranteed a certain profit from such activities in the form of a conditional right to exploit a resource they have discovered.*

[1287] Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**, p. 10.

[1288] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 127.

[1289] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, pp. 2, 3.

[…] *A licensee is entitled to be granted an exploitation licence when the licensee has established the existence of a commercially exploitable deposit of mineral resources, and the conditions of subsection (1) have been met.*"[1290] (emphasis added)

999. The automatic nature of GM's right to an exploitation licence was therefore a matter of explicit discussion and acceptance between the parties 12 years before this dispute arose.

1000. The general comments in the explanatory notes confirm that the strategic aim of the MRA was to attract investors:

> "*In March 1988, the Home Rule Government and the Danish Government concluded an agreement on principles for changing parts of the Greenland mineral resource system. The main principles were as follows:*
>
> […]
>
> *4. The licence system of the MRA was also to apply to hydropower activities in Greenland*
>
> […]
>
> *Some of the main elements of the proposed strategy were:*
>
> *a. The introduction of radically changed licence terms, particularly for the exploitation of hard minerals <u>in order to be able to offer terms that are competitive as compared to the terms in other countries</u>*"[1291] (emphasis added).

1001. In its updated 2009 mineral strategy paper, the Greenlandic Mineral Resources Directorate reiterated that holders of exploration licences are *entitled* to be granted a 30-year exploitation licence, provided that the conditions of the exploration licence have been met and a commercially exploitable deposit has been established.[1292]

1002. The BMP also published an English-language booklet in January 2009, describing Greenland as "*a treasure of mineral resources*", enticing potential exploration investors by saying that "[p]*olitically, the mineral sector in Greenland is a highly prioritised area of growth which also includes focus on the educational aspects of the mining sector*", and stating specifically that:

(a) "*Depending on environmental conditions and the fulfilment of exploration obligations and other legal requirements, <u>the exploration licensee who</u>*

[1290] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 127.

[1291] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, pp. 4-5.

[1292] Report titled "*Mineral Strategy 2009: Update of goals and plans for mineral exploration in Greenland*", produced by Greenlandic Mineral Resources Directorate, at **(C-670E)**, p. 8.

delineates a viable mineral deposit is entitled to an exploitation licence. The transition between these two licence types is described in the standard terms for exploration licences on the BMP website."[1293] (emphasis added)

1003. The MRA is, therefore, the latest in a series of mining laws that have been designed to entice investors such as GM to commit capital and technology to Greenland. The evidence shows that the legal framework has been gradually optimised to achieve this policy objective, by combining the grant of an exploration licence with a connected conditional right to receive an exploitation licence. Whether an investor with an exploration licence meets the conditions for (and therefore becomes unconditionally *entitled* to) an exploitation licence is, by design, outside governmental control. As noted above, government records confirm that the element of government discretion in the transition from exploration to exploitation was *deliberately* removed in 1991.[1294]

1004. Thus, by the time GM entered Greenland, the scope of governmental discretion concerning the transition from exploration to exploitation had been gradually diluted and then fully eliminated. This is the situation today under the MRA. At the same time, the contractual aspects of the legal relationship established under mining licences had been enhanced, as part of the strategy to make Greenland internationally competitive.

(c) Mining licences are contracts existing within an administrative law framework

1005. In this Section (c), GM will show that mining licences consist of both private law and administrative law elements, identify which contractual and administrative law rules and principles apply simultaneously in relation to such a licence, and demonstrate that this legal framework imposes restrictions on the administrative authorities in relation to potential unilateral action.

(i) Dual legal nature of a mining licence

1006. As explained above, the Greenlandic mining legislation is based on an understanding of mining licences for exploration and exploitation activities as *concessions*. A concession is a contract for pecuniary interest concluded in writing between a governmental entity and a private entity. This is the definition used in EU legislation and incorporated into Danish law.

1007. It is generally accepted as a matter of Danish (and Greenlandic) law that a mining licence (concession) is a *sui generis* legal instrument, being a contract under private law

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[1293] BMP Booklet, "*BMP highlights - Application Procedures, Standard Terms and Rules for Field Work in Greenland (Mineral Prospecting and Exploration)*", 23 January 2009, at **(C-671)**, pp. 5, 6, 9.

[1294] Report titled, "*Mineralstrategi 2004: Mål og planer for mineralefterforskningen i Grønland*", produced by the Directorate of Mineral Resources, at **(C-669)**; see English translation, Report titled, "*Mineral Strategy 2004: Goals and plans for mineral exploration in Greenland*", produced by the Directorate of Mineral Resources, at **(C-669E)**, p. 40.

("*privatret*") within the framework of administrative (public) law ("*forvaltningsret*"). As explained by Professor Mortensen:

> "*Both types of licenses* [exploration licences and exploitation licences] *are issued by the Government of Greenland, and in this respect, they originate from an administrative act. Due to the inherent contractual nature, the licenses are not purely administrative acts. It follows that in respect of issuance of licences and handling of licence applications and licenced activities, the Government of Greenland is subject to the principle of legality, proportionality, legal basis (in Danish: 'lovhjemmel') as well as other principles of administrative law, and as thus acts - and shall act - in its capacity as administrative authority.*
>
> *However, these licenses have significant similarities with a contract.*"[1295]

1008. This same position is taken by Bo Sandroos in his 2015 commentary on the MRA. In relation to MRA Section 16(1), Mr Sandroos observes:

> "*Awarding a licence is an official act by the Authorities however the licences may also have clear contractual characteristics granting both rights and obligations to both parties, and may be negotiated between the parties.*
>
> *Hence, besides the public law principles of equal treatment, objectivity and proportionality, contract law is also relevant when assessing individual licences.*"[1296]

1009. The historical records referred to above, and the consensus amongst scholars and commentators, confirm the concessionary nature of Greenlandic exploration and exploitation licences.

1010. The concept and definition of a "*concession*" have been debated over time.

1011. Under EU Directive 2014/23 on the award of concession contracts, a "*concession*" is defined as follows in Article 5(1):

> "***Definitions***
>
> *For the purposes of this Directive the following definitions apply: (1) 'concessions' means works or services concessions, as defined in points (a) and (b):*
>
> *(a) 'works concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which consists either solely in*

[1295] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 80-81.

[1296] Bo Sandroos, *The Greenland Mineral Resources Act: The Law and Practice of Oil, Gas and Mining in Greenland*, (1st ed., 2015), p. 122, at **(CL-189)**.

the right to exploit the works that are the subject of the contract or in that right together with payment;

(b) 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment."[1297] (emphasis added)

1012. This EU legislation was incorporated into Danish law by way of the Procurement Law ("*udbudsloven*"[1298]) and the related executive order on the issuance of concessions.[1299] This legislation is applicable in the present arbitration by way of the inclusion of Danish law in the choice of law provision of the Standard Terms (Section 1801). This means that Danish law applies in this case even in areas where, absent the choice of law in Section 1801, Danish law would not ordinarily apply in Greenland. As such, the definition of concessions under the EU directive mentioned above is also applicable in this case even if the EU directive does not *per se* apply to Greenland. In any event, to a material extent, the MRA effectively incorporates into Greenlandic law rules similar to those laid down in the EU directive.[1300]

1013. In the current MRA, the word "*licence*" ("*tilladelse*") is used, whereas prior legislation used the word "concession" ("*concession*"). No material change has been intended in this respect, and so the fundamental understanding of a mining licence as a concession remains unchanged today. This is confirmed by Professor Mortensen in his expert report:

> "*Virtually all of the provisions in the 1965 Mineral Resources Act for Greenland (Parliament Act No. 166 of 12 May 1965) concerning exploration and exploitation licences described the licences as 'concessions', whereas the 1991 and later versions of the Mineral Resources Act refer to 'permits' or 'licences' (in Danish: 'tilladelser'). Nothing in the preparatory works for the later versions of the Mineral Resources Act or any other legally relevant source would seem to suggest any change in the legal concept. In this context, the legal concept is basically a contractual relationship - existing within an administrative law*

[1297] Directive 2014/23/EU of the European Parliament and the Council of 26 February 2014 on the award of concession contracts, at **(CL-190)**, pp. 19-20.

[1298] Danish Parliament Act No. 10 of 6 January 2023 on Public Procurement, at **(CL-191)** (consolidated version; the act was first promulgated as Danish Parliament Act No. 1564 of 15 December 2015).

[1299] Executive order ("Bekendtgørelse") no. 1080 of 29 June 2022 on granting of concessions, at **(CL-192)**.

[1300] The explanatory notes to the Mineral Resources Act contains the following notes under Section 23: "*The provision contains rules that to a great extent correspond to what applies according to the EU hydrocarbons licensing directive (Directive of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (94/22/EC))*"*;* see English translation, Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 60.

framework - established for the purposes of the pursuit of a pecuniary interest in exploration and/or exploitation of land and/or the underground."[1301]

1014. The understanding of Greenlandic concessions as a legal "*hybrid*" between private law and administrative law is supported by Dr. jur., Rasmus Grønved Nielsen of the University of Copenhagen, whose doctoral thesis on "*Forvaltningskontrakter*" (2021) was relied upon by both Parties at the hearing on interim measures in 2022. To date, this is the most comprehensive study of administrative contracts under Danish law. In respect of concessions, Dr. jur. Nielsen explains:

> "***3.4.4.3. Koncessioner***
>
> *Koncessionsbegrebet har været genstand for en del diskussion i retslitteraturen i relation til den retlige systematik. Oprindeligt var teorien mest tilbøjelig til at opfatte koncessionernes genstande som privat virksomhed, »der paa Grund af deres Vigtighed og den offentlige Tillid« var undergivet det offentliges bevillingsmyndighed. Poul Andersen mente, at »den retlige Hovedbestanddel i en Koncession« var »en Forvaltningsakt, hvorved det overdrages en Privatmand eller et privat Selskab at udøve en Virksomhed, som efter sin Natur maa anses for en Del af den offentlige Forvaltning«. Han anerkendte dog, at koncessionsforholdet »indeholder* […] *en kontraktmæssig Bestanddel, idet den private naturligvis ikke paatager sig den paagældende Virksomhed, uden at der tilsikres ham visse Modydelser«. Det er imidlertid vanskeligt at finde klar støtte i retspraksis for synspunktet om, at koncessioner først og fremmest opfattedes som forvaltningsakter. Tværtom findes flere afgørelser fra den periode, der omtaler koncessionerne som kontrakter og behandler dem mere nuanceret. I sin anmeldelse af værkets 2. udgave bemærkede Carl Rasting da også, at koncessionerne burde »have været nævnt som Eksempel paa Forvaltningskontrakter«.*
>
> *Med tiden er de kontraktuelle elementer blevet mere præsente, ikke mindst som følge af EU-retlig påvirkning. Koncessionsdirektivets artikel 5, nr. 1, litra a) og b) definerer således en koncession som en »gensidigt bebyrdende kontrakt«, der indgås skriftligt, hvorved koncessionshaveren overdrages ansvaret for udførelsen af bygge- og anlægsarbejder eller ansvaret for levering og forvaltning af tjenesteydelser, og hvor koncessionshaverens vederlag består helt eller delvist i retten til at udnytte de af kontrakten omfattede arbejder eller tjenesteydelser.*
>
> *Selv om koncessionsordningernes kontraktselementer generelt er trådt mere i forgrunden, er der ikke tvivl om, at det underliggende nationale retsgrundlag undertiden forudsætter, at koncessionsforholdet etableres ved forvaltningsakt (tilladelse), jf. fx undergrundlovens § 5, stk. 1, og § 23, stk. 1, og råstoflovens § 20, stk. 2. Endvidere kan fremhæves den faste tradition for at kundgøre koncessioner som bekendtgørelser, jf. afsnit 8.5.1. I dag er der således næppe tvivl om, at koncessioner i almindelighed er undergivet både privatretlig og offentligretlig regulering. I det lys giver det mening, når Høyesterett i NRt*

[1301] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 76.

1985.1355 (Philips) ikke fandt det nødvendigt at tage stilling til parternes principielle uenighed om, hvorvidt en »petroleumskonsesjon« var udtryk for en kontrakt eller en forvaltningsakt, for at løse en konkret tvist, jf. herom afsnit 9.3.4."

In English (unofficial translation):

"***3.4.4.3. Concessions***

The concept of concession has been the subject of some discussion in the legal literature in relation to the legal system. Originally, the theory was most inclined to perceive the objects of the concessions as private enterprises, 'which, because of their importance and public trust', were subject to the public's authority to grant permits.' Poul Andersen believed that 'the main legal component of a Concession' was 'an administrative act whereby a private person or a private company is entrusted to carry out a business which by its nature must be considered part of the public administration'. He acknowledged, however, that the concession relationship 'contains […] *a contractual component, as the private individual naturally does not undertake the business in question without being assured of certain consideration'.*

However, it is difficult to find clear support in case law for the view that concessions were primarily perceived as administrative acts. On the contrary, there are several decisions from that period that refer to the concessions as contracts and treat them in a more nuanced way. In his review of the 2nd edition, Carl Rasting also noted that the concessions 'should have been mentioned as examples of management contracts'.

Over time, the contractual elements have become more present, not least as a result of the influence of EU law. Section 5, no. 1, points (a) and (b) of the Concession Directive thus defines a concession as a 'mutually binding contract' entered into in writing whereby the concessionaire is entrusted with the responsibility for the execution of construction works or the responsibility for the provision and management of services, and where the concessionaire's remuneration consists wholly or partly in the right to utilize the works or services covered by the contract.

Although the contractual elements of the concession framework have generally come more to the fore, there is no doubt that the underlying national legal basis sometimes presupposes that the concession relationship is established by an administrative act (licence), for example Sections 5(1) 23(1) of the Subsoil Act 1, and Section 20(2), subsection of the [Danish] *Mineral Resources Act.*

Furthermore, the firm tradition of announcing concessions as executive can be highlighted, see section 8.5.1. Today, there is thus little doubt that concessions in general are subject to both private law and public law rules. In that light, it makes sense when the Norwegian Supreme Court in NRt 1985.1355 (Philips) did not find it necessary to take a position on the parties' disagreement in principle as to whether a 'petroleum concession' was an expression of a contract

or an administrative act, in order to resolve a dispute at hand, see section 9.3.4."[1302]

1015. In the matter at hand, the hybrid character of GM's Exploration Licence appears to be accepted by the Respondents, who have, in their submission that the jurisdiction of the Tribunal only extends to disputes subject to private law, implicitly recognised that GM's Exploration Licence contains elements of private law.[1303]

(ii) Recent examples of Greenlandic mining concessions

1016. The contractual character of Greenlandic mining concessions may also be seen in publicly available concessions and ancillary documents. One such example is the exploitation licence granted to Tanbreez on 13 August 2020, which was for a 30-year period to exploit rare earth elements in South Greenland.[1304] The Tanbreez exploitation licence contains several examples of mutual rights and obligations, demonstrating that it is a *quid pro quo* instrument. It provides Tanbreez with the ability to exploit certain minerals in the geographic area covered by the licence. Simultaneously, it ensures substantial economic and social benefits to Greenland through various economic and social contributions by Tanbreez. The economic contributions include royalties and fees, and the social contributions are made through the creation of jobs and the generation of business for the local workforce and enterprises.

1017. The provisions of the Tanbreez exploitation licence that illustrate its predominantly contractual nature include:

(a) Joint discussions and planning: An obligation for both parties to jointly discuss the planning of development activities until commencement of exploitation of minerals. This obligation encompasses, for instance, Tanbreez preparing an exploitation plan, a closure plan, plans in relation to construction, operation and closure of the mine and specific plants, installations, buildings and infrastructure, and activities in relation to development, exploitation and closure and post-closure activities, as well as the provision of financial security and a company guarantee as security for performance. The Greenlandic Government is obliged to process and make decisions in relation to the abovementioned matters (Section 6.01).

(b) Collaboration around IBA: The IBA is to be negotiated and made with the Greenlandic Government and the Municipality (Section 9.03).

[1302] R. G. Nielsen, *Management contracts*, (1st edition, 2021), pp. 100-101, at **(RL-45)**.

[1303] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, paras. 141-142.

[1304] Document titled "*Exclusive Licence No. 2020-54 for Exploitation of Certain Minerals in Areas at Killavaat Alannguat in South Greenland*", by the Government of Greenland, Ministry of Mineral Resources, August 2020, at **(C-672)** ("**Tanbreez Exploitation Licence**").

(c) Payment of royalties and licence fees: In exchange for the right to commercially exploit the area covered by the licence, Tanbreez shall pay royalties to the Greenlandic Government for minerals which are exploited under the licence and considered sold (Section 14.01). The royalty shall be paid annually at the annual rates (Section 14.06). Tanbreez shall pay a fee of DKK100,000 to the Greenlandic Government for the granting of the licence and shall pay a fee of DKK200,000 to the Government on each extension of the licence (Sections 30.01 and 30.02).

1018. The contractual character of the Tanbreez exploitation licence is further evidenced by the choice of a distinctly private dispute resolution mechanism (arbitration) in the event of a dispute between the parties (Section 34.01). Under Danish law and Greenlandic law, an arbitration agreement is by nature a creature of private law. Similarly, the choice-of-law agreement (Section 34.01) is also a private law agreement to apply certain law, including Danish law, even where it might not necessarily apply in Greenland (as described above).

1019. Another example is the IBA concluded by Tanbreez and the relevant authorities in Greenland. This document is, both by nature and title, an *agreement* (and *not* an administrative decision or act).[1305] At Sections 5.1 to 5.3 of the Tanbreez IBA, there are clear indications of the hybrid nature of the legal framework within which the IBA is situated:

> "*5.1 The Licensee, the Municipality and the Greenlandic Government shall each act in accordance with and comply with Greenland law, Danish law and international law and agreements applicable in Greenland at any time.*
>
> *5.2 In the performance of obligations and the exercise of rights under the IBA, Tanbreez, the Municipality and the Greenlandic Government shall each act reasonably and in accordance with general rules and principles of law, including contracts law and administrative law, in Greenland, including the principle of objectiveness, the principle of proportionality and the principle of equal treatment.*
>
> *5.3 In the making of assessments and decisions and other case processing in relation to this IBA, the Municipality and the Greenlandic Government shall each act reasonably and in accordance with general rules and principles of Greenland administrative law, including the principle of objectiveness, the principle of proportionality and the principle of equal treatment. This shall apply to all assessments and decisions, including discretionary decisions and decisions on granting of approvals, setting*

[1305] Document titled "*Impact Benefit Agreement concerning the Tanbreez (Killavaat Alannguat) project between Tanbreez A/S, Kommune Kujalleq and the Government of Greenland under Mineral Exploration License no. 2020-54*", 2020, at **(C-668)**.

of terms, requirements and time limits and granting of extensions of time limits." (emphasis added)[1306]

1020. GM notes that the Tanbreez IBA is not unique in its mix of contractual and administrative elements. In general, the IBA agreements published by the Greenlandic Government contain a similar mix of private and public law, including provisions that both create contractual rights and recognise elements of discretion for the authorities.[1307]

(iii) Danish Government adherence to contract norms under concessions

1021. As a result of the dual legal nature of Greenlandic mining instruments such as GM's Exploration Licence, the conduct of the Greenlandic Government under such instruments is regulated both by Danish contract law and by administrative law. This is confirmed by Rasmus Grønved Nielsen:

> "*Det giver ikke mening at tale om et »enten–eller«. I overensstemmelse hermed fremgår af retspraksis, at forvaltningsretlige normer finder anvendelse på »privatretlige aftaler«, mens kontraktsretlige normer omvendt gælder for »offentligretlige aftaler«*"
>
> "*I stedet foreslås en integreret tilgang, der frem for deduktion ansporer til argumentation ud fra følgende tese: Både forvaltningsretlige og kontraktsretlige normer finder potentielt anvendelse – eventuelt med fornødne tilpasninger – på forvaltningens aftaler.*"

In English (unofficial translation):

> "*It does not make sense to talk about an 'either-or'. Accordingly, it appears from case law that administrative law norms apply to 'private law agreements', while contract law norms conversely apply to 'administrative agreements'* […]"
>
> "*Instead, an integrated approach is proposed that, rather than deduction, encourages argumentation based on the following thesis: Both administrative law and contract law norms are potentially applicable - possibly with necessary adaptations - to administrative agreements.*"[1308]

1022. The relevant principles of contract law and administrative law that apply to this dispute are discussed in more detail below. For present purposes, it suffices to note that perhaps the most significant effect of the partly contractual nature of Greenlandic mineral licences is that contract law principles operate as significant restrictions on the freedom

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[1306] Document titled "*Impact Benefit Agreement concerning the Tanbreez (Killavaat Alannguat) project between Tanbreez A/S, Kommune Kujalleq and the Government of Greenland under Mineral Exploration License no. 2020-54*", 2020, at **(C-668)**, p. 7.

[1307] See, link to the active Impact Benefit Agreements available at, https://govmin.gl/exploitation/get-an-exploitation-licence/impact-benefit-agreement-iba/.

[1308] R. Grønved Nielsen, *Forvaltningskontrakter*, (Karnovgroup, 1st ed., 2021), p. 166, at **(CL-193)**, p. 166 (p.1 of pdf).

of the administrative authorities to take unilateral action *vis-à-vis* the right-holder.[1309] This effect is evident from the general reluctance of the Danish authorities to implement material changes to concession terms unilaterally. As a matter of general administrative practice, such changes to concession terms have generally been implemented by way of negotiation with the right holder.

1023. A well-known example of this administrative practice is A.P. Møller's Sole Concession of 1962, which was amended following negotiations between the Danish Government in 1971 and 1981. The scope of A.P. Møller's rights had become the object of a dispute following the Danish Government's request that A.P. Møller relinquish certain parts of the area covered by its concession. The Danish Government recognised, however, that its request had to be reconciled with the contractual rights that A.P. Møller enjoyed under the concession. As Uggi Engel notes in his 1981 study of the A.P. Møller case:

> "*The legal form of the* [A.P. Møller] *concession complex is a combination of a governmental act (the original concession of 1962 as amended in 1963), with a further government act and an agreement (the prolongation of 1972 with the protocol) and a further agreement (the agreement of July 15, 1976). However, as stated earlier, all the individual parts of the concession complex have been subject to negotiations between the authorities and it is clearly recognized that the concession complex involves contractual rights and obligations for both parties.*"[1310] (underline original)

1024. The matter was ultimately settled without the need for arbitration as the Danish Government concluded that if it insisted on such a relinquishment of rights without the consent of A.P. Møller, that would amount to expropriation. As discussed below, considering that Act No. 20 has been designed in a way that makes its applicability conditional upon the *absence of expropriatory effect*, it very much appears as though the drafters of Act No. 20 (the lawyers who now represent the Respondents in this arbitration) applied the learning from the A.P. Møller affair, and designed a statute that the Greenlandic Government could purport to use immediately (to stop the Kvanefjeld Project) but which effectively deferred the question of expropriation to a later stage.

1025. Another example of the Danish Government's practice of refraining from unilateralism in concession contexts (and therefore recognising the contractual rights that such instruments confer) is the Greenex concession, which was granted in 1971 for a lead and zinc mine in Greenland. In 1985, specific amendments concerning environmental issues and ownership structure were introduced by mutually agreed addenda.[1311]

[1309] Lynge Andersen, *Aftaler og mellemmænd* (Karnov Group, 8th ed., 2022), pp. 178-212, 264-269, at **(CL-194)**, p. 267 (p. 42 of pdf).

[1310] U. Engel, *The Legal Character of The Danish Sole Concession*, in T. Daintith (ed.), *The Legal Character of Petroleum Licences: A Comparative Study* (1981), Chapter 5, at **(CL-195)**, p. 174.

[1311] F. Dalgaard-Knudsen, *Exploitation Concessions: Contracts or Permits: Contributions from the Norwegian Phillips/Ekofisk Case*, 1987 5(3) *Journal of Energy & Natural Resources Law* 165-181, at **(CL-92)**, p. 173 (p. 9 of pdf).

1026. The Danish courts have endorsed this practice and have since the 1930's systematically found that administrative authorities cannot impose substantive unilateral changes in a contractual relationship between a private entity and a public authority.[1312]

1027. Norwegian case law validates this position. In the leading *Ekofisk* case of 1985, the Norwegian Supreme Court confirmed that the Norwegian Government could not unilaterally change the economic equilibrium in oil concessions for the North Sea because of contract law obligations. The Supreme Court of Norway found that the government could not unilaterally amend the due dates and payment frequency of the royalties from concessionaires, and although it was not necessary for the Supreme Court to express a definitive view on the precise legal character of the concessions in question, the Supreme Court reached its conclusion using distinctly contractual terminology.[1313]

1028. The relevance of the *Ekofisk* decision is reinforced by the fact that Norwegian law and practice influenced the Greenlandic concessionary system. The Greenlandic system is, however, even more contractual than the Norwegian system. This is confirmed by Dalgaard-Knudsen, in his 1987 analysis of Scandinavian minerals resources regimes:

> "*The Greenlandic approach is probably more private law-minded than the Danish North Sea approach, but the difference is not great. The degree of private law in the Norwegian concessions may be less than in the Danish concessions*."[1314] (emphasis added)

1029. To conclude, the legal framework for mining concessions in Greenland has been specifically tailored to cater to the needs and expectations of foreign investors, resulting in a *sui generis* system that incorporates administrative law and contract law. It is thus natural that the MRA sets out only the overarching principles for the licensors' and licensees' respective rights and obligations, leaving the particulars for further determination by contract. As shown above, the key features of the *sui generis* Greenlandic system are the strong reciprocal character of the legal relationship (*quid*

[1312] See U.1939.447 H in matter 254/1937, 13 March 1939, at **(CL-137)**: A municipality could not terminate an agreement with a private association for cremations based on the municipality's wish to change the economic equilibrium agreed with the association; U.1984.735 H in matter 485/1981, 10 December 1984, at **(CL-138)**: A municipality could not unilaterally derogate from an agreement with a homeowner's association concerning an increase of levies agreed in relation to sewerage work to be performed by the association; U.2014.2510 V in matter B-1754-11, 2 May 2014, at **(CL-139)**: A municipality could not use its administrative authority to terminate immediately a lease agreement with a private real estate owner/landlord; MAD2002.562 Ø in matter B-1921-00, 18 January 2002, at **(CL-140)**: Denial of right to dump dirt in a gravel pit considered expropriation in light of previous commitments to the owner of the gravel pit; U.1986.72Ø in matter 13-206/1985, 5 September 1985, at **(CL-91)**: Ministry of Defence wanted to establish a trail for running tanks through for military exercises purposes. Since part of the forest was owned by a private owner and the Ministry of Defence had a lease agreement with that private owner, the ministry had to defer to the private property rights.

[1313] F. Dalgaard-Knudsen, *Exploitation Concessions: Contracts or Permits: Contributions from the Norwegian Phillips/Ekofisk Case*, 1987 5(3) *Journal of Energy & Natural Resources Law* 165-181, at **(CL-92)**, pp. 176-179 (pp. 12-15 of pdf).

[1314] F. Dalgaard-Knudsen, *Exploitation Concessions: Contracts or Permits: Contributions from the Norwegian Phillips/Ekofisk Case*, 1987 5(3) *Journal of Energy & Natural Resources Law* 165-181, at **(CL-92)**, p. 11.

pro quo provisions) underpinned by the concession, coupled with narrowed scope for the authorities to act unilaterally.

(d) The independent nature of exploration licences in the Greenlandic system

(i) General comments

1030. As set out above, the MRA provides the general framework and mandate for the Government of Greenland to issue exploration and exploitation licences. It follows from the statute as well as its historical background that the Greenlandic Government would set out specific terms for mining activities in standard licence terms.

1031. It follows that the MRA is only meant to lay down the basic rules and principles defining the confines of the legal relationship in question, leaving the particulars to be further defined by way of standard terms and other negotiated terms. The specific terms applicable under a licence thus supplement the statutory regime in accordance with the principles laid down in the MRA.

1032. A licence is therefore an exclusive administrative contract (concession) based on Standard Terms mandated in the MRA. The licence allows the Greenlandic Government to conclude specific terms but not to exceed the powers bestowed upon it by the MRA. This means the government cannot through specific terms remove fundamental rules and protections enshrined in the act.

(ii) The MRA establishes the general framework for the parties' legal relationship

1033. The MRA is, in effect, a framework statute: it sets out the general rules that scope the more specific rights set out in individual exploration and exploitation licences. As Bo Sandroos put it in his 2015 study of the MRA, "*the Greenlandic system quickly developed into its own 'sui generis' form of licensing strategy, policy and administration which makes very little use of general, executive orders but instead relies heavily on rule-making in the individual licenses and operating permits*."[1315]

1034. As discussed above, MRA Section 29 sets out a licence-holder's automatic entitlement to an exploitation licence where conditions are met. In other provisions, the MRA foresees a number of steps that an exploration licence holder must take, i.e., to (i) draw up an exploitation (development) plan and closure plan both of which must be submitted to the relevant authority for approval (Sections 19, 43 and 20); (ii) comply with terms, deadlines etc. specified in the licence issued by the authority, (iii) mitigate adverse environmental impacts (Part 13); (iv) carry out environmental- and social impact

[1315] Bo Sandroos, *The Greenland Mineral Resources Act: The Law and Practice of Oil, Gas and Mining in Greenland*, (1st ed., 2015), pp. 28-29, at **(CL-196)**.

assessments (Part 15 and 16); and (5) to submit projects of a certain magnitude to pre-consultation and consultation of the general public (Part 18a).

1035. It is important to recognise that these steps are separate and distinct from the fundamental right of transition from exploration to exploitation enshrined in MRA Section 29(2). As explained by Professor Mortensen, these steps concern *how* the right to an exploitation licence is to be exercised through specific physical exploitation activities, not *whether* (or "*if*") there is a legal right to be granted an exploitation licence:

> "*In contrast to and separate from the right to an exploitation licence as such, discretion of the Government of Greenland exists in relation to how specific exploitation activities (actual mining) are performed and are closed down at the end of the mining project. This is distinct from the granting of an exploitation licence as such under Section 29(2) of the Mineral Resources Act and Section 1401 of the Standard Terms.*
>
> *Indeed, the issue of* how *exploitation is carried out is addressed separately in Sections 73 (EIA) and 76 (SSA) of the Mineral Resources Act. No reference to Section 29(2) or a licence holder is made in relation to the provisions on EIA, SSA or development and closure plans. Additionally, under Sections 19 and 43 of the Mineral Resources Act, the Government of Greenland shall approve a development plan and a closure plan regarding exploitation activities before they may commence. Again, this is distinct from the right to be granted an exploitation licence as such, i.e., the general right under Section 29(2) of the Mineral Resources Act to exploit mineral resources discovered. It is similarly made clear under the Standard Terms that the right to an exploitation licence under Section 1401 of the Standard Terms is not linked to* how *specific exploitation activities are to take place*".[1316]

1036. In general, consistent with its function as a framework statute, the MRA does not purport to detail the respective rights and obligations of the licence holder and the government. Nor does it purport to regulate in detail the regime for transitioning from exploration to exploitation. Instead, the MRA lays down a general right to receive an exclusive exploitation licence on specific terms, treating the particularities (the "*how*") as a separate and practical – rather than *legal* – matter. As noted above, the Greenlandic Governments mandate to address these particularities, by fixing the specific terms of an exploitation licence, is conferred by MRA Section 16(1). Government documents show that, by the time Act No. 20 was passed, the Greenlandic Government understood that it had moved from the framework of MRA Section 29(2) and into the practical process of MRA Section 16(1).[1317]

[1316] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 96-97.

[1317] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

(iii) The Exploration Licence establishes the specific terms for the parties' contractual relationship

1037. The original licence granted to Rimbal Pty Ltd in 2005 (and transferred to GM in 2007), as well as the subsequent addenda and extensions of the licence, explicitly refer to the successive versions of the MRA. The sole exception to this general rule is the licence renewal of 21 April 2010, where only the Standard Terms (which refer to the Act) are mentioned.[1318]

1038. Notably, the most recent extension of GM's Exploration Licence, dated February 2023, reads as follows (emphasis supplied):

> "*Under section 16(1) of the Greenland Parliament Act No. 7 of 7 December 2009, on Mineral Resources and Mineral Resource Activities, as amended by the Greenland Parliament Act No. 26 of 18 December 2012, the Greenland Parliament Act No. 6 of 8 June 2014, the Greenland Parliament Act No. 16 of 3 June 2015, the Greenland Parliament Act No. 34 of 28 November 2016, the Greenland Parliament Act No. 16 of 27 November 2018 and the Greenland Parliament Act No. 39 of 28 November 2019 ('MRA'), the Government of Greenland hereby grants the licensee stated below an exclusive exploration licence for an area near Kuannersuit in South Greenland. The licence is granted pursuant to the terms stated below and the terms stated in the Mineral Resource Act.*"[1319]

1039. It follows that the MRA is the sole statutory basis for the Exploration Licence. GM will address Act No. 20 in Section H below. For present purposes, it suffices to note that there is no reference to Act No. 20 in the renewed licence of February 2023 (notwithstanding that this renewal came after the promulgation of Act No. 20).[1320]

1040. As noted above, GM's Exploration Licence incorporates the 1998 Standard Terms, which were issued under the 1991 MRA. Hence, pursuant to the MRA, the Exploration Licence (incorporating the Standard Terms) enables GM to explore Kvanefjeld and gives it the right to open a mine (exploitation) if commercially viable deposits are found at the site. The licence ensures substantial economic and social benefits to Greenland in the form of various economic contributions by GM and social contributions by creating jobs and business for the local workforce and enterprises.

1041. In certain provisions, the Standard Terms not only elaborated upon the MRA but granted licensees rights in addition to those granted under the MRA. For instance, pursuant to Section 301 of the Standard Terms, GM was entitled to an extension of its Exploration Licence for up to ten years, whereas under the MRA, extensions were

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[1318] "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland*" dated February 2010 and executed 21 April 2010, at **(C-7)**.

[1319] Addendum No. 9 to Licence No. 2010/02, 15 March 2023, at **(C-673)**, p. 1.

[1320] Addendum No. 9 to Licence No. 2010/02, 15 March 2023, at **(C-673)**.

typically for only three years. This is consistent with Professor Mortensen's description of how the Standard Terms add various elements to the statutory regime, such as the feasibility study to be completed and the licensee's proposal for delineation pursuant to Section 1402(b) and (c) and the right to establish buildings, production plants, installations, tailings and waste disposal sites within and outside the licence area, provided they are approved in accordance with MRA Sections 10 and 25(1).

1042. As Professor Mortensen also notes: "*Section 14 of the Standard Terms generally contains a distinct but similar right to that enshrined in Section 29(2) of the Mineral Resources Act, meaning that GMAS has a right under both legal instruments, but with slightly different content.*"[1321]

1043. Section 14 of the Standard Terms provides in relevant part:

> "***14. The transition from exploration to exploitation***
>
> *1401. If the licensee has found and delineated commercially viable deposits which the licensee intends to exploit and provided the terms of this licence have been complied with, the licensee is entitled to be granted an exploitation licence under articles 7 and 15 subsection 2 of the MRA. The exploitation licence will be granted as indicated in sections 1402 1408.*"[1322]

1044. Consistent with MRA Section 29(2), the Section 1401 right of transition from exploration to exploitation is distinct from the issue of *how* GM is to exercise that right. It would not be possible for the Greenlandic Government to contractually deviate from this principle enshrined in the MRA. As noted by Professor Mortensen, the specific sub-sections in Section 14 of the Standard Terms indicate that the Government has discretion only in relation to *how* specific exploitation activities would be carried out, but not in relation to whether the exploitation licence shall be granted or not:

> "*Indeed, as stated in Section 1401, 'The exploitation licence will be granted as indicated in sections 1402*[-]*1408.'* […] *The only discretion of the Government of Greenland in these respects is in relation to the specific delineation of the licenced area under Section 1406(c) in light of* how large an area *it is considered that GMAS has demonstrated contains exploitable deposits and which should be delineated accordingly in relation to the rules otherwise set out in Section 1406. In all other respects, the legal position of GMAS is fixed already in the exploration licence.*
>
> *As described in section 2.3.3 above, the Government of Greenland has discretion in relation to* how *specific exploitation activities are to be carried out.*

[1321] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 140.

[1322] Standard conditions for exploration permits regarding mineral raw materials (excluding hydrocarbons), 25 June 2013, at **(R-1)**, see English translation, "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1401.

Again, this issue is distinct from the right to an exploitation licence as such under Section 1401, and this is also explicitly emphasized in the way that Section 1401 makes no reference to the provisions relevant in relation to specific exploitation activities, which are Sections 1409-1413.

[…]

Sections 1410-1411 further make clear the distinction between the granting of an exploration licence as such and the considerations in relation to the specific exploitation activities envisaged by GMAS. Thus, Section 1410 states:

> *'Following the granting of an exploitation licence, the licensee shall to BMP submit a development plan etc. including a closure plan in accordance with articles 10 and 19 of the Mineral Resources Act.'* [underlining added]

And Section 1411 states:

> *'At the granting of an exploitation licence and based on the discussions under section 1409 BMP will stipulate a time-limit for the licensee's submission of a development plan etc., cf. section 1410. The time-limit will be stipulated in such a way that the licensee has the necessary time for the preparation of the material.'*

These provisions thus lay down a process whereby the exploitation licence is to be granted before the parties further discuss the specific exploitation activities. Thus, such discussions cannot stop the granting of an exploitation licence."[1323]

1045. The scheme of Section 14 is such that, once GM demonstrated that an exploitable deposit of rare earths, zinc and fluorspar existed within the licenced area, then – provided GM had otherwise met the conditions in the Exploration Licence – the conditional right to an exploitation licence under Section 1401 of the Standard Terms automatically became an unconditional right to receive such a licence. At that juncture, there was no longer any question as to *whether* GM had a right to an exploitation licence: it did, and that right enjoyed both statutory and contractual protection; rather, at that juncture, what remained to be determined was *how* GM's exploitation rights would be exercised in practice, in light of the content of the feasibility study, EIA and SIA.

1046. As detailed in Dr Mair's witness statement,[1324] GM diligently performed all its obligations under the Exploration Licence. In particular, GM demonstrated that a commercially viable mine could be opened at Kvanefjeld and declared its intent to do

[1323] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 142-147.

[1324] First Witness Statement of J. Mair, at **(CWS-3)**, section X.R.

so. This was expressly recognised by the Greenlandic Government on 22 April 2020.[1325] None of this is disputed by the Respondents (nor could it be).

1047. To be clear, the Respondents' authorities had full discretion to decide whether to grant the Exploration Licence to GM in the first place and, as part of that, whether to grant GM the conditional right to an exploitation licence through Section 14 of the Standard Terms. The Respondents' authorities exercised their discretion in that regard in 2007, when they granted GM the Exploration Licence and within it the conditional right to an exploitation licence. Having made this discretionary decision in accordance with the MRA, the Respondents are now bound by the terms of their contract with GM, *pacta sunt servanda*. The Respondents cannot now declare they have discretion to avoid the core obligation in that contract: the obligation to grant GM an exploitation licence for the minerals it has found.

1048. GM does not dispute that the Greenlandic Government still has the right to make certain discretionary administrative decisions in relation to the Exploration Licence, but none of these decisions concern the right to exploitation. That right was already granted from the beginning, as part of the grant of the Exploration Licence, and the transition from a conditional right to an unconditional right is completely outside government control. The Greenlandic system is such that, once an exploration licence holder has satisfied the conditions in MRA Section 29(2), as replicated in Section 14 of the Standard Terms, the right to transition to an exploitation becomes unconditional and is not subject to any Government discretion. What remains is for the specific terms of that exploitation licence to be determined in accordance with MRA Section 16. As noted above, GM had fulfilled the conditions of MRA Section 29(2) and Section 14 of the Standard Terms by April 2020 at the latest, and by January 2021 had commenced the Section 16 process to determine the specific conditions of its exploitation licence for the Kvanefjeld Project.

1049. In conclusion, once GM had discovered and delimited a commercially viable resource at Kvanefjeld, GM had "*won the lottery*", to use the Respondents' words. This will be further demonstrated below.

(e) GM's Exploration Licence is a contract

(i) Overview

1050. As explained and documented above, the Exploration Licence is a contract existing within an administrative law framework. The contractual content of the Greenlandic concessions has long been recognised. As Dalgaard-Knudsen observed in 1991:

> "*Without any doubt the* [Greenlandic mineral] *concessions or permits do contain contractual elements; as fairly clear examples one may point to the clauses on*

[1325] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

agreed definitions, mutual confidentiality, indemnity, arbitration and choice of jurisdiction and venue."[1326]

1051. In the case at hand, the Exploration Licence itself has all the hallmarks of a contractual relationship under Danish and Greenlandic law:

(a) The Exploration Licence is a concession, i.e., an administrative contract (Section (ii) below).

(b) The Standard Terms constituted a binding offer to GM, which was accepted (Section (iii) below).

(c) When the Exploration Licence was originally put in place and was later extended and amended, the Parties relied on contract formation rules and methodology for considering it validly established and for it to come into force (see Section (iv) below).

(d) The Exploration Licence contains mutual *quid pro quo* rights and obligations commensurate with ordinary contractual relationships (see Section (v) below).

(e) The Exploration Licence contains a choice of law agreement that incorporates into the legal relationship the entirety of both Greenlandic and Danish law and thus even the parts of the latter which would not ordinarily apply in Greenland, and this choice-of-law could only have been extended to the several extensions and amendments of the Exploration Licence pursuant to agreement (Section (vi) below).

(f) The Exploration Licence contains an arbitration agreement which is ordinarily used by private parties, and which could also only have been extended to the several extensions and amendments of the Exploration Licence pursuant to agreement (see Section (vii) below).

1052. These elements – both individually and cumulatively – demonstrate that the Exploration Licence is fundamentally a contract between GM and the Government of Greenland. It follows that GM's right under Section 14 of the Exploration Licence to obtain an exploitation licence was also a *contractual* right that existed on 1 December 2021.

(ii) The Exploration Licence is a concession (administrative contract)

1053. As further described in Section E.3 above, GM has demonstrated that the *sui generis* system of mining in Greenland is based upon a tradition of concessions. In this tradition, which was continued under the MRA, the Exploration Licence is fundamentally a contract existing within an administrative law framework.

[1326] F. Dalgaard-Knudsen, *Mineral Concessions and Law in Greenland*, (1st ed., 1991), at **(CL-186)**, p. 162.

1054. Further, as also noted above, in its decision on certain procedural issues, the Tribunal correctly referred to the Exploration Licence as a contract: "*the contract is subject to Greenlandic and Danish law*."[1327]

1055. On these grounds alone, it may be concluded that the Exploration Licence gave rise to contractual rights and obligations, including in relation to the key issue in this case, i.e., the right to an exploitation licence for rare earths, zinc and fluorspar. In the submissions that follow, GM will place the contractual character of the Exploration Licence beyond doubt.

(iii) The Standard Terms constituted a legally binding offer to GM, which was accepted

1056. As demonstrated in Sections (b) and (c) above, Sections 16 to 21 and 29 to 31 of the MRA provide the general framework and mandate for the Greenlandic Government to issue exploration and exploitation licences in Greenland. It is clear from the legislation itself, and from its historical background, that the intention was for the specific terms for mining activities to be specified by the Greenlandic Government in standard licence terms, in the exercise of its power under MRA Section 16.

1057. In connection with certain amendments of the MRA in 2009, a significant legislative committee report ("*betænkning*") of 21 November 2009 was issued, which included general and specific comments on the existing legislative framework as well as comments on the proposed changes at the time.[1328] The committee ("*udvalget*") that issued this report consisted of five members, four of whom represented the two parties (IA and Siumut) that currently constitute the Greenlandic Government. In the committee's report, the following was stated in relation to the fundamental purpose and nature of the legislative framework established with the MRA:

> "*Råstoflovgivningens formål – en vanskelig balancegang*
>
> > *Set fra et overordnet perspektiv skal råstoflovgivningen tjene flere formål: Den skal sikre grundlaget for råstofaktiviteter her i landet, i form af rammer, som gør det interessant for mine- og olieselskaber at investere i efterforskningsprojekter. Den skal sikre, at det grønlandske samfund får et økonomisk udbytte, og herunder også gerne et beskæftigelsesmæssigt udbytte, af råstofaktiviteter her i landet. Og endelig skal den sikre, at råstofaktiviteterne ikke påfører miljøet – og herunder ikke mindst den meget sårbare arktiske natur – uoprettelig skade.*
> >
> > *Disse hensyn er til dels modsatrettede: Større krav til samfundets udbytte og til beskyttelse af miljøet, gør det mindre attraktivt for mine- og*

[1327] Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al., Ad Hoc, Decision on Procedural Issues, 24 November 2022, at **(C-212)**, para. 287.

[1328] Legislative committee report ("betænkning") EM2009/120 on Bill on Mineral Resources Act, at **(CL-197)**.

olieselskaber at investere i efterforskningsprojekter. Der er således tale om en vanskelig balancegang.

Lovforslaget fastsætter de overordnede rammer for denne balancegang. Inden for disse rammer vil det være op til Naalakkersuisut at lave udfyldende bestemmelser i form af bekendtgørelser, standardvilkår og modeltilladelser m.v. […]

Sikring af samfundsmæssigt udbytte

Ligesom hensynet til vort miljø ikke bør tilsidesættes, bør samfundet også i videst mulig udstrækning sikres en økonomisk og beskæftigelsesmæssig gevinst i relation til råstofaktiviteter. De vilkår, som skal sikre Grønlands økonomiske og beskæftigelsesmæssige interesser, bør dog - i sagens natur - ikke skærpes i en sådan grad, at olie- og mineselskaber mister interessen for efterforskning i Grønland. Det ville ikke styrke vort land – hverken økonomisk eller beskæftigelsesmæssigt.

Hvad der kan anses for passende krav må nødvendigvis ændre sig over tid, og her giver en rammelov som den foreliggende et råderum for tilpasning til udviklingen."

In English (unofficial translation) (emphasis added):

"*The purpose of the mineral resources legislation – a difficult balancing act*

At the high level, the mineral resources legislation must serve several purposes: It must secure the basis for mineral resources activities in this country, in the form of a framework that makes it interesting for mining and oil companies to invest in exploration projects. It must ensure that Greenlandic society receives an economic benefit, and preferably also an employment benefit, from mineral resource activities in this country. And finally, it must ensure that the mineral resources activities do not cause irreparable damage to the environment – and not least the very vulnerable Arctic nature.

These considerations are partly contradictory: More requirements for society's benefits and for the protection of the environment make it less attractive for mining and oil companies to invest in exploration projects. It is thus a difficult balancing act.

The bill establishes the overall framework for this balancing act. Within this framework, it will be up to Naalakkersuisut to make supplementary provisions in the form of executive orders, standard terms and model licences, etc. […]

Ensuring social benefits

Just as consideration for our environment should not be disregarded, society should also, to the greatest extent possible, be assured of an

economic and employment gain in relation to mineral resources activities. However, the conditions which are to secure Greenland's economic and employment interests should - in the nature of the matter - not be tightened to such an extent that oil and mining companies lose interest in exploration in Greenland. It would not strengthen our country - neither economically nor in terms of employment.

What can be considered appropriate requirements must necessarily change over time, and here a framework act such as the present one gives room for adaptation to developments."[1329]

1058. Subsequently, the following was stated in the Explanatory Notes to the MRA, emphasising the MRA's purpose in stimulating mineral resources activity in Greenland, which included issuing favourable and competitive terms for future concessions, and also used standard terms in connection with the issuance of exploration and exploitation licences (mentioned in the context of MRA Section 29(1)) (emphasis added):

"*The working group's proposal for a new strategy for the mineral resource area led to the introduction of a new mineral resources bill that was adopted as Act No. 335 of 6 June 1991 and which is still in force. The bill aimed to make it more attractive to invest in exploration for mineral resources (hydrocarbons and minerals) in Greenland.*

Some of the main elements of the proposed strategy were:

a. The introduction of radically changed licence terms, particularly for the exploitation of hard minerals in order to be able to offer terms that are competitive as compared to the terms in other countries."

"*The granting of licences for exploration for (subsection (1)) and exploitation of (subsection (2)) hard minerals is assumed to be based on the use of standard terms in the form of model licences that contain detailed provisions within the framework set out in this bill.*

A licence under subsection (1) will, for example, state the geological, technical and financial data that must be presented when the licensee declares that a deposit is commercially exploitable and is intended to be exploited to obtain an exploitation licence under subsection (2). An exploitation licence will be limited to those parts of the area that contain commercially exploitable deposits which the licensee intends to exploit with an additional area of a certain size which is determined by the Greenlandic Government. The purpose of this is to ensure appropriate delimitation of the area covered by the licence."[1330]

1059. As this shows, the fundamental purpose of the MRA was to establish a general legislative framework for the promotion of foreign investments into Greenland to the

[1329] Legislative committee report ("betænkning") EM2009/120 on Bill on Mineral Resources Act, at **(CL-197)**, pp. 2-4.

[1330] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, pp. 5, 68, 69.

benefit of Greenlandic (and Danish) society. The preparatory works (explanatory notes) to the MRA also directly state that the way this objective would be achieved was by offering specific terms for exploration and exploitation in Greenland that were globally competitive – an approach that was also taken under the Danish Mineral Resources Act 1991. As explained in detail in Section (b) above, in relation to exploration activities, this was origin of the Standard Terms which were offered to investors, including GM.

1060. A contract is, naturally, legally binding on its parties. This follows (*inter alia*) from Section 1 of the Danish Contracts Act and from the general principle of *pacta sunt servanda*. The same fundamental rule applies where governmental authorities in Greenland or Denmark act as contract partners.[1331] There would seem to be no dispute about this in the present case.

1061. Thus, when GM first accepted the Standard Terms offered by the Respondents in 2007, a legally binding contract was formed under Danish and Greenlandic law.

(iv) The Parties relied on contract formation rules and methodology for the Exploration Licence

1062. With respect to its effectiveness, the following was stated in Section 3 of the original Exploration Licence of 2007:

> "*301. The licence is effective from the signature of the Government of Greenland to December 31, 2009. The period from the signature to the end of 2007 will count as year 3 and the calendar years 2008 and 2009 will count as years 4 and 5, respectively.*"[1332] (emphasis added)

1063. Accordingly, from the outset, it was clear that the Greenlandic Government's signature was required for the Exploration Licence to become legally effective. At the same time, the Greenlandic Government required that the licensee sign the licence before the Government did – a "*you sign first*" practice that the Greenlandic Government continues to this day (as evidenced, most recently, by the signing sequence for the renewal of GM Exploration Licence in early 2023[1333]).

1064. This was how the original Exploration Licence for Kvanefjeld came into effect: it was signed by both parties (Rimbal and the Greenlandic Government) by 6 July 2005, at which point it became effective in accordance with its terms.[1334] The Exploration

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[1331] R. G. Nielsen, *Management contracts*, (1st edition, 2021), pp. 100-101, at **(RL-45)**.

[1332] "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq North in West Greenland*" dated April 2007 and executed 14 June 2007, at **(C-5)**, section 301.

[1333] Email from R. J. F. Lindholm (MLSA) to M. Guy (GM), subject: "*Sv: License renewal (Nanoq - ID nr.: 22831035)*", 16 March 2023, at **(C-674)**, pp. 6-8, email dated 6 December 2022.

[1334] "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq in West Greenland*" dated May 2005 and executed 6 July 2005, at **(C-3)**

Licence came into existence in the same way private parties typically perfect a contract under Greenlandic/Danish law, i.e., by mutual signatures.

1065. Thus, from the inception of the Exploration Licence, its effectiveness was based on contract formation rules or methodology rather than ordinary administrative law rules or practice, under which an administrative approval becomes legally effective simply upon its issuance by the relevant authority (i.e., without the need for a signature from anyone).

1066. The same contract formation rules were followed by GM and the Greenlandic Government each time the Exploration Licence was renewed. Under MRA Section 29(1), exploration licences can be extended as follows:

> "*As regards minerals, exploration licences under section 16 above are granted for a period of up to ten years or, if special circumstances exist, for a period of up to 16 years. A licence may be extended with a view to exploration by up to three years at a time. An extension for more than ten years may be granted on modified terms.*"[1335]

1067. Thus, based on mutual signatures, the extensions of GM's Exploration Licence entered into force on 21 April 2010 (extension for years 6-10),[1336] 8 April 2015 (years 11 to13),[1337] 31 July 2018 (years 14-16),[1338] 1 February 2021 (also years 14 to 16),[1339] and 15 March 2023 (years 17-19).[1340] In each case, the renewal instruments (in Sections 3 or 4) provided that the renewal would become effective upon the signature of the Greenlandic Government, and the Government required GM to apply its signature to the renewal instrument first.

1068. Similarly, contract formation methodology has been followed by the Greenlandic Government and GM in the various amendments that have been made to the Exploration Licence over time. With one (revealing) exception, all nine of these addenda contained signature blocks for the licensee and the Government and provisions that stated that they would only be effective upon the signature of the Greenlandic Government. The one exception to the practice of mutual signature of the licence addenda was Addendum

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[1335] Danish Parliament Act No. 473 of 12 June 2009 on Greenland Self-Government, at **(RL-14)** Section 29(1).

[1336] "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals & Energy (Trading) A/S for an area near Kuannersuit in Southwest Greenland*" dated February 2010 and executed 21 April 2010, at **(C-7)**.

[1337] "*Renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy (Trading) A/S for an area near Kuannersuit in South Greenland*" dated March 2015 and executed 8 April 2015, at **(C-15)**.

[1338] "*Addendum no. 4 on renewal of exploration licence with exclusive exploration rights for Greenland Minerals and Energy A/S for the area Kuannersuit near in South Greenland*" dated June 2018 and executed 31 July 2018, at **(C-11)**.

[1339] "*Addendum no. 7 to exploration licence 2010-02 on change of licence period temporary adjustment of the yearly exploration expenses for 2020*" dated January 2021 and executed 1 February 2021, at **(C-14)**.

[1340] Addendum No. 9 to Licence No. 2010/02, 15 March 2023, at **(C-673).**

no. 8 of August 2022 (issued just prior to the Copenhagen hearing on interim measures): for the first time in the history of the parties' relations, the Greenlandic Government *unilaterally* issued a licence instrument without the need for GM's countersignature. As counsel for GM said at the Copenhagen hearing:

> "[Addendum No. 8] *is the first document in this series since 2005 that only has a signature block for the Government. They know these instruments have a contractual character, they know the fact that they are cosigned by the parties is one of the indicators of their contractual character and they have realised that and stopped doing that.*"[1341]

1069. Accordingly, GM's Exploration Licence encompasses all the documents listed below:

(a) The Standard Terms for Exploration Licences for Minerals (Excluding Hydrocarbons) in Greenland of 16 November 1998, as amended by addendum no. 1 of 10 September 2010, addendum no. 2 of 25 June 2013,and addendum no. 3 of 1 July 2014, including appendices 1-4 to this addendum no. 3;

(b) Exploration Licence no. 2005-17 with a licence period from 2005 to 2009 (year 1 to 5).

(c) Addendum no. 1 to licence 2005-17 dated September 2006.

(d) Exploration Licence no. 2005-28 dated April 2007, granted as a separation of licence no. 2005-17 with a licence period from 2007 to 2009 (year 3 to year 5).

(e) Addendum no. 1 to licence no. 2005-28 dated June 2008.

(f) Exploration Licence no. 2010-02 dated February 2010, granted as a continuation of licence no. 2005-28 and extending the licence period for 5 years from 2010 to 2014 (year 6 to year 10).

(g) Addendum no. 1 to Licence 2010-02 dated December 2011.

(h) Renewal of Exploration Licence no. 2010-02 dated March 2015 and extending the licence period for 3 years from 2015 to 2017 (year 11 to year 13).

(i) Addendum no. 2 to Licence 20 10-02 dated December 2015.

(j) Addendum no. 3 to Licence 2010-02 dated May 2017.

(k) Addendum no. 4 for renewal of Exploration Licence 2010-02 dated July 2018 and extending the licence period for 3 years from 2018 to 2020 (year 14 to year 16).

[1341] Transcript of Hearing held on 7 September 2022, at **(C-134)**, p. 84 (Dr Luttrell).

(l) Addendum no. 5 to Licence 2010-02 dated September 2018.

(m) Addendum no. 6 to Licence 2010-02 dated August 2018.

(n) Addendum no. 7 to Licence 2010-02 dated February 2021.

(o) Addendum no. 8 to Licence 2010-02 dated August 2022.

(p) Addendum no. 9 to Licence 2010-02 dated February 2023, extending the licence period until 31 December 2025.

1070. Although some of the revisions to GM's Exploration Licence have been minor and accepted (signed) by GM without substantial negotiation (e.g., adjustment of GM's royalties) others have been substantive in nature and were the subject of extensive negotiation between GM and the relevant Greenlandic authorities. This was the case especially with the 2010 Amendment to the Standard Terms (discussed in Section C.12 above), Addendum No. 1 (discussed in Section C.17 above), and the 2015 Exploration Licence Renewal (discussed in Section C.35 above).

1071. In summary, most of the addenda to the Exploration Licence were subject to at least some discussion and have (with the single, revealing exception of Addendum No. 8) been mutually signed as per the Greenlandic Government's instructions. This was true of the most recent extension of the Exploration Licence on 15 March 2023, during this very arbitration, in respect of which the Greenlandic Government continued its practice of requesting GM to sign the extension instrument before it would sign the document itself (upon which it would enter into force).[1342]

1072. The above shows that the Parties consistently relied on contract formation rules or methodology in respect of the entry into force of the Exploration Licence (as extended and amended) rather than ordinary administrative law rules or practice. In and of itself, this confirms the contractual nature of the Exploration Licence.

(v) Specific mutual rights and obligations (*quid pro quo*)

1073. Unlike an ordinary approval issued by administrative authorities under Greenlandic and/or Danish law, the Exploration Licence has always contained mutual rights and obligations of GM and the Government of Greenland. The Exploration Licence is a *quid pro quo* system (*ydelse og modydelse*). And the same would apply in respect of an exploitation licence.

[1342] Email from R. J. F. Lindholm (MLSA) to M. Guy (GM), subject: "*Sv: License renewal (Nanoq - ID nr.: 22831035)*", 16 March 2023, at **(C-674)**, pp. 6-8, email dated 6 December 2022.

1074. From the beginning in 2007 and as of 1 December 2021, GM's main obligations under the Exploration Licence ("*ydelsen*") included:

(a) performance of qualitative exploration activities at certain minimum (significant) cost levels with such costs to be documented (see Section 6 of the Standard Terms).[1343]

(b) reporting to the BMP of exploration activities and provision of geological and other data concerning the resource under exploration (Sections 10 and 12 of the Standard Terms).

(c) payment of licence fees (these were not part of the exploration costs) under Sections 401-406 of the Standard Terms and Section 6 of Addendum No. 4 to the Exploration Licence.

(d) payment of licence fees and taxes for subsequent exploitation activities as well as reimbursement of expenses of the BMP (Section 1408 of the Standard Terms).

(e) payment of royalties for subsequent exploitation (sale) of rare earth elements (5% royalty), uranium (5% royalty), and other minerals (2.5% royalty).[1344]

(f) employing local Greenlandic or Danish workforce and entering into relevant contracts with local Greenlandic or Danish suppliers and other enterprises (Section 13 of the Standard Terms).

(g) reimbursement of BMP's expenses in relation to inspection of the exploration activities (Section 804 of the Standard Terms).

(h) removal of buildings and clean-up following termination of exploration activities (Section 9 of the Standard Terms), assuming GM had not transitioned into exploitation.

1075. In return for GM performing the above obligations, from the beginning in 2007 and as of 1 December 2021, the main obligations of the Government of Greenland under the Exploration Licence ("*modydelsen*") included:

(a) issuing an exploitation licence under Section 14 of the Standard Terms, provided GM had fulfilled the conditions under the licence itself for transitioning into the exploitation stage of mining activities (this obligation and corresponding right is addressed separately below).

[1343] Sections 1-2 of Addendum No. 2, No. 3 and No. 6 as well as Section 3 of Addendum No. 7 to the Exploration Licence introduced changes to minimum economic spend for GM' exploration activities.

[1344] Addendum No. 3 to Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland of 1 July 2014, at **(C-2)**, Section 2.

(b) in connection with granting of an exploitation licence, assisting GM with respect to *how the parties can arrange, in the most expedient way*, the development activities up to the commencement of production (Section 1409 of the Standard Terms).

(c) treating the reports that GM submits concerning its exploration activities as confidential (Section 11 of the Standard Terms).

1076. The above main obligations, as well as all ancillary obligations in the Exploration Licence, constituted rights of GM or the Government of Greenland, respectively. The Exploration Licence was (and is) a *quid pro quo* contract providing, on the one hand, GM with the ability to explore Kvanefjeld and the possibility of opening a mine (exploitation) if commercially viable at the site, and, on the other hand, ensuring substantial economic and social benefits to Greenland in the form of the receipt of valuable geological data and feasibility work and social contributions by creating jobs and business for the local workforce and enterprises. As such, both parties to the Exploration Licence were performance debtor ("*realdebitor*") and performance creditor ("*realkreditor*"), albeit in relation to different issues, while only GM was payment debtor ("*pengedebitor*") and the Government of Greenland was payment creditor ("*pengekreditor*").

1077. The roles and obligations summarised above are commensurate with obligations and corresponding rights under the general Danish law on obligations and under Danish contract law, and the relationship under the Exploration Licence was (and is) thus fundamentally contractual in nature also for these reasons.

(vi) The Exploration Licence contained a separate choice-of-law agreement

1078. As noted above, Section 1901 of the Standard Terms provides that the Exploration Licence is subject to the laws of Greenland and Denmark in force at any time. It also follows from Section 2003 that the Tribunal shall apply Danish law "*in its decision*", i.e., the decision on the merits.

1079. The choice-of law agreement in Section 1901 is a creature of private law because through *agreement* it incorporates Danish law into the legal relationship established between the parties under the Exploration Licence, meaning that Danish law applies in this case even to the extent that parts of Danish law would not ordinarily apply in Greenland.

1080. Such a choice-of-law agreement is a separate agreement within the Exploration Licence – in the same way as the arbitration agreement (see Section L.3 below).

