

# **Legal Report**

Enemalta p.l.c.  
Mozura Windfarm Project  
28 January 2021

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## *Definitions*

Capitalised terms used in this Report shall bear the meaning set forth alongside them below unless the context otherwise requires.

<b>“Accenture Report”</b>	the due diligence report dated September 2014 sent to the relevant minister for the Government of Malta and Enemalta on the 17 <sup>th</sup> September 2014.
<b>“Addendum 1”</b>	the addendum to the SPA dated 28 <sup>th</sup> December 2015.
<b>“Addendum 2”</b>	the addendum to the SPA dated 16 <sup>th</sup> April 2016.
<b>“Bank Guarantee”</b>	the guarantee required in terms of the Lease.
<b>“Board of Directors” or “BOD”</b>	the board of directors of Enemalta.
<b>“BWPM”</b>	BWP Montenegro d.o.o. (02651742).
<b>“Celebic”</b>	Celebic d.o.o. (50049154).
<b>“Celebic SPA”</b>	the redacted share purchase agreement between Celebic and Cifidex for the sale and purchase of 1% of the Transfer Shares executed on the 10 <sup>th</sup> February 2015.
<b>“Cifidex”</b>	Cifidex Limited (126590).
<b>“Cifidex Acquisition Price”</b>	Euro 2.9m.
<b>“Consortium”</b>	collectively Envision, IREDL and Vestigo and each a <b>“Consortium Member”</b> .
<b>“Consortium Agreement”</b>	the agreement entered into on the 19 <sup>th</sup> April 2016 by and between the Consortium Members.
<b>“Definitive Agreement”</b>	the agreement entered into on the 15 <sup>th</sup> September 2017 by and between, Enemalta, the Consortium Members, Mozura and JVCO.
<b>“Due Diligence Reports”</b>	collectively the Accenture Report, the KN/DD Report, the Moravcevic Report and the PWC Report.
<b>“Enemalta” or “Company”</b>	Enemalta p.l.c. (C65836).
<b>“Enemalta Acquisition Price”</b>	Euro 10.3m (unless otherwise stated in the Report).

<b>“Enemalta Group”</b>	as depicted in Chapter 2.2 of this Report.
<b>“Envision”</b>	Envision Energy International Limited (1213158) or any associated company.
<b>“Fersa”</b>	Fersa Energias Renovables (A62338827) or any associated company.
<b>“Fersa SPA”</b>	the redacted share purchase agreement between Fersa and Cifidex for the sale and purchase of 99% of the Transfer Shares executed on the 12 <sup>th</sup> February 2015.
<b>“ICE”</b>	International Clean Energy Limited (C66509).
<b>“ICE BOD”</b>	the board of directors of ICE.
<b>“ICE SPA”</b>	the share purchase agreement between ICE and Cifidex for the sale and purchase of the Transfer Shares dated 20 <sup>th</sup> February 2015.
<b>“IREDL”</b>	International Renewable Energy Development Ltd. (C68860).
<b>“JVCO”</b>	Malta Montenegro Wind Power JV Limited (C75115).
<b>“JVCO SPA”</b>	the agreement entered into between JVCO, SME and Enemalta for the acquisition of the Transfer Shares dated 20 <sup>th</sup> September 2017.
<b>“K/N DD Report”</b>	the legal due diligence report prepared by Karnovic/Nikolic for Enemalta dated 29 <sup>th</sup> March 2015.
<b>“Lease”</b>	the lease over the immovable property upon which the wind power plant is to be constructed.
<b>“Lease Agreement”</b>	the agreement regulating the Lease entered into on the 5 <sup>th</sup> July 2010 between the SME and the consortium made up of Celebic and Fersa.
<b>“Lease Transfer Agreement”</b>	the agreement entered into between <i>inter alia</i> SME, Enemalta and Mozura dated 27 <sup>th</sup> October 2015 whereby the rights and obligations under the Lease were transferred to Enemalta.
<b>“MBR”</b>	the Malta Business Registry.

<b>“MOU”</b>	the memorandum of understanding between the Ministry for Energy and the Conservation of Water Republic of Malta and China Power Investment Corporation dated 11th September 2013.
<b>“Mozura”</b>	Mozura Wind Park d.o.o. (50483964).
<b>“Moravcevic Report”</b>	the legal due diligence report prepared by Moravcevic Vojnovic & Partneri OAD for Enemalta dated 28 <sup>th</sup> March 2016.
<b>“OECD Guidelines”</b>	the OECD Guidelines on Corporate Governance of State Owned Enterprises.
<b>“Payment Agreement”</b>	the agreement entered into between the Consortium Members, Enemalta and JVCO dated 19 <sup>th</sup> April 2016.
<b>“PWC Report”</b>	the report prepared for Shanghai Electric Power Co. Ltd. By PWC Shanghai dated 22 <sup>nd</sup> February 2016.
<b>“Reviewed Documents”</b>	the documents provided by Enemalta by virtue of two (2) password protected pen drives that apply to the Relevant Period and which were reviewed by MTCV.
<b>“SEP”</b>	SEP (Malta) Holding Limited (C67784).
<b>“Shanghai Electric”</b>	Shanghai Electric Power & Energy Development Limited (1359631).
<b>“Share Sale Agreement”</b>	the agreement entered into between <i>inter alia</i> Enemalta and Cifidex by virtue of which the Transfer Shares were transferred to Enemalta dated 28 <sup>th</sup> December 2015.
<b>“SME”</b>	State of Montenegro represented by the Government of Montenegro.
<b>“SPA”</b>	the share purchase agreement entered into between <i>inter alia</i> Enemalta and Cifidex for the sale and purchase of the Transfer Shares dated 19 <sup>th</sup> October 2015.
<b>“Transfer Shares”</b>	the entire issued share capital in Mozura.
<b>“Vestigo”</b>	Vestigo Clean Energy I Limited (61748)

## *Chapter 1: Introduction*

### *1.1 Request by Enemalta*

On the 03 November 2020, Enemalta requested that Mamo TCV Advocates (“**MTCV**”) prepare a report on the investment made by Enemalta in the Mozura Windfarm Project (the “**Project**”), such report to consist of the following:

- a. an assessment on whether Enemalta internal policies and procedures, related to the investment process, are of the highest standards and an assessment as to whether there was adherence to these policies and procedures by Enemalta officials during the Project’s investment process;
- b. an assessment as to whether there was knowledge within Enemalta that this investment was originally acquired by Cifidex for the Cifidex Acquisition Price and whether there was a business rationale behind the acquisition at the Enemalta Acquisition Price;
- c. an assessment as to whether management should have been or was aware that Enemalta was acquiring an investment from an entity with a beneficial owner that sat on the board of Electrogas Malta Limited, which in turn has been awarded a major energy supply contract by Enemalta; and
- d. to identify if any of the current board of directors of Enemalta had a decision making role at the time of the alleged wrongdoing and if it were to transpire that they were directly involved (in the wrongdoing), the possible effects on the standing or position of Enemalta today.

