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27 Symona Petliury str.
Kyiv, Ukraine, 01032
And by email: kanc-gp@gpee.com.ua

Our reference SB/02D03211

Your reference

When calling please ask for Shaul Brazil

Cabinet of Ministers of Ukraine
12/2 Hrushevsky Str.
Kyiv, Ukraine, 01008
FAO: Mr. Denys Shmyhal, Prime Minister of Ukraine
And by email: 1545@ukc.gov.ua

National Power Company "Ukrenergo"
25 Symona Petliury str.
Kyiv, Ukraine, 01032
FAO: Mr. Volodymyr Kudrytskyi, Chairman of the
Management Board
And by email: nec-kanc@ua.energy / ir@ua.energy

3 December 2021

Dear Sirs,

Our client: DTEK Renewables B.V.

1. We advise DTEK Renewables B.V. ("**DTEK**") in relation to criminal offences contrary to the law of England and Wales that it appears may have been committed in connection with the issue of a Eurobond in the amount of \$825 million by JSC NEC Ukrenergo on the London Stock Exchange.
2. We have had sight of the letter dated 30 November 2021 sent to SC Garantovanyi Pokupets ("**GarPok**") by our client's English civil lawyers, Seladore Legal ("**Seladore**"), and we note the actions and information demanded by Seladore at the end of their letter.
3. Those suspected of committing offences are:
 - a. persons responsible for the decisions and conduct of GarPok, in particular Vadim Ulida;
 - b. members of the Cabinet of Ministers of Ukraine;
 - c. any person who entered into an agreement to participate in the conduct identified in paragraphs 10 to 25 below (the "**Factual Background**"); and
 - d. any person who aided, abetted, counselled or procured the conduct identified in the Factual Background;

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України

№1/16/32246-21 н/а

4. The primary offences which it appears may have been committed are:
 - a. possession of criminal property contrary to section 329 of the Proceeds of Crime Act 2002;
 - b. entering into a money laundering arrangement contrary to section 328 of the Proceeds of Crime Act 2002;
 - c. making a false or misleading statement contrary to section 89 of the Financial Services Act 2012;
 - d. fraud by false representation contrary to section 2 of the Fraud Act 2006; and
 - e. fraud by abuse of position contrary to section 4 of the Fraud Act 2006.
5. All these offences are serious indictable crimes punishable by significant terms of imprisonment.
6. Moreover,
 - a. anyone who enters into an agreement to commit these offences is guilty of an offence; and
 - b. any person who aids, abets, counsels or procures the commission of these offences is guilty of an offence.
7. The offences identified in paragraph 6 are also serious indictable crimes punishable by significant terms of imprisonment.
8. Unless the steps required in paragraph 70 below are taken without delay, DTEK intends to invite the Metropolitan Police, the Financial Conduct Authority and the Serious Fraud Office to investigate the conduct identified in the Factual Background. In those circumstances, and from the moment the investigation commenced, the assets of all those subject to investigation would be vulnerable to a restraint order which would have the effect of prohibiting any dealings with those assets in anticipation of confiscation. Moreover, the United Kingdom has entered into a number of treaties providing for mutual legal assistance including for the enforcement overseas of domestic restraint orders.
9. In the event that it becomes necessary, it is also the current intention of DTEK to pursue a private investigation and, if so advised, a private prosecution. A private prosecution would have precisely the same effect as a prosecution conducted by a public prosecutor i.e. any defendant convicted would be vulnerable to a significant term of imprisonment and the confiscation of their assets.

Factual Background

The Ukrainian Renewable Energy Support Scheme

10. Ukraine operates the Renewable Energy Support Scheme (“**the RES Scheme**”) whereby producers eligible for the ‘Feed-in-Tariff’ (“**FiT**”) sell all generated electricity to GarPok, a state-owned entity designated by the government. Pursuant to legislation introduced in 2017, the state guaranteed, to all producers for whom the FiT was set, that it would purchase all supplied electricity at the FiT and that the level of the FiT would remain stable until 31 December 2029.

