United Nations Commission on International Trade Law
Arbitration Rules 1976

Abdallah Andraous
- Claimant -

v

Kingdom of the Netherlands
- Respondent -

Notice of Arbitration

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7 February 2023

LINDEBORG
COUNSELLORS AT LAW

18 Park Street
London W1K 2HZ
United Kingdom

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INTRODUCTION

1. This Notice of Arbitration is filed by Mr Abdallah Andraous (the "**Claimant**") against the Kingdom of the Netherlands (the "**Respondent**") in accordance with Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law in force as of 1976 (the "**UNCITRAL Rules**"). The Notice comprises this submission plus Claimant's factual exhibits **C-1 to C-32** and Claimant's legal exhibits **CL-1 to CL-4**.

2. The Claimant brings this application pursuant to the Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands signed on 2 May 2002, and which entered into force on 1 March 2004 (the "**Lebanon-Netherlands BIT**" or the "**Treaty**").[1] The Kingdom of the Netherlands' consent to arbitrate disputes is given under Article 9 of the Treaty.

3. This application is a consequence of the decision of the Central Bank of Curaçao and St Maarten (the "**CBCS**") – formerly known as the Bank of the Netherlands Antilles – to take over Ennia Caribe Holding NV ("**Ennia**"), in which the Claimant has a shareholding, expropriating its assets and completely depleting Ennia of its value. The Claimant, like the other shareholders, has been deprived of access to his assets due to the actions of the CBCS for almost five years now.

4. Below, the Claimant sets out (i) the details of the Parties, (ii) the factual background of the dispute, (iii) the applicable legal framework under which the dispute is to be settled, (iv) the breaches of the Lebanon-Netherlands BIT by the Respondent, (v) the right of the Claimant to resort to UNCITRAL arbitration, (vi) procedural matters, and (vii) a statement of the relief sought.

[1] **Exhibit CL-1**, Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands (signed on 2 May 2002, entered into force on 1 March 2004).

I. THE PARTIES

A. The Claimant

5. The Claimant in this arbitration is Mr Abdallah Andraous, a national of the Republic of Lebanon and currently residing in Paris, France.[2]

6. The Claimant in this arbitration is represented by Dr Rutsel Silvestre J Martha (Lindeborg Counsellors at Law). The Claimant has duly authorised Lindeborg Counsellors at Law Ltd to institute and present arbitration proceedings on his behalf.[3]

7. All correspondence and communications intended for the Claimant should be addressed directly to the registered counsel. The following address is designated for correspondence purposes:

Lindeborg Counsellors at Law
18 Park Street
London W1K 2HZ
United Kingdom
[redacted]

B. The Respondent

8. The Respondent in this arbitration is the Kingdom of the Netherlands. It can be notified at the following address:

Ministry of Foreign Affairs
Rijnstraat 8, P.O. Box 20061
2500 EB The Hague
The Netherlands
[redacted]

[2] See **Exhibit C-1,** Passport of Mr Abdallah Andraous with No. RL 4119141; **Exhibit C-2**, Certificate of Lebanese nationality dated 10 November 2022, as attached to Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 12 November 2022.

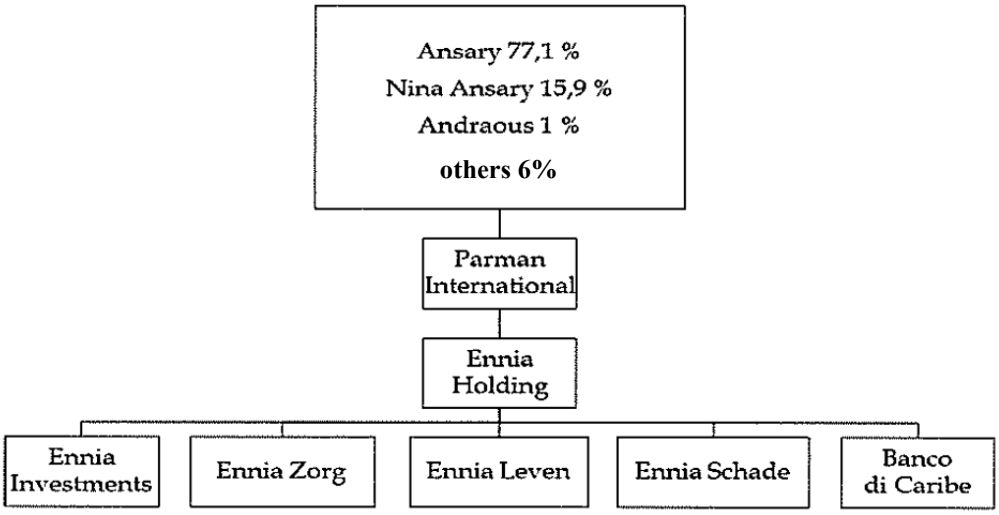
[3] **Exhibit C-3**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 3 May 2022, attaching the original Power of Attorney dated 2 May 2022; **Exhibit C-4**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 10 October 2022, attaching the updated Power of Attorney dated 8 October 2022.

II. SUMMARY OF THE FACTUAL BACKGROUND AND THE DISPUTE

9. In what follows, the Claimant will first present the corporate structure of Ennia (**Section A**) before describing how, by way of supervision order, the CBCS took over the management of the Ennia companies to sell its assets, in particular Banco di Caribe, despite strong compliance with the applicable solvability requirements and the Claimant's conduct to mitigate the effects of the situation (**Section B**). The Claimant will then explain how the actions taken by the CBCS, in particular with regard to property known as Mullet Bay, are progressively and rapidly destroying the value of Ennia (**Section C**). In short, the *fil rouge* in this case is that the CBCS blames Ennia's management for certain acts and omissions, while it then later adopts inferior behaviour.

