REDACTED VERSION FOR PUBLICATION

**PCA Case No. 2022-49** **21 September 2026**

**Arbitration pursuant to the Agreement Between the Government of the Islamic Republic of Iran and the Government of the Azerbaijan Republic on the Reciprocal Promotion and Protection of Investments**

**MOHAMMAD REZA KHALILPOUR BAHARI**

The Claimant

**v.**

**THE REPUBLIC OF AZERBAIJAN**

The Respondent

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# AWARD

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**ARBITRAL TRIBUNAL**

Professor Gabrielle Kaufmann-Kohler, Presiding Arbitrator

Mr. Laurence Shore, Arbitrator

Sir Daniel Bethlehem KC, Arbitrator

**Secretary of the Arbitral Tribunal**

Dr. Adrien Compain

**Registry**

Ms. Jinyoung Seok

Permanent Court of Arbitration

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Mr. David L. Earnest
Mr. Allan B. Diamond
Mr. Jose Manuel Gonzalez Pineda

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Mr. Paul Cohen

From HUGHES HUBBARD & REED LLP
Dr. Rémy Gerbay
Ms. Eleanor C. Erney

*Representing The Republic of Azerbaijan:*

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Dr. Anthony Sinclair
Mr. Stephen Jagusch KC
Mr. Epaminontas Triantafilou
Ms. Hafsa Zayyan
Ms. Emma Bohman-Bryant
Ms. Lakshana Radhakrishnan
Mr. Jan Nato
Ms. Patricija Rukstelyte

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## FREQUENTLY USED ABBREVIATIONS

| | |
|---|---|
| ASFAN | ASFAN Ltd |
| Ayna Sultan Proceedings | A series of proceedings before the Azerbaijani courts from 2004 to 2010 concerning the title to the Ayna Sultan Property |
| Ayna Sultan Property | an immovable property located in the Narimanov District of Baku |
| Carpet Ledger | A carpet ledger, which Claimant asserts, Mr. Bahari let draw up in 1999 by an Iranian carpet expert, indexing his carpets. |
| Carpets | a collection of ancient carpets as well as seven carpets commissioned for Caspian Fish |
| Caspian Fish | a fish processing business in Azerbaijan |
| Caspian Fish BVI | Caspian Fish Co. Inc. |
| Caspian Fish Shareholders Agreement | shareholder agreement allegedly entered into on 27 April 1999 by Messrs. Ilham Aliyev, Heydarov, Khanghah and Bahari |
| Chartabi Contracting | Chartabi Contracting Services |
| Chartabi Contracts | Coolak Baku Chartabi Contract of 16 May 1996, the Shuvalan Sugar Chartabi Contract of 10 July 1997, and the Caspian Fish Construction Chartabi Contract of 10 May 1999 |
| Coolak Baku | Beverage manufacturing business located in Baku |
| Coolak Baku JV or JV | Joint venture established as Coolak Baku Co |
| FET | Fair and equitable treatment |
| FPS | Full Protection and Security |
| Hearing | Hearing held between 20 and 29 January 2025 |
| ICCI | ICCI Limited |
| ICJ | International Court of Justice |
| ICSID Convention | Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 |
| MFER | Ministry of Foreign Economic Relations |
| Order on Provisional Measures | Order on Provisional Measures dated 27 April 2024 |
| PCA | Permanent Court of Arbitration |
| PHC | Pre-hearing conference held on 18 December 2024 |
| PO | Procedural Order |
| PO1 | Procedural Order No. 1 dated 3 December 2022 |
| PO2 | Procedural Order No. 2 dated 24 February 2023 |
| PO3 | Procedural Order No. 3 dated 21 June 2023 |

| | |
|---|---|
| PO4 | Procedural Order No. 4 dated 19 July 2023 |
| PO5 | Procedural Order No. 5 dated 8 April 2024 |
| PO6 | Procedural Order No. 6 dated 9 April 2024 |
| Rejoinder or SoRJ | Respondent's Rejoinder Memorial dated 29 October 202 |
| RoJ | Claimant's Statement of Rejoinder on Jurisdiction dated 10 December 2024 |
| Shuvalan Sugar | sugar refinery in the Shuvalan District near Bak |
| Statement of Claim or SoC | Claimant's Statement of Claim dated 21 April 2023 |
| Statement of Defence or SoD | Respondent's Objections to Jurisdiction and Statement of Defence dated 22 December 2023 |
| Statement of Reply or SoR | Claimant's Statement of Reply dated 21 June 2024 |
| TOA | Terms of Appointment dated 16 December 2022 |
| Treaty | Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments of 1996 |
| UNCITRAL | United Nations Commission on International Trade Law |
| UNCITRAL Rules | UNCITRAL Arbitration Rules, as revised in 2013 |
| VLCT | Vienna Convention on the Law of Treaties |
| WS | Witness statement |

# I. INTRODUCTION

1. This is an *ad hoc* arbitration (the "Arbitration") brought under the Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments of 1996 (the "Treaty")[1] pursuant to the United Nations Commission on International Trade Law Arbitration Rules, as revised in 2013 (the "UNCITRAL Rules").[2]

## A. THE PARTIES AND THEIR REPRESENTATIVES

2. The Claimant is Mr. Mohammad Reza Khalilpour Bahari.

3. The Claimant is represented by Mr. Eric Z. Chang from CHANG LAW, Mr. David L. Earnest, Mr. Allan B. Diamond, and Mr. José Manuel González Pineda from DIAMOND MCCARHTY LLP, Mr. Paul Cohen from 4-5 GRAY'S INN SQUARE, and Dr. Rémy Gerbay and Ms. Eleanor C. Erney from HUGHES HUBBARD & REED LLP.

4. The Respondent is the Republic of Azerbaijan.

5. The Respondent is represented by Dr Anthony Sinclair, Mr. Stephen Jagusch KC, Mr. Epaminontas Triantafilou, Ms. Hafsa Zayyan, Ms. Emma Bohman-Bryant, Ms. Lakshana Radhakrishnan, Mr. Jan Nato and Ms. Patricija Rukstelyte from QUINN EMANUEL URQUHART & SULLIVAN UK LLP.

## B. THE ARBITRAL TRIBUNAL

6. The Tribunal is composed of:

**Prof. Gabrielle Kaufmann-Kohler (Presiding Arbitrator)**

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1211 Geneva 4
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1 Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments of 28 October 1996.

2 Excluding the application of the UNCITRAL Rules on Transparency, since the confidentiality and transparency of the arbitration are governed by the rules set out in PO2.

**Sir Daniel Bethlehem KC (Co-Arbitrator)**

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20 Essex Street
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7. With the consent of the Parties, the Tribunal initially appointed as Secretary to the Tribunal:

**Dr. David Khachvani**

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Switzerland
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Email: david.khachvani@lk-k.com

8. In the course of the proceedings, the Tribunal proposed to replace the Secretary to the Tribunal and, with the Parties' consent, appointed as Secretary to the Tribunal, as of 8 July 2024:

**Dr. Adrien Compain**

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Tel: +41 22 80 96 200
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### C. LANGUAGE OF THE ARBITRATION AND PLACE OF ARBITRATION

9. Pursuant to paragraph 7.1 of the Terms of Appointment ("TOA") executed by the Parties and the Tribunal, English is the language of the arbitration.[3] Thus, this Award is issued in English.

10. By agreement of the Parties, as reflected in paragraph 31 of the TOA, Geneva, Switzerland, is the place of arbitration.

## II. PROCEDURAL HISTORY

11. This section provides a summary of the history of these arbitration proceedings. For ease of readability, given the numerous procedural issues and exchanges, the Tribunal has organized this section by topics. Within each topic, it has set out the procedural steps in chronological order.

[3] See also Procedural Order No. 1, para. 3.

## A. COMMENCEMENT OF THE ARBITRATION AND CONSTITUTION OF THE TRIBUNAL

12. On 11 July 2022, pursuant to Article 10 of the Treaty, the Claimant sent a Notice of Arbitration, informing the Respondent of a dispute between him and the Republic of Azerbaijan under the Treaty. In the Notice of Arbitration, the Claimant appointed Mr. Laurence Shore as arbitrator.

13. On 30 September 2022, the Respondent informed the Claimant of its appointment of Sir Daniel Bethlehem KC as arbitrator.

14. On 3 November 2022, the arbitrators informed the Parties of their agreement to appoint Professor Gabrielle Kaufmann-Kohler as presiding arbitrator, who accepted her nomination.

## B. THE TERMS OF APPOINTMENT AND PO1

15. On 1 December 2022, the Parties and the Tribunal held a virtual procedural hearing in which they addressed, *inter alia*, previously circulated drafts of the TOA and Procedural Order No. 1 ("PO1").

16. On 21 December 2022, the TOA were executed by the Parties and the members of the Tribunal. In the TOA, it was agreed by the Parties, *inter alia*, that the Permanent Court of Arbitration ("PCA") would facilitate the transmission of their submissions and communications to the Tribunal and its Secretary. Additionally, the Parties confirmed that they had no objection to the constitution of the Tribunal and to the appointment of the arbitrators in respect of matters known to them at the date of signature of the TOA.

17. On 22 December 2022, after consultations with the Parties, the Tribunal issued PO1, which addressed certain procedural matters, including case administration by the PCA, and fixed the procedural calendar.

## C. PO2 AND PO3

18. Given the disagreement between the Parties on several points regarding the modalities of confidentiality and transparency of the proceedings during the first procedural hearing of 1 December 2022, the Tribunal invited the Parties to file written submissions on these matters.

19. On 12 December 2022, the Respondent filed its submission, followed by the Claimant's submission of 22 December 2022.

20. On 24 December 2022, at the Respondent's request, the Tribunal allowed the Parties to file a second round of written submissions.

21. On 9 January 2023, the Respondent filed its second submission, followed by the Claimant's second submission of 16 January 2023.

22. On 24 February 2023, the Tribunal issued Procedural Order No. 2 ("PO2"), establishing the confidentiality and transparency rules applicable to the proceedings. Pursuant to PO2, the PCA is to publish the written submissions (without accompanying evidence, witness statements and expert reports and other documents listed in paragraph 24 of PO2, which shall remain confidential), subject to a procedure allowing the Parties to request redactions decided by the Tribunal in case of disagreement. PO2 further provided that "[u]nless otherwise agreed by the Parties at a later stage of the proceedings, awards shall remain confidential".

23. On 14 March 2023, the Tribunal confirmed that the confidentiality and transparency rules set forth in PO2 apply to the two rounds of written submissions contemplated by paragraph 4.1 of PO1, while procedural correspondence and other submissions remain confidential.

24. On 21 June 2023, the Tribunal issued Procedural Order No. 3 ("PO3"), providing, *inter alia*, that the publication of redacted written submissions pursuant to PO2 by the PCA shall occur only after the redaction process of the second submission on a given round of exchange is completed.

## D. THE WRITTEN SUBMISSION PHASE

### 1. The Respondent's Response to Notice of Arbitration

25. On 4 January 2023, the Respondent submitted its Response to Notice of Arbitration pursuant to Article 10 of the Treaty and PO1 (the "Response to Notice of Arbitration").

### 2. The Respondent's request for information relating to the Claimant's funding arrangement

26. On 14 December 2022, the Claimant made a disclosure in connection with a third-party funding arrangement in accordance with PO1.

27. On 11 April 2023, the Respondent submitted an application for information relating to the Claimant's funding arrangement, in view of a potential application for security for costs.

28. On 5 May 2023, the Claimant opposed the Respondent's application.

29. On 23 May 2023, the Tribunal ruled on the application and ordered the Claimant to provide certain financial information relating to his ability to meet a potential adverse costs award up to USD 5 million.

30. On 31 May 2023, the Claimant stated that "his funder has not accepted liability for an adverse costs award" and that "there is no insurance policy or another third party commitment currently in place to pay a cost award of up to USD 5 million".

## 3. The Statement of Claim

31. On 21 April 2023, the Claimant submitted his Statement of Claim (the "Statement of Claim" or "SoC") in accordance with the procedural calendar. The Statement of Claim was accompanied by factual exhibits C-001 through C-233; legal authorities CLA-1 through CLA-184; witness statements from Mr. Mohammad Reza Khalilpour Bahari ("Bahari WS-1"), Mr. Naser Tabesh Moghaddam ("Moghaddam WS-1"), Mr. Yusuf Allahyarov ("Allahyarov WS-1"), Mr. Dieter Klaus ("Klaus WS-1"), and Dr. Fereydoun Kousedghi ("Kousedghi WS-1"); as well as expert reports from Mr. Kiran Sequeira and Mr. Alexander Messmer from Secretariat Advisors ("Secretariat ER-1") and Mr. William Iselin from Iselin Art Advisory ("Iselin ER-1").

32. On 5 May 2023, the Respondent filed a request for redaction of the Statement of Claim, followed by the Claimant's response of 12 May 2023.

33. On 15 May 2023, the Respondent requested leave from the Tribunal to file an additional submission in support of its request, which the Claimant opposed on the same date.

34. On 16 May 2023, the Tribunal notified the Parties that it was sufficiently informed and did not require additional submissions regarding the Respondent's request for redactions of 5 May 2023.

35. In PO3 of 21 June 2023, the Tribunal granted the Respondent's request for redaction of direct quotations from the categories of documents listed in paragraph 24 of PO2 and denied its other requests for redaction.

## 4. The Request for Bifurcation

36. On 2 June 2023, the Respondent filed a request for bifurcation pursuant to PO1, seeking bifurcation of the proceedings and the determination of five preliminary objections as preliminary questions, namely (i) an objection that none of the Claimant's alleged investments have been approved by the competent authority of Azerbaijan as provided by Article 9 of the Treaty; (ii) an objection that the Claimant's alleged interest in certain Persian carpets does not constitute an investment; (iii) an objection that the Claimant's alleged interest in the Ayna Sultan land plot is not permissible under Azerbaijani law and does not constitute an investment; (iv) an objection that the Claimant's alleged interest in the Shuvalan Sugar business is wholly unsubstantiated, is not permissible under Azerbaijani law and does not constitute an investment; and (v) an objection that the Tribunal does not have jurisdiction to determine claims of breach of full protection and security, which the Claimant asserts by operation of the most-favored nation clause contained in Article 2(3) of the Treaty.

37. On 23 June 2023, the Claimant filed his answer to the request for bifurcation, requesting that the Tribunal deny it in full.

38. On 19 July 2023, having reviewed the Parties' submissions, the Tribunal issued its decision on the request for bifurcation in Procedural Order No. 4 ("PO4"). Considering that, out of the five objections raised by the Respondent, four were intertwined with the

merits and four were not capable of disposing of a significant portion of the claims, the Tribunal concluded that bifurcating the proceedings would not be likely to promote the efficient and fair resolution of the dispute and, therefore, denied the Respondent's request for bifurcation.

## 5. The Statement of Defence

39. On 22 December 2023, the Respondent filed its Objections to Jurisdiction and Statement of Defence (the "Statement of Defence" or "SoD") in accordance with the procedural calendar. The Statement of Defence was accompanied by factual exhibits R-6 through R-178; legal authorities RLA-88 through RL-197; witness statements from Ms. Yegana Blakishiyeva ("Blakishiyeva WS-1"), Mr. Samir Valiyev ("Valiyev WS-1"), Mr. Habib Aliyev ("Aliyev WS-1"), Mr. Rasim Zeynalov ("Zeynalov WS-1"), Mr. Sabutay Hasanov ("Hasanov WS-1"), Mr. Tahir Kerimov ("Kerimov WS-1"), Ms. Kristina Izmaylova ("Izmaylova WS-1"), and Mr. Anar Abbasov ("Abbasov WS-1"); as well as expert reports from Dr. Mahnaz Mehrinfar ("Mehrinfar ER-1"), Professor Kenneth J Vandevelde ("Vandevelde ER-1"), Mr. Altay Mustafayev ("Mustafayev ER-1"), Mr. Rza Hasanov ("Hasanov ER-1"), and Dr. Min Shi from Oxera Consulting LLP ("Oxera ER-1").

40. On 5 January 2024, the Parties filed their request for redaction of the Statement of Defence pursuant to PO2, followed by their objections to the other Party's request for redaction on 12 January 2024.

41. On 30 January 2024, the Tribunal issued its decision on the disputed redactions and invited the Parties to agree on the redactions to be applied to the Statement of Defence pursuant to its directions.

42. On 15 February 2024, the Respondent informed the Tribunal that the Parties had failed to agree on the redactions to be applied to the Statement of Defence, due to further redactions requested by the Respondent.

43. On 16 February 2024, the Claimant provided his comments on the Respondent's letter of 15 February 2024.

44. On 22 February 2024, the Tribunal accepted that the additional redactions requested by the Respondent be made to the Statement of Defence, considering that they pertained to direct quotations of categories of document listed in paragraph 24 of PO2. On this basis, it also accepted the further redactions applied by the Respondent to the Statement of Claim were consistent with paragraph 24 of PO2.

## 6. The Order on Provisional Measures

45. On 5 March 2024, the Claimant filed an application for an *ex parte* preliminary order and follow-on interim measures in connection with allegations of witness and claim tampering by the Respondent.

46. On 8 March 2024, on the Tribunal's invitation, the Respondent objected to the Tribunal's power to grant *ex parte* interim measures. In the alternative, the Respondent applied to be heard on the merits of the application before any determination on the *ex parte* application.

47. On 11 March 2024, the Claimant filed his reply to the Respondent's submission, followed by the Respondent's rejoinder of 12 March 2024.

48. On 12 March 2024, having considered the Parties' submissions, the Tribunal decided not to entertain the Claimant's application on an *ex parte* basis and invited him to file an *inter partes* application, following which the Tribunal would give directions on the briefing schedule and procedure to be followed.

49. On the same date, the Claimant filed his *inter partes* application, accompanied by exhibits C-236 through C-249, exhibits CLA-207 through CLA-230, and a witness statement from Mr. Mohammad Reza Khalilpour Bahari, requesting that the Tribunal first issue an immediate preliminary order before issuing any subsequent order for interim measures.

50. On 14 March 2024, the Respondent opposed the Claimant's request for an immediate preliminary order and requested, *inter alia*, the production of certain documents in connection with his application.

51. On the same date, in addressing the Parties' requests, the Tribunal (i) issued a preliminary order requiring the Parties to refrain from any action that might threaten the life or integrity of, or otherwise cause harm or prejudice to, any person associated with the arbitration by reason of that association, pending the determination of the Claimant's application; (ii) granted the Respondent until 5 April 2024 to respond to the application; (iii) informed the Parties of its availability for a virtual hearing on 9 or 10 April 2024, and (iv) ordered the Claimant to provide the Respondent with certain documents relevant to his application by 15 March 2024.

52. Still on 14 March 2024, the Claimant commented on the Tribunal's order for the production of documents.

53. On 15 March 2024, the Respondent replied to the Claimant's comments, following which the Claimant submitted further comments.

54. On the same date, the Tribunal reiterated its 14 March 2024 order for the production of documents.

55. On 18 March 2024, the Respondent informed the Tribunal that the Claimant failed to comply with the Tribunal's order and requested that the Tribunal order the Claimant to produce the documents urgently. It also requested that the Claimant be ordered to provide originals of certain documents for inspection. The Respondent further informed the Tribunal of the unavailability of its counsel at the proposed hearing dates and suggested alternative dates.

56. On the same date, the Claimant produced the documents ordered by the Tribunal. As regards the documents requested by the Respondent for inspection, the Claimant stated that he would liaise with counsel for the Respondent to agree on a joint protocol for inspection. He also confirmed his availability on 9 or 10 April 2024.

57. On 19 March 2024, in response to the Claimant's communication of 18 March 2024, the Respondent disputed redactions applied by the Claimant and requested the production of additional documents. As regards the inspection, it requested, *inter alia*, that the Tribunal order the Claimant to produce specific documents for inspection in accordance with the protocol set out in its letter. The Respondent also maintained its position as to the necessity of a hearing in order to test the Claimant's evidence and suggested an agenda for the hearing to be held on one of the alternative dates it had previously identified.

58. On the same date, the Tribunal invited the Parties to seek agreement on a joint protocol to allow for inspection of original documents as promptly as possible.

59. On 20 March 2024, in light of the Respondent's unavailability on the dates initially proposed, the Tribunal informed the Parties that it had identified 7 April 2024 as the only remaining potential date for the hearing and that, should that date not be suitable for either Party, it would consider deciding the application for interim measures without a hearing.

60. On the same date, the Claimant opposed both the Respondent's request of 19 March 2024 for the production of additional documents, as well as the proposed protocol for inspection of documents. He also expressed his view that a hearing was unnecessary.

61. On 21 March 2024, the Respondent reiterated that a hearing was required and confirmed that its counsel would make themselves available on the dates initially identified by the Tribunal to allow the hearing to proceed.

62. On the same date, the Claimant maintained that a hearing was not required. He nevertheless confirmed that, should the Tribunal consider a hearing necessary, he would be available on the dates initially proposed.

63. On 23 March 2024, having considered the Parties' letters of 19, 20, and 21 March 2024, the Tribunal (i) rejected the Respondent's request for inspection of certain documents; (ii) accepted the Respondent's request for examination of the Claimant at the hearing; (iv) took note that the Claimant was seeking to obtain the additional documents requested by the Respondent; and (iv) confirmed that the hearing on provisional measures would take place on 9 April 2024, with 10 April 2024 being held in reserve.

64. On 25 March 2024, the Claimant requested the presence of Mr. Gasim Mammadov for examination at the hearing on provisional measures.

65. On 26 March 2024, the Claimant provided details about the actions taken to obtain the additional documents requested by the Respondent and produced three documents.

66. On 27 March 2024, the Respondent (i) objected to the Claimant's request for examination of Mr. Mammadov for failing to provide the particularization of his request; (ii) requested that the Claimant be ordered to provide clarifications concerning the documents produced on 26 March 2024 as well as the specific documents requested by the Respondent for inspection; and (iii) requested that the Parties make short submissions on document production.

67. On the same date, the Claimant objected to the Respondent's requests.

68. On 28 March 2024, the Tribunal denied the Respondent's requests of 27 March 2024.

69. On the same date, the Claimant provided his reasons for calling Mr. Mammadov at the hearing on provisional measures. He further requested that the Respondent be ordered to produce certain documents ahead of the hearing.

70. On 2 April 2024, the Respondent provided comments on the Claimant's reasons for calling Mr. Mammadov and stated that the latter would be able to attend the hearing. It also reiterated its request for production of additional documents having not yet been produced by the Claimant

71. On the same date, the Claimant submitted his comments on the Respondent's letter.

72. Still on 2 April 2024, the Claimant informed the Tribunal, in a letter dated 1 April 2024 and received on the next day, of alleged actions by the Respondent contravening the Tribunal's preliminary order of 14 March 2024 and requested another immediate order from the Tribunal.

73. On 3 April 2024, the Respondent objected to the Claimant's document production requests of 28 March 2024.

74. On the same date, the Claimant commented on the Respondent's objections and reiterated his document production requests.

75. On 4 April 2024, the Tribunal ruled on the Claimant's document production requests and ordered the Respondent to undertake good faith efforts to produce responsive documents. If, despite those efforts, the Respondent was unable to locate any responsive documents, it was required to provide the Claimant with a detailed description of the searches conducted. As regards the examination of Mr. Mammadov, the Tribunal determined that his appearance as a witness was warranted in the circumstances and requested the Respondent to make the necessary arrangements for him to be heard at the hearing scheduled for 9 and 10 April 2024.

76. On 5 April 2024, the Claimant produced the rest of the additional documents requested by the Respondent. He also informed the Tribunal of his intention to submit a limited number of additional factual exhibits ahead of the hearing.

77. On the same date, the Tribunal informed the Claimant that additional documents could be filed outside the prescribed time limits only with the Tribunal's permission. The

Tribunal accordingly invited the Claimant to identify the documents it sought to introduce and to substantiate the existence of exceptional circumstances justifying their admission. The Tribunal also circulated a draft Procedural Order No. 5 ("PO5") concerning the organization of the hearing on provisional measures, together with a proposed hearing schedule, and invited the Parties to comment.

78. Still on 5 April 2024, the Respondent filed its Response to the Claimant's Application for Interim Measures, accompanied by exhibits R-179 through R-219, exhibits RLA-224 through RLA-243, and witness statements from Mr. Bayram Orujov ("Orujov WS"), Mr. Mammadov ("Mammadov WS-1") and Ms. Aysel Kishiyeva ("Kishiyeva WS-1"), requesting that the Tribunal deny the Claimant's application. A corrected version of Kishiyeva WS-1 was filed on the following day.

79. On 6 April 2024, the Respondent commented on the Claimant's letter of 1 April 2024 and denied having taken any action in contravention of the Tribunal's preliminary order of 14 March 2024.

80. On 6 and 7 April 2024, the Parties exchanged comments on the draft of PO5.

81. On 7 April 2024, the Tribunal informed the Parties that it would decide the Claimant's request of 1 April 2024 following the hearing on provisional measures.

82. On 7 April 2024, the Claimant applied to the Tribunal for permission to file additional factual exhibits for the forthcoming hearing.

83. On 8 April 2024, the Respondent submitted to the Tribunal an updated draft of PO5, reflecting the provisions agreed by the Parties and its proposed changes to the hearing schedule. The Claimant separately submitted comments explaining his disagreement with those proposed changes.

84. On the same date, the Tribunal issued PO5, accepting the Parties' agreed amendments and adopting the hearing schedule as originally proposed to the Parties.

85. Also on the same date, the Respondent objected to the Claimant's request of 7 April 2024 for the filings of additional factual exhibits. The Respondent also sought leave to submit one factual exhibit into the record, to which the Claimant objected.

86. On 9 April 2024, the Tribunal granted the Parties' respective requests of 7 and 8 April 2024 for the introduction of additional exhibits.

87. The hearing on provisional measures took place on 9 and 10 April 2024 by videoconference. The following persons attended the hearing:

**The Tribunal**

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)
Mr. Laurence Shore
Sir Daniel Bethlehem KC

**Tribunal Secretary**

Dr. David Khachvani

| **Claimant** | **Respondent** |
|---|---|
| *Claimant and Fact Witness*<br>Mr. Mohammad Reza Khalilpour Bahari | *Quinn Emanuel Urquhart & Sullivan LLP*<br>Mr. Anthony Sinclair<br>Mr. Epaminontas Triantafilou<br>Ms. Hafsa Zayyan<br>Ms. Emma Bohman-Bryant<br>Ms. Lakshana Radhakrishnan<br>Mr. Jan Nato |
| *Counsel*<br>Mr. Eric Z. Chang<br>Mr. Paul Cohen<br>Mr. David Earnest<br>Mr. Paul Grant | *Fact Witness*<br>Mr. Qasim Mammadov |
| *Azerbaijani-English Translator*<br>Mr. Mehrnaz Ighan | *Azerbaijani-English Translator*<br>Mr. Ayten Dmirovska. |
| | *Farsi-English Translator*<br>Mr. Mehdi Bahrami |

**PCA**

Ms. Jinyoung Seok, Legal Counsel
Mr. Benjamin Craddock, Senior Case Manager

**Court Reporter**

Ms. Jade King

**Interpreters**

*Azeri Interpreters*
Mr. Isa Ahadov
Mr. Saeed Menason

*Farsi Interpreters*
Ms. Mina Faress
Mr. Mohammad Azeri

88. On 27 April 2024, the Tribunal issued its Order on Provisional Measures as follows, without providing its reasons, given the urgency:

> i. The Respondent shall refrain from taking any action that may harm the integrity of these proceedings, including (but not limited to) the following:
>
> (a) any action that may threaten the life or integrity or otherwise cause harm or prejudice to any person associated with this arbitration in consequence of his or her association with this arbitration; and
>
> (b) any action that may impair or otherwise hinder the timely and efficient collection and presentation of evidence and information for purposes of this arbitration, including any action that may intimidate potential fact and expert witnesses or other sources of information on matters relevant to this dispute.

ii. The other requests for provisional measures are denied;

iii. This Order replaces the preliminary order issued on 14 March 2024, which ceases to be effective[.]

89. On 15 September 2024, the Tribunal provided its reasons for the Order on Provisional Measures, to be appended as a Codicil to the Order.

## 7. The document production phase

90. On 18 January 2024, the Claimant informed the Tribunal of the Parties' agreement to amend deadlines of the document production phase established in PO1, to which the Tribunal agreed on 24 January 2024.

91. On 2 February 2024, the Parties exchanged their requests for production of documents.

92. On 1 March 2024, each Party submitted its objections to the other Party's document production requests.

93. On 15 March 2024, each Party submitted its replies to the other Party's objections to its document production requests.

94. On 9 April 2024, the Tribunal issued Procedural Order No. 6 ("PO6"), in which it decided each Party's document production requests.

95. On 26 April 2024, the Parties produced the documents, which were later supplemented by further productions.

96. On 29 April 2024, the Claimant requested that the Tribunal issue certain directions regarding alleged document production deficiencies by the Respondent under PO6.

97. On 3 May 2024, the Respondent rejected the Claimant's requests and allegations, to which the Claimant subsequently responded.

98. On 14 May 2024, the Tribunal, having reviewed the Parties' positions and disregarding the Claimant's response of 3 May 2024 on the basis that no second round of submission had been provided for, denied the Claimant's requests.

## 8. The document inspection phase

99. In the course of the document production phase, the Parties requested the production of originals of certain documents for inspection.

100. In PO6 of 9 April 2024, the Tribunal invited the Parties to agree on a protocol and modalities for such inspection.

101. On 29 April 2024, the Claimant informed the Tribunal that the Parties had failed to reach an agreement and sought directions from the Tribunal.

102. On 3 May 2024, the Respondent provided comments on the Claimant's letter of 29 April 2024 and requested that the Tribunal order any inspection to be undertaken in accordance with a protocol proposed by the Respondent.

103. On 13 May 2024, the Tribunal issued its directions on document inspection requests.

104. On 17 May 2024, pursuant to the Tribunal's directions, each Party served on the other with requests for inspection of documents.

105. On 22 May 2024, each Party submitted its objections to the other Party's document inspection requests.

106. On 28 May 2024, the Tribunal ruled on each Party's document inspection requests and proposed to the Parties a draft protocol for document inspection.

107. On 30 May 2024, the Parties proposed amendments to the draft protocol for document inspection.

108. On 31 May 2024, having reviewed the Parties' proposals, the Tribunal issued the protocol for document inspection in final form.

109. On 20 June 2024, the Respondent, alleging the Claimant's non-compliance with the document inspection protocol, requested that the Tribunal order the Claimant to produce for inspection the originals of exhibits C-238, C-240 and C-241, as well as the Claimant's witness statements, or, alternatively, provide detailed explanations of his efforts to obtain them.

110. On the same date, the Claimant advised the Tribunal that he would address the Respondent's letter the following week, given the ongoing preparation of his Statement of Reply due on 21 June 2024.

111. On 22 June 2024, the Tribunal invited the Claimant to produce the missing originals, explain their unavailability in detail, or otherwise respond to the Respondent's letter of 20 June 2024 by 25 June 2024.

112. On 25 June 2024, the Claimant confirmed that he had provided the Respondent with electronic copies of his witness statements and explained that he did not possess the originals. He also opposed the Respondent's request for production of the originals of exhibits C-238, C-240 and C-241, stating that they were held by third parties and could not be produced without their permission. The Claimant further requested that the Respondent be directed to produce for inspection certain original exhibits that had not been made available within the time limits prescribed by the document inspection protocol.

113. On 27 June 2024, the Respondent reiterated its requests for production of the originals of exhibits C-238, C-240 and C-241, further to the Claimant's confirmation that they were in the possession of his witnesses.

114. On 2 July 2024, the Claimant reiterated his requests that the Tribunal (i) reject the Respondent's application for production of the originals of exhibits C-238, C-240 and C-241; and that (ii) order the Respondent to produce the originals identified in his letter of 25 June 2024.

115. On the same date, the Respondent requested that the Claimant be ordered to provide responses to requests for information in relation to the originals of the Claimant's witness statements.

116. On 15 July 2024, at the Tribunal's invitation, the Respondent submitted its comments on the Claimant's request for production of 2 July 2024.

117. On 16 July 2024, the Claimant commented on the Respondent's letter of 15 July 2024.

118. On 18 July 2024, having considered the Parties' submissions, the Tribunal issued its decisions on the Parties' requests, (i) denying the Respondent's requests for information and for production of the originals of exhibits C-238, C-240 and C-241; (ii) issuing a revised protocol for document inspection; and (iii) inviting the Respondent to make available to the Claimant for inspection the originals of the exhibits identified in his letter of 25 June 2024, in accordance with the revised protocol.

119. On the same date, the Respondent submitted a further request that the Claimant be ordered to disclose native copies of specific pages of exhibits C-84, C-85 and C-92.

120. On 23 July 2024, the Claimant provided his comments on the Respondent's request, which he opposed.

121. On 26 July 2024, having considered the Parties' positions, the Tribunal granted the Respondent's request and ordered the Claimant to provide the requested native copies.

## 9. The Claimant's request for third party production

122. On 18 April 2024, the Claimant filed an application for permission to proceed under the English Arbitration Act of 1996 to compel third parties to produce documents and give oral testimony in the Arbitration.

123. On 26 April 2024, the Respondent filed its response to the Claimant's application, opposing the application.

124. On 15 May 2024, having considered the Parties' positions, the Tribunal denied the application, considering, *inter alia*, that granting the application would result in serious disruption and delays in the Arbitration and that the *prima facie* relevance and materiality of the evidence that may be obtained did not appear to justify such disruption and delays.

## 10. The first supplement to the Order on Provisional Measures

125. Between 16 and 20 May 2024, the Claimant and the Respondent exchanged *inter partes* correspondence, copied to the Tribunal, concerning the Respondent's alleged violations of the Order on Provisional Measures.

126. On 21 May 2024, the Claimant requested that the Tribunal amend the Order on Provisional Measures to include a no-contact order covering certain individuals, in light of the Respondent's alleged violations of the Order.

127. On 24 May 2024, the Respondent provided its comments on the Claimant's letter of 21 May 2024, denying his allegations and opposing his request for an amendment to the Order on Provisional Measures.

128. On 31 May 2024, having considered the Parties' positions, the Tribunal denied the Claimant's request for a no-contact order. At the same time, it supplemented the Order on Provisional Measures by requiring the Respondent, should it continue to contact certain individuals, to give the Claimant and the Tribunal advance notice of any anticipated action, allowing sufficient time for those individuals to be notified.

## 11. The Statement of Reply

129. On 24 April 2024, the Parties informed the Tribunal that they had agreed on amendments to the procedural calendar, including the filing dates for the Parties' second round of submissions and all other procedural steps leading up to the hearing scheduled for January 2025. The Tribunal approved the amended procedural calendar on 2 May 2024.

130. On 21 June 2024, the Claimant filed his Statement of Reply (the "Statement of Reply" or "SoR"), in accordance with the procedural calendar. The Statement of Reply was accompanied by exhibits C-275 through C-368; exhibits CLA-186 through CLA-318; witness statements from Mr. Mohammad Reza Khalilpour Bahari ("Bahari WS-2"), Mr. Naser Tabesh Moghaddam ("Moghaddam WS-2"), Mr. Yusuf Allahyarov ("Allahyarov WS-2"), Mr. Dieter Klaus ("Klaus WS-2"), Ms. Konul Ramazanova ("Ramazanova WS"), Mr. Timur Abdulmajidov ("Abdulmajidov WS"), Mr. Elchin Suleymanov ("Suleymanov WS") and Mr. Chin Kwee Hay ("Hay WS"); and expert reports from Mr. Kiran Sequeira and Mr. Alexander Messmer from Secretariat Advisors ("Secretariat ER-2"), Mr. William Iselin from Iselin Art Advisory ("Iselin ER-2"), Professor Stephen Schill ("Schill ER"), Mr. Duncan Allan and Ms. Tamara Makarenko ("Allan & Makarenko ER"), Mr. Robert Alan Steer from FRP Advisory Trading Limited ("Steer ER"), and Ms. Angela Morrissey from FRP Advisory Trading Limited ("Morrissey ER").

131. On 5 July 2024, the Respondent submitted a request for redactions to the Statement of Reply pursuant to PO2.

132. On 12 July 2024, the Claimant confirmed that he had no objections to the Respondent's proposed redactions to the Statement of Reply.

## 12. The Respondent's requests in connection with the Statement of Reply

Expert Reports

133. On 8 July 2024, the Respondent submitted requests concerning the Allan & Makarenko ER and the Morrissey ER, seeking production of the instructions provided to the experts and supporting documents not filed with the reports. In addition, with respect to the Morrissey ER, the Respondent requested clarification as to which of the Claimant's signatures had been provided to, or examined by, the expert in original form.

134. On 11 July 2024, in response to the Respondent's requests, the Claimant provided information concerning the instructions given to the Allan & Makarenko experts and undertook to produce the missing supporting documents. As regards the Morrissey ER, he produced the missing supporting document electronically and opposed the Respondent's remaining requests.

135. On 18 July 2024, the Tribunal ruled on the Respondent's requests, directing the Claimant to produce the missing supporting documents for the Allan & Makarenko ER by 26 July 2024 and to make available for inspection the signatures relied upon in the Morrissey ER by 5 August 2024.

136. On 7 August 2024, the Respondent submitted further requests concerning the two expert reports. As regards the Allan & Makarenko ER, it sought production of the outstanding supporting documents. As regards the Morrissey ER, it requested confirmation as to whether the expert had been provided with originals of the supporting document produced electronically on 11 July 2024 and of exhibit C-7, together with copies of the versions provided to the expert.

137. On 13 August 2024, in response to the Respondent's requests, the Claimant undertook to produce the outstanding documents relating to the Allan & Makarenko ER by the end of the week and opposed the requests concerning the Morrissey ER.

138. On 16 August 2024, the Tribunal ruled on the Respondent's requests, directing the Claimant to produce immediately the outstanding supporting documents relating to the Allan & Makarenko ER and to make available to the Respondent the originals of the documents provided to his expert in connection with the Morrissey ER by 23 August 2024.

Exhibits

139. On 18 July 2024, the Respondent requested that the Claimant be ordered to provide details of the searches undertaken by counsel to locate exhibit C-281.

140. On 23 July 2024, the Claimant opposed the Respondent's request.

141. On 26 July 2024, the Tribunal denied the Respondent's request for information.

142. On 7 August 2024, the Respondent requested that the Tribunal order the Claimant to produce (i) documents referred to in exhibit C-389 and Suleymanov WS-1 but not filed with the Statement of Reply, and (ii) the missing English translations and original language versions of certain exhibits thereto.

143. On 13 August 2024, the Claimant produced the documents requested and undertook to produce the missing translations and original language versions by the end of August.

144. On 16 August 2024, the Tribunal directed the Claimant to produce the missing translations and original versions by 23 August 2024.

### 13. The second supplement to the Order on Provisional Measures

145. On 11 July 2024, the Claimant alleged that, following the submission of Mr. Suleymanov's witness statement, the Respondent and Mr. Zeynalov had intimidated Mr. Suleymanov in violation of the Order on Provisional Measures of 27 April 2024 and thus requested that the Tribunal issue an expeditious order.

146. On 13 July 2024, the Tribunal invited (i) the Claimant to provide any additional information and evidence in support of his allegations raised in his letter of 11 July 2024, and (ii) the Respondent to comment thereafter on the Claimant's request and allegations.

147. On 16 July 2024, the Claimant provided additional information regarding his allegations.

148. On 19 July 2024, the Respondent disputed the Claimant's allegations and opposed his requests. It also requested that the Claimant be ordered (i) to provide clarifications regarding the witness statement submitted in these proceedings by Mr. Suleymanov, and (ii) to provide inspection to the Respondent's expert of the original signature page of said witness statement.

149. On 26 July 2024, the Claimant commented on the Respondent's letter of 19 July 2024 and made a number of new requests, including a request for an order that "going forward, Counsel for either Party must not have any contact with any opposing party witnesses or experts without first informing the other Party's Counsel and seeking leave from the Tribunal".

150. On 1 August 2024, the Respondent commented on the Claimant's letter of 26 July 2024 and requested that the Claimant be ordered to confirm the place of signature of Mr. Suleymanov's witness statement, while maintaining its request for inspection of the signature page.

151. On 7 August 2024, the Tribunal ruled on the Parties' requests. In respect of the Respondent's requests, the Tribunal ordered the Claimant to state the place of signature of Suleymanov WS and denied the other requests. The Tribunal also rejected the Claimant's requests but supplemented the Order on Provisional Measures with the following injunction:

> A Party shall not approach or otherwise initiate contact with a fact or expert witness of the other Party without first obtaining permission from the Tribunal on the basis of a reasoned application, on which the other side shall be afforded an opportunity to comment.

## 14. Further issues related to the Order on Provisional Measures

152. On 10 October 2024, the Claimant complained of a breach by the Respondent of the Order on Provisional Measures as updated and supplemented on 31 May 2024 and 7 August 2024, alleging contact between a police officer and one of his witnesses, Ms. Ramazanova, without the Tribunal's permission.

153. On 17 October 2024, on the Tribunal's invitation, the Respondent informed the Tribunal that it was taking prompt steps to investigate the Claimant's allegations and would endeavor to provide an explanation with supporting documentation as soon as possible after the submission of its Rejoinder scheduled for 24 October 2024.

154. On 19 October 2024, the Claimant raised new concerns arising from criminal investigations initiated by the Respondent against Ms. Ramazanova.

155. On 21 October 2024, the Tribunal invited (i) the Respondent to submit a detailed response to the matters raised by the Claimant, and (ii) the Claimant to comment thereafter on the Respondent's response.

156. On 1 November 2024, the Respondent submitted its response, asserting that the criminal investigations initiated against Ms. Ramazanova were legitimate and denying any breach of the Order on Provisional Measures.

157. On 8 November 2024, the Claimant maintained that the Respondent had breached the Order on Provisional Measures and requested that the Tribunal direct the Respondent to cease all contact with Ms. Ramazanova and her family and to refrain from further contact with Ms. Ramazanova, Mr. Abdulmajidov, any other Claimant witness, and their families until the Tribunal became *functus officio*.

158. On 15 November 2024, having reviewed the Parties' submissions, the Tribunal found that the contact between the police officer and Ms. Ramazanova without having obtained the permission of the Tribunal was inconsistent with the spirit, if not the terms, of the Order on Provisional Measures. For the avoidance of doubt, the Tribunal clarified that Order on Provisional Measures "applies to any and all contact, whether initiated directly or indirectly, or procured, with a fact or expert witness of the other Party, without first obtaining permission from the Tribunal on the basis of a reasoned application, on which the other side will have an opportunity to comment".

159. On 11 January 2025, the Claimant alleged a further breach of the Order on Provisional Measures, asserting that a police officer had repeatedly harassed and intimidated Ms. Ramazanova's neighbor, thereby indirectly intimidating Ms. Ramazanova. The Claimant accordingly requested, *inter alia*, that the officer and all members of his police station be directed to cease any contact with the neighbor. On 13 January 2025, the Claimant informed the Tribunal that the neighbor had been subjected to a further threat.

160. On 14 January 2025, the Respondent denied any breach of the Order on Provisional Measures, stating that the police had not sought to contact Ms. Ramazanova, directly or indirectly, and that her neighbor had been contacted only in connection with a separate investigation. The Respondent also opposed the relief sought by the Claimant as an impermissible interference with its sovereign authority to investigate crimes within its territory.

161. On 16 January 2025, the Tribunal found that the timing of the police engagement shortly before the hearing gave rise to concerns and stated that any further contact between the police authorities and Ms. Ramazanova's neighbor during the hearing would constitute a breach of the Order on Provisional Measures. The Tribunal further directed the Respondent to inform the competent authorities of its determination and to confirm that the necessary instructions had been issued.

162. On 19 January 2025, the Respondent's counsel confirmed that instructions to Azerbaijan have been issued in accordance with the Tribunal's directions of 17 January 2025.

## 15. The addition of new counsel for the Claimant

163. On 3 October 2024, the Claimant informed the Tribunal that he intended to retain Mr. Remy Gerbay and Ms. Eleanor Erney of Hughes Hubbard & Reed LLP as additional legal representatives in the arbitration.

164. On 4 October 2024, the members of the Tribunal provided the Parties with information in relation to the new counsel considered by the Claimant and invited the Respondent to express any views it may have on the Claimant's letter of 3 October 2024.

165. On 8 October 2024, the Respondent indicated that it had no comments on the information provided by the Tribunal.

166. On 11 October 2024, in light of the Respondent's indication, the Tribunal confirmed that it had no objection to the changes in the Claimant's legal representation for this Arbitration.

## 16. The Rejoinder

167. On 24 October 2024, the Respondent requested an extension of two business days for filing its Rejoinder on the Merits and Reply on Jurisdiction and Admissibility, together with a corresponding extension of the deadline for the Claimant's Rejoinder on Jurisdiction. The Claimant opposed the request on the same day.

168. On 25 October 2024, the Tribunal granted the Respondent's request and correspondingly extended the deadline for the Claimant's Rejoinder on Jurisdiction and Admissibility to 10 December 2024.

169. On 29 October 2024, the Respondent filed its Statement of Rejoinder (the "Rejoinder" or "SoRJ"), which was accompanied by exhibits R-236 through R-452; exhibits RLA-

251 through RLA-327; witness statements from Mr. Ernst Rudman ("Rudman WS-1), Mr. Samir Valiyev ("Valiyev WS-2"), Mr. Habib Aliyev ("Aliyev WS-2"), Mr. Abulfaz Kazimov ("Kazimov WS-1"), Mr. Tahir Kerimov ("Kerimov WS-2"), Mr. Alfred Topf ("Topf WS"), Mr. Arguj Kalantarli ("Kalantarli WS"), Mr. Aydin Sultanov ("Sultanov WS"), Mr. Zaur Salmanli ("Salmanli WS"), Mr. Qasim Mammadov ("Mammadov WS-2"), Mr. Rasim Zeynalov ("Zeynalov WS-2") and Mr. Sabutay Hasanov ("Hasanov WS-2"); as well as expert reports from Dr. Mahnaz Mehrinfar ("Mehrinfar ER-2"), Mr. Rza Hasanov ("Hasanov ER-2"), Prof. Kenneth J. Vandevelde ("Vandevelde ER-2"), Ms. Elisabeth Briggs ("Briggs ER"), Mr. Farhad Parvizi ("Parvizi ER") and Dr. Min Shi from Oxera Consulting LLP ("Oxera ER-2").

170. On 12 November 2024, the Parties submitted their respective requests for redactions to the Rejoinder and, on 19 November 2024, commented on the other Party's requests, indicating that they had no objection to the proposed redactions provided that their own were also implemented.

## 17. The Rejoinder on Jurisdiction and Admissibility

171. On 10 December 2024, the Claimant filed his Rejoinder on Jurisdiction ("Rejoinder on Jurisdiction" or "RoJ"), which was accompanied by witness statements from Mr. Mohammad Reza Khalilpour Bahari ("Bahari WS-3") and Mr. Shahbaz Khalilov ("Khalilov WS"), as well as expert reports from Mr. Tom Gaines from Secretariat Advisors ("Gaines ER") and Prof. Stephan Schill ("Schill ER-2").

172. On 24 December 2024, the Respondent proposed redactions to the Claimant's Rejoinder on Jurisdiction.

173. On 26 December 2024, the Claimant objected to some of the proposed redactions.

174. On 7 January 2025, the Tribunal dismissed the Claimant's objections.

## 18. The pressures exerted on the Claimant's funder

175. On 20 December 2024, the Claimant informed the Tribunal of alleged threatening contacts directed at [redacted], the company managing the Claimant's funding in these proceedings. He stated that the matter was under investigation and requested that the Tribunal extend the Order on Provisional Measures to [redacted] and direct Azerbaijan to cease any contact with [redacted], whether directly or through intermediaries.

176. On 21 December 2024, noting the Claimant's intention to supplement his application, the Tribunal requested that the Claimant submit the supplemental application at the earliest opportunity, following which the Respondent would submit its response.

177. On 27 December 2024, the Claimant submitted a letter addressing the Respondent's alleged interference with his funder, together with an affidavit of [redacted] CEO and two exhibits. The Claimant denounced a concerted campaign of pressures by Azerbaijan to choke off the funding of his claim on the eve of the Hearing, through

contacts and threats directed at [redacted], in violation of various civil and criminal laws. Stressing the gravity of the situation, the Claimant reiterated and expanded upon his requests of 20 December 2024.

178. On 2 January 2025, pursuant to the Tribunal's directions, the Respondent responded to the Claimant's allegations. It denied any interference with [redacted], rejecting the evidence of [redacted] CEO as unreliable due to [redacted]'s interest in supporting Mr. Bahari's claim. Further, it argued that the evidence did not establish any wrongdoing by Azerbaijan nor implicate Azerbaijan in any of the alleged contacts. The Respondent therefore requested that the Claimant's requests be denied.

179. On 7 January 2025, the Tribunal issued its decision. Noting that it was troubling and regrettable that [redacted]'s representatives were subject to the pressures described in the affidavit, the Tribunal found however that there was no direct evidence that Azerbaijan was involved in the pressures exercised against [redacted]. Accordingly, the Tribunal denied the Claimant's requests. However, it directed that [redacted] and its special purpose vehicle involved in the funding not be contacted by any individual and entity in connection with the arbitration for the duration of these proceedings, other than the Claimant and his counsel. The Tribunal further ordered the Respondent to take all necessary and appropriate steps to ensure that its decision was brought to the attention of all its organs and agencies with an interest in the proceedings.

## E. PRE-HEARING MATTERS

### 1. Hearing organization

180. On 19 September 2024, after consultations with the Parties, the Tribunal confirmed that the evidentiary hearing ("Hearing") would be held in The Hague from 20 to 25 January 2025, with three reserved days allocated from 27 to 29 January 2025.

181. On 9 December 2024, in accordance with the procedural calendar, the Parties provided the names of the witnesses and experts they wished to cross-examine at the Hearing.

182. On 12 December 2024, the Tribunal circulated a draft of Procedural Order No. 7 ("PO7") concerning the organization of the Hearing.

183. On 16 December 2024, the Parties submitted their joint comments on the draft of PO7.

184. On 18 December 2024, the Tribunal convened a pre-hearing conference ("PHC") to address outstanding matters concerning the organization of the Hearing. The PHC was attended by the members of the Tribunal, the Secretary to the Tribunal, representatives and counsel for the Parties, and the PCA.

185. On 28 December 2024, the Tribunal issued PO7, which *inter alia* fixed the schedule for the Hearing from 20 to 29 January 2025.

