

Advokatfirmaet Thommessen AS

Only sent by e-mail

Oslo, 4 February 2022

RAK Petroleum plc – Exemption from the mandatory bid obligation**1. The Application**

Reference is made to the letter from Advokatfirmaet Thommessen AS dated 10 November 2021 with appendices and the subsequent supplementary information provided by e-mail in November and December 2021 and telephone in January 2022 (jointly the "**Application**"), for and on behalf of Bijan Mossavar-Rahmani ("**BMR**"), a limited liability company to be established and controlled by BMR (the "**LLC**") and one or more trusts to be established for the benefit of BMR's descendants (the "**Trust**"). In the Application it is applied for an exemption from the mandatory bid obligation, cf. the Norwegian Securities Trading Act ("**STA**") section 6-2 (3), in connection with a contemplated indirect ownership restructuring related to RAK Petroleum plc. ("**RAKP**") (as described under item 3 below). In the Application it is argued that the restructuring will not change or lead to any change of the ultimate control of the underlying RAKP shares.

2. Legal basis

STA section 6-1 (1) regarding the mandatory bid obligation in connection with share acquisitions states: *"Any person who through acquisition becomes the owner of shares representing more than 1/3 of the voting rights in a Norwegian company the shares of which are quoted on a Norwegian regulated market is obliged to make a bid for the purchase of the remaining shares in the company."*

STA section 6-1 (2) expands the share acquisition term to also include certain indirect acquisitions: *"The following are also regarded as acquisitions under subsection (1): 1. shares representing more than 50 per cent of the votes of a company whose principal activity consists in owning shares in a company as mentioned in subsection (1), 2. (...), 3. a corresponding owner interest in a foreign company with a form of business organisation equivalent to that mentioned in no. 1 or no. 2, as well as other foreign undertakings if the takeover supervisory authority so determines."*

Pursuant to the STA section 6-1 (6) the mandatory bid obligation may furthermore be triggered by consolidation of parties: *"Subsection (1) applies correspondingly in the event of acquisition by someone with whom the acquirer is consolidated pursuant to section 6-5, when the acquirer alone or together with one or more of the related parties crosses the mandatory offer threshold as a result of the acquisition."*

The STA section 6-5 regarding consolidation reads as follows: “(1) Under the mandatory bid rules, shares owned or acquired by a shareholder's related parties as mentioned in section 2-5 are considered equal to the shareholder's own shares. The mandatory bid obligation comes into play independently of whether the acquisition is undertaken by the shareholder himself or by the shareholder's related parties as mentioned in section 2-5. (...) (2) The takeover supervisory authority shall decide whether consolidation shall be carried out pursuant to subsection (1). The takeover supervisory authority shall communicate its decision to the participants in the group so consolidated.”

Furthermore, the STA section 2-5 states that: “‘Related party’ of a person or entity means: (...) 4. an undertaking over which the said person or entity (...) exercises such influence as mentioned in (...) the Public Limited Companies Act section 1-3 subsection (2) (...), 5. a party with whom the said person or entity must be assumed to be acting in concert in the exercise of rights accruing to the owner of a financial instrument, including in cases where a bid is frustrated or prevented.”

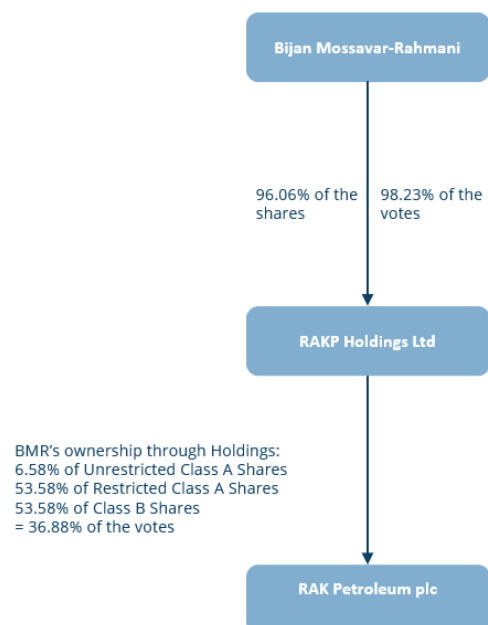
The legal basis for making a resolution on exemption from the mandatory bid obligation is stated in the STA section 6-2 (3): “The takeover supervisory authority may in special cases make exceptions from the mandatory bid obligation in the case of acquisition by someone with whom the acquirer is consolidated pursuant to section 6-5; see section 6-1 subsection (6).”