A. Corporate Structure

10. Ennia Holding consists of a number of group companies, of which Ennia Caribe Leven NV, Ennia Caribe Schade NV and Ennia Caribe Zorg NV form the insurance companies (the "**Insurers**"). The Insurers today represent approximately 50,000 policyholders, of which 30,000 are pension policyholders. In 2018, the Insurers served 50% of the insurance market in Curaçao. The current corporate structure of Ennia, excluding the Aruba operations,[4] can be summarised as follows:



[4] The shares of the Insurers and the insurance operations in Aruba are held by Parman through Ennia Holding Aruba.

11. As is the case with any insurance company, the Insurers have always generated cash from policyholder premiums and necessarily invested that cash in order to satisfy future long-term liabilities. Over the years 2006-2016, the Insurers used some of these assets by making loans to EC Investments BV ("**EC Investments**") (i.e. a separate investment vehicle created by Ennia Investments at the end of 2012) in exchange for fixed interest payments over time, generating a substantial positive return for the Insurers. At the time of the CBCS's seizure, EC Investments held approximately USD 280 million in cash and marketable securities at Merrill Lynch in New York – thus more than enough liquid assets to repay the principal of all loans of policyholder premiums.

12. Wholly distinct from the Insurers, two long-term investment assets part of Parman International BV ("**Parman**"), i.e. the holding company above Ennia, had been contributed to the capital of the Ennia Group over a decade ago, namely Banco di Caribe NV ("**BDC**") and SunResorts Ltd. NV ("**SunResorts**"). These separate investments had been housed in EC Investments since their contribution.

13. Mr Andraous has been Managing Director of Parman since 7 July 2005. He also became a shareholder in Parman in December 2011 when he got allotted shares for his past and continuing services. In addition, from 9 February 2011 to 4 July 2018, he was also a director of Ennia Holding; from 4 May 2017 to 4 July 2018, director of Ennia Investments; and from 26 March 2011 to 4 July 2018, a director of the Insurers. Finally, since 21 July 2006, he has been director of Resorts Caribe. In short, the Claimant's functions can be summarised as follows:

Parman International	director shareholder	07/07/2005 – to date from takeover Ennia-to date
Ennia Holding	director lid *investment committee*	09/02/2011 – 04/2018 19/05/2006 – 04/07/2018
Ennia Investments	director	04/05/2017 – 04/07/2018
Ennia Zorg	director	26/03/2011 – 04/07/2018
Ennia Leven	director	26/03/2011 – 04/07/2018
Ennia Schade	director	26/03/2011 – 04/07/2018
Resorts Caribe	director	21/07/2006 – to date

14. The Claimant enjoys direct rights as a shareholder, including rights to profit from the company (by payment of dividends), to exert control by exercising voting rights within the company's shareholders meeting, and to control the liquidation and disposition of Ennia's assets. Indeed, as a holding company, Ennia's (and by extension Parman's) entire purpose and value derives from the ability to control the assets that are its companies. The fact that the Claimant only has a shareholding of 1% in Parman does not negate the size of his investment: it trickles down to all of the holding's extremely valuable assets.

B. Alleged Intercompany Insolvability

15. As will be described below, Ennia has always had strong solvency ratios above those required by applicable law and regulations. Prior to the takeover by the CBCS, Ennia's financial standing was sound, and its short term liquidity ratio stood well above 100%, thus ensuring it had sufficient assets to meet the claims of its lenders, shareholders and insured.[5]

16. On 20 December 2005, Parman acquired 50.1% of the shares in BDC, following an agreement with its former owner, Mr De Kort. The next month, on 25 January 2006, Mr Hushang Ansary, the majority shareholder of Parman and current director of SunResorts and Resorts Caribe, made a capital increase of BDC's share capital of 100 million Netherlands Antillean Guilder ("**NAf**") (i.e. approximately USD 55,586,320) and a further NAf 98.5 million by way of shares in SunResorts, which were respectively approved by the shareholders. Thereafter, Parman held 79.88% of the shares in BDC, and BDC bought 80% of Ennia Caribe Holding, thus structuring the Ennia companies as a vertical concern.

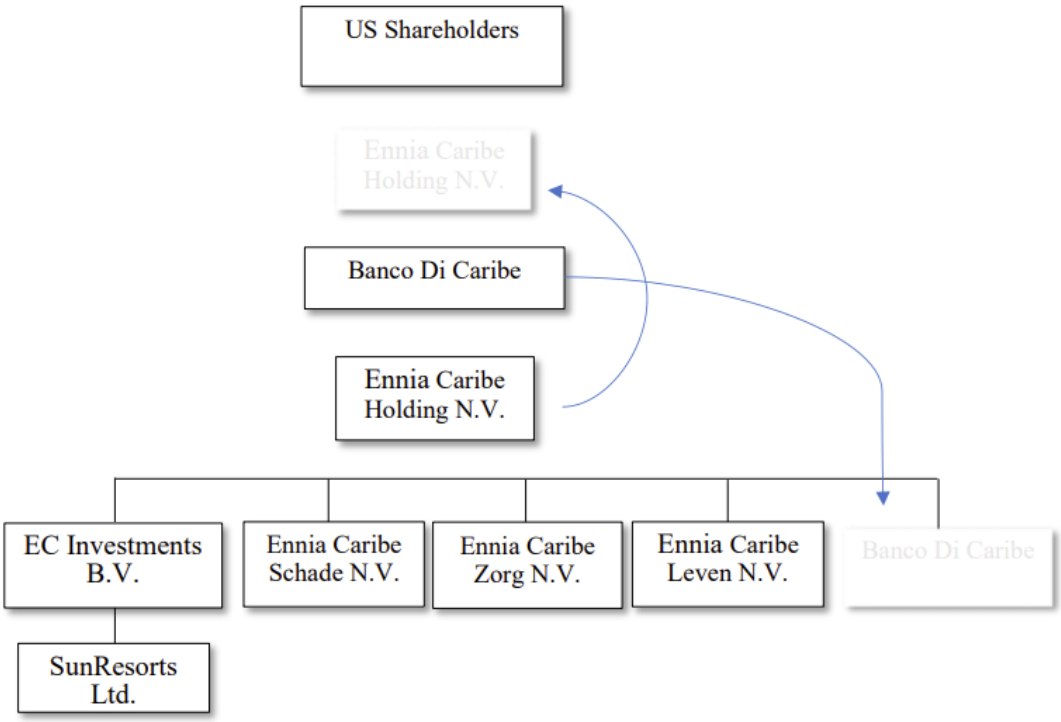
17. The investment decisions by Parman were applauded by the CBCS. In letters dated 23 September 2008, the CBCS stated:

> *Based on our examination we wish to inform you that Ennia Caribe [Leven/Schade/Zorg] N.V. is in compliance with our rules and regulations. Since the acquisition of Ennia by the Parman Group, the management of the company has*

[5] **Exhibit C-5**, Asset Liability Management Study 2016.

recorded impressive progress. Thanks to the investments decisions made by the group and additional capital infusion the company is now not only solvent but in a much stronger position.[6]

18. Despite this praise, in 2009, the CBCS instructed the management of BDC, then the holding company, to change to the current horizontal structure shown above,[7] effectively creating intercompany accounts. It also instructed the shareholders to put the investments under one of Ennia's subsidiaries, EC Investments – despite the fact that they were never actually paid for transferring this or any other interest and that these assets had been acquired long before the acquisition of BDC.[8] The requested shift in structure can be illustrated as follows:



19. Moreover, while no major change occurred in the investment portfolio between 2008 and 2012, the initial praise was unexpectedly reversed in April 2012, when the CBCS argued that

[6] See, respectively, **Exhibit C-6**, Letter from the CBCS to Ennia Leven dated 23 September 2008; **Exhibit C-7**, Letter from the CBCS to Ennia Schade dated 23 September 2008; **Exhibit C-8**, Letter from the CBCS to Ennia Zorg dated 23 September 2008.
[7] See paragraph 10.
[8] See paragraph 12.

only investments with at least a rating of BBB (S&P) or BAA (Moody's) would be allowed to be reported as admissible assets.

20. Furthermore, in 2014, the CBCS said that the assets on the balance sheet of Ennia Investments consisted mainly of investments in SunResorts and Stewart & Stevenson LLC, and that there was a concentration risk. This despite the lack of regulation on concentration of investments in Curaçao, and the investments being the same – the increase in value simply being the profits made on these investments.

21. This new horizontal structure of the Ennia companies was requested and accepted by the CBCS for several years, and intercompany accounts were used in calculating solvency until the CBCS, in an inexplicable *volte-face*, in 2015 radically changed its regulations whereby it no longer took into account such intercompany accounts (thus effectively returning to the original vertical structure of the holding). That way, the new regulations disregarded any receivables owed by related parties (regardless of their value) for regulatory capital purposes.

22. Probably aware of its sudden change to the law – contrary to the principle of legal certainty – the CBCS granted the Insurers until 2019 to replace their investments and come into regulatory compliance. Prior to the expiration of this grace period, however, in – another – *volte-face*, the CBCS defaulted on its written assurance, and took control of all property belonging to Ennia, including Parman's right to direct how its only assets are managed (see Section C).

23. In yet another U-turn, the CBCS in the hearing on emergency measures suggested that reverting back to a vertical structure would eliminate the intercompany accounts and would make the company more than solvent. As set out below, it did not.

24. The original management of Ennia agreed on 31 May 2018 to restructure the company back in its original vertical form with the purpose of eliminating the intercompany accounts (the "**Restructuring Agreement**").[9] Simply put, upon repayment of related-party receivables

[9] **Exhibit C-9**, Restructuring Agreement dated 31 May 2018.

covered by the assets of EC Holding and EC Investments in New York, Ennia would move BDC and/or a portion of SunResorts to be held by one of the Insurers, in a cashless restructuring that did not require the sale of any assets. To recall, as a matter of fact and law, these assets should not have been the subject of the Emergency Declaration in the first place.[10] Upon completion of the Restructuring Agreement, Ennia would be restored to compliance with the new regulatory laws for the benefit of all stakeholders, including the US shareholders. Thus, Ennia did try to mitigate the effects of the CBCS's supervision: if all the affiliated balances, including interest due to Ennia Caribe Leven, were repaid in full, the Insurers would have been compliant.[11]

25. However, while the CBCS announced to do so,[12] it did not sign nor apply the Restructuring Agreement. Rather than using the USD 280 million that was transferred to the Insurers – as ordered by the US Bankruptcy Court in New York, the CBCS stopped there: while it changed the ownership structure, it did not proceed to the corollary elimination of intercompany receivables, but tried to keep these sums from the books without any acceptable reason.

26. Later, the Curaçao Court of First Instance (the "**Court**") in its judgment of 21 January 2019 made clear that the Insurers did not meet the solvability requirements imposed by the CBCS in 2015 *exactly* because they were dependent on intercompany receivables from EC Investments and Ennia Holding.[13] Moreover, this finding was made without the benefit of a solvency calculation, underscoring once more the arbitrariness in the conduct of the CBCS.

[10] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 1 ("the investment entity, … is not under the supervision of the Central Bank"), and p 3 ("[a] key point in this is also that we have not requested the emergency measure only for the three companies of Ennia, we have also requested it for the holding and for the investment company, precisely because these were the key for us to be able to restructure the group a lot faster."). See also **Exhibit C-11,** 'Sun Resorts Lien Follows Ennia Emergency Ruling' (The Daily Herald, 9 July 2018), available at: https://www.thedailyherald.sx/islands/n-sun-resorts-lien-follows-ennia-emergency-ruling (demonstrating that although Mr Jardim knew that BDC was a separately managed entity acquired by Parman before they purchased their interests in the Ennia Group and did not fall under the emergency measure, he intended to utilise the Emergency Declaration to "exert indirect influence on BDC").

[11] **Exhibit C-9**, Restructuring Agreement dated 31 May 2018.

[12] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation).