### 2. The unavailability of Dr. Kousedghi

186. On 1 December 2024, the Claimant informed the Tribunal that he was unable to make contact with one of his witnesses, Dr. Kousedghi, and was concerned about his participation at the Hearing. The Claimant also requested the Tribunal to order Azerbaijan to answer a number of questions concerning possible interferences with Dr. Kousedghi's appearance.

187. On 5 December 2024, the Respondent stated that it had no knowledge of Dr. Kousedghi's whereabouts and rejected the Claimant's allegations. It further requested that the Claimant confirm that the necessary arrangements had been made for the in-person attendance of all his witnesses at the Hearing.

188. On 12 December 2024, the Tribunal denied the Parties' respective requests.

189. On 10 January 2025, the Claimant informed the Tribunal that, despite extensive efforts to locate Dr. Kousedghi, including through a U.S.-based international consultancy and investigations firm, he remained unavailable. The Claimant maintained that Dr. Kousedghi's unavailability was not attributable to him and requested that the Tribunal continue to give due consideration to Dr. Kousedghi's witness statement.

190. On 14 January 2025, the Respondent requested that the Tribunal deny the Claimant's request, further to paragraph 7.12 of PO1, which provides that the written statement of a witness who fails to appear at a hearing may be considered only if the witness provides a valid reason for that failure. The Respondent accordingly submitted that Dr Kousedghi's witness statement should not form part of the record.

191. On 15 January 2025, having reviewed the Parties' submissions and disregarded the Claimant's unsolicited communication of the same day, the Tribunal found that no explanation, let alone a valid reason, had been provided for Dr. Kousedghi's failure to attend the Hearing and accordingly excluded his witness statement from the record.

### 3. The unavailability of Mr. Rudman

192. On 14 January 2025, the Respondent informed the Tribunal that Mr. Rudman would be unable to attend the Hearing due to serious health issues affecting one of his relatives. It requested that the Tribunal nevertheless consider Mr. Rudman's witness statement in accordance with paragraph 7.12 of PO1.

193. On 15 January 2025, the Claimant indicated that, in light of the circumstances, it did not insist on Mr. Rudman's presence at the Hearing, while reserving the right to call him for cross-examination at a later stage.

194. On the same date, the Tribunal decided that Mr. Rudman's witness statement would remain on the record, since a valid reason for his non-appearance had been provided. The Tribunal further issued a revised schedule for the Hearing to account for his absence.

### 4. The attendance of Dr. Tabrizi

195. On 13 January 2025, the Respondent requested that Dr. Reza Tabrizi, who was presented as one of the Claimant's representatives on the attendance list, not be permitted to attend the Hearing, stating that it had no information concerning his affiliation with the Claimant.

196. On the same date, the Claimant opposed the Respondent's request, explaining that Dr. Tabrizi was his advisor and assisted with translation.

197. On 15 January 2025, the Tribunal determined that Dr. Tabrizi could attend the Hearing, subject to the confidentiality obligations applicable to all participants in these proceedings.

## F. THE HEARING

198. The Hearing took place from Monday 20 to Wednesday 29 January 2025 in The Hague, the Netherlands. The following persons attended the Hearing:

**The Tribunal**

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)
Mr. Laurence Shore
Sir Daniel Bethlehem KC

**Tribunal Secretary**

Dr. Adrien Compain

**Claimant**

*Claimant & Fact Witness*
Mr. Mohammad Reza Khalilpour Bahari

*Claimant's Representatives*
Dr. Reza Tabrizi
Mr. Ashkan Khalilpour Bahari

*4-5 Gray's Inn Square*
Mr. Paul Cohen

*Chang Law*
Mr. Eric Z. Chang

*Diamond Mccarthy LLP*
Mr. David Earnest
Mr. Jose Manuel Gonzalez Pineda
Mr. Allan Diamond
Mr. Justin Strother (remote)

*Hughes Hubbard & Reed LLP*
Dr. Rémy Gerbay
Ms. Eleanor Erney

**Respondent**

*Embassy of the Republic of Azerbaijan to the Kingdom of the Netherlands*
Mr. Nurlan Aliyev
Mr. Jeyhun Khalilov
Mr. Vusal Ibrahimov

*Quinn Emanuel Urquhart & Sullivan LLP*
Dr. Anthony Sinclair
Mr. Stephen Jagusch KC
Mr. Epaminontas Triantafilou
Ms. Hafsa Zayyan (remote)
Ms. Emma Bohman-Bryant
Mr. Jan Nato
Ms. Lakshana Radhakrishnan
Ms. Patricija Rukstelyte
Ms. Eda Dilmen

*Fact Witnesses*
Mr. Habib Aliyev
Ms. Yegana Balakishiyeva
Mr. Sabutay Hasanov
Mr. Tahir Kerimov

*Savoie Arbitration*
Ms. Caroline Defois

*Fact Witnesses*
Mr. Naser Tabesh Moghaddam
Mr. Elchin Suleymanov
Mr. Yusuf Allahyarov
Mr. Dieter Klaus
Mr. Shahbaz Khalilov
Mr. Konul Ramazanova (remote)
Ms. Timur Abdulmajidov (remote)
Mr. Chin Kwee Hay (remote)

*Counsel assisting Mr. Hay*
Ms. Isabelle Chip Oi-Yi (remote)

*Expert Witnesses*
Mr. Will Iselin
Mr. Stephen Wright
Dr. Angela Morrissey
Mr. Robert Steer
Mr. Tom Gaines
Mr. Kiran Sequeira
Mr. Alexander Messmer

*Claimant's Interpreter*
Mr. Nima Adel

*Claimant's Security Guard*
Mr. Paul Grant

Mr. Abulfaz Kazimov
Mr. Qasim Mammadov
Mr. Rasim Zeynalov

*Expert Witnesses*
Ms. Elisabeth Briggs
Mr. Rza Hasanov
Mr. Farhad Parvizi
Dr. Min Shi

Mr. Nurlan Jabrayilov
*Assistant to Mr. Parvizi*

Mr. Yuhao Zhou
Mr. Luke Pickering
*Assistants to Dr. Shi*

**PCA**

Ms. Jinyoung Seok, Legal Counsel
Mr. Shayan Khan, Assistant Legal Counsel
Ms. Kate Yoon, Assistant Legal Counsel
Mr. Benjamin Craddock, Senior Case Manager
Mr. Iain Reid, Case Manager

**Court Reporters**

Mr. Trevor McGowan
Ms. Anne-Marie Stallard

**Opus 2, Electronic Presentation of Evidence**

Ms. Aisling Mullins

**Interpreters**

*Azerbaijani Interpreters*
Mr. Kamran Akhmedov
Ms. Jamila Del Mistro

*Farsi Interpreters*
Mr. Reza Amini
Ms. Mina Faress

*German Interpreters*
Ms. Kathrin Harrison
Ms. Barbara Bethäusser-Conte

*Russian Interpreters*
Ms. Irina van Erkel
Mr. Stanislav Kuld

199. Pursuant to PO6, the Claimant and the Respondent filed the PowerPoint presentations or demonstrative exhibits prior to their use. The Tribunal heard opening submissions by counsel, asked questions to the Parties which counsel answered orally and in their post-hearing submissions, and heard evidence from the witnesses and experts mentioned above.

200. On the eve of the Hearing, on 19 January 2025, the Claimant informed the Tribunal of alleged intimidation, including threats of in-country arrest, of two of the Claimant's fact witnesses, and requested a short period of time to discuss the issue at the Hearing.

201. On 20 January 2025, the Tribunal heard the Claimant's requests and explanations concerning the underlying allegations and invited him to put them in writing. Later that day, the Claimant filed a letter accompanied by an audio recording, setting out his allegations and reiterating his requests that measures be taken to ensure the witnesses' safety and availability to appear before the Tribunal, and that their witness statements remain on the record.

202. On 21 January 2025, by noon and pursuant to the Tribunal's directions, the Respondent submitted its written response, rejecting the Claimant's allegations. It maintained that there was no credible evidence of intimidation, nor any valid reason for the witnesses not to appear to give oral testimony, and submitted that the Claimant's requests were "a last-minute and ill-conceived attempt to preserve the evidence of witnesses who plainly have become nervous about their lies being exposed on the stand" and requested that, "[i]n the event any of these witnesses refuse to provide oral testimony, their statements should not be considered by the Tribunal at all".

203. The Tribunal rendered its decision at the Hearing at the end of the day.[4] Noting the unusual circumstances, it found that the Claimant's requests concerning witness protection were already addressed by the Order on Provisional Measures and that no further measures could be taken in that respect. The Tribunal further observed that it was not in a position to assess the veracity of the witnesses' asserted fears and that the witnesses were free to decide whether to testify. Additionally, it determined that their witness statements would remain in the record regardless of their decision and granted the Respondent an opportunity to make submissions on the weight to be given to the witness statements in the event that the witnesses did not appear. Following

4 Hearing Transcript Day 2, pp. 179-184.

discussion with the Parties, the Tribunal directed the Claimant to inform the Tribunal and the Respondent of the witnesses' decisions as soon as possible and, in any event, by 22:00 CET on the same day.

204. Pursuant to the Tribunal's directions, the Claimant informed the Tribunal later that evening that Mr. Khalilov had decided not to testify and to return to Azerbaijan, while the other remained willing to give oral evidence despite the circumstances.

## G. POST-HEARING DEVELOPMENTS

205. Following consultations with the Parties at the end of the Hearing, on 3 February 2025, the Tribunal issued Procedural Order No. 8 ("PO8") in relation to post-hearing matters, which was corrected on the same date.

206. On 21 February 2025, in accordance with PO8 and following an extension granted by the Tribunal, the Parties submitted their agreed corrections to the Hearing transcripts, as well as their respective charts responding to one of the Tribunal's questions.

207. On 21 and 22 February 2025, the Parties sought the Tribunal's determination of the proposed corrections to the Hearing transcript on which they had been unable to agree.

208. On 28 February 2025, the Respondent filed its post-hearing brief on admissibility ("R-PHB Admissibility").

209. On 3 March 2025, the Tribunal resolved outstanding issues with the transcripts.

210. On 6 May 2025, following an extension agreed between the Parties, each Party filed its post-hearing brief (respectively, "C-PHB" and "R-PHB").

211. On 16 May 2025, each Party filed its costs statement.

212. On 20 May 2025, the Claimant submitted his requests for redactions to the post-hearing briefs, to which the Respondent responded on 27 May 2025. The Tribunal resolved outstanding issues with respect to the redactions on 29 May 2025.

## H. CLOSURE OF THE PROCEEDINGS

213. On 19 August 2026, the PCA requested that the Parties verify the list of the Parties' representatives to be recorded in the Award.

214. On 25 and 31 August 2026, the Parties communicated their amended lists of Parties' representatives.

215. On 2 September 2026, the Tribunal closed the proceedings in accordance with Article 31 of the UNCITRAL Rules and informed the Parties that it expects to issue the Award during the week of 21 September 2026.

## III. REQUESTS FOR RELIEF

### A. THE CLAIMANT'S REQUEST FOR RELIEF

216. In his PHB, the Claimant sought the following relief:

> a. a declaration that the dispute is within the Tribunal's jurisdiction and competence, and that Mr. Bahari's claims are admissible;
>
> b. a declaration that Azerbaijan has breached its obligations under the Treaty and international law with respect to Mr. Bahari's investments in Azerbaijan;
>
> c. an order directing Azerbaijan to compensate Mr. Bahari for his losses resulting from Azerbaijan's breaches of the Treaty for an amount equivalent to the above Option 1 discussed supra at paragraph 372 (and as determined by applicable pre-Award interest), which may be supplemented in a subsequent report, plus post- Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;
>
> d. an order directing Azerbaijan to compensate Mr. Bahari for moral damages of USD 10 million, or five (5) percent of the total material damages awarded, whichever is greater, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;
>
> e. an order directing Azerbaijan to bear all arbitration costs and attorneys costs and expenses incurred by the Mr. Bahari in connection with these proceedings on a full indemnity basis, together with interest thereon at a commercially reasonable rate, compounded annually; and
>
> f. an order for such other and further relief as the Tribunal deems just and proper in the circumstances.[5]

### B. THE RESPONDENT'S REQUEST FOR RELIEF

217. In its PHB, the Respondent requests that the Tribunal:

> (1) DECLARE that the Tribunal does not have jurisdiction over the dispute.
>
> (2) DECLARE that the Claimant's claims are inadmissible.
>
> (3) DISMISS in their entirety all claims.
>
> (4) ORDER the Claimant to bear all attorney fees and expenses incurred by the Respondent in connection with these proceedings on a full indemnity basis, as well as all costs of the arbitration and the Centre, together with interest thereon at a rate to be determined.[6]

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5 C-PHB, para. 421.

6 R-PHB, para. 331.

## IV. PRELIMINARY MATTERS

218. In this section, the Tribunal will address the applicable laws (**A**); evidentiary matters (**B**); the language of the Treaty (**C**); the confidentiality/transparency of the proceedings (**D**); and the fate of the provisional remedies ordered in the course of the arbitration (**E**).

### A. THE APPLICABLE LAWS

#### 1. Law governing the arbitration proceedings

219. Paragraph 9.1 of the TOA provides as follows in connection with the applicable procedural rules:

> The procedure is governed by (in the following order of precedence):
>
> 1. These Terms of Appointment
>
> 2. The UNCITRAL Arbitration Rules (2013)
>
> 3. Procedural Order No. 1 and any other procedural rules issued by the Tribunal in the course of this arbitration subject to any mandatory rules of the law on international arbitration applicable at the seat of the arbitration.

220. In accordance with paragraph 6.1 of the TOA, the seat of the arbitration is Geneva, Switzerland.

221. In addition, paragraph 9.2 of the TOA provides that "[i]f the provisions therein do not address a specific procedural issue, the issue shall be determined by agreement between the Parties or, in the absence of such agreement, by the Tribunal, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a reasonable opportunity of presenting its case in accordance with Article 17(1) of the UNCITRAL Arbitration Rules (2013)".

#### 2. Law governing the merits of the dispute

222. Paragraph 8.1 of the TOA provides as follows in connection with the applicable substantive law:

> The Tribunal's jurisdiction is derived from the BIT, which is the controlling text of these proceedings. When resolving the dispute, the Tribunal shall accordingly have primary regard to the BIT, as interpreted and applied pursuant to the rules of public international law. Where the BIT does not on its face address or regulate a specific matter, the Tribunal will have regard to relevant and applicable international or domestic law.

223. Thus, the Tribunal will primarily apply the Treaty and, subsidiarily, the applicable rules and principles of international or domestic law.

### *3. Jura novit arbiter*

224. Paragraph 8.2 of the TOA provides as follows in connection with the determination of the content of the law:

> The Parties shall, in principle, establish the content of the law, while the Tribunal may, but is not required to make its own inquiries into the applicable law, provided that it does not decide the dispute or any material aspect of it based on a legal principle which was not pleaded by the Parties, and the relevance of which could not have been reasonably anticipated.

225. Accordingly, when applying the law, the Tribunal may not only resort to the legal sources invoked by the Parties, it may also consider the law of its own motion, provided it seeks the Parties' views if it intends to base its decision on a legal theory that was not addressed and that the Parties could not reasonably anticipate.[7]

### 4. The relevance of prior awards

226. Both Parties have relied on previous decisions or awards to support their positions, either to conclude that the same solution should be adopted in the present case, or in an effort to explain why this Tribunal should depart from that solution.

227. While not bound by previous decisions or awards in other cases, the Tribunal may give due consideration to earlier decisions of international tribunals. Specifically, it considers that, subject to compelling contrary grounds, it should accord appropriate weight to principles that reflect a consensus amongst international adjudicators. It is further of the view that, subject always to the specific text of the Treaty, and with due regard to the circumstances of each particular case, it has a duty to contribute to the harmonious development of international investment law in furtherance of the certainty of the rule of law.

## B. EVIDENTIARY MATTERS

228. In this section, the Tribunal briefly sets out the applicable principles on burden of proof (**1**) and standard of proof (**2**).

### 1. Burden of proof

229. As a general matter, since the claims brought in this Arbitration seek to establish the responsibility of a State for breach of the latter's international obligations, it is appropriate to apply international law to the burden of proof. The principle that each party has the burden of proving the facts on which it relies is widely recognized and applied by international courts and tribunals. The International Court of Justice (the "ICJ") as well as investment treaty tribunals have characterized this rule as a general

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[7] In the investment treaty context, see, *inter alia*, *Daimler Financial Services A.G. v. Argentine Republic*, ICSID Case No. ARB/05/1, Decision on Annulment, 7 January 2015, para. 295; *Deutsche Telekom v. India*, PCA Case No. 2014-10, Interim Award, 13 December 2017, para. 112; *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, para. 118.

principle of law.[8] Article 27(1) of the UNCITRAL Rules also provides that each party has the burden of proving the facts on which it relies in support of its claim or defense.[9] In the present case, it is uncontroversial that the Claimant bears the burden of proving the facts underlying his claims and that the Respondent bears the burden of proving the facts which it alleges in support of its defense.[10]

230. The Parties also discussed the burden of proof in the context of jurisdiction. They rightly appear to concur that, in principle, the Claimant must prove the facts necessary to meet the jurisdictional requirements,[11] and that the Respondent bears the burden of establishing the facts relevant to its objections.

231. This being so, the Claimant contends that it would be reasonable to shift the burden of proof to the Respondent and require Azerbaijan to disprove his "investment case", in circumstances where "all of the evidence is in Azerbaijan's hands".[12] As the burden of proof is governed by international law, it appears appropriate to apply international law to this issue as well, and more specifically the general principle of *actori incumbat probatio*.[13] Accordingly, the Tribunal holds that the Claimant bears the burden of proving the facts underlying his claims to succeed.

### 2. Standard of proof

232. A different matter is the applicable standard of proof, which relates to the degree of certainty required for a fact to be proven. In most cases, the question of the applicable standard of proof does not arise because in practice the Tribunal has no serious doubt that a fact has or has not occurred.

233. The formulations of the applicable standard of proof under international law vary across tribunals, without there necessarily being any real difference in practice. Some refer to common law standards such as balance of probabilities and preponderance of evidence.[14] Others use the civil law notion of *intime conviction du juge* or "inner conviction of the judge". Still others adopt the standard of reasonable certainty, which

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8 See, e.g., *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, I.C.J. Reports 2024, p. 78, paras. 79, 168. See also, in the investment arbitration context, **CLA-341**, *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, para. 237.

9 UNCITRAL Rules, Article 27(4) ("Each party shall have the burden of proving the facts relied on to support its claim or defence").

10 See, e.g., SoD, para. 375; SoC, para. 18; RoJ, paras. 29, 47-56, 60-66.

11 See, e.g., SoD, para. 49, referring to **CLA-99**, *Phoenix Action, Ltd. v Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, paras. 60-61; RoJ, paras. 50-52, referring *inter alia* to **CLA-302**, *President Allende Foundation, Victor Pey Casado and Coral Pey Grebe v. Republic of Chile (II)*, PCA Case No. 2017-30, Award, 28 November 2019, para. 264.

12 RoJ, para. 59.

13 See **CLA-100**, *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, Final Award, 23 April 2012, para. 148.

14 See, e.g., **CLA-165**, *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18 and ARB/07/15, Award, 3 March 2010, para. 229.

appears close to *intime conviction*.[15] Pursuant to Article 27(4) of the UNCITRAL Rules, tribunals enjoy wide discretion in weighing the evidence and determining whether a fact is established. Hence, in reliance on Article 27(4) of the UNCITRAL Rules, the Tribunal will apply the standard of reasonable certainty, being specified that what will matter is that the Tribunal is convinced or reasonably certain that a fact has occurred on the basis of an overall assessment of the evidence before it.

234. With respect to establishing jurisdiction, the Tribunal will be guided by the standard of reasonable certainty to assess the facts necessary to meet the jurisdictional requirements. By contrast, consistent with the *pro tem* test applied by international tribunals, it will be sufficient at the jurisdictional stage for the Claimant to show that he has a *prima facie* cause of action under the Treaty or, differently worded, that the facts alleged if ultimately established are susceptible of constituting a breach of the Treaty.[16]

## C. LANGUAGES OF THE TREATY

235. The Tribunal notes that the Treaty's official languages are Persian, Azerbaijani, and English, and that the English text prevails in the event of a discrepancy.[17] Accordingly, in the following discussion, the Tribunal refers only to the English version of the Treaty introduced into the record as CLA-1.

## D. CONFIDENTIALITY/TRANSPARENCY

236. As recorded in paragraph 24(ii) of PO2, the Parties agreed that "[u]nless otherwise agreed by the Parties at a later stage of the proceedings, awards shall remain confidential".

237. Following the publication of the PHBs on the PCA website, the Tribunal suggested that the Parties agree on the publication of the Award, to which the Respondent objected. For his part, the Claimant requested that the Tribunal order its publication.

238. In this context, the Tribunal invited the Parties to address whether, having regard to Article 34(5) of the UNCITRAL Rules, and in the absence of agreement between both Parties, the Tribunal may amend paragraph 24(ii) of PO2 to allow for the publication of the Award, subject to appropriate redactions. The Respondent submitted that, under both the UNCITRAL Rules and PO2, the Tribunal is not empowered to amend

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15 See, e.g., **RLA-275**, *BSG Resources Limited (in Administration), BSG Resources (Guinea) Limited and BSG Resources (Guinea) SÀRL v. Republic of Guinea*, ICSID Case No. ARB/14/22, Award, 18 May 2022 [Redacted], para. 493, with further references.

16 *Oil Platforms (Islamic Republic of Iran v. United States of America)*, ICJ, Judgment on Preliminary Objection, 12 December 1996, Separate Opinion of Judge Higgins, para. 32. See also, e.g., **CLA-145**, *Quiborax S.A., Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012, para. 571; **CLA-99**, *Phoenix Action, Ltd. v Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, paras. 62-64.

17 See **CLA-1**, Treaty, Article 12.4 ("Done in duplicate at Baku this 11 day of October 1996 in Persian, Azerbaijani and English languages, all texts being equally authentic. In case of divergence the English text shall prevail").

paragraph 24(ii) of PO2 or to allow for publication of the Award without the consent of both Parties, and maintained its opposition to such publication. The Claimant, which has sought publication of the Award, argued that the Respondent had accepted that paragraph 24(ii) could be amended in previous correspondence.

239. In the Tribunal's view, publication of the Award would be preferable. *First,* by agreement of the Parties, the written submissions have been published. The disputed facts and the legal submissions underlying this Award are therefore in the public domain, with the result that it would be in the best interest of all participants in the Arbitration and of the public that the outcome of the dispute through the Award likewise be made publicly available, subject to the protection of sensitive information. *Second*, and more generally, the Tribunal is convinced that transparency in investor-State arbitration is in the public interest and contributes to the legitimacy of the process and the predictability of international investment law.

240. That said, these proceedings are governed by the UNCITRAL Rules and the Tribunal's procedural orders. Both Article 34(5) of the UNCITRAL Rules and paragraph 24(ii) of PO2 are clear: subject to exceptions that are not relevant in the present case, an award may not be published if one of the Parties objects. In this regard, the Tribunal observes that, while the Claimant has given his consent to the publication of the Award – consent which the Tribunal considers remains effective – the Respondent has not so far consented. Given this, unless the Respondent consents to the publication of the Award after its issuance, this Award shall not be published.[18]

## E. PROVISIONAL MEASURES

241. The Tribunal ordered provisional measures in the course of the proceedings. In the Order on Provisional Measures of 27 April 2024, which replaced a preliminary order of 14 March 2024, the Tribunal thus ordered the following provisional measures:

> The Respondent shall refrain from taking any action that may harm the integrity of these proceedings, including (but not limited to) the following:
>
> (a) any action that may threaten the life or integrity or otherwise cause harm or prejudice to any person associated with this arbitration in consequence of his or her association with this arbitration; and
>
> (b) any action that may impair or otherwise hinder the timely and efficient collection and presentation of evidence and information for purposes of this arbitration, including any action that may intimidate potential fact and expert witnesses or other sources of information on matters relevant to this dispute; […].

242. On 31 May 2024, the Tribunal amended the Order on Provisional Measures and added the following provisional measure:

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[18] As the Tribunal will become *functus officio* following issuance of the Award (but for post-issuance remedies, such as interpretation or correction), should the Respondent indicate its consent to publication of the Award at any point following issuance, through formal correspondence to the PCA, the Tribunal has instructed the PCA to publish the Award.

> To the extent it continues to contact Mr. Abdulmajidov and Ms. Ramazanova's family members, the Respondent shall promptly inform the Claimant and the Tribunal through its Counsel of any anticipated actions, providing sufficient time to notify the family members, as well as Mr. Abdulmajidov and Ms. Ramazanova.

243. On 7 August 2024, the Tribunal further supplemented the Order on Provisional Measures with the following injunction:

> A Party shall not approach or otherwise initiate contact with a fact or expert witness of the other Party without first obtaining permission from the Tribunal on the basis of a reasoned application, on which the other side shall be afforded an opportunity to comment.

244. On 15 November 2024, the Tribunal affirmed the terms of the Order on Provisional Measures and added that "it applies to any and all contact, whether initiated directly or indirectly, or procured, with a fact or expert witness of the other Party, without first obtaining permission from the Tribunal on the basis of a reasoned application, on which the other side will have an opportunity to comment".

245. As shown by the terms of the Order on Provisional Measures as amended and supplemented, the provisional measures ordered by the Tribunal aimed to preserve the integrity of the proceedings. Given that the proceedings have been closed and the Tribunal will become *functus officio* following issuance of the Award (subject to post-issuance remedies), the Order on Provisional Measures and its supplements no longer apply and lapse accordingly.

## V. FACTUAL BACKGROUND

246. The following summary is meant to provide an overview of the dispute and is not intended to include all potentially relevant facts. It outlines undisputed facts and presents the Parties' positions on the numerous disputed facts.

### A. THE CLAIMANT'S BUSINESS VENTURES IN IRAN IN THE 1980S-1990S

247. Mr. Bahari is an Iranian entrepreneur who was involved in business ventures in Iran in the 1980s, among which were a pharmaceutical processing company, called Kaveh Tabriz, and a soft drink company, called Coolak Shargh. By the mid-1990s, Coolak Shargh started exporting products to neighbouring countries, including Azerbaijan. Coolak Shargh's operations in Azerbaijan led Mr. Bahari to travel and then to settle down in the country, and later to venture into business in Azerbaijan.[19]

248. The Parties disagree on the extent of Mr. Bahari's involvement in these Iranian companies, their success, and the resources which they made available to him.

249. According to the Claimant, Kaveh Tabriz and Coolak Shargh were substantial and highly successful companies under his continuous ownership and management.[20] He

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19 SoC, paras. 24-34.

20 SoC, paras. 25-27; SoR, para. 105.

avers that their success provided him with the expertise and financial capacity to later establish and develop his investments in Azerbaijan.[21] As regards Kaveh Tabriz, Mr. Bahari asserts that it "was an extremely successful pharmaceutical company that incorporated modern packaging machinery from foreign manufacturers",[22] and that he was the "majority owner and at all times managed and controlled" the company.[23] In support of his assertion that Kaveh Tabriz provided him with the resources he had available throughout the 1990s, Mr. Bahari produces letters from Iranian banks, including a letter from Bank Saderat of 23 March 2024 stating that, in 1992, Kaveh Tabriz was able to open a letter of credit totaling Deutsche Marks 487 million.[24] With respect to Coolak Shargh, Mr. Bahari alleges that he "created, managed, and owned Coolak Shargh, which was an extremely successful Iranian soft drinks company",[25] whose "success and production capacity provided [him] with his entry into the Azerbaijani soft drink market".[26] He relies on contemporaneous documents showing that he was Coolak Shargh's managing director, as well as a letter of credit from Bank Refah Kargaran of 23 January 1996 of the equivalent of USD 5.86 million.[27] He denies Azerbaijan's allegations that 50% of Coolak Shargh was purchased for approximately USD 4.200 in June 1997 and that he exited the company in 1999. According to him, these allegations are based on "incorrect and unreliable information […] from an Official Gazette of the Islamic Republic of Iran".[28]

250. For Azerbaijan, Mr. Bahari's allegations in relation to both Kaveh Tabriz and Coolak Shargh, are refuted by public records.[29] In the Respondent's view, there is no evidence that his previous ventures were significant enough to generate amounts approaching the nearly USD 90 million which he claims to have invested in Azerbaijan.[30] In relation to Kaveh Tabriz, the Respondent contends that the Official Gazette of the Islamic Republic of Iran shows that Mr. Bahari was not the manager and owner, but only the chairman of the board of directors and one of its three equal shareholders as of 1984.[31] It further asserts that it was a "modest business for which Mr. Bahari had no specific expertise"[32] and argues Mr. Bahari fails to substantiate his allegations concerning the company's success and resources. Regarding the letter from Bank Saderat of 23 March 2024, Azerbaijan contends that it is "totally implausible" that Kaveh Tabriz procured a letter of credit of more than half a billion dollars. It also notes that the circumstances surrounding this letter of credit are unexplained, whereas it is publicly known that there has been a practice in Iran of securing falsified letters of credit from banks, including

21 SoD, para. 117; SoR, para. 68, 103; RoJ, paras. 90-95; Bahari WS-1, para. 25.
22 SoR, para. 105.
23 SoR, para. 105; Bahari WS-2, para. 4.
24 Bahari WS-2, paras. 5-6; **C-287**, Letter from Bank Saaderat regarding Mr. Bahari's Letters of Credit, 23 April 2024.
25 SoR, para. 109.
26 SoR, para. 112.
27 **C-274**, Letter of Credit of Coolak Shargh, 23 January 1996.
28 Bahari WS-2, paras. 9-10; SoR, para. 113.
29 SoD, para. 185; SoRJ, paras. 269-283.
30 SoRJ, para. 271.
31 SoD, para. 185(a); **R-80**, Extract from Official Gazette of the Islamic Republic of Iran, Notice of Establishment on 15 March 1982, 6 May 1982.
32 SoRJ, p. 119.

from Bank Saderat.[33] About Coolak Shargh, Azerbaijan asserts that the Official Gazette of Iran shows that a company called Refah Chain Stores purchased 50% of Coolak Shargh in 1997 for USD 4.200 and that Mr. Bahari sold his shares to a company by the name of Azerbaijan Development Investment Company in December 1999.[34] In addition, according to Coolak Shargh's financial statements for 2013, Mr. Bahari owed the company approximately USD 4 million "[redacted]",[35] which Mr. Bahari disputes.[36]

## B. THE CLAIMANT'S PURPORTED INVESTMENTS IN AZERBAIJAN AND THEIR ALLEGED MISTREATMENT BY THE RESPONDENT

251. The dispute concerns the Respondent's alleged mistreatment of investments allegedly made by Mr. Bahari into five businesses or assets: Coolak Baku, a beverage manufacturing company (**1**), Shuvalan Sugar, a sugar refinery (**2**), Caspian Fish, a fish processing company (**3**), Ayna Sultan, an immovable property (**4**), and a collection of carpets (**5**).

### 1. Coolak Baku

252. The first group of the Claimant's alleged investments involves a beverage manufacturing business located in Baku ("Coolak Baku").

253. It is common ground that Mr. Bahari was involved in the operations of a beverage business in Baku in the mid-1990s and that, in this context, he established a joint venture with a local company, ASFAN Ltd ("ASFAN"). One of the shareholders of ASFAN was Mr. Arif Pashayev, father of the Vice-President and First Lady of Azerbaijan (since 2017), Ms. Mehriban Aliyeva, and father-in-law of the President of Azerbaijan (since 2003), Mr. Ilham Aliyev.

254. By contrast, the timing and conditions under which the joint venture was established, its activities, the subsequent events attributed to alleged failures of its shareholders, as well as the circumstances of ASFAN's exit of the joint venture in 2005, are disputed. For the Claimant, the joint venture in which he invested USD 28 million was a highly profitable commercial success, before ASFAN fraudulently stripped it of its assets and businesses through sham legal proceedings. The Respondent replies that Coolak Baku failed due to Mr. Bahari not fulfilling his obligations, leading ASFAN to withdraw from the joint venture in accordance with a judgment from the Azerbaijani Economic Court.

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33 SoRJ, para. 275, referring to **R-364**, NPR Press report, Iran's Largest Banks Swindled Out Of $2.6 Billion, 27 October 2011.

34 SoD, paras. 185(b); SoRJ, paras. 278-282; **R-175**, Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 18 March 1999, 19 April 1999; **R-84**, Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999, 15 January 2000.

35 **R-161**, Coolak Shargh Financial Statements for the year ending September 2013, 21 December 2013.

36 Bahari WS-2, para. 9-10.

### a. *The Joint Venture Agreements relating to Coolak Baku*

255. The joint venture was established as Coolak Baku Co ("Coolak Baku JV" or "JV") under a joint venture agreement of 29 February 1996 ("1996 JVA"),[37] and the legal entity registered on 15 March 1996.[38]

256. Mr. Bahari submits that he is the one who concluded the 1996 JVA with ASFAN and that he no longer holds a copy.[39] For its part, Azerbaijan contends that the 1996 JVA, a copy of which it obtained from the State Tax Service, was not entered into between Mr. Bahari and ASFAN, but between Coolak Shargh and ASFAN. According to the Respondent, this is confirmed, *inter alia*, by the 1996 JVA itself and an addendum signed on 28 March 1996 by Coolak Shargh and ASFAN.[40] According to the copy of the 1996 JVA and its addendum produced by the Respondent, Coolak Shargh and ASFAN had, respectively, a 93% and 7% interest in the Coolak Baku JV.[41] Coolak Shargh's obligations were to carry out repair and reconstruction works, supply equipment, and manage the sales and exports. ASFAN's main obligation was to transfer production areas and buildings to the JV.[42] Mr. Bahari does not admit the authenticity of the 1996 JVA and denies that the JV involved Coolak Shargh.[43]

257. The 1996 JVA was amended through a new joint venture agreement between Mr. Bahari and ASFAN on 23 January 1998 ("1998 JVA"). Pursuant to that JVA, Mr. Bahari held 75% and ASFAN 25% of the Coolak Baku JV, which is not disputed,[44] and the JV's objective was to engage in the production of alcoholic drinks, soft drinks, and juice, as well as a broad range of other commercial activities. ASFAN's main contributions were to (i) provide a land plot of 4,030 m2 located in Baku, and (ii) make a capital contribution of USD 500.000. Mr. Bahari's main contributions were to (i) procure construction and repair works on a 2,000 m2 production area located in the land plot provided by ASFAN, as well as equipment necessary to produce canned beer and soft drinks, (ii) provide know-how, and (iii) make a capital contribution of USD 1.5 million.[45]

258. Furthermore, Azerbaijan alleges that, on 9 September 1999, Mr. Bahari and ASFAN concluded still another joint venture agreement in relation to Coolak Baku ("1999 JVA"), which extinguished the rights of the Coolak Baku JV under the prior agreements and

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37 SoC, paras. 39-42; SoR, para. 138.
38 **R-100**, Certificate of Registration for Coolak Baku, 15 March 1996.
39 SoC, para. 39.
40 SoD, para. 188-195; **R-98**, Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company, 29 February 1996; **R-99**, Application by Coolak Shargh to the Ministry of Finance for the registration of Coolak Baku enclosing Coolak Baku Charter, 7 March 1996; **R-101**, Addendum to the 1996 Agreement, 28 March 1996.
41 **R-98**, Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company, 29 February 1996.
42 SoD, para. 193; **R-101**, Addendum to the 1996 Agreement, 28 March 1996.
43 SoR, para. 138.
44 SoC, para. 39; SoR, para. 200.
45 **C-1**, Coolak Baku Joint Venture Agreement of 23 January 1998.

terminated the parties' obligations to contribute to the JV.[46] Mr. Bahari's position regarding the 1999 JVA is unclear. While he does not appear to contest its authenticity,[47] he nonetheless "disputes Azerbaijan's narrative" about the evolution of the Coolak Baku joint venture agreements"[48] and refers to it as an "alleged" agreement.[49]

### b. *The implementation of the project*

259. Mr. Bahari submits that he fully satisfied his obligations with respect to the Coolak Baku JV and invested USD 28 million to procure the necessary construction works and equipment for establishing a beverage production facility on the land plot provided by ASFAN.[50] He alleges that, as part of his investments, he hired an Iranian contractor for the bulk of the construction works, Chartabi Contracting Services ("Chartabi Contracting"), under a contract of 16 May 1996 with a value of USD 4.155 million.[51] He also spent significant amounts to purchase and install state-of-the-art equipment from foreign suppliers.[52] Moreover, he states that ASFAN never paid its USD 500.000 contribution under the 1998 JVA, resulting in Mr. Bahari having to finance the entire USD 2 million capital contribution.[53]

260. With respect to the works, Mr. Bahari argues that the construction started in early 1996 under his management, and that it took a year to build the facility.[54] Thus, by 1998, the Coolak Baku JV owned and operated a quality beverage facility and business that produced soft drinks and beers.[55] His witnesses, Mr. Naser Tabesh Moghaddam (a former employee managing the finances of Mr. Bahari's businesses in Azerbaijan) and Mr. Elchin Suleymanov (a welder who worked on site from 1996 to 1998), attest to the quality of the facility, which had two processing lines, one for soft drinks and one for beer.[56] Mr. Shahbaz Khalilov (a construction worker who worked on Mr. Bahari's projects) also testifies that Mr. Bahari hired Chartabi Contracting to build the facilities and that Coolak Baku produced soft drinks and beers.[57]

261. Mr. Bahari contends that his USD 28 million investment is supported by Secretariat's inspection of more than two hundred documents, confirming over 75% of the invested amount.[58] He also says that he was the sole investor in Coolak Baku, as established *inter alia* by (i) extensive due diligence performed by Azerbaijan prior to his

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46 SoD, paras. 209-211; SoRJ, para. 9; **R-72**, Contract between ASFAN and Mr. Bahari in relation to Coolak Baku Co, 9 September 1999.
47 SoR, para. 138.
48 SoR, para. 773.
49 SoR, para. 774. See also, RoJ, para. 99.
50 SoC, paras. 51-56; SoR, paras. 121-129; RoJ, paras. 103-111.
51 SoC, para. 52; SoR, paras. 127(b), 141; Bahari WS-2, para. 21; **C-84**, Chartabi Contracting Coolak Baku Construction Contract of 16 May 1996; **C-380**, Earnest Statement, 24 May 2024.
52 SoC, paras. 54-55; SoR, para. 127(d).
53 SoC, paras. 48, 51; SoR, para. 126.
54 SoC, para. 53.
55 SoC, para. 53; SoR, para. 127(c).
56 SoC, paras. 54-56 ; SoR, para. 127; Bahari WS-1, paras. 25-57; Moghaddam WS-1, paras. 32-36; Suleymanov WS, paras. 10-15.
57 Khalilov WS, paras. 10-14.
58 SoR, paras. 122-123; Secretariat ER-2, Table 9.

investment,[59] and (ii) a notarized letter of 31 March 2024 from Mr. Ahad Gazai,[60] Iran's former Ambassador to Azerbaijan.

262. Thus, it is Mr. Bahari's submission that, as a result of his investments and management, Coolak Baku became a commercial success generating significant returns, with a daily production of approximately 40,000 bottles of soft drinks and 50,000 to 70,000 liters of beer, and approximately 60 employees.[61]

263. By contrast, Azerbaijan views Coolak Baku as a "failed joint venture", which was never a success because Mr. Bahari "did not make the investments in Coolak Baku that he promised".[62] Thus, while a small amount of beer was produced, Coolak Baku never produced any soft drinks at all,[63] and production only took place after his departure.[64]

264. In support of its contentions, Azerbaijan relies on letters exchanged by Mr. Bahari and ASFAN between 1997 and 1999[65] and minutes of meeting of the Coolak Baku JV and ASFAN dating between 2002 and 2004.[66] These documents, says the Respondent, show that Mr. Bahari failed to fulfil his obligations under the JV, as well as "a number of concerning activities on the part of Mr. Bahari", who purchased "[redacted]", "[redacted]" used the stamp of Coolak Shargh in Azerbaijan,[67] and was absent for long periods of time, as he "[redacted]", with the result that the "[redacted]".[68] Mr. Bahari does not admit the authenticity of the "alleged ASFAN correspondences", stating that he does not recall or recognize them, and "categorically rejects their content […] that he did not make the investments in Coolak Baku".[69]

265. Azerbaijan also relies on the testimony of Mr. Rasim Zeynalov, former General Director of Coolak Baku, who states that there was "[redacted]", that the "[redacted]" purchased for soft drinks production was of "[redacted]" and "[redacted]", and that the equipment for beer production was purchased "[redacted]

59 **C-275**, Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995; **C-276**, Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996.

60 **C-279**, Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024.

61 SoC, paras. 58-59.

62 SoD, paras. 187-224; SoRJ, paras. 284-314.

63 SoD, paras. 218-219.

64 R-PHB, paras. 205, 209.

65 **R-24**, Letter from ASFAN Ltd to Mr. Bahari, 8 January 1997; **R-25**, Letter from ASFAN to Mr. Bahari, 22 December 1997; **R-26**, Letter from ASFAN Ltd to Mr. Bahari, 2 July 1998; **R-27**, Letter from ASFAN Ltd to Mr. Bahari, 22 July 1998; **R-28**, Letter from ASFAN Ltd to Mr. Bahari, 20 September 1999.

66 **R-366**, Coolak Baku meeting minutes, 20 May 2002; **R-29**, Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002; **R-360**, Minutes of Meeting of Management Board of Coolak Baku, 14 April 2003; **R-30**, Minutes of Meeting of ASFAN's founders, 27 April 2004.

67 SoD, para. 208; **R-26**, Letter from ASFAN Ltd to Mr. Bahari, 2 July 1998; **R-27**, Letter from ASFAN Ltd to Mr. Bahari, 22 July 1998.

68 SoD, para. 207(c); **R-26**, Letter from ASFAN Ltd to Mr. Bahari dated 2 July 1998.

69 SoR, para. 138(c). See also, RoJ, para. 122.

[redacted]".[70] This is corroborated by the testimony of Mr. Habib Aliyev, a former shareholder of ASFAN who visited the site between 1997 and 1999.[71]

266. In relation to the works, Azerbaijan asserts that the contract of 16 May 1996 allegedly entered into with Chartabi Contracting is a fraudulent document "prepared by Mr. Bahari, in collusion with his brother-in-law (the supposed owner of Chartabi Contracting Services, allegedly an Iranian construction company), two decades or more after the alleged construction took place".[72] According to the Respondent, there was no general contractor overseeing any construction work at Coolak Baku[73] and much of the construction necessary for the production of soft drinks or beer took place in or around 2004.[74] Regarding the equipment, the Respondent argues that Coolak Baku's contemporaneous import records demonstrate that only approximately USD 800.000 was spent on imported equipment between the years 1996 and 1999.[75]

267. Moreover, the Respondent submits that Mr. Bahari is unable to prove that he invested in Coolak Baku, arguing that (i) what Mr. Bahari describes as "extensive due diligence" is merely routine documentation for establishing a joint venture with a foreign investor, and that (ii) Mr. Gazai's letter, which was created for the purposes of these proceedings and written by a person who will not testify, proves nothing.[76]

268. In addition, the Respondent says that the record shows other sources of funding, such as (i) Mr. Malik Aliyev, who joined Coolak Baku as a general director in or around 1999 at Mr. Bahari's invitation, installed some of the equipment at Coolak Baku,[77] (ii) ASFAN was advancing sums towards the cost of relevant equipment,[78] and (iii) Mr. Bahari left Coolak Baku with debts in an amount of at least USD 1.145 million,[79] suggesting that he "did not in fact pay for the supplies he arranged, and instead left them on Coolak Baku's books".[80]

269. As to the amounts allegedly invested by Mr. Bahari, Azerbaijan contends that the documentary record shows that, if any investment was made by Mr. Bahari, it did not exceed USD 1.4 million.[81] It disputes that Mr. Bahari made a capital contribution of USD 2 million, a fact that is contradicted by the 1999 JVA and other documents.[82] Further, Azerbaijan's quantum expert reviewed the documents analysed by the

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70 Zeynalov WS-1, paras. 14-15, 17.
71 SoD, para. 207; SoRJ, para. 300; Zeynalov WS-1, para. 17; Aliyev WS-1, para. 12
72 R-PHB on admissibility, para. 3.
73 R-PHB on admissibility, para. 53.
74 R-PHB, para. 206.
75 SoD, para. 108, referring to **R-73** to **R-76**, Reference Certificates on the export-import operations of Coolak Baku Co for the years 1996 to 1999.
76 SoRJ, paras. 286-288.
77 Aliyev WS-1, paras. 16-18; **R-28**, Letter from ASFAN Ltd to Mr. Bahari,20 September 1999; **R-102**, Invoice and Act of Transfer and Acceptance from M. Aliyev to Mr. Bahari, 10 October 2000.
78 **R-26**, Letter from ASFAN Ltd to Mr. Bahari, 2 July 1998.
79 **R-29**, Minutes of Coolak Baku Co Joint Venture Staff Meeting, 30 November 2002.
80 SoRJ, para. 289.
81 SoRJ, para. 311; **R-28**, Letter from ASFAN to Mr. Bahari, 20 September 1999.
82 SoRJ, para. 309(b), referring to **R-360**, Minutes of Meeting of Management Board of Coolak Baku, 14 April 2003.

Claimant's experts and concluded that only investment costs ranging from USD 134.577 to USD 846.822 are "supported by sufficient evidence".[83]

### c. *The alleged seizure of Coolak Baku's assets by ASFAN in collusion with the Azerbaijani Judiciary*

270. ASFAN filed an application with the Azerbaijani Economic Court to withdraw from the Coolak Baku JV on 19 January 2005, which that Court granted on 4 April 2005.[84] Thereafter, ASFAN exited the Coolak Baku JV. Following its withdrawal, ASFAN produced beer at the facilities.[85]

271. Mr. Bahari argues that ASFAN and Mr. Zeynalov conceived and carried out a plot to illegally seize the Coolak Baku JV's assets through ASFAN's fraudulent withdrawal in collusion with the Azerbaijani judiciary, which "enabled the stripping of Coolak Baku's assets through sham proceedings".[86] Mr. Bahari alleges that, when submitting the Statement of Claim, he no longer had any control or visibility over Coolak Baku. Therefore, he only knew, based on limited facts available at the time, that ASFAN took over the facility and substituted itself into the production and business of the Coolak Baku JV.[87] Only when the Respondent exhibited the case files from the Economic Court proceedings, of which he had never heard before,[88] did he understand the plot orchestrated by ASFAN and Mr. Zeynalov to strip him of his investments in Coolak Baku.[89]

272. The main steps of the alleged plot may be summarized as follows. *First*, ASFAN and Mr. Zeynalov took advantage of Mr. Bahari's expulsion from Azerbaijan to secure the adoption of fraudulent decisions by the JV and initiate the stripping of Coolak Baku's assets.[90] Mr. Zeynalov presented himself as Mr. Bahari's authorized representative at shareholders meetings by using an expired power of attorney,[91] allowing the JV to adopt corporate decisions to the detriment of Mr. Bahari, including at a shareholders' meeting of June 2002 where Mr. Zeynalov was appointed General Director.[92] *Second*, ASFAN consummated the plot by means of sham proceedings before the Economic Court,[93] which were riddled with serious due process and substantive defects, including that (i) Mr. Bahari was never notified of the proceedings, (ii) the Economic Court proceeded *in absentia* without regard to due process safeguards provided by the Civil Procedure Code, and (iii) Mr. Bahari was not notified of the judgment rendered on

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83 SoRJ, paras. 311-313; Oxera ER-1, section 2 and Appendix 3; Oxera ER-2, section 2D, Appendix 3.
84 **R-168**, Decision on the acceptance of ASFAN's Statement of Claim, 19 January 2005.
85 SoD, para. 219.
86 SoR, p. 54; C-PHB, para. 3(e).
87 SoC, paras. 292, 299.
88 SoR, para. 158.
89 SoR, paras. 157-212.
90 SoR, para. 170.
91 **R-38**, POA from Mr. Bahari to Mr. Zeynalov, 17 December 1999; **C-297**, Revocation of Rasim Zeynalov Power of Attorney, 19 December 2000.
92 SoR, paras. 165-173; **R-104**, Minutes of the Meeting of the Shareholders of Coolak Baku, 18 June 2002. See also, RoJ, paras. 124-130.
93 **C-296**, US Department of State, 2005 Investment Climate Statement-Azerbaijan.

4 April 2005.[94] Further, the outcome of the proceedings confirmed their fraudulent nature, as the judgment was "plainly one-sided" and "muddled and full of contradictions".[95] In particular, on the basis of Article 96 of the Civil Code, the Economic Court allowed ASFAN to take back not only the land plot it contributed to the JV, but also the entire facility and equipment built on that land.[96] However, Article 96 of the Civil Code makes clear that a party withdrawing from a joint venture is entitled only to the value of the property which it has contributed.[97] *Third*, ASFAN used the deficient Economic Court judgment to fraudulently take over the entirety of the Coolak Baku JV's beverage production equipment, facility and business, even though ASFAN should have been entitled to recover only the land plot provided to the JV.[98] In the Claimant's view, it was confirmed at the Hearing that ASFAN produced its own beer using the exact same equipment at the exact same facility as Coolak Baku.[99]

273. The Respondent contends that nothing in the record supports Mr. Bahari's conjecture that "ASFAN had a 'scheme', much less any suggestion of the Azerbaijani Court's participation in it".[100] ASFAN resolved to withdraw from the joint venture given the lack of profit generated,[101] and the Coolak Baku Proceedings "reveal no misconduct on the part of the Azerbaijani courts".[102]

274. The Respondent's position on the alleged plot can be summarized as follows. *First*, Mr. Bahari's claim that ASFAN and Mr. Zeynalov initiated the stripping of Coolak Baku's assets through fraudulent corporate decisions by reference to the Coolak Baku JV shareholders' meeting of June 2002 is "non-sensical", as this meeting had nothing to do with ASFAN's decision to exit the JV made two years later in 2004,[103] and Coolak Baku had significant debts and was a failing enterprise.[104] *Second*, the Economic Court proceedings were not a "sham" and there was no misconduct by the Economic Court. Mr. Bahari was given notice of the proceedings in accordance with Azerbaijani law. The court file shows extensive efforts to serve Mr. Bahari despite his unknown whereabouts, and his complaint that the Economic Court failed to locate him does not constitute a procedural defect, as deemed service is a standard practice in such situations.[105] In fact, Mr. Bahari was notified of ASFAN's application and of the Economic Court's judgment, but has never taken steps to exercise any control over Coolak Baku.[106] As for the alleged substantive defects of the proceedings, Mr. Bahari

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94 SoR, paras. 174-194; RoJ, paras. 168-171; **R-105**, Judgment of the Economic Court, 4 April 2005.
95 SoR, paras. 184, 186.
96 RoJ, paras. 153-164.
97 **R-105**, Judgment of the Economic Court, 4 April 2005; SoR, paras. 197-202.
98 SoR, paras. 195-204.
99 C-PHB, para. 3(d).
100 SoRJ, para. 325.
101 SoD, para. 219.
102 SoRJ, para. 324.
103 SoRJ, paras. 327-328; **R-104**, Minutes of the Meeting of the Shareholders of Coolak Baku, 18 June 2002.
104 SoRJ, para. 333.
105 SoRJ, paras. 334, 340-354.
106 SoD, para. 224; **R-107**, Service of Process summons sheet from Judge to Mr. Bahari, 27 January 2005; **R-108**, Judge's notification of Judgment to Mr. Bahari, 12 May 2005.

mischaracterizes the 4 April 2005 judgment and misinterprets Azerbaijani law. Regarding the reference to Article 96 of the Civil Code, the Economic Court merely ordered that ASFAN recover the property which it contributed to the company. It did not require any defendant to transfer property or funds to ASFAN.[107] *Third*, in accordance with the Economic Court's judgment, the production facilities were subsequently returned to ASFAN, and ASFAN was removed as a founder in the Coolak Baku JV, effective 14 July 2005.[108] ASFAN did not strip anything of the JV, as Mr. Bahari had failed to fulfil his obligations under the Coolak Baku JV.[109]

### 2. Shuvalan Sugar

275. The second group of the Claimant's purported investments involves a sugar refinery in the Shuvalan District near Baku ("Shuvalan Sugar").