(the “**Scope**”)

### *1.2 Methodology*

- 1.2.1 The first set of board minutes of Enemalta provided to MTCV in respect of the Project are with respect to a board meeting that was held on the 15<sup>th</sup> December 2014. The Transfer Shares were acquired by the JVCO on the 20<sup>th</sup> September 2017 (the period from 15<sup>th</sup> December 2014 to the 20<sup>th</sup> September 2017 shall hereinafter be referred to as the “**Relevant Period**”). The Scope is therefore restricted to an examination of the Reviewed Documents applicable to the Relevant Period and, generally, to the Relevant Period only.
- 1.2.2 Findings presented in this Report are based on the Reviewed Documents (as qualified) submitted to MTCV. In this regard, all documentation was submitted by Enemalta. Furthermore, other than as resulted from the Interview with Mr Sheng Baojie referred to in section 1.2.5 below, MTCV was not given access to any documentation or information belonging to SEP. MTCV inquired as to the availability of the email accounts and emails of the members of the BOD; however, MTCV was informed by Enemalta that (a) individual board members were not assigned an Enemalta email account (unless they also occupied an executive function within Enemalta and were assigned one in such latter capacity) and that (b) access to personal email accounts would not be possible. Moreover Enemalta further informed MTCV that it was its practice that the contents of email boxes would be discarded after a period of six (6) months from the termination of an Enemalta executive’s cessation of his relationship with the Company. MTCV was also unable to conduct any computer aided search

functions on the names of any persons or email addresses or by the adoption of any other electronic means. In addition to documentation received, MTCV submitted additional information requests to Enemalta pursuant to which MTCV sought to obtain clarifications on certain matters. The replies provided (the “**Replies**”) form part of this Report. Note that MTCV has not sought to verify such statements and that, for the purposes of this Report, any answer received from any director of Enemalta, management, staff and/or any individual on behalf of Enemalta is deemed to be an answer provided by Enemalta.

- 1.2.3 MTCV has assumed that the Reviewed Documents and information required for the purpose of this Report were, to the best of MTCV’s knowledge, made available. By way of clarification, MTCV did request (and obtain) confirmation from Enemalta that all minutes of the BOD relevant to the Project had been received by MTCV. MTCV’s findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal.
- 1.2.4 MTCV has assumed (i) the completeness and conformity to the originals of all Reviewed Documents submitted to us as copies, scanned copies or final execution versions; (ii) the genuineness and authenticity of the signatures and initials on all documents examined by us (iii) that the signatures purporting to be the signatures of any particular person are actually those of the person against whose name they appear; (iv) translations (whether certified or not) are faithful representations of their counterparts; (v) the existence of fully executed documents of all documents provided to us that do not contain all signatures and (vi) that we are able to rely on any of the Due Diligence Reports.
- 1.2.5 On the 16<sup>th</sup> December 2020 and 17<sup>th</sup> December 2020, MTCV carried out interviews with Mr. Kevin Chircop and Mr. Sheng Baojie respectively, with a follow up interview with Mr. Kevin Chircop on the 18<sup>th</sup> January 2021. On the 25<sup>th</sup> January 2021 MTCV also carried out interviews with representatives of Ganado Advocates and Schoenherr Attorneys at Law (the interviews collectively the “**Interviews**”, each an “**Interview**” and the Interviews form part of the Replies). Mr. Kevin Chircop was selected due to (i) the Company appointing him as our point of contact for the Project, (ii) our understanding that he is the most appropriate person to discuss Company matters with respect to the Project on the Enemalta side, (iii) him being one of only a handful of current members of the BOD that was a member of the BOD during the Relevant Period and (iv) our understanding (as also supported by the minutes of the BOD during the Relevant Period) that he was centrally active with respect to the Project. Mr. Sheng Baojie was selected (i) following discussions with Enemalta, (ii) due to our understanding that he is the most appropriate person to discuss Company matters with respect to the Project from the Shanghai side and (iii) due to our understanding (as also supported by the minutes of the BOD during the Relevant Period) that he was very active with respect to the Project (both in respect of matters that were linked to the investment in Mozura as well as in respect of matters connected therewith and with SEP). Ganado Advocates and Schoenherr Attorneys at Law were interviewed as they acted as Maltese and Montenegrin counsel for Enemalta with respect to the Project. The information received as a result of the aforementioned interviews has been included, and has informed our understanding expressed, in this Report.

### *1.3 Disclaimers & Qualifications*

- 1.3.1 This Report has been prepared for the exclusive use and benefit of the addressee(s) and solely for the purpose for which it is provided. Unless we provide express prior written consent, no part of this report should be reproduced, distributed or communicated to any third party.
- 1.3.2 Every attempt has been made to ensure that the information contained in this Report is correct. MTCV is not responsible for any errors or omissions in this Report or for the results obtained from the use of any of the information contained in this Report. All information contained herein is provided “as is” with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose. In no event, will MTCV, its partners, agents or employees be liable to you or anyone else for any decision made or action taken in reliance on any information in this Report or for any consequential damages.
- 1.3.3 The views, expressions and opinions contained in this Report are based on the information available to MTCV at the time of this Report. MTCV makes no assurance that such views, expressions and opinions are accurate or may not have been supplemented and/or changed on the basis of other information to which MTCV has not been given access.
- 1.3.4 The Report does not comment on tax, financial, accounting, valuations or any other type of fiscal matter and we have not attempted to confirm any flow of funds applicable to the Project. Our assertions as to payments are provided on the basis of contractual obligations, without (unless otherwise specified) verification that such payments were made.
- 1.3.5 The Report is based on the following and is purely limited to the Scope as is qualified by the Relevant Period: (a) the Reviewed Documents, (b) certain public information which is easily accessible; and (c) the Replies.

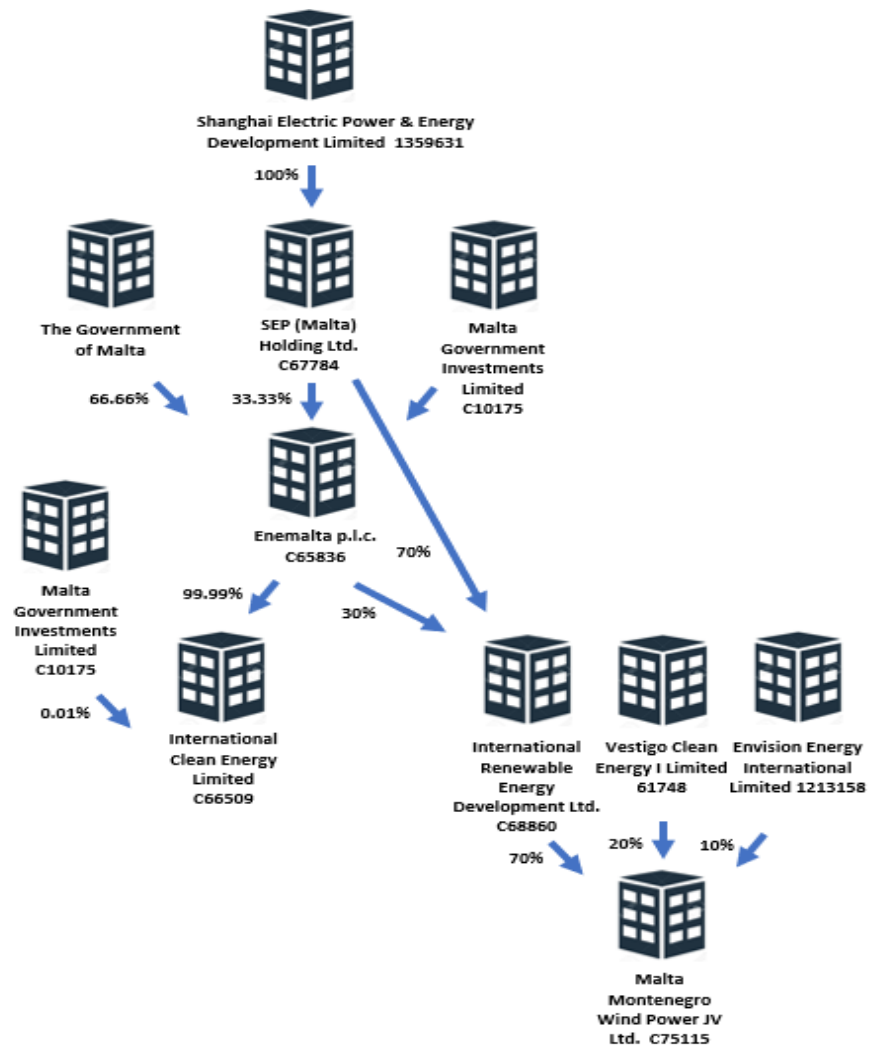


Chapter 2: Mozura and the Enemalta Group

2.1 Mozura

<b>Name</b>	Mozura Wind Park d.o.o. Podgorica
<b>Registration No.</b>	50483964
<b>Address</b>	Bulevar Dzordza Vasingtona, the Capital Plaza VIII Sprat Br.98, Podgorica
<b>Date of Incorporation</b>	22.07.2008
<b>Directors</b>	Kevin Chircop Huang Zhen
<b>Shareholders</b>	Enemalta p.l.c. (10%) Malta Montenegro Wind power JV Limited (90%)