11. The RES Scheme contemplates that GarPok would fund payments for the FiT by selling electricity purchased from the renewable energy producers to consumers. Any deficit between the level of the FiT and the revenues received by GarPok (“**the FiT deficit**”) would be covered by the tariff to consumers charged by JSC NEC Ukrenergo (“**Ukrenergo**”), the Ukrainian transmission system operator.

The 2019 regulatory regime

12. We understand that a new regulatory regime was established in 2019 pursuant to government Resolutions No. 1471 of 27 December 2017 and No. 641 of 26 April 2019, which dealt with the licensing conditions for conducting business with GarPok, and the activities of GarPok regarding the purchase of electricity at the FiT.
13. We further understand that this regime provides that any indebtedness incurred by GarPok to the renewable energy producers must be settled on a *pro rata* basis (insofar as GarPok has insufficient funds to pay the debts in full).
14. Pursuant to this regulatory regime, we believe that seven operating subsidiaries of DTEK entered into Model Sale and Purchase Agreements with GarPok, namely:
 - a. DTEK NIKOPOLSKA SOLAR FARM LLC
 - b. DTEK BOTIEVSKA WIND FARM LLC
 - c. DTEK PRYMORSKA WIND FARM-2 LLC
 - d. DTEK POKROVSKA SOLAR FARM LLC
 - e. DTEK ORLIVSKA WIND FARM LLC
 - f. DTEK PRYMORSKA WIND FARM LLC
 - g. DTEK TRYFONIVSKA SOLAR FARM LLC

Accrued debt owed to renewable energy producers

15. In the months following the new regulatory regime’s enactment, however, it became evident that the system was not working as intended. By the end of 2019, Ukraine faced difficulties in complying with its FiT regime because the FiT that GarPok owed renewable energy producers substantially exceeded market prices. As such, the level of the tariff charged to consumers by Ukrenergo was insufficient to cover the FiT deficit, and although the Ukrainian government undertook to finance 20% of the FiT deficit directly, it failed to do so.
16. In light of the increasing FiT deficit, on 10 June 2020, the Ukrainian government and industry associations representing some (but not all) renewable energy producers signed a Memorandum of Understanding, pursuant to which, we understand, (a) the parties agreed to a reduction in the level of the FiT for future contracts, and (b) the government undertook to ensure GarPok’s timely payment of the reduced FiT and gradually to repay the debt that had accrued since the beginning of 2020.

17. Notwithstanding the commitments made pursuant to the June 2020 Memorandum of Understanding, the debt owed to renewable energy producers by GarPok continued to accrue. We understand that by June 2021, Ukrenergo owed c. €520 million to GarPok to finance the FiT deficit and by 1 November 2021, GarPok owed c. UAH 27.6 billion (c. \$1 billion) to renewable energy producers, including c. UAH 4.3 billion (c. \$159 million) to the seven DTEK companies.

The Eurobond issue

18. On 11 October 2021, the government of Ukraine enacted Resolution No. 1049 providing for a state guarantee for the purpose of a placement of a Eurobond by Ukrenergo on international markets (the “**Eurobond**”). Pursuant to Clause 5, the Ukrainian Ministry of Energy, together with Ukrenergo and GarPok were required to ensure that the proceeds of the issue would be used to repay debts incurred by GarPok to renewable energy producers.
19. We understand that Resolution No. 1049, read together with Resolutions No. 1471 of 27 December 2017 and No. 641 of 26 April 2019, represents a commitment by the Ukrainian government to use the net proceeds of the subsequent Eurobond issue to repay the debts owed to renewable energy producers, including the seven DTEK companies, on a *pro rata* basis.
20. On 4 November 2021, GarPok issued a press release in which it stated that Ukrenergo expected settlements on the Eurobond to be received on 9 November 2021, and that GarPok was preparing for the immediate transfer of funds in favour of renewable energy producers.
21. The Ukrenergo Eurobond prospectus was published on 5 November 2021. The prospectus related to the issue of \$825 million 6.875% Guaranteed Sustainability-Linked Green Notes due in 2026. Application would be made for the Notes to be admitted to the Official List and admitted to trading on the Main Market of the London Stock Exchange. The Notes would also be displayed on the London Stock Exchange’s Sustainable Bond Market. As regards use of the proceeds of the issue, the prospectus stated (p.99):