[13] **Exhibit C-12**, Letter from Mr Metry to the CBCS dated 11 November 2019 (translation), p 2.

C. The Emergency Declaration

27. By order of 4 July 2018, the Court pronounced the declaration on emergency measures (the "**Emergency Declaration**", or *noodregeling* in Dutch) at the request of the CBCS in respect of Ennia pursuant to Article 60 of the Ordinance on the Supervision of the Insurance Industry (*Landverordening Toezicht Verzekeringsbedrijf* or "**LTV**").[14] Important to note is that – notwithstanding conventional and customary international law – such an emergency declaration is not subject to appeal under the laws of Curaçao, and the supervising role of the courts is – in contrast to what is the case in the Netherlands – limited to cost issues.[15]

28. On this basis, the CBCS appointed itself as the director of the Ennia companies. The CBCS stated in court and publicly in a press release that the emergency control of the Insurers in 2018 was under the guise of implementing a "very extensive and well thought-out" restructuring developed after careful study over a period of six months,[16] basically "by bringing back into the company, especially into Ennia Caribe Leven, the assets that are located elsewhere, in such a way that the company becomes solvent again."[17] In this sense, restructuring would be a very simple task, being merely a question of re-ordering the ownership of the assets within the group.[18] The CBCS said that Ennia had no particular financial difficulties, and that the supervision only needed to be restricted to a short period of time,[19] and NAf 300,000 in fees,[20] although the Court then limited the CBCS's fee to NAf 100,000.[21]

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[14] **Exhibit CL-2**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Article 60; **Exhibit C-13**, Curaçao Court of First Instance, *Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al.*, Judgment of 4 July 2018, ECLI:NL:OGEAC:2018:160 (translation).

[15] Email from the Judge to the CBCS dated 19 July 2016 as cited in **Exhibit C-12**, Letter from Mr Metry to CBCS dated 11 November 2019 (translation), p 6.

[16] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 3.

[17] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 2.

[18] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 2 ("This restructuring implies that all the assets and properties that are in fact owned by Ennia but that are located elsewhere, will re-enter Ennia's balance sheet, and that way the problem will be solved.").

[19] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 2 ("we do not focus on an emergency measure process that will take years, yet we are talking about a much shorter process since we believe that the conditions exist to create an Ennia that is solvent again.").

[20] **Exhibit C-12**, Letter from Mr Metry to the CBCS dated 11 November 2019 (translation), p 6.

[21] **Exhibit C-12**, Letter from Mr Metry to the CBCS dated 11 November 2019 (translation), p 6.

29. However, today (i.e. more than 4.5 years later), the supervision is still not concluded, and the CBCS has spent over NAf 30 million (USD 16.5 million) (!) in legal fees, taken from Ennia's funds. No restructuring has been done whatsoever – mainly because the CBCS, partly to cover the country's own economic losses, refuses to let go of Ennia's lucrative business that can today earn substantially higher interest rates on its funds than was possible over four years ago. This is a clear sign of mismanagement and incompetence on behalf of the CBCS, in particular because restructuring was its main reason to invoke its supervision powers in the first place.

30. This incompetence is only further evidenced by the fact that the alleged solvability deficit has *increased* since the CBCS's takeover in 2018 – as confirmed by the Respondent during the negotiations, be it without any supporting evidence apart from the only defence that inactive investments simply decrease in value. This despite the injection of USD 280 million from Parman's liquid assets in New York. It is therefore not difficult to see that the Claimant is worried about Ennia as a going concern.

31. Ironically however, there was no reason to intervene and declare supervision. As the 2016 Asset Liability Management Study ("**ALM Study**") shows, before the takeover by the CBCS, Ennia's solvency was perfectly sound, with a solvency ratio of well over 100% for all portfolios.[22] Indeed, as Ennia complied with all its obligations in the last four years before the supervision order, how could it be insolvent? Although it could be argued that Ennia did not comply with certain solvency *requirements*, this was entirely due to the horizontal structure imposed by the CBCS in 2009 that created the intercompany accounts in the first place. However, this does not *ipso facto* mean that the company was *insolvent*.[23] There was no emergency, since there was and remains enough liquidity to discharge all current financial obligations. In other words, Ennia was in no need of any emergency liquidity assistance when the intervention occurred nor thereafter.

[22] **Exhibit C-5**, Asset Liability Management Study 2016.

[23] By way of an aside, the damages to which the Claimant was condemned by the Court, do not reflect any alleged insolvability. The parties to this arbitration agreed during the negotiations that the latter were, while of importance to this dispute, not the subject of the court proceedings.

32. To date, no calculation substantiating the claim of insolvency has been presented.

33. Moreover, even If, *arguendo*, there was an issue of solvency, that is a long term problem that could have been resolved – in particular through the restructuring on which the parties agreed. Regulatory authorities faced with a financial institution whose underlying solvency is uncertain must make a series of decisions, including how and when to intervene. Although it said it did, CBCS failed to conduct the necessary study to calibrate its intervention. Empirical evidence demonstrates that it is often optimal to delay intervention in financial institutions, as it increases the chance that information appears that reveals their true solvency state.[24] This shows that there were other policy options available to the CBCS which would have addressed any legitimate concern, without the need to invoke the emergency powers.