(vii) The Exploration Licence contained a separate arbitration agreement

1081. The Exploration Licence contains an arbitration agreement in Section 20 of the Standard Terms. As is well-known, an arbitration agreement is contractual in nature. Further, and as set out in DAA Section 16(1), the doctrine of separability provides that such arbitration agreement is considered an independent contract separate from the main contract within which it is included.

1082. The arbitration agreement contained in the Exploration Licence was (and is) thus a separate contract requiring *separate contract formation* for it to be validly concluded and to enter into force. There was never any separate approval process for the arbitration agreement, and so the general approval process and mutual signatures to extensions and amendments of the Exploration Licence (including the Standard Terms) were presumed by the parties to also cover the arbitration agreement thus effectively extending the arbitration agreement to all such extensions and changes of the Exploration Licence. Since the right to arbitrate is based on consent and cannot be extended in scope unilaterally, the extension of the scope of the arbitration agreement at Section 20 of the Standard Terms over the years could therefore only have taken place pursuant to explicit or implicit *agreement* by the parties thereto.

1083. The above further supports GM's submission that the Exploration Licence is fundamentally a contract giving rise to contractual rights and obligations. In the following, GM will turn to address to the key right and corresponding obligation in the present case, this being GM's right and the Government's obligation to transition from exploration to exploitation at Kvanefjeld.

E.4 Relevant principles of contract law

1084. In the matter at hand, the relevant principles of Danish and Greenlandic private law, specifically contract law, include (i) the duty of loyalty ("*loyalitetspligten*"), (ii) good faith ("*god tro*"), (iii) fairness and reasonableness ("*billighed og rimelighed*"), (iv) the doctrine of implied conditions ("*forudsætningslæren*"), (v) the principles of non-performance ("*mangelfuld ydelse*") and that the remedial framework of performance, avoidance and/or compensation for damages may be triggered in the event of breach of contractual obligations.

1085. The Danish Contracts Act has been enacted for Greenland through Act. No. 104 of 31 March 1965, concerning the entry into force of certain property acts in Greenland. The law has subsequently been amended by Decree No. 350 of 14 July 1980 concerning the entry into force of certain property acts in Greenland.[1345]

[1345] Greenland Parliament Act No. 350 of 14 July 1980 on Decree on amendment of the Contract Act , at **(CL-198)**, amending the Greenland Contracts Act, to also include Section 36 of the Danish Contracts Act, of which

(a) The duty of loyalty ("*loyalitetspligten*")

1086. The duty of loyalty broadly stipulates a standard whereby each contracting party must duly consider and – if necessary – act (or refrain from acting) to support the interests of the other contracting party. Parties are generally obliged to *perform to the best of their ability* in fulfilling an agreement and to advance the performance or the purpose of the agreement.[1346] A party is also obliged to loyally disclose information to the other party that may be relevant to that party's view of the contractual relationship.

1087. If a party acts contrary to the duty of loyalty, that party is considered to commit a breach of obligations, allowing the other party remedies for breach ("*misligholdelsesbeføjelser*").

1088. The duty of loyalty follows from the contractual relationship as a *naturalia negotii* (a rule of law which does not have to be specifically agreed before it will be applicable to a specific type of contract).[1347] Thus, the duty of loyalty is applicable to the Exploration Licence.

1089. Further, the duty of loyalty is related to the duty of good faith. The duty of good faith relates to the concepts of fairness and reasonableness. The importance of the duty of acting in good faith is that contracting parties can expect mutual consideration to the effect that the parties can reach a common goal. Accordingly, the duty of loyalty may be invoked if a party has not acted in good faith, including in relation to conclusion and performance of an agreement/contract and subsequently.[1348]

1090. As discussed in Claim 3 below, the Respondents have breached their duty of loyalty by (*inter alia*) failing to act to support the rights and interests of GM and failing to act to the best of their ability in the licensing process. The duty of loyalty is also applied in the Jurisdiction Section below (see Section L.5).

(b) The principle of good faith ("*god tro*")

1091. In Danish law, good faith is used in relation to the doctrine of the invalidity of contracts because in this area it is relevant to examine if a party acts in good or bad faith in respect

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the newest version is Danish Parliament Act No. 193 of 2 March 2016 on the Promulgation of the Act on Contracts and Other Acts in the Field of Property Law, at **(CL-199)**.

[1346] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 45-46 (pp. 23-24 of pdf).

[1347] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 46 (p. 24 of pdf).

[1348] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 48 (p. 26 of pdf).

of the matter giving rise to the dispute concerning the validity of the contract or the agreement.[1349]

1092. Although the contents of the duty of good faith are not fixed under Danish law, they are reflected in various statutory provisions. One example is the first sentence of Section 39 of the Contracts Act, whereby contractual engagements that have been entered into on the basis of declarations made in bad faith are not binding upon the party acting in good faith.[1350]

1093. In Danish contract law, the duty of good faith is often invoked when the validity of the contract (or part of the contract) is disputed by one of the parties.[1351] In such contexts, the evidence of the existence of good faith at the relevant time becomes the critical point of dispute between the parties to the contract or the agreement.[1352]

1094. The Greenlandic Government has proposed (and relied upon) an interpretation of the Addendum No. 1 Caveats which is inconsistent with the principle of good faith (amongst other norms). This will be further elaborated on in Section G.2 below regarding Addendum 1. As explained in the Jurisdiction Section below (L), the Respondents have also breached their duty of good faith through their conduct in the arbitration to date.

(c) The doctrine of implied conditions ("*forudsætningslæren*")

1095. Under Danish law, the doctrine of implied conditions ("*forudsætningslæren*") is generally accepted and refers to the failure of a contracting party's basic assumptions for entering into a contract or an agreement, whereby the party wishes to cancel the agreement or parts of it. The doctrine of implied conditions relates to the concepts of fairness and reasonableness, as it may be stated that it is unfair or unreasonable to assert a contract or an agreement if the assumptions have failed.[1353]

1096. Thus, the doctrine of implied conditions is defined as a party's material precondition and assumptions for entry into a contract having either failed ("*bristet*") or being false/incorrect ("*urigtige*").

[1349] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 32 (p. 10 of pdf).

[1350] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 32-33 (pp. 10-11 of pdf).

[1351] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 32 (p. 10 of pdf).

[1352] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 32 (p. 10 of pdf).

[1353] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 33-34 (pp. 11-12 of pdf).

1097. The invalidity or the partial setting aside of a contract/agreement requires, according to the doctrine of implied conditions, that:

(a) the assumption has been material to the promisor;

(b) the promisee has realised or should have realised this; and

(c) the assumption is relevant, i.e., that the risk of its failure must be borne by the other party.

1098. As a result, a contract may be set aside in whole or in part if it may be proved that a decisive assumption of a party has later failed or has turned out to be false when the other party was aware of this, and a total assessment of considerations leads to this result.[1354]

1099. As explained below, the Addendum No. 1 Caveats should be set aside because, when GM accepted them, it did so on the understanding that (i) they did not limit any existing statutory or contractual rights that GM had at that time, (ii) any application for an Exploitation Licence covering uranium that it made under Addendum No. 1 would be assessed by the Government in accordance with the MRA and Section 14 of the Exploration Licence because the ZTP would ultimately be lifted and (iii) GM would be granted an exploitation licence covering uranium if it could demonstrate, in its EIA, that radiation risks could be safely managed in accordance with international best practice, and these assumptions (of which the Greenlandic Government was aware) have failed or turned out to be false.

(d) The principle of fairness and reasonableness ("*billighed og rimelighed*")

1100. When referring to general fairness and reasonableness, a Danish court will base its decision on an overall estimate of the facts of the specific case in order to reach "*a reasonable result in practice*."[1355] The principle of fairness and reasonableness is especially relevant in disputes where an uneven balance of power exists between the parties.[1356]

1101. Section 36 of the Contracts Act is an example of the principle of "*fairness and reasonableness*" codified in a statutory provision. Section 36(1) states that an agreement or contract may be set aside in whole or in part if enforcement of it would

[1354] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 34-35 (pp. 12-13 of pdf).

[1355] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 37 (p. 15 of pdf).

[1356] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 37 (p. 15 of pdf).

be unreasonable or in conflict with the principles of good faith.[1357] In making an assessment under Section 36(1), the circumstances existing at contract formation, the content of the agreement, and subsequent factual circumstances shall be taken into account (see Section 36(2) of the Contracts Act). This means that an agreement, which originally was reasonable, may turn into an *unreasonable* agreement due to subsequent events. This is particularly relevant in circumstances of long-term contractual relationships.[1358]

1102. As explained below, the Greenlandic Government has proposed an unfair and unreasonable interpretation of the Addendum No. 1 Caveats, which is inconsistent with the principle of good faith (amongst other norms). Applying Section 36 of the Contracts Act, the Addendum No. 1 Caveats must therefore be severed from this instrument.

E.5 Relevant principles of administrative law ("*forvaltningsret*")

(a) Introduction to principles of administrative law

1103. As noted above, because the Exploration Licence has the status of a concession or administrative contract under Danish law, it imposes upon the Greenlandic Government parallel obligations under private/contract law and public/administrative law.

1104. As explained by Professor Mortensen:

> "*Both types of licenses are public and are issued by the Government of Greenland, and in this respect, they originate from an administrative act. Due to the inherent contractual nature, the licenses are not purely administrative acts. It follows that in respect of issuance of licences and handling of licence applications and licenced activities, the Government of Greenland is subject to the principle of legality, proportionality, legal basis (in Danish: 'lovhjemmel') as well as other principles of administrative law, and as thus acts - and shall act - in its capacity as administrative authority.*"[1359]

1105. Under Danish law, the conduct of an administrative authority is regulated (*inter alia*) by the fundamental principle of "*fair administration*" ("*saglighed*"). This applies broadly to all administrative authorities, whenever an authority interacts with private parties.

[1357] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 38 (p. 16 of pdf).

[1358] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 39 (p. 17 of pdf).

[1359] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 80.

1106. This doctrine is summarised by S. Højgaard Mørop, in Forvaltningsret, Almindelige Emner, as follows (emphasis supplied):

> "*Den i praksis udviklede grundsætning må imidlertid hovedsageligt forstås som et krav til forvaltningsafgørelsens materielle rigtighed eller lovlighed. Dvs., at spørgsmålet, om der foreligger magtfordrejning er ensbetydende med, om den pågældende forvaltningsafgørelse* […] *er båret af sagligt vedkommende hensyn eller præmisser.*" […]
>
> "*Det er også en del af grundsætningen om saglig forvaltning, at der er pligt til positivt at inddrage relevante saglige hensyn i afvejningen, dvs. grundsætningen har også et positivt indhold, og det er ikke tilstrækkeligt, at forvaltningen har undladt at tage usaglige hensyn.*"[1360]

In English (unofficial translations):

> "*However, the principle developed in practice must mainly be understood as a requirement for the material correctness or legality of the administrative decision. In other words, the question of whether there is a misuse of power is tantamount to whether the administrative decision in question* [...] *is based on factually relevant considerations or premises.*" [...]
>
> "*It is also part of the principle of objective administration that there is a duty to positively include relevant factual considerations in the balance, i.e. the principle also has a positive content, and it is not sufficient that the administration did not take inappropriate considerations into account.*"

1107. There are various other principles that protect the interests of private parties in their interactions with the administration, *inter alia*, by prohibiting the inclusion of unfair or illegal considerations in decision-making processes. These include:

(a) the principle of *legality* ("*legalitetsprincippet*") which dictates that decisions must have a basis in law, and that the administration's scope of action is restricted by the content of the statutory provisions which it is enforcing;

(b) the principle of *objectivity* ("*objektivitetsprincippet*") whereby any administrative authority must not base a decision, directly or indirectly, on subjective or illegitimate considerations. The doctrine also constitutes a duty to *positively ensure* that all relevant factual and legal circumstances are taken into consideration when a decision is made;

(c) the principle of *equality* ("*ligebehandlingsprincippet*") whereby similar cases of fact and law must be assessed and decided similarly leading to similar results.

[1360] S. Højgaard Mørup et al., *Forvaltningsret: Almindelige Emner* (Djøf Forlag, 7th ed., 2022), at **(CL-200)**, pp. 222-223 (pp. 5-6 of pdf).

(d) the principle of *proportionality* ("*proportionalitetsprincippet*") whereby no administrative decision potentially restricting a private party in whole or in part from an activity in question may go any further than necessary in view of the legitimate public interest; and

(e) the principle of *legitimate expectations* ("*berettigede forventninger*") which holds that the conduct of the administration may give rise to legally protected expectations on the part of private parties. This principle is discussed further below.[1361]

1108. These principles are fundamental principles of administrative law that must be adhered to by an administrative authority even when it acts (primarily) as a contractual party.

1109. In its processing of GM's exploitation licence application, the Greenlandic Government has violated all the principles of administrative law referred to above. GM reserves all of its rights in this respect.

(b) The concept of legitimate expectations

1110. The recognition and protection of legitimate expectations is a general (fundamental) principle of Danish law. Traces of, or references to it, are observable both in statutory rules and case law. For instance, the Danish Constitution contains rules built on and inspired by this principle (see, e.g., Section 22 on the enforceability of laws, Section 73 on expropriation, and Section 43 on taxation etc.).[1362] The rules on invalidity of contracts in the Contracts Act also draw on the "*expectation doctrine*" ("*forventningsprincip*"), as do the customary rules on invalidity of a contract due to breached/failed assumptions.[1363]

1111. The administrative law concept of legitimate expectations is not enshrined in statute but is widely recognised in Danish legal literature and is frequently invoked by Danish courts when assessing the validity/legality of the conduct of administrative authorities, including in relation to expropriation cases.[1364]

1112. Broadly speaking, the doctrine dictates that the conduct of the administration, be it by action or omission, may give rise to a *legitimate expectation* on the part of private parties. The administration has a duty when interacting with a private party, to assess the extent of legitimate expectations that either the administration's own conduct, or the prior conduct of other public authorities, has created on the part of the private party.

[1361] S. Højgaard Mørup et al., *Forvaltningsret: Almindelige Emner* (Djøf Forlag, 7th ed., 2022), at **(CL-200)**, pp. 223 *et seq*.

[1362] Danish Parliament Act No. 169 of 5 June 1953 on the Constitution of the Kingdom of Denmark, at **(CL-201)**.

[1363] M Bryde Andersen, *Grundlæggende aftaleret* (Gjellerup, 5th ed., 2021), p. 447-457, at **(CL-202)**.

[1364] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, p. 135 (p. 5 of pdf).

The attention that a relevant administrative authority has paid to a private party's legitimate expectations in its decision-making processes is subject to judicial scrutiny.[1365]

1113. The effect of the expectation doctrine is to restrict the ability of public authorities to reverse or alter the *status quo* unilaterally where a private party had a legitimate expectation that it could proceed in reliance on a specific legal position or relationship.[1366]

1114. The test for legitimate expectations has three limbs:

(a) Demonstrating the existence of an *expectation* prompted by an act (including written or oral representations) or omission by a public authority.[1367] The requirements for a relevant expectation to exist are, in principle, subjective in nature, i.e., the expectation pertains to the specific and individual perception of the private party in question. In practice, however, the assessment is more objective, i.e., an assessment of what expectation (or expectations) an act or omission of the relevant authority could *reasonably* induce.[1368] Some authors describe this requirement as an objective requirement that the party must have had the expectation in question on a legitimate basis (in good faith).[1369]

(b) Demonstrating that the expectation is *legitimate*, i.e., whether the private party objectively had reason to rely on the act or omission based on the facts.[1370] For instance, it would be legitimate to expect that a positive decision on an application will not be revoked if the reasons given for the revocation are reasons that also existed when the decision was taken.[1371]

[1365] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, pp. 1020-1024 (pp. 75-79 of pdf); S. Bønsing, Almindelig Forvaltningsret, (Jurist- og Økonomforbundets Forlag, 4th ed., 2018), pp. 50-56, at **(CL-204)**, pp. 5455 (pp. 9-10 of pdf); N. Fenger, *Administrative law* (Jurist- og Økonomforbundets Forlag, 1st ed., 2018), pp. 363-367, at **(CL-205)**, pp. 363-367 (pp. 3-7 of pdf); S. Højgaard Mørup et al., *Forvaltningsret: Almindelige Emner* (Djøf Forlag, 7th ed., 2022), at **(CL-200)**, p. 301 (p. 12 of pdf).

[1366] S. Højgaard Mørup et al., *Forvaltningsret: Almindelige Emner* (Djøf Forlag, 7th ed., 2022), at **(CL-200)**, p. 301-302 (pp. 12-13 pdf).

[1367] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, p. 136 (p. 6 of pdf).

[1368] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, p. 137 (p. 7 of pdf).

[1369] S. Højgaard Mørup et al., *Forvaltningsret: Almindelige Emner* (Djøf Forlag, 7th ed., 2022), at **(CL-200)**, p. 302 (p. 13 of pdf).

[1370] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, pp. 157-158 (pp. 27-28 of pdf).

[1371] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, pp 138-139 (pp.8-9 of pdf).

(c) Demonstrating that the party acted in *reliance* on the relevant expectation. This condition refers to the underlying interest protected by the expectation doctrine. The reliance is assessed from the moment a party becomes aware of the act or omission of the public authority. From that point in time, the party may begin to form a legitimate expectation. As such, the *passing of time* is a relevant factor in assessing reliance,[1372] as is the existence of a bilateral or contractual element (provided that the contract in question is valid).[1373]

1115. Having described the nature and content of the underlying legal framework, in the following sections, GM will turn to address the specific rights it enjoyed with respect to the Project. Subsequently, GM will demonstrate that it also had legitimate expectations due to the affirmative conduct and representations of the Greenlandic and Danish authorities throughout the period of the Exploration Licence.

F. CLAIM 1B – RIGHT TO AN EXPLOITATION LICENCE FOR RARE EARTHS, ZINC AND FLUORSPAR

F.1 Overview

1116. The Parties agree that there is no basis to carry out expropriation under Act No. 20, and that it would constitute expropriation if rights acquired by GM by 1 December 2021 were eliminated or restricted by way of application of Act No. 20 in this specific case.

1117. As set out above, GM's Exploration Licence is indeed a contract that exists within an administrative law framework, which confers upon GM a positive right to transition from exploration to exploitation with respect to all minerals covered by the licence or, at the very least, with uranium being handled as a residual, non-exploitable mineral. These positive rights were coupled with a corresponding legitimate expectation induced by years of supportive declarations and conduct of the relevant Greenlandic and Danish authorities.

1118. In Claim 1, GM seeks from the Tribunal an order that the Respondents acknowledge that GM had one or more of these rights and one or more of these legitimate expectations. The acknowledgement of these rights and/or these legitimate expectations should result in the automatic disapplication of Act No. 20.

[1372] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, p. 170 (p. 40 of pdf).

[1373] S. Højgaard Mørup, *Berettigede Forventninger i Forvaltningsretten* (Jurist- og Økonomforbundets Forlag, 1st ed., 2005), at **(CL-203)**, pp. 171-172 (pp. 41-42 of pdf).

F.2 GM's exclusive right to transition from exploration to exploitation

(a) The concept of "*exploitation*"

1119. As a preliminary point of terminology, it is necessary to clarify what the term "*exploitation*" means. The MRA regulates all "*collection*", "*mining*", and "*exploitation*" of minerals on Greenlandic territory. The approach taken in the MRA is that all such activities are prohibited unless otherwise stated in the Act, and, for every prohibited activity, a licence is required under the Act.

1120. The MRA does not define these activities. However, it can be inferred from the context and content of MRA, and from its explanatory notes, that any acts of collection and/or extraction of minerals which have a commercial aim are considered "*exploitation*".

1121. In Chapter 11 (titled "*Collection and extraction of minerals without a licence*"), the MRA allows for limited "*collection*" and "*mining*" of minerals without a licence being required. This pertains to "*non-commercial collection of loose minerals*" – see MRA Section 45(1).[1374] In circumstances where such acts of collection have a commercial aspect, the MRA switches terminology and refers to the activity as "*exploitation*".

1122. This terminology is consistent also with Sections 46 and 47 of the MRA which allow municipalities and companies to collect and mine certain minerals for construction projects. Sub-section 2 of both provisions refers to this *commercial* activity as "*exploitation*". Thus, the approach of the MRA is that any *commercial* extraction activity is considered "*exploitation*".

1123. Chapter 7 of the MRA, which is titled "*Special rules on exploration and exploitation of minerals*", aligns with this terminology. It is in Chapter 7 that Section 29 is located. The understanding of exploitation as commercial extraction is clear from the terms of MRA Section 29(2): to be entitled to an exploitation licence, the exploration licence holder must have discovered and delimited "*commercially exploitable deposits*", and it is only these deposits that the exploitation licence can cover.

1124. The explanatory notes to MRA Section 45(1) confirm this interpretation:

> "*The provision exempts only non-commercial collection of loose minerals from the requirement that mineral resource activities may be performed only pursuant to a license granted by the Greenlandic Government. Non-commercial collection of minerals is characterised in that quantities and value are limited and that the minerals are not sold and do not form part of production with a view to sale, but that the minerals are used solely for private consumption, for example collection of stones as a hobby. Conversely, commercial exploitation*

[1374] Greenland Parliament (Consolidation) Act no. 8 of 26 February 2020 on Mineral Resources and Mineral Resource Activities (the Mineral Resources Act), 26 February 2020, at **(RL-4)**; see English translation, Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, Section 45(1).

of minerals means collection or extraction of minerals with a view to sale or commercial production."[1375] (emphasis added)

1125. Finally, the above understanding of "exploitation" is confirmed by MRA Section 6, This provision concerns and defines the expression "*offshore facilities*". According to Section 6(i)(a), "*offshore facilities*" are platforms or other installations from which "*prospecting, exploration or exploitation (production)*" of hydrocarbons from the subsoil under the seafloor takes place. The explanatory notes to MRA Section 6 reiterate that exploitation is connected to *production*:

> "*Exploitation (production) includes extraction from wells and subsequent processing of hydrocarbons at the facilities.*"[1376]

1126. It is therefore clear from the MRA that the term "*exploitation*" is used to mean the *commercial* activity by which minerals covered by a licence are extracted and produced for sale.

1127. This interpretation was confirmed in the Department of Business, Trade, Foreign Affairs and Climate's submission on Act No. 20.[1377] As discussed in paragraphs 760 - 765 above, the Department submitted that, based on the Mineral Resources Act, the term "*exploitation*" must be interpretated as meaning "*commercial exploitation*", "*the total activities which are linked to a commercial exploitation*" and "*the right to mine and process ore, produce minerals as stipulated in the exploration permit and transport and sell these*".[1378] While the Department advised the Government clarify this in the Explanatory Notes, the Government declined to do so. Despite being demonstrably aware as to the correct meaning of the term "*exploitation*", the Government insisted on its wholly fallacious interpretation of the term as including "*all activities which are carried out by or on behalf of the licensee under the licence*".[1379]

1128. This reading of the MRA is also consistent with the ordinary meaning of the words. The word "*exploration*" is something that can lead to "*exploitation*", i.e., exploration is investigation with the objective of commercially utilising (exploiting) what is found through the exploration activities and covered by the exploration licence. This is

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[1375] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 81.

[1376] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 37.

[1377] Document titled "*Consultation response to proposals for: Inatsisart Agreement on prohibition of preliminary investigation, exploration and exploitation of uranium.*", J. Hesseldahl (Department for Business, Trade, Foreign Affairs and Climate), at **(C-627E)**

[1378] Document titled "*Consultation response to proposals for: Inatsisart Agreement on prohibition of preliminary investigation, exploration and exploitation of uranium.*", J. Hesseldahl (Department for Business, Trade, Foreign Affairs and Climate), at **(C-627E)**

[1379] "*Explanatory notes to the Bill*", at **(CL-6)**, section 2.2, p. 4; See also paragraphs 762 – 765 above.

confirmed by Professor Mortensen, who states in his expert report that "*exploitation is the actual commercialization of mineral resources discovered during exploration*."[1380]

1129. Hence, the transition from exploration to exploitation under MRA Section 29(2), clearly involves the licensee being given permission to use the minerals encompassed by its licence *commercially* as a main product or by-product.

1130. The distinction between those minerals that are destined for commercial use and other minerals that are extracted but not exploited is important for determining the scope of the exploitation licence required. Whereas a licence is needed for the commercially exploited minerals, the treatment of other extracted minerals that are unearthed in the process but not destined for commercial use does not require a separate licence under the MRA. This is explained by Professor Mortensen in his expert report:

> "*In practice, a practical (but not legal) distinction is also made between a 'main product' and a 'by-product' covered by the exploration or exploitation activities. There is no definition of this in the Mineral Resources Act or elsewhere in public record. However, in practice, the 'main product' is the mineral or minerals targeted by the exploration and exploitation activities for reasons of commercialization (sale). A 'by-product' is a mineral or minerals that may or have to be physically extracted from the underground together with the main product and which may also be commercialized, but which would ordinarily not make commercial sense to explore or exploit in isolation from the main product. A mineral or minerals not intended for commercialization would accordingly be residual minerals. Such mineral material is often referred to as tailings. See, e.g., the current Tanbreez exploitation licence No 2020-54, article 7 regarding an exploitation plan which, i.a., shall include a plan for environmental protection and waste handling including both 'mineral waste materials (tailings) and other waste'.*
>
> *Generation of tailings and handling (disposal) in connection with a mining project is not exploitation within the meaning of the Mineral Resources Act, and indeed the term 'exploitation' presupposes commercialization according to its ordinary meaning and the purpose of the Mineral Resources Act, which precisely is to commercialize mineral resources to the benefit of the Greenlandic society: 'The Government of Greenland's goal with the mineral resources sector is clear. It wants to promote prosperity and welfare by creating new income and employment opportunities in the area of mineral resource activities'.*"[1381]

1131. Thus, under the MRA, there is no legal requirement for a separate licence or other kind of governmental approval for the handling of residual, non-exploited minerals in connection with licenced exploitation activities. To the extent the MRA leaves any doubt in this regard, this is proven by the terms of exploitation licences that the

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[1380] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 67.

[1381] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 108-109.

Greenlandic Government has granted in recent years, which – without any additional licence or permission – allow the licensee to commercially exploit certain minerals and treat other minerals it extracts in the process as waste/tailings, even (in some cases) where some of those waste minerals are expressly excluded from the exploitation licence. These examples are discussed in detail below.

1132. GM pauses here to note that recent statements by the Deputy Minister for Mineral Resources, Mr Hammeken-Holm, suggest that the Government in fact has some doubts as to the meaning of the term "*exploitation*" that it has relied upon in this dispute. The Deputy Minister recently told the press: "*Exploitation and extraction are words in the same category, but it is not 100 percent clear in the law. We clearly believe that exploitation is as soon as you dig something out of the ground*."[1382] There are three points to make here. First, the Deputy Minister's remarks show that the Government is in fact not certain of its legal position on this key issue. Second, it appears the Greenlandic Government is seeking to take advantage of this (supposed) ambiguity as to the meaning of "*exploitation*" to positively assert that GM did not have *any* rights (i.e., because the Addendum No. 1 Caveats apply even where uranium is treated as a residual impurity for tailings). Third, the Government's interpretation is simply wrong, as Professor Mortensen confirms.

(b) GM's right of transition into exploitation

1133. As mentioned above, GM's right to transition from exploration to exploitation is enshrined in two instruments: the MRA and the Exploration Licence. The two instruments are quite different in legal character – one a statute and the other an administrative contract or concession – but largely the same in their relevant content.

1134. Starting with the MRA, the provision that regulates the granting of licences for exploration and exploitation of minerals in Greenland is Section 29. As this provision is central to the current dispute, it is appropriate to set it out in full, so that its contents and contours are fully understood:

> "*(1) As regards minerals, exploration licences under section 16 above are granted for a period of up to ten years or, if special circumstances exist, for a period of up to 16 years. A licence may be extended with a view to exploration by up to three years at a time. An extension for more than ten years may be granted on modified terms.*
>
> *(2) A licensee who, under a licence under subsection (1) above, has discovered and delimited deposits that the licensee intends to exploit and who has otherwise met the terms of the licence is entitled to be granted an exploitation licence. The licence may be granted to a company designated by the licensee; see section 16(3) above. The licence is granted for those parts of the area that contain deposits which the*

[1382] M. Lindstrøm, *Kuannersuit: The dispute continues – final rejection ready in a few weeks,* Sermitsiaq, 28 March 2023, at **(C-604E)**.

licensee intends to exploit. The licence is granted for a period of 30 years, unless a shorter period has been laid down as a condition for granting the licence.

(3) The Government of Greenland may extend the period for exploitation stated in subsection (2) above; but see section 16(5) above.

(4) In an area covered by a licence under section 16 for exploitation of minerals, no parties other than the licensee may perform activities under a licence for prospecting, exploration or exploitation of minerals."[1383]

1135. GM notes, for completeness, that the version of Section 29 extracted above is the *current* version. The previous version of Section 29(2) contained a further criterion that the deposit also be "*commercially exploitable*", corresponding to the criterion in Section 14 of the Exploration Licence. This "*commercially exploitable*" criterion was removed from MRA Section 29(2) as one of the amendments that were made to the MRA in 2019. In any event, there is no dispute that GM demonstrated "*commercially exploitable*" deposits at Kvanefjeld (this was confirmed by the Greenlandic Government in writing on 22 April 2020).[1384]

1136. Turning to the Exploration Licence, the right to transition from exploration to exploitation is addressed in Section 14 of the Standard Terms. Again, as this provision is central to the present dispute, it is necessary to set its text out in full:

"***§ 14. The transition from exploration to exploitation***

1401. *If the licensee has found and delineated commercially viable deposits which the licensee intends to exploit and provided the terms of this licence have been complied with, the licensee is entitled to be granted an exploitation licence under articles 7 and 15 subsection 2 of the Mineral Resources Act (Section 16(1) and 29(2) of the current Mineral Resources Act). The exploitation licence will be granted as indicated in sections 1402 1408.*

1402. *If the licensee finds that a deposit or several deposits are commercially viable and intends to effect exploitation thereof, and after delineation of these deposits the licensee may submit to BMP a request for the granting of an exploitation licence for the deposit or deposits in question. The request shall be accompanied by*

a. A declaration that the deposit or deposits are commercially viable and that the licen-see intends to exploit these deposits.

[1383] Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, Section 29.

[1384] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

b. A bankable feasibility study of the deposits in question on which the declaration is based. The feasibility study shall contain a description and an evaluation of the deposits with respect to geology and a specification of the assumptions as regards exploitation technology, economics, environmental matters and other matters which form the basis for the licensee's declaration.

c. The licensee's proposal for delineation of the exploitation licence area based on the deposit or deposits in question, cf. section 1406.a-g.

1403. The exploitation licence will be granted to either a company or a joint venture of companies, appointed by the licensee of the exploration licence, fulfilling the conditions in article 7 subsection 3 of the Mineral Resources Act, cf. also article 27 subsection 1 of the Mineral Resources Act (sections 16(3) and section 88(1) of the current Mineral Resources Act).

1404. The exploitation licence will cover the same mineral resources as covered by the exploration licence.

1405. The exploitation licence will be granted for a period of 30 years from the signing by the Government of Greenland.

1406. The licence area for the exploitation licence will be delineated by BMP by corner coordinates defined by degrees and undivided minutes connected by longitude and latitude according to the following principles:

a. The licence area will comprise the area in which according to the available results from drilling commercially viable deposits have been demonstrated and delineated.

b. The delineation of the area will be based on the vertical projection of the outer limits of the deposits to the surface extended by a surplus area whereby the distance from these projected outer limits to the borderline of the licence area as determined by BMP is at least 1 km, however adjusted to the delineation by degrees and minutes.

c. The basis of the delineation under point b will be the deposits in question as their extent, in the judgment of BMP, has been documented by the licensee in the material under section 1402.b and taking into consideration the licensee's proposal under section 1402.c.

d. The licence area may wholly or partly be delineated by the coast line.

e. The licence area may consist of several subareas, each delineated as indicated above.

f. Areas lying outside of the exploration licence area cannot be included in the exploitation licence area, unless a licence for such areas is granted in accordance with article 7 of the Mineral Resources Act (section 16 of the current Mineral Resources Act).

g. The licence area cannot include areas which are covered by exclusive licences to other parties regarding the same mineral resources as the exploitation licence.

h. The exploitation licence area will be excluded from the exploration licence area with effect from the granting of the exploitation licence.

1407. The licensee is entitled to establish buildings, production plants, installations, tailings and waste disposal sites, etc. within and outside of the licence area provided they are approved in accordance with articles 10 and 25 subsection 1 of the Mineral Resources Act (sections 19 and 86(1) of the current Mineral Resources Act). However, establishment of such buildings, production plants, installations, tailings and waste disposal sites, etc. outside of the licence area will, in addition to the approval under the Mineral Resources Act, require a permit under the Act on Land Use in Greenland.

1408. The economic terms in an exploitation licence will be as follows, unless otherwise stipulated in the exploration licence, cf. article 16 of the Mineral Resources Act (article 30 of the current Mineral Resources Act):

a. Taxation according to Greenland legislation in force at any time and, provided the licensee is domiciled in Denmark, also according to Danish legislation.

b. Payment of a fee of DKK 100,000 to BMP at the granting of an exploitation licence, cf. article 7 subsection 6 of the Mineral Resources Act (article 16(7) of the current Mineral Resources Act).

c. Reimbursement of BMP's expenses regarding regulation in accordance with article 25 subsection 5 of the Mineral Resources Act (article 86(5) of the current Mineral Resources Act).

The other terms of an exploitation licence will be those standard terms which are being used for new exploitation licences at the point in time when the exploitation licence is granted.

1409. In connection with the granting of an exploitation licence, the licensee and BMP shall discuss how the parties can arrange in the most expedient way the development activities up to the commencement of production. The discussion shall inter alia form the basis for the preparation of a

joint timetable for the development activities including inter alia the following activities:

a. The licensee's preparation and submission to BMP of the development plan etc. including a closure plan as indicated in section 1410. The material shall to the extent possible be prepared and submitted, so that the overall plan for the exploitation is submitted first.

b. The licensee's preparation, in cooperation with BMP, of an Environmental Impact Assessment ('EIA') regarding the specific exploitation. The EIA shall be submitted as part of the material indicated in section 1409.a. BMP may demand that the EIA shall be changed or expanded if it, in the opinion of BMP, is not sufficient.

c. BMP's processing of the licensee's development plan etc. including the closure plan. This processing is to the extent possible carried out so that, based on the material under section 1409.a-b, decisions are made first as regards the overall plan for the exploitation. The timetable shall specify the dates at which the parties, in cooperation, will aim in arranging their respective tasks. The licensee and BMP shall use their best endeavors to adhere to the timetable.

1410. Following the granting of an exploitation licence, the licensee shall to BMP submit a development plan etc. including a closure plan in accordance with articles 10 and 19 of the Mineral Resources Act. This material shall contain all necessary plans for the activities, including development, production, tailings and waste disposal, transportation and closure activities. The closure plan shall include cost estimates for the closure activities.

1411. At the granting of an exploitation licence and based on the discussions under section 1409 BMP will stipulate a time-limit for the licensee's submission of a development plan etc., cf. section 1410. The time-limit will be stipulated in such a way that the licensee has the necessary time for the preparation of the material.

1412. Prior to commencement of development and production the plans indicated in section 1410 shall have been approved in accordance with articles 10 and 19 of the Mineral Resources Act (articles 19 and 43(1) of the current Mineral Resources Act).

1413. The licensee shall initiate the exploitation at the latest at the date stipulated in the approval under section 1412. The time limit will be

stipulated in such a way that the licensee has the necessary time to carry out the approved development plan etc."[1385] (emphasis added)

1137. The combination of MRA Section 29(2) and Section 14 of the Exploration Licence is the source of GM's fundamental right, under statute and contract, as of 1 December 2021 to receive an exploitation licence for Kvanefjeld with respect to the same mineral resources covered by the Exploration Licence.

1138. There is no ambiguity or discretion in MRA Section 29(2) or Section 1401 of the Standard Terms. GM's entitlement to an exploitation licence became *unconditional* from the moment GM filed the requisite documentation demonstrating commercially viable mineral deposits at Kvanefjeld and indicating GM's intent to exploit them. As detailed in the Detailed Statement of Facts, GM submitted all these documents long before 1 December 2021.

1139. There is no dispute that GM performed all its obligations as a licensee under the Exploration Licence. Nor is there any dispute as to whether GM satisfied the conditions of MRA Section 29(2) and Section 1401. As noted above, this was confirmed by the Greenlandic Ministry of Mineral Resources in its email to GM dated 22 April 2020:

> "*Under section 29(2) of the Mineral Resources Act, one of the main requirements for the granting of a mineral exploitation licence to GM is that GM has documented (substantiated) a deposit of exploitable minerals in the licence area and that this has been approved by the Greenlandic Government.*
>
> *The ministry has now approved that GM has documented mineral resources comprising 16 oxides and one metal in the licence area of GM's exclusive licence No 2010/02 for exploration for minerals.*"[1386]

1140. It bears noting that, of the "*16 oxides*" referred to in this email confirmation, one is uranium (identified as "*U308*" in the table to which the Ministry's email refers).

1141. It is also notable that, in this email, the Ministry concluded as follows:

> "*Some of the main remaining matters are currently the Environmental Impact Assessment (EIA) report, which is not yet ready for release for official public consultation and the Social Impact Assessment (SIA) report, which awaits GM's submission of a word version of the Greenlandic edition, which is needed for ensuring that the Greenlandic edition linguistically is of sufficient quality for release for public consultation on the Greenlandic Government's website. The EIA report and the SIA report must have been through the public consultation process and have been approved by the Greenlandic Government before an*

[1385] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 14.

[1386] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

exploitation licence may be granted by the Greenlandic Government to GM."[1387] (emphasis added)

1142. This communication from the Ministry makes it clear that, from the perspective of the Greenlandic Government, GM had, as at 22 April 2022, satisfied the conditions of MRA Section 29(2) (and Section 1401 of the Exploration Licence) and what remained was the completion of the EIA and SIA process so that the exploitation licence terms (reflecting the outcomes of those studies) could be stipulated by the Government in the exploitation licence, in accordance with MRA Section 16(1). The Ministry's email expressly refers to MRA Section 16.[1388]

1143. Accordingly, at the date of this email from the Ministry of Mineral Resources (22 April 2020), GM had acquired an unconditional, automatic right to be granted an exploitation licence in respect of the 16 oxides and one metal referred to in the email. The only discretion left for the Greenlandic Government from that point in time was in the MRA Section 16 process to determine *how* the exploitation activities should be carried out.

1144. In much the same way as MRA Section 29(2) only lays down the fundamental entitlement to transition to an exploitation licence and relies upon the Standard Terms (in Section 1401) to elaborate on the conditions of this entitlement, MRA Section 16 is general in nature and relies upon the Standard Terms to posit more detailed rules on precisely *how* the transition procedure will take place. These more detailed rules for the transition procedure are set out in Sections 14 of the Standard Terms.

1145. It is significant that, amongst these provisions that concern the transition procedure, the Greenlandic Government is placed under an obligation *to assist and support* GM in the transition process. This obligation is in Section 1409, which states that "[i]*n connection with the granting of an exploitation licence, the licensee and BMP shall discuss how the parties can arrange in the most expedient way the development activities up to the commencement of production*."[1389] Again, this is the question of *how* exploitation is to take place, not *if* exploitation will take place. It is of course significant to the interpretation of Section 1401 that, not only was the Government contractually obliged to grant GM an exploitation licence, but it was also contractually obliged to ensure that exploitation activities commence as soon as possible. As demonstrated in the Detailed Statement of Facts above, the Greenlandic Government breached this obligation.

[1387] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

[1388] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

[1389] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1409.

1146. Finally, it is important to note that the licensing guarantee in MRA Section 29(2) and Section 1401 of the Standard Terms is also reflected in the Application Procedures.[1390] The Application Procedures (published as part of the same document that contains the Standard Terms) reflect a licensing scheme whereby the decision to grant an exploration licence in the first place is discretionary, whereas there is no discretion as to whether to grant an exploitation licence. Specifically:

(a) The Application Procedures provide that applications for exploration licences are presented to the BMP, and then go to the Greenlandic/Danish Joint Committee on Mineral Resources (Section 4.1), which provides a recommendation to the Danish Minister for Environment and Energy for final decision on the application (Section 4.2). According to the Application Procedures, the authorities have discretion as to whether to grant an exploration licence (Section 4.7), and it is open for the authorities to exclude certain areas from exploration licence applications (Section 5.2).

(b) After an exploration licence is granted, the "*transition*" from exploration licence to exploitation licence is automatic. Section 7.1 provides that, if a licence-holder has delineated a commercial deposit and complied with their licence, an exploitation licence "*will be granted*" (emphasis added).

1147. Based on the above, GM had clearly acquired an unconditional right to an exploitation licence well before Act No. 20 came into effect. The contemporaneous documents show that the Greenlandic Government not only confirmed this, but also subjectively understood that the only remaining question was of *how* the exploitation activities would be conducted. Thus, there is plainly no merit to the Respondents' assertions that the issuance of an exploitation licence is a purely administrative decision at the Greenlandic Government's complete discretion.

F.3 GM's right to an Exploitation Licence for Non-Radioactive Elements

1148. In the following, GM will demonstrate (i) its right to exploit non-radioactive minerals (Section (a)), (ii) its right to process/handle residual (non-exploited) minerals (Section (b)), (iii) that no prohibition against processing/handling *radioactive* residual (non-exploited) minerals exists (Section (c)), and (iv) that all other existing licences imply handling of residual minerals, whether radioactive or not (Section (d)).

[1390] Document titled "*Application Procedures and Standard Terms for Mineral Exploration and Prospecting in Greenland*", by Government of Greenland and BMP, 25 June 2013, at **(C-238E)**. The current version of the Application Procedures on the Naalakkersuisut website are from 1998 and were "*approved by the Government of Greenland and the Danish Minister for Environment and Energy*".

(a) The right to exploit non-radioactive minerals

1149. Section 101 of the original Exploration Licence of 2005 stated: "[t]*he licence covers the mineral resources as indicated in Section 101 of the Standard Terms.*"[1391]

1150. Section 101 of the Standard Terms provides as follows:

> "***§ 1. Mineral resources covered by the licence***
>
> *101. The licence covers exploration for all mineral resources except hydrocarbons, radioactive elements and hydro-power, unless otherwise indicated in the licence, cf. chapter 3 of the Mineral Resources Act* [part 5 of the MRA]"[1392]

1151. As noted above, GM's Exploration Licence incorporated the Standard Terms from the beginning. Accordingly, from the beginning, GM's Exploration Licence included rare earths and zinc. Subsequent extensions and amendments of the Exploration Licence included similar language as stated above.

1152. It follows that, from the date the Exploration Licence was first granted, GM always had the right to explore rare earths, and zinc and fluorspar as well as any other mineral resource except hydrocarbons and hydropower (with respect to radioactive elements, see Section G below).

1153. As demonstrated in Section F.2 above, Section 1401 of the Exploration Licence and MRA Section 29(2) provide an automatic – contractual and statutory – right for GM to obtain an exploitation licence for the minerals covered by the Exploration Licence, including in particular rare earths, zinc and fluorspar. This right became unconditional from the moment that GM fulfilled the conditions under Section 1401 of the Standard Terms and MRA, which it did by 22 April 2020 at the latest. From that point in time, there was no legal basis for the Government of Greenland to deny GM an exploitation licence in this respect, and any denial would constitute a breach of GM's rights under both contract and statute.

(b) The right to process/handle residual (non-exploited) minerals

1154. The MRA does not mention residual minerals or parts of minerals that are not to be exploited, but which will nevertheless have to be handled (processed in some way) in connection with the exploitation of targeted minerals. The nature of the mining process is that it inevitably separates residual minerals that are not exploited (sold); in large-

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[1391] "*Exploration Licence for Rimbal Pty Ltd. for an Area at Nakkaalaaq in West Greenland*" dated May 2005 and executed 6 July 2005, at **(C-3)**.

[1392] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 101.

scale mining, these residual minerals are typically either stored as "tailings" or stockpiled for later return to the location from where they were extracted.

1155. This is confirmed by Professor Mortensen in his expert report:

> "*All mining involves processing/handling of minerals that are commercialized and minerals and other geological material that are not commercialized for legal or other reasons. In practice, there are accordingly three categories of minerals and geological material: Firstly, there are the minerals covered by the exploration and exploitation licence and which are de facto exploited (sold) by the mining company. Secondly, there are the minerals covered by the exploration and exploitation licence, but which the mining company (for commercial reasons) does not wish to exploit (sell) but which are left as residual minerals (including impurities) as part of the processing of the exploited minerals. Thirdly, there are the minerals and other geological material which is not covered by the exploration and exploitation licence, and which the mining company therefore cannot exploit (sell) and which therefore will also be left as residual minerals or other residual geological material (including impurities) as part of the processing of the exploited minerals.*"[1393]

1156. The MRA naturally assumes that, in practice, exploitation activities will involve the separation of residual minerals that may or may not be exploited. Indeed, in all existing exploration and exploitation licences in Greenland, this is simply assumed or – in the case of exploitation licences – even directly addressed in the licence or related agreements (such as the IBA for the project).

1157. Any mining project will inevitably have an impact on the natural environment, as the mining process involves the removal of minerals from the location in which they formed or were placed by the forces of nature. Some mining projects may also have a significant impact on the physical environment and/or society and therefore require that measures be adopted to mitigate such impacts. In the latter contexts, the MRA contains rules to address these impacts, such as those in Section 53 concerning pollution mitigation measures and the rules on EIAs and SIAs under Parts 15 and 16. Consistent with the MRA being a framework statute, the assumption is that the details of these environmental protection measures will be set out in the terms of the relevant approvals that the Government grants for the project.

1158. This was the approach in the legislation that preceded the MRA. In the preparatory works of the Danish Mineral Resources Act 1991, it was explained that the handling of residual (non-exploited) minerals, such as in tailings, would be part of a continuous monitoring process performed by the Greenlandic authorities, and that the terms upon

[1393] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 107.

which the authorities would conduct such monitoring would be laid down in the governmental approvals issued for the project under the Act:

> "*Endvidere udføres der i råstofforvaltningens regi i konkrete tilfælde en løbende monitering af forhold af miljømæssig betydning under råstofaktiviteternes udførelse og efter disses afslutning. Sådan monitering fastsættes i råstofforvaltningens godkendelser under hensyntagen til karakteren og omfanget af de råstofaktiviteter, som godkendes. Udgifterne til sådan monitering refunderes af den pågældende rettighedshaver.*
>
> *Ved monitering forstås eksempelvis regelmæssige undersøgelser af råstofaktiviteters indvirkning på dyrebestande eller påvirkning af forskellige dele af miljøet gennem frigivelse af tungmetaller eller andre miljøfarlige stoffer, f.eks. fra tailingsdeponier og andre deponier i forbindelse med minevirksomhed. Myndighedsbehandlingen i råstofforvaltningens regi er baseret dels på bestemmelserne i lov om mineralske råstoffer m.v. i Grønland, dels på bestemmelser i følgende andre love:*
>
> - *lov for Grønland om arealanvendelse, byudvikling og bebyggelse;*
> - *lov for Grønland om miljøforhold m.v.;*
> - *lov for Grønland om el, vand og varme, brandvæsen, havne, veje, telekommunikation m.v.;*
> - *lov for Grønland om forsyning, trafik, postbesørgelse m.v.*"[1394]

In English (unofficial translation):

> "*In addition, under the auspices of the Mineral Resources Administration, ongoing monitoring of conditions of environmental importance is carried out under the auspices of the Raw Materials Administration during and after their completion. Such monitoring shall be determined in the authorisations of the Mineral Resources Management taking into account the nature and extent of the raw materials activities authorised. The costs of such monitoring shall be reimbursed by the rightholder concerned. Monitoring means, for example, regular surveys of the impact of raw material activities on animal populations or the impact on different parts of the environment through the release of heavy metals or other environmentally hazardous substances, e.g. from tailings landfills and other landfills in connection with mining activities. The regulatory treatment under the auspices of the Mineral Resources Administration is based partly on the provisions of the Act on Mineral Raw Materials, etc. in Greenland, and partly on provisions in the following other acts:*
>
> - *the Greenland Act on Land Use, Urban Development and Settlement;*
> - *Act for Greenland on Environmental Conditions, etc.;*

[1394] Froslag, *Lovforslag som fremsat med bemærkninger*, No. 335, 2 May 1991, at **(CL-105)**, p. 9.

- *Act for Greenland on electricity, water and heating, fire brigades, ports, roads, telecommunications, etc.;*

- *Act for Greenland on supply, traffic, postal services, etc.*"

1159. In line with the MRA, the Exploration Licence also assumes that handling of residual minerals (as tailings or otherwise) would – or at least could – occur in connection with exploitation activities. Under Section 1407 of the Standard Terms (extracted above), licensees are "*entitled to establish* […] *waste disposal sites*". Further, Section 1410 of the Standard Terms (extracted above) provides that, following the grant of an exploitation licence, the licensee will submit a development plan including the necessary plans for "*tailings and waste disposal*".

1160. As described in Section C.33 above, the Greenlandic authorities insisted that GM update its ToR to include the refining of mineral concentrate in Greenland (which would have meant the production of uranium oxide in Greenland). GM's EIA was based on the approved and agreed ToR. GM's EIA was the subject of extensive consultation with the Greenlandic and Danish authorities, and was amended several times upon request of the authorities, including to accommodate any concerns which the authorities had in relation to handling of residual minerals, including uranium.

1161. In late 2020, the Greenlandic and Danish authorities and the Greenlandic Government accepted GM's EIA and underlying radiological studies as being factually accurate and therefore suitable for public consultation. GM's approved EIA[1395] contained substantial information concerning residual minerals, such as waste rock, and general waste management. Reference is made to Sections 2.5.5 (Assessment of Impacts - Waste management), 3.5 (Project Description - Waste rock stockpile), 3.10.4 (Project Description - Domestic and industrial waste handling), 10.3.7 (Water Environment - Waste rock runoff), and Section 11 (Waste Management). According to GM's approved EIA:

(a) Waste rock will be mined together with ore during the operations phase. This waste rock will be stockpiled near the mine in waste rock stockpiles, which will fill an area equivalent to 1.37 km^2 during the mine's 37 year-expected lifetime.[1396]

(b) Two streams of tailings (waste produced during processing activities) will be generated: a flotation residue and a chemical residue. Both will be stored in tailings storage facilities. The tailings in the tailing storage facilities will be covered with a water cap throughout operations. The project design also maintains a water cap over the tailings after operations have ceased. The tailings

[1395] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**.

[1396] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 25 and 46.

storage facilities will fill an area equivalent to 2.52 km^2 during the mine's 37 years' expected.[1397]

(c) Hazardous waste will be handled according to the Kommune Kujalleq regulations regulating management of hazardous waste. Hazardous waste in the municipality will be shipped to Denmark and handled in compliance with the EU initiated legal framework.[1398]

(d) General waste mitigation measures will include (i) development of waste handling procedures and a waste management manual, (ii) installation of a sewage treatment plant, and (iii) remediation of any contamination arising from Project activities.[1399]

(e) With proper procedures in place (as described in the EIA), the impact of residual minerals and waste production to the environment was assessed to be low for the duration of the mining project.[1400]

1162. As set out in the Detailed Statement of Facts above, public consultation on GM's EIA took place in 2021. The next step was for the Greenlandic authorities to determine the environmental conditions applicable to GM's project, based upon the accepted EIA, and to stipulate these conditions in the exploitation licence itself (in accordance with MRA Section 16). These conditions naturally would have included conditions reflecting the EIA components regarding the handling of residual (non-exploited) minerals, to ensure this material was managed properly.

1163. Thus, pursuant to the MRA and the Standard Terms, the handling of residual minerals is an issue of *how* exploitation is to take place, not *if* exploitation is to take place at all.

1164. As of 1 December 2021, there were no rules in the MRA or the Exploration Licence (or otherwise) that required a *further* licence or governmental approval to handle residual (non-exploited) minerals in connection with exploitation. Rather, under the MRA and the Exploration Licence, it was intended that the regime for the processing/handling of residual minerals would be covered by any exploitation licence issued under the MRA.

1165. Indeed, if it was the case that a separate licence or approval were required for handling (non-exploited) residual minerals in connection with the exploitation of targeted minerals, and such licence or approval could be denied by the Greenlandic Government,

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[1397] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, pp. 24-25.

[1398] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 238.

[1399] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 239.

[1400] Report titled "*Environmental Impact Assessment*", produced by Greenland Minerals A/S, 13 December 2020, at **(C-213)**, p. 239.

the automatic right of an exploration licence holder to be granted an exploitation licence under MRA Section 29(2) and Section 14 of the Standard Terms would no longer be automatic. This would contradict the entire purpose of the MRA and therefore cannot be accepted as law. Notably, such a legal position has not even been suggested by the Respondents in this case. Yet, still, the Respondents deny that GM had any right to an exploitation licence, *even if* GM only sought to exploit non-radioactive elements (rare earths, zinc and fluorspar) and treat all radioactive elements (uranium and thorium) as residual minerals to be directed safely to tailings and not sold.

(c) No prohibition against processing/handling *radioactive* residual (non-exploited) minerals

1166. The MRA does not differentiate between non-radioactive minerals (such as rare earth elements and zinc) and minerals containing radioactive elements (such as uranium). In fact, radioactive elements are not mentioned at all in those parts of the MRA that are relevant to the present case (Parts 5 and 7 of the MRA). Indeed, radioactive elements are only mentioned *three times* in the entire MRA, and in each case in relation to activities not relevant to the present case (specifically, small-scale mining activities[1401] and activities by natural persons).[1402]

1167. In those parts of the MRA that concern ordinary commercial mining activities (Parts 5 and 7), there are no prohibitions or limitations on the exploration or exploitation of radioactive elements. It therefore follows from a plain reading of MRA Parts 5 and 7 (and the MRA in general) that no such prohibitions and limitations apply to GM's mining project.

1168. This is confirmed by Professor Mortensen in his expert report:

> "*The Mineral Resources Act does not distinguish between radioactive and non-radioactive minerals (elements). It follows that the same rules apply to both types of minerals (elements), and that no independent licence or governmental approval is required for any radioactive material, whether it is a main product or a by-product under an exploration licence or exploitation licence.*

[1401] In relation to so-called commercial "*small scale*" exploration and exploitation of minerals (Part 8 of the Mineral Resources Act), Section 33(1) of the Mineral Resources Act provides (emphasis supplied): "*The Government of Greenland may grant exclusive or non-exclusive licences for small-scale exploration or exploitation of minerals on specific terms. A small-scale licence will not be granted for the exploration for or exploitation of radioactive minerals*."; Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc., at **(CL-1)**, Section 33(1).

[1402] With respect to non-commercial collection, extraction and export of minerals without a licence by a natural person residing in Greenland (Part 11 of the Mineral Resources Act), Section 45(c)(1) of the Mineral Resources Act provide as follows: "*The right to collect, extract and export minerals from Greenland under sections 45 and 45a does not extend to radioactive minerals*." In relation to (non-commercial) potential export of minerals by a non-resident natural person, Section 45(e)(4) provides the following: "*The right to export minerals from Greenland under subsections [45] (2) and (3) does not extend to radioactive minerals*."; Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium, prospecting, exploration and exploitation, etc., at **(CL-1)**, Sections 45(c)(1), 45(e)(4).

While exploration and exploitation of radioactive elements are subject to the same licencing system governing non-radioactive minerals (as described above), special conditions can be inserted into an exploration licence or exploitation licence regarding radioactive elements, including any specific measures to be taken to minimize environmental impact.

It thus also follows that generation and handling of radioactive tailings are subject to the same rules as non-radioactive tailings, meaning that specific provisions can be included in an approved exploitation plan, e.g., to minimize environmental impact. Accordingly, no separate licence is required in relation to radioactive waste, and so radioactive waste products and handling thereof is accepted and allowed under the exploration or exploitation licence in question, including in situation where the main product and/or by-product covered by an exploration licence or exploitation licence are non-radioactive minerals."[1403]

1169. Non-radioactive and radioactive minerals are equally "*minerals*" within the meaning of the MRA. The absence of any distinction reflects a deliberate choice of the legislator. This has its origins in the first mining law for Greenland in 1965, in the drafting of which the idea of a specific regime for radioactive minerals was considered and rejected by the Mining Law Commission.[1404] Instead, the Mining Law Commission considered that if there was in the future a need to make a reservation with respect to radioactive minerals, it could be done by the Government within the terms of the relevant licence.[1405] The approach recommended by the Mining Law Commission in 1963 continues under the MRA today. Whether or not a specific exploration licence will cover both kinds of minerals – radioactive and non-radioactive – is a matter for the Greenlandic Government to decide when it decides the scope of the exploration licence in question.

1170. Since the MRA draws no relevant distinction between non-radioactive and radioactive minerals in this respect, the handling of both types of minerals is allowed and covered by the licence for the targeted minerals.

1171. It follows from the above that, whether GM intends to exploit radioactive minerals or simply extract them and treat them as residual impurities for tailings, GM's Exploration Licence (including the Standard Terms) cannot be understood to include any (implicit) condition or requirement for a separate licence or governmental approval under the MRA. The terms of the MRA and its legislative history confirm that non-commercial extraction and processing of uranium was accepted and allowed under the Exploration Licence from the beginning, and, by extension, is also accepted and allowed under an exploitation licence to be granted.

[1403] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 112-114.

[1404] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 19.

[1405] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 19.

1172. Even if there was any reasonable doubt about whether handling of radioactive minerals (such as those containing uranium) as residual impurities would be accepted and allowed already under the Exploration Licence and thus – by extension – also under an exploitation licence, GM was granted formal exploration rights for radioactive elements under Addendum No. 1. Nothing in the terms of Addendum No. 1 purports to introduce any restriction with respect to the handling of radioactive elements as residual impurities.

1173. To summarise, as of 1 December 2021, there was no legal requirement for GM to have a separate licence or other governmental approval for the non-exploitative handling of radioactive elements in connection with exploration activities at Kvanefjeld. GM had the right to do this – to treat uranium as a residual impurity for tailings – as part of the wider set of rights that the Government included within the scope of GM's Exploration Licence at the beginning.

(d) Examples of handling of non-radioactive and radioactive residual minerals in practice

1174. There is nothing novel about the interpretation set out above. Over the years, the Greenlandic Government has consistently followed the practice of allowing the handling of residual (non-exploited) minerals – whether radioactive or not – as part of the already licenced exploitation activities. Indeed, by 1 December 2021, this very practice had been applied to at least three large-scale mining projects other than Kvanefjeld:

1175. The first example is the exploitation licence granted to Tanbreez Mining Greenland A/S.

1176. On 13 August 2020, Tanbreez was granted an exploitation licence for a period of 30 years for (*inter alia*) exploitation of rare earth elements.[1406] Sections 5.01-5.03 of the Tanbreez licence stated as follows in relation to the scope of licenced exploitation activities (emphasis supplied):

> "*5.01 This Licence comprises exploitation of the following elements: zirconium (Zr), hafnium (Hf), tantalum (Ta), niobium (Nb), lanthanum (La), cerium (Ce), praseodymium (Pr), neodymium (Nd), samarium (Sm), europium (Eu), gadolinium (Gd), terbium (Tb), dysprosium (Dy), holmium (Ho), erbium (Er), thulium (Tm), ytterbium (Yb) lutetium (Lu) and yttrium (Y). In this Licence and its appendices, the terms 'Minerals' and 'minerals' also means and includes these elements unless otherwise stated or apparent from the context.*

[1406] Document titled "*Exclusive Licence No. 2020-54 for Exploitation of Certain Minerals in Areas at Killavaat Alannguat in South Greenland*", by the Government of Greenland, Ministry of Mineral Resources, August 2020, at **(C-672)**.

5.02 This Licence does not comprise exploitation of any mineral or element other than the elements stated in section 5.01.

5.03 This Licence does not comprise exploitation of feldspar and arfvedsonite, when this Licence is granted by the Greenlandic Government to the Licensee."

1177. Thus, in the Tanbreez licence, the minerals feldspar and arfvedsonite were explicitly excluded from the scope of the licence. However, according to the IBA for the Tanbreez exploitation project (between Tanbreez, the Municipality of Kujalleq and the Greenlandic Government), the following is stated in relation to tailings (i.e., unexploited residual minerals):

> "*An annually mining of 500,000 tonnes of ore has been applied for, with distribution of 100,000 tonnes eudialyte concentrate per year and 400,000 tonnes of tailings per year. The outcome of the separation is made up of three fractions, a black highly magnetic concentrate (arfvedsonite), a red concentrate (eudialyte), and a white non-magnetic concentrate (feldspar). The black magnetic concentrate (mafic) (arfvedsonite) is a silicate mineral and will be tailings. Arfvedsonite may be processed into a saleable product later on in the Licence Period rather than being tailings if the Licence is amended with terms thereon by an addendum to the Licence granted by the Greenlandic Government to the Licensee. The feldspar is also a silicate mineral and will also be tailings. Feldspar may be processed into a saleable product later on in the Licence Period rather than being tailings if the Licence is amended with terms thereon by an addendum to the Licence granted by the Greenlandic Government to the Licensee. Feldspar can be used in glassmaking, ceramics, and the construction industry.*"[1407]

1178. As this extract of the Tanbreez IBA shows, Tanbreez's mining project will extract and deposit massive amounts of waste rock – indeed, residual minerals will make up 80% of the overall mineral material extracted annually. These residual minerals include feldspar and arfvedsonite, even though Section 5.03 of the Tanbreez exploitation licence states "[t]*his Licence does not comprise exploitation of feldspar and arfvedsonite*".[1408]

1179. It is interesting to note that the EIA for the Tanbreez project envisaged a much lower volume of tailings (200,000 tpa), and that the residual minerals (impurities) would include uranium:

> "*It should be noted that the content of Uranium and Thorium at Killavaat Alannguat is low and below that background level. Radon is a gas that is*

[1407] Document titled "*Impact Benefit Agreement concerning the Tanbreez (Killavaat Alannguat) project between Tanbreez A/S, Kommune Kujalleq and the Government of Greenland under Mineral Exploration License no. 2020-54*", 2020, at **(C-668)**, p. 5, para. 2.7.

