

MARREVEESHJA E ORTAKEVE

E lidhur ne Durres, sot me 03.06.2013, ne perputhje si me poshte:

EMS Shipping & Trading GmbH, nje shoqeri me pergjegjesi te kufizuar, e themeluar dhe qe ekziston ne perputhje me legjislacionin gjerman, e regjistruar prane Regjistrin Tregtar te Aurich, Germany me nr. Regjistrimi HRB 110271, me seli ne adresen: Hafenstraße 15, 26789 Leer, Germany, rregullisht e perfaqesuar ne nenshkrimin e kesaj marreveshjeje nga Z. Manfred Mueller, lindur me 30.05.1966, ne Emden, Gjermani, mbajtes i pasaportes me nr. 184117635, i cili vepron ne cilesine e drejtorit te shoqerise. (ne vijim e quajtur "EMS")

EMS Shipping & Trading GmbH ne vijim e quajtur (EMS ose Pala):

MEQENESE:

- A. EMS, ne vijim te pjesemarrjes ne nje tender, te Qeverise Shqiptare, eshte shpallur fitues i Kontrates se Concesionit me titull: "Menaxhimi, Operimi, ndertimi, mirembajtje dhe permiresimi dhe azhurnimi teknik i Terminalit Lindor ne Portin e Durresit" (ne vijim quajtur "Projekti").
- B. Ne baze te kerkesave te percaktuara nga Autoriteti Kontraktues ne dokumentet e tenderit per Projektin, subjekti i shpallur fitues i tenderit duhet te themeloje nje shoqeri te re, e cila do te jete edhe subjekti i cili do te kryeje dhe performoje aktivitetin qe lidhet me Projektin; Emertimi i shoqerise se re do te jete EMS Albanian Port Operator (EMS APO) Shpk (ne vijim e quajtur "EMS APO" ose "Shoqeria");
- C. EMS ka nenshkuar nje Marreveshje Koncesionare me Autoritetin Kontraktues, Ministria e Puneve Publike dhe Transportit te Shqiperise, me date 06.05.2013 e cila ka hyre ne fuqi me nenshkrimin e saj;

PRANDAJ TANI, ne lidhje me themelimin e Kompanise se Re EMS APO, EMS Shipping & trading GmbH (EMS) bie dakord per kushtet si vijon:

1. PREAMBULA

Preambula eshte pjese pandare dhe thelbesore te kesaj Marreveshje midis Ortakeve (ne vijim quajtur "Marreveshje").

2. ADMINISTRIMI I SHOQERISE

2.1. Struktura e Administrimit

Shoqeria do te administrohet nga 1 (nje) Administrator, i cili do te propozohet nga EMS dhe do te emerohet me vendimin e Asamblese se Ortakeve te Shoqerise, ne perputhje me dispozitat e statutit (dmth. 75 % te kuotave te kapitalit).

2.2. Detyrat dhe Shperblimi i Administratoreve

2.2.1 Administratori i Shoqerise do te emerohen perkatesisht per te qene ne detyre te kompanise per nje periudhe prej 5 (pese) vjetesh me te drejte rizgjedhje dhe kane per detyre te ndjekin (kontrollojne, udhezojne, drejtojne) dhe te kujdesen per aktivitet dhe marredheniet me subjektet private dhe publike te perfshira ne zbatimin dhe realizimin e Projektit.

Administratori do te kryejne detyrat me perkushtim te vazhdueshem dhe te qendrueshem per te plotesuar te gjitha nevojat qe lidhen me realizimin e Projektit, ne menyre qe te evitohen dhe/ose te kapercohen te gjitha pengesat dhe veshtiresite dhe te respektohen afatet e percaktuara ne Marreveshjen Koncesionare dhe/ose nga Autoriteti Kontraktues.

Per kryerjen e detyrimeve dhe aktivitetet e lartpermendur, Pala do t'i akordojne Administratorit kompetencat perkatese per administrimin e Shoqerise, ne perputhje me kufizimet e percaktuara ne statutin e EMS APO.

