

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES (1976)

ABDALLAH ANDRAOUS

Claimant

v.

KINGDOM OF THE NETHERLANDS

Respondent

ICSID Case No. UNCT/23/3

FINAL AWARD

Arbitral Tribunal

Ms. Claudia Salomon (Presiding Arbitrator)
Prof. Nassib G. Ziadé
Mr. José Emilio Nunes Pinto

Secretary of the Tribunal

Mr. Felipe Aragón

Representative of ICSID

Mr. Alex B. Kaplan

20 May 2026

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and

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Ms. Anna Sablicova
Mr. Alexandru Baltag
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ABBREVIATIONS AND ACRONYMS

2021 Judgment	Judgment of the Curaçao Court of First Instance of 29 November 2021
2023 Judgment	Judgment of the Curaçao Court of Appeal of 12 Septemebr 2023
Administering Authority's Fees	Fees and expenses of the appointing authority pursuant to Art. 38 (f) of the UNCITRAL Rules
Andraous Personal Statement	Mr. Abdallah Andraous' witness statement of 22 February 2024
Arbitrators' Expenses	Arbitrators' expenses pursuant to Art. 38 (b) of the UNCITRAL Rules
Arbitrators' Fees	Arbitrators' fees pursuant to Art. 38 (a) of the UNCITRAL Rules
Banco di Caribe	Banco di Caribe NV
Central Bank	Central Bank of Curaçao and St. Maarten
Claimant	Mr. Abdallah Andraous
Claimant's Costs Submission	Claimant's Costs Submission of 14-22 March 2025
Claimant's Response on Costs Submission	Claimant's Response on Costs Submission of 11 April 2025
Court of First Instance	The Curaçao Court of First Instance
Dutch-Lebanese BIT, BIT or the Treaty	Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands, signed on 2 May 2002, which entered into force on 1 March 2004
Emergency Declaration	Declaration of Emergency issued by the Curaçao Court of First Instance on 4 July 2018
Ennia Holding	Ennia Caribe Holding NV
Ennia Investments	EC Investment BV
Grace Period	Three-year period that the Central Bank granted to the Ennia Insurance Companies to resolve liquidity and solvency requirements
Insurers	Ennia Zorg NV, Ennia Leven NV and Ennia Shade NV
Investment Management Agreement	Investment Management Agreement between Ennia Incestments and S&S on 22 June 2018
Katherine Filesia Legal Opinion	Legal Opinion of Dr. Katherine Filesia of 2 December 2024
LTV	<i>Landverordening Toezicht Verzekeringsfedrijf</i> or National Insurance Supervision Ordinance
Mr. Ansary	Mr. Hushang Ansary
Parman	Parman International BV
PCA	Permanent Court of Arbitration

PO	Procedural Order
Reasonable Legal Costs	Costs of legal representation pursuant to Art. 38 (e) of the UNCITRAL Rules
Rejoinder	Rejoinder on Jurisdiction of 2 December 2024
Reply	Reply on Jurisdiction of 1 October 2024
Respondent	The Kingdom of the Netherlands
Respondent's Costs Submission	Respondent's Costs Submission of 4 March 2025
Respondent's Response on Costs Submission	Respondent's Response on Costs Submission of 11 April 2025
	
S&S	Stewart & Stevenson
SoC	Statement of Claim on Jurisdiction and Merits of 22 February 2024
SoD	Statement of Defense on Jurisdiction of 24 May 2024
SPF	<i>Stichting Particulier Fonds</i>
Sun Resorts	Sun Resorts Ltd. NV
Tr. Day (x), p. (x)	Hearing Transcript
Tribunal's Other Costs	Tribunal's other costs pursuant to Art. 38 (c) of the UNCITRAL Rules
UNCITRAL Rules	1976 UNCITRAL Arbitration Rules
UNCITRAL Transparency Rules	UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration
	

LIST OF CASES CITED

<i>African Holding</i>	<i>African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo</i> , ICSID Case No. ARB/05/21, Award on the Objections to Jurisdiction and Admissibility, 29 July 2008
<i>Carrizosa</i>	<i>Alberto Carrizosa Gelzis and others v. Republic of Colombia</i> , PCA Case No. 2018-56, Award, 7 May 2021
<i>Alpha</i>	<i>Alpha Projektholding v. Ukraine</i> , ICSID Case No. ARB/07/16, Award, 8 November 2010
<i>Ballantine</i>	<i>Michael Ballantine and Lisa Ballantine v. The Dominican Republic</i> , PCA Case No. 2016-17, Final Award, 3 September 2019
<i>Bayindir</i>	<i>Bayindir v. Pakistan</i> , ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005
<i>Bimer</i>	<i>Bimer SA v. Moldova</i> , App No. 15084/03 ECtHR 2007
<i>Boshporus</i>	<i>Boshporus Hava Yollari Turizm v. Ireland</i> , App No. 45036/98 ECtHR 2005
<i>Camuzzi</i>	<i>Camuzzi v. Argentina (I)</i> ICSID Case No. ARB/03/2, Decision on Objections to Jurisdiction, 11 May 2005
<i>Channel</i>	<i>Channel Tunnel Group v. France and the United Kingdom</i> , PCA Case No 2003-06, Partial Arbitral Award, 30 January 2007
<i>CMS</i>	<i>CMS v. Argentina</i> , ICSID Case No. ARB/01/8, Award on Jurisdiction, 17 July 2003
<i>Dosier</i>	<i>Gasus Dosier v. Netherlands</i> , App No. 15375/89 ECtHR 1995
<i>Doutremepuich</i>	<i>Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius</i> , PCA Case No. 2018-37, Award on Jurisdiction, 23 August 2019
<i>El Paso</i>	<i>El Paso v. Argentina</i> , ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006
<i>Enron</i>	<i>Enron and Ponderosa Assets, L.P. v. Argentine Republic</i> , ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004

<i>Enron (Ancillary Claim)</i>	<i>Enron and Ponderosa Assets, L.P. v. Argentine Republic</i> , ICSID Case No. ARB/01/3, Decision on Jurisdiction of Ancillary Claim, 2 August 2004
<i>García Armas</i>	<i>Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela</i> , PCA Case No. 2013-3, Decision on Jurisdiction, 15 December 2014
<i>Komaksavia Airport Invest</i>	<i>Komaksavia Airport Invest Ltd. v. The Republic of Moldova</i> , SCC Case 2020/074, Final Award, 3 August 2022
<i>Nova Scotia</i>	<i>Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela (II)</i> , ICSID Case No. ARB(AF)/11/1, Award, 30 April 2014
<i>OI European</i>	<i>OI European v. Venezuela</i> , ICSID Case No. ARB/11/25, Award, 10 March 2015
<i>Pac Rim Cayman</i>	<i>Pac Rim Cayman LLC v. Republic of El Salvador</i> , ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012
<i>Phoenix</i>	<i>Phoenix Action Ltd v. Czech Republic</i> , ICSID Case No. ARB/06/5, Award, 15 April 2009
<i>Romak</i>	<i>Romak S.A. v. The Republic of Uzbekistan</i> , PCA Case No. 2007-07-AA280, Award, 26 November 2009
<i>Roussalis</i>	<i>Spyridon Roussalis v. Romania</i> , ICSID Case No. ARB/06/1, Award, 7 December 2011
<i>Saipem</i>	<i>Saipem v. Bangladesh</i> , ICSID Case No. ARB/05/07, Decision on Jurisdiction, 21 March 2007
<i>SAUR</i>	<i>SAUR v. Argentina</i> , ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012
<i>Société Générale</i>	<i>Société Générale v. Dominican Republic</i> , LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008
<i>Standard Chartered Bank</i>	<i>Standard Chartered Bank v. United Republic of Tanzania</i> , ICSID Case No. ARB/10/12, Award, 2 November 2012
<i>Veteran Petroleum</i>	<i>Veteran Petroleum Limited (Cyprus) v. The Russian Federation</i> , PCA Case No. 2005-05/AA228, Interim Award on Jurisdiction and Admissibility, 30 November 2009

Webuild

Webuild v. Argentina, ICSID Case No.
ARB/15/39, Decision on Jurisdiction and
Admissibility, 23 February 2018

I. INTRODUCTION

1. This case concerns a dispute submitted under the Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands, signed on 2 May 2002, which entered into force on 1 March 2004 (the “**Dutch-Lebanese BIT**,” the “**BIT**” or the “**Treaty**”) and pursuant to the 1976 UNCITRAL Arbitration Rules (“**UNCITRAL Rules**”) and the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “**UNCITRAL Transparency Rules**”).¹
2. The case was brought by Mr. Abdallah Andraous (“**Claimant**”) against the Kingdom of the Netherlands (“**Respondent**”). Claimant and Respondent are jointly referred to as the “**Parties**.” The complete list of the Parties’ representatives and their respective addresses have been provided on the cover sheet of this Award.
3. The dispute relates to Claimant’s alleged investment in the Ennia Group, one of the largest insurance groups in Curaçao, a constituent country of Respondent. Claimant alleges that, in July 2018, the Central Bank of Curaçao and St. Maarten (“**Central Bank**”) unlawfully intervened with the insurance companies of the Ennia Group, on the unsubstantiated grounds that the Group had fallen short of the solvency and liquidity requirements imposed by the banking and insurance regulations. According to Claimant, after the takeover, the Central Bank implemented a series of measures that depleted the Ennia Group of its value.² The Curaçao courts later confirmed that the Central Bank’s actions were lawful, which, in Claimant’s view, definitively resulted in the expropriation of his investment.³
4. Claimant requests *inter alia* that the Tribunal declare that Respondent breached its Treaty obligations and order Respondent to compensate Claimant for its alleged losses arising from the alleged breaches.⁴

¹ Terms of Appointment, para. 23.

² SoC, Sections II G. and H.

³ SoC, Section IV C.

⁴ Notice of Arbitration, para. 93; SoC, para. 178.

5. At the outset of these proceedings, Respondent stated that it would submit jurisdictional objections, and the Parties agreed to bifurcate the proceedings in order to first address these jurisdictional objections.⁵
6. In this phase of the proceedings, Respondent raised the following jurisdictional objections:⁶
7. First, Respondent argues that the Tribunal lacks jurisdiction *ratione personae* because Claimant is not a qualifying “investor” within the meaning of the BIT. It is undisputed that during the relevant time, Claimant was a Dutch-Lebanese national.⁷ To the extent the BIT protects dual nationals, Respondent argues that Claimant bears the burden of proving that his dominant and effective nationality was Lebanese, which he failed to do.
8. Second, in two *ratione materiae* objections, Respondent argues that:
 - a. Claimant’s alleged shareholding (i) was allotted to him and thus involved no contribution from Claimant; (ii) Claimant has not held title to said shares since 2015, when he transferred them to a Curaçaoan entity; and (iii) in any event, Claimant’s connection to the Ennia Insurance companies – the assets allegedly affected by the State’s measures – is far too remote to be granted protection under the BIT;
 - b. Claimant’s salary and pension rights do not qualify as protected investments under the BIT.
9. To proceed, therefore, Claimant must overcome both of Respondent’s objections and satisfy its burden of proving both jurisdiction *ratione personae* and *ratione materiae*.
10. As discussed in more detail below, the Tribunal concludes that it lacks jurisdiction *ratione materiae*. Claimant alleges that his investment consists of his alleged shareholding, but he has not held title to said shares since 2015, and his alleged salary and pension rights do not qualify as protected investments. Given this conclusion, it is not necessary to address Respondent’s *ratione personae* objection because even if

⁵ PO 1, Annex I.

⁶ Reply, para. 3.

⁷ SoC, para. 144(iii).

Claimant could establish jurisdiction *ratione personae*, Claimant's claims could not proceed.

II. PROCEDURAL HISTORY

1. INITIATION OF THE ARBITRATION PROCEEDINGS AND CONSTITUTION OF THE ARBITRAL TRIBUNAL

11. In early 2022,⁸ 2 May,⁹ 29 July¹⁰ and 8 October 2022,¹¹ Claimant requested Respondent to engage in consultations under Article 9(1) of the BIT, prior to submitting the dispute to arbitration.
12. On 7 February 2023, Claimant filed a Notice of Arbitration with the Permanent Court of Arbitration (“PCA”), together with factual exhibits C-001 to C-0032 and legal authorities CL-001 to CL-004. In his Notice of Arbitration, Claimant nominated Prof. Nassib G. Ziadé, a dual Lebanese and Chilean national as co-arbitrator.¹²
13. On 22 February 2023, Claimant requested that the Secretary-General of the PCA be appointed as Appointing Authority, pursuant to Article 6(1) of the UNCITRAL Rules.¹³
14. On 27 February 2023, Respondent filed its Response to Claimant’s Notice of Arbitration.¹⁴
15. On 1 March 2023, Claimant submitted an amended Notice of Arbitration.
16. On 9 March 2023, Respondent submitted to Claimant a letter: rejecting his proposition to appoint the Secretary-General of the PCA as Appointing Authority, in view of avoiding any potential conflict of interest, given that Respondent was the Kingdom of the Netherlands and the PCA is seated in that country; agreeing to apply the 1976 UNCITRAL Rules to these proceedings; and nominating Mr. José Emilio Nunes Pinto, a Brazilian national, as co-arbitrator in this matter.¹⁵

⁸ C-003, Letter from Claimant to the Dutch Ministry of Foreign Affairs, dated 3 May 2022, attaching the original Power of Attorney, dated 2 May 2022.

⁹ C-003, Letter from Claimant to the Dutch Ministry of Foreign Affairs, dated 3 May 2022, attaching the original Power of Attorney, dated 2 May 2022.

¹⁰ C-019, Letter from Claimant to the Dutch Ministry of Foreign Affairs, dated 29 July 2022.

¹¹ C-004, Letter from Claimant to the Dutch Ministry of Foreign Affairs, dated 10 October 2022, attaching the updated Power of Attorney, dated 8 October 2022.

¹² Notice of Arbitration, para. 88.

¹³ Claimant’s letter to the PCA proposing Appointing Authority, dated 22 February 2023.

¹⁴ Respondent’s letter with the Response to the Notice of Arbitration, dated 27 February 2023.

¹⁵ Respondent’s letter to Claimant, dated 9 March 2023.

17. On 4 April 2023, the Parties agreed to the designation of the Secretary-General of ICSID to serve as Appointing Authority.¹⁶
18. On 3 May 2023, the PCA designated the Secretary-General of ICSID as Appointing Authority.¹⁷
19. On 14 September 2023, ICSID notified the appointment of Ms. Claudia Salomon, a national of the United States, as the presiding arbitrator.

2. FIRST CMC, TERMS OF APPOINTMENT AND PROCEDURAL ORDER NO. 1

20. On 2 November 2023, the Tribunal held a first session with the Parties by videoconference. The Parties and the Tribunal discussed the draft Terms of Appointment, the draft Procedural Order No. 1 and the Procedural Timetable.
21. On 14 November 2023, the Tribunal and the Parties executed the Terms of Appointment, agreeing *inter alia*: that the 1976 UNCITRAL Rules and the UNCITRAL Transparency Rules apply to the proceedings; to appoint ICSID as the registry and administering institution of the arbitration, with Mr. Alex Kaplan, Senior Legal Counsel at ICSID, as the institutional representative of ICSID; and to appoint Mr. Felipe Aragón as Secretary of the Tribunal.
22. On 23 November 2023, the Tribunal issued its Procedural Order (“**PO**”) No. 1, recording, *inter alia*: the Parties’ agreement that the arbitration be conducted in English and be seated in Geneva, Switzerland; and the Parties’ agreement on the procedural calendar for a bifurcated proceedings to first resolve the Parties’ contentions regarding Respondent’s jurisdictional objections.