3. Factual circumstances

The chart shows the current ownership structure.

BMR currently holds 96.06% of the shares and 98.23% of the voting rights in RAKP Holdings Ltd. (“**Holdings**”). The remaining 3.94% of the shares are held by six different US based shareholders. The are several share classes, and each share class mirrors the share classes in RAKP.

We have been informed that, pursuant to the Articles of Association of Holdings, the shareholders’ shares in Holdings are exchangeable with the underlying shares in RAKP, and each of the shareholders in Holdings has the right to control the voting of its underlying RAKP shares separately. Each shareholder in Holdings is the beneficial owner of the underlying RAKP shares held by such shareholder through its ownership in Holdings, as if Holdings were a “nominee”. BMR’s ownership in Holdings represents 36.88% of the votes



in RAKP. Thus, BMR is the beneficial owner of shares in RAKP representing 36.88% of the votes (12,801,236 unrestricted class A shares, 63,030,824 restricted A shares and 63,030,824 B shares).

The contemplated restructuring consists of three steps (jointly the “**Restructuring**”);

Step 1 – establishment of LLC and Trust:

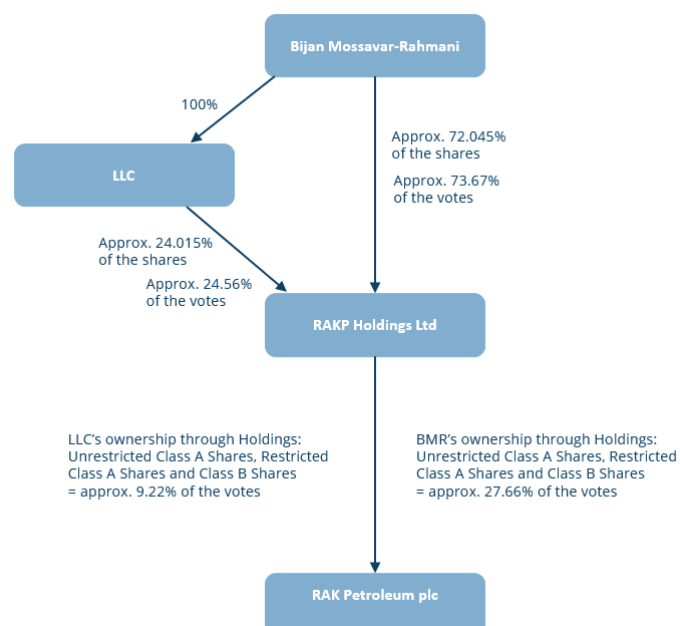
BMR will establish the Trust, and establish and control the LLC. The entities will be established under US law.

Step 2 – transfer of shares in Holdings to LLC:

BMR will transfer a certain number of his shares in Holdings to the LLC. The number of shares to be transferred will represent the beneficial ownership to shares in RAKP with an approximate value of USD 25 million. We have been informed that shares in RAKP with such value constitute approximately 1/4th of BMR’s shares in RAKP held through Holdings (equivalent to approximately 9.22% of the aggregate voting rights in RAKP).

The exact number of shares in Holdings to be transferred to the LLC will depend on the NOK/USD exchange rate. However, based on the above (a transfer representing underlying RAKP shares with a value of approximately USD 25 million), approximately 24.015% of the shares and 24.56% of the voting rights in Holdings will be transferred to the LLC (1/4th of BMR’s shares and votes in Holdings today). The transfer will be made without consideration.