[1408] Document titled "*Exclusive Licence No. 2020-54 for Exploitation of Certain Minerals in Areas at Killavaat Alannguat in South Greenland*", by the Government of Greenland, Ministry of Mineral Resources, August 2020, at **(C-672)**.

generated when Uranium-238 decays. The low content of Uranium at Killavaat Alannguat means that Radon will occur in low concentrations only."[1409]

1180. As such, it seems that uranium will be extracted as part of the Tanbreez project, notwithstanding that the Tanbreez exploitation licence does not allow for the exploitation of uranium (which is not included in the list of elements in in Section 5.01), and notwithstanding that the IBA does not mention uranium. However, under the exploitation licence, Tanbreez is required to produce a development and closure plan, both including descriptions of handling of residual minerals.[1410] There is no mention in the Tanbreez licence of any requirement to obtain a separate licence or governmental approval for the handling of residual minerals under the MRA as a condition to being granted the exploitation licence. This is because, for reasons of the design of the MRA and the Standard Terms, the necessary approval has already been granted as part of the exploitation licence itself.

1181. The second example is the exploitation licence granted to Hudson Greenland A/S (**Hudson**). On 9 September 2015, Hudson was granted an exploitation licence (2015/39) for a period of 30 years.[1411] Pursuant to Section 4.01 of the licence "[t]*he Licence covers exploitation of plagioclase (anorthosite).*" From page 12 of Hudson's EIA,[1412] it is apparent that, during the processing stage, approximately 30% of the ore (85,000 tonnes annually) will be rejected due to the magnetic separation process which is required to produce a commercial product. This is confirmed at page 16 of the IBA for Hudson's project (between Hudson and the Greenlandic authorities). [1413] The rejected residual material (impurities) contains minerals such as pyrite, magnetite and ilmenite and biotite, which are not covered by Hudson's exploitation licence. Like Tanbreez's licence, the handling of these residual minerals was accepted and allowed under Hudson's exploitation licence without any separate licence or governmental approval under the MRA.

1182. The third example is the exploitation licence granted to London Mining Greenland A/S (**London Mining**). In October 2013, London Mining was granted an exploitation

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[1409] Document titled "*Tanbreez Project: Environmental Impact Assessment*", by Tanbreez Mining Greenland A/S, December 2014, at **(C-675)**, p. 35.

[1410] Document titled "*Exclusive Licence No. 2020-54 for Exploitation of Certain Minerals in Areas at Killavaat Alannguat in South Greenland*", by the Government of Greenland, Ministry of Mineral Resources, August 2020, at **(C-672)**, sections 7.01b(6) and 7.03b(7), pp. 16-17.

[1411] Document titled "*Exclusive Licence No. 2015-39 for Exploitation of Certain Minerals in Areas at Naajat in West Greenland*", by Government of Greenland, Ministry of Mineral Resources, September 2015, at **(C-676)**.

[1412] Report titled "*Environmental Impact Assessment (EIA): White Mountain Anorthosite Mining Project*", produced by Hudson Resources Inc., February 2015, at **(C-677)**, p. 12.

[1413] Impact Benefit Agreement between Hudson Greenland A/S, Qeqqata Kommunia and Government of Greenland, September 2015, at **(C-128)**, p. 16.

licence for a period of 30 years.[1414] Pursuant to Section 4.01 of the licence, "[t]*he Licence covers exploitation of the mineral iron (Fe)*". According to London Mining's EIA, the mineral sulphur would also be part of the extracted material.[1415] However, sulphur would not be exploited but instead would be deposited in a nearby tailings pond. Consequently, this residual material was accepted and allowed under Hudson's exploitation licence without any separate licence or governmental approval under the MRA.

1183. These examples prove that, as a matter of both Greenlandic law and Greenlandic Government practice, it was accepted that substantial volumes of minerals, including radioactive elements such as uranium, would and could be handled as non-exploited residual impurities (for tailings) under exploitation licences without any separate licence or government approval under the MRA.

1184. On this basis, there was (and could be) no legal requirement, as of 1 December 2021, for GM to have a separate licence or other government approval for handling of residual minerals, including uranium, in connection with exploitation activities at Kvanefjeld.

F.4 GM had a legitimate expectation of an exploitation licence for rare earths, zinc and fluorspar

1185. As of 1 December 2021, GM had both a contractual and statutory right to be granted an exploitation licence in respect of rare earths, zinc and fluorspar, and, as part of this, a right to handle any residual non-exploited minerals – whether radioactive or not – as part of its exploitation activities.

1186. In addition to this contractual and statutory right, GM had a legitimate expectation that it would be granted a licence for rare earths, zinc and fluorspar (including, at the very least, the right to handle uranium as a residual impurity). The bases for GM's legitimate expectations included:

(a) GM's Exploration Licence and MRA Section 29(2) stated that it would be entitled to an exploitation licence if it delimited a commercially viable deposit. The licensing guarantee is a fundamental tenet of the statutory and contractual system described above at Section B.2 above. GM's witnesses have testified that they referred to this as the "*automatic rollover*" from exploration licence to

[1414] Document titled "*Exclusive Licence No. 2013-31 for Exploitation of Certain Mineral Resources in Areas at Isukasia in West Greenland*", by Government of Greenland, Bureau of Minerals and Petroleum, October 2013, at **(C-678)**.

[1415] See, for example, Document titled "*Isua Iron Ore Project Environmental Impact Assessment Main Report for London Mining Greenland A/S*", by Orbicon A/S, 15 March 2013 (Final), at **(C-679)**, p.70.

exploitation licence and relied on this licensing guarantee when pursuing and advancing GM's investment in Greenland.[1416]

(b) The Application Procedures (published as part of the Standard Terms) provides that an exploration licence will automatically "*transition*" into an exploitation licence.[1417] Dr Mair testifies that GM personnel read and relied upon the Application Procedures in the conduct of their investment in Greenland.[1418]

(c) In January 2009, the Government agreed the content of a document published by GM, which stated that "*an exploration license automatically leads to the exploitation rights, subject to submitting a feasibility study to the government that demonstrates the viability of the project, and an environment impact assessment report, if all license obligations and requirements by law have been met*."[1419]

(d) When the ZTP was lifted in October 2013, the Minister of Mineral Resources advised the Parliament that the licensing guarantee had been "*a guiding principle*" of Greenland's mineral resources framework since the Danish Mineral Resources Act 1991, stating: "*A licensee with an exploration permit on standardized terms is thus entitled to be granted exploitation rights for established occurrences. The purpose of this was to promote investments in exploration for minerals by giving a right holder a security to be able to benefit from his investments in exploration by having the right to an exploitation permit*." (emphasis added)[1420]

(e) In 2016, various senior Government representatives stated that if GM met all the conditions of its Exploration Licence it would have a legal right to an exploitation licence for the Kvanefjeld Project. This was expressly confirmed by Premier of Greenland Kim Kielsen,[1421] Minister for Mineral Resources

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[1416] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 98, 101; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 27.

[1417] Document titled "*Application Procedures and Standard Terms for Mineral Exploration and Prospecting in Greenland*", by Government of Greenland and BMP, 25 June 2013, at **(C-238E)**, Section 7.1.

[1418] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 98-100.

[1419] First Witness Statement of S. Bunn, at **(CWS-7)**, section II.C; Email from J. Telling (BMP) to R. McIllree (GM), subject: "*VS: A Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland*", 16 January 2009, at **(C-257)**; Document titled, "*A Brief Outline of the Current and Future Status of Uranium Exploration and Exploitation in Greenland*", by R. McIllree (GM) with comments by J. Telling (BMP), 16 January 2009, at **(C-258)**.

[1420] Questionnaire from the Rastof Committee regarding EM13 item 106, repeal of the Zero Tolerance, 16 October 2013, at **(C-368E)**, p. 7.

[1421] J. Lyberth, *Law professor Political refusal will be a misuse of power*, KNR, 14 November 2016, at **(C-466E)**

Vittus Qujaukitsoq,[1422] and former Minister for Mineral Resources Jens-Erik Kirkegaard.[1423]

(f) In April 2020, the Ministry confirmed in writing that GM had satisfied the requirements of MRA Section 29(2).[1424] The following month, the Minister of Mineral Resources stated to Parliament that, in relation to GM's application, "*a rightholder has the right to be granted an exploitation permit if the licensee has identified and delimited deposits that it intends to exploit*." (emphasis added)[1425]

(g) The Government renewed GM's Exploration Licence in 2015 and 2018.

(h) GM paid application licence fees and application processing fees, and the Government accepted these payments.

(i) GM invested more than US$150 million in Greenland, with the Government's full knowledge and approval.

1187. In addition to these examples, GM's legitimate expectations that it would be granted an exploitation licence for rare earths, zinc and fluorspar (at least), were reinforced by the Government's conduct which supported GM's legitimate expectations that it would be granted an exploitation licence for rare earths, zinc, fluorspar and uranium. The bases for these legitimate expectations are summarised in Section G.3 below.

1188. The evidence conclusively proves that the Greenlandic and Danish Governments consistently represented to GM that, if it satisfied the licensing requirements, it was guaranteed an exploitation licence for rare earths, zinc and fluorspar (at least). These representations were legitimately relied upon by GM in continuing its investment in Greenland. Nothing was ever said or done by the Greenlandic Government that could have made GM question the licensing guarantee.

1189. In conclusion, by 1 December 2021, the conduct of the Greenlandic and Danish Governments had given rise to legally protected expectations ("*berettigede forventninger*") on the part of GM that it was entitled to exploit rare earths, zinc and fluorspar. This included, at the very least, the right to handle uranium as a residual impurity. As discussed in Section G below, GM's position is that, in addition, it had a right and legitimate expectations that it was entitled to exploit uranium commercially.

1190. There was no reasonable or objective basis on which the Government could have rejected GM's application for an exploitation licence for rare earths, zinc and fluorspar

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[1422] *Naalakkersuisut's response to referendum proposal on mining of up to 0.05% radioactive materials*, Minister for Business, Labour, Trade and Foreign Affairs, 20 April 2016, at **(C-214E)**.

[1423] W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

[1424] Email from T. Lauridsen (MMR) to J. Mair (GM), subject: "Exclusive licence for exploitation - Section 29(2) of the Mineral Resources Act (Nanoq - ID nr.: 13595107)", 22 April 2020, at **(C-142)**.

[1425] §37 Parliamentary Questionnaire No. 77/2020, 13 May 2020, at **(C-196)**, answer on 18 May 2020.

under the existing legal framework. This is proven by the fact that the IA Party Government did not use the existing legal framework to reject GM's licence application. As such, the IA Party Government turned to Poul Schmith to *change* the legal framework so as to force the surrender of GM's right to an exploitation licence.

1191. By reason of the matters set out above, by (i) proposing and then causing the enactment of Act No. 20 and (ii) declaring that it would not perform its obligations under MRA and GM's Exploration Licence to process and grant GM an exploitation licence, the Government has violated GM's legitimate expectations. Further, the Government has breached its contractual obligations to GM under the Exploration Licence, including its duties of good faith and loyalty.

G. CLAIM 1A – RIGHT TO AN EXPLOITATION LICENCE FOR RARE EARTHS, ZINC, FLUORSPAR AND URANIUM

G.1 Overview

1192. As demonstrated in Section F above, GM has – at the very least – a right and legitimate expectation to be granted an exploitation licence covering rare earths, fluorspar and zinc with radioactive elements being handled as residual (non-exploited) minerals in tailings. With respect, on the terms of the applicable legal instruments and the undisputed facts, the existence of this right and legitimate expectation is beyond reasonable debate.

1193. GM's rights (statutory and contractual) and legitimate expectations also covered the *exploitation* of uranium.

1194. First, GM's statutory and contractual rights to exploration and the fundamental right to transition into exploitation were extended to also include radioactive elements by Addendum No. 1 and the subsequent abolition of the ZTP (Sections C.17 and C.29 above), the result of which was that these were the exploitation rights that GM had acquired by 1 December 2021.

1195. Second, by 1 December 2021, GM certainly had a legitimate expectation to be able to exploit all desired minerals, including uranium, that it has delimited within the area of its Exploration Licence. As noted above, under Danish law, legitimate expectations are recognised *both* as one of the elements which an administrative body must take into consideration when making decisions *and* as a self-standing property right that enjoys full protection under Section 73 of the Danish Constitution. This is the object of Section G.3 below.

G.2 Contractual and statutory right to an exploitation licence for uranium

(a) The starting point

1196. As set out in the preceding sections, the concessionary legal framework underpinning GM's Exploration Licence has evolved over the decades to meet the needs and

expectations of prospective foreign investors and has resulted in a hybrid system that exists at the intersection of contractual and administrative law.

1197. The declared objective of successive Governments to attract foreign investment though the development of the legal framework has resulted in the legal regime enshrined (*inter alia*) in MRA Section 29(2). This provision sets out an exclusive and automatic right to transition from exploration to exploitation if the licensee has found and delineated a deposit and has otherwise complied with the terms of the licence. As also explained above, the fundamental right in MRA Section 29(2) is mirrored in the distinct but similar right conferred by Section 14 of the Standard Terms.

1198. As explained in Section F.3 above, in large-scale mining contexts such as Kvanefjeld, the MRA does not distinguish between radioactive and non-radioactive minerals, as both are considered minerals under the MRA. There are no relevant special provisions that apply to radioactive minerals under the MRA.

1199. Under the MRA, the Greenlandic Government is at liberty to determine which minerals are to be covered by an exploration licence. Pursuant to Section 101 of the Standard Terms (applicable to GM's Exploration Licence), it is stated that the licence "*covers exploration for all mineral resources except hydrocarbons, radioactive elements and hydro-power, unless otherwise indicated in the licence, cf. chapter 3 of the Mineral Resources Act.*"

1200. As demonstrated in Section F.3 above, there is no statutory or contractual requirement for a separate licence or government approval for the handling of residual (non-exploited) minerals that are extracted in connection with the targeted (exploited) minerals.

1201. Thus, the starting point under the Exploration Licence was that, as of 1 December 2021, GM had an unconditional right to an exploitation licence, for *at least* rare earths, fluorspar, and zinc, and this right also comprised a right to handle other minerals, including uranium, as residual non-exploited minerals for tailings.

1202. Following the conclusion of Addendum No. 1, GM's Exploration Licence was extended to also cover radioactive elements. This adaptation of the contractual framework for GM's Project, in combination with the abolition of the ZTP in 2013 and a wide range of other supportive conduct by the Greenlandic Government, created both a right and legitimate expectations protected by Danish law. Specifically, these acts of the Greenlandic authorities created both a right and a legitimate expectation that GM would be permitted to commercially exploit uranium in addition to non-radioactive minerals at Kvanefjeld.

(b) The ZTP could not affect GM's statutory and contractual rights

1203. In this dispute, the Greenlandic Government has argued that the ZTP (abolished in 2013) should inform the interpretation of Addendum No. 1, and Addendum No. 1

therefore renders all of GM's rights in relation to the Kvanefjeld Project conditional and gives the Government absolute discretion to reject GM's exploitation licence application. This was the interpretation argued by counsel for the Respondents at the meeting between GM and the Government on 8 February 2022 (see Section C.77 above).

1204. This was also the position the Respondents argued at the hearing on interim measures on 7 September 2022. At the hearing, counsel for the Respondents argued that:

> "[I]*n respect of the zero tolerance policy* [Addendum No. 1] *made sure to underline that Claimants still have no right to mine uranium or other radioactive materials. This was known to all parties when the exploration licence and the addenda were granted. In essence, Claimant bought a very expensive lottery ticket; a ticket with a massive grand prize, as well as a massive risk. Later, the zero tolerance policy was formally abolished. However, the zero tolerance policy was kept as an intricate part of the exploration licence, as well as later exploration licences. In other words, the change in political policy did not entail any changes in the granted licences.*"[1426] (emphasis added)

1205. The Respondents' arguments are incorrect. As discussed in the Detailed Statement of Facts above, and Section (c) below, when Addendum No. 1 was concluded, the Government had represented to GM that it intended to lift the ZTP. The Addendum No. 1 Caveats were designed to function as an interim solution pending the formal lifting of the ZTP. The intention was that, after the ZTP was lifted, the caveats would become redundant.

1206. Moreover, the Respondents' understanding of the ZTP is misconceived. At the meeting on 8 February 2022, counsel for the Respondents asserted that the ZTP "*was law under the law of Greenland and Denmark*" and would "*bind the administration until changed*."[1427] This is incorrect.

1207. The ZTP emerged in the late 1980s and seems to have originated in a stance against nuclear power within the central (Danish) Government, rather than a formal moratorium on all extraction of uranium in connection with any mining activity.[1428] As noted by Professor Mortensen:

> "*Historically, it appears that the ad hoc policy that became known as 'zero tolerance' was the indirect result of the central Government's 1985 decision not to include nuclear energy as an indigenous source of power for Denmark.*"[1429]

[1426] Transcript of Hearing held on 7 September 2022, at **(C-134)**, pp. 24-25.

[1427] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**.

[1428] See Section C.2.

[1429] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 120.

1208. Further, whatever its origins may have been, the contents of the ZTP were never articulated in statute or other legally binding document. As Professor Mortensen explains:

> "*In addition to the lack of a formal parliamentary or executive decision, as mentioned above, the 'zero-tolerance policy' was never expressed in any legislation, administrative decree (in Danish: 'bekendtgørelse'), circular (in Danish: 'cirkulære') or administrative guidance note (in Danish:'vejledning') either. Accordingly, there never was any source of law as such introducing or describing this policy. Further, I am not aware that the policy has ever even been described in any formal public document. And, so, as far as I am aware, the policy has only been articulated from time to time by Greenlandic authorities and politicians etc., and such debate has not necessarily been consistent in relation to the scope or content of the policy.*"[1430]

1209. Professor Mortensen confirms that the contents of the ZTP were always unclear:

> "*At times, the 'zero-tolerance policy' was articulated as a total ban against exploration and exploitation activities targeted at radioactive elements, i.e., it was focused on the potential for, in particular, uranium exports as a concern. On other occasions, including by myself, the policy was also explained in a way indicating that even extraction of non-radioactive minerals was undesired and should not be allowed if such extraction would also lead to unearthing of radioactive elements. However, at multiple times, the policy was described as a policy whereby only activities that would lead to an increase in radiation above ordinary background level radiation (which varies from area to area) was undesirable and should not be allowed. The fact that commentators, including myself, took the 'zero-tolerance policy' to mean different things at different points in time, illustrates that its contents were never clear.*"[1431]

1210. These realities aside, the ZTP existed as a matter of public discourse and seems to have informed the terms that the Respondents (and, from 2009, the Greenlandic Government alone) offered to mining companies under specific licences in practice. As Professor Mortensen explains:

> "*In practice, the 'zero-tolerance policy' was observed by the Mineral Licence and Safety Authority ('MLSA') in relation to the content of specific licence terms and the content of the Standard Terms (as well as the similar standard terms for prospecting activities). Terms on radioactive elements were added to the Standard Terms in the 1990's. This was motivated by a recommendation from the Joint Council for Mineral Resources and by agreement between the Greenlandic Home rule and the central Government. Section C 1.1 of the Standard Terms from 1998 simply stated that radioactive elements were*

[1430] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 122.

[1431] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 123.

excluded from an exploration permit, unless otherwise stipulated in the licence."[1432]

1211. Apparently conscious of its uncertain status, since this arbitration has commenced, the Respondents appear to have retreated from the position they took at the February 2022 meeting. Whereas in that meeting counsel for the Respondents described the ZTP as "*the law of Greenland and Denmark*" that would "*bind the administration*",[1433] the Respondents now refer to the ZTP as an "*administrative practice*."[1434]

1212. Under general principles of Danish administrative law, an "*administrative practice*" generally refers to a certain and standing interpretation of statutory rules. As such, the legal concept of an administrative practice relies primarily on the public law principles of equal treatment and legitimate expectations to ensure a uniform and coherent approach to similar cases that are decided by an administrative authority over time. Consequently, an administrative authority may deviate from an administrative practice, where fair and objective reasons provide grounds for such deviation. The length of a specific administrative practice is generally perceived to be an indicator of its importance, i.e., a long-standing and clear practice is more authoritative than a few isolated decisions.[1435]

1213. GM notes that the Respondents are yet to provide any evidence or legal basis to establish that the ZTP qualified as an "*administrative practice*" that was legally capable of binding private parties such as GM or even capable of binding the public authorities themselves. Similarly, the Respondents are to yet to provide any evidence or legal basis to support the contention that the Greenlandic Government could not deviate from the ZTP in relation to the Kvanefjeld Project.

1214. The Respondents have suggested that the ZTP was implemented through the exclusion of radioactive elements in Section 101 of the Standard Terms.[1436] However, the words of Section 101 do not support a strict zero-tolerance policy, as it allowed the Government to otherwise indicate in the terms of the licence that radioactive elements

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[1432] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 124.

[1433] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**.

[1434] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 43.

[1435] S. Bønsing, Almindelig Forvaltningsret, (Jurist- og Økonomforbundets Forlag, 4th ed., 2018), pp. 50-56, at **(CL-204)**, pp. 50-55.

[1436] See also Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, paras. 52-53; Naalakkersuisut Draft Decision on Licence Application (with paragraph numbers), 22 July 2022, at **(C-310)**, para. 8.

were included.[1437] Thus, Section 101 cannot be evidence in itself of any administrative practice of "zero tolerance" vis-à-vis uranium.

1215. On the contrary, the facts of this case clearly show that the Greenlandic Government took measures specifically to accommodate GM to advance the Kvanefjeld Project notwithstanding its uranium component, including by way of allowing formal exploration of uranium (in a commercial sense) from 2012 onwards.[1438] Indeed, Section 101 contemplates precisely the type of agreement reflected in Addendum No. 1, whereby the Government indicates in the terms of a licence that a licensee has the right to explore for uranium.

1216. Even before this contractual change was made, the ZTP was not applied to Kvanefjeld in the sense that *no* mining activities could take place because of the uranium content in the resource. If the ZTP was absolute in the way the Respondents now seek to present it, no Exploration Licence should ever have been granted over Kvanefjeld, which the authorities had known contained uranium since the 1950s.

1217. The Respondents have described the ZTP as a matter of political agreement or consensus.[1439] Under the general principle of legality ("*legalitetsprincippet*" or "*den formelle lovs princip*"), a political agreement or consensus on a certain matter must be enacted so that an administrative decision has a statutory basis that permits it to give effect to such a political agreement. The application of this principle may be observed in the Greenlandic Ombudsman's report no. 2021-4, dated 21 September 2021.[1440] In this report, the Ombudsman summed up her findings as follows (unofficial translation):

> "*A citizen complained to the ombudsman that the then Department for Fisheries, Catching and Agriculture had made a decision and notified the citizen refusal of a dinghy license for fishing for halibut in management area 47 Disko Bay. The department justified the decision by saying that Naalakkersuisut had decided to stop issuing new dinghy licenses for fishing halibut in management area 47 Disko Bay. In the decision, the department wrote among other things,*

[1437] This is also consistent with section 16(1) of the Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, pursuant to which the Greenlandic Government may grant exploration licences "on specific terms". According to the explanatory notes, the Greenlandic Government was "*authorised to lay down specific provisions*", including "*provisions in* […] *specific licence terms*": Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p 20. See also p 30.

[1438] *See* Sections C.16-C.18 above.

[1439] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 52.

[1440] Report from the Ombudsman for Inatsisartut, "*Afslag på ny jollelicens i strid med loven. Politisk beslutning ikke en del af gældende ret*", Report no. 2021-4, at **(CL-206)**, p. 1. In another recent report, Report from the Ombudsman for Inatsisartut, "*Naalakkersuisuts beslutning ikke gyldigt hjemmelsgrundlag. Departementet har ikke handlet i overensstemmelse med legalitetsprincippet*", Report no. 2023-2, at **(C-680)**, the Ombudsman reiterated her critique to the same department in relation to an application on quotas for joint catch on herring whippers, in which the department had again made decisions based on a political decision made by the Greenlandic Government.

that the department therefore did not make a concrete assessment of the application.

The department stated in connection with the ombudsman's investigation that Naalakkersuisut by a political decision had stopped the issuance of new licenses for fishing for halibut in management area 47, and that the department cannot administratively manage contrary to the decision of Naalakkersuisut.

The Ombudsman stated that Naalakkersuisut's decision was contrary to that administrative law principle of legality, since in the ombudsman's view the Government was not authorized by law to issue a refusal of a dinghy license to fishing for halibut based on the applicant's place of residence (hereinafter the residence criterion).

The Ombudsman further stated that a decision made by Naalakkersuisut was not part of existing legislation and that such a decision neither could supplement or replace existing legislation."

1218. As a matter of law, therefore, the ZTP cannot be invoked against the terms of the MRA or the Exploration Licence. The Respondents have argued that through Addendum No. 1 "*the zero tolerance policy was kept as an intricate part of the exploration licence*."[1441] However, this argument is not legally tenable given that the ZTP: (i) had no legal basis in the first place; and (ii) could not distort the operation of statutory or contractual rights. As the Ombudsman concluded in the halibut case a decision "*not part of existing legislation*" cannot "*supplement or replace existing legislation*."

1219. Whatever the ZTP was, it could not, as a matter of Danish and Greenlandic law, *affect* – let alone restrict – the positive rights of GM enshrined in the MRA and the Exploration Licence.

1220. As GM will show, contrary to what the Respondents have argued, the ZTP and its abolition reinforced GM's rights, and certainly its legitimate expectations, with respect to its entitlement to receive a licence to also exploit uranium. It is abundantly clear from the evidence that the ZTP was abolished primarily to enable the Kvanefjeld Project to proceed. And the abolition of the ZTP rendered the Addendum No. 1 Caveats inoperative. Indeed, GM and the Government agreed this position at meetings shortly before and after the ZTP was formally lifted.

1221. The Respondents' claim that an unwritten "policy" that was deliberately and conclusively abolished six years before GM submitted its formal exploitation licence application somehow deprived GM of its rights and expectations is absurd as a matter of fact and law.

[1441] Transcript of Hearing held on 7 September 2022, at **(C-134)**.

(c) Addendum No. 1 extended GM's rights to also cover radioactive elements

1222. As outlined in the Detailed Statement of Facts above, at various points before the ZTP was abolished, GM sought to obtain clarity from the authorities on what they considered to be the impact of the ZTP on the Project. These were, of course, natural steps for a foreign controlled company to take in the circumstances. And it was in these steps that Addendum No. 1 had its genesis.

1223. As discussed above, the backdrop to Addendum No. 1 was GM's need for clarity with respect to the scope of (i) its existing exploration rights and (ii) its future exploitation rights. The relevant facts are set out in detail in Section C.17 above.

1224. To summarise, in October 2011, GM advised Premier Kleist and Minister Berthelsen that further investments in the Project were not possible unless there was "*imminent progress in advancing beyond the current zero tolerance policy*." [1442] GM representatives then met with the Government. The Government expressed a strong interest in the Project continuing and represented that it anticipated that the ZTP would be lifted in the near future to allow the exploitation of uranium at least as a by-product, i.e., in addition to the non-radioactive minerals covered by the Exploration Licence. GM and the Government negotiated a contractual solution, which became Addendum No. 1 to GM's Exploration Licence. Addendum No. 1 was signed by GM in December 2011 and countersigned by the Minister in January 2012. The Greenlandic Government has specifically described Addendum No. 1 as being "*agreed*" between the Government and GM.[1443]

1225. The key term of Addendum No. 1 was that uranium would be added to GM's exploration licence and GM would have the right to apply to exploit it. This delivered clarity for GM and its shareholders. At the same time, the Greenlandic Government desired a contractual assurance to protect it against future claims from GM in the event the ZTP was not lifted before GM filed its exploitation licence application and the Government could not (from a political standpoint) grant GM a licence to also exploit radioactive elements. This was the reason for the Addendum No. 1 Caveats. GM notes that the Government's concern about potential future claims by GM confirms that the Government also understood (correctly) that, according to the legal framework, exploitation rights follow automatically from an exploration licence and include all minerals covered by such licence.

1226. The Addendum No. 1 Caveats provided that GM did not have an automatic right to receive an exploitation licence *for uranium* and, further, that the Greenlandic Government could reject an exploitation licence application *for uranium* without

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[1442] Letter from R. McIllree (GM) to K. Kleist (Premier of Greenland), 19 October 2011, at **(C-302)**.

[1443] Open Letter titled "*Statement on addendum to the Standard Terms of September 2010 on sections 709 - 711 and addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by Government of Greenland, 23 October 2013, at **(C-307)**.

providing reasons (and indeed without there being a reason at all). The Addendum No. 1 Caveats reflect an *interim* solution pending the lifting of the ZTP. This was the mutual intent of the parties, as explained in the testimony of Dr Mair, who recently confirmed with the two Government officials who were responsible for drafting Addendum No. 1, namely Messrs Jørn Skov Nielsen and Jens Hesseldahl, that the Government shared this intention.[1444]

1227. This was also the understanding that GM conveyed to the public via its subsequent ASX announcements, which were monitored by the Government.[1445] On 5 December 2011, GM announced that its Exploration Licence was "*now inclusive of uranium*" and that "[t]*he granting of an exploitation license will be dependent on establishing an environmentally and socially sustainable development scenario that is economically robust*."[1446] On 30 January 2012, GM announced that Addendum No. 1 gave GM "*the right to exploit all economic components of the world-class Kvanefjeld resource, pending outcomes of environmental and social impact assessments*."[1447]

1228. At no point did the Greenlandic Government express that it did not agree with this understanding of Addendum No. 1 as set out in these ASX announcements. Nor did the Greenlandic Government otherwise backtrack on the statements made to GM during the negotiation of Addendum No. 1 as to the intention behind the caveats.

1229. In August 2013, GM and the BMP held a meeting at which there was a discussion of the imminent lifting of the ZTP and what this would mean in terms of GM's Exploration Licence. As discussed in paragraphs 288 - 295 above, GM and the BMP discussed the Danish and Greenlandic Governments setting up a regulatory system to manage the exploitation and export of uranium after the ZTP was lifted. In addition, the Government would update section 101 of the Standard Terms to include the right to explore for uranium.

1230. The Government proceeded to lift the ZTP on 24 October 2013. Five days later, on 29 October 2013, Dr Mair met with Deputy Minister of Mineral Resources Jørn Skov Nielsen. Now that the ZTP had been lifted (and as discussed in Section C.30 above), Dr Mair and Deputy Minister Nielsen also held discussions regarding the Danish and Greenlandic Governments setting up a regulatory system to administer the exploitation and export of uranium, and the fact that the Addendum No. 1 Caveats would become redundant. As set out in Dr Mair's contemporaneous note of the meeting, both the Danish and Greenlandic Governments supported the Project, and their "*overall aim*"

[1444] First Witness Statement of J. Mair, at **(CWS-3)**, para. 892.

[1445] Dr Mair testifies, "if the authorities did not agree with something in our ASX announcements, they said so". First Witness Statement of J. Mair, at **(CWS-3)**, para. 96.

[1446] Greenland Minerals Ltd ASX Announcement titled "Greenland Government Introduces Uranium Licensing Framework For the Kvanefjeld Multi-Element Project", 5 December 2011, at **(C-311)**.

[1447] Greenland Minerals Ltd ASX Announcement titled "December 2011 Quarterly Activities Report", 30 January 2012, at **(C-318)**.

was to set up a regulatory framework so as "*to keep driving Kvanefjeld forward and to complete a mining license application*".[1448]

1231. The Deputy Minister advised Dr Mair that the Government would amend Section 101 of the Standard Terms to include uranium, but this would not happen immediately as the Danish and Greenlandic Governments needed time to set up the regulatory framework to manage uranium exports. This would make Section 1 of Addendum No. 1 redundant (such that the addendum as a whole would be redundant). The Deputy Minister represented that this delay in amending the Standard Terms was to GM's advantage because GM had "*access to pursuing uranium*", whereas other companies did not. As Dr Mair testifies: "*The key point was that GM had been given the green light to advance the Project and to explore for and exploit uranium as a by-product*".

1232. Dr Mair testifies that: "*To the best of my recollection, this was the last discussion I had with the Government about the caveats in Addendum No. 1. From this point in time, there was a major effort to set up the uranium export framework*."[1449]

1233. The contemporaneous documentary evidence and witness testimony therefore establishes that the Government and GM understood that, with the ZTP lifted and the two governments setting up a regulatory framework for the exploitation and export of uranium, the Addendum No. 1 Caveats would be inoperative. As explained in the Detailed Statement of Facts section above, the Danish and Greenlandic Governments undertook a major regulatory exercise to set up the framework for the exploitation and export of uranium, a framework that was tested in 2017 when GM was permitted to export ore from Kvanefjeld to China (see Section C.44 above). This series of discussions and events leaves no doubt that, years before GM applied for an exploitation licence for non-radioactive elements and uranium, GM had a contractual right under Section 14 of the Exploration Licence, a statutory right under MRA Section 29(2), *as well as* a legitimate expectation that a future exploitation licence would include uranium.

1234. GM's Exploration Licence was renewed in 2015. As discussed in Section C.35, in the negotiation of this renewal, the Government offered GM a licence that did not include Addendum No. 1. In response, Dr Mair pointed out that GM's application included uranium and that it was "*extremely important to GME*" that the licence renewal included uranium.[1450] This is why Addendum No. 1 was included by reference in the 2015 Exploration Licence Renewal. The negotiation shows that the only purpose that the parties understood was being achieved by incorporating Addendum No. 1 was that GM had the right to explore for uranium (as Section 101 of the Standard Terms had not yet

[1448] Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

[1449] First Witness Statement of J. Mair, at **(CWS-3)**, para. 306.

[1450] Email from J. Mair (GM) to N. V. Rasmussen (MLSA), subject: "*Question in regard to exploration license renewal*", 12 February 2015, at **(C-412)**.

been updated to include the exploration of radioactive elements). This makes perfect sense: the caveats were, by this stage, inoperative.

(d) The Addendum No. 1 Caveats are invalid or unenforceable as a matter of contract law

1235. As a preliminary point, it is important to recognise that Addendum No. 1 did *nothing* to disturb or condition GM's existing entitlement to an exploitation licence for *non-radioactive* elements. Addendum No. 1 was solely concerned with rights to commercially exploit radioactive elements (i.e., uranium). The Greenlandic Government now appears to acknowledge this. As discussed in paragraphs C.90 above, a comparison of the Draft Decision and the Final Decision strongly suggests that the Greenlandic Government understands that it cannot assert, based on Addendum No. 1, that GM had no right to, and no legitimate expectation of, an exploitation licence for non-radioactive elements at least.

1236. Turning now to the key issue in this section: the Addendum No. 1 Caveats are invalid or unenforceable as a matter of Danish contract law.

1237. First, Addendum No. 1 must be interpreted in accordance with the mutual intent of the parties when they executed this amendment.

1238. The evidence shows that the parties' mutual intention was that Addendum No. 1 would serve as an *interim solution* only, on the mutually recognised assumption that the ZTP would be repealed soon and the regulatory framework for uranium exploitation and export would be set up, and that this would remove an apparent political impediment to the Greenlandic Government confirming full exploitation rights with respect to uranium (and, therefore, the ordinary operation of the MRA and the Standard Terms). The Addendum No. 1 Caveats were intended to protect the Greenlandic Government from claims by GM in the unexpected event that the ZTP was *not* lifted. It was the parties' mutual intention that when the ZTP was lifted and the regulatory framework was set up, GM would be entitled to exploit uranium if it met the relevant requirements and demonstrated this could be done safely.

1239. The evidence of this mutual intention includes the following:

(a) In the negotiations that led to the 2010 Amendment, GM indicated to the Government that it would be willing to offer an indemnity to cover a situation in which GM was given special dispensation for activities at Kvanefjeld and the ZTP was not lifted. This indemnity would only have covered the period during which the ZTP was under review (see Section C.12 above). This was ultimately unnecessary because the Government offered to amend the Standard Terms, rather than providing special dispensation to GM. But the fact this indemnity was offered is relevant to the intentions of the parties when Addendum No. 1 was subsequently negotiated.

(b) Dr Mair was involved in the negotiations of Addendum No. 1 in late 2011. He has testified that the Addendum No. 1 Caveats were designed to serve on an interim basis while the ZTP was still notionally in place and, after the ZTP was lifted, his understanding was that "*we could mine uranium provided we could show that it was safe to do so*."[1451]

(c) Mr Bunn was COO of GM when Addendum No. 1 was concluded and has testified that his understanding of this instrument was that "*if we could show in the studies that the Project was sound from an environmental and health perspective and the Project was feasible, we were entitled to a licence for rare earths and (assuming the ZTP was lifted) uranium.*"[1452]

(d) Following the conclusion of Addendum No. 1, GM announced that it gave GM "*the right to exploit all economic components of the world-class Kvanefjeld resource, pending outcomes of environmental and social impact assessments*."[1453] Mr Bunn sent emails to GM's strategic partners saying that Addendum No. 1 removed the risk of political interference in the licensing process.[1454]

(e) In August 2013, shortly before the ZTP was lifted, the BMP advised GM representatives including Dr Mair and Mr Bunn that after the ZTP was lifted, the Danish and Greenlandic Governments would set up a regulatory system to manage the exploitation and export of uranium, and the Government would amend section 101 of the Standard Terms to include the right to explore for uranium (see paragraphs 288 - 295 above).

(f) Concurrent with the lifting of the ZTP, on 25 October 2013, the Premier of Greenland told the Parliament that Addendum No. 1 "*already granted permission for uranium mining in Greenland*."[1455]

(g) As set out above, following the abolition of the ZTP, on 29 October 2013, the Deputy Minister of Mineral Resources advised GM that the Danish and Greenlandic Governments were setting up a regulatory system to manage the exploitation and export of uranium, in time, the Government would amend Section 101 of the Standard Terms to include uranium (which would make

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[1451] First Witness Statement of J. Mair, at **(CWS-3)**, para. 299.

[1452] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 163. See also para. 222.

[1453] Greenland Minerals Ltd ASX Announcement titled "December 2011 Quarterly Activities Report", 30 January 2012, at **(C-318)**.

[1454] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 167; Email from A. Driscoll (Grundfos) to S. Bunn (GM), subject: "*Re: Kvanefjeld Update*", 9 December 2011, at **(C-313)** Email from T. Borup (Vestas) to S. Bunn (GM), subject: "*RE: Kvanefjeld Update*", 8 December 2011, at **(C-314)** Email from C. Hansen (Maersk) to S. Bunn (GM), subject: "*RE: Meeting follow up [Our Ref:EXF09639]*", 7 December 2011, at **(C-315)**

[1455] §37 Parliamentary Questionnaire No. 203/2013, 15 October 2013, at **(C-209E)**.

Section 1 of Addendum No. 1 redundant). It was understood that, with the ZTP lifted and the two governments setting up the regulatory framework, the Addendum No. 1 Caveats would be inoperative.

(h) When the parties negotiated the renewal of GM's Exploration Licence in 2015 (i.e., two years after the ZTP was lifted), the Government did not propose to incorporate Addendum No. 1 into the licence. The addendum was only included by reference after Dr Mair pointed out that the licence needed to include the right to explore for uranium. It is clear from the parties' exchanges at the time that the purpose of referring to the addendum was simply to implement GM's request.[1456]

(i) The Minister of Mineral Resources at the time the ZTP was lifted, Jens-Erik Kirkegaard, told the press in late 2016: "*The mine for the extraction of uranium and rare earths at Kuannersuit will become a reality if they meet the environmental and safety requirements*."[1457] He continued to explain that, in GM's case, the legal entitlement to a permit "*does not apply to uranium exactly. But since that exception was added, the zero tolerance for uranium has been lifted*." He concluded: "*I estimate that the process is so far advanced that GME now actually has a legal requirement to obtain a permit*".

(j) The terms of Addendum No. 1 were negotiated on the Government side by Deputy Minister of Mineral Resources Jørn Skov Nielsen and BMP lawyer Mr Jens Hesseldahl. In April 2021, Mr Nielsen told Dr Mair that he had spoken to Mr Hesseldahl about the Addendum No. 1 Caveats, and Mr Hesseldahl "*confirmed the wording of the addendum was due to Greenland's zero tolerance to uranium being in place at the time. It was not intended to give the government freehand discretion to reject an exploitation licence*."[1458]

1240. As the Greenlandic Government abolished the ZTP in 2013 and the Danish Government supported the exploitation of uranium in Greenland by working with the Greenlandic Government to establish a regulatory framework for the exploitation and export of uranium, the Addendum No. 1 Caveats became void of meaning and could thus no longer be enforced. GM and the Government discussed the licensing situation and the Government represented that the Standard Terms would ultimately be updated to include uranium (which would make Section 1 of Addendum No. 1 redundant). The Government further represented to GM that it was in GM's best interests to wait for the Standard Terms to be updated. It would therefore be contrary to the intent of the parties

[1456] See Section C.35 above.

[1457] W. Turnowsky, *Mute may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

[1458] First Witness Statement of J. Mair, at **(CWS-3)**, section XI.F; Greenland Minerals Ltd, Minutes of Board Meeting, 29 April 2021, at **(C-208)**

when the addendum was negotiated, and the understanding reached at the meetings on 19 August 2013 and 29 October 2013, to enforce these caveats.

1241. The Addendum No. 1 Caveats are null and void, as was the understanding of GM and the Government as at 19 August 2013 and 29 October 2013.

1242. Furthermore, when they are interpreted in accordance with the common intent of the parties, the Addendum No. 1 Caveats became unenforceable years before GM applied for an exploitation licence for non-radioactive elements and uranium, and were therefore unenforceable as of 1 December 2021 (when Act No. 20 was passed). Thus, the Respondents cannot rely upon these caveats to assert that GM had no right to, or legitimate expectation of, an exploitation licence covering radioactive elements.

1243. *Subsidiarily*, if the Tribunal disagrees with this interpretation of the Addendum No. 1 Caveats, then the enforcement of these caveats would in any case be *unreasonable* in the sense of Danish and Greenlandic contract law, with the result that the caveats are invalid *ex tunc*.

1244. According to Section 36 of the Contracts Act,[1459] an agreement or other legal transaction can be set aside (wholly or partially) if it would be *unreasonable* or *contrary to honest conduct* to enforce it. Section 36 of the Contracts Act reads as follows:

> "*(1) An agreement may be set aside wholly or in part if it will be unfair or inconsistent with honest conduct to claim the agreement. The same applies to other legal transactions.*
>
> *(2) Decisions made under subsection 1 must take into account the circumstances at the conclusion of the agreement, the substance of the agreement and subsequent circumstances.*"

1245. Section 36 is a legal standard in which the decisive criterion is "*unreasonableness*". The provision is thus often referred to as a "*reasonableness-norm*". Section 36(2) provides for an overall assessment of the circumstances that existed at the conclusion of the relevant agreement, the substance of the agreement and the subsequent circumstances. However, an agreement (or parts thereof) can also be set aside based upon only one of these elements, such as based on the conclusion that the content of the agreement or a specific term of it is unreasonable.[1460] Danish jurisprudence demonstrates that unreasonable terms are often found to exist in circumstances where one of the parties to an agreement has been in an inferior negotiating position vis-à-vis the other party (or parties). However, the existence of an imbalance in negotiating power is not an actual

[1459] Greenland Parliament Act No. 350 of 14 July 1980 on Decree on amendment of the Contract Act , at **(CL-198)**, amending the Greenland Contracts Act, act to also include Section 36 of the Danish Contracts Act, of which the newest version is Danish Parliament Act No. 193 of 2 March 2016 on the Promulgation of the Act on Contracts and Other Acts in the Field of Property Law, at **(CL-199)**.

[1460] P. Bo Madsen, *Aftalte ansvarsfritagelser i erhvervsforhold* (U.2018B.131), 2018, at **(CL-207)**, p. 133.

criterion for the applicability of Section 36. The provision also applies if the content of the agreement (or parts of it) is too unbalanced.[1461]

1246. As set out above, as of the date GM applied for an exploitation licence, and certainly by 1 December 2021, the Addendum No. 1 Caveats were unreasonable, invalid and/or could no longer be enforced as between the parties to the Exploration Licence under Section 36 of the Danish Contracts Ac, because:

(a) enforcing these terms was contrary to the common intent of the parties when they concluded Addendum No. 1;

(b) enforcing these terms was contrary to the understanding reached between GM and the Government on 19 August 2013 and 29 October 2013;

(c) the Danish and Greenlandic Governments' conduct after the abolition of the ZTP involved substantial efforts to further promote exploitation of uranium in Greenland in general and at Kvanefjeld in particular (as described at length above);

(d) enforcing the caveats would effectively undermine the fundamental system of automatic transition from exploration to exploitation in MRA Section 29(2) and Section 14 of the Standard Terms as described in Section [(e)] below; and

(e) the caveats were only included as a result of the imbalance in negotiating power that existed between the parties at the time, in which GM was in an inferior position vis-à-vis the licensing authority, the Greenlandic Government.

1247. Additionally, as a matter of good faith and loyalty, under Addendum No. 1, GM's express right to apply for an exploitation licence was matched by the Greenlandic Government's obligation to receive, consider and process any such application in *good faith*. This obligation also follows from the express wording of the Exploration Licence.[1462] However, by stipulating a *purported* right of the Government to deny an application for an exploitation licence also covering radioactive elements without cause and at the same time depriving GM of its automatic right to such a licence, the balance between rights and duties of the parties under the licence is evidently non-existent. The Addendum No. 1 Caveats therefore violate the principle of loyalty and good faith, which require that each party must safeguard the interest of the other party to a reasonable extent.

[1461] Lynge Andersen, *Aftaler og mellemmænd* (Karnov Group, 8th ed., 2022), pp. 178-212, 264-269, at **(CL-194)**, p. 208.

[1462] Standard conditions for exploration permits regarding mineral raw materials (excluding hydrocarbons), 25 June 2013, at **(R-1)**, see English translation, "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1409.

1248. Under Danish law, when part of a contract is invalid, that part of the contract is to be severed and the valid provisions of the contract survive and remain enforceable.[1463]

1249. Therefore, according to the *valid* content of Addendum No. 1, GM had full exploration rights over uranium under its Exploration Licence, at the very least, and also had a right to apply for an exploitation licence for uranium, which had to be granted if the conditions for being granted such licence were fulfilled (which they were by 1 December 2021).

1250. *More subsidiarily*, if the Tribunal finds that the Addendum No. 1 Caveats are not invalid, the caveats must in any case be set aside due to the failure of GM's basic assumption when entering into Addendum No. 1 ("*bristende forudsætninger*").

1251. As noted above, the concept of breached assumptions refers to situation where the assumptions that were the party's condition or reason for entering into a contract have either failed/ceased to exist ("*bristet*") or being false ("*urigtige*"). The legal test for setting aside an agreement by reference to breached assumptions has three elements:

(a) the assumption must be material to the promisor;

(b) the promisee must have realised or ought to have realised that this was the case; and

(c) the assumption must be relevant, i.e., the risk of its failure must be borne by the other party.[1464]

1252. The evidence shows that this legal test is satisfied in the present case:

(a) It was a material assumption for GM that the Addendum No. 1 Caveats would apply only in a scenario where the ZTP was not abolished, and that GM would be granted a licence to exploit uranium if the requirements were met.

(b) The Greenlandic Government knew that this assumption was material to GM. This follows from the fact that the modification of GM's licence and amendment to the Standard Terms was discussed at the meetings between GM and the Government on 19 August 2013 and 29 October 2013. With respect to the latter meeting, Dr Mair's contemporaneous notes indicate that the "*licensing situation was discussed, and specifically modifications to the standard terms, and the removal of any caveats associated with uranium on our current exploration*

[1463] Lynge Andersen, *Aftaler og mellemmænd* (Karnov Group, 8th ed., 2022), pp. 178-212, 264-269, at **(CL-194)**, p. 178 *et seq.*

[1464] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 34.

license". [1465] The Government represented that the delay in amending the Standard Terms was to GM's advantage as GM had "*access to pursuing uranium*", whereas other companies did not.

(c) Further, before Addendum No. 1 was agreed, GM repeatedly expressed its concerns in relation to the ZTP and the continuation of the Project before Addendum No. 1 was agreed.

(d) The risk of the failure of the assumption must naturally and reasonably be borne by the Greenlandic Government.

1253. Accordingly, the Addendum No. 1 Caveats should be set aside or alternatively not enforced *vis-à-vis* GM, with the result that the Government of Greenland cannot validly rely on the caveats as a basis for denying an application by GM for an exploitation licence also covering radioactive materials.

(e) The Addendum No. 1 Caveats are invalid or unenforceable under public law

1254. The Greenlandic Government has breached the principles of legality, proportionality, and fair governance by purporting to introduce a term into Addendum No. 1 that the Greenlandic Government may "*freely and without any reason or for any reason reject*" an application for radioactive elements, and that an application may be rejected on the basis of a "*political or administrative decision*" (Section 302).

1255. As to the principle of legality, Addendum No. 1 is a concessionary instrument, with the same hybrid (public-private law) nature as the rest of the Exploration Licence. This means the addendum was entered into as a contract under the MRA and therefore could only grant or modify rights to the extent permissible under the MRA.

1256. Pursuant to the legality principle, the Greenlandic Government could not, by contract or by an administrative decision, derogate from rights *that follow explicitly from statute*. In other words, by implementing a term in Addendum No. 1 which purports to remove GM's right under MRA Section 29(2) of the MRA to transition from exploration to exploitation with respect to all minerals covered by the Exploration Licence, the Greenlandic Government has acted in violation of the *principle of legality.*

1257. This is confirmed by Professor Mortensen in his expert report:

> "*I have carefully reviewed Addendum No. 1* […]. *It was valid for Addendum No. 1 to add radioactive elements to the minerals covered by GMAS's exploration licence. The Self-Government had this power under Section 16 of the Mineral Resources Act. By contrast, the caveat in the addendum concerning potential*

[1465] Document titled "*Meeting with Jørn Skov Nielsen – Tuesday 29th October, Copenhagen*", by J. Mair (GM), 4 November 2013, at **(C-210)**.

> *denial of an exploitation licence based on the Government of Greenland's sole discretion does not seem to be legal and in compliance with the Mineral Resources Act. The Mineral Resources Act does not contain any authorization for the Self-Government to derogate from the fundamental system of Section 29(2) of the Mineral Resources Act, i.e., the automatic right for a holder of an exploration licence to obtain an exploitation licence for the minerals covered by the exploration licence, and this is essentially what part of Addendum No. 1 purports to do in relation to potential exploitation of radioactive elements.*"[1466]

1258. Professor Mortensen explains that:

> "*The Government cannot circumvent Section 29(2) by issuing addenda or supplements to licenses with special conditions, regardless of the minerals involved. Licenses must be administered according to factual and objective criteria as envisaged in the Mineral Resources Act (and preparatory works).*"[1467]

1259. His conclusion is that: "*the method of administration shown by the content of Addendum No. 1 (cited above) does not seem to be legal and in compliance with the Mineral Resources Act*".[1468]

1260. Furthermore, GM maintains that the Addendum No. 1 Caveats violate the principles of *proportionality* and *fair governance,* by purporting to bestow upon the Greenlandic Government a power to make a decision to the detriment of GM without considering the necessity and proportionality of its decision and without giving reasons for any decision.

1261. As part of his expert report on expropriation,[1469] leading Danish constitutional law expert Professor Michael Hansen Jensen (of the University of Aarhus) has considered the validity of the Addendum No. 1 Caveats. In his analysis, Professor Hansen Jensen begins by identifying Section 302 as the "*constitutive element*" of the addendum, finding that: "*the terms and conditions in section 302 – and accordingly also sections 201-202 and 304 – of Addendum No. 1 are not in accordance with the applicable Danish law and legislation*."[1470] He states:

> "*due to the unlimited discretionary character of section 302 the section cannot be considered necessary and proportional in order to meet the purposes of the*

[1466] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 15.g.

[1467] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 161.

[1468] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 163.

[1469] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**.

[1470] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, paras. 64, 66.

Mineral Resources Act. Section 302 must be considered not in accordance with the principle of proportionality."[1471]

1262. Proportionality and fair governance are fundamental principles of administrative law which remain binding on the Greenlandic Government even when acting in the capacity of a contractual party under an instrument such as the Exploration Licence. Accordingly, the language in Section 302 that purports to confer unlimited discretion on the Government is of no legal effect, as it would permit the Government to exercise an administrative power without regard to these fundamental principles.

1263. Further, to the extent any provision of Addendum No. 1 purports to vary or exclude an obligation of the Government of Greenland under statute or fundamental principles of administrative law, that provision is invalid as a matter of public law, including administrative law. That is the case regardless of whether Addendum No. 1 is viewed as an administrative law instrument, a contract law instrument, or a hybrid of the two.

1264. Insofar as Addendum No. 1 is viewed as an *administrative law* instrument, this follows immediately from the administrative law principles described above.

1265. In this regard, GM refers the Tribunal to the Supreme Court case U.2017.75H.[1472] In that case, the Supreme Court found that a Danish municipality had entered into an agreement *specifically* to relieve itself of duties that would otherwise have followed from administrative law principles. The Supreme Court found that relying on such a consideration was in violation of the principle of fair governance. Furthermore, the Supreme Court explicitly held that:

> "*Det følger af almindelige forvaltningsretlige principper, at en kommune - også ved indgåelse af privatretlige aftaler* […] *- skal overholde grundsætningen om saglig forvaltning*".

In English (unofficial translation):

> "*It follows from general principles of administrative law that a municipality - also when entering into private law agreements* [...] *- must comply with the principle of objective administration.*"

1266. GM also refers the Tribunal to the Western High Court judgment in U.2007.2522V,[1473] in which a Danish municipality was obliged to act in accordance with administrative

[1471] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 70.

[1472] U.2017.75H in matter 232/2015, 21 September 2016, at **(CL-208)**.

[1473] U.2007.2522V in matter B.1552-06, 28 June 2007, at **(CL-209)**.

law principles in its private-law agreements regarding commercial leases within a local shopping centre:

> "*Den lejeaftale, der er indgået mellem parterne, er efter sin karakter en privatretlig disposition* […]"
>
> "*en sådan lighed med egentlig myndighedsudøvelse efter planloven, at Skærbæk Kommune i sin forvaltning af lejekontrakterne er underlagt almindelige forvaltningsretlige principper*."

In English (unofficial translation):

> "*The lease entered into between the parties is, by its nature, a disposition under private law* […]"
>
> "*such a similarity with the actual exercise of authority under the Planning Act that Skærbæk Municipality is subject to general principles of administrative law in its management of the leases.*"

1267. The Greenlandic Government must administer the MRA and the Exploration Licence in accordance with their respective provisions. It cannot evade statutory provisions or general principles of administrative law through a contractual caveat. Public statements made by Minister Nathanielsen indicate that the Greenlandic Government's current position is that Addendum No. 1 functions as "*an emergency brake*" on GM's rights under the MRA.[1474] As explained above, this position is contrary to the intentions of GM and the Greenlandic Government when they negotiated the addendum, and any political function that the addendum had expired with the abolition of the ZTP. Notably, MRA Section 29(2) was specifically designed to remove Government discretion, meaning there is no *political emergency brake* in the statute.

1268. Of course, that is not to say that there is not an *environmental emergency brake* in the MRA. Quite the opposite, pursuant to MRA Sections 1(2) and 83, the Government is obliged to ensure that mining activities are performed in accordance with environmental best practice, and it therefore always has the power to prevent a project that would not be performed in an environmentally sound manner. However, this is not the case here. The Government has not relied on these provisions of the MRA to stop the Project. GM's approved EIA shows that the Project can be conducted safely and in accordance with international best practice. The Government therefore had no basis under the MRA to deny GM the exploitation licence it was entitled to under MRA Section 29(2) (and Section 1401 of its Exploration Licence).

1269. It is self-evident from the Minister's characterisation of Addendum No. 1 as a *political emergency brake*, that the Greenlandic Government now considers that it can through

[1474] First Witness Statement of J. Mair, at **(CWS-3)**, para. 898; Government of Greenland Public Announcement "*Government of Greenland supports mining activities, despite no to uranium*" (Minister Naaja Nathanielsen), 7 May 2021, at **(C-20)**.

an agreement override statutory rights. This is manifestly contrary to the principle of legality discussed above.

1270. In this connection, Professor Hansen Jensen observes that Section 302 purports to give the Government freehand discretion to reject an application to exploit uranium, and to disregard MRA Section 1 and Part 13 which deal with health, safety and the environment. Professor Hansen Jensen opines that: "*Section 302 of Addendum No. 1 suggests the Government can disregard these matters, which conflicts with the Mineral Resources Act*."[1475]

1271. Finally, Professor Hansen Jensen opines that "*Section 302 of Addendum No. 1 conflicts with the requirement under Danish law that terms and conditions must be formulated in a clear manner. On the contrary, the wording of Section 302 gives administrative authority an open/unlimited discretionary power to reject an application for an exploitation*."[1476]

1272. Professor Hansen Jensen's conclusion on the Addendum No. 1 Caveats is as follows:

> "*Being not in accordance with the purpose set out in the Mineral Resources Act and with the requirement under Danish law that terms and conditions must be formulated in a clear manner and necessary and proportional, section 302 should be considered illegal and invalid having as consequence that GM is not bound by this section – nor by sections 201-202 and 304 – of Addendum No. 1. This means also that the Government of Greenland cannot place legal reliance on these sections of Addendum No. 1.*"[1477]

1273. The Addendum No. 1 Caveats are invalid or unenforceable under Danish public law, and once the caveats are severed, Addendum No. 1 confers on GM a right to explore radioactive elements (in addition to the right to explore and exploit rare earths and zinc), with such right being subject to the ordinary operation of MRA Section 29(2) and, by extension, Section 14 of the Exploration Licence.

(f) Conclusion on invalidity and severance of Addendum No. 1 Caveats

1274. The relevant provisions of Addendum No. 1[1478] are set out below. The parts to be severed due to the Danish law principles set out above are in red.

> "***1. Minerals covered by the licence***
>
> *101. The licence covers the mineral resources set out in section 101 of the Standard Terms. These include all mineral resources*

[1475] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 68.

[1476] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 69.

[1477] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 71.

[1478] "*Addendum No. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*"' dated December 2011 and executed 6 January 2012, at **(C-8)**.

except hydrocarbons, radioactive elements and hydropower resources, unless the licence provides otherwise.

102. During the licence period for this exploration licence, the licence also covers radioactive elements, but see sections 201-202.

2. No right to exploitation of radioactive elements or to an exploitation licence thereto

201. The licensee has no right to, and may not carry out, exploitation of radioactive elements. The licensee also has no other right as regards exploitation of radioactive elements.

202. The licensee is not entitled to be granted a licence to exploit radioactive elements. This applies regardless of the licensee having established the presence of and delineated commercially viable deposits of radioactive elements and complied with the terms set out in this exploration licence.

3. Application for grant of licence for exploitation of radioactive elements

301. If the licensee applies for an exploitation licence on the basis of this exploration licence, see sections 1401-1408 of the Standard Terms, the licensee may furthermore apply for grant of a licence for exploitation of radioactive elements under the exploitation licence.

302. If the licensee applies for a licence to exploit radioactive elements, see section 301, the Government of Greenland may freely and without any reason or for any reason reject the application. An application may be rejected on the basis of a political or administrative decision not to grant a licence to exploit radioactive elements. Rejection of an application creates no obligation and no liability, including no liability in damages, for the Greenland Self-Government, the Government of Greenland or the Bureau of Minerals and Petroleum.

303. If the licensee applies for a licence to exploit radioactive elements, see section 301, the Government of Greenland may freely and without any limitation lay down any term for granting a licence to exploit radioactive elements. The Government of Greenland may for example lay down terms for exploitation activities, health and safety, the environment, resource utilisation and social sustainability and for the licensee's payment of consideration to the Greenland Self-Government. The Government of Greenland may thus freely and without any limitation lay down terms for payment of an annual fee calculated on the basis of the size of the area comprised by the licence (area fee), terms for payment of a fee calculated on the basis of the extracted mineral resources, etc. (royalty) or terms

for payment to the Greenland Self-Government of a share of the profit from the activities comprised by the licence (profit fee).

304. Sections 301-303 do not apply if sections 201-202 provide otherwise. Sections 301-303 do not have the effect that the licensee has a right to be granted a licence to exploit radioactive elements."

1275. The Greenlandic Government has known that the Addendum No. 1 Caveats are invalid or unenforceable as a matter of Danish law since before Act No. 20 was submitted to Parliament. As discussed above, the evidence shows that Poul Schmith performed a legal assessment for the IA Party Government on Addendum No. 1 around April to June 2021, and a second legal assessment dated 8 October 2021. Neither of these legal assessments have been disclosed. As discussed in Sections C.63 and C.72 above, the evidence supports the inference that these legal assessments did not support the Government's position that the addendum allowed the Government to stop the Kvanefjeld Project.

1276. Professor Hansen Jensen reaches a similar conclusion:

> "*It can be noted that maybe the adoption of Act No. 20 of 1 December 2021 to ban uranium prospecting, exploration and exploitation, etc. can be seen as a result of the Greenlandic government and legislative assembly being of the opinion that the act might be necessary to prevent GM from extracting rare earth elements containing certain amounts of uranium etc. according to Section 29(2) of the Mineral Resources Act.*"[1479]

1277. If it is correct that the Greenlandic Government has known since before Act No. 20 that the Addendum No. 1 Caveats do not negate *all* of GM's rights, then the Government has breached the principles of good faith and loyalty by positively asserting that, because of the Addendum No. 1 Caveats, GM had no rights at all. In particular:

(a) On 1 November 2021, the IA Party Government formally advised the Parliament that "*the rightholders do not have a legal right to an exploitation licence*" because "*the special conditions of existing licences already stipulate that no licensee is entitled to the exploitation of uranium.*"[1480]

(b) On 8 February 2022, the Respondents' counsel advised GM that Addendum No. 1 "*includes a right to refuse on any ground*" and invited GM to withdraw its application.

[1479] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 73.

[1480] Resolution of 2nd hearing, "*Proposal for: Inatsisartut Act prohibiting exploration, exploration and exploitation of uranium, etc.*", EM2021/23, 1 November 2021, at **(C-207E)**.

(c) On 22 July 2022, in the Draft Decision, the Government claimed that the Addendum No. 1 Caveats meant that GM did not have any rights or legitimate expectations with respect to exploitation at Kvanefjeld.

