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Certificado de Idoneidad No. 587 de septiembre del 2023
Bogotá, Colombia

TRADUCCIÓN OFICIAL No. LG-4

Yo, Enrique Santos Urzola, por la presente certifico que soy traductor profesional, debidamente autorizado por el Gobierno de Colombia y competente en los idiomas español e inglés.

Asimismo, certifico que he traducido al inglés el documento que se indica a continuación, siendo esta traducción una versión fiel y exacta en inglés del texto que me fue entregado electrónicamente en español.

- **Respuesta de un apoderado judicial a la Superintendencia de Sociedades sobre las solicitudes de KPMG INC, relacionada con un proceso extranjero y el control de cuentas bancarias.**

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En fe de lo cual firmo y sello la presente en Bogotá, a los veintidós días (22) días del mes de enero de dos mil veintiséis (2026).



Santiago Londoño Correa

Delegated Superintendent for Insolvency Proceedings

Superintendency of Companies

E. S. D.

Re: Application for Recognition of Foreign Proceeding of Canacol Energy Colombia S.A.S., CNE Oil & Gas S.A.S., Cantana Energy – Colombian Branch, and Cneog Colombia – Colombian Branch.

File No. 40197

Subject: Submission regarding filings No. 2026-01-010840 and 2026-01-010832 presented by KPMG INC.

Juan Sebastián Lombana Sierra, of legal age, domiciled in the city of Bogotá, identified with Citizenship ID No. 11,233,717 and Professional License No. 161,893 issued by the Superior Council of the Judiciary, acting in his capacity as judicial counsel for **MACQUARIE BANK LTD** (hereinafter, “Macquarie”), pursuant to the power of attorney filed in the docket, respectfully submits his position regarding filings No. 2026-01-010840 and 2026-01-010832 submitted by **KPMG INC** (“KPMG”), the “Foreign Representative” or the “Monitor,” as follows:

A. With respect to filing No. 2026-01-010840, the Superintendency may and must order service of the application.

First, KPMG INC’s opposition clearly evidences its concern regarding the possibility that creditors may appear before this Office to address the reality of the financial aspects of the transaction, as it is unreasonable to expect the adjudicating authority to adopt a decision based solely on one position while completely disregarding that of the other interested parties.

The foregoing is not a minor issue, as it not only disregards **Law 2437 of 2024**, as explained in the request for service, but also **Article 29 of the Constitution**, which expressly guarantees all parties the right to present their position and defense before the authority—in this case, the Superintendency. Accordingly, any attempt to have this Office rule without further proceedings and without granting interested parties the opportunity to be heard and to exercise their rights, is contrary to due process and to the Constitution, and would clearly amount to a de facto proceeding.

Indeed, KPMG cannot and should not disregard that the application that has been initiated constitutes a jurisdictional proceeding, and as such, it must observe due

process and afford the parties the opportunity to be heard, insofar as the matter falls within the jurisdiction of the Superintendent of Companies. Accordingly, I must insist that the Superintendent of Companies may and must order service of the debtor's application in Colombia, irrespective of what may have occurred before foreign courts, in this case, the Court of Alberta.

Second, the Foreign Representative is required to provide the Office with complete and timely information in order to ensure the proper administration of the proceeding. By way of example, it has been omitted that the party I represent sought authorization to appeal the decision concerning post-petition financing (DIP Financing), and that such request remains pending resolution.

I note that this information was brought to the attention of the Office by the undersigned through Filing No. 2026-01-008543 dated January 8, 2025, by means of a memorial through which the appeal in question was submitted. Nevertheless, I reiterate that this information should have been provided by the Monitor pursuant to its duty of disclosure, given that the decision ultimately adopted may have repercussions for the processing of the present matter.

Likewise, on January 7, 2026, the DIP Financing was amended, modifying substantial aspects such as the DIP Agent, the fronting lender, and the events of default, among other elements. However, based on the review of the docket, as of the date of submission of this brief there is no record that such amendments were reported to the Delegated Superintendent, whether by the Monitor, the debtor companies, or any other participant in this proceeding.

Under these circumstances, the minimum that could be expected of the Monitor, in its capacity as Foreign Representative, is compliance with its duty of disclosure as set forth in Articles 4 and 104 of Law 1116 of 2006. However, this has not occurred.

Third, KPMG, in its capacity as Monitor, cannot disregard that the Court of Alberta deferred to the Superintendent of Companies the recognition and approval of the proceeding insofar as it concerns financing and guarantees. Indeed, such decision—without prejudice to the appeal that has been filed—implies that the foreign authority itself expressly acknowledged that it falls to the Colombian judge to conduct the relevant analysis and rule on the corresponding authorization.