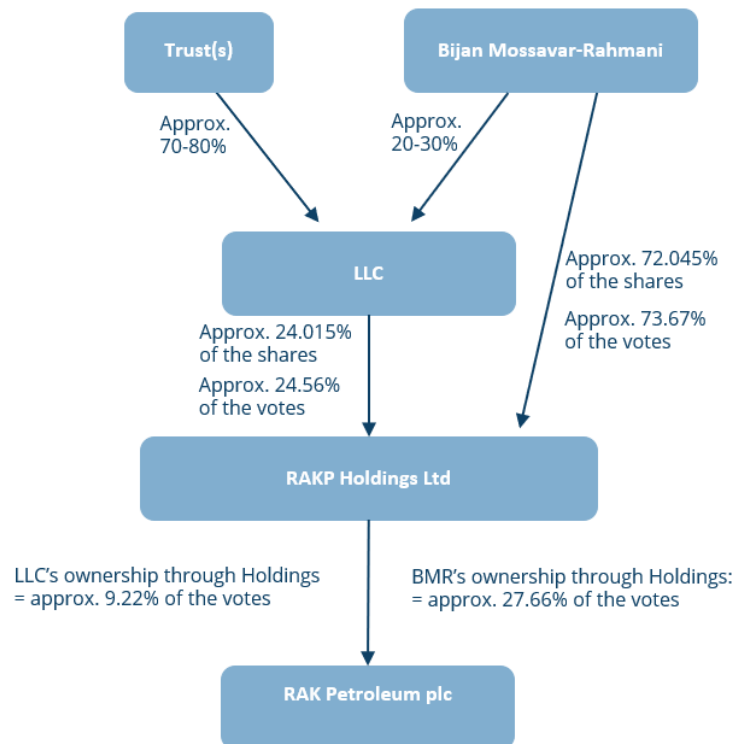
The ownership structure after step 2 will be as follows:



Step 3 – transfer of shares in LLC to Trust:

After step 2, BMR will transfer approximately 70-80% of the units and voting rights in the LLC to the Trust (representing approximately 20% of all shares and voting rights in Holdings and 7% of RAKP, or 70-80% of the voting rights which the LLC holds in RAKP through Holdings). The transfer will be made without consideration.

The ownership structure after step 3 will be as follows:



Agreements between the parties:

In connection with the Restructuring, a share transfer agreement and LLC agreement will be entered into between BMR and the LLC, and both BMR and the Trust will be bound by a trust deed (jointly the “**Agreements**”). Pursuant to the Agreements, for as long as the LLC holds an interest in Holdings and/or in RAKP, BMR will 1) retain and at all times hold sole voting control over the LLC's shares in Holdings and the underlying shares in RAKP and 2) possess the exclusive, non-transferable power to direct the management and policies of the LLC with respect to its interest in Holdings. Thus, it is argued in the Application that the Restructuring will not change or lead to any change of the ultimate control of the underlying RAKP shares.

The Trust will however have a financial interest in the underlying RAKP shares, for instance so that any distributions on the relevant RAKP shares may be distributed up through Holdings to LLC and further up to the shareholders in LLC, i.e. BMR and Trust.

4. Oslo Børs' assessment

4.1. Whether the Restructuring triggers a mandatory bid obligation

In the Application, an exemption from the mandatory bid obligation is requested *if Oslo Børs should be of the opinion that the contemplated Restructuring would trigger a mandatory bid obligation.*

There is no direct transfer of shares in RAKP in the Restructuring. As the Restructuring amends the indirect and beneficial ownership, the relevant section of the STA is 6-1 (2) no. 1 cf. no. 3, i.e. whether the LLC following the Restructuring becomes the owner of "shares representing more than 50 per cent of the votes of a company whose principal activity consists in owning shares in a company as mentioned in subsection (1)", i.e. in RAKP. By the Application, Oslo Børs understands that Holdings' principal activity consists in owning shares in RAKP.

