

In the Matter of

BIDZINA IVANISHVILI

- and -

GEORGIA

FINAL NOTICE OF DISPUTE

Addressed to:

H.E. Mikhail Saakashvili, President of Georgia
H.E. Zurab Adeishvili, Minister of Justice of Georgia

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM (UK) LLP
40 Bank Street
London E14 5DS
United Kingdom
Phone: +(44 20) 7519-7000
Fax: +(44 20) 7519-7070

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue N.W.
Washington, D.C. 20005
United States of America
Phone: + (1 202) 371-7000
Fax: + (1 202) 393-5760

Legal Advisers to Bidzina Ivanishvili

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I. SUMMARY

1. Through the undersigned legal representatives, Mr Bidzina Ivanishvili submits this final Notice of Dispute to the Government of Georgia. The dispute arises from the illegal treatment of his investments in two Georgian commercial banks: JSC Cartu Bank and JSC Progress Bank.

2. On 7 October 2011, Mr Ivanishvili announced his intention to form an opposition party challenging the current Georgian Government in the nation's October 2012 parliamentary elections. Within days, the Georgian Government began a sustained campaign of intimidation, expropriation and other unlawful conduct towards Mr Ivanishvili and his assets, coordinated across all arms of the State: the Executive, the Legislature, the Judiciary and even the Central Bank: the National Bank of Georgia.

3. Georgia's campaign against Mr Ivanishvili has been an attack on many fronts. The President revoked his Georgian citizenship. State officials falsely accused him of money laundering and pressured customers to abandon and defraud his bank. At the same time, Parliament rewrote Georgian law for ulterior purposes to allow any bank's security interests to be superseded by government tax claims, throwing every secured transaction in Georgia into disarray. Georgian tax and enforcement authorities then enforced the new laws only against JSC Cartu Bank – one of 19 commercial banks in Georgia – in a targeted and discriminatory plan that stripped Mr Ivanishvili's bank of assets worth more than GEL 190,000,000 (US\$ 114.6 million). The Georgian courts later rubber-stamped these systematic abuses of State power.

4. The evidence shows that the Georgian Government has had no qualms about misusing every element of State power at its disposal to harm Mr Ivanishvili for political ends. In its

campaign to damage and seize his assets, the Government was prepared to go so far as re-writing Georgia's tax code, tearing up its laws recognising property rights and compromising the independence of its Central Bank and courts, thereby causing grave harm to Georgia's economy, banking system and standing in the international community.

5. The conduct of the Georgian Government summarised in this Notice violates Georgian law and international law, including the investment treaty obligations that Georgia owes to Mr Ivanishvili. Failing a prompt amicable resolution of this matter by Georgia, Mr Ivanishvili intends to refer this dispute to binding arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, D.C. on 18 March 1965 (the "**ICSID Convention**").

6. Although Mr Ivanishvili remains open to finding an amicable solution, the hostile attitude of the current Government and the targeted nature of the attacks against him suggest that any negotiations will be futile. Accordingly, he reserves the right to commence arbitration proceedings under the ICSID Convention without further notice.

II. MEASURES GIVING RISE TO THE DISPUTE

A. Georgia's Campaign of Intimidation and Expropriation: a Chronology

7. Mr Ivanishvili has been a leading investor in the Georgian banking sector. Until recently, he was the 100% beneficial owner of a Georgian commercial bank, JSC Cartu Bank: a joint stock company incorporated under the laws of Georgia with its registered address at 39a I. Chavchavadze Street, Tbilisi ("**Cartu Bank**"). Mr Ivanishvili also owns a 21.7% shareholding in JSC Progress Bank: a joint stock company incorporated under the laws of Georgia with its registered address at 8 Baratashvili Street, Old Tbilisi District, Tbilisi ("**Progress Bank**").

8. As the Government is aware, on 7 October 2011 Mr Ivanishvili publicly announced his intention to enter Georgian politics in opposition to the current Government. He did this through an open letter which was harshly critical of President Saakashvili.¹

9. Within days, Mr Ivanishvili and his investment in Cartu Bank became the target of a blatant political attack coordinated across all arms of the Georgian State: the Executive, the Parliament, the Judiciary and other State bodies including the National Bank of Georgia.

10. On 11 October 2011, the President of Georgia issued a decree revoking Mr Ivanishvili's Georgian citizenship.²

11. The same week, State entities holding accounts with Cartu Bank closed them and many of the Bank's other customers were coerced by Georgian security forces to do likewise. This resulted in an unprecedented capital flight from Cartu Bank of GEL 45,000,000 (US\$ 27 million) during the last two weeks of October 2011.³

12. On 18 October 2011, the Ministry of Internal Affairs falsely accused Cartu Bank of money laundering in a charade supported by the National Bank of Georgia. The accusations were aired over local media that evening to cause maximum prejudice, but were then never substantiated or even explained to Cartu Bank.

13. On 19 October 2011, the National Bank of Georgia commenced a discriminatory audit against Cartu Bank that was scheduled to last only two months but has been extended continuously since then. What began as an "audit" has become a daily oversight of Cartu

¹ Open letter of Bidzina Ivanishvili, available at <http://www.civil.ge/eng/article.php?id=24006>

² Decree No. 602 of the President of Georgia on the Termination of the Citizenship of Bidzina Ivanishvili (11 October 2011).