34. Indeed, there was clearly no emergency situation during the supervision justifying this denial of the Claimant's due process rights prior to the liquidation. Even if there had been an emergency situation justifying the intervention, *quod non*, any such emergency was resolved at the outset of the CBCS's intervention. There was never a danger of imminent, real and substantial harm to assets of the creditors, including the insured – the 2,500 pension holders have always been paid their pension – and therefore no justification for denying the Claimant's basic due process rights. Apart from two policy holders (in accordance with the Emergency Declaration), all creditors and policy holders have been paid on time. Bizarrely, this was confirmed by the then-acting President of the CBCS, Mr Jose Jardim in the press statement announcing the emergency measures.[25] Moreover, that the financial health of Ennia is perfectly sound at this moment is also evidenced by the many anthropological causes the company supports, including the career of Curaçao's first ever Olympic athlete.[26]

[24] **Exhibit CL-3**, Philipp Koenig, Paul Mayer and David Pothier, 'Optimal Timing of Policy Interventions in Troubled Banks', Deutsche Bundesbank Discussion Paper No. 10/2022.
[25] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation), p 2 ("it is also important that we stress that what is being discussed is not at all the payment of pensions, nor the fact that when one has a policy and suffers damage or has medical expenses that these are covered. None of this is a point of discussion at this time, Ennia is in a position to continue fulfilling its obligations.").
[26] **Exhibit C-14**, Ennia, 'Terrence Agard Sponsored by ENNIA until the 2024 Olympic Games' (27 February 2022), available at: https://www.ennia.com/en/about-ennia/news/2022/terrence-agard-sponsored-by-enniauntil-the-2024-olympic-games/.

35. In this context, it matters not whether some or even all of the grounds for the supervision were justified: Ennia never had the opportunity to address them. The Claimant's investment was destroyed without any due process in the context of an incomprehensible *volte-face* by the Respondent. As demonstrated in Section B, the CBCS's case is built around several of such incomprehensible U-turns of its own making, such as the change in position regarding Ennia's solvability.

36. Yet, the "emergency" intervention has lasted for over four and a half years now. Already after one year, it attracted the attention of the International Monetary Fund, which stressed that "[t]o strengthen the insurance sector, the authorities should design a strategy for Ennia's successful exit from the CBCS's special administration regime."[27] In the same year, also the Court encouraged the parties to seek an out-of-court settlement through mediation.

37. For the reasons above, Parman applied to order the Central Bank to withdraw the emergency regulation and to suspend the measures and decisions already taken, and to order CBCS to enter into consultations with Parman with the aim of achieving a solution acceptable to all parties restructuring Ennia. In a judgment of 31 January 2019, the Court dismissed Parman's claims in summary proceedings.[28] In the operative paragraphs, the Court stated:

> *4.19. All of the foregoing leads the court to conclude that it is not plausible that the court hearing the case on the merits will rule that the CBCS acted unlawfully by submitting the application pursuant to Article 60 paragraph 1 LTV. It is also not plausible that the court hearing the case on the merits, ruling on a legal remedy, … will reach the opinion that the emergency regulation should not be declared. In summary, the situation is that the insurers have not complied with the applicable solvency rules for a long time, that there has been no improvement in this despite instructions from the CBCS, that a final plan has been blocked by the (ultimate) shareholder and that, instead, a substantial amount of money was taken from the*

[27] **Exhibit C-15**, International Monetary Fund, Article IV Consultation report 2019 (April 2020), para. 31.
[28] **Exhibit C-16**, Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation).

group. Under these circumstances it is plausible that (also) the court hearing the case on the merits will come to the conclusion that the interests of the joint creditors require intervention by the supervisory authority and that this intervention must take place in the form of emergency regulations. ….

4.24. All things considered, the court arrives at the provisional opinion that the Ennia companies must jointly be regarded as "insurers" within the meaning of the LTV. Hence, the CBCS was entitled to request the application of the emergency regulation also with regard to [EC Investments] and [Ennia Holding]. …

38. In a judgment of 18 January 2021, the Court ordered Ennia (controlled by the CBCS) to produce certain documents for Ennia's shareholders to inspect.[29] Mr Ansary and the defendants in that case successfully argued that they could not adequately verify the accuracy of the assertions made by the CBCS and could therefore, at least not adequately, defend themselves against the former.

39. Indeed, as stated in a letter by Mr Metry (the then President of the Supervisory Board of Ennia Caribe Leven NV, and who was fired by the CBCS shortly after writing this letter), in an effort to conceal its personal enrichment and to justify its continued exercise of control over Ennia, the CBCS did not share financial statements, shareholder resolutions or decisions it has taken since its takeover in 2018, leaving shareholders and Ennia's directors completely in the dark.[30] This despite numerous requests as recent as the consultations.[31] This is probably because the situation is not as the CBCS is describing to the Court, and/or because the auditors are refusing to sign these financial statements because they found major irregularities in them.

[29] **Exhibit C-17**, Curaçao Court of First Instance, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 18 January 2021, Case No. CUR201903842/3843/3796/3844/3845/3846.
[30] **Exhibit C-12**, Letter from Mr Metry to the CBCS dated 11 November 2019 (translation). At the time of writing, for Curaçao, these statements were also not published on Ennia's website, edited by the CBCS: **Exhibit C-18**, Ennia, Financial Highlights, available at https://www.ennia.com/en/about-ennia/financial-highlights/.
[31] **Exhibit C-3**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 3 May 2022, attaching the original Power of Attorney dated 2 May 2022; **Exhibit C-19**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 29 July 2022.

40. While miraculously the financial statements of only one year after the intervention were produced in the last stage of the consultations, these were not confirmed by the accountants. In fact, no audited financial statement can be made whatsoever, as the CBCS has not appointed a supervisory board as required by the charter of the company, and which is the authority to approve financial statements.[32]

41. Moreover, these recently revealed financial statements admit that two of three of the assets of the Insurers had in fact been restored to regulatory compliance two years ago, in the first quarter of 2021. A third unaudited financial statement for Ennia Caribe Leven confirms that the auditors were not convinced of the CBCS's argument that the company's liabilities could exceed its assets. Thus, as confirmed by a press release, by managing the intercompany balances, solvency was restored to these entities without the need for any additional capital.[33]

D. The Sale of Banco di Caribe

42. However, despite Ennia's efforts described above, and the clear lack of an emergency situation, in June 2022, the CBCS orchestrated the sale of BDC to United Group Holdings BV ("**United**"), owned by Mr Gregory Elias, a local businessmen with strong ties to Jardim,[34] for millions of guilders below (NAf 120 million) the *bank*'s book value (NAf 180 million).[35] That

[32] **Exhibit C-12**, Letter from Mr Metry to the CBCS dated 11 November 2019 (translation), p 6.