2.2 Enemalta Group



Chapter 3: The Project

3.1 Project Timeline (Key Dates & Documents)

Sec	Date	Event	Material Points	Comments
<b>A</b>	<b>15.12.2014</b>	BOD approves the Project in principle.	Presentation was given on the Project including (a) key players of Consortium, (b) energy market Montenegro, (c) project outline and (d) financial analysis.	Please see corresponding section dealing with corporate governance.
<b>B</b>	<b>16.02.2015</b>	ICE BOD approves the execution of the ICE SPA and authorizes Ing. Frederick Azzopardi to execute the ICE SPA.		
<b>C</b>	<b>20.02.2015</b>	ICE SPA is executed.	<p>Purchase price of Euro 11.3m for the acquisition of the Transfer Shares.</p> <p>Payment mechanism as follows:</p> <ol style="list-style-type: none"> <li>a. Escrow Arrangement of Euro 3.5m</li> <li>b. Balance of Price to be paid on or before Final Payment Date</li> </ol>	<p>Cifidex (as vendor) does not own the Transfer Shares at the time of the ICE SPA. However, note that the Fersa SPA and the Celebic SPA have been executed.</p> <p>Customary warranties and indemnities are included <b>provided</b> that the following is included as a limit to liability for breach of warranties:  <i>“damages suffered by the Purchaser or any third party due to an alleged frustration of expectations or an alleged overpayment for the Transfer Shares”</i>. MTCV has never encountered a similar limitation on liability.</p>
<b>D</b>	<b>14.10.2015</b>	BOD approval for the execution of:		

		<p>a. Transfer Lease Agreement and approval of performance guarantee required in terms of the same.</p> <p>b. Acquisition of the Transfer Shares.</p>		
<i>E</i>	<i>19.10.2015</i>	SPA is executed.	<p>Enemalta replaces ICE as purchaser.</p> <p>Purchase price is <b>reduced</b> to Euro 10.3m for the acquisition of the Transfer Shares.</p> <p>Payment mechanism as follows:</p> <ul style="list-style-type: none"> <li>a. Escrow Arrangement of Euro 3.5m</li> <li>b. Balance of Price to be paid on or before Final Payment Date (as defined therein)</li> </ul> <p>Extension of the date upon which the balance of the purchase price is to be paid subject to the satisfaction or waiver of conditions precedent under the finance documents for the development of the Project to the 31<sup>st</sup> March 2016.</p> <p>Introduction of the acknowledgement that Mozura has various liabilities and undertaking by Cifidex that said liabilities will be discharged on or</p>	Please see corresponding section dealing with corporate governance.

			before Completion Date (as defined therein).	
<i>F</i>	<i>27.10.2015</i>	Lease Agreement is executed. Transfer is	Note that the extensions that Enemalta felt were required for the success of the Project are obtained.	
<i>G</i>	<i>27.10.2015</i>	BWPM Confirmation	All agreements entered into between BWPM and Mozura have been settled and no liabilities exist under the said agreements.	
<i>H</i>	<i>18.11.2015</i>	Celebic Confirmation	Mozura's payment obligation of Euro 800K to Celebic is settled. a. No outstanding claims/liabilities.	
<i>I</i>	<i>23.11.2015</i>	Fersa Confirmation	Obligation to reimburse Fersa the wind measurement fee of Euro 1.675m is settled.  No liabilities or claims remaining.	
<i>J</i>	<i>25.11.2015</i>	Fersa Confirmation	Mozura has discharged all payment obligations under the Management Agreement.  Management Agreement terminated.  Mozura has fully discharged its payment obligations or these have been waived.	
<i>K</i>	<i>10.12.2015</i>	Cifidex Assignment of Sale Claims executed	Cifidex transfers Transfer Claims (as defined in the SPA) to Enemalta.	Note that the definition of Transfer Claims in the SPA is vague and does not provide any guidance by way of specific claims/amounts but does however provide the security that Cifidex does not have any claims against Mozura,

				being the target company.
<b>L</b>	<b>10.12.2015</b>	Cifidex Statement (4.4 to 4.10 of SPA)	<p>Fersa's statement 23.11.2015 in relation to costs of wind measurement.</p> <p>BWMP's statement 27.10.2015 in relation to various agreements.</p> <p>Celebic's statement 18.11.2015 – Annex 1.</p> <p>Fersa's statement 25.11.2015 in relation to Management Agreement.</p> <p>Execution of Mozura's financial statements for the FYE 2013, 2014 and 1<sup>st</sup> quarter 2015 audited by PricewaterhouseCoopers</p>	
<b>M</b>	<b>10.12.2015</b>	Cifidex Statement -No Disposal/Encumbrance	Transfer Shares not subject to encumbrance.	
<b>N</b>	<b>28.12.2015</b>	Addendum 1 is executed	Concept of Escrow Amount is removed and replaced with 'Initial Amount' (also Euro 3.5m) which is paid within one (1) day of evidence from Montenegro Registry evidencing transfer of Transfer Shares to Enemalta.	
<b>O</b>	<b>28.12.2015</b>	Share Sale Agreement is executed.	Consideration is indicated as Euro 3.5m	This is incorrect. Purchase Price is Euro 10.3m. Please see corresponding section dealing with corporate governance.
<b>P</b>	<b>28.12.2015</b>	Cifidex Confirmation	Acquisition of 99% stake in Mozura held by Fersa.	Please see corresponding section dealing with

			<p>Acquisition of 1% stake in Mozura held by Celebic.</p> <p>Consideration paid by Cifidex Euro 2.9m “according to Fersa’s press release”.</p> <p>Obligation to reimburse Fersa the wind measurement fee of Euro 1.675m.</p> <p>Mozura’s payment obligation of Euro 1.4m to BWPM.</p> <p>Mozura’s payment obligation of Euro 800K to Celebic.</p> <p>Mozura’s payment obligation of Euro 783K to Fersa.</p> <p>Significant resources deployed to develop project from ‘almost dead’ to ‘ready to build’.</p>	<p>corporate governance.</p>
<b>Q</b>	<b>04.01.2016</b>	Cifidex Confirmation	<p>Lease Transfer Agreement executed.</p> <p>No Material Adverse Change.</p>	<p>Enemalta proceeds with the payment of the Initial Amount without receipt of originals of DD documentation</p>
<b>R</b>	<b>06.04.2016</b>	JVCO is incorporated	<p>Shareholding as follows:</p> <ul style="list-style-type: none"> <li>- IREDL: 70% (A Shareholder);</li> <li>- Vestigo: 20% (B Shareholder);</li> <li>- Envision: 10% (C Shareholder).</li> </ul> <p>Appointment of Directors:</p> <ul style="list-style-type: none"> <li>- A Shareholder may appoint three (3) directors (one of</li> </ul>	<p>IREDL’s investment reflected in representation and control with respect to JVCO.</p>