An amount equal to the net proceeds of the issue of the Notes, will be used to finance or re-finance, in whole or in part, Eligible Green Projects as described in the Issuer’s Green and Sustainability-Linked Bond Framework. Principally, such amount will be used by the Issuer for the repayment of debt owed to the Guaranteed Buyer, with any remaining proceeds after repayment of the debt owed to the Guaranteed Buyer used to finance or re-finance other Eligible Green Projects.

22. One of the ‘anchor investors’ for the Eurobond was the European Bank for Reconstruction and Development (“**EBRD**”) which subscribed to the Eurobond in the amount of \$75 million. The EBRD has publicly stated that its decision to subscribe was conditional on the provision by the Ukrainian government of a “*clear commitment*” that the proceeds of the Eurobond would be used to pay all of the debts owed to renewable energy producers (including the DTEK companies). Given its status as an ‘anchor investor’, the EBRD’s decision to invest will have strongly influenced other investors seeking exposure to the renewable energy market to subscribe to the Eurobond.

Subsequent events

23. We understand that the Eurobond issue took place on 9 November 2021 and that the net proceeds (c. UAH 19.3 billion) were transferred by Ukrenergo to GarPok on 11 November 2021. We are instructed

that on that day, the seven DTEK companies each wrote to GarPok to enquire whether and/or when they would receive payment of outstanding debts (and if so, how much).

24. On 12 November 2021, GarPok replied to confirm that it would distribute the funds received from the Eurobond issue to repay debts owed to renewable energy producers and that the distribution would be “*carried out between all producers of electricity who have the green tariff on a proportional and non-discriminatory basis in accordance with principles of transparency and fairness.*” GarPok also confirmed the amount that would be paid to each DTEK company (representing c. 61% of the outstanding debt).
25. The sequence of events thereafter is unclear with conflicting statements being made by the relevant parties. In summary:
 - a. According to GarPok, on Friday 12 November 2021, payment instructions were issued to its bank (the state-owned, Oschadbank) for transfer of the full amount of the funds received from the sale of the Eurobond (UAH 19.3 billion) to all renewable energy producers on a *pro rata* basis. However, the instructions were issued after the close of banking and were not therefore effected that day.
 - b. The following day, Saturday 13 November 2021, at an extraordinary meeting of the government, the head of GarPok, Konstantin Petrikovets, was dismissed purportedly due to the sale of electricity by GarPok at deliberately low prices in favour of certain financial and industrial groups. This was announced on the same day by the Cabinet of Ministers of Ukraine.
 - c. According to GarPok, on Monday 15 November 2021, the new head of GarPok, Vadim Ulida, sent a letter to Oschadbank instructing the bank to return all funds which had not already been transferred to the renewable energy producers pending an investigation into the legitimacy of the level of debts accrued by each of them.
 - d. At the time of the instructions given by Mr Ulida, however, approximately UAH 16.3 billion of the proceeds of the Eurobond issue had already been transferred to beneficiaries such that only UAH 3.04 billion was available to be returned.
 - e. In light of the requirement on GarPok to settle its debts to renewable energy producers on a *pro rata* basis (and GarPok’s confirmation of the same to the DTEK companies on 12 November 2021), it was expected that that the DTEK companies would have received their *pro rata* share of the UAH 16.3 billion transferred by GarPok.
 - f. However, it appears that whilst **all** other renewable energy producers received their *pro rata* share of the debts owed to them from the payment of UAH 16.3 billion (out of the UAH 19.3 billion) made by GarPok, the seven DTEK companies have not received **any** payment. It appears therefore that payment to the DTEK companies was deliberately withheld.
 - g. The deliberate withholding of payment from the DTEK companies is referred to in press reports and public statements made by Mr Petrikovets, which suggest that Mr Petrikovets’ dismissal was in fact related to his refusal to comply with unlawful instructions by the Prime Minister, Denis Shmygal, to withhold payment from the DTEK companies. According to some reports, this action was politically motivated.