[33] **Exhibit C-20**, Ennia, 'The Restructuring of the ENNIA Group (1 October 2021), available at: https://www.ennia.com/en/about-ennia/news/2021/restructuring/ ("Meanwhile, the solvency of ENNIA Caribe Schade NV and ENNIA Caribe Zorg NV is up to par again. These businesses are thus fully able to meet their obligations and are functioning normally. Taking the group-wide approach of the restructuring into account, release of these entities from under the emergency measure is being assessed.").

[34] See, for example, **Exhibit C-21**, 'United Group Buys BDC' (St Maarten News, 18 September 2021), available at: https://stmaartennews.com/banking/united-group-buys-banco-di-caribe/ (stating that he is the "uncrowned king of the largest offshore online gambling and money laundering network in the world", and that he was subject to a Dutch parliamentary inquiry in 2017 following his appearance in the Panama Papers); **Exhibit C-22**, 'The Gambling Sector Rules in Curaçao' (Curaçao'Chronicle, 25 May 2022), available at: https://www.curacaochronicle.com/post/main/research-platform-investico-the-gambling-sector-rules-in-curacao. These concerns about BDC's new owner also led ING, a venerable Dutch multinational bank, to stop serving as its long-time correspondent bank for international transactions (**Exhibit C-23**, BDC, 'New Correspondent Bank for Euro and GBP Transfers').

[35] See, for example, **Exhibit C-24**, 'BDC Sale is Difficult' (Curaçao Chronicle, 29 September 2021), available at: https://www.curacaochronicle.com/post/local/banco-di-caribe-sale-is-difficult/. Concerns about Mr Elias were

is surprising, considering that Ennia had shown that BDC was solvent, generated earnings of around NAf 80 million, and reported a profit of around NAf 25 million a year on average.

43. Liquidation of this profitable long-term investment asset, especially during the most inopportune time for a sale (a pandemic followed by a recession), seemed even a bridge too far for the CBCS's leadership. Ultimately, De Nederlandsche Bank NV ("**DNB**") stepped in to side with Mr Jardim over his superiors to push the sale to proceed. Therefore, the CBCS required DNB's assistance in connection with the BDC sale to sell this asset and its role as financial regulator.

E. Mullet Bay and its Impending Sale

44. After the sale of BDC, CBCS now intends to sell – or outright expropriate (see paragraph 51) – Mullet Bay, a plot of land in St Maarten of approximately 67.7 hectares, which includes a hotel and a golf course of 40 hectares, and this at a loss of USD 30 million and after drastically reducing its equity. Mullet Bay is one of the main assets of SunResorts Ltd NV, of which Mr Ansary is still director and in which Ennia has a 93.3% shareholding.

45. As was made clear during the negotiations, the issue regarding Mullet Bay, apart from its impending sale, and thus one of the main points of contention in this dispute, concerns its valuation. Indeed, the alleged solvability deficit described above is necessarily linked to the difference in valuation of Mullet Bay, one of the main assets of Ennia. Mullet Bay represents 55% of the Insurers' total assets, and if valuations undertaken by the CBCS are close to the real value of the plot, this would prove disastrous for Ennia's shareholders as well as the insured.

46. The CBCS argues that Mullet Bay is valued artificially high and for different amounts, ranging from USD 292 million in December 2006 to USD 419 million in June 2018. Valuations on behalf of the CBCS after the takeover – done by experts with no experience in the St Maarten real estate market – were significantly lower, respectively USD 50 million (September 2018)

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also shared by the Central Bank of Aruba, another important stakeholder of BDC: it outright vetoed Elias as the ultimate owner of BDC's Aruba subsidiary. As a result, BDC had to quickly sell off at a further-depressed price its Aruba operations.

and USD 96.4 million (January 2021). CBCS also argued that the plot represents too much of the assets in Ennia, i.e. that the concentration risk is too high – despite the lack of regulation to that effect in Curaçao.[36] In large part, to obfuscate the financial picture, the CBCS – unsuccessfully – relied on a 2020 valuation done amidst a pandemic as to represent fair market value in 2017. Recognising this foul play, Ennia's auditing firm would not agree with the CBCS that its statements accurately and fairly depicted the financial condition of the company.[37]

47. Indeed, as discussed during the negotiations, and as stated in a letter of 13 December 2022, there have been real and concrete offers by such third parties, for example by Melia International Hotels.[38] Moreover, as stated in the same letter, in 2017, SunResorts sold a large piece of its land to a third party at about USD 600 per square meter to a French developer.[39] These valuations, thus reflecting the real and fair market value, a standard wielded by the IFRS, are in line with the valuation done by Ennia's original management and not the CBCS.

48. Moreover, it is important to stress that, in May 2019, the CBCS used the same valuation used by the original management of Ennia in the preparation of the financial statements of BDC. CBCS used a report prepared under the original management of Ennia, valuing plots held by BDC at USD 62.5 million, which had been approved by external shareholders, as well as by Mr Jardim and Mrs Grimm (Co-Manager of the Insurers after the Emergency Declaration) on behalf of the CBCS by way of shareholder resolution.[40] A dividend distribution of approximately NAf 62.5 million was made by BDC to Ennia, i.e. the one share that BDC holds in Resorts Caribe BV, of which the sole assets are a number of plots of land scattered across Mullet Bay. Both the low valuation of Mullet Bay and the paying out of dividends for such

[36] See paragraph 20.
[37] See paragraphs 39-41.
[38] **Exhibit C-25**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 13 December 2022, Annex I.
[39] **Exhibit C-25**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 13 December 2022, Annex IV.
[40] See **Exhibit C-26**, Court of First Instance of Curaçao, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Defendants' pleadings and opening statement of 14-15 October 2021, Case No. CUR201903796/3843/3844/3845/3842, para. 97.