			<p>which is the Chairman).</p> <ul style="list-style-type: none"> <li>- B Shareholder may appoint one (1) director</li> <li>- C Shareholder may appoint one (1) director.</li> </ul> <p>Legal and judicial representation vested in any A Director.</p> <p>Quorum at three (3) directors which must include a director from each class.</p> <p>Board decision passed by simple majority of the board save for board reserved matters which are passed by unanimity and the written consent of Enemalta).</p>	
<i>S</i>	<i>16.04.2016</i>	Addendum 2 is executed.	<p>Method of Payment with respect to the balance of the purchase price is changed:</p> <ul style="list-style-type: none"> <li>- Enemalta to pay Euro 5.44m by 19.04.2016; and</li> <li>- Vestigo to pay Euro 1.36m by 25.04.2016 (the “<b>Vestigo Assumption</b>”)</li> </ul>	
<i>T</i>	<i>19.04.2016</i>	Consortium Agreement is executed	<p>Agreement that share capital of JVCO is to be increased to Euro 6m upon opening of bank account. This is to be subscribed as follows:</p> <ul style="list-style-type: none"> <li>- IREDL: Euro 4.2m;</li> <li>- Vestigo: Euro 1.2m; and</li> <li>- Envision: Euro 600K.</li> </ul>	

			<p>Enemalta to provide loan to JVCO: Euro 291.5K (guaranteed by Consortium Members)</p> <p>Once properly capitalised, JVCO to acquire the Transfer Shares for an amount equal to the Enemalta Acquisition Price plus Mark-Up as defined within.</p> <p>JVCO to perform the following obligations:</p> <ul style="list-style-type: none"> <li>- pay Euro 10.3m in which Euro 6.8m (the “<b>Balance Price</b>”) is paid in accordance the Payment Agreement and Euro 3.5m is paid to Enemalta in cash;</li> <li>- procure issuance of Bank Guarantee as required by Lease Agreement.</li> <li>- Indemnify Enemalta for all costs, losses, liabilities or obligations which have been or may be incurred by Enemalta with respect to <i>inter alai</i> the acquisition, holding and disposal of the Transfer Shares</li> </ul>	<p>Note return on Enemalta investment and Mark-Up</p> <p>Note that MTCV has been provided with evidence of Enemalta receiving Euro 3,281,860 and not Euro 3.5m</p> <p>Note release of Enemalta from Bank Guarantee</p> <p>Note Mark-Up which is not only calculated on the actual outlay by Enemalta but also the value of the Bank Guarantee</p> <p>Note Indemnification</p>
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			Vestigo to also receive a mark-up in terms of the funds it made available for the purpose of the Bank Guarantee.	
<i>U</i>	<b>19.04.2016</b>	Payment Agreement is executed	<p>JVCO agrees to pay the balance of the price of the Purchase Price to Cifidex (to be considered a payment on account for the corresponding amount owed to Enemalta for the acquisition of the Transfer Shares) (the “<b>Advance Payment</b>”).</p> <p>IREDL and Envision will make this Advance Payment on behalf of the JVCO:</p> <ul style="list-style-type: none"> <li>- IREDL: Euro 4.76m; and</li> <li>- Envision: Euro 680K</li> </ul> <p>Amounts paid by IREDL and Envision (the “<b>Consortium Receivables</b>”) are to be capitalised and converted into share capital in JVCO.</p> <p>Vestigo Assumption to be treated as a debt owing by Enemalta to Vestigo (the “<b>Vestigo Receivable</b>”).</p> <p>JVCO binds itself to acquire the Vestigo Receivable on the date that the JVCO acquires the Transfer Shares for a purchase price equivalent to the Vestigo Receivable.</p>	<p>Transfer amounts paid to Cifidex evidenced through relevant receipts, HSBC (London) irrevocable payment instructions and Enemalta confirmation letter stating that Advance Payment has been received.</p> <p>Consortium Receivables and Vestigo Receivable capitalized as evidenced by relevant Form H registered with MBR on the 18.11.2017.</p>

			<p>Amount owing for the Vestigo Receivable to be capitalised and converted into share capital in JVCO.</p> <p>Standard unwinding provisions in place if inter alia governmental approval is not obtained and/or Transfer Shares not acquired by the JVCO.</p>	
<i>V</i>	<b>07.09.2017</b>	Government of Montenegro approval for transfer of 90% of the share capital of Mozura from Enemalta to JVCO		
<i>W</i>	<b>15.07.2017</b>	Definitive Agreement is executed	Provides that Mozura shall assume all rights and obligations of the Lease Agreement.	Note that Enemalta remains responsible under the Lease Agreement with indemnity provided by Consortium Members.
<i>X</i>	<b>20.09.2017</b>	JVCO SPA is executed	<p>JVCO acquires 90% of Mozura.</p> <p>Enemalta remains jointly and severally liable for obligations of Mozura</p> <p>Further changes in shareholding structure of Mozura requires consent of Government of Montenegro</p>	Note corresponding indemnity for Enemalta in Consortium/Payment Agreement

## Chapter 4: Corporate Governance

### 4.1 General

- 4.1.1 As a result of our review of the Relevant Documents and Replies, it is our understanding that Enemalta does not, nor did it at the time of the Project, have any particular policies, procedures and/or guidelines in place in order to properly guide itself as to its conduct when carrying out investments, including with respect to the Project. It follows therefore that MTCV is unable to opine on whether Enemalta's internal policies and procedures relating to any particular investment process were of a particular standard, nor, naturally, whether there was adherence to any particular policies, procedures and/or guidelines with respect to the Project.
- 4.1.2 Therefore, MTCV provides, on a 'by exception' basis only, those issues which we regard as material when examining the conduct of Enemalta in undertaking the Project as compared to that which would typically be expected of a company of Enemalta's size, standing and public function when undertaking a similar investment.
- 4.1.3 On the basis of generally accepted practices and on the guidance provided by the OECD Guidelines it is noted that boards of State-Owned Enterprises ("SOEs") should "have the necessary authorities, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management". With respect to the Project, this translates into:
- (a) the requirement that the BOD is made up of persons with the relevant competence and experience;
  - (b) the requirement that the BOD is awarded the independence necessary to challenge the Project;
  - (c) the requirement that the BOD is given the necessary information and time in order to allow it to properly evaluate the risks associated with the Project; and
  - (d) the establishment of specialised committees composed of independent and qualified members to assist the BOD in its determination of the Project.
- 4.1.4 Below, we address the points contained in 4.1.3 individually as well as make specific reference to *Sections* which correspond, in numbering, to the sections in *Chapter 3 The Project*.

### 4.2 Competence, Experience and Independence

- 4.2.1 Enemalta was incorporated on the 01<sup>st</sup> July 2014. As an SOE, Enemalta faces corporate governance challenges additional to those faced by other companies, even those that are listed, because of the distinct type of ownership that arises as a result of the State as owner. State ownership typically brings with it a 'political oversight' that may subsequently impact the composition of the board of directors both in terms of (i) appointees that may or may not have the necessary competence and experience with respect to the particular business of the company to which they are appointed to act as directors; as well as (ii) ensuring that those appointees are able to exercise independent judgment, free from imposition from those that have appointed them.