- h. Following the withholding of payment from the DTEK companies, on 16 November 2021, the price of its Eurobond issued on the Dublin exchange in November 2019 fell below par. The price of Ukrenergo's Eurobond also fell below par and the price of Ukraine's sovereign bond fell to 103.8 (from 107 on 10 November 2021).
- i. On 18 November 2021, Oschadbank issued a press release in which it confirmed that the new head of GarPok had withdrawn the previously issued payment instructions, and therefore the bank had no alternative but to comply.
- j. On 19 November 2021, GarPok issued a press release confirming that an interdepartmental working group had been established to inspect the activities of GarPok regarding the sale and purchase of electricity and settlements with renewable energy producers.

Criminality - Money Laundering

- 26. The English courts have held that the money laundering offences under the Proceeds of Crime Act 2002 have extra-territorial effect. As such, they would apply to conduct taking place in Ukraine, even if no measure of the activities constituting the crime take place in England.
- 27. In English criminal law, there are three offences of money laundering under the Proceeds of Crime Act 2002. The two money laundering offences which appear to have been committed by reason of the conduct described above are the offences contrary to section 329(1) (possession of criminal property) and section 328(1) (entering into money laundering arrangements).

Possession of criminal property

Elements of the offence

- 28. As regards the offence of possession of criminal property under section 329(1), the following definitions are relevant:
 - a. under section 340(3), property is 'criminal property' if (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit;
 - b. under section 340(2), 'criminal conduct' is defined as conduct which (a) constitutes an offence in any part of the United Kingdom, or (b) would constitute an offence in any part of the United Kingdom if it occurred there;
 - c. under section 340(5), a person benefits from conduct if he obtains property as a result of or in connection with the conduct;
 - d. under section 340(6), if a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage; and
 - e. under s.340(9), property is all property wherever situated and includes *inter alia* money.
- 29. Accordingly, the offence of possession of criminal property will have been committed if:

- a. conduct has taken place in Ukraine which would constitute an offence in any part of the United Kingdom if it had occurred there;
- b. a person has obtained property or a pecuniary advantage as a result of or in connection with the conduct; and
- c. a person is in possession of that property or pecuniary advantage knowing or suspecting that it constitutes or represents property or a pecuniary advantage obtained as a result of or in connection with the conduct.

Conduct which would constitute an offence in any part of the United Kingdom

30. It appears that there has been conduct in Ukraine which would constitute the offence of misconduct in public office if it had occurred in the United Kingdom.
31. Misconduct in public office is committed by:
 - a. a public officer acting as such who;
 - b. wilfully neglects to perform his duty and/or wilfully misconducts himself;
 - c. to such a degree as to amount to an abuse of the public's trust in the office holder;
 - d. without reasonable excuse or justification.
32. Conduct equivalent to the United Kingdom offence of misconduct in public office will have been committed in the Ukraine if a decision was made by one or more public officers to withhold payment solely from the DTEK companies as opposed to any other renewable energy provider and (a) the decision was contrary to a Ukrainian legal requirement to distribute the proceeds of the Eurobond issue to all renewable energy providers on a *pro rata* basis; and/or (b) the decision was improperly / politically motivated.