³ US dollar equivalents are approximate and included for information purposes.

Bank's activities, enabling the Government to have real-time reporting of Cartu Bank's account movements for no legitimate reason. Similar actions were taken against Progress Bank.

14. Most significantly, between 28 October and 11 November 2011, the Parliament of Georgia enacted laws that gave its tax authorities priority over the secured claims of financial institutions, defying international good practice and undermining the certainty of the entire Georgian financial system.

15. From November 2011 onwards, Georgian authorities invoked those laws to strip Cartu Bank of assets worth GEL 190,000,000 (US\$ 114.6 million) which it had lawfully acquired as security for its commercial loans. Out of the 19 commercial banks in Georgia, only the assets of Cartu Bank were seized in this way. Assets held by the other 18 banks (accounting for 96% of the market) were untouched.

16. On 14 March 2012, the Georgian Chamber of Control imposed unjustified fines on Cartu Bank of GEL 822,040 (US\$ 500,000), causing additional losses to Mr Ivanishvili. These were accompanied by unlawful political fines levied against Mr Ivanishvili personally of GEL 74,325,065 (US\$44.8 million) – all part of Georgia's efforts to prevent him from exercising his rights as an opposition candidate to President Saakashvili. Georgia's National Enforcement Bureau later seized Cartu Bank and Mr Ivanishvili's shares in Progress Bank, purportedly in execution of those fines.

17. Since December 2011, Cartu Bank has sought relief in the Courts of Georgia through more than a dozen court applications, all of which were denied despite their obvious merit. The decisions of the Georgian Courts were manifestly biased in favour of the State.

18. As a result of the State's actions, and with no realistic prospect of being able to hold onto Cartu Bank in the light of the State's ongoing unlawful campaign against him, on 30 April 2012 Mr Ivanishvili sold his shares in JSC Cartu Group (the parent company of Cartu Bank).

19. These events are described in more detail below, beginning with the most extreme measure: the rewriting of Georgia's banking laws to target the assets of Cartu Bank.

B. Measures Unlawfully Extinguishing the Security Interests of Cartu Bank

20. Until 28 October 2011, banks in Georgia operated under a system which enabled them to take security over pledged assets in a transparent and reliable manner. If a customer wished to pledge an asset as security for a loan (usually real estate or shares), the bank examined the relevant public registry to see whether or not any liens or other charges had been registered against the asset. If not, then the bank could proceed to register its pledge or mortgage on the property as security for the loan, knowing that its security interest ranked first in priority to any other claims over that asset.⁴

21. If other persons, such as the Georgian tax authorities, subsequently registered a lien over the same property, it would rank second in interest to the bank's prior security. This is consistent with international practice in Europe, the United States and elsewhere: secured claims have priority over all unsecured claims (including tax claims) and, among secured creditors, the priority of liens is determined by the date of registration.

22. On 28 October 2011, the Parliament of Georgia turned this legal framework on its head. In particular, through changes to Article 75 of the Law of Georgia on Enforcement

⁴ See Article 82³ of the Law of Georgia on Enforcement Proceedings, Article 75, Paragraph 4 of the Law of Georgia on Enforcement Proceedings and Article 239, Paragraph 6 of the Tax Code of Georgia.

Proceedings as well as Article 239 of the Tax Code, Parliament cast aside this existing schedule of priority. Under the laws as amended, if the Georgian tax authorities entered a lien over property which was attributable to taxes owed prior to registration of the bank's security, then the tax authorities' lien took priority even if it was not registered until a later date.

23. The amendments applied to all existing contracts, whenever concluded. Consequently, any lender's existing security over an asset could be rendered worthless if the tax authorities subsequently entered a lien over that asset in respect of historic tax liabilities.

24. In principle, these amendments would have called into question the priority of every secured transaction entered into in Georgia, wreaking havoc with countless commercial relationships and threatening severe macro-economic effects including the inability to borrow against Georgian collateral, a resulting credit freeze within Georgia and a sharp fall in foreign investment. Unsurprisingly, the American Chamber of Commerce in Georgia denounced the changes in the clearest terms, writing to the Prime Minister of Georgia as follows:

The chief impact of the Amendments will be to undermine the certainty of financial institutions, their auditors and outside legal counsel, business partners, and financiers, regarding the ranking of financial institutions' security in the collateral that underpins their secured loan portfolios. Logically this will have severe 'knock-on' effects throughout the economy, making banks more reluctant to lend on the basis of any Georgian property as collateral, reducing the availability of domestic credit (both corporate and individual, especially restraining residential mortgage and construction lending) undermining also the willingness of International Financial Institutions to lend on the basis of Georgian collateral, and reducing Foreign Direct Investment into Georgia (which is often financed by IFIs).⁵

⁵ Letter from the American Chamber of Commerce in Georgia to the Prime Minister of Georgia dated 14 December 2011. The same letter also refuted Georgia's assertion that the changes to its legislation were consistent with international practice: "Georgian bank and IFI representatives we have spoken to told us that when they have raised the issue with their Georgian government and NBG [National Bank of Georgia] counter-parts, they have heard various defences of the Amendments. One of the main defences raised by these officials has been that the Amendments reflect the best and customary practice
(cont'd)

25. In practice, however, the amended law has been applied *only against Cartu Bank* – not against any of the other 18 commercial banks in Georgia – which confirms that the amendments, ostensibly of general application, were enacted solely as part of a discriminatory campaign against Mr Ivanishvili.