- 4.2.2 A review of the minutes provided to MTCV by Enemalta as well as the Interviews and Replies indicate unequivocally that there is a certain level of competence and experience within certain key members of management and the BOD. However, as is typical of many SOEs, a certain mix of qualities, expertise and backgrounds is also noted amongst other members that may not necessarily be relevant in particular to the core business of Enemalta. It is therefore MTCV's view that, as is common in other companies, whilst a particular person's competence and/or experience as relevant to the particular appointment is subjective, with respect to the BOD, not all members engaged at board level might have possessed the all round degree of competence and experience that one would typically expect of a competent and experienced director.
- 4.2.3 Insofar as independence is concerned, it is to be noted that, also typical of many SOEs, many of the appointees to the BOD are appointed due to 'political oversight' and that consequently this has the potential to lead to a lack of independence (or, the perception of the same) exercised by the said appointee. As also mentioned, the MOU indicates that Enemalta (and therefore the BOD) was required to source renewable projects. However given what resulted from the Interviews, that is, that the Project was introduced to both Enemalta as well as Shanghai Electric by the responsible minister who had initially identified the Project, it is also important to note and commendable, on the part of Enemalta and its BOD and management, to state that the very fact that the Project had been identified in this way did not result in the Project being implemented blindly and without the necessary follow up scrutiny that was eventually undertaken by Enemalta, as is evidenced through *inter alia* the Due Diligence Reports and the engagement of Ganado Advocates as legal counsel, and the following of the advice resulting from such engagements.

#### 4.3 *Information and Time*

- 4.3.1 It is to be noted that throughout the Relevant Period various Due Diligence Reports were commissioned, some having a direct impact on the drafting of subsequent documents. MTCV was unable to source any BOD minutes in which any of the Due Diligence Reports were discussed (save for the Accenture Report that was presented at the initial meeting of the BOD on the 15<sup>th</sup> December 2014). MTCV would have expected that the Due Diligence Reports be discussed throughout the Relevant Period and that generally a greater interest in the Project be taken by the BOD. Nevertheless, one should point out that, despite MTCV being unable to identify minutes in which these Due Diligence Reports were discussed, it is evident, from the evolution of the transaction surrounding the acquisition of the Transfer Shares, that key issues identified (for example in the K/N DD Report) and subsequently confirmed (for example in the PWC Report) were taken on board and addressed, independently of whether this was at the insistence of the BOD or Enemalta's legal counsel or both.
- 4.3.2 MTCV was unable to source any minutes in which the Cifidex Acquisition Price was discussed. As we note in this Report, the Cifidex Acquisition Price was publicly disclosed on the 13<sup>th</sup> February 2015 and one would have expected (i) Enemalta to have been aware of such announcement and (ii) for the BOD to have discussed the said announcement. Indeed, it would have been expected that the Cifidex Acquisition Price be discussed at BOD level and that the BOD arrive at a position of relevant comfort with respect to the Enemalta Purchase Price, if for no other reason than justification on the basis of the Mozura Liabilities. On the 07<sup>th</sup> December 2020, MTCV put the

following question to the Company which was then repeated as part of one of the Interviews:

*“Can you please confirm whether the Cifidex Acquisition Price was ever discussed at any level?”*

4.3.3 During an Interview, MTCV was informed that the Cifidex Acquisition Price was not discussed at BOD level. This is surprising, as this should have been considered as a fundamental development and would therefore indicate a weakness with respect to BOD’s effective oversight of the Project.

4.3.4 Please also refer to *Project Timeline (Key Dates & Documents) Section A*. below.

#### *4.4 Committees*

4.4.1 As part of the Replies, on the 7<sup>th</sup> December 2020 the Company confirmed that, at the time, *“the prevailing practice was that any investment opportunities were brought to the board of directors and the necessary analysis was done at that level based on reports presented to the same board”*.

4.4.2 The establishment of committees purposely tasked with investment and made up of individuals with the necessary competence and experience would improve boardroom efficiency and support the board in its dealings. MTCV would have expected that, due to Enemalta’s size, standing and public function, a committee would have been specifically established for the Project. MTCV understands that Enemalta is now currently in the process of setting up such a committee for any future investments.

#### *4.5 Project Timeline (Key Dates & Documents) Section A*

4.5.1 It appears that the meeting held on the 15<sup>th</sup> December 2014 is the first meeting of the BOD at which the Project was formally discussed. The applicable minute simply reads *“the board discussed the project and (i) resolved to approve it in principle.”* As a result of the telegraphic manner by which the minutes were taken, MTCV is unable to determine what the discussions consisted of and is furthermore unable to determine whether, although it would have been expected, the BOD questioned the Project. Neither is MTCV able to positively conclude that the aforesaid manner by which the minutes were taken conceals the fact that no serious debate was in fact entertained at BOD level. MTCV feels that no formal determination of whether the BOD only acted as a rubber stamp or otherwise can be reached. That said, however, MTCV notes that the Accenture Report in fact provides the level of detail one would expect for a similar project, particularly at its inception. Enemalta confirmed that the Accenture Report had been provided to the BOD prior to the BOD meeting and that it is this report that was presented.

4.5.2 MTCV also noted the MOU which provides *inter alia* that the *“Parties shall support SEP and Enemalta in setting up joint ventures and collaborate in developing solar photovoltaic power projects in Malta and abroad”*. MTCV also noted the explanations provided in one of the Interviews with respect to the Government of Malta’s obligations under the MOU and in particular to assist in identifying a number of potential photovoltaic and wind power generation projects (both in Malta as well as in Europe),

and that the assessment of these projects was destined to be carried out by the Chinese partner under the MOU. Furthermore, whilst this is not to imply that the BOD was not to examine the project independently and on the merits of the Project, it would appear that, as noted in the section addressing independence, the presentation of the Project from the responsible ministry would mean that, save for serious red flags, and subject to Chinese investor approval, the Project was one that would receive Enemalta investment.

- 4.5.3 It would therefore appear that at least insofar as an *in principle approval* was given, the BOD had the necessary time and documentation to be able to assess the Project.

#### 4.6 *Project Timeline (Key Dates & Documents) Section E*

- 4.6.1 It is to be noted that the K/N DD Report was concluded during the period following the execution of the ICE SPA and before the execution of the SPA. It is further noted that:

- (a) the aforementioned K/N DD Report highlighted a number of issues and made corresponding suggestions. It is to be positively observed that, as a result of the K/N DD Report and, presumably the appointment of Ganado Advocates, these issues were identified and appropriately tackled and/or mitigated in the SPA (as opposed to the ICE SPA). One such example is the recognition and inclusion of the Mozura liabilities and the condition precedent to closing, namely that these be waived. Insofar as corporate governance is concerned, this indicates a thorough process of identifying, examining and mitigating risk, and one which on the face of it cannot be subject to any criticism; and
- (b) the ICE SPA permitted ICE to withdraw from the ICE SPA pending a due diligence to its satisfaction. It was presumed, and subsequently confirmed through the Interviews, that a number of closing conditions included in the ICE SPA, the due diligence condition being one such condition, gave Enemalta the legal comfort it needed to enter into the ICE SPA and to subsequently examine Mozura and the Project in greater detail.

- 4.6.2 MTCV has not been provided with any documentation which explains the manner in which the aforementioned liabilities have been waived. From a commercial standpoint, creditors in general do not simply waive debts owed to them. However, Enemalta has confirmed that no payment was made by Enemalta for any such liabilities to be waived. From a legal perspective, it is sufficient that the purchaser (in this case Enemalta) obtains confirmation in writing from the respective creditors that the liabilities have been settled in full. However, as many of these liabilities relate to consulting services and, further to the fact that MTCV was unable to ascertain whether these consulting services were in fact provided to Mozura as well as required and justified, MTCV was also unable to ascertain whether these services (and the liabilities in general) provided good and justifiable value for Mozura. This point becomes crucial when determining whether there is any justification for the Enemalta Acquisition Price as compared to the Cifidex Acquisition Price as presumably, these liabilities (if they represent an exchange of valuable services for Mozura) would go some way toward justifying the Enemalta Acquisition Price as compared to the Cifidex Acquisition Price.