Criminal property

33. As regards the second element of the offence, namely whether a person has obtained property or a pecuniary advantage as a result of or in connection with the conduct, it appears that a pecuniary advantage has been obtained by GarPok as a result of or in connection with the conduct described above: it has obtained the sum of money which would otherwise have been transferred to the DTEK companies.

Knowledge or suspicion

34. Finally, as regards the third element of the offence, this requirement will have been satisfied by any person within GarPok (such as its new head, Mr Ulida) who knew or suspected that the funds in the possession of GarPok which would otherwise have been transferred to the DTEK companies were retained as a result of or in connection with the conduct described above.

Entering into a money laundering arrangement

35. The second potential money laundering offence which appears to have been committed by reason of the conduct described above is entering into a money laundering arrangement contrary to section 328(1).
36. This offence is committed where a person enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.
37. This offence will have been committed by any person other than GarPok (and certain of its senior management) who became concerned in an arrangement which he/she knew or suspected facilitated the ongoing improper retention by GarPok of funds which should have been transferred to the DTEK companies.

Criminality - Misleading Statements

38. The Financial Services Act 2012 creates various offences of market manipulation which criminalise the making of false or misleading statements or impressions with an intention to induce another to engage in market activity.
39. The offence which appears to have been committed by reason of the conduct described in the Factual Background is the making of a misleading statement, or the dishonest concealment of material facts, contrary to section 89 which provides as follows:

(1) Subsection (2) applies to a person (P) who -

- (a) makes a statement which P knows to be false or misleading in a material respect,*
- (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or*
- (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.*

(2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made) -

- (a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or*
- (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.*

Making a statement or impression

40. The words “statement” and “impression” are not defined in the Act and, accordingly, must be given their ordinary meanings. Making a statement has been construed by the courts and regulators as including,

for instance, issuing a Regulatory News Service, giving a forecast about a company's trading in an online interview, or making submissions within the LIBOR or EURIBOR setting process.

False or misleading in a material respect

41. A statement is false or misleading if it is objectively incorrect, or if it is objectively correct but omits material information so that it is misleading as a whole. A statement is likely to be interpreted as false or misleading in a material respect if that respect does or would be expected to have an effect on the person intended to be induced to enter into a relevant agreement or investment.

Relevant agreement or relevant investment

42. A relevant agreement is an agreement which relates to a relevant investment and the entering of which constitutes a specified activity: section 93(3).
43. Specified activities include controlled activities listed in Pt 1 of Sch.1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) ("**FSMA Order 2005**") including dealing in securities and contractually-based investments, such as buying, selling, subscribing for or underwriting securities.
44. Similarly, relevant investments include controlled investments specified in Pt 2 of Sch.1 of the FSMA Order 2005. These investments include instruments creating or acknowledging indebtedness and government and public securities (including those issued outside the United Kingdom).

Territorial scope

45. An offence is committed if the statement is made or the concealment occurs in the United Kingdom, or arrangements for the statement or concealment are made in the United Kingdom; or the person induced or intended to be induced is in the United Kingdom; or the agreement is entered into, or is intended to be entered into, in the United Kingdom: section 89(4)

Misleading statements – statements made prior to the Eurobond issue

46. As regards statements made prior to the Eurobond issue on 9 November 2021:
- a. GarPok issued a press release dated 4 November 2021 in which it stated that Ukrenergog expected settlements on the Eurobond to be received on 9 November 2021 and that GarPok was preparing for the immediate transfer of funds in favour of renewable energy producers.
 - b. The Eurobond prospectus dated 5 November 2021 made the following statement concerning use of the proceeds of the issue:

An amount equal to the net proceeds of the issue of the Notes, will be used to finance or re-finance, in whole or in part, Eligible Green Projects as described in the Issuer's Green and Sustainability-Linked Bond Framework. Principally, such amount will be used by the Issuer for the repayment of debt owed to the Guaranteed Buyer, with any remaining proceeds after repayment of the debt owed to the Guaranteed Buyer used to finance or re-finance other Eligible Green Projects.

