Signing date: October 6, 2022
In the Tel Aviv-Yafo District Court — C.A. 5726-05-21
Before the Economic Department — Before the Hon. Judge Altuvia

In the matter of: **Sections 350 and 351 of the Companies Law, 5759-1999, and the Companies Regulations (Motion for Compromise or Arrangement), 5762-2002**

And in the matter of: **1. NewMed Energy Management Ltd. (formerly Delek Drilling Management (1993) Ltd.) P.C. 511798407**
2. NewMed Energy Trusts Ltd. (formerly Delek Drilling Trusts Ltd.) P.C. 511803876
Both represented by Agmon & Co., Rosenberg Hacohen & Co. Adv., whose address for service of process is in the Technology Garden, Building 1, Entrance C, 1 Derech Agudat Sport Hapoel, Malcha, Jerusalem, Zip Code 92149 Tel. No.: 02-5607607 Fax. No.: 02-5639948.

The Petitioners

And in the matter of: **NewMed Energy - Limited Partnership**

The Partnership

And in the matter of:

1. **Delek Group Ltd**
   Represented by Adv. Pinhas Rubin and Adv. Yaron Elhawi from Gornitzky & Co., Vitania Tower, 20 Haharash St., Tel Aviv 67692107
   Tel: 03-7109191; Fax: 03-5606555
2. **The Israeli Securities Authority**
   Represented by Adv. Liav Weinbaum from the Tel Aviv D.A. (Civil) Office
   Kardan House, 154 Menachem Begin Street, Tel Aviv 6492107
   Tel: 073-3924888; Fax: 02-6468005
3. **The Tel Aviv Stock Exchange Ltd.**
   Of 2 Ahuzat Beit St., Tel Aviv 652521
   Tel: 076-8160411; Fax: 03-5105379
4. **The Commissioner of Insolvency and Economic Rehabilitation**
   Represented by Adv. Roni Hirschenzon & Co.
   Of 2 Hashlosha St., Tel Aviv 61090
   Tel: 03-6899695; Fax: 03-64662502
5. **Ariel Yanko I.D. 045566130**
6. **Amikam Reshef I.D. 003433711**
7. **Drora Reshef I.D. 005379383**

Represented by Adv. Haim Zaks of 2 Weizman St., Tel Aviv 64239 (13th floor)
Tel: 050-6217263; Fax: 03-6932012

8. **Cohen Gas and Oil Development Ltd. P.C. 520032970**
9. **Y.N.U Nominee Company Ltd. P.C. 515258135**
10. **J.O.E.L. Jerusalem Oil Exploration Ltd. P.C. 520033226**
    Represented by Adv. Alex Hertman and/or Noam Zamir and/or Gal Kelner of the S. Horowitz & Co. law firm, of 31 Ahad Ha'am St., Tel Aviv 5520204
    Tel: 03-5670700; Fax: 03-5660974

The Respondents

Deadline for Filing the Motion: no deadline is set by law or has been set by a decision.

Motion for Instructions Re a Change in the Scheme of Arrangement

Motion for Instructions Re a Change in the Scheme of Arrangement

Pursuant to the authority of the Honorable Court according to Section 14(F) of the Companies Regulations (Motion for Compromise or Arrangement), 5762-2002 (the "**Regulations**") and for the sake of caution, the Court is moved to issue instructions regarding the manner in which the proceedings for the approval of the proposed arrangement are to be continued, taking into consideration the changes that have been made recently in the details of the arrangement, as detailed in this Motion.

In particular, the Court is moved to order that the approval of the updated arrangement at the general meeting of the holders of the participation units issued by Petitioner 2 (the "**Units**"), which will be convened by the Petitioners in accordance with the decisions rendered by the Honorable Court and the Supreme Court and which have already approved the convening of a meeting, will constitute a lawful approval of the updated arrangement.

In view of the **urgency** of the matter, as detailed in the Motion, the Court is moved that if it deems appropriate to accept the positions of the parties to the Motion, a **short time** will be allocated for filing answers, and a short time will be allocated simultaneously for the Petitioners' response to the answers.

Zvi Agmon, Adv.	Shirel Gutman-Amira, Adv.	Zeev Gutreich, Adv.	Daniel Levy, Adv.