Shoqeria do t'i paguaje Administratorit per detyrat dhe obligimet qe i jane ngarkuar, sipas percaktimeve te lartpermendura, nje shperblim mujor prej EUR 1/muaj dhe kjo shume do te jete simbolike per vitin e pare dhe ne funksion te kontributeve financiare dhe te administrimit te shoqerise ne vitet e ardhshme

3. STATUTI I SHOQERISE

Ortaket e EMS APO bien dakord te hartojne dispozitat e statutit qe do te sherbeje per te administruar Shoqerine dhe aktivitetin e saj tregtar.

Veçanerisht, ne statutin e Shoqerise do te percaktohet:

- 3.1 e drejta e parablerjes se ortakeve te Shoqerise ne rast transferimi te kuotave nga ortaket e Shoqerise tek persona te trete;
- 3.2 kuorumi prej 100% te kapitalit dhe shumica prej me shume se 75 % e kuotave per vendimet qe kane te bejne me sa me poshte:
 - (a) Percaktimin e politikave te biznesit;
 - (b) Emerimin dhe shkarkimin e Administratoreve;
 - (c) Emerimin dhe shkarkimin e likuiduesve dhe audituesve te autorizuar;
 - (d) Emerimin dhe shkarkimin e avokateve, eksperteve kontabel, Drejtuesin e terminalit dhe Shefin e finances
 - (e) Rritjen dhe zvogelimin e kapitalit themeltar;

te forces madhore dhe veçanerisht si rrjedhoje e revolucioneve, kryengritjeve, levizjeve popullore, lufterave, grevave, zjarrit, permbytjeve, fenomeneve natyrore, shpronësimit ose veprimeve te organeve shtetërore te cilat kufizojne lirine personale ose lirine e ndermarrjes se seciles prej Paleve.

7. NJOFTIMET

Çdo njoftim apo komunikim duhet te jete me shkrim dhe do te konsiderohet i dorezuar (i) me depozitim ne poste nepermjet postes se regjistruar te njoftimit adresuar Pales (ii) me poste te shpejte; ose (iii) duke e dorezuar njoftimin personalisht. Njoftimi do te konsiderohet i dhene ne daten e dorezimit ose ne ditën e dyte te punes pasardhese nga data e dorezimit ne rast kur njoftimi eshte derguar me poste te shpejte. Ne rast se eshte derguar me poste te regjistruar, njoftimi do te konsiderohet i marre ne ditën e trete nga data e postes.

Per qellim njoftimi, adresa e Paleve eshte si me poshte:

Per EMS: EMS Shipping & Trading GmbH
Ne vemendje te: Mr. Manfred Mueller
Fax: +49 491 928 15 15
Adresa: Hafenstrasse 15, 26789 Leer, Germany

8. VEÇUESHMERIA

Dispozitat qe permban kjo Marreveshje do te jene te zbatueshme pavaresisht nga njera tjera dhe vlefshmeria e seciles prej tyre nuk do te cenohet ne rast se ndonje dispozite eshte e pavlefshme.

9. TRANSFERIMI

Asnjera nga Ortaket nuk do te kete te drejten te transferoje ose te kaloje te drejta dhe detyrimet e tij/te saj qe rrjedhin nga kjo Marreveshje, pa miratimin paraprak me shkrim te Ortakeve te tjere, miratim i cili nuk duhet te refuzohet pa arsye.

10. KOSTOT DHE SHPENZIMET

Pervec rastit kur eshte parashikuar ndryshe ne kete Marreveshje, EMS do te shlyeje shpenzimet qe lidhen me negociimin dhe pergatitjen e kesaj Marreveshje, duke perfshire çdo dhe te gjitha shpenzimet noteriale dhe shpenzimet e tjera qe do te kryhen ne lidhje me zbatimin dhe realizimin e kesaj Marreveshje.