276. It is common ground that Shuvalan Sugar constituted a business activity under the 1998 JVA.[110] However, while the Claimant contends that his investments resulted in the establishment of a successful business, the Respondent denies the existence of both the investments and the business, asserting that the activity never materialized.

277. According to the Claimant, he established a sugar refining business that could supply sugar to Coolak Baku and sugar markets. For that, he invested in a sugar refinery located on a land plot in the Shuvalan District that was granted to him by ASFAN.[111] He hired Chartabi Contracting to build a 1,130 $m^2$ factory under a contract of 10 July 1997 with a value of USD 3.65 million,[112] and procured sugar-making equipment through an Iranian company, Ahan Sanat, which installed the equipment on site,[113] as evidenced by a "certificate of purchase" from Ahan Sanat dated 1 July 2019 for works as of 10 September 1998 in the amount of USD 2.736.910.[114] Mr. Suleymanov confirms that Shuvalan Sugar was "[redacted]" with "[redacted]",[115] and Mr. Khalilov testifies that he worked on the construction of the facility and that Chartabi Contracting oversaw and managed the construction.[116] Mr. Bahari claims that he invested into Shuvalan Sugar a total amount of USD 6.4 million (this amount being included in the USD 28 million which he allegedly spent on Coolak Baku).[117] As regards the operations, Mr. Bahari explains that the production began at the end of 1997 and that, once the refinery was operational, it had a significant production of around 12 to 13 tons of refined sugar per day and that it maintained an inventory of at least 2,000

107 SoRJ, paras. 356-364.
108 SoD, para. 222.
109 SoRJ, para. 365.
110 SoD, para. 114; SoR, para. 780.
111 SoC, paras. 62-67; SoR, paras. 145-152.
112 SoC, para. 63; SoR, para. 146; **C-85**, Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997.
113 SoR, para. 147.
114 SoR, para. 147; **C-376**, Ahan Sanat Certificate of Purchase for Works Performed, 1 July 2019.
115 Suleymanov WS, paras. 24-25; **R-297**, Respondent's translation of C-379, according to which the date of the document is not 1 July 2019 but rather 7 January 2019, which coincides with the date of **C-86**, Letter from Chartabi Contracting.
116 Khalilov WS, para. 17.
117 SoR, paras. 121-122.

tons of raw imported sugar in 2001. The products were sold to the public in Azerbaijan as well as in other countries such as Georgia and Russia.[118]

278. By contrast, the Respondent contends that Shuvalan Sugar "did not exist and Mr. Bahari made no investment in it",[119] asserting that it was a potential business activity that never came to fruition, that there was no "sugar refinery" in the Shuvalan District, and that there is no evidence of any operations.[120] According to Azerbaijan, there was no plot of land in the Shuvalan District upon which Mr. Bahari could have built a facility,[121] and Mr. Bahari never carried out any construction work there.[122] Mr. Habib Aliyev, ASFAN's former General Director, testifies that, if there was a small warehouse of 150-200 $m^2$, it was used only occasionally by Mr. Bahari to store sugar imported from Iran and was too small to "[redacted]".[123] Mr. Zeynalov corroborates that Mr. Bahari only produced "[redacted]" and that no building or restoration work was carried out there.[124] Moreover, Azerbaijan submits that the contract with Chartabi Contracting "is a creation of Mr Bahari's imagination",[125] and that the certificate for purchase from Ahan Sanat of 1 July 2019 "has very little probative value", since it was created 20 years after the fact and contradicts Mr. Bahari's assertion that the production began at the end of 1997, as it states that the equipment was installed in September 1998.[126]

### 3. Caspian Fish

279. The third group of the Claimant's alleged investments concerns a fish processing business in Azerbaijan ("Caspian Fish").

280. The Parties are in disagreement over most of the facts relating to Caspian Fish. Mr. Bahari claims to have invested USD 56 million in the construction of a state-of-the-art fish processing facility, from which he was deprived by his business partners, Messrs Aliyev and Heydarov. By contrast, Azerbaijan contends that Mr. Heydarov was the one who invested in Caspian Fish, and that Mr. Bahari left the business following a dispute over the mismanagement of the project and sold his interest in 2001.

#### a. *The inception of the project*

281. According to Mr. Bahari, after the successful establishment of Coolak Baku, Mr. Ilham Aliyev, the current President of Azerbaijan and then Member of Parliament and Vice-President of the State Oil Company of the Azerbaijan Republic, approached him to discuss potential business opportunities in Azerbaijan, including the creation of a facility

118 SoC, paras. 64-65; SoR, paras. 148, 152.
119 SoRJ, p. 141.
120 R-PHB, para. 48(3).
121 SoD, paras. 225-228; SoRJ, para. 315.
122 SoRJ, para. 315(c), referring to **R-26**, Letter from ASFAN to Mr. Bahari, 2 July 1998; **R-28**, Letter from ASFAN to Mr. Bahari, 2 September 1999.
123 Aliyev WS-1, paras. 21-23 ; Aliyev WS-2, paras. 9, 13.
124 Zeynalov WS-1, para. 22; Zeynalov WS-2, para. 13(f).
125 SoRJ, para. 316.
126 SoRJ, paras. 317-318.

for processing fish from the Caspian Sea to produce caviar and other fish products.[127] Thereafter, it was decided that Mr. Aliyev would bring into the project Mr. Kalamaddin Heydarov, the current Minister of Emergency Situations and then Chairman of the State Customs Committee. As local partners, Messrs. Aliyev and Heydarov would assist with administrative formalities and provide the land for building the facility. For his part, Mr. Bahari would bring into the project Mr. Manouchehr Ahadpour Khanghah, an Iranian businessman whom he had recently met. As the investor, Mr. Bahari would lead the project, contribute the capital, technical know-how, and business experience. He would have control over the investment and the management of the business.[128]

282. Azerbaijan submits that it has no knowledge of Mr. Bahari's alleged relationships or discussions with third parties acting in their private capacities and that, if any discussion took place, they were private commercial matters that did not concern the State.[129]

### b. *Caspian Fish BVI*

283. It is common ground that, on 5 March 1999, a company named Caspian Fish Co. Inc. was incorporated in the British Virgin Islands ("Caspian Fish BVI").[130] The shareholders of Caspian Fish BVI were Mr. Bahari for 40%, Mr. Khanghah for 10%, and a BVI company named ICCI Limited ("ICCI") for the remaining 50%.[131] It is also common ground that, on 27 April 1999, Caspian Fish BVI founded a representative office in Azerbaijan. According to its charter, the representative office, an entity without legal personality, was to represent the interests of Caspian Fish BVI in Azerbaijan by *inter alia* concluding contracts and otherwise doing business.[132] The Parties disagree, however, on the identity of the shareholders of ICCI.

284. The Claimant's position has evolved during the proceedings. In the Statement of Claim and the Statement of Reply, he stated that Messrs. Aliyev and Heydarov were shareholders of Caspian Fish BVI via ICCI and that "documentary evidence establishes that President Aliyev and Minister Heydarov owned and/or controlled Caspian Fish BVI from its incorporation until at least 2022",[133] relying *inter alia* on (i) the shareholder agreement allegedly entered into on 27 April 1999 by Messrs. Ilham Aliyev, Heydarov, Khanghah, and Bahari ("Caspian Fish Shareholders Agreement"),[134] and (ii) an account opening form with Vereins - und Westbank AG in Hamburg, Germany ("Vereinsbank") of 13 November 2000 allegedly signed by Messrs. Ilham Aliyev, Heydarov, Khanghah, and Bahari.[135] However, in the Rejoinder on Jurisdiction, the Claimant argued that "Azerbaijan has not submitted *any* evidence demonstrating that Minister Heydarov held a legal or beneficial interest in Caspian Fish, whether that is through […] ICCI's fifty percent interest in Caspian Fish BVI [or] the Caspian Fish

127 SoC, paras. 68-69.
128 SoC, paras. 70-71.
129 SoD, para. 229.
130 **C-2**, Memorandum and Articles of Association for Caspian Fish Co. Inc., 5 March 1999.
131 **C-107**, Caspian Fish Co. Inc. Registers and Datasheet.
132 **C-3**, Charter of the Representative Office of Caspian Fish Co. Inc., 27 April 1999.
133 SoC, para. 203; SoR, para. 282.
134 **C-4**, Shareholders Agreement for Caspian Fish Co. Inc., 27 April 1999.
135 **C-7**, Vereinsbank Opening of Account Statement,13 November 2000.

BVI representative office in Azerbaijan", seemingly in response to Azerbaijan's submission that Mr. Heydarov was the investor in Caspian Fish.[136] Mr. Bahari nonetheless maintains that the Caspian Fish Shareholders Agreement is authentic and unchallenged.[137]

285. The Respondent submits that it has no direct knowledge of the ownership or control of ICCI.[138] It argues that there is no evidence of Mr. Aliyev's involvement in Caspian Fish and denies the authenticity of both the Caspian Fish Shareholders Agreement and the signatures on the Vereinsbank account opening form, relying on the expert report of Ms. Briggs.[139] Furthermore, Azerbaijan contends that (i) ICCI was Mr. Heydarov's company and that (ii) Caspian Fish has been majority-owned and controlled by Mr. Heydarov since Mr. Bahari's exit, relying in particular on the witness statement of Mr. Kerimov (the Director of Caspian Fish's factory as of February 2001),[140] and a letter of 10 May 2024 from Khazri Solutions LLC, the new corporate form of Mr. Heydarov's holding company by the name of Gilan Holding, which states that "[redacted]".[141]

### c. *Caspian Fish LCC*

286. While it is not disputed that a local vehicle called Caspian Fish LLC was established in Azerbaijan on 29 August 2000, the Parties have opposing views about its incorporation and activities.

287. The Claimant asserts that Caspian Fish LLC was fraudulently incorporated and operated without his knowledge and eventually took over Caspian Fish's assets and operations,[142] based on documents exhibited by Azerbaijan.[143] In his view, the timing of the incorporation of the LLC and subsequent activities in the months leading up to the completion and grand opening of the Caspian Fish in February 2001, demonstrate that it was an initial phase of a broader plan to take Caspian Fish from Mr. Bahari.[144] The next phase involved Caspian Fish LLC becoming a subsidiary of Gilan Holding.[145] Thereafter, Caspian Fish LLC sought to "expunge [him] from the corporate record" by obtaining a new registration certificate in April 2002.[146] Thus, the Claimant's position is that the fraudulent incorporation of Caspian Fish LLC behind his back "was plainly done to bring this extremely valuable 'asset' under the control of Azerbaijan and its kleptocratic system of governance".[147]

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136 RoJ, para. 180 (internal citations omitted).
137 C-PHB, paras. 34-44.
138 SoD, paras. 232, 315-317; SoRJ, paras. 399.
139 SoRJ, paras. 43-45, 399 ; Briggs ER-1, paras. 6.1.17 to 6.1.20.
140 SoRJ, para. 401, paras. 401, 422-428; Kerimov WS-2, para. 37.
141 **C-318**, Letter from Khazri Solutions, 10 May 2024 [Respondent Document Production - 075_01].
142 SoC, paras. 15(iv), 257, 284-291; SoR, paras. 288-289.
143 SoR, paras. 288-304.
144 SoR, para. 304.
145 SoC, paras. 15(iv), 257, 284-291; SoR, paras. 258, 288-289.
146 SoR, para. 332.
147 SoR, para. 338.

288. The Respondent contends that Mr. Bahari was fully involved in the establishment of the local vehicle, whose activities consisted of owning and developing Caspian Fish business in Azerbaijan,[148] as evidenced by a number of documents.[149] It finds Mr. Bahari's fraud defenses weak and unfounded, arguing that the evidence points towards his knowledge and participation and that he cannot provide any credible reason why Caspian Fish LLC would have been concealed from him.[150] It also points out that Mr. Bahari's contention that Caspian Fish LLC was incorporated "to bring this extremely valuable 'asset' under the control of Azerbaijan and its kleptocratic system of governance" is non-sensical, since it was held by Caspian Fish BVI, the shareholding structure of which did not change.[151]

### d. *The construction of the facilities between 1999 and 2001*

289. The construction of the Caspian Fish facilities commenced in early 1999 and was completed approximately two years later. Mr. Bahari asserts that he personally funded the construction of a large, state-of-the-art fish processing plant equipped with modern machinery.[152] Azerbaijan acknowledges that Mr. Bahari managed the project as Caspian Fish's general director,[153] but argues that Caspian Fish was poorly managed and funded by Mr. Heydarov.

290. According to the Claimant, as with Coolak Baku and Shuvalan Sugar, he retained Chartabi Contracting to carry out construction works under a contract of 10 May 1999 with a value of USD 28.8 million.[154] The scope of works allegedly performed by Chartabi Contracting included considerable earthworks and excavation,[155] the construction of a 2.5 km long connecting road along with excavation, electricity cable channels and infrastructure and asphalting, walls of 12,600 meters long around the area up to a height of 4 meters including the foundation, three halls with a truss roof of 3600 $m^2$ including foundations at a height of 8 meters, a connecting channel between the office building, warehouses and cold storage for sewerage, water, electricity and telephone networks, a guard unit, a medical clinic, and installation of a CCTV system.[156] Further, he alleges that he concluded other contracts for other parts of the construction, as well as for the purchase of various equipment, including contracts with high-end equipment

148 SoR, paras. 245-250; **R-116**, Certificate of State Registration No. 893 for the LLC, 19 September 2000.

149 **R-56**, Application for the Registration of the LLC, 29 August 2000; **R-57**, Charter of the LLC, 11 September 2000; **R-117**, Letter from the LLC to Absheron District State Social Protection Fund, 9 October 2000; **R-118**, Letter from the LLC to Absheron District Labour and Employment Center, 9 October 2000; **R-119**, Letter from the LLC to Absheron District Territorial Tax Department, 9 October 2000; **R-120**, Letter from the LLC to Absheron District Statistical office dated 9 October 2000; **R-121**,Letter from the LLC to Absheron District State Social Protection for Disabled Persons, 9 October 2000; **R-122,** Protocol of LLC Meeting on addendum to Charter, 6 October 2000.

150 SoRJ, paras. 407-421.

151 SoRJ, para. 416.

152 SoC, paras. 79-83; SoR, paras. 214-224, 232, 442-450.

153 SoD, paras. 237-239 ; SoRJ, para. 397

154 SoC, para. 81; SoR, para. 143(b); **C-92**, Chartabi Contracting Caspian Fish Construction Contract, 10 May 1999.

155 SoR, paras. 227-228.

156 SoR, para. 232.

manufacturers from Europe and Japan.[157] In addition, beyond managing the project, he contributed his know-how and was intimately involved in the design and development of the production processes of the facilities, as well as their interior design.[158]

291. In connection with the funding of the project, Mr. Bahari contends that he invested USD 56 million of his own capital, as established by multiple pieces of evidence, including: (i) the witness evidence of Mr. Moghaddam and Mr. Dieter Klaus, Mr. Bahari's private then banking advisor at Commerzbank AG; (ii) invoices, agreements with third parties, bank receipts and statements; (iii) press reports discussing the USD 56 million foreign investment in Caspian Fish; (iv) a letter of 31 March 2024 from the then Iranian Ambassador to Azerbaijan confirming that Mr. Bahari personally invested in Caspian Fish; (v) a letter of 9 April 2024 from Mr. Samad Chartabi, the brother of Mr. Ahad Chartabi, former CEO of Chartabi, stating that Chartabi carried out the construction works and was paid by Mr. Bahari; and (vi) a check of 30 September 2000 from Iran Melli Bank drawn on Coolak Shargh and made out to Mr. Chartabi in connection with the payment of works carried out in Azerbaijan.[159] The Claimant also relies on the analysis of the documentary record carried out by Secretariat, his quantum expert, who concludes that Mr. Bahari "likely" invested "at least" USD 44.417.931 in Caspian Fish.[160]

292. By contrast, for Azerbaijan, the project was funded by Mr. Heydarov, and that the latter was "[redacted]" who was managing the project.[161]

293. In relation to the construction, Azerbaijan asserts that the contract with Chartabi Contracting is a fabrication, as are the contracts for Coolak Baku and Shuvalan Sugar. It submits that Chartabi Contracting did not carry out the construction works, and that Mr. Bahari did not pay it to do so.[162] Mr. Zeynalov testifies that Mr. Bahari arranged for the works to be carried out by "[redacted]" and that there was "[redacted]".[163] Mr. Sabutay Hasanov, Caspian Fish's accountant as of October 2000, states that he has never heard about Chartabi,[164] as does Mr. Rudman, who was on site for six months in 2000 to review the progress of the project in 2000 on Mr. Heydarov's request.[165] Further,

157 SoC, paras. 82, 84.
158 SoC, paras. 85, 88.
159 SoC, para. 79; SoR, paras. 214-225; RoJ, paras. 244-286; C-PHB, paras. 45-50; Bahari WS-1, para. 38; Moghaddam WS-1, para. 45; Klaus WS-1, para. 20; **C-279**, Letter from Ambassador Ahad Ghazaei to Diamond McCarthy LLP, 31 March 2024; **C-280**, Letter from Samad Chartaby, 9 April 2024; **C-281**, Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.
160 RoJ, paras. 246-254; Secretariat ER-2, para. 7.121.
161 SoRJ, paras. 434-435; Rudman WS, para. 13.
162 SoD, paras. 89-90, 240.
163 SoD, para. 250; Zeynalov WS-1, para. 28. See also **R-122**, Protocol of LLC Meeting on addendum to Charter, 6.10.2000; **R-123**, Licence granted to the LLC by the State Committee for Construction and Architecture, 21.12.2000.
164 SoD, para. 92; Hasanov WS-1, para. 10.
165 SoRJ, para. 373(e); Rudman WS, para. 9.

Azerbaijan contends that the equipment supplied was of poor quality and often purchased at low cost from third parties rather than directly from the manufacturer.[166]

294. Regarding the project's value, the Respondent's quantum expert opines, on the basis of the documentation analyzed by the Claimant's experts, that documentary evidence supports investment into Caspian Fish of between USD 11.4 million and 14.1 million.[167]

295. Azerbaijan contends that Mr. Bahari has not demonstrated that he funded the project: (i) the witness evidence of Messrs. Moghaddam and Klaus is unreliable, as Mr. Moghaddam is closely connected to Mr. Bahari and Mr. Klaus [redacted] (which Mr. Klaus denies); (ii) the invoices, contracts, shipping and banking documents relied upon by Mr. Bahari do not show that the funds used to finance the project;[168] (iii) press reports are not reliable evidence of what was spent on the project were his;[169] (iv) the two letters of 2024 are not reliable proof, as the authors, who do not appear as witnesses, are likely to have reproduced what Mr. Bahari has told them;[170] and (v) the purported check of 30 September 2000, the authenticity of which Azerbaijan disputes, is not evidence of a payment, let alone of a payment made by Mr. Bahari.[171] In Azerbaijan's submission, Caspian Fish was funded by Mr. Heydarov, which is confirmed by Messrs. Zeynalov, Kerimov and Hasanov,[172] and corroborated by Mr. Heydarov himself in a letter of 25 October 2024 to Azerbaijan's counsel,[173] as well as 41 invoices from a BVI company called International N.A.T Limited issued monthly to Caspian Fish BVI between February 1999 and December 2000, as well as documents related to bank accounts of the local representative office and Caspian Fish LLC at Azerbaijani Atabank which demonstrate that Mr. Bahari did not purchase equipment with his own funds.[174]

296. Mr. Bahari contends that he funded the project. He argues that the Atabank documents show anomalies and are unreliable, and he further relies on the testimony of Mr. Chin Kwee Hay, founder and director of Victorplex, a Malaysian supplier, who states that he does not recall ever receiving payment from Atabank and only received funds from Mr.

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166 SoRJ, paras. 434-435, 491; Kerimov WS-1, para. 17; Kerimov WS-2, paras. 18-19 ; Hasanov WS-1, paras. 38-42; Hasanov WS-2, paras. 13, 32, 34, 35, 76(a); Rudman WS, para. 13 ; Sultanov WS, paras. 33-34.

167 Oxera ER-2, paras. 2.11-2.12; Parvizi ER-1, Table 12.

168 SoRJ, para. 367; Oxera ER-2, Table 2.3.

169 SoRJ, paras. 402-406.

170 SoRJ, paras. 370-371.

171 SoRJ, paras. 54-61, 372.

172 SoD, para. 97; Zeynalov WS-1, para. 30; Hasanov WS-1, para. 11.

173 **R-304**, Letter from Mr. Heydarov to Quinn Emanuel, 25 October 2025.

174 SoD, para. 95-96; SoRJ, paras. 378-387; **R-89**, Atabank funds transfer request from Caspian Fish Co Inc to Nissei ASB, 7 January 2020; **R-90**, Atabank payment order from Caspian Fish Co Inc to Nissei ASB, 10 August 2000; **R-91**, Atabank payment order from Caspian Fish Co Inc to Mr. Bahari's account at Commerzbank, 18 August 2000; **R-92**, Atabank payment orders from Caspian Fish Co Inc to Victorplex, 10 August 2000; **R-93**, Atabank payment orders from Caspian Fish Co Inc to Victorplex, 1 September 2000; **R-94**, Atabank payment order from Caspian Fish Co Inc to RFC Electronic, 10 August 2000; **R-95**, Atabank payment order from Caspian Fish Co Inc to Schiller and Mayer, 1 September 2000.

Bahari's bank account at Commerzbank.[175] Mr. Bahari also disputes that Mr. Heydarov funded Caspian Fish, arguing that Azerbaijan has not proven his investment in Caspian Fish,[176] as the INL Invoices are unreliable and have no connection to Mr. Heydarov (or Gilan Holding) nor to the project.[177] Further, he challenges the credibility of Azerbaijan's witness due to his ties with Mr. Heydarov,[178] pointing out that his testimony about the latter's investment in Caspian Fish is "second-hand, indirect, and vacuous"[179] and provides no support for the Respondent's contention that Mr. Heydarov funded the project.[180]

### e. *Caspian Fish's operations*

297. According to the Claimant, following the completion of the project and the start of operations in 2001, Caspian Fish became a leader in the field of caviar and fish production in Azerbaijan. As a result of his investments and vision, it was highly profitable and valuable.[181] He contends that Caspian Fish had the largest processing factory in the region, with the "capacity to process 300 tonnes of fresh material per day into a wide variety of products, including canned caviar, fresh fish, frozen fish, smoked fish and crayfish".[182] When it opened, it employed 800 employees.[183] He further argues that "contemporaneous statements by its own fact witnesses, the Azerbaijani Government, and a multitude of independent international organizations and media, all repeatedly confirm[ed] that Caspian Fish was in fact a 'success story'".[184]

298. By contrast, the Respondent asserts that "Caspian Fish was not the success story Mr. Bahari would have [the] Tribunal believe",[185] but "a poorly thought out enterprise that had no real prospect of succeeding and whose operations were ultimately wound up when its losses became unsustainable".[186] Mr. Hasanov, chief accountant and executive director of Caspian Fish between 2000 and 2014, and Mr. Kerimov, director of the factory as of February 2001, and that both attest that the facilities had numerous design flaws and that buildings and equipment were not fit for purpose.[187] Furthermore, while there was some production in the early 2000s, the plant was loss-making, as evidenced by documents obtained from Caspian Fish's archives;[188] at its highest, Caspian Fish had 150-200 employees, and the average capacity was up to 2.5 tons of

175 SoR, paras. 241-250; RoJ, paras. 192-199; Hay WS, paras. 11-12.
176 RoJ, paras. 184-199.
177 RoJ, paras. 185-191.
178 SoR, paras. 57-62.
179 RoJ, p. 75.
180 C-PHB, paras. 52-57.
181 SoC, para. 93 ; SoR, paras. 442-470.
182 SoC, para. 92.
183 SoC, para. 92.
184 SoR, paras. 450-454; Secretariat ER-2, para. 3.30 and Table 7, p. 22.
185 SoD, para. 308
186 SoRJ, para. 428.
187 SoD, para. 311; SoRJ, para. 491; Hasanov WS-1, para. 38-44; Hasanov WS-2, paras. 13, 32, 34, 35, 76(a); Kerimov WS-1, paras. 15-17; Kerimov WS-2, paras. 18-19. See also, Sultanov WS, paras. 33-34.
188 SoD, paras. 308-314; **R-13**, Summary of Caspian Fish's operation for 2001; **R-253**, Unsigned memorandum from Mr. Sabutay Hasanov to Mr. Ahmad, 2003.

final product per day.[189] In Azerbaijan's submission, Mr. Bahari "was not expert in fishing, and he did not know what he was doing".[190]

### f. *The alleged forced removal of Mr. Bahari from Caspian Fish as from the opening ceremony of 10 February 2001*

299. It is common ground that the opening ceremony of Caspian Fish took place on 10 February 2001 in the presence of Azerbaijan's President Heydar Aliyev, who gave an inaugural speech before hundreds of guests, including the Iranian ambassador to Azerbaijan, and that it was reported in the local media.[191] It is also common ground that, on the day of the opening ceremony, there was a plaque at the entrance of the facilities reading "[redacted]".[192] Further, it is not disputed that Mr. Bahari did not attend the opening ceremony.[193]

300. According to Mr. Bahari, he was absent because, on the orders of Mr. Ilham Aliyev, Government security officers in plain clothes forcibly removed him from his office on the Caspian Fish premises, and drove him in a Government vehicle to his home in Baku.[194] In the Government vehicle, he spoke on the phone with Mr. Aliyev, who stated that "[redacted]", using an "[redacted]" tone.[195] Ms. Konul Ramazanova, his personal assistant at Caspian Fish at the time, testifies that [redacted] and that she "[redacted]".[196] Mr. Bahari asserts that, in addition to being prevented from attending the opening ceremony, he was removed from Caspian Fish's operations altogether on 10 February 2001. He was unlawfully put under house arrest for several weeks, with Government security agents placed outside his house, preventing him from accessing Caspian Fish premises.[197] Mr. Moghaddam corroborates his assertions.[198]

301. The Respondent, on the other hand, states that Mr. Bahari stopped working at Caspian Fish in or around May 2001,[199] as a result of a dispute with Mr. Heydarov about the former's mismanagement of the project and inflated costs diverted for his own profit.[200] Azerbaijan submits that it has no knowledge of Mr. Bahari's whereabouts during the

189 Hasanov WS-1, para. 37.
190 SoRJ, para. 490.
191 SoC, paras. 123-131; SoD, paras. 255-256.
192 **C-62**, Dieter Klaus Photograph – Heydar Aliyev Plaque; SoC, para. 131; SoR, para. 89.
193 SoC, paras. 132-143; SoD, para. 257; SoRJ, para. 438.
194 Bahari WS-1, paras. 69-70. See also SoC, paras. 133-134.
195 SoC, para. 135; Bahari WS-1, para. 71.
196 Ramazanova WS, paras. 14-15.
197 SoC, paras. 149-151; Bahari WS-1, para. 74.
198 See Moghaddam WS-1, para. 60; Kousedghi, WS-1, para. 22.
199 Kerimov WS-1, para. 21.
200 SoR, para. 267-274; SoRJ, paras. 429, 443-444, 627 ; Zeynalov WS-1, paras. 33-42; Kerimov WS-1, paras. 11-20; Hasanov WS-1, paras. 14-15 ; Sultanov WS, para. 24; **R-366**, Coolak Baku meeting minutes, 20 May 2002.

opening ceremony.[201] It infers from the evidentiary record that "Mr Bahari was not present because in the light of Mr Rudman's investigation, Mr Bahari was instructed by Mr Heydarov not to attend and, no doubt mortified that his mismanagement was starting to be uncovered, he acquiesced".[202] Furthermore, Azerbaijan contests that anyone acting on behalf of the Government asked Mr. Bahari's to leave.[203] It disputes the reliability of Mr. Bahari's testimony about threats made by Mr. Aliyev, underscoring that it is inconsistent with his prior accounts.[204] Finally, the Respondent calls Mr. Bahari's contention that he was placed under house arrest a "fabrication"[205], arguing that documentary and testimonial evidence evince that Mr. Bahari conducted business as usual in the days following the opening ceremony, in reliance on contemporaneous documents signed by Mr. Bahari in March and April 2001.[206]

### g. *The alleged sale of the Claimant's shares in Caspian Fish BVI*

302. It is undisputed that Mr. Bahari met with Mr. Khanghah in Dubai on or around 15 June 2002. However, the background, purpose and outcome of the meeting are disputed.

303. According to Mr. Bahari, following his removal from Caspian Fish and expulsion from Azerbaijan in March 2001, he discussed his situation with Mr. Heydarov several times and the latter eventually proposed "as a solution, to purchase and take over Mr. Bahari's investments, and sent Mr. Khanghah to Dubai to present Mr. Bahari with terms, on behalf of himself and Mr. Aliyev".[207] Eventually, Messrs. Aliyev and Heydarov sought to impose a forced sale on him through Mr. Khanghah at the 15 June 2002 Dubai meeting (the "2002 Agreement").[208]

304. Mr. Bahari alleges that, under the 2002 Agreement, he would sell his 40% ownership stake in Caspian Fish BVI to an unidentified buyer and return all documentation in relation to Caspian Fish BVI, in exchange for (i) USD 4.5 million, including USD 3.5 million to be paid in cash up front and USD 1 million to be paid in instalments, (ii) USD 380,000 for interest on loans previously taken out by Mr. Bahari to finance the construction of the facilities, (iii) USD 440,000 in instalments as compensation for his share of the profits in Caspian Fish, and (iv) the return and full ownership of Coolak Baku.[209]

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201 SoR, para. 257; SoRJ, para. 438.
202 SoRJ, para. 437.
203 SoR, para. 257; SoRJ, para. 438.
204 SoR, para. 258. See also, SoRJ, para. 439.
205 SoD, para. 259.
206 SoD, para. 259; **R-60**, Letter from Caspian Fish Co Azerbaijan to "DFT GmbH", 26 March 2001; **R-59**, Letter from Caspian Fish to Caviar House, 26 March 2001; **R-61**, Letter from Caspian Fish Co Azerbaijan to Baader, 29 March 2001; **R-127**, Letter from Mr. Marc Valluet of Luxal France to Caspian Fish Co, 30 March 2001; **R-157**, Contract between Caspian Fish Co Azerbaijan and Caviar House, 7 April 2001.
207 SoC, para. 167.
208 SoC, paras. 165-184; SoR, paras. 739, 1085; Bahari WS-1, paras. 81-83; **C-17**, Settlement Proposal, 15 June 2002, at 1-4.
209 SoC, para. 170. See also, SoR, paras. 418-419.

305. He further contends that, during the 15 June 2002 meeting, Mr. Khanghah threatened that Coolak Baku would be charged with "unpaid back tax issue[s]", preventing him to ever return to Azerbaijan, should he refuse to sign the 2002 Agreement. He "immediately understood this as a threat coming from Messrs. Aliyev, Heydarov, or Pashayev", as Coolak Baku never had any tax issues.[210] Nevertheless, he did not agree to the 2002 Agreement, and made a counter proposal. Under his counter proposal, he would sell his shares and return all documentation related to Caspian Fish in exchange for (i) a settlement of his investment in Caspian Fish, i.e., USD 56 million, (ii) keeping Coolak Baku, and (iii) the return of his carpets. Both Mr. Bahari and Mr. Khanghah signed the counter proposal, but the latter ultimately rejected its terms.[211]

306. Azerbaijan rejects Mr. Bahari's allegations. It asserts that Mr. Bahari willingly sold his interest in Caspian Fish in 2001 under a sale agreement which he signed with Mr. Khanghah on 20 September 2001 (the "2001 Agreement"),[212] and that the purpose of the 2002 Agreement was to reschedule the payment obligations under the prior agreement.

307. Azerbaijan asserts that under the 2001 Agreement, Mr. Bahari agreed to sell his shares in Caspian Fish BVI for a price of USD 4.5 million to be paid in instalments, and that this amount was paid to him.[213] The first payment of USD 1.5 million was effected by 5 November 2001, as acknowledged in a payment receipt signed by Mr. Bahari.[214] Thereafter, Mr. Bahari received another USD 2 million payment between 5 November 2001 and 15 June 2002, as recorded in an undated payment receipt containing a note in Farsi written and signed by Mr. Bahari.[215] According to the Respondent, the payments made are further substantiated by extracts from two notebooks belonging to Mr. Heydarov's former assistant,[216] and the share transfer is confirmed by an undated stock transfer form, signed by Mr. Bahari in or around November 2001.[217] In addition, the Caspian Fish BVI's register of members records the transfer of Mr. Bahari's shares to Mr. Khanghah on 5 March 1999;[218] while Azerbaijan does not know the reason for back-dating this entry, the register of members thus reflects the terms of the 2001 Agreement.[219]

308. Moreover, Azerbaijan submits that Mr. Bahari mischaracterizes the terms of the 2002 Agreement, which cannot be a sale agreement, as "Mr Bahari had already agreed to sell, had already received USD 3.5 million of the agreed USD 4.5 million, and indeed

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210 SoC, para. 171.
211 SoC, para. 173-175; SoR, para. 739; **C-17**, Settlement Proposal, 15 June 2002, handwritten annotation, at 5-6.
212 **R-50**, Buyer and Seller Agreement between Mr. Bahari and Mr. Khanghah, 20 September 2001.
213 SoD, paras. 275-281; SoRJ, paras. 447-483.
214 **R-51**, Receipt for payment of USD 1.5 million, 5 November 2001.
215 **R-52**, Receipt for payment of USD 2 million, at 2.
216 SoRJ, paras. 469-472; **R-389**, Extracts of Notebooks containing records of payments in relation to Mr. Heydarov's business affairs from 2002.
217 **C-121**, Caspian Fish Purported Instrument of Transfer, undated; **R-129**, Stock Transfer Form, undated.
218 **C-109**, Caspian Fish Co. Inc. Registers and Datasheet.
219 SoRJ, paras. 451-463.

had already transferred his shares in Caspian Fish to Mr Khanghah pursuant to the terms of the 2001 Sale Agreement".[220] In the Respondent's view, the terms of the 2002 Agreement establish that Mr. Khanghah proposed to Mr. Bahari a new schedule for the payment of the remaining USD 1 million and a further payment of USD 820,000.[221]

309. It is therefore Azerbaijan's submission that Mr. Bahari was initially paid USD 3.5 million under the 2001 Agreement, and a further USD 1.82 million under the 2002 Agreement, as he himself stated in an email to the President's office of 4 December 2013, which is an "express confirmation that Mr Bahari was paid for his shares under the 2001 Agreement and 2002 Agreement".[222]

310. Mr. Bahari challenges the 2001 Agreement and the undated stock transfer form as forged and adds that he had neither seen nor signed these documents.[223] Likewise, he disputes the authenticity of the alleged evidence of payment of the share price submitted by the Respondent.[224] *First*, the receipt of 5 November 2001 allegedly confirming the first USD 1.5 million payment instalment is fraudulent and the signature is a forgery.[225] *Second*, the undated payment receipt allegedly proving that Mr. Bahari received a further USD 2 million payment is a merger of (i) a handwritten Farsi note from him bearing his signature, which concerned the repayment of USD 2 million cash advance he had previously made to Mr. Heydarov and is unrelated to any sale of shares, and (ii) a fraudulent typewritten receipt in English that he has never seen.[226] *Third*, the notebooks are neither reliable nor authenticated and in any event do not establish he received any money for his shares in Caspian Fish.[227]

311. With respect to the email he sent to the President's office on 4 December 2013, Mr. Bahari "confirms the email address […] is his and that he generally recalls sending this email".[228] In his view, the email shows, *inter alia*, that he built Caspian Fish, and that it was later taken from him. By contrast, it does not contain any confirmation, nor any mention, of the 2001 Agreement or the 2002 Agreement. As for his statement that [redacted], Mr. Bahari recalls that [redacted], but he does [redacted].[229] He further argues that the sum does not match the terms of the alleged sale agreements.[230]

312. Moreover, the Claimant submits that, under BVI law, there was no valid sale of his interest in Caspian Fish BVI, since there was no valid stock transfer form, no valid

220 SoD, para. 286.
221 SoD, paras. 283-288; SoRJ, paras. 477-783.
222 SoD, para. 306; SoRJ, para. 447; **R-53**, Email from Mr. Bahari to A Kalantarli, copied to President's Office, 4 December 2013.
223 SoR, paras. 364-368, 379-380, 423; RoJ, paras. 322-333; C-PHB, para. 24.
224 SoR, paras. 409-417; RoJ, paras. 336-341; C-PHB, paras. 27-30.
225 SoR, para. 409; Bahari WS-2, para. 21(e).
226 SoR, paras. 411-417; Bahari WS-2, para. 21(f).
227 RoJ, paras. 300-305.
228 SoR, para. 430; Bahari WS-2, para. 37.
229 SoR, para. 433(h); Bahari WS-2, para. 38.
230 SoR, para. 436.

director's resolution, and no update to the register of members.[231] He further argues that, under BVI law in force at the time, the physical share was considered *prima facie* evidence of title to that share, the original share certificate in his possession thus proving that he never sold his shares.[232] In addition, a resolution of Caspian Fish BVI of 2006 noting that he still held his shares disproves the existence of a prior sale.[233] Thus, the BVI record conclusively contradicts the Respondent's assertion of sale of his shares.[234]

313. Finally, the Claimant points out that Azerbaijan avoided questioning him on the alleged sale of his shares in Caspian Fish BVI at the Hearing, because that sale did not take place.[235]

### h. *The alleged scheme to strip Mr. Bahari of his shareholding rights in Caspian Fish BVI*

314. Mr. Bahari submits that, in parallel to the seizure of Caspian Fish's assets and business in Azerbaijan through Caspian Fish LLC, and because he had refused to sell his 40% shareholding in Caspian Fish BVI, Messrs. Aliyev, Heydarov, and Khanghah (the latter acting on their behalf) carried out a fraudulent scheme to strip him of his shares in Caspian Fish BVI, as well as the underlying assets, through illegal corporate actions and "a series of massive share dilutions and transfers to various opaque corporate shells".[236] He argues that the corporate actions relating to Caspian Fish BVI are relevant to the dispute because "what occurred with Caspian Fish BVI mirrors what was happening in Azerbaijan",[237] thus revealing an "overall ploy to strip Mr. Bahari's interest in the company and place them into the hands of the Aliyev and Heydarov families".[238]

315. The documents allegedly supporting these allegations were obtained by Mr. Bahari by way of discovery orders obtained from the BVI courts that were granted in February and March 2023, directing the BVI registered agents of Caspian Fish BVI and other BVI companies to disclose their statutory registers and categories of documents relating to their legal and beneficial ownership.[239]

316. The main stages of the alleged fraudulent scheme implemented by Messrs. Aliyev, Heydarov, and Khanghah, can be summarized as follows:

- *First*, on 15 November 2001, Mr. Khanghah, one of the two initial directors of Caspian Fish BVI, fraudulently removed Mr. Bahari as director and stepped in as

231 SoR, paras. 376-395; RoJ, paras. 340-341.
232 SoR, paras. 388-395; **C-6**, Mr. Bahari's Share Certificate in Caspian Fish Co. Inc., 5 March 1999.
233 SoR, paras. 396-403; **C-122**, Caspian Fish Co Inc, Director's Resolution in writing, undated.
234 RoJ, paras. 334-341; C-PHB, para. 23.
235 C-PHB, para. 8(c).
236 SoC, paras. 190-252; SoR, paras. 333-336, 369-375.
237 SoR, para. 334.
238 SoR, para. 372.
239 SoC, paras. 192-194; **C-105**, BVI Order granting First NPO, 15 February 2023; **C-106**, BVI Order granting Second NPO, 9 March 2023.

Caspian Fish BVI's sole director.[240] Subsequently, he transferred to himself Mr. Bahari's 400 000 shares on the basis of the forged stock transfer form.[241]

- *Second*, Mr. Khanghah carried out massive share dilutions and share transfers to the benefit of Messrs. Aliyev and Heydarov: (i) on 3 September 2002, a Caspian Fish BVI resolution increased the share capital from 1,000,000 to 56,000,000 at USD 1 par value, thus diluting Mr. Bahari's 40% interest to 0.71%;[242] (ii) on 8 December 2006, Mr. Khanghah transferred his 500.000 shares (which included 400,000 shares of Mr. Bahari) to a BVI shell company called Southmead Management Limited ("Southmead"), of which he was a director and sole shareholder; [243] (iii) on the same date, Mr. Khanghah issued 4,500,000 shares to Southmead, 22,400,000 shares to a BVI shell called Carnivore Capital Markets Limited ("Carnivore"), 28,060,000 shares to a Panamanian shell called Lacey Enterprises ("Lacey"), and ICCI transferred its 500.000 shares to Lacey;[244] and (iv) on 15 October 2007, Carnivore transferred its shares in Caspian Fish BVI to a Panamanian company called Lanisten International SA ("Lanisten") and Lacey transferred its 28.560.000 shares in Caspian Fish BVI equally between three Panamanian companies, Arblos Management Corp., Hising Management SA, and Lynden Management Group Inc. ("AHL Companies").[245]

  Mr. Bahari asserts that the AHL Companies are associated with and/or controlled by the Aliyev and Pashayev families, pointing out that Ms. Arzu Aliyeva and Ms. Leyla Aliyeva, the daughters of Mr. Aliyev and the granddaughters of Mr. Pashayev, hold senior positions in the AHL companies.[246] It is therefore his submission that (i) the UBOs of Caspian Fish BVI included members of both the Aliyev and Pashayev family, and that (ii) Mr. Ilham Aliyev maintained control of the company through his daughters and can himself be considered a UBO of Caspian Fish BVI.[247]

- *Third*, Caspian Fish BVI was formally separated from its assets. The Claimant infers this separation from the fact that Mr. David Pow, a former solicitor,[248] stated in

240 **C-109**, Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.

241 SoC, paras. 198-217; **C-121**, Caspian Fish Purported Instrument of Transfer, undated; **R-129**, Stock Transfer Form, undated.

242 SoC, paras. 220-223; **C-124**, Caspian Fish Co. Inc. Director's Resolution in writing, 3 September 2002.

243 SoC, paras. 224-226; **C-109**, Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-128**, Southmead Management Limited Registers and Datasheet, 1 May 2009.

244 SoC, paras. 230; **C-109**, Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007; **C-130**, Southmead Share Application to Caspian Fish 2006; **C-131**, Caspian Fish Co. Inc. Stock Transfer Form, undated; **C-132**, Caspian Fish Co. Inc. Directors Resolution in writing, 8 December 2006; **C-133**, Lacey Share Application to Caspian Fish, 2006.

245 SoC, paras. 231-234; **C-136**, Caspian Fish Co. Inc. Register of Members, 17 August 2009; **C-137**, Caspian Fish Co. Inc. Share Certificates, 15 November 2007.

246 **C-138**, Arblos Management Corp. Amendment to Articles of Incorporation, 11 August 2006; **C-139**, Lynden Management Group Articles of Incorporation, 17 August 2006; **C-140**, Hising Management S.A. Amendment to Articles of Incorporation, 1 June 2012.

247 SoC, paras. 235-240.

248 **C-118**, BVI Financial Services Commission Caspian Fish Co. Inc. Register of Directors, 26 February 2021.

September 2021 to a BVI registered agent that the sole asset of Caspian Fish BVI were the shares in Caspian Fish LLC.[249] A year later, he attested to the transfer of Caspian Fish BVI's shares in Caspian Fish LLC to a local Azeri company to act as a holding company.[250]

- On 4 July 2023, Caspian Fish BVI was eventually dissolved.[251]

317. The Respondent notes that it has no knowledge of the corporate actions and transfers of Caspian Fish BVI's shares that took place in the BVI, which concern the actions of third parties in their private capacities, and that it has no jurisdiction over such matters.[252] It further notes that none of the companies mentioned by the Claimant are alleged to constitute part of his investment[253] and that the BVI record says nothing about the beneficial ownership of Caspian Fish BVI.[254] Its understanding, based on the evidentiary record, is that "[s]ince Mr. Bahari's exit, Caspian Fish has been majority owned and controlled by Mr. Heydarov or his companies".[255]

## 4. Ayna Sultan

318. The Claimant's fourth purported investment was his purchase of an immovable property in the Narimanov District of Baku (the "Ayna Sultan Property"). Mr. Bahari claims that he was dispossessed of the Ayna Sultan Property by third parties with the involvement of the Azerbaijani courts in the context of fraudulent proceedings of which he was never made aware. By contrast, Azerbaijan asserts that Mr. Bahari sold the Ayna Sultan Property and took part in the proceedings, which show no indication of fraud.

### a. *The Ayna Sultan Property*

319. Mr. Bahari submits that he acquired an interest in the Ayna Sultan Property for business purposes. In the Statement of Claim, he alleged that the Ayna Sultan Property was a "plot of land […] covering approximately 1000 square meters" which he purchased to "[redacted]".[256] In the Statement of Reply, he alleged that the property was "located at 62 Karl Marx Street, which became Bunyadov Street, in the Narimanov District of Baku" and referred to a title registration certificate No. 109288 of 28 January 1998 relating to an apartment of 45.2 square meters.[257] He nevertheless maintained that his objective was to build there a prestigious office building.[258] Furthermore,

249 **C-118**, BVI Financial Services Commission Caspian Fish Co. Inc. Register of Directors, 26 February 2021.
250 SoC, paras. 245-252; **C-102**, Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2, 23 September 2021; **C-103**, FHCS email communications Re: 2021 compliance review Part 3, 15 March 2022.
251 **C-413**, Caspian Fish Co. Inc. – Company Search Report, 13 March 2024.
252 SoD, para. 315.
253 SoD, paras. 315-317.
254 SoRJ, para. 400.
255 SoRJ, para. 400.
256 SoC, Defined terms: Ayna Sultan, p. ix, para. 95; Bahari WS-1, paras. 48-49.
257 SoR, para. 471; **C-16**, Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.
258 SoR, para. 790; C-PHB, para. 78.

Mr. Bahari denies having ever sold his interest in the Ayna Sultan Property and argues that the "alleged sale is part of the fraudulent scheme to misappropriate Mr. Bahari's property and never happened".[259]

320. The Respondent states that the Ayna Sultan Property was a "small 45.2 square metre dwelling"; it was neither a plot of land, nor a 1000 square meters property on which Mr. Bahari could have built prestigious office buildings.[260] Moreover, Azerbaijan submits that, on 14 December 1999, Mr. Bahari sold or promised to sell the Ayna Sultan Property to a third party, Mr. Azad Gambarov,[261] for a sum of USD 70.000 that he received on the same day.[262] In addition, Mr. Samadaga Pashayev, an individual unrelated to Mr. Arif Pashayev, claimed that Mr. Bahari had also promised to sell the Ayna Sultan Property to him.[263]

### b. *The Ayna Sultan proceedings*

321. According to court files produced by Azerbaijan, the title to the Ayna Sultan Property was the subject of a series of proceedings before the Azerbaijani courts from 2004 to 2010 (the "Ayna Sultan Proceedings). Their main steps may be summarized as follows:[264]

- On 16 August 2004, following a claim filed by Mr. Gambarov against Mr. Bahari, the Narimanov District Court issued a first judgment granting title to the Ayna Sultan Property to Mr. Gambarov.[265]

- On 20 August 2004, following a claim filed by Mr. Samadaga Pashayev against Mr. Bahari, the Narimanov District Court issued a second judgment granting title to the Ayna Sultan Property to Mr. Pashayev.[266]

- On 24 June 2005, after consolidating appeals filed against both these judgments, the Baku Court of Appeal held that the judgment of 16 August 2004 would have full force and effect.[267]

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259 SoR, para. 540.
260 SoD, paras. 118.
261 SoRJ, para. 507.
262 SoD, paras. 37(g), 119, 323; SoRJ, paras. 508-509, footnote n° 1372; **R-62**, Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr. Gambarov and Mr. Bahari, 14 December 1999; **R-63,** Receipt issued by Mr. Bahari to Mr. Gambarov for payment, 14 December 1999.
263 SoRJ, para. 508; **C-344**, S. Pashayev Statement of Claim, 29 April 2004.
264 See SoD, paras. 333-334; SoR, paras. 473-533; RoJ, paras. 344-354.
265 **R-398**, A. Gambarov Statement of Claim, 4 August 2004; **R-147**, Decision of the Narimanov District Court, 16 August 2004.
266 **C-344**, S. Pashayev Statement of Claim, 29 April 2004; **R-148,** Decision of the Narimanov District Court, 20 August 2004.
267 **C-308**, [Respondent Document Production - 182_22] Decision of the Appeal Court of the Republic of Azerbaijan, 14 June 2005; **R-149**, Judgment of the Baku Appellate Court in Case No 1mk-4123/2005 [English translation and Azerbaijani original], 24 June 2005.

- On 11 August 2009, Mr. Abulfaz Kazimov filed, allegedly on Mr. Bahari's behalf, a petition to extend time to file of an appeal against the Court of Appeal's decision, as well an appeal against the decision before the Supreme Court.[268]

- On 30 September 2009, the Baku Court of Appeal granted Mr. Bahari's application for extension of time to file an appeal.[269]

- On 21 January 2010, the Supreme Court of Azerbaijan upheld an appeal filed by Mr. Gambarov's widow against the Court of Appeal's decision to grant Mr. Bahari's application, on the ground that "[redacted]".[270]

- On 26 May 2010, the Court of Appeal concluded that "[redacted]", returned the petition to Mr. Kazimov, and granted leave for appeal within ten days.[271] No appeal was filed.