- 4.6.3 Furthermore, when compared to the terms of the ICE SPA, the SPA *inter alia* provides for an extension with respect to the Payment Date (as defined therein) as well as a

reduction of the Enemalta Acquisition Price from the Euro 11.3m originally agreed to in the ICE SPA to Euro 10.3m in the SPA. During an Interview, MTCV asked for an explanation of the reduction in the Enemalta Acquisition Price as well as the identity of the natural person/s with whom Enemalta negotiated with on behalf of Cifidex, as a negotiation is apparent from the evolution of the transaction concerning the sale and acquisition of the Transfer Shares. Through the Interviews, MTCV was informed that the aforementioned reduction in the Enemalta Acquisition Price was achieved by Shanghai Electric dealing directly with Cifidex on the basis of a number of issues raised, one such issue being the discovery of the Cifidex Acquisition Price. It was further disclosed that the natural person representing Cifidex was a certain Mr. Stefano Paniello who it appears, was empowered to negotiate on behalf of his principal, save with respect to the Enemalta Acquisition Price. The Interviews confirmed that no other natural person appeared on behalf of Cifidex or was known to Enemalta to be connected to or to have been acting for and on behalf of Cifidex (other than document signatories).

#### 4.7 *Project Timeline (Key Dates & Documents) Section O and P*

4.7.1 MTCV has not seen evidence showing transfer of title of the Transfer Shares from Celebic and Fersa to Cifidex prior to the execution of the Share Sale Agreement and, it is its view, that this is a fundamental aspect to the entire transaction. On the 7<sup>th</sup> December 2020, MTCV sent the following information requests to Enemalta

- *“Could you please provide the information that was provided to fulfil the below condition precedent in the Cifidex/ICE SPA: “The Vendor having demonstrated to the reasonable satisfaction of the Purchaser it has the right to transfer the Transfer Shares to the Purchaser under this Agreement.”*
- *“We note statements by Fersa/Celebic re transfer of shares to Cifidex, however is there documentation that shows chain of title of the shares in the Target Company passing to Cifidex? How did Enemalta confirm that Vendor owned the Target Company on completion?”*

4.7.2 As part of the Replies, MTCV was provided with the Fersa SPA and the Celebic SPA. These documents indicate that Cifidex had indeed contracted with Fersa and Celebic for the sale and acquisition of the Transfer Shares, however this is on a promise of sale (and not final transfer) basis. Subsequently, MTCV was informed that evidence showing registration of Cifidex as the registered owner of the Transfer Shares prior to the Share Sale Agreement is not available. Therefore, MTCV is unable to formally opine on the matter regarding the chain of title of the Transfer Shares.

4.7.3 It is also to be noted that, whilst deliberated at BOD level, Enemalta seems to have undertaken a risk, albeit calculated, with respect to the time at which the Share Sale Agreement was executed. The Consortium Agreement and Payment Agreement are dated 19<sup>th</sup> April 2016, whilst the Share Sale Agreement is dated 28<sup>th</sup> December 2015. Therefore, for the interim period and without, at that stage, yet knowing whether the Consortium Members would eventually agree to be part of the Project, Enemalta was solely responsible for (i) all obligations arising out of the Lease (as this had been transferred to Enemalta on the 27<sup>th</sup> October 2015), (ii) all obligations arising out of sole ownership of Mozura, as well as (iii) the payment of the Enemalta Acquisition Price. However, as has been confirmed by Enemalta and as also noted in this Report, the BOD had discussed, and was comfortable with, being solely responsible for the Project



(please see Section 4.9.2). Indeed, the confidence that the Project could be undertaken solely by Enemalta resulted in Enemalta being able to secure a guaranteed rate of return of 9.4% on its investment in the Project, without which, Enemalta was ultimately not prepared to relinquish any of its shareholding in Mozura.

- 4.7.4 Lastly, MTCV informed the Company that it resulted from its examination of the Reviewed Documents that the Share Sale Agreement made reference to an amount of Euro 3.5m as representing the purchase price for the Transfer Shares as opposed to the Enemalta Acquisition Price contained in the SPA and sought clarity with respect to the same. As a result, MTCV was provided with email correspondence dating back to December 2015 between *inter alia* Ganado Advocates, Schoenherr Attorneys at Law, Cifidex representative Stefano Panniello, and members of Enemalta (the “**Correspondence**”).
- 4.7.5 It is noted from the Correspondence that whilst all of the entities referred to in the immediately preceding paragraph are in copy, exchanges are primarily between Schoenherr Attorneys at Law and Cifidex representative Stefano Panniello. From an examination of same, it is clear that confidentiality was of significant importance to Cifidex and that furthermore Cifidex sought to avoid disclosure of the entire price payable by Enemalta for the Transfer Shares. Indeed the Correspondence considers the matter of publicity of the Share Sale Agreement and, once it is confirmed that the Share Sale Agreement would have been accessible to the public, it appears as though the Share Sale Agreement was intentionally submitted with the reference to Euro 3.5 m as the purchase price, only after the earlier submission had been rejected by the Montenegro Company Registry office precisely for it having failed to disclose any price whatsoever.
- 4.7.6 MTCV, through the Interviews, further sought to understand the reason behind the insertion of Euro 3.5m in the Share Sale Agreement. Accordingly, MTCV was informed (i) that this matter would have been exclusively dealt with by legal counsel, (ii) by Ganado Advocates, that this matter would have been dealt with by Schoenherr Attorneys at Law, as Enemalta legal counsel in Montenegro, and (iii) by Schoenherr Attorneys at Law, that they did not believe that the under reporting of the purchase price had an impact on Enemalta as the purchaser, but could not recall the reason behind such under reporting of the purchase price for the Transfer Shares. Schoenherr further informed MTCV that the under reporting of the purchase price would not, in terms of Montenegrin Law, have any impact on the transaction concluding the acquisition of the shares or its legal validity and neither would it have any unfavourable tax consequences on Enemalta.
- 4.7.7 As a result, MTCV (i) was unable to obtain any form of clarity with respect to the insertion of Euro 3.5m as a purchase price for the Transfer Shares and in particular the reason therefore, and (ii) in the circumstances, finds such insertion, at the very least, to be questionable and, on the basis of the information provided to MTCV both uncalled for as well as inappropriate. Indeed, MTCV has been unable to determine a justifiable reason that provides any value to Enemalta why it should have been acceptable to it to record the price at an undervalue to the true price that had been previously agreed to in terms of the SPA.



#### 4.8 *Project Timeline (Key Dates & Documents) Section W*

4.8.1 It is to be noted that by virtue of the Lease Transfer Agreement, the Lease Agreement was transferred to Enemalta. The Definitive Agreement provides that Mozura shall assume all rights and obligations under the Lease Agreement, however MTCV was not provided with the notification to the SME, of the transfer of the Lease to Mozura, which MTCV has been led to believe would have been required, and we cannot therefore confirm whether the transfer of the Lease Agreement to Mozura has in fact been perfected.

#### 4.9 *Other*

4.9.1 MTCV notes that (i) the Lease Transfer Agreement (through which Enemalta acquired the Lease) was executed prior to the execution of the Share Sale Agreement (the latter through which Enemalta acquired the Transfer Shares) and that (ii) the ICE SPA, the SPA, the Lease Transfer Agreement and the Share Sale Agreement were executed without any confirmation and undertaking from the Consortium Members and/or SEP that they will be involved in the Project. In this regard it is noted that a significant risk was assumed by Enemalta as:

- (a) Enemalta had assumed the Lease without ownership of Mozura and strictly speaking, this meant that Enemalta could have been in a situation in which it was bound by the Lease without ownership of the company that was capable of carrying out the Project. This risk is however mitigated by the fact that the Lease Transfer Agreement (although not executed by Cifidex, but executed by the then owners of the Transfer Shares) required transfer of the Transfer Shares to Enemalta within ninety (90) days of the Lease Transfer Agreement; and
- (b) although the Consortium Agreement and Payment Agreement were eventually executed on the 16th April 2016, it was Enemalta alone that would have been responsible for the Enemalta Acquisition Price, the obligations arising from ownership of the Transfer Shares as well as all obligations with respect to the Lease. MTCV was able to source minutes at which the above was discussed.