26. On 11 November 2011, the Parliament of Georgia went even further. It amended Article 77.1.7 of the Law of Georgia on Enforcement Proceedings to provide that if a pledged asset is sold by compulsory auction to satisfy a tax lien, then the sale of that asset extinguishes all property rights registered in the asset after the date of the underlying tax obligation.

27. In other words, the State could take an asset that had been pledged to a bank, retrospectively assess a tax lien over the asset and then sell the asset to a third party with a clear title. Not only was the bank's priority interest superseded; it was extinguished completely and without compensation (even if the asset was sold for a price that exceeded the amount of tax owing).

28. On 28 December 2011, the Parliament of Georgia also expedited the procedure for the sale of assets in favour of the State budget through changes to Article 69.1 of the Law of Georgia on Enforcement Proceedings. A process that previously took two months could now be completed in just two weeks. The same amendment provided that if a seized asset did not sell at auction, or if the winning bidder failed to pay within 15 days, then the National Enforcement Bureau had the right to transfer the asset to the State, which could proceed to

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in other countries. We must disagree. Our discussions only over the past several days with qualified persons on this issue have confirmed that in the United States, Germany and France, for example, the law is as it was in Georgia before the Amendments."

sell it with clear title. Georgia then used these new procedures to expedite its attacks on Mr Ivanishvili's bank.

29. The legislative changes described in this Part A above are referred to collectively as the "**Tax Seizure Laws**".

30. Worsening matters, the State also colluded with or condoned illegal actions by customers of Cartu Bank to extinguish Cartu Bank's security interests – even where the Tax Seizure Laws did not so permit.

31. For example, many of Cartu Bank's customers were special-purpose vehicles established at the same time that the Bank's security interests were created. It was therefore impossible for those companies to have had any tax liabilities arising from activities prior to the Bank's security interest.

32. Nevertheless, in such a situation, many valuable assets pledged in favour of Cartu Bank were transferred by its debtor clients to related entities that either owed, or were suddenly found to owe, taxes pre-dating the Bank's security interest. A tax lien then ensued, as a result of which the assets were put up for auction.

33. At every auction (92 in total), the asset either did not sell or the winning bidder (often having outbid Cartu Bank by many multiples of the asset's value) conveniently failed to pay within the 15 days required, which meant that the assets were then transferred into the ownership of the State. All of Cartu Bank's attempts to buy back the assets at auction were frustrated in this manner. Authorities similarly denied all efforts by Cartu Bank to obtain transparent information about the auctions, such as the identity of "buyers" or proof that any of them had paid the immediate 10% deposit required by the auction rules.

34. The State then sold the same assets, free of any pledge in favour of the Bank, back to their original owners or to companies controlled by the same original beneficial owners – enriching the State and third parties at the direct expense of Cartu Bank.

35. This complicit action between the State and third parties explains why none of the affected taxpayers apparently disputed the tax liabilities imposed upon them – despite the fact that the tax assessments were often ridiculous on their face.

36. The State's unlawful behaviour can be illustrated through the following example. Caucasus Real Estate Group Ltd., a company incorporated on 23 June 2010, is a customer of Cartu Bank with a debt of approximately US\$ 10,000,000. Its debt had been secured through a mortgage entered into with Cartu Bank on 25 June 2010. There was no legal basis upon which to attribute any tax liability to that company retrospectively for the two-day window between its incorporation and the execution of a mortgage in favour of Cartu Bank. Indeed, the LEPL Revenue Service of the Ministry of Finance of Georgia (the "**Revenue Service**") did not even attempt to impose such a liability.

37. Instead, on 24 November 2011 (less than three weeks after the first of the Tax Seizure Laws took effect) the assets of Caucasus Real Estate Group Ltd. that had been pledged in favour of Cartu Bank were unlawfully transferred to another company with the same beneficial owner, JSC Pirimze.⁶

38. Simultaneously, the Revenue Service suddenly "discovered" that JSC Pirimze had a tax liability - dating from 2005. Its liability was quantified at GEL 25,000,000 for "social

⁶ See the share purchase agreement between Caucasus Real Estate Group Ltd and JSC Pirimze registered with the Public Registry dated 24 November 2011 providing for deferred consideration of GEL 12,853,978. The relevant shareholders' registers confirm that Caucasus Real Estate Group Ltd and JSC Pirimze share the same beneficial owners: Mrs Laura Gachava and her husband, Mr Notar Kodua.

insurance" dues. This was based on an absurd finding that JSC Pirimze had paid salaries in 2004 of GEL 100 million, when the average annual salary in that company's sector during 2004 was GEL 415 (GEL 34.6 per month) – falsely implying a workforce of almost 250,000, which would have rendered it the largest private employer in Georgia in 2004 by many multiples.