Counsel for the Petitioners

1. As may be recalled, on December 27, 2021, the Honorable Court accepted the Petitioners' motion to convene a meeting to approve the scheme of arrangement pursuant to Section 350 of the Companies Law, to exchange the Units for shares of a new English company whose shares will be dually listed in London and Tel Aviv (the "**Motion to Convene a Meeting**").

2. An appeal was filed against the judgment, mainly on the grounds that the convening of the meeting is illegal since it is a partnership and not a company, as well as a motion for a stay of execution (the motion for a stay of execution is attached as **Exhibit 1**; a stipulation entered by the parties to this Motion is attached as **Exhibit 2**). However, as part of the appeal proceeding, the parties received a **compromise proposal from the Supreme Court**, according to which the approval to convene a meeting for approval of the arrangement remains in place, but it was determined that the approval of the arrangement in the Honorable Court pursuant to Chapter 5 of the Regulations will be conditional upon receiving an order from the Minister of Justice (the judgement in the appeal dated July 25, 2022 is attached as **Exhibit 3**; another decision extending the deadlines is attached as **Exhibit 4**).

3. In view of the ongoing delay in the arrangement approval proceedings, which was mainly caused by the consistent objection to convene the meeting on the part of Respondents 5-7 (the "**Opponents**"), the Partnership encountered a business opportunity which matured and resulted in the closing of an agreement that was signed on September 29, 2022 between the Partnership and Petitioner 1 and between the public company Capricorn Energy PLC ("**Capricorn**"), which was incorporated in Britain and is traded in the Premium list of the London Stock Exchange. In the context of this agreement, the parties agreed to carry out a transaction to combine the businesses and assets of the Partnership and Capricorn, which is conditional, among other things, on approval thereof within the current proceeding. Extensive detail of the agreement and its terms was provided in an immediate report published by the Partnership on September 29, 2022 (attached as **Exhibit 5**).

4. Capricorn is a public company incorporated in Britain that operates independently in the gas and oil sector, and holds interests in oil assets in Britain, Egypt, Mauritania, Mexico and Suriname. Links to Capricorn's statements for 2021 and half of 2022 are attached to the aforementioned immediate report (**Exhibit 5**).

5. In accordance with the transaction concluded with Capricorn and in order to enable its implementation, certain adjustments and changes will be made in the arrangement proposed to the holders of the Units (the "**Updated Arrangement**").

6. As may be recalled, as part of the original arrangement, the unitholders were offered to exchange the Units they own in exchange for shares in a new English company that will hold all the rights (100%) in the Partnership, and will be dually listed in the Standard list on the London Stock Exchange and the Tel

Aviv Stock Exchange, such that after the completion of the capital issue in England at a rate of about 10%, the existing unitholders were expected to hold **about 90%** of the English company's share capital (See Section 44, 91-92 as well as the schematic diagram in Section 25 of the Motion to Convene a Meeting). In addition, it was clarified in the Motion to Convene a Meeting that it is possible that in the future the shares of the English company will be listed in the Premium list of the London Stock Exchange, and as a result changes will be applied to the corporate governance rules applicable thereto (See Sections 59, 64 and 67 of the motion).

7. The main change in the Updated Arrangement is that the exchange of the Units will be carried out against Capricorn shares, and not against the shares of the new English company. Since according to the latest arrangement there will be no need to carry out an additional capital issue in England beyond the one required to allocate Capricorn shares to the owners of the interests in the Partnership, then upon completion of the latest arrangement the unitholders will hold **approximately 89.7%** of the share capital of the consolidated company (similar to the results of the original arrangement which included an intention to issue capital on the London Stock Exchange). According to the terms of the agreement, these shares are expected to be listed (similar to the other Capricorn shares that exist at this time) in the prestigious Premium list of the London Stock Exchange (as opposed to the Standard list in the original arrangement), and will also be dually listed in Tel Aviv, in accordance with the provisions of Chapter 3 of the Securities Law. The proposed Updated Arrangement is attached as **Exhibit 6**; a schematic diagram showing the change in the Updated Arrangement compared to the original arrangement is attached as **Exhibit 7**.

8. In other words, at the end of the day, the Updated Arrangement is very much the same as the original arrangement, where in both of them the main proposal is that the unitholders will exchange the Units they own with shares of a company incorporated in Britain, while incorporating new foreign investors (the existing shareholders in Capricorn) at a rate of about 10% . In particular, it should be emphasized that similar to the original arrangement, also within the framework of the Updated Arrangement, Capricorn shares will be allocated to the unitholders from among the public and to the controlling shareholder on a pro rata basis, without the controlling shareholder having an advantage or benefits over the other holders.