4.9.2 That said, however, it is also appropriate to point out that the assumption of the aforesaid considerable business risk was not uncalculated. MTCV sought further explanation about these matters through one of the Interviews. Enemalta informed MTCV that, on the basis of the returns expected from the Project (based on the financial projections) and the capital expenditure required, Enemalta was comfortable with the possibility that the Project may be one that would be solely carried out by Enemalta. It appeared to make little difference, given that Enemalta was convinced of the financial viability of the Project, whether this was entered into indirectly through a joint venture, in addition to a small direct participation (as the Project was indeed concluded) or whether it was to remain Enemalta's exclusively. Moreover, Enemalta was acutely aware that Shanghai Electric was also very interested in the Project and that it was felt that the question as to whether it would come on board was more a matter of timing than anything else.

4.9.3 Please also see Chapter 6 which provides the due diligence aspect in relation to corporate governance.

4.9 In conclusion, on the assessment required in respect of the matter referred to in section 1.1(a) above, it has to be stated that for the several reasons explained above, (a) the internal policies and procedures adopted by Enemalta, relating to the investment process, cannot be said to have been of the highest standards, put quite simply, because the said policies and procedures did not formally exist in written form, and (b) there was consequently no formal adherence to any written policies and procedures by Enemalta officials during the Project's investment process.

Chapter 5: *Enemalta Acquisition Price and the Cifidex Acquisition Price*

- 5.1 From publicly available information, the first disclosure MTCV was able to source of the Cifidex Acquisition Price was on the 13<sup>th</sup> February 2015. MTCV was unable to source any BOD minutes provided as part of the Reviewed Documentation in which the Cifidex Acquisition Price was discussed.
- 5.2 As part of a document request, MTCV requested the documents through which Enemalta confirmed that Cifidex had acquired the Transfer Shares prior to the execution of the Sale Share Agreement. MTCV was provided with the Fersa SPA and the Celebic SPA. Note that (i) these documents were, in isolation, insufficient to confirm ownership or knowledge of the Cifidex Acquisition Price as these are effectively promises of sale and (ii) the purchase price for the acquisition of the Transfer Shares by Cifidex was redacted.
- 5.3 By means of a letter dated 28<sup>th</sup> December 2015 sent by Cifidex and addressed to Enemalta and SEP, Cifidex acknowledges its purchase of 99% of Mozura from Fersa and that “according to Fersa’s press release, purchase price was of EUR 2.9m”. We fail to understand the relevance of this inclusion, particularly as it is qualified by “*according to Fersa’s press release...*”. The Share Sale Agreement is dated 28<sup>th</sup> December 2015 and as the aforementioned letter provides a number of confirmations requested in order for Enemalta to enter the Share Sale Agreement, MTCV presumes that the letter was received prior to the execution of the Share Sale Agreement and that therefore Enemalta was aware of the Cifidex Acquisition Price, at least on the date of the Share Sale Agreement.
- 5.4 During the Interviews, MTCV sought clarification as to whether the Cifidex Acquisition Price had ever been discussed by Enemalta following the aforementioned publicly available information referred to in section 5.1 above and whether consequently Enemalta was aware of the Cifidex Acquisition Price at any time during the Relevant Period but before the 28<sup>th</sup> December 2015. During the Interviews, it was confirmed that Enemalta became aware of the Cifidex Acquisition Price around the date of publicly available information referred to in Section 5.1. Therefore, MTCV is unable to provide an opinion on whether Enemalta was aware of the Cifidex Acquisition Price at the time of execution of the ICE SPA.
- 5.5 We cannot comment on whether the Enemalta Acquisition Price, when compared to the Cifidex Acquisition Price, was justified from a business rationale perspective. This is/was purely a matter for the BOD. However, at a high level, we note the following:

<b>Cifidex Acq. Price</b>	<b>Euro 2.9m</b>	(P)
<b>Enemalta Acq. Price</b>	<b>Euro 10.3m</b>	(E)
<b>Mozura Liabilities</b>	<b>Euro 4,658m*</b>	
Fersa	Euro 1.675m	(P)
BWPM	Euro 1.4m	(P)
Celebic	Euro 800K	(P)
Fersa	Euro 783K	(P)

<b>Cifidex Acq. Price + value of Mozura Liabilities</b>	<b>Euro 7,558m</b>	
<b>Balance (Enemalta Acq. Price)</b>	<b>Euro 2,742m*</b>	
<p>* Mozura Liabilities were waived by counterparties.</p> <p>* We also note the following: (a) Mozura share capital, (b) Significant resources deployed to develop project from ‘almost dead’ to ‘ready to build’ (although there is no guidance as to what these relate to and the associated monetary value), (c) the Lease and (d) the Mark-Up.</p> <p>In the above context, it is important to note that, with respect to the ICE SPA, no mention of Mozura Liabilities was made and the Cifidex Acquisition Price was set at Euro 11.3m. Therefore, the above mentioned matters, which may justify the Enemalta Acquisition Price when compared to the Cifidex Acquisition Price, were presumably unknown at the time of execution of the ICE SPA and, taken alone, would constitute a material weakness from a due diligence perspective and therefore BOD oversight.</p> <p>However, it is also pertinent to point out that the ICE SPA was, in addition to a number of other conditions precedent, subject to a full due diligence carried out to the satisfaction of Enemalta. Whilst it is not within our Scope to determine the conditions required for closing of the ICE SPA, it is fair to assume that the conditions precedent were wide enough to allow Enemalta not to close in terms of the ICE SPA. This may have given the BOD sufficient comfort to approve the Project, albeit in principle, at such an early stage and without sufficient due diligence having been carried out.</p> <p>MTCV also notes from what was explained by one of the Interviewees that it was through the negotiations carried out by Shanghai Electric with Mr. Stefano Paniello on behalf of Cifidex that the reduction in price from Euro 11.3 m to Euro 10.3m was achieved. The same Interviewee was not able to confirm with accuracy the particular reasons for obtaining the discount as these discussions were often carried out by the financial people at Shanghai Electric and not by him.</p> <p>However, please also see 4.6 Project Timeline (Key Dates &amp; Documents) Section E</p>		(G) (H) (I) (J)

5.6 In conclusion, on the assessment required in respect of the matter referred to in section 1.1(b) above, it has to be stated that (a) there is no doubt that there was knowledge

within Enemalta that Cifidex was in the first place still in the process of itself acquiring the investment; that (b) at some point following the publicly available information referred to in section 5.1 above, there appears to have been knowledge within Enemalta that this investment was originally acquired by Cifidex for the Cifidex Acquisition Price and that (c) MTCV is unable to comment about the business rationale behind the acquisition at the Enemalta Acquisition Price beyond that which is already provided in section 5.5 above.