¹⁶ Claimant’s and Respondent’s letters, dated 4 April 2023.

¹⁷ PCA’s Designation of Appointing Authority, dated 3 May 2023; PCA’s letter to Ms. Meg Kinnear, ICSID’s Secretary-General, enclosing the Designation of Appointing Authority, dated 3 May 2023.

3. SUBMISSION OF THE PARTIES AND POS OF THE TRIBUNAL IN THE BIFURCATED PROCEEDINGS

3.1 THE PARTIES' SUBMISSIONS ON RESPONDENT'S APPLICATION FOR SECURITY FOR COSTS

23. On 5 December 2023, Respondent filed an application requesting the Tribunal to order Claimant to provide a security for costs, together with factual exhibits R-001 to R-008 and legal exhibits RL-001 to RL-009.
24. On 22 December 2023, Claimant filed a response to Respondent's application for security for costs, together with factual exhibits C-033 to C-035 and legal exhibits CLA-005 to CLA-053.
25. On 5 January 2024, Respondent submitted its reply on its application for security for costs.
26. On 19 January 2024, Claimant filed a rejoinder on Respondent's application for security for costs, together with legal exhibits CLA-054 to CLA-057.

3.2 THE PARTIES' MAIN SUBMISSIONS

27. On 22 February 2024, Claimant filed its Statement of Claim on Jurisdiction and Merits ("SoC"), together with factual exhibits C-036 to C-089 and legal exhibits CLA-058 to CLA-230 and a witness statement of Mr. Abdallah Andraous ("**Andraous Personal Statement**").
28. On 24 May 2024, Respondent submitted its Statement of Defense on Jurisdiction ("SoD"), together with factual exhibits R-010 to R-052 and legal exhibits RL-010 to RL-061.

3.3 THE PARTIES' SUBMISSIONS ON DOCUMENT PRODUCTION

29. On 3 June 2023, Claimant filed an application to exclude Respondent's Exhibit R-014 from the record.
30. On 5 June 2023, the Parties simultaneously filed their respective requests for document production.

31. On 19 June 2023, the Parties simultaneously filed their respective responses to the opposing Party's request for document production.
32. On 26 June 2023, the Parties simultaneously filed their respective replies to the opposing Party's response to their requests for document production.
33. On 7 July 2024, the Tribunal issued its decision dismissing Claimant's application to remove Respondent's Exhibit R-014 from the record.¹⁸
34. On 9 July 2024, the Tribunal issued its PO No. 2 with the decisions on document production.

3.4 THE TRIBUNAL'S DECISION ON RESPONDENT'S APPLICATION FOR SECURITY FOR COSTS

35. On 30 August 2024, the Tribunal informed the Parties of (i) its decision to dismiss Respondent's application for security for costs; and (ii) that a reasoned decision would follow.¹⁹
36. On 28 November 2024, the Tribunal issued its PO No. 3 with its reasoned decision on Respondent's application for security for costs.

3.5 THE PARTIES' SECOND MAIN SUBMISSIONS

37. On 1 October 2024, Claimant submitted its Reply on Jurisdiction ("**Reply**"), together with factual exhibits C-090 to C-115 and legal exhibits CLA-231 to CLA-262.
38. On 2 December 2024, Respondent filed its Rejoinder on Jurisdiction ("**Rejoinder**"), together with factual exhibits R-053 to R-80 and legal exhibits RL-062 to RL-070 and a legal opinion of Dr. Katherine Filesia ("**Katherine Filesia Legal Opinion**").

3.6 THE HEARING ON JURISDICTION

39. On 29 December 2024, the Tribunal issued its PO No. 4 establishing the rules for the organization of the Hearing on Jurisdiction.

¹⁸ Communication A3, dated 23 July 2024

¹⁹ Communication A4, dated 30 August 2024.

40. On 20 and 21 January 2025, the Tribunal held the Hearing on Jurisdiction in Paris, France, at the facilities of the Delos Arbitration Center, located at 92 rue Réaumur, 75002 Paris, France. The following were present at the hearing:

<i>Tribunal</i>	
Ms. Claudia Salomon	President
Prof. Nassib G. Ziadé	Arbitrator
Mr. José Emilio Nunes Pinto	Arbitrator
<i>Secretary of the Tribunal</i>	
Mr. Felipe Aragón	Secretary of the Tribunal
<i>ICSID Secretariat</i>	
Mr. Oladimeji Ojo ²⁰	Representative of ICSID
<i>For Claimant</i>	
Dr. Rutsel Silvestre J. Martha	Lindeborg Counsellors at Law
Mr. Abdallah Andraous	Claimant
<i>For Respondent</i>	
Dr. Annemarieke Künzli	Ministry of Foreign Affairs of the Kingdom of the Netherlands
Ms. Selma Blank	Ministry of Foreign Affairs of the Kingdom of the Netherlands
Mr. Oliver Whitehead	Ministry of Foreign Affairs of the Kingdom of the Netherlands
	Ministry of Foreign Affairs of the Kingdom of the Netherlands
	Ministry of Foreign Affairs of the Kingdom of the Netherlands
Mr. Albert Marsman	De Brauw Blackstone Westbroek
Dr. Irina Buga	De Brauw Blackstone Westbroek
Ms. Anna Sablicova	De Brauw Blackstone Westbroek
Mr. Alexandru Baltag	De Brauw Blackstone Westbroek
Ms. Busra Ataman	De Brauw Blackstone Westbroek
	Representative of the Central Bank of Curaçao and Sint Maarten
	Counsel to the Central Bank of Curaçao and Sint Maarten
<i>Expert Witness</i>	
Dr. Katherine Filesia (remotely)	Expert witness proposed by Respondent
<i>Court Reporter</i>	
Ms. Yvonne Vanvi	

²⁰ In substitution of Mr. Alex B. Kaplan.

41. Dr. Katherine Filesia, Respondent's expert was examined via video conference.

3.7 POST-HEARING SUBMISSIONS

42. On 23 January 2025, the Tribunal issued PO No. 5, on the post-hearing filings.

43. By 14 February 2025, the Parties agreed on the clerical corrections that should be made to the hearing transcript, which were then incorporated by the Court Reporter into a final version; and on 6 March 2025, the Secretary of the Tribunal transmitted the final version of the transcript to the Parties.

44. As recorded in PO No. 5, the Parties agreed that no post-hearing briefing would be required and that they would only make a simultaneous two-round submission on costs.

45. Pursuant to PO No. 5, the Parties were granted until 4 March 2025 to file their first submission on costs and until 18 March 2025 to submit their response to the counterparty's submission on costs.

46. On 4 March 2025, Respondent submitted its first submission on costs ("**Respondent's Costs Submission**"). Claimant did not present his first submission on that date.

47. On 7 and 14 March 2025, Claimant informed that his counsel was undergoing an unexpected medical treatment and, because of this, had been unable to submit the first submission on costs; Claimant additionally requested leave to present its first submission on costs.

48. On 19 March 2025, the Parties informed the Tribunal that they had reached an agreement: (i) which allowed Claimant to present its first submission on costs on 21 March 2025; (ii) that the deadline to submit the response on costs submission would be moved to 11 April 2025; (iii) that Respondent would introduce into the record the Swiss Federal Tribunal's judgment dated 6 February 2025 in the *Raimundo Santamarta v. Venezuela* setting-aside proceedings, accompanied by a one-page submission and Claimant would submit a response to said pleading by 2 April 2025.

49. On 14 March 2025, Claimant submitted its first submission on costs, amended by subsequent filings presented on 21 and 22 March 2025 (“**Claimant’s Costs Submission**”).
50. On 26 March 2025, Respondent submitted the Swiss Federal Tribunal’s judgment dated 6 February 2025 in the *Raimundo Santamarta v. Venezuela* setting-aside proceedings (RL-075), accompanied by a one-page submission.
51. On 2 April 2025, Claimant filed its response to Respondent’s submission on the Swiss Federal Tribunal’s judgment.
52. On 11 April 2025, the Parties submitted their respective Response to the Submission on Costs (“**Claimant’s and Respondent’s Response on Costs Submission**”).

3.8 CLOSE OF PROCEEDINGS

53. On 22 April 2026, the Tribunal closed the proceeding.²¹

²¹ Communication A5, dated 22 April 2026.

III. FACTUAL BACKGROUND TO THE DISPUTE

1. CLAIMANT

54. Claimant was born in Beirut, Lebanon on 2 January 1957 and is a Lebanese national.²² He obtained his Business Administration degree at Saint Joseph University of Beirut in 1978.²³ Until 1984, he resided in Lebanon, where he held several positions in the auditing and finance departments of banks and commercial entities. He also served as professor of Statistic, Probabilities and Financial Mathematics at the Institut Français from 1979 until 1983, when he also became a certified public accountant (CPA) in Lebanon.²⁴
55. In 1984, due to the civil war occurring in Lebanon at that time, Claimant decided to leave the country, and moved with his wife and two children at that time to the Dutch Caribbean. He found a job opportunity as an Internal Auditor at Sun Resorts Ltd. NV (“**Sun Resorts**”), a leisure and hotel provider company seated in Sint Maarten, a constituent country of the Kingdom of the Netherlands in the Caribbean. Eventually, Claimant would become Sun Resort’s Chief Financial Officer.²⁵
56. In this period, Claimant met Mr. Hushang Ansary (“**Mr. Ansary**”), the majority shareholder of Sun Resorts and later Chairman of the Board of Directors, and owner of a wider group of investment companies.
57. In 1989, Claimant and his family moved to Paris, France. From that point onwards, he would commute between St. Maarten and Paris, to carry out his professional duties in Sun Resorts.²⁶
58. In 1991, Claimant applied to obtain Dutch nationality for himself, his wife and children, which they obtained in 2000.²⁷

²² C-001, Passport of Mr. Abdallah Andraous.

²³ Andraous Personal Statement, para. 5.

²⁴ Andraous Personal Statement, para. 6.

²⁵ Andraous Personal Statement, para. 8.

²⁶ Andraous Personal Statement, paras. 9-10.

²⁷ R-010-DUTCH, Dutch Ministry of Justice Immigration and Naturalization Service, Nationality and Naturalization documents of Abdallah Andraous; R-011-DUTCH, Dutch Ministry of Justice Immigration and Naturalization Service, Nationality and Naturalization documents of [REDACTED].

59. On 21 July 2023, Claimant acquired French nationality and, according to Claimant, by virtue of the applicable law of the Kingdom of the Netherlands, he lost his Dutch nationality.²⁸

2. MR. ANSARY’S INCURSION INTO THE DUTCH CARIBBEAN BANKING AND INSURANCE SECTOR

60. In 2001, Mr. Ansary entered into discussions with the Government and the Central Bank of Curaçao regarding the acquisition of Banco di Caribe NV (“**Banco di Caribe**”) and Ennia, a group of insurance companies²⁹ that included: the holding company, Ennia Caribe Holding NV (“**Ennia Holding**”), and the insurer companies, Ennia Zorg NV, Ennia Leven NV and Ennia Shade NV (the “**Insurers**”). The Insurers serve 50% of the insurance market in Curaçao representing approximately 50,000 policyholders.³⁰
61. Between 2001 and 2005, Claimant advised Mr. Ansary regarding the negotiations, due diligence and overall operation to acquire Banco di Caribe and Ennia.³¹ Eventually, on 20 December 2005, through Mr. Ansary’s holding company Parman International BV (“**Parman**”), the acquisition of the financial institutions materialized. Mr. Ansary would first acquire 50.1% of the shares in Banco di Caribe; and would later make a capital increase in the bank of NAf 98.5 million by contributing shares he held in Sun Resorts.³²
62. Claimant asserts that he was not paid for the duties performed for Mr. Ansary leading up to the acquisition of Banco di Caribe and Ennia. Instead, in exchange for his work, Mr. Ansary promised Claimant an equity interest in Parman. Eventually, on 28 December 2011, Claimant was allotted 25,000 Class A shares of Parman, at that time worth USD 3,548,000.³³

²⁸ SoC, paras. 5 and 20, fn. 31; CLA-058-DUTCH, Dutch Nationality Law, Art. 15A; CLA-060, Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, signed on 6 May 1963; C-036-FRA, Declaration of French Nationality.

²⁹ Andraous Personal Statement, para. 11.

³⁰ Notice of Arbitration, paras. 3, 10.

³¹ Andraous Personal Statement, para. 11.

³² C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.15.

³³ Andraous Personal Statement, para. 14; C-040, Parman International B.V. Stock Register; C-041, Parman International B.V. Stock Certificate.

63. From 2006 onwards, Claimant held several senior management positions at these companies: he became the Managing Director of Parman and Co-Managing Director of Ennia Holding and the Insurers. He further held the following positions:³⁴
- a. a member of Parman's investment committee, which met daily to discuss market conditions and stock investments;
 - b. Managing Director of National Investment Bank, a bank specialized in the syndication and management of large infrastructure loans with a record of zero delinquency in the loan portfolio;
 - c. a member of the credit committee of Banco di Caribe;
 - d. exercising overall supervision of Banco di Caribe in Curaçao and Aruba;
 - e. overseeing Ennia's operations in Aruba (Ennia Caribe Holding Aruba); and
 - f. supervising the administration of Sun Resorts and the Towers at Mullet Bay NV in St. Maarten.
64. For his employment services at these companies, Claimant received a salary compensation and was included in the companies' pension programs. Further, from 2012 to 2015, he received dividends from his shares at Parman.³⁵ Since 1989, Claimant's main residency has been in France. Accordingly, he paid taxes in the Kingdom of the Netherlands as a foreign resident, and in France, as a habitual resident.
65. On 1 December 2015, Claimant sold his shares in Parman to the entity [REDACTED] [REDACTED] ("[REDACTED]").³⁶ Claimant initially argued that the transfer never materialized because the purchase price was never paid,³⁷ but then abandoned this position at the Hearing on Jurisdiction.³⁸

³⁴ Andraous Personal Statement, para. 15.

³⁵ Andraous Personal Statement, para. 15; C-039, Proof of pension dated 28 November 2018; C-042, Parman International B.V. Dividend Distribution.

³⁶ C-040, Parman International B.V. Stock Register, p. 4; C-114, Share sale and purchase agreement between Claimant and [REDACTED] dated 1 December 2015.

³⁷ Reply, para. 117.

³⁸ Tr. Day 1, pp. 125-26.