47. In light of the provisions of Ukrainian government Resolutions No. 1471 of 27 December 2017, No. 641 of 26 April 2019 and No. 1049 of 11 October 2021, these statements appear to represent a statement that the proceeds of the Eurobond issue would be used to pay the debts owed to renewable energy producers on a *pro rata* basis (including, of course, the debts owed to the DTEK companies).
48. The Eurobond was promoted *inter alia* in the United Kingdom, was admitted to trading on the Main Market of the London Stock Exchange and attracted investors located in the United Kingdom. Statements as to the intended use of proceeds of the Eurobond issue were likely to be material to investors such that knowledge of the statements being incorrect in the manner described above is likely to have impacted on their decision to invest in the issue.¹
49. Any person involved in making the statements set out in paragraph 46 above who was aware that (or was reckless as to whether) payment to the DTEK companies would be withheld for improper reasons, is vulnerable to prosecution for the offence of making a misleading statement contrary to section 89.

Misleading statements – statements made following the Eurobond issue

50. Public statements were made by GarPok concerning the events surrounding the cancellation of payment instructions on 15 November 2021: see paragraph 25 above.
51. False statements appear to have been made in this context and any person responsible for those false statements appears to be vulnerable to prosecution for the offence of making a misleading statement contrary to section 89 on the basis that they were, at the very least, reckless as to whether the statement would impact on investors' decisions to trade in the Eurobond Notes.

Criminality - Fraud

52. Two offences contrary to the Fraud Act 2006 appear to have been committed.
 - a. Under section 2, a person commits an offence of fraud by false representation if he (a) dishonestly makes a false representation, and (b) intends, by making the representation (i) to make a gain for himself or another, or (ii) to cause loss to another or to expose another to risk of loss. A representation is false if (a) it is untrue or misleading, and (b) the person making it knows that it is, or might be, untrue or misleading. A representation means any representation as to fact or law and a representation may be express or implied.
 - b. Under section 4, a person commits an offence of fraud by abuse of position if he: (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, (b) dishonestly abuses that position, and (c) intends, by means of the abuse of that position (i) to make a gain for himself or another, or (ii) to cause loss to another or to expose another to a risk of loss.

¹ We note that, as stated at paragraph 22, one of the 'anchor investors' for the Eurobond was the EBRD which subscribed in the amount of \$75 million. The EBRD has publicly stated that its decision to subscribe was conditional on the provision by the Ukrainian government of a "*clear commitment*" that the proceeds of the Eurobond would be used to pay all of the debts owed to renewable energy suppliers, including the DTEK companies. Given its status as an 'anchor investor', the EBRD's decision to invest will have strongly influenced other investors seeking exposure to the renewable energy market to subscribe to the Eurobond.

53. The offences under the Fraud Act 2006 are Group A offences within Pt 1 of the Criminal Justice Act 1993. The effect of this is that jurisdiction in England is conferred if a relevant event, defined by section 2 of that Act, occurred in England and Wales. So far as an offence of fraud is concerned, relevant events include the occurrence of a gain, if the fraud involved an intention to make that gain, and the occurrence of a loss, if the fraud involved an intention to cause or to expose another to the risk of that loss.

Fraud by false representation – statements made prior to the Eurobond issue

54. The relevant statements made prior to the Eurobond issue on 9 November 2021 are set out at paragraph 46 above.

55. Any person involved in making those statements who knew at the time they were made that they were untrue or misleading appears to have acted dishonestly and with a view to making a gain for themselves or another (*viz.* the proceeds of the Eurobond issue) and to exposing another to a risk of loss (*viz.* investors in the issue e.g. the EBRD).

56. In light of the fact that exposure to a risk of loss was caused to investors in the United Kingdom, it is clear that jurisdiction of the courts of England Wales would be engaged.

Fraud by false representation – statements made following the Eurobond issue

57. The relevant statements concerning the events surrounding the cancellation of payment instructions following the Eurobond issue are set out at paragraph 25 above.