39. On 22 December 2011, the assets previously pledged to Cartu Bank and wrongly transferred to JSC Pirimze were transferred to the State as payment in kind for the tax liabilities of JSC Pirimze, thereby extinguishing Cartu Bank's security interests *because of a tax debt allegedly owed by a company other than the mortgagor*.⁷ The assets were later transferred by the State to a private company (PP Ltd) whose ownership remains murky. This unlawful scheme thus went even further than the (already unlawful) provisions of the Tax Seizure Laws as enacted.

40. There are numerous examples of similar unlawful conduct, which Cartu Bank has already brought to the attention of the Georgian authorities and the Georgian Courts through more than a dozen separate litigation proceedings but to no avail.⁸

41. In all, 92 auctions were held pursuant to the Law on Enforcement Proceedings, stripping Cartu Bank of its security interests in 195 assets (which included some of the most prominent buildings in Tbilisi). These caused a direct loss to Cartu Bank, and thus Mr Ivanishvili, of more than GEL 190,000,000 (US\$ 114.6 million), plus related losses in the

⁷ Georgia denied Cartu Bank's request for proof that the taxes had in fact been paid to the State.

⁸ See, e.g.: *JSC Cartu Bank v Logos LLC, Tetri Sakhli Patnership, LEPL Revenue Service of the Ministry of Finance of Georgia and LEPL National Enforcement Bureau of the Ministry of Justice of Georgia*; and *JSC Cartu Bank v Tolia LLC, Aslan Jincharadze, LEPL Revenue Service of the Ministry of Finance of Georgia and LEPL National Enforcement Bureau of the Ministry of Justice of Georgia*. A schedule of relevant proceedings is included as **Appendix A**.

underlying capital value of Cartu Bank and costs incurred in seeking to enforce Cartu Bank's rights – without success – in the Georgian Courts. (See Part E below: Denial of Justice).

42. During March 2012, other Georgian banks finally started to protest against the Tax Seizure Laws because, even though the Government had privately assured them that only Cartu Bank would be targeted, the banks' auditors were required to value their security portfolios no later than 30 April 2012. The Tax Seizure Laws would have required massive write-downs of the banks' assets and triggered in a liquidity crisis in Georgia.

43. As a result, the Georgian Parliament abolished the Tax Seizure Laws through Law No. 5970 of 30 March 2012, with effect from 20 April 2012. This restored the relevant Georgian laws to the position that existed prior to 28 October 2011.

44. In all, the legislative changes were in force for slightly less than six months (7 November 2011 - 20 April 2012). Over that period, the Tax Seizure Laws were applied *only* to customers and assets of Cartu Bank, notwithstanding that Cartu Bank accounts for only 4% of the Georgian commercial banking system. The selective application of the Tax Seizure Laws reveals the discriminatory intent of the Georgian Parliament. They were never intended to serve a *bona fide* purpose; from the start, the Tax Seizure Laws were intended to target Mr Ivanishvili. The subsequent abandonment of those laws in April 2012 simply reconfirmed that they served no legitimate public purpose.

C. Regulatory Harassment of Cartu Bank and Progress Bank

45. The enactment and selective application of the Tax Seizure Laws coincided with other unlawful conduct against Cartu Bank causing further loss to Mr Ivanishvili. This broader conduct is both a violation of international law in its own right and also illustrates the

political motivations behind Georgia's enactment and selective application of the Tax Seizure Laws.

(i) False Accusations of Money Laundering

46. On 18 October 2011, Georgian officials falsely accused Cartu Bank of money laundering in a charade coordinated by the Ministry of Internal Affairs.

47. Cartu Bank routinely collects cash from various commercial banks in Georgia to enable cash withdrawals by its customers. It does so through inter-bank transactions in which it takes funds deposited abroad, and wires them to one of Georgian commercial banks holding surplus amount of cash, from which it collects the equivalent amount in bank notes. In 2011, Cartu Bank engaged in approximately 200 such transactions valued in aggregate at more than GEL 70,000,000 (US\$ 42.2 million).

48. On 18 October 2011, agents of the Georgian Prosecutor's Office seized on one of these transactions to publicly and falsely accuse Cartu Bank and Mr Ivanishvili of money-laundering. On that day, Cartu Bank had properly transferred to another commercial bank – JSC Bank of Georgia – US\$ 2 million as well as €1,000,000 from accounts it holds abroad through Citibank, Kommerzbank and Deutsche Bank. In the customary way, Cartu Bank employees arranged collection of the bank notes from the premises of JSC Bank of Georgia.

49. After several unexplained calls from JSC Bank of Georgia asking them to delay collecting the funds, the Cartu Bank delivery team was instructed by an official from JSC Bank of Georgia to drive to a specific location at its premises in order to collect the bank notes. Suddenly, a group of armed officers with video-cameras (some masked, others in plain clothes) approached the Cartu Bank van, arrested the driver and other Cartu Bank

employees and held them in custody. The van and bank notes were also impounded. All of this was conveniently captured on video-tape by the officers.

50. That evening, Government-controlled television channels aired news reports stating that Cartu Bank's employees had been arrested in connection with allegations of "large-scale money laundering" and that the seized funds were linked to Mr Ivanishvili. Detectives posed with images of the bank notes spread widely across a floor.⁹ This charade and the false accusation underlying it harmed the Bank's standing, as well as that of Mr Ivanishvili, and caused commercial losses including a loss of customers. The Cartu Bank employees were released from custody the same day and the money was returned to Cartu Bank, without explanation, two months later.