322. It is Mr. Bahari's submission that the Ayna Sultan Proceedings contained "gross, systematic procedural and substantive defects that allowed Mr. Bahari's property to be transferred to fraudsters".[272] He affirms that they were carried out without his knowledge or participation and denies having given powers of representation or engaged in procedural acts.[273] He further claims that the appeal allegedly filed on his behalf in 2009 is fraudulent and that his signatures on the application for extension of time to file a cassation appeal and the cassation appeal of 2009 are forgeries.[274] In his view, the Ayna Sultan Proceedings "point to the Narimanov District Court and Baku Court of Appeal's roles in enabling various individuals' schemes to defraud Mr. Bahari" and show that the courts "administered justice in a seriously inadequate way which resulted in manifest injustice to Mr. Bahari".[275]

323. The Respondent disputes any irregularities in the Ayna Sultan Proceedings[276] and argues that Mr. Bahari was duly notified at each stage of the proceedings.[277] It adds that Mr. Bahari did participate in the proceedings, as the court record evidences that

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268 **R-172**, Mr. Bahari's Application to the Baku Appellate Court for an extension of time, 11 August 2009; **R-173**, Mr. Bahari's Cassation Appeal, 11 August 2009.
269 **R-174**, Decision of the Baku Appellate Court on Mr. Bahari's Cassation Appeal, 30 September 2009; **C-356**, Claimant's Translation of R-174.
270 **R-153**, Decision of the Supreme Court of Azerbaijan, 21 January 2010.
271 **R-159**, Decision of the Baku Appellate Court, 26 May 2010; **C-358**, Claimant's translation of R-159.
272 RoJ, paras. 41. See also RoJ, paras. 344-348, 386.
273 SoR, paras. 473-533; RoJ, paras. 349-350, 366-384.
274 SoR, paras. 510-523; RoJ, paras. 368-373.
275 RoJ, para. 386.
276 SoRJ, paras. 510-523.
277 SoR, paras. 333-334; SoRJ, paras. 531-536.

he appealed the Court of Appeal's decision through his representative in 2009.[278] In this regard, while Azerbaijan accepts that the analysis of its own handwriting expert suggests that the signatures on the application for extension of time to file and the cassation appeal "[redacted]", it observes that this does not mean that the documents "were not signed with Mr. Bahari's authority", drawing on the testimony of Mr. Kazimov, who alleged being Mr. Bahari's lawyer in these proceedings.[279]

### 5. The Carpets

324. The Claimant's fifth alleged investment is a collection of ancient carpets as well as seven carpets commissioned for Caspian Fish (the "Carpets").

325. While the Parties agree that Mr. Bahari was known in Azerbaijan as a carpet collector and purchased hundreds of carpets, they part ways regarding the specific carpets acquired by Mr. Bahari, their value, and their subsequent fate.

326. Mr. Bahari claims that, as of 1996, he bought in or around Azerbaijan over 500 antique carpets from Iran, Turkey and Azerbaijan, assembling a collection worth millions of dollars. For instance, his collection included a rare and extremely valuable carpet that was a gift by the Nader Shah Afshar of Iran to the Czar of Russia in the 18th century, for which he paid approximately USD 500,000.[280] In his view, the historical or artistic value of his collection is confirmed by Azerbaijani Ministry of Culture's denial of an export permit for 264 of his carpets.[281]

327. The purchase of his carpet collection was part of a plan, he says, to develop and build the world's largest Persian carpet museum in Baku. He spoke about it with Mr. Ilham Aliyev, who supported the project and suggested providing the land for the museum. He also allegedly hired an Iranian architect to design conceptual art for the museum building and later gave a copy of the design to Mr. Aliyev.[282]

328. Furthermore, the Claimant asserts that, in 1999, he engaged an Iranian carpet expert to draw up a ledger indexing his carpets (the "Carpet Ledger"), identifying 508 carpets.[283] According to Mr. Bahari, the Carpet Ledger was supposed to show the provenance, the age, size, and specific characteristics of each carpet, but ended up being somewhat rudimentary and not capturing these details.[284] He explains that the Carpet Ledger does not indicate the purchase price, but only the "commission" paid to intermediaries.[285]

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278 SoRJ, paras. 537-546.
279 SoRJ, para. 544; Briggs ER, para. 4.22.8; Kazimov WS, para. 16(b).
280 SoC, paras. 106-114.
281 SoR, para. 75; **R-36**, Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300, 26 July 2002. See also SoR, paras. 550, 792(c); RoJ, para. 389.
282 SoC, paras. 101-107; SoR, para. 545; Bahari WS-1, paras. 50-60.
283 **C-79**, Carpet Ledger.
284 SoC, paras. 115-118; SoR, paras. 545, 550-552; Bahari WS-1, paras. 50-60.
285 C-PHB, para. 417.

329. The Claimant submits that in 2001 the Carpets were illegally seized or taken from him. The taking is made clear by his request to Mr. Khanghah at the 15 June 2002 meeting that the Carpets be returned to him.[286] He has presented different versions of the events surrounding the taking. More specifically, in the Statement of Claim, invoking the witness statements of Messrs Moghaddam and Kousedghi,[287] he alleged that, in August 2001, Messrs. Aliyev and Heydarov directed the Chief of Police of Baku to seize the Carpets,[288] which were moved from the warehouse where they were stored and transferred to "unknown third parties".[289] In the Statement of Reply, he argued, however, that he was "separated" from the Carpets "and ultimately lost possession and control because of his expulsion by Azerbaijan", without referring to a police seizure.[290] Finally, in the PHB, he claimed that, in July 2002, the Ministry of Culture permanently retained more than half of the Carpets.[291]

330. Moreover, Mr. Bahari denies having made any request to Mr. Zeynalov or any other arrangement for the Carpets to be shipped to him in Dubai and having ever received any of them.[292]

331. Azerbaijan refutes the Claimant's allegations. Regarding the value of the Carpets, it contends that the Carpet Ledger provides at most the details of 451 carpets allegedly acquired by Mr. Bahari and includes a column titled "price", which on its face reflects their purchase price, thus establishing that the total spent by Mr. Bahari on the Carpets was USD 183,000.[293] It also stresses that there is no evidence that Mr. Bahari acquired the very rare carpet from the Nader Shah Afshar of Iran, and specifies that no such carpet was ever offered by Nader Shah to Russia according to public sources.[294] Furthermore, there is no indication that some of the Carpets were refused export, let alone due to their value.[295]

332. With respect to the alleged carpet museum project, Azerbaijan comments that there is no evidence other than Mr. Bahari's own testimony, which at best shows that he entertained the idea of establishing a museum.[296] The Respondent further stresses that at the Hearing Mr. Bahari stated that he had "[redacted]" and "[redacted]".[297]

333. Finally, the Respondent states that the Carpets were shipped to Mr. Bahari in Dubai in 2002, relying *inter alia* on Mr. Zeynalov's testimony that Mr. Bahari had asked him in

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286 SoC, para. 183; SoR, paras. 547-557; **C-17**, Settlement Proposal, 15 June 2002, pp. 5-6.
287 Moghaddam WS-1, paras. 63-70; Kousedghi WS-1, para. 31.
288 SoC, para. 473(i).
289 SoC, paras. 122, 613(vi).
290 SoR, para. 794.
291 C-PHB, paras. 81, 165(c), 337(c).
292 SoR, para. 794; Bahari WS-2, para. 27.
293 SoR, para. 550; R-PHB, paras. 80-90.
294 SoR, paras. 341-342.
295 SoC, paras. 117-118.
296 SoD, paras. 125, 151(f), 336.
297 R-PHB, para. 220; Hearing Transcript, Day 3, 147:24-25.

2002 to arrange for the Carpets to be shipped to him.[298] Thereafter, Mr. Zeynalov applied for export permits for 211 carpets, which the Ministry of Culture granted on 26 July 2002.[299] In October 2002, Mr. Zeynalov shipped the 211 carpets which had export permits, as well as the remaining ones, to Mr. Bahari.[300]

## C. THE PURPORTED CAMPAIGN AGAINST THE CLAIMANT FROM 2001 ONWARDS

334. Mr. Bahari's case is that Azerbaijan implemented a systematic and concerted campaign of harassment, violence and obstruction to prevent him from accessing and recovering his investments and ultimately to take them from him, starting in 2001 and continuing to this day. Azerbaijan challenges these allegations and submits that it has never taken any steps to prevent him from pursuing or accessing his alleged investments. The Parties' positions on Azerbaijan's alleged unlawful acts as part of this campaign are presented in the following sections.

### 1. The alleged expulsion of the Claimant from Azerbaijan in 2001

335. Mr. Bahari asserts that, following his forced removal from Caspian Fish's opening ceremony and subsequent house arrest, he and his family were unlawfully expelled from Azerbaijan by the State security forces in late March 2001, and thereafter "banned" from the country. Specifically, he alleges that, in late March 2021, three Government security agents arrived at his home and informed him that he and his family had to leave the country. They provided airplane tickets and the passports of Mr. Bahari and his family, which they had retrieved from his safe at Caspian Fish. Mr. Bahari and his family were then driven to the airport by Mr. Zeynalov, while Government security agents followed in another car. At the airport, Mr. Bahari and his family boarded the airplane directly from the tarmac and departed for Dubai.[301] According to Mr. Bahari, his sudden expulsion from Azerbaijan and subsequent "banishment"[302] prevented him from collecting more than a few records related to his investments, leaving behind many valuable documents.[303]

336. The Respondent challenges the allegation of expulsion, describing it as "one of the more egregious of Mr. Bahari's lies".[304] The State border records, so it says, show that Mr. Bahari and his family were in Azerbaijan in March 2001 and freely entered and

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298 SoD, paras. 346-351; Zeynalov WS-1, paras. 44-51; R-PHB, paras. 217-218; **R-35**, Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, 15 May 2002.

299 **R-36**, Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300, 26 July 2002.

300 SoD, para. 126; **R-36**, Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan No. 300, 26 July 2002 to 26 October 2002; **R-37**, Export Declaration for 211 Carpets, 3 October 2002.

301 SoC, paras. 152-156; SoR, paras. 318-319; C-PHB, paras. 224-236; Bahari WS-1, paras. 75-76; Bahari WS-2, paras. 30-31.

302 RoJ, para. 457.

303 SoC, para. 153; Bahari WS-1, para. 76.

304 SoD, paras. 264-266; SoRJ, para. 445.

exited the country throughout 2001.[305] Relying on Mr. Zeynalov's testimony, it adds that Mr. Bahari and his family left Baku on a commercial flight and were not accompanied to the airport by any agents.[306] Further, the State Migration Service confirmed that "[redacted]".[307] Mr. Bahari's submission about his expulsion are contradicted by his statements in the first notice of arbitration filed on 5 April 2019 before it was withdrawn seven months later. There he stated that he "[redacted]".[308] Additionally, Azerbaijan points out that Mr. Bahari has provided no evidence of his new life in the UAE in 2001 following his alleged expulsion, which is consistent with Mr. Bahari remaining in Baku until December 2001.[309]

### 2. The alleged assaults and detentions of Mr. Moghaddam in 2001 and 2002

337. Based on the testimony of Mr. Moghaddam, Mr. Bahari asserts that Government security forces assaulted and detained Mr. Moghaddam in 2001 and 2002 as means to intimidate and threaten him.[310] Mr. Moghaddam attests that, because of his association with Mr. Bahari and efforts to recover his investments:[311] (i) in late April 2001, he was physically assaulted on a street close to his home by four plainclothes members of the Azeri police or other Government body, who repeatedly hit him in the face and kicked him when he fell on the ground;[312] (ii) in June 2001, he was approached by a similar group of men who again attacked him when he was walking home, repeatedly hitting him in the face and head;[313] and (iii) in late June 2002, he was detained and interrogated about Mr. Bahari for a week by Government security agents in a windowless room of a building where he slept in chairs and on the floor, after being forcibly taken there his eyes blindfolded.[314]

338. The Respondent contests having ever targeted Mr. Moghaddam.[315] The only evidence in support of Mr. Moghaddam's allegations, it stresses, is his own testimony and that of Mr. Bahari, which is contradicted by (i) the State borders records, which show that Mr. Moghaddam was not present in Azerbaijan between late April and May 2001 and was instead in the UAE between May and September 2002,[316] and (ii) the statements of Ms. Kristina Izmaylova, Mr. Moghaddam's separated wife, who declared that she

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305 **R-58**, Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, 2 November 2023.

306 Zeynalov WS-1, para. 42.

307 **R-177**, Letter from the Republic of Azerbaijan State Migration Service to SSPI, 22 December 2023.

308 **R-54**, *Mohammad Reza Khalilpour Bahari v. Republic of Azerbaijan*, Notice of Arbitration, 5 April 2019, paras 10 and 39; **R-55**, Letter from Winston & Strawn to H Gharavi and G Griffith, 14 November 2019.

309 R-PHB, para. 71.

310 SoC, paras. 157-160, 185-186; SoR, para. 565.

311 C-PHB, paras. 273-279, 293-298.

312 Moghaddam WS-1, para. 64; Moghaddam WS-2, paras. 21-23.

313 Moghaddam WS-1, para. 65; Moghaddam WS-2, paras. 21-23.

314 Moghaddam WS-1, paras. 73-77; Moghaddam WS-2, paras. 21-23.

315 SoD, paras. 352-358; SoRJ, para. 578.

316 **R-58**, Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, 2 November 2023.

recalled neither the alleged assaults of 2001 nor the alleged one-week detention of 200.[317] It further emphasizes that the Claimant chose not to cross-examine Ms. Izmaylova and that her evidence is therefore unchallenged.[318]

### 3. The alleged obstruction of the Claimant's investigative efforts in 2004

339. Mr. Bahari avers that, in 2004, he hired a Turkish lawyer, Mr. Serhat Kilic, to investigate possible legal proceedings against Messrs. Aliyev, Heydarov and Pashayev in Azerbaijani courts. However, after two months of initial due diligence work, including speaking with individuals and organizations in Azerbaijan, Mr. Kilic said that he could no longer represent Mr. Bahari, who "[redacted]".[319] According to the Claimant, he attempted to locate and obtain a witness statement from Mr. Kilic, without success, likely because he had passed away.[320]

340. Azerbaijan claims to have no knowledge of the facts alleged in relation to Mr. Kilic and submits that "[t]he story of Mr Kilic remains a mystery and is completely unproven",[321] considering that (i) there is no documentary evidence of the existence of Mr. Kilic, (ii) the only evidence in support of these allegations is Mr. Bahari's own testimony, and (iii) Mr. Bahari's evidence is unparticularized, as he has not provided any details regarding Mr. Kilic's place of business, registration, qualification or law firm, nor the persons and organizations he allegedly spoke with.[322]

### 4. The conviction of Mr. Moghaddam for drug crimes in 2009

341. It is common ground that, on 25 February 2009, Mr. Moghaddam was arrested at his home by the Nasimi District Police on drug possession charges and placed in pre-trial detention. He was then convicted of drug-related crimes on 17 July 2009 and sentenced to nine years in prison by the Nasimi District court. On 26 May 2014, Mr. Moghaddam was granted presidential pardon and deported to Iran shortly thereafter.[323]

342. For the Claimant, Mr. Moghaddam was convicted and imprisoned on falsified charges because of his association with Mr. Bahari and inquiries about Caspian Fish which he had made in late 2008 and early 2009.[324] Mr. Moghaddam testifies that he was at the time a 52-year-old father of two, with no criminal record, who never had anything to do with drugs and that, on the day of his arrest, a professional acquaintance planted drugs

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317 Izmaylova WS-1, paras. 8-9.
318 R-PHB, para. 244.
319 SoC, paras. 187-189; SoR, paras. 578-581; Bahari WS-1, paras. 86-87..
320 SoR, para. 579.
321 R-PHB, para. 232.
322 SoD, paras. 362-363; SoRJ, para. 579.
323 SoC, paras. 307, 311; SoR, paras. 565, 571; SoD, paras. 354-385; **R-169**, Decision of the Nasimi District Police Department, 27 February 2009; **R-151**, Decision of the Baku Court on Grave Crimes, 17 July 2009; **RLA-195**, Decree No. 513 of the President of the Republic of Azerbaijan, About the Amnesty of Convicted Persons, 26 May 2014.
324 SoC, para. 308; SoR, para. 565(d); Moghaddam WS-1, para. 86; Moghaddam WS-2, para. 30.

in his home and left a few minutes before police arrived.[325] In the Claimant's view, the falsified nature of the drug charges against Mr. Moghaddam and the irregularity of his conviction is evidenced by: (i) the consistent account of his arrest, conviction, and innocence; (ii) the co-defendant's account before the court that he was entrapped by the police and forced to testify that he obtained drugs from Mr. Moghaddam; and (iii) the regular use of the Azerbaijani State's coercive powers to charge and convict targeted people on falsified charges, as observed by Amnesty International, the UN Special Rapporteur on the situation of human rights defenders, and the European Court of Human Rights.[326]

343. The Respondent refutes the Claimant's submission that Mr. Moghaddam's conviction and sentencing were improper and meant to intimidate Mr. Bahari. It submits that the evidentiary record shows that Mr. Moghaddam is a known drug user[327] and highlights that Mr. Moghaddam confirmed that he "[redacted]" when he appealed the sentence.[328] Moreover, no factual record corroborates the Claimant's assertion that Mr. Moghaddam's arrest and conviction were triggered by alleged inquiries into Caspian Fish in late 2008 - early 2009, which is "completely wrong".[329]

### 5. The alleged negotiations of Prof. Amirahmadi with senior Government officials on behalf of Mr. Bahari in 2009

344. The Claimant asserts that, in April 2009, he provided Prof. Hooshang Amirahmadi – an American Iranian who teaches at Rutgers University in New Jersey and was a candidate in the presidential elections in Iran on three occasions – with a power of attorney to negotiate a settlement on his behalf with senior Government officials.[330] According to Mr. Bahari, the negotiations were not fruitful and Prof. Amirahmadi "[redacted]".[331] Mr. Bahari, who did not mention Prof. Amirahmadi in his Statement of Claim and his first witness statement, contends that he was reminded of him through the Respondent's Statement of Defence. According to the Claimant, he asked Prof. Amirahmadi to serve as a witness, but he declined because of his high profile in the region.[332]

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325 Moghaddam WS-1, paras. 83-87; Moghaddam WS-2, paras. 28-29.

326 SoR, paras. 571-577; **R-97**, Decision of the Baku Court on Grave Crimes, 17 July 2009, p. 2, 8; **C-200**, Amnesty International Report 2022-23, Human Rights in Azerbaijan, p. 82-83; **C-372**, Case of Aliyev v. Azerbaijan, Applications nos. 68762/14 and 71200/14, European Court of Human Rights, 4 February 2019, paras. 32-33, 223.

327 SoD, paras. 37(d), 354-358; SoRJ, paras. 100(a), 119(a), 578 (d) (e); Izmaylova WS-1, para. 7; **R-170**, Opinion No. 434 of the Republican Narcological Dispensary of the Ministry of Health of the Republic of Azerbaijan, 5 March 2009.

328 **R-156**, M. Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes, 30 April 2014.

329 SoD, para. 355.

330 SoR, paras. 503-504, 582; **R-152**, Power of Attorney issued by Mr. Bahari to Mr. Amirahmadi, 20 April 2009.

331 Bahari WS-2, paras. 33-34.

332 Bahari WS-2, para. 33.

345. The Respondent says that Mr. Bahari's allegations are "a fig-leaf to cover the true reason" behind the issuance of a power of attorney to Mr. Amirahmadi by Mr. Bahari, which was to file an appeal in the Ayna Sultan Proceedings.[333] According to Azerbaijan, the power of attorney which Mr. Bahari granted to Mr. Amirahmadi on 20 April 2009, which was found in the court file of the Ayna Sultan Proceedings, related to the authority to participate in local proceedings on behalf of Mr. Bahari.[334] Mr. Amirahmadi granted Mr. Kazimov another power of attorney on 1 May 2009, also found in the case file, according to which Mr. Kazimov filed a petition and an appeal before the Baku Court of Appeal in August 2009.[335] Mr. Kazimov confirms in his witness statement that Mr. Amirahmadi instructed and engaged him to "[redacted]".[336] The Respondent further emphasizes that the power of attorney issued to Mr. Amirahmadi makes no reference to negotiations with the Azerbaijani Government and that there is no indication that he engaged in any such negotiations.[337]

### 6. The alleged encounter between Mr. Bahari and Mr. Heydarov in 2013

346. It is undisputed that, in October 2013, Mr. Bahari and his son went to Azerbaijan for around two weeks.[338]

347. According to Mr. Bahari, he was able to contact Mr. Heydarov earlier in 2013, who invited him to Azerbaijan to discuss his investments, guaranteed him "[redacted]", and issued him a 30-day visa to enter Azerbaijan for their meeting.[339] He went to Azerbaijan in October 2013 and brought his son along, thinking that Mr. Heydarov would not dare harming a child.[340] He met with Mr. Heydarov at the Ministry of Emergency Situations over a three-day period. On the last day, so he says, Mr. Heydarov told him that "[redacted]" and that "[redacted]". That prospect frightened Mr. Bahari, as he felt "[redacted]",[341] and he ultimately declined the offer.[342]

348. The Respondent rejects these allegations. Relying on the testimony of Mr. Arguc Kalantarli, Mr. Heydarov's assistant at the time, Azerbaijan submits that Mr. Bahari was likely invited by Mr. Khanghah and that Mr. Heydarov had nothing to do with the visa, which was issued by the Ministry of Foreign Affairs, as is the case for all nationals from non-visa exempted countries.[343] Furthermore, Mr. Kalantarli testifies that he had meetings with Mr. Bahari, who also met with the First Deputy Minister, but never with

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333 SoRJ, paras. 537-542, 587.
334 **R-152**, Power of Attorney issued by Mr. Bahari to Mr. Amirahmadi, 20 April 2009.
335 **R-285**, Power of Attorney issued by Mr. Amirahmadi to Mr. Kazimov, 1 May 2009.
336 Kazimov WS-1, para. 13.
337 SoRJ, paras. 583, 588.
338 SoD, para. 301; SoR, para. 588; **R-58**, Letter from the State Border Service of the Republic of Azerbaijan to the SSPI, 2 November 2023.
339 SoR, para. 319; **C-183**, Azerbaijan visa for Mr. Bahari, 7 October 2013.
340 SoC, paras. 312-313; SoR, para. 583-584; Bahari WS-1, paras. 95-96; Bahari WS-2, para. 36.
341 Bahari WS-1, para. 96.
342 SoR, para. 583.
343 SoRJ, paras. 446, 584; Kalantarli WS, para. 8.

Mr. Heydarov. According to Mr. Kalantarli, Mr. Bahari was "[redacted]", "[redacted]", and "[redacted]".[344] Azerbaijan notes that the Claimant has not called Mr. Kalantarli at the Hearing.[345]

### 7. The alleged threats by Mr. Heydarov in 2014

349. Mr. Bahari alleges that, in 2014, Mr. Heydarov, through one of its associates, threatened him by phone to stop contacting him or he would "[redacted]".[346]

350. Azerbaijan claims that these allegations are a "fiction" and affirms having no knowledge of such discussions.[347]

### 8. The alleged obstruction of the Claimant's investigations efforts in 2019

351. Mr. Bahari argues that, in 2019, he asked Mr. Yusif Allahyarov, an Azerbaijani lawyer, to make a formal inquiry to the relevant Azeri Government agencies about his properties.[348] Mr. Allahyarov testifies that, on 14 January 2019, he hand delivered a letter to the State Committee for Property Issues inquiring into the ownership status of Coolak Baku and Shuvalan Sugar's land and production site.[349] According to Mr. Allahyarov, he was contacted four days later by phone and summoned to the offices of that committee, where he met the Deputy Head of the Legal Department, a woman who told him that [redacted] and that [redacted]. Mr. Allahyarov understood this as a threat and discontinued any further inquiries.[350]

352. Azerbaijan contests that Mr. Allahyarov made inquiries into Mr. Bahari's alleged properties in 2019, arguing that there is no trace of the 14 January 2019 letter at the State Committee for Property Issues.[351] Ms. Yegana Balakishiyeva, Head of the Legal Department of the State Service on Property Issues (formerly the State Property Committee), confirms in her witness statement that there is no record of the letter.[352] The Respondent further denies Mr. Allahyarov's allegations concerning the purported phone call and subsequent meeting. It draws on the testimony of Ms. Balakishiyeva, who explains that the Deputy Head of the Legal Department between 2012 and 2020 was a man and that none of the female employees of the Legal Department at the time had any interaction with Mr. Allahyarov.[353]

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344 SoRJ, para. 584(b); Kalantarli WS, para. 4.
345 R-PHB, para. 266.
346 SoC, para. 318; SoR, paras. 595-599; Bahari WS-1, para. 98.
347 SoD, para. 307; SoRJ, para. 586.
348 SoC, paras. 319-324; SoR, paras. 600-602.
349 SoC, para. 321; Bahari WS-1, para. 99; Allahyarov WS-1, para. 10, Allahyarov WS-2, para. 3; **C-68**, Letter from Yusuf Allahyarov to Chairman of the State Committee for Property Issues, 14 January 2019.
350 Allahyarov WS-1, para. 11-12, Allahyarov WS-2, para. 3.
351 SoD, paras. 364-368.
352 Balakishiyeva WS-1, paras. 9-13.
353 SoD, para. 368; Balakishiyeva WS-1, paras. 15-18.

## 9. The alleged campaign of harassment, intimidation and violence against Mr. Abdulmajidov and Ms. Ramazanova as of 2021

353. In the Statement of Reply, the Claimant further alleged that Ms. Konul Ramazanova, Mr. Bahari's former assistant at Caspian Fish, and Mr. Timur Abdulmajidov, her husband, were subjected to a campaign of harassment, intimidation, and violence by the Respondent, which sought to stymie Mr. Bahari's efforts to access his investments and prepare his claim.[354] According to Mr. Bahari and Mr. Abdulmajidov and Ms. Ramazanova's evidence, this campaign included the following events:

- On 23 July 2021, Mr. Abdulmajidov and Ms. Ramazanova visited the exterior of the Caspian Fish's site to assist Mr. Bahari with the preparation of his claim. They were assaulted by security agents when they took photographs of the facility. The agents asked them questions about a picture of the Caspian Fish Shareholder Agreement they found on Ms. Ramazanova's phone.[355]

- On 12 September 2021, an unknown person broke into the office of Mr. Abdulmajidov and Ms. Ramazanova's travel agency, looking for the Caspian Fish Shareholders Agreement. The police took no action to investigate or bring any charges about this incident.[356]

- On 18 September 2021, Mr. Abdulmajidov was summoned to a police station, where three State security agents interrogated and physically beat him, threatened his family, and demanded that he hands over the Caspian Fish Shareholders Agreement.[357]

- On 2 October 2021, a truck deliberately rammed the car which Mr. Abdulmajidov and Ms. Ramazanova were driving, injuring Ms. Ramazanova. The police took no action to investigate or bring any charges about this incident.[358]

- On 8 October 2021, Mr. Abdulmajidov was summoned to the headquarters of the road police, where three State security agents beat him and detained him for approximately 15 hours, while asking questions about Mr. Bahari. Mr. Abdulmajidov was seriously injured.[359]

- On 14 December 2021, a car deliberately ran over Mr. Abdulmajidov. Four State security agents exited the car and violently assaulted him on the street, then

354 SoR, paras. 603-659.
355 Ramazanova WS, paras. 21-27; Abdulmajidov WS, paras. 12-19.
356 Ramazanova WS, para. 31; Abdulmajidov WS, paras. 22-23.
357 Ramazanova WS, paras. 32-34; Abdulmajidov WS, paras. 24-28.
358 Ramazanova WS, para. 35; Abdulmajidov WS, paras. 30-32.
359 Ramazanova WS, paras. 36-38; Abdulmajidov WS, paras. 33-38.

instructed the police to take him to a police station. Mr. Abdulmajidov was hospitalized with serious injuries, as evidenced by medical reports.[360]

- In February 2022, Mr. Abdulmajidov and Ms. Ramazanova were summoned to a police station, where the police accused them of illegally trafficking foreign persons into Azerbaijan, without showing proof and without filing charges.[361]

- On 8 April 2022, while they were traveling abroad, Mr. Abdulmajidov and Ms. Ramazanova received a phone call from an unknown person, who threatened them and instructed them to return to Azerbaijan. On the next day, they flew to England because they feared for their freedom and safety if they were to return to Azerbaijan. They applied for asylum in the United Kingdom.[362]

- On 26 April 2022, the Office of the Prosecutor General issued a criminal summons directing Mr. Abdulmajidov to attend a pre-trial interrogation on 28 April 2022, based on false accusations that Mr. Abdulmajidov "[redacted]".[363]

- In 2022 and 2023, Mr. Abdulmajidov and Ms. Ramazanova's families were threatened by people inquiring about their whereabouts.[364]

354. The Respondent disputes the Claimant's allegations as well as Mr. Abdulmajidov and Ms. Ramazanova's testimonies, asserting that they have concocted a false story designed to exploit Mr. Bahari's dispute with the State as a means of securing asylum abroad on which Mr. Bahari relies to attempt to substantiate his allegations of intimidation and harassment,[365] in particular:

- Azerbaijan contests that the events of July 2021 at the Caspian Fish site described by Mr. Abdulmajidov and Ms. Ramazanova took place, [366] arguing that Ms. Ramazanova's answers at the Hearing revealed a number of inconsistencies.[367]

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360 Ramazanova WS, paras. 39-44; Abdulmajidov WS, paras. 39-47; **C-238**, Mr. Timur General Diagnostic, Forensic Expertise Center, 20 December 2021; **C-239**, Caspian International Hospital X-ray order, 16 December 2021.

361 Ramazanova WS, paras. 49-55; Abdulmajidov WS, paras. 52-57.

362 Ramazanova WS, paras. 57-62; Abdulmajidov WS, paras. 60-64.

363 Ramazanova WS, paras. 62; Abdulmajidov WS, paras. 64-68; **C-241**, Prosecutor General Summons for Mr. Timur, 26 April 2022.

364 Abdulmajidov WS, para. 72.

365 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 6-7; SoRJ, para. 589.

366 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 17-24; **R-188**, Letter from Caspian Fish to Quinn Emanuel, 3 April 2024.

367 R-PHB, paras. 157-163.

- It does not accept that a break-in occurred at the office of Mr. Abdulmajidov and Ms. Ramazanova's travel agency in September 2021 and that the police failed to investigate the matter.[368]

- It disputes that Mr. Abdulmajidov was called into a police station about this break-in and was beaten.[369]

- It challenges an incident involving a truck took place in October 2021, which the police did not investigate, arguing that the police did not record such incident.[370]

- It disputes any assault on Mr. Abdulmajidov, whether at the police headquarters in October 2021 or on the street in December 2021. It says that the "forensic report" submitted by the Claimant to support the allegation that Mr. Abdulmajidov suffered severe injuries is a forgery and relies on the testimony of Ms. Kishiyeva, acting head of the Scientific Research and Methodological Work Department at the Ministry of Justice's Forensic Expertise Centre, who states that the report's signatory was not an expert doctor from the Centre and that the Centre does not issue such reports.[371]

- It denies that Mr. Abdulmajidov and Ms. Ramazanova were summoned to a police station for questioning and accused of illegal trafficking in February 2022, arguing that there is no police record of such interviews, nor of any criminal investigation or other proceedings initiated against them in this regard.[372]

- It does not accept that an anonymous phone call on 8 April 2022 prompted Mr. Abdulmajidov and Ms. Ramazanova to flee to England, as their posts on social media show that they had plans to leave the country and relocate to London as early as March.[373]

- The criminal summons dated 26 April 2022 is a forgery. The forgery is corroborated by the review of Mr. Gasim Mammadov. Similarly, extracts of a logbook of outgoing correspondence from Mr. Mammadov's Department of Investigation in which the summons does not appear, an imprint of the true seal of the department, which differs from the seal appearing on the criminal summons, and a sample summons

368 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 27-31; **R-182**, Letter from Ministry of Internal Affairs to SSPI, 2 April 2024.

369 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 30-31.

370 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 32-37; **R-182**, Letter from Ministry of Internal Affairs to SSPI, 2 April 2024.

371 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 48-49; SoRJ, para. 46(b); Kishiyeva WS, para. 8(a).

372 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 55-57; **R-182**, Letter from Ministry of Internal Affairs to SSPI, 2 April 2024; **R-212**, Letter from Ministry of Internal Affairs to SSPI,4 April 2024.

373 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, para. 58; SoRJ, para. 590, citing **R-227/R-226**, Video taken from Tiktok account "[redacted]" and transcript, 26 March 2022.

from the same month and year which show differences in the form and content, confirm that the summons is forged.[374]

355. Moreover, Azerbaijan submits that it is implausible that the Statement of Claim referred to alleged episodes of harassment more than two decades ago but said nothing of Mr. Abdulmajidov and Ms. Ramazanova's alleged harassment just months before the filing. In its view, the only reasonable conclusion is that the harassment "did not happen and was invented to create a story for the purposes of obtaining asylum".[375]

## VI. JURISDICTION

356. The Respondent raises objections to jurisdiction on the following grounds:

- Mr. Bahari's claims fall outside the scope of the Tribunal's jurisdiction *ratione* materiae*, as* he had no qualifying investments at the time of the alleged breaches ((**A**) below);
- The claims fall outside the scope of the Tribunal's jurisdiction *ratione temporis*, as the majority of the Respondent's impugned conduct, as well as the dispute itself, occurred prior to the entry into force of the Treaty ((**B**) below);
- None of the Claimant's alleged investments were approved pursuant to Article 9 of the Treaty ((**C**) below); and
- The Tribunal has no jurisdiction over the FPS claims brought under the MFN clause contained in Article 2(3) of the Treaty ((**B**)(**3**)(**b**)(**iii**) below).

### A. JURISDICTION *RATIONE MATERIAE*

357. The Tribunal will first examine the requirements for an investment to qualify for protection under the Treaty (**1**), and will then apply those requirements to Mr. Bahari's alleged investments (**2**).

#### 1. Requirements for a qualifying investment

##### a. *The Respondent's position*

358. The Respondent submits that the Treaty contains three threshold requirements for an asset to qualify for protection: (i) the asset must be an "investment" as defined in the Treaty; (ii) the investment must be owned by the investor at all legally relevant times,

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374 Respondent's Response to the Claimant's Application for Interim Measures, 5 April 2024, paras. 58-73; SoRJ, para. 46; Mammadov WS-1, paras. 6, 13; **R-217**, Extracts of the logbook of the Department of Investigation; **R-214**, True Seal of the Department of Investigation of the Prosecutor's Office, 4 April 2024; **R-216**, Specimen anonymised witness summons issued in the year 2022.

375 SoRJ, para. 594.

including the date of the alleged breach; and (iii) the investment must have been made in its territory.[376]

359. *First*, Azerbaijan asserts that the term "investment" contained in Article 1(1) requires "something over and above the mere existence of an asset (enumerated in a list or otherwise), namely a consideration of the objective and ordinary meaning of the term investment", as held by arbitral tribunals when interpreting similar provisions.[377] Relying *inter alia* on *Romak v. Uzbekistan*, the Respondent argues that a simplistic construction of the term "investment" by reference only to the list of assets set out in the Treaty would deprive it of any inherent meaning, which would be "contrary to the logic" of the Treaty and "eliminate any practical limitation to the scope of the concept of 'investment'".[378] This reading, it argues, would elevate every asset or mere one-off transaction to a qualifying investment, which was not the intent of the Contracting Parties.[379] Therefore, the Tribunal must consider the ordinary meaning of the term "investment", in light of the object and purpose of the Treaty, to assess whether the Claimant's purported investments qualify for protection under the Treaty.[380]

360. According to the Respondent, the objective and ordinary meaning of the term "investment" must be determined according to the *Salini* test or objective criteria adopted by tribunals in both ICSID and non-ICSID cases, namely contribution, duration, an expectation of return, and an element of risk.[381] Noting that the Claimant recognizes that the case law on whether tribunals should adopt the *Salini* test to interpret the term investment is not settled, it points to non-ICSID awards resorting to objective criteria to define the term investment.[382]

361. *Second*, the Respondent submits that the requirement that the investment be owned by the investor on the date of the alleged breach derives from the plain meaning of the words "assets" in Article 1(1), "expropriat[e]" in Article 4, and "of" in Article 2(3) of the Treaty.[383] It follows that if ownership cannot be established on that date, the asset is

376 SoD, para. 75.

377 SoD, para. 76, citing *inter alia* **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 180; **RLA-20**, *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction, 23 August 2019, para. 117.

378 SoD, paras. 76-77, citing **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, paras. 185, 187.

379 SoD, para. 77, citing **CLA-1**, Treaty, Preamble, third and fourth recitals.

380 SoRJ, para. 179.

381 SoD, para. 78, referring to **RLA-67**, *Nova Scotia Power Incorporated v. Venezuela*, ICSID Case No. ARB(AF)/11/1, Award, 30 April 2014, para. 80; **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 207; **RLA-84**, *Alps Finance v. Slovakia*, Ad Hoc Arbitration, Award, 5 March 2011, para. 241; **RLA-143**, *Emmis International Holding and others v. Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014, para. 169.

382 SoRJ, para. 179, referring to **CLA-247**, *Antonio del Valle Ruiz and others v. Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 372; **RLA-268**, *Muszynianka v. Slovakia*, PCA Case No. 2017-08/AA629, Award, 7 October 2020, para. 289; **RLA-269**, *AMF Aircraftleasing v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, para. 460.

383 SoD, paras. 79-81. See also SoRJ, para. 181.

not an investment for purposes of the Treaty.[384] To the Claimant's assertion that continuity of ownership is not required for a tribunal to have jurisdiction over a claim, the Respondent replies that a claimant must prove "ownership at all legally relevant times".[385]

362. *Third*, Azerbaijan submits that Article 10 of the Treaty provides that only investments made in the territory of the host State may form the basis of an investor-State dispute. Therefore, investments that are not made in the territory of Azerbaijan are not qualifying investments under the Treaty.[386]

### b. *The Claimant's position*

363. In answer, the Claimant makes the following arguments.

364. *First,* Mr. Bahari opposes the application of an objective meaning of the term "investment" under the Treaty. While agreeing that the application of the *Salini* test is debated in non-ICSID cases, he argues that it is unnecessary to apply it in this case, since the Treaty defines "investment" with sufficient clarity, and gives it no meaning other than that of "assets" as set out in Article 1(1) of the Treaty.[387] Further, he submits that the Respondent's reliance on *Romak v. Uzbekistan* is misplaced, as the case is "fact-specific" and "exceptional in the case law outside the ICSID system".[388] Relying instead on *Guaracachi America v. Bolivia*, he claims that it would be inappropriate to import "objective" definitions of investment developed for the purpose of interpreting Article 25 of the ICSID Convention in a non-ICSID arbitration.[389]

365. Moreover, the Claimant submits that even if an objective definition of investment requiring contribution, duration, and risk were applied, his investments would satisfy those criteria.[390] With respect to contribution, he argues that the notion is not limited to monetary contributions and has consistently been recognized as including the provision of knowledge, personnel, and materials, adding that the contribution does not need to be made directly in the host State.[391] Regarding duration, it should be assessed based on all the circumstances, and tribunals have consistently found a period of two to five

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384 SoD, para. 80, referring *inter alia* to **RLA-143**, *Emmis International Holding v. Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014, para. 162; **RLA-144**, *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 140; **RLA-145**, *Vladislav Kim and others v. Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017, para. 268.

385 SoRJ, para. 181(c).

386 SoD, para. 82.

387 RoJ, paras. 395-400.

388 RoJ, para. 408.

389 RoJ, paras. 401-408, referring to **CLA-202**, *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, para. 364.

390 SoR, para. 754; RoJ, paras. 409-415.

391 RoJ, para. 410, referring to **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 207; **RLA-65**, *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, para. 53; **CLA-321**, *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, para. 73.

years sufficient.[392] Concerning risk, he cites *Romak v. Uzbekistan*, which considered risk to be "a situation in which the investor cannot be certain of a return on his investment and may remain unaware of the total amount he will ultimately expend, even if all relevant counterparties fully perform their contractual obligations".[393]

366. *Second*, Mr. Bahari maintains that he "held the rights to all of his investments when Azerbaijan first breached the Treaty".[394] He further stresses that a claimant need not demonstrate continuous ownership for a tribunal to have jurisdiction over a claim.[395] Moreover, relying on *El Paso v. Argentina*, he notes that even if all his investments were expropriated before the Treaty's entry into force, Azerbaijan's FET obligation continues.[396]

367. *Third*, the Claimant does not dispute that the investment must be made in the territory of the host State.[397] However, he claims that this requirement does not entail that the investment must be made directly within the territory of the host State, as a broad definition of investment such as the one in the Treaty includes indirect investments, as recognized by numerous tribunals.[398] Accordingly, his investments in Azerbaijan, even if held through an intermediate foreign company, are protected by the Treaty.

### c. *Analysis*

368. Pursuant to Article 10 of the Treaty, the Tribunal has jurisdiction over disputes between a Contracting Party in whose territory an investment is made and one or more investors of the other Contracting Party "with respect to an investment". It follows that the Tribunal's *ratione materiae* jurisdiction is limited to disputes concerning investments

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392 RoJ, para. 412, referring *inter alia* to **CLA-322**, *GEA Group Aktiengesellschaft v. Ukraine*, ICSID Case No. ARB/08/16, Award, 31 March 2011, para. 152; **CLA-324**, *Chevron Bangladesh Block Twelve, Ltd. and Chevron Bangladesh Blocks Thirteen and Fourteen, Ltd. v. People's Republic of Bangladesh*, ICSID Case No. ARB/06/10, Award, 17 May 2010, para. 125(b).

393 RoJ, para. 414, citing **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 230, and **RLA-65**, *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, para. 55.

394 SoR, para. 757.

395 SoR, para. 757, referring to **RLA-145**, *Vladislav Gustav and others v. Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017, paras. 268, 272.

396 SoR, para. 716; **CLA-290**, *El Paso v. Argentina*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, 27 April 2006, para. 135.

397 SoR, para. 758.

398 RoJ, paras. 427-432, referring to **CLA-329**, *Siemens, A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8. Decision on Jurisdiction, 3 August 2004, para. 137; **CLA-202**, *Guaracachi America, Inc. v. Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, paras. 352-354, 361-362; **CLA-320**, *Tza Yap Shum v. Peru*, ICSID Case No. ARB/07/6, Decision on Jurisdiction and Competence, 19 June 2009, paras. 81, 85, 92, 100. See also **CLA-328**, *Société Ouest Africaine des Bétons Industriels (SOABI) v. Senegal*, ICSID Case No. ARB/82/1, Decision on Jurisdiction, 1 August 1984; **CLA-44**, *Ioannis Kardassopolous v. Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007, paras. 123-124; **CLA-222**, *Hesham Talaat M. al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014, paras. 158, 503, 511, 514, 516; **CLA-330**, *CEMEX Caracas Investments B.V. & CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on Jurisdiction, 30 December 2010, para. 157.

that are protected within the meaning of the Treaty, which in turn requires that the following conditions be satisfied.

### i. *Inherent characteristics of an investment*

369. Article 1(1) of the Treaty reads as follows:

> The term "investment" in conformity with the hosting Party's laws and regulations, shall include every kind of assets in particular:
>
> (i) shares, stocks or any other form of participation in companies,
>
> (ii) returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment,
>
> (iii) movable and immovable property, as well as any other rights related thereto such as mortgages, liens, pledges and usufructs,
>
> (iv) industrial and intellectual property rights such as copyrights, patents, licenses, industrial designs, technical processes, as well as trade marks and names, goodwill and know-how,
>
> (v) business rights conferred by law or by contract, including rights to search for, cultivate, extract or exploit natural resources in the territory of each Party.

370. In line with other arbitral tribunals, the Tribunal considers that the term "investment" in Article 1(1) of the Treaty has an objective meaning which requires the presence of the inherent characteristics of an investment, namely, contribution, duration, and risk, which includes an expectation of commercial return.[399] The ordinary meaning of "investment" involves committing funds or other resources with the purpose to generate a profit.[400] The fact that Article 1(1) specifies that an investment "include[s] every kind of assets", and follows with a non-exhaustive list ("in particular") does not mean that investment means nothing more than an asset, as the Claimant would have it. The list merely identifies possible forms of investments. This appears particularly so where, as is the case here, the word "investment" is qualified by conformity with the host State's laws. That reading is confirmed by the Treaty context, especially by Article 9, which requires that an investment be approved by the host State for it to benefit from Treaty protection. Such approval requirement suggests an economic operation of a certain scale, rather than any kind of asset without limitation. The Tribunal's interpretation is also consistent with the Treaty's object and purpose, as expressed in its title and preamble, namely, the reciprocal promotion and protection of investments so as to

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399 See, e.g., **CLA-247**, *Antonio del Valle Ruiz and others v. Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 372; **RLA-268**, *Muszynianka v. Slovakia*, PCA Case No. 2017-08/AA629, Award, 7 October 2020, para. 289; **RLA-269**, *AMF Aircraftleasing v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, para. 460; **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, paras. 165-166; **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 207.

400 See, e.g., **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 177.

stimulate the flow of capital and technology, economic development, and the effective utilization of economic resources within a stable investment framework.

371. It follows that, for an investment to qualify for protection, it must be an asset as set out in Article 1(1) of the Treaty and have the inherent characteristics of an investment. The content of these inherent elements, namely, contribution, duration and risk, has been the subject of extensive analysis by arbitral tribunals, whose approaches have not always been uniform. This Tribunal considers that their main features can be described as follows.

372. The contribution element requires a commitment of resources of economic value.[401] The assets listed in provisions such as Article 1(1) of the Treaty are the result of the economic act of investing. In the words of *KT Asia v. Kazakhstan*, they presuppose an investment in the sense of a commitment of resources.[402] Such resources can take different forms. They may be financial, or consist in the supply of equipment, the provision of services, or the transfer of know-how or technology.

373. The duration of the investment may range from months to years depending on the circumstances surrounding the operation. What matters is to rule out trade or short-term commercial transactions. It is assessed in light of the intended, rather than the actual, duration of the investment.[403]

374. The risk element is related to the expectation of return and entails an uncertainty about the returns and the possibility of losing the resources committed.[404] By contrast, where there is no expectation of return, a commitment of resources cannot properly be characterized as an investment.

375. Finally, these characteristics are often closely interrelated and must therefore be assessed in their entirety by means of a holistic approach.

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401 See, e.g., **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 214; **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, paras. 165-166; **RLA-270**, *Capital Financial Holdings v Cameroon*, ICSID Case No. ARB/15/18, Award 22 June 2017, paras. 423-424; *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017, para. 370.

402 **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, para. 166.

403 See, e.g., **CLA-104**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, paras. 132-133; **RLA-19**, *Romak SA v. Uzbekistan*, PCA Case No. 2007-07/AA280, Award, 26 November 2009, para. 225; **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, paras. 208-209.

404 See, e.g., **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, para. 170; **CLA-81**, *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018, para. 215.

### ii. *Ownership*

376. It is not seriously disputed between the Parties, and rightly so, that the investor must have owned the investment in respect of which protection is sought at the time when the alleged violation of the Treaty occurred.

377. Article 1(1) defines the term "investment" by reference to an "asset", which implies ownership of the item constituting the asset.[405] The Treaty's FET standard also affords protection to "investments *of* the investors of the other Party", indicating that the protected investments must belong to the investor.[406] Other provisions of the Treaty also refer to "investments *of* investors" (Articles 6 and 8). It follows that the investor must own the investment at the time of the impugned measures.

378. It is true that the Respondent submits that the investment must not only be owned by the investor on the date of the breach,[407] but at "all legally relevant times",[408] and that the Claimant likewise refers to ownership "when Azerbaijan first breached the Treaty"[409] and "at all relevant times".[410] For present purposes, it suffices to repeat that the investor must own the investment at the time of the alleged Treaty breach and that a breach of the Treaty can only arise once the Treaty is in force, as will be further examined below. Mr. Bahari asserts that he made or acquired his investments before the entry into force of the Treaty on 20 June 2022. Hence, if the Tribunal were to find that Mr. Bahari no longer held his alleged investments upon the Treaty's entry into force, he would not have an investment qualifying for treaty protection.

379. *El Paso v. Argentina* on which the Claimant relies, does not suggest otherwise.[411] *El Paso* dealt with a different fact pattern in which the claimant had sold its investment after the initiation of the arbitration. Whatever the solution adopted there, it does not alter the position that an investor must hold the investment at the time of the measures about which he complains.

### iii. *Indirect investments*

380. There is no dispute that a qualifying investment must be made in the territory of the host State. Moreover, the Respondent does not appear to challenge the Claimant's position according to which the investment need not be made directly in the territory of the host State,[412] and rightly so.

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405 See, e.g., **CLA-319**, Black's Law Dictionary, Ninth Edition, WEST, 2009, p. 134, which defines assets to include "[a]n item that is owned and has value".

406 **CLA-1**, Treaty, Article 2(1) (emphasis added).

407 SoD, paras. 79-81. See also SoRJ, para. 181.

408 SoD, para. 79, referring to **RLA-143**, *Emmis International Holding and ors v. Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014, para. 169; SoRJ, para. 181(c).

409 SoR, para. 757.

410 C-PHB, para. 19.

411 **CLA-290**, *El Paso v Argentina*, ICSID Case No. ARB/03/15. Decision on Jurisdiction, 27 April 2006.

412 R-PHB, para. 48(1).

381. There is no indication in Article 1(1) of the Treaty that the investment must be direct, i.e., that it be made without the involvement of (an) intermediate holder(s). Investors frequently structure their foreign investments through several corporate layers for legal or regulatory purposes, and it is well-established that the ordinary meaning of "investment" is not limited to assets owned directly by the investor.[413] Arbitral tribunals have thus consistently refused to read the reference to the territory of the host State as a requirement for direct ownership of the assets constituting the investment.[414]

382. Neither does the context of Article 1(1) call for a different understanding. The Treaty consistently uses broad and unqualified language referring to "investments", without any limitation about how the investment must be held.