11. NDRYSHIMET

Perveç rastit kur parashikohet ndryshe ne kete Marreveshje, ndryshimet e kesaj te fundit mund te behen vetem me shkrim dhe duhet te nenshkruhen nga Ortaket.

12. HEQJA DORE

Asnje heqje dore nga Palet ne lidhje me shkeljen ose mospermbushjen nga ana e Pales tjeteter te çdo perfaqesimi, garancie, premtimi ose kushteve te parashikuara ne kete Marreveshjeje, nuk do te perbeje heqje dore nga ndonje shkelje ose mospermbushje nga kjo Pale te dispozitave te tjera te ngjashme qe lidhen me perfaqesimin, garancine, premtimin ose kushtet. Nese ndonjera prej dispozitave rezulton e pavlefshme, qe do te ishte e vlefshme ne rast se nje pjese e saj do te hiqej, kjo dispozite do te zbatohet me ndryshimet e nevojshme per ta bere ate te vlefshme.

13. KONFIDENCIALITETI

Ortaket bien dakord te ruajne konfidencialitet te plote dhe te mos bejne publike personave te trete kushtet dhe percaktimet e kesaj Marreveshjeje, perveç rastit kur publikimi eshte e parashikuar ne ligj.

14. ZGJIDHJA E MOSMARREVESHJEVE

Ne rast mosmarreveshjesh qe mund te lindin midis ortakeve ne lidhje me interpretimin, realizimin, zbatimin, shkeljen, perfundimin dhe ekzekutimin e kesaj Marreveshjeje, ortaket angazhohen te bejne te gjitha perpjekjet e mundshme dhe ne mirebesim qe t'i zgjidhin ato me mirekuptim.

Ne rast se mosmarreveshja nuk eshte zgjidhur brenda 14 diteve nga perpjekja e pare, do te zgjidhet perfundimisht sipas dhe konform legjislacionit shqiptar ne Gjykatën e Shqiperise.

Vendimi i arbitrazhit sipas ketij neni, do te jete perfundimtar dhe detyrues per Palet ne lidhje me objektin e çeshtjes dhe do te jete i ekzekutueshem me vendim te gjykates kompetente.

15. LIGJI I ZBATUESHEM

Kjo Marreveshjeje, te drejtat dhe detyrimet qe rrjedhin per ortaket nga kjo Marreveshjeje, do te rregullohen, interpretohen dhe zbatohen ne perputhje me ligjet e Republikës se Shqiperise.


16. GJUHA

Kjo Marreveshje eshte hartuar dhe nenshkruar ne 4 kopje ne gjuhen angleze dhe 4 kopje ne gjuhen shqipe. Ne rast mosmarreveshje midis Paleve ne lidhje me interpretimin dhe/ose zbatimin e kesaj Marreveshjeje, do te merret per baze versioni anglisht.

Per EMS Shipping&Trading GmbH

Vendi: Durrës

Date: 06.06.2013

Përfunduar me procedurën
me Manfred Mueller
Arben Buzani


SHAREHOLDERS AGREEMENT

Entered into in Durres, today on 03.06.2013 with respect to the following:

EMS Shipping & Trading GmbH, a limited liability company, organized and existing pursuant to the German legislation, registered with the Commercial Register of Aurich, Germany with registration no. HRB 110271 having its legal seat at the address: Hafenstraße 15, 26789 Leer, Germany, duly represented herein by Mr. Manfred Mueller, born on 30.05.1966, in Emden Germany, holder of the passport no. 184117635 in its quality of director of the company (hereinafter referred to as "EMS")

EMS Shipping & Trading GmbH is hereinafter referred to as the "EMS" or "Party".