51. Despite many requests, Georgian prosecutors refused to provide the Bank with information about their investigation of this event, preventing Cartu Bank from being able to mitigate the damage to its standing caused by the false public accusations. The prosecutors still claim that their investigation is ongoing, yet Cartu Bank's employees have not been asked a single question about these funds in the eight months since the staged arrests. No one has been charged with any offence; nor have Georgian prosecutors approached Cartu Bank's correspondent banks in the transactions, which would have been a logical first step in any good faith investigation.

(ii) Unjustified Audits of Cartu Bank and Progress Bank

52. Within 24 hours of the money laundering charade, the National Bank of Georgia issued Order No. 767 of 19 October 2011 commencing an audit of Cartu Bank, ostensibly to confirm Cartu Bank's compliance with Georgia's anti-money laundering statute, the Law of

⁹ http://rustavi2.com/news/video.php?fr=video&id_news=43489&lang=eng&ftp1=1&ftp2=0&ftp3=0

Georgia on Facilitating the Prevention of Illicit Income Legalization. Despite the fact that the audit was scheduled to last only two months, the National Bank of Georgia has continuously extended the audit period since then.¹⁰

53. The National Bank's previous audits of Cartu Bank had never revealed any money-laundering violations and never lasted more than one month. Logically, all prior audits also focused on transactions prior to the audit date.

54. This audit was very different. It has now lasted nine months. The "auditors" have not investigated any historical data. Instead, they have converted the "audit" into a daily monitoring of all of Cartu Bank's transactions – straying well beyond any legitimate State interest and exceeding the regulatory mandate of the National Bank of Georgia. The "auditors" have even asked for the computer systems of Cartu Bank to be linked electronically to those of the National Bank of Georgia.

55. Shortly after Mr Ivanishvili acquired shares in Progress Bank, it also became the subject of a similar unlawful audit, which has been extended to 31 December 2012.¹¹

(iii) Political fines levied against Cartu Bank

56. On 12 March 2012, the Georgian Chamber of Control fined Cartu Bank GEL 822,040 (US\$ 500,000) for having made alleged political donations in violation of Article 26 of the Organic Law of Georgia on Political Associations (the "**Political Associations Law**"),

¹⁰ On 16 December 2011, the Vice-President of the National Bank of Georgia issued Ordinance No. 872 extending the audit by a further two months, i.e. until 20 February 2012. On 17 February 2012, Ordinance No. 156 of the National Bank of Georgia further extended this audit until 22 May 2012. This was again extended by Order No. 643 of the National Bank of Georgia dated 21 May 2012.

¹¹ The audit of Progress Bank and subsequent extensions were implemented through the following Ordinances of the Vice-President of the National Bank of Georgia: Ordinance No. 814 dated 17 November 2011; Ordinance No. 841 dated 30 November 2011; Ordinance No. 184 dated 29 February 2012; and Ordinance No. 681 dated 31 May 2012.

merely because Cartu Bank had paid bonuses to key employees in an effort to retain them during a period of intense turmoil in its business caused by Georgia's actions. The bonuses were consistent with industry norms. Cartu Bank made no donation to any political party; nor did its employees receiving the bonus payments. Even accepting the Political Associations Law at face value,¹² there was no reasonable basis upon which the Chamber of Control could have found a violation on the part of Cartu Bank under that legislation. Furthermore, the manner in which the Georgian Courts later upheld the fine was unfair and amounts to a denial of justice. Ultimately, Cartu Bank paid this fine, under protest, to avoid further coercive action by the State.

57. For all of these reasons, the imposition of this fine against Cartu Bank violated international law and caused additional losses to Mr Ivanishvili.

D. Seizure of Cartu Bank and Progress Bank

58. In tandem with the actions taken against Cartu Bank, the Government levied fines against Mr Ivanishvili personally, which led to both Cartu Bank and Mr Ivanishvili's minority shareholding in Progress Bank being seized by the National Enforcement Bureau.

(i) Political fines levied against Mr Ivanishvili

59. On 7 June 2012, the Chamber of Control applied to the Tbilisi City Court alleging that Mr Ivanishvili had violated the Political Associations Law through companies that the State associated with him,¹³ giving him less than 24 hours' notice of the charge prior to a full merits hearing. Within days, Mr Ivanishvili was fined GEL 74,325,065 (US\$ 44.9 million).

¹² The Political Associations Law itself is of dubious standing under international law, having been amended in recent months specifically to prevent Mr Ivanishvili from exercising his political rights in opposition to the Government.

¹³ Burji LLC and Elita Burji LLC.

60. The fines are exorbitant and the findings of the Georgian Courts in these cases were flawed in numerous respects, described (in summary form) in Part E below.

(ii) Seizure of Cartu Bank and Progress Bank

61. Mr Ivanishvili refused to pay these illegal fines. On 2 July 2012 the National Enforcement Bureau proceeded to seize Mr Ivanishvili's 21.7% shareholding in Progress Bank. The Bureau also seized 100% of the shares in Cartu Bank, claiming that Cartu Bank still belonged to Mr Ivanishvili notwithstanding that he had sold his shares in Cartu Group (the parent company of Cartu Bank) on 30 April 2012.