## Chapter 6: Beneficial Ownership in Mozura

6.1 MTCV is unable to ascertain whether the BOD or management were aware of the beneficial ownership of Cifidex. However, reference is made to slide 8 of a PowerPoint titled '*timeline\_updated*' provided to MTCV in which the following is identified: "the due diligence on 'Seller' to be carried out by Shanghai Electric Power". As a result of a review of the Reviewed Documents, on the 7<sup>th</sup> December 2020, MTCV put the following question to Enemalta:

- *Can you please confirm that Enemalta does not have the due diligence on 'Seller' carried out by Shanghai Electric Power (referred to on slide 8 of power point titled 'timeline\_updated').*

6.2 On the 09<sup>th</sup> December 2020, the Company provided the following Reply:

- *The due diligence was done on the Project*

Indeed this reply was also corroborated by a reply provided during one of the Interviews where it was indicated that the due diligence exercises brought undertaken by Shanghai Electric were focused on and concerned themselves mainly with the financial and technical aspects of the Project (and not the ownership trail).

6.3 There is no specific legislative guidance as to whether a company, when entering into any transaction, should carry out searches in order to identify the beneficial owners of the counterparty. Whilst there is no express legal obligation to do so, this becomes a matter of best practice and requirements in terms of important considerations relevant to the particular transaction.

6.4 In commercial transactions, due diligence exercises are conducted by a buyer, often with the co-operation of the seller, to avoid a bad business transaction and the assumption of unexpected liabilities. By conducting proper due diligence, a buyer is able to evaluate the strengths and weaknesses of a business transaction and avoid unforeseen risks. Relevant to the case at hand is the fact that a proper due diligence exercise may put directors on alert and note anything untoward present within any given transaction. Although this has recently become more important, in principle, due diligence exercises are normally required to be conducted as part of the directors' duty to take informed decisions on transactions which are crucial not only to the company's future growth but also to the maintenance of its good reputation.

6.5 Indeed, particularly with respect to an acquisition of assets (in this case the Transfer Shares), the primary legal considerations are (i) whether the seller has legal, valid and unencumbered title to the assets to be sold (in this regard please see 4.7 Project Timeline (Key Dates & Documents) Section O and P); and (ii) whether the seller is capable of disposing of those assets and performing the obligations in any of the relevant transaction documents. However, considerations other than strictly legal ones may be of interest to the directors of an acquiring company, especially if that company is an SOE. According to the Guidelines, boards of SOEs should apply high ethical standards and adopt internal controls to prevent fraud and corruption, especially since they may be subject to particular pressures given the interaction of business considerations with political and public policy ones.

- 6.6 Where a SOE uses public funds to further its investment objectives, one material consideration which the board would be required to make prior to investing relates to the identity of the persons that the SOE is dealing with. Such identification usually leads to a determination as to whether those persons are trustworthy and have the credentials and business experience commensurate with the role they are playing in the particular transaction, whether they are in any way connected to public officials, or whether they represent or have dealings with third-parties who in turn have connections with public officials. This process of identification is crucial to any due diligence exercise and would normally be one of the measures taken by SOEs to prevent against the misuse of public funds. It certainly should be the first step taken to prevent a counterparty from acting as an illicit channel for third-parties.
- 6.7 Of particular relevance may be the existence of any prior or ongoing dealings which the enterprise may have had or has, either directly or indirectly, with the counterparty, as well as any of its shareholders, directors or associated parties. Within the context of this particular case, the BOD presumably knew of the relevant persons forming part of one of the winning bidders in a public tendering process regarding the award of a significant energy supply contract by Enemalta. Had the BOD been aware that that person may have also been the beneficial owner of Cifidex, this would have enabled the BOD to question the Project and the links between the two. The mere fact that the BOD was not aware of the conflict of interests or potential conflicts of interest that might arise as a result of the alleged identity being disclosed, highlights the importance of (and the consequence of not having carried out) an appropriate due diligence exercise. Moreover, from a simple business perspective, parties typically prefer to know with whom they are dealing.
- 6.8 Prior to the purchase of the Transfer Shares, MTCV would have expected a legal opinion from a reputable law firm in the jurisdiction of the vendor confirming whether the shares in Cifidex could be legally sold without hindrance and detailing the ownership structure of Cifidex. Depending on the structure sitting above Cifidex, such legal opinion may have identified the beneficial owner of Cifidex, as the firm issuing the report would need to determine whether, in terms of the memorandum and articles of association of Cifidex, any form of approval, apart from board approval, is required for the disposal of assets.
- 6.9 In conclusion, on the assessment required in respect of the matter referred to in section 1.1(c) above, it has to be stated that it appears that Enemalta was not aware of the identity of the beneficial owner of Cifidex and therefore, depending on an eventual positive confirmation of the identity of the beneficial owner of Cifidex, that Enemalta was acquiring an investment from an entity with a beneficial owner that may have sat on the board of Electrogas Malta Limited. It follows therefore that in accordance with good practice and due to the particular nature of Enemalta and the public interest element involved, MTCV would have expected more rigorous due diligence procedures to have been conducted by Enemalta with respect to any entity that it is considering dealing with in order to allow it to identify any potential conflicts of interest and any other material issues. Despite the fact that Enemalta's investment in the Project as at the date of this Report is as indicated in Section 2.2. of this Report (and therefore it might be arguable that the level of due diligence carried out relative to the structure and investment size was appropriate), the opinion stated in this Section 6 is provided on the

basis that prior to the investment by the Consortium Members, Enemalta was directly responsible for the entirety of the Project and accordingly would have done well to apply more rigorous due diligence procedures.



## Chapter 7: Board of Directors

- 7.1 The final question forming part of the Scope requested of MTCV is to identify “*if any of the current board of directors of Enemalta had a decision making role at the time of the alleged wrongdoing and if it were to transpire that they were directly involved (in the wrongdoing), the possible effects on the standing or position of Enemalta today*”. Please note the following.
- 7.2 As at the date of this Report, the following members of the current BOD were members of the BOD during the Relevant Period:
- Mr. Kevin Chircop;
  - Dr. Ingrid Zammit Young (appointed 9<sup>th</sup> August 2017) – technically within the Relevant Period, even though her office commenced right at the tail end of the Relevant Period;
  - Mr. Salvu Sant;
  - Mr. Gao Yongxin (appointed 30 December 2014);

We also note that Mr. Sheng Baojie, whilst not a member of the BOD during the Relevant Period, was considerably involved in the Project during the Relevant Period and does sit on the BOD at the time of this Report.

- 7.3 It is important to note that it is a main principle of company law that the members on any particular board act as a collective and are therefore, unless any particular fraud or unlawful conduct of a particular individual is identified, all equally responsible for their conduct and the conduct of the Company.
- 7.4 Naturally, when negotiating a particular transaction, the board may delegate responsibilities in such a manner that certain persons would be more involved than others. Nevertheless, those other directors, although not actively involved, must still oversee the entire project, apply an independent mind when voting on the confirmation of the deal and should challenge and ask relevant questions. On the strength of the principle that a board is collectively responsible for the company’s conduct, all directors named above would be, although to varying degrees, responsible for the Project.
- 7.5 The above said, MTCV has not found any evidence of any wrong-doing, carried out by or on behalf of any of the persons referred to in section 7.2 above, that would give rise to a liability on their part. To be clear, it is not to say that there were no failings or shortcomings – as these have been pointed out in other parts of this Report - that were carried out by all or any one of the persons referred to above. But these failings or shortcomings were in the nature of adherence to good corporate governance principles, and in the nature of best practice. As is commonly acknowledged these matters are themselves in a state of constant development and updating.
- 7.6 In conclusion, on the assessment required in respect of the matter referred to in section 1.1(d) above, it has to be stated that it did not transpire, from the Reviewed Documents and Replies, that, during the Relevant Period, any of the current directors in decision making roles were themselves involved in any wrong doing capable of giving rise to liability on their part and consequently their continued performance of their directorship duties would not, on this basis, impact the legal standing or position of Enemalta today.