383. In addition, the object and the purpose of the Treaty impose no such restriction either. The preamble provides that the Contracting Parties desire to "promote greater economic cooperation between them, particularly with respect to investments by investors of one Party in the territory of the other Party" and "stimulate the flow of capital and technology and the economic development of the Parties".[415] Such objectives can be achieved irrespective of whether an investor carries its economic activities directly or indirectly, an interpretation which is confirmed by consistent decisions of a number of investment tribunals.[416]

384. In conclusion, the Tribunal determines that, for an investment to qualify for protection under the Treaty, it must (i) materialize in an asset within the meaning of Article 1(1) of the Treaty, and possess the inherent characteristics of an investment; (ii) be made on the territory of the host State, whether directly or indirectly; and (iii) be owned by the investor at the time of the alleged breach.

## 2. Application to the Claimant's alleged investments

### a. *Preliminary remarks*

385. As noted above, pursuant to Article 10 of the Treaty, the Tribunal has jurisdiction over disputes "with respect to an investment". Therefore, it is sufficient for the Claimant to

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413 See, e.g., **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 315. See also, *Deutsche Telekom v. India*, PCA Case No. 2014-10, Interim Award, 13 December 2017, para. 142.

414 **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 321; **CLA-330**, *CEMEX Caracas Investments B.V. & CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on Jurisdiction, 30 December 2010, para. 157; **CLA-202**, *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, para. 356.

415 **CLA-1**, Treaty, Preamble.

416 See **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 324; **CLA-202**, *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014, para. 352; **CLA-329**, *Siemens, A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8. Decision on Jurisdiction, 3 August 2004, para. 137.

establish that the dispute concerns an investment in order to gain access to arbitration and confer jurisdiction on the Tribunal.

386. It follows that if the Claimant succeeds in establishing the existence of at least one investment protected under the Treaty, the Tribunal's inquiry into its *ratione materiae* jurisdiction may end at that point. As other tribunals have observed, in such a situation it would be unnecessary to determine whether other alleged investments also qualify for protection at the level of jurisdiction, as any determination regarding these other alleged investments would not change the conclusion that the tribunal has jurisdiction over the dispute.[417] It would then become necessary to review whether the challenged measure harmed a qualifying investment when analyzing the merits.

387. Despite these methodological considerations, in the present case, it appears most efficient to start by assessing whether each type of investment alleged by Mr. Bahari qualifies as such under the Treaty. This is so because Mr. Bahari's claims involve five groups of investments which bear no direct economic relationship to one another, namely, Caspian Fish, Coolak Baku, Shuvalan Sugar, the Ayna Sultan Property, and the Carpets. Should any of the five groups fail to meet the *ratione materiae* jurisdictional requirement, then any further examination of the other aspects of the Tribunal's jurisdiction with respect to that group could be dispensed with.

### b. *Caspian Fish*

#### i. *The Parties' positions*

388. In the context of his investment in Caspian Fish, the Claimant relies on five distinct assets: shares in Caspian Fish BVI (a); rights under the Caspian Fish Shareholder Agreement (b); equipment and construction of the plant (c); design and know-how (d); and licenses (e). He also bases his claims on all these assets "as a whole" (f).

(a) Shares in Caspian Fish BVI and Ownership and Participation in the Local Representative Office and Caspian Fish LLC

389. The first investment asserted by Mr. Bahari under Article 1(1)(i) relates to his shares in Caspian Fish BVI. He contends that he holds "[o]wnership of equity (40%) of Caspian Fish BVI and the related rights to profits/dividends from the Caspian Fish business operation in Azerbaijan (via 40% equity) whether that business is run through the representative office or otherwise".[418]

390. It is the Respondent's submission that Mr. Bahari voluntarily sold his interest in Caspian Fish in September 2001 under the 2001 Agreement. Therefore, says the Respondent, he held no ownership interest in Caspian Fish, nor any indirect interest in any of its assets, on the date when the Treaty entered into force.[419]

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417 See, e.g., *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017, para. 381.

418 C-PHB, para. 18. See also SoC, para. 436; SoR, para. 760.

419 SoD, para. 101; SoRJ, para. 189.

391. Irrespective of this timing objection, the Respondent disputes that Mr. Bahari had any protected investment through his shares in Caspian Fish BVI for three main reasons. *First*, that company is a BVI entity and, as such, its shares do not qualify as assets located within the territory of Azerbaijan. Likewise, the rights to profits and dividends associated with Caspian Fish BVI cannot be deemed investments in Azerbaijan, as they arise solely from Mr. Bahari's ownership of BVI shares and not from any underlying assets located in Azerbaijan.[420] *Second*, Mr. Bahari's indirect interest in Caspian Fish's local representative office does not amount to a "participation in [a] compan[y]", as required under Article 1(1)(i) of the Treaty, because the local representative office is not a legal entity under Azerbaijani law, but merely an office out of which a foreign entity is operated.[421] *Third*, while Mr. Bahari's interest in Caspian Fish LLC via Caspian Fish BVI could constitute an investment under the Treaty, this interest does not grant the Tribunal jurisdiction over the claims, as Mr. Bahari cannot demonstrate that he made an indirect investment in Caspian Fish LLC.[422]

392. The Claimant denies having sold his shares in Caspian Fish BVI, be it in September 2001 under the 2001 Agreement, the authenticity of which he disputes, or in June 2002 under the 2002 Agreement. He contends that he did not accept that latter agreement which his counterparts sought to impose on him during the 15 June 2002 meeting in Dubai.[423]

393. More generally, Mr. Bahari insists that he held qualifying investments deriving from his shares in Caspian Fish BVI. *First*, his ownership through Caspian Fish BVI cannot negate protection under the Treaty, which encompasses indirect investments.[424] In addition, his equity in Caspian Fish BVI afforded him "right to profits and dividends from the business venture that was in-country".[425] *Second*, his participation in the local representative office qualifies as an investment under the Treaty, since that office was established to represent the interests of Caspian Fish BVI in Azerbaijan.[426] *Third*, Caspian Fish BVI's shares in Caspian Fish LLC constitute another indirect investment in Azerbaijan in which he held an interest.[427]

(b) Rights under the Caspian Fish Shareholders Agreement

394. Mr. Bahari further alleges that he had "contractual rights to a share of the profits generated by the business in Azerbaijan pursuant to the Shareholders Agreement", which rights qualify as investments under Article 1(1)(ii) of the Treaty.[428]

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420 SoD, para. 83; SoRJ, para. 184(b).

421 SoRJ, para. 184(a), referring to **RLA-162**, Law of the Republic of Azerbaijan "On Enterprises" No. 847, 1 July 1994, article 17, **C-3**, Charter of the Representative Office of Caspian Fish Co Inc, 27 April 1999.

422 SoRJ, para. 189.

423 SoR, para. 769.

424 RoJ, para. 432.

425 SoR, para. 762.

426 SoR, para. 762, referring to **C-3**, Charter of Representative Office of Caspian Fish Co., Inc., 27 April 1999.

427 SoR, para. 767.

428 C-PHB, para. 18. See also SoC, para. 436; SoR, para. 760.

395. The Respondent denies that the Caspian Fish Shareholder Agreement gave rise to investments protected under the Treaty, both on factual and legal grounds. On the facts, it challenges the authenticity of the Caspian Fish Shareholder Agreement.[429] On the law, it submits that the Caspian Fish Shareholder Agreement does not confer any rights to Mr. Bahari. *First*, arguing that a right to performance in an investment treaty "must be read as a right to performance in respect of the transfer of money", the Respondent submits that nothing in the Caspian Fish Shareholder Agreement grants Mr. Bahari any claim to money or performance that would qualify as an investment under the Treaty.[430] *Second*, the rights conferred by the Caspian Fish Shareholder Agreement constitute intangible property located in the BVI not in Azerbaijan. Consequently, even if any right arose from the Caspian Fish Shareholder Agreement, it would be "situated where it is properly recoverable or can be enforced", i.e., the BVI.[431]

396. For his part, the Claimant maintains that the Caspian Fish Shareholder Agreement is authentic.[432] He argues that, pursuant to the agreement, each shareholder was entitled to receive a specific portion of the company's profits. Therefore, the Caspian Fish Shareholder Agreement affords him "claims to money" and "rights to legitimate performance having financial value related to an investment" in the meaning of Article 1(1)(i) of the Treaty.[433]

(c) Equipment and the construction of the facility

397. It is the Claimant's submission that he personally funded the purchase of equipment and the construction of the Caspian Fish operation in Azerbaijan, which constitute an investment under Article 1(1)(iii) of the Treaty.[434]

398. The Respondent challenges the reality of such an investment. In its view, Mr. Bahari failed to prove that he disbursed any funds towards the purchase of equipment or the construction of the buildings of Caspian Fish.[435] Moreover, so it argues, assets and contracts owned by a company in which an investor holds shares do not qualify as the investor's investments.[436] It adds that the mere purchase of equipment for a company

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429 SoRJ, paras. 43-45, 185(a); Briggs ER, paras. 6.1.17-6.1.20; **C-4**, Caspian Fish Shareholders Agreement, 27 April 1999.

430 SoD, para. 84, SoRJ, para. 185(c), citing **RLA-148**, *The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al., Oxford, 2014, Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations, pp. 383, 387.

431 SoRJ, para. 185(b), citing **RLA-148**, *The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al., Oxford, 2014, Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations, p. 383.

432 Bahari WS-3, paras. 7-12.

433 SoR, paras. 763-765, referring to **RLA-148**, *The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al., Oxford, 2014, Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations, p. 383.

434 C-PHB, para. 18. See also SoC, para. 436; SoR, para. 760.

435 SoD, paras. 87-97.

436 SoRJ, para. 187, citing **CLA-59**, *Casinos Austria International v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018, paras. 183-184; also referring to **CLA-121**, *El Paso v. Argentina*, ICSID Case No. ARB/03/15, Award, 31 October 2011,

is a one-off transaction lacking elements of duration, return, and risk, and therefore cannot be deemed an investment.[437] Further, construction or refurbishment of a building may be a contribution to an investment in immovable property but is not an asset which itself could qualify as an investment.[438]

399. The Claimant characterizes Azerbaijan's allegations that he did not fund the Caspian Fish project are "patently false and incoherent":[439] he was the investor behind Caspian Fish, and "the evidentiary record overwhelmingly establishes that on any standard of proof, it was Mr. Bahari who provided the monetary investment" in Caspian Fish.[440] Further, so he submits, "[i]ntellectually dismantling large processing facilities to their individual component purchases is disingenuous to the point of absurdity and demonstrates the weakness of Azerbaijan's overall argument".[441] He adds that, as a shareholder in Caspian Fish BVI, he retained an ownership stake in the equipment and other immovable and movable assets even after he conveyed them to the company, arguing that several awards rendered under BITs comparable to the Treaty establish that an investor may directly claim assets associated with a local company, as he does in the present case.[442]

(d) Design, know-how and goodwill

400. The Claimant puts forward that he contributed industrial design, technical processes, goodwill and know-how to Caspian Fish, which qualify as an investment under Article 1(1)(iv) of the Treaty.[443]

401. The Respondent objects that the contributions of design, know-how, or goodwill are not investments, because they are one-off transactions.[444] Further, Mr. Bahari did not hold any industrial or intellectual property rights, as such rights would not constitute assets of Mr. Bahari but would instead belong to the company, and, therefore, would not qualify as his investments either.[445]

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paras. 188, 189, 193, 214; **RLA-273**, *Poštová banka v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, 9 April 2015, paras. 229, 245.

437 SoD, para. 100(a), referring to **RLA-149**, *Joy Mining v. Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, 6 August 2004, para. 55.

438 SoD, para. 100(b).

439 SoR, para. 766.

440 RoJ, para. 176.

441 SoR, para. 755(b).

442 RoJ, paras. 419-423, citing **CLA-117**, *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, paras. 322, 325; **CLA-326**, *Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020, para. 718; **CLA-327**, *Azurix Corp. v. The Argentine Republic (I)*, ICSID Case No. ARB/01/12, Decision on Application for Annulment, 1 September 2009, para. 108.

443 SoC, para. 436; SoR, para. 760.

444 SoD, para. 100(c).

445 SoRJ, paras. 186-187.

(e) Licenses

402. The Claimant contends that Caspian Fish BVI and Caspian Fish LLC were issued licenses authorizing the processing and export of caviar, which licenses meet the definition of investment under Article 1(1)(v) of the Treaty.[446]

403. In response, Azerbaijan denies having issued caviar processing or export licenses to Caspian Fish BVI, its local representative office, or Caspian Fish LLC. It stresses that Mr. Bahari provides no evidence of any such license. In any event, so it adds, these licenses would be assets of the company, not investments owned by the Claimant.[447]

(f) Caspian Fish "as a whole"

404. Finally, Mr. Bahari claims his investments should be "treated as a whole". He rejects the distinction made by the Respondent between the various components of his investments, arguing that such a distinction is "nonsensical" and "ignores that the scope of Mr. Bahari's investment was his work in Caspian Fish […]".[448] For him, this case does not involve the usual scenario where an investor acquires shares in an existing company. Instead, this is "the rarer shareholder case in which Mr. Bahari, as the initial and primary investor, himself handled and funded the startup of the investment", with the expectation of a return on the amounts he spent to fund the construction and startup.[449] Accordingly, so he argues, "Caspian Fish possess[es] the hallmarks of an 'investment'".[450]

405. The Respondent maintains that even if Mr. Bahari could prove he contributed to the assets of Caspian Fish, they would not qualify as his protected investments, as they are one-off transactions and the assets belong to the company.[451]

**ii. *Analysis***

406. The Tribunal starts its analysis by assessing whether Mr. Bahari sold his shares in Caspian Fish BVI before the Treaty's entry into force. The answer to this question is decisive, because the shares are the controlling investment without which, for the following reasons, he could not hold any of the other assets relating to Caspian Fish.

407. As mentioned, the Claimant claims five investments in connection with Caspian Fish: 40% shares in Caspian Fish BVI and related rights to profits or dividends; contractual rights to profits pursuant to the Caspian Fish Shareholders Agreement; equipment and constructed immovable property of the Caspian Fish operations; design, good-will, and know-how of the Caspian Fish operations; and rights under exploitation licenses.

446 SoC, paras. 90, 436; SoR, para. 766(e).
447 SoD, paras. 99-100.
448 RoJ, para. 416.
449 RoJ, para. 419.
450 SoR, para. 768.
451 R-PHB, para. 48(1).

408. It is Mr. Bahari's own case that he held the rights to profits and dividends via his shares in Caspian Fish BVI. Accordingly, if the shares were sold, no rights to profits and dividends could accrue.

409. Similarly, Mr. Bahari would no longer be entitled to rights to profits under the Caspian Fish Shareholders Agreement, as those rights were intrinsically linked to the shares.[452] In his PHB, the Claimant argues that the alleged share sale would not have affected his investments under the Caspian Fish Shareholders Agreement, "since the contracting parties are different than the BVI shareholders".[453] The Tribunal does not share this view: by their very nature Mr. Bahari's rights under the Shareholders Agreement are dependent on his capacity as shareholder. If he ceases being a shareholder, he necessarily loses the rights under the related contract, irrespective of the identity of the other parties.

410. The existence of Mr. Bahari's other alleged investments is likewise conditional upon the sale of his shares in Caspian Fish BVI. According to Mr. Bahari, "he invested the assets, and then created a BVI shareholding entity to hold them" and, as "an indirect shareholder"; he "retained an ownership stake in [its] equipment and other immovable and movable assets even after he conveyed them to [the company]".[454] Accordingly, in his own submission, other alleged investments are assets of the company. He contends, however, that "[t]he harm he has suffered is the loss of the value of his investment in [Caspian Fish BVI], a loss which is due, not only to his loss of shares following their forced transfer to other individuals, but also the expectations formed at the time of his making his investment that he would see return for the amounts he paid to finance construction and startup".[455] The Tribunal agrees that a treaty may protect the financial or commercial interest of an investor in an investment of which he is not the legal owner, but which is legally held by a third party. In theory, Mr. Bahari could therefore have a protected interest in the assets of the company even if he is no longer a shareholder. That said, in the case of a shareholder selling his shares to a third party, the former does not retain a financial or commercial interest in the underlying assets of the company, unless there is an agreement to this effect, which has not been alleged in this case. It follows that, if Mr. Bahari had sold his shares in Caspian Fish BVI and thus lost his shareholder status after transferring his investments to the company, he would no longer have any interest in the assets held by Caspian Fish BVI.

411. Lastly, the Tribunal notes that, when addressing Mr. Bahari's ownership of his purported investments, both Parties have referred to decisions discussing whether a shareholder has the right to bring claims in respect of the underlying assets of a company in which it holds shares.[456] This discussion, however, is relevant only if the investor is a shareholder: in principle, if the investor holds no shares, his or her links to

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452 See **C-4**, Caspian Fish Shareholders Agreement, 27 April 1999, Clause 6.

453 C-PHB, para. 33.

454 RoJ, footnote 738 and para. 419.

455 RoJ, para. 419.

456 See, e.g., *Casinos Austria International v. Argentina* ICSID Case No. ARB/14/32, Decision on Jurisdiction, 28 June 2018, **CLA-59**, paras. 183-184; *Poštová Banka v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, 9 April 2015, **RLA-273**, paras. 229-245.

the company are severed and so are any possible links to that company's underlying assets.

412. In conclusion, Mr. Bahari's shareholding in Caspian Fish BVI is the controlling investment: if he had divested the shares prior to the Treaty's entry into force, he would not have owned a protected investment in Caspian Fish after that date, and especially not at the time of the impugned measures.

413. The Tribunal now turns to the question of whether Mr. Bahari sold his shares before the Treaty's entry into force. It will first examine key evidence on record on this issue and then proceed with its analysis in the broader context of the dispute.

The 2001 Agreement

414. In support of its contention that Mr. Bahari sold his shares in September 2001, the Respondent first relies on exhibit **R-50**, which is the 2001 Agreement.[457] This document is a one-page "Buyer and Seller Agreement" between Mr. Khanghah and Mr. Bahari dated 20 September 2001, allegedly signed by Mr. Bahari. It is purported to show that Mr. Khanghah bought out Mr. Bahari's shares in Caspian Fish BVI for a price of USD 4.5 million to be paid in instalments, with the first payment of USD 1.5 million to be made no later than 5 November 2001. The 2001 Agreement further provides that Mr. Bahari agreed to "[redacted]".[458]

415. Mr. Bahari submits that exhibit R-50 is a "[redacted]". He adds that "the document was not notarized, it includes no witness names or signatures, and the names of the contracting parties are incorrectly spelled".[459] At the Hearing, he reaffirmed that there was no sale between him and Mr. Khanghah, explaining that it would be illogical for him to have sold his shares for USD 4.5 million after having invested significantly more in Caspian Fish.[460]

416. The Parties' handwriting experts examined the original document, but neither provided a conclusive opinion on the authenticity of the document or of Mr. Bahari's signature.[461]

The payment receipt of 5 November 2001

417. The Respondent further relies on exhibit **R-51**, a single page document dated 5 November 2001 allegedly signed by Mr. Bahari and confirming receipt of USD 1.5 million in his Commerz Bank account for the sale of his shares in Caspian Fish BVI.[462] According to the Respondent, this document proves that Mr. Bahari's acknowledgement that "he was paid the first tranche of USD 1.5 million under the [2001

457 **R-50**, Buyer and Seller Agreement between Mr. Bahari and Mr. Khanghah, 20 September 2001.
458 **R-50**, Buyer and Seller Agreement between Mr. Bahari and Mr. Khanghah, 20 September 2001.
459 C-PHB, para. 24. See also SoR, para. 364; Bahari WS-2, para. 21(d).
460 C-PHB, paras. 24-25. See also Hearing Transcript, Day 2, 104:19-22.
461 Briggs ER, paras. 4.5.1-4.5.10; Morrissey ER, paras. 3.2.1-3.2.9.
462 **R-51**, Receipt for USD 1.5 million, 5 November 2001.

Agreement], and pursuant to the parties' agreement, documents for the transfer of shares were signed, and beneficial ownership of the shares transferred from Mr. Bahari".[463]

418. The Claimant contends that exhibit **R-51** "is also forged and equally suspect". He emphasizes that it "misspells [his] name, and there is no notarization or witness that could confirm [his] signature".[464]

419. As for exhibit **R-50**, the Parties' handwriting experts who inspected the original, did not provide a definitive opinion as to its authenticity.[465]

The undated stock transfer form

420. Azerbaijan contends that, in or around November 2001, Mr. Bahari executed a stock transfer form legally transferring his shares to Mr. Khanghah, in accordance with his obligations pursuant to the 2001 Agreement.[466] The Respondent's contention relies on exhibit **R-129**, which is a one-page undated stock transfer form, recording the transfer of 400,000 shares of "Caspian Fish Co." from Mr. Bahari to Mr. Khanghah for a consideration of USD 4.5 million and is allegedly signed by Mr. Bahari.[467]

421. According to the Claimant, exhibit R-129 is also forged and he has neither seen nor signed that document.[468]

422. Again, none of the handwriting experts offers a definitive opinion about whether Mr. Bahari's signature is genuine.[469] However, the evidence of Ms. Briggs, the Respondent's expert, is that exhibit R-129 was signed on top of exhibit R-51, suggesting that both documents were signed at the same time.

The second payment receipt

423. The Respondent submits that Mr. Bahari later acknowledged a further tranche of USD 2 million via various representatives,[470] as evidenced by a payment receipt bearing the date of 14 June 2002, produced as exhibit **R-52**.[471]

424. Mr. Bahari objects that exhibit R-52 is a merger of (i) a fraudulent typewritten receipt in English that he has never seen and (ii) a handwritten Farsi note from him, with his signature, which concerns the repayment of a USD 2 million cash advance which he had previously made to Mr. Heydarov, and is therefore unrelated to a sale of shares.[472] He points out that the document is "riddled with material indications of inauthenticity",

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463 R-PHB, para. 197.
464 C-PHB, para. 27.
465 Briggs ER, paras. 4.6.1-4.6.6; Morrissey ER, paras. 3.3.1-3.3.9.
466 R-PHB, para. 197.
467 **R-129**, Stock Transfer Form, undated.
468 SoR, paras. 364-368; 379-380.
469 Briggs ER, paras. 4.16.1-4.16.14; Morrissey ER, paras. 3.10.1-3.10.12.
470 R-PHB, para. 197.
471 **R-52**, Receipt for payment of USD 2 million, undated.
472 SoR, paras. 411-417; Bahari WS-2, para. 21(f).

including that the first page makes no mention of a sale of shares and is unsigned, and that the note in Farsi records payment for a sum of USD 2 million to multiple people in Azerbaijan, not including him.[473]

The 2002 Agreement

425. The Parties concur that Messrs. Bahari and Khanghah met on 15 June 2002 in Dubai. However, they provide divergent accounts of what transpired at that meeting.

426. According to Mr. Bahari, Mr. Khanghah was sent to Dubai by Mr. Heydarov. During the meeting, Mr. Khanghah attempted to coerce him into selling his shares pursuant to the 2002 Agreement, exhibited as exhibit **C-17**.[474] However, Mr. Bahari did not agree to the terms of the 2002 Agreement, which he never signed. Instead, he made a counterproposal, which he and Mr. Khanghah both signed, and which appears as the fifth handwritten page in Farsi of exhibit C-17.[475] It is Mr. Bahari's submission that exhibit C-17 shows that Mr. Heydarov sought to force him to sell his shares, which he did not do. Moreover, he claims that his testimony on the content of the 15 June 2002 meeting stands unchallenged, as the Respondent did not cross-examine him on his account.[476]

427. By contrast, Azerbaijan argues that the terms of the 2002 Agreement are evidence that, at the 15 June 2002 meeting, payment of the remaining USD 1 million under the 2001 Agreement was restructured, and various additional sums were agreed to be paid to Mr. Bahari. It submits that it "has been unable to locate a copy of the 2002 Agreement signed by both Mr Khanghah and Mr Bahari, but it is likely that it was signed by Mr Bahari".[477] It adds that the handwritten note in Farsi was not a counteroffer but only contained additional promises to solve pending issues in relation to Coolak Baku and to deliver the Carpets.[478]

Extracts of Mr. Heydarov's notebooks

428. The Respondent produced a "contemporaneous ledger […] obtained from the files of Mr Heydarov's late assistant"[479] as exhibit **R-389**,[480] which it alleges shows cash payments to Mr. Bahari in 2002 in amounts that closely match with the schedule agreed in the 2001 Agreement and the 2002 Agreement.[481]

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473 C-PHB, para. 28.
474 **C-17**, 2002 Agreement, 15 June 2002.
475 SoC, paras. 165-184; SoR, paras. 739, 1085; Bahari WS-1, paras. 81-84.
476 C-PHB, paras. 282-284.
477 SoD, para. 285.
478 R-PHB, para. 197; SoD, paras. 282-288.
479 R-PHB, para. 197(3).
480 **R-389**, Extracts of Notebooks containing records of payments in relation to Mr. Heydarov's business affairs from 2002.
481 SoRJ, paras. 470-471.

429. Mr. Bahari rejects the notebook entries as unreliable and unauthenticated. He adds that, in any event, there is no indication of what the payments were for and no indication that the currency was USD.[482]

Caspian Fish BVI records

430. For his part, the Claimant produced various documents from the Caspian Fish BVI corporate records, arguing that they contain no indication of a sale of his shares in 2001. Relying in particular on a director's resolution exhibited as exhibit **C-122**,[483] he submits that he still held his shares on that date, as the resolution records that he was issued a new share certificate in 2006, and that his shares were transferred to Mr. Khanghah in a follow-on transaction, with the transfer backdated to 5 March 1999.[484]

431. For the Respondent, the register of members of Caspian Fish BVI produced as exhibit **C-109** demonstrates that Mr. Bahari's shares were transferred to Mr. Khanghah.[485] While acknowledging that the register records the date of the share transfer as 5 March 1999, i.e., the same date of Caspian Fish BVI's incorporation, the Respondent claims that it does not know the reason for the backdating of this entry and maintains that the transfer reflects the terms of the sale agreement.[486] Further, the register of members of Caspian Fish BVI shows, says the Respondent, that ten days after the 2001 Agreement, Mr. Bahari was removed as a director of Caspian Fish.[487] Moreover, the Respondent submits that under BVI law, it is clear that Mr. Bahari sold his shares and ceased to be a shareholder before the Treaty entered into force.[488]

The email of 4 December 2013

432. Finally, the Respondent filed an email from Mr. Bahari to Mr. Kalantarili dated 4 December 2013 as exhibit **R-53**, in which the former acknowledged receiving USD 5.36 million from Mr. Heydarov.[489]

433. Mr. Bahari does not dispute that he sent that email after his trip to Azerbaijan in 2013 and stated there that Mr. Heydarov had paid him USD 5.36 million. However, he says, this amount was reimbursing him for loans to Mr. Heydarov, with whom he had "[redacted]" when he went to Azerbaijan.[490]

434. According to the Respondent, the payment acknowledged in exhibit R-53 matches the total sum of USD 5.3 million agreed upon for the sale of Mr. Bahari's shares under the 2002 Agreement, thus confirming that Mr. Bahari had indeed sold his shares. The

482 RoJ, paras. 300-305.
483 **C-122**, Caspian Fish Co. Inc, Director's Resolution in writing.
484 RoJ, paras. 336-340.
485 **C-109**, Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007.
486 SoD, para. 278.
487 R-PHB, para. 197; **C-109**, Caspian Fish Co. Inc. Registers and Datasheet, 3 May 2007, p. 9 PDF.
488 SoD, para. 278.
489 **R-53**, Email from Mr. Bahari to A Kalantarli copied to President's Office, 4 December 2013.
490 Hearing Transcript, Day 3, 112:15-17.

Respondent disputes Mr. Bahari's explanation that the payments were loan repayments, arguing that there is no evidence that Mr. Bahari lent money to Mr. Heydarov and that it beggars belief that Mr. Heydarov would ask or accept a loan from Mr. Bahari if he needed to borrow money.[491]

435. On the basis of the evidentiary record just outlined, the Tribunal now proceeds to review whether Mr. Bahari had sold his shares. The starting point of the analysis is the 2002 Agreement. While Mr. Bahari disputes the authenticity of the 2001 Agreement and other pieces of evidence, he accepts that the 2002 Agreement is authentic and was discussed with Mr. Khanghah at the 15 June 2002 meeting. The 2002 Agreement provides for the sale of Mr. Bahari's 40% equity in Caspian Fish BVI in the following terms:

[redacted][492]

436. Despite the formal imperfections, the meaning of these provisions is clear. The 2002 Agreement is not a sales agreement but rather a "[redacted]" relating to the sale of Mr. Bahari's shares, which provides for the payment of a remainder of USD 1 million out of a total amount of USD 4.5 million and an additional remittance of USD 820,000.

437. The very notion of a "[redacted]" with respect to the sale of the shares implies the existence of a prior sale agreement. Likewise, the reference to a sum of USD 1 million "[redacted]" USD 4.5 million presupposes a previous agreement for the payment of that total. Hence, the clear and undisputed terms of the 2002 Agreement strongly point to an earlier contract over the sale of Mr. Bahari's shares for a price of USD 4.5 million. Considering that the 2001 Agreement is such a prior sales contract and that it sets the consideration for the shares at USD 4.5 million, the 2002 Agreement constitutes convincing evidence, produced by Mr. Bahari himself, that he agreed to sell his shares pursuant to the 2001 Agreement.

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491 R-PHB, paras. 198-199.

492 **C-17**, 2002 Agreement, 15 June 2002, pp. 1-2 (emphasis added).

438. The fact that the 2001 Agreement is not notarized, bears no names or signatures of witnesses, and that the parties' names are spelled incorrectly, does not mean that it is forged or otherwise not genuine. Mr. Bahari has not alleged, let alone established that the 2001 Agreement required notarization or witness signatures to be binding and enforceable. Neither is it shown or plausible that misspelled names that are transliterated from other alphabets are an indication of forgery. Quite to the contrary, Persian names may have various transliterations into the Latin alphabet. For instance, Mr. Bahari's name is transliterated differently in some documents on record whose authenticity is not in dispute.[493]

439. In addition, the price of USD 4.5 million for 40% of Caspian Fish BVI shares is consistent with the estimates of Mr. Bahari's own quantum experts of his investments in Caspian Fish. Excluding the value of the Chartabi Contract (which is discussed below), the total value of his investments in Caspian Fish considered as '[redacted]' by Secretariat amounts to USD 11 million.[494] Mr. Bahari's 40% participation is equivalent to USD 4.4 million, which is roughly the price of the shares under the 2001 Agreement.

440. Moreover, the reference in the 2002 Agreement to a remaining payment of USD 1 million out of a total of USD 4.5 million, which is not disputed by Mr. Bahari, suggests that he had already collected USD 3.5 million by 15 June 2002. This amount of USD 3.5 million conforms to the payment receipts for USD 1.5 million of 5 November 2001 (**R-51**) and for USD 2 million of 14 June 2002 (**R-52**). This conformity tends to accredit the authenticity of the three payment receipts.

441. In this context, it is noteworthy that Mr. Bahari does not dispute the authenticity of the handwritten note in Farsi contained in exhibit R-52. That note states: '[redacted]'.[495] Mr. Bahari attempts to explain his acknowledging receipt of USD 2 million by saying that it referred to the reimbursement of a cash advance extended to Mr. Heydarov. However, this explanation is unsupported by evidence beyond Mr. Bahari's testimony. It is also inconsistent with his own case that, at that time, Mr. Heydarov and others used physical violence against him and his associates, and sought to expropriate him. Why would Mr. Heydarov then have chosen to voluntarily repay a loan?

442. As for the second payment receipt filed as exhibit **R-51**, similarly to the 2001 Agreement, the lack of notarization and witnesses is no indication of forgery. Therefore,

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493 See, e.g., **C-1**, Coolak Baku Joint Venture Agreement, 23 January 1998 ("Mahammad"); **SEC-76**, Contract between Super-Pufft Popcorn Corp and Mr. Bahari, 30 November 1998 ("Mohammed").

494 See Secretariat ER-2, para. 7.121. (44,417,931 * 0.896) – 28,800,000 = USD 10,998,466.

495 **R-52**, Receipt for payment of USD 2 million, pp. 2-3.

the most plausible explanation is that, by June 2002, Mr. Bahari had received an amount of USD 3.5 million for the sale of his shares.

443. Returning to exhibit **C-17**, the handwritten note in Farsi appearing on the last page, the authenticity of which is undisputed, says that Mr. Bahari "[redacted]".[496]

444. Mr. Bahari's submission that this note was a "proposal" under which he "agreed to sell his shares in Caspian Fish in exchange for a settlement of the sums he had invested in the company – that is, $56 million" – finds no support in the note. At the very least, such a proposal would be expected to be set out with clarity and to identify an amount. However, the note merely refers to a "[redacted]". In addition, this "[redacted]" is not framed as a condition for the sale of the shares, but rather for the delivery of documents and evidence about the sale. As a result, rather than a condition, Mr. Bahari's commitment appears as a supplement to the terms of the final settlement set out in the 2002 Agreement.

445. Another material piece of evidence informing the Tribunal's analysis is Mr. Bahari's email of 4 December 2013. There, the Claimant confirmed having received USD 5.36 million from Mr. Heydarov, an amount close to the total of USD 5.32 million payable to him pursuant to the 2002 Agreement. Mr. Bahari does not dispute having sent this email and has offered no explanation for the source of this payment other than the repayment of loans allegedly made to Mr. Heydarov years earlier. However, this explanation appears improbable. *First*, it rests on no evidence other than his own testimony and *second*, is inconsistent with the very essence of his case. Indeed, it seems unlikely that Mr. Heydarov would at the same time deprive Mr. Bahari of investments amounting to several tens of millions of USD and repay to him a USD 5.3 million debt. For these reasons, the Tribunal finds that the email of 4 December 2013 corroborates that Mr. Bahari was paid the amount due to him pursuant to the 2002 Agreement.

446. In addition, the Tribunal notes that Mr. Bahari's claim that the documents relating to the sale of his shares produced by the Respondent are not authentic or forged is not established. Although his handwriting expert had the opportunity to inspect the original documents, she was unable to conclude that they were falsified or that his signature had been forged. In addition, the 2002 Agreement produced by Mr. Bahari himself supports the conclusion that Mr. Bahari did in fact sell his shares in Caspian Fish BVI.

447. This being so, the BVI corporate records raise certain questions. In particular, it is surprising that the share transfer was not recorded in the register of members until the

496 **C-17**, 2002 Agreement, 15 June 2002, pp. 5-6.

2006 director's resolution and then backdated to 5 December 1999. It is equally surprising that the transfer was effected after the issuance of a new share certificate to Mr. Bahari. However, these circumstances alone do not disprove the existence of a prior share sale. First, the resolution's purpose was '[redacted]'.[497] It was thus intended to cover the period during which the sale took place. Furthermore, the newly issued share certificate was immediately cancelled and the shares transferred to Mr. Khanghah in the same resolution. While the registered transfer date of 5 December 1999 remains unexplained, this fact does not suffice to prove fraud, contrary to the Claimant's assertion.[498]

448. In conclusion, on the basis of the record, the Tribunal finds that Mr. Bahari sold his shares in Caspian Fish BVI before the Treaty entered into force on 20 June 2022. As the Caspian Fish BVI shares were the controlling investment, it follows that Mr. Bahari could not have owned any of the assets claimed to be part of the Caspian Fish investment when the Treaty entered into force and, more importantly, on the date of the alleged Treaty breaches. Accordingly, without it being necessary to decide whether these investments meet the requirement for Treaty protection, the Tribunal finds that it lacks jurisdiction over the part of the dispute that arises in connection with Mr. Bahari's alleged investments in Caspian Fish.

### c. *Coolak Baku*

#### i. *The Parties' positions*

449. The Claimant claims to hold five assets in relation to Coolak Baku: shares in the Coolak Baku JV (a); choses-in-action under the JV agreements (b); equipment and construction of the plant (c); design and know-how (d); and a license (e). He also bases his claims on all these assets "as a whole" (f).

(a) Shares in the Coolak Baku JV

450. It is common ground that Mr. Bahari held a 75% equity stake in the Coolak Baku JV, whether under the 1998 JVA as asserted by Mr. Bahari or under the 1999 JVA as claimed by Azerbaijan. It is equally undisputed that this 75% interest in the JV qualifies as "shares, stocks or any other form of participation in companies" under Article 1(1)(i) of the Treaty.[499]

(b) Choses-in-action under the 1998 JVA and the 1999 JVA

451. The Claimant contends that both the 1998 JVA and the 1999 JVA provided for choses-in-action and he thus holds "claims to money or any other right to legitimate

497 **C-122**, Caspian Fish Co Inc, Director's Resolution in writing, undated, clause 1.
498 RoJ, para. 339.
499 SoR, para. 773; SoD, paras. 102, 201.

performance having financial value" related to Coolak Baku, which qualify as an investment under Article 1(1)(ii) of the Treaty.[500]

452. For the Respondent, the 1999 JVA, which superseded the 1998 JVA, removed any specific obligation on the parties to contribute assets or perform any obligation under the JV, and contains no financial obligations owing to Mr. Bahari.[501] In addition, Mr. Bahari fails to particularize how these alleged choses-in-action are the subject of his claims.[502]

(c) Equipment and construction of the facility

453. The Claimant contends that he "had the vision for, carried out, and paid for the design, construction, and equipment for the Coolak Baku facility, which are assets of 'moveable and immovable property' under Article 1(1)(iii) of the Treaty".[503]

454. The Respondent challenges the existence of any qualifying investment by Mr. Bahai in this respect, relying on arguments like those advanced in relation to Caspian Fish. *First*, Mr. Bahari fails to prove that he paid for the design, construction or equipment in connection with the establishment of Coolak Baku's beverage production facility.[504] *Second*, such payments would not constitute investments satisfying the objective criteria under the *Salini* test.[505] *Third*, Mr. Bahari owned neither the equipment nor the buildings on the date of the alleged breach, since the equipment was transferred to the JV and the immovable property was at all times owned by ASFAN.[506]

455. The Claimant rejects the Respondent's arguments on grounds similar to those raised in respect of Caspian Fish.[507]

(d) Design, know-how and goodwill

456. The Claimant submits that the "contribution of his experience and knowledge from prior companies in Iran", and "his overall role as the leader and manager of development and design and execution of the Coolak Baku facility" are know-how, design, and good-will under Article 1(1)(iv) of the Treaty.[508]

457. For the Respondent, there is no evidence that Mr. Bahari brought or created any know-how, design or good-will in relation to Coolak Baku.[509] In any event, so it argues, know-how, design or goodwill allegedly contributed to the JV by Mr. Bahari cannot qualify as

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500 SoR, paras. 771, 774, referring to **C-1**, Coolak Baku Joint Venture Agreement, 23 January 1998, Clauses 6 and 10, and **R-72**, Contract between ASFAN and Mr. Bahari in relation to Coolak Baku Co (1999 Agreement), 9 September 1999, p. 2.
501 SoD, para. 103; SoRJ, para. 192.
502 SoRJ, para. 192.
503 SoR, para. 775.
504 SoD, paras. 106-109; SoRJ, paras. 193-194.
505 SoD, para. 112; SoRJ, paras. 193-194.
506 SoD, para. 112; SoRJ, para. 193.
507 SoR, para. 775.
508 SoR, paras. 771, 776.
509 SoD, para. 110; SoRJ, para. 193.

an investment under the Treaty, as these would have been one-off transactions and were not owned by Mr. Bahari.[510]

(e) License

458. The Claimant alleges that, on 16 April 1999, the Coolak Baku JV was issued a license by the Ministry of Agriculture for the production of 20,000 decalitres of beer per year which qualifies as a "business right conferred by law" under Article 1(1)(v) of the Treaty.[511]

459. The Respondent does not dispute that the license was issued to the Coolak Baku JV, but submits that it does not qualify as Mr. Bahari's investment, relying on *Casinos v. Argentina* where the tribunal found that the license of the local entity in which the claimants held shares could not be regarded as an investment.[512]

(f) Coolak Baku "as a whole"

460. As with Caspian Fish, the Claimant asserts that his investments in Coolak Baku must be treated as a whole, claiming that the development and construction of Coolak Baku, including the purchase of equipment, was not a "one-off transaction lacking elements of duration, return and risk".[513] He further argues that he retained an ownership interest in the equipment and other movable and immovable assets even after transferring them to the JV.[514]

**ii. *Analysis***

461. Mr. Bahari's alleged investments in connection with Coolak Baku are similar to those related to Caspian Fish, insofar as the principal investment consists of shares. They nonetheless differ in an important respect. It is uncontested, and rightly so, that Mr. Bahari's 75% interest in the JV constitutes "shares, stocks, or any other form of participation in companies" within the meaning of Article 1(1)(i) of the Treaty, and that Mr. Bahari held such shares at the time of the Respondent's alleged breaches. In addition, since the Coolak Baku JV is a legal entity incorporated in Azerbaijan in accordance with Azerbaijani law, there is no question that the investment was situated in the territory of the Respondent.

462. As a consequence, the remaining issue is whether the shares display the inherent characteristics of an investment, namely contribution, duration, and risk, which the Tribunal examines below.

463. *First*, with regard to the contribution element, Mr. Bahari was to receive 75% of the shares in the JV in consideration for constructing a beverage production facility,

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510 SoD, para. 112(c); SoRJ, para. 193.

511 SoR, para. 777, referring to **C-83**, Coolak Baku Licence, Azerbaijan Ministry of Agriculture, 26 April 1999.

512 SoRJ, para. 187, citing **CLA-59**, *Casinos Austria International v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018, paras. 183-184.

513 SoR, para. 778.

514 RoJ, paras. 416-423.

supplying the equipment required, providing know-how, and making a capital contribution of USD 1.5 million.[515] It is established that Mr. Bahari has, at least in part, delivered on his commitments. Mr. Zeynalov explained in his first witness statement that Mr. Bahari "[redacted]" and "[redacted]".[516] Mr. Aliyev further acknowledged at the Hearing that Mr. Bahari procured the construction and renovation of the buildings and purchased and installed equipment on Coolak Baku's premises.[517] In addition, Azerbaijan concedes that "Mr. Bahari has provided evidence that he invested between USD 134.577 to 846.822 in Coolak Baku".[518] Accordingly, Mr. Bahari committed resources of economic value to Coolak Baku in consideration for his participation in the JV.

464. *Second*, it is common ground that the project began in 1996 and continued for a period of several years, and that at least two joint venture agreements were concluded in 1996 and 1998. It is further undisputed that Mr. Bahari purchased equipment at least between March and October 1997[519] and that construction was in progress as of July 1998.[520] Moreover, the Coolak Baku JV was intended to operate over time, as evidenced by the terms of the 1998 JVA, which provided *inter alia* that the joint venture could not be liquidated until the project was fully completed.[521] Accordingly, Mr. Bahari committed resources to a project meant to last for a significant period of time.

465. *Third*, the purpose of the Coolak Baku JV was to undertake the production of alcoholic beverages, soft drinks, and juices, together with a broad range of other commercial operations, with a view to generating profits for the shareholders. This is clear from the 1998 JVA, which enumerates the activities of the JV and stipulates that profits are to be distributed among the parties in proportion to their participation,[522] as well as from correspondence from ASFAN filed by the Respondent.[523] In the Tribunal's view, such an expectation of profit implies the assumption of risk.

466. On this basis, the Tribunal concludes that Mr. Bahari's shares in the Coolak Baku JV possess the inherent characteristics of an investment. As the other requirements for protection under the Treaty are likewise satisfied, it follows that Mr. Bahari's shares in the Coolak Baku JV constitute a protected investment.

467. For the reasons set out above, this finding is sufficient to establish the Tribunal's jurisdiction over the claims in respect of Coolak Baku, without requiring determination that the other investments claimed in connection with Coolak Baku are protected under

515 **C-1**, Coolak Baku Joint Venture Agreement, 23 January 1998.
516 Zeynalov WS-1, paras. 14-15.
517 Hearing Transcript, Day 6, 163:15-19.
518 R-PHB, para. 204.
519 Oxera ER-1, para. 1.23.
520 **R-26**, Letter from ASFAN Ltd to Mr. Bahari, 2 July 1998.
521 **C-1**, Coolak Baku Joint Venture Agreement of 23 January 1998, clause 14.3.
522 **C-1**, Coolak Baku Joint Venture Agreement of 23 January 1998, clauses 2.1 and 6.2
523 **R-26**, Letter from ASFAN Ltd to Mr. Bahari, 2 July 1998.

the Treaty. Accordingly, the Tribunal has jurisdiction over the dispute to the extent that it concerns Mr. Bahari's investments in Coolak Baku.

### d. *Shuvalan Sugar*

#### i. *The Parties' positions*

468. The Claimant asserts three categories of qualifying investments, all of which are disputed by the Respondent.[524] He claims that (i) he owned and participated in Shuvalan Sugar, which qualifies as an investment under Article 1(1)(i) of the Treaty; (ii) he had choses-in-action in Shuvalan Sugar, which qualify as an investment under Article 1(1)(ii) of the Treaty; and (iii) he designed, constructed, equipped, and paid for the Shuvalan Sugar facility, which constitutes an investment under Article 1(1)(iii) of the Treaty.[525]

469. For the Respondent, Shuvalan Sugar was not a company, nor a business of any kind. Therefore, any alleged "participation" of Mr. Bahari in Shuvalan Sugar would not constitute an investment under the Treaty.[526] As regards Mr. Bahari's claims that he had choses-in-action, his "pleading is grossly deficient, failing to particularize which alleged business rights or claims to money Mr Bahari could possibly to said to have […]". The Tribunal should accordingly dismiss any claim that Mr. Bahari's had an investment in the form of business rights or claims to money.[527] In respect of the claim in relation to the design, construction, and equipment of Shuvalan Sugar, the Respondent argues that Mr. Bahari fails to prove his allegations.[528] In any event, Mr. Bahari's claims are subject to the same challenges as those concerning Coolak Baku, namely that they do not meet the objective criteria under *Salini*, and that Mr. Bahari did not own them.[529]

#### ii. *Analysis*

470. It is common ground that Mr. Bahari's purported investments in Shuvalan Sugar are directly connected to the Coolak Baku JV agreements. Indeed, Mr. Bahari submits that he owned a participation in Shuvalan Sugar "as part of the Coolak Baku JVA" and had choses-in-action "via the Coolak Baku JVA".[530] For its part, the Respondent likewise contends that Shuvalan Sugar was a "business activity under Coolak Baku", even though it claims that it never materialized.[531] Neither does Azerbaijan deny that Mr. Bahari was a "shareholder in Coolak Baku (and Shuvalan Sugar, to the extent that was a business of Coolak Baku)".[532]

524 SoR, paras. 779-780.
525 SoR, paras. 780-781.
526 SoD, para. 114.
527 SoD, para. 114.
528 SoD, para. 115; R-PHB, para. 48(3).
529 SoD, para. 116; SoRJ, para. 196.
530 SoR, para. 780.
531 SoD, para. 114.
532 R-PHB, para. 8.

471. The Tribunal notes that a sugar refining activity falls indeed within the scope of the JV's activity under the joint venture agreements, whether of 1996, 1998, or 1999.[533] Thus, assuming that Mr. Bahari financed the construction and equipment of the Shuvalan Sugar facility as he alleges, these investments would, in effect, have been made under the joint venture agreements, and it is in his capacity as a shareholder of the Coolak Baku JV that he would have been entitled to a share of the profits generated by such investments.

472. Having determined that it has jurisdiction over the part of the dispute linked to Coolak Baku and considering that Shuvalan is part of the Coolak Baku operation, the Tribunal concludes that its jurisdiction extends to the Claimant's purported investments in connection with Shuvalan Sugar.

### e. *Ayna Sultan*

#### i. *The Parties' positions*

473. Mr. Bahari contends that his title to the Ayna Sultan Property constitutes an investment within the meaning of Article 1(1)(iii) of the Treaty.

474. While the Respondent does not dispute that the Claimant owned the Ayna Sultan Property and that immovable property constitutes an asset under Article 1 of the Treaty, it denies that Mr. Bahari's ownership of the Ayna Sultan Property entitles him to protection under the Treaty. According to Azerbaijan, Mr. Bahari sold his interest in the Ayna Sultan Property on 14 December 1999 and was paid for it.[534] In addition, Azerbaijan refutes Mr. Bahari's allegations that he purchased the property for the purpose of constructing prestigious office buildings, arguing that the record establishes that the Ayna Sultan Property was a small 45.2 square meter residential dwelling.[535] Relying on *Seo v. Korea*, where the tribunal found that houses not predominantly used for rental purposes lack the return component inherent in the meaning of investment, it contends that the Ayna Sultan Property is not an investment, as it does not meet the criteria set out in *Salini*.[536]

475. Mr. Bahari disputes having sold his interest in the Ayna Sultan Property.[537] He also disputes the applicability of the *Salini* test and argues that *Seo v. Korea* is distinguishable, as the relevant UK-Korea BIT provides for a definition of the term

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533 See **R-98**, Agreement between Coolak Shargh and ASFAN, 29 February 1996, clause 2.1; **C-1**, Coolak Baku Joint Venture Agreement, 23 January 1998, clause 2.1; **R-72**, Contract between ASFAN and Mr. Bahari in relation to Coolak Baku Co, 9 September 1999, clause 2.

534 SoD, paras. 117-119; **R-62**, Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr. Gambarov and Mr. Bahari, 14 December 1999; **R-63,** Receipt issued by Mr. Bahari to Mr. Gambarov for payment, 14 December 1999.

535 SoRJ, para. 200; R-PHB, para. 48(4), referring to **C-16**, Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.

536 SoD, para. 120; SoRJ, para. 199, referring to **RLA-150**, *Jin Hae Seo v. Korea*, HKIAC Case No. 18117, Final Award, 27 September 2019, paras. 123, 126.

537 SoR, paras. 540, 787.

investment akin to *Salini*, which differs from Article 1 of the Treaty.[538] Moreover, he maintains that his investment was not a one-off transaction, as he "purchased Ayna Sultan to ultimately become a prestigious office building that would be the headquarters for his various Azerbaijan businesses", claiming that the fact that he was unable to follow through was a result of Azerbaijan's adverse actions.[539]

### ii. *Analysis*

476. The Tribunal first addresses the Respondent's argument that the Ayna Sultan Property cannot constitute a qualifying investment as it does not possess the inherent characteristic of an investment.

477. As discussed above, the Tribunal considers that the expectation of a commercial return is a characteristic element of an investment for the purposes of treaty protection. Although certain arbitral tribunals have regarded it as an autonomous criterion, this Tribunal, in line with many others, views it as part of the risk component.[540] A commitment of resources without an expectation of commercial return is akin to the consumption of those resources or a mere expenditure and cannot properly be regarded as falling within the ordinary meaning of an investment.