Following the Restructuring, the LLC holds approximately 24% of the shares and votes in Holdings. Thus, the LLC's ownership alone does not trigger a mandatory bid obligation pursuant to STA section 6-1 (1) or (2). The LLC and BMR do however jointly hold shares in Holdings crossing the threshold of 50% cf. the STA section 6-1 (2) no. 1 cf. no. 3. Thus, the question is whether the LLC and BMR constitute a new consolidated group resulting in the LLC's acquisition triggering the mandatory bid obligation, cf. the STA section 6-1 (6), i.e. if the LLC and BMR are related parties pursuant to the STA section 2-5.

BMR will only hold 20-30% of the units in the LLC, and by the provided information we understand that the Trust has voting rights in LLC based on its ownership percentage. BMR will thus not have determinative influence over the LLC through its ownership percentage or voting rights in the LLC, cf. the STA section 2-5 no. 4, cf. the Public Limited Liability Companies Act section 1-3 (2) alternative 1. However, we have been informed that the LLC will be managed by a Managing Member alone instead of a board, and that BMR pursuant to the LLC agreement irrevocably shall be the Managing Member. Furthermore, we have been informed that BMR irrevocably shall be (and appoint) the Investment Manager of the LLC. Thus, it is our understanding that BMR will have determinative influence over the LLC by appointing and holding such irrevocable roles, cf. the STA section 2-5 no. 4, cf. the Public Limited Liability Companies Act section 1-3 (2) alternative 2. The LLC and BMR are thus related parties pursuant to the STA section 2-5 no. 4.

Furthermore, the LLC's sole business is to own shares in Holdings. As mentioned under item 3 (Factual circumstances), BMR will pursuant to the Agreements; 1) retain and at all times hold sole voting control over the LLC's shares in Holdings and the underlying shares in RAKP, and 2) possess

the exclusive, non-transferable power to direct the management and policies of the LLC with respect to its interest in Holdings. With such long-term and extensive co-operation, the LLC and BMR (and the Trust) must be assumed to be acting in concert in the exercise of rights accruing to the LLC as owner of shares in Holdings and of the underlying shares in RAKP. The LLC and BMR are thus also related parties pursuant to the STA section 2-5 no. 5.

Based on the above, the LLC and BMR constitute a new consolidated group resulting in the LLC's acquisition triggering the mandatory bid obligation, cf. the STA section 6-1 (6), by on a consolidated basis holding "shares representing more than 50 per cent of the votes of a company [Holdings] whose principal activity consists in owning shares in a company as mentioned in subsection (1) [RAKP]". Thus, the Agreements form the basis for the consolidation by which the LLC's acquisition triggers the mandatory bid obligation, both with regard to determinative influence and binding co-operation.

Furthermore, we understand that the Application also applies for an exemption from the mandatory bid obligation with regard to the transfer of units in the LLC to the Trust (and thus the indirect ownership to shares in Holdings and the underlying RAKP shares). The Trust becomes owner of 70-80% of the units and voting rights in the LLC. We have been informed that the LLC's only activity consists in owning shares in Holdings. However, it is RAKP and not Holdings that is a listed company. Thus, the transfer of units in the LLC to the Trust is not directly covered by the wording in STA section 6-1 (2) no. 1 cf. no. 3, cf. STA section 6-1 (1) regarding becoming the owner of shares or having the owner interest "representing more than 50 per cent of the votes of a company whose principal activity consists in owning shares in a company as mentioned in subsection (1) [RAKP]". Oslo Børs has however previously considered that both the preparatory work and policy considerations (Nw. "reelle hensyn") argue that the provision also applies to events with two intermediate companies as long as the ownership structure gives the shareholder de facto control over the listed shares and the companies' principal activity is to own shares in the listed company. Reference is in this connection made to Circulars, decisions and statements 2011 p. 133 (the Stock Exchange Appeals Committee's case 1/2011: Wilh. Wilhelmsen) (p. 144-145). The Appeals Committee decided not to assess the matter as it in such case was sufficient to assess the question of consolidation (p. 148).