WHEREAS:

- A. EMS, following the participation in the bidding procedure of the Albanian Government, has been awarded the Concession Contract for "The management, operation, construction, maintenance, technical upgrading and the adaptation of the East Terminal of the Durres Port" (hereinafter referred to as the "Project").
- B. Pursuant to the requirements set forth in the bidding documents provided by the Contracting Authority with regard to the Project, the entity being awarded as the winning bidder shall establish a new company which shall be the entity that shall perform the activity related to the Project; the name of the New Company will be EMS Albanian Port Operator (EMS APO) Shpk (hereafter referred to as "EMS APO "or "the Company");
- C. The EMS has already signed the Concession Contract with the Contracting Authority, namely the Albanian Ministry of Public Works and Transportation, dated 06.05.2013, which enters into force on the day of signature.

NOW THEREFORE, with respect of the establishment of New Company EMS APO, the EMS Shipping and Trading GmbH (EMS) agrees and covenant as follows.

1. RECITALS

The recitals form an integral and substantial part of this Shareholders Agreement (hereinafter referred to as the "Agreement").

2. MANAGEMENT OF THE COMPANY

2.1. Management Structure

The management of the Company shall be performed by 1 (one) Administrator, appointed upon decision of the Assembly of Shareholders as provided under the bylaws of the latter (i.e. 75 % of the shares).

2.2. Tasks and remuneration of the Administrators

The Administrator of EMS APO shall be respectively appointed for being in charge of the Company for a period of 5 (five) years with the possibility of renewal, with the task to follow (control, guide, lead) and to take care of the activities and the relationships with all the private and public entities involved in the execution and implementation of the Project;

The Administrator will assure with a constant and continuous engagement to provide for all needs relative to the execution of the Project, in order to avoid and/or to overcome all obstacles and difficulties and to observe all the deadlines as defined in the Concession Agreement and/or by the Contracting Authority.

For purposes of performance of the above obligations and activities, the Party will provide to the Administrator adequate administration powers subject to the limitations set forth in the provisions of the bylaws of EMS APO.

In consideration of all the obligations, tasks and duties assigned to the Administrator, as mentioned above, EMS APO shall pay to the Administrator a monthly compensation of EUR 1/ month and such amount will symbolically be paid for the first year, while for the next years such payment will be performed in consideration of the financial contributions and the management of the Company.

3. BYLAWS OF COMPANY

The shareholders of EMS APO agree on the drafting of the provisions of the bylaws which shall direct the company's corporate governance and commercial activity.

In particular, in the bylaws of the company it will be defined:

- 3.1 the pre-emption rights for the transfer of the shares from each of the shareholder to any third party;
- 3.2 the need of a quorum of 100% and a majority of more than 75 % of the shares for decisions shall include, but not to be limited to, to following items:
 - (a) setting of the business policies;
 - (b) appointment and dismissal of the Administrators;
 - (c) appointment and dismissal of liquidators and authorized auditors;

- (d) appointment and dismissal of a lawyer, a tax advisor, the terminal manager and the chief accountant;
- (e) increase or decrease of the share capital;
- (f) approval of the distribution of annual profits;
- (g) restructuring, dissolution, transformation, merger, amalgamation, winding up or liquidation of the Company or the reorganization of the Company into another corporate form;
- (h) change of the legal status and/or legal form and termination of the Company in accordance with the Albanian legislation;
- (i) taking of any necessary actions to assure that the Company has sufficient capital and assets to permit it to conduct activities and perform its obligations toward third parties;
- (j) acquisition of shares in other companies or transfer of shares of the Company or of any participation that the Company has in other companies having similar scope of activity;
- (k) establishment, closing and /or winding up of any branch offices, affiliates and subsidiaries;
- (l) investments for amounts exceeding EUR 50.000,--;
- (m) transfer of assets of the Company having a value which exceeds EUR 50.000,--;
- (n) purchase or transfer of immovable properties having a value which exceeds EUR 50.000,--
- (o) commitment of any bank guarantees and Letter of Credits by the Company, and
- (p) any other matter set forth by the applicable law(s) or these Bylaws.