478. Therefore, the issue is whether Mr. Bahari acquired the Ayna Sultan Property with an expectation of commercial return, in light of his contention that his [redacted]".[541]

479. In the Tribunal's view, the acquisition of immovable property to build corporate headquarters is not *per se* inconsistent with the ordinary meaning of an investment. However, in the present case, Mr. Bahari's contention that he acquired the property for that purpose does not withstand scrutiny. According to the title of the registration certificate filed by Mr. Bahari himself,[542] the Ayna Sultan Property was an apartment of 45 square meters in surface. The nature and size of the property appear wholly inadequate for "[redacted]" headquarters, let alone any building. The documentary record thus contradicts Mr. Bahari's testimony and shows that his alleged headquarters project lacks credibility.

480. On this basis, the Tribunal reaches the conclusion that the acquisition of the Ayna Sultan Property did not fulfil the required expectation of profit, which is part of an investment's risk component, and therefore, cannot constitute an investment.

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538 SoR, paras. 788-789, citing **RLA-150**, *Jin Hae Seo v. Korea*, HKIAC Case No. 18117, Final Award, 27 September 2019, paras. 123, 126.

539 SoR, para. 790.

540 See, e.g., **CLA-62**, *Electrabel S.A. v. The Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, para. 5.43; **RLA-64**, *KT Asia Investment Group B.V. v. Kazakhstan*, ICSID Case No. ARB/09/08, Award, 17 October 2013, para. 170; **RLA-150**, *Jin Hae Seo v Korea*, HKIAC Case No. 18117, Final Award, 27 September 2019, paras. 133-134.

541 Bahari WS-1, para. 48.

542 **C-16**, Ayna Sultan Registration Voucher and Technical Passport, 29 May 1996.

Accordingly, the Tribunal lacks jurisdiction over the dispute insofar as it relates to the Ayna Sultan Property. It can thus dispense with assessing whether Mr. Bahari sold his apartment prior to the entry into force of the Treaty.

### f. *The Carpets*

#### i. *The Parties' positions*

481. The Claimant's fifth purported investment refers to the purchase of the Carpets, which he presents as investments within the category of movable property under Article 1(1)(iii) of the Treaty.

482. While the Respondent takes no issue with carpets being movable property, it denies that the Carpets qualify as an investment for three primary reasons.

483. *First*, Azerbaijan contends that Mr. Bahari's ownership of the Carpets is not established, the Carpet Ledger providing no proof of ownership. With respect to the allegation that Mr. Bahari commissioned seven carpets for Caspian Fish, there is no evidence of commissioning, nor that the carpets belong to Mr. Bahari and not to Caspian Fish.[543]

484. *Second*, the Respondent submits that the Carpets do not fall within the objective meaning of the term investment. It argues that Mr. Bahari was not investing in the carpets business and that their mere storage in Azerbaijan lacks any element of return or risk, underscoring that Mr. Bahari confirmed at the Hearing that he had "no profit in mind".[544] In addition, there is no evidence in support of Mr. Bahari's claim with respect to a carpet museum. Even if Mr. Bahari planned a carpet museum, that plan would not elevate the acquisition, import, or storage of carpets to an investment. Relying on *Eyre and Montrose Developments v. Sri Lanka*, where the tribunal found that the purchase of land for the development of a hotel complex could not constitute an investment because the project "remained at best aspirational", adding that "[t]here must have been substantive commitments and arrangements entered into, involving specific commitments and financial costs, all of which would entail both certain risks as well as possible benefits", Azerbaijan argues that Mr. Bahari does not evidence such commitments in the present case.[545]

485. *Third*, Azerbaijan asserts that the shipment of the Carpets to Mr. Bahari in Dubai was completed in October 2002. Accordingly, allegations of breach after that date are doomed to fail as Mr. Bahari did not own an investment at the time of the breach.[546]

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543 SoD, paras. 122-124.

544 R-PHB, para. 48(5).

545 SoD, para. 125, SoRJ, para. 203, citing **RLA-21**, *Eyre and Montrose Developments v. Sri Lanka*, ICSID Case No. ARB/16/25, Award, 5 March 2020, paras. 301-302, and **RLA-151**, *Mihaly International Corporation v. Sri Lanka*, ICSID Case No. ARB/00/2, Award, 15 March 2002, para. 61.

546 SoD, para. 126.

486. The Claimant maintains that his "collection of Persian carpets with a view to creating a museum" was an investment under the Treaty.[547] To establish his ownership, he invokes Mr. Zeynalov's testimony, who acknowledged that he acquired hundreds of carpets, as well as evidence presented by Azerbaijan, including the export permits granted by the Ministry of Culture.[548]

487. Further, Mr. Bahari argues that the Carpets, not only satisfy the subjective test of an investment under Article 1(1)(iii) of the Treaty, but also falls within the objective meaning. He asserts that the Carpets formed "the fundamental element of his Persian carpet museum located in Baku", "were purchased over a certain duration", and "constituted the foundational part of a business plan", adding that "amassing such a collection and a related museum entails numerous risks".[549] Moreover, he contends that *Eyre and Montrose Developments v. Sri Lanka* is inapposite, as the purchase of the Carpets "was not mere preparation" and he "had already amassed a very significant and valuable collection of the principal asset that was necessary for his carpet museum in Baku".[550]

488. Finally, Mr. Bahari denies ever having taken delivery of any of the Carpets in Dubai.[551]

### ii. *Analysis*

489. At the Hearing, Mr. Bahari confirmed in no uncertain terms that the museum project for which he allegedly acquired the Carpets was not a commercial undertaking. Indeed, questioned by the Tribunal, he testified that the museum was meant "[redacted]" and that he "[redacted]":

[redacted][552]

490. Whatever the merits of this cultural project and of Mr. Bahari's intentions, that venture cannot be deemed an investment due to the absence of an element of risk associated with an expectation of return. It follows that the Carpets cannot qualify for protection under the Treaty. Here again, the Tribunal can dispense with addressing the remaining issues relating to the Carpets for reasons of procedural economy. The Tribunal

547 SoR, p. 280.
548 SoR, para. 792; Zeynalov WS-1, paras. 44, 48; **R-37**, Export Declaration for 211 Carpets, 3 October 2002.
549 SoR, para. 793.
550 SoR, para. 793.
551 SoR, para. 794, Bahari WS-2, para. 27.
552 Hearing Transcript, Day 3, 147:11-148:2 (emphasis added).

therefore concludes that it has no jurisdiction over the part of the dispute concerning the Carpets.

### *3.* Conclusion on jurisdiction *ratione materiae*

491. In conclusion, the Tribunal finds that:

a. Mr. Bahari sold his shares in Caspian Fish BVI before the Treaty entered into force and therefore no longer owned his alleged Caspian Fish-related investments on the date of the Respondent's alleged breaches;

b. Mr. Bahari's shares in the Coolak Baku JV qualify for protection under the Treaty; the same conclusion applies to his participation in Shuvalan Sugar;

c. The Ayna Sultan Property did not display the inherent characteristics of an investment and therefore does not qualify for protection under the Treaty; and

d. The Carpets lack the inherent characteristics of an investment as well and therefore do not qualify for protection under the Treaty.

492. Accordingly, the Tribunal has jurisdiction *ratione materiae* over the parts of dispute that arose in connection with Coolak Baku, including Shuvalan Sugar.

## B. JURISDICTION *RATIONE TEMPORIS*

### 1. The Respondent's position

493. The Respondent's objection to the Tribunal's jurisdiction *ratione temporis* rests primarily on two arguments, namely, that the vast majority of the acts complained of by Mr. Bahari occurred before the Treaty entered into force on 20 June 2002, and that the Tribunal lacks jurisdiction over the dispute as it crystallized before the Treaty came into force. Moreover, Azerbaijan refutes Mr. Bahari's claims of a composite expropriation and of continuing breaches of FET and FPS, as well as his contention that the Tribunal has jurisdiction over pre-treaty breaches of customary international law.

494. Starting with the first argument that the alleged breaches occurred before the Treaty came into effect, relevant acts include the forced removal of Mr. Bahari from Caspian Fish's opening ceremony on 10 February 2001, his placement under house arrest by state security forces in February 2001, the expulsion of Mr. Bahari and his family from Azerbaijan by state security forces in March 2001, the detention and physical abuse of Mr. Moghaddam by government security forces in April and June 2001, the seizure of Mr. Bahari's carpets in August 2001, and the attempt by Messrs. Aliyev and Heydarov to impose a forced sale on Mr. Bahari on 15 June 2002.[553] Thus, it is the Respondent's submission that "the core matters said to breach the Treaty, or from which all breaches flowed, took place pre entry into force and fall outside of the Tribunal's temporal

553 SoD, para. 51; SoRJ, para. 153.

jurisdiction".[554] Therefore, they are "incapable of forming the evidentiary basis for a Treaty claim" in accordance with the principle of non-retroactivity of treaties set forth in Article 28 of the VCLT.[555]

495. In addition, the Respondent objects to jurisdiction because the dispute arose and crystallized before the Treaty entered into force, which does not extend to disputes arising prior to that date.[556] Referring in support to the PCIJ's definition of dispute, it sets the emergence of the dispute on 15 June 2002 when Mr. Bahari met with Mr. Khanghah in Dubai and, by his own account, made it known to Messrs. Aliyev and Heydarov that he rejected a forced sale and made a counter-proposal, and they expressed their opposition.[557]

496. Moreover, Azerbaijan disputes the Claimant's view that the Tribunal has jurisdiction over pre-treaty disputes, arguing that the *Mavrommatis* case "finds almost no support in investor-State arbitration"[558] and that Mr. Bahari's reliance on *Carrizosa v. Colombia* is misplaced, as the applicable treaty contained no temporal limitation with respect to disputes that may come within the tribunal's jurisdiction.[559] To the contrary, so it argues, numerous tribunals held that their jurisdiction was limited to disputes arising after the treaty's entry into force, even in the absence of explicit wording to that effect.[560]

497. Azerbaijan refutes Mr. Bahari's claim that its challenged conduct gave rise to composite and continuing breaches. It submits that there was no creeping expropriation crystallizing after the entry into force, and that the acts alleged to violate FET and FPS are not continuing in nature.

498. The Respondent points out that, on the Claimant's own submission, the alleged expropriatory acts were performed before the Treaty took effect. Indeed, according to Mr. Bahari, his investments were seized and he lost control over them after he was expelled and prevented from returning to Azerbaijan in 2001. None of the conduct that took place subsequent to the Treaty's entry into force can give rise to an expropriation

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554 R-PHB, para. 46.

555 SoD, paras. 51-52; SoRJ, para. 153.

556 SoD, paras. 69-74; SoRJ, paras. 166-176; R-PHB, para. 35.

557 SoD, paras. 73-74, citing **RLA-140**, *Case concerning East Timor (Portugal v. Australia)*, ICJ Reports 1995, p. 90, para. 22 and the summary of jurisprudence set out in **RLA-141**, *Bahgat v. Egypt (I)*, PCA Case No. 2012-07, Decision on Jurisdiction, 30 November 2017, paras. 294-300; SoRJ, para. 168, citing **CLA-253**, *Maffezini v. Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, para. 96.

558 SoRJ, para. 170; **RLA-24**, *Ping An Life Insurance Company v. Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015, para. 184.

559 SoRJ, para. 173, referring to **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 15.

560 SoD, paras. 70-72, referring to **RLA-138**, *Salini Costruttori SpA v. Jordan*, ICSID Case No. ARB/02/13 ICSID, Decision on Jurisdiction, 29 November 2004, para. 170; **RLA-71**, *MCI Power Group v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, para. 61; **RLA-24**, *Ping An Life Insurance Company v. Belgium*, ICSID Case No. ARB/12/29, Award, 30 April 2015, para. 184. See also **RLA-134**, *Impregilo SpA v. Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005, paras. 299-300; **RLA-139**, *ABCI Investments Limited v. Republic of Tunisia*, ICSID Case No. ARB/04/12, Decision on Jurisdiction, 18 February 2011, para. 169.

claim, as the decisive factor is the completion of the deprivation.[561] In its view, this case bears similarities to *Berkowitz v. Costa Rica*, in which the tribunal declined jurisdiction over the expropriation on the basis that the treaty had not entered into force at the time of the taking, or to *Carrizosa v. Colombia*, which held that there was no independently actionable breach as the majority of measures alleged by the claimant occurred before the treaty entered into force.[562] In addition, Azerbaijan rejects Mr. Bahari's argument that the "indirect expropriation did not occur until after 20 June 2002 but was most likely consummated by 1 January 2003",[563] pointing out that Mr. Bahari conceded at the Hearing that this date was "[redacted]"[564] and that he cannot identify what happened between 20 June 2002 and 1 January 2003 that would have turned Azerbaijan's conduct into expropriation, for the simple reason that there are no relevant facts over this period.[565]

499. As regards the claims of continuing breaches of FET and FPS, the Respondent agrees that these standards are in principle capable of being continuously breached.[566] However, it stresses that the ILC Articles distinguish between instantaneous breaches whose effects are continuous, and breaches which themselves have a continuing character.[567] In this vein, it submits that the acts which Mr. Bahari regards as continuing in nature do not qualify as such, as the relevant breach was completed before the Treaty came into force, with only its effects continuing.[568]

500. Mr. Bahari's position on the expulsion from Azerbaijan in 2001 is not supported by the authorities which he cites.[569] In any event, there is no evidence, argues the Respondent, that Mr. Bahari's alleged expulsion was a continuing act; to the contrary, he did travel to Azerbaijan in 2013 and was admitted with no difficulty.[570] Likewise, the Respondent dispute any violation of Mr. Bahari's right to enter and remain in its territory under Article 2(2)(a) of the Treaty, which remains unproven.[571]

501. As for the alleged threats, intimidation and assaults of Mr. Bahari's counsel or former employees, Azerbaijan submits that none of the alleged pre-entry into force acts could

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561 SoD, paras. 58-62.

562 SoD, paras. 59-61, citing **RLA-136**, *Aaron C Berkowitz and others (formerly Spence International Investments and ors) v. Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (Corrected), 30 May 2017, paras. 222, 269 and 271; **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, paras. 126, 151-167. See also SoRJ, para. 161.

563 SoR, para. 1083.

564 SoRJ, para. 163-164, 662, 666; R-PHB, para. 44; Hearing Transcript, Day 1, 92:5-8.

565 SoRJ, para. 163-164.

566 SoRJ, para. 155.

567 SoD, para. 53, referring to **CLA-37**, ILC Articles, Article 14(1).

568 SoD, para. 68; SoRJ, paras. 156-157.

569 SoRJ, paras. 156(b)-(c), referring to **CLA-37**, ILC Articles, Commentary, Article 14, para. 4; **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, paras. 399, 402; **CLA-246**, *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, para. 3.24.

570 SoRJ, para. 156(d), referring to Kalantarili WS, para. 8.

571 R-PHB, paras. 301-303.

be construed as continuing and extending after the Treaty's entry into force, as a single instance of assault or a brief period of detention does not constitute a continuous act.[572]

502. Azerbaijan denies that the Tribunal has jurisdiction over pre-treaty breaches of customary international law. It argues that Article 28 of the VCLT confirms that a treaty is not retrospective unless "a different intention appears" and that Article 10 of the Treaty expresses no such "different intention". In its view, "the combined effect of Article 28 of the VCLT and Article 10 of the Treaty is that the temporal scope of the Treaty does not extend to disputes that arose before its entry into force". It adds that in *Salini v. Jordan*, the tribunal found that similar provisions do not cover disputes that arose pre-BIT.[573]

### 2. The Claimant's position

503. The Claimant submits that the Tribunal has jurisdiction over Azerbaijan's pre-treaty breaches of customary international law and composite and continuous acts in breach of the Treaty that lasted after its entry into force. Further, he rejects Azerbaijan's argument that the Tribunal has no temporal jurisdiction over the dispute because it crystallized before the Treaty came into force.

504. *First*, according to Mr. Bahari, the Respondent breached the MST under customary international law before the Treaty came into effect and the Tribunal has jurisdiction over such pre-treaty breaches. In support of his argument, the Claimant emphasizes that the arbitration agreement in Article 10 of the Treaty is worded in the broadest possible terms, both regarding the types of breaches covered (whether conventional or customary) and the timing of the breaches (whether pre- or post-entry into force). Therefore, jurisdiction is not limited to breaches of the Treaty itself, nor to breaches occurring after its entry into force.[574]

505. He adds that the Treaty is silent on the timing of breaches while expressly providing for its application to investments made both before and after the Treaty's entry into force. Relying on *Tekfen and TML v. Libya*, he asserts that as a result, Article 10 of the Treaty does not preclude the Tribunal from ruling on pre-treaty violations of customary international law.[575] Consequently, so he argues, there is jurisdiction over a claim that

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572 SoRJ, para. 156(e).

573 R-PHB, para. 35, referrring to **RLA-138**, *Salini Costruttori SpA v. Jordan*, ICSID Case No. ARB/02/13 ICSID, Decision on Jurisdiction, 29 November 2004, para. 170.

574 RoJ, paras. 433-448, referring to **CLA-338**, *Tekfen TML Joint Venture v. Libya (II)*, ICC Case No. 21371/MCP/DDA, Final Award, 11 February 2020, para. 7.4.2; **CLA-334**, B. Sabahi, N. Rubins, et al., 'XII. Jurisdiction Ratione Temporis', *Investor-State Arbitration* (Second Edition), Oxford University Press, 2019, p. 423; **CLA-335**, KJ Vandevelde, *United States Investment Treaties: Policy and Practice*, Kluwer, Boston, 1992, p. 66; **CLA-366**, C. Schreuer, L. Malintoppi, A. Reinisch, A. Sinclair, *The ICSID Convention: A Commentary* (Second Edition), Cambridge University Press, 2009, p. 229, para. 507; **CLA-337**, C. Schreuer, *Jurisdiction and Applicable Law in Investment Treaty Arbitration*, McGill Journal of Dispute Resolution, 2014, Vol 1:1 2.

575 RoJ, paras. 433-448, referring to **CLA-338**, *Tekfen TML Joint Venture v. Libya (II)*, ICC Case No. 21371/MCP/DDA, Final Award, 11 February 2020, para. 7.4.2; **CLA-334**, B. Sabahi, N. Rubins, et al., 'XII. Jurisdiction Ratione Temporis', *Investor-State Arbitration* (Second

Azerbaijan's alleged pre-treaty conduct breaches the MST under customary international law.

506. As to the pre-treaty conduct at issue, Mr. Bahari alleged in his Rejoinder on Jurisdiction that his expulsion from Caspian Fish in 2001 constitutes a breach of the MST.[576] In his PHB, he broadened the scope of his claims to encompass all of the Respondent's pre-treaty acts.[577]

507. *Second*, the Claimant is of the view that the Tribunal's jurisdiction covers (i) Azerbaijan's composite expropriation of his investments that crystallized after the Treaty's entry into force and (ii) continuous breaches of its FET and FPS obligation.[578] He adds that pre-entry into force acts or omissions can, in any event, be considered to shed light on the background of the case, the cause and scope of post-entry violations, and to assess damages.[579]

508. With respect to his expropriation claim, Mr. Bahari disputes Azerbaijan's position that he lost control over his investments prior to the Treaty entering into force, arguing that his investments were subject to an "indirect composite expropriation" or "creeping expropriation" that crystallized once the Treaty was in force.[580] He argues that a creeping expropriation qualifies as a composite act within the meaning of Article 15 of the ILC Articles.[581] He contends that numerous tribunals in similar situations have

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Edition), Oxford University Press, 2019, p. 423; **CLA-335**, KJ Vandevelde, *United States Investment Treaties: Policy and Practice*, Kluwer, Boston, 1992, p. 66; **CLA-366**, C. Schreuer, L. Malintoppi, A. Reinisch, A. Sinclair, *The ICSID Convention: A Commentary* (Second Edition), Cambridge University Press, 2009, p. 229, para. 507; **CLA-337**, C. Schreuer, *Jurisdiction and Applicable Law in Investment Treaty Arbitration*, McGill Journal of Dispute Resolution, 2014, Vol 1:1 2.

576 RoJ, para. 448.

577 C-PHB, para. 222.

578 SoR, paras. 706-709, referring to **CLA-41**, *Société Générale v. The Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, paras. 87-88; **CLA-184**, *Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction, 18 May 2010, para. 124; **CLA-249**, *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004, paras. 166-167; **CLA-250**, *Oko Pankki Oyj, VTB Bank (Deutschland) AG and Sampo Bank Plc v. The Republic of Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007, para. 193.

579 SoR, para. 704; RoJ, para. 449, referring to *inter alia* **CLA-41**, *Société Générale v. The Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, para. 87; **CLA-246**, *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. 2.105; **CLA-247**, *Antonio del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 407; **CLA-39**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, paras. 69-70.

580 SoR, para. 726-730; RoJ, para. 461.

581 SoR, para. 729, RoJ, para. 458.

assessed the facts on a composite basis and assumed jurisdiction over the breach,[582] stressing that *Berkowitz v. Costa Rica* is factually distinct.[583]

509. The subject matter of the expropriation claim evolved throughout the Claimant's submissions: in the Statement of Claim, the claim concerned all of his investments;[584] in the Statement of Reply, his "expropriation claim [was] limited to Caspian Fish";[585] in the Rejoinder on Jurisdiction, the claim did not appear so limited anymore;[586] eventually, in the PHB, he specified that he only raised a claim for the expropriation of his investments in Caspian Fish.[587]

510. With respect to the FET and FPS claims, it is the Claimant's submission that Azerbaijan's pre- and post-treaty conduct in breach of its obligations under the Treaty constitute continuous breaches over which the Tribunal has *ratione temporis* jurisdiction.[588] He argues that whether an act or omission constitutes a continuous breach depends on the circumstances of each case and requires the breach to be ongoing and uninterrupted.[589] On this basis, Mr. Bahari submits that Azerbaijan's conduct was a "continuous and multifaceted" campaign against him and his investments.[590] He asserts that "Azerbaijan's pre-entry into force conduct was of a continuous nature and became a breach of FET/FPS on the day the treaty came into force", claiming that Azerbaijan's alleged "adverse actions taken against Mr. Bahari were (i) repeated; (ii) formed part of an overall, concerted campaign to ultimately wrest his investments from him; (iii) and, critically, continued well after the entry into force of the Treaty",[591] as Azerbaijan engaged in "a series of post-entry into force breaches" through a "campaign of intimidation, threats, and assaults against [him] and his associates".[592]

511. Moreover, while maintaining that his alleged expulsion from Azerbaijan in 2001 and continued forced absence is a continuing wrongful act,[593] the Claimant states that

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582 RoJ, para. 459, citing **CLA-40**, *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, paras. 57, 66; **RLA-72**, *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, para. 301; **CLA-344**, *Walter Bau AG (In Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Award, 1 July 2009, paras. 12.14-12.15.

583 RoJ, para. 460, referring to **RLA-136**, *Berkowtiz (formerly Spence International Investments and others) v Costa Rica*, ICSID Case No UNCT/13/2, Interim Award, 25 October 2016, paras. 271, 299.

584 See, e.g., SoC, para. 613.

585 SoR, para. 1079.

586 RoJ, para. 461.

587 C-PHB, para. 320.

588 C-PHB, para. 203.

589 SoR, para. 711, referring to **CLA-37**, ILC Articles, Commentary, Art. 14, para. 2 and **CLA-250**, *Oko Pankki Oyj, VTB Bank (Deutschland) AG and Sampo Bank Plc v. The Republic of Estonia*, ICSID Case No. ARB/04/6, Award, 19 November 2007, para. 194.

590 SoR, para. 718.

591 C-PHB, paras. 218-221.

592 C-PHB, paras. 290-291.

593 SoR, para. 717, referring to **CLA-37**, ILC Articles, Commentary, Art. 14, para. 4; **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 399; RoJ, para. 450-455, referring to **CLA-246**, *Pac Rim Cayman LLC v.*

Azerbaijan's focus on his expulsion before the Treaty entered into force "misses the point", because "what gives rise to Mr. Bahari's damage is the ongoing inability, resulting from his expulsion, for him to enforce his rights to his investments".[594] In addition, he points to Article 2(2)(a) of the Treaty, according to which "nationals of either Party shall be permitted to enter and remain in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment", is an ongoing and continuous violation of this substantive protection as well.[595] Furthermore, he asserts that the Respondent's alleged post-treaty conduct amounted to specific instances of instantaneous breaches of FET, such as the unlawful detention and interrogation of Mr. Moghaddam in late June 2002; however, he does not identify other breaches.[596]

512. *Third*, Mr. Bahari challenges Azerbaijan's submission that the Tribunal has no jurisdiction over the dispute because it arose and crystallized before the Treaty came into force. His argument is twofold: *first*, the dispute crystallized after the Treaty entered into force; *second*, in any event, the Tribunal would have jurisdiction over a dispute existing at the time the Treaty entered into force.

513. More specifically, relying on *Maffezini v. Spain*,[597] Mr. Bahari argues that the critical date for assessing jurisdiction is not when a dispute arises, but when it "crystallize[s] into a justiciable investment dispute". Here, he says, the critical date was 1 January 2003, namely "the date on which he was reasonably forced to understand that Azerbaijan had no intention of restoring his investment or allowing him entry back into the country".[598] In the alternative, Mr. Bahari submits that the Tribunal could find that a dispute arose at various points in time after 1 January 2003, including in 2004 when he retained Mr. Kilic to investigate legal proceedings in Azerbaijan, or in 2009 when Mr. Amirahmadi negotiated on his behalf with senior Government officials in Azerbaijan.[599]

514. Mr. Bahari claims that pursuant to Article 10 of the Treaty, the Tribunal has jurisdiction over a dispute existing at the time the Treaty entered into force.[600] In support, he *inter alia* refers to *Carrizosa v. Colombia*, where in his submission the language of the treaty

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*Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012.

594 RoJ, para. 457.

595 RoJ, para. 456. See also, e.g., Claimant's Overview Chart, p. 2.

596 See, e.g., Claimant's Overview Chart, p. 2.

597 RoJ, para. 466, citing **CLA-253**, *Maffezini v. Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction, 25 January 2000, para. 92.

598 RoJ, paras. 473, 475.

599 C-PHB, para. 216.

600 SoR, paras. 742-747, referring to **CLA-254**, *Case of Mavrommatis Palestine Concessions (Greece v. UK)*, Judgment, 30 August 1924 (Objection to the Jurisdiction of the Court); **RLA-72**, *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, 1 December 2008, paras. 265-267; **RLA-23**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 462.

was close to that of the Treaty and the tribunal applied the treaty retroactively to pre-existing disputes.[601]

## 3. Analysis

515. The Tribunal first examines whether the Treaty derogates from the principle of non-retroactivity (**a**) and then determines whether it has temporal jurisdiction to hear the claims arising from alleged treaty breaches (**b**). Lastly, the Tribunal will address the Claimant's contention that its jurisdiction extends to alleged pre-treaty breaches of customary international law (**c**).

### a. *Does the Treaty derogate from the principle of non-retroactivity?*

516. It is common ground between the Parties, and rightly so, that the principle of non-retroactivity of treaties governs the Tribunal's temporal jurisdiction. This general principle of international law is codified in Article 28 of the VCLT, which establishes a presumption against retroactivity in the following terms:

> Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.[602]

517. Like the intertemporal principle under which "a juridical fact must be appreciated in the light of the law contemporary with it", as formulated by Judge Huber in the *Island of Palmas* case,[603] the principle of non-retroactivity expresses the basic notion that international law does not impose new rules on past acts. For jurisdictional purposes, the consequence is that a treaty tribunal's jurisdiction is limited to claims arising from acts or facts which occurred or continued to occur after the entry into force of the treaty, unless the Contracting States agreed otherwise.[604]

518. Accordingly, the Tribunal's temporal jurisdiction turns on whether the Treaty, interpreted in accordance with the principles set out in Article 31 VCLT, evinces an intention by the Contracting Parties to derogate from the principle of non-retroactivity.

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601 RoJ, para. 465, citing **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 15.

602 **CLA-36**, Vienna Convention on the Law of Treaties, Article 28.

603 Cited in **CLA-37**, ILC Articles, Article 13, commentary 1.

604 See, e.g., among many others, **CLA-157**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, para. 11.2; **CLA-39**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, paras. 68-70; **RLA-134**, *Impregilo SpA v. Pakistan*, ICSID Case No ARB/03/3, Decision on Jurisdiction, 22 April 2005, paras. 299-314; **RLA-71**, *MCI Power Group v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, para. 61; **RLA-136**, *Aaron C Berkowitz and others (formerly Spence International Investments and ors) v. Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (Corrected), 30 May 2017, paras. 214-223; **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, paras. 133-149; **RLA-267**, *Rand Investments v. Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, para. 442.

519. Neither Party alleges that the Contracting Parties agreed to the retroactive application of the Treaty's substantive provisions. The text of the Treaty indeed shows no such intention.

520. By contrast, the Parties have opposing views on the Treaty's procedural provisions. According to the Respondent, Article 10 of the Treaty does not express the "different intention" required by Article 28 of the VCLT whereby the Parties would have departed from the principle of non-retroactivity.[605] The Claimant contends that Article 10 of the Treaty contained no temporal limitation and that the Tribunal has jurisdiction over acts or facts predating the Treaty's entry into force.[606]

521. Article 10 of the Treaty, which contains the Contracting Parties' offer to arbitrate, reads in relevant parts as follows:

> Article 10 – SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY
>
> 1. In the event of occurrence of a dispute between a Party in whose territory an investment is made and one or more investors of the other Party with respect to an investment, the Party in whose territory the investment is made and the investor(s) shall primarily endeavor to settle the dispute in an amicable manner through negotiation and consultation.
>
> 2. In the event that the Party in whose territory an investment is made and the investor(s) are unable to agree within six months from the notification of the claim by one party to the other, each of them may refer the dispute to the competent courts of the Party in whose territory the investment is made, or, with due regard to its own laws and regulations, refer the dispute to a three member arbitration board in accordance with paragraph 5 below. […]

522. Under Article 31 VCLT, the ordinary meaning of the text is the starting point of the interpretation. Article 10 provides for arbitration "[i]n the event of occurrence of a dispute […] with respect to an investment". However, it does not identify the time of the occurrence of the dispute. In other words, the text is silent as to whether the dispute may occur prior to the Treaty's entry into force. Faced with similar arbitration clauses, arbitral tribunals have adopted divergent views on their temporal jurisdiction over pre-treaty disputes. Some tribunals have considered that an offer to arbitrate "disputes" without a specification such as that contained in Article 10 of the Treaty does not cover pre-treaty disputes. Among others, the *Salini v. Jordan* tribunal held that an arbitration clause covering "any dispute which may arise between one of the contracting Parties and the investors of the other contracting Party on investments" does not cover "disputes which may have arisen before the entry into force of the BIT".[607] In the same vein, in *MCI v. Ecuador*, the tribunal held that "the silence of the text of the BIT with respect to its scope in relation to disputes prior to its entry into force does not alter the effects of the principle of the non-retroactivity of treaties", which excludes "its

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605 R-PHB, para. 35.

606 C-PHB, para. 200, citing Hearing Transcript, Day 1, 77:9-14.

607 **RLA-138**, *Salini Costruttori SpA v. Jordan*, ICSID Case No. ARB/02/13 ICSID, Decision on Jurisdiction, 29 November 2004, para. 170.

application to disputes arising prior to its entry into force".[608] By contrast, other tribunals have held that the treaty's silence about the timing of the dispute does not mean that their jurisdiction is limited to post-treaty disputes.[609]

523. This being so, even the latter tribunals (which accepted jurisdiction over pre-treaty disputes) concurred that the silence of a treaty as to its temporal application cannot be construed as expressing the intent of the Contracting States to depart from the cardinal principle of non-retroactivity of treaties. For instance, in *Carrizosa v. Colombia*, the tribunal emphasized that if the dispute encompassing the impugned conduct had arisen before the treaty's entry into force, the principle of non-retroactivity of treaties would not place such dispute outside the reach of the treaty, *provided* that post-treaty conduct is in itself an actionable breach of the treaty.[610] In other words, the claim must arise out of an act or fact which took place *after* the treaty came into force.

524. Turning now to the context of Article 10 and the Treaty's object and purpose, the Tribunal notes that they confirm that the Contracting Parties did not intend to depart from the principle of non-retroactivity.

525. As to the context, Article 12(1) of the Treaty provides that it "shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter". In the Tribunal's view, the ordinary meaning of this provision is that investments made before the Treaty's entry into force and continuing to exist thereafter may benefit from the Treaty's protections from the date of its entry into force. Article 12(1) does not evidence an intention to depart from the principle of non-retroactivity in relation to any of the Treaty's provisions. To the contrary, it aligns with the principle of non-retroactivity, as it binds the Contracting Parties in relation to pre-treaty investments that are "existing" at the date of its entry into force, i.e., that were made before and continue to exist thereafter, as opposed to pre-treaty investments that "ceased to exist before the date of the entry into force of the treaty", consistent with Article 28 of the VCLT.

526. The Treaty's object and purpose support this analysis. The Claimant contends that "[r]eading temporal limitations into Article 10 of the Treaty would also counter the Treaty's object and purpose, which is to favor the protection of investments, prior to and post entry into force".[611] It is correct that among other objectives, the Treaty seeks to protect investments. However, that goal does not imply protecting investments at a time when the Treaty is not effective. Moreover, the preamble indicates that the Treaty is forward-looking. Indeed, it uses prospective language such as "[d]*esiring*", "[r]ecognizing that *agreement* upon the treatment to be accorded to such investments *will* stimulate […]", or "agreeing that fair and equitable treatment is *desirable*".[612] These

608 **RLA-71**, *MCI Power Group v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, para. 61.

609 See, e.g., **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 135.

610 **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 149.

611 C-PHB, para. 200.

612 **CLA-1**, Treaty, Preamble (emphasis added).

formulations express intentions and aspirations for the future. In the same vein, the preamble suggests that the Treaty is designed to produce effects over time, including increased capital flows, technological advancement, and economic development.

527. On this basis, the Tribunal finds that the Contracting Parties did not intend to depart from the principle of non-retroactivity of treaties. It follows that, in accordance with Article 28 VCLT, the offer to arbitrate contained in Article 10 of the Treaty does not bind the Contracting Parties "in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party".

### b. *Does the Tribunal have temporal jurisdiction to hear the claims arising from alleged Treaty breaches?*

#### i. *Relevant principles*

528. There are two prongs to this objection. The first goes to the Tribunal's jurisdiction over alleged acts that occurred before the Treaty's entry into force. The second concerns whether the Tribunal has jurisdiction over pre-treaty disputes and whether the present dispute occurred before or after the Treaty's entry into force. As the two prongs are ultimately intertwined, and given how the Respondent put forward its objection, the Tribunal addresses them together.

529. The principles governing the first prong are well settled in arbitral jurisprudence and are not seriously in dispute here. The principle of non-retroactivity entails that only conduct occurring after the treaty's obligations came into force and became binding upon the Contracting States falls within the jurisdiction of the treaty tribunal. Accordingly, as prior tribunals have consistently held, if the impugned conduct spans both pre- and post-entry into force periods, a tribunal may take pre-treaty conduct into account, provided that post-treaty conduct constitutes an independent cause of action under the treaty.[613] Thus, pre-treaty conduct, while incapable of giving rise to a treaty breach, may assist in understanding the background of the treaty violations that occurred after the entry into force.

530. It is well established that these principles apply to continuous and composite acts, as reflected in Articles 14 and 15 of the ILC Articles. A continuous act extends over a period of time.[614] It "occupies the entire period during which the act continues and remains not in conformity with the international obligation, provided that the State is bound by the international obligation during that period".[615] The continuous breach is an ongoing and uninterrupted act and is distinguishable from an instantaneous breach,

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613 See, e.g., **CLA-39**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, para. 70; **RLA-136**, *Aaron C Berkowitz and others (formerly Spence International Investments and ors) v. Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (Corrected), 30 May 2017, para. 217; **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 143.

614 **CLA-247**, *Antonio del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 399.

615 **CLA-37**, ILC Articles, Article 14, commentary 3.

that produces lasting effects.[616] As an example of continuous act, one can cite the internationally unlawful detention of persons. By contrast, a composite act is made up of a series of distinct acts that occur over time and results from the aggregation of such separate acts.[617] An illustration is provided by the crime of genocide that presupposes a large number of separate killings, the accumulation of which may constitute a genocide depending on the circumstances.

531. The principle of non-retroactivity entails that continuous and composite acts may only give rise to a treaty breach if they unfold, at least in part, while the treaty is in force, as reflected in the ILC Commentaries to Article 14 with respect to continuous acts ("provided that the State is bound by the international obligation during that period") and Article 15 with respect to composite acts ("[i]n cases where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the 'first' of the actions or omissions of the series for the purposes of State responsibility will be the first occurring after the obligation came into existence").[618] Hence, what matters when jurisdiction is based on the international instrument that establishes the obligation allegedly breached, as is the case in investment treaty arbitration, is that the unlawful conduct that can constitute an independent cause of action under the treaty materialized post-entry into force, irrespective of its instantaneous, continuous, or composite nature.[619]

532. The second prong of the objection turns on the definition of a dispute. A dispute is traditionally defined as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons", according to the PCIJ's judgment in the *Mavrommatis* case, relied upon by both Parties.[620] As set out by Prof. Gaillard, "[i]t follows that a dispute arises at the moment a disagreement is formed between the parties over points of law or fact. In turn, a disagreement is formed once the claims or positions of one of the parties over those points of law or fact are contested or ultimately ignored by the other. A dispute, therefore, presupposes the existence of the factual and legal framework on which the disagreement is based and cannot arise until the entirety of such constituent elements has come into existence".[621] Accordingly, where the conduct giving rise to the dispute occurs in whole or in part after a treaty's entry into force, the disagreement constituting the dispute necessarily arises after the treaty's entry into force.

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616 **CLA-37**, ILC Articles, Article 14, commentaries 2-4.

617 **CLA-247**, *Antonio del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 400.

618 **CLA-37**, ILC Articles, Article 15, commentary 11.

619 See Z. Douglas, *The International Law of Investment Claims*, Cambridge University Press, 2009, p. 335, cited in **CLA-247**, *Antonio del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, footnote 220. See also p. 332. Additionally, see **RLA-71**, *MCI Power Group v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, para. 94.

620 **CLA-254**, *Case of Mavrommatis Palestine Concessions (Greece v. UK)*, Judgment, 30 August 1924 (Objection to the Jurisdiction of the Court).

621 *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Dissenting Opinion by Arbitrator Emmanuel Gaillard, 18 August 2017, para. 6. See also para. 8 and the ICJ case law referred to in footnote 5.

533. In the present case, it is not disputed, and rightly so, that the Tribunal has jurisdiction over disputes occurring after the Treaty's entry into force under Article 10. Therefore, if the impugned conduct giving rise to the claims occurred at least in part after the Treaty's entry into force, the resulting dispute between Mr. Bahari and Azerbaijan will necessarily fall within the Tribunal's jurisdiction under Article 10 of the Treaty.

534. With this background, the Tribunal now examines whether it has temporal jurisdiction to hear the expropriation claims under Article 4 of the Treaty, the claims for violation of the FET and FPS standards under Article 2(3) of the Treaty, and the claim alleging a violation of the right to enter and remain in Azerbaijan under Article 2(2) of the Treaty.

#### ii. *Article 4 of the Treaty*

535. As noted above, after some hesitation, Mr. Bahari eventually stated that his expropriation claim was limited to Caspian Fish. As the Tribunal lacks *ratione materiae* jurisdiction in respect of Caspian Fish, it can dispense with assessing its temporal jurisdiction.

#### iii. *Article 2(3) of the Treaty*

536. For the sake of expediency, the Tribunal will start by reviewing Mr. Bahari's invocation of the MFN clause contained in Article 2(3) of the Treaty. The Claimant claims violations of the FPS standard and the obligation to provide effective means of asserting claims and enforcing rights,[622] which are provided in Azerbaijan's investments treaties with third party States, by operation of the MFN clause in Article 2(3) of the Treaty.[623]

537. The Respondent objects that the scope of the MFN clause in Article 2(3) of the Treaty is limited to the FET standard, so that it applies exclusively to more favorable FET guarantees.[624] It points to the wording of Article 2(3) and a proper application of the *ejusdem generis* principle.[625]

538. The plain meaning of the text of Article 2(3) of the Treaty leaves no doubt that the provision only permits the importation of more favorable FET provisions from other treaties:

> Each Party shall ensure *fair and equitable treatment* within its territory to the investments of investors of the other Party. *This treatment* shall not be less favourable than that accorded by each Party to investments made within its territory

622 C-PHB, para. 316.

623 SoC, para. 543, referring *inter alia* to **CLA-108**, *MTD v. Chile*, ICSID Case No. ARB/01/7, Decision on Annulment, 21 March 2007, para. 64; SoR, paras. 1015-1017.

624 SoD, paras. 159-169; SoRJ, paras. 255-260.

625 SoD, paras. 160-169, referring *inter alia* to **RLA-155**, Lord McNair, *The Law of Treaties*, 1986, p. 393; **RLA-156**, F. Baetens, "Chapter 7: Ejusdem Generis and Noscitur a Sociis" in J. Klingler, Y. Parkhomenko, et al. (eds), *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law*, 2018, p. 145; **RLA-160**, *Ambatielos Claim*, Award, 6 March 1956, p. 107. See also SoRJ, para. 257; **RLA-70**, *Quasar de Valores and ors v. Russia*, SCC Case No. 24/2007, Award on Preliminary Objections, 20 March 2009, para. 105; **CLA-134**, *Sergei Paushok and ors v. Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability, 28 April 2011, para. 570.

> by its own investors or than that accorded by each Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.[626]

539. The expression "this treatment" in the second sentence refers to the "fair and equitable treatment" mentioned in the first sentence. The Claimant does not adduce an argument to suggest that this language should be read against its clear meaning. Nor does the Tribunal see any possible reason for doing so.

540. As a result, Article 2(3) of the Treaty does not allow Mr. Bahari to rely on protections other than those provided in the Treaty itself. Accordingly, the Tribunal lacks jurisdiction over the FPS and effective means claims advanced by Mr. Bahari under Article 2(3) of the Treaty. The Tribunal therefore limits the analysis of its temporal jurisdiction over Article 2(3) claims to those alleging FET breaches.

541. There are two components to these FET claims: *first*, a denial of justice claim and, *second*, what may be called a general or global claim.

542. The denial of justice claim is asserted as an "instantaneous breach" of FET[627] arising from Azerbaijan's alleged conduct in the context of the Coolak Baku Proceedings, which the Claimant summarizes as follows: "In 2005 and 2006, Azerbaijan's courts enabled the stripping of Mr. Bahari's rights to and control over the assets of Coolak Baku by permitting litigation carried out in his absence and issuing absurd results [which] resulted in a denial of justice for Mr. Bahari".[628] It is undisputed that the entirety of such actions took place after the Treaty's entry into force on 20 June 2002.[629] Consequently and considering that the denial of justice claim is capable of constituting an independent cause of action under the Treaty, the Tribunal's temporal jurisdiction is established.

543. As to the second or global claim, Mr. Bahari submits that virtually all of the Respondent's impugned conduct before and after the Treaty's entry into force "formed part of an overall, concerted campaign to ultimately wrest his investments from him".[630] He contends that this "overall campaign" continued after the Treaty's entry into force, thus "bringing the pre-entry into force breaches into the post-entry into force period, and resulting in a violation of the FET and FPS provisions of the Treaty" "on the day the Treaty came into force".[631]

544. This claim raises a number of issues. *First*, the existence of a treaty breach presupposes the existence of a binding treaty obligation; hence, no pre-entry into force treaty breaches can arise, as no such obligation existed before the Treaty came into force. Therefore, there can be no "pre-entry into force breaches".

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626 **CLA-1**, Treaty, Article 2(3) (emphasis added).
627 Claimant's Overview Chart, p. 5.
628 C-PHB, para. 165(e).
629 SoRJ, para. 157.
630 C-PHB, paras. 218-221.
631 C-PHB, paras. 218-221, para. 287.

545. *Second*, the mere entry into force of a treaty cannot transform pre-entry into force conduct into an actionable breach. At most, if the Claimant is able to establish acts performed after entry into force which are actionable breaches, the pre-entry into force conduct may be taken into account as background when assessing that post-entry into force alleged breach. By contrast, if the Claimant is unable to point to such conduct, then, as held in *Mondev v. US*A and consistently reaffirmed in jurisprudence, "[t]he mere fact that earlier conduct has gone unremedied or unredressed when a treaty enters into force does not justify a tribunal applying the treaty retrospectively to that conduct".[632]

546. The Claimant's allegation of a continuous wrongful act does not change this conclusion: if the conduct does not continue after the entry into force of the Treaty, the claim falls outside the Tribunal's jurisdiction, as it would rest solely on the effects of pre-entry into force conduct.[633]

547. *Third*, the notion of systematic campaign aligns more closely with a composite than with a continuing act. Indeed, continuing acts typically take the form of a single act, such as the "maintenance in effect of legislative provisions incompatible with treaty obligations of the enacting State", the "unlawful detention of a foreign official", or the "unlawful occupation of embassy premises".[634] Arbitral tribunals have accordingly typically examined the existence of systematic campaigns in the context of allegations of composite acts.[635]

548. Be that as it may, if the post-entry into force conduct invoked by Mr. Bahari in support of his global FET claim were to be established on the merits, such conduct would be capable of constituting an independent cause of action under the Treaty. This includes the detention of Mr. Moghaddam in late June 2002 and the latter's imprisonment in June 2009. It further covers the purported systematic campaign against the Claimant and his investments.

549. Accordingly, for jurisdictional purposes, the Tribunal holds that the Respondent's post-entry into force conduct as asserted by the Claimant may constitute an independent cause of action under Article 2(3) of the Treaty, with the result that it has temporal jurisdiction.

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632 **CLA-39**, *Mondev v. United States*, Award, 11 October 2002, para. 70. See, e.g., **RLA-271**, *Gabriel Resources v. Romania (I)*, ICSID Case No. ARB/15/31, Award, 8 March 2024, para. 738; **RLA-267**, *Rand Investments v. Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, para. 442; **RLA-23**, *Astrida Benita Carrizosa v. Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 147.

633 See **CLA-37**, ILC Articles, Article 14, commentary 6; **CLA-247**, *Antonio Del Valle Ruiz and others v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 402.

634 See **CLA-37**, ILC Articles, Article 14, commentary 3.

635 See **RLA-271**, *Gabriel Resources v. Romania (I)*, ICSID Case No. ARB/15/31, Award, 8 March 2024, paras. 799, 819-830.

#### iv. *Article 2(2)(a) of the Treaty*

550. The Claimant asserts a distinct continuous breach of his right to enter and remain on Azerbaijan's territory under Article 2(2)(a) of the Treaty. In this regard, he initially claimed that "Azerbaijan's policy of keeping [him] out of Azerbaijan over the period after his expulsion and until the present is an ongoing and continuous violation" of that right, also claiming that he was subjected to a "banishment from Azerbaijan".[636] In the PHB, his claim has evolved, as he now speaks of a "great fear for his life and that of his family" caused by pre- and post-treaty conduct that allegedly prevented him from returning to Azerbaijan, without reference to a "policy of keeping him out" or "banishment".[637] That claim is not fully pled, as Mr. Bahari fails to explain how his subjective fear could objectively amount to a breach of the right to enter and remain in Azerbaijan.

551. For jurisdictional purposes, the alleged act of preventing Mr. Bahari from returning to Azerbaijan post-treaty could *prima facie* be an independent cause of action under Article 2(2)(a) of the Treaty.

552. For the foregoing reasons, the Tribunal finds that the claims under Articles 2(3) and 2(2)(a) of the Treaty are premised on post-entry into force acts that are *prima facie* capable of constituting independent causes of action under the Treaty and therefore fall within its temporal jurisdiction. It follows that the Tribunal has jurisdiction over the dispute arising from those same acts as it necessarily occurred after the Treaty's entry into force, without it being necessary to determine whether Article 10 of the Treaty covers pre-treaty disputes, nor to establish the precise moment at which the dispute occurred.

### c. *Does the Tribunal have jurisdiction over the Respondent's alleged pre-Treaty breaches of customary international law?*

553. The Tribunal now turns to the Claimant's claim that the Tribunal has jurisdiction over alleged breaches of the MST under customary international law that materialized before the Treaty entered into force.

554. To begin with, the Tribunal notes difficulties relating to how the claim was framed. Mr. Bahari alleges that he "has claimed breaches of general international law in addition to (and as distinct from) treaty breaches since the Notice of Arbitration".[638] While the request for relief in the Notice of Arbitration referred generally to "a declaration that the Republic of Azerbaijan has breached its obligations under the Treaty *and international law* with respect to Claimant's investments in the Republic of Azerbaijan",[639] the Statement of Claim and Statement of Reply only sought "a declaration that Azerbaijan has breached its obligations under the Treaty with respect to Mr. Bahari's investments

636 RoJ, paras. 456, 457. See also Claimant's Overview Chart, p. 2.
637 C-PHB, paras. 252, 260, 287, 289(c).
638 C-PHB, para. 192.
639 Notice of Arbitration, para. 133(b) (emphasis added).

in Azerbaijan",[640] without any reference to international law. Only in the Rejoinder on Jurisdiction and PHB did breaches of international law resurface in the request for relief.[641]

555. As a result, the claim is inconsistent with the Claimant's position in the Statement of Reply, in which he stated unambiguously that "[he] does not allege that this Tribunal has jurisdiction over Azerbaijan's acts that occurred prior to the Treaty's entry into force" and that "[i]t is not [his] case that the alleged breach occurred before the Treaty entered into force", as it is, in his own words, "a legal impossibility under the principle of non-retroactivity".[642]

556. In addition, the scope of the claim evolved between the Rejoinder on Jurisdiction, in which Mr. Bahari invoked a breach of the MST only in connection with his alleged expulsion from Caspian Fish,[643] and his PHB, in which he targeted all of the Respondent's pre-Treaty conduct as violations of customary international law.[644]

557. In these circumstances, the Tribunal would be inclined to dismiss the claim as untimely, given that the Claimant failed to raise it in its first submissions on the merits and on jurisdiction, and offered no justification for this failure. Moreover, the expansion of the scope of the claim in the Claimant's PHB is prejudicial to the Respondent's right of defense, as it prevented the Respondent from providing a full response.

558. In any event, the claim must be dismissed on other grounds. As discussed above, the principle of non-retroactivity means that the Tribunal has no jurisdiction over pre-treaty breaches of customary international law, unless the Contracting Parties departed from that principle. Pursuant to the non-retroactivity principle, a treaty, including the offer to arbitrate that it contains, does not bind the Contracting State while the treaty is not effective. Hence, before entry into force, there is no offer to arbitrate outstanding that a claimant may accept. That reasoning applies irrespective of the characterization of the Contracting State's pre-treaty act as a breach of treaty or customary international law.