(d) On 2 June 2023, in its Final Decision, the Government again claimed that the Addendum No. 1 Caveats meant that GM did not have any rights or legitimate expectations with respect to exploitation at Kvanefjeld, and thereby purported to reject GM's Exploitation Licence Application.

1278. If the Respondents wish to dispute that they were advised that the Addendum No. 1 Caveats were invalid and/or unenforceable, the Respondents should produce copies of the legal advice they received, including the legal assessments performed by Poul Schmith, prior to the events above.

G.3 GM had legitimate expectations of an exploitation licence for uranium

(a) Preliminary remarks on legitimate expectations under Section 73 of the Danish Constitution

1279. The Greenlandic Government suggests in its Final Decision that legitimate expectations generally do *not* constitute property rights capable of expropriation:[1481]

> "*An abstract or uncertain expectation of a right could be a general possibility to apply for a licence under the legislation which has not yet been exercised or communicated to the authority. As a general rule, an abstract or more uncertain expectation of a right would not be protected by section 73 of the Constitution.*"

1280. This assertion, for which the Greenlandic Government provides no further explanation or legal basis, is wrong – both legally and in the way it characterises GM's legitimate expectation in this specific case.

1281. First, as noted above, Danish law recognises legitimate expectations as a self-standing entitlement which must be given due consideration by public authorities when they make decisions that affect the legal position of private parties. As discussed immediately below, legitimate expectations enjoy protection under the Danish Constitution, and this includes expectations of receiving a licence. Second, there is nothing "*uncertain*" about GM's expectation of being able to exploit Kvanefjeld as a multi-element Project. This was foreseen under the applicable contractual framework (including Addendum No. 1). As set out below, this expectation is solidly anchored both in statutory and contractual rights and has been repeatedly reaffirmed by the consistent and supportive conduct and statements of the Greenlandic Government and its agencies—conduct that induced GM to pursue the Project in Greenland over more than a decade at the cost of more than US$150 million.

[1481] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, p. 26.

1282. Regarding the scope of rights protected by Section 73 of the Danish Constitution, as discussed further below in relation to Claim 2, the notion of "*property*" ("*ejendomsret*") in Section 73 of the Danish Constitution is very wide,[1482] and certainly includes the rights that GM held under MRA Section 29(2) and Section 14 of the Standard Terms. There is no doubt that a licence to conduct a specific business is a protected right under Section 73 of the Danish Constitution.[1483] It should therefore be uncontroversial that GM's Exploration Licence is a protected property right under the applicable law.

1283. GM's legitimate expectation of receiving an exploitation licence pursuant to the Exploration Licence enjoys the same protection. This position is also backed by case law and doctrine.

1284. GM refers the Tribunal to the 1997 Danish Supreme Court judgment in U.1997.157H.[1484] This case concerned the question of whether a rejection ("*afslag*") of an *application for a licence to continue extraction of mineral resources* constituted expropriation. The Supreme Court found that it did. The background to U.1997.157H was as follows: a 1972 regulation on mineral resources prescribed that, subject to four exceptions, a licence was required for the extraction of mineral resources. Subsequent regulations introduced in 1977 maintained this state of law provisionally but required that, from 1988 onwards, parties wishing to conduct extraction activities would need to apply for a licence – even in cases where the extraction activities had previously been captured by one of the exceptions in the 1972 regulation. The preparatory works to the 1977 regulations explicitly stated that it was the expectation that such "*extension*" licences would be granted except in exceptional circumstances (such as due to considerations of water supply or similar). The plaintiff in U.1997.157H was a landowner who had conducted extraction activities under the first 1972 regulation exception for many years. Because of the new regulation introduced in 1977, the landowner applied for permission to continue the extraction activities after 1988, but his application was rejected by the relevant authority. The Supreme Court found that the rejection was to be compared to a prohibition on an existing extraction right under the 1972 regulation and found that compensation for expropriation was due to the plaintiff landowner.

[1482] H. Mølbeck et al., *Ekspropriation i praksis* (Djøf Forlag, 2nd ed., 2019), pp. 25-30, at **(CL-210)**, pp. 26-30.

[1483] See for instance P. Pagh, T. Haugsted, *Fast Ejendom - Regulering og Køb*, (4th ed., 2022), pp. 718-721, at **(CL-211)**, p. 718; A. Ross, *Dansk Statsforfatningsret 2*, (3rd ed., 1980), pp. 640-650, at **(CL-212)**, p. 648; H. Zahle, *Dansk Forfatningsret 3* (3rd ed., 2003), p. 186, at **(CL-213)**, p. 186; J. Peter Christensen et al., *Dansk Statsret 3. udgave* (Jurist- og Økonomforbundets Forlag, 2nd ed., 2022), pp. 175, 347-348, at **(CL-214)**, pp. 347-348; F. Dalgaard-Knudsen, *Mineral Concessions and Law in Greenland*, (1st ed., 1991), at **(CL-186)**, p. 63, 171. See also the Danish Supreme Court in U.1981.394H in matter 190/1980, 2 April 1981, at **(CL-215)**. In the matter, the Danish Supreme Court held that, a licence to be exclusive distributor of milk in a specific area (a concession) was considered a protected right under article 73 of the Constitution (although the intervention in question was not considered expropriation based on intensity considerations).

[1484] U.1997.157H in matter 296/1995, 27 November 1996, at **(CL-216)**.

1285. GM notes that a similar case came before the Danish Supreme Court in 1999 in U.1999.1538H.[1485] This case concerned the same legislation and similar facts. The Supreme Court reiterated its reasoning from U1997.157H, stating that the rejection was to be compared to a prohibition on an existing extraction right under the 1972 regulation, and therefore compensation for expropriation was due to the plaintiff.

1286. The same mineral resources legislation was the subject of the more recent decision of the Western High Court in MAD2018.202.[1486] In this 2018 decision, the Western High Court explicitly referred to the *legitimate expectations* doctrine which the plaintiff had specifically invoked in support of its position that "*the company had had a legitimate expectation that it would receive a permit to extract peat*". The underlying reasoning does not appear to differ from the earlier judgements of the Supreme Court in U.1997.157H and U.1999.1538H (discussed immediately above).

1287. GM further refers the Tribunal to the judgment of the Supreme Court in U.2017.2491H.[1487] In this case, the Danish Supreme Court was called to decide on the question of whether a property owner was entitled to expropriation damages for lost profits on exploitation of mineral resources contained within the expropriated land plot, even though the property owner did not yet have an exploitation licence for those resources. The property owner had purchased the property via a tender that stated that an expansion of a nearby highway was planned which would affect part of the property. The tender material also stated that it would be possible to obtain a licence for exploitation of the mineral resources on the property. When the property owner wished to obtain the exploitation licence, the Directorate for Roads ("*Vejdirektoratet*") objected to the licence covering a part of the property that was not mentioned in the tender materials but which the authorities now also wished to use for the expansion of the highway. The question in the case was thus whether the property owner had a *legitimate expectation* of exploiting mineral resources on all his property other than the plots mentioned in the tender materials, i.e., whether his legitimate expectation included the additional land plot that the Directorate for Roads now wished to exclude from the licence. The Supreme Court stated that (i) the property owner had purchased the property with the intention to exploit mineral resources and, (ii) the property owner at the time of purchase could expect to obtain an exploitation licence for the entire property other than the land plots that, at the time of the tender, were identified as being part of the expansion of the motorway. On this basis, the Supreme Court awarded expropriation damages to the property owner for the profit lost by not being able to extract the mineral resources.

[1485] U.1999.1538H in matter 249/1997, 16 June 1999, at **(CL-217)**.

[1486] MAD 2018.202 in the matter B-2757-06, 25 April 2018, at **(CL-218)**.

[1487] U.2017.2491H in the matter 141/2016, 11 May 2017, at **(CL-219)**.

1288. The decision of the Supreme Court in U.2017.2491H appears to build on the reasoning of the Western High Court in TfL 1999.226V.[1488] In this case, the Western High Court considered whether further expropriation damages were due in a case where a property containing gravel had been expropriated. The owner had been compensated for the expropriated land but not the mineral resources (gravel) on the property. The Western High Court stated that (i) mineral resources were proven to exist on the property, (ii) the owner intended to exploit those mineral resources at some point, and (iii) it was proven (by a declaration from a public authority) that the owner would be able to obtain permission for exploitation of the resources. On this basis, the Western High Court stated that the owner both wished to and could obtain an exploitation licence for the relevant mineral resources. The Western High Court then proceeded to state, in relation to expropriation damages, that it cannot be a requirement that exploitation is ongoing, or that an exploitation licence had been obtained, by the time expropriation occurs.

1289. Against the backdrop of this stable line of judicial authority, a legitimate expectation of receiving a licence enjoys full legal protection equivalent to a statutory or contractual right.

1290. In the following, GM will address the basis for its specific legitimate expectations with respect to the exploitation of radioactive elements.

(b) The Greenlandic and Danish Governments consistently represented that GM would be entitled to an exploitation licence for uranium if it satisfied the requirements

1291. As GM has shown, it is a fundamental tenet of the Greenlandic mining framework that the holder of an exploration licence that delimits a deposit is entitled to an exploitation licence over the same area. Through Addendum No. 1, GM had a right to explore for uranium. This right to explore, coupled with the licensing guarantee, supported GM's legitimate expectation that, if it delineated a commercially viable deposit in accordance with MRA Section 29(2) and Section 14 of the Standard Terms, it would be entitled to a uranium licence.

1292. Further, as demonstrated in the Detailed Statement of Facts above, the Greenlandic and Danish Governments consistently represented that GM would be entitled to an exploitation licence for uranium if it delineated a commercially viable deposit and satisfied the social and environmental requirements.

[1488] TfL 1999.226V in matter B-2671-96, 23 September 1999, at **(CL-220)**.

1293. This pattern of Government conduct began very early in GM's investment. For many years before the ZTP was lifted, the Greenlandic Government accepted GM's mining activities involving uranium. For example:

(a) The Greenlandic and Danish Governments issued and renewed GM's Exploration Licence while fully aware that the ore body is enriched with uranium.[1489]

(b) The Greenlandic and Danish Governments knew that uranium would need to be extracted and treated if *any* mining activity was to occur at Kvanefjeld.[1490]

(c) In its exploration activities focussed on rare earth elements, GM extracted drill cores containing all elements present in the deposit (including uranium) and relied on uranium as a pathfinder to analyse the deposit. This was done with the Greenlandic Government's full knowledge.[1491]

(d) Although GM's focus has always been the exploitation of the rare earths, since 2008, GM has repeatedly communicated to the Greenlandic authorities that uranium was co-mingled with the rare earth elements it intended to exploit, and that it wished to commercially exploit uranium as a by-product.[1492]

1294. The Greenlandic and Danish authorities' knowledge and continuous acceptance of the mining activities involving uranium and the intrinsic need to process and handle it along with other residual products not covered by the licence created legitimate expectations that GM could (at least) handle uranium as a residual product while conducting its exploration activities and that this would also be the case after the transition from exploration to exploitation.

1295. The Greenlandic and Danish Governments went much further than merely tolerating the handling of uranium as part of the ongoing exploration activities. Indeed, the two governments made various representations and took various regulatory steps to facilitate the development of the Kvanefjeld Project as a rare earths *and uranium* project.

1296. These representations and actions include (but are not limited to) the following:

(a) In 2007, the Greenlandic Government initiated a review of uranium mining and, in October 2008, the Ministry of Mineral Resources and BMP produced the 2008 Uranium Report, which concluded that uranium mining could be performed safely and highlighted the Kvanefjeld Project as a deposit that could

[1489] As discussed in Section C.1, the Danish and Greenlandic Governments have known that Kvanefjeld is enriched with uranium since the 1950s. This was known when the Exploration Licence for Kvanefjeld was first granted (see section C.3 above).

[1490] See, for example, paragraphs 121 and 144 above.

[1491] See section C.5 above.

[1492] See section C.5 above.

be commercially exploited, with Greenland benefiting economically. It recommended that Greenland set guidelines based on the IAEA guidelines and international best practice, including radiation dosage limits (see Section C.6 above).

(b) In January 2009, the Government agreed the content of a document published by GM, which confirmed that the Government had allowed exploration at Kvanefjeld on a multi-element basis, including uranium, and that "[t]*his stance would then permit relevant projects to be advanced to the mining stage*" (see Section C.7 above).

(c) In August 2009, the Greenlandic Government sent a delegation to Western Australia to learn about uranium mining regulation. This delegation represented to GM that Greenland would establish a regulatory system based on international best practice (see Section C.9 above).

(d) Following meetings with GM and stakeholders about the Kvanefjeld Project, in June 2010, the Government announced a comprehensive review by the Danish authorities of uranium mining in Greenland (see Section C.12 above).

(e) In August 2010, GM made it clear to the Government that it would not be able to continue its investment activities unless the Government granted it permission to include uranium in its studies. To keep GM investing in Greenland, the Government agreed to amend the Standard Terms (see Section C.12 above). During these negotiations of the 2010 Amendment to the Standard Terms, the Minister of Mineral Resources represented to GM in writing that the Government's decision on whether to permit uranium mining would be subject to the information generated in GM's detailed feasibility studies, EIA and SIA.[1493] Accordingly, GM announced (without objection from the Government) that the Government had represented to it that, if the Government was "*satisfied that all health, safety and environmental requirements can be met, then an exploitation license can be issued to develop an operation that will produce REEs, uranium and zinc*."[1494]

(f) In September 2010, the Danish authorities published the GEUS Factbook on uranium mining to inform the public and the Parliamentary discussion of this issue (see Section C.13 above). This represented that, for the Kvanefjeld Project specifically, uranium mining would be regulated using radiation dosage thresholds, and it was expected that mining could be conducted in accordance with these thresholds. It further represented that, if the ZTP was lifted, the uranium exploitation would be contingent on the applicant being able to

[1493] Letter from O. K. Berthelsen (Minister for Industry and Mineral Resources) to R. McIllree (GM), 3 August 2010, at **(C-271)**.

[1494] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 109.

demonstrate through EIA and SIA studies that it could "*carry out the activity in a manner safe to the environment and health and minimize the impact on the environment*."[1495]

(g) In September 2010, a Greenlandic Government delegation visited Canada to learn about uranium mining regulation and produced a report which concluded that mining could be conducted safely, and that Greenland should follow Canadian and IAEA best practice, and that environmental and health impacts should be assessed through EIA studies (see Section C.14 above).

(h) In December 2010, the Government issued GM with a permit to include uranium in its studies at the Kvanefjeld Project, in accordance with the 2010 Amendment (see Section C.12 above).

(i) At a meeting in June 2011 regarding GM's ToR, a full range of Government departments expressed their support for the Kvanefjeld Project as scoped, which included the exploitation of uranium as commercial by-product (see paragraph 200 above).

(j) In August 2011, the Greenlandic and Danish authorities approved GM's 2011 ToR, which included uranium as a saleable by-product (see paragraph 201 above).

(k) In late 2011, GM made it clear to the Government that it would have no choice but to walk away from its investment unless the Government provided it with licensing security, and the Government agreed to extend GM's Exploration Licence to include the right to explore for uranium and the right to apply to exploit uranium (i.e., Addendum No. 1). As discussed above, Addendum No. 1 was agreed as a bridging solution pending the lifting of the ZTP, which the Government represented would occur, thus paving the way for a commercial exploitation of uranium.

(l) In February 2012, the Premier of Greenland confirmed to GM that the Government would support the Kvanefjeld Project if GM met the safety and environmental requirements (see paragraph 235 above).

(m) In March 2012, the Deputy Minister for Mineral Resources represented to GM that GM would be granted an exploitation licence inclusive of uranium provided GM met the environmental conditions (see paragraph 241 above).

[1495] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 124.

(n) In June 2012, the Premier of Greenland indicated to GM that the ZTP should be abolished and that decisions on licence applications should be based on the findings of EIA and SIA studies.[1496]

(o) In June 2012, the Minister of Mineral Resources stated to the press that he "*want*[ed] *uranium mines opened in Greenland*", that he supported "*abandoning the so-called zero tolerance policy*", and that he expected to be processing GM's application to exploit rare earths and uranium within a year.[1497]

(p) In August 2012, the Premier of Greenland and the Minister of Mineral Resources advised GM that they supported the Project but needed more time to lift the ZTP (see paragraph 255 above).

(q) In November 2012, the Greenlandic and Danish Governments established the UWG to investigate the consequences of lifting the ZTP. The primary reason for the UWG process was to facilitate the Kvanefjeld Project (see Section C.23).

(r) In December 2012, GM representatives joined representatives of the Danish and Greenlandic Governments, including the Premier of Greenland, on a trade delegation to South Korea, and the Government represented to GM that the ZTP would be lifted in the spring sitting of Parliament (see paragraph 271 above).

(s) In January 2013, the Danish Government, including Denmark's foreign policy spokesperson, stated to the press that Denmark would support Greenland in pursuing uranium mining.[1498]

(t) In January 2013, the Premier of Greenland stated to the press that the Government expected to lift the ZTP.[1499]

(u) In March 2013, the Danish authorities advised GM that Greenland's uranium mining regulations would be a "*copy-paste*" of regulations used in other Western countries (i.e., Australia and Canada) (see paragraph 277 above).

(v) In March 2013, the new Government's coalition agreement provided that: "*The 0-tolerance policy for minerals containing uranium will be abolished, though*

[1496] See paragraph 248 above. Email from O. Ramlau-Hansen (GM) to R. McIllree (GM), subject: "*Letter to Kuupik (Confidential!)*", 15 June 2012, at **(C-326)**; attaching Letter from O. Ramlau-Hansen (GM) to K. Kleist (Premier of Greenland), 14 June 2012, at **(C-327)**.

[1497] See paragraph 251 above; B. H. Sørensen and V. Hyltoft, *He wants uranium mines opened in Greenland*, Berlingske, 17 June 2012, at **(C-237)**; B. H. Sørensen and V. Hyltoft, *He wants uranium mines opened in Greenland*, Berlingske, 19 October 2012, at **(C-332E)**.

[1498] H. Jacobsen, *Danish U-turn clears way for uranium mining in Greenland*, EURACTIV, 29 January 2013, at **(C-346)**.

[1499] First Witness Statement of J. Mair, at **(CWS-3)**, para. 255; EIRDanmark, *Kuupik Kleist IPC press conf. incl. EIR question, Jan. 14, 2013*, 16 January 2013, http://www.youtube.com/watch?v=JeUmpFoKsXY (last accessed 9 May 2023), at **(C-347)**, 56:40.

the abolition will be contingent upon securing public health, nature and environment from risks."[1500] It also provided that "*New jobs will be created within the mining industry and royalties will secure an income for society*."

(w) In April 2013, the Minister of Mineral Resources stated in Parliament that the environmental impacts of uranium mining projects would be assessed through EIA studies, and that mining companies would need to demonstrate compliance with radiation dosage limits.[1501] The Minister emphasised that lifting the ZTP was important for the Kvanefjeld Project, which would be "*given the opportunity to get started*".

(x) In April 2013, advisers to the Danish and Greenlandic Governments released the Lett Report, which stated that radiation protection in Greenland would be regulated through radiation dosage limits, and this regime would apply to the Kvanefjeld Project specifically (see Section C.25).

(y) In May 2013, the Premier of Greenland and the Minister of Mineral Resources advised GM that the Government aimed to lift the ZTP and then focus their attention on establishing a regulatory framework to govern the exploitation and export of uranium (see paragraph 286 above). The Minister subsequently stated to GM in writing that: "*it is exciting times for Greenland and the government feels it* [sic] *there's good opportunity to developing a new resource sector*."[1502]

(z) In July 2013, the Minister of Mineral Resources advised the Parliament that, after the ZTP was lifted, companies would be permitted to exploit and export uranium as both a main product and a by-product.[1503] He stated that the Government intended to follow IAEA recommendations and guidelines.

(aa) In August 2013, the Government advised GM that, after the ZTP was lifted, the Danish and Greenlandic Governments would establish a framework for the exploitation and export of uranium, and the Government would amend Section 101 of the Standard Terms to include uranium. The Government further advised that Greenland's radiation protection regulations would follow international standards and conventions, including IAEA standards (see paragraphs 288-294 above).

(bb) In September 2013, the Deputy Minister of Mineral Resources advised GM in writing that, once the ZTP was lifted, the Government would set up the

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[1500] Government of Greenland Coalition Agreement 2013-2017, at **(C-349)**, p. 4.

[1501] §37 Parliamentary Questionnaire No. 26/2013, 30 April 2013, at **(C-350)**.

[1502] Email from J. Kirkegaard (Minister for Minerals and Industry) to J. Mair (GM); J. S. Nielsen (Nanoq), subject: "*SV: GME - correction to previous email*", 4 June 2013, at **(C-355)**.

[1503] §37 Parliamentary Questionnaire No. 118/2013, 9 July 2013, at **(C-362)**.

regulatory and administrative structure to enable the exploitation and export of uranium.[1504]

(cc) In September 2013, the Minister of Mineral Resources advised the Parliament that, when the ZTP was lifted, exploitation permits for uranium could be granted in accordance with the MRA "*if the activities can be carried out responsibly and in accordance with recognized good practice*."[1505]

(dd) In October 2013, the Premier of Greenland stated in a speech at the Arctic Circle Forum that Greenland intended to become a significant uranium exporter.[1506] The Premier subsequently reiterated these statements in the Parliament, confirming that the purpose of lifting the ZTP was to allow for uranium exports as a by-product in the mining of rare earths.[1507] The Minister later confirmed to the Parliament that the Premier was referring to the Kvanefjeld Project specifically.

(ee) In October 2013, the UWG Report recommended that Greenland set up a regulatory framework based on uranium mining countries (i.e., Australia, Canada and the USA), using radiation dosage limits and IAEA and ICRP best practice.[1508] It stated that the Government expected GM to apply for an exploitation licence for the Kvanefjeld Project (including uranium), after the ZTP was lifted.

(ff) In October 2013, the Parliament passed a proposal to lift the ZTP, which stated that Greenland's uranium mining regulations would be based on international best practice, including IAEA standards and guidelines (see paragraphs 297(b) and 317 above). During the Parliamentary discussions regarding lifting the ZTP:

(i) The Government formally advised that the reason for lifting the ZTP was "*to ensure that we can utilize the common earth metals, which are often linked to uranium*", referring specifically to the Kvanefjeld Project.[1509]

(ii) The Minister for Mineral Resources stated that: (i) the motivation for lifting the ZTP was to enable rare earths exploitation and the Kvanefjeld

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[1504] First Witness Statement of J. Mair, at **(CWS-3)**, para. 289; Email from J. S. Nielsen (Nanoq) to J. Mair (GM), subject: "*SV: Upcoming schedule*", 8 September 2013, at **(C-361)**.

[1505] §37 Parliamentary Questionnaire No. 167/2013, 17 September 2013, at **(C-364)**.

[1506] A. Hammond (Premier of Greenland), *ARCTIC CIRCLE Presentation FINAL EN*, Naalakkersuisut, 12 October 2013, at **(C-375)**.

[1507] §37 Parliamentary Questionnaire No. 204/2013, 15 October 2013, at **(C-376)**, answer on 4 November 2013.

[1508] UWG Report, at **(C-231E)**, pp. 54-55.

[1509] Answer note regarding questions put by the Raw Materials Committee for consultation on Sunday 20 October in ML no. 2, by J. E. Kirkegaard (Minister of Mineral Resources), 20 October 2013, at **(C-369E)**.

Project in particular;[1510] (ii) Greenland and Denmark had been working together to create a framework for uranium mining in accordance with international best practice; [1511] and (iii) the Government supported Greenland becoming a significant uranium exporter.[1512]

(iii) The Parliamentary Rastof Committee recommended lifting the ZTP, confirming that the main reason for this was to enable rare earths mining (i.e., the Kvanefjeld Project).[1513]

(gg) Following the abolition of the ZTP, on 29 October 2013, the Deputy Minister of Mineral Resources advised GM that the Danish and Greenlandic Governments were setting up a task force to establish a regulatory framework for uranium mining based on international best practice. He represented that "*the overall aim is to keep driving Kvanefjeld forward and to complete a mining license application*" and that the Greenlandic Government was "*supportive of this approach and is pushing this agenda*".

1297. After the ZTP was lifted, the Danish and Greenlandic authorities embarked upon a process of developing a regulatory framework for the exploitation and export of uranium based on international best practice (see Section C.31 above). These steps were taken with the primary objective of enabling the Kvanefjeld Project and took place in close consultation with GM, as confirmed by GM's witness James Eggins.[1514]

1298. During this period, GM enjoyed the explicit support of successive Greenlandic and Danish Governments. The two governments made various representations and took multiple legal and political steps in order to allow the Project to proceed as a rare earths *and uranium* project. The evidentiary record shows that the parties collaborated closely with a view to taking the Project into the exploitation phase. In particular:

(a) In December 2013, the Ministry of Mineral Resources advised GM that the UWG working groups were developing a regulatory structure "*according to the highest international standards*" and that, with respect to the Kvanefjeld Project specifically, "*a permit will only be granted on the conditions that the*

[1510] See Questionnaire from the Rastof Committee regarding EM13 item 106, repeal of the Zero Tolerance, 16 October 2013, at **(C-368E)**.

[1511] Document titled "*Proposal for Inatsisartut decision that Inatsisartut accedes with effect from EM 13, that the "Zero tolerance" towards mining of uranium and other radioactive substances ceases*", EC 2013/106, by Member of Naalakkersuisut for Business and Raw Materials, 8 October 2013, at **(C-367)**.

[1512] See Questionnaire from the Rastof Committee regarding EM13 item 106, repeal of the Zero Tolerance, 16 October 2013, at **(C-368E)**.

[1513] Document titled "*Proposal for Inatsisartut decision that Inatsisartut, with effect from EM13, agrees to the "Zero tolerance" towards the extraction of uranium and other radioactive substances*", Rastof Committee, 21 October 2013, at **(C-278E)**.

[1514] First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 37-59, and 64-77.

exploitation activities must be carried out in accordance with best practice with regard to both safety, health environment and social sustainability."[1515]

(b) In February 2014, Greenland's Minerals Strategy for 2014-2018 listed the Kvanefjeld Project as one of its target projects to licence in the next five years.[1516]

(c) In March 2014, the Minister of Mineral Resources and the Deputy Minister of Industry, Labour and Trade advised GM that the Government wanted to see the momentum of the Project maintained and expected GM's licence application to be approved in the current term of government.[1517]

(d) In May 2014, the Government insisted that GM's project development plan for Kvanefjeld include the refining of rare earth elements and uranium (up to yellowcake). Deputy Minister of Mineral Resources Mr Hammeken-Holm referred to this development plan as an "*agreement*" between GM and the Government.[1518]

(e) In June 2014, GM representatives attended a workshop with representatives of the Danish and Greenlandic Governments, and the parties agreed a strategy for the development of uranium mines in Greenland, which included that radiation protection would follow international standards (e.g., the ICRP) and that licensing would be governed by the Mineral Resources Act.[1519]

(f) In February 2015, Deputy Minister of Mineral Resources Mr Hammeken-Holm asked GM to provide materials about the Kvanefjeld Project for a marketing

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[1515] Email from J. Hesseldahl (Nanoq) to R. McIllree (GM), subject: "*AVG certification.txt*", 4 December 2013, at **(C-380)**; Email from J. Hesseldahl (Nanoq) to R. McIllree (GM), subject: "*AVG certification.txt*", 4 December 2013, at **(C-380E)**.

[1516] First Witness Statement of J. Mair, at **(CWS-3)**, para. 310; Document titled "*Greenland's oil and mineral strategy 2014-2018*", by Government of Greenland, February 2014, at **(C-386)**.

[1517] First Witness Statement of J. Mair, at **(CWS-3)**, para. 313.

[1518] For example, on 15 May 2014, Mr Hammeken-Holm sent a letter to GM recording the MLSA's understanding that GM "*would like to carry as much processing as possible in Greenland and is committed to pursuing chemical processing (refinery) up until yellow cake*". It stated that GM had "*agreed*" to this approach, meaning that the project plan and studies would need to incorporate the processing of uranium ore in Greenland. The MRA asked GM to confirm this understanding. The letter stated: "*MRA will strive within Greenland law to reach a final agreement beneficial to all parties*". Email from N. V. Rasmussen (Nanoq) to J. Mair (GM), subject: "*Follow up on correspondence and meeting reg. processing in Greenland*", 15 May 2014, at **(C-391)**; Letter from J. T. Hammeken-Holm (MLSA) to J Mair (GM), subject: "*Follow up on correspondence and meeting regarding processing in Greenland*", 15 May 2014, at **(C-392)**. See First Witness Statement of J. Mair, at **(CWS-3)**, para.320; First Witness Statement of S. Bunn, at **(CWS-7)**, para. 224.

[1519] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 260-261; Document titled "*Stages of Uranium Production and Trade*", by the DIIS, 25 June 2014, at **(C-383)**.

presentation to be given by the Minister, referring to the Project as one of the "*large upcoming exploitation projects in Greenland*."[1520]

(g) In March 2015, the Government of Greenland published a newsletter on mineral exploration in Greenland.[1521] This newsletter included express commentary on the Kvanefjeld Project, as a rare earths and uranium project. The newsletter noted that the Premier of Greenland "*has emphasized the government's commitment to resource extraction and creation of a stable investment environment in Greenland: 'The coalition will ensure a more stable and continuous mining policy to attract foreign investors.' The Prime Minister also confirmed that the government will maintain the abolition of the uranium 'zero tolerance', which was lifted in October 2013*."

(h) In March 2015, the Government and GM negotiated the renewal of GM's Exploration Licence, which included uranium as one of the targeted minerals for exploration (see Section C.35 above). The Government accepted application fees paid by GM.

(i) In November 2015, GM's ToR and white paper were approved by the Government and posted on the Government's webpage.[1522] GM's ToR included a requirement that GM produce uranium in Greenland. It also provided that the Project would be regulated by various IAEA standards, and required GM to engage an independent consultant to analyse the radiological risks of its operations and estimate the radiation dosage impact of mining operations on workers and the public. The Deputy Minister of Industry Jørn Skov Nielsen advised GM that the approval of its ToR would be aligned with the Parliament's consultation on the International Uranium Conventions.[1523]

(j) In December 2015, the Greenlandic Government passed the Greenlandic Radiation Protection Act, which empowered the Government to regulate radiation protection through dosage limits. The Government also committed to ratifying the International Uranium Conventions. The Danish authorities subsequently took steps which saw Greenland accede to these conventions.[1524]

(k) In early 2016, the Greenlandic and Danish Governments concluded the Uranium Export Agreements to establish a combined framework to govern the

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[1520] See Section C.32 above.

[1521] First Witness Statement of J. Mair, at **(CWS-3)**, para. 358; Ministry of Mineral Resources, *Minex Newsletter (47)*, March 2015, at **(C-390)**.

[1522] First Witness Statement of J. Mair, at **(CWS-3)**, para. 407; Email from J. S. Nielsen (MILT) to J. Mair (GM), subject: "*SV: update*", 24 November 2015, at **(C-402)**Greenland Minerals Ltd ASX Announcement titled "Kvanefjeld Update: Government Pre-Hearing Approvals Complete", 25 November 2015, at **(C-37)**.

[1523] First Witness Statement of J. Mair, at **(CWS-3)**, para. 403.

[1524] See paragraph 405 above.

obligations relating to export controls and nuclear safeguards of uranium trade (and dual-use items) in Greenland.[1525]

(l) In February 2016, Denmark's Ministry of Foreign Affairs and Greenland's Ministry of Industry, Labour and Trade issued a joint statement which provided: "*The government intends to present legislative proposals on the safety control of nuclear materials and facilities in Greenland with a view to ensuring compliance with the NPT* [Non-Proliferation Treaty] *and the Kingdom of Denmark safety control obligations under the IAEA and to ensure that the highest international standards in the area, which they, among other things, is expressed in Australia and Canada, is followed*.".

(m) In February 2016, Greenland's Minister for Industry, Labour, Trade and Foreign Affairs stated to the Parliament that the Government was obliged to process GM's application in accordance with the MRA and the terms of the Exploration Licence, and that, if the Government rejected GM's application to exploit uranium, it would "*appear as an untrustworthy cooperation partner.*"[1526]

(n) In March 2016, the IA Party acknowledged that, if the Government passed legislation to block the Kvanefjeld Project, it may be liable to compensate GM for "*broken assumptions.*"[1527]

(o) In April 2016, Greenland's Minister for Industry, Labour, Trade and Foreign Affairs issued a statement on behalf of the Government to the Parliament that, if GM met all the conditions of its Exploration Licence and delineated a commercially exploitable deposit, it would have a "*right to exploitation*" for the Kvanefjeld Project, and that this right was "*guaranteed*" by law.[1528] The Government further stated that holding a referendum on uranium mining would call into question this licensing guarantee, and to ban uranium mining would undermine the rule of law and would "*rightly be criticised*". The Government further stated that, in terms of radiation protection, "[ppm] *limit values are hardly relevant*".

[1525] First Witness Statement of J. Mair, at **(CWS-3)**, para. 428.

[1526] §37 Parliamentary Questionnaire No. 53/2016, 26 February 2016, at **(C-445E)**.

[1527] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**.

[1528] *Naalakkersuisut's response to referendum proposal on mining of up to 0.05% radioactive materials*, Minister for Business, Labour, Trade and Foreign Affairs, 20 April 2016, at **(C-214E)**.

(p) In April 2016, the Democrats stated that the Parliament had decided to support uranium mining, and to reverse this position would indicate that the decisions of the Parliament "*cannot be trusted*."[1529]

(q) In May 2016, the Greenlandic Parliament passed resolutions on proposals regarding dual-use products and nuclear safety (see Section C.39 above).

(r) In June 2016, the Danish Parliament passed legislation on the peaceful use of nuclear material (see Section C.39 above). This legislation was modelled on the international standards practised in Australia, Canada, and Euratom.

(s) In July 2016, the IA Party acknowledged that, if the Government passed legislation to block the Kvanefjeld Project it may be liable to compensate GM for "*a loss of rights*."[1530]

(t) In September 2016, the Minister of Mineral Resources stated to the Parliament, in the context of a discussion on uranium mining: "*Naalakkersuisut is firm on the fact that the utilization of raw materials must benefit our country and our people*."[1531]

(u) In October 2016, the IA Party acknowledged that the door was "*wide open*" for GM to mine uranium at Kvanefjeld.[1532]

(v) In October 2016, the Democrats issued a statement to the Parliament expressing their support for mining and stating that passing legislation to prevent the Kvanefjeld Project would "*be a signal to outside investors that they must invest their money elsewhere than in Greenland, because here you cannot trust the decisions that are made*" and that, given GM's significant investment in Greenland, stopping the Project "*would be profoundly inhibiting for foreign investment*."

(w) In October 2016, the Siumut Party expressed their support for uranium mining, noting that the Canadian Nuclear Safety Commission had advised that, based on

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[1529] *Democrats' response to referendum proposal on mining and export of uranium (FM 2016/97)*, J. Hansen, 1 April 2016, at **(C-448E)**.

[1530] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

[1531] *Naalakkersuisut's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, Minister for Finance and Raw Materials, 16 September 2016, at **(C-457E)**.

[1532] *Inuit Ataqatigiit's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, M. B. Egede (IA), 1 October 2016, at **(C-458E)**.

decades of data collection, "*uranium mines are so safe that they are safer than ordinary mines*."[1533]

(x) In October 2016, Denmark's DCE published the DCE Report on Environmental Issues, which stated that Greenland would regulate uranium mining using radiation dosage limits, in accordance with international best practice (i.e., IAEA and ICRP standards) and in the model of Australia, Canada, and the USA. [1534] It concluded that uranium mining could occur "*without major environmental problems*".

(y) In October 2016, the Ministry published its annual mineral exploration newsletter, which had a section on the Kvanefjeld Project, which it noted was for "*both rare earth elements and uranium*."[1535] The newsletter stated: "*it is expected that GMEL will submit a full exploitation licence application in the near future, which will be followed by a public hearing process*". In the section on the Kvanefjeld Project, the newsletter explained the progress that had been made by the two governments in developing a legal framework for the exploitation of uranium. It stated: "*This is a key step that allows GMEL to work toward establishing an off-take agreement for uranium, in close dialogue with the respective governments*."

(z) In November 2016, when the ZTP had been lifted, the former Minister of Mineral Resources told the press: "*The mine for the extraction of uranium and rare earths at Kuannersuit will become a reality if they meet the environmental and safety requirements*" and "*I estimate that the process is so far advanced that GME now actually has a legal requirement to obtain a permit*."[1536]

(aa) In November 2016, the Premier of Greenland stated to the press: "*if GME can live up to the environmental requirements, Greenland is legally obliged to grant permission for extraction*."[1537]

(bb) In November 2016, the Minister of Mineral Resources (Múte B. Egede, who is the current Premier of Greenland) told the Parliament that "[w]*hen Naalakkersuisut decides on the granting of an exploitation permit, Naalakkersuisut attaches importance to the permit conditions*" and that the

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[1533] *Partii Naleraq's response to A. B. Egede (IA)'s proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, H. Enoksen (Partii Naleraq), 3 October 2016, at **(C-461E)**.

[1534] First Witness Statement of J. Mair, at **(CWS-3)**, section VIII.Y; DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**.

[1535] First Witness Statement of J. Mair, at **(CWS-3)**, section VIII. U; Ministry of Mineral Resources, *Minex Newsletter* (49), October 2016, at **(C-469)**.

[1536] W. Turnowsky, *Múte may end up issuing a licence to GME*, Sermitsiaq, 9 November 2016, at **(C-464E)**.

[1537] J. Lyberth, *Law professor Political refusal will be a misuse of power*, KNR, 14 November 2016, at **(C-466E)**.

"*handling of cases and decision in general must be based on objective administrative criteria and in accordance with the criteria prescribed by law*."[1538]

(cc) In March 2017, the Minister of Mineral Resources Múte Egede and Deputy Minister Hammeken-Holm invited GM to present about the Project at a promotional event for "*Advanced Projects in Greenland*" (see Section C.41 above).

(dd) In May 2017, the Danish and Greenlandic Governments met with the Director General of the IAEA to discuss cooperation in relation to the Kvanefjeld Project, and Dr Mair took the IAEA Director General, the Premier of Greenland, the Danish Ambassador, Deputy Minister Nielsen and the Mayor of Southern Greenland on a tour of the Kvanefjeld Project site. The Premier of Greenland stated to the press: "*The Naalakkersuisut sees the IAEA as a guarantor of a high international standard in terms of security and export control of uranium*" and "*Director General Amano's visit to Greenland shows that the IAEA considers Greenland to be a serious partner in terms of the framework we have set for uranium utilization*."[1539]

(ee) In May 2017, the Danish Government permitted GM to export uranium ore to China, and then proceeded to develop a system for approving uranium export applications on the back of GM's application (see Section C.44 above).

(ff) On 12 October 2017, the Government sent GM the draft executive order to be used for its EIA and SIA studies, which set a dosage threshold for the radiation exposure of workers (see Section C.46 above).

(gg) In May 2018, the Government's coalition agreement included support for the Kvanefjeld Project specifically.[1540]

(hh) In May 2018, the Greenlandic and Danish authorities attended a meeting at the IAEA headquarters in Vienna and prepared the DCE Report for IAEA Waste Convention. [1541] This report confirmed that Greenland would align its regulations with international IAEA standards and that the Kvanefjeld Project specifically would be regulated using radiation dosage limits.

[1538] §37 Parliamentary Questionnaire No. 262/2016, 25 November 2016, at **(C-468E)**.

[1539] W. Turnowsky, *Kim happy for atomic praise*, Sermitsiaq, 19 May 2017, at **(C-443E)**.

[1540] K. McGwin, *As Greenland nears uranium decision, opponents fear public won't be heard*, ArcticToday, 16 May 2018, at **(C-471)**.

[1541] Report titled, "*Joint Convention on the safety of spent fuel management and on the safety of radioactive waste management*", produced by Greenland, 2018, at **(C-501)**, p. 58.

(ii) In July 2018, the Government renewed GM's Exploration Licence, which included uranium (see Section C.48 above). The Government accepted application fees paid by GM.

(jj) In August 2018, the Minister of Mineral Resources sent a letter to GM acknowledging "*all the important work that has been done by GME*" and GM's "*consistent efforts and work that has been put in to* [e]*nsure that the environmental and societal impact assessments meets the prober* [sic] *quality standards*".[1542] The Minister stated that the Ministry "*wants to engage in cooperative relations with GME to the fullest extent possible*", including by proving "*the necessary clarity of the timing process and schedules*" and that it "*will be very committed to engage in constructive and hopefully fruitful dialogue on how to cooperate most beneficially*."

(kk) In September 2019, Naalakkersuisut advised GM in writing that, in relation to radiation protection at Kvanefjeld, GM was "*obliged to follow the IAEA recommendations and to report on the handling of radioactive material*", was bound by Danish legislation with respect to the control of the peaceful use of nuclear material, and was bound by ILO Convention No. 115 on the protection of workers against ionising radiation.[1543] Naalakkersuisut stated: "*The adoption of these Acts was necessary to ensure a legal and proper handling of the products which will be extracted in a mine at Kvanefjeld and of the disposal of the waste and tailings resulting from the mining.*"

(ll) In October 2018, following a change of coalition, it was reported that "*Siumut and Kim Kielsen are trying to signal investors that they are really committed to their pro-business, pro-mining and pro-uranium platform*."[1544]

(mm) In March 2020, the Minister of Mineral Resources posted a statement on the Greenlandic Government website, which stated: "*The Government of Greenland expects* [the Kvanefjeld Project] *to meet the requirements of the Mineral Resources Act soon, and this will provide an opportunity to establish a mining industry in South Greenland. This would benefit the whole of Greenland, but especially the Kujalleq Municipality in the form of new jobs*."[1545] The following

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[1542] Email from N. V. Sembach (Nanoq) to J. Mair (GM), subject: "*Letter from Minister of Mineral Resources (Nanoq - ID nr.: 8456841)*", 9 August 2018, at **(C-473)**; Letter from V. Qujaukitsoq (Nanoq) to J. Mair (GM), 9 August 2018, at **(C-474)**.

[1543] First Witness Statement of J. Mair, at **(CWS-3)**, para. 778;Letter from K. Kielsen (Premier of Greenland) and M. S. Pedersen (EAMRA) to J. Mair (GM), subject: "Greenland Minerals Ltd v. The Environmental Agency for Mineral Resource Activities", 6 September 2019, at **(C-166)**.

[1544] Reuters Staff, *Greenland PM Kielsen forms minority government to end political crisis*, Reuters, 2 October 2018, at **(C-472)**.

[1545] Press release titled "Progress on two rare earth projects in South Greenland", by the Government of Greenland, 19 March 2020, at **(C-138)**.

month, the Ministry confirmed that GM had satisfied the requirements of MRA Section 29(2).

(nn) In April 2020, the Ministry confirmed in writing that GM had satisfied the requirements of MRA Section 29(2) in relation to the Kvanefjeld deposit, including uranium resources (see Section C.58 above).

(oo) In May 2020, the Minister of Mineral Resources made a statement to the Parliament regarding GM's rights, confirming that (i) under MRA Section 29(2) "*a rightholder has the right to be granted an exploitation permit if the licensee has identified and delimited deposits that it intends to exploit*"; and (ii) the Government would not hold a referendum on uranium mining as this would undermine "*the right to be granted an exploitation permit*" and to restrict this right would be unconstitutional.[1546]

(pp) In December 2020, the Greenlandic and Danish authorities approved GM's EIA and SIA for public consultation, and the Government issued a press release stating: "*The start of the public consultation marks an important step for all of Greenland, which has long been awaited*."[1547]

(qq) On 20 January 2021, the Minister of Mineral Resources told the press that GM would be entitled to exploit rare earths and uranium within a year.[1548] He stated: "*Greenland Minerals will be able to start extracting rare earths and uranium a few kilometers from Narsaq over the next six months or a whole year*" and "*I am a supporter of the project*" and "[t]*he time to get started is just right. There are good prices on rare earths. They must be used in the green transition. They are in demand because the rare earths found in Kuannersuit can be used for magnets in wind turbines and batteries in electric cars*".

1299. The representations summarised above are only a selection of the countless representations made by the Greenlandic and Danish Governments in support of the Project over the course of GM's investment in Greenland. As explained in Sections C.32 and C.41 above, the two governments promoted the Kvanefjeld Project and used it as part of their marketing strategy to the international mining industry.

1300. As set out above, the affirmative actions and representations on the part of the Respondents (seen jointly or in isolation) were of a nature to instil a legitimate

[1546] §37 Parliamentary Questionnaire No. 77/2020, 13 May 2020, at **(C-196)**, answer on 18 May 2020.

[1547] Press release titled "*Public consultation of EIA and SIA reports for Kuannersuit begin*s", Government of Greenland, 17 December 2020, at **(C-582)**.

[1548] First Witness Statement of J. Mair, at **(CWS-3)**, para. 845; The Editorial Staff, *Kuannersuit: A flourishing Narsaq or environmental disaster?*, Sermitsiaq, 20 January 2021, at **(C-198E)**.

expectation in GM that it would in fact be able to benefit from its investments in the Project, including by exploitation of uranium.

1301. It was only because of the Government's consistent support for the Project that GM continued to invest in Greenland. As discussed in the Detailed Statement of Facts above, there were various points in time when GM explicitly told the Government that it would not be able to continue its investment in Kvanefjeld unless the Government took steps to clarify GM's rights *vis-à-vis* uranium, and the Government took the steps required. In these circumstances, it is indeed surprising for counsel for the Respondents to suggest that GM had nothing more than a "*very expensive lottery ticket*."[1549]

1302. GM relied on the Greenlandic and Danish Governments' representations and acts of support in continuing its investment in the Kvanefjeld Project, the costs of which were more than US$150 million over the duration of GM's investment in the project, up until it was halted at the end of 2021.[1550]

1303. The Greenlandic and Danish Governments were undoubtedly aware of the size and scale of the investments that GM was making in reliance upon their support. Throughout this period, GM was continuously announcing and making public statements to the effect that the Kvanefjeld Project involved the commercialisation of rare earths as the main product and uranium as a by-product. Indeed, GM was invited by the Government to give presentations to promote mining in Greenland, and the Government posted these presentations on its website (where they can still be found today).[1551]

(c) The Greenlandic and Danish Governments consistently represented that the radiological impacts of the Kvanefjeld Project would be evaluated according to international best practice

1304. In addition to representations supporting the Project and affirming GM's rights, the two governments made specific representations regarding precisely *how* the radiological impacts of uranium exploitation at Kvanefjeld would be assessed. Specifically, the Governments represented that uranium mining would be regulated according to international best practice (as required by MRA Sections 1(2) and 83), by reference to the IAEA and ICRP standards, following the practice of Australia and Canada, and using radiation dosage limits. Moreover, the Governments represented that radiation dosage limits would be applied to Kvanefjeld specifically.

1305. Accordingly, GM legitimately expected that the Government would apply scientifically sound and internationally accepted criteria in evaluating the radiological impacts of the

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[1549] Transcript of Hearing held on 7 September 2022, at **(C-134)**.

[1550] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure 9-1, p. 125. Costs are quoted in real 2021 dollars. See also para. 9.7.

[1551] See Section C.41 above.

Project. GM and its expert consultants relied on these representations when preparing their EIA studies. Dr Chambers of Arcadis testifies that he used the recommended dose limits for protection of human and wildlife set by the ICRP.[1552] Arcadis' studies demonstrated that the radiological impacts of the Kvanefjeld Project were well below the relevant radiation dosage thresholds and that "*radiation exposure will not be significantly different than current conditions*" (see Section B.5 above). The Greenlandic and Danish authorities (including the DCE, GINR and EAMRA) reviewed and accepted these studies and found that GM's EIA was "*adequate and correct*" including with respect to radiological risks.[1553] In conducting their review, the DCE referred to ICRP publications and IAEA safety standards.[1554]

1306. The passage of Act No. 20 violated GM's legitimate expectations as to how radiation protection would be regulated. The uranium ppm threshold contained in Act No. 20 was simply the politically motivated introduction of a targeted, arbitrary and scientifically unjustifiable legislative barrier with the express purpose of stopping the Project.

1307. This is clear from statements made in the covering letter to the Consultation Bill and the Explanatory Notes, which state respectively that the background of the proposal was "*a political desire to reintroduce the zero-tolerance policy by law*", and that the IA Party Government had "*a political wish to stop uranium extraction in Greenland*", that the relevant 100 ppm threshold was "*a political choice*", and that it was "*not the aim of this Bill to lay down rules on health and safety, the environment, resource utilisation, etc., as these considerations are covered by the Mineral Resources Act*."[1555]

1308. The evidence shows that, in preparing the Consultation Bill, the IA Party Government was not concerned about whether a uranium ppm threshold would be an appropriate or effective way to regulate radiation protection.[1556] Indeed, the scientific advice received by the Government at this time did not support the use of a uranium ppm threshold, and rather indicated that radiological risks should be regulated through radiation dosage limits.[1557]

[1552] See, for example, First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 33-37

[1553] Report titled "*Environmental review and technical assessment of: "Kvanefjeld Project: Environmental Impact Assessment" by Greenland Minerals A/S, August 2020*", by DCE and GINR, 17 September 2020, at **(R-17)**, p. 4.

[1554] See for example, the DCE and GINR comments issued in response to GM's EIA drafts submitted to EAMRA, Document titled "*Recommendations for radon emanation from the Kvanefjeld Mining Project in South Greenland*", DCE/GINR, 27 March 2019, at **(C-681)**, p. 3; Document titled "*Review and technical assessment of: "Greenland Minerals and Energy A/S. Kvanefjeld Project. Environmental Impact Assessment, June 2019*", DCE/GINR, 1 October 2019, at **(C-682)**, pp. 9, 15, 21, 22.

[1555] Consultation Letter, "*Hearing on the proposal for the Inatsisart Act on the ban on preliminary investigation, exploration and exploitation of uranium*", 1 July 2021, at **(C-205E)**; "*Explanatory notes to the Bill*", at **(CL-6)**, pp. 17-18.

[1556] See Sections C.66, C.71 and C.75 above.

[1557] See Section C.66 above.

1309. Nevertheless, in the Explanatory Notes and in its Final Decision, the Government has indicated that the basis for Act No. 20 was the following:

> "[U]*ranium may spread into the surrounding environment and such uranium leaks may potentially have critical impacts on the environment. Also, in connection with activities targeted at uranium resources, high-risk uranium leaks, e.g. from yellow cake, may occur in connection with production, transport, process water spills, etc. By banning activities targeted at uranium, several of these risks are eliminated.*"[1558]

1310. The reference to the risks of "*uranium leaks e.g. from yellow cake*" reveals a fundamentally flawed understanding as to the risks associated with uranium mining.[1559] As identified by the DCE in the DCE Report on Environmental Issues, and as explained by Dr Chambers, the principal radiological pathways being by way of radon and thoron gas releases.[1560] As explained above (at paragraph 751), the risk of yellowcake accident causing a radiation hazard would be virtually nil.

1311. Ultimately, legislating a uranium ppm threshold is divorced from any realistic assessment of the radiological risks associated with uranium mining and production, and contrary to international best practice (whereby radiological risks are assessed by reference to radiation dosage limits measured in mSv).[1561] As Dr Chambers testifies, "[v]*irtually the only accepted and appropriate method of regulating the risks of radiation exposure is by assessing and implementing appropriate (typically annual) dosage limits (i.e., in mSv) instead of in-situ material concentration limits*".[1562] Dr Chambers observes that the Explanatory Notes, which purport to address the potential "*high-risk uranium leaks*", do "*not make sense from a scientific perspective*" given the unlikelihood of such a spill incident occurring because "[t]*he process design will minimize the potential for a uranium spill in the process plant and additionally planning for such spills is a standard component of standard operating practices at a uranium processing facility.*"[1563]

1312. Not only is Act No. 20 devoid of scientific basis, but it has no basis in regulatory practice.

[1558] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**

[1559] See paragraphs 749 and 751 above.

[1560] DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, pp. 50, 174; Report titled "*Radon and Thoron Releases - Mining the Kvanefjeld Rare Earth Element Resource, Narsaq Area, Greenland - Revision 2*", by Arcadis, at **(C-228)**, pp. 27-34.

[1561] First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 28-37; First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 22-30.

[1562] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 36.

[1563] First Witness Statement of D. Chambers, at **(CWS-8)**, para. 80.

1313. During the meeting held between GM and the Greenlandic Government on 15 December 2021, counsel for the Respondents (the author of Act No. 20) claimed: "*The 100 ppm limit is also inspired by foreign legislation e.g. legislation enacted in Nova Scotia*."[1564] However, as explained in Section C.71 above, any suggestion that Nova Scotia's regulatory framework provides a sound basis for Act No. 20 is misconceived. Specifically:

(a) The Interdepartmental Uranium Committee which made the recommendations that led to implementation of the Nova Scotia threshold expressly recognised that a concentration threshold for uranium cannot be scientifically defended, pointing instead to radiation dosimetry as the relevant metric by which to assess environmental and health impacts (being, of course, the way in which GM legitimately expected radiation issues would be regulated by the Greenlandic Government, consistent with international best practice).

(b) When the Nova Scotia threshold was subjected to scientific review, the Interdepartmental Uranium Committee recommended that the threshold be lifted.

(c) By way of contrast to the prohibition contained in Act No. 20, the 100 ppm Nova Scotia uranium threshold is subject to an exception which allows for exploitation of other minerals as long as uranium is treated as a residual impurity and remains on site, and the uranium content in the mineral concentrate removed from the project area is below 100 ppm.[1565]

(d) The documents disclosed by the Ministry surrounding the preparation of the Consultation Bill demonstrate that the IA Party Government conducted no independent analysis as to the scientific validity of the Nova Scotia threshold or its suitability for application in Greenland, including in respect of the Project (see Section C.71 above).

(e) The DCE had previously prepared an extensive analysis of Canada's uranium regulatory framework for the Greenlandic Government, and excluded the Nova Scotia regulatory framework entirely, indicating that the Nova Scotia threshold was not consistent with international best practice and did not constitute a

[1564] See Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, pp. 4.

[1565] Open File Report ME 1994-6, "*The Activities, Conclusions and Recommendations of the Interdepartmental Uranium Committee Concerning the Uranium Exploration and Mining Industries*", by the Interdepartmental Uranium Committee. July 1994, at **(C-626)**

science-backed approach to uranium mining regulation (see Sections C.23 and C.71 above).[1566]

1314. In the circumstances, the Respondents' purported reliance on the Nova Scotia threshold in its meeting with GM and in its Final Decision does not withstand scrutiny, and itself calls attention to the Government's failure to undertake any analysis of the uranium ppm threshold.

(d) Conclusion on violation of legitimate expectations for an exploitation licence for uranium

1315. The facts set out above conclusively prove that the conduct of the Greenlandic and Danish Governments gave rise to legally protected expectations ("*berettigede forventninger*") on the part of GM that it was entitled to an exploitation licence for uranium if it delineated a commercially viable deposit and showed that the Project was safe from an environmental and human health perspective. Additionally, with respect to the radiological risks of the Project, the conduct of the two governments gave rise to legitimate expectations on the part of GM that radiation protection in Greenland would be regulated in accordance with international best practice, being radiation dosage limits. Indeed, the Governments represented that radiation dosage limits would be applied to the Kvanefjeld Project specifically.

1316. By 1 December 2021, GM had satisfied the requirements for a licence to exploit uranium:

(a) The Government had confirmed in April 2020 that GM had delineated a commercially viable deposit (including uranium).

(b) GM had demonstrated through its rigorous EIA studies, which were approved by the Danish and Greenlandic authorities by December 2020, that the Project was safe, and that radiation dosage limits would be complied with.

1317. There was no reasonable or objective basis on which the Government could have rejected GM's application for an exploitation licence for uranium under the existing legal framework.

1318. This is proven by the fact that the IA Party Government did not use the existing legal framework to reject GM's licence application. Pursuant to MRA Sections 1(2) and 83, the Government has an obligation to ensure that mining activities are performed in accordance with environmental best practice. If there had been a genuine environmental basis on which to reject GM's application, the IA Party Government would have relied on these provisions of the MRA to reject GM's application. But there was no such basis

[1566] DCE Report, "*Exploitation of Radioactive Minerals in Greenland – Management of environmental issues based on experience from uranium producing countries*", DCE and GINR, 2016, at **(C-227)**, Section 3.12 and Appendixes A and E.

(not even a tenuous environmental basis). As such, the IA Party Government turned to Poul Schmith to *change* the legal framework to force the surrender of GM's right to an exploitation licence.

1319. By reason of the matters set out above, the Greenlandic Government has violated GM's legitimate expectations by (i) proposing and then causing the enactment of Act No. 20, (ii) declaring that it would not perform its obligations under the MRA and GM's Exploration Licence to process and grant GM an exploitation licence, and (iii) rejecting GM's application for an exploitation licence for uranium in its Final Decision (based upon Act No. 20).

1320. In addition, the Greenlandic Government has also breached its administrative law obligations of objectivity and proportionality. Specifically, the Government has:

(a) failed to comply with the principle of objectivity ("*objektivitetsprincippet*"), by basing those decisions on subjective or illegitimate considerations (i.e., "*political wishes*" that were inconsistent with international best practice, divorced from any realistic assessment of the relevant radiological risks, and without factual or scientific basis), and failing to positively ensure that all relevant factual and legal circumstances were taken into account in making those decisions (e.g., by failing to conduct any independent analysis as to the suitability of the uranium ppm threshold, or to consider the submissions made in respect of the Consultation Bill, which, amongst other things, identified these deficiencies); and

(b) failed to comply with the principle of proportionality ("*proportionalitetsprincippet*"), in that a restriction on mining activities in areas enriched with uranium by way of a uranium concentration threshold is unnecessary to protect any legitimate public interest, including, for example, to protect the environment or public health.

1321. For the same reasons, the Government has breached its contractual obligations to GM under the Exploration Licence, including its duties of good faith and loyalty. These private law duties applied simultaneously by virtue of the legal nature of the Exploration Licence as a concession or administrative contract.

H. CLAIM 2 – APPLICABILITY OF ACT NO. 20

H.1 Overview

1322. In Claim 2, GM asks the Tribunal to order that the Respondents shall acknowledge that Act No. 20 does *not apply* to GM's application for the:

(a) exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc, fluorspar as well as uranium and thorium; or, subsidiarily,

(b) exploitation (i.e., extraction and commercial utilisation) of rare earth elements, zinc and fluorspar with uranium and thorium to be handled as residual impurities only (i.e., products for disposal and non-commercial use).

1323. As noted in the introduction, it is necessary for the Tribunal to rule upon Claim 2 because the question of whether Act No. 20 is applicable bears upon the liability issue of whether the Respondents' breaches of contract were with or without fault.

1324. As discussed below, to determine Claim 2, it will be necessary for the Tribunal to conduct a hypothetical analysis of the expropriatory effect of Act No. 20. This task arises from the design of Act No. 20 itself.

1325. Although, for completeness, GM addresses all three of the main factors for determining whether an expropriation would occur under Section 73 of the Danish Constitution, it is apparent from the position the Respondents have taken in these proceedings, and from the terms of the Draft Decision and the Final Decision, that only one of these factors is in dispute: whether GM had one or more relevant property rights (and/or legitimate expectations) for the purposes of Section 73 of the Constitution.

H.2 Act No. 20 does not apply to the extent it is expropriatory

1326. It is undisputed that Act No. 20 *does not apply* if it results in expropriation in the specific case. The preparatory works of the Act and statements from the Greenlandic Government in communications with GM all show that the Parliament did not intend for Act No. 20 to apply if its application would amount to an expropriation under Section 73 of the Danish Constitution. Indeed, Act No. 20 does not contain a legal basis allowing public authorities to expropriate private property. The Parties agree on this.

1327. GM notes that this was recently affirmed by the Greenlandic Government in the Final Decision, which states, relevantly:

> "*According to the legislative history of the Uranium Act, the Act is not in the nature of a compulsory acquisition act and therefore does not provide for the compulsory acquisition of protected property rights. Against this basis, a licence may therefore not be refused, restricted or revoked if this is deemed to constitute an intrusion on property protected by section 73 of the Danish Constitution.*"[1567]

1328. It is clear, therefore, that Act No. 20 does not in any way regulate the question of whether GM had a right to be granted an exploitation licence: that question remains the exclusive domain of the MRA and the Exploration Licence. Instead, Act No. 20 regulates (*bans*) mining activities concerning uranium where the average content of uranium in the ore exceeds the threshold of 100 ppm.

[1567] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, p. 28.

1329. To reach the conclusion that Act No. 20 does apply to GM's application for an exploitation licence, it was necessary for the Greenlandic Government to assert that GM's Exploration Licence is separate to the exploitation licence it has requested. This is stated expressly in the Final Decision (emphasis added):

> "*The Uranium Act came into force on the day after its promulgation, see section 5(1), i.e. on 2 December 2021. The Act then applies to all licences issued after its effective date, see section 5(2) of the Act.*
>
> *According to the explanatory notes to section 5, this applies even if the exploitation licence is granted 'in continuation of an exploration licence and the exploration licence has been granted prior to the effective date of the Act. Exploration licences and exploitation licences are thus considered as separate licences in the Uranium Act, which is in line with the principle of the Mineral Resources Act, see section 16(1)(2) of that Act*."[1568]

1330. This notion of the Exploration Licence and the exploitation licences being "*separate*" is an essential premise of the Greenlandic Government's conclusion that Act No. 20 does apply to GM's exploitation licence application. But this premise is flawed as it is based upon a misrepresentation of the fundamental system of the MRA

1331. The relevant part of Section 16 of the MRA states*:* "*Licences may be granted separately for exploration and exploitation, respectively*". It follows that licences may also be granted as a joint licence covering both exploration and exploitation, precisely because it is not stated in the MRA that licences for these different activities *shall* be granted as separate licences. In fact, the wording of MRA Section 16 would seem to imply that, in principle, licences should be granted as *joint* licences, but that they may be granted as separate licences.

1332. In any event, the Respondents entirely ignore the fundamental purpose and system of the MRA generally and Section 29(2) specifically, which is to provide mining companies with the legal certainty regarding their prospective exploitation rights that they require to commit the capital and resources necessary to find exploitable minerals in Greenland. As discussed in Sections B.2 and E.3(e) above, and as confirmed in the expert report of Professor Mortensen, the Respondents made a concerted effort to optimise the investment climate for mining in Greenland, and the result in the current system is an *automatic and exclusive right to exploitation*, based on conditions that were deliberately placed beyond the control of government.