4. DUTIES OF THE SHAREHOLDERS

For the implementation and efficient performance of the Project pursuant to the Concession Contract entered into with the Contacting Authority and its economic and profit oriented execution, EMS APO will need financial means, experienced and qualified staff and experts as well as sophisticated equipment and trade related know – how which EMS is able, willing and prepared to deliver and make available to EMS APO in sufficient quantities, quality and scope.

5. COMMENCEMENT AND DURATION OF THIS AGREEMENT

This Agreement is binding and effective as of the date of its signature and shall be in force for the entire existence of the Company.

6. FORCE MAJEURE

No Party will be considered liable if the fulfillment of any provision of this Agreement shall result in delay or shall be rendered impossible as a result of force majeure and especially as a result of revolutions, riots, popular movements, wars, strikes, fires, floods, act of Gods, expropriation or government actions that limit the personal freedom or those of undertaking of each Party.

7. NOTICES

Any notice or communications hereunder must be in writing and shall be deemed given: (i) by depositing the same in the mail, addressed to the Party to be notified, postage prepaid and registered with return receipt requested and received, (ii) by sending the same by express courier, or (iii) by delivering the same personally. Such notice shall be deemed received on the date on which it is hand-delivered or on the second business day following the date on which it was sent by express courier. If sent by registered mail, such notice shall be deemed received on the third business day following the date on which it is so mailed.

For purposes of giving notice, the addresses referred to are:

For EMS:	EMS Shipping & Trading GmbH
Attn.	Mr. Manfred Mueller
Fax	+49 491 928 15 15
Address:	Hafenstraße 15, 26789 Leer, Germany

8. SEVERABILITY

The provisions contained in this Agreement shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid.

9. ASSIGNMENT

No shareholder shall have the right to assign or transfer his/her rights and obligations under this Agreement without the prior written consent of the other shareholders, such consent not unreasonably be withheld.

10. COSTS AND EXPENSES

Except where otherwise provided in this Agreement, EMS shall pay the costs relating to the negotiation and preparation of this Agreement, including any and all costs for notary public fees and other costs incurred in connection with the execution and performance of this Shareholders Agreement.

11. AMENDMENTS

Except as otherwise provided in this Agreement, any amendment to this Agreement may be performed only in writing and should be signed by the shareholders.

12. WAIVER

No waiver by any Party of any default or breach by the other Party of any representation, warranty, covenant or condition contained in this Agreement, shall be deemed to constitute a waiver of any subsequent default or breach by such Party of the same or any other representation, warranty, covenant or condition. If any provision resulting invalid, would be repaired by removing part of it, such provision shall apply as properly amended in order to render it valid.

13. CONFIDENTIALITY

The shareholders agree to maintain confidential and to not disclose to any third Party the terms and conditions of this Agreement except as required under the applicable law.

14. DISPUTE RESOLUTION

In case of any dispute that may arise between the shareholders with regard to the interpretation, performance, execution, breach, termination and enforcement of this Agreement the shareholders shall use their best efforts and in good faith to resolve it amicably.

In case the dispute is not settled within 14 days from the first attempt, it shall be finally settled by the Albanian Courts in accordance with the Albanian Legislation.

The award rendered pursuant to arbitration in accordance with this clause shall be final and binding on the Parties hereto with respect to the subject matter and may be entered and enforced in any court of competent jurisdiction.

15. GOVERNING LAW

This Agreement, the rights and obligation deriving for the shareholders thereof shall be governed by, construed with and enforced in accordance with the Albanian legislation.

16. LANGUAGE

This Agreement is written and signed in 4 copies in the English language and 4 copies in the Albanian language. In case of any controversy arising between the Parties in connection with the interpretation and/or execution of this Agreement, the English version shall prevail.

For EMS Shipping&Trading GmbH

Place:

Durrës

Date:

03.06.2013

Përfunduar me pranim
nga Manfred Mueller
Huber, Buzari