9. In this context, it should be noted that as far as the Delek Group royalties is concerned, there has been a change that is reflected in Section 3.4.2 of the Updated Arrangement. In summary, according to the terms of the arrangement, "new" oil assets purchased by the consolidated company other than through the Partnership will not be subject to royalty interests, and accordingly the Delek Group has assumed that if a third party claims within this proceeding or within an independent proceeding that it is entitled to receive royalties from "new" oil assets that the consolidated company will purchase, the Delek Group will not support such a demand. However, if a competent court determines in a final and conclusive judgment, at the request of a third party, that other owners of royalty interests (other than the Delek Group) are entitled to royalties in relation to "new" assets of the consolidated company, the Delek Group will be entitled to

demand the same royalty interests (Compare to Section 74 of the Motion to Convene a Meeting).

10. It should also be noted that another change in the updated scheme is that, according to the strategy of the consolidated company, the geographical areas where it is expected to focus its business will be mainly the Middle East, North Africa and the countries bordering the Mediterranean Sea (Compare to Sections 36-39 of the Motion to Convene a Meeting where a different mechanism was proposed in this regard).

11. In any case, to the estimation of Petitioner 1, this extraordinary opportunity may significantly improve and upgrade the benefits of the original arrangement, among other things, **thanks to the fact that Capricorn shares are currently listed in the prestigious Premium segment of the London Stock Exchange, which is expected to significantly expand the interests of leading analysts and foreign institutional investment bodies in the consolidated company, after the completion of the business combination transaction as well as due to the addition of the existing business and assets of Capricorn** (for details on the benefits see Section 3.3 in **Exhibit 5**; as well as a presentation presented to investors and attached as **Exhibit 8**).

12. Since the shares of the consolidated company are expected to continue to be traded as aforesaid in the Premium segment, which is included in the Schedule to the Securities Law, 5728-1968 (the "**Law**") and therefore meets the definition of "foreign exchange" in the Law, then the provisions of the Companies Law applicable by virtue of Section 39A(a) of the Law on a company that was incorporated outside of Israel, will not apply to the consolidated company, and this is in accordance with Section 39A(d) whereby "The provisions of this section shall not apply to a company whose securities are listed on a stock exchange outside of Israel" (See also Section 59 of the Motion to Convene a Meeting). As mentioned, the possibility that the shares of an English company will be subsequently listed in the Premium segment, with the possibility that it will start reporting in a dual format with all the implications thereof, was also foreseen within the original arrangement, as was explicitly clarified in the Motion to Convene a Meeting, but now, the opportunity has arisen to ensure the registration of the shares in the Premium segment from the outset, at the time of completion of the arrangement.

13. The reference to the consequences arising from the continued registration in the Premium segment on the rules of corporate governance applicable to the consolidated company after the completion will be included in the notice of meeting report and the other documents that will be published towards the convening of the meeting, subject to and in accordance with the instructions of the Israeli Securities Authority, including the prospectus and the registration document that Capricorn will publish in connection with the transaction and the dual listing of its shares on the Tel Aviv Stock Exchange in accordance with the provisions of Chapter 3 of the Securities Law.

There is no impediment to convene the meeting for the approval of the Updated Arrangement according to the decision of the Honorable Court

14. As is known, the proceeding according to Section 350 of the Companies Law is a two-stage proceeding in which, in the first stage, the court approves the convening of the meeting, and later if there is an approval by the necessary majority, the court proceeds to discuss the approval of the arrangement. In the title proceeding, the convening of the meeting was approved as aforesaid, with the court ordering the publication of a prospectus and the provision of "all the relevant information according to any law" for the review of the unitholders as part of the notice of the meeting (Section 28 of the decision dated December 27, 2021), and further authorizing the Petitioners to return to the court to seek approval of the arrangement if it is approved by the meeting (Section B on page 33 of the decision).