1333. Against this background, it is frankly surprising that the Respondents have taken the position that Act No. 20 can apply because there is a formal distinction and separation between an exploration and exploitation licence under Greenlandic law. There is not. They are obviously linked, and when the Respondents created and updated the Greenlandic mining law framework to produce the system that exists today, they did so

[1568] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, p. 27.

with a clear and constant intention that these licences would be linked. The Respondents' willingness to grossly misrepresent the applicable law – including this fundamental aspect of the licencing system they developed themselves – is revealing. It is simply an expression of the Greenlandic Government's publicly stated political objective of preventing the Kvanefjeld Project from going ahead, whilst also seeking to avoid paying compensation for expropriation in accordance with Section 73 of the Constitution. It is apparent that the Greenlandic Government will make any assertions of law and fact that it considers necessary to achieve this result and to avoid judgement for what they have done to GM.

1334. The reality is that, even if (*arguendo*) the Respondents' theory of "*separate*" licences is correct, Act No. 20 is invalid because it constitutes a targeted legislative measure ("*singulær lovgivning*") against the Kvanefjeld Project (the only existing project affected by Act No. 20) and an illegitimate taking of property in violation of (*inter alia*) Section 73 the Constitution, Article 17 of the EU Charter on Fundamental Rights, and Protocol 1 to the European Convention on Human Rights. The evidence of Act No. 20 being targeted at the Kvanefjeld Project is overwhelming and undeniable.[1569]

1335. The Greenlandic Government's illegitimate attempt to utilise Act No. 20 to deprive GM of its acquired rights and legitimate expectations of receiving an exploitation licence is one of several breaches of administrative and private law by the Greenlandic Government in this case. These breaches are pleaded in Claim 3 below.

H.3 The test for expropriation under Danish law

1336. The hypothetical question of expropriation is primarily governed by Section 73 of the Danish Constitution. The substantive rule in Section 73 of the Danish Constitution is set out in sub-section (1), which reads as follows:

> "*(1) The right of property shall be inviolable. No person shall be ordered to cede his property except where required by the public weal. It can be done only as provided by Statute and against full compensation.*"

1337. In assessing whether an intervention constitutes expropriation, three factors are considered:

(a) first, whether the intervention has been taken in respect of property or rights protected by Section 73;

(b) second, whether the property or right is held by an owner who is protected by Section 73; and

[1569] See Sections C.62 – C.75, and in particular Section C.62, paragraphs 663 and 667.

(c) third, whether the intervention constitutes ordered surrender of the property or rights.[1570]

1338. These factors are discussed and applied in the sections that follow. In the sections that follow, GM refers to and relies upon the expert report of Professor Michael Hansen Jensen, the leading Danish scholar on the law of expropriation.

H.4 GM had rights protected by Section 73 of the Danish Constitution

1339. With respect to the first factor, the notion of "*property*" ("*ejendomsret*") in Section 73 of the Danish Constitution is very wide.[1571] As Professor Hansen Jensen describes it: "*The term* [property] *can generally be said to include any legally recognized right for the entitled person to exploit a given good*."[1572]

1340. The broad coverage of Section 73 was explained by Professor Hansen Jensen in his previous article "*The Protection of Property Rights under the Danish Constitution*" in the Journal of Scandinavian Studies in Law:

> "*It is assumed that, within the meaning of the Constitution, 'property' should be interpreted widely. Briefly, one can say that under the Constitution the concept of property covers all rights that form the basis of the economic existence and activities of both legal and natural persons. Thus, the concept of property covers not only ownership of real property and chattels etc., but also limited rights such as user rights, mortgages and purely financial claims.*
>
> *Not only rights based on private law, but also rights based on public law are protected by Article 73 of the Constitution. Thus it is assumed that, for example, commercial rights acquired directly under legislation or under a public licence are protected.*"[1573]

1341. The assessment of whether a property right exists for the purposes of Section 73 does not factor in whether the right is negotiable/transferrable or whether the right derives from statute, administrative decision, or licence.[1574] Danish law recognises that the rights protected under Section 73 of the Constitution include legal claims ("*retlige krav*"), intellectual property rights, trade/business rights ("*næringsret*"), rights of use, security interests, and adjoining landowner's rights ("*naboret*").

[1570] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 2.1 M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)** p. 124

[1571] H. Mølbeck et al., *Ekspropriation i praksis* (Djøf Forlag, 2nd ed., 2019), pp. 25-30, at **(CL-210)**, pp. 26-30.

[1572] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 18.

[1573] M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 124.

[1574] A. Ross, *Dansk Statsforfatningsret 2*, (3rd ed., 1980), pp. 640-650, at **(CL-212)**, p. 644.

1342. Legal claims arise out of an agreement or a statute, and it is not necessarily a requirement that a legal claim be due for it to enjoy protection under Section 73.[1575] As Professor Hansen Jensen opines:

> "*It has been stated that rights based on statutory law do not always enjoy the same protection as rights based on private law. The point of view is based on the fact that the holder of a right that rests on statutory law often cannot have the same expectation of the immutable nature of the right as the holder of a right that rests on a private law nature in so far as the holder of a right under statutory law has not given consideration for the right.*"
>
> "*There can be no doubt that a license issued under statutory law can enjoy protection under Section 73* […] *Conditional license rights issued under statutory law can also enjoy protection under Section 73.*"[1576] (emphasis added)

1343. It is generally the case that, to qualify for protection Section 73 of the Danish Constitution, the right must be exclusive. This presents no issue in the case at hand because it is undisputed that the rights of GM under MRA Section 29(2) and the Exploration Licence are exclusive in nature.

1344. There is no doubt that Section 73 applies to rights under concessions and other forms of administrative contract. It is uncontroversial that rights under contracts are protected by Section 73, as are "*commercial rights acquired directly under legislation or under a public licence*."[1577]

1345. The recognition that concessions are protected by Section 73 is confirmed by Danish Government practice. As noted above, in the dispute with AP Moller regarding relinquishment of part of the area covered by the Sole Concession, it was acknowledged by the Danish Government that forcing the relinquishment upon the concessionaire would amount to expropriation.[1578]

1346. Thus, there is no doubt that a licence to conduct a specific business is a protected right under Section 73 of the Danish Constitution.[1579]

[1575] J. Elo Rytter, *Individets Grundlæggende Rettigheder* (4th ed., 2021), at **(CL-222)**, p. 391.

[1576] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, paras. 15, 40-41.

[1577] M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 124.

[1578] See Section B.2 above.

[1579] See for instance P. Pagh, T. Haugsted, *Fast Ejendom - Regulering og Køb*, (4th ed., 2022), pp. 718-721, at **(CL-211)**, p. 718; A. Ross, *Dansk Statsforfatningsret 2*, (3rd ed., 1980), pp. 640-650, at **(CL-212)**, p. 648; H. Zahle, *Dansk Forfatningsret 3* (3rd ed., 2003), p. 186, at **(CL-213)**; F. Dalgaard-Knudsen, *Mineral Concessions and Law in Greenland*, (1st ed., 1991), at **(CL-186)**, p. 186; J. Peter Christensen et al., *Dansk Statsret 3. udgave* (Jurist- og Økonomforbundets Forlag, 2nd ed., 2022), pp. 175, 347-348, at **(CL-214)**, pp. 347-348. See also the Danish Supreme Court in U.1981.394H in matter 190/1980, 2 April 1981, at **(CL-215)**. In the matter the Danish Supreme Court held, that a licence to (be exclusive distributor of milk in a specific

1347. In his expert report, Professor Hansen Jensen conducts a detailed analysis of whether a licensee's rights under MRA Section 29(2) are protected by Section 73 of the Danish Constitution. He concludes that they are:

> "*In my opinion, it is clear that this right to be granted an exploitation licence when fulfilling the requirements under section 29(2) is protected under Section 73 of the Constitution. In my opinion this is the case, both when the conditions of Section 29(2) have been fulfilled by the licence holder (i.e. the right has become unconditional) and when the conditions can be fulfilled by the licence holder (i.e. the right remains conditional).*"[1580]

1348. Professor Hansen Jensen states that, in GM's case, his conclusion that the right under MRA Section 29(2) is protected is strengthened by the fact that:

> "*The wording of this section of the Standard Terms closely corresponds to the wording of Section 29(2) of the Mineral Resources Act. It must be noted that* this Section 1401 is included in an exploration licence that GM and the Government of Greenland both signed."[1581]

1349. Professor Hansen Jensen also confirms the protection that is afforded to legitimate expectations under Section 73: "*it follows from court practice that also legitimate expectations of the issuing of a new permit/license are considered protected property under Section 73*."[1582] He continues to opine that:

> "*commercial rights based on statutory law, the legislation in general and legitimate expectations often enjoy a relatively high degree of protection under Section 73, in so far as the holder of the right has acted and especially invested in reliance upon an actual or conditional right.*"[1583]

1350. As of 1 December 2021, GM therefore had a range of property, rights and legitimate expectations protected by Section 73 of the Danish Constitution, including:

(a) the unconditional right to be granted an Exploitation Licence for rare earths, zinc and fluorspar under MRA Section 29(2) and Section 1401 of the Standard Terms;

(b) the unconditional right to be granted an Exploitation Licence for uranium, under MRA Section 29(2) and Section 1401 of the Standard Terms;

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area (a concession) was considered a protected right under article 73 of the Constitution (although the intervention in question was not considered expropriation based on intensity considerations).

[1580] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 48.

[1581] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 3.2 and para. 51.

[1582] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 42.

[1583] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 43.

(c) the right to completion of the licensing process, under MRA Section 16(1) and Section 140 of the Standard Terms; and

(d) the right to use the various items of intellectual property that GM authored and commissioned in relation to the exploitation of the rare earths, zinc, fluorspar and uranium at Kvanefjeld.

1351. As noted above, *legitimate expectations* are also protected by Section 73 of the Danish Constitution. GM's legitimate expectations, as explained above, included:

(a) the legitimate expectation that it would be granted an exploitation licence for rare earths, zinc, fluorspar and uranium (see Section G.3 above); or, subsidiarily,

(b) the legitimate expectation that it would be granted an exploitation licence for rare earths, zinc and fluorspar, with uranium to be handled as a residual impurity (see Section F.4 above); and

(c) the legitimate expectation that the radiological impacts of the Kvanefjeld Project would be evaluated according to international best practice, being radiation dosage limits (see Section G.3(c) above).

1352. These rights and legitimate expectations are considered in the analysis of "*surrender*" below.

H.5 GM is a person whose property rights are protected by Section 73 of the Danish Constitution

1353. With respect to the second factor, all private owners are protected under Section 73 of the Constitution. The protection not only covers private individuals but also legal persons such as companies.[1584]

1354. There is no doubt that, as a company duly incorporated under Greenlandic law, GM is private person for the purposes of Section 73 of the Danish Constitution. The Respondents have never disputed this, and indeed it is clear from the terms of the Draft Decision and the Final Decision that the Respondents accept this factor is satisfied.

[1584] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 2.3; M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 125

H.6 The application of Act No. 20 would have the character of a 'surrender' of GM's property rights

1355. With respect to third factor, whether the measure has the character of a "*surrender*" of the property, the following criteria are generally considered:

(a) the transfer of property,

(b) the general-concrete criterion,

(c) the question of intensity, and

(d) a *causa* criterion.[1585]

1356. Case law illustrates that these criteria are applied as part of "*an overall assessment.*"[1586]

1357. These criteria are discussed below.

(a) The transfer criterion

1358. With respect to the first of these criteria (transfer), As Professor Hansen Jensen notes:

> "*According to the transfer criterion, it points toward ordered surrender if a right is transferred from one person to another – typically to the state or another public entity.* […] *If, on the other hand, it is not a question of a transfer of a right, but rather simply a limitation on the disposal of a property, then this often points towards the conclusion that there is no ordered surrender.*"[1587]

1359. With respect to the case at hand, Professor Jensen observes:

> "*The Uranium Act does not just imply a limitation of GM's right to obtain an exploitation license under section 29(2) of the Mineral Resources Act. The Uranium Act entails a cancellation of the right to obtain an exploitation license under section 29(2) – which in my opinion in itself points in the direction of an ordered surrender (expropriation).*"[1588]

1360. In this regard, Professor Hansen Jensen refers to the decision of the Eastern High Court in U 1980.955 and the Western High Court in MAD 2018.202, explaining that "[i]*n*

[1585] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 2.4; M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 127.

[1586] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 2.4; M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 126.

[1587] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 30. M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 127.

[1588] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(1).

both cases, the intervention entailed not just a limitation but a cancellation of the right (to sea transport in the first case and the right to obtain a new license to extract peat in the second case) which, from the owner's perspective, does not differ significantly from an actual transfer of the rights."[1589]

(b) The general-concrete criterion

1361. Regarding the second of the surrender criteria ("*general-concrete*"), Professor Hansen Jensen explains that it weighs in favour of ordered surrender if a surrender is concrete, using the example of an intervention that only affected a single company.[1590] Conversely, according to Professor Hansen Jensen, it speaks against surrender if the intervention is general in its effects, for example, if it is directed to all, or to all within a certain category.

1362. As stated above, the evidence for Act No. 20 being targeted at the Kvanefjeld Project is overwhelming and undeniable.[1591] Premier Múte Egede stated that the IA Party's objective was to stop the Kvanefjeld Project specifically, and this was included in the coalition agreement between the IA Party and the Naleraq party. The Parliamentary discussions regarding the bill were dominated by a discussion of GM's rights and a possible compensation claim in relation to the Kvanefjeld Project. It is a notorious fact that Act No. 20 was targeted at the Kvanefjeld Project.

1363. Further, the practical effect of Act No. 20 has been that the Kvanefjeld Project has been the only advanced mining project affected by the uranium ppm threshold. In his expert report, Professor Hansen Jensen observes:

> "*it seems that GM is the only company active in mining that has been prohibited by the Uranium Act from obtaining an exploitation license under section 29(2) of the Mineral Resources Act. In U 1980.955, the Eastern High Court in support of the state monopolization of sea transport to and from Greenland being an ordered surrender emphasized that the intervention only affected a single shipping company.*"[1592]

[1589] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(1).

[1590] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, section 2.4M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 127.

[1591] See Sections C.62 – C.75, and in particular Section C.62, paragraph 663.

[1592] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(2).

1364. In the Respondents' pleadings to date, they have not disputed that GM's Project is the only advanced mining project affected by Act No. 20.

(c) The intensity criterion

1365. The third criterion in assessing whether there has been a surrender is "intensity". In the assessment of intensity, emphasis has been laid on the amount of loss which an owner suffers from a measure.[1593] In this connection, Professor Hansen Jensen explains that "*court practice has inter alia accessed the size of the financial loss suffered by the affected owner, whether the owner has had the opportunity to adapt to the intervention and the general burdensomeness of the intervention for the affected owner*."[1594]

1366. In the case at hand, if Act No. 20 applied to GM's rights, it would be a measure of *extreme* intensity.

1367. First, according to the Greenlandic Government, the application of Act No. 20 results in GM being totally and completely banned from transitioning its Exploration Licence into an exploitation licence. This transition right was (and is) fundamental and central to the Exploration Licence and it would be eliminated if Act No. 20 applies.

1368. Second, as exploitation represents the only way GM can earn a return on its investment in the Kvanefjeld Project, the elimination of the right to transition its licence to an exploitation licence represents a total deprivation of the value of the Project. As explained in the Damages section below, the fair market value (**FMV**) of the Kvanefjeld Project on 1 December 2021 was US$7.5 billion.

1369. Third, according to the Greenlandic Government, Act No. 20 does not allow GM the opportunity to adapt to the intervention. While Minister Nathanielsen initially indicated that the IA Party Government was open to a discussion about alternative project development plans, the Government has since indicated that there is no flexibility in Act No. 20 for the Project to proceed.[1595] Nevertheless, GM notes that the licensing situation is evolving and its Amended Application remains pending as at the date of this Statement of Claim.

[1593] M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 128.

[1594] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 33M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 128.

[1595] See Sections C.74 and C.77 above.

1370. If Act No. 20 applied to GM's property rights, the intensity of this measure would be extreme, depriving GM of the legitimately expected and legally guaranteed benefits of more than a decade of work and investment. As Dr Mair testifies:

> "*the passing of Act No. 20 was essentially taking ten years of good faith cooperation between GM and the Government and throwing it in the face of both the Company, and significantly our shareholders who have invested in the Project and Greenland.*"[1596]

(d) The causa criterion

1371. The final factor in assessing whether a surrender has taken place is the *causa* criterion. Professor Hansen Jensen explains:

> "*According to the causa criterion, it points away from ordered surrender if the intervention aims to prevent a danger that emanates from the property in question or a business related to it.*"[1597]

1372. It is in this area that considerations of proportionality may be relevant. As Professor Hansen Jensen explains:

> "*it follows from theory and court practice that the causa criterion only calls for compensation-free regulation where the requirement of necessity or proportionality is met.*"[1598]

1373. Professor Hansen Jensen illustrates the necessity/proportionality requirement with the example of U 2000.1/2 H, where the Supreme Court found that:

> "*if isolation of cattle as a less restrictive measure is sufficient to prevent the spread of disease from the cattle, then slaughter of the cattle would not be necessary. Thus, according to the principle of proportionality, such measure would more likely constitute an expropriatory measure.*"[1599]

1374. Thus, in the assessment of the *causa* criterion, the Tribunal is required to consider the following:

(a) Whether in proposing Act No. 20, the IA Party Government's subjective intention was to prevent a danger.

(b) Whether Act No. 20 was objectively necessary to prevent a danger.

[1596] First Witness Statement of J. Mair, at **(CWS-3)**, para. 949.

[1597] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 36; M. H. Jensen, *The Protection of Property Rights under the Danish Constitution* (Scandinavian Studies in Law, Vol. 52), pp. 123-132, at **(CL-221)**, p. 128.

[1598] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(4).

[1599] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 94.

(c) Whether there were less restrictive measures available to the Government to prevent this danger.

1375. GM will address each of these issues in turn.

1376. First, the evidence shows that, in proposing Act No. 20, the IA Party Government's subjective intention was to prevent the Kvanefjeld Project from proceeding for purely political reasons. Indeed, in the Explanatory Notes to the bill, the Government states that it had "*a political wish to stop uranium extraction in Greenland*", and that it was "*not the aim of this Bill to lay down rules on health and safety, the environment, resource utilisation, etc., as these considerations are covered by the Mineral Resources Act*."[1600] This is conclusive evidence that Act No. 20 was not subjectively intended to address threats to the environment and public health. It is also conclusive evidence that the IA Party Government did not consider that Act No. 20 was necessary to protect public health and the environment, as the existing legal framework (i.e., the MRA) was already adequate for this purpose.

1377. While the Explanatory Notes to the bill contain also refer to the risks of "*uranium leaks e.g. from yellow cake*", as discussed in Section C.71 above, this explanation is fundamentally flawed, and the entire premise of the uranium ppm threshold is devoid of a coherent scientific basis.

1378. Second, even if the objective of Act No. 20 was radiation protection (which is denied), the extensive scientific evidence presented in this submission shows that Act No. 20 was objectively unnecessary to achieve this purpose. This evidence includes international best practice, the witness evidence of radiological expert Dr Doug Chambers, and reports prepared by the Danish authorities for the Greenlandic Government.[1601] All of this evidence shows that uranium mining can be conducted safely, and risks can be managed through the use of radiation dosage thresholds.

1379. Indeed, in early 2019, Greenland's Chief Medical Officer advised the people of Narsaq that: (i) "*we do not believe that there will be an impact on the population of Narsaq*"; (ii) "*there is nothing to indicate, a spread of either radioactivity or other dangerous substances into the city of Narsaq itself*"; (iii) "*I can't see where the radioactivity is coming from*"; and (iv) "*then nothing will come that has any health significance here and now in Narsaq city*."[1602] This advice was confirmed by the Minister of Environment, who advised the Parliament that these statements were "*objective and concrete*" and that the Danish Environmental Protection Agency for Mineral Resources had confirmed that the Chief Medical Officer's statements "*were answered based on public and*

[1600] "*Explanatory notes to the Bill*", at **(CL-6)**, p. 17.

[1601] See above at Section G.3(c).

[1602] A. Albinus, *The doctor's table. Dialogue meeting in Narsaq about the Kvanefjeld project 18.2.19*, Atomic Post, 20 February 2019, at **(C-199E)**.

scientifically quality-assured information and data, existing knowledge, research and studies available in the area."[1603]

1380. Third, even if the objective of Act No. 20 was radiation protection (which is denied), it is obvious that there were less restrictive measures available to the Government to prevent this danger. The answer is simple: radiation dosage limits (measures in mSv). This is international best practice, and it is how the Danish and Greenlandic Governments told GM (and the world at large) that they would evaluate and manage radiological risks in Greenland and for the Kvanefjeld Project specifically (see Section G.3(c) above).

1381. The truth is that the reason for Act No. 20 was the ideological opposition of the IA Party to uranium *full stop*. There is no legitimate public health or environmental basis for this measure.

1382. GM's legal expert, Professor Hansen Jensen, has analysed Act No. 20 and the Explanatory Notes and the Government's stated motivations for the measures. He has concluded that:

> "*the preparatory works of the Uranium Act does not document or convincingly argue that the ban and the threshold in Section 1 of the Act are necessary and proportional to prevent a danger for uranium pollution of the environment etc. that emanates from mining activity based on an exploitation license issued under the regime in the Mineral Resources Act.*"[1604]

1383. Professor Hansen Jensen concludes that the Explanatory Notes suggest that the motivation for Act No. 20 was political. He states:

> "*It must here be noted that before the adoption of the Uranium Act, the risks of pollution were well known and accepted within the regime of the Mineral Resources Act as a license to exploration for rare earth elements containing certain amounts of uranium etc. was issued to GM.*
>
> *The preparatory works do not indicate new information about the risk of pollution, but rather indicate a changed risk assessment of a more political nature.*"[1605]

1384. Professor Hansen Jensen's conclusion is confirmed by the contemporaneous evidence. The IA Party Government repeatedly stated that the reason for the uranium ppm threshold was its political ideology, describing the threshold as a political "*decision*", "*wish*", and "*choice*."[1606]

[1603] §37 Parliamentary Questionnaire No. 122/2019, 25 February 2019, at **(C-200)**, answer on 8 March 2019.

[1604] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(4).

[1605] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, para. 132(4).

[1606] "*Explanatory notes to the Bill*", at **(CL-6)**, pp. 17-19.

1385. It is beyond doubt that Act No. 20 was not subjectively intended to prevent a danger, nor was it objectively necessary to prevent a danger. In the analysis of surrender, the *causa* criterion weighs heavily against the measure being a compensation-free regulation.

(e) Conclusion on surrender

1386. Applying the criteria set out above, it is very clear that the application of Act No. 20 to GM's exploitation licence application would result in a surrender of property. In summary, Act No. 20 was specifically targeted at the Kvanefjeld Project, it is extreme in its intensity (resulting in a total deprivation of GM's rights and legitimately expected economic benefits from the Project), it was motivated by political ideology, and it is unnecessary to prevent a danger.

1387. As Professor Hansen Jensen concludes:

> "*It is my assessment – based on the information available for me – that a rejection of GM's application for exploitation licence with reference to the Uranium Act should be considered an ordered surrender of property under Section 73 of the Constitution, i.e., an expropriation, when GM is fulfilling or could fulfil the requirements under Section 29(2) of the Mineral Resources Act to be granted an exploitation licence.*
>
> […] *I have placed particular emphasis on the fact that the Uranium Act constitutes a very intensive intervention against GM and that it is doubtful that the ban and the threshold in Section 1 of the Uranium Act are necessary and proportional to prevent a danger for uranium pollution of the environment etc.*"[1607]

H.7 Conclusion on Applicability of Act No. 20

1388. For the reasons set out above, on a conventional application of Danish expropriation law, it is clear GM had valuable property and rights (and legitimate expectations) and that these would be expropriated if Act No. 20 applied to GM's Exploration Licence or its exploitation licence application for the Kvanefjeld Project.

1389. On the basis that the parties agree that Act No. 20 does not apply if it would result in expropriation, GM requests that the Tribunal grant Claim 2.

I. CLAIM 3 – BREACH OF CONTRACT

I.1 Introduction

1390. As demonstrated in the Detailed Statement of Facts above, in April 2021 (when the current IA Party-led Government came to power), the Greenlandic Government –

[1607] Expert Report of Professor Michael Hansen Jensen (Aarhus University), at **(CEWS-5)**, paras. 5-6.

including the authorities responsible for mineral resources – shifted from a position of support to a position of hostility towards GM and the Kvanefjeld Project. As the leader of the IA Party said in the lead-up to the election in April 2021: "*Our goal in Inuit Ataqatigiit is that there should be no raw material extraction in Kuannersuit, therefore no one should be in doubt that Inuit Ataqatigiit will vote to stop the project*."[1608] The IA Party committed to stopping GM's Project even though, in 2016, the IA Party expressly acknowledged on at least two occasions that if the Greenlandic Government passed legislation to block the Kvanefjeld Project the Government may be liable to compensate GM for "*broken assumptions*"[1609] and "*a loss of rights*."[1610]

1391. In hindsight, it is quite clear how the IA Party Government went about achieving this political objective:

(a) First, as demonstrated above, once it came to power, the IA Party took advice from Poul Schmith – indeed, the very same lawyers who now represent the Government in this arbitration – about its legal options. It is self-evident from the radical legislation that followed that the IA Party was told that Addendum No. 1 was not enough to avoid recognition of GM's legal right to an exploitation licence and, unless new law was created, there was no way to deny GM a licence (at least not without having to pay proper compensation to GM).

(b) As a second step, the IA Party Government took steps to undermine and delay the processing of GM's exploitation licence application to be able to execute its strategy to stop the Project through legislation. Rather than run an objective and balanced consultation process on GM's EIA and SIA, the IA Party used this process to drum up support for their anti-uranium platform.

(c) This led to the third step: the bill for Act No. 20. This bill, which was drafted by Poul Schmith, clearly targeted GM and its Project. Drawing on the lessons of A.P. Møller's Sole Concession – when the Danish Government (rightly) concluded that it could not unilaterally deprive a concession holder of its rights without paying compensation for expropriation – a law was devised that the Government could use immediately to stop the Kvanefjeld Project, but which would allow the Government to avoid, at least temporarily, acknowledging its obvious liability for expropriation. This was achieved by including a provision (Section 5) stating that the law does not apply to existing licences, and then including in the Explanatory Notes statements that the law does not apply if its application would amount to an expropriation under Section 73 of the Danish

[1608] I. Kristiansen & A. Wille, *IA will stop the Kuannersuit project if they get power after the election*, KNR, 26 February 2021, at **(C-596E)**.

[1609] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**.

[1610] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

Constitution. In other words, the new law purported to empower the Greenlandic Government carry out an *expropriation without expropriation*.

(d) The fourth step was the passage of Act No. 20 in the Greenland Parliament. The IA Party Government misled the Parliament by saying that the law would stop the Kvanefjeld Project without any liability on the part of the Government, even though it had received legal advice that did not support this position. The bill ultimately passed by a very slim majority margin (1 vote).

(e) Once this was done, as a fifth step, the Greenlandic Government invited GM to a meeting (in December 2021) where it explained that, because of the new law, GM's exploitation licence would surely be rejected if the application was maintained. The Government and its legal counsel sought to trick GM into withdrawing its application and forfeiting its legal right to a licence. GM declined to do so. This was not part of the Government's plan. When GM subsequently (in a meeting in February 2022) asked how Act No. 20 could apply given that it would expropriate GM's existing rights, the Government's response was that GM had *no rights* and no legitimate expectations, so there was *nothing to expropriate* (and therefore no reason why Act No. 20 could not apply). The Government's entire case hinges on this proposition being correct.

1392. However, things did not go according to the Government's plan. GM maintained its exploitation licence application and insisted on completing the licensing process. As a result, in May 2022, the Greenlandic Government issued GM the Notification Letter, informing GM that the licensing process had been unilaterally terminated and that a decision on its application would be made. The Government subsequently issued the Draft Decision, in which it repeatedly misquoted the Addendum No. 1 Caveats to support its conclusion that GM had no rights at all, meaning that Act No. 20 was applicable and GM's licence application had to be rejected. That Draft Decision, and the Final Decision that followed it, now stand as evidence of the Government's breaches of contract (actual and anticipatory) and its breaches of its duties of good faith and loyalty.

1393. The actions of the Greenlandic Government were plainly unlawful. As established in Section G.2 above, the hybrid nature of the Exploration Licence and the concessionary system in place under the MRA obliges the Greenlandic and Danish Governments to comply with the terms of the Exploration Licence, as well as the obligations under private and public law deriving from the licence and underlying legal regime. As demonstrated in the Detailed Statement of Facts above, there can be no doubt that, when it embarked upon the aggressive strategy summarised above, the IA Party Government knew that it owed GM these obligations.

1394. The conduct of Greenlandic Government in this specific case involves a series of breaches of these obligations, giving rise to an entitlement on the part of GM to claim damages for the losses it has suffered as a result.

1395. As set out in the Requests for Relief section above (Section A.1), in this Claim 3, GM requests that Respondents acknowledge their breaches of contract.

1396. In support of its requests for relief in Claim 3 (Breach of contract), in the sections that follow, GM will address the legal basis for the Respondents' liability towards GM (Section I.2) before turning to the specific breaches by the Respondents (Section I.3). GM also briefly addresses the legal principles concerning damages liability. The quantum of GM's losses is addressed in Part 3 of this Statement of Claim.

I.2 Breach and liability for damages

1397. The Respondents' specific legal obligations to GM are described in detail above (see, in particular, Sections G.2 and G.3 above). In this section, GM will therefore focus on the framework for incurring liability under the applicable law, as well as the burden of proof.

(a) General framework for breach and liability for damages

1398. Under Danish law, the granting of damages presupposes that four cumulative conditions are fulfilled:[1611]

1399. *First*, there must be a basis of liability in principle ("*ansvarsgrundlag*"). Ordinarily, that basis is *culpa*, meaning the party who caused the loss has committed a wrongdoing, i.e., acted contrary to what is normally to be expected of a reasonable party in similar circumstances ("*culpabetingelsen*"). What is considered to amount to *culpa* depends on the circumstances, including the legal nature of a relationship between two (or more) parties.[1612] There may be other grounds for liability based in contract, statute or case law, such as objective liability (i.e., a no-fault liability). Contractual obligations may constitute a warranty or assurance ("*garanti*" or "*tilsikring*") entailing an objective (no-fault) liability if breached.[1613] There are also forms of an objectivised (near objective) liability, such as a presumed liability subject to a reversed burden of proof ("*præsumptionsansvar*") (discussed further in paragraph 1407 below). In contractual relationships, this means that a party who is in breach of an obligation is presumed to be liable (*in culpa*) for losses caused by the breach, unless they (the party in breach) can prove that no liability has arisen as a result of the beach in question.

1400. *Second*, the party seeking damages must demonstrate that an economic loss has occurred or will occur.

[1611] A. Bloch Ehlers, *Grundlæggende Erstatningsret* (Karnov Group, 1st ed., 2019), at **(CL-223)**, pp. 17-26; See also B. Von Eyben, H. Isager, *Lærebog i Erstatningsret* (Djøf Forlag, 9th ed., 2019), at **(CL-224)**, pp. 21-23.

[1612] T. Iversen, *Obligationsret 2. del*, (Jurist- og Økonomforbundets Forlag, 5th ed., 2019), pp. 208-209, at **(CL-225)**, p. 208.

[1613] M. Bryde Andersen, *Lærebog i Obligationsret I* (5th ed., 2020), pp. 95 et seq, at **(CL-226)**, p. 98.

1401. *Third*, it must be possible to establish a causal link between the contract breach and/or negligent conduct (as relevant) and the losses incurred ("*kausalitet*"), meaning that the loss would not have occurred *but for* the breach and/or conduct in question.

1402. *Fourth*, the loss or damage must have been foreseeable ("*adækvans*") to the party who caused it.

(b) Anticipatory breach and position risk

1403. In addition to breaches that have already materialised, Danish law also operates with a general principle of anticipated breach,[1614] according to which a contracting party may pre-emptively invoke the entire remedial framework (including contractual damages) to counter expected *future* breaches.[1615]

1404. In order to rely on an expected future breach, there naturally must be a very high (near certain) likelihood of the future breach occurring.[1616] A future (anticipatory) breach may for example arise where a party has expressly stated that it will not perform the contract.[1617]

1405. In the case at hand, since at least December 2021, the Greenlandic Government has definitively and repeatedly stated that it will not perform its obligations under Section 14 of GM's Exploration Licence. This is the Greenlandic Government's declared position/standpoint for which it must bear the risk ("*standpunktsrisiko*") if that position/standpoint turns out to be wrong (which it is) and to have caused to suffer loss (which it has).

1406. If the Tribunal agrees that GM had a pre-existing right to transition its exploration licence into an exploitation licence under Section 14 of the Standard Terms (i.e., the Tribunal grants Claim 1), then the Tribunal should also have no difficulty finding that the Greenlandic Government's declarations above constitute acts of anticipatory breach, including a material breach ("*væsentlig misligholdelse*"), of GM's contractual rights, and that the Greenlandic Government must bear the risk and associated liability of any such breach.

[1614] See e.g. Ø.L.D. 4. maj 2021*i anke* 18. *afd*. *BS-50733/2020* (U.2021.3485), at **(CL-227)**, in which the Eastern High Court explicitly stated that the concept of anticipated breach is a general principle under the law on obligations.

[1615] T. Iversen, *Obligationsret 3. del*, Jurist- og Økonomforbundets Forlag (3rd ed., 2018), pp. 15-21, at **(CL-228)**, p. 19.

[1616] T. Iversen, *Obligationsret 3. del*, Jurist- og Økonomforbundets Forlag (3rd ed., 2018), pp. 15-21, at **(CL-228)**, pp. 17-18.

[1617] T. Iversen, *Obligationsret 3. del*, Jurist- og Økonomforbundets Forlag (3rd ed., 2018), pp. 15-21, at **(CL-228)**, p. 15.

(c) Burden of proof

1407. In principle, under Danish law, the burden of proof is borne by the party with the closest proximity/access to the evidence supporting a claim or defence.[1618] As such, it will ordinarily fall to the injured party making a claim for damages to show that (i) an economic loss has occurred and the amount of such loss; and (ii) that other conditions for establishing liability are fulfilled. However, in circumstances where a contractual breach can be established (be it anticipatory or actual), Danish law operates with a general principle of reversal of the burden of proof ("*præsumptionsansvar*") so that it falls to the party in breach to show that the breach has *not* resulted in liability at all and/or that the specific loss incurred cannot be awarded in damages in whole or in part.[1619] In other words, there is a presumption of liability in contract where there is a contract breach. Thus, the burden of proving *lack* of liability (in whole or in part) is ordinarily placed on the party in breach.

1408. Given that the Respondents have stated that GM has no right to an exploitation licence for the Kvanefjeld Project and have refused to grant and deliver to GM an Exploitation Licence on this basis, *if* the Tribunal finds that such right existed, the Tribunal must consequently find that the Respondents' acts constitute actual and anticipatory violations (breaches) of GM's rights, including material breaches.

1409. Thus, if the Tribunal grants Claim 1, it shall be the Respondents' responsibility to prove that the breach does not entail liability or that the liability is not to the extent claimed by GM, including in terms of amount of damages.

1410. For the avoidance of doubt, the submission above is without prejudice to GM's primary position that it has fully substantiated the Respondents' breaches and GM's related losses.

(d) Liability of public legal entities

1411. In principle, the above-mentioned legal principles for incurring liability apply to public authorities as well.[1620] Indeed, when a public authority acts as a contractual party, there are no grounds for special treatment in terms of the public authority's liability (i.e., no higher threshold for liability applies).[1621] Thus, under Danish law, a public authority is liable for contractual breaches in the same way as a private party.

[1618] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, p. 41.

[1619] T. Iversen, *Obligationsret 2. del*, Jurist- og Økonomforbundets Forlag (5th ed., 2019), pp. 268, 309, at **(CL-229)**, p. 209.

[1620] P. Pagh et al., *Offentlige myndigheders erstatningsansvar* (Jurist- og Økonomforbundets Forlag, 1st ed., 2021), at **(C-683)**, pp. 25-28.

[1621] R. Grønved Nielsen, *Forvaltningskontrakter* (Karnovgroup, 1st ed., 2021), pp. 575, 624-628, at **(CL-230)**, pp. 626-627.

I.3 Respondents' breaches

1412. The Government of Greenland has committed breaches, including material breaches, of its obligations owed to GM directly under the Exploration Licence, Danish contract law, the Danish law on obligations and the international law principle of *pacta sunt servanda*. These breaches include the following:

(a) The Greenlandic Government has committed a breach (including a material breach) of its obligation under Sections 1401-1408 of the Standard Terms to grant and deliver to GM an exploitation licence for the Kvanefjeld Project covering rare earths, zinc, fluorspar, and uranium, by stating, in its Final Decision of 2 June 2023, that GM does not have any rights or legitimate expectations with respect to exploitation at Kvanefjeld and purporting to reject GM's Exploitation Licence Application.

(b) The Greenlandic Government has committed an *anticipatory breach* of its obligation under Sections 1401-1408 of the Standard Terms to grant and deliver to GM an exploitation licence for the Kvanefjeld Project covering rare earths, zinc, and fluorspar, but excluding uranium, by stating, since 1 November 2021, that GM will not obtain an exploitation licence for any non-radioactive or radioactive minerals due to the purported applicability of Act No. 20, while failing to recognise GM's rights and legitimate expectations as of 1 December 2021 to be granted an exploitation licence.

(c) The Greenlandic Government has committed a breach (including a material breach) of its obligations under Sections 1401-1408 of the Standard Terms to complete all required steps in the exploitation licence application process, including completing the White Paper process and concluding the IBA (as communicated in its Notification Letter of 5 May 2022 and subsequently despite repeated requests from GM, to resume and complete the process).

(d) The Greenlandic Government has committed a breach of its obligations under Sections 1401-1408 of the Standard Terms to (i) process GM's exploitation licence application of 17 June 2019 on the basis of the rights and legitimate expectations of GM as of 1 December 2021 to be granted such exploitation licence, and (ii) contribute to an expedient development of the Kvanefjeld Project and the commencement of production, including unreasonably extending GM's exploitation licence application process, the EIA approval process, and the public consultation process.

(e) The Greenlandic Government breached its duty of loyalty under Danish contract law and the Danish law of obligations by the acts and omissions set out in sub-paragraphs (a) to (d) above, and by otherwise failing to take the necessary or appropriate steps to ensure expedient granting of an exploitation licence for rare

earths, zinc, fluorspar, and uranium, or subsidiarily, of an exploitation licence for rare earths, zinc and fluorspar.

1413. It follows from the foregoing that the Greenlandic Government has incurred liability towards GM for losses incurred. In this respect:

(a) The Greenlandic Government has incurred liability for GM's losses in one or more of the above respects on an objective (no-fault) basis because the rights to an exploitation licence under Section 14 of the Standard Terms and MRA Section 29(2) were created to establish legal certainty for GM in being able to obtain an exploitation licence based on conditions beyond the control of the Respondents, i.e., these obligations are equivalent to a contractual warranty or assurance under Danish law, entailing no-fault liability.

(b) In any event, the Greenlandic Government has acted culpably by its breaches referred to in paragraph 1412 above with intent, or at least by negligent behaviour, thereby resulting in liability for GM's losses. In the circumstances, there must at the very least be a very strong presumption in favour of liability, which is for the Respondents to rebut (and which cannot be rebutted, due to the overwhelming body of evidence).

(c) Finally, the Greenlandic Government is liable for GM's losses caused by the wrong position that the Government has taken with respect to, and its related breach (including material breach) of, GM's right to an exploitation licence for the Kvanefjeld Project ("*standpunktsrisiko*").

1414. As noted above, in its assessment of the breaches of contract pleaded above, it will only be necessary for the Tribunal to apply the international law principle of *pacta sunt servanda* if, after applying Danish law, the Tribunal finds that the Government of Greenland has not breached the contract or, alternatively, that the Government has breached the contract but, for reasons of Danish law, it has incurred no liability towards GM. In either scenario, GM invokes the international principle of *pacta sunt servanda* as both the basis of the breach and the basis of the Greenlandic Government's liability.

I.4 Joint liability of the Respondents

1415. As noted in Section E.2(b) above, Denmark, Greenland and the Faroe Islands together constitute a unitary, sovereign state. As Professor Mortensen explains[1622]:

> "*Under Danish and public international law (jus gentium), Greenland is not considered an independent state but a part of the Realm. The Realm itself constitutes a unitary sovereign state. The Realm is a construction of three autonomous legal societies with one common Constitution, i.e., currently the*

[1622] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 25-26.

Constitution from 1953 (Act No. 169 of 5 June 1953; 'Constitution'). The Realm shares, in addition to the Constitution, citizenship and some general functions, including the judiciary system. Such and other fields of responsibility belong to the competences of the Realm, meaning that the competence belongs to the Realm's (central) Government (the central Government), while other fields have been transferred to Greenland and the Faroe Islands, respectively, by way of statutory rules issued by the Parliament.

Greenland has territorial autonomy. It is not established by the Constitution, but by legislation issued by the Parliament (Folketinget). The Self-Government Act lists the political areas belonging to the central Government (the executive branch of the Realm located in Denmark), and the areas transferable to the Greenlandic Self-Government upon the latter's initiative."

1416. It follows that Greenland (together with Denmark and the Faroe Islands) is an indissociable part of the Realm. On this basis alone, Greenland's actions and omissions necessarily engage the responsibility of the Realm as a whole.

1417. Furthermore, within this institutional framework, the central Parliament (in Denmark) – and subsequently the Greenlandic Government and the legislative branch in Greenland, Inatsisartut – has enacted legislation regulating the exploration and exploitation of minerals in Greenland, and the central executive branch and the local Greenlandic executive branch have administered such legislation in cooperation with a developing division of competence over the years, including during the term of GM's Exploration Licence.

1418. As described above in Section E.3(b) above, this institutional framework gave the Danish and Greenlandic executive branches a mutual right of veto for specific mining projects. When the Danish Mineral Resources Act of 1991 was promulgated, this mutual veto right was modified such that it only existed at the point of granting an exploration licence (after which, under MRA Section 29(2) and Section 1401 of the Standard Terms, the exploration licence holder's right to an exploitation licence was *automatic* once the conditions stated therein were satisfied, meaning there was nothing to veto). This mutual Danish-Greenlandic right of veto at the exploration licence grant stage was applicable when the exploration licence was originally granted for the Kvanefjeld Project in 2005 and when the Exploration Licence was transferred to GM in 2007.

1419. By virtue of this institutional framework, it is self-evident from the fact that the Exploration Licence was granted to GM in 2007 that the Danish Government *endorsed* the granting of the Exploration Licence, because without the Danish Government's endorsement the licence could not have come into existence.

1420. After the entry into force of the Self-Government Act and the MRA (on 1 January 2010), the legislative and executive powers concerning the mineral resources area were

transferred to Greenland, but certain competences were retained by the central Government in Copenhagen. As Professor Mortensen explains:

> "*The mineral resources area was transferred from the central Government to the Self-Government on 1 January 2010 pursuant to the Self-Government Act and a declaration by the Greenlandic Self-Government in that respect. From that point in time, it has thus been the Greenlandic authorities that have had the legislative and executive power over the mineral resources area. The first exercise of this legislative power was the Mineral Resources Act of 2009, which came into effect on the same day as the mineral resources area was transferred to the Self Government. It follows from Section 1 of the Mineral Resources Act that the Greenland Self-Government authorities shall exclusively exercise legislative and executive power in the fields of responsibility taken over. However, Denmark retains legislative powers concerning areas not taken over by the Greenlandic Self-Government, as well as executive powers relating to foreign policy and national security and other such areas of significance to the Realm. In addition, Denmark has economic interests tied to the mineral resources area pursuant to the Self-Government Act in that profits from mineral resources activities shall to some extent be shared with Denmark. In the Self-Government Act, mining of uranium-containing deposits (and other radioactive deposits) was not addressed.*"[1623]

1421. As Professor Mortensen also has noted, in January 2016, the Greenlandic Self-Government and the Danish Government signed an agreement on the exploitation and export of uranium and other radioactive resources:

> "*The Self-Government has retained the competence to issue permits for preliminary investigation, research and exploitation of uranium, while the central Ministry of Foreign Affairs is the authority for security control in the Realm and is responsible for compliance with international agreements. Export control also belongs to the Realm. However, it must take place in collaboration with the Self-Government. When exporting uranium, the Realm, in cooperation with the Self Government, must enter into an intergovernmental recipient agreement with the buyer country, which must ensure that the uranium is handled safely, and that the recipient country complies with its non-proliferation obligations.*"[1624]

1422. The need for a formalised agreement between the Respondents on the division of competences in the administration of the mineral resources, as regards uranium specifically, arose from the results of the UWG process discussed in the Detailed Statement of Facts above at Sections C.25 and C.28. The UWG was established jointly

[1623] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 31.

[1624] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 36.

by the Greenlandic and Danish Governments to assess the consequences of a decision to lift the ZTP in October 2013.[1625]

1423. In connection with the UWG's discussions, the Danish Government continuously maintained the position that foreign policy in relation to natural resources, including with regards to uranium export controls under the applicable nuclear non-proliferation regimes, remained an affair for the Realm.[1626] As noted by Professor Mortensen:[1627]

> "*While uranium is radioactive, it also has a double use: Uranium can be part of a nuclear fuel cycle and can as such produce electrical energy at nuclear power plants. In addition to the civilian use, uranium can in highly enriched form also have different forms of military applications. This includes nuclear bombs. Depleted uranium can be used for projectiles in ammunition. In spite of the Self-Government Act's principle that the Self-Government holds the exclusive right to control mineral resources in Greenland, uranium, being a dual-use good (energy and weapons), is nevertheless governed not only by Greenlandic law, the Self-Government Act, and the Constitution, Danish law and international law also governs this particular mineral, especially in respect of nuclear non-proliferation, even if such law in principle only applies to Denmark but not to Greenland.*"

1424. The export of uranium is an inherent condition or consequence for GM realising income from the Kvanefjeld Project as there is no market for exploited uranium, nor rare earth elements, within the Realm. The same applies with respect to the Respondents realising taxation income and other benefits from the Project. In addition, there has been a clear presumption of export of rare earth elements, zinc, and fluorspar from the Kvanefjeld Project, especially in view of the large size and potential production capacity of the Kvanefjeld Project. This means that the Danish Government would *necessarily* have had a role to play in relation to the commercialisation of the Kvanefjeld Project. This is proven by the fact that, in May 2017, GM was required to seek approval from the Danish Government to export uranium ore to China (following which the Danish authorities proceeded to develop a system for approving uranium export applications on the back of GM's application) (see Section C.44 above).

1425. Further, the direct involvement of the Danish Government in the exploitation phase of the Project was what GM and the Greenlandic authorities legitimately expected. For example, when GM and the Greenlandic authorities discussed the terms of the

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[1625] UWG Report, at **(C-231E)**, p. 10.

[1626] UWG Report, at **(C-231E)**, p. 20 with reference to Annexes 6 and 8 to the report, which contains the Danish Government's legal assessments and argumentation.

[1627] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 35.

exploitation licence in August 2013, it was contemplated that Denmark would necessarily be a "*co-signatory*" to the exploitation licence itself.[1628]

1426. In addition to Denmark explicitly retaining its competence with regards to export of uranium, as mentioned above in the quote from Professor Mortensen's expert report, the Danish Government has specific economic interests tied to the exploitation of mineral resources in Greenland. This is particularly true of the mineral resources at Kvanefjeld.

1427. Under Sections 7 and 8 of the Self-Government Act, public income from mineral resource activities in the Greenlandic subsoil accrues to the Greenlandic Self-Government. However, the annual block grant paid by the Danish Government to Greenland (DKK3.44 billion in 2009-value but indexed yearly and currently above DKK4 billion) is reduced by an equivalent to half of the Greenlandic Self-Government's income from mineral resources exceeding DKK75 million in a calendar year. Thus, in the case of a multibillion-dollar project such as Kvanefjeld, the Danish Government stands to gain a significant economic benefit in the exploitation phase, through a reduction in the annual block grant it pays to Greenland. Even before the Self-Government Act of 2009, the Danish Government also had clear economic interests in the field of mineral resources. The division of income set out in the Self-Government Act is a development of the previous rules regarding division of income from mineral resource activities between the Greenlandic Government and the Danish Government. Under the legal framework applicable prior to 2009 (i.e., at the time of the issuing of the Exploration Licence), income up to DKK500 million was to be divided equally between the Greenlandic and Danish Governments.[1629]

1428. Given the veto right that the Danish Government held at the time the Exploration Licence was first granted to GM, it is clear that the Danish Government endorsed the Kvanefjeld Project, and that, in doing so, the Danish Government took into account the above-mentioned presumptions regarding the future export of exploited materials and the accompanying economic gains that the Project had the potential to deliver to the Realm as a whole.

1429. In light of the above, there is no justification for drawing a distinction between the Danish Government and the Greenlandic Government in relation to liability in this case. Instead, the Tribunal should be satisfied that joint liability applies, as the two Respondent governments collectively form parts of one sovereign state, which has entered into a contract with GM on exploration and subsequent exploitation of mineral resources at Kvanefjeld.

1430. In addition, the Tribunal should be satisfied that the Danish Government may be held liable based on the principle of active identification ("*aktiv identifikation*"), pursuant to

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[1628] See section C.26 above.

[1629] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, s. 22**.**

which a (third) party may under the circumstances be held liable for damages caused by another party. Under the doctrine of active identification, one may be held liable for another's causation of damage based on the relationship between the two parties and the damaging act in the context of this relationship. One central consideration behind this doctrine, is that a party should not be able to evade its liability by transferring an obligation etc. to another party and thereby cause a deterioration of the damaged party's legal position.[1630]

1431. The Respondents must be considered as jointly liable for the breaches listed above, in view of:

(a) the institutional framework (Greenland being an integral and indissociable part of the Realm);

(b) the Danish Government's endorsement of the Project in choosing not to exercise its right of veto at the material point in time but rather supporting the issuance and transfer of the Exploration Licence to GM;

(c) the continued involvement in the Project of the Danish Government from its inception to date (as summarised in Section L.6 of the Jurisdiction Section below);

(d) the specific legal competencies retained by the Danish Government in the areas of nuclear non-proliferation, safeguards and uranium export controls;

(e) the economic interest that the Danish Government has in the exploitation of mineral resources in Greenland; and

(f) the role of the Danish Government in the political and legal process that led to Act No. 20. (see Section L.6 of the Jurisdiction Section below)

1432. For the avoidance of doubt, in the event the Tribunal does not find that the Danish Government can be held jointly liable with the Greenlandic Government, the Greenlandic Government must nonetheless be held fully liable for the breaches pleaded above.

I.5 GM's losses

1433. As mentioned, in the event the Tribunal rules in favour of GM in Claim 1 (and therefore rules that GM had a right and/or legitimate expectation to receive an exploitation licence), the Tribunal is requested to assess the amount of damages which GM is

[1630] M.L. Holle, *Om retsinstituttet passiv identifikation i formueretten* (Ugeskrift for Retsvaesen, 2015), Vol. 149(14), U.2015B.147, pp. 147-156, at **(CL-231)**; M.L. Holle, *Hæftelsesansvar for selvstændigt virkende tredjemænd* (1st ed., 2013), pp. 33 et seq., at **(C-684)**.

entitled to as a result of the breaches of its right by the Respondents (or, subsidiarily, by the Greenlandic Government).

1434. As set out in the Damages section below and the independent expert report of Mr Milburn, the losses which GM has incurred by the Respondents' breach of their obligation to grant and deliver an exploitation licence to GM have been conservatively assessed at approximately US$11.5 billion.

1435. The composition and quantum of GM's losses, as well as underlying calculations and documentation, are addressed in more detail in the Damages section below.

I.6 Causation and foreseeability

1436. GM's quantified losses are and/or will be a direct and inevitable consequence of the Greenlandic Government's refusal to perform its obligation to grant GM an exploitation licence in accordance with Section 1401 of the Standard Terms and underlying legal framework.

1437. The two governments were aware of GM's activities and business objectives. Indeed, far from merely acting as passive regulators, the two governments actively collaborated with GM and used GM and the Kvanefjeld project to promote mining in Greenland. The two governments were aware of the mineral resources at Kvanefjeld. The presence of uranium was known to the Governments well before GM's Exploration Licence was granted. From April 2012, when GM submitted its pre-feasibility study, the Governments were also aware of the vast quantities of rare earth elements, zinc and fluorspar in the ore body at Kvanefjeld. Certainly, by April 2020 (when the Greenlandic Government confirmed that GM had delineated a commercially viable deposit), the Governments were also aware that the exploitation of the mineral resources at Kvanefjeld was likely to generate *billions* of dollars in profit for GM.[1631]

1438. Further, the Governments were (or ought to have been) aware, from the very early stages of GM's investment in Greenland, that if the Governments refused to grant GM an exploitation licence, in whole or in part, that would lead to significant losses in the form of lost profits, sunk costs and consequential losses. In the case of the Greenlandic Government, the Government's actual (subjective) awareness of this is proven conclusively by:

(a) the many public statements by members of the Greenlandic Government that the Government may be liable to pay GM to compensate GM for "*broken*

[1631] Report titled "*Kvanefjeld Project Feasibility Study*", produced by Greenland Minerals Ltd, April 2016, at **(C-1090)**, p. 8, confirming project NPV was about US$ 1.5 billion at that time.

assumptions"[1632] and "*a loss of rights*"[1633] if GM was refused an exploitation licence;

(b) the fact that, in the Parliamentary debates on the bill for Act No. 20, questions regarding compensation and damages liability were repeatedly put to the Greenlandic Government (see Section C.71 above); and

(c) the fact that the Greenlandic Government received "*legal assessments*" from Poul Schmith on "*Potential Claims for Damages as a Result of the Uranium Act*" prior to the enactment of Act No. 20.[1634]

1439. This is a case where the party in breach was subjectively aware (for many years) that the exact breach in question would (if committed) cause its counterparty to suffer massive losses, and indeed took specific legal advice on its damages liability before it committed the breach.

1440. GM's losses were *foreseeable* to the Greenlandic and Danish Governments – indeed, the evidence shows that GM's losses were *actually* foreseen by the Greenlandic Government (at least).

1441. Accordingly, the Tribunal should be satisfied that all of the conditions for holding the Respondents liable in relation to these losses are fulfilled in this case.

J. CLAIM 4 – DAMAGES

1442. At this stage of the present proceeding, GM is not requesting that the Tribunal make any determination with respect to Claim 4. Rather, GM requests that the Tribunal assess the quantification of damages under Claim 4 at a later stage, if necessary.

1443. Claim 4 relates to the quantification of damages that GM has suffered or will suffer as a result of the Respondents' acts and omissions in relation to the Kvanefjeld Project. To be clear, Claim 4 does not relate to *whether* GM has suffered or will suffer damages. Rather, Claim 4 is limited in scope to the quantification of those damages in dollar terms. As a consequence of the fact that the Greenlandic Government has not yet reached a decision with respect to the Amended Application, this is not currently possible.

[1632] *IA's proposal for referendum on mining and export of uranium (FM 2016/97)*, IA Party, 3 March 2016, at **(C-202E)**.

[1633] *Inuit Ataqatigiit's proposal for 50km safe distance from mining of 60ppm radioactive substances (EM 2016/52)*, A. B. Egede (IA), 13 July 2016, at **(C-203E)**.

[1634] Naalakkersuisut Response to Question 056 2022 under section 37 of the Rules of Procedure of the Inatsisartut regarding Potential Claims for Damages as a Result of the Uranium Act (English translation), 21 March 2022, at **(C-24)**.

1444. For convenience, it is helpful to recall that GM submitted the Amended Application in mid-December 2022.[1635] As Mr Frere explains, "[t]*he Amended Application contemplated that GM would not exploit uranium, but would instead separate the uranium from rare earths as an impurity, and store it as tailings*."[1636] The fact that, as of the date of the Statement of Claim, the Amended Application remains outstanding[1637] means that GM does not currently know and is unable to know the full extent of the Greenlandic Government's infringement of GM's rights.

1445. For this reason, GM requests that the Tribunal assess the quantification of damages under Claim 4 at a later stage of the proceeding. The extent of GM's loss is not (and cannot presently be) known. Consequently, the quantum of damages cannot yet be ascertained with certainty.

1446. At the same time, however, it is possible to model GM's losses based on the limited number of factual scenarios that may yet occur. As GM discusses below (in Part 3), GM's damages are quantified by reference to three such scenarios, each of which may eventuate, depending on the Greenlandic Government's determination of the Amended Application.

1447. GM's corresponding entitlement to damages will range from US$446 million to US$11.5 billion (including interest), based on the calculations provided by independent experts engaged by GM. To be clear, there is no question as to the certainty of the value those losses, only as to which specific losses will be triggered by the Greenlandic Government's conduct (i.e., by its decision to grant or not grant the Amended Application). It is for this precise reason that it is more efficient to assess the quantification of damages until at a later time, once it becomes clear which of these three scenarios actually occurs.

[1635] Third Witness Statement of G. Frere, at **(CWS-4)**, paras. 87-88.

[1636] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 88.

[1637] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 100.

PART 3. QUANTIFICATION OF DAMAGES

K. DAMAGES

K.1 Overview

1448. As explained in the introduction to this Statement of Claim, at this stage, GM does not seek a ruling on the question of damages (Claim 4). Instead, GM proposes that the question of damages (including quantum of damages) be bifurcated and addressed by the Tribunal in a subsequent phase of these proceedings once necessary (i.e., following the Tribunal's partial award on Claims 1, 2 and 3). In proposing this approach, GM is also conscious that the situation is still evolving, particular in connection with GM's Amended Application, which is still pending before the Greenlandic Government.

1449. Nevertheless, the evidence leaves no doubt that, through the unlawful acts and omissions of the Respondents, GM has already suffered significant losses. In this regard, GM recalls the Tribunal's decision on GM's Interim Measures application regarding the Government of Greenland's Draft Decision rejecting GM's application for an exploitation licence: "*In the Tribunal's view, interim measures of the nature sought by Claimant generally only serve a purpose if it is possible to 'freeze' a situation to maintain the status quo. In this case, the decision that the Claimant seeks to prevent by its Application has effectively already been taken, albeit in a draft form, and is in the public domain.*"[1638] In other words, the Tribunal refused interim measures because there was no *status quo* to maintain—the Government of Greenland had already caused GM to suffer very significant losses in publishing the Draft Decision. It is appropriate at this stage, therefore, for GM to present a quantification of the damages that it will claim from the Respondents, depending on which damages scenario (explained below) ultimately occurs.

1450. GM reserves its right to update its quantification, including, without limitation, to take account of varied or additional scenarios pending further development (including in relation to GM's Amended Application).

1451. Notwithstanding this qualification, in this section, GM's damages claim is presented based on three alternative possible damages scenarios, each described below. As the Tribunal will see, the applicable scenario depends upon the outcome of GM's Amended Application.

1452. The three scenarios upon which GM's provisional damages assessment is based are:

(a) **Damages Scenario 1**: In this scenario, it is assumed that the Tribunal finds that GM was entitled to an exploitation licence covering rare earths, zinc, fluorspar and uranium. Assuming also the Amended Application is rejected, GM will

[1638] *Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al.*, Ad Hoc, Interim Award regarding Application for Interim Measures, 23 September 2022, at **(CL-232)**, para. 304(5).

have been totally deprived of the value of the right to exploit the resources at Kvanefjeld (i.e., rare earths, zinc, fluorspar and uranium). The quantum of damages due to GM is therefore the FMV of the entire Project, as calculated by Mr Milburn.

(b) **Damages Scenario 2**: In this scenario, it is assumed that the Tribunal finds that GM was entitled to an exploitation licence covering rare earths, zinc, fluorspar but not uranium. Assuming also that the Amended Application is rejected, GM will have been deprived (in full) of the value of the right to exploit all target minerals at Kvanefjeld, except uranium. The quantum of damages due to GM is therefore the FMV of the entire Project without uranium exploitation, as calculated by Mr Milburn.

(c) **Damages Scenario 3**: In this scenario, it is assumed that the Tribunal finds that GM was entitled to an exploitation licence covering rare earths, zinc, fluorspar and uranium. Assuming also that the Amended Application is granted, GM will have effectively attained the value of the right to exploit all target minerals at Kvanefjeld except uranium. GM however has still suffered loss because it has been deprived of the right to exploit uranium. The quantum of damages due to GM is therefore the FMV of the Project including uranium exploitation less the FMV of the Project without uranium exploitation, as calculated by Mr Milburn. In other words, Damages Scenario 3 is the *delta* between Damages Scenario 1 and Damages Scenario 2.

1453. GM's damages claim is supported by the independent opinions of three experts. GM's valuation expert, Mr Milburn, has calculated the FMV of the Project and then made the necessary deductions and additions to calculate the quantum of damages due to GM. Mr Milburn's calculations apply the technical and costs inputs from the report of GM's mine engineering expert, Mr Lambert of SLR, and the price forecasts inputs provided by Mr Castilloux of Adamas Intelligence. Mr Milburn conservatively applies a 10% discount rate, to reflect the time-cost of money, built into the DCF modelling itself.

1454. Based on Mr Milburn's analysis, a summary of the 3 Damages Scenarios and GM's damages assessment in respect of each of them is set out below:

	Tribunal finding	Government of Greenland decision	Damages (US$)
Damages Scenario 1	Right to exploitation licence including uranium	Amended Application rejected	11.5 billion
Damages Scenario 2	Right to exploitation licence excluding uranium	Amended Application rejected	11.0 billion
Damages Scenario 3	Right to exploitation licence including uranium	Amended Application granted	446 million

K.2 The applicable standard of damages

1455. In the Legal Claims section above, GM has described the basis for the Respondents' liability and demonstrated that the resulting losses are causally connected to the Respondents' breaches, were foreseeable to the Respondents and are supported by the evidence in this case. In this section, GM presents the preliminary calculations of the losses that it will incur in the 3 scenarios described above.