Fourth, the purpose of service is to ensure that the adjudicating authority has the information necessary to render a decision after considering the totality of the circumstances. Accordingly, failure to serve the petitions results in a violation of the due process rights of those who have not been afforded an opportunity to be heard. For this reason, the judge, as director of the proceeding, is the authority called upon to grant the procedural and evidentiary opportunities that may be warranted.

Fifth, Article 107 of Law 1116 of 2006 clearly provides that when the Colombian judge recognizes a foreign proceeding and the orders issued within its framework, the judge

may subordinate or condition the effects of such measures when necessary to ensure adequate protection of creditors and other interested parties in the proceeding. Accordingly, the Office not only has the authority but the duty to guarantee due process and to hear all interested parties in a timely manner.

Finally, the same Office in the case of LATAM Airlines Group S.A. held that the judge must conduct a special study of measures affecting property rights in Colombia, as is the case at hand:

“17. From this standpoint, it is noted that while it falls within the competence of the judge of the main proceeding to grant authorizations regarding transactions of the debtor and its group that are unrelated to the ordinary course of business, this does not imply that the decisions issued by that tribunal will have automatic effect within the Colombian jurisdiction.

*18. In this regard, **whenever any of the authorizations issued by the judge of the principal domicile relate to assets located in Colombia, such authorizations must be subject to review by this Office in order to comply with Article 91 of Law 1116 of 2006, failing which the sanctions set forth in paragraph 2 of Article 105 of Law 1116 of 2006 shall apply.**¹”*

Accordingly, it falls to the Office to establish the procedural conditions necessary to guarantee due process, not only pursuant to Law 2437 of 2024, but also in accordance with Article 29 of the Constitution, in order to ensure proper notice and due process for all interested parties, and thereby prevent the Superintendency from adopting a decision without having the complete and relevant information before it.

B. With respect to filing No. 2026-01-010832, the Superintendency denied KPMG’s request concerning control over the bank accounts

As I stated in my submission filed under **File No. 2026-01-006827**, KPMG plainly failed to discharge the procedural burden incumbent upon it and imposed by the Delegated Superintendency, insofar as it failed to provide evidence that the secured creditor under the Control Agreement registered with the Movable Guarantees Registry had consented to the bank accounts affected by such security—identified in Section 20 of Order No. 2025-01-844296 dated December 11, 2025—remaining under the control of the debtor companies.

In this regard, and for the sake of complete clarity, I take the liberty of quoting the relevant order, with which the debtor has failed to comply:

21. The Office notes that, contrary to what was indicated with respect to the other measures, this measure is not included in the Initial Order, nor in the order that ratified or supplemented it. This request concerns an authorization for the debtor companies

¹ Case of Latam Airlines Group S.A. and others, Record 2020-1-270364 of June 17, 2020.

to retain control and use of the accounts subject to a control agreement registered as a movable security.

22. With respect to this specific issue, it must be emphasized that in cases where there is a risk of impairment of the guarantees securing the credit, a detailed analysis must be conducted to ensure that the act does not result in an infringement of creditors' rights, taking into particular consideration the parties' intent to modify, substitute, or extinguish the effects of a contractual relationship, such as a security interest.

23. In particular, Article 50 of Law 1676 of 2013 provides that a security granted in favor of a creditor may be replaced by another that protects its position as a secured creditor, as follows:

“(...) In the event that the assets subject to the security are subject to depreciation, the creditor may request the judge, in the event of insolvency, **to adopt measures to protect its position as a secured creditor, such as the substitution of the collateral asset for an equivalent asset**, the establishment of reserves, or the capitalization of periodic payments to compensate the creditor for the loss in value of the asset. (...)” (Emphasis added)

24. Accordingly, for this Office to be able to authorize the delivery to the insolvent debtor of the funds held in the accounts that remain subject to the control of the debtor companies, and for such funds to be allocated to the payment of operating expenses and administrative expenses of the debtor companies, the acceptance of the secured creditor must be submitted with respect to such measure, under the terms indicated.

25. Likewise, Article 43.5 of Law 1116 of 2006 provides that the creation, modification, or cancellation of guarantees requires the affirmative vote of the beneficiary, as a measure intended to protect the insolvency judge from adopting decisions that affect validly established legal transactions, and, conversely, the rights of creditors holding security interests.

Instead of complying with this requirement, the Monitor proceeded to offer explanations for which there is no legal basis, as acknowledged in submission No. 2026-01-010832². However, the fact that the guarantees at issue have not been enforced does not eliminate or waive the requirement to obtain the secured creditor's consent as established in Law 1676 of 2013.

² KPMG stated in this submission that it would “**also provide the explanations** set out in Section 1.3, in accordance with what was requested by the Office, so that it could adopt the decisions it deemed appropriate” (emphasis added).

Accordingly, it is evident that there is no basis for the “explanations” or arguments that the Monitor seeks to put forward in order to disregard requirements expressly established by law and expressly ordered by the Delegated Superintendency.

Respectfully submitted,

[Signature]

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