15. In doing so, the Honorable Court clarified that it is well aware that the terms of the arrangement may change, and that the time has not yet arrived to address the specific terms of the arrangement. As determined by the court:

> "At this stage, and prior to filing an appropriate motion for the approval of the arrangement **in the framework of which the court will discuss specific objections to the terms of the proposed arrangement**, if and as long as it is approved by the meeting of the owners of the participation units, **there is no room to refer now to the terms of the proposed arrangement, which may still change prior to the arrangement being presented to the owners of the participation units.**" (Section 19 of the decision dated December 27, 2021; the emphases added)

16. And indeed, the court was right in its assessment that the details of the arrangement may change, as indeed happened, but the approval for the convening of the meeting remains valid, and the changes made to the arrangement do not affect the validity of the approval received.

17. The fundamental issues discussed between the parties during the proceeding so far have been decided as of today in a conclusive judgment of the Supreme Court which allows the convening of the meeting (while it was also agreed to thereafter seek an order from the Minister of Justice). Needless to say that if the Opponents who have been opposing the arrangement so far or other opponents from among the unitholders have any reservation about the provisions of the Updated Arrangement, then they may first, vote against the arrangement at the meeting, and second, further oppose the final approval of the arrangement in court as part of the second stage of the hearing. In any event, the discussion regarding the Honorable Court's decision to order the convening of the meeting, has been exhausted and ended with a conclusive judgement.

18. As the Opponents stated in their pleadings, the discussion in the first stage of the proceeding should deal only with preliminary questions concerning the very convening of the meeting, and in their words:

> "Indeed at this stage, it is not appropriate, as a rule, to address issues concerning the merit and fairness of the proposal. These issues will be decided after the meeting is held and for this purpose the interested parties are given another option, in accordance with Section 34 of the Compromise and Arrangement Regulations, to object to the arrangement. However, and as emphasized at the preface and in the letter of objection – the objection of the holders deals **exclusively** with preliminary issues that should be decided already at the stage of convening of the meeting" (Section 99 of the Opponents' response dated November 10, 2021).

19. Therefore, since the discussion of the "preliminary" questions has been concluded, the particular change that took place in the details of the arrangement (even if anyone believed that it could affect the merit of the proposal and it is the position of Petitioner 1 that any such effect is only for the benefit of the unitholders) in any event does not lead to a change in the legal framework whereby the discussion of the merit is irrelevant at this stage.

20. In view of the above, the Petitioners also believe that no change in the details of the arrangement (which, as aforesaid, was foreseen to possibly change) should lead to a re-publication of the arrangement in the press and opening it up for further objections from additional unitholders. The changes in the details of the arrangement are in no way relevant to the discussion of the mere convening of the meeting which has been fully exhausted, and as much as they may provoke different reservations than those raised so far, **they would pertain to the merit that will only be discussed in the second stage where the arrangement itself is discussed.**

21. Moreover, in the case at bar, the parties have already held a long litigation which has already lasted (unfortunately for the Petitioners) about 17 months from the date of filing of the original motion to convene a meeting, and hundreds of pages of pleadings have already been written on those "preliminary" issues. In the end, the parties reached a compromise on which the court entered a judgment, thus structuring a delicate balance agreed by everyone (for purpose of compromise), in which framework the specific arrangement before us will have to receive approvals from three different institutions – in the general meeting, before the Minister of Justice and also in court in the proceeding for approval of the scheme of arrangement after the discussion in the meeting.

22. In such a case where such intensive discussions were conducted, and agreement was also reached on a comprehensive procedural framework for the future which will surely protect the rights of all parties, there is obviously no room to reopen the discussion on the whole issue of convening the meeting, which as aforesaid has been definitively exhausted, and now the amended arrangement must be discussed in the general meeting. This is so in particular where usually

this stage of the proceeding in relation to the convening the meeting ends quickly, since it revolves around a preliminary issue only, and does not include any final operative result. However, the many obstacles placed by the parties to the proceeding have not allowed the Petitioners to even summon the meeting so far.

23. Now that the obstacles have finally been removed and a judgment has been given in the Supreme Court that conclusively approves the convening of the meeting (subject to conditions), it is important to prevent any further delay from hearing the unitholders in the general meeting, who are the ones who will be affected by the results of the proceeding and the consequences that further delays may have.

24. And these things are even more true in view of the business opportunity that is now on the agenda. Naturally, the agreement concluded with Capricorn, on which the Updated Arrangement is based upon, requires compliance with a time frame that is derived also from the interests of Capricorn, its shareholders and the regulatory authorities in England. As described in Section 4.3 of the immediate report (Exhibit 5), the parties' goal is to work towards the fulfillment of the closing conditions, which further include the approval of the arrangement by the meeting, receiving an order of the Minister of Justice, and then the approval of the Honorable Court, by the end of Q1/2023.