1456. In the context of Claim 4 (the nature of which will be dictated by the Tribunal's determination on breach (Claim 3), it is GM's primary position that it is entitled to receive damages that will fully restore it to the financial position that GM would have been in if the exploitation licence had been granted as required by Section 1401 of the exploration licence (and MRA Section 29(2)).

1457. Under Danish law, damages are calculated as the difference between the injured party's situation with the contractual breach, on the one hand, and the injured party's situation if the contract had been performed as intended, on the other hand. These are called expectation damages ("*positiv opfyldelsesinteresse*") (see subsection K.3 below). The measure of damages substantively corresponds with the amounts that would be due to GM for expropriation damages, which is GM's claim in reserve pending the outcome of future developments including the outcome of GM's Amended Application (see subsection K.4 below).

1458. Further, GM notes that both measures of damages at Danish law (full restoration or expectation loss) correspond with the position at international law, which requires damages to be sufficient to wipe out the consequences of a State's internationally unlawful conduct. In cases concerning advanced mining projects, such as Kvanefjeld, the approach taken by international tribunals is generally to award amounts equal to lost future expected profits.

1459. However, GM acknowledges that international tribunals have significant discretion in the assessment of damages and, as part of that, the selection of appropriate valuation methodologies. In this regard, to the extent it is required or becomes appropriate, GM reserves its rights to present a subsidiary and alternative claim for reliance damages calculated on the basis that the contract was never negotiated and concluded at all ("*negativ kontraktsinteresse*").[1639] GM emphasises, however, that this approach would be manifestly inappropriate in the case at hand, especially given the advanced stage that the Kvanefjeld Project had reached when the Respondents' breaches occurred. Accordingly, in the provisional assessment that follows, GM focuses on the damages methodology that is clearly the most appropriate: the DCF method.

K.3 GM is entitled to expectation damages

1460. The default rule under Danish contract law is that *all* losses are recoverable in relation to a contract breach resulting in liability.[1640] This includes—but is not limited to—out of pocket costs, loss of business and/or loss of profit deriving from the halt or decline of the injured party's business as a result of the breach.

1461. In the case at hand, if the exploitation licence had been granted, GM would have been able to create a flourishing and valuable business in the extraction and sale of rare earth elements, zinc, fluorspar and uranium from the Kvanefjeld mine. The evidence set out in the Detailed Statement of Facts section above shows that this was very much what the Respondents expected. With the Greenlandic Government's denial of the necessary exploitation licence, the Greenlandic Government has deprived GM in full of the opportunity to realise future profits in carrying out this business.

1462. Businesses may be valued in different ways in practice, but the common denominator is that an FMV is derived from any such valuation methodology. In the context of a damages claim, the compensable value is the value lost due to the wrongdoing in question. It is therefore appropriate to fix the expectation damages in this case at a level corresponding to the difference between the market value of the Project with and without an exploitation licence.

1463. For this purpose, GM's independent expert, Mr Milburn, has prepared a DCF model to value GM's future lost profits, which is an appropriate and ordinary way of valuing businesses in general and in relation to damages claims under Danish law (see Section K.5 below). Using this methodology, Mr Milburn, arrives at an estimated loss of FMV of the expected business of US$11.5 billion (for Damages Scenario 1).

[1639] T. Iversen, *Obligationsret 2. del*, Jurist- og Økonomforbundets Forlag (5th ed., 2019), pp. 307-324, at **(CL-233)**.

[1640] M. Bryde Andersen, *Praktisk aftaleret*, (2nd. ed., 2003), pp. 388-394, at **(CL-234)**, p. 390; T. Iversen, *Obligationsret 2. del*, Jurist- og Økonomforbundets Forlag (5th ed., 2019), pp. 270-276, at **(CL-235)**, pp. 270–271.

K.4 Expropriation damages

1464. As noted in the introduction and discussed further in the Legal Claims section above, the legislative design of Act No. 20 is such that it does not apply if its application would amount to an expropriation under Section 73 of the Danish Constitution (the Respondents accept this). Thus, if the Tribunal finds in favour of GM under Claim 2, and therefore orders the Respondents to acknowledge that Act No. 20 does not apply, no expropriation of GM's investments should occur.

1465. It is, however, by no means certain that the Respondents will refrain from expropriating GM's property even in a scenario where the Tribunal finds that Act No. 20 does not apply. It is also possible that, notwithstanding the Tribunal's finding that Act No. 20 does not apply, GM suffers an uncompensated expropriation in any event.

1466. Accordingly, for completeness (and whilst fully reserving its rights), it is appropriate for GM to briefly outline the principles of damages for expropriation under Danish law.

1467. A claim for expropriation damages pursuant to Section 73 of the Constitution would largely rely on the same methodology for valuation purposes and would yield the same result as GM's claim for contractual expectation damages. This is because "*full compensation*" in the sense of Section 73(1)(3) of the Constitution corresponds *grosso modo* to the contractual breach case (expectation damages)—that is to say, the expropriated party must be restored to the position it would have been in but for the expropriation.[1641]

1468. The basis for the quantification of expropriation damages is accordingly also the FMV of the expropriated property right at the time of the expropriation (in this case, 1 December 2021). Legal scholar, Carsten Munk-Hansen, has noted that an expectation of future exploitation is also in principle recoverable in its own right:

> "*Markedsværdien vil i almindelighed tage udgangspunkt i de udnyttelsesmuligheder, som en ejendom har, men undertiden erstattes en såkaldt »forventningsværdi« (forstået som realistiske fremtidige udnyttelsesmuligheder), hvor en landejendom kan forventes inddraget under byzone, jf. U 1975.718 H og U 1975.722 H.*"
>
> "*The market value will ordinarily be based on the exploitation possibilities that are inherent in the property, but, occasionally, a so-called 'expectation-value' is replaced (which is to be understood as the realistic future exploitation possibilities), where a property in an agricultural zone is expected to be included in an urban zone, see U 1975.718 H og U 1975.722 H.*"[1642]

[1641] C. M. Hansen, *Fast ejendom III* (2nd ed., 2015), pp. 112-114, at **(CL-236)**, p. 113.

[1642] C. M. Hansen, *Fast ejendom III* (2nd ed., 2015), pp. 112-114, at **(CL-236)**, p. 113.

1469. The possibility of compensation for lost future profits also applies to rights existing under a concession. GM refers to MAD 2018.202[1643] (among other authorities), wherein a holder of a licence to collect peat from a bog area (Lille Vildmose) was awarded expropriation damages following the Nature Complaints Board's refusal in 2006 to grant it a licence for continued extraction. The Western High Court found that, since the adverse environmental effect of the exploitation could be mitigated, the licensee had a legitimate expectation to be able to continue extracting raw materials, which should be taken into account when determining the amount of damages due to the claimant.

1470. Accordingly, GM is entitled to receive damages covering its full value of lost future profits it expected to realise in the amount of US$11.5 billion (for Damages Scenario 1).

K.5 The DCF method is the appropriate valuation methodology

1471. The DCF model is routinely used in arbitration proceedings under the Danish Arbitration Act and international arbitration cases in general, including in the context of governmental deprivation of business, for the purpose of assessing the market value of a business in question (and therefore damages). It is also routinely relied on before the Danish courts. The model is also used by the Danish tax authorities for calculating the trading value of company shares (for taxation purposes).[1644] The Danish courts generally do not take issue with this methodology.[1645]

1472. In the judgment referenced in the Danish Weekly Law Reports 2015,[1646] which concerned the valuation of the shares in a football club, the High Court and the Supreme Court both found there were no reason to disregard a valuation solely on grounds that it was based on a DCF-analysis, as this methodology is commonly known and used.[1647]

1473. In the case at hand, Mr Milburn has used a valuation date of 1 December 2021 (the day of the promulgation of Act No. 20) because that was when the Respondents' breaches (actual and anticipatory) first manifested and it was when the Claimant incurred its resulting losses. This choice of valuation date is pragmatic, and conservative, in the circumstances:

(a) There are several possible starting points for the valuation of damages given the diffuse nature of the Respondents' breaches, i.e., there is not one self-standing breach, but rather a series of successive breaches designed to disrupt the Project, which began when the current Greenlandic Government acceded to power in

[1643] MAD 2018.202 in the matter B-2757-06, 25 April 2018, at **(CL-218)**.

[1644] See e.g., U.2018.1215 H in matter 19/2017, 20 December 2017, at **(CL-237)**.

[1645] See e.g., U.2015.2550 H in matter 304/2013, 29 April 2015, at **(CL-238)**.

[1646] U.2015.2219 H in matter 149/2013, 31 March 2015, at **(CL-239)**, pp. 2219 et. seq.

[1647] U.2015.2219 H in matter 149/2013, 31 March 2015, at **(CL-239)**.

April 2021 (well in advance of 1 December 2021), and which are ongoing at the time of this Statement of Claim.

(b) It is not possible to indicate a precise date for when the production and sales from the Project would have commenced. GM considers that production should have commenced at the latest by 1 January 2024, as supported by Mr Milburn in his expert report.[1648]

1474. For the reasons above and pending further developments, GM reserves its right to present alternative valuations based on alternative valuation dates and/or production dates.

1475. The evidence in this case—contemporaneous, lay, and expert—confirms that GM held significant proven Ore Reserves, as well as vast Mineral Resources at Kvanefjeld. These estimates were compiled in accordance with the JORC Code and signed off by an independent "*competent person*", in accordance with the strict rules and regulations that apply to an Australian public company, such as GMAS' parent company.

1476. GM's Reserves and Resources have been verified by Mr Lambert, GM's independent technical expert, as described in detail at paragraphs 1503–1505 below. Mr Lambert's conclusions are supported by the fact that the Government of Greenland's independent advisor, Auralia, confirmed GM's JORC-compliant resource estimates for various minerals, including uranium.[1649] In summary, at the Valuation Date (the date of the promulgation of Act No. 20), GM held 107 million tonnes (Mt) of Mineral Reserves (comprising, predominantly, total rare earths oxides, as well as uranium and zinc concentrate).[1650]

1477. Further, the Project has been the subject of extensive feasibility studies and associated DCF models previously, with GM's first feasibility study completed in 2015, which was updated in 2016 and then optimised in 2019.

1478. In the context of damages, this body of prior work is relevant because it not only provides contemporaneous cashflow projections, but it also reflects the extensive work that was done by GM and its professional advisers to assess the technical and economic feasibility of the Project, including capital and operating costs. What this means is that the projections in the DCF model prepared by Mr Milburn are neither optimistic nor

[1648] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, paras. 6.30–6.31.

[1649] Document titled: "*Memorandum Re: Mining Application Review – Greenland Minerals, Kvanefjeld Project*", by Auralia Mining Consulting, 4 December 2019, at **(C-569)**, pp. 7, 10–18.

[1650] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 1, p. 4 (Fourth row, "*Reserves Mined*").

speculative. Further, as he notes, the classification of the Project under the VALMIN Code supports the use of the DCF valuation method:

> "*I have determined that the DCF methodology is appropriate to use as a primary valuation methodology to determine the FMV of the Project at the Valuation Date given the following:* […]
>
> *e.* *A DCF methodology is appropriate under the* [International Valuation Standards] *since the income-producing ability of the Project is the critical element affecting value and reasonable, and since contemporaneously prepared projections of the amount and timing of future income are available for the Project;* […]
>
> *g.* *According to SLR, at the Valuation Date, absent the Alleged Breaches, the Project would be classified as a Development Project under VALMIN for which the income approach is considered applicable under VALMIN's guidance.*"[1651]

1479. Mr Lambert confirms:

> "*I consider the Kvanefjeld Project to be a Development Project for which a decision has been made to proceed with construction or production or both, but which are not yet commissioned or operating at design levels. Economic viability of Development Projects will be proven by at least a Pre-Feasibility Study. In this case decisions have been made to proceed and an Optimised Feasibility Study has been completed.*"[1652]

1480. Accordingly, Mr Milburn "*conclude*[s] *that the income and market valuation approaches are appropriate to use to determine the FMV of the Project at the Valuation Date, absent the Alleged Breaches.*"[1653] As he notes in his discussion of classification, a feasibility study for the Project had been completed.[1654]

1481. Moreover, although the Project was not in production as at the Valuation Date, an income-based/DCF approach is most appropriate given the level of reported reserves and resources as well as the reality that, prior to the Valuation Date, market participants were already assessing the Project by reference to a DCF model (which includes an independent valuation by McKnight and Glanville in November 2011).[1655] Crucially, in late-2019/early-2020, at the request of the Government of Greenland, GM provided its DCF model to the Government and its independent advisor, Auralia. Both the Government and Auralia accepted the use of a DCF model to assess whether the Claimant had "*discovered and delimited commercially exploitable deposits*" at

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[1651] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.32.

[1652] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 32.

[1653] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.31.

[1654] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, paras. 5.32(b) and (f).

[1655] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.32(c).

Kvanefjeld.[1656] Further, there is ample evidence on the record that given the size, quality and nature of the Project, it is more than reasonably certain that, but for the Respondents' actions, the Project would have generated the profits calculated by Mr Milburn.[1657]

1482. In addition, Mr Milburn notes the following factors which support the use of a DCF valuation in the present case:

(a) Mr Lambert's independent opinion is that the Project is classified as a Development Project,[1658] for which a DCF valuation would be applicable (for example under VALMIN);[1659] and

(b) the Project's unique and favourable characteristics (very large size, geological properties, location in a stable jurisdiction, low operating costs, partnership with Shenghe, simple and low-cost mining process and strategic nature of rare earths elements, among other reasons) suggest a DCF valuation should be used.[1660]

1483. As to the financing of the Project—another factor to be considered when weighing the appropriateness of a DCF approach—the evidence is clear that, given the inherent value of the Project and the buoyant state of the rare earths market in the period leading up to the events of 2021, GM would have been able to secure project financing. Mr Guy explains in his evidence the interest the Project received from Shenghe (a global business specialised in rare earths).[1661] Mr Guy states that:

> "*The most significant progress GM made in securing financing for the Project was through its dealings with Shenghe Resources Holding Co., Ltd (Shenghe). Shenghe is a large, global rare earths resources company which is involved in the mining, smelting, separation and processing of rare earths elements. Shenghe is a publicly listed company (listed on the Shanghai Stock Exchange) and is not a Chinese state-owned enterprise. Shenghe's market capitalisation is around AU$5 billion, and so Shenghe undoubtedly had the resources and capability to fund the Project, either itself using its own balance sheet, in a*

[1656] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, paras. 5.32(d) and 6.4.

[1657] See for example Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 2.51(e): "*The Project is unique due to its very large size, geological properties, its location in a stable jurisdiction, its relatively low operating costs, the involvement of Shenghe (a leading global REE mining and processing company), its simple and low-cost mining process, and the strategic nature of REEs in the global transition from fossil fuels toward renewable energies, among others*". See also First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 24: "*In June 2015, GML publicly announced (in accordance with Australian resource reporting standards, including the JORC Code) that Kvanefjeld hosts 673 million tonnes of Mineral Resources, including 108 million tonnes of Ore Reserves. These Reserves and Resources place Kvanefjeld amongst the largest undeveloped rare earth deposits in the world.*"

[1658] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 32.

[1659] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.31–5.32.

[1660] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 2.51(e).

[1661] First Witness Statement of M. Guy, at **(CWS-5)**, paras. 14–26.

> *syndicate with other financiers or by other means of guaranteeing funding for GM to develop to Project to production. GM and Shenghe had a very good relationship, and Shenghe could potentially play a major role in financing the Project*."[1662]

1484. However, Mr Guy is also clear that GM was not wholly reliant on Shenghe. The Project's economics were so strong that GM would have been able to secure competitive bids for financing on the most attractive terms. Mr Guy explains:

> "*Although Shenghe was the most realistic and attractive financing partner at the time GM started its dealings with Shenghe in 2016, the Project's technical and economic feasibility continued to develop and become more attractive as time passed. By 2019, with GM having made further advances in its Optimised Feasibility Study, GM was confident that there would be a number of alternative financing arrangements available with other funders. Accordingly, GM considered Shenghe to be one of a number of potential financing options and GM was actively exploring financing with other funders.*"[1663]

1485. In addition to the Danish jurisprudence referred to above, there are multiple examples of cases at international law where damages for a pre-productive mining asset have been calculated by reference to a DCF model. One such example is *Gold Reserve v Venezuela*.[1664] In that case, the tribunal accepted the DCF method, finding that:

> "*Although the Brisas Project was never a functioning mine and therefore did not have a history of cashflow which would lend itself to the DCF model, the Tribunal accepts the explanation of both* [parties' experts] *that a DCF method can be reliably used in the instant case because of the commodity nature of the product and detailed mining cashflow analysis previously performed.*"[1665]

1486. In another case, *Crystallex v Venezuela*, the tribunal rejected the use of a "*cost approach methodology*" on the basis that it "*would not produce estimates of fair market value*" and would have been "*inappropriate*" due to the reserves and resources of the disputed project (Las Cristinas).[1666] Instead, the tribunal held that "*Las Cristinas must be valued according to income-based and market-based approaches*".[1667] Similarly, in *Karaha Bodas v Pertamina*, even though that project "*had not yet reached the stage of full development*", the tribunal found that other considerations gave it the "*required level of*

[1662] First Witness Statement of M. Guy, at **(CWS-5)**, para. 14.

[1663] First Witness Statement of M. Guy, at **(CWS-5)**, para. 26.

[1664] *Gold Reserve Inc v Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, at **(CL-240)**.

[1665] *Gold Reserve Inc v Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, at **(CL-240)**, para. 830.

[1666] *Crystallex International Corporation v Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, at **(CL-241)**, paras. 766, 881–885.

[1667] *Crystallex International Corporation v Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, at **(CL-241)**, paras. 766, 911.

confidence" to determine that lost profits were available.[1668] Invoking its "*inherent power to assess the quantum of damages*", the tribunal awarded the claimant US$150 million.[1669]

1487. There is therefore a solid juridical and factual foundation for the Tribunal to award expectation damages for the losses that GM has sustained due to the Respondents' breaches, and a sound basis in the applicable valuation principles for using the DCF method for this purpose. There is, of course, also the more fundamental point of fairness and equity: having taken steps to prevent the development of (and otherwise unlawfully interfered with) the Project before it commenced production, and in market circumstances that were such that GM's prospects of taking the Project into production were strong, the Respondents should not be allowed to avoid liability to pay DCF-based damages by pleading that the Project was not yet in production.

1488. Similarly, the Respondents should not be allowed to oppose the use of the DCF method on the basis of any uncertainty that the Respondents themselves created (or any adverse state of affairs to which the Respondents contributed). To allow the Respondents to avoid liability for DCF-based damages on these grounds would offend the principle that no party may derive an advantage from its own wrong (*nullus commodum capere de sua injuria propria*).

1489. The independent expert evidence of Mr Milburn further confirms that, as a matter of industry practice, a DCF valuation is appropriate for this Project. Specifically, Mr Milburn approaches the valuation of the Project on the basis that it is a component of a business that was a going concern as at the date of GM's Request for Arbitration (22 March 2022). As noted in Mr Milburn's report, when an investment is most appropriately valued as a going concern, three main valuation approaches are generally recognised:

(a) *Income-based approaches*—Here, primary importance is attached to the discretionary after-tax cash flow of the investment. As Mr Milburn observes, "[w]*hen applying a going-concern approach, methodologies such as the DCF or capitalized cash flow, where the present value of future cash flows that are expected to be generated by the business are determined, are preferred*".[1670]

(b) *Market-based approaches*—Here, value is determined by reference to publicly available information. Mr Milburn explains that "[v]*alue relationships are inferred from information pertaining to publicly traded business interests or*

[1668] *Karaha Bodas Co., LLC v Pertamina & Others*, Final Award, 18 December 2000, at **(CL-242)**, paras. 122 and 124.

[1669] *Karaha Bodas Co., LLC v Pertamina & Others*, Final Award, 18 December 2000, at **(CL-242)**, para. 136.

[1670] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.22(a).

transactions, provided they are deemed sufficiently comparable to the subject business".[1671]

(c) *Cost-based approaches*—These "*are based on the principles that cost contributes to future value, and that a prospective buyer will not pay more for an asset than it could pay to construct a similar asset for itself*".[1672]

1490. As explained above, based on his review of the evidence concerning the value of the Project, including prior DCF valuations of the Project, as well as having regard to international valuation codes (including the VALMIN Code), Mr Milburn opines that a DCF approach is appropriate for the calculation of damages in this case.[1673] This opinion is supported by Mr Lambert, who considers the Project to be a Development Project.[1674]

K.6 Expert evidence relied on by GM for valuation purposes

(a) Mr Milburn's DCF model

1491. GM relies upon the DCF model and related opinions from Mr Milburn of Secretariat. Mr Milburn has vast experience valuing mining projects on behalf of both investors and states in the context of international disputes and has written a robustly independent report.

1492. Mr Milburn's methodology is set out in detail in his expert report. In summary, he has conducted a detailed review of the evidence (which includes the technical and costs inputs provided to him by Mr Lambert) to establish the following:

(a) the revenues the Project would have generated;

(b) the capital costs of the Project;

(c) the operating costs of the Project;

(d) applicable taxes and royalties; and

(e) the appropriate discount rate.

1493. Mr Milburn has then tested his analysis by looking at other factors, which indicate whether the DCF approach is producing a commercially rational value. For example, Mr Milburn has performed a market analysis seeking to benchmark the value of the

[1671] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.22(b).

[1672] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.22(c).

[1673] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, paras. 5.31–5.32.

[1674] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 32.

Project against other comparable projects and has also taken account of prior reports on the Project.

1494. Mr Milburn accounts for any specific uncertainty associated with the Project being a non-productive mine as well as price forecasting risks. Mr Milburn has added to his discount rate a Project Specific Risk Premium of 2–3% to:

> "[R]*eflect the risks that existed at the Valuation Date with respect to advancing the Project from the feasibility stage to production (except for the political/permitting risks that I have been instructed to exclude), and commodity price forecasting risk. These risks included execution risk to complete a positive DFS, reach financial close, commence and complete construction on time and on budget, and commodity price forecasting risk over the LoM, in particular due to the volatility in REE prices in the period leading up to the Valuation Date.*"[1675]

1495. Mr Milburn ultimately concludes that the effect of his 2–3% Project Specific Risk Premium has a net reduction to the FMV of the Project that is in the same order of a global 30–40% reduction on FMV that was suggested by third party analysts who had historically valued the Project. Mr Milburn explains:

> "*I have estimated the project specific equity risk premium to be from 2% to 3%, based on surveys from the Canadian Institute of Mining's Management and Economic Society. I note that this range of risk premium is mathematically equivalent to applying a global risk adjustment (as two of the three industry analysts did in their DCF valuations of the Project), of approximately 30%–40%. I consider this to be a reasonable range relative to the 60% risk adjustments applied by the two analysts since a large portion of the risks the analysts referred to were political/permitting risks that I have been instructed to exclude in my analysis.*"[1676]

1496. Mr Milburn has also reviewed GM's significant expenditure on the Project.[1677] In relation to the mining inventory and costs, Mr Milburn has relied not only on contemporaneous evidence but also on the technical report of Mr Lambert of SLR, which is described further below (at paragraphs 1503–1505). In relation to pricing, Mr Milburn has relied on the price forecasts from Mr Ryan Castilloux, who is an expert in rare earths pricing and market forecasting.

[1675] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. A3.38.

[1676] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. A3.39.

[1677] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Section 9, pp. 124–126.

1497. Having calculated the Project value using the DCF model, Mr Milburn has then applied the below methodology to calculate fair compensation for GM:[1678]

(a) Deduct: any value retained or any cashflows received by GM from the Project from the Valuation Date to present;

(b) Add: any incremental costs incurred by GM as a result of the actions of the Respondents in preventing the Project from proceeding from the Valuation Date to present; and

(c) Add: Pre-Award interest at the rate prescribed by the Danish Interest Act.

1498. Finally, in accordance with his instructions, Mr Milburn has also presented an alternative valuation of the Project for the purposes of Damages Scenario 2 (and by extension, Damages Scenario 3). Mr Milburn explains his approach:

> "*According to SLR, under Alternative 2, where it is assumed that absent the Alleged Breaches, the Claimants would have received an exploitation licence for REE but not for uranium, the uranium contained in the mined ore would be treated as residual, and not sold, and there would be no impact to operating expenses. Therefore, in my calculations under Alternative 2 and Alternative 3, I have calculated the FMV of the Project excluding uranium by reducing the revenue from uranium, and associated royalty cost in the 2023 SLR Model, to nil. All other variables in the 2023 SLR Model are unchanged.*"[1679]

1499. Mr Milburn's approach results in the following FMV calculations (contained in detail in Schedule 1 of his expert report) for the 3 Damages Scenarios presented by GM:[1680]

Description	Alternative 1 - Licence Including Uranium (A)	Alternative 2 - Licence Excluding Uranium (B)	Alternative 3 - Loss on Uranium Portion Only (C = A - B)
Present Value of Project's Cash Flows	$ 7,552	$ 7,260	$ 292
Less: Costs to Begin Construction	(22)	(22)	-
FMV of the Project	**$ 7,530**	**$ 7,238**	**$ 292**

1500. Mr Milburn has also conducted market-based comparable transactions analysis to assess the reasonableness of his conclusions reached via his DCF valuation.[1681] In conducting this analysis, he has considered a range of transactions but notes that "[o]*verall, the level of confidence and thus reliance on the conclusions from this analysis is low due to the small number of transactions identified by my screening analysis of the S&P Global database and since only one of the transactions identified*

[1678] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 5.7.

[1679] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 6.14.

[1680] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure 6-1, p. 82.

[1681] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 7.1, see also Section 7, pp. 94–106 in full.

was at a similar stage of development" [1682] and that "[s]*ince three of the four transactions included* […] *did not have Reserves and had not completed feasibility studies, the value obtained from these three transactions would tend to understate the value of the Project at the Valuation Date, which also reduces the level of confidence and reliance on the conclusions from this analysis.*"[1683]

1501. In carrying out his comparable transactions analysis, Mr Milburn has been conservative in his assessment of the implied value of the Project. For example, in respect of Inferred Resources (which he uses as part of assigning a market comparables value to the Project), Mr Milburn has applied a 50% discount rate, noting:

> "*In my calculation of the price paid per tonne of contained REE Reserves and Resources, I discounted the Inferred Resources by 50% to account for the additional risks associated with bringing Inferred Resources into commercial production. I applied the same adjustment to the Inferred Resources at the Project, to compare the different mines on a common basis.*"[1684]

1502. Ultimately, as a result of Mr Milburn's market-based analysis, he concludes his DCF valuation is reasonable given the unique and compelling characteristics of the Project, such as:[1685]

(a) its large size relative to the other comparable transactions;

(b) its relatively low capital intensity and operating costs;

(c) its location in a relatively stable jurisdiction; and

(d) the financial and technical support of Shenghe.

(b) Mr Lambert's technical inputs

1503. Mr Milburn's DCF model is based on various technical and costs inputs that require the opinions of a technical mining expert. Mr Richard Lambert of SLR is a Mining Engineer with over 40 years' industry experience.[1686] He has prepared an expert report, which (i) sets out the Mineral Reserves and Mineral Resources of the Project as at the Valuation Date (1 December 2021), and (ii) provides technical and costs assumptions and inputs required for a DCF valuation of the Project.[1687] In preparing his report, Mr Lambert has independently verified the work done by GM and its advisors in estimating Ore Reserves and Mineral Resources prior to the Valuation Date. He

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[1682] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 7.44.

[1683] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 7.45.

[1684] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 7.51.

[1685] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 7.46.

[1686] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 226.

[1687] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 25.

summarises the key technical inputs as extracted below (with certain rows removed):[1688]

Table 1: Comparison of 2020 OFS Model and 2023 SLR Model

Parameter	Units	2020 OFS Model	2023 SLR Model	2023 SLR Model w/o U
Construction Period	Years	3	3	3
Operating Period	Years	37	37	37
Mine Life	Years	37	37	37
Reserves Mined	'000 t	107,795	107,795	107,795
Uranium grade	ppm	362	362	362
Zinc grade	ppm	2,595	2,595	2,595
TREO grade	%	1.43	1.43	1.43
Plant Capacity	'000 t	3,000	3,000	3,000
Gross Revenue	US$ millions	23,437	59,950	58,320
Offsite costs	US$ millions	6,494	5,287	5,287
Royalties and other non-income based taxes	US$ millions	89	2,980	2,899
Net Revenue	US$ millions	16,853	51,682	50,134
Operating Costs	US$ millions	5,365	5,974	5,974
Operating Cash Flow	US$ millions	11,489	45,708	44,161
Initial Capital Costs	US$ millions	579	1,162	1,162
Sustaining Capital Costs	US$ millions	66	77	77
Closure Costs	US$ millions	70	85	85
Free Cash Flow – Before Tax	US$ millions	10,774	44,384	42,836

1504. As suggested in the extract above, Mr Lambert has commenced his analysis with the most recent technical work done by GM in its OFS (and associated financial model). As Mr Garry Frere explains:

> "*In August 2019, following significant technical development, GM completed what it called its 'Optimised Feasibility Study', being Study 3. The results of GM's optimisation work on the Feasibility Study were summarised in an ASX announcement dated 15 May 2019. Study 3 contained several changes to the Project that had been described in Study 2, the effect of which was to significantly improve the economic viability of the Project.*
>
> *Study 2 and Study 3 are both extensive documents and contain detailed analysis of all parts of the respective configurations of the Kvanefjeld Project. Both Study 2 and Study 3 run to approximately 450 pages and both are supported by a*

[1688] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 1, pp. 4–6.

number of references, reports prepared by independent experts and appendices prepared either by GM or independent consultants. The overall document package of each study comprises over one thousand pages of information representing over 1GB of data."[1689]

1505. Mr Lambert has independently reviewed and amended technical inputs when he has deemed necessary to do so. As Mr Lambert confirms:

(a) The Project concerns rare earths elements (**REE**) and uranium deposits contained within the Ilimaussaq Intrusive Complex,[1690] which is approximately 17 km x 8 km in size and one of the most unique geologies on earth.[1691] The Project contemplates development of a mine, mineral concentrator, refinery and supporting infrastructure to process 3 million tonnes per annum (**Mtpa**) of ore in order to produce mixed rare earths oxides, as well as uranium and zinc.[1692] Rare earths oxides, however, form the vast bulk of revenue for the Project (90.7%), as opposed to uranium (7.6%), zinc concentrate (0.9%) and fluorspar (0.8%).[1693]

(b) The Claimant's OFS provides for a Project life-of-mine of 37 years (at least) with 107Mt of Mineral Reserves (1.43% of total rare earths oxides (**TREO**); 362ppm of uranium; 2,595ppm of zinc).[1694] Mr Lambert has independently confirmed these figures and they remain unchanged in SLR's technical model.[1695]

(c) Mr Lambert's adjustments to the OFS are in summary mostly reductions to the recovery percentages of the various REE and other elements to be mined; reductions to the sales tonnages of the Projects various products (TREO, uranium and zinc concentrate but not fluorspar); and increases to operating, capital and closure costs.[1696]

(c) Mr Castilloux's price forecasting

1506. Ryan Castilloux is an experienced rare earths market forecasting expert with Adamas Intelligence (he is also Managing Director of that firm), with over 10 years of

[1689] Second Witness Statement of G. Frere, 12 June 2023, at **(CWS-2)**, paras. 16–17.

[1690] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 37.

[1691] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 53.

[1692] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 37.

[1693] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, para. 87.

[1694] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 22, p. 57, see rows three ("*Mine Life*") to seven ("*TREO*").

[1695] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 22, p. 57, see rows three ("*Mine Life*") to seven ("*TREO*").

[1696] Expert Report of Richard Lambert (SLR Consulting), at **(CEWS-2)**, Table 22, pp. 57–59.

experience as a rare earths industry analyst and consultant. Although forecasting of any kind, by its nature, is impossible to perform with perfect accuracy, it nevertheless forms a crucial input for a DCF valuation of this kind. Given the long-term life of mine (at least 37 years), GM engaged Mr Castilloux to carry out this work, to ensure that the Tribunal has the best possible view of the future market for the purposes of the counter-factual damages analysis that is required under the legal framework for damages in this case.

1507. Mr Castilloux has conducted a rigorous analysis and has consulted a wide range of sources in coming to his conclusions. As he explains:

> "*Adamas Intelligence closely tracks global production and consumption of rare earth oxides.*
>
> *Over the past decade, Adamas has developed detailed proprietary models that track global rare earth oxide and materials consumption year-after-year in hundreds of unique end-uses and applications, including electric vehicle traction motors, wind power generators, industrial motors, consumer electronics and many others.*
>
> *Similarly, over the past decade, Adamas has developed detailed proprietary models that track global rare earth oxide production year-after-year from all major production sites worldwide, including those in China, Australia, the U.S., Africa and a growing list of other nations.*
>
> *From this detailed foundation of industry knowledge, Adamas Intelligence produces comprehensive forecasts of future rare earth oxide supply, demand and prices, which are referenced and relied on by producers, end-users and other industry stakeholders globally.*"[1697]

1508. Based on this methodology, and his considerable knowledge and experience, Mr Castilloux explains the development of his price forecasts as follows:

> "*To forecast rare earth oxide prices, Adamas Intelligence develops a 'cost curve' of current and prospective future rare earth oxide producers globally to identify the price needed each year to induce the supply side to meet demand.*
>
> *Forecasted prices are considered in the context of producer profitability and capital expense payback periods. For example, prices need to reach a level that supports the profitability of all producers required to satisfy demand, otherwise the supply side is unsustainable. Similarly, for emerging producers, particularly those developing operations with high pre-production capital expenses, prices need to meet a level that not only supports profitability, but also helps promote a timely payback of pre-production capital expenses.*
>
> *Moreover, forecasted prices are also considered in the context of the evolving demand side of the market and end-users' willingness to pay. For example,*

[1697] Expert Report of Ryan Castilloux (Adamas), at **(CEWS-3)**, p. 12.

demand for rare earth magnets was historically dominated by consumer electronics, gadgets, loudspeakers and other price sensitive applications in which the use of rare earths was generally not critical to the application's performance or economics. Looking ahead, however, the future of rare earth magnet demand will be increasingly driven by electric vehicle traction motors, wind power generators and energy-efficient motors, pumps and compressors in which the use of rare earth magnets imparts an economic benefit at the system-level (be it through battery cost savings, maintenance cost reductions or reduced emissions), making the nature of future demand significantly less sensitive to rare earth input prices than that of past and present."[1698]

1509. Based on this methodology, and his considerable experience, Mr Castilloux has prepared the following long-term price forecasts from 2021 to 2035 and beyond (all in real 2021 dollars) for all the main rare earths oxides.[1699] These are contained in Figure 17 in his report.[1700]

1510. Separately, Mr Castilloux was also asked to opine on the likely separation cost that GM could expect to incur for the duration of the life of mine. The separation cost is the amount a third-party refiner would charge GM to separate its mixed TREO product into saleable elements (mainly praseodymium, neodymium, terbium and dysprosium). Based on his review of the available data (e.g., data published by other rare earths miners), Mr Castilloux estimates a separation cost of US$4/kg TREO[1701] for the duration of the life of mine of the Project, which has been included as a costs input in the Claimant's DCF model.[1702]

K.7 Interest

1511. There are no provisions regulating interest in the Standard Terms. However, Section 2003 of the Standard Terms requires any dispute to be resolved by this Tribunal applying Danish law.

1512. Under Danish law, interest on pre-award amounts is regulated by the Danish Interest Act ("*procesrente/morarente*") (**Danish Interest Act**).

1513. In accordance with Section 3(5) of the Danish Interest Act, GM provisionally claims for pre-award interest from 1 December 2021, being the date that GM suffered loss due to the Respondents' breaches.

[1698] Expert Report of Ryan Castilloux (Adamas), at **(CEWS-3)**, pp. 12–13.

[1699] These are lanthanum, cerium, praseodymium, neodymium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium and yttrium oxides.

[1700] Expert Report of Ryan Castilloux (Adamas), at **(CEWS-3)**, p. 17.

[1701] Expert Report of Ryan Castilloux (Adamas), at **(CEWS-3)**, p. 18.

[1702] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 6.11.

1514. In accordance with Section 5(1) of the Danish Interest Act, Mr Milburn has calculated pre-award interest as follows:

(a) the commencement date for the calculation of interest is 1 December 2021 and the end date is 31 December 2026 (being an approximate date for an award in this Arbitration);[1703] and

(b) the interest rate is the official lending interest rate ("*udlånsrente*") published by the Danish National Bank ("*Nationalbankens*") from time to time, calculated as the prevailing *udlånsrente* on 1 January and 1 July each year (being the reference rate), plus 8% per annum.[1704]

1515. Mr Milburn has calculated pre-award interest on a simple basis and has included his calculations in his expert report for each of the 3 damages scenarios presented by GM.[1705] GM relies on Mr Milburn's calculation of pre-award interest (as extracted below) as part of its alternative damages claim:

Start Date	End Date	Pre-Award Interest Rate	Alternative 1 - Licence Including Uranium	Alternative 2 - Licence Excluding Uranium	Alternative 3 - Loss on Uranium Portion Only
1-Dec-2021	31-Dec-2021	7.65%	$ 48	$ 46	$ 2
1-Jan-2022	30-Jun-2022	7.55%	285	274	11
1-Jul-2022	31-Dec-2022	7.55%	285	274	11
1-Jan-2023	30-Jun-2023	9.90%	373	359	14
1-Jul-2023	31-Dec-2026	11.25%	2,968	2,853	115
			$ 3,959	$ 3,805	$ 154

[1703] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 10.1.

[1704] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, para. 10.3.

[1705] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure 10-1, p. 128 and Schedule 2.

K.8 Damages conclusion

1516. On the basis of the reasons explained in his report, Mr Milburn quantifies GM's damages as follows:[1706]

Description	Alternative 1 - Licence Including Uranium (A)	Alternative 2 - Licence Excluding Uranium (B)	Alternative 3 - Loss on Uranium Portion Only (C = A - B)
FMV of the Project	$ 7,530	$ 7,238	$ 292
Add: Pre-Award Interest	3,954	3,801	154
GMAS' Damages Including Pre-Award Interest	**$ 11,485**	**$ 11,039**	**$ 446**

1517. Accordingly, in the event it becomes necessary for GM to do so, GM provisionally claims damages as follows:

(a) Damages Scenario 1: **US$11,497,000,000**;

(b) Damages Scenario 2: **US$11,051,000,000**; and

(c) Damages Scenario 3: **US$446,000,000**.

[1706] Expert Report of Chris Milburn (Secretariat), at **(CEWS-4)**, Figure 11-1, p. 129.

PART 4. THE TRIBUNAL'S JURISDICTION

L. JURISDICTION

1518. In the section that follows, GM will further set out its case on why the Tribunal should find that it has jurisdiction over this dispute. In so doing, GM will address certain allegations and arguments that the Respondents made against jurisdiction in the interim measures phase of these proceedings last year. GM does so without prejudice to its position that these allegations and arguments are matters in respect of which the Respondents bear the burdens of proof and persuasion, and without prejudice to GM's right to respond to the submissions on jurisdiction that the Respondents will make after this Statement of Claim is filed.

1519. This section is structured as follows:

(a) First, GM sets out its case on the Tribunal's subject matter jurisdiction (jurisdiction *ratione materiae*), specifically:

(i) how the dispute falls within the scope of the arbitration agreement at Section 20 of the Standard Terms; and

(ii) why the dispute is arbitrable as a matter of Danish law.

(b) Second, GM sets out its case on the Tribunal's personal jurisdiction (jurisdiction *ratione personae*) over the Danish Government, namely why the Danish Government is bound by the arbitration agreement.

1520. By way of preface to the discussion of the points above, GM acknowledges that the Respondents, like any party to an arbitration, have a right to contest the jurisdiction of the Tribunal. However, this procedural right, like all procedural rights in an arbitration, must be exercised in *good faith*. GM does not accept that the Greenlandic Government's objections to jurisdiction are made in good faith.

1521. In particular, the Greenlandic Government's jurisdictional objection based upon Section 2001 of the Standard Terms is made in breach of good faith, because this objection is premised upon the Government's claim that it has "*discretion*" on the question of whether GM has an entitlement to an exploitation licence, but (as demonstrated in the Legal Claims above) the Government is subjectively aware that it has no such discretion at all and that GM's entitlement is "*automatic*" under the MRA and the Standard Terms.[1707] The same is true of the Government's attempts to oppose jurisdiction on the basis that Addendum No. 1 gives it unfettered discretion to decide to reject any application made by GM.

[1707] *See* Section G.2 above.

1522. This dispute arose when the Greenlandic Government caused the enactment of Act No. 20 on 2 December 2021. The Respondents subsequently committed actual and anticipatory breaches of GM's contractual rights, as detailed in the Legal Claims section above. Thus, for the purposes of this dispute, the Draft Decision and the Final Decision on GM's Exploitation Licence Application are relevant only as *evidence* of the Respondents' breaches. As GM has repeatedly stated, it does not ask the Tribunal to conduct any judicial review of the Draft Decision, and that is also the case for the Final Decision. GM also does not ask the Tribunal to make "*a constitutive decision, which can only be made by the authorities*" (contrary to what the Respondents have submitted).[1708] Fundamentally, what GM seeks from the Tribunal is a ruling on whether it had rights under the Exploration Licence (which it did) and whether those rights were breached (which they were).

L.1 The lex arbitri

1523. As noted above, Section 2003 of the Standard Terms stipulates that the board of arbitration (the Tribunal) "*will be seated in Copenhagen*".[1709]

1524. The law that governs arbitration in Denmark is the Danish Arbitration Act 2005 (**DAA**),[1710] which is based upon the Model Law. The preparatory works for the DAA emphasise its international origins, meaning that the international standards of the Model Law are therefore an integral part of the *lex arbitri* in this case.[1711] As the preparatory notes to the DAA make clear, it was intended that arbitrators in Denmark take account of these standards, as reflected in the jurisprudence of courts and tribunals in other Model Law jurisdictions. GM notes that the Respondents themselves have placed heavy reliance on international jurisprudence in their pleadings, including in their recent Application for Security for Costs.

1525. As discussed below, Model Law jurisprudence, and the wider body of international arbitration practice, has significantly influenced Danish law in recent years, including Danish law as it concerns the interpretation of arbitration agreements.

L.2 Interpretive framework

1526. Section 2003 of the Standard Terms stipulates that "[i]*n its decision, the board of arbitration will apply Danish law*".[1712] As noted in the Legal Claims section, the

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[1708] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 116.

[1709] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2003.

[1710] Lov 2005-06-24 nr. 553 om voldgift, at **(CL-8)**, p. 2; English version: Danish Parliament Act No. 553 of 24 June 2005 on Arbitration, at **(CL-9)**, p. 5.

[1711] Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, pp. 13-14.

[1712] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2003.

applicable law stipulation in Section 2003 is to be read in light of Section 1901, which provides (relevantly) that the "[t]*he licence is subject to the laws of Greenland and Denmark in force at any time*".[1713]

1527. The DAA (at Section 16) empowers the Tribunal to rule upon objections to its own jurisdiction (*kompetenz-kompetenz*).[1714]

1528. Applying Section 2003 of the Standard Terms, questions of jurisdiction – including questions arising out of the interpretation of the arbitration agreement – are to be decided by application of Danish law.

1529. Under Danish law, the interpretation of an arbitration clause "*must be based on the actual words used* […] *and the context in which these words occur*".[1715] Danish law recognises that an arbitration agreement is a contract and as such is subject to the usual principles of contractual interpretation.[1716] Notably, these principles include *contra proferentem*, which is relevant in the case at hand because the arbitration clause was drafted solely by the Respondents (as the Respondents accept).[1717]

1530. The prevailing textual approach to the interpretation of arbitration agreements is illustrated by the decision of the Danish Supreme Court in U1997.751H.[1718]

1531. However, there is scholarly authority in support of the *expansive* interpretation of arbitration agreements where the meaning is not clear. In Danish law, an expansive interpretation of an arbitration clause tends to place more emphasis on the common intention of the parties to the arbitration agreement and on the purpose of the arbitration agreement.[1719] The expansive approach has been said to be in line "*with the development in major arbitration jurisdictions* […] [a]*nd it would cater to the practical needs created by ever-increasing global commerce*".[1720] Additional reasons under Danish law that support an expansive approach towards interpreting arbitration agreements include the Danish law approach of avoiding circumstances where interpreting arbitration agreements would lead to an "*unfortunate division of*

[1713] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1901.

[1714] Lov 2005-06-24 nr. 553 om voldgift, at **(CL-8)**, p. 2; English version: Danish Parliament Act No. 553 of 24 June 2005 on Arbitration, at **(CL-9)**, section 16(1).

[1715] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 99.

[1716] H. Beckmann & J. Nolsø, *Fortolkning af voldgiftsklausuler* (U.2008B.411), at **(CL-108)**, p. 411.

[1717] *See* Section L.3(d) above.

[1718] U 1997.751H cited in H. Beckmann & J. Nolsø, *Fortolkning af voldgiftsklausuler* (U.2008B.411), at **(CL-108)**, p. 3.

[1719] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 114.

[1720] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 97.

competences between arbitration and court proceedings", i.e., split/fragmented proceedings.[1721] In the words of Danish practitioners, it should be presumed that:

> "*parties who have agreed on an arbitration clause have a preference for this method of dispute resolution, regardless of whether the actual text has been drafted more or less fortunately*".[1722]

1532. The expansive approach reflects the well-recognised "*pro-arbitration*" approach that prevails in international arbitration,[1723] and is a hallmark of Model Law jurisprudence globally. This approach is illustrated by a large (and growing) body of case law, including:

(a) ICC Case No. 12363/ACS, where the tribunal held that "*there is a presumption that in case of doubt, an arbitral tribunal has 'all-encompassing jurisdiction'*".[1724]

(b) *Wintershall AG v Qatar*, where the tribunal concluded that there is a "*tendency* […] *not only to a non-restrictive but even to an expansive view of international arbitration* [clauses]".[1725]

(c) *Sonatrach v K.C.A. Drilling Ltd*, where the Swiss Federal Tribunal reasoned that "*if it is established that an arbitration clause exists, there is no reason to interpret that clause restrictively* [but it should be] *assumed that the parties wish for an embracing jurisdiction of the arbitral tribunal, given that they have concluded an arbitration agreement*."[1726]

1533. The rationale for this approach was explained as follows by Gary Born:

> "*Derived from the policies of leading international arbitration conventions and national arbitration legislation, and from the parties' likely objectives, this type of presumption provides that a valid arbitration clause should generally be*

[1721] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 100.

[1722] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 99.

[1723] The pro-arbitration presumption has been discussed by Gary Born in, G. Born, *International Commercial Arbitration Vol. I* (3rd ed., 2021), pp. 1433, 1450, at **(CL-109)**.

[1724] Partial Award in ICC Case No. 12363/ACS, 24 ASA Bull. 462, 466 (2006) cited in G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, fn 85.

[1725] Wintershall AG v. Qatar, Partial Ad Hoc Award of 5 February 1988, 28 I.L.M. 795, 811 (1989) cited in G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, p. 1445.

[1726] Judgment of 15 March 1990, Sonatrach v. K.C.A. Drilling Ltd, 1990 Rev. Arb. 921, 923 (Swiss Fed. Trib.) cited in G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, p. 1439.

interpreted expansively and, in cases of doubt, extended to encompass disputed claims."[1727]

1534. This *pro-arbitration*[1728] approach to interpretation prevails also in Australia, the home State of GMAS' parent company (and the market from which the capital and much of the expertise for the Kvanefjeld Project was sourced). Like Denmark, Australia has adopted the Model Law as the basis of its arbitration legislation.

1535. As part of the expansive/pro-arbitration approach to interpretation, Danish legal literature also supports the view that interpretation of an arbitration clause should take account of "*consequences of interpretation*"[1729] which (*inter alia*) include the parties' legitimate expectations that the arbitration agreement will be applied.[1730]

1536. Case law from the Danish Supreme Court also supports the proposition that *atypical* disputes and disputes essentially based in tort, where they relate to a contract in dispute, can be included under an arbitration agreement even though explicit language to that effect is not found in the relevant arbitration clause.[1731] The same development can be seen in Norway and Sweden.[1732]

1537. Danish law commentators have also opined that a restrictive interpretation of an arbitration clause is likely to result in a more costly and cumbersome process for the parties, because a part of the case would have to go to court, while the remainder would have to be arbitrated.[1733] Referring to the decision in U 2003.885 where a Danish court rejected a restrictive interpretation of the arbitration agreement, one commentator suggests that arbitration clauses should be interpreted in an expansive way under Danish

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[1727] G. Born, *International Commercial Arbitration Vol. I* (3rd ed., 2021), pp. 1433, 1450, at **(CL-109)**, p. 1433.

[1728] G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, p. 7.

[1729] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**

[1730] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 98; H. Beckmann & J. Nolsø, *Fortolkning af voldgiftsklausuler* (U.2008B.411), at **(CL-108)**, pp. 417-418.

[1731] U.1997.751H H.D. in the matter 479/1995, 18 March 1997, at **(CL-244)**, pp. 751 et seq.; U.2006.1638 V.L.D. in appeal 15th Dept. B-1613-05, 3 February 2006, at **(CL-245)**, pp. 1638 et seq.; U.2013.2338H H.D. in the matter 362/2012 and 366/2012, 23 May 2013, at **(CL-246)**, pp. 2338 et seq; U.2014.2042 H.D. in the matter 216/2013 (2nd Dept.), 11 April 2014, at **(CL-247)**, pp. 2042-2045.

[1732] M. Frank, *Fortolkning af voldgiftsaftaler – patologier og anden uklarhed i forståelsen af voldgiftsaftaler srækkevidde*, Karnov Group Denmark A/S, 2018, ch. 2.2.4-2.2.6, at **(CL-248)**; M. Frank, *Interpretation of arbitration agreements - pathologies and other ambiguities in understanding the scope of arbitration agreements*, (Karnov Group Denmark A/S, 2018), ch. 2.2.4-2.2.6, at **(CL-248E)**.

[1733] A. Ørgaard, '*Voldgiftsaftalen*', chapter 10, Jurist- og Økonomforbundets Forlag (2006), pp. 223-224, at **(CL-249)**; A. Ørgaard, '*The Arbitration Agreement*', chapter 10, Jurist- og Økonomforbundets Forlag, (2006), pp. 223-224, at **(CL-249E)**.

law, "*whereby the arbitral tribunal not only could take a position on individual issues but on all issues between the parties, which would be costs-saving*."[1734]

1538. Although the textual approach generally prevails, it has been emphasised in the scholarship that interpretation based only on the wording of the arbitration agreement may lead to "*an unfortunate division of competencies between arbitration and court proceedings*". [1735] The literature suggests that "[s]*uch a division should have a presumption against it*"[1736] – a presumption that is applied in other Nordic systems (such as Sweden).[1737] Nevertheless, if it is not possible to arbitrate all the issues that have arisen between the parties – even though they are within the scope of the arbitration clause as written – then this division of competencies may be unavoidable, with some matters being resolved by arbitration and others by the courts. From the perspective of procedural economy, this "*fragmentation*" [1738] of proceedings is sub-optimal, but it is the result that the contract to arbitrate demands in these circumstances. As two Danish academics have explained:

> "*there is no legal basis* [in Danish law] *for setting aside arbitration clauses on the grounds of procedural economy. Either the dispute in question is covered by an arbitration agreement or it is not. Courts cannot censor the agreement in the light of what is appropriate*".[1739]

1539. Thus, if the result of the interpretive exercise is that the arbitration clause covers the dispute in question, but a portion of the dispute is not arbitrable (and must therefore go to court), the tribunal cannot decline jurisdiction entirely; it must exercise the jurisdiction that it does have, over the portion of the dispute that is arbitrable, and leave the remainder of the dispute for the courts to determine.

[1734] A. Ørgaard, '*Voldgiftsaftalen*', chapter 10, Jurist- og Økonomforbundets Forlag (2006), pp. 223-224, at **(CL-249)**; A. Ørgaard, '*The Arbitration Agreement*', chapter 10, Jurist- og Økonomforbundets Forlag, (2006), pp. 223-224, at **(CL-249E)**.

[1735] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 100.

[1736] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 105.

[1737] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 105.

[1738] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, 98.

[1739] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 109.

L.3 The arbitration agreement in the Standard Terms

1540. The arbitration agreement in Section 20 of the Standard Terms comprises six sub-sections, under the heading "*Arbitration*".[1740] The sub-sections that are at issue in this case are Section 2001 and Section 2002, which read as follows:

> "***§ 20. Arbitration***
>
> *2001. Decisions, which according to stipulations of the licence depend on the judgment or resolve of the Government of Greenland or BMP, are not subject to arbitration. This stipulation does not exclude ordinary review by Danish courts.*
>
> *2002. In any other case disputes arising between the Government of Greenland and the licensee regarding questions arising out of the licence will be finally decided upon by a board of arbitration, appointed pursuant to sections 2003-2006.*"[1741]

1541. As noted above, Danish law requires that the interpretation of this arbitration clause "*must be based on the words actually used* […] *and the context in which these words occur*".[1742]

1542. The first point to be made about the text of Section 2001 and Section 2002 is that they are placed under a heading that contains one word: "*Arbitration*".[1743] The drafters of Section 20 (the Respondents) could have used a broader term, such as *Dispute Resolution*, but they did not do so. They used the term "*Arbitration*".[1744]

1543. This signals that arbitration is the singular purpose and primary object of Section 20 and, as such, that the drafters of Section 20 intended that provision to create a general rule with respect to the method of *arbitration*. Moreover, the heading "*Arbitration*"

[1740] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 20.

[1741] GM notes that the translation of Section 2002 provided above differs from the unofficial English translation provided by the Greenlandic Government, on which GM has relied in the present proceeding to date ("*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**) insofar as the translation above refers to "*questions arising out of the licence*", whereas the unofficial translation previously relied on refers to "*questions concerning*" the licence. The translation on which GM now relies is faithful to the original Danish. Moreover, the unofficial translation is narrower in scope and therefore materially less favourable to licensees than the original (official) Danish version.

[1742] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 99.

[1743] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 20.

[1744] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 20.

signals that the drafters intended any method of dispute resolution under Section 20 that is *not* arbitration to be the exception.[1745]

1544. The heading of the section thus confirms that arbitration is the general rule (and any other procedure is the exception). This is confirmed by the text of the provisions contained within Section 20.

1545. Section 2002 is the key provision, providing for arbitration.[1746]

1546. Section 2001 is a carve out from Section 2002 and provides an exception to the general rule. The opening words of Section 2002 ("[i]*n any other case*") are cross-referential to Section 2001, signalling that the scope of Section 2002 was intended to be understood by reference to the scope of Section 2001.[1747]

(a) Interpretation of Section 2002

1547. The wording of Section 2002 is simple and clear. As such, it suffices for GM to make three main observations on this text.

1548. First, as noted above, the title of Section 20 is "*Arbitration*", and Section 2002 is where the primary objective of Section 20 is expressed. Applying Danish principles of contractual interpretation, the singular purpose and methodological priority that this heading conveys informs the interpretation of all words contained in Section 20. Thus, the title of the section requires that all words in the provision be interpreted with the primacy of arbitration in mind. This strengthens the case for an expansive/pro-arbitration interpretation of the entirety of Section 20, as that same interpretive bias is entrenched in the scheme of the provision itself.

1549. Second, consistent with the opening words, the description of the class of disputes that must go to arbitration under Section 2002 is expansive: "*disputes arising between the Government of Greenland and the licensee regarding questions arising out of the licence*." This language creates the broadest possible nexus between the dispute and the Exploration Licence: all that is required is that there be a question that *arises out of* the licence. As discussed below, there is no such nexus language in Section 2001. Following the textual approach to interpretation, the broad scoping language in Section 2002 must be given a broad effect: it cannot be narrowed by an unnatural, restrictive interpretation of its own terms, or by an expansive interpretation of the exclusion clause that precedes it (Section 2001). Professor Gary Born notes that the formulation "*arising*

[1745] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 20.

[1746] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2002.

[1747] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2002.

out of" is one of several "*standard formulae used in arbitration agreements*",[1748] the intent of which "*is to apply expansively to all disputes relating to a particular contract, regardless of legal formulation*."[1749] Consequently, Professor Born identifies a "*clear trend in contemporary national court decisions* […] *in favor of liberal interpretations of the 'arising out of formula'*".[1750]

1550. Third, it is immediately clear that Section 2001 and Section 2002 are radically different in the scope of the jurisdiction that they reserve and confer respectively: Section 2002 confers a very broad jurisdiction upon the arbitral tribunal. This is reinforced by the broad words: "*disputes arising* […] *regarding questions arising out of the licence*".[1751] Conversely, Section 2001 preserves a very narrow jurisdiction for the Danish courts to conduct ordinary (judicial) review of qualifying, specifically: "*Decisions, which according to stipulations of the licence depend on the judgment or resolve of the Government of Greenland or BMP*".

1551. On a plain reading, Section 2002 has two limbs. There must be a dispute that:

(a) is "*arising between the Government of Greenland and the licensee*"; and

(b) which is "*regarding questions arising out of the licence*".

1552. As discussed in section L.4(a) below, each of GM's Claims satisfies these two limbs.

(b) Interpretation of Section 2001

1553. In its English version, Section 2001 reads as follows:

> "*Decisions, which according to stipulations of the licence depend on the judgment or resolve of the Government of Greenland or BMP, are not subject to arbitration. This stipulation does not exclude ordinary review by Danish courts*."[1752]

[1748] G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, Section 9.02, p. 1451.

[1749] G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, Section 9.02, p. 1452.

[1750] G. Born, *International Commercial Arbitration* (3rd ed., 2021), pp. 1423-1514, at **(CL-243)**, Section 9.02, p. 1462.

[1751] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2002.

[1752] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2001.

1554. The first interpretive point to note is that, as with Section 2002, this provision must be read with the primacy of arbitration in mind, as signalled by the section heading: "*Arbitration*".[1753]

1555. Section 2001 is an exception to the primary dispute resolution mechanism of arbitration, providing a narrow set of circumstances in which the review of Government action is reserved for "*ordinary review by the Danish courts*".[1754] The expression "*ordinary review*" means judicial review in accordance with principles of administrative law.[1755]

1556. Based on the plain language of Section 2001, it is clear the drafters intended to establish strict criteria for determining when a decision can only be the subject of judicial review (and cannot be the subject of arbitration). Specifically:[1756]

(a) there must be a "*decision*" in existence (the temporal criterion);

(b) the decision itself must be the "*subject*" of the dispute (the subject criterion);

(c) the decision must "*depend on*" the "*judgment or resolve of the Government or BMP*" (the discretionary criterion); and

(d) the discretionary nature of the decision must be stipulated in the provisions of the licence (the stipulation criterion).

1557. All four of these criteria must be met for the review of a decision to be reserved for the courts under Section 2001. This is discussed below.

(i) Temporal criterion

1558. The first criterion is the temporal criterion. As a matter of common sense, Section 2001 can only apply to "*decisions*" that already exist.[1757] It is impossible for a court to review a decision that an authority has not made yet. Thus, Section 2001 cannot reserve for the courts the review of decisions that have not been made.

1559. This is the only interpretation of Section 2001 that is reasonably available, as the opposite would produce a fundamental imbalance in the arbitration agreement. If Section 2001 were interpreted as reserving for the courts the decisions of authorities

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[1753] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2002.

[1754] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2001.

[1755] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, Section 2001.

[1756] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

[1757] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

that are made after disputes have commenced, the authorities would have the ability to unilaterally narrow or even escape arbitration by rendering decisions that cut across the subject matter of the dispute. That interpretation would give weight to an interest that is not legitimate and under Danish law cannot be taken into account in the interpretation of the provision.[1758] It would also amount to an interpretation of Section 2002 as optional for the Government – an interpretation that neither the wording nor the purpose of Section 20 supports.

1560. It bears emphasising that, in the present case (as discussed in Section G.2 above), the Greenlandic Government had no power to make any decision that is relevant to the temporal component of Section 2001 of the Standard Terms. This is because the question of whether GM had a right to a licence is not a matter for the Greenlandic Government to decide. Rather, GM had a *right* to an exploitation licence. The foregoing interpretation of Section 2001 of the Standard Terms is therefore based on the hypothetical scenario where the Greenlandic Government *does* have the power to render a decision.

(ii) Subject criterion

1561. The second criterion is that a decision will only be reserved for the courts if the decision itself is the *subject* of the dispute. This is clear from a plain reading of Section 2001, which refers to "*decisions*" that are not "*subject to arbitration*".[1759]

1562. The narrow language of Section 2001 stands in contrast to the language used in Section 2002, where the broadest possible nexus language ("*any*", "*case*", "*disputes*", "*arising*", "*regarding*", "*questions*", " *arising out of*") is used to articulate the scope of the promise to arbitrate.[1760]

1563. There are no such words in Section 2001.[1761] Indeed, if the drafters had intended Section 2001 to have a broad scope, they would have included words such as *disputes regarding decisions*, or *disputes arising out of decisions*. They have not done so.

1564. It follows that it is only a decision *itself* that can be reserved for judicial review, whereas a dispute *in connection with* or *related to* a decision must go to arbitration. Thus, for example, if a dispute arises regarding questions arising out of compliance with a term of the licence, and in that dispute one of the parties points to a decision as *evidence* of

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[1758] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 98.

[1759] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

[1760] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2002.

[1761] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

non-compliance with the relevant term of the licence, then the subject criterion of Section 2001 will not be engaged.

(iii) Discretionary criterion

1565. The third criterion is that the decision that is the subject of the dispute must "*depend on*" the "*judgment or resolve of the Government or BMP*".[1762]

1566. Section 2001 is clearly intended to reserve for the courts only a limited class of executive action: discretionary decisions. This is clear from a plain reading of the provision, which applies only to decisions that "*depend on the judgment or resolve of the Government of Greenland or BMP*".[1763]

1567. GM notes that, in their submissions before the Tribunal, the Respondents have argued for a broader interpretation of Section 2001, according to which Section 2001 is *not* limited to discretionary decisions.[1764] However, this position is contradicted by the Greenlandic Government's own internal legal assessment dated 15 December 2022, which in fact agrees that Section 2001 is only concerned with discretionary decisions:

> "*Naalakkersuisut's discretionary decisions are not covered by the arbitration clause in the standard terms of investigation, nor can this matter be brought before a court until Naalakkersuisut has made a decision*."[1765]

1568. This legal assessment also confirms the (common sense) position that a decision cannot be reserved for the court unless a decision has been made (i.e., the temporal criterion).