62. On 10 July 2012, the National Enforcement Bureau auctioned both shareholdings online, but the process failed to yield a buyer. The next day, the National Enforcement Bureau announced its intention to place both banks under State control, thereby seizing Cartu Bank (owned by other foreign investors now being punished for fines levied against Mr Ivanishvili) as well as Mr Ivanishvili's 21.7% shareholding in Progress Bank.¹⁴

63. Only after Mr Ivanishvili donated GEL 80,000,000 to the State budget on 26 July 2012, as relief for recent flooding victims, did the National Enforcement Bureau release Cartu Bank and Progress Bank from State control. Because the fines levied against Mr Ivanishvili violated international law and Georgian law, the forcible seizure of his investments to execute those fines was equally unlawful.

E. Denial of Justice by the Georgian Courts

64. Following enactment of the Tax Seizure Laws, and their application against assets pledged in favour of Cartu Bank, the Bank brought more than a dozen applications in the

¹⁴ Statement of the National Enforcement Bureau of 11 July 2012, available at: http://nbe.gov.ge/index.php?lang_id=ENG&sec_id=32&info_id=5369

Georgian Courts seeking: (i) injunctive relief to prevent the auctioning or sale of the assets pledged in its favour; and (ii) declarations invalidating the imposition of the tax liens and the flawed auction process. Mr Ivanishvili also appealed against the fines levied against him personally, which formed the basis for the subsequent seizure of Cartu Bank and his shareholding in Progress Bank.¹⁵

65. For the reasons given in the appeal papers filed in those proceedings, which are incorporated by reference, the Georgian Courts' handling of those cases was unjust both procedurally and in substance. As a result, the conduct of the Georgian Courts separately violated Georgia's investment treaty obligations and amounted to a denial of justice under international law.

66. By way of example, the National Enforcement Bureau served Mr Ivanishvili's lawyers with its applications and supporting evidence (more than 600 pages of documents plus four CDs) on the afternoon and evening of 7 June 2012. The court hearing was fixed for 10:00 am the following day. In other words, Mr Ivanishvili's lawyers were given about 10 waking hours to digest all of the evidence against him and prepare his defence.

67. Both the Tbilisi City Court and the Tbilisi Appeals Court denied Mr Ivanishvili's request for more time to prepare his case. They also denied him any opportunity to cross-examine the Government witnesses whose statements formed the basis for the prosecution case.

68. The Courts' rulings against Cartu Bank and Mr Ivanishvili are further confirmation of a weak judicial system that has been denounced internationally. For example, the U.S. Department of State 2011 Human Rights Report identifies as one of the principal concerns

¹⁵ See Appendix A for a schedule of relevant proceedings.

for human rights in Georgia, "[s]hortfalls in the rule of law, such as concerns about ensuring the judiciary's independent and even-handed application of due process protections."¹⁶

III. JURISDICTION UNDER THE TREATY

69. Georgia's conduct gives rise to liability under the Agreement between the Government of the French Republic and the Government of Georgia on the Encouragement and Reciprocal Protection of Investments dated 3 February 1997 (the "**Treaty**") as well as under customary international law.¹⁷

70. Mr Ivanishvili is a French citizen and therefore a "national" of France within the meaning of Article 1(2) of the Treaty.¹⁸

71. Until 30 April 2012, Mr Ivanishvili was the ultimate and sole beneficial owner of Cartu Bank. He also owns a 21.7% shareholding in JSC Progress Bank.

72. Mr Ivanishvili's shareholding interests in Cartu Bank and Progress Bank are protected investments under the Treaty, which defines "investment" in Article 1(1) to mean "all assets, goods, rights and interests of any kind and particularly but not exclusively . . . (b) shares, share premiums and other forms of participation, even minority or indirect, in companies constituted in the territory of one of the contracting Parties."¹⁹

¹⁶ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. Georgia Country Report on Human Rights Practices (2011).

¹⁷ The Treaty entered into force on 13 April 2000, see: http://www.mfa.gov.ge/index.php?sec_id=356&lang_id=ENG

¹⁸ Article 1(2) of the Treaty states: "The term 'nationals' means physical persons possessing the nationality of one of the contracting Parties." In the French version: "Le terme de 'nationaux' désigne les personnes physiques possédant la nationalité de l'une des Parties contractantes."

¹⁹ In French: "Le terme 'investissement' désigne tous les avoirs, tels que les biens, droits et intérêts de toutes natures et, plus particulièrement mais non exclusivement: . . . b) Les actions, primes d'émission et autres formes de participation, même minoritaires ou indirectes, aux sociétés constituées sur le territoire de l'une des Parties contractantes"

(cont'd)

73. The current dispute is therefore an investment dispute between a national of France, on the one hand, and Georgia, on the other, which Article 7 of the Treaty refers to binding arbitration under the ICSID Convention.

IV. VIOLATIONS OF THE TREATY

74. The actions described in Part II of this Notice violate Georgia's obligations under the Treaty, including (without limitation) the guarantees contained in Articles 3, 4 and 5 thereof.