"unrealistic" value is merely and simply opportunistic. The CBCS cannot blow hot and cold at the same time, i.e. respectively use a low valuation of Mullet Bay when it justifies its supervision for an alleged solvability deficit, and a valuation of over USD 400 million when it wants to sell BDC.

49. The Court followed the CBCS partly in the valuation question: "the question is not so much what value may ultimately be attributed to Mullet Bay, but whether the defendants could, in view of all the risks, base their decisions to pay out to the shareholders on the (at least) questionable value assessments that were available."[41] It further dismissed the CBCS's claim that any director should be liable for the buyout of the apartment owners on Mullet Bay:

> *The claims concerning the buy-out of apartment owners by SunResorts and the buy-out of the profit rights of Resorts Caribe for a total of NAf 56,966,000 shall also be dismissed. The payments made by Ennia Investments are (indirectly) offset by the acquisition of approximately 49,000 m² of land on which the apartments were located, without any further obligations towards the apartment owners and/or Resorts Caribe. In the substantiation by Ennia et al. of this part of its claim, the court sees insufficient leads to conclude that these transactions were clearly unfavourable to Ennia and that the defendants may be seriously blamed for these transactions concluded by Ennia Investments.*[42]

50. There are strong indications that the reason why the CBCS values the land held by Ennia this low is because it wants to sell it to a third party at a low price. In an absurd change of position, in a hearing before the Joint Court of Aruba, Curaçao, St Maarten and of Bonaire, St Eustatius and Saba (the "**Joint Court**"), Mr Jardim, the managing director of the CBCS, informed the Joint Court of his intention of expropriating and donating (!) Mullet Bay to the people of St Maarten, by fraudulently claiming it is time to "return it to the people".[43] St

[41] **Exhibit C-27**, Court of First Instance of Curaçao, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 5.107.
[42] **Exhibit C-27**, Court of First Instance of Curaçao, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 5.142.
[43] **Exhibit C-10,** Transcript of the Press Conference by Mr Jardim dated 5 July 2018 (translation).

Maarten has even begun a parliamentary inquiry ("Giving Mullet Bay Back to the People") to determine how to put this into practice in order to avoid later scrutiny.

51. This would mean an almost complete depletion of Ennia's assets, without any equity in return. It goes without saying that by taking such decisions Ennia will certainly never be able to pay back its shareholders. These proposals therefore further exemplify the incompetence of the CBCS. The impending sale of Mullet Bay is all the more surprising considering that insurance companies need to have long-term investments as well, and that selling these assets in the current circumstances will deplete Ennia completely.

52. Despite the Claimant's warning, the CBCS has not changed their course of action, destroying the Claimant's investment in Curaçao. Rather, in the day-to-day business of Ennia, the actions of the CBCS are simply eroding the value of the company at a very rapid pace. These actions are causing great harm to the Claimant.

53. In fact, this entire case seems to rest upon the ego of this one man, Mr Jardim. Under previous directors of the CBCS, Ennia had always been found compliant. Mr Jardim, who has been denied employment with ENNIA, either out of vengeance for lost career and business opportunities – or simply out of ignorance – sees this case as a personal crusade against Mr Andraous, Mr Ansary, and their partners, including Mr Palm. It is no coincidence that Mr Jardim was the Executive Director of the CBCS from November 2017, and its acting President between 1 January and 7 August 2020, when the emergency measures and key decisions regarding Ennia were taken. Mr Doornbosch, his successor, serves to further Mr Jardim's agenda. Despite his goal of personal gain – Mr Jardim is likely to leave the CBCS to become BDC's next President, his and others' unlawful conduct while in control of Ennia is attributable to the Kingdom.

III. LEGAL FRAMEWORK

54. Under Article 11 of the Lebanon-Netherlands BIT, the following conditions must be met for the Treaty to apply to a dispute:

    (i) the dispute relates to an investment as defined by Article 1(a); and

    (ii) the dispute is between a Contracting Party and an investor of another Contracting Party as defined by Article 1(b).

55. For the following reasons, the Claimant's claim set out in this Notice falls squarely within all four corners of jurisdiction (*ratione materiae*, *ratione personae*, *ratione loci* and *ratione temporis*) under the Lebanon-Netherlands BIT. Hence, the Claimant's investments in the Netherlands are protected by the Treaty.

A. Material Jurisdiction

56. Claimant's investments meet the definition of "investment" in Article 1(a) of the Lebanon-Netherlands BIT. Article 1(a) adopts the typical broad, asset-based definition of investment, in which "investment" is defined as "every kind of asset" with the listed categories only serving as examples (*ejusdem generis*) of the types of assets covered. Most, if not all, bilateral investment treaties concluded by the Kingdom of the Netherlands adopt this broad asset-based definition, protecting investments irrespective of whether they are significant, lasting, contribute to the host State's economic development, or even made in accordance with the host State's laws.[44]

57. Shares in a company are typically an asset and investment in terms of Article 1(a). Indeed, they are listed as one of the specific categories under subparagraph (a)(ii): "rights derived from shares, bonds and other kinds of interests in companies and joint ventures". The fact that the Claimant is a minor shareholder, or that the shares were received as payment for his services to Parman and Ennia does not alter this conclusion.

[44] **Exhibit CL-4**, Roos van Os and Roeline Knottnerus, *Dutch Bilateral Investment Treaties: A Gateway to 'Treaty Shopping' for Investment Protection by Multinational Companies* (SOMO 2011) 22.

58. Moreover, acting as the director of Ennia since 6 July 2018, the CBCS stopped paying Mr Andraous' salary when he was removed as managing director, and stopped paying his pension and emoluments after 18 months. The CBCS is now requesting him to reimburse what he had received by means of pension, while the pension premium was part of the financial statements submitted quarterly and yearly to – and approved by – the CBCS and external auditors.

59. The Claimant's pension and salary are also protected by the Treaty. They are legal property with economic value for the Claimant, more particularly "claims to money, to other assets or to any performance having an economic value" (subparagraph (a)(iii)). Contrary to what was alleged during the negotiations, there is no dispute with Parman whatsoever and therefore these are not simple contractual claims against Ennia and/or Parman. Indeed, the pensions and emoluments were no longer paid exactly because of the CBCS's intervention.