66. Despite this transaction, Claimant avers that, for the purpose of establishing *ratione materiae* jurisdiction, he maintains an interest in the shares transferred to the [REDACTED] foundation because:
- a. On 27 September 2019, the founder of [REDACTED] – [REDACTED] – issued a “Declaration of Ownership” stating that the beneficiary of the foundation was Claimant;³⁹ and
 - b. On 1 January 2024, [REDACTED] assigned to Claimant its authorities as founder of [REDACTED] under Article 10 of the Articles of Incorporation of the foundation, including “[...] appointing, changing or revoking beneficiaries, setting forth the conditions and rules applicable to such benefits, instruct the Board of the Foundation to make distributions, set forth the general policies of the Foundation, request the amendment of the Articles of Incorporation of the Foundation, nominate members of the Board of Directors.”⁴⁰
67. Respondent disputes that these documents prove any interest or link of Claimant to the Parman shares. Respondent maintains that [REDACTED] foundation is the owner of the Parman shares, and thus, Claimant does not hold an investment that would grant him protection under the BIT.

3. THE ENNIA GROUP

68. At the relevant time, the Ennia Group was structured through Ennia Holding, which in turn held the insurance providers Ennia Zorg NV, Ennia Leven NV and Ennia Shade NV (already referred to as the “**Insurers**”). The group also had other investment vehicles not directly related to the insurance business, namely:
- a. EC Investment BV (“**Ennia Investments**”): an investment vehicle established by Mr. Ansary on 20 July 2006, through which the Insurers would make certain investment to generate returns for the policyholders. Around 2018, the Insurers had made loans to Ennia Investments in exchange for fixed interest payments for this

³⁹ C-115, Declaration of Ownership of [REDACTED], dated 27 September 2019.

⁴⁰ C-116, Assignment Agreement, dated 1 January 2024.

purpose. Around that time, Ennia Investments held USD 280 million in cash and marketable securities;⁴¹ and

- b. Stewart & Stevenson (“S&S”), a US company focused on the oil and gas sector, at the relevant time controlled by Mr. Ansary, the majority shareholder of the group.⁴²

3.1 THE ORIGINAL STRUCTURE OF THE ENNIA GROUP

- 69. As stated above, on 20 December 2005, through his holding company Parman, Mr. Ansary first acquired and took control of Banco di Caribe, who would then in turn acquire Ennia Holding from its majority owner, Delta Lloyd Antilles NV, on 6 January 2006,⁴³ by contributing the Sun Resorts shares to Ennia Holding for a value of NAf 100 million.⁴⁴

3.2 CENTRAL BANK’S REQUEST FOR THE CHANGE IN THE CORPORATE STRUCTURE

- 70. On 11 March 2009, the Central Bank requested the Ennia Group to change its corporate structure, stating that:⁴⁵

From a supervisory perspective it is imperative to increase the transparency within the [Banco di Caribe]-group. Therefore, you should restructure [Banco di Caribe] group by separating the banking entities, the insurance entities, and the nonbanking/ insurance entities from each other. This means that [Ennia Holding] is no longer allowed to be a subsidiary of [Banco di Caribe] [...].

The capital of the (immediate) parent company of the separated entities must at all times equal the sum of the capital of all its immediate subsidiaries. Furthermore, all supervised subsidiaries must be adequately capitalized and meet all our supervisory guidelines at all times. [...].

- 71. The corporate structure was then amended to have Ennia Holding as the parent company, with the Insurers and Banco di Caribe as subsidiaries, as follows:⁴⁶

⁴¹ Notice of Arbitration, para. 11.

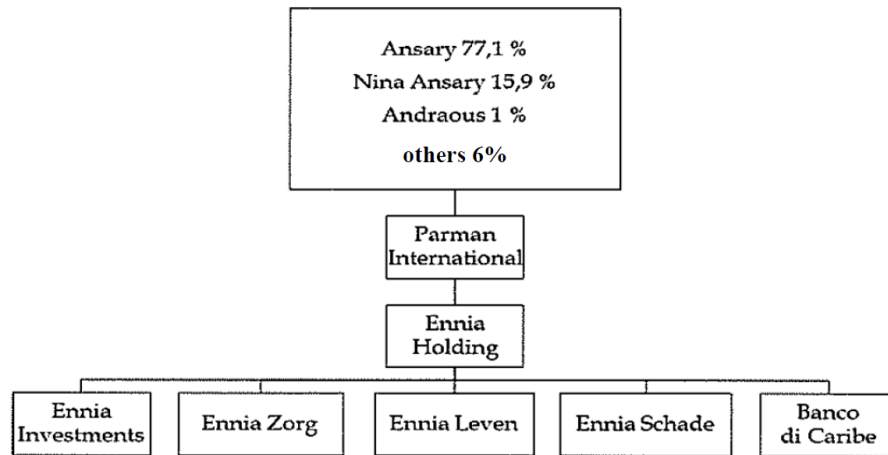
⁴² C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.55.

⁴³ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, paras. 2.10-2.13.

⁴⁴ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.15.

⁴⁵ C-044, Letter from the CBCS to BDC dated 11 March 2009; C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.24.

⁴⁶ Notice of Arbitration, para. 10.



4. THE CENTRAL BANK’S CONCERNS REGARDING THE SOLVABILITY OF THE INSURERS

72. In 2015, the Central Bank raised concerns regarding the solvability requirements of the Insurers. The assets of the Insurers consisted in a substantial extent of intercompany receivables against Ennia Holding and Ennia Investments. In the Central Bank’s view, this was not in compliance with the solvency regulations, and it urged the Ennia Group to remedy this situation and cease the issuance of loans from the Insurers to Ennia Holding and Ennia Investments.⁴⁷
73. On 4 August 2016, the Central Bank requested Ennia to implement certain measures such as avoiding further loans to and receivables from affiliated entities and repaying or reducing existing loans within a period of not more than three years. The Central Bank granted the Ennia Insurance Companies a period of three years, until August 2019, to restructure their investments (the “**Grace Period**”).⁴⁸
74. Between 2016 and 2018, the Central Bank and the Ennia Group held discussions to address the situation and considered options for restructuring the group, to bring it back to the solvency requirements set by the Central Bank.⁴⁹ Within these consultations, on

⁴⁷ C-016, Curaçao Court of First Instance, Parma International B.V. v. Central Bank of Curaçao and St Maarten, Judgment of 31 January 2019, ECLI:NL; OGEAC:2019:15, paras. 2.6-2.7.

⁴⁸ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.42; RL-008, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.42; C-047, Letter from the CBCS to Ennia dated 4 August 2016, pp. 2-3.

⁴⁹ C-016, Curaçao Court of First Instance, Parma International B.V. v Central Bank of Curaçao and St Maarten, Judgment of 31 January 2019, ECLI:NL; OGEAC:2019:15, paras. 2.8-2.10.

31 May 2018, Ennia Holding adopted the Restructuring Agreement, with a proposal for the restructuring.⁵⁰

75. On 22 June 2018, Ennia Investments, represented by Claimant, and S&S, represented by Mr. Ansary, signed an **Investment Management Agreement**, by which S&S would manage USD 250 million of Ennia Investments in return for an interest of 6.5% p.a. An initial transfer of funds of USD 100 million would be made, with the remaining funds to be transferred on later dates. On that same day, Ennia Investments transferred USD 100 million to S&S pursuant to the Investment Management Agreement.⁵¹
76. On 13 July 2018, the Central Bank revoked the license to the Insurers,⁵² prior to the expiry of the Grace Period.

5. THE EMERGENCY DECLARATION

77. On 4 July 2018, at the request of the Central Bank, the Curaçao Court of First Instance (“**Court of First Instance**”) pronounced a declaration of emergency (“**Emergency Declaration**”) under Article 60 of the National Insurance Supervision Ordinance (the *Landverordening Toezicht Verzekeringsfedrijf*, hereinafter the “**LTV**”), on the grounds that, according to the Central Bank, the Ennia Group had a serious solvency deficit; the assets belonging to the group were being withdrawn from the supervision of the Central Bank through Ennia Holding and Ennia Investments; and the ultimate shareholders of the Ennia Group were failing to comply with the Central Bank’s instructions to remedy the situation.⁵³
78. To safeguard the interests of the Insurers’ creditors (the policyholders), the Court of First Instance adopted an emergency scheme under Article 60 of the LTV, whereby the Central

⁵⁰ C-009, Restructuring Agreement, dated 31 May 2018.

⁵¹ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.47.

⁵² C-016, Curaçao Court of First Instance, Parma International B.V. v Central Bank of Curaçao and St Maarten, Judgment of 31 January 2019, ECLI:NL; OGEAC:2019:15, paras. 2.11-2.13; C-013, Curaçao Court of First Instance, Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al., Judgment of 4 July 2018, ECLI:NL: OGEAC:2018:160, para. 3.2; C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 2.49. See also SoD, paras. 46-47.

⁵³ C-013, Curaçao Court of First Instance, Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al., Judgment of 4 July 2018, ECLI:NL: OGEAC:2018:160, para. 3.5.

Bank would take control of the Ennia Group to restructure it to restore the solvency ratios.⁵⁴

79. Parman petitioned the Court of First instance for interim measures suspending the Emergency Declaration and ordering the Central Bank to engage in consultations with the Ennia Group to find an amicable solution; on 31 January 2019, the Court of First instance dismissed this application.⁵⁵
80. To this date, the supervision and control of the Central Bank over the Ennia Group continues.⁵⁶
81. Claimant asserts that the Central Bank has spent around USD 16.5 million in legal fees at the expense of Ennia's funds, without restructuring or solving the situation; in fact, according to Claimant, the solvency deficit has increased since the Central Bank took control of the companies.⁵⁷
82. Further, Claimant argues that the Central Bank has refused to share with the former directors and shareholders of the Ennia Group the financial statements, resolutions and decisions taken since the takeover in 2018, leaving the shareholders and Ennia Group's directors in the dark regarding the management and financial situation of the companies.⁵⁸
83. Claimant argues that the Ennia Group was in compliance with the solvability requirements and there was no need or urgency to adopt the Emergency Declaration. It adduces a 2016 Asset Liability Management Study⁵⁹ which would show that the Ennia Group's solvency was sound, with a solvency ratio above 100%.⁶⁰ Claimant further asserts that there was never imminent, real and substantial harm to the creditors: all policyholders have been paid on time – except for two of them, according to the Emergency Declaration.⁶¹ In Claimant's view, any alleged solvency issues was entirely

⁵⁴ C-013, Curaçao Court of First Instance, Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al., Judgment of 4 July 2018, ECLI:NL: OGEAC:2018:160, paras. 3.7-3.10 and 4.1-4.3.

⁵⁵ C-016, Curaçao Court of First Instance, Parma International B.V. v Central Bank of Curaçao and St Maarten, Judgment of 31 January 2019, ECLI:NL: OGEAC:2019:15, para. 5.

⁵⁶ Notice of Arbitration, paras. 29-30.

⁵⁷ Notice of Arbitration, para. 30.

⁵⁸ Notice of Arbitration, para. 39; SoC, para. 47 (x).

⁵⁹ C-005, Asset Liability Management Study 2016.

⁶⁰ Notice of Arbitration, para. 31.

⁶¹ Notice of Arbitration, para. 34.

due to the horizontal structure imposed by the Central Bank in 2009 that created intercompany accounts.⁶²

84. And in any case, Claimant asserts that the solvency issue adduced by the Central Bank could have swiftly been resolved through the restructuring that the Ennia Group agreed to undertake in the May 2018 Restructuring Agreement.⁶³

6. THE LIQUIDATION OF ASSETS OF THE ENNIA GROUP

85. The Central Bank has undertaken actions to liquidate some of the assets of the Ennia Group:

86. First, in June 2022, the Central Bank sold the Banco di Caribe to [REDACTED] (“[REDACTED]”).

87. Claimant alleges that the owner of [REDACTED] is a local businessman with close ties to the Managing Director of the Central Bank, [REDACTED]; and that the transaction was made for NAf⁶⁴ 120 million, well below Banco di Caribe’s book value of NAf 180 million. According to Claimant, Banco di Caribe was solvent and profitable, and there was no reason to make that sale pursuant to those terms.⁶⁵

88. Second, the Central Bank has the intention of selling Mullet Bay, a 67.7 hectares plot of land in St. Maarten, which includes a hotel and a golf course, and that is one of the main assets of Sun Resorts, which is one of the companies that is part of the Ennia Group.⁶⁶

89. Claimant asserts that the Central Bank wrongfully considers the value of Mullet Bay to be artificially high. While the Ennia Group values the plot in an amount ranging from USD 292 million in December 2006 to USD 419 million in June 2019, the Central Bank considered a significant lower value of USD 96.4 million in January 2021.⁶⁷ Claimant also argues that the Central Bank is seeking to sell Mullet Bay to a third party for a low price with an expropriatory intent.⁶⁸

⁶² Notice of Arbitration, para. 31.

⁶³ Notice of Arbitration, para. 33.

⁶⁴ Netherlands Antillean Guilder.

⁶⁵ Notice of Arbitration, paras. 42-43; SoC, paras. 72-76.

⁶⁶ Notice of Arbitration, para. 44.

⁶⁷ Notice of Arbitration, para. 46.

⁶⁸ Notice of Arbitration, para. 50; SoC, paras. 83-97.

7. THE CONSEQUENCES OF THE EMERGENCY DECLARATION REGARDING CLAIMANT

90. At the outset of the Central Bank’s intervention of the Ennia Group in the summer of 2018, Claimant’s directorship and management positions at the group were terminated; and thus, from that point onwards, he stopped receiving his salary⁶⁹ and he claims to have lost his pension rights.⁷⁰

8. THE 2021 AND 2023 JUDGMENTS

91. Under the control of the Central Bank, the Ennia Group companies sued the former directors and shareholders of the group, for damages estimated at over NAf 1.1 billion⁷¹ (approximately USD 550 million), as a result of their alleged unlawful conduct pertaining to the management and supervision of the Group and of the Insurers’ funds. According to Ennia (now controlled by the Central Bank), the former directors and shareholders had transferred the Insurers’ funds to entities not controlled by the Insurers nor supervised by the Central Bank. The purpose of these transactions was to use the Insurers’ funds to make high risk investments not suitable for an insurer. Ennia further argued in these proceedings that the Insurers assumed all the risk of the operations while yielding no benefit from those transactions. Further, the directors extracted funds from Ennia in the form of capital withdrawals, dividends, or unrelated expenses in prejudice of the Insurers.⁷²
92. On 29 November 2021, the Court of First Instance issued a judgment (the “**2021 Judgment**”) concluding that the former directors and shareholders had breached their special duty of care incumbent on directors and supervisors of insurance companies and had caused significant damages to Ennia, for which they were liable.⁷³

⁶⁹ Andraous Personal Statement, paras. 17(4), 43, 78.

⁷⁰ Reply, para. 134.

⁷¹ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, p. 2.

⁷² C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, paras. 4.1-4.2.

⁷³ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, paras. 5.148-5.149.

93. Claimant was held jointly and severally liable with other co-defendants to pay approximately NAF 237 million.⁷⁴
94. Claimant and his co-defendants appealed the decision and on 12 September 2023, the Curaçao Court of Appeal issued its ruling (the “**2023 Judgment**”) concluding that:
- a. Claimant is jointly and severally liable to pay USD 117 million for sales of shares in S&S held by the Ennia Group at a price below market price;⁷⁵
 - b. Claimant is liable for unlawful distribution of dividends based on the overvaluation of Mullet Bay. A court-appointed expert would determine the final compensation owed;⁷⁶
 - c. Claimant is jointly and severally liable to pay USD 316,044 for his conduct regarding amounts improperly paid by Ennia to advisors who did not render services to the companies of the group;⁷⁷ and
 - d. Claimant is jointly and severally liable for Ennia Investments’ damages consisting of the fixed costs associated with travel expenses not related to Ennia’s business. A court-appointed expert would determine the final compensation owed.⁷⁸
95. On 11 April 2024, the Central Bank and the government of Curaçao and Sint Maarten signed an outline agreement to continue with the restructuring of the Ennia Group.⁷⁹

⁷⁴ C-027, Court of First Instance of Curaçao, ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al., Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, paras. 5.149 and 6.1-6.7.