75. Article 3(1) of the BIT obliges Georgia to provide fair and equitable treatment to Mr Ivanishvili's investments. It states:

Each Contracting Party undertakes to ensure, within its territory and in its maritime area, fair and equitable treatment in accordance with the principles of international law, to investments of nationals or companies of the other Party and to ensure that the exercise of the right so granted to fair and equitable treatment is not hindered by law or in practice.²⁰

76. Article 4 of the BIT confers on Mr Ivanishvili's investments and associated activities (including recourse to arbitration) a right to national treatment and most-favoured-nation treatment. It states:

Each Contracting Party shall enforce, within its territory and in its maritime area, to nationals or companies of the other Party, with respect to their investments and activities associated with these investments, treatment no less favourable than that accorded to its nationals or companies, or the treatment accorded to nationals or

(cont'd from previous page)

On the same basis, the current dispute also qualifies as one "arising directly out of an investment" for purposes of Article 25(1) of the ICSID Convention.

²⁰

In its French text:

Chacune des Parties contractantes s'engage à assurer, sur son territoire et dans sa zone maritime, un traitement juste et équitable, conformément aux principes du Droit international, aux investissements des nationaux et sociétés de l'autre Partie et à faire en sorte que l'exercice du droit ainsi reconnu à un traitement juste et équitable ne soit entravé ni en droit, ni en fait.

companies of the most favoured nation, whichever is more advantageous.²¹

77. In accordance with Article 4 of the Treaty, Mr Ivanishvili reserves the right to rely on more favourable provisions of other investment treaties entered into by Georgia, including more favourable dispute resolution provisions contained in those treaties.²²

78. Article 5 of the Treaty requires Georgia to provide full protection and security to Mr Ivanishvili's investments. It also prohibits Georgia from expropriating those investments except for a public purpose, on a non-discriminatory basis and upon payment of fair market value of the expropriated asset on an undamaged basis (i.e. excluding any diminution in value caused by the State's unlawful conduct or a threat thereof). Article 5 states:

Investments made by nationals or companies of either Contracting Party shall enjoy, in the territory and maritime zone of the other Contracting Party, full and complete protection and security.

The Contracting Parties shall not take measures of expropriation or nationalization or any other measures having the effect of depriving, directly or indirectly, nationals and companies of the other Party of their investments in their territory and in its maritime area, except for public purposes and provided that such measures are not discriminatory or contrary to a specific commitment.

All dispossession measures taken shall give rise to the payment of prompt and adequate compensation in an amount equal to the actual

²¹ In its French text:

Chaque Partie contractante applique, sur son territoire et dans sa zone maritime, aux nationaux ou sociétés de l'autre Partie, en ce qui concerne leurs investissements et activités liées à ces investissements, un traitement non moins favorable que celui accordé à ses nationaux ou sociétés, ou le traitement accordé aux nationaux ou sociétés de la nation la plus favorisée, si celui-ci est plus avantageux.

²² These other more favourable dispute resolution provisions include (without limitation) those contained in the Agreement between the Kingdom of the Netherlands and Georgia on encouragement and Reciprocal Protection of Investments dated 3 February 1998 (the "**Netherlands-Georgia BIT**"), Article 9 of which entitles Dutch investors in Georgia to commence arbitration under the 1965 ICSID Convention without engaging in any prior attempts at amicable settlement. Any offer to engage in such attempts at negotiation in this Notice, or made subsequently by Mr Ivanishvili, are purely expressions of goodwill and do not arise from any binding obligations upon Mr Ivanishvili or any pre-conditions to ICSID arbitration.

value of the investments concerned, measured against a normal economic situation prior to any threat of dispossession.

Such compensation, the amount and manner of payment shall be determined no later than the date of dispossession. The compensation shall be effectively realizable, paid without delay and be freely transferable. It shall bear interest at an appropriate market rate until the date of payment.²³

79. Georgia's violations of the Treaty have caused very substantial losses to Mr Ivanishvili, which can be quantified through negotiations or arbitration proceedings, as appropriate.

V. RELIEF REQUESTED

80. Mr Ivanishvili requests full reparation for Georgia's unlawful conduct, consistent with Georgia's obligations under the Treaty and customary international law. In this case, reparation must include damages for all losses caused to Mr Ivanishvili as a result of Georgia's violation of the Treaty as well as moral damages.

²³ In its French text:

1. Les investissements effectués par des nationaux ou sociétés de l'une ou l'autre des Parties contractantes bénéficient, sur le territoire et dans la zone maritime de l'autre Partie contractante, d'une protection et d'une sécurité pleines et entières.

2. Les Parties contractantes ne prennent pas de mesures d'expropriation ou de nationalisation ou toutes autres mesures dont l'effet est de déposséder, directement ou indirectement les nationaux et sociétés de l'autre Partie des investissements leur appartenant sur leur territoire et dans leur zone maritime, si ce n'est pour cause d'utilité publique et à condition que ces mesures ne soient ni discriminatoires, ni contraires à un engagement particulier.

Toutes les mesures de dépossession qui pourraient être prises doivent donner lieu au paiement d'une indemnité prompte et adéquate dont le montant, égal à la valeur réelle des investissements concernés, doit être évalué par rapport à une situation économique normale et antérieure à toute menace de dépossession.