1569. Notwithstanding this clear evidence that the Respondents internally understand and accept that Section 2001 only applies to *discretionary* decisions, GM makes the following observations, in case the Respondents unreasonably maintain their submission that Section 2001 is *not* so limited:

(a) First, the Respondents' call for a broad interpretation of Section 2001 is essentially a request that the Tribunal adopt a *restrictive* interpretation of the arbitration agreement itself – an interpretive approach that is not only out of line with contemporary Danish jurisprudence, but also the jurisprudence of other Nordic jurisdictions (such as Sweden). As two Danish scholars noted, "[t]*he*

[1762] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

[1763] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

[1764] See, for example, Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 139 ("*decisions during the administrative process as to whether or not to grant the above licences are subject to the discretion and / or determination of Naalakkersuisut*").

[1765] Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193)**; English translation, at **(C-193E)**, p. 1.

restrictive practice dates back to a time when there was no arbitration act […] *the situation is markedly different today*".[1766]

(b) Second, Section 2001 is an exception clause: its purpose is to carve-out the arbitration clause that immediately follows it. As Danish law supports the expansive interpretation of arbitration agreements,[1767] the logical corollary of this is that any exception to arbitration (Section 2001) should be read narrowly in light of the arbitration agreement (Section 2002), but the Respondents propose the opposite.

1570. For these reasons, the Respondents' interpretation of Section 2001 is incorrect and must be rejected.

(iv) Stipulation criterion

1571. The final criterion that must be satisfied for a decision to be reserved for the courts is that the discretionary nature of the decision must be stipulated in the provisions of the licence. This criterion is intertwined with the discretionary criterion, as is apparent from the wording of Section 2001, which applies to: "*Decisions, which according to stipulations of the licence depend on the judgment or resolve of the Government of Greenland or BMP*".[1768]

1572. The Danish language version of Section 2001 reads as follows:

"*Afgørelser, som efter indholdet af tilladelsen beror på landsstyrets eller råstofdirektoratets skøn eller bestemmelse, er ikke underlagt voldgift*."[1769]

1573. A wider review of the Standard Terms shows that the drafters did intend the expression "*efter indholdet*" in Section 2001 to equate to the English "*stipulations*".[1770]

1574. The key point here is that the stipulation criterion will only be satisfied when *the licence itself* describes an act of the authorities that entails the exercise of some discretion, and

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[1766] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 106.

[1767] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, pp. 97, 100, 102 and 114.

[1768] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 2001.

[1769] Standard conditions for exploration permits regarding mineral raw materials (excluding hydrocarbons), 25 June 2013, at **(R-1)**, p .16.

[1770] This is clear from the fact that, whereas in some locations in the Standard Terms the Danish word "bestemmelsen" is used (which translates simply to "provision" in English), Danish equivalents of the more precise "stipulation" are used in other locations. The examples of the Danish equivalent of "stipulations" are mostly in sections that contemplate an act (or an implied act) by the authorities that requires an exercise of discretion (as envisaged in Section 2001). See, for example, sections 403, 901b, 1408 (chapeau), 1411, 1413 and 1602 of the "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**.

this discretion is expressly or implicitly stipulated in the provisions of the licence. For ease of reference, GM will refer to the decisions encompassed by the discretionary criterion and the stipulation criterion as "**stipulated discretionary decisions**".

1575. Examples of stipulated discretionary decisions in the Standard Terms include:

(a) Section 707, which provides that, if the licensee's activities cause pollution or have a harmful effect on the environment, "*the BMP may order the licensee to take remedial action and to remedy any damages*".[1771]

(b) Section 1303, which provides that "*BMP may lay down rules and procedures regarding recruitment of personnel*" from Greenland or Denmark.[1772]

(c) Section 1702, which provides that the "*BMP may request that the licensee provides security for the fulfillment of his obligations*".[1773]

1576. The provision that is central to the current dispute, Section 1401,[1774] does not envisage that the Government will make a stipulated discretionary decision under Section 2001.

1577. Rather, Section 1401 says that the licensee "*is entitled to be granted an exploitation licence*" – words that signal a total *absence of discretion* on the part of the authorities.[1775] As set out in detail in the Legal Claims (Section E.3(b) above), Section 1401 and its sister statutory provision, MRA Section 29(2), were deliberately designed to exclude government discretion in the transition from exploration to exploitation.[1776] The legislative history, and the statements of Greenlandic Government officials prior to this dispute, leave no doubt that the Respondents intended the entitlement that these provisions confer to be "*automatic*"[1777] (notwithstanding their belated self-serving protestations to the contrary).

[1771] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 9.

[1772] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 12.

[1773] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 15.

[1774] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p 12.

[1775] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, section 1401.

[1776] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 12; Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, p. 12.

[1777] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15.b-d, 53, 73; Report titled, "*Mineralstrategi 2004: Mål og planer for mineralefterforskningen i Grønland*", produced by the Directorate of Mineral Resources, at **(C-669)**; Report titled, "*Mineral Strategy 2004: Goals and plans for mineral exploration in Greenland*", produced by the Directorate of Mineral Resources, at **(C-**

1578. Following the plain words of Section 1401 (namely its final sentence, which says that the "[t]*he exploitation licence will be granted as indicated in sections 1401* [to] *1408*"),[1778] the only aspects of "[t]*he transition from exploration to exploitation*"[1779] that may involve any discretionary decision on the part of the Government or BMP are:

(a) the delineation of the exploitation licence area, in accordance with Section 1406;[1780]

(b) the fixing of the economic terms of the exploitation licence in accordance with Section 1408;[1781] and

(c) the sufficiency of an EIA, which the BMP may demand be changed or expanded if, in the opinion of the BMP, it is not sufficient, in accordance with Section 1409b.[1782]

1579. This makes sense because, in taking these steps, the Greenlandic Government is determining the terms upon which exploitation activities will be permitted (the "*how*"), and, as noted above (and confirmed in Professor Mortensen's expert report), this is the part of the licensing process where the Greenlandic Government does have discretion (under MRA Section 16).[1783]

1580. With respect to Section 1406 of the Standard Terms, it bears noting that, in certain places, this provision uses language that closely corresponds to Section 2001. For example, Section 1406(c) states:

> "*The basis of delineation under point b will be the deposits in question as their extent, in the judgement of BMP, has been documented by the licensee* […]"[1784]

669E), p. 40; Froslag, *Lovforslag som fremsat med bemærkninger*, No. 335, 2 May 1991, at **(CL-105)**; see English translation, Explanatory notes on Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland, 2 May 1991, at **(CL-105E)**, p. 16.

[1778] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 12.

[1779] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 14.

[1780] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 13.

[1781] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, pp. 13-14.

[1782] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 14.

[1783] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15.d, 96, 97,102, 143.

[1784] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 13.

1581. Thus, applying Section 2001, GM could not challenge a delineation decision by BMP at arbitration. The same is true of a decision to fix certain economic terms under Section 1408, or a decision that the EIA is not sufficient under section 1409b.[1785] Challenges to such decisions must be brought by way of judicial review, in the ordinary courts.

1582. But, other than these stipulated discretionary decisions, nothing in the "[t]*he transition from exploration to exploitation*"[1786] that is regulated by Section 14 falls within the exclusion of arbitration under Section 2001, because no discretion is involved. It bears emphasising again that, as the historical and legislative records make clear, this was exactly what the Respondents intended when they drafted the Standard Terms.

(v) Conclusion on interpretation of Section 2001

1583. To conclude, Section 2001 is narrow and is only engaged where a section of the licence expressly mandates the Government or BMP to decide an issue on a discretionary basis, and the Government or BMP makes such a decision *before* arbitration is commenced, and it is this decision that is the subject of the arbitration. In this scenario, the licensee cannot challenge the decision by way of arbitration, but it may seek judicial review of the decision in the Danish courts.

1584. Even in these circumstances, to the extent the *decision* is part of a wider dispute regarding questions arising out of the licence, the balance of the dispute – meaning everything except judicial review of the decision itself – can be referred to arbitration.

1585. Therefore, it is possible that circumstances will arise where the authorities have made a stipulated discretionary decision (which is not the case here) and, at the same time, there is also a dispute regarding questions arising out of a licence. In these circumstances, it is possible that there will be arbitration proceedings in parallel to judicial review in the competent courts. Although this may (hypothetically) result in "*an unfortunate division of competencies between arbitration and court proceedings*",[1787] it is the result that inevitably follows from the parties' arbitration agreement, which must be respected, *pacta sunt servanda*.[1788] The mere existence of a stipulated discretionary decision does not give a tribunal licence to disregard the arbitration agreement.

[1785] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, pp. 13.14.

[1786] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, **§** 14.

[1787] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 100.

[1788] See Section E.3(d) above ("[t]*he Respondents' authorities exercised their discretion in that regard in 2007, when they granted GM the Exploration Licence and within it the conditional right to an exploitation licence. Having made this discretionary decision in accordance with the MRA, the Respondents are now bound by the terms of their contract with GM, pacta sunt servanda*").

(c) Legislative history of the arbitration agreement

1586. As set out above, Section 2002 contains a broad agreement to arbitrate, which is subject to a carve out for stipulated discretionary decisions, the review of which is reserved for the courts.[1789] To be clear, every part of a dispute arising out of the licence that is not a stipulated discretionary decision must go to arbitration in accordance with Section 2002.

1587. This interpretation of Section 20 is consistent with the legislative history of the provision.

1588. As discussed above (and as the Respondents have themselves acknowledged), Section 20 of the Standard Terms has its origins in the draft mining law that the Mining Law Commission prepared in 1963. Notably:

(a) The Mining Law Commission considered that, in circumstances where an exploration concession-holder is denied an exploitation licence and the quantum of compensation cannot be agreed, the matter should be resolved by arbitration.[1790]

(b) Elaborating on a scenario where an exploration concession-holder is denied an exploitation licence and an exploitation concession is subsequently granted to a third party or to the State itself, the Mining Law Commission explained that the enforcement of the former concessionaire's right to compensation, including through "*a special arbitration board*" if necessary, was an integral part of the scheme proposed: "*It is hereby deemed unfair to the holder of the exploration license to simply direct him to seek the fulfillment of his unfulfilled right at the ordinary courts of law*."[1791]

(c) Addressing a scenario where the Government decides to expropriate part of the rights held under an exploration concession or an exploitation concession, the Mining Law Commission considered that arbitration was the appropriate method.[1792]

[1789] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 16.

[1790] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 30. ("*If no agreement is reached between the parties, it is proposed that the matter be referred to a final decision by an arbitration board of 3 members. The Commission has considered whether problems of this nature should find their resolution in the ordinary courts. It has, however, been of the opinion that in the situations referred to here, there may be so many special problems, including particularly Greenlandic problems, that it would be reasonable to refer the decision to a specially appointed board, which would be able to provide the necessary special expertise*").

[1791] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 30.

[1792] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 29 ("*compensation* [for expropriation] *must - in the absence of an amicable agreement be determined by a commission of 3 members, of which the chairman must be a judge appointed by the president of the Supreme*

1589. Based on these recommendations, the 1965 Mining Act included a provision allowing for the inclusion of arbitration clauses in Greenlandic concessions. The arbitration provisions of the 1965 Mining Act were drafted to cover two situations: (i) where a "*concession for the exploitation of raw materials is granted to someone other than the holder of the exploration concession*" (Section 16);[1793] and (ii) where the licensee's activities require the Government to expropriate third party rights (Section 13(3)).[1794]

1590. Section 16 provided:

> "*If the concession for the exploitation of raw materials is granted to someone other than the holder of the exploration concession, a decision must be made, under the mediation of the Minister of Greenland, by negotiation between the parties, as to whether and, if so, to what extent and under what conditions the previous holder of the exploration concession must be granted cover for his expenses during the investigation.*
>
> *Paragraph 2. If no agreement is reached between the parties on the items in subsection 1, the question is finally decided by a board of 3 members, of which 2 are chosen by the holder of the exploration concession and the holder of the exploitation concession respectively. The 3rd member is elected by the other 2 members or, in the absence of agreement, by the President of the Supreme Court. The Board itself sets the rules for the treatment and decides who will bear the costs of it.*"[1795]

1591. There are obvious similarities between the text of paragraph 2 above and the text of Section 20 of the Standard Terms.

1592. The Mining Law Commission prepared its report of 1963, which attached proposed standard terms, including the following arbitration provision:

> "*Questions which, according to the content of this Act, rest on the discretion or determination of the Minister for Greenland, are finally decided by the Minister, unless the Act, as far as the question in question is concerned, expressly authorizes access to an arbitration decision.*"

Court, while according to the proposal one member must be appointed by the minister for Greenland and one member of the expropriate")

[1793] Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185E)**, section 16.

[1794] Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185E)**, section 13(3): "*If the licensee's business within the concession area necessitate the removal of other associated buildings or fittings or interference with other associated rights, the Minister for Greenland may, at the licensee's request and at his expense, carry out expropriation against full compensation. In the absence of an amicable agreement, the compensation is determined by a commission of 3 people, the chairman of which must be a judge appointed by the president of the Supreme Court, while 1 member is appointed by the Minister for Greenland after negotiation with the Greenland Council and 1 member by the grant holder*."

[1795] Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185E)**, section 16.

> *Paragraph 2. Other disputes that may arise between the State and a concession holder in any matter regarding the concession are settled by the Danish courts. The venue is Copenhagen*."[1796]

1593. Thus, in its original formulation, in the arbitration clause of the standard terms, the general rule was that disputes go to the courts, and *arbitration was the exception*. This has since been reversed.

1594. GM digresses to note that the clear statements of intention in the 1963 Commission Report leave no doubt that the Mining Law Commission intended, at a bare minimum, that the provision that became Section 20 of the Standard Terms would give a licensee the right to refer disputes regarding the non-granting of exploitation licences and disputes regarding expropriation to arbitration. These were the two scenarios in which the Mining Law Commission "*expressly authorizes access to an arbitration decision*".[1797] Arbitration was therefore to be the dispute resolution method under the standard terms drafted by the Mining Law Commission.

1595. From 1965, the two governments set out to make the Greenlandic mining law regime more investor friendly. As Professor Mortensen notes in his expert report:

> "*Since 1965, when the first Greenland-specific mining legislation was enacted, the main legislative objective has been to make the Greenlandic mining law system internationally competitive and more attractive to foreign investors.*"[1798]

1596. The Danish and Greenlandic Governments have long known that foreign mining investors prefer arbitration (if only because, as the Mining Law Commission noted, it allows for the selection of arbitrators with "*the necessary special expertise*").[1799] Thus, as part of their effort to make the Greenlandic mining law framework more attractive to foreign investors, the two governments changed the law to broaden the scope of disputes capable of being submitted to arbitration.

1597. In 1991, when the Danish Mineral Resources Act was enacted, the two governments were mandated to include arbitration clauses in concessions on any terms they saw fit. This mandate was set out in Section 29, which read as follows:

> "*It may be stipulated in a licence that disagreement between the Greenland Home Rule Government and the licensee as to whether the terms of the licence*

[1796] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 47.

[1797] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 47.

[1798] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 15(b).

[1799] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 24.

> *have been complied with shall be brought before a court of arbitration whose decision shall be final.*"[1800]

1598. The explanatory notes to this provision stated that it:

> "*aims to lay down an express legal basis to include provision on arbitration in licences issued pursuant to this Act.* […] *More detailed provisions on the composition of the arbitral tribunal, competence, case management etc will have to be included in the individual licences.*"[1801]

1599. The 1991 legislation therefore recognised the broad power of the two Governments to agree to arbitrate disagreements about "*whether the terms of the licence have been complied with*" and to stipulate any limits on the Tribunal's "*competence*" in the arbitration clause itself.[1802] This is the legal basis for the *sui generis* arbitrability framework discussed below.

1600. As noted above, it was under the Danish Mineral Resources Act 1991 that the two governments published the Standard Terms in 1998.[1803] Thus, the arbitration clause in Section 20 is a reflection of the mandate of the two governments in Section 29 of the Danish Mineral Resources Act 1991.[1804] The Standard Terms were produced as part of the two governments' wider strategy to design an internationally competitive regime and make it more attractive to invest in exploration for mineral resources in Greenland.[1805] This legislative objective is discussed in detail in the Legal Claims section above.[1806] When the two governments drafted the text of Section 20 of the Standard Terms, they made a conscious shift to a more pro-arbitration approach because that was consistent with this economic goal. As part of this, the two governments decided to reverse the priority originally reflected in the standard terms drafted by the Mining Law Commission in 1963. Thus, in the 1998 Standard Terms, the two governments made arbitration the rule, and court-based dispute resolution the exception. This choice, and the context in which it was made, should inform the interpretation of Section 20 (and it is another reason why Section 2001 should be construed narrowly).

[1800] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, p. 8.

[1801] Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**, p. 20.

[1802] Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**, p. 20.

[1803] *See* Section E.3(b) above.

[1804] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, p. 8.

[1805] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 5; Legislative committee report ("betænkning") EM2009/120 on Bill on Mineral Resources Act, at **(CL-197)**

[1806] *See* Section E.3(b) above.

1601. As also noted above, the Danish Mineral Resources Act 1991 was the law in force when GM's Exploration Licence was first granted. Thus, the broad mandate and intention reflected in Section 29 of the 1991 Act and its explanatory note still inform Section 20 of GM's Exploration Licence.

1602. When the MRA was enacted following the shift to Self-Government in 2009, the wording of the arbitration section (Section 90) was left substantially the same as the wording of the arbitration section (Section 29) in the Danish Mineral Resources Act 1991, as shown below:

Mineral Resources Act 1991	**MRA**
"*Section 29. It may be stipulated in a licence that disagreement between the Greenland Home Rule Government and the licensee as to whether the terms of the licence have been complied with shall be brought before a court of arbitration whose decision shall be final.*"[1807]	"*90. A licence may stipulate that a dispute between the Government of Greenland and the licensee as to whether the terms of a licence have been complied with must be brought before a court of arbitration whose decision will be final.*"[1808]

1603. An addition concerning Section 63 of the Danish Constitution was made to the explanatory notes to this provision, as discussed below.

1604. It is clear from subsequent events that, under the MRA, the Greenlandic Government did not intend to change its long-standing approach to arbitration clauses. This is apparent from the preparatory works to the MRA amendments made in 2016. One of the amendments initially proposed was to add a provision clarifying the relationship between MRA Section 90 and the Greenland Arbitration Act. This provision was subsequently removed from the amendment bill. The Government of Greenland explained that it had removed this provision because:

> "*it is considered more appropriate that, in accordance with existing practice, the arbitration provisions should continue to be regulated in the permit texts*."[1809]

1605. In conclusion, the legislative history of the arbitration agreement confirms it was intended to express a very broad promise to arbitrate and stipulate only one limit on the Tribunal's competence: that it could not conduct judicial review of stipulated discretionary decisions. For all other questions arising out of licences, arbitration was

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[1807] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, Section 29.

[1808] Greenland Parliament Act No. 7 of 7 December 2009 on mineral resources and mineral resources activities, at **(CL-3)**, Section 90.

[1809] Comments on the proposal for amendments to the Mineral Resources Act, 22 September 2016, at **(CL-250E)**, p. 38.

the exclusive dispute resolution procedure. Even as late as 2016, the position of the Greenlandic Government was that issues of jurisdiction (including, necessarily, arbitrability) "*should continue to be regulated in the permit texts*."[1810]

(d) Contra proferentem

1606. As set out above, Section 2001 is sufficiently clear and must be understood as applying only to stipulated discretionary decisions.

1607. However, if the Tribunal considers that Section 2001 is ambiguous in any respect, then any such ambiguity must be resolved *contra proferentem*, by interpreting Section 2001 against the parties that drafted it: the Respondents.

1608. As Dalgaard-Knudsen wrote in 1991:

> "*If the* [Danish] *State one day is forced to claim that the standard bidding round concessions are standard permits issued by the Sovereign State, it is very likely that the courts will treat the concessions as 'contrat d'adhesion', and interpret the texts in favour of the other party*".[1811] (emphasis added)

1609. Thus, to the extent that there remains any doubt as to the interpretation of Section 2001 (*quod non*), such doubt must be resolved in favour of GM – meaning in favour of arbitration.

L.4 Claims fall within the arbitration agreement

1610. Having interpreted the text of the arbitration agreement, the next question is whether each of the Claims as framed in the present Statement of Claim fall within Section 2002, such that these Claims must be resolved by arbitration.

1611. After it is established that a Claim *does* fall within Section 2002, it must be determined whether a Claim (or any part of it) falls within Section 2001, such that it is (wholly or partially) excluded from arbitration by Section 2001.

1612. This analysis is set out below.

(a) Section 2002 applies

1613. To fall within Section 2002, there must be a dispute that:

(a) is "*arising between the Government of Greenland and the licensee*"; and

(b) which is "*regarding questions arising out of the licence*".

[1810] Comments on the proposal for amendments to the Mineral Resources Act, 22 September 2016, at **(CL-250E)**, p. 38.

[1811] F. Dalgaard-Knudsen, *Mineral Concessions and Law in Greenland*, (1st ed., 1991), at **(CL-186)**, p. 248.

1614. The Claims that GM submitted to arbitration meet both limbs of this test.

1615. As to the first limb, there is no disagreement that the dispute is between the Government of Greenland and the licensee (GM). There is only a disagreement as to the involvement of (and the Tribunal's jurisdiction over) the Danish Government – that issue is addressed further below.

1616. As to the second limb, GM's Claims are clearly "*disputes* […] *regarding questions arising out of the licence*". Specifically:

(a) Claim 1 (Rights) concerns the question whether GM had rights and legitimate expectations under Section 1401 of its Exploration Licence to an exploitation licence for (i) rare earths, zinc, fluorspar and uranium, or, subsidiarily, (ii) rare earth elements, zinc and fluorspar (with uranium handled as a residual impurity).

(b) Claim 2 (Applicability of Act No. 20) concerns the question whether a particular Greenlandic law applies to GM's Exploration Licence. The answer to this question turns upon whether the application of that law would expropriate GM's rights and legitimate expectations under its Exploration Licence.

(c) Claim 3 (Breach of contract) involves questions whether the Respondents have, by their conduct and statements, breached their obligations to GM under its Exploration Licence.

(d) Claim 4 (Damages) involves questions as to the quantification of the damages that GM has suffered (and may further suffer) as a result of the Respondents' breaches of the Exploration Licence.

(e) Claim 5 (Costs), Claim 6 (Jurisdiction), and Claim 7 (Other Relief) involve questions arising from the disputes submitted to arbitration under the Exploration Licence.

1617. Thus, the two limbs of Section 2002 are satisfied for each of the Claims in this dispute.

(b) Section 2001 does not apply

1618. Having established that GM's Claims fall within Section 2002, the next question is whether any of these Claims are excluded from arbitration under Section 2001.

1619. In these proceedings, the Respondents have objected to the jurisdiction of the Tribunal, on the basis that "*the case concerns matters to be decided by the authorities*".[1812] The

[1812] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 129.

Respondents rely upon Section 2001 to argue that "*Such matters are explicitly exempted from arbitration in the standard terms*".[1813]

1620. This arbitration was commenced in March 2022 when GM submitted its dispute to arbitration. Four months after this dispute commenced, on 22 July 2022, the Government rendered its Draft Decision on GM's exploitation licence application. A year later, on 2 June 2023, the Government rendered its Final Decision rejecting GM's exploitation licence application. By issuing the Final Decision, the Greenlandic Government has sought to make this dispute appear to be about a "*decision*", whereas in reality, this is a dispute about pre-existing rights and whether the Respondents have breached their obligations under the Exploration Licence.

1621. The question for the Tribunal is whether the fact that the Government has rendered the Final Decision has the effect that GM's Claims are excluded from arbitration under Section 2001. To determine this question, it is necessary to apply the four criteria set out above. It is only when all four of these criteria are satisfied that a decision must be reserved for the courts under Section 2001.

(i) Temporal criterion applied

1622. Starting with the temporal criterion, as set out above, Section 2001 can only apply to "*decisions*" that already exist when a tribunal is seized of a dispute.

1623. GM brought this dispute because, after the Government caused the enactment of Act No. 20, the Government asserted in two meetings with GM that the company had no rights at all and sought to trick GM into forfeiting its rights. This is the genesis of the dispute. The questions that GM has submitted to the Tribunal arise out of these events.

1624. None of the questions that GM has put to the Tribunal for determination refers to any "*decision*" of the Government or BMP. This is because no such "*decision*" existed at the time the RfA was issued. The Respondents in fact confirmed that when this dispute was submitted to arbitration, "*no administrative decision ha*[d] *been made yet in the case concerning GMAS's exploitation licence*".[1814] This is a crucial concession made by the Respondents that automatically renders meaningless any jurisdictional objection based on the alleged applicability of Section 2001 to this dispute.

1625. With respect to the Final Decision (which is not the subject of GM's claims), the temporal criterion clearly is not satisfied, as this decision post-dates this dispute by more than a year. The same is true of the Draft Decision.

1626. For the reasons explained in Section L.3(b) above, Section 2001 cannot be interpreted as covering decisions made after the commencement of arbitration. Such a reading

[1813] Respondents' Rejoinder on Interim Measures, 29 August 2022, at **(RP-3)**, para. 49.

[1814] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 97.

would effectively render the arbitration agreement optional, because it would allow the Government to avoid arbitration by simply making a "*decision*" after arbitration is initiated (as the Greenlandic Government has now sought to do).

(ii) Subject criterion applied

1627. The second criterion is the subject criterion. In this case, the question is whether the Final Decision is the "*subject*" of GM's Claims.

1628. The answer to this question must (necessarily) be *no*. This is principally because the temporal criterion is not satisfied: no "*decision*" existed at the time the claims were submitted to arbitration, so it is *impossible* that the claims had a "*decision*" as their subject. Nevertheless, even if (*arguendo*) that were not the case, this question would still be answered in the negative.

1629. This dispute arises out of GM's rights as at 1 December 2021. At this time, the licensing process was taking place in accordance with an agreement reached between GM and the Greenlandic Government. The steps in the licensing process were the subject of specific sections of the Exploration Licence, in which overtly contractual language is used.

1630. At the meetings after Act No. 20 was passed, the Greenlandic Government twice asked for GM's consent to the cessation of this process (which GM declined).[1815] In requesting GM's consent to terminate the contractual licensing process, the Government implicitly acknowledged the contractual nature of the licensing process. It was in these meetings that the Government denied GM had any rights or legitimate expectations to an exploitation licence. The Government subsequently issued the Notification Letter and the Press Release, announcing its intention to unilaterally terminate the agreed licensing process.

1631. In these actions, the Greenlandic Government breached its contractual obligations to GM under the Exploration Licence (a concession or administrative contract), including its duties of good faith and loyalty. Simultaneously, in denying the existence of GM's rights and expectations and unilaterally aborting the agreed licensing process, the Greenlandic Government breached its administrative law obligations of proportionality, legality, only taking legally relevant criteria or considerations ("*saglige hensyn*") into account, and refraining from any misuse of powers ("*magtfordrejning*").

1632. It was on the basis of this conduct on the part of the Government that GM commenced arbitration and submitted to the Tribunal questions arising out of its Exploration Licence. It was only after this time that the Government issued the Final Decision.

[1815] Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 15 December 2021, at **(C-61)**, pp. 4-5; First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, paras. 58, 67 and 77(c).

1633. In this arbitration, GM is asking the Tribunal to rule on questions arising out of its Exploration Licence. GM is *not* asking for the Tribunal to conduct any judicial review of the Final Decision. The only reason the Tribunal needs to look at the Draft Decision and the Final Decision at all is that they are part of the body of evidence of the Respondents' breaches of the Exploration Licence. For example, the Draft Decision is evidence of the Government intentionally misquoting the Addendum No. 1 Caveats in an attempt to deny the existence of GM's rights and legitimate expectations. This document therefore serves as (further, post-dispute) evidence that the Government has committed actual and anticipatory breaches of Section 1401 and breaches of its duties of good faith and loyalty. This is relevant to Claim 3.

1634. Neither the Draft Decision nor the Final Decision can objectively be said to be the "*subject*" of GM's Claims.

(iii) Discretionary criterion applied

1635. The third criterion is the discretionary criterion, i.e., whether the decision in question "*depend*[s] *on the judgment or resolve of the Government of Greenland or BMP*".

1636. As already stated, the Final Decision is not relevant to this analysis as it post-dates the dispute and is not the subject of the dispute.

1637. In any event, the Final Decision is not a discretionary decision for the purposes of Section 2001, as it is based solely on Act No. 20, which has no discretionary content at all. The evidence shows that this was deliberate: the first draft of Act No. 20 included a provision that would have given the Government the power to grant exemptions from the Act. This was removed from the final bill.[1816] The Respondents' counsel is aware of this as they themselves drafted Act No. 20.

1638. The legal reality is that no decision concerning GM's rights under Section 1401 of the Exploration Licence and MRA Section 29(2) could ever be a discretionary decision. The legislative history shows that the Respondents intended to eliminate all discretionary elements from these provisions, such that the right to an exploitation licence was "*automatic*".[1817] The non-discretionary nature of these provisions is confirmed by Professor Mortensen in his expert report.[1818]

[1816] *See* Section C.65 above.

[1817] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15.b-d, 93-94, 104; Report titled, "*Mineralstrategi 2004: Mål og planer for mineralefterforskningen i Grønland*", produced by the Directorate of Mineral Resources, at **(C-669)**; Report titled, "*Mineral Strategy 2004: Goals and plans for mineral exploration in Greenland*", produced by the Directorate of Mineral Resources, at **(C-669E)**, p. 40; Froslag, *Lovforslag som fremsat med bemærkninger*, No. 335, 2 May 1991, at **(CL-105)**; see English translation, Explanatory notes on Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland, 2 May 1991, at **(CL-105E)**, p. 16.

[1818] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15.b-d, 93-94, 104.

1639. As noted above, in this arbitration, the Respondents have argued that Section 2001 is *not* limited to discretionary decisions.[1819] In making this argument, the Respondents are plainly seeking to avoid arbitration. They are essentially saying that, by making a decision after GM commenced arbitration, they can bring the pre-existing dispute within the Section 2001 carve out and exclude it from arbitration. That is not a legitimate interest for the purposes of interpretation. As two Danish scholars explained, "[t]*he interest of one party in obstructing the other party after the dispute has arisen can of course not be taken into account in the interpretation of the contract*".[1820] The Respondents' interpretation should be rejected for the reasons outlined above.

(iv) Stipulation criterion applied

1640. As demonstrated above, the Final Decision is not a discretionary decision, and is based solely on Act No. 20. This is clear from the conclusion of the Final Decision, which states: "*The Government of Greenland therefore refuses the application of 17 June 2019, as the granting of a licence is contrary to section 1(1) of the Uranium Act*".[1821] The fact that the Final Decision is a decision under Act No. 20 necessarily means that it is not – and *cannot be* – a decision under the Exploration Licence, and therefore also fails to satisfy the stipulation criterion.

1641. Even if the Final Decision were a decision under Section 1401 of the Standard Terms (which it clearly is not), this would fail on the stipulation criterion, as Section 1401 does not stipulate any discretion on the part of the Government (meaning this would not be a stipulated discretionary decision).

1642. Read neutrally, there is nothing in the Exploration Licence that says GM's entitlement to an exploitation licence for rare earths, zinc and fluorspar "*depends on*" the "*judgment or resolve of the Government or BMP*".

1643. As to GM's entitlement to an exploitation licence for uranium, even if the Addendum No. 1 Caveats were relevant to this analysis (*quod non*), they are invalid and unenforceable as a matter of Danish law (see Section G.2 above). Thus, the discretion that these caveats purport to confer upon the Greenlandic Government is of no legal effect. Further, at the time the arbitration was commenced, the Government had not made any decision concerning Addendum No. 1, so this licensing instrument is irrelevant for the purposes of Section 2001.

[1819] See, for example, Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 139 ("*decisions during the administrative process as to whether or not to grant the above licences are subject to the discretion and / or determination of Naalakkersuisut*").

[1820] T. Iversen & M. Andersen, *The Scope of Arbitration Agreements: Is it Time for a New Approach to the Interpretation of Arbitration Clauses?*, 2017(63) Scandi. St. in Law 96, at **(CL-65)**, p. 102.

[1821] Final Decision on Exploitation Licence Application, 1 June 2023, at **(C-650E)**, para. 120.

(v) Conclusion on application of Section 2001

1644. For the reasons set out above, GM's Claims are properly the subject of arbitration, as GM has not asked for the Tribunal to review a stipulated discretionary decision. It is irrelevant to this analysis that, more than a year after GM commenced the present arbitration, the Government rendered the Final Decision.

1645. In addition, any jurisdictional objection based on the Final Decision does not (and cannot) bring the present dispute within the carve-out in Section 2001, because, as discussed below, such an objection would be inadmissible on both temporal and substantive grounds.

(c) Temporal inadmissibility of jurisdictional objection

1646. In addition to the four criteria set out above (including the temporal criterion), the Government's ability to invoke Section 2001 is subject to the general principle that a party's conduct after the commencement of arbitration cannot deprive the tribunal of jurisdiction.

1647. This principle is reflected in the judgment of the International Court of Justice in the *Case Concerning Right of Passage over Indian Territory* (*Portugal v. India*):

> "*It is a rule of law generally accepted, as well as one acted upon in the past by the Court that, once the Court has been validly seised of a dispute, unilateral action by the respondent State in terminating its Declaration* [accepting the jurisdiction of the Court] *in whole or in part cannot divest the Court of jurisdiction.*"[1822] (emphasis added)

1648. It is also reflected in the decision of the arbitral tribunal in *Company Z & Others v State Organization ABC*:

> "*it cannot be accepted that the parties wished or simply accepted that the validity and effectiveness of a contractual clause as fundamental as an arbitration clause should be subject to a sort of condition entirely within the power of one party, the occurrence of which would depend solely on the will of the State of which the public organization party to the said contract and to the undertaking to arbitrate is an instrumentality*."[1823] (emphasis added)

1649. Thus, the Government may not invoke its actions or decisions taken after the arbitration was commenced to negate the jurisdiction of the Tribunal. It follows that, because the Draft Decision and the Final Decision were made after GM commenced arbitration, any jurisdictional objection based on these documents is inadmissible on temporal grounds.

[1822] *Case Concerning Right of Passage over Indian Territory (Portugal v. India)*, Judgment on Preliminary Objections, 26 November 1957, 1957 ICJ Rep. 125, at **(CL-111)**, p. 142.

[1823] *Company Z and Others v. State Organization ABC*, ad hoc, Award, April 1982, 1983(8) Y.B. Com. Arb. 94, at **(CL-110)**, p. 108.

(d) Substantive inadmissibility of jurisdictional objection

1650. In addition to a jurisdictional objection based on the Final Decision being inadmissible on temporal grounds, such an objection is inadmissible on substantive grounds.

1651. The Respondents' present objective is to force GM into the courts, as they consider they will have an advantage in that forum. This is why the Respondents have disputed the jurisdiction of the Tribunal, both in these proceedings and through public statements,[1824] and it appears to be why the Respondents have avoided agreeing to the Terms of Appointment for the Tribunal (see Section C.92 above).

1652. In so doing, the Respondents are seeking to inflict upon GM the very same "*unfair*"[1825] result that the 1963 Mining Law Commission was seeking to avoid through the inclusion of arbitration clauses in Greenlandic concessions.

1653. By rendering the Draft Decision and the Final Decision and bringing a jurisdictional objection on the basis of these very documents, the Greenlandic Government has breached the following duties it owed GM under Danish law:

(a) good faith, which requires (*inter alia*) that the Greenlandic Government refrain from any abusive exercise of its rights under the arbitration agreement; and

(b) loyalty, which requires (*inter alia*) that the Greenlandic Government act with a reasonable level of consideration and care towards GM in the arbitration process under Section 20.

1654. Additionally, by taking these steps, the Greenlandic Government has also breached the following obligations that it owes GM under general principles of law and arbitration:

(a) The duty to maintain the *status quo* and not aggravate the dispute. As the Tribunal has recognised in its orders, this duty applies to all participants in this arbitration equally.[1826] It bears noting here that, in issuing the Draft Decision and making the Final Decision, the Greenlandic Government specifically breached the Tribunal's recommendation (of 29 June 2022) that the parties

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[1824] T. Munk Veirum, *Naaja about Greenland Minerals: They must stand in a Greenlandic courtroom*, Sermitsiaq, 25 March 2022, at **(C-637E)**, p. 1, *"There is no basis for involving a Danish arbitration in the issue of Greenland Minerals' claims, assesses Naaja H. Nathanielsen. She expects the claim for an arbitration case to be dismissed", "they are welcome to have that interpretation clarified in a courtroom, which must, however, be settled on Greenlandic land under Greenlandic law, writes Naaja H. Nathanielsen"*.

[1825] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 24.

[1826] Email from T. Iversen to counsel for the Claimant and the Respondents, 29 June 2022, subject: "Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark - Motion for Immediate Temporary Measure", at **(C-95)**.

refrain from aggravating the dispute – a recommendation that the Tribunal said was "*in line with the bona fide principle of international arbitration*".[1827]

(b) The duty of good faith, which (*inter alia*) imposes a presumption that, at the time the arbitration agreement came into existence, the parties intended and understood that each would abstain from any abusive conduct designed to unilaterally unwind or rupture the obligations that were a reasonable consequence of that agreement.[1828] As observed by the tribunal in *Methanex v United States*, each party to an arbitration is under "*a general legal duty to the other and to the Tribunal to conduct themselves in good faith during these arbitration proceedings and to the equality of arms between them, the principles of 'equal treatment' and procedural fairness*."[1829]

1655. Moreover, the Greenlandic Government violated Greenlandic law by refusing to continue processing GM's exploitation licence application but nevertheless proceeding to issue first the Draft Decision and then the Final Decision. It bears recalling in this context that, at a meeting on 15 December 2021, the Respondents' counsel remarked to GM that "*we are suggesting you withdraw* [the application], *even though* ***there is no way to make an official decision until the application is processed***"[1830] (emphasis added). In an abrupt and, by its own admission, unlawful *volte face*, the Greenlandic Government later formally notified GM that it "*has decided to stop informing the matter of* [GM's] *application for an exploitation licence and start making a decision on whether or not to grant the exploitation licence, based on the material currently available*."[1831]

1656. Applying the general principle that no party may derive a benefit from their own breach (*nullus commodum capere de sua injuria propria*),[1832] the Greenlandic Government cannot derive any benefit from this conduct.

[1827] Email from T. Iversen to counsel for the Claimant and the Respondents, 29 June 2022, subject: "Greenland Minerals A/S vs. Government of Greenland & Government of the Kingdom of Denmark - Motion for Immediate Temporary Measure", at **(C-95)**.

[1828] B. Cremades, *Good Faith in International Arbitration*, 27(4) Am. U. Intl. Law Rev. 761, at **(CL-115)**, p. 777.

[1829] *Methanex Corporation v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005, at **(CL-113)**, Part II, Chapter I, para. 54.

[1830] See Section C.77 above. *See also*, Greenland Minerals Ltd Minutes of Meeting with Ministry of Mineral Resources and Justice, 8 February 2022, at **(C-62)**, pp. 4-5; First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 67.

[1831] *See* Section C.81 above. *See also* Letter from J. Hammeken-Holm (Permanent Secretary Ministry of Mineral Resources and Justice) to Greenland Minerals A/S, 5 May 2022, subject: "Notification, Naalakkersuisut-decision", at **(C-70)**; First Witness Statement of G. Frere, 24 June 2022, at **(CWS-1)**, para. 76.

[1832] B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953), pp. 148-149, at **(CL-112)**, p. 149.

1657. Thus, any jurisdictional objection based upon the Final Decision, including any assertion that it somehow brings GM's existing dispute within the exception to arbitration in Section 2001, is inadmissible and cannot be heard.

1658. GM reserves its right to claim indemnity costs for the expenses it has incurred in addressing these jurisdictional objections.

L.5 The dispute is arbitrable as a matter of Danish law

1659. In addition to their objection based upon Section 2001 (which fails for the reasons set out above), the Respondents have raised a generalised objection to the arbitrability of this dispute.

1660. The Respondents assert that the competence of the arbitral tribunal can "*only be extended to disputes subject to private law*".[1833]

1661. First and foremost, GM's Claims are private law claims, as they concern (fundamentally) the existence of rights in a contractual instrument, whether breaches of these rights have been committed by the Respondents, and what remedies GM is entitled to if the Tribunal determines that breaches have occurred. These are the types of issues that arbitrators in Denmark are routinely asked to determine.

1662. But, because of the assertions that the Respondents have made, it is necessary for GM to address the issue of arbitrability.

1663. In the assessment of the Respondents' case on arbitrability, it is important to recall that the Respondents do not assert that the Greenlandic Government lacked authority to agree to arbitration in the terms set out in Section 20. In circumstances where the arbitration agreement was drafted by the Respondents (both of which are governments who are deemed to know the law) and they do not dispute its validity, the Respondents' arbitrability objections should be dismissed by the Tribunal.

1664. The submissions on arbitrability that follow are without prejudice to GM's position that it is the Respondents' burden to prove that the dispute is not capable of settlement by arbitration.

(a) The *sui generis* arbitrability framework of this case

1665. As explained in the Legal Claims section above, this dispute arises out of a *sui generis* legal framework, that was constructed by the Respondents over the course of several decades to induce foreign mining investors to come to Greenland with their capital and technology.

[1833] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)** para. 142.

1666. The document that contains the arbitration clause – the Exploration Licence – is itself a *sui generis* legal instrument, being a contract under private law ("*privatret*") within the framework of administrative (public) law ("*forvaltningsret*"). GM notes, in this connection, that the *contractual* nature of the Exploration Licence was acknowledged by the Tribunal in its Decision on Procedural Issues.[1834]

1667. There is, as such, an obvious and immediate difference between the dispute at hand and the typical scenario in which questions of arbitrability arise (and in which the Danish case law on arbitrability has developed). Issues of arbitrability most commonly arise in arbitrations between private parties, where the parties' freedom of contract – and therefore their freedom of disposition for the purposes of arbitrability – is regulated by the general law. In these cases, neither party enjoys a special power or privilege, and the text of their agreement to arbitrate (whatever it may say) is naturally subject to the general test for arbitrability, which in Denmark bars the arbitration of criminal matters, bankruptcy, and family law matters (other than alimony).

1668. The dispute at hand is obviously *very* different. It is between a company (GM) and two governments (Greenland and Denmark), under a concessionary instrument that is a hybrid of public and private law. In circumstances where the Respondents agreed to arbitrate "*disputes regarding questions arising out of*" this *concessionary instrument*, it simply makes no sense to apply any generalised test of arbitrability (as the Respondents propose).

1669. Rather, the Tribunal should approach the issue of arbitrability first through the lens of the *arbitration agreement itself*. This is consistent with the long-standing practice of the Greenlandic Government, which (as the Government put it in 2016) is that "*arbitration provisions should continue to be regulated in the permit texts*".[1835]

(i) The Respondents' mandate to stipulate arbitrability limitations in the arbitration clause itself

1670. As noted above, the DAA (2005) is based on the Model Law. While the Model Law does recognise arbitrability as a limit to party autonomy, it does not introduce a harmonised regime in this respect. The Model Law approach is that it is "*up to each enacting State to determine what categories of disputes cannot be submitted to arbitration*". Ultimately, therefore, the notion of arbitrability in the Model Law is an

[1834] Greenland Minerals A/S v. Government of Greenland (Naalakkersuisut) et al., Ad Hoc, Decision on Procedural Issues, 24 November 2022, at **(C-212)**, para. 287: "*Among the factors pointing to the Danish language as "appropriate" is that this is the language of the authoritative contract document. Further, the contract is subject to Greenlandic and Danish law, and thus, the language of the relevant legislation, travaux préparatoires, and administrative rules is Danish and Greenlandic. The Parties' dispute relate to possibly delicate and minute interpretation of a large complex of legislation and contracts*".

[1835] Comments on the proposal for amendments to the Mineral Resources Act, 22 September 2016, at **(CL-250E)**, p. 38.

"*empty box*", which must be filled with contents determined by the law of the State where the arbitral proceedings are seated.[1836]

1671. The Danish Parliament filled this "*empty box*" with Section 6 of the DAA. Section 6 states as follows:

> "*Disputes concerning legal relationships in respect of which the parties have an unrestricted right of disposition may be submitted to arbitration unless otherwise provided.*"[1837]

1672. The legislative history of the DAA shows that Section 6 was intended to enshrine the principle that the parties can refer civil cases to arbitration if the parties have free disposal of the subject matter of the case but not otherwise.[1838] The Danish Government did not consider it appropriate to include in the DAA more detailed rules on which disputes could be settled by arbitration. Rather, the Danish Government considered that if there was a need to exclude certain types of cases from arbitration, this should be regulated in the relevant special legislation.[1839]

1673. In the case at hand, as noted above, the relevant legislation is the Danish Mineral Resources Act 1991. This was the legislation that was in force at the time GM's Exploration Licence was first granted. In this legislation, the Respondents were given a very broad mandate to enter into arbitration agreements in mineral licences. This mandate was conferred by Section 29, which reads as follows:

> "*It may be stipulated in a licence that disagreement between the Greenland Home Rule Government and the licensee as to whether the terms of the licence have been complied with shall be brought before a court of arbitration whose decision shall be final*".[1840]

1674. As noted above, the explanatory notes to Section 29 state that the provision said that "[m]*ore <u>detailed provisions</u> on the composition of the arbitral tribunal, <u>competence</u>, case management etc will have to be <u>included in the individual licences</u>*"[1841] (emphasis added).

[1836] I. Banketas, et al., *UNCITRAL Model Law on International Commercial Arbitration*, (Cambridge University Press, 2020), at **(CL-251)**, pp. 891-892.

[1837] Lov 2005-06-24 nr. 553 om voldgift, at **(CL-8)**, p. 2; Danish Parliament Act No. 553 of 24 June 2005 on Arbitration, at **(CL-9)**.

[1838] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 39.

[1839] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 21, para. 5.5.3.

[1840] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, p. 8.

[1841] Denmark - *Forslag til Lov om mineralske råstoffer m.v. i Grønland (råstofloven)*, No. L 185, at **(CL-60)**, p. 20.

1675. The term "*competence*" (in Danish: "*kompetence*") is a term of art of arbitration, covering all issues of jurisdiction and admissibility. It includes subject matter jurisdiction (jurisdiction *ratione materiae*) and, as part of that, arbitrability.

1676. Thus, when GM's Exploration Licence was first granted, the Respondents were operating under a broad freedom of disposition:

(a) they could agree to arbitrate any dispute arising out of "*whether the terms of the licence have been complied with*"; and

(b) they could stipulate the limits of the arbitral tribunal's competence, including what types of issues could not be resolved by arbitration (and instead had to be resolved in the competent courts).

1677. The Respondents exercised this broad freedom when they drafted the arbitration agreement in Section 20 of the Standard Terms. Specifically, the Respondents stipulated:

(a) the arbitral tribunal was competent to finally determine any dispute "*regarding questions arising out of the licence*" (Section 2002); but

(b) the arbitral tribunal was *not* competent to conduct judicial review of stipulated discretionary decisions made by the Government or BMP before arbitration is commenced (Section 2001).

1678. Under the applicable law, the Respondents are bound by these stipulations as written.

(ii) The Respondents did *not* stipulate any "*private law*" limitation in Section 20 of the Standard Terms

1679. As set out above, the Respondents assert that the competence of the arbitral tribunal can "*only be extended to disputes subject to private law*".[1842] The Respondents did not include any such stipulation in the arbitration clause that they drafted – quite the contrary, the words they chose imply that the competence of the arbitral tribunal goes *well beyond* the parameters of "*private law*".

1680. This implication arises from the stipulation in Section 2002 that disputes "*regarding questions arising out of the licence*" could be referred to arbitration. As explained above, the "*licence*" is a concession – a *sui generis* contract under private law that exists within the framework of administrative (public) law. As discussed in the Legal Claims section above, there is consensus amongst Danish scholars on this point, and the historical documents leave no doubt that the Respondents understood this.

[1842] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 142.

1681. By stipulating that "*questions arising out of*" a concessionary instrument could be referred to arbitration, the Respondents necessarily agreed that questions outside the realm of pure "*private law*" would be capable of settlement by arbitration. Acting in accordance with the mandate they had under Section 29 of the Danish Mineral Resources Act 1991 (which contained no limitation regarding "*private law*"), the Respondents' decision to *not* include any stipulation that an arbitral tribunal's competence under Section 20 of the Standard Terms is limited to "*private law*" disputes is conclusive.

1682. It is precisely for this reason that the Respondents seek to avoid the 1991 legislation and instead base their arbitrability objection on the MRA of 2009.

(iii) MRA Section 90 is irrelevant to arbitrability

1683. As noted above, the provision that mandates arbitration agreements in the MRA (Section 90) is substantially the same as the provision of the 1991 legislation (Section 29). MRA Section 90 provides as follows:

> "*A licence may stipulate that a dispute between the Government of Greenland and the licensee as to whether the terms of a licence have been complied with must be brought before a court of arbitration whose decision will be final*".

1684. The Respondents claim that, under MRA Section 90, only private law disputes can be referred to arbitration.[1843] The Respondents emphasise that, according to the explanatory notes to MRA Section 90, decisions which:

> "*must be determined by the regulatory authority under this Bill cannot be brought before an arbitral tribunal, see section 63 of the Constitution concerning the right to bring administrative decisions before the courts. Accordingly, an arbitration clause can only concern private law disputes*."[1844]

1685. It is the final sentence of this explanatory note that the Respondents rely on in their jurisdictional objections (discussed below). However, when the MRA was promulgated in 2009, it was stated that existing licences and concessions (such as GM's Exploration Licence) remained valid.[1845] Thus, the arbitration agreement as originally included in the Exploration Licence remains valid in every respect, including its stipulations concerning the competence of the arbitral tribunal. As noted above, the ongoing validity of the arbitration agreement in GM's Exploration Licence is reinforced by the doctrine of separability that is enshrined in Section 16(1) of the DAA.[1846] It is also reinforced by

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[1843] See, for example, Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)** paras. 127-128.

[1844] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)** para. 128.

[1845] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, section 98(4), p. 127.

[1846] Lov 2005-06-24 nr. 553 om voldgift, at **(CL-8)**, p. 2; Danish Parliament Act No. 553 of 24 June 2005 on Arbitration, at **(CL-9)**, p. 5.

the contractual nature of the arbitration clause itself, both as a matter of Danish law and as a matter of international principles.[1847] Moreover, the Exploration Licence was issued under the 1991 Mineral Resources Act, which is *Danish* legislation. In contrast, the explanatory notes on which the Respondents rely to argue that the dispute is not arbitrable relate to the *Greenlandic* MRA. It cannot be the case that a Greenlandic law that post-dates the arbitration agreement, a creature of Danish law, renders the dispute inarbitrable, not least because the arbitration clause requires the Tribunal to apply Danish law in the present dispute.

1686. It follows that the arbitrability arguments that the Respondents have made based upon the reference to "*private law*" disputes in the explanatory note to MRA Section 90 are irrelevant to the arbitration agreement in GM's Exploration Licence, as they are arguments based on the wrong (later) law. The same is true of the Respondents' misguided arguments in relation to MRA Section 3(d), which was introduced by an amendment in 2016,[1848] eight years after GM's Exploration Licence came into existence.

1687. In any event, the Respondents' portrayal of the part of the explanatory note to MRA Section 90 extracted above is inaccurate and misleading:

(a) The Respondents ignore the fact that the explanatory note's mention of "*private law disputes*" is intended to distinguish a specific type of "*public law dispute*", i.e., disputes arising out of administrative law decisions which, as a matter of public policy, cannot be settled by arbitration due to the prohibition under Section 63 of the Danish Constitution. It is pertinent to clarify that GM's entitlement to an Exploitation Licence is *not* subject to an administrative law decision which, as a matter of *public policy* (i.e., Section 63 of the Danish Constitution), cannot be settled by arbitration. Rather, GM's entitlement to an Exploitation Licence arises from a contractual obligation of the Respondents that belongs in the *private law* domain, pursuant to Section 14 of the Standard Terms.

(b) The Respondents ignore the fact that nowhere does the explanatory note to MRA Section 90 state that a "*private law dispute*" that raises questions of *public law* cannot be settled by arbitration. In fact, it specifically and correctly isolated the only "*public law dispute*" which, as a matter of *public policy*, cannot be submitted to arbitration, i.e., administrative decisions subject to judicial review in accordance with Section 63 of the Danish Constitution.

[1847] B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953), pp. 266-267, at **(CL-118)**, p. 266. ("*where the parties have the power to confer jurisdiction upon the tribunal* […], *once they have concurred in doing so in a given matter*, […] *either by express words or by acts conclusively establishing it, neither party may subsequently question the tribunal's competence*").

[1848] Comments on the proposal for amendments to the Mineral Resources Act, 22 September 2016, at **(CL-250E)**, p. 41.

1688. Fundamentally, none of the claims that GM has submitted to arbitration engage Section 63 of the Danish Constitution. Consequently, the part of the explanatory note on which the Respondents rely is completely irrelevant to the present dispute.

1689. Finally, even if (*arguendo*) the explanatory note to MRA Section 90 *did* have the meaning that the Respondents contend and could therefore somehow narrow the scope of disputes capable of being submitted to arbitration under Section 20 of the Standard Terms, the Respondents would be in complete disregard of their duty of loyalty under Danish law. This is because that duty would have required the Respondents to either issue a formal clarification or an addendum to the Standard Terms (*a fortiori,* since the Respondents claim that this radical change occurred via an *explanatory note* to an amendment made in the year 2009), both of which they failed to do. As noted in the Legal Claims section above, the Danish law principle of loyalty sets a minimum standard of conduct on parties to any contract. It places an obligation on each contracting party to act with a reasonable level of consideration and care towards the other contracting party or parties. This includes the obligation of a contracting party to protect the other contracting party from suffering any harm that is outside the normal or foreseeable scope of the legal relationship shared between the parties.[1849] Accordingly, the Respondents' failure to fulfill its duty to at least inform GM of this radical alteration to its Standard Terms which occurred both unilaterally and surreptitiously would squarely qualify as a breach of the Respondents' duty of loyalty to GM as a counterparty to the Standard Terms. Thus, no jurisdictional objection tainted by this breach of loyalty can be heard by the Tribunal.

(iv) Conclusion on the *sui generis* arbitrability framework

1690. To conclude, the question of which disputes may be submitted to arbitration by GM is determined exclusively by the text of Section 20 of the Standard Terms (subject only to Section 6 of the DAA, which contains no relevant limitation). While the MRA of 2009 is irrelevant to the content of the arbitration agreement, the explanatory notes to MRA Section 90 confirm in any event that the text of Section 20 of the Standard Terms shall determine the Tribunal's "*competence*" to settle "*any disputes*".[1850] The fact that the explanatory notes to MRA Section 90 mention "*private law*" does not change the manner in which Section 20 regulates the question of what the Tribunal is competent to determine.[1851]

[1849] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 45-46.

[1850] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 119. ("*The provision* [MRA Section 90] *aims at ensuring that any disputes can be settled quickly and by persons with special expertise in the area. The intention is that under the authority of the provision, specific terms may be laid down in the provision indicating how any arbitration proceedings should be conducted, including terms on the composition, competence, procedure, etc. of the arbitration court*.")

[1851] Explanatory Notes to the Bill on Greenlandic Mineral Resources Act, 1 November 2009, at **(CL-188E)**, p. 119.

(b) The dispute is arbitrable under wider Danish law in any event

1691. If (*arguendo*) there remains any question as to whether the present dispute is arbitrable under Danish law, then the answer to this question is in the affirmative.

1692. Danish law takes an expansive approach towards the arbitrability of disputes. This is self-evident from the terms of Section 6 of the DAA, under which disputes *arising out of* "*legal relationships in respect of which the parties have an unrestricted right of disposition*" are arbitrable.

1693. Pursuant to Section 1(1) of the DAA, it applies to "*international arbitration*". The legislative background to the DAA demonstrates that this phrase was intended to encompass a broad scope. Section 1(1) of the DAA was intended to encompass "*non-commercial arbitration*".[1852] As the comments to Section 1(1) explain, the DAA "*applies to both commercial and other arbitrations*".[1853] Further, the legislative materials make clear that Section 1(1) of the DAA was intended to encompass "*international commercial arbitration*" within the meaning of Article 1(1) of the Model Law (and more).[1854]

1694. The note that accompanied the term "*commercial*" in Article 1(1) of the Model Law explains that:

> "*The term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.*"[1855] (emphasis added)

1695. The present dispute arises under a mineral exploration licence (a concession). The dispute therefore falls within the broad notion of "*commercial*" that underpinned the Model Law 1985, and which is incorporated into the DAA.

[1852] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 37, see English translation, Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, p. 80.

[1853] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 37, see English translation, Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, p. 80.

[1854] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 17, section 1.1.

[1855] 1985 UNCITRAL Model Law on International Commercial Arbitration, at **(CL-70)**, p. 7.

1696. It is significant, however, that the DAA was also intended to cover "*non-commercial arbitration*".[1856] This is an immediate signal that – contrary to what the Respondents contends – arbitrability in Denmark is not confined to matters of private law.

1697. There are, of course, certain areas of Danish law that parties cannot agree to arbitrate. As is the case in most other jurisdictions, these areas include criminal matters, bankruptcy, and family law matters (other than alimony). Such disputes are non-arbitrable because these areas involve questions of public status - whether a person is a criminal, whether a person is married, whether a person is bankrupt - that must be considered in open court processes of a uniform and public nature, with appropriate procedural safeguards such as appeal rights for the person or persons whose status is in question.

1698. But there is no general rule against the arbitrability of disputes involving questions of public law in Denmark. This is clear from the preparatory works to the DAA, which indicate that "*arbitration is not excluded per se simply because the dispute is governed in whole or in part by rules which cannot be derogated from by prior agreement (mandatory rules)*".[1857] This demonstrates that, even where a dispute is governed by public law of a general and mandatory character, that does not mean that arbitration is not available. One example given in the preparatory works to the DAA was the area of family law, describing questions of paternity, adoption, and divorce as non-arbitrable, but questions of alimony as arbitrable.[1858] In addition, it is generally accepted that civil law consequences of public law regulations or mandatory legislation may be settled by arbitration.

1699. The absence of any general and absolute prohibition against the arbitration of public law issues is also evident from Danish case law. One example is *U 2004.2661 H*. That case concerned a contract relating to Copenhagen Harbour. A dispute arose and the issues included a question about the legal nature of the harbour, specifically whether, as a legal entity, it was a public authority. In its 1999 award, the arbitral tribunal ruled on this issue, even though it was a public law question at its core. Subsequently, the tribunal's award was indirectly recognised by the Danish courts.[1859]

1700. In their pleadings during the interim measures phase of this arbitration, the Respondents relied on the decision of the Supreme Court in the U.1999.829H (*the Pharmacists Case*) as authority for a general proposition that "*certain disputes are so significant – either to society, to third parties or to the parties involved – that a legal decision should be*

[1856] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 37, see English translation, Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, p. 80.

[1857] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 7, see English translation, Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, p. 17.

[1858] Denmark - *Forslag til lov om voldgift*, No. 127, LFF 2005-03-16, at **(CL-13)**, p. 39, see English translation, Denmark, Draft law on arbitration, No. 127, LFF 2005-03-16, at **(CL-13E)**, p. 86.

[1859] U 2004.2661 H H.D. in matter 246/2002 (1st Dept.), 17 August 2004, at **(CL-252)**, pp. 1-16.

made by the courts".[1860] In that case, the Danish Supreme Court found that the dispute was not arbitrable because the award involved a ruling by the Danish Pharmacists' Association that a pharmacist had infringed a decree (issued under the Pharmacy Act) that regulated the calculation of consumer prices for medicines.[1861] The arbitral award entailed a finding of infringement and guilt against the pharmacist (a question of status that brought the case close to the field of criminal law). Further, no government authority was party to the arbitration, so the public interest was not represented in the arbitral proceedings.

1701. Thus, not only is the *Pharmacist Case* clearly distinguishable (factually and legally) from the case at hand, but it does not stand for any general proposition that public law issues are non-arbitrable in Denmark. GM is not alone in this view. In his 2008 article "*Private arbitration with sub-questions of public law*" (which the Respondents have cited to support their previous pleadings), Professor Erik Werlauff cautioned against reading the *Pharmacist Case* as expressing a general rule against the arbitrability of public law matters:

> "*On the basis of the Supreme Court's reasoning in the pharmacy case, it would on the face of it be tempting to place these categories of cases, which are characterised by detailed public law regulation on the basis of general considerations, in the box called 'Inarbitrable', but a closer examination must show that this would be an unreasonable simplification*".[1862] (emphasis added)

1702. The Respondents' arbitrability case is premised on the very same "*unreasonable simplification*" against which Professor Werlauff cautioned. Indeed, the over-simplification that underpins the Respondents' arbitrability case is even more unreasonable, given that this dispute arises under a *concessionary* instrument, which the Respondents themselves drafted and which is, by its very nature, a hybrid of public and private law regulated simultaneously by administrative law and contract law norms (as Professor Mortensen confirms in his expert report).[1863]

1703. The unreasonableness of the Respondents' position is heightened by the fact that, although the Respondents have accepted that the Exploration Licence contains some private law content,[1864] the Respondents have (despite repeated invitations from GM) refused to specify what types of "*private law*" disputes could arise under the Exploration Licence and could be resolved by arbitration under Section 20.

[1860] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 120.

[1861] U.1999.829H H.D. in matter II 401/1997 ("*Pharmacist Case*"), 17 February 1999, at **(RL-27)**.

[1862] E. Werlauff, *Privat voldgift med offentligrelige delspørgsmål* (U.2008B.152), at **(RL-28)**, p. 5.

[1863] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, paras. 15.a, 76-85.

[1864] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 128.