⁷⁵ RL-008, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 13.2.

⁷⁶ RL-008, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 11.39, 13.3.

⁷⁷ RL-008, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.76(b).

⁷⁸ RL-008, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 12.56 and 12.76(f).

⁷⁹ R-013, Central Bank of Curaçao and Sint Maarten Press Release regarding the Ennia Resolution: Signing of the Outline Agreement, dated 11 April 2024.

IV. REQUEST FOR RELIEF

96. In this jurisdictional phase, Respondent requests the Tribunal to: “Render an award dismissing Claimant’s claims in their entirety, for lack of jurisdiction; and Order Claimant to pay all of the Kingdom of the Netherlands’ costs.”⁸⁰
97. Claimant asks the Tribunal to:⁸¹
- (i) disregard Section 2 of Respondent’s Statement of Defence [on Jurisdiction];
 - (ii) declare that it has jurisdiction over this dispute;
 - (iii) declare that Respondent has breached its obligations under the BIT;
 - (iv) order Respondent and the [Central Bank] to cease its plans for the sale and further depletion of the assets of Ennia, including but not limited to Mullet Bay;
 - (v) order Respondent and the [Central Bank] to abstain from any negotiations, consultations, conversations or actions with any third parties which could prevent the due execution of the BIT or otherwise frustrate its objects;
 - (vi) order Respondent to restore Claimant’s proprietary rights as per the date of the intervention;
 - (vii) order Respondent to compensate in full the Claimant for Respondent’s breaches under the BIT, which shall be quantified at a later stage in these proceedings;
 - (viii) order Respondent to pay Claimant the full costs of the arbitration, including but not limited to compensation for all arbitrators’ fees and costs, legal fees and expenses incurred by the Claimant in connection with the present dispute; and
 - (ix) order Respondent to pay applicable interests on any amount awarded until it complies with such award.
98. In its PO No. 3 – Decision on Security for Costs, the Tribunal rejected Claimant’s request (i) to exclude Section 2 of Respondent’s Statement of Defence on Jurisdiction from the file.⁸² Further, Claimant’s requests (iii) through (vii) and (ix) pertain to the merits of

⁸⁰ Rejoinder, para. 164; See also SoD, para. 234.

⁸¹ Reply, para. 137.

⁸² PO 3, Decision on Security for Costs, paras. 16-17.

Claimant's case on liability and quantum, and thus, are not the subject matter of the bifurcated proceedings and of this Final Award.

99. Therefore, Claimant's requests for relief that the Tribunal will address in this Final Award will be request (ii), whether the Tribunal has jurisdiction over the present dispute; and if applicable, request (viii), whether to reimburse Claimant of his arbitration costs.

V. THE *RATIONE MATERIAE* JURISDICTIONAL OBJECTION

1. WHETHER CLAIMANT HAS A PROTECTED “INVESTMENT”

100. Article 1(a) of the BIT provides that:

(a) the term “investments” means every kind of asset and more particularly, though not exclusively:

(i) movable and immovable property as well as any other rights in rem in respect of every kind of asset;

(ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) claims to money, to other assets or to any performance having an economic value;

(iv) rights in the field of intellectual property, technical processes, goodwill and know-how;

(v) rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

101. Additionally, Article 1(b) of the BIT provides that:

(b) the term “investor” shall comprise with regard to either Contracting Party:

(i) natural persons having the nationality of that Contracting Party;

[...]

who have made an investment in the territory of the other Contracting Party.
(Emphasis added)

102. Claimant alleges that his investment consists of:⁸³

- a. His shares in Parman (and thus his indirect shareholding at Ennia Holding), which would qualify under Article 1(a)(ii) of the BIT; and
- b. His pension and salary as “claims to money” under Article 1(a)(iii) of the BIT, that, once removed as managing director of Ennia by the Central Bank, he no longer received.

⁸³ SoC, para. 104.

103. Respondent has raised two *ratione materiae* objections, arguing that:

- a. First, Claimant's alleged shareholding in Parman (and indirectly in Ennia) does not qualify as a protected investment; and
- b. Second, Claimant's pension and salary rights do not qualify as protected "claims to money" of Article 1(a)(iii) of the BIT.

1.1 RESPONDENT'S POSITION

A. **Claimant's alleged shareholding in Ennia does not qualify for protection under the BIT**

104. Respondent argues that Claimant does not satisfy the BIT provision requiring the "making" of an "investment" because:

- a. First, the shares in Parman were allotted to Claimant as compensation for his work in these entities, and thus, do not constitute the making of an investment for the purpose of the BIT (a.);
- b. Second, Claimant does not hold title to the Parman shares; they are actually held by another entity, the [REDACTED] foundation (b.); and
- c. Third, Claimant's alleged proprietary indirect interest on Ennia Holdings is far too remote to be granted protection under the BIT (c.).

a. **The compensation through shares within an employment relationship does not qualify as the "making" of an "investment"**

The BIT requirements for an investment to be granted protection

105. Respondent emphasizes that a construction of the BIT "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Article 31 of the VCLT) leads to the conclusion that Article 1(b) of the BIT (as well as Articles 8, 9(2)(a) and 12(3))⁸⁴ establishes that a protected investor is

⁸⁴ SoD, paras. 174, 177, citing to Art. 8 of the BIT, which states that the BIT shall "apply to investments, which have been *made* before that date, in accordance with the laws and regulations as applicable in the territory of the Contracting Party concerned at the time when the investments were made"; Article 9(2)(a) of the BIT, that refers to "[t]he competent court of the Contracting Party in the territory of which the investment has been *made*"; and Article 12(3) of the BIT that covers "investments *made* before the date of the termination of the present Agreement." (Emphasis added by Respondent).

required to actively “make” an “investment,” in order to be granted protection under the BIT.⁸⁵

106. As confirmed by investment case law interpreting similar provisions, the “making” of an investment entails “a contribution that extends over a certain period of time and that involves some risk”⁸⁶ or “some action in bringing about the investment.”⁸⁷

107. In Respondent’s view, an interpretation of the BIT’s preamble also supports the requirement of active involvement in the making of an investment when it states the Contracting Parties’ desire “[...] to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly regarding investments *by* the investors of one Contracting Party in the territory of the other Contracting Party.” For Respondent, the term “by” should be interpreted to signify that the investor is the actor and entails an active role for that investor.⁸⁸

Claimant made no active contribution to acquire his alleged investment

108. Claimant has argued that the lack of a cash contribution when acquiring shares does not preclude protection under the BIT because there are other non-monetary forms of contribution that constitute the making of an investment, such as active contribution of knowledge or “sweat equity.” In response to this argument, Respondent concedes that contribution in the act of making an investment can take non-monetary forms, but that in this case, Claimant has not demonstrated he made any contribution aimed at acquiring the shares in Parman: allegedly, Claimant was allotted the shares in Parman in 2011 for an unsubstantiated promise by Mr. Ansary for Claimant’s services rendered between 2001 and 2006. Claimant has furnished no evidence of the promise made or the work allegedly performed.⁸⁹

109. Claimant has further argued that he received the Parman shares in exchange for having contributed “goodwill and know-how,” which are listed as protected investments under

⁸⁵ SoD, para. 174; Rejoinder, paras. 146-147.

⁸⁶ SoD, para. 178, citing to RL-050, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07-AA280, Award, 26 November 2009, para. 207.

⁸⁷ SoD, paras. 179-181, citing to RL-046, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012, para. 222; See also SoD, para. 183, citing to RL-047, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, para. 155.

⁸⁸ SoD, para. 176; Rejoinder, paras. 147-150.

⁸⁹ SoD, paras. 187-188; Rejoinder, paras. 145, 152-155, 157.

Article 1(a)(iv) of the BIT. Respondent asserts that that provision deals with a particular type of investment consisting of “rights in the field of intellectual property, technical processes, goodwill and know-how.” The provision aims at protecting intangible assets with measurable economic benefits. In this context, the term “goodwill” refers to the value created by the sale or purchase of a business for an amount higher than the sum of the net fair value of all of the assets purchased in the acquisition and the liabilities assumed in the process; the term “know-how” refers to a type of commercial confidential information that is primarily characterized by its technical nature.⁹⁰

110. In this case, Claimant’s alleged “goodwill” and “know-how” in the sense of general business acumen and services provided to companies in the context of an employment contract fall clearly outside the scope of Article 1(a)(iv).⁹¹ For Respondent, services rendered in the context of an employment relationship cannot equate to providing contribution directed at “making” an “investment.” Such relation does not entail the inherent criteria for investments that are: (i) a capital contribution to the host State; (ii) a significant duration over which the project is implemented; and (iii) a sharing of operation risk.⁹² An interpretation allowing employment contracts to qualify as protected investments under BITs would entail that every expatriate employee could qualify as a protected investor.⁹³ In any event, Claimant has submitted no evidence of the alleged work and business experience provided to his employer.⁹⁴

b. Claimant holds no title to the Parman shares

(i) The [REDACTED] foundation is the owner of the Parman shares

111. Respondent further argues that Claimant does not own the shares in Parman: on 1 December 2015, long before the dispute arose (July 2018) and these arbitration proceedings commenced (February 2023), Claimant sold and transferred his shares in Parman to the [REDACTED] foundation.⁹⁵

⁹⁰ SoD, para. 190; Rejoinder, paras. 161-162.

⁹¹ SoD, para. 190.

⁹² Rejoinder, paras. 159-160.

⁹³ SoD, paras. 189, 191.

⁹⁴ Rejoinder, para. 156.

⁹⁵ SoD, paras. 192-193, citing to C-040, Parman International B.V. Stock Register, p. 4; Rejoinder, paras. 84, 87-89.

112. Accordingly, Claimant does not hold an “investment” in Parman, nor an indirect investment in the Ennia Group.⁹⁶

113. In his Reply, Claimant avers that the transfer never materialized because the purchase price was never paid; however, Respondent asserts that Claimant offers no evidence to support this contention. In any event, as a matter of Curaçao law, the transfer of the shares to [REDACTED] was effective regardless of the lack of payment, as confirmed by Dr. Katherine Filesia,⁹⁷ a deputy civil-law notary and expert on Curaçao law, whose expert opinion Respondent has produced to confirm that [REDACTED] is the owner of the Parman shares.⁹⁸ Article 7 of the share sale and purchase agreement (“SPA”) sets out that the transfer of the shares in Parman from Claimant to [REDACTED] is effective as of the date of acknowledgement by Parman:⁹⁹

“This agreement shall have immediate effect upon its execution. The transfer of the Shares will be effective as of the date of acknowledgement thereof by [Parman] or the date this agreement is served upon [Parman] (whichever occurs first).”

114. On 1 December 2015, Claimant – acting on behalf of Parman, signed the SPA for acknowledgement of Parman of the transfer.¹⁰⁰

115. Additionally, the Parman stock registry also confirms that Claimant sold his shares to [REDACTED] on that date, as the latter is listed as the successor shareholder in the stock registry.¹⁰¹

⁹⁶ SoD, para. 194.

⁹⁷ Rejoinder, paras. 93-94.

⁹⁸ Rejoinder, para. 8; Katherine Filesia Legal Opinion, paras. 19-21.

⁹⁹ Rejoinder, para. 90, citing to C-114, Share sale and purchase agreement between Claimant and [REDACTED], dated 1 December 2015, Article 7.

¹⁰⁰ Rejoinder, para. 91.

¹⁰¹ Rejoinder, para. 92, citing to C-040, Parman International B.V. Stock Register, p. 4.

Stockregister of Parman international B.V. Established in Curaçao Trade registry 97128		
shareholder full name	Bahram Ansary	Abdallah Andraous
address	4 Somerset House Somerset Road London, SW19 5JA	28, Avenue Hoche 75008 Paris
change of address		
quantity of shares	25,000 A shares	25,000 A shares
serial numbers	A 2,456,857 u/i A 2,481,856	A 2,481,857 u/i A 2,506,856

116. To support his argument on his title to the shares, Claimant avers that he received periodic dividends from the shares. On this point, Respondent asserts that:

- a. First, this confirms that all or part of the purchase price of the SPA was paid: Article 5 of the SPA states that “Any distribution by the Company to its shareholders will be paid to the Seller, as payment on account of the Purchase Price, until the Purchase Price is paid in full”;¹⁰² and
- b. Second, Claimant only received dividends until 2015 and not thereafter, as evidenced by the lack of any trace of dividend receivables in Claimant’s French or Dutch tax statements;¹⁰³ this date coincides with the sale and transfer of the shares to [REDACTED].

117. Lastly, the UBO statement of Ennia Caribe holding of 31 December 2013 that Claimant has produced to aver that he is the owner of the Parman shares is inapposite. The document is dated well before the conclusion of the SPA, the arising of the dispute and the commencement of the arbitration; thus, it cannot serve to disprove that the owner of the shares at the relevant time was and is the [REDACTED] foundation.¹⁰⁴

¹⁰² Rejoinder, para. 96, citing to C-114, Share sale and purchase agreement between Claimant and [REDACTED], dated 1 December 2015, Article 5.

¹⁰³ Rejoinder, paras. 98 and 111, citing to Reply, para. 86 and R-058, Andraous’ Dutch tax statement, 2015; R-059, Andraous’ Dutch tax statement, 2016; R-060, Andraous’ Dutch tax statement, 2017; R-070, Andraous’ Dutch tax statement, 2018; R-071, Andraous’ Dutch tax statement, 2015 - 2019 R-072-FRENCH, Andraous’ French tax statement, 2015; R-073-FRENCH, Andraous’ French tax statement, 2016; R-074-FRENCH, Andraous’ French tax statement, 2017; R-075-FRENCH, Andraous’ French tax statement, 2018; R-076-FRENCH, Andraous’ French tax statement, 2019; R-077-FRENCH, Andraous’ French tax statement, 2020; R-078-FRENCH, Andraous’ French tax statement, 2021; R-079-FRENCH, Andraous’ French tax statement, 2022.

¹⁰⁴ Rejoinder, para. 97.