559. The Claimant relies on *Tekfen v. Libya* in support of the contrary proposition.[645] The Tribunal acknowledges that its own analysis differs from that of the *Tekfen* tribunal.[646]

560. That tribunal considered itself competent to adjudicate claims based on pre-treaty breaches of the MST arising from an "act or fact which took place […] before the date of the entry into force of the treaty" within the meaning of Article 28 of the VCLT. It must thus have understood the treaty provisions as derogating from the principle of non-

640 SoC, para. 710(ii); SoR, para. 1209(ii).
641 RoJ, para. 528 (ii); C-PHB, para. 421(b).
642 SoR, paras. 704, 1105.
643 RoJ, para. 434.
644 C-PHB, para. 221.
645 **CLA-338**, *Tekfen TML Joint Venture v. Libya (II)*, ICC Case No. 21371/MCP/DDA, Final Award, 11 February 2020, para. 7.5.8.
646 The President of the Tribunal, who was a member of the *Tekfen* tribunal, acknowledges the difference in solution reached here. Upon a renewed legal analysis in the context of this arbitration, she has come to the conclusion that the solution expressed here better conforms to the principle of non-retroactivity and its effects on the arbitration agreement.

retroactivity. However, this Tribunal has difficulty discerning how such a derogation could be inferred from the relevant treaty in that case, which expressly provides that it "shall not apply to disputes that have arisen before its entry into force" (Article 10 of the Turkey-Libya BIT). Be that as it may, the Tribunal has found that the present Treaty does not deviate from the principle of non-retroactivity and thus cannot govern pre-treaty conduct.

561. Accordingly, the Tribunal lacks temporal jurisdiction over claims arising from pre-treaty conduct alleged to be in breach of customary international law. The Tribunal's conclusion finds support in several awards, including *Mondev v. USA* and *MCI v. Ecuador*.[647] Accordingly, the Tribunal dismisses the claims insofar as they relate to alleged pre-treaty breaches of customary international law as falling outside its temporal jurisdiction.

## C. ARTICLE 9 OF THE TREATY

562. The Respondent submits an additional preliminary objection founded upon Article 9 of the Treaty. That provision reads as follows:

> This Agreement shall only apply to the investments approved by the competent authorities of the host Party.
> The competent authority in the Islamic Republic of Iran is: […]
>
> The competent authority in the Republic of Azerbaijan is:
> Ministry of Foreign Economic Relations
> S.Gurbanov Str. 4
> Baku
> the Republic of Azerbaijan.[648]

### 1. The Respondent's position

563. Azerbaijan contends that the Tribunal does not have jurisdiction to hear the Claimant's claims, because none of his alleged investments were approved by the Ministry of Foreign Economic Relations ("MFER") or any competent authority as required under Article 9 of the Treaty.

564. According to the Respondent, Article 9 is a jurisdictional requirement defining the State's consent to the Treaty, under which no investment, pre-existing or otherwise, receives Treaty protection unless approved by the host State.[649] That requirement ensures that the host State retain a measure of discretion in the application of the Treaty with respect to specific investors or investments.[650] Azerbaijan contends that the opening words "[t]his Agreement shall only apply" indicate that Article 9 imposes a "clear condition on the State's consent to the applicability of the Treaty – irrespective

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647 **CLA-39**, *Mondev v. United States*, Award, 11 October 2002, para. 74; **RLA-71**, *MCI Power Group v. Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, para. 96. See also **CLA-157**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, 11.3.

648 **CLA-1**, Treaty, Article 9.

649 SoRJ, para. 208, referring to Vandevelde ER-2, paras. 5-14.

650 SoD, paras. 131-132.

of the point in time at which an investment is made",[651] adding that the broad language of the heading "Applicability of the Agreement" shows that Article 9's approval requirement "is cumulative, not alternative, to any other condition or requirement".[652]

565. The Respondent further submits that both the ordinary meaning and context of Article 12 of the Treaty support its interpretation of Article 9. Pointing to the title of Article 12 "Entry into Force, Duration and Termination", it argues that the plain meaning of Article 12(1) is "simply that the Treaty applies to investments made before its entry into force",[653] and that the words "as well" in the final sentence show that the Treaty applies to pre-existing investments "on the same basis as it applies to those investments made after its entry into force", which includes the condition to the State's consent to the Treaty set out in Article 9.[654] Accordingly, it is the Respondent's submission that for an investor with a pre-entry into force investment seeking Treaty protection, an application under Article 9 is required.[655]

566. Moreover, relying on Professor Kenneth Vandevelde's expert opinion, Azerbaijan challenges the Claimant's contention that its interpretation is incorrect as it would grant the host State "*carte blanche*" to decide whether or not it complies with its treaty commitments, alleging that States are not obligated under customary international law to admit foreign investments.[656]

567. The Respondent also rejects the Claimant's reliance on the *travaux préparatoires,* general BIT practice of Iran and Azerbaijan, and rule-of-law considerations, to interpret Article 9 of the Treaty. Specifically, it submits that recourse to the *travaux préparatoires* is inappropriate, and that they are in any event of limited guidance and do not support the Claimant's conclusions.[657] As to the treaty practice of both States, it asserts that treaties with third-party States are irrelevant since they have no connection to the negotiation and conclusion of the Treaty, and in any event would have little probative value to interpret the Treaty.[658] Azerbaijan further disputes the proposition that rule-of-law considerations are pertinent here. As a jurisdictional requirement, Article 9 must be construed on its own terms, a State's consent to arbitrate having to be stated unequivocally.[659]

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651 SoRJ, para. 218.
652 SoRJ, para. 219.
653 SoRJ, para. 216.
654 SoRJ, para. 218.
655 SoRJ, para. 218; Vandevelde ER-2, paras. 19-23.
656 SoD, paras. 131-132.
657 SoRJ, paras. 222-226, 235.
658 SoRJ, paras. 228-231, referring *inter alia* to **CLA-51**, *Rompetrol v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, para. 108; **RLA-283**, *Mobil Investments v. Canada (II)*, Decision on Liability and Principles of Quantum, 22 May 2012, para. 230.
659 SoRJ, para. 208, referring to **CLA-107**, *Daimler v. Argentina*, ICSID Case No. ARB/05/1, Award, 22 August 2012, para. 175; **RLA-274**, *Plama v. Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005, para. 198; **RLA-257**, *Latam Hydro v. Peru*, ICSID Case No. ARB/19/28, Award, 20 December 2023, para. 345; **RLA-275**, *BSG Resources v. Guinea*, ICSID Case No. ARB/14/22, Award, 18 May 2022, para. 292; **RLA-276**, *ICS v. Argentina (I)*, PCA Case No. 2010-09, Award on Jurisdiction, 10 February 2012, para. 280; **RLA-277**, *Wintershall v. Argentina*, ICSID Case No. ARB/04/14, Award, 8 December 2008, para. 160(3).

568. On the facts, the Respondent points out that Mr. Bahari did not seek or obtain approval from the competent authority both before and after the Treaty entered into force, which is not disputed. It further denies that Mr. Bahari's investments were approved, arguing that the alleged "informal" or "*de facto*" approvals to satisfy the requirements of Article 9, as most of these merely establish the existence of an asset under Azerbaijani law or are routine administrative permits.[660]

569. Finally, Azerbaijan contests the Claimant's claims grounded on the severability of Article 9 of the Treaty or on the existence of a waiver of the approval requirement. As regards the first claim, Azerbaijan argues that the Claimant "has no standing to claim that Article 9 of the Treaty is inoperable or suspended", as the "suspension of the provisions of the Treaty can only be effected by inter-State dispute settlement, pursuant to Article 11 of the Treaty, or by agreement of the States Parties".[661] In its view, the claim fails in any event due to the condition that a clause may only be severed if it is "not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole" set forth in Article 44 of the VCLT, which is met neither for Iran, as acknowledged by the Claimant itself, nor for Azerbaijan.[662] Indeed, Article 9 was important to Azerbaijan, which is confirmed by Mr. Valiyev, Head of the Economic Department of the MFER when the Treaty was negotiated.[663]

570. Azerbaijan further denies that its alleged failure to "operationalize" Article 9 constitutes a waiver or gives rise to an estoppel. The designation of a competent authority in the form of the MFER was sufficient to operationalize Article 9, even if the MFER was abolished in 1997 before the Treaty entered into force.[664] What matters is that the successors to the MFER assumed their functions for the purposes of the Treaty,[665] as any investor knowing of the abolition of the MFER would also have been aware of its successor ministries. Moreover, any correspondence addressed to the MFER at the address specified in Article 9 would have been redirected to its then successor.[666] The Respondent also stresses that waiver and estoppel "have high thresholds in investment treaty jurisprudence", and that the decisions relied upon by the Claimant bear no resemblance to the present case.[667] Waiver and estoppel require "a very definite, very

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660 SoD, para. 151, citing **RLA-18**, *Philippe Gruslin v Malaysia (II)*, ICSID Case No ARB/99/3, Award, 27 November 2000, paras. 25.5-25.6.

661 SoRJ, paras. 237-239, referring to **CLA-36**, VCLT, Article 57; **CLA-251**, *B3 Croatian Courier v Croatia*, ICSID Case No. ARB/15/5, Award, 5 April 2019, paras. 533-534.

662 SoRJ, paras. 248-249.

663 SoD, paras. 134-136; SoRJ, para. 225, citing Valiyev WS-1, paras. 9, 28-31.

664 SoD, paras. 129-130, 137.

665 SoD, paras. 139-145, referring to Mustafayev ER, paras. 22-35; **C-233**, Decree of the President of the Republic of Azerbaijan No. 607, 24 June 1997; **RLA-78**, Decree of the President of the Republic of Azerbaijan No. 475, 30 April 2001.

666 SoD, para. 141; SoRJ, para. 215.

667 SoRJ, paras. 251-252, referring to **CLA-246**, *Pac Rim v Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, para. 8.51; **CLA-282**, *H&H v. Egypt*, ICSID Case No. ARB/09/15, Final Award, 6 May 2014; **CLA-117**, *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015; **CLA-31**, *Desert Line v. Yemen*, Award, 6 February 2008. See also SoD, paras. 152-157.

consistent course of conduct on the part of the State" as well as detrimental reliance[668] and a good faith effort to comply on the part of the investor,[669] which are lacking.[670]

### 2. The Claimant's position

571. The Claimant submits that Article 9 of the Treaty applies to investments made before the Treaty entered into force, only if approval was required under the host State's law at the time of the investment, which was not the case in Azerbaijan. Alternatively, he contends that the doctrines of severability or waiver entitle him to Treaty protection, even if his investments lacked Article 9 approval.

572. Relying on Professor Stephan Schill's expert opinions, the Claimant maintains that Azerbaijan's interpretation of Article 9 leads to a result that is manifestly absurd or unreasonable and cannot have been intended.[671] In his submission, several issues arise when interpreting Article 9 of the Treaty: (i) what the relationship is between Articles 9 and 12(1) of the Treaty, which are both scope-of-application provisions; (ii) whether approval under Article 9 requires domestic implementation and, if so, what the consequences of its absence are; and (iii) whether unilateral changes to the authority designated in Article 9 requires a specific form and notification to the other Contracting State and the latter's investors.[672] As the wording and context of Article 9 do not provide clear answers, it is necessary to resort to other means of interpretation, namely to *travaux*, treaty practice of the two States, and "rule-of-law considerations".[673]

573. According to the Claimant, the *travaux* show that Azerbaijan proposed that the Treaty apply to all investments made in conformity with the host State's laws, whether made before or after entry into force, and that such proposal was retained despite the inclusion of an approval requirement in Article 9. Conversely, the *travaux* do not support the notion that pre-existing investments required approval after the Treaty entered into force.[674]

574. As regards treaty practice, Mr. Bahari emphasizes that Iran's treaty practice is [redacted]".[675] With respect to Azerbaijan's treaty practice, he points out that none of the 49 other Azerbaijani BITs nor its 2016 Model BIT require investment approval. In addition, except for four BITs that do not apply to pre-existing investments, all of the

668 SoRJ, para. 252, citing **RLA-290**, *North Sea Continental Shelf (Germany v. Denmark)*, Judgment, 20 February 1969, ICJ Reports 1969, para. 28.
669 SoRJ, paras. 252-253, referring to **RLA-266**, *Orazul v. Argentina*, ICSID Case No. ARB/19/25, Award, 14 December 2023, para. 507; **RLA-291**, A. Kulick, *About the Order of Cart and Horse, Among Other Things: Estoppel in the Jurisprudence of International Investment Arbitration Tribunals*, EJIL, 2016, Vol. 27 No. 1, paras. 111, 121, 124.
670 SoRJ, para. 253, referring to SoR, paras. 812-813.
671 Schill ER-2, para. 47.
672 Schill ER-1, paras. 47-58.
673 Schill ER-1, paras. 59-60.
674 Schill ER-1, paras. 39-47, 101-107; Schill ER-2, paras. 48-49.
675 Schill ER-1, paras. 163-168.

BITs extend treaty protection to investments made prior to entry into force, which confirms that Article 12(1) is a scope-of-application provision independent from Article 9.[676]

575. Moreover, the Claimant argues that "rule-of-law considerations" derived from the Treaty's object and purpose to promote and protect investments should inform the interpretation of Article 9 of the Treaty.[677] *First*, such considerations mandate that there must be '[redacted].[678] *Second*, legal certainty mandates that '[redacted], with the consequence that [redacted]". [679] *Third*, rule-of-law considerations imply that a change of the competent authority under Article 9 must be notified to the other Contracting Party and publicized.[680] The designation of the MFER in the Treaty is insufficient to operationalize Article 9, as the changes resulting from the MFER's replacement were neither notified to Iran nor made public.[681] Furthermore, while Iranian investors have invested close to USD 5 billion in Azerbaijan between 1995 and 2023, not a single one has requested approval under Article 9 of the Treaty, which rebuts the Respondent's argument that publicly available laws inform Iranian investors that another ministry carries out the MFER's functions.[682]

576. Accordingly, it is the Claimant's submission that approval under Article 9 was not required before the Treaty entered into force because no requirement or possibility existed under Azerbaijani law, be it when the investment was made or upon the Treaty's entry into force.[683]

577. In the alternative, the Claimant contends that, even if Article 9 is interpreted as requiring investment approval prior to the entry into force of the Treaty, the doctrines of severability of inoperative treaty clauses or waiver would call for the application of the Treaty to his investments, even without Article 9 approval.[684] The doctrine of severability, so argues Mr. Bahari, allows '[redacted]".[685] Furthermore, he denies lacking standing to claim that Article 9 is inoperable or suspended, because Article 10 does not imply

676 Schill ER-1, paras. 209-213.
677 Schill ER-2, paras. 15-31.
678 Schill ER-1, paras. 67-74.
679 Schill ER-1, paras. 75-81.
680 Schill ER-1, paras. 82-83.
681 Schill ER-2, paras. 96-104.
682 Schill ER-2, paras. 105-107, referring to Valiyev WS, para. 32.
683 Schill ER-2, para. 7.
684 SoR, paras. 848-857.
685 Schill ER-1, paras. 221-239; Schill ER-2, para. 154.

any limitation as to the types of investment disputes that can be submitted to arbitration.[686]

578. As a further alternative, according to the Claimant, Azerbaijan's failure to operationalize Article 9 can be seen as a waiver or estoppel.[687] Investment arbitration awards support the proposition that a treaty-based approval requirement may be unilaterally waived by the host State.[688] Many if not all factors typically considered in assessing such a waiver are present in this case, including (i) the status of Azerbaijani officials and organs who provided assurances concerning Mr. Bahari's investments; (ii) the lack of clarity about the process to obtain approval under Article 9 and about the competent authority; (iii) the investor's compliance with local law requirements when making the investment; and (iv) the fact that Azerbaijan has issued permits and allowed Mr. Bahari to establish local entities.[689]

### 3. Analysis

579. The Respondent's objection hinges on whether the Article 9 approval requirements applies to investments made before the Treaty's entry into force. Under the facts, the approval requirement for post-Treaty investments is irrelevant. The Tribunal will first determine whether pre-existing investments are subject to Article 9 in order to benefit from the Treaty (**a**). It will then discuss the form of the approval (**b**) and, lastly it will address whether Mr. Bahari's investments were in fact approved (**c**).

#### a. *Does Article 9 of the Treaty require that pre-existing investments be approved before they can benefit from Treaty protection?*

580. The starting point of the analysis is the interpretation of Article 9 of the Treaty in accordance with Article 31 of the VCLT. The ordinary meaning of Article 9 of the Treaty is clear. The title ("Applicability of the Agreement") and the opening phrase ("[t]his Agreement shall only apply to the investments approved by the competent authorities of the host Party") make no distinction based on the timing of the investments.

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686 Schill ER-2, paras. 126-140.

687 Schill ER-1, para. 251; Schill ER-2, para. 154.

688 Schill ER-1, paras. 252-262, citing *inter alia* **CLA-31**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, para. 118; **CLA-282**, *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, The Tribunal's Decision on Respondent's Objections to Jurisdiction, 5 June 2012, para. 54; **CLA-117**, *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, para. 411; **RLA-92**, *Walter Bau AG (in Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Partial Award on Jurisdiction, 5 October 2007, para. 7.2; **RLA-18**, *Philippe Gruslin v. Malaysia (II)*, ICSID Case No. ARB/99/3, Award, 27 November 2000, paras. 19.1-20.5; **CLA-35**, Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines, ICSID Case No. ARB/03/25, Award, 16 August 2007, para. 346.

689 Schill ER-1, paras. 263-271, referring *inter alia* to **CLA-117**, *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015; **CLA-47**, *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015; **CLA-282**, *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, The Tribunal's Decision on Respondent's Objections to Jurisdiction, 5 June 2012.

Accordingly, every investment must be approved to be covered by the Treaty. For jurisdictional purposes, this means that an arbitral tribunal constituted under Article 10 only has jurisdiction if the dispute before it arises in connection with an approved investment.

581. There is nothing extraordinary in such a requirement. Clauses requiring the host State's prior approval as a condition for an investment to be entitled to treaty protection are found in other treaties, which is acknowledged by the experts of both Parties[690] and confirmed by arbitral jurisprudence.[691]

582. Contrary to the Claimant's suggestion, the plain meaning of Article 9 is not inconsistent with other parts of the Treaty. *First*, the approval requirement of Article 9 is consistent with the legality requirement set in Article 1(1), pursuant to which investments are to be made in compliance with the host State's law. Approval and legality requirements have different purposes.[692] The latter excludes unlawful investments from the scope of the treaty, whereas the former allows the host State to monitor the investments to which protection is granted.

583. *Second*, the clear, ordinary meaning of Article 9 is equally consistent with Article 12(1), according to which investments made before the Treaty's entry into force, but continuing to exist thereafter, may benefit from Treaty protection from the date of entry into force. Article 12 does not specify under what conditions pre- and post-Treaty investments are protected. By contrast, Article 9 provides that the applicability of the Treaty is subject to the host State's approval of the investment. Hence, there is no contradiction or ambiguity between Articles 9 and 12.

584. *Third*, the ordinary meaning of Article 9 is in line with the Treaty's object and purpose to promote economic cooperation between the Contracting Parties with respect to investments, as they are reflected in the preamble. As the tribunal in *Desert Line v. Yemen* found, approval requirements pursue "a legitimate policy rationale, in the sense that the Governments of such States evidently wish to exercise a qualitative control on the types of investments which are indeed to be promoted and protected".[693]

690 See, e.g., Schill ER-1, paras. 47-49; Vandevelde ER-1, paras. 38-40.

691 See, e.g., **CLA-33**, *Yaung Chi Oo Trading Pte Ltd v. Government of the Union of Myanmar*, ASEAN Case No. ARB/01/1, Award, 31 March 2003, para. 53; **CLA-31**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, paras. 108-110 and 111; **CLA-47**, *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015, para. 404; **RLA-92**, *Walter Bau AG (in Liquidation) v. The Kingdom of Thailand*, UNCITRAL, Partial Award on Jurisdiction, 5 October 2007, paras. 3.20-3.23.

692 See, e.g., **RLA-154**, *Öztaş Construction v. Libya*, ICC Final Award, 14 June 2018, para. 115; **CLA-33**, *Yaung Chi Oo Trading v. Myanmar, ASEAN I.D*. Case No. ARB/01/1, Award, 31 March 2003, para. 58.

693 *Desert Line Projects LLC v. Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, **CLA-31**, para. 108.

585. For these reasons, the Tribunal concludes that Article 9 requires that pre-existing investments must be approved if they are to benefit from Treaty protection.

### b. *What approval is required in respect of pre-existing investments?*

586. The next step in the analysis is to determine what type of approval is required. The Parties advance different positions. The Respondent says that any pre-existing investment is subject to the approval of the successor to the MFER following the Treaty's entry into force. According to the Claimant, pre-existing investments are not subject to any approval requirement, since Azerbaijani law imposed no such requirement before the Treaty entered into force.

587. Neither view seems well-founded. The Respondent's position does not accord with the terms of Article 9, which provides that the Treaty "shall only apply to investments approved by the competent authorities of the host Party". In the Tribunal's view, this language does not suggest that approval must be obtained after the Treaty became effective. Rather, the Tribunal understands it as meaning, in the words of *Churchill Mining v. Indonesia*,[694] that the approval "is a one-time occurrence, a gateway through [which] all […] investors must pass once". This one-time occurrence may take place before or after the Treaty enters into force. What matters is not the time but the fact that it does take place. This interpretation is reinforced if one considers that requiring repeated approvals would not serve the legitimate policy of controlling investments entering the territory, as that control has already been exercised. It follows that a pre-existing investment may validly have been approved before the Treaty became effective.

588. This reasoning demonstrates the lack of merit of the Claimant's position that no approval requirement at all applies to pre-Treaty investments. It is correct that Azerbaijani law did not set up such requirement.[695] However, it does not follow from such absence, that pre-Treaty investments can benefit from the Treaty without any approval whatsoever. Such a consequence would leave Article 9 without *effet utile* for part of the investments qualifying for Treaty protection. It would also create an imbalance between Iranian investors in Azerbaijan and Azerbaijani investors in Iran. Before the Treaty, Azerbaijani legislation established a general regime affording foreign investments from all origins certain guarantees. By contrast, the Treaty set up a

694 *Churchill Mining PLC v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and ARB/12/40, Decision on Jurisdiction, 24 February 2014, para. 289, cited in Schill ER-1, para. 78.

695 Thus, the Law "About Protection of Foreign Investments" did not establish any requirement of prior approval for the entry of foreign investments, merely providing that "enterprises with foreign investments are subject to state registration by the authorised executive power" and that "[r]efusal in state registration of the enterprise with foreign investments is possible only in cases stipulated by the Law […] 'On State Registration and the State Register of Legal Entities'". The latter stated that such a refusal was "possible due to violation of legal procedure when establishing legal entities, branches and representations of foreign legal entities, or inconformity of their partnership documents with legislation", adding that "[r]efusal in state registration of legal entities, branches and representations of foreign legal entities referring to lack of potential is not permitted". See **C-212**, Law of the Republic of Azerbaijan about Protection of Foreign Investments, 15 January 1992, Clause 18; **C-215**, Law of the Republic of Azerbaijan on State Registration of Legal Entities, 6 February 1996, Article 15.

separate legal regime, applicable in Azerbaijan, solely to Iranian investments in Azerbaijan granting them distinct rights, including the right to resort to arbitration.

589. Returning to the wording of Article 9, the opening sentence refers to approval by the "competent authorities of the host Party". The use of the plural suggests that other authorities than those specified in the following paragraph may be competent to approve an investment. Article 9 does not identify such other authorities, nor does it specify the formalities or substantive conditions of the approval process for such approval. In the absence of specification, it appears reasonable to understand that the Treaty envisages that any authority with relevant competence under local laws may approve pre-Treaty investments. By way of illustration, a foreign investor which obtained a permit necessary for its operations in the host State may be deemed to have secured the approval of a competent authority in respect of that investment.

590. Accordingly, a pre-existing Iranian investment that obtained substantive approval from an Azerbaijani authority having competence over that investment before the Treaty's entry into force may be deemed approved for purposes of Article 9 of the Treaty. This interpretation accords with the plain meaning of the words of Article 9 in their context. It ensures that Azerbaijan, as the host State, has exercised control over the investment prior to that investment benefiting from the protection of the Treaty. It also avoids imposing another control over the same investment after the Treaty's entry into force, which is consistent with established jurisprudence holding that an investment is subject to host State admission control only once, namely upon entry into that State's territory.

### c. *Were the Claimant's investments in connection with Coolak Baku approved within the meaning of Article 9?*

591. The Tribunal must now determine whether the pre-existing investments which meet the other jurisdictional requirements, namely Mr. Bahari's investments in Coolak Baku, including Shuvalan Sugar, were approved within the meaning of Article 9 of the Treaty.

592. The Claimant produced a number of documents obtained from the Respondent during document production, including a letter of 19 February 1995 from the Iranian administration for presentation to the Embassy of Azerbaijan, confirming that Coolak Shargh was active in the production of beverage, and a letter of 27 February 1996 from Bank Refah Kargaran to the same Embassy, informing it of that company's turnover and of credit facilities which it had opened for the importation of equipment.[696] The Claimant contends that these documents establish that the authorities "did scrutinize and perform due diligence on Mr. Bahari and his Iranian background when he was investing in Azerbaijan".[697]

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696 **C-329**, Letter from Iranian Government for presentation to the Embassy of Azerbaijan in Iran re soft drink production, 19 February 1995; **C-276**, Letter from Bank Refah Kargaran to the Embassy of Republic of Azerbaijan, 27 February 1996. See also **C-275**, Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995; **C-277**, Data related to Coolak Shargh from the Ministry of Commerce of Islamic Republic of Iran, 20 February 1998.

697 C-PHB, para. 103.

593. The Respondent challenges this contention. It asserts that "the submission of these types of documents was a routine part of establishing a joint venture in Azerbaijan where one of the participants was foreign". It adds that these documents were, in any event, submitted with the application to register Coolak Baku under the terms of the 1996 JVA, pursuant to which the investor was Coolak Shargh, not Mr. Bahari.[698]

594. In the Tribunal's assessment, these challenges appear to go beyond what was needed to register the Coolak Baku JV under Azerbaijani law.[699] It is true that, as such, they do not prove that the authorities conducted "due diligence" on the investments. However, they nonetheless show a level of state oversight during the establishment of the joint venture. In addition, while it is correct that the documents refer to Coolak Shargh and not Mr. Bahari, it is undisputed that the two were closely connected. In fact, Mr. Bahari was presented in one of these documents as the chairman and managing director of Coolak Shargh.[700]

595. Moreover, it is common ground that the Ministry of Agriculture issued a license to the Coolak Baku JV to produce beer in April 1999.[701] Although the context and conditions under which this license was issued were not addressed by the Parties, it may be regarded as an approval of the Ministry of Agriculture at a time when it is undisputed that Mr. Bahari was the foreign shareholder of the Coolak Baku JV.

596. Furthermore, there is no dispute that Mr. Heydarov was aware of Mr. Bahari's investments in Coolak Baku before the Treaty's entry into force. For the Claimant, Mr. Heydarov, through his representative Mr. Malik Aliyev, took control over Coolak Baku.[702] The Respondent contends that Mr. Bahari offered Mr. Malik Aliyev the position of general director in or around 1999.[703] Mr. Heydarov's involvement was also confirmed at the Hearing when Mr. Habib Aliyev testified that Mr. Malik Aliyev was Mr. Heydarov's representative and that the latter was controlling Coolak Baku.[704] Thus, although the Parties offer different explanations, they concur that Mr. Heydarov was involved in Coolak Baku's operations through Mr. Malik Aliyev. Mr. Heydarov, then the Chairman of the State Customs Committee and one of the most influential figures in the State, was therefore, at a minimum, aware of Mr. Bahari's investments in Coolak Baku, which may reasonably be regarded as a substantive approval of those investments.

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698 SoRJ, paras. 286-287.

699 See **C-212**, Law of the Republic of Azerbaijan about Protection of Foreign Investments, of 15 January 1992, Clause 18; **C-215**, Law of the Republic of Azerbaijan on State Registration of Legal Entities, 6 February 1996, Articles 7, 8, and 10.

700 **C-275**, Confirmation from the Iranian Embassy in the Republic of Azerbaijan that Mr. Bahari is working in Coolak Shargh, 13 July 1995.

701 **C-83**, Licence issued by Ministry of Agriculture to Coolak Baku, 26 April 1999.

702 RoJ, para. 143.

703 SoRJ, para. 289(a).

704 Hearing Trancript, Day 6, 179:1-180:18. See also **R-366**, Minutes of a meeting of Coolak Baku joint venture, 20 May 2002 ([redacted]").

597. On this basis, the Tribunal finds that the Claimant's investments in relation to Coolak Baku, including Shuvalan Sugar, were approved within the meaning of Article 9 of the Treaty before its entry into force. It follows that the Treaty, including Article 10, applies to those investments, which thus fall within the Tribunal's jurisdiction.

598. Finally, the Tribunal notes that several of the factors which arbitral awards identified to assess whether the host State has waived its right to raise the lack of approval are present here. A first factor refers to the knowledge of the investment at the highest levels of the State. As mentioned, Mr. Heydarov's awareness suggests that the investments were informally approved.[705] A second criteria addresses the granting of licenses and permits as well as registration with state authorities. Here it is not disputed that the Coolak Baku JV was registered with the Ministry of Justice in compliance with Azerbaijani law and was granted a license for the purposes of its activities in the country by the Ministry of Agriculture.[706] A third element focuses on the absence of an approval procedure in the host State's legislation.[707] That was indeed the case in Azerbaijan.

599. Even if Article 9 of the Treaty required formal approval for pre-existing investments (*quod non*), the Tribunal's conclusion would remain intact, as the Respondent would be deemed to have waived the approval requirement provided in Article 9 of the Treaty in respect of Mr. Bahari's investments in connection with Coolak Baku.

## D. CONCLUSION ON JURISDICTION

600. For the foregoing reasons, the Tribunal determines that:

e. It has jurisdiction *ratione materiae* over the dispute arising from the Claimant's investments in connection with Coolak Baku, including Shuvalan Sugar;

f. It has jurisdiction *ratione temporis* over the claims of Treaty breaches in relation to the Claimant's investments in Coolak Baku, including Shuvalan Sugar;

g. Those investments were approved within the meaning of Article 9 of the Treaty;

h. It lacks jurisdiction over the claims based on FPS brought under the MFN clause contained in Article 2(3) of the Treaty; and

i. It lacks jurisdiction over the other alleged investments, namely the Claimant's alleged investments in connection with Caspian Fish, the Ayna Sultan Property and the Carpets.

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705 See, e.g., **CLA-31**, *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008, paras. 103, 119; **CLA-282**, *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, The Tribunal's Decision on Respondent's Objections to Jurisdiction, 5 June 2012, para. 54, cited in Schill ER-1, para. 265.

706 See, e.g., **CLA-282**, *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, The Tribunal's Decision on Respondent's Objections to Jurisdiction, 5 June 2012, paras. 53-54, cited in Schill ER-1, para. 270.

707 See, e.g., **CLA-117**, *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, para. 411.

## VII. ADMISSIBILITY

601. Having found that the Tribunal has jurisdiction over the dispute concerning Coolak Baku, including Shuvalan Sugar, the question arises as to whether these claims are admissible having regard to the Respondent's objection that Mr. Bahari committed a fraud, with the result that the Tribunal should not entertain his claims. This fraud was allegedly perpetrated through three documents, namely the Coolak Baku Chartabi Contract of 16 May 1996 (**C-84**), the Shuvalan Sugar Chartabi Contract of 10 July 1997 (**C-85**) and the Caspian Fish Construction Chartabi of 10 May 1999 (**C-92**) (the "Chartabi Contracts"). This section addresses this issue.

### A. THE RESPONDENT'S POSITION

602. The Respondent submits that the claims should be rejected as inadmissible on the ground that Mr. Bahari sought to perpetrate fraud upon the Tribunal by producing and relying on the Chartabi Contracts, which are fraudulent documents created by Mr. Bahari to mislead the Tribunal.

603. On the law, Azerbaijan contends that its objection pertains to the admissibility of the claims rather than to the Tribunal's jurisdiction, arguing that questions of jurisdiction determine whether a tribunal has authority to hear a dispute under the applicable treaty, whereas issues of admissibility address whether a tribunal should hear a claim over which it has jurisdiction. Relying on *Churchill Mining v. Indonesia* as an example of fraud affecting admissibility rather than jurisdiction, it submits that, even if the Tribunal has jurisdiction over them, the claims should nevertheless be declared inadmissible due to the Claimant's fraudulent conduct.[708]

604. Azerbaijan's objection primarily relies on the doctrine of abuse of process. Arbitral jurisprudence, it says, has identified several categories of abuse, including fraudulent misrepresentation (as in *Inceysa Vallisoletana v. El Salvador*), treaty shopping and artificial restructuring of investments (as in *Phoenix Action v. Czech Republic*), or the filing of claims based on fabricated or non-existent investments (as in *Europe Cement v. Turkey* and *Cementownia v. Turkey*). It further points out that investment tribunals have consistently dismissed claims where the claimant engaged in document manipulation. It refers, *inter alia,* to *Europe Cement v. Turkey*, where the tribunal found that the claimant had not acted in good faith because it had asserted an investment "on the basis of documents that according to the evidence presented were not authentic" and concluded that "conduct that involves fraud and an abuse of process deserves condemnation".[709] Azerbaijan's objection also relies on international public policy as a

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708 R-PHB on Admissibility, paras. 102-104, citing **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 557.

709 R-PHB on Admissibility, paras. 85-96, referring *inter alia* to **CLA-99**, *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009; **RLA-144**, *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009; **CLA-32**, *Hamester v. Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010; **RLA-304**, *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008; *Cementownia v. Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009; *Inceysa Vallisoletana, S.L. v. El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006.

principle of international law, which, so it argues, prohibits an arbitral tribunal from adjudicating claims founded on forged documents.[710] In addition, Azerbaijan invokes the clean hands doctrine, asserting that this "equitable principle" applied in investment treaty arbitration precludes a party that has engaged in unlawful or deceitful conduct from seeking relief before an international tribunal and therefore requires dismissal of the claim once fraud is established.[711]

605. With respect to the standard for a finding of abuse, in reliance on *Churchill Mining v. Indonesia*, Azerbaijan pleads that the Tribunal must merely review "whether the impugned documents are authentic for the purposes of an action seeking to engage the international responsibility of a State".[712] By contrast, motive and intent, which may form part of the circumstantial evidence in assessing authenticity, are not required for a finding of fraud. Furthermore, the Respondent accepts that it bears the burden of proving that the Chartabi Contracts are inauthentic.[713]

606. Turning to the facts, the Respondent stresses three aspects. *First*, Azerbaijan submits that the Chartabi Contracts are central to Mr. Bahari's claims in respect of his investments in Caspian Fish, Coolak Baku and Shuvalan Sugar, both on the merits and in terms of quantum. As to the merits, the Chartabi Contracts purport to support Mr. Bahari's case that he made significant investments in Azerbaijan, for which he had the financial capacity to carry out these projects, contracted with Chartabi Contracting for the purpose of constructing the facilities, and paid Chartabi Contracting in full for the construction works. In respect of quantum, Azerbaijan emphasizes that the Claimant's quantum experts calculate the value of the Chartabi Contracts as being 97% of the investments which they confirm were made in Caspian Fish, Coolak Baku and Shuvalan Sugar. Thus, it is Azerbaijan's submission that, without the Chartabi Contracts, Mr. Bahari's claims do not stand.[714]

607. *Second*, the Respondent asserts that the Claimant fabricated the Chartabi Contracts and that Chartabi did not perform the works relating to Mr. Bahari's purported projects.

608. With respect to the Chartabi Contracts themselves, the Respondent challenges the credibility of the account given by Mr. Bahari at the Hearing about the creation of the documents by himself and his brother-in-law, Mr. Chartabi. Further, it claims that the contract terms cannot be verified, nor can the very existence of contemporaneous contracts be established, particularly in light of Mr. Bahari's admission that neither the originals nor any drafts are available anymore.[715] Azerbaijan adds that, while the

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710 R-PHB on Admissibility, paras. 97-101, referring to **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, paras. 508, 528.

711 R-PHB on Admissibility, paras. 109-111, referring to **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 493.

712 R-PHB on Admissibility, para. 84, citing **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 243.

713 R-PHB on Admissibility, paras. 83-84, citing **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 243.

714 R-PHB on Admissibility, paras. 8-12; 25-27.

715 R-PHB on Admissibility, paras. 13-15.

Chartabi Contracts do not include the provisions that would be expected in EPC contracts of such quantum,[716] several of their provisions are contradicted by the evidentiary record, including with respect to scope (as Mr. Gaines, the Claimant's construction expert, acknowledges that the dimensions set out in the Chartabi Contract do not match those of the buildings ultimately constructed) and timing (as Mr. Bahari asserts that construction works commenced at Caspian Fish in early 1998 despite the contract being dated May 1999).[717] Lastly, Azerbaijan emphasizes that there is no evidence showing that a construction business known as Chartabi Contracting ever existed in Iran or anywhere else, pointing out that Mr. Gaines admitted that he was unable to verify the existence of Chartabi Contracting.[718]

609. The additional evidence invoked by the Claimant in support of the Chartabi Contracts lacks probative value or is forged, in Azerbaijan's view.[719] Such evidence is composed of three non-contemporaneous letters: (i) a letter of 7 January 2019 from Mr. Chartabi confirming that Mr. Bahari paid the contractual amounts, which carries no evidentiary weight because it was likely prepared at the same time and by the same persons as the fraudulent contracts; (ii) a letter of 31 March 2024 from Mr. Gazai, Iran's former Ambassador to Azerbaijan, stating that the projects were "[redacted]" of Mr. Bahari, which likewise provide no proof, as it makes no reference to Chartabi Contracting, any construction works or amounts; and (iii) a letter of 9 April 2024 from Mr. Chartabi's brother, which Mr. Bahari conceded having obtained on account of their family relationship.[720]

610. The only additional evidence that is contemporaneous is an Iran Melli Bank check of 30 September 2000 drawn on Coolak Shargh's account in favour of Mr. Chartabi, in connection with the final payment of USD 24 million for construction works carried out in Azerbaijan. The Respondent contends that this document is likely to be a forgery, emphasizing the lack of credibility of Mr. Bahari's explanations on its provenance and the many inconsistencies apparent on the cheque itself.[721]

611. Moreover, the Respondent maintains that no general contractor was involved in Caspian Fish, Coolak Baku, or Shuvalan Sugar. In its submission, the works were most likely carried out informally by local workers and contractors, which was common practice in Azerbaijan in the late 1990s, as evidenced *inter alia* by the absence from the record of any documents evidencing construction activities carried out by Chartabi Contracting, as well as the discrepancies between the alleged scope of the EPC

716 R-PHB on Admissibility, paras. 16-18.
717 R-PHB on Admissibility, paras. 19-22.
718 R-PHB on Admissibility, paras. 23-24.
719 R-PHB on Admissibility, para. 41.
**720** R-PHB on Admissibility, paras. 44-49; **C-86**, Letter from Chartabi Contracting (Ahad Chartabi), 7 January 2019; **C-279**, Letter from Ahad Gazai to Diamond McCarthy LLP, 31 March 2024; **C-280**, Letter from Samad Chartabi, 9 April 2024.
721 R-PHB on Admissibility, paras. 50-52; **C-281**, Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.

construction contracts and the activities which Mr. Bahari and his witnesses otherwise state having performed.[722]

612. *Third*, Azerbaijan asserts that, throughout the proceedings, the Claimant sought to conceal his fraud with respect to the Chartabi Contracts, more specifically: (i) when he filed them with the Statement of Claim, he presented them as original, authentic documents; (ii) similarly, he made no disclosure during the document inspection carried out by the Respondent's handwriting expert; (iii) following problems that emerged during that inspection and pressure put by the Respondent, he eventually acknowledged in the Statement of Reply that the Chartabi Contracts had been "reissued" and adduced a statement from counsel asserting that the contracts were "copies of originals provided by Chartabi Contracting itself", which turned out to be incorrect; [723] (iv) subsequently, Mr. Bahari refused to provide information to the Respondent, in particular with respect to the "term sheets" included in the contracts; and (v) ultimately, it is only at the Hearing that he testified on the process of the creation of the Chartabi Contracts.[724]

613. Accordingly, it is the Respondent's case that the fabrication of the Chartabi Contracts by Mr. Bahari in support of his claims constitutes a clear abuse of process, which undermines the integrity of the arbitral proceedings. Allowing the claims to proceed would contravene fundamental principles of international public policy. Azerbaijan further submits that the fraudulent nature of the Chartabi Contracts, together with Mr. Bahari's related conduct in the arbitration, taint the whole case. Not sanctioning such a fraud could incentivize alleged investors to use dishonest means in order to make undue gains through arbitration.[725] Therefore, the Respondent requests the Tribunal to declare all the Claimant's claims as inadmissible.[726]

614. Finally, Azerbaijan denies its admissibility objection was raised belatedly at the Hearing. It only became aware of the extent of the fraud at the Hearing, when Mr. Bahari for the first time disclosed the process by which the Chartabi Contracts were created. It thus made its objection at the earliest possible opportunity, namely in its opening statement and subsequently in its closing submissions.[727]

### B. THE CLAIMANT'S POSITION

615. The Claimant addressed the Respondent's objection at the Hearing and in his PHB. His defense is twofold: *first*, there was no fraud on the Tribunal and no abuse of process; *second*, the objection is a jurisdictional challenge and should therefore be dismissed as time-barred.

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722 R-PHB on Admissibility, paras. 53-61.
723 **C-380**, Earnest Statement, 24 May 2024, paras. 6-7.
724 R-PHB on Admissibility, paras. 62-72.
725 R-PHB on Admissibility, paras. 109-111, referring to **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 493 and the cases cited in footnote 780.
726 R-PHB on Admissibility, paras. 73-76; 96; 101; 107-108.
727 R-PHB on Admissibility, paras. 77-79.

616. *First*, Mr. Bahari maintains that there is no basis, in law or in fact, to find his claim inadmissible due to the evidence relating to the Chartabi Contracts. On the law, the Claimant argues that "no international court or tribunal has ever ruled a claim inadmissible on the grounds of the provenance of certain pieces of evidence".[728] The authorities, which the Respondent cites merely establish that an investment will not benefit from protection when it was made or carried out in breach of national law or international principles of good faith, which the Respondent does not argue. Hence, these decisions do not support the objection. In particular, *Europe Cement v. Turkey* is inapposite, since the Chartabi Contracts are evidence of an investment and Mr. Bahari was prevented from producing the original documents because of the Respondent's Treaty breaches. Likewise, *Churchill Mining v. Indonesia* is distinguishable, insofar as it dealt with the investor's conduct in the implementation and oversight of the investment, and the contentious documents were directly related to that conduct, which is different here.[729]

617. Moreover, the Claimant contends that the awards addressing allegations of fraud show that tribunals accept abuse objections "only in very exceptional circumstances", and that the investor's intent is relevant to determining whether an investment is entitled to treaty protection. Accordingly, he insists that, even assuming that an entire claim could be held inadmissible because some documents are fabricated, here the objection fails, as he has not engaged in fraud or abuse of process.[730]

618. On the facts, Mr. Bahari submits that he did not act in bad faith and did not intend to deceive. He did not deny that the Chartabi Contracts are not originals and "fully accepts that his submission of the Contracts absent further explanation was a mistake".[731] He also stresses that he "has been transparent and forthright in responding to queries about the provenance of the Chartabi Contracts": specifically (i) he made the hard copies available for inspection by the Respondent and its forensic expert; (ii) he stated without reservation that the Chartabi Contracts were not the originals which he was forced to leave in Azerbaijan when he was expelled; and (iii) the issues identified during the inspection are unfounded, and he promptly produced hard copies of the missing

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728 C-PHB, para. 116, referring *inter alia* to **CLA-32**, *Hamester v. Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010; **CLA-99**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009; **RLA-144**, *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009; **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016; **RLA-304**, *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008.

729 C-PHB, para. 120, citing **RLA-144**, *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 141; **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 557.

730 C-PHB, paras. 122-124, referring *inter alia* to **CLA-130**, *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, para. 186; **RLA-300***, Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 244; **CLA-99**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 105.

731 C-PHB, para. 124.

pages and explained that the so-called "term sheets" were "created by Claimant's prior counsel as an internal working summary and was inadvertently included in C-092".[732]

619. Furthermore, Mr. Bahari testified at the Hearing that, prior to commencing his first arbitration against Azerbaijan in 2019, he was "[redacted]", an advice upon which he relied in the first arbitration and during the initial phase of this one.[733] He adds that he "[redacted]" and "[redacted]".[734]

620. In addition, the Claimant contends that the Chartabi Contracts were filed merely to corroborate the amounts expended for the construction of his projects and do not form an essential element of his claims. In this context, he underlines that he "made numerous qualifying investments in Azerbaijan that are entitled to protection under the Treaty, and none of which turns on the Chartabi Contracts".[735]

621. It is Mr. Bahari's further argument that he has produced documentary and witness evidence proving the facts underlying the Chartabi Contracts. In his view, the oral testimony of his witnesses confirmed the presence of Chartabi Contracting during the construction at Caspian Fish, and his construction expert opined that a general contractor was required for the project management and construction of Caspian Fish.[736]

622. Accordingly, it is Mr. Bahari's submission that his conduct in relation to the Chartabi Contracts falls short of establishing any fraud on the Tribunal or bad faith rising to the level of an abuse of process.

623. Finally, Mr. Bahari avers that Azerbaijan purposefully curtailed witness and documentary evidence about Chartabi Contracting and that its "immediate and precise arguments that the Chartabi Contracts were not the original versions strongly suggest that Azerbaijan is currently in possession of the actual originals".[737] In his view, there is therefore "sufficient support for an inference that Azerbaijan has the original versions of the Chartabi Contracts and leveraged that unknown fact in these proceedings in an attempt to discredit Mr. Bahari".[738]

624. *Second*, the Claimant avers that Azerbaijan's objection must be rejected as untimely under Article 23(2) of the UNCITRAL Rules, which requires that a "[p]lea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence". He points out that (i) in the Statement of Defence Azerbaijan challenged the

732 C-PHB, para. 125.
733 C-PHB, para. 127.
734 C-PHB, paras. 128-129.
735 C-PHB, paras. 119, 121, 161-162.
736 C-PHB, paras. 140-152.
737 C-PHB, para. 153.
738 C-PHB, para. 155.

authenticity of the Chartabi Contracts, but did not raise fraud,[739] and that (ii) in the Rejoinder, it limited itself to requesting that the Chartabi Contracts "be disregarded in their entirety", again without raising an objection although it had full knowledge of the facts underlying the objection.[740] He adds that raising the objection on the last day of the Hearing was unfair and amounts to an abuse of process.[741]

## C. ANALYSIS

### 1. Relevant principles

625. The doctrine of abuse of process is well established in international law and has been consistently recognized in international jurisprudence. It is a variation of the doctrine of abuse of right, which derives from the principle of good faith and prohibits the exercise of a right for purposes other than those for which the right was established.[742] The prohibition of abuse of process focuses on the misuse of a procedural right and especially of the right to arbitrate.[743] As the ICJ recently recalled in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide*, "[a]n abuse of process 'goes to the procedure before a court or tribunal' and concerns the question whether a State has misused that procedure to such an extent that its case should be rejected at the preliminary phase of the proceedings".[744]

626. Arbitral tribunals have resorted to the doctrine of abuse of process to reject claims where the claimant's conduct was regarded as constituting an abuse of the system of investment protection in different types of circumstances. For instance, the doctrine has been applied where an investment was restructured to attract investment treaty protection at a time when a dispute with the host State had arisen or was reasonably foreseeable,[745] or where multiple arbitral proceedings were initiated by different entities under the same control seeking reparation for the same measures and the same

739 SoD, para. 90.

740 SoRJ, paras. 8, 21-40.

741 C-PHB, paras. 156-160.

742 See, e.g., Robert Kolb, "Part Three Statute of the International Court of Justice, Ch.II Competence of the Court, General Principles of Procedural Law" in A Zimmermann, K Oellers-Frahm, C Tomuschat, CTams, M Kashgar, D Diehl (eds), *The Statute of the International Court of Justice: A Commentary*, Oxford University Press, (Second Edition), 2012, p. 904.

743 See, e.g., among many, **CLA-99**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 107; *Abaclat and others (formerly Giovanna A. Beccara and others) v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, para. 646; *Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, 10 June 2010, paras. 169-184; *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017, para. 541.

744 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, ICJ, Judgment – Preliminary Objections, 2 February 2024, para. 113.

745 See, e.g., **CLA-99**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009; **CLA-246**, *Pac Rim v. Salvador*, Decision on the Respondent's Jurisdictional Objections, 1 June 2012; *Philip Morris Asia Limited v. The Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015.

economic harm.[746] The doctrine has also come into play in situations involving forged documents. In *Churchill Mining v. Indonesia*, the tribunal dismissed the claims for abuse of process on the ground that they were based on documents that were fabricated as part of a fraud aimed at obtaining the mining rights giving rise to the dispute.[747] In *Europe Cement v. Turkey*, the tribunal dismissed the claims for abuse of process because the claimant had asserted an investment based on falsified documents.[748]

627. The Claimant submits that those cases are distinguishable, as they denied treaty protection when the investment was established or carried out in breach of domestic law or international principles of good faith, which is not alleged here. Be this as it may, the fact that the present situation has not been dealt with in a prior arbitral decision is irrelevant. It is generally accepted and not disputed here that the existence of an abuse of process is contingent upon the specific circumstances of each case.[749] To recall the statement of the ICJ, there is an abuse of process if a litigant has misused the proceedings in such manner that its claims must be rejected. Therefore, it is up to the Tribunal to determine whether the Claimant's submission of, and reliance on, the Chartabi Contracts constitutes a misuse of the arbitration mechanism available under the Treaty that is sufficiently serious to amount to an abuse of the investment dispute settlement system. In making this determination, the Tribunal must consider all the circumstances of the present dispute.

628. Moreover, it is well settled that the threshold for a finding of abuse of right or of process is high. As the ICJ held, "[i]t is only in exceptional circumstances that the Court should reject a claim […] on the ground of abuse of process".[750] Arbitral tribunals have also consistently emphasized that a finding of abuse is limited to exceptional situations.[751]

629. It is likewise well established that the assessment of whether a party's conduct amounts to an abuse of process is an objective one.[752] A finding of abuse is warranted if certain

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746 *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017.

747 **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 528.

748 **RLA-144**, *Europe Cement Investment and Trade S.A. v Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 175.