25. Giving an instruction to the Petitioners that the approval that has already been given to convene a meeting continues to be valid will give all the unitholders, for the first time, an opportunity to make a decision for themselves on the arrangement after, so far, only the minority opposing the arrangement (which holds a negligible proportion of the Units) has been able to make all the decisions for them, by putting a spoke in the wheels of the approval proceedings.

26. A situation where a technical delay thwarts the right of the unitholders to discuss and decide on the arrangement, which Petitioner 1 believes may bring them significant financial value, should not be accepted. Such a thwarting would be a fatal error which works against the rationale underlying Section 350 to grant flexibility to carry out business arrangements efficiently and under supervision.

27. Nota bene. The update of the arrangement does not change anything material for our case at this preliminary stage. As aforesaid, the arrangement was and remains essentially a transaction of exchanging participation units in an Israeli public limited partnership for shares in a British public company. The business of the consolidated company after the completion of the transaction will not be substantially different from the business of the Partnership nowadays, and the addition of the existing assets and business of Capricorn are only expected to make it stronger.

28. It is not disputed that for the purpose of the unitholders' assessment regarding the **merit of the arrangement**, it is also important to provide full and comprehensive information regarding Capricorn's business and assets. Such detailed information will be included in the prospectus that Capricorn will publish for the purpose of the transaction, in a disclosure format subject to the

approval of the Securities Authority, and in accordance with the provisions of any law (as already been clarified in Section 28 of the Honorable Court's decision of December 12, 2021).

The normative framework for giving instructions in arrangement proceedings is relevant to our case

29. Despite the marginal nature of the changes made to the arrangement for the purpose of this stage of the proceeding (pre-meeting), since in this proceeding there were already opposition proceedings that took a lot of time and significantly delayed the proceedings for approving the scheme of arrangement, the Petitioners believed that it was appropriate to apply to the Honorable Court with this Motion to allow them to convene the holders' meeting for the purpose of approving the Updated Arrangement, without the need for additional court proceedings.

30. Precisely for such cases, the sub-legislator saw to promulgate Section 14(F) of the Regulations, whereby an official appointed by the court "**may at any time apply to the court with motion for instructions, including instructions regarding the prevention of actions that have the potential to thwart the arrangement or compromise**". In our case, no official was appointed, and therefore this provision applies to the Petitioners in accordance with Section 14(H) which sets forth that the provisions of the Regulations "applicable to an official in the company, shall apply to the company if no official has been appointed".

31. The section is intended to allow the person responsible for promoting the arrangement to apply to the court at any time to receive instructions, so that he can continue to lead the approval process effectively. This right is particularly relevant when there is a concern of actions that could thwart the arrangement, and in our case this concern is a particularly burdensome concern when the continuation of the proceedings in the current schedule may, God forbid, lead to the thwarting of the arrangement.

32. And more generally, the case law has already clarified the right to move for instructions in proceedings of this kind (C.A. 4371/12 **Segev v. Shapir Structures & Industries (2002) Ltd.**, paragraph 28 of Judge Fogelman's judgment (September 17, 2014)):

> "Where a doubt arises among the official whether a certain action he wishes to take is a substantial action that requires prior approval, **he would do well to file a motion for instructions with the court**."

33. The Petitioners believe that there is no reason to prevent them from convening the meeting to approve the Updated Arrangement, but since there has indeed been a certain change in the details of the arrangement and since there is supreme importance in meeting the time frame of the international transaction before us, and there is a concern that late objections to the actions of the

Petitioners will ultimately thwart the transaction, there is room to receive clear instructions from the Honorable Court on this matter.

34. Therefore, the Honorable Court is moved to order as requested at the top of this Motion. As an alternative only, to the extent that, despite everything stated in this Motion, the Honorable Court deems it necessary to order additional proceedings prior to the convening of the meeting for the approval of the Updated Arrangement, then the court is moved to determine **an extremely urgent time frame** for this matter, which will preserve the rights of the Petitioners and the unitholders, and will also take into account the long and comprehensive litigation that has already been conducted on this issue.

35. The facts detailed in this Motion are supported by the affidavit of Mr. Yossi Abu, the CEO of the Partnership.