1704. As GM noted in its pleadings on interim measures, Professor Werlauff's paper is useful because it proposes a framework to categorise public law issues on a spectrum, on the basis that "*the distinction between inarbitrability and arbitrability* […] *depends on the specific parties and interests involved*".[1865] His focus is on public law issues that are "*inarbitrable*" and public law issues that are "*arbitrable subject to public policy*". He explains the category of public law issues that are "*arbitrable subject to public policy*" as follows:

> "*Sub-issues that are regulated by public law are indispositive, but they are not necessarily inarbitrable for this reason. To a certain extent, a private arbitral tribunal may give a preliminary ruling on issues regulated by public law, but in such a way that the arbitral award may be declared null and void if its content is manifestly contrary to public policy, cf. Section 37(2)(2)(b) and (in the enforcement phase) Section 39(1)(2)(a)* [of the DAA]".[1866]

1705. As outlined above, GM's claims are private law claims under a contract. To the extent GM's claims implicate any matters of public law, such as norms of administrative law, these aspects of the case are clearly arbitrable.

1706. However, if the Tribunal requires more comfort on the matter of arbitrability, GM sets out its case on the arbitrability of the dispute, including the arbitrability of the individual questions raised, applying Professor Werlauff's framework where relevant.

(c) The dispute is arbitrable under the general Danish approach

1707. The first point to emphasise is that, as explained above, GM does not ask the Tribunal to conduct judicial review of any Government decision (whether a stipulated discretionary decision or otherwise). To the extent the content of any question submitted to arbitration by GM (such as whether GM had a right to an exploitation licence as at 1 December 2021) overlaps with the content of the Final Decision, that is no barrier to the arbitrability of the question because:

(a) firstly, there is no such arbitrability limitation under the *lex arbitri* in any event; and

(b) secondly, any such overlap is the direct result of the Greenlandic Government's unilateral abortion of the agreed licensing process and issuance of the Final Decision after the arbitration was commenced, in breach of contract law and administrative law obligations owed to GM. As such, any arbitrability objection based on the existence or content of the Final Decision is inadmissible (*nullus commodum capere de sua injuria propria*).

[1865] E. Werlauff, *Privat voldgift med offentligrelige delspørgsmål* (U.2008B.152), at **(RL-28)**, p. 5.

[1866] E. Werlauff, *Privat voldgift med offentligrelige delspørgsmål* (U.2008B.152), at **(RL-28)**, p. 5.

1708. GM turns now to address the arbitrability of the individual claims it has submitted to arbitration.

1709. As noted above, the dispute is primarily about whether GM had a right (or rights) under the Exploration Licence at the time Act No. 20 came into effect (2 December 2021). This is Claim 1. The focus of Claim 1 is Section 1401 of the Standard Terms. Because the parties agree that Act No. 20 does not apply if its application would result in an expropriation, there is no need for the Tribunal to carry out any exercise of statutory interpretation with respect to Act No. 20.

1710. Thus, in Claim 1, the main task of the Tribunal will be to interpret a contract (or a concession). The focus of the interpretation will be Section 1401 of the Standard Terms, and the application of its terms (once interpreted) to the facts.

1711. The Respondents have placed significant emphasis on Addendum No. 1, and it will also be necessary for the Tribunal to interpret that component of the concession. As noted above, the Greenlandic Government has described Addendum No. 1 as an agreement.[1867] Further, as outlined in the Legal Claims section above, GM contends that the Addendum No. 1 Caveats are invalid or unenforceable under private law and public law, so the Tribunal will be required to conduct that interpretive analysis of Addendum No. 1, as well.

1712. There is no doubt that contractual interpretation is arbitrable under Danish law. Long before the modernisation of Danish arbitration law, contractual interpretation was regarded as arbitrable even in cases where other disputed issues were not. An example from early in the 20th century is *U 1924.548 H*. This case concerned a sewer contract. A dispute arose concerning whether the contract was void because of new legislation. Although in this 1924 decision the Danish Supreme Court ruled that this particular aspect of the dispute was not arbitrable, it nevertheless held that issues related to interpretation of the contract *were* arbitrable.[1868] As noted above, Danish law on arbitration (and arbitrability) has evolved significantly since this decision was rendered.

1713. No arbitrability issue arises from the fact that, as part of this exercise of contractual interpretation, the Tribunal will be required to consider certain laws, regulations or administrative guidelines, such as the MRA. Arbitrators routinely do this in Denmark, even in circumstances where real limitations on arbitrability are recognised (such as cases involving issues of competition law). The Respondents seem to accept this as, applying the Werlauff framework that they propose, these will be sub-issues in the case and therefore clearly arbitrable.

[1867] Open Letter titled "*Statement on addendum to the Standard Terms of September 2010 on sections 709 - 711 and addendum no. 1 to licence 2010/02 for an area at Kuannersuit in South West Greenland*", by Government of Greenland, 23 October 2013, at **(C-307)**, p. 4/4.

[1868] U.1924.548H in matter 186/1923, 20 May 1924, at **(CL-253)**.

1714. Finally, it is relevant that, in the 1963 Mining Law Commission Report, the Commission proposed (and the Danish Government accepted) that arbitration would be available in scenarios where (i) a concession-holder has an unfulfilled entitlement to an exploitation licence,[1869] and (ii) the Government expropriates the concession-holder's rights.[1870] The dispute that GM has submitted to arbitration obviously contains elements of both scenarios and is therefore arbitrable even if the arbitrability assessment focuses on the original intentions of the Mining Law Commission (which it should not, as the scope of arbitrable subject matter was significantly expanded in the decades that followed, as explained above).

1715. Similarly, the Respondents (or certainly the Danish Government) cannot contend that GM's case is non-arbitrable because it involves a (hypothetical) question of expropriation (in Claim 2). As discussed in Section E.3(c) above, the Sole Concession contained an arbitration clause, and the issue of expropriation of A.P. Møller's rights would have gone to arbitration if it had not been resolved by negotiation between the concessionaire and the Danish Government.[1871]

1716. Thus, GM's Claim 1 (Rights) and Claim 2 (Applicability of Act No. 20) do not present any arbitrability issue under Danish law.

1717. Regarding Claim 3 (Breach of contract), this involves predominantly private law issues arising under private law causes of action. As set out in the Legal Claims above, the causes of action that the Tribunal will be called upon to determine in Claim 3 are exclusively private law causes of action (e.g., breach of contract, breach of the duty of loyalty, breach of good faith, etc).

1718. It is trite law that these causes of action are capable of settlement by arbitration in Denmark.

1719. There is no doubt that a claim for breach of a concession is arbitrable in Denmark. This has long been the case. An example can be found in *U 1928.996 H*. This case concerned a concession for local electricity supply. A dispute arose concerning breach of contract. The Supreme Court held that this dispute was covered by the arbitration clause.[1872]

[1869] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 30; Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185)**, section 16.

[1870] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 29; Danish Parliament Act No. 166 of 12 May 1965 on Mineral Resources in Greenland, at **(CL-185)**, section 13(3).

[1871] U. Engel, *The Legal Character of The Danish Sole Concession*, in T. Daintith (ed.), *The Legal Character of Petroleum Licences: A Comparative Study* (1981), Chapter 5, at **(CL-195)**, p. 172. As Uggi Engel noted in his 1981 study of the Sole Concession: "*At the end of 1975, however, the Ministry of Commerce and the concessionaires agreed to try to reach a solution to the question through negotiations instead of having it settled through arbitration under the procedure set out in the concession.*"

[1872] U.1928.996H in matter 147/1928, 30 July 1928, at **(CL-254)**, para. 996.

1720. GM's request for damages (Claim 4) is also arbitrable. Specifically, it is about the quantification of the damages to which GM is entitled as a result of government conduct that constitutes a breach of contract or other private law obligations. Arbitrators routinely quantify and order damages in Denmark.

1721. Absolute confirmation of the arbitrability of damages in the present case can be found in the 1963 Commission Report. As noted above, in that report, the Mining Law Commission considered that, in circumstances where an exploration concession holder is denied an exploitation licence and the quantum of compensation cannot be agreed, the matter should be resolved by arbitration:

> "*If no agreement is reached between the parties, it is proposed that the matter be referred to a final decision by an arbitration board of 3 members. The Commission has considered whether problems of this nature should find their solution in the ordinary courts. It has, however, been of the opinion that in the situations referred to here, there may be so many special and including particularly Greenlandic problems that it would be reasonable to refer the decision to a specially appointed board, as it will be possible to provide the necessary special expertise*"[1873] (emphasis added).

1722. While there was never any merit to the Respondents' contention that GM was seeking a "*constitutive decision, which can only be made by the authorities*",[1874] this objection is now moot, given that all GM seeks is an order that the Greenlandic Government acknowledge its right or rights and a determination as to whether a violation of those right has occurred.

1723. No arbitrability issue arises with the order of acknowledgement that GM seeks against the Greenlandic Government.

L.6 The Danish Government is bound by the arbitration agreement

1724. GM now turns to set out its case on the Tribunal's personal jurisdiction (jurisdiction *ratione personae*) over the Danish Government, namely why the Danish Government is bound by the arbitration agreement.

1725. In the Respondents' submissions on Procedural Issues, the Respondents asserted that "*Denmark cannot become involved in the arbitration proceedings*" as Denmark has "*not issued or accepted the standard terms contained in the arbitration clause*".[1875]

[1873] Mining Law Commission for Greenland Report, "*Report No. 340 1963*", 1 June 1963, at **(CL-184E)**, p. 24.

[1874] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 116.

[1875] Respondents' Pleadings on Procedural Issues, 15 July 2022, at **(RP-1)**, para. 49.

1726. This is incorrect. As detailed in the Detailed Statement of Facts above, the Danish Government was a regular and essential participant in the legal relationship underpinned by the Exploration Licence, from the beginning.

1727. The Danish Government is bound by the arbitration agreement on the basis that:

(a) it has implicitly consented to be bound by the Exploration Licence;

(b) it is a third-party beneficiary of the Exploration Licence; and

(c) it is bound to arbitrate by virtue of the principles of passivity and loyalty.

1728. These principles of Danish and international law are applied below. Before doing so, GM will first provide a brief overview of the political, legal and economic framework for natural resources in Greenland during the period in question, and then outline the relevant facts to establish that the Danish Government is indeed bound by the arbitration agreement under the legal principles set out above.

(a) Framework for Danish-Greenlandic cooperation on mineral resources

(i) Joint Danish-Greenlandic authority over mineral resources (pre-2010)

1729. At the outset, it bears noting that the Kingdom of Denmark is one realm. As Professor Mortensen explains:

> "*Under Danish and public international law (jus gentium), Greenland is not considered an independent state but a part of the Realm. The Realm itself constitutes a unitary sovereign state. The Realm is a construction of three autonomous legal societies with one common Constitution, i.e., currently the Constitution from 1953*".[1876]

1730. However, within the Realm, certain arrangements exist as between Denmark and Greenland, as explained in detail in Professor Mortensen's expert report.[1877] Prior to 2010, the law that regulated mineral resources in Greenland was the Danish Mineral Resources Act 1991. As noted above, this was the law under which GM's Exploration Licence was granted – meaning the Exploration Licence was Danish at its inception.

[1876] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 25.

[1877] Expert Report of Professor Bent Ole Gram Mortensen (University of Southern Denmark), at **(CEWS-6)**, para. 37. As Professor Mortensen explains: "*With the Mineral Resource Act from 1978, joint decision-making competence was introduced between the central Government and the Home Rule (to come). In the explanatory notes (L26 of 6 October 1978) to section 2, it is described as a mutual right of veto. This right of veto was maintained when the central Government and the Home Rule agreed on 8 January 1998 to transfer the management of mineral resources in Greenland to the Home Rule. The joint decision-making power and thus the right of veto was abolished with Self-Government and the 2009 Mineral Resource Act.*"

1731. Pursuant to Section 3 of the Danish Mineral Resources Act 1991, the Greenlandic Government and the Danish Government exercised joint authority over the granting of mineral resource rights in Greenland.[1878] Accordingly, the Exploration Licence for Kvanefjeld was granted by the Greenlandic Government *and* the Danish Government under this system of joint authority.

1732. The system of joint authority and decision-making shared between the two governments prior to Greenland achieving self-government also had an important dimension of "*practical cooperation*". This was detailed in the Report on Self-Government in Greenland prepared in April 2008 by the Greenlandic-Danish Self-Government Commission (**Self-Government Report**).[1879] As explained in the report, "*significant transactions in this area* [or raw materials] *require agreement between the Home Rule Government and the Government*".[1880] The Self-Government Report further highlights that this "*practical cooperation*" was implemented through the "*Joint Council on Mineral Resources in Greenland with an equal number of members appointed by the Home Rule Government and the Government for separate periods of office*".[1881] Accordingly, under these arrangements, the Danish Government was necessarily involved in the decision to grant the Exploration Licence for Kvanefjeld. The Self-Government Report in fact lays out the formal procedure through which "*significant transactions*" were to be agreed upon by the two governments, i.e., through the "*Joint Council on Mineral Resources in Greenland*".[1882]

1733. The joint authority and practical cooperation arrangements between the Danish and Greenlandic Governments in the pre-2010 period manifested themselves in various ways. One of these was that the two governments cooperated in the development of materials for mineral resources administration. It was in this way that Denmark and Greenland jointly authored and issued the Standard Terms and Application Procedures (which are part of the same document).[1883]

[1878] This was provided for in Section 3 of the Danish Mineral Resources Act, which states as follows: "*The granting of prospecting licences under section 6 and exclusive licences under section 7 for exploration for and exploitation of mineral resources in Greenland, cf. sections 11 and 15, are subject to agreement between the Danish Government and the Greenland Home Rule Government*." See Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, Section 3.

[1879] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**.

[1880] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1881] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1882] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1883] Document titled "*Application Procedures and Standard Terms for Mineral Exploration and Prospecting in Greenland*", by Government of Greenland and BMP, 25 June 2013, at **(C-238E)**.

1734. The Application Procedures were published in 1998 and have never been updated (the 1998 version is the current version available on Naalakkersuisut's website). The Application Procedures were "*approved by the Government of Greenland and the Danish Minister for Environment and Energy*". The Application Procedures provide that applications for exploration licences are presented to the BMP, and then go to the Greenlandic/Danish Joint Committee on Mineral Resources (section 4.1), which provides a recommendation to the Danish Minister for Environment and Energy for final decision on the application (section. 4.2). According to the Application Procedures, the authorities have discretion as to whether to grant an exploration licence (section 4.7), and it is open for the authorities to exclude certain areas from exploration licence applications (section 5.2). By contrast, there is no such discretion for the transition from exploration licence to exploitation licence (section 7.1).

1735. The operation of the Application Procedures and the Standard Terms is such that, once an exploration licence is issued based upon the Standard Terms, a contractual relationship is established between the licensee and the Government.[1884] In this contract, the BMP played the role of agent of both the Greenland and the Danish Governments. This is explained in a GEUS and BMP newsletter from February 2009:

> "*The BMP is secretariat for the Joint Committee on Mineral Resources, which has been set up as a consultative body to follow mineral resources developments and make recommendations to the Greenland and Danish governments. The BMP acts on behalf of the Danish and Greenland political authorities in relation to license holders in Greenland*."[1885]

1736. This role of the BMP as an *agent* for both Governments under the Standard Terms is consistent with the arrangements that existed between the two governments in the period before 2010. In addition to representation through its agent the BMP, the Standard Terms allocate certain specific functions for the Danish Government and contemplate performance of certain steps by the Danish Government and certain Danish authorities, and benefits accruing to Denmark. For example:

(a) Sections 203 and 209 provide that Denmark's GEUS is empowered to map, calculate and determine licence areas, and to determine changes to licence areas in consultation with licensees.[1886]

(b) Section 503 provides that the Danish Ministry of Foreign Affairs may permit others to sample geological material within the licence area. This shows that, even on the territory of Greenland, and within the exclusive area of an

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[1884] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**.

[1885] GEUS and BMP, *Minex Newsletter* (34), February 2009, at **(C-686)**, p. 1

[1886] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, pp. 1-2.

exploration licence, the Danish Government has a direct power of intervention.[1887]

(c) Section 1301 provides that licensees must "*use reasonable endeavours to employ manpower from Greenland or Denmark when employees are hired*".[1888]

(d) Section 1408 provides that, if the licensee is domiciled in Denmark, the "*economic terms in an exploitation licence*" will be "*according to Danish legislation*".[1889]

(e) Section 1701 provides that "[t]*he licensee shall be liable for loss and damages caused by activities comprised by the licence according to the enactments and general rules of Danish law*".[1890]

1737. These contractual terms remain in the Standard Terms today. As such, contractually, the Danish Government – through the BMP, GEUS and the Ministry of Foreign Affairs – continues to have rights and responsibilities under GM's Exploration Licence, even though, in 2010, the power-sharing arrangements between Greenland and Denmark in relation to mineral resources underwent significant change.

1738. Indeed, in every Exploration Licence that is based upon the Standard Terms, the Danish Government is, to this day, a party in all but name.

(ii) Continuing cooperation between Danish and Greenlandic authorities in the regulation of the mineral resource area (2010 to present)

1739. As noted above, the Self-Government Act was passed in 2009 and came into effect on 1 January 2010. The Greenlandic Government received general authority over natural resources, although the Danish Government retained authority in the areas of foreign affairs and defence (both of which were implicated in GM's case, due to the fact the Kvanefjeld Project involved uranium).

1740. Notwithstanding the formal transfer of authority over mineral resources to the Self-Government, the Danish Government and the Greenlandic Government continued to cooperate on mineral resources. This was the intention when the Self-Government Act was passed. The Self-Government Report fully endorsed the recommendations of the

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[1887] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 4.

[1888] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 12.

[1889] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, pp. 13-14.

[1890] "*Standard Terms For Exploration Licences For Minerals (Excluding Hydrocarbons) in Greenland*", at **(C-1)**, p. 15.

Working Group on Non-Living Resources, which outlined the areas of Greenlandic mineral resource management where continuing cooperation between the Danish Government and the Greenlandic Government was essential. The key recommendations of the Working Group in this regard are summarised below:

(a) Under the system of self-government, the "*Greenlandic authorities*" should have "*as much competence and responsibility as possible*" in the "*area of raw materials*". However, "*the working group is of the opinion that Greenland and Denmark should continue to strive for a level of exploration that follows the objective of creating a basis for obtaining income from the exploitation of mineral raw materials in Greenland.*"

(b) As a part of the continuing cooperation, the Working Group highlighted that it should be "*a political objective to conclude multi-annual cooperation agreements between Danish and Greenlandic institutions in the field of mineral resources in order to maintain a certain level of exploration for raw materials in Greenland*". Accordingly, the Working Group recommended that "*following the takeover of the mineral resource area by the Greenlandic authorities, it may be appropriate to have some form of continued cooperation between Danish and Greenlandic institutions, at least for a transitional period*."[1891]

(c) The Working Group mentions that it is in fact the Greenlandic Government which has "*stressed that there will be a need for models of continued cooperation between Greenland and Denmark on the exploitation of mineral raw materials, including technical cooperation between the Greenland Mineral Resources Authority and the Geological Survey of Denmark and Greenland (GEUS) and the National Environmental Research Institute (NERI) respectively*."[1892]

1741. The Working Group's recommendations reveal that the need for joint cooperation between the two governments stems from, amongst other factors, the Danish Government's interest in maintaining a "*certain level of exploration*" of mineral resources in Greenland with a view towards achieving the "*objective of creating a basis for obtaining income from the exploitation of mineral raw materials in Greenland*".[1893] This implies that, for the Danish Government to have complied with this recommendation of the Working Group, it would have necessarily continued its involvement in GM's exploration activities even after the passing of the Self-

[1891] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, pp. 46-47.

[1892] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 399.

[1893] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, pp. 46-47.

Government Act. The evidence discussed below shows that this is indeed what occurred. As Dr Mair testifies:

> "While Greenland was formally responsible for mineral resources from 2009, the Danish Government continued to have a major role in supporting and advising the Greenlandic Government. Greenland has a tiny population – less than 57,000 – and in areas, had to draw on the Danish expertise."[1894]

1742. In this connection, GM notes that the role of the Danish authorities in the mineral resources area in Greenland continues today. Section 23 of the new Mineral Activities Act (adopted by the Greenland Parliament on 31 May 2023) states: "*Naalakkersuisut, together with the Danish Mineral Resources Agency and the Environmental Protection Agency the administrative authority for the mineral area covered by the Inatsisartut Act*."[1895] This confirms the role played by the Danish authorities.

(iii) Sharing of economic benefits from mineral resources between Greenland and Denmark

1743. At the time when GM's Exploration Licence was granted, the arrangement between Greenland and Denmark was such that the income generated from all mineral resource activities in Greenland was effectively distributed equally between the Danish Government and the Greenlandic Home Rule Government. The framework for distribution of income was such that "*up to DKK 500 million per year, all income covered by the scheme will be distributed with 50% to the state and 50% to Greenland's home rule government without any set-off against the capital transfer*."[1896] This "*50-50% distribution scheme*" was aligned with "*the other principles of the raw materials regime, which are formally and effectively based on the principle of parity and codecision* [sic]".[1897]

1744. After the Self-Government Act entered into force in 2010, the Danish Government remained a beneficiary of the income generated from mining activities in Greenland. The Self-Government Report deals extensively with the mechanism for distributing income between the two governments, including, *inter alia*, the mechanism for setting-off Denmark's block grant to Greenland against the income generated by mining activities in Greenland.[1898] Here, the specific details concerning the mechanism of income distribution are not as critical as the fact that the Danish Government clearly continues to maintain a direct financial interest arising from the core issue raised in this

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[1894] First Witness Statement of J. Mair, at **(CWS-3)**, para. 70.

[1895] See Section C.91 above. Greenland Parliament Act No. 2023/49 on Mineral Activities, at **(CL-172)**, pp. 6-7.

[1896] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 173.

[1897] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 173.

[1898] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, pp. 482-543.

dispute, i.e., GM's entitlement to an exploitation licence. In fact, the Working Group's recommendation clearly reveals a direct relationship between the "*level of exploration*" being conducted in Greenland and the "*income from the exploitation of mineral raw materials in Greenland*".[1899]

1745. With this overview complete, GM now sets out the facts relevant to establish that the Danish Government is bound by the arbitration agreement at Section 20 of GM's Exploration Licence. Applying these facts, GM then demonstrates that the Danish Government is indeed bound by the arbitration agreement under various principles of Danish law and international law.

(b) Facts relevant to establish that the Danish Government is bound by the arbitration agreement

1746. As demonstrated below, GM has placed on record a substantial volume of evidence to establish that the Danish Government is bound by the arbitration agreement at Section 20 of GM's Exploration Licence. More specifically, the Danish Government:

(a) granted its consent and approval for the formal transfer of the Exploration Licence for Kvanefjeld to GMAS;

(b) was directly involved in GM's activities under the Exploration Licence, through its various authorities and Ministries;

(c) was directly involved in the Kvanefjeld Project through developing a legal framework for uranium mining and export within the Danish Realm; and

(d) was to be a potential co-signatory to an exploitation licence for Kvanefjeld.

(i) Consent and approval for the Exploration Licence transfer to GMAS

1747. The Exploration Licence for Kvanefjeld (which contains the arbitration agreement) was both issued and formally transferred to GMAS under the Danish Mineral Resources Act 1991. As required by Section 27 and Section 3 of the Danish Mineral Resources Act, the formal transfer of the Exploration Licence for Kvanefjeld to GM could only take place after the approval and consent of the Danish Government.[1900] As the Exploration Licence was transferred to GMAS prior to Greenland achieving self-government, the requirement of the Danish Government's approval and consent for the transfer to occur is consistent with the framework in place for the Greenlandic mineral resources area at the time, i.e., "*that significant transactions in this area require agreement between the*

[1899] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 46.

[1900] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, Sections 3 and 27.

Home Rule Government and the Government".[1901] The Respondents have in fact already acknowledged that the Exploration Licence for Kvanefjeld was issued under the Danish Mineral Resources Act 1991, pursuant to "*an agreement between the Danish Government and the Naalakkersuisut*" and upon "*the recommendation of the Danish-Greenland Joint Council on Mineral Resources in Greenland.*"[1902]

1748. Hence, the Danish Government effectively entered into the arbitration agreement contained in GM's Exploration Licence, together with the Greenlandic Government.

(ii) Role of the Danish Government authorities in uranium mining regulation and the Kvanefjeld Project

1749. The Danish Government very much considered that it was part of the legal relationship underpinning the development of the Kvanefjeld Project. This is revealed, *inter alia*, by the direct role that various Danish authorities played in GM's activities under the Exploration Licence. They worked in collaboration with the Greenlandic Government during the various steps that GM had to undertake under the Exploration Licence to ensure grant of an exploitation licence. The Danish authorities also often directly communicated with representatives of GM during this process.

1750. As set out in more detail in the Detailed Statement of Facts above, the Danish Government's authorities that were directly involved in GM's activities under the Exploration Licence and their corresponding nature of involvement is summarised below:

(a) The GEUS is an advisory institution of the Danish Ministry of Climate, Energy and Utilities, and assisted the BMP/MLSA with mining and geological aspects of the Kvanefjeld Project. GEUS also co-published the GEUS Factbook in September 2010, which provided specific guidance on radiation dosage thresholds for uranium mining at Kvanefjeld.[1903] GEUS participated in the UWG process and establishing the legal framework for the exploitation and export of uranium from Greenland. As part of this, GEUS representatives consulted directly with GM, attended workshops with GM's representatives, and even visited Western Australia. GEUS also took part in the IAEA inspection of the Kvanefjeld site in August 2018.

[1901] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1902] Respondents' Reply on Interim Measures, 15 July 2022, at **(RP-2)**, para. 28.

[1903] *See* Section C.13 above.

(b) The DCE (known as NERI until 2011) is a scientific advisory body based in Aarhus University, a publicly funded Danish university, which had a major role in the development of the Kvanefjeld Project. Specifically:

(i) The DCE led the substantive review of the environmental aspects of the Project. This was the most involved aspect of the licensing process under GM's Exploration Licence and included advising the BMP/MLSA on the ToR for the EIA and SIA (which took four years) and EAMRA on GM's EIA (which took five years), as well as the EIA White Paper. GM's witnesses testify that the DCE was effectively driving the EIA process. For example, Mr Frere explains that "*EAMRA was formally GM's primary point of contact. However, EAMRA seemed, from my observations, to be doing little more than facilitating communications between the DCE and GM.* […] *EAMRA appeared not to filter or limit the comments and/or requests for information made by the DCE. In fact, it appeared to me that the DCE, not EAMRA, was driving the EIA review process, and that EAMRA was taking at best a limited role in managing either the DCE or that process.*"[1904] Dr Mair testifies that EAMRA was "*grossly under-resourced*" and "*most of the substantive review was performed by the DCE*".[1905] Similarly, Mr Bunn notes that "*EAMRA relied heavily on the DCE, which had the expertise, whereas EAMRA had limited competence*".[1906] For the documents comprising GM's EIA, the DCE provided GM with comments, requests for information and proposed amendments.[1907] At times, DCE personnel also engaged in direct discussions with GM personnel, including GM's radiological consultant.[1908] The DCE ultimately approved GM's EIA for public consultation in late 2020.[1909]

(ii) The DCE attended various public meetings regarding uranium mining and the Kvanefjeld Project specifically, including a meeting in Narsaq in February 2019.[1910] The DCE participated in the first round of public consultations on GM's EIA and SIA in February 2021,[1911] although they

[1904] Third Witness Statement of G. Frere, at **(CWS-4)**, para. 37.

[1905] First Witness Statement of J. Mair, at **(CWS-3)**, paras. 438-444.

[1906] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 61.c.

[1907] First Witness Statement of D. Chambers, at **(CWS-8)**, paras. 56, 58-59, 63, 66.

[1908] See Section C.49 above.

[1909] Document titled "*Greenland Minerals A/S - The permission at a glance*", by Government of Greenland, 16 August 2021, at **(C-204E)**.

[1910] See Section C.54 above.

[1911] See Section C.61 above.

were removed from the expert panel in public meetings run by the new IA Party Government in August 2021.

(iii) The DCE/NERI produced reports and guidelines on uranium mining and regulation for the Greenlandic authorities. This included co-authoring the GEUS Factbook in September 2010, authoring a memorandum in the Lett Report on the environmental impacts of uranium mining in April 2013, contributing to the UWG Report in October 2013, producing the DCE Report on Environmental Issues in October 2016, producing the DCE Recommendations for EIA Studies in April 2018, and producing the DCE Recommendations for Radioactive Waste in June 2022. Additionally, the DCE produced the DCE Report for IAEA Waste Convention in 2018, by which the Danish Government represented to the IAEA (a treaty organisation that Denmark is a member of) that radiation protection at the Kvanefjeld Project specifically would be regulated through radiation dosage thresholds. The DCE therefore played a major role in the development of the regulatory framework for uranium exploitation and export in Greenland, and Kvanefjeld in particular.

(iv) GM was required to pay for costs incurred by the Greenlandic and Danish authorities (and their advisers) in processing its exploitation licence application. A substantial portion of these funds were to reimburse the DCE's costs. As explained by Mr Guy, the fees ultimately incurred by GM totalled over DKK7.2 million (AU$1.6 million).[1912]

(c) The DMA, which operates under the auspices of the Danish Government, was responsible for reviewing and approving GM's Maritime Safety Study in 2017.[1913] This was one of the documents comprising GM's exploitation licence application submitted in June 2019, as required by the Danish Act on Safety at Sea. This act empowers the DMA to (i) lay down rules and regulations, (ii) carry out investigations, (iii) issue general and specific prohibitions (enforcement notices) for ensuring safe navigation in Greenlandic waters, and (iv) issue statements on the necessary navigational conditions for any given exploitation licence application.[1914]

(d) The Danish Ministry of Foreign Affairs was involved in the planning, development, and implementation of the legislative and regulatory framework applicable to GM's Kvanefjeld Project. It led the UWG process,[1915] and its

[1912] First Witness Statement of M. Guy, at **(CWS-5)**, para. 43.

[1913] See Section C.47 above.

[1914] Danish Maritime Authority Guidelines, 10 January 2011, at **(C-493)**, pp. 1-2.

[1915] See Section C.23 above.

representatives met with GM on various occasions, including at workshops in Greenland in June 2014 and in Sweden in August 2016.[1916] Between 2016 and 2019, the Ministry liaised with GM personnel regarding the preparation and passing of the Enabling Legislation.[1917] The Danish Ministry of Foreign Affairs also played a pivotal role in policymaking concerning uranium export and trade.[1918] At the invitation of the Danish Ministry of Foreign Affairs, GM representatives joined a trade delegation to South Korea and China to promote mining in Greenland.[1919]

(e) The Danish Foreign Policy Committee, which operates as an independent committee established under the Constitutional Act of Denmark and is consulted by the Danish Government on matters of major importance to foreign policy, discussed with the Danish Ministry of Foreign Affairs bilateral agreements with Greenland concerning uranium exports and trade. This directly concerned the Kvanefjeld Project, and formed part of the regulatory process that representatives of GM were directly involved in.[1920]

(f) The Danish Ministry of Defence and its subordinate agency, the Danish Emergency Management Agency, frequently met with GM personnel, including during workshops in Greenland in June 2014,[1921] in Sweden in August 2016, and in Iceland in August 2017.[1922] Representatives of DEMA also took part in the August 2018 IAEA safeguards inspections of the Kvanefjeld Project.[1923] DEMA also played a key role in policymaking concerning uranium export and trade. In May 2017, DEMA (through the Danish Business Authority) approved the export of ore from the Kvanefjeld Project to China.[1924] DEMA then worked with Greenland's MILT to formulate a radioactive material export procedure to enable further exports from Kvanefjeld. DEMA was also responsible for

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[1916] First Witness Statement of S. Bunn, at **(CWS-7)**, section V.E; See: Email from C. Vestergaard (DIIS) to S. Bunn (GM), et al., subject: "*Thank you, photo, list, and Whiteboard Art*", 25 June 2014, at **(C-381)**; Document titled "*Participation list with emails - Uranium workshop 10-17 June*", by the Danish Institute for International Studies, 25 June 2014, at **(C-382)**.

[1917] See Sections C.39 and C.45 above.

[1918] See Sections C.31 and C.39 above.

[1919] See Section C.32 above; First Witness Statement of J. Mair, at **(CWS-3)**, paras. 76 and 455.

[1920] Email from J. Eggins (GM) to J. Mair (GM), subject: "*FW: Uranium developments*", 20 January 2016, at **(C-431)**. See also First Witness Statement of J. Eggins, at **(CWS-6)**, para. 45.

[1921] First Witness Statement of S. Bunn, at **(CWS-7)**, section V.E; See: Email from C. Vestergaard (DIIS) to S. Bunn (GM), et al., subject: "*Thank you, photo, list, and Whiteboard Art*", 25 June 2014, at **(C-381)**; Document titled "*Participation list with emails - Uranium workshop 10-17 June*", by the Danish Institute for International Studies, 25 June 2014, at **(C-382)**.

[1922] See Section C.39 above.

[1923] See Section C.50 above.

[1924] See Section C.44 above.

preparing Denmark's Executive Order for Safeguards,[1925] and Denmark's Executive Order to Protect Workers Against Ionising Radiation,[1926] which were elements of the Enabling Legislation.

(g) The Danish Ministry of Industry, Business and Financial Affairs, and its subordinate agency, the Danish Business Authority, were involved in the implementation of uranium export controls, inspections, and reporting, and engaged in uranium export-related discussions with GM in mid-2017.[1927]

(h) The Danish Ministry of Employment, through its subordinate agency the Danish Working Environment Authority, is responsible for occupational health and safety and working environment conditions. This authority was responsible for preparing and administering Denmark's Executive Order on ionising radiation and working environment in Greenland.[1928]

(i) The Danish Health and Medicines Authority met with GM personnel during workshops in Greenland in June 2014[1929]and participated in meetings with the IAEA Director General in May 2017.[1930]

(j) The DIIS is an independent public research body funded by the Danish Government, and (i) hosted workshops on uranium and nuclear cooperation, (ii) published reports and studies concerning uranium export safeguards and controls and nuclear non-proliferation, and (iii) participated in meetings with GM alongside representatives of the Danish Ministry of Foreign Affairs and the Danish Ministry of Defence.[1931]

(k) The Technical University of Denmark is an institution that conducts scientific research and advises the Danish Government. Representatives from the university participated in the June 2014 workshop in Greenland.[1932]

[1925] See Section C.45 above.

[1926] See Section C.46 above.

[1927] See Section C.44 above.

[1928] First Witness Statement of J. Mair, at **(CWS-3)**, section. IX.F; Executive Order No. 1099 on Ionising Radiation and Working Environment in Greenland, 1 July 2022, at **(CL-170E)**. See also First Witness Statement of S. Bunn, at **(CWS-7)**, para. 240.

[1929] See Section C.31 above; First Witness Statement of S. Bunn, at **(CWS-7)**, section V.E

[1930] Greenland Minerals Ltd ASX Company Announcement titled "IAEA Director General Visits Kvanefjeld Project", at **(C-16)**.

[1931] First Witness Statement of J. Eggins, at **(CWS-6)**, paras. 13, 53; Danish Institute for International Studies "*Governing Uranium in the Danish Realm*" (DIIS Report 2015:17), at **(C-17)**, pp. 14-29.

[1932] First Witness Statement of S. Bunn, at **(CWS-7)**, section. V.E; see: Document titled "*Participation list with emails - Uranium workshop 10-17 June*", by the Danish Institute for International Studies, 25 June 2014, at **(C-382)**.

(iii) Role of Danish Government in uranium law and policymaking within the Danish Realm

1751. The Danish Government was directly involved in the development of the Kvanefjeld Project because of its role in uranium law and policymaking across the Danish Realm, i.e., including the territory of Greenland.

1752. At the time of joint Danish-Greenlandic authority over mineral resources in Greenland, the Danish Government was directly involved in the review of Greenland's uranium mining policy. This review was driven by the economic potential of the Kvanefjeld Project. As explained in the Detailed Statement of Facts above, during the policy review, the Ministry of Mineral Resources and the BMP completed the 2008 Uranium Report, the purpose of which was to facilitate an informed debate on uranium mining in Greenland. The 2008 Uranium Report was discussed in the Joint Council on Mineral Resources and circulated to the relevant Danish ministries and authorities.[1933]

1753. Even *after* the enactment of the Self-Government Act, the Danish Government remained actively and directly involved in lawmaking concerning uranium in Greenland (and thereby directly engaged with GM personnel).

1754. In late 2012, the UWG, led by the Danish Ministry of Foreign Affairs, was established to investigate the consequences of lifting the ZTP. As part of this, Denmark's GEUS consulted with GM on the regulatory framework when the ZTP was lifted, advising that the Danish Government wished to establish "*the adequate control system*" after the ZTP is lifted.[1934] In late March or April 2013, the Premier of Greenland met with the Danish Prime Minister, who indicated that the decision to remove the ZTP on uranium exploitation belonged to Greenland, and that Denmark would support Greenland's decision.[1935] It was reported that "*Greenland must ask Denmark for permission before it can move ahead with uranium mining and the mining of rare earths at Kuannersuit*" and "*a majority of members of the Danish parliament seem ready to support the extraction and export of uranium from Greenland*".[1936]

1755. In October 2013, the Greenland Parliament voted to lift the ZTP. This decision was sanctioned by the Danish Government.[1937] The Danish Government's endorsement was critical. Because Denmark retained control over the areas of national security and foreign relations, it was necessary for the two governments to cooperate to ensure that

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[1933] See Section C.6 above.

[1934] First Witness Statement of S. Bunn, at **(CWS-7)**, paras. 178, 253 et seq.

[1935] First Witness Statement of J. Mair, at **(CWS-3)**, para. 271; Greenland Minerals Ltd ASX Announcement titled "March 2013 Quarterly Report", 24 April 2013, at **(C-687)**.

[1936] J. George, *Environmental groups urge Greenland, Denmark to stay away from uranium*, Nunatsiaq News, 29 April 2013, at **(C-688)**.

[1937] First Witness Statement of J. Mair, at **(CWS-3)**, para. 297; P. Levring, *Greenland End to 25-Year Uranium Mining Ban Gets Danish Backing*, Bloomberg, 25 October 2013, at **(C-377)**.

the export of radioactive substances took place in accordance with Denmark's international obligations. Ultimately, Greenland would only be able to export uranium with Denmark's cooperation.[1938]

1756. Once the ZTP was lifted, the Greenlandic and Danish Governments worked together to establish the legal framework required for the exploitation and export of uranium, i.e., the Enabling Legislation.[1939] This major regulatory exercise was principally to facilitate the export of uranium from the Kvanefjeld Project. Indeed, in June 2014, a delegation of Danish parliamentarians travelled to Narsaq to visit GM's operations and to learn about the Project and related environmental considerations.[1940]

1757. The Danish and Greenlandic Governments kept GM updated about the development of the Enabling Legislation and sought input from experienced GM personnel on various matters, including radiation protection, nuclear safeguards, and export controls.[1941] GM has placed on record a large volume of factual evidence which demonstrates the level of engagement between GM and representatives of both the Danish and Greenlandic Governments in this regard.[1942] For example, GM's Manager of Uranium Marketing and Contracts, Mr James Eggins was actively consulted by both Governments from 2014 to 2018 regarding the development of a workable regulatory framework for uranium export.[1943]

1758. In June 2014, Mr Eggins and Mr Bunn attended and presented at workshops in Narsarsuaq and Narsaq called the 'Workshop on Uranium Best Practice: The Environment, Safeguards and Security'. These workshops were attended by representatives of both Governments, including the Danish Ministry of Foreign Affairs, the Danish Ministry of Defence, the Danish Health and Medicines Authority, the DCE and GEUS.[1944] Shortly after this workshop, Mr Eggins met with senior advisers at the Danish Ministry of Foreign Affairs in Copenhagen to discuss the Kvanefjeld Project.[1945]

[1938] This is confirmed in the Greenland's 2014-2018 Oil and Mineral Strategy: "*Greenland holds the right to issue uranium exploitation licences, but if uranium export activities are envisaged which may have foreign, defence and national security policy implications, Denmark must be involved.*" Document titled "*OUR MINERAL RESOURCES – CREATING PROSPERITY FOR GREENLAND - Greenland's oil and mineral strategy 2014-2018: Quick Read Version*", by Government of Greenland, May 2014, at **(C-378)**; Document titled "*OUR MINERAL RESOURCES – CREATING PROSPERITY FOR GREENLAND - Greenland's oil and mineral strategy 2014-2018: Quick Read Version*", by Government of Greenland, May 2014, at **(C-378E)**, p. 14. See also First Witness Statement of J. Mair, at **(CWS-3)**, paras. 256 and 271.

[1939] See Section C.31 above.

[1940] First Witness Statement of S. Bunn, at **(CWS-7)**, para. 266; Greenland Minerals Ltd ASX announcement titled "Developments in Greenland Firm Permitting Timeline for Kvanefjeld", 23 June 2014, at **(C-384)**, p. 2.

[1941] See Section C.31 above.

[1942] See Section C.31 above.

[1943] See Section C.31 above.

[1944] See Section C.31 above.

[1945] See Section C.31 above.

1759. In early 2016, the two governments entered into Uranium Export Agreements[1946] and in June 2016, the Danish Parliament passed legislation on the peaceful use of nuclear material.[1947] Over the next several years, the two governments continued to develop regulations, guidelines and executive orders for uranium mining and export.[1948] GM was kept appraised of these developments.

1760. In the months of May to June 2017, the Danish Government, through the Danish Business authority and DEMA, granted permission to GM to export uranium ore.[1949]

(iv) Denmark as a co-signatory to GM's exploitation licence

1761. Under the Uranium Export Agreements, Denmark was responsible for nuclear non-proliferation and safeguards, and the two governments committed to establishing a joint structure to share aspects of implementation of export controls, inspections and reporting. It was anticipated therefore that Denmark would have a major role in administering exports from the Kvanefjeld Project.

1762. There is direct evidence that the Greenlandic Government considered the Danish Government would need to be a co-signatory to GM's exploitation licence. In August 2013, the BMP hosted a workshop with GM. At this workshop, the parties discussed how Denmark would need to authorise all the uranium exporting and reporting conditions in GM's exploitation licence.[1950] The minutes from this meeting state: "*Exporting and reporting conditions will be specified on license in regard to uranium and Denmark likely to be a co-signatory*".[1951] Dr Mair confirms that the parties discussed that Denmark would probably need to be a party to GM's exploitation licence.[1952] This is hardly surprising, given the ongoing role of the Danish authorities pursuant to GM's Exploration Licence.

1763. It follows that, if the Greenlandic authorities had complied with its obligations under the Exploration Licence and completed the processing of GM's licence application, GM would likely have entered into a direct contractual relationship with the Danish Government.

[1946] See Section C.38 above.

[1947] See Act for Greenland on Export Control of Dual-Use Items (No. 616), 8 June 2016, at **(CL-167)**; Act for Greenland on Export Control of Dual-Use Items (No. 616), 9 June 2016, at **(CL-167E)**.

[1948] See Section C.31 above.

[1949] See Section C.44 above.

[1950] First Witness Statement of J. Mair, at **(CWS-3)**, para. 287.

[1951] Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 5.

[1952] First Witness Statement of J. Mair, at **(CWS-3)**, para. 287.

(v) Conclusion on the role of the Danish Government

1764. It is clear that the Danish Government was no passive actor in this case. It was, in substance, a true party to the long-term transaction with GM. In developing the Project for more than a decade, GM upheld its side of the bargain, contributing to the economic development of the Realm. The Danish Government was equally bound to honour its obligations to GM as a foreign investor.

1765. In fact, the Greenlandic Government's own internal legal assessment indicates that the Danish Government is bearing one third of the Respondents' costs of this arbitration.[1953] The Danish Government's direct involvement in the issues raised in this arbitration is further confirmed by a recent news report which reveals that the ongoing debate between Danish and Greenlandic politicians revolves around the extent to which Denmark and Greenland are each financially responsible for the damages claimed by GM in this arbitration.[1954]

(c) Application of legal principles under which the Danish Government is bound by the arbitration agreement

(i) Implied consent to arbitrate

1766. Under Danish law, the legal principle of implied consent ("*konkludent adfærd*" or "*stiltiende accept*") can be understood as the conduct of one contracting party giving the other contracting party an impression of conferring an obligation or right.[1955]

1767. The principle is rooted in the absence of any requirement under Danish law for an agreement to be formally set out in writing or even expressed verbally.[1956] Accordingly, under Danish law, consent to enter into a legally binding agreement may be ascertained through the parties' conduct, provided that the conduct is sufficiently clear to establish that the parties have in fact entered into a mutually binding agreement.

1768. The DAA does not contain any specific formal requirements to establish the existence of an arbitration agreement between parties. Furthermore, while there are no general rules on the requirements to establish a party's implicit consent to arbitrate under Danish law, Danish case law and legal doctrine suggests that a party's implicit consent to arbitrate may be established by (i) demonstrating a textual basis, i.e., "*a minimum written anchoring of the arbitration agreement*", through which the non-signatory knew

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[1953] Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193)**; Translation to Respondents' Internal Legal Analysis of the Arbitration Case, 15 December 2022, at **(C-193E)**, p. 4.

[1954] L. Voller, *Greenlandic and Danish politicians deeply disagree on responsibility for the collapse of Kvanefjeld*, Danwatch, 15 May 2023, at **(C-689)**; English translation at, L. Voller, *Greenlandic and Danish politicians deeply disagree on responsibility for the collapse of Kvanefjeld*, Danwatch, 15 May 2023, at **(C-689E)**.

[1955] M. Bryde Andersen, *Grundlæggende aftaleret* (Gjellerup, 5th ed., 2021), pp. 157-192, at **(CL-255)**, pp. 172-173.

[1956] M. Bryde Andersen, *Grundlæggende aftaleret* (Gjellerup, 5th ed., 2021), pp. 229-244, at **(CL-256)**, p. 244.

or ought to have known of its intention to arbitrate;[1957] and (ii) identifying specific elements of performance of obligations, i.e., unequivocal acts by the non-signatory which would indicate the non-signatory's intention to be bound by an arbitration agreement.[1958]

1769. In view of the above, the Danish Government's implied consent to arbitrate is clearly established by the fact that the Danish Government was required to grant its consent and approval for the transfer of the Exploration Licence for Kvanefjeld to GMAS, as explained further above (see Section C.4 above).

1770. Accordingly, Sections 3 and 27 of the Danish Mineral Resources Act of 1991 fulfill both criteria for establishing the Danish Government's implied consent to be bound by an agreement as a matter of Danish law, i.e., these provisions form the textual basis through which the Danish Government knew or at least ought to have known of its intention to arbitrate with GM in accordance with Section 20 of the Exploration Licence. Furthermore, given that the Danish Government was required to approve the formal transfer of the Exploration Licence to GMAS, the fact of the transfer indicates the Danish Government's intention to be bound by the contents of the Exploration Licence, including the arbitration agreement. In fact, the Self-Government Report lays out the formal procedure through which "*significant transactions*" were to be agreed upon by the two governments, i.e., through the "*Joint Council on Mineral Resources in Greenland*".[1959]

1771. The legal principle of implied consent which emerges from international arbitration practice when applied to the facts at hand, also establishes that the Danish Government is bound to the arbitration agreement. Under ordinary principles of contract law, both national courts and arbitral tribunals have increasingly found that non-signatories can be bound by an arbitration agreement if it can be established that the non-signatory implicitly consented to the arbitration agreement by virtue of the non-signatory's

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[1957] N. Schiersing, *Voldgiftsloven: med kommentarer* (Jurist- og Økonomforbundets forlag, 1st ed., 2016), pp. 123-125, at **(CL-257)**, p. 124; English translation at N. Schiersing, *The Arbitration Act with Commentary* (Jurist- og Økonomforbundets forlag, 1st ed., 2016), pp. 123-125, at **(CL-257E)**, p. 124.

[1958] N. Schiersing, *Voldgiftsloven: med kommentarer* (Jurist- og Økonomforbundets forlag, 1st ed., 2016), pp. 123-125, at **(CL-257)**, p. 125; ; English translation at N. Schiersing, *The Arbitration Act with Commentary* (Jurist- og Økonomforbundets forlag, 1st ed., 2016), pp. 123-125, at **(CL-257E)**, p. 125.(*"active actions that show that the party – regardless of the lack of signature – considers itself bound by the agreement, can lead to the agreement being considered adopted."*)

[1959] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 46.

conduct. As summarised by one legal commentator and supported by other prominent legal academics such as Born:[1960]

> "*Agreements of all sorts can be inferred from behavior. […] Arbitral jurisdiction based on implied consent involves a non-signatory that should reasonably expect to be bound by (or benefit from) an arbitration agreement signed by someone else, perhaps a related party. In such circumstances, no unfairness results when arbitration rights and duties are inferred from behavior. […] Building on assumptions that permeate most contract law, joinder extends the basic paradigm of mutual assent to situations in which the agreement shows itself in behavior rather than words.*"

1772. GM has placed on record a substantial volume of evidence to show that the Danish Government, through its various authorities, conducted itself in a manner that only a party to GM's Exploration Licence would (see, in particular, Section (b) above). As detailed further above, the Danish Government (through its various authorities) played a direct role in GM's activities under the under the Exploration Licence, including the various steps that GM had to undertake under the Exploration Licence to ensure grant of an exploitation licence. Moreover, the Danish Government's role in law and policymaking concerning uranium exploitation and export resulted in the Danish authorities taking an active interest in the development of the Kvanefjeld Project and working together with GM personnel to develop a framework for mining uranium in Greenland. This also serves as confirmation of the Danish Government's conduct as a party to the arbitration agreement, given that the Danish Government clearly maintained a substantial interest in GM's activities under the Exploration Licence.

1773. Pertinently, tribunals have also ruled that States are bound by arbitration agreements in contracts where private entities have been granted an exploitation licence for mineral resources. For example, in ICC Case No. 15113 of 2007, which concerned the termination of a contract for exploitation of iron ore, the arbitral tribunal concluded that the State, although not mentioned as a party to the agreement, should be bound by the arbitration clause. The arbitral tribunal found that the State had behaved as if it were a party to the agreement. As described by one legal commentator:

> "*Indeed, for the following reasons the arbitral tribunal reached the conclusion that throughout the project, the state had exceeded the role of regulatory authority and had behaved as if it were a true party to the agreement as it was*

[1960] See S. Brekoulakis, "Rethinking Consent in International Commercial Arbitration: A General Theory for Non-signatories", *Journal of International Dispute Settlement*, 2017, 8, 610-643, at **(CL-258)**; G. Born, *International Commercial Arbitration Vol. I* (Kluwer Law International, Updated August 2022), ch. 10: "*Parties to International Arbitration Agreements*", at **(CL-259)**, pp. 1539 et seq; Bharucha et al.,*The Extension of Arbitration Agreements to Non-Signatories: A Global Perspective*, 5(1) Indian J. Arb. L. 35, 62 (2016), at **(CL-260)**, p. 62. (the "*general trend*" is to uphold an "*arbitration agreement* [that] *was concluded by the parties either expressly or impliedly*"); See also The Principles Of European Contract Law 2002 (Parts I, II, and III), at **(CL-261)**, Art. 2:102, p. 5. ("*The intention of a party to be legally bound by contract is to be determined from the party's statements or conduct as they were reasonably understood by the other party*").

present at all times throughout the contractual relationship, during the negotiation of the agreement and in the course of its performance".[1961]

1774. Furthermore, the tribunal ruled that the "*existence of common obligations and interests*" between the Respondent and the non-signatory State was an element that spoke in favour of extending the arbitration to the non-signatory State.[1962] As explained above, the Self-Government Report in fact describes the relationship of the Danish Government and the Greenlandic Government within the Greenlandic raw materials area at the time when GM was granted its Exploration Licence as "*formally and effectively based on the principle of parity and codecision* [sic]" (see Section (a) above).[1963]

1775. Accordingly, the Danish Government is bound by the arbitration agreement in accordance with the legal principle of implied consent as a matter of both Danish law and international law.

(ii) Third-party beneficiary

1776. The Danish Government is bound by the arbitration agreement as a third-party beneficiary under Danish law and international law, as it enjoys certain rights and financial benefits from mineral resource activities at Kvanefjeld. In fact, the recommendations of the Working Group on Non-Living Resources acknowledge that there is a direct relationship between the "*level of exploration*" being conducted in Greenland and the "*income from the exploitation of mineral raw materials in Greenland*".[1964] Thus, the Danish Government has been a third-party beneficiary of GM's exploration activities under its Exploration Licence, which contained the arbitration agreement.

1777. A third party can be bound by an arbitration agreement if it enjoys certain rights under the contract in question.

1778. A "*third-party beneficiary promise*" ("*tredjemandsløfte*") is defined as "*a statement made by one person to another that create a right or, in exceptional cases, places an*

[1961] ICC Case no. 15113 of 2007 reported in B. Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract, Multi-issue – A comparative Study* (2nd edition, Kluwer Law International 2020), 10 July 2020, at **(CL-262)** pp. 126-127.

[1962] ICC Case no. 15113 of 2007 reported in B. Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract, Multi-issue – A comparative Study* (2nd edition, Kluwer Law International 2020), 10 July 2020, at **(CL-262)** pp. 126-127.

[1963] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 173.

[1964] Report titled "*Betænkning om Selvstyre I Grønland, Grønlandsk-Dansk Selvstyrekommissions*", April 2008, at **(C-685)**; see English translation, Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

obligation on a third party".[1965] Accordingly, a third-party beneficiary promise under Danish law refers to a mutual declaration of intent of the parties to confer rights (or obligations) on a third party, which the third-party (or promisee) may invoke directly against the promisor.[1966]

1779. In most jurisdictions, it is also well accepted that a third-party beneficiary may be bound by an arbitration agreement. As explained by Born, "*nonparties to a contract may* […] *claim the benefits of that contract as third-party beneficiaries.*[…] *In such circumstances, the third party may either be able to invoke or may be bound by an arbitration clause contained in the contract*".[1967] As a matter of international law, the legal literature provides that a party can be a third-party beneficiary even if the original parties have not specifically agreed to pass on the benefits of the arbitration agreement to the third party.[1968] Instead, consent to the assignment of the substantive right and/or obligation to a third-party is sufficient to establish that the third-party is a beneficiary to the agreement and is accordingly bound by it.[1969]

1780. As set out in the Self-Government Report, at the time when GM was issued its Exploration Licence, the Danish Government and Greenlandic Government shared all income from mineral resource activities under a "*50-50% distribution*" scheme which has been described as aligned with "*the other principles of the raw materials regime, which are formally and effectively based on the principle of parity and codecision* [sic]".[1970] This implies, *inter alia*, that the Danish Government is already a beneficiary to GM's Exploration Licence as it would have directly received monetary benefits in the form of taxes paid and licence fees deposited by GM in accordance with the terms of the Exploration Licence. Moreover, the Danish Government directly benefits from GM's activities under the Exploration Licence as the income generated from mining activities in Greenland is to be, *inter alia*, allocated towards reducing Denmark's block grant to Greenland as per the mechanism outlined in the Self-Government Report.[1971]

[1965] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 21-22, at **(CL-263)**, p. 21.

[1966] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 21-22, at **(CL-263)**, pp. 21-22.

[1967] G. Born, *International Commercial Arbitration Vol. I* (Kluwer Law International, Updated August 2022), ch. 10: "*Parties to International Arbitration Agreements*", at **(CL-259)**, at §10.02[F].

[1968] S. Brekoulakis, "Rethinking Consent in International Commercial Arbitration: A General Theory for Non-signatories", *Journal of International Dispute Settlement*, 2017, 8, 610-643, at **(CL-258)**, p. 620.

[1969] S. Brekoulakis, "Rethinking Consent in International Commercial Arbitration: A General Theory for Non-signatories", *Journal of International Dispute Settlement*, 2017, 8, 610-643, at **(CL-258)**, p. 620.

[1970] Report titled "*Betænkning om Selvstyre I Grønland, Grønlandsk-Dansk Selvstyrekommissions*", April 2008, at **(C-685)**; see English translation, Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 201.

[1971] Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, pp. 482-543.

1781. As already demonstrated above, even under the self-government regime, the Self-Government Report expressly recognises the Danish Government as a third-party beneficiary to mineral resource activities in Greenland at the level of both exploration and exploitation activities. The Working Group for Non-Living Resources states that the Danish Government must work towards "*the objective of creating a basis for obtaining income from the exploitation of mineral raw materials in Greenland*" as it stands to financially benefit from exploitation activities.[1972] More importantly, the Working Group recommends that to achieve this "*objective*" of generating income, the Danish Government and the Greenlandic Government "*should continue to strive for a level of exploration*".[1973] As acknowledged by the Working Group for Non-Living Resources, it is the level of exploration conducted by an exploration licence holder that will *in turn* determine the financial benefits which shall accrue to both governments under any exploitation licence issued.

1782. In any event, as already explained above (see Section C.26 above), there is direct evidence that the Danish Government would be a potential co-signatory to any exploitation licence granted for the Kvanefjeld Project.[1974] This serves as confirmation of the Danish Government's obvious tangible interests in an exploitation licence for the Kvanefjeld Project.

1783. Accordingly, the Danish Government is clearly a third-party beneficiary to exploration activities and exploitation activities at Kvanefjeld.

(iii) Danish law principles of *passivity* and *loyalty*

1784. The Danish Government is bound by the arbitration agreement pursuant to the Danish law principles of *passivity* and *loyalty*, which hold that a party's acts or omissions may give rise to specific legal obligations and rights under Danish law.

1785. The Danish law principle of *passivity* provides that if a party had a reasonable opportunity to pursue a right but failed to do so, and the other party had a legitimate expectation that the right would no longer be pursued, such a right may be automatically forfeited after the passage of time.[1975] The key consideration underlying the principle

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[1972] Report titled "*Betænkning om Selvstyre I Grønland, Grønlandsk-Dansk Selvstyrekommissions*", April 2008, at **(C-685)**, see English translation, Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1973] Report titled "*Betænkning om Selvstyre I Grønland, Grønlandsk-Dansk Selvstyrekommissions*", April 2008, at **(C-685)**, see English translation, Report titled, "*Report on Self-Government in Greenland*", prepared by the Greenlandic-Danish Self-Government Commission, April 2008, at **(C-685E)**, p. 48.

[1974] Minutes of Meeting with Greenland Government, 19 August 2013, at **(C-360)**, p. 5.

[1975] M. Bryde Andersen, *Grundlæggende aftaleret* (Gjellerup, 5th ed., 2021), pp. 229-244, at **(CL-256)**, pp. 235-236.

of *passivity* is to protect the party which has reasonably come to expect a certain legal situation due to the inaction of the other party.[1976]

1786. The Danish law principle of *loyalty* is described in the Legal Claims section above.[1977] The duty of loyalty relevantly includes the obligation of a contracting party to protect the other contracting party from suffering any harm that is outside the normal or foreseeable scope of the legal relationship shared between the parties.[1978] While the principle of *loyalty* has also been codified in special legislation under Danish law, it is also applied as a general principle by Danish courts.

1787. In U2005.817Ø, the Danish High Court of the Eastern District held that a party's failure to actively opt out of an arbitration agreement while also having performed certain obligations pursuant to the agreement would bind the party to such an agreement.[1979] The underlying reasoning of the Court hinges on the legitimate expectations of the other party created by both (i) the party's failure to actively opt out of the agreement; and (ii) the party's previous performance under the agreement.[1980]

1788. Danish law principles of *passivity* and *loyalty* apply to bind the Danish Government to the arbitration agreement. As already established above, GM's Exploration Licence was granted under the Danish Mineral Resources Act 1991 which expressly required the Danish Government's consent and approval.[1981] Accordingly, even if (*arguendo*) the Danish Government now alleges that only the Greenlandic Government consented to the arbitration agreement, the Danish Government's failure to actively opt out of the arbitration agreement after having granted its consent and approval pursuant to the Danish Mineral Resources Act 1991, would still bind the Danish Government to the arbitration agreement pursuant to the principle of "*passivity*" under Danish law as applied by the Danish High Court in U2005.817Ø.[1982]

1789. Further, for the Danish Government to now argue that it is not bound by an arbitration agreement that came into existence because of the Danish Government's consent and approval would be a clear violation of the Danish law principle of *loyalty*. As explained above (see Section (b) above), given that the Danish Government's consent and

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[1976] U.2005.817Ø Ø.L.D. in appeal B-1851-03 (15th Dept.), 9 November 2004, at **(CL-264)**, p. 5; M. Bryde Andersen, *Grundlæggende aftaleret* (Gjellerup, 5th ed., 2021), pp. 229-244, at **(CL-256)**, pp. 235-237.

[1977] See Section E.4(a) above.

[1978] F. Dalgaard-Knudsen, *Danelaw on Contracts: Principles, practices and law today* (Narayana Press, 1st ed., 2015), pp. 25-50, at **(CL-176)**, pp. 45-46.

[1979] U.2005.817Ø Ø.L.D. in appeal B-1851-03 (15th Dept.), 9 November 2004, at **(CL-264)**, p. 5.

[1980] U.2005.817Ø Ø.L.D. in appeal B-1851-03 (15th Dept.), 9 November 2004, at **(CL-264)**, p. 5.

[1981] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, Sections 3 and 27.

[1982] U.2005.817Ø Ø.L.D. in appeal B-1851-03 (15th Dept.), 9 November 2004, at **(CL-264)**, p. 4.

approval was necessary for GMAS to be issued its Exploration Licence,[1983] the Danish Government's subsequent denial of ever being a party to the arbitration agreement would fall entirely outside the normal and foreseeable scope of the legal relationship shared between the parties.

1790. Accordingly, the Tribunal should uphold the Danish law principle of *loyalty* and exercise personal jurisdiction over the Danish Government on the basis that the Danish Government failed to actively opt out of the arbitration agreement pursuant to the Danish law principle of *passivity*.

[1983] Danish Parliament Act No. 335 of 6 June 1991 on Mineral Resources, etc. in Greenland (consolidated with amendments into Consolidation Act No. 368 of 18 June 1998), at **(CL-2)**, Sections 3 and 27.

PART 5. SUBMISSION

1791. GM reserves its right to supplement or modify this Statement of Claim, and/or its requests for relief (set out in Section A.1 above).

Respectfully submitted for and on behalf of the Claimant on 19 July 2023.

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