(ii) Claimant has not proven to be the beneficiary of the [REDACTED] foundation

118. Respondent asserts that Claimant has not produced any evidence to support his contention that he is the sole beneficiary of the [REDACTED] foundation.¹⁰⁵
119. As explained by Dr. Filesia, [REDACTED] is a *Stichting Particulier Fonds* (“SPF”), a particular form of foundation under Curaçao law, with a separate legal personality, which does not have shareholders. Typically, the SPF has a trust office in charge of any distributions required by the SPF’s articles of association.¹⁰⁶ Unless a person has been expressly assigned rights to the SPF’s assets in its articles of association, such person has no interest vested in the SPF’s assets nor can such person force the entity to make distributions in its favor.¹⁰⁷
120. In this case, the founder of [REDACTED], as per its articles of association, is [REDACTED], an entity with which Claimant has not attempted to prove any relationship. The articles of association contain no reference to Claimant as beneficiary or otherwise, nor do they include any directions on how [REDACTED]’s funds are to be distributed and in what manner. There is only one provision granting the board general power to make distributions or provide financial assistance to any person on a discretionary basis.¹⁰⁸ Dr. Filesia asserts that, under these circumstances, potential beneficiaries do not have even a contingent right over the foundation’s assets; they merely may have a hope of becoming recipients of distribution if the board actually makes such distribution in the exercise of its discretionary power.¹⁰⁹
121. The only evidence that Claimant has produced to support his link to the [REDACTED] foundation are the following:
122. First, the “Declaration of Ownership” dated 27 September 2019, prepared for the purpose of an unidentified transaction that would have occurred in 2019. The document is

¹⁰⁵ Rejoinder, para. 100.

¹⁰⁶ Rejoinder, para. 101, citing to Katherine Filesia Legal Opinion, paras. 22-23.

¹⁰⁷ Rejoinder, para. 103.

¹⁰⁸ Rejoinder, para. 115, citing to R-080, Curaçao Chamber of Commerce Dossier regarding [REDACTED], including Articles of Association, 12 May 2011, Article 2(1).

¹⁰⁹ Rejoinder, para. 106, citing to Katherine Filesia Legal Opinion, para. 40; See also Rejoinder, paras. 110, 113-115.

insufficient to prove that Claimant indirectly owns the Parman shares at the relevant points in time;¹¹⁰ and

123. Second, the purported assignment by [REDACTED] to Claimant of its authorities as founder of the [REDACTED] foundation, dated 1 January 2024, which would include, *inter alia*, the right to instruct the Board of Directors to make distributions and appoint beneficiaries of the foundation.¹¹¹ Respondent avers that this alleged assignment does not equate to any entitlement of Claimant to the Parman shares and offers three arguments:
124. First, relying on Dr. Filesia’s examination at the Hearing, Respondent contests the validity and/or efficacy of this document: Article 10 of the Articles of Incorporation provide that the founder’s ([REDACTED]) authorities “are personal, cannot be exercised by any other person, and do not devolve unto his successors in inheritances.” Article 10 of the Articles of Incorporation allows the founder to “appoint one or more successors” but not to “assign” his rights. Article 394 of the Civil Code of Curaçao establishes the requirements for an “assignment”, and these clearly differ from an “appointment” under Article 10 of the Articles of Incorporation.¹¹²
125. Second, even if said assignment is valid and effective, two conclusions can be drawn:
- a. First, it would prove that, before 1 January 2024, when the alleged assignment took place, Claimant had no power to name beneficiaries of the foundation and no link to the Parman shares owned by the [REDACTED] foundation;¹¹³ and
 - b. Second, this would constitute an abuse of process by Claimant that would exclude him from the protection of the BIT: by unlawfully attempting to change his relation to [REDACTED] and his link to the Parman shares, long after the dispute arose (July 2018) and these arbitration proceedings commenced (February 2023).¹¹⁴

¹¹⁰ Rejoinder, paras. 107-112, citing to C-115, Declaration of Ownership of [REDACTED], dated 27 September 2019.

¹¹¹ C-116, Assignment Agreement, dated 1 January 2024.

¹¹² Tr., Day 1, pp. 155-157.

¹¹³ Tr., Day 2, pp. 227-228.

¹¹⁴ Tr., Day 2, pp. 193-195.

c. Claimant's alleged interest in the assets of the Ennia Group is too remote

126. Finally, Respondent sustains that, even assuming that Claimant holds title to that 1% shareholding in Parman, his connection with the actual assets that would potentially qualify as an investment are too remote: Parman holds shares in Ennia Holding, which in turn, holds the Ennia Insurance Companies in which the Central Bank intervened and which constitute the relevant business and assets regarding this dispute.¹¹⁵
127. Respondent contends that it cannot be deemed to have consented to arbitrate disputes with regard to an alleged investor so remote from the allegedly affected companies.¹¹⁶
128. Respondent further asserts that investment case law has consistently held that a cut-off point must be established beyond which claims by remote minority shareholders should not be allowed.¹¹⁷ The doctrine has suggested that the cut-off threshold (i) should be set at a minimum shareholding of 10%; and (ii) knowledge by the host State of said holding, that would allow the State to foresee a potential claim.¹¹⁸
129. In this case, even assuming that Claimant holds a minority indirect interest in the Ennia Insurance Companies, it is far too remote to qualify for BIT protection.¹¹⁹

B. Claimant's pension and salary rights do not qualify as protected investments

130. Respondent submits that Claimant's salary and pension rights do not qualify as protected investment for three reasons:¹²⁰
- a. First, salary and pension rights arising from an employment contract cannot be reasonably interpreted as "claims to money" under Article 1(a)(iii) of the BIT;

¹¹⁵ SoD, para. 195; Rejoinder, paras. 116-117.

¹¹⁶ SoD, para. 195; Rejoinder, para. 119.

¹¹⁷ SoD, paras. 196-199, citing to RL-053, *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004, paras. 50-52; RL-054, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 122; RL-055-FRENCH, *African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo*, ICSID Case No. ARB/05/21, Award on the Objections to Jurisdiction and Admissibility, 29 July 2008, paras. 100-101.

¹¹⁸ SoD, para. 201; Rejoinder, para. 118.

¹¹⁹ SoD, para. 203.

¹²⁰ SoD, para. 205.

- b. Second, as with the case of a compensation with allotted shares for work performed under an employment contract, payment of salary and accrual of pension rights cannot be regarded as the active “making” of an “investment;” and
- c. Third, the claim is unsubstantiated because Claimant claims salaries and pension rights for services that have not been rendered.

a. Salary and pension rights do not constitute “claims to money” under Article 1(a)(iii) of the BIT

131. Respondent submits that the term “investment” in the BIT has an inherent meaning and that the illustrative categories of assets listed in Article 1(a) (i) through (v) must be interpreted in light of that meaning and the object and purpose of the BIT. In this case, an automatic application of the BIT to any type of “claims to money” would entail an overly broad interpretation that would disregard the ordinary meaning of the terms of the BIT in their context and in light of its object and purpose.¹²¹
132. As stated by the *Romak* tribunal, the “mechanical application of the categories listed” in an investment treaty based on an overly broad interpretation of “investment,” without regard to the term’s inherent meaning “would eliminate any practical limitation to the scope of the concept of ‘investment.’”¹²² Similarly, and more specifically, the *OI European* tribunal underscored that pension rights do not fall within the inherent meaning of investment and thus fall outside the scope of investment treaty protection.¹²³
133. The BIT is meant to encourage foreign investment, not to attract expatriate employees; accordingly, it offers protection to certain kinds of assets, but not to mere employment agreements.¹²⁴ Therefore, Claimant’s alleged salary and pension rights arising from his

¹²¹ SoD, paras. 207-210; Rejoinder, paras. 122-134.

¹²² SoD, para. 215, citing to See RL-050, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07-AA280, Award, 26 November 2009, paras. 184-185. See also SoD, paras. 216-223, citing to RL-047, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, paras. 148-149; RL-059, *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela (II)*, ICSID Case No. ARB(AF)/11/1, Award, 30 April 2014, para. 82; RL-060, *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction, 23 August 2019, para. 117; CLA-104, *Alpha Projektholding v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, paras. 265-274. See also SoC, paras. 111-112.

¹²³ SoD, paras. 213-214, citing to CLA-095, *OI European v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 218.

¹²⁴ SoD, para. 211.

employment relationship with the Ennia Group cannot reasonably constitute protected investments under the BIT.¹²⁵

134. Respondent rejects Claimant’s attempt to characterize its alleged ownership of shares in Parman and his salary and pension rights as a “unitary” or “multi-faceted” investment arising out of a complex operation.¹²⁶

b. The payment of salary and accrual of pension rights cannot be regarded as the active “making” of an “investment”

135. Respondent contends that a national of one Contracting Party engaging in work under an employment agreement at a company constituted under the laws of the other Contracting Party cannot be regarded as an “investor” who is “making” an “investment” in the territory of that other Contracting Party. This goes far beyond the inherent meaning of the terms “investor,” “investment,” and the “making” of an investment.¹²⁷

c. Claimant is not claiming salary and pension rights accrued for employment services actually rendered

136. Lastly, Respondent notes that Claimant seeks compensation of the salary and pension rights that would have accrued after his dismissal as director of Ennia, following the Central Bank’s intervention of the Group.¹²⁸
137. Because Claimant never rendered services to the Ennia Group after 2018, there is no outstanding “claims to money.” Claimant is not requesting compensation of salary and pension rights accrued for work performed prior to 2018.¹²⁹
138. The termination of Claimant’s employment with the Ennia Group was grounded on a track record of improper business conduct, as confirmed by the Curaçao courts, which included misappropriating and shifting of asset in detriment of the Insurance companies and the policyholders. However, Respondent emphasizes, Claimant does not claim that the judgments of the Curaçao Courts constitute a violation of the BIT, and thus, there is no legal basis for his claim over salary and pension rights.¹³⁰

¹²⁵ SoD, paras. 212, 224.

¹²⁶ Rejoinder, paras. 135-136.

¹²⁷ SoD, paras. 225-227.

¹²⁸ SoD, para. 228.

¹²⁹ SoD, para. 229.

¹³⁰ SoD, paras. 230-231.

C. Respondent’s argument regarding the application of the European Convention on Human Rights

139. At the Hearing, Claimant argued that the European Convention on Human Rights (“ECHR”) – that protects individual property and that would include Claimant’s shares and salary and pension rights – is applicable pursuant to the Most Favored Nation protection under Article 3(5) of the BIT.¹³¹
140. Respondent replies that Article 3(5) of the BIT is applicable with respect to protected investments, and thus, because Claimant’s shares in Parman and his salary and pension rights do not qualify as investments, Article 3(5) of the BIT cannot be invoked to seek protection of these assets.¹³²
141. Further, Respondent submits that the ECHR does not include an arbitration clause and establishes that the European Court of Human Rights is the competent body to adjudicate disputes concerning the rights and obligations that stem from the ECHR.¹³³

1.2 CLAIMANT’S POSITION

A. Claimant’s shareholding in Ennia qualifies for protection under the BIT

a. Claimant “made” an investment when he acquired the shares in Parman

142. Claimant does not dispute that the BIT requires that protected investors “make” an investment in the territory of the host State to be granted protection under the Treaty.¹³⁴
143. However, Claimant disagrees with Respondent on the criteria to establish whether an investor “made” a “contribution” when acquiring the investment. For Claimant, the transfer of the shares suffices to demonstrate that Claimant’s investment of work, knowledge and time was not gratuitous:¹³⁵ Mr. Ansary and Claimant reached a financial agreement by which, in exchange for the services, knowledge and experience that Claimant brought to Sun Resorts, Parman and Ennia, and the time he worked for these companies, including the process dealing with the acquisition of Banco di Caribe and Ennia, he would receive 25,000 shares of Parman. On 28 December 2011, Claimant was allotted these shares, and in the period between 2013 and 2015, Claimant received

¹³¹ Tr., Day 1, pp. 29, 77.

¹³² Tr., Day 1, pp. 132-135.

¹³³ Tr., Day 2, p. 227.

¹³⁴ Reply, para. 85.

¹³⁵ Reply, paras. 87-88.

dividends on a yearly basis, for a total amount of USD 784,000.¹³⁶ Thus, Claimant's shareholding and assets constitute an investment under "rights derived from shares" and "claims to money," in exchange for his investment of services, expertise, goodwill and know-how.¹³⁷

144. Claimant submits that there is no additional requirement of an "active contribution" by the investor in order to qualify for protection.¹³⁸ Further, protection is not limited to investments made *ab initio*; it also applies to acquisitions of existing investments in the host State. In this case, the original investment – Parman and the affiliate entities – need not have been made initially by Claimant, in order for him to seek protection under the BIT¹³⁹. The ordinary meaning of the terms of the treaty in light of its object and purpose confirms that the "making" of an "investment" includes the mere acquisition of the investment: for instance, the Protocol to the BIT states that "[t]he provisions of article 3, paragraph 2, are not applicable to the *acquisition* of real estate or real estate rights, under Decree-Law No. 11614, dated January 4, 1969, in the territory of the Lebanese Republic."¹⁴⁰
145. In any event, Claimant's contribution to Parman was an active one, involved full-time work in the day-to-day business of Parman since 7 July 2005, as Managing Director; as Director of the Ennia companies since 9 February 2011, for which he was already a member of the investment committee since 2006; and as Director of Resorts Caribe since 21 July 2006. In these roles, he provided specialist business knowledge and experience vital for the management and operation of the companies;¹⁴¹ and this investment also entailed an expectation of commercial return in the form of dividends and an assumption of risk, to the extent that Claimant's work and resources transferred over the years would have been futile, for example, because the whole operation would not prove lucrative and decrease the value of Parman.¹⁴²

¹³⁶ SoC, para. 109; Reply, paras. 86-88, citing to Personal Statement of Abdallah Andraous, paras. 14, 16; C-040, Parman International B.V. Stock Register; C-041, Parman International B.V. Stock Certificate; C-100, UBO Statement of ECH dated 31 December 2013; C-042, Parman International B.V. Dividend Distribution.

¹³⁷ Reply, para. 89.

¹³⁸ Reply, para. 90, citing to CLA-086, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 79, 81. See also Reply, paras. 112-114.

¹³⁹ SoC, para. 110; Reply, para. 92.

¹⁴⁰ Reply, para. 93.

¹⁴¹ Reply, paras. 94-95, 106 citing to Personal Statement of Abdallah Andraous, para. 15.

¹⁴² Reply, para. 101.

146. Claimant emphasizes that the contribution in the acquisition of the investment need not be the injection of monetary capital; investment case law has repeatedly held that no cash contributions are required if there is some transfer of value into the host State, such as equipment, know-how or personnel.¹⁴³

147. In sum, Claimant's acquisition of the shares in Parman, in exchange for services, time, know-how, business experience and entrepreneurship, qualifies as making an investment for the purposes of the BIT.¹⁴⁴

b. Claimant holds title to the Parman shares

148. Claimant avers that Respondent's own courts confirmed Claimant's 1% ownership of the Parman shares.¹⁴⁵

149. In his Reply, in response to Respondent's assertion that the shares were transferred to the [REDACTED] foundation in 2015, Claimant argued that, while there was indeed a share sale and purchase agreement foreseeing the transfer of the shares to [REDACTED], the transfer never materialized. At no point was the purchase price paid. The result is that it is Claimant, and not [REDACTED], who remains the owner of the 25,000 Class A shares in Parman, in its own name. This is also confirmed by the Declaration of Ownership of [REDACTED] requested by Respondent and produced by Claimant in the document production phase.¹⁴⁶

150. At the Hearing, however, Claimant changed his argument and recognized that said transaction was effective and that, as of 1 December 2015, the [REDACTED] foundation is the owner of the shares,¹⁴⁷ and expressly recanted the argument made in his Reply.¹⁴⁸

151. In any event, Claimant asserts that the transfer of shares to [REDACTED] would not disqualify Claimant as a protected investor because:

¹⁴³ Reply, paras. 97, 104, citing to See CLA-247, *Bayindir v. Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, paras. 121, 131; and CLA-248, *Saipem v. Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction, 21 March 2007, para. 100; CLA-086, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 102.