As the LLC's shares in Holdings mirrors the underlying shares in RAKP as if Holdings were a "nominee", and as the LLC's shares in Holdings are exchangeable with the underlying shares in RAKP, the LLC's principal (and only) activity does indirectly consist of owning the underlying RAKP shares, and may in this regard be considered to be covered by STA section 6-1 (2) no. 1 cf. no. 3.

The assessment of whether the 50% threshold in STA section 6-1 (2) no. 1 is fulfilled must reflect that Holdings is planned to be the company directly holding the underlying RAKP shares, and that Holdings is not fully owned by the LLC. As mentioned under item 3 (Factual circumstances – step

3), the 70-80% of the units and voting rights in the LLC transferred to the Trust only represents approximately 20% of all shares and voting rights in Holdings and 7% of the underlying RAKP shares.

If the LLC's shares in Holdings were exchanged with the underlying shares in RAKP, as they may, the LLC would hold shares directly in RAKP. Such potential direct ownership would correspond with the indirect ownership that the LLC is planned to hold in RAKP through Holdings. The Trust would thus hold 70-80% of the LLC which in turn would directly hold 7% of the voting rights in RAKP.¹ However, in the current non-exchange situation, the Trust's ownership in the LLC of 70-80%, reflecting that Holdings will be an intermediate company not owned 100% by the LLC, may be viewed as indirectly representing approximately 20% of the shares and voting rights of a "company [Holdings] whose principal activity consists in owning shares in a company as mentioned in subsection (1) [RAKP]". Thus, the Trust does not reach the threshold of 50% in STA section 6-1 (2) no. 1 alone. The Trust indirectly and BMR directly do however jointly hold shares or have the owner interest which represent more than 50% of all shares and voting rights in Holdings. The Trust's acquisition may thus trigger the mandatory bid obligation if the Trust and BMR are considered a new consolidated group, cf. the STA section 6-1 (6), i.e. if the Trust and BMR are related parties pursuant to the STA section 2-5.

We have not been given any information indicating that BMR has determinative influence over the Trust directly. However, the Trust will be bound by the Agreements giving BMR control over the LLC with respect to its interests in Holdings and the underlying RAKP shares. BMR is therefore indirectly given control over the Trust's control in the LLC as LLC's sole business is owning shares in Holdings and the underlying RAKP shares. It can thus be assumed that BMR and the Trust are acting in concert in the exercise of rights; 1) accruing to the Trust, as owner of units in the LLC, with regard to the underlying shares in Holdings and RAKP, and 2) accruing to the LLC as owner of shares in Holdings and of the underlying shares in RAKP. The Trust and BMR are thus also related parties pursuant to the STA section 2-5 no. 5, and the Trust's acquisition thus triggers the mandatory bid obligation on a consolidated basis.

For the sake of order, and with reference to STA section 6-2 (1) which exempts acquisitions in the form of gifts from triggering a mandatory bid obligation, Oslo Børs notes that the transfer of shares in Holdings to LLC and the transfer of units in LLC to Trust do not seem as gifts in the traditional sense given the content of the Agreements. To the extent a dispensation is granted in the present case, such assessment is nevertheless not of significance.

¹ The LLC's voting rights in RAKP would in such event not represent more than 1/3 of the votes in RAKP cf. STA section 6-1 (1). However, the LLC and BMR would on a consolidated basis represent voting rights above 1/3 in RAKP, cf. the Agreements and the consolidation assessment above. The exchange would thus trigger a mandatory bid obligation for the LLC.

4.2. Exemption from the mandatory bid obligation

Oslo Børs, in its capacity as takeover supervisory authority, may in special cases (Nw: "særlige tilfeller") make exceptions from the mandatory bid obligation in the case of acquisition by someone with whom the acquirer is consolidated, cf. the STA section 6-2 (3). In the preparatory works for the STA, cf. NOU 2005:17 and Ot.prp. no. 34 (2006-2007), regarding whether or not an exemption from the mandatory bid obligation should be granted, it is expressed that it shall be placed emphasis on whether the transfer represents a change of control or is part of a chain of transactions that may lead to a change of control. Pursuant to NOU 2005:17, the exemption possibility is narrower in the case of consolidation on the basis of personal related parties or binding co-operation (the assumption of parties acting in concert), than in the case of transfers within group companies or related parties with determinative influence because the relevant considerations advocating for an exemption to a lesser extent will be present when consolidation takes place on the basis of personal related parties or binding co-operation.