749 *Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, 10 June 2010, para. 177; *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Decision on Annulment, 17 September 2020, para. 309.

750 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Preliminary Objections, Judgement, 2 February 2024, para. 113; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, 6 June 2018, para. 150.

751 See, e.g., *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru, ICSID Case No. ARB/11/17*, Award, 9 January 2015, para. 186; **RLA-325**, *Mercuria Energy v. Poland*, SCC Case No. V 2019/126, Award, 29 December 2022, para. 626; **RLA-267**, *Rand Investments v. Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, para. 464.

752 See, e.g., *Philip Morris Asia Limited v. The Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015, para. 539; *Orascom TMT Investments S.à.r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, 31 May 2017, para. 542; *Cascade Investments NV v. Republic of Turkey*, ICSID Case

objective factors are present. It does not require evidence of bad faith, as subjective intent is inherently difficult to prove. So for instance, in the context of document forgery, the *Churchill Mining* tribunal held that the relevant inquiry was "whether the impugned documents are authentic for purposes of an action seeking to engage the international responsibility of a State", adding that "motive and intent are not required, but may form part of the circumstantial evidence to be considered in assessing authenticity".[753]

630. As for the burden and standard of proof, the Respondent accepts, and rightly so, that it bears the burden of proving the facts underlying its objection, and submits that the applicable standard is the balance of probabilities.[754] For his part, the Claimant emphasizes that "[t]he graver the charge the more confidence must there be in the evidence relied [upon]".[755] In line with other decisions,[756] this Tribunal does not consider that a heightened standard of proof is required to establish fraudulent conduct. The high threshold inherent in a finding of abuse relates to the nature of the facts that must be proven, not to the assessment of the evidence. Accordingly, the Tribunal will apply the standard of reasonable certainty, as defined in Section (IV)(B)(2) above. In other words, it will need to be convinced or reasonably certain that the facts alleged to constitute fraud did occur.

631. Finally, should fraud be established, the Tribunal will be required to determine the legal consequences of such finding. A review of international decisions shows that fraudulent conduct may bear upon the jurisdiction of the tribunal, the admissibility of all or part of the claims, or the merits of a dispute.[757] The Tribunal agrees with the Respondent that its abuse of process objection goes to the admissibility of the claims rather than to jurisdiction. Jurisdiction was established over part of the claims in accordance with the jurisdictional requirements set in the Treaty (Section IV above), that is irrespective of whether Mr. Bahari committed fraud in connection with the Chartabi Contracts. Yet, a tribunal which has jurisdiction may decline to exercise it because the claimant is abusing the arbitration process.

632. On this basis, the Tribunal will now examine the two issues underpinning the Respondent's objection: Does the Claimant's conduct in connection with the Chartabi

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No. ARB/18/4, Award, 20 September 2021, para. 344; *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Award, 16 March 2022, para. 367.

753 **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 243.

754 R-PHB on Admissibility, para. 83.

755 C-PHB, para. 123, citing **RLA-301**, *Lao Holdings v. Laos (I)*, ICSID Case No. ARB(AF)/12/6, Award, 6 August 2019, para. 110.

756 See, e.g., *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011, para. 125; *Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30, Award, 16 March 2022, para. 366; **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 243; **CLA-341**, *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013, para. 243, in the context of allegations of corruption.

757 **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 494 and paras. 495-506 and the case law referred to.

Contracts amount to fraud? If so, does the fraud render the claims inadmissible on the grounds of an abuse of process?

## 2. Does the Claimant's conduct in connection with the Chartabi Contracts constitute fraud?

633. The specificity of this case is that the inauthenticity of the Chartabi Contracts, which are documents created twenty years after their alleged execution, is not in dispute. Mr. Bahari eventually acknowledged that the Chartabi Contracts filed with his Statement of Claim were not the original contracts allegedly signed in 1996, 1997 and 1999, as he confirmed in his second witness statement and as was discussed at length at the Hearing. In the Claimant's submission, the Chartabi Contracts are "[redacted]" that were "[redacted]" and signed in 2019.[758] Moreover, Mr. Bahari accepts that the submission of these documents "absent further explanation was a mistake".[759] However, he denies any fraud or bad faith, asserting that he was fully transparent on their provenance when the issue arose.

634. In this context, the Tribunal considers that the mere fact that the Chartabi Contracts are not authentic is not sufficient, in and of itself, to establish fraud. It will rather focus its examination on three objective factors: *first*, the nature of the Chartabi Contracts as reproductions of genuine original contracts (**a**); *second*, the circumstances surrounding their "reissuance" in 2019 (**b**); and *third*, the procedural history relating to the Chartabi Contracts (**c**).

### a. *Are the reissued Chartabi Contracts copies of genuine contracts?*

635. Given the specific circumstances of the case, the central question is whether the Chartabi Contracts filed as exhibits C-84, C-85 and C-92 are true copies created in 2019 of genuine, original contracts executed and performed in the 1990s, as the Claimant contends. If the answer is affirmative, their submission into the record could arguably be regarded as a "mistake" that amounts to inappropriate procedural conduct, but which does not necessarily qualify as fraudulent conduct. If the answer is negative, the Claimant's defense founded on an alleged "mistake" would be untenable.

636. *First*, a preliminary and critical issue is whether the company that allegedly signed these contracts with Mr. Bahari, i.e., Chartabi Contracting, existed at the relevant time. The Claimant contends that Chartabi Contracting was "[redacted]"[760] and carried out significant works on his projects in Azerbaijan. However, he has not produced a single document demonstrating the company's existence and activities.

637. The Tribunal finds it particularly troubling that the Claimant was unable to produce any such documentary evidence, which could have originated from Iran or Azerbaijan and be composed of any type of documentation, such as commercial registry extracts,

758 Bahari WS-2, para. 21(b).
759 C-PHB, para. 124.
760 Hearing Transcript, Day 3, 72:12-14.

administrative or tax documents, invoices, pictures, or anything else that might have made the existence of this company at least plausible. This glaring absence of proof is even more troublesome as he had direct access to Mr. Chartabi, and did not spare resources to investigate other matters, including in Iran, for instance by retaining an international consultancy and investigations firm to locate one of his witnesses. Further, Mr. Gaines, the Claimant's construction expert, confirmed at the Hearing that he had searched for Chartabi Contracting, without result. Yet, it seems reasonable to expect that a construction company, *a fortiori* a large-scale construction company, would have left documentary traces, even in the 1990s.

638. The only documents on record purportedly evidencing Chartabi Contracting's existence are two non-contemporaneous letters: a letter prepared by Mr. Chartabi in 2019,[761] and a letter prepared by Mr. Chartabi's brother in 2024.[762] In the Tribunal's view, these documents have little probative value, if any. The 2019 letter was provided to Mr. Bahari by Mr. Chartabi when they "[redacted]" the disputed contracts[763] and therefore cannot constitute reliable evidence of the contracts' authenticity. As for the 2024 letter, it merely indicates that various projects of Mr. Bahari "[redacted]", without even a mention of Chartabi Contracting or the Chartabi Contracts. In addition, as Mr. Bahari admitted at the Hearing, that letter was provided to him by Mr. Chartabi's brother because of their family relationship.[764] Accordingly, these letters do not prove the existence of Chartabi Contracting.

639. The Tribunal further observes that at the Hearing, none of the Claimant's witnesses were able to confirm the existence of Chartabi Contracting. Mr. Klaus, the Claimant's private banker at the time, did not remember the name of Chartabi Contracting.[765] Mr. Suleymanov, who worked on the construction projects, testified that Mr. Chartabi was not "[redacted]" and that "[redacted]", without confirming the existence of Chartabi Contracting as a company.[766] In the same vein, Ms. Ramazanova stated that Mr. Chartabi was "[redacted]", without mentioning Chartabi Contracting.[767]

640. It follows that the evidentiary record casts serious doubt as to the very existence of Chartabi Contracting at the time when the Chartabi Contracts were allegedly executed and performed.

641. *Second*, another important aspect relevant to the Tribunal's assessment of whether the Chartabi Contracts reproduce genuine original contracts is whether these contracts were, in fact, performed.

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761 **C-86**, Letter from Chartabi Contracting (Ahad Chartabi), 7 January 2019.
762 **C-280**, Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, C-280, 9 April 2024.
763 Bahari WS-2, para. 21(b).
764 Hearing Transcript, Day 3, 138:5-7.
765 Hearing Transcript, Day 4, 190:13.
766 Hearing Transcript, Day 4, 43:4-7.
767 Hearing Transcript, Day 4, 127:20-128:12.

642. In this context, a first question arises which is whether the works contemplated in the Chartabi Contracts were carried out by Chartabi Contracting in accordance with the contractual terms.

643. It is common ground that, pursuant to the purported Chartabi Contracts, Chartabi Contracting was to perform the construction works as an EPC contractor. Indeed, the evidence of Mr. Gaines, is that [redacted]" under the Caspian Fish Chartabi Contract.[768] The same observation applies to the Coolak Baku and Shuvalan Sugar contracts, as their terms largely mirror those of the Caspian Fish contract, except as regards scope and price.[769] Thus, as the EPC contractor, Chartabi Contracting was responsible for the execution of all engineering, procurement, and construction activities required to complete the projects.

644. However, the oral testimony of the Claimant's witnesses suggest that Chartabi Contracting was not the EPC contractor on the projects. As noted above, Mr. Suleymanov stated that Mr. Chartabi was not "[redacted]" and that "[redacted]", and Ms. Ramazanova testified that he was merely "[redacted]". Those testimonies are inconsistent with Chartabi Contracting acting as the EPC contractor on the projects; rather, they describe Mr. Chartabi as one of the construction professionals involved in the works.

645. Other witness evidence also suggests that Chartabi Contracting was not the EPC contractor. With respect to Caspian Fish, Mr. Bahari testified that he personally paid the salaries of 600 workers and USD 4.5 million for building materials and consumables;[770] Mr. Moghaddam explained that he was responsible for constructing the doors and windows;[771] and Mr. Suleymanov stated that the metal trusses for the roof were fabricated in April 1999, prior to the date of the contract.[772] However, had there been an EPC contractor involved under a lump sum contract, the EPC contractor would have paid salaries, purchased the materials and consumables, and procured doors, windows, and trusses.

646. Furthermore, Mr. Gaines declared that any construction project generates documentation that is kept either on site or by the contractor or any other party involved.[773] However, no such documentation appears on the record, and no credible explanation has been provided in this respect. Indeed, even accepting for the sake of discussion the Claimant's position that he lost access to documentation which he left behind when he was expelled from Azerbaijan, this state of affairs would not explain

768 Gaines ER, para. 3.11.

769 **C-92**, Chartabi Contracting Caspian Fish Construction Contract, 10 May 1999, Articles 1 and 8; **C-84**, Chartabi Contracting Coolak Baku Construction Contract, 16 May 1996, Articles 1 and 8; **C-85**, Chartabi Contracting Shuvalan Sugar Construction Contract, 10 July 1997, Articles 1 and 8.

770 Hearing Transcript, Day 3, 92:18-25; Bahari WS-1, para. 46(ii).

771 Hearing Transcript, Day 3, 158:17-20.

772 Suleymanov WS, para. 31.

773 Hearing Transcript, Day 8, 43:20-44:24.

why Chartabi Contracting or other third parties involved in the projects could not provide Mr. Bahari with copies.

647. In addition, in his expert report, Mr. Gaines compared the scope of the Caspian Fish contract with the buildings eventually constructed, as shown in satellite images. While he states that [redacted], he adds the qualification "[redacted]".[774] The Tribunal has difficulty admitting that the project scope was completed when the number of buildings and their size were not in conformity with the contract. The Tribunal's doubts are reinforced when taking into account that, contrary to his expert, Mr. Bahari maintained at the Hearing that "[redacted]".[775]

648. In light of these considerations, the Tribunal is not persuaded that Chartabi Contracting performed the works addressed in the Chartabi Contracts. More precisely, there is sufficient evidence to find that Chartabi Contracting did not act as the EPC contractor on the projects.

649. *Third*, another issue that is directly relevant to the Tribunal's review of the performance of the Chartabi Contracts relates to whether Mr. Bahari paid Chartabi Contracting the allegedly agreed price for the works, i.e. a total of USD 36.6 million, as he claims.

650. Here again, it is troubling that the record is almost entirely devoid of documentary evidence, when a payment of such magnitude would necessarily have a documentary trail. Mr. Bahari relies on four documents, out of which three are non-contemporaneous, in support of his contention that he paid in full the price of the Chartabi Contracts.

651. The first three documents include the letters prepared by Mr. Chartabi in 2019 and by the latter's brother in 2024,[776] which have already been discussed and carry no evidentiary weight. The Claimant also invokes a 2024 letter from Mr. Gazai, a former Iranian ambassador, addressed to his counsel, stating that the projects were "[redacted]" of Mr. Bahari.[777] However, the letter mentions neither Chartabi Contracting, nor the Chartabi Contracts, nor any amount, and therefore cannot constitute evidence of payment. Accordingly, these three documents do not prove that Mr. Bahari paid Chartabi Contracting the price stipulated under the Chartabi Contracts.

652. The fourth document is the copy of a check dated 30 September 2000 in the amount of IRR 43.7 billion (approximately USD 25 million) drawn on Iran Melli Bank against Coolak Shargh's account, "[redacted]

774 Gaines ER, para. 3.45. See also para. 3.41.
775 Hearing Transcript, Day 3, 75:1-7.
776 **C-86**, Letter from Chartabi Contracting (Ahad Chartabi), 7 January 2019; **C-280**, Letter from Samad Chartabi, the CEO of Chartabi Metalworking Industries, 9 April 2024.
777 **C-279**, Letter from Ahad Gazai to Diamond McCarthy LLP, 31 March 2024.

[redacted]".[778] It is Azerbaijan's submission that this check is also likely a forgery, which the Claimant denies.

653. The Tribunal considers that a number of elements call into question the authenticity of the check dated 30 September 2000: (i) the explanations provided by Mr. Bahari at the Hearing as to its provenance, according to which he obtained the check from the son of his former accountant in Azerbaijan,[779] were unclear and unconvincing; (ii) the check was to be paid to Mr. Chartabi, not to Chartabi Contracting, and Mr. Bahari provided no credible explanation as to why he would have paid the former rather than the latter; (iii) the amount of the check does not match the amounts of the Chartabi Contracts and no plausible clarification was given for this discrepancy; (iv) the check was drawn on Coolak Shargh's bank account, not Mr. Bahari's, and the latter did not credibly explain why he would have used Coolak Shargh's bank account for personal purposes; (v) the check was issued after Coolak Shargh had been expropriated by the Iranian Government, if one follows Mr. Bahari's version at the Hearing,[780] or after Mr. Bahari had sold his entire participation in Coolak Shargh, if one relies on the Official Gazette of Iran.[781] Considering these elements together and in the absence of any other trustworthy evidence, the Tribunal concludes that the check is not authentic and cannot be relied upon.

654. In conclusion, the record suggests that Mr. Chartabi, or possibly one of his companies or individuals working for or with him, may have been employed by Mr. Bahari on the projects to carry out some construction. By contrast, it also shows, and the Tribunal is reasonably certain, that Chartabi Contracting did not exist at the relevant time, that Chartabi Contracting did not build the facilities as an EPC contractor in accordance with the terms of the Chartabi Contracts, and that Mr. Bahari did not make the payments required under the Chartabi Contracts. Accordingly, the Tribunal concludes that the Chartabi Contracts are not true, accurate or authentic copies or representations of genuine original contracts that were executed and performed in the late 1990s. This finding represents a decisive indication of fraud.

655. Furthermore, the Tribunal notes that, in light of the analysis above, the inference sought by the Claimant that the Respondent is in possession of the originals of the Chartabi Contracts must fail as it is neither reasonable nor consistent with the record, and with the finding just expressed that there were no such contracts.

### b. *How were the Chartabi Contracts "reissued" in 2019?*

656. Another objective factor informing the Tribunal's assessment of Mr. Bahari's fraudulent conduct is the circumstances in which the Chartabi Contracts were created or "[redacted]" in 2019, as recounted by Mr. Bahari at the Hearing.

778 **C-281**, Iran Melli Bank Check from Coolak Shargh to Ahad Chartabi, 30 September 2000.
779 Transcript of Hearing on Jurisdiction and Merits, Day 3, 91-92-93.
780 Transcript of Hearing on Jurisdiction and Merits, Day 3, 98:1-17.
781 **R-175**, Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 18 March 1999; **R-84**, Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999.

657. To begin with, Mr. Bahari gave reasons for the "[redacted]" of the Chartabi Contracts that he had not disclosed prior to the Hearing. He explained the reissuance by saying that, before filing his first arbitration against Azerbaijan in 2019, he was advised by his then counsel Winston & Strawn that "[redacted]" and that "[redacted]" with an "[redacted]". He maintains this statement in his PHB.[782]

658. That testimony is implausible. First, the alleged advice is not corroborated by any writing in the record. Second, it seems highly unlikely that experienced lawyers would have given such advice to a client, for reasons of their ethical duties and the risks of professional liability.

659. Furthermore, the Claimant described "the process that Mr. Bahari and Mr. Ahad Chartabi employed to reissue the Chartabi Contracts" in 2019. As summarized in his PHB, he made the following declaration:

> Mr. Ahad Chartabi had a text that he brought to Mr. Bahari to confirm, which was the same as the original Chartabi contracts. There were a number of engineers who worked on the projects that assisted Mr. Ahad Chartabi in putting the Chartabi Contracts together, and it took 21 days to collect all of the information.[783]

660. He also stated that "[redacted], adding that [redacted].[784] Moreover, while admitting that the reissued contracts did not reflect the "[redacted]" of the contracts but were "[redacted]", he insisted, as was already mentioned, that [redacted][785]

661. The Tribunal cannot accept these explanations. It is highly implausible that "a number of engineers" would have taken 21 days – a duration that is surprisingly precise – to assist Mr. Chartabi in drafting the contracts, which are rather basic and contain only limited technical information. It equally defies reason that those engineers and Mr. Chartabi himself recalled the details of the contracts more than twenty years after their execution in the absence of any documentary support, not to mention that it is unlikely that the engineers who worked on the project so many years earlier were all still employed by the same firm. Moreover, the Tribunal has already observed that Mr. Bahari's evidence about the identity of the measurements of the buildings is contradicted by his own construction expert.

662. Finally, Mr. Bahari claims in his PHB that he "[redacted]". For him, "the 'authenticity' of the Chartabi Contracts is that he did enter [into] them with Chartabi Contracting, and Mr. Ahad Chartabi confirmed in writing that he had entered into three construction contracts and was fully

782 C-PHB, para. 127, referring to Hearing Transcript, Day 3, 65:3-15, 67:4-7, 142:25,143:1-6.
783 C-PHB, para. 132, referring to Hearing Transcript, Day 3, 74:12-18, 76:23-25, 77:1-23, 85:2-12.
784 C-PHB, para. 131, referring to Hearing Transcript, Day 3, 64:7-11.
785 Hearing Transcript, Day 3, 75:1-7.

paid".[786] This attempted justification is unconvincing. It is true that Mr. Bahari cannot be expected to grasp all the nuances and complexities of evidentiary matters in arbitral proceedings. However, the difference between an original and a non-original document is generally understood by businesspeople, and Mr. Bahari is a very experienced businessman. In fact, Mr. Bahari proved his understanding of this distinction on numerous occasions throughout the Hearing,[787] as well as in contemporaneous documents on record.[788] Likewise, he confirmed that he fully understands that a document can be fabricated and therefore unreliable.[789]

663. While the foregoing review of the process of creation of the Chartabi Contracts does not allow the Tribunal to retrace the exact conditions under which the Chartabi Contracts were produced, the Tribunal is convinced that the circumstances examined support a finding of fraud.

### c. *Procedural history relating to the Chartabi Contracts*

664. A third objective factor which the Tribunal has considered is the history of the presentation of the Chartabi Contracts in these proceedings. In summary, that history is as follows:

a. On 21 April 2013, Mr. Bahari filed the Chartabi Contracts with his Statement of Claim. It is common ground that he did not mention their "reissuance" nor give any other explanation about these exhibits, thus impliedly presenting them as authentic, which is how the Tribunal understood them.

b. On 22 December 2023, in its Statement of Defence, Azerbaijan "dispute[d] the authenticity of the Chartabi Contracts" and announced that it would seek "inspection of the original documents in due course" for a number of reasons related to the documents themselves and the evidentiary record.[790]

c. On 22 May 2024, Mr. Bahari agreed to the physical inspection of the Chartabi Contracts.

d. On 24 May 2024, Mr. David Earnest, a member of Mr. Bahari's counsel team, signed an affidavit where he stated that [redacted]", Mr. Bahari "[redacted].[791] The affidavit and the information it contains was not shared with the Respondent and the Tribunal then, and it was especially not shared before the inspection took place, although the inspection was still weeks away.

786 C-PHB, paras. 129-130.
787 See, e.g., Hearing Transcript, Day 2, pp. 53-54; Hearing Transcript, Day 3, pp. 82-83, 86-87.
788 See, e.g., **R-145,** Email from Mr. Bahari to ANS Press, 28 June 2013; **R-53**, Email from Mr. Bahari to A Kalantarli copied to President's Office, 4 December 2013.
789 See, e.g., Hearing Transcript, Day 2, pp. 55-56, 101-103, 111.
790 SoD, para. 90.
791 **C-380**, Earnest Statement, 24 May 2024, paras. 6-7.

e. On 17 June 2024, the physical inspection of the Chartabi Contracts took place at the offices of Azerbaijan's forensic expert. On the same date, the Respondent wrote to the Claimant, requesting an explanation for discrepancies in the physical documents and copies of missing pages.[792]

f. On 18 June 2024, the Claimant responded that it was "[redacted]" where the missing pages were and would provide an update "[redacted]".[793]

g. On 21 June 2024, Mr. Bahari filed his Statement of Reply, Mr. Earnest's affidavit of 24 May 2024, and his second witness statement, where he explained that the Chartabi Contracts were "[redacted]" in 2019 "[redacted]".[794]

h. On 5 July 2024, the Respondent wrote to the Claimant, raising a number of requests for information in relation to Mr. Earnest's affidavit and the Chartabi Contracts. It also asked for the inspection of the native version of the "term sheets", the page in English summarizing the content of the contracts included in each of them.[795]

i. On 9 July 2024, the Claimant declined to respond but stated that the "term sheets" are "[redacted]". Further, he explained that "[redacted]".[796]

j. On 11 July 2024, the Respondent reiterated its request for the native versions of the "term sheets",[797] to which the Claimant's counsel responded on 16 July 2024 that they had "[redacted]".[798]

k. On 26 July 2024, the Tribunal granted the Respondent's request and ordered the Claimant "to provide the Respondent with native copies of the documents contained in page 6 of the electronic version of exhibits C-84, C-85 and C-92, with full metadata intact".

l. On 2 August 2024, the Claimant informed the Respondent that he "[redacted]", that "[redacted]

792 **R-339**, Emails between Quinn Emanuel, Diamond McCarthy and others, 17 June 2024 - 2 July 2024.
793 **R-339**, Emails between Quinn Emanuel, Diamond McCarthy and others, 17 June 2024 - 2 July 2024
794 Bahari WS-2, para. 21(b).
795 **R-340**, Letter from Quinn Emanuel to Diamond McCarthy and others, 5 July 2024.
796 **R-341**, Letter from Chang Law to Quinn Emanuel, 9 July 2024.
797 **R-344**, Letter from Quinn Emanuel to Diamond McCarthy and others, 11 July 2024.
798 **R-345**, Email from Diamond McCarthy to Quinn Emanuel, 16 July 2024.

[redacted]
[redacted]”,
and that ‘[redacted]
[redacted]”.[799]

m. On 29 August 2024, the Respondent raised additional requests for information regarding Winston & Strawn’s involvement in the creation of the “term sheets” and knowledge about the Chartabi Contracts.[800] On 6 September 2024, the Claimant refused to answer.[801]

n. On 29 October 2024, in its Rejoinder, the Respondent claimed that the Chartabi Contracts were “fraudulent documents” and a “fabrication”, asserting that Mr. Bahari had been “forced to admit that he prepared these documents for the purposes of this arbitration and backdated them, and therefore misled the Tribunal”. Accordingly, Azerbaijan requested that the Chartabi Contracts “be disregarded in their entirety”.[802]

o. On 10 December 2024, in the Rejoinder on Jurisdiction, the Claimant contended that “Mr. Bahari, and his Counsel, have been transparent and forthright with the Tribunal and Azerbaijan’s Counsel about the circumstances surrounding the reissued nature of the original contracts”. He continued to rely on the Chartabi Contracts, maintaining that they are “appropriate” and represent “what was built”.[803] Further, for the preparation of the expert report of Mr. Gaines submitted with the Rejoinder on Jurisdiction, Mr. Bahari furnished him with the Chartabi Contracts without caveat, as Mr. Gaines acknowledged at the Hearing.

p. At the Hearing, Mr. Bahari made new allegations concerning his former counsel’s advice on the Chartabi Contracts and their creation process in 2019, first through his counsel in the opening statement, then during his testimony. The Respondent raised its fraud defense during its opening presentation and again in closing statement.[804]

q. In his PHB, Mr. Bahari conceded that “it was an error to submit the Chartabi Contracts without explaining that they represented an attempt to recreate the originals” and that “his submission of the Chartabi Contracts absent further explanation was a mistake”, adding that “there was a misunderstanding between Mr. Bahari and his Counsel about the provenance of the Contracts”.[805] At the same time, he insisted that he “ha[d] been transparent and forthright responding to queries about the provenance of the Chartabi Contracts”. Finally, he submitted that

799 **R-346**, Letter from Chang Law and Diamond McCarthy to Quinn Emmanuel, 2 August 2024.
800 **R-347**, Letter from Quinn Emanuel to Diamond McCarthy and others, 29 August 2024.
801 **R-348**, Email from Diamond McCarthy to Quinn Emmanuel, 6 September 2024.
802 SoRJ, para. 8(a).
803 RoJ, paras. 283-284.
804 Hearing Transcript, Day 1, pp. 135-141; Hearing Transcript, Day 9, pp. 83-93.
805 C-PHB, paras. 111, 124, 126.

the "term sheets" were "created by Claimant's prior counsel as an internal working summary" and were "inadvertently" included in the Chartabi Contracts.[806]

665. The narrative of the procedural history of the Chartabi Contracts in this Arbitration, as it was just set out, further buttresses the Tribunal's finding that the Claimant's use of these documents was fraudulent for a number of reasons.

666. *First*, the Claimant disclosed that the Chartabi Contracts were not original documents only after the Respondent raised concerns and only after the document inspection. That there may have been a misunderstanding between the Claimant and his prior counsel, or for that matter his present counsel, makes no difference. It remains that the Claimant chose to use these documents, which are an essential part of his case, knowing that they were not authentic. As discussed above, the Tribunal is unconvinced by Mr. Bahari's explanations about why he believed he could file the contracts. Like any experienced businessperson, he must have understood that a "recreated" contract is not the original contract. A recreation is also not a copy.

667. *Second*, the Claimant failed to act transparently by allowing the inspection to proceed without informing Azerbaijan that the Chartabi Contracts were not authentic, when the whole purpose of the inspection was to assess the authenticity of documents. The least the Claimant could have done in his situation was to forward Mr. Earnest's affidavit of 24 May 2024 without delay. The fact that he did not do so adds even more questions as to the Claimant's motivations.

668. *Third*, neither did Mr. Bahari show full transparency in responding to the Respondent's queries concerning the provenance of the Chartabi Contracts and the so-called "term sheets", which gave rise to extensive exchanges between the Parties and required the Tribunal's intervention. Eventually, the provenance of the Chartabi Contracts and the process by which they were purportedly reissued by Mr. Chartabi and subsequently re-signed by Mr. Bahari and Mr. Chartabi during a trip to Iran were only revealed at the Hearing. Had the Claimant acted transparently, he would have disclosed this information at an earlier stage, especially given the specific requests raised by the Respondent in this respect as early as July 2024.[807] He should also have given a full account of the facts in his second witness statement.

669. As regards the "term sheets", their origin remains unclear. Mr. Bahari initially claimed that they were "[redacted]".[808] However, in his PHB, he then submitted that they were "created" by Winston & Strawn as "an internal working summary".[809] Beyond the inconsistency between the two, neither appears credible taking into consideration Mr. Bahari's assertions regarding the process by which the Chartabi Contracts were reissued in 2019 and the absence of any evidence showing Winston & Strawn involvement in connection with the Chartabi Contracts.

806 C-PHB, para. 125.
807 See, e.g., **R-340**, Letter from Quinn Emanuel to Diamond McCarthy and others, 5 July 2024.
808 **R-341**, Letter from Chang Law to Quinn Emanuel, 9 July 2024.
809 C-PHB, para. 125.

670. When assessed as a whole, the history of Mr. Bahari's procedural conduct in connection with the Chartabi Contracts shows that his defense that he merely made a "mistake" when producing them at the outset of the proceedings is untenable: he withheld relevant information relating to the contracts on multiple occasions during the proceedings and ultimately failed to provide credible explanations on essential matters.

671. Finally, the foregoing procedural history leads to the conclusion that the Claimant's position, according to which the Respondent's admissibility objection is untimely, is unfounded. While it is true that the Respondent had already asserted that the Chartabi Contracts were fraudulent in the Rejoinder, the Claimant had not been forthright about their circumstances, and information was not forthcoming until the Hearing, when the objection was raised. In addition, in his PHB, the Claimant had the opportunity to fully respond to the Respondent's arguments set out in its PHB on Admissibility.

672. Based on all these circumstances, the Tribunal is reasonably certain that the Claimant's conduct in connection with the Chartabi Contracts constitutes fraud.

### 3. Does the Claimant's fraud amount to an abuse of process rendering the claims inadmissible?

673. Having established that the Claimant engaged in fraudulent conduct, the Tribunal must now determine whether that conduct is of sufficient gravity to constitute an abuse of process justifying a declaration that the claims are inadmissible. It has already set forth the relevant principles from which it emerges that this assessment hinges on the specific circumstances of the case in light of criteria identified in case law,[810] including the seriousness of the fraud (a), the involvement of the disputing parties in connection with the fraud (b), the nexus between the fraud and the claims (c), and the time when the fraud was committed (d). The Tribunal will then add considerations on the specificities of this dispute in terms of evidence (e).

#### a. *The seriousness of the fraud*

674. The Tribunal emphasizes in the strongest terms that the fabrication of inauthentic documents for the purposes of international claims constitutes, in and of itself, a serious form of fraud.

675. In this instance, the record establishes that the Claimant fabricated fraudulent documents in support of his claims against Azerbaijan. The fraud, however, goes further. Mr. Bahari also produced other questionable documents with a view to proving the existence of the Chartabi Contracts, obtained under dubious circumstances. These include, in particular, exhibit **C-86**, the letter from Mr. Chartabi issued at the same time as the disputed contracts, as well as exhibit **C-281**, the bank check that Mr. Bahari

810 See, e.g., *Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama*, ICSID Case No. ARB/13/28, Award, 2 June 2016, para. 103; *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, para. 357; **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, para. 494; *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru, ICSID Case No. ARB/11/17*, Award, 9 January 2015, para. 186

claims to have located during the course of the proceedings. In addition, he persists in relying on the Chartabi Contracts on the basis that they are "copies" and "exactly the same" as the contracts allegedly "signed in Baku" twenty years ago, whereas it is reasonably certain that they are not.

676. Accordingly, there can be no doubt that Mr. Bahari's fraudulent conduct is of serious nature and is unacceptable in an international proceeding.

### b. *The role of the Claimant in relation to the fraud*

677. The direct and active involvement of Mr. Bahari in the perpetration of the fraud is clear from the record. Mr. Bahari accepts that he signed the disputed contracts that were allegedly "re-issued" by his brother-in-law in 2019.

678. In addition, Mr. Bahari himself submitted the Chartabi Contracts with his Statement of Claim, without providing any clarification as to the lack of authenticity, and failed to act transparently in their respect, resisting repeated information requests, throughout the proceedings.

### c. *The nexus between the fraud and the claims*

679. The nexus between Mr. Bahari's fraud and his claims is a decisive criterion in assessing the consequences of the fraud. Indeed, if the Chartabi Contracts were merely items of evidence of secondary importance, the sanction attaching to the fraud may differ from that applicable in circumstances where they constitute foundational elements of the claims.

680. The analysis of the Claimant's submissions shows that the Chartabi Contracts were invoked not only as an integral part of his narrative, but also as evidence of his investments in Caspian Fish, Coolak Baku, and Shuvalan Sugar, both in terms of merits and quantum.

681. As regards the merits, the few examples below show that the Claimant relied on the Chartabi Contracts as proof of the very existence of his alleged investments.

682. With respect to Coolak Baku:

> Mr. Bahari invested around $27-28 million of his own money in Coolak Baku. For the bulk of the construction works, Mr. Bahari hired an Iranian contractor, Chartabi Contracting Services ('Chartabi Contracting'). […] The Coolak Baku construction contract with Chartabi Contracting is dated 16 May 1996, with a value of $4,155,000. Chartabi Contracting performed civil works at the Safar Aliyev Land Plot, built an office block on the same site, and undertook a full renovation of pipes and electricity cables there";[811]
>
> Mr. Bahari also personally financially contributed to the Coolak Baku JV for many years. For example, he purchased land and equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill

811 SoC, para. 52.

> and know-how. Accordingly, Mr. Bahari's participation and interests in the Coolak Baku joint venture constitute Qualifying Investments";[812]
>
> Mr. Bahari had the vision for, carried out, and paid for the design, construction, and equipment for the Coolak Baku facility, which are assets of 'moveable and immovable property' under Article 1(1)(iii) of the Treaty. […] Mr. Bahari paid and was responsible for the creation and development of the Coolak Baku facility, including the engagement of Chartabi.[813]

683. With respect to Shuvalan Sugar:

> In or around 1997, Mr. Bahari began developing the sugar refining facility on a land plot in the Shuvalan District area near Baku. On 10 July 1997, Mr. Bahari engaged Chartabi Contracting to build a 1,130 m2 factory on the Shuvalan Land Plot. […] The total cost of the construction works was $3,650,000. Mr. Chartabi reconfirmed being paid in full for the contract value by Mr. Bahari in his letter dated 7 January 2019;[814]
>
> Mr. Bahari also personally contributed to the Shuvalan Sugar Refinery for many years. He purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how. Accordingly, Mr. Bahari's participation and interests in the Shuvalan Sugar Refinery constitute Qualifying Investments;[815]
>
> Mr. Bahari Invested in Shuvalan Sugar and Constructed a Sugar Refinery There. […] The Chartabi Contract for Shuvalan Sugar is *prima facie* evidence that Mr. Bahari constructed a sugar refinery there.[816]

684. With respect to Caspian Fish:

> On 10 May 1999, Mr. Bahari hired Chartabi Contracting to perform the works, which were valued at $28,800,000 and fully paid for by Mr. Bahari. The construction included everything from civil engineering (earthworks) to construction of the facilities. The Chartabi Contracting agreement was the largest of the contracts for the construction of Caspian Fish;[817]
>
> Mr. Bahari also constructed and financed Caspian Fish for more than two and a half years. He purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how. […] Accordingly, Mr. Bahari's participation, rights, and interests in Caspian Fish constitute Qualifying Investments;[818]
>
> Mr. Bahari had the vision for, carried out, and paid for the design, construction, and equipment for the Caspian Fish facility. […] Mr. Bahari clearly paid and was responsible for the development and creation of the Caspian Fish facility, including the engagement of Chartabi.[819]

685. The Chartabi Contracts also play a determining role in the quantum of the claims. The Claimant's quantum experts conclude that Mr. Bahari paid USD 36.6 million in construction costs on the basis of the Chartabi Contracts. This accounts for (i) 97% of

812 SoC, para. 437.
813 SoR, para. 775.
814 SoC, para. 63.
815 SoC, para. 438.
816 SoR, p. 48 and para. 146.
817 SoC, paras. 81-82.
818 SoC, para. 436.
819 SoR, para. 766.

the investments costs for Caspian Fish, Coolak Baku, and Shuvalan Sugar "[redacted]" and (ii) for 55% of the total investment costs for Caspian Fish, Coolak Baku, and Shuvalan "[redacted]" by the Claimant's experts.[820]

686. In his PHB, the Claimant contends that the Chartabi Contracts "were submitted as one piece of evidence to corroborate the overall amount Mr. Bahari spent on constructing the Projects" and "are not evidence of an investment", arguing that he "made numerous qualifying investments in Azerbaijan that are entitled to protection under the Treaty, and none of which turns on the Chartabi Contracts". Accordingly, so he contends, they are not an essential element of the claims.[821] This appears incorrect, as he continues to rely on the Chartabi Contracts as evidence of his investments in Caspian Fish, Coolak Baku, and Shuvalan Sugar, as well as on quantum.[822]

687. Although Mr. Bahari seeks, belatedly, to downplay the significance of the Chartabi Contracts, it is clear that they are central to his claims: he relies upon them as evidence of his investments under Article 1(1)(iii) of the BIT; they are essential to his allegation that he was the investor behind Caspian Fish, Coolak Baku, and Shuvalan Sugar; and they account for more than half of the amounts that his financial experts regard as having been invested by him.[823]

### d. *The time when the fraud was committed*

688. Although the facts of the case date back more than twenty years, the Claimant's fraudulent conduct is far more recent. According to Mr. Bahari himself, the Chartabi Contracts were issued in 2019. Moreover, he has expressly admitted that they were prepared for the purposes of his claims against Azerbaijan. In his second witness statement, Mr. Bahari thus explained that the Chartabi Contracts were issued "[redacted]".[824] At the Hearing, Mr. Bahari offered a different story, alleging that the contracts had been prepared in the context of his prior arbitration initiated against Azerbaijan in 2019. Be that as it may, it is established that the Chartabi Contracts were specifically – and fraudulently – prepared in anticipation of his claims against the Respondent.

### e. *The evidentiary specificities of the dispute*

689. A further factor considered by the Tribunal relates to the evidentiary record, which, in the Tribunal's experience, displays notable specificities.

690. Despite the significance of contemporaneous evidence in litigation, the Claimant adduced only a limited number of contemporaneous documentation. While the dispute largely concerns events that took place more than twenty years ago, this circumstance alone cannot justify the small number of contemporaneous documents capable of

820 See, e.g., Secretariat ER-2, para. 2.20.
821 C-PHB, paras. 119, 120(a), 121.
822 C-PHB, paras. 61-62, 113.
823 For a similar situation, see **RLA-144**, *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 175.
824 Bahari WS-2, para. 21(b).

establishing the facts alleged by the Parties. In addition, the Tribunal finds that no persuasive explanation has been offered in this respect, in particular by Mr. Bahari, whose allegations that he lost access to numerous documents left in Azerbaijan when he was forced to leave are unconvincing, especially as he provided his quantum experts with dozens of documents from that period.

691. The scarcity of contemporaneous documentation contrasts sharply with the numerous allegations of forgery, lack of authenticity, or unreliability advanced by the Parties, which extend to nearly all aspects of the case. While each Party retained an experienced forensic expert to inspect and examine disputed documents, the experts did not provide any conclusive insight.[825]

692. The Parties also presented a large number of witnesses, but this did not compensate for the shortcomings of the documentary record. The examination of witnesses at the Hearing demonstrated that some of them were unable to provide convincing explanations on important issues, thereby rendering their testimony largely unreliable. This observation applies to Mr. Bahari, whose oral evidence on many matters was very difficult to follow.

693. The specific characteristics of the evidentiary record accordingly confirm the Tribunal in its assessment of the gravity of Mr. Bahari's fraudulent conduct. As the Claimant, Mr. Bahari bore the primary responsibility for adducing reliable evidence in support of his case, and, given the paucity of documentary evidence, the submission of forged documents that were essential to his claims is even more serious.

694. In conclusion, the Tribunal finds that Mr. Bahari fabricated fraudulent documents for the purposes of his claims against Azerbaijan and then submitted those documents into the record of these proceedings as a central component of his case, along with other questionable documents purporting to confirm their content. This irregular conduct could have induced the Tribunal to grant ill-founded claims based on unreliable evidence. Such behavior is of such severity that it plainly justifies depriving the Claimant of protection under the Treaty. That the fraud occurred in relation to the proceedings, rather than in making or performing the investment, does not diminish its seriousness. In the words of the ICJ, "[a]n abuse of process 'goes to the procedure before a court or tribunal' and concerns the question whether a State has misused that procedure to

825 The Tribunal notes, however, that a number of elements indicate that the criminal summons of 26 April 2022 allegedly issued by the Prosecutor's Office and signed by Mr. Mammadov from that Office's Investigation Department (C-241) is not authentic. Ms. Briggs' evidence that Mr. Mammadov's signature on C-241 was not written by Mr. Mammadov is credible; even for a casual observer this is quite apparent. Moreover, the seal affixed on C-241 differs from the seal of the Investigation Department of the Prosecutor's Office, and C-241 does not appear on the extracts of the Investigation Department's logbook showing outgoing correspondence produced by the Respondent. The consequence of this finding is merely that C-241 cannot be relied upon. There are no further effects for this dispute because C-241 appears to have been prepared in the context of the asylum applications filed in the UK by Mr. Abdulmajidov and Ms. Ramazanova, and it is unlikely that Mr. Bahari was involved in creating that document. In particular, the finding that C-241 is not authentic does not affect the Order on Provisional Measures of 27 April 2024, which was issued on the basis of a *prima facie* assessment of the evidence.

such an extent that its case should be rejected at the preliminary phase of the proceedings".[826] Fabricating false documents to support claims seeking to engage the international responsibility of a State before an arbitral tribunal constitutes a serious misuse of the arbitration procedure. Accordingly, the Claimant's pursuit of its claims in these proceedings constitutes an abuse of process that renders inadmissible the claims over which the Tribunal has jurisdiction.

695. For completeness, the Tribunal notes that, as pointed out by the Respondent, allowing claims based on fraud to proceed would be contrary to international public policy. Acts tainted by fraud, including of a procedural nature, cannot be upheld or enforced by courts or arbitral tribunals. This principle, which has been recognized in prior awards where fraud affected the rights whose protection was invoked,[827] applies with equal force where fraud relates to the evidence concerning the merits and the quantum of the claims, as in the present case.

696. For all the foregoing reasons, the Tribunal holds that the Claimant's claims over which it has jurisdiction are inadmissible.

## VIII. COSTS

### A. THE COSTS OF THE ARBITRATION

697. Article 40(1) of the UNCITRAL Rules provides for the Tribunal's power to fix the costs of arbitration. Article 40(2), which defines those costs, broadly recognizes two categories of arbitration costs: the Parties' costs, which comprise the legal fees and other costs incurred by the Parties (**1**), and the costs of the proceedings, which comprise the fees and expenses of the Arbitral Tribunal and the Secretary, as well as the administrative costs incurred by the PCA (**2**).

#### 1. The Parties' costs

698. The Claimant requests that the costs he has incurred in connection with these proceedings be borne entirely by the Respondent and seeks interest on costs awarded.[828] According to his cost statement, he incurred costs amounting to USD 8,247,912.55, comprising: (i) legal fees in the amount of USD 3,865,000, which reflects "significantly discounted […] standard hourly rates"; (ii) expert fees in the amount of USD 1,255,976.96; (iii) other disbursements in the amount of USD 2,392,640.59; and (iv) arbitration costs in the amount of USD 734,295[829]

826 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, ICJ, Judgment – Preliminary Objections, 2 February 2024, para. 113.

827 **RLA-300**, *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, paras. 508, 528.

828 C-PHB, para. 421(e).

829 C-Costs Statement, para. 6, 10 and 13.

699. The Respondent seeks an order requiring the Claimant to bear all attorneys' fees and expenses incurred in connection with these proceedings, as well as all costs of the arbitration, together with interest.[830] According to its costs statement, the Respondent's total costs amount to USD 20,270,626.40, GBP 1,975,784.25 and EUR 659,000.00, comprising: (i) legal fees in the amount of USD 19,647,911; (ii) costs of the arbitration in the amount of EUR 650,000; (iii) experts fees in the amount of USD 273,895.92, GBP 1,838,033.29, and EUR 9,000; and (iv) disbursements in the amount of USD 348,819.51 and GBP 137,750.96.[831]

## 2. The costs of the proceedings

700. Throughout the proceedings, the Members of the Tribunal collectively spent a total of 1,450.74 hours divided as follows: Mr. Shore 339.69 hours; Sir Daniel 328.80 hours; and Prof. Kaufmann-Kohler, 782.25 hours. In the TOA, it was agreed that the Tribunal's time would be compensated at an hourly rate of EUR 650.[832]

701. The Secretary of the Tribunal spent a total of 668.70 hours. In the TOA, it was agreed that the Secretary would be compensated at an hourly rate of EUR 300.[833] It was further agreed that VAT and any other local tax or duty applicable to any arbitrator's fees would be reimbursed.[834] Therefore, the fees of the Tribunal and the Secretary amount to (i) EUR 1,051,287.50, which is not subject to VAT; and (ii) EUR 92,300.00, to which VAT applies, resulting in an amount of EUR 117,110.24 inclusive of VAT. The total fees of the Tribunal and the Secretary, inclusive of VAT, amount to EUR 1,168,397.74.

702. In addition, the PCA's fees for the administration of the case and its registry services amount to EUR 102,401.50.

703. Further in terms of expenses, the Tribunal and the Secretary have incurred expenses in the amount of EUR 29,193.89. Other costs, relating in particular to the hearing expenses, IT costs, catering, court reporting services, interpretation, telecommunication, courier fees, bank charges, courier translation variances, printing and supplies, amount to EUR 265,743.17.

704. Thus, the total costs of the proceedings amount to EUR 1,565,736.30, divided as follows:

| | | |
|---|---|---|
| Tribunal and Secretary fees (including VAT) | EUR | 1,168,397.74 |
| Tribunal and Secretary expenses | EUR | 29,193.89 |
| PCA fees | EUR | 102,401.50 |
| Administrative costs | EUR | 265,743.17 |
| Total Costs | EUR | 1,565,736.30 |

830 R-PHB, para. 331(4).
831 R-Costs Statement.
832 TOA, para. 3.2.
833 TOA, para. 3.2.
834 TOA, para. 3.3.

705. The total of the costs advances paid by the Parties amounts to EUR 1,640,000.00.[835] In accordance with Article 43(5) UNCITRAL Rules, the PCA will provide the Parties with a statement of account once the 30-day time period under Articles 37 to 39 has elapsed unused, or the work in connection with a post-award remedy under Articles 37 to 39 has been completed, whichever occurs later. Any arbitration costs in connection with such work will be shared equally between the Parties and each Party will bear its own legal fees in that connection. The PCA will reimburse the Parties any unexpended balance in equal shares. The current balance in the statement of account amounts to EUR 74,263.70.

## B. ALLOCATION OF THE COSTS OF THE ARBITRATION

706. Article 42 of the UNCITRAL Rules sets out the standard on the basis of which the Tribunal must determine the allocation of the costs of the arbitration:

> 1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. 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. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

707. It follows that, while the unsuccessful party shall in principle bear all of the costs of the arbitration, the Tribunal may determine that other circumstances warrant a different apportionment of costs. Similar principles have been applied in ICSID jurisprudence in cases of abuse of process.[836] The Tribunal is of the view that, while a finding of abuse of process in principle justifies an award of the full costs against the unsuccessful party, it does not preclude the Tribunal from taking into account circumstances specific to the parties, the dispute, or the proceedings.

708. On this basis, the Tribunal considers that the application of the principle of "costs follow the event" should be tempered among others by the circumstance that the proceedings were marked by unusual incidents relating to alleged intimidation of witnesses and pressures exerted on the Claimant's third party funder. While there is no direct evidence of the origin and/or impact of such actions, these incidents were nonetheless troubling and required multiple interventions. In assessing a fair apportionment of the costs, the Tribunal also takes into account the disparity between the amounts that the Parties

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835 The Claimant paid a total of EUR 820,000.00, comprising EUR 150,000.00 on 9 January 2023, EUR 500,000.00 on 26 July 2024, EUR 150,000.00 on 4 July 2025, and EUR 20,000.00 on 31 August 2026. The Respondent likewise paid a total of EUR 820,000.00, comprising EUR 150,000.00 on 8 February 2023, EUR 500,000.00 on 23 August 2024, EUR 150,000.00 on 4 July 2025, and EUR 20,000.00 on 26 August 2026.

836 See, e.g., *Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama*, ICSID Case No. ARB/13/28, Award, 2 June 2016, paras. 125-126; *Ipek Investment Limited v. Republic of Turkey*, ICSID Case No. ARB/18/18, Award, 8 December 2022, para. 44; **CLA-130**, *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 9 January 2015, paras. 201-202;

spent on these proceedings, the Claimant having sought to minimize his costs, while the Respondent expended substantially higher amounts.

709. Taking these circumstances as well as the outcome of the proceedings and the overall picture, the Tribunal finds it fair and reasonable for the Claimant to bear the entirety of the Tribunal and PCA costs. The Claimant shall therefore reimburse the Respondent for 50% of these costs, i.e., EUR 782,898.15. In addition, the Claimant shall bear two-third of the Respondent's costs, i.e., USD 13,513,750.93, GBP 1,317,189.50, and EUR 6,000.

710. Finally, the Tribunal notes that both Parties have sought interest on the costs awarded. In light of the circumstances described above, the Tribunal considers it fair and reasonable to award interest on the costs ordered to be paid by the Claimant at a rate of SOFR 3-month +2%, compounded annually.

## IX. DECISION

711. For the reasons set forth above, the Tribunals decides, orders and awards as follows:

a. The Tribunal has jurisdiction over the dispute in respect of the Claimant's investments in connection with Coolak Baku and Shuvalan Sugar;

b. The Tribunal lacks jurisdiction over the dispute in respect of the Claimant's other purported investments;

c. The claims founded on the Claimant's investments in connection with Coolak Baku and Shuvalan Sugar are inadmissible;

d. The Claimant shall pay the Respondent an amount of EUR 782,898.15, plus interest at a rate of SOFR 3-month +2%, compounded annually, as a reimbursement of the advance on costs paid by the latter;

e. The Claimant shall pay to the Respondent an amount of USD 13,513,750.93, GBP 1,317,189.50, and EUR 6,000, plus interest at a rate of SOFR 3-month +2%, compounded annually, as a contribution to the legal fees and other expenses incurred in connection with this arbitration; and

f. All other claims and requests are dismissed.

Seat of arbitration: Geneva, Switzerland

Date: 21 September 2026

Mr. Laurence Shore

*Arbitrator*

Sir Daniel Bethlehem KC

*Arbitrator*

Prof. Gabrielle Kaufmann-Kohler

*Presiding Arbitrator*