¹⁴⁴ SoC, paras. 105-106; Reply, para. 107.

¹⁴⁵ Reply, para. 111, citing to RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.4; RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.4.

¹⁴⁶ Reply, para. 117.

¹⁴⁷ Tr., Day 1, pp. 124-126.

¹⁴⁸ Tr., Day 1, pp. 125-26.

- a. Claimant is the sole beneficiary of [REDACTED] a private foundation established for the purpose of holding and protecting investments of individuals;¹⁴⁹ and
- b. As of 1 January 2024, the [REDACTED] as founder of the [REDACTED] foundation, assigned to Claimant its authority to, *inter alia*, instruct the Board of Directors to make distributions and appoint beneficiaries of the foundation.¹⁵⁰

152. The manner in which Claimant structures and holds his investment is irrelevant for jurisdictional purposes. Claimant is a protected investor under the BIT, whether he holds the investment in its own name or through a vehicle of which he is the 100% beneficiary.¹⁵¹ The fact that Claimant received the dividends as “rights derived from shares” demonstrates that he is the owner of the shares.¹⁵²

c. Claimant’s interest in the assets of the Ennia Group is not remote

153. The fact that Claimant only holds 1% of the shares in Parman, which is the immediate company above Ennia Holding, does not exclude those shares from the scope of protection of the BIT: it is the quality and nature of the investment that matters, not the quantity. It is undisputed that minority shareholders are protected by investment treaties, irrespective of their percentage of shareholding.¹⁵³

154. Respondent’s argument regarding the need to establish a cut-off point beyond which minority shareholders would be excluded from treaty protection is only a minority policy position defended in few investment cases and doctrinal commentaries, but does not form part of the applicable law, *i.e.*, the BIT.¹⁵⁴

155. Furthermore, Claimant rejects Respondent’s argument that it cannot be deemed to have consented to arbitrate this type of dispute with a minority shareholder because of its lack

¹⁴⁹ C-115, Declaration of Ownership of [REDACTED], dated 27 September 2019.

¹⁵⁰ C-116, Assignment Agreement, dated 1 January 2024.

¹⁵¹ Reply, para. 118.

¹⁵² Reply, para. 119.

¹⁵³ SoC, para. 107; Reply, para. 122, citing *inter alia* to CLA-078, *Webuild v. Argentina*, ICSID Case No. ARB/15/39, Decision on Jurisdiction and Admissibility, 23 February 2018, paras. 178-183; CLA-079, *CMS v. Argentina*, ICSID Case No. ARB/01/8, Award on Jurisdiction, 17 July 2003, paras. 48-52, 63-69; CLA-080, *Enron and Ponderosa Assets v. Argentina*, ICSID Case No. ARB/01/3, Decision on Jurisdiction of Ancillary Claim, 2 August 2004, paras. 27-46; CLA-081, *Camuzzi v. Argentina (I)*, ICSID Case No. ARB/03/2, Decision on Objections to Jurisdiction, 11 May 2005, paras. 63-64, 81-82; CLA-082, *El Paso v. Argentina*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, para. 138; CLA-083-ESP, *SAUR v. Argentina*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012, paras. 435-437.

¹⁵⁴ Reply, para. 124.

of awareness or predictability over a potential claim. There is no requirement of awareness by the host State in the BIT for allowing an investor to seek protection under the Treaty. Pursuant to Article 9(2) of the BIT, Respondent gave its unconditional consent to submit this type of dispute to international arbitration, regardless of the size of the Claimant's shareholding or corporate structure.¹⁵⁵

B. Claimant's pension and salary rights qualify as protected investments

a. Salary and pension rights constitute "claims to money" under Article 1(a)(iii) of the BIT

156. Claimant avers that his remuneration and pension rights before and after the takeover of the Ennia Group by the Central Bank qualify as protected investments under Article 1(a)(iii) of the BIT, and they are related to Claimant's overall investment in the Ennia Group.¹⁵⁶ In this case, Claimant does not claim for past services rendered in relation to which remuneration has already been paid, but only for the salary and pension rights he no longer received after the Central Bank's intervention of the Ennia Group in 2018.¹⁵⁷
157. Claimant concedes that, in general, employment agreements are not to be considered investments for the purposes of the BIT; however, in this case, Claimant's loss of his position as Director of Ennia and his remuneration and pension rights are a consequence of Respondent's breach of the BIT. Claimant's rights and claim to his salary and pension rights is not a private contractual claim against Ennia or Parman; Claimant's rights were thwarted as a consequence of the Central Bank's intervention, and thus, his claim is admissible in the context of the BIT.¹⁵⁸ Prior investment decisions, such as the one rendered by the *Société Générale v. Dominican Republic* tribunal, have recognized that non-payment of invoices under the services contract may result in the breach of treaty obligations.¹⁵⁹
158. Furthermore, Claimant's salary and pension rights are linked to his overall investment in the Ennia Group, including the shares in Parman. Claimant made and acquired an investment in shares and received regular monthly payments in the form of salary and

¹⁵⁵ Reply, para. 125.

¹⁵⁶ SoC, para. 111; Reply, para. 130.

¹⁵⁷ Reply, para. 134.

¹⁵⁸ SoC, para. 112; Reply, para. 132.

¹⁵⁹ SoC, para. 112, citing to CLA-110, *Société Générale v. Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, para. 48.

pensions, the latter constituting contractual rights pertinent to Claimant's overall investment, which fall under the scope of "claims to money" of Article 1(a)(iii) of the BIT.¹⁶⁰

159. Claimant submits that the shares in Parman and his salary and pension rights, derived from the time, service, goodwill and know-how that Claimant provided the Ennia Group, should be regarded as a unitary and multi-faceted investment, that falls within the scope of protection of the BIT.¹⁶¹

b. Claimant's claim for salary and pension rights that should have accrued after 2018 are admissible

160. In response to Respondent's argument that Claimant is asking for compensation of salary and pension rights for services not effectively rendered, Claimant submits that such discussion pertains to an issue of quantum and not jurisdiction, and thus, should only be addressed at a later stage of these proceedings.¹⁶²

C. Claimant's argument regarding the application of the European Convention on Human Rights

161. At the Hearing, Claimant submitted an additional argument regarding the protection of his shares and pension and salary rights: Claimant invokes the Most Favored Nation protection under Article 3(5) of the BIT, that states that:¹⁶³

"If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement."

162. By virtue of this clause, Claimant asserts that he is entitled to enforce Respondent's obligations under the ECHR, including its Protocol 1, that pertains to the protection of property, which would include his shares in Parman and his salary and pension rights.¹⁶⁴

¹⁶⁰ SoC, para. 112; Reply, para. 133.

¹⁶¹ SoC, para. 114; Reply, para. 135.

¹⁶² Reply, para. 136.

¹⁶³ Tr., Day 1, pp. 29, 77.

¹⁶⁴ Tr., Day 1, pp. 29-31.

VI. TRIBUNAL'S DECISION

163. To determine whether the Tribunal has jurisdiction *ratione materiae*, it is necessary to examine first, whether Claimant's alleged shareholding in Parman (and thus his indirect shareholding in Ennia Holding) qualify as an investment under Article 1(a)(ii) of the BIT; and second, whether Claimant's alleged pension and salary constitute "claims to money" under Article 1(a)(iii) of the BIT. Claimant has the burden of proving that he has made such an investment as of the date of the measures complained of, *i.e.*, July 2018.¹⁶⁵ If Claimant had no investment as of that date, there could be no injury or claim of breach of the BIT.

1. CLAIMANT'S SHARES IN PARMAN DO NOT QUALIFY AS AN INVESTMENT

164. Article 1(a)(ii) of the BIT recognizes that "shares" are an investment, and Claimant alleges that he made an investment because he owns shares in Parman (and thus has an indirect shareholding in Ennia Holding). Therefore, as an initial matter, the Tribunal must assess whether Claimant either owns the shareholding in Parman (and thus his indirect shareholding in Ennia Holding) or has a beneficial ownership interest.

165. In his Reply, Claimant argued that the transfer of shares to the [REDACTED] foundation as of 1 December 2015 never materialized.¹⁶⁶ At the Hearing, however, Claimant amended his argument, and recognized that said transaction was effective and that as of 1 December 2015 the [REDACTED] foundation was the owner of the shares.¹⁶⁷ When asked directly whether he maintained the argument in his Reply, Claimant's counsel said: "*No. I cannot make that as a lawyer, I cannot make that.*"¹⁶⁸

166. The Tribunal is appreciative of that confirmation because the evidence submitted by Claimant falls short of proving that he in fact owns the shares. To the contrary, it appears that on 1 December 2015, years before the dispute arose (July 2018) and these arbitration

¹⁶⁵ RL-020, *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, para. 2.15; RL-021, *Alberto Carrizosa Gelzis and others v. Republic of Colombia*, PCA Case No. 2018-56, Award, 7 May 2021, para. 189.

¹⁶⁶ Reply, para. 117.

¹⁶⁷ Tr. Day 1, pp. 124-126.

¹⁶⁸ Tr. Day 1, pp. 125-26.

proceedings commenced (February 2023), Claimant sold and transferred his shares in Parman to the [REDACTED] foundation.¹⁶⁹

167. First, the SPA between Claimant, as seller and [REDACTED] foundation, as buyer, that Claimant submitted shows that he sold and transferred his 1% shareholding in Parman as early as 1 December 2015.¹⁷⁰ Article 7 of the SPA sets out that the transfer of the shares to [REDACTED] foundation is effective as of the date of acknowledgement by the company (*i.e.* by Parman). On 1 December 2015, Claimant himself – acting on behalf of Parman – signed the SPA for acknowledgement by Parman.

168. Second, the transaction was reflected in the Stock Register that Claimant submitted, which shows a handwritten notation that the shares were sold on 1 December 2015 to [REDACTED] foundation, and that [REDACTED] foundation, and not Claimant, owns the shares as of that date.¹⁷¹ [REDACTED] foundation is listed as the successor shareholder in the stock register.

Stockregister of Parman international B.V. Established in Curaçao Trade registry 97128		
shareholder full name	Bahram Ansary	Abdallah Andraous
address	4 Somerset House Somerset Road London, SW19 5JA	28, Avenue Hoche 75008 Paris
change of address		
quantity of shares	25,000 A shares	25,000 A shares
serial numbers	A 2,456,857 u/i A 2,481,856	A 2,481,857 u/i A 2,506,856
date of issue	December 28, 2011	December 28, 2011

169. Third, Claimant did not submit any evidence to demonstrate that the purchase price was not paid. Instead, he submitted that he received dividends on the shares from the effective date of the transfer, which was in August 2013, pursuant to Article 2 of the SPA, until 2015. But Article 5 of the SPA provides that “[a]ny distribution by the Company to its shareholders will be paid to the Seller, as payment on account of the Purchase Price, until the Purchase Price is paid in full.” Claimant’s receipt of dividends is therefore in line with Article 5 of the SPA, which provides that any dividend distribution will be paid to Claimant as payment on account of the share purchase price, and confirms that all or a

¹⁶⁹ SoD, paras. 192-193, citing to C-040, Parman International B.V. Stock Register, p. 4; Rejoinder, paras. 84, 87-89.

¹⁷⁰ C-114, Share sale and purchase agreement between Claimant and [REDACTED], dated 1 December 2015.

¹⁷¹ C-040, Parman International B.V. Stock Register.

portion of the purchase price was paid. Claimant did not submit any evidence regarding dividends after 1 December 2015, the date of the SPA.

170. Moreover, the Tribunal heard from Dr. Katherine Filesia,¹⁷² a deputy civil-law notary and expert on Curaçao law, that as a matter of Curaçao law, the sale and transfer of the shares was effective regardless of whether the purchase price was paid (in part or in full), and this testimony was uncontroverted. Once the shares were transferred pursuant to the SPA, [REDACTED] foundation owns the shares whether or not the purchase price has been paid in full. If not paid in full, the outstanding portion of the purchase price amounts to a claim to be paid (from dividends or otherwise), but it does not reverse the transfer.¹⁷³
171. Fourth, the additional evidence that Claimant submitted does not prove his ownership of the shares after 1 December 2015. The UBO statement of Ennia Caribe holding dated 31 December 2013 is dated almost two years before the conclusion of the SPA. Thus, it cannot serve to disprove that the owner of the shares at the relevant time was and is the [REDACTED] foundation.¹⁷⁴
172. Lastly, the Tribunal does not attach any particular relevance to what is in the Curaçao court decisions relied upon by Claimant, which Claimant asserts that he has a shareholding interest; this is in light of the Parties' agreement that Claimant does not in fact have a shareholding interest in Parman.¹⁷⁵ Those cases were concerned with issues of director liability, and the issue of whether Claimant was a shareholder was not debated between the parties to the proceedings as it was of no particular significance to the dispute. Moreover, as Respondent noted at the Hearing on Jurisdiction, the SPA was not before the court in those proceedings, and as Dr. Filesia explained, the Stock Register is only evidence of the transfer, but the transfer is effectuated with both an agreement and the company's acknowledgement of the transfer.¹⁷⁶
173. In short, the SPA, coupled with the Stock Register, demonstrates that the transaction had been completed pursuant to, and in conformity with, the applicable Curaçao law, as a consequence of which Claimant no longer owns the shares as of 1 December 2015,

¹⁷² Rejoinder, paras. 93-94.

¹⁷³ Katherine Filesia Legal Opinion, para. 21.

¹⁷⁴ Rejoinder, para. 97.

¹⁷⁵ Tr., Day 1, pp. 124-126.

¹⁷⁶ Katherine Filesia Legal Opinion, paras. 15-17 and 19-21.

before the measures of which he complains and years before the commencement of this arbitration.

174. The remaining dispute between the Parties regarding the shares is whether Claimant has rights to the assets of [REDACTED] foundation. Specifically, Claimant alleges that:

- a. He is the “sole beneficiary” of [REDACTED] foundation and for that reason still holds 1% of the shares; and
- b. On 1 January 2024, the [REDACTED] assigned to Claimant its authorities as founder of [REDACTED] under Article 10 of the Articles of Incorporation of the foundation, including, *inter alia*, the power to appoint beneficiaries and instruct the Board of Directors to make distributions.

1.1 CLAIMANT HAS NO CONTINGENT RIGHT TO THE PARMAN SHARES OWNED BY [REDACTED]

175. [REDACTED] foundation is a private foundation – or *Stichting Particulier Fonds* in Dutch (“SPF”) – and a particular form of foundation with separate legal personality under Curaçao law. As Dr. Filesia explained, an SPF does not have any shareholders. It does have a board – typically a trust office, and the manner in which the board of the SPF manages the SPF’s assets, including the making of any distributions, is determined by the articles of association of the SPF.¹⁷⁷

176. The concept of a “beneficiary” of an SPF is not defined under Curaçao law, but as also explained by Dr. Filesia:

[T]he precise nature and extent of the rights attributed to the beneficiary could only be assessed based on specific corporate documents (e.g., articles of association). In other words, to ascertain the beneficial interest in the assets of an SPF, there must be written evidence setting out that a particular person holds a specified right regarding the assets of the SPF in question. Without such documentation, it is impossible to determine if the (potential) beneficiary has or will have a present or future entitlement to assets of the SPF.¹⁷⁸

177. In turn, unless a person has been assigned rights to the SPF’s assets in accordance with the SPF’s articles of association, such person does not have an interest in the SPF’s assets,

¹⁷⁷ Katherine Filesia Legal Opinion, paras. 31-33.