As of today BMR holds and exercises all rights attached to 12,801,236 unrestricted class A shares, 63,030,824 restricted A shares and 63,030,824 B shares representing 36.88% of the votes in RAKP through Holdings. The Restructuring causes a change in the ownership structure relating to such shares.

BMR will however, pursuant to the Agreements which BMR, the LLC and the Trust are bound by, maintain and at all times hold sole voting control over the LLC's shares in Holdings and over the relevant, underlying RAKP shares. BMR will furthermore possess the exclusive, non-transferable power to direct the management and policies of the LLC with respect to its interest in Holdings, and will irrevocably hold the roles Managing Member and Investment Manager in the LLC. Thus, BMR will after the Restructuring be in the same control position as under the current ownership structure, i.e. control 36.88% of the votes in RAKP. An exemption from the mandatory bid obligation in the present case should thus be under the condition that the LLC, the Trust and BMR are bound by the Agreements giving BMR such control.

By the provided information, Oslo Børs further understands that the only explicit prerequisite for BMR maintaining such control, is that the LLC holds an interest in Holdings and/or in RAKP. Thus, Oslo Børs considers that an exemption should be under the condition that the LLC holds an interest in Holdings and/or in RAKP.

Furthermore, it is our understanding that the only implicit prerequisite for BMR maintaining such control is that BMR has not transferred his direct ownership in the LLC and Holdings. In the opposite event, it is our understanding that there will no longer be a receiver of the said voting control or power to direct pursuant to the Agreements. If such transfer is by inheritance, probate or gift, the transfer will normally not trigger a mandatory bid obligation due to the exemption for such

transfers. Oslo Børs thus considers that an exemption in the present case must take into account the event that BMR transfers his direct ownership in the LLC and Holdings by inheritance, probate or gift, or if he swaps his direct ownership in Holdings with direct ownership in RAKP and thereafter transfers such direct ownership by inheritance, probate or gift.

In such event, the beneficial ownership to the relevant RAKP shares would be held by the Trust/the LLC and the heir(s)/receiver of BMR's direct ownership. There would thus be a change of control related to the relevant RAKP shares in the sense that the LLC's (and, indirectly, the Trust's) voting rights in Holdings and RAKP no longer would be under BMR's control. However, if BMR's direct shares were transferred to someone who is not a related party to the Trust and the LLC, they would not be subject for consolidation and thus not represent more than 1/3rd of the voting rights in RAKP. The same would apply in the present case if the Restructuring was completed without the Agreements. Based on the acquisition size alone, a mandatory bid obligation would thus not be triggered in either events, and an exemption application would not be necessary.

If BMR's direct shares however were transferred to someone who is a related party to the Trust and the LLC, they would on a consolidated basis represent more than 1/3rd of the voting rights in RAKP (36.88%), as in the present case. Contrary to the present case where the Agreements result in no change of control and thus give ground for the exemption, the Agreements would no longer apply. However, and as in the present case, unless there were an understanding or agreement regarding the exercise of voting rights related to the RAKP shares, the Trust and LLC would only de facto control 1/4th of such 36.88%. It would only be in the event that the parties have an understanding or agreement giving the Trust and LLC control over the voting rights representing more than 1/3rd of the voting rights in RAKP, that there would be a relevant change of control. An exemption should thus be under the condition that, in the event that 1) BMR transfers his direct ownership in the LLC and Holdings by inheritance, probate or gift, and / or 2) BMR swaps his direct ownership in Holdings with direct ownership in RAKP and thereafter transfers such direct ownership by inheritance, probate or gift, and 3) if the control given to BMR pursuant to Agreements does not apply to the heir(s)/receiver(s), the Trust and LLC shall not control more voting rights in RAKP than the beneficial ownership interest held by Trust and LLC represents.