Cette indemnité, son montant et ses modalités de versement sont fixés au plus tard à la date de la dépossession. Cette indemnité est effectivement réalisable, versée sans retard et librement transférable. Elle produit, jusqu'à la date de versement, des intérêts calculés au taux d'intérêt de marché approprié.

VI. REQUEST FOR AMICABLE NEGOTIATION

81. Georgia has been on notice of the facts giving rise to this very public dispute for several months already. Indeed, the claim arises from State conduct targeted specifically at Mr Ivanishvili since October 2011, which the State has failed to remedy despite ample opportunity and numerous requests.

82. These prior requests include official complaints to Parliament, public statements, letters to the relevant State authorities (the National Bank of Georgia, the Ministry of Finance the Ministry of Internal Affairs and the Prosecutor's Office) as well as dozens of litigation proceedings in the Georgian Courts against the relevant State entities.²⁴ These efforts were coupled with unsuccessful attempts to reach out to the Government through third party organisations including the World Bank, the International Monetary Fund and the International Chamber of Commerce.²⁵ Despite all of these efforts, the matter remains unresolved.

²⁴ See, e.g., letter from the General Director of JSC Cartu Bank to the Head of the Financial Monitoring Service of Georgia dated 31 October 2011; letter from the General Director of JSC Cartu Bank to the President of the National Bank of Georgia dated 1 November 2011; letter from the General Director of JSC Cartu Bank to the President of the National Bank of Georgia dated 18 November 2011; letter from the General Director of JSC Cartu Bank to the Head of Department of Old Tbilisi Division VII of the Ministry of Internal Affairs dated 13 December 2011; letter from the General Director of JSC Cartu Bank to the Board of the National Bank of Georgia dated 30 December 2011; letter from the 1st Deputy Director of JSC Cartu Bank to Old Tbilisi District Regional Prosecutor dated 9 March 2012; letter from the General Director of JSC Cartu Bank to the President of the National Bank of Georgia dated 8 June 2012; and Information Memorandum to the Public Defender of Georgia dated 24 April 2012. Further copies of these letters are being provided with this Notice, for ease of reference.

²⁵ See, e.g., letter from the American Chamber of Commerce in Georgia to the Prime Minister of Georgia dated 14 December 2011; letter from the General Director of JSC Cartu Bank to the Board of Banking Association of Georgia dated 11 June 2012; letter from the General Director of JSC Cartu Bank to the International Chamber of Commerce dated 18 June 2012; letter from the General Director of JSC Cartu Bank to the Executive Director of IMF dated 22 June 2012; and letter from the General Director of JSC Cartu Bank to the President of the World Bank Group dated 4 July 2012. Copies of these letters are being provided with this Notice, for ease of reference.

83. Consequently, any further request for amicable negotiations is almost certain to be futile, particularly given the Government's strident opposition to Mr Ivanishvili and its targeted campaign against him.

84. Nevertheless, and without prejudice to his right to commence ICSID arbitration without any further conditions or notice to Georgia, Mr Ivanishvili accords Georgia a final opportunity to demonstrate its good faith desire to resolve this dispute. Mr Ivanishvili requests Georgia to confirm in writing within 14 days, by notice to his legal representatives, whether or not Georgia: (i) accepts and acknowledges the actions taken against Cartu Bank and Progress Bank outlined in Part II of this Notice were politically motivated;²⁶ and (ii) is prepared to resolve this dispute promptly through good faith negotiations to quantify and pay the resulting damages owing to Mr Ivanishvili under international law. Representatives of Mr Ivanishvili stand ready to meet members of the Government during that period should Georgia require any further information beyond that provided in this Notice.

85. Mr Ivanishvili reserves the right to commence ICSID arbitration proceedings under Article 7 of the Treaty at any time, and without further notice, in light of Georgia's long-running notice of this dispute, the prior complaints raised by him through Cartu Bank and the targeted nature of Government's the actions against him, which make a mockery of the notion that the Government will resolve this dispute amicably. This right to proceed directly to ICSID arbitration is further supported by the terms of the Treaty, the non-mandatory nature of the amicable negotiation period specified therein, and the more favourable dispute

²⁶ This narrow question is intended to simplify the Government's task and establish its *bona fides*. It should not be interpreted as limiting the scope of Georgia's liability under the Treaty and international law.

resolution procedures agreed to by Georgia in other investment treaties including that contained Article 9 of the Netherlands-Georgia BIT.²⁷

86. All communications relating to this Notice should be addressed to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue N.W.
Washington, D.C. 20005
United States of America
Phone: + (1 202) 371-7000
Fax: + (1 202) 393-5760
Attn: Gregory Craig: gregory.craig@skadden.com

Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street
London E14 5DS
United Kingdom
Phone: ++(44 20) 7519-7000
Fax: ++(44 20) 7519-7070
Attn. Karyl Nairn: karyl.nairn@skadden.com
Attn. David Herlihy: david.herlihy@skadden.com

Respectfully submitted,

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

**Skadden, Arps, Slate, Meagher & Flom (UK) LLP
For and on behalf of Bidzina Ivanishvili**

²⁷ This Notice is filed in the English language. A Georgian translation is also being provided to facilitate a prompt response by the Government. This is provided without prejudice to the use of English as the sole language of any subsequent ICSID proceedings. In the event of any discrepancy, the English version of this Notice shall take precedence.