¹⁷⁸ Katherine Filesia Legal Opinion, para. 30.

nor can such person enforce (*i.e.* obtain a court order) against the SPF to make distributions.¹⁷⁹

178. Here, [REDACTED] foundation's articles of association provide that its founder is [REDACTED], an entity with which Claimant has not attempted to demonstrate a relationship, and the articles of association makes no reference to Claimant as beneficiary or otherwise; nor do they include any directions on how [REDACTED]'s funds are to be distributed and in what manner. There is only one provision granting the board general power to make distributions or provide financial assistance to any person on a discretionary basis.¹⁸⁰ According to Dr. Filesia, under these circumstances, potential beneficiaries do not have even a contingent right over the foundation's assets; they merely may have a hope of becoming recipients of distribution if the board actually makes such distribution in the exercise of its discretionary power.¹⁸¹

179. The only evidence that Claimant has produced to support his link to the [REDACTED] foundation is a document dated 27 September 2019, which refers to Claimant as a beneficiary,¹⁸² without explanation. Addressing this document, Dr. Filesia explained that there are different types of beneficiaries, including fixed beneficiaries, who have a claim, and potential beneficiaries, a person to whom the board may in its discretion distribute assets, but the document does not identify what type of beneficiary Claimant is. Given the fact that the Articles of Association state that the board has discretion, the Tribunal can only conclude that Claimant would be a potential beneficiary, which only gives him a hope to receive assets but no claim.¹⁸³

180. Moreover, after this document of 27 September 2019, the Board of [REDACTED] foundation issued another letter on 24 November 2021,¹⁸⁴ which is a third party declaration in response to a court ordered issue levied by Claimant's creditors, who sought to attach his assets, and in this letter, [REDACTED] foundation makes clear that it does not owe him anything

¹⁷⁹ Katherine Filesia Legal Opinion, paras. 33-34.

¹⁸⁰ Rejoinder, para. 105, citing to R-080, Curaçao Chamber of Commerce Dossier regarding [REDACTED], including Articles of Association, 12 May 2011, Article 2(1).

¹⁸¹ Rejoinder, para. 106, citing to Katherine Filesia Legal Opinion, para. 34; See also Rejoinder, paras. 110, 113-115.

¹⁸² C-115, Declaration of Ownership of [REDACTED], dated 27 September 2019.

¹⁸³ Katherine Filesia Legal Opinion, paras. 26 and 40-41.

¹⁸⁴ R-081, Declaration of Garnishment on [REDACTED], dated 24 November 2021.

other than monies under a contract, which are decidedly not an ownership interest of any kind.

181. If Claimant had in fact been designated as the intended future recipient of particular assets of the SPF in accordance with the SPF's articles of association, the Tribunal would expect to see a resolution or other documentation to that effect. None has been produced, despite the Tribunal's order that Claimant produce all documents relating to his relationship with [REDACTED].¹⁸⁵

1.2 THE ALLEGED ASSIGNMENT OF THE FOUNDER'S POWERS TO CLAIMANT DOES NOT CONFER HIM A CONTINGENT RIGHT TO THE PARMAN SHARES OWNED BY [REDACTED]

182. On 1 January 2024, the [REDACTED] allegedly assigned to Claimant its powers as founder of [REDACTED] under Article 10 of the Articles of Incorporation of the foundation, including the power to appoint beneficiaries and instruct the Board of Directors to make distributions. Claimant contends that this assignment confers him control over the [REDACTED] foundation and entitlement to its assets, including the Parman shares. The Tribunal is not convinced by this argument.
183. First, the expert on Curaçao law, Dr. Filesia, testified that the purported assignment lacks validity or efficacy, because it "contravenes the Articles of Association" and "the fundamental principles of Curaçaoan corporate law."¹⁸⁶ Article 10 of the Articles of Association allows the founder to "appoint one or more successors" but not to "assign" his rights.¹⁸⁷
184. Further, Dr. Filesia testified that "[...] according to case law of the Dutch Supreme Court, the Cancun case that has been submitted as well [...] directors of foundations are not allowed to listen, for instance, to donors or those on whose recommendation they have been appointed, nor may they mindlessly follow the instructions of those to who a power of instruction under the Articles of Association has been granted."¹⁸⁸
185. Claimant offered no rebuttal or evidence that contradicted the expert's opinion.

¹⁸⁵ Procedural Order No. 2, Annex B: Decision on Respondent's Document Production Requests, p. 28.

¹⁸⁶ Tr., Day 1, pp. 156-7.

¹⁸⁷ Tr., Day 1, pp. 154-157.

¹⁸⁸ Tr., Day 1, p. 158.

186. Second, even if the Tribunal were to consider that the assignment of powers by the founder to Claimant was valid, this would not automatically entail that Claimant has proprietary rights over the Parman shares. The shares are still in the ownership of the [REDACTED] foundation, and Claimant would only be hypothetically entitled to distributions of [REDACTED]'s funds.
187. Third, even assuming that the assignment is valid and that by virtue of that assignment one could consider that Claimant has a vested interest or proprietary rights over the Parman shares held by the [REDACTED] foundation, this would only have occurred as of 1 January 2024, *i.e.*, six years after the dispute arose on July 2018 and a year after the arbitration proceedings commenced in February 2023. Investors seeking protection under BIT must maintain their qualifying status – in this case, ownership of the investment – at least until the submission of the dispute to arbitration.¹⁸⁹ The only exception to this rule are the situations of direct expropriation, when the State has deprived the investor of direct ownership over the investment.
188. In light of the finding that Claimant does not hold title or an interest to the shares of Parman, and such shares are instead held by the [REDACTED] foundation, Claimant cannot be found to have a qualified investment, pursuant to Article 1(b) of the BIT with regard to the shares. Claimant cannot have a qualified investment in something in which he does not in fact have title or interest. It is therefore unnecessary to analyze whether ownership of such shares constitute the making of an investment for the purpose of the BIT or whether such alleged indirect interest is far too remote, two additional defenses raised by Respondent.

2. CLAIMANT'S CLAIM FOR SALARY AND PENSION DO NOT QUALIFY AS AN INVESTMENT

189. The Tribunal next turns to the question of whether Claimant's claim to salary and pension rights constitute "claims to money" under Article 1(a)(iii) of the BIT. Specifically, Claimant asserts that his loss of salary and pension rights after the Central Bank's intervention in the Ennia Group in 2018 constitutes an investment.¹⁹⁰

¹⁸⁹ *Michael Ballantine and Lisa Ballantine v. The Dominican Republic*, PCA Case No. 2016-17, Final Award, 3 September 2019, para. 527; *Serafin García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, 15 December 2014, para. 217; *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, PCA Case No. 2005-05/AA228, Interim Award on Jurisdiction and Admissibility, 30 November 2009, paras. 562–63.

¹⁹⁰ SoC, para. 111; Reply, para. 130.

190. To consider this question, the Tribunal will first consider what evidence is before the Tribunal of the Claimant's claim to salary and pension. Notably, Claimant has admitted that he was paid for the work he has performed, and his claim for unpaid salary concerns the time after his dismissal as a director of the Ennia Group as a result of the Central Bank's intervention in 2018.¹⁹¹
191. With regard to Claimant's claim to salary, Claimant has not submitted any evidence establishing his alleged salary rights. In response to the Tribunal's questions about such evidence, Claimant's counsel argued that, "We all know that high-level executives are paid packages, it's a combination of salary and stock options. And that's what happened here."¹⁹² This bald assertion that there is a common understanding of how executives are paid is insufficient to demonstrate Claimant's alleged salary rights. Claimant's counsel did not provide any evidence of Claimant's salary or his alleged salary rights or even evidence of how such executives are typically paid in the industry. While Claimant rightly notes that the exact amounts of any salary due would be a question of quantum at a later stage, Claimant cannot skirt his burden of establishing a *right* to such salary.
192. With regard to Claimant's claim to pension rights, Claimant has submitted a proof of policy.¹⁹³ This proof of policy, however, does not establish what pension rights Claimant has under the particular policy. At the hearing, Claimant's counsel asserted that Claimant made payments for his pension,¹⁹⁴ but Claimant submitted no evidence demonstrating that any payments were made, deferring his salary in the form of a pension.
193. On this limited record, the Tribunal does not consider that Claimant has submitted sufficient evidence to establish that he has a claim to salary and pension rights. But even if he had established that he has such claims, the Tribunal would have found that such claims do not amount to an investment under the BIT.
194. Article 1 of the BIT defines "investments" as "every kind of asset" and provides an illustrative list of qualifying investments, including "claims to money, to other assets or to any performance having an economic value."

¹⁹¹ Reply, para. 134.

¹⁹² Tr., Day 2, p. 237.

¹⁹³ C-039, Andraous' Ennia Insurance Policy.

¹⁹⁴ Tr., Day 2, pp. 237-38.

195. When read in conjunction with Article 31 of the VCLT, which set out the general rule of treaty interpretation, this illustrative list cannot be interpreted in a vacuum. Rather, “the illustrative list [of assets under the BIT] does not trump the objective, ordinary meaning of the definition that precedes it.”¹⁹⁵ Likewise, “if an asset does not correspond to the inherent definition of ‘investment,’ the fact that it falls within one of the categories listed in [...] [the BIT] does not transform it into an ‘investment.’”¹⁹⁶ In short, the ordinary meaning of the terms must be considered in their context and in the light of the object and purpose of the BIT, which is to “stimulate the flow of capital and technology and the economic development of the Contracting Parties.”¹⁹⁷
196. *OI European v. Venezuela* is instructive in this regard. There, it was held that not all assets, by the mere fact of being included in the non-exhaustive list of examples under the BIT, constitute an investment: “[s]uch assets must be a true investment in order to meet the objective and inherent characteristic of all investments.”¹⁹⁸
197. The tribunal then specifically took pension rights as an example of an asset that does not qualify as an “investment:”
- [T]hink about a citizen of a foreign country who is entitled to collect a pension. The pensioner’s credit right could be understood as something that would fall under [...] the BIT. However, *the right to receive a pension does not constitute an investment* and accordingly should not be understood as being included under the BIT’s scope of protection [...].¹⁹⁹
198. The tribunal in *Romak v. Uzbekistan* further cautioned against the “mechanical application of the categories listed,” explaining that this “would eliminate any practical limitation to the scope of the concept of ‘investment.’”²⁰⁰

¹⁹⁵ RL-047, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, para. 148.

¹⁹⁶ RL-050, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07-AA280, Award, 26 November 2009, para. 207. See also e.g. Exhibit RL-057, W. Shan and L. Wang, “The Concept of “Investment” Treaty Definitions and Arbitration Interpretations,” in J. Chaisse et al. (eds.), *Handbook of International Investment Law and Policy* (2021), p. 41.

¹⁹⁷ CLA-001, Agreement on the encouragement and reciprocal protection of investments between the Lebanese Republic and the Kingdom of the Netherlands.

¹⁹⁸ CLA-095, *OI European v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 218. See also e.g. RL-050, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07-AA280, Award, 26 November 2009, para. 207.

¹⁹⁹ CLA-095, *OI European v. Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015, para. 218 (emphasis added).

²⁰⁰ RL-050, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07-AA280, Award, 26 November 2009, paras. 184-85. See also RL-047, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case

199. The cases cited by Claimant concern accepted forms of investment or merely confirm that the notion of “investment” is broad.²⁰¹ But they do not address whether a purported right to salary and pension under an employment relationship would qualify as an investment, and they do not refute the widely held view that a definition of investment cannot be construed as a literal list of assets.
200. With this framework, and interpreting Article 1(a) of the BIT in accordance with Article 31 of the VCLT, the Tribunal finds that salary and pension claims which arise out of an employment arrangement do not constitute an investment under the ordinary meaning of that term in the BIT. The BIT is designed to attract foreign investment, not attract expatriate employees.
201. Lastly, it is noted that Claimant concedes that employment agreements are not investments in all contexts. “Indeed, all else being equal, foreign nationals engaging in work for a company constituted under the laws of the other Contracting State are usually not investors for the purposes of the BIT.”²⁰² He also acknowledges that, generally, “mere salary and pension rights under employment agreements, or indeed one-off sale-purchase agreements, do not necessarily qualify as ‘investments.’”²⁰³
202. Claimant asserts that “what distinguishes this case from normal employment relationships is that, by contributing services, time, know-how and goodwill, Claimant did make and acquire an investment, *i.e.* a shareholding in Parman, and received regular monthly payments before and – for some time – after the [Emergency Measures] in the form of salary and pensions.”²⁰⁴ This alternative argument that his salary and pension claims are investments because they are related to, and supplement his alleged shareholding does not stand given the Tribunal’s determination above that Claimant did not own the shares at the relevant time.

2020/074, Final Award, 3 August 2022, paras. 148-50; RL-059, *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela (II)*, ICSID Case No. ARB(AF)/11/1, Award, 30 April 2014, para. 82; RL-060, *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction, 23 August 2019, para. 117.

²⁰¹ CLA-104, *Alpha Projektholding v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, para. 303; CLA-105-FRA, *African Holding v. Democratic Republic of Congo*, ICSID Case No. ARB/05/21, Decision on Jurisdiction and Admissibility, 29 July 2008, para. 75.

²⁰² Reply, para. 132.

²⁰³ *Id.*

²⁰⁴ Reply, para. 133.

203. Moreover, Claimant's salary and pension rights arose in 2005 from his employment relationship with various Ennia entities, and existed long before, and independent of, the allotment of the shares to him in 2011 (that he subsequently sold in 2015). Claimant contributed his services and time pursuant to his employment relationship and was compensated for that work, like the normal employment relationship that Claimant admits does not give rise to an investment.
204. For these reasons, the Tribunal concludes that it lacks jurisdiction *rationae materiae*.