Based on the above, Oslo Børs does not consider the Restructuring to constitute a change of control, or as part of a chain of transactions that may constitute a change of control. Oslo Børs is thus of the opinion that such special cases exist in the present situation and that an exemption from the mandatory bid obligation can be granted pursuant to the STA section 6-2 (3), under the mentioned conditions. The right to set conditions for the exemption follows from general administrative law rules, and is also specified in NOU 2005: 17 p. 27.

Exemptions from the mandatory bid obligation should contain a time frame for carrying out the transaction. Oslo Børs considers 31 May 2022 to be adequate for this transaction.

5. Resolution

Oslo Børs, in its capacity as takeover supervisory authority, has on this basis made the following resolution:

"An exemption from the mandatory bid obligation will be granted to the LLC (limited liability company to be established and controlled by Bijan Mossavar-Rahmani) and the trust(s) (one or more trusts to be established for the benefit of Bijan Mossavar-Rahmani's descendants) pursuant to the Norwegian Securities Trading Act section 6-2 (3) in connection with the transfer of the beneficial ownership to shares in RAK Petroleum plc. (representing approximately 1/4th of 36.88% of the voting rights in RAK Petroleum plc.) by the transfer of shares in RAKP Holdings Ltd., whose principal activity consists in owning shares in RAK Petroleum plc., to the LLC, and by the transfer of units in the LLC, whose principal activity consists in owning shares in RAKP Holdings Ltd. and/or the underlying shares in RAK Petroleum plc., to the trust(s).

The exemption is given under the following conditions:

- (i) The said LLC, the said trust(s) and Bijan Mossavar-Rahmani shall be bound by agreements and/or deeds pursuant to which, for as long as the said LLC holds an interest in RAKP Holdings Ltd. and/or in RAK Petroleum plc., Bijan Mossavar-Rahmani will 1) retain and at all times hold sole voting control over the said LLC's shares in RAKP Holdings Ltd. and the underlying shares in RAK Petroleum plc. and 2) possess the exclusive, non-transferable power to direct the management and policies of the said LLC with respect to its interest in RAKP Holdings Ltd. and the underlying shares in RAK Petroleum plc.;*
- (ii) The said LLC shall hold and continue to hold an interest in RAKP Holdings Ltd. and/or in RAK Petroleum plc.; and*
- (iii) In the event that 1) Bijan Mossavar-Rahmani transfers his direct ownership in the said LLC and RAKP Holdings Ltd. by inheritance, probate or gift, and/or 2) Bijan Mossavar-Rahmani swaps his direct ownership in RAKP Holdings Ltd. with direct ownership in RAK Petroleum plc. and thereafter transfers such direct ownership in RAK Petroleum plc. by inheritance, probate or gift, and 3) if the control given to Bijan Mossavar-Rahmani pursuant to the said agreements does not apply to the heir(s)/receiver(s); the said trust(s) and the said LLC shall not control more voting rights in RAK Petroleum plc. than the beneficial ownership interest held by such trust(s) and LLC represents.*

The transfer must be carried out within 31 May 2022.

No later than the agreement or decision regarding the transfers are executed, the said LLC and the said trust(s) shall make sure that an ordinary stock exchange notice is published, stating that

Oslo Børs, in its capacity as takeover supervisory authority, has resolved to grant an exemption pursuant to the Norwegian Securities Trading Act section 6-2 (3) for the transfers. Oslo Børs shall at the same time be notified about the disclosure.”

For the sake of good order Oslo Børs informs that this resolution may be appealed by persons having a legal interest in an appeal (Nw: rettslig klageinteresse).

The dispensation is granted based on the information given in the Application. Oslo Børs shall be notified in the event of changes to the matters presented in the Application, or if the transfer is not carried out. Oslo Børs shall also, after the said restructuring is completed, be notified in the event of any future changes to the beneficial, indirect and / or direct ownership when such changes / transactions are of relevance with regard to, or are affected by, this exemption and its conditions.

Yours sincerely

OSLO BØRS ASA

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