58. Press coverage and public statements made by the dismissed head of GarPok, Mr Petrikovets, suggest that the true reason for withholding payment from the DTEK companies was politically motivated.

59. If this is correct, GarPok's statements from 15 November 2021 onwards as to the reasons for the payment being withheld (i.e., an investigation into the conduct of Mr Petrikovets) would be demonstrably false.

60. Any person involved in making these false statements appears therefore to be vulnerable to prosecution for the offence of fraud by false representation as they will have exposed holders of both the Eurobond issued by DTEK on the Dublin exchange (including UK-based investors), as well as holders of Ukrenergo's Eurobond, to risk of loss. In this regard, we note that both the DTEK and Ukrenergo Eurobonds price did in fact fall below par on 16 November 2021.

Fraud by abuse of position

61. The word 'abuse' is not defined in the Fraud Act 2006. Its natural and ordinary meaning, however, involves acting contrary to the expectation by which the position is defined (*viz.* to safeguard, or not to act against, the financial interests of another person) and in a way which is made possible because of the position. The abuse must be dishonest and must be accompanied by the requisite intention as to gain and loss.

62. The conduct set out in the Factual Background (namely, an improper decision to withhold payment from the DTEK companies and subsequent false statements as to the reason for this decision) appears to constitute abuse of position.
63. Any person responsible for this conduct appears to be vulnerable to prosecution for the offence of fraud by abuse of position since they will have exposed holders of both the Eurobond issued by DTEK on the Dublin exchange (including UK-based investors), as well as holders of Ukrenergo's Eurobond, to risk of loss. In this regard, we again note that both the DTEK and Ukrenergo Eurobonds price did in fact fall below par on 16 November 2021.

Criminality - Secondary Parties

64. As we observed in paragraph 6 above,
- a. anyone who enters into an agreement to commit any of the offences identified above is guilty of an offence; and
 - b. any person who aids, abets, counsels or procures the commission of these offences is guilty of an offence.
65. Persons who commit these offences ("secondary parties") commit serious indictable crimes punishable by significant terms of imprisonment.

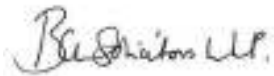
Conclusion

66. As we stated in paragraphs 8 and 9 above:
- a. DTEK currently intends to invite the Metropolitan Police, the Financial Conduct Authority and the Serious Fraud Office to investigate the conduct identified in the Factual Background; and
 - b. in the event that it becomes necessary, it is the current intention of DTEK to pursue a private investigation and, if so advised, a private prosecution.
67. In these circumstances, the assets of all those subject to investigation would be vulnerable to a restraint order which would have the effect of prohibiting any dealings with those assets which would be frozen in anticipation of confiscation. Moreover, the United Kingdom has entered into a number of treaties providing for mutual legal assistance including for the enforcement overseas of domestic restraint orders.
68. Accordingly, we advise you to obtain English criminal law advice on the contents of this letter.
69. Unsurprisingly, DTEK would prefer to avoid the dispute that has arisen prompting a criminal investigation.
70. The deadline set out in Seladore's letter dated 30 November 2021 for payment in full of the amounts due to our client has now passed, and in the circumstances DTEK requires that GarPok:
- a. pays to DTEK **without any further delay** the sum of UAH 3.04 billion currently held at Oschadbank (or other relevant bank or institution);

- b. provides the confirmations and information demanded by Seladore as soon as possible; and
- c. provides a commitment to pay the remainder of the debt owed to DTEK pursuant to the arrangement that all the renewable energy producers would be paid outstanding debt on a *pro rata* basis.

71. We look forward to your urgent reply.

Yours faithfully

A handwritten signature in cursive script, appearing to read "BCL Solicitors LLP".

BCL Solicitors LLP

cc Ministry of Energy of Ukraine, The Presidential Office of Ukraine