3. CLAIMANT'S ARGUMENT REGARDING THE APPLICATION OF THE ECHR

205. At the Hearing, Claimant raised an extemporaneous argument that had not been brought up or developed in his SoC or his Reply.
206. Claimant invoked the Most Favored Nation clause of Article 3(5) of the BIT, arguing that it incorporates the substantive provisions of the ECHR, specifically its Protocol 1, that regulates the protection of property rights, as applicable law into these proceedings, which according to Claimant, would include his purported interests in the shares in Parman and his salary and pension rights.
207. The Tribunal rejects this argument for the following reasons:
208. First, as the Tribunal has already determined, Claimant has failed to produce sufficient evidence to establish any proprietary rights with respect to the Parman shares or to salary and pension rights that would have supposedly accrued after his dismissal as director of the Ennia Group in 2018. Accordingly, even if this Tribunal would be inclined to incorporate into these proceedings the substantive protection of proprietary rights from the ECHR or any other treaty, such determination would not change the Tribunal's finding: Claimant has failed to establish ownership of rights susceptible of protection under the BIT or under any other regulation providing for the protection of proprietary rights.
209. Second, the Tribunal considers that it has no jurisdiction to adjudicate this dispute on the basis of Protocol 1 of the ECHR. Article 3(5) of the BIT sets forth that:

“If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation,

whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.” [Emphasis added by the Tribunal]

210. Pursuant to Article 31 of the VCLT, Article 3(5) of the BIT must be interpreted “in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” In this case, Article 3(5) allows Claimant to invoke provisions of municipal law of The Kingdom of the Netherlands or obligations entered into by The Kingdom of the Netherlands under international law concerning the treatment and protections granted to investments made by foreign investors. The ordinary terms of Article 3(5) of the BIT indicate that tribunals constituted under the BIT may apply provisions of law that regulate investments.
211. The Tribunal considers that this provision cannot be indiscriminately applied in order to incorporate into the substantive protection of the BIT any regulation or provision entered into by The Kingdom of the Netherlands, even if it is slightly tangential to the rights and obligations concerning foreign direct investment contained in the BIT.
212. The ECHR is a treaty conceived for the protection of human rights and political freedom. It contains a specific provision concerning the protection of proprietary rights of individuals. However, in the Tribunal’s view, this is not sufficient to warrant its incorporation to the substantive protection offered to foreign investors under the BIT. As Claimant argues, the jurisprudence of the ECHR considers salary and pension accruals as protected rights under Protocol 1 of the ECHR. Allowing the incorporation of this provision into the substantive protection of the BIT would significantly alter its object and purpose and the framework that the Contracting Parties established for the protection of foreign investment. The Tribunal cannot incorporate as applicable law provisions that, in this case would, for instance, significantly alter the definition of “investment” of Article 1 of the BIT, by including within the protected assets rights such as salaries and pensions.
213. This approach is consistent with prior decisions of treaty-based investment tribunals where the claimants sought to strengthen their claims on the basis of Protocol 1 of the

ECHR. These investment tribunals rejected the claimants' arguments and dismissed their applications to adjudicate the investment dispute applying Protocol 1 of the ECHR.²⁰⁵

214. Third, pursuant to Article 32 of the ECHR, the European Court of Human Rights seated in Strasbourg is the competent body with jurisdiction over "all matters concerning the interpretation and application of the Convention and the Protocols thereto."
215. The initiation of this arbitration by Claimant does not preclude him from instituting another proceeding before the European Court of Human Rights, where the cause of action would be based on Protocol 1 of the ECHR²⁰⁶ and as a subject matter different from the cause of action in this arbitration, namely, investment protection under the BIT.
216. For the reasons stated above, the Tribunal rejects Claimant's request for the Tribunal to apply as applicable law in this arbitration Protocol 1 of the ECHR.

²⁰⁵ *Channel Tunnel Group v. France and the United Kingdom*, PCA Case No. 2003-06, Partial Arbitral Award 2007, para. 150; *CLA-225, Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011, paras. 311-312.

²⁰⁶ See, e.g., the cases before the European Court of Human Rights such as *Gasus Dosier v. Netherlands*, App No. 15375/89 ECtHR 1995; *Boshporus Hava Yollari Turizm v. Ireland*, App No. 45036/98 ECtHR 2005; *Bimer SA v. Moldova*, App No. 15084/03 ECtHR 2007.

VII. COSTS

217. Article 38 of the UNCITRAL Rules states that:

The arbitral tribunal shall fix the costs of arbitration in its award. The term “costs” includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39 (“**Arbitrators’ Fees**”);

(b) The travel and other expenses incurred by the arbitrators (“**Arbitrators’ Expenses**”);

(c) The costs of expert advice and of other assistance required by the arbitral tribunal (“**Tribunal’s Other Costs**”);

(d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable (together with (d), the “**Reasonable Legal Costs**”);

(f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague. (“**Administering Authority’s Fees**”)

1. ARBITRATORS’ FEES AND EXPENSES, THE TRIBUNAL’S OTHER COSTS AND THE ADMINISTERING AUTHORITY’S FEES

1.1 ARBITRATORS’ FEES AND EXPENSES AND THE TRIBUNAL’S OTHER COSTS

218. Article 39 of the UNCITRAL Rules establishes that:

The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

219. In accordance with the Terms of Appointment approved by the Parties:

28. The members of the Tribunal shall be remunerated at the rate of USD 800 per hour for all time spent in connection with the arbitration, plus VAT, if applicable. Time spent on travel will be charged at 50% of this rate.

29. The members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to business class air and first-class train travel expenses.

220. The Arbitrators' Fees and Expenses incurred in these proceedings are the following:

	Fees (USD)	Expenses (USD)	Total (USD)
Prof. Nassib G. Ziadé	88,800.00	7,148.60	95,948.60
Mr. José Emilio Nunes Pinto	98,400.00	1,321.58	99,721.58
Ms. Claudia Salomon	168,720.00	236.90	168,956.90
Total			364,627.08

1.2 THE TRIBUNAL'S OTHER COSTS

221. The Tribunal's Other Costs include the Tribunal Secretary's fees and travel expenses.

Pursuant to the Terms of Appointment approved by the Parties:

As agreed by the Parties, the Tribunal appoints Mr Felipe Aragón Barrero to act as a legal secretary to the Tribunal (the "**Tribunal Secretary**"), to assist it in the organization of the file and in research. The Secretary shall be entitled to charge his or her time spent on the matter at the rate of 160 USD per hour. The Secretary shall be reimbursed for all reasonable expenses associated with his or her appointment.

222. The Tribunal's Secretary's fees and travel expenses are the following:

	Fees (USD)	Expenses (USD)	Total (USD)
Mr. Felipe Aragón	47,360	1715.54	49,075.54

1.3 THE ADMINISTERING AUTHORITY'S FEES

223. In the Terms of Appointment, the Parties agreed that ICSID would act as registry and administer the proceedings and that:

Work carried out by ICSID as set out in this Section and Section VIII, above, shall be billed annually in accordance with the ICSID Schedule of Fees in force at the time the fees are incurred. This includes an annual administrative charge amounting to US\$ 52,000.00 (fifty-two thousand United States dollars). The administrative fee will be paid from the trust account. The cost of ICSID's services shall be included in the costs of the arbitration.

224. ICSID's fees as Administering Authority are:

	Fees (USD)
ICSID's Administrative Fees	156,000.00
Other Direct Expenses	32,409.39
Total	188,409.39

225. Further, the Parties incurred two additional set of costs as follows:

	Fees
Claimant	
Costs of appointment of the PCA as designating authority	EUR 3,000
Costs of appointment of ICSID as appointing authority	USD 5,000
Respondent	
Costs of appointment of ICSID as appointing authority	USD 5,000
Total	EUR 3,000 and USD 10,000

226. In summary, the Arbitrators' Fees and Expenses, the Tribunal's Other Costs and the Administering Authority's Fees amount to USD 612,112.01 and EUR 3,000; the Claimant's share amounts to USD 306,056.005 and EUR 3,000, and the Respondent's share amounts to USD 306,056.005.

2. DEPOSITS MADE BY THE PARTIES

227. As set out in the Terms of Appointment, ICSID has managed the funds deposited by the Parties as advance for the Tribunal's fees and expenses and the administrative fees, in accordance with Article 41 of the UNCITRAL Rules.²⁰⁷

228. During the course of the proceedings, the Parties have made the following deposits:

	Deposit (USD)
Claimant	300,000
Respondent	300,000

229. The unexpended balance of the deposit shall be returned to the Parties in accordance with Article 41.5 of the UNCITRAL Rules.

²⁰⁷ See Terms of Appointment, Section XI.

3. THE PARTIES' LEGAL AND OTHER COSTS

230. Claimant has declared the following legal and other costs:²⁰⁸

Lawyers' fees and expenses	301,956.54 GBP
	15,000 USD
	7,000 ANG
Expert report	6,500 GBP
Hearing Expenses	775 EUR
Total²⁰⁹	317,118.23 GBP

231. Respondent has submitted the following breakdown of its legal and other costs:²¹⁰

Lawyers' fees and expenses and expert costs	2,927,007.10 EUR
Total²¹¹	2,927,007.10 EUR

4. THE PARTIES' POSITIONS ON COSTS ALLOCATION

4.1 CLAIMANT'S POSITION

232. Claimant asserts that he should not be held responsible for the arbitration costs, as he was compelled to bring these proceedings for Respondent's unlawful expropriation of Claimant's assets,²¹² and even if he is unsuccessful in the jurisdictional phase, he should be reimbursed 50% of his costs, based on his inability to seek justice within the Kingdom of the Netherlands.²¹³

233. Claimant points out that he consciously limited his counsel team, to present his case as efficiently as possible, but was forced to incur unexpected additional costs due to Respondent's adverse conduct, and the need to respond to the security for costs application.²¹⁴ On the other hand, Respondent engaged a disproportionate large team incurring EUR 2.9 million for a relative straightforward case on jurisdiction.

²⁰⁸ Claimant's Response on Costs Submission, Section III.

²⁰⁹ Exchange rate on 11 April 2025.

²¹⁰ Respondent's Response on Costs Submission, para. 10.

²¹¹ Exchange rate on 11 April 2025.

²¹² Claimant's Response on Costs Submission, para. 4.

²¹³ Claimant's Cost Submission, p. 6.

²¹⁴ Claimant's Response on Costs Submission, para. 5.

Additionally, while Claimant brought only two lawyers to the Hearing, Respondent unnecessarily made use of 12 lawyers.²¹⁵

234. In any case, in line with international practice, Claimant submits that each Party should cover their own legal and expert's costs.

235. Claimant further alleges that his procedural conduct was proper throughout the proceedings, contrary to what Respondent asserts. Claimant presented his case in a straightforward manner and supplemented his arguments, when necessary, to counter Respondent's defenses.²¹⁶

4.2 RESPONDENT'S POSITION

236. Respondent submits that, if it prevails in this jurisdictional phase of the proceeding and the case is dismissed, then Claimant should bear all arbitration costs²¹⁷ or a significant portion thereof.²¹⁸ In any event, Claimant should be held liable for all arbitration costs in light of his conduct throughout the proceedings:

- a. In abuse of process, Claimant changed his factual and legal positions throughout the arbitration, bringing to the Hearing new arguments not submitted with his written submissions;²¹⁹
- b. Claimant engaged in an obstructive conduct when presenting his case, forcing Respondent to incur additional costs to properly establish the factual record and to resort to a legal expert to clarify the issue regarding the SPF structure and transfer of shares under Curaçao law.²²⁰ Further, Claimant failed to comply with the Tribunal's orders on document production;²²¹
- c. Claimant has not been forthright regarding his financial position: on one hand, he represented that he had not engaged a third-party funder, and that he was able to

²¹⁵ Claimant's Response on Costs Submission, para. 6.

²¹⁶ Claimant's Response on Costs Submission, paras. 10-12.

²¹⁷ Respondent's Costs Submission, para. 7.

²¹⁸ Respondent's Costs Submission, para. 15.

²¹⁹ Respondent's Costs Submission, paras. 9-11.

²²⁰ Respondent's Costs Submission, para. 12.

²²¹ Respondent's Costs Submission, para. 13.

cover an adverse costs award; while in the Hearing, his representative recognized that Claimant had no capability to pay for more lawyers to handle his case.²²²

237. In light of the above, Respondent requests the Tribunal to order Claimant to cover all the costs of the proceedings, and reimburse Respondent for its part, which consists of: (i) legal costs in the amount of EUR 2,927,007.10 and (ii) costs of the arbitration proceedings, in the amount of USD 305,000.²²³

238. Additionally, Respondent argues that, even if the Tribunal considers that Respondent is liable for Claimant's costs, Claimant would not be entitled to his costs claim, because:

- a. Not all legal costs claimed by Claimant have been incurred, *i.e.*, there is no proof that they have been paid;²²⁴
- b. The majority of Claimant's legal costs have been incurred by Claimant's counsel, not by Claimant himself,²²⁵ which suggests that he was indeed funded by a third party; in light of this, Respondent should not be held liable for the costs incurred in relation to the security for costs application;²²⁶
- c. Claimant claims costs related to an alleged expert report on quantum by Mr. Marthew Happold; this report, however, was never submitted in these proceedings, and in fact, Claimant recognized that the expert report was never delivered or paid.

239. In light of the above, Respondent asserts that Claimant has provided evidence of costs incurred in the arbitration only in the amount of GBP 75,000 and the sums paid by Claimant to cover the Tribunal's fees and to administer the proceedings, *i.e.*, USD 308,000.²²⁷

²²² Respondent's Costs Submission, para. 14.

²²³ Respondent's Costs Submission, para. 18.

²²⁴ Respondent's Response on Costs Submission, para. 4.

²²⁵ Respondent's Response on Costs Submission, paras. 5-7.

²²⁶ Respondent's Response on Costs Submission, paras. 13-15.

²²⁷ Respondent's Response on Costs Submission, para. 9.

5. DECISION

240. Article 40 of the UNCITRAL Rules states as follows:

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

241. In this case, the Tribunal has concluded that it lacks jurisdiction, and therefore, Respondent is the successful party, and Claimant is the unsuccessful party. The Tribunal also notes that Claimant's case changed throughout the arbitration, including new arguments at the Hearing not submitted with his written submissions that resulted in Respondent incurring additional costs. And Claimant did not comply with the Tribunal's orders regarding document production.

242. On the other hand, the Tribunal recalls that Respondent was not successful in its application for security for costs and engaged a large legal team for this case. However, Respondent raised various jurisdictional defenses and utilized, in what appeared to be an efficient approach, various members of its team to address those different defenses. The fact that the Tribunal determined that one of the defenses was sufficient to defeat Claimant's claim does not mean that it was inappropriate in any way for Respondent to have raised the defenses it did. Likewise, the fact that Claimant opted to proceed with its claim with a smaller team does not demonstrate that Respondent's legal team was not justified.

243. Taking into account all of these factors, the Tribunal awards Respondent 60% of its attorneys' fees and expenses, which amounts to EUR 1,756,204.26 and 60% of its share of the Arbitrators' Fees and Expenses, the Tribunal's Other Costs and the Administering Authority's Fees, which amounts to USD 183,633.60. These amounts total EUR 1,756,204.26 and USD 183,633.60.

VIII. THE TRIBUNAL'S DECISION

244. For the foregoing reasons, the Tribunal decides to:

- a. Dismiss all claims brought by Mr. Abdallah Andraous against the Kingdom of the Netherlands in this arbitration because the Tribunal lacks jurisdiction *ratione materiae*;
- b. Order Mr. Abdallah Andraous to pay the Kingdom of the Netherlands EUR 1,756,204.26 and USD 183,633.60.
- c. Reject all other claims.

[Signed]

Prof. Nassib G. Ziadé
Arbitrator

Mr. José Emilio Nunes Pinto
Arbitrator

Place of Arbitration: Geneva (Switzerland)
Date of Issuance: 20 May 2026

Place of Arbitration: Geneva (Switzerland)
Date of Issuance:

Ms. Claudia Salomon
President of the Tribunal

Place of Arbitration: Geneva (Switzerland)
Date of Issuance:

[Signed]

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President of the Tribunal

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