60. The Claimant reserves the right to amend and/or supplement this description and categorisation of his investments.

B. Personal Jurisdiction

61. Article 1(b) of the Lebanon-Netherlands BIT defines 'investor' as comprising "natural persons having the nationality of that Contracting Party … who have made an investment in the territory of the other Contracting Party." As stated in paragraph 5, Claimant is a national of Lebanon.[45]

62. While it is true that the Claimant has a Dutch passport *in addition to* his Lebanese passport, this makes him a dual national at most. However, this should not preclude his claim under the Lebanon-Netherlands BIT. The Treaty does not specifically exclude dual nationals from its ambit, nor – as the Respondent alleged during the consultations in an effort to dismiss

[45] See **Exhibit C-1,** Passport of Mr Abdallah Andraous with No. RL 4119141; **Exhibit C-2**, Certificate of Lebanese nationality dated 10 November 2022, as attached to Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 12 November 2022.

the case outright – does it include a requirement of dominant and effective nationality.[46] In any case, as a matter of *fact*, Claimant is a Lebanese national for the purposes of this arbitration, which would make such argument inconsequential.

C. Temporal and Spatial Jurisdiction

63. The Treaty entered into force on 1 March 2004 for both the Republic of Lebanon, the home country of the investor, and the Kingdom of the Netherlands, the host State. The Treaty is thus binding on both.

64. As set out in paragraph 13, the Claimant became an investor in Curaçao, a country within the Kingdom of the Netherlands, within the meaning of the Lebanon-Netherlands BIT when in 2011, i.e. after the treaty entered into force in the territory of the Netherlands, he acquired shares in Parman, a company incorporated under the laws of Curaçao and registered at the Chamber of Commerce.

65. By virtue of the constitutional structure of The Kingdom of the Netherlands, Curaçao is responsible for the discharge of the obligations under the Treaty in its territory. Accordingly, Curaçao must accord the Claimant, and his investments, the treatment prescribed by the Lebanon-Netherlands BIT in its territory. The Kingdom of the Netherlands is ultimately responsible for the acts and omissions of Curaçao, as the scope of the Treaty is extended to the Netherlands Antilles and Aruba by virtue of its Article 11. As will be set out at in Section IV, Curaçao and therefore the Kingdom of the Netherlands have failed to do so.

IV. THE KINGDOM OF THE NETHERLANDS HAS BREACHED THE TREATY

66. The adverse effects of Curaçao's acts and omissions on the Claimant's investments constitute a breach of several substantive obligations imposed by the Treaty upon the Kingdom of the Netherlands.

[46] See **Exhibit CL-4**, Roos van Os and Roeline Knottnerus, *Dutch Bilateral Investment Treaties: A Gateway to 'Treaty Shopping' for Investment Protection by Multinational Companies* (SOMO 2011) 23 ("Even when alternative criteria are introduced, as some IIAs do, such as provisions relating to dual nationality, the term 'natural person' remains a fairly uncontroversial legal principle.").

67. In particular, Articles 3(1) of the Treaty provides:

> *Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments full security and protection*.

Paragraph 4 adds that "[e]ach Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party".

68. This provision requires that the host State provide physical and legal protection to investments, in part, through a stable legal environment free from political intervention. The CBCS breached this obligation to the Claimant by seizing Ennia's assets under the guise of quickly "restructuring" the company, retaining them for over 4.5 years, monetising some and attempting to monetise others for the benefit of private individuals, as well as refusing to make required financial disclosures about them, and refusing to return them to their rightful owner. Moreover, the CBCS violated the Claimant's legitimate expectation that his investment would be held and operated free from interference from government regulations that have no appropriate public policy objectives, and by reneging on its written assurances that it would give EC Investments sufficient time to come into regulatory compliance with novel laws when it instead seized EC Investments' assets before this time expired.

69. In addition, Articles 3(2), 3(3) and 3(5) contain national treatment and most-favoured nation clauses. The Claimant reserves the right to make claims based on the violation of these clauses, and to rely on more favourable provisions of investment treaties the Kingdom of the Netherlands has entered into with other States.

70. Furthermore, according to Article 5, measures depriving, directly or indirectly, investors of the other Contracting Party of their investments are prohibited:

Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

a) the measures are taken in the public interest and under due process of law;

b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;

c) the measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants. The genuine value of the investment shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

71. It cannot be argued that the exceptions set out in Article 5 apply in this case, whether alternatively or concurrently – the latter being the provision's requirement. On the contrary, every individual condition has been violated. The CBCS has targeted the Claimant's and other shareholders' valuable rights in Parman and Ennia, effectively expropriating these by taking discriminate measures to effect an indirect takeover of Parman (including its management), stripping it of all of its value by liquidating assets and looting others, leaving it a worthless shell with no assets to control whatsoever. Parman's three main assets, i.e. its insurance businesses, its banking operation, and extremely valuable real estate have all been commandeered, operated for private and political gain, and sold (or readied for sale) at a bargain price to those associated with the CBCS and the Curaçao Government. This is clearly not a legitimate use of governmental powers, but a simple attempt to further private financial interests. By taking and retaining control of Ennia long after any conceivable "emergency" could have existed, the CBCS unlawfully expropriated Claimant's property

interest in the companies and assets, without providing compensation, in violation of international (and Dutch) law.

72. Importantly, Article 5(c) explicitly states that also the interest on those investments needs to be compensated when investors are deprived of their investment(s). This means that the CBCS's passive stance towards Ennia's assets, in particular Mullet Bay, must have repercussions on the amount claimed.

73. Thus, the CBCS's (and DNB's) acts and omissions in relation to its supervision, management and sale of Ennia (which is still in progress) constitute, separately and jointly, violations of the obligations imposed upon the Kingdom of the Netherlands under the Treaty.

74. In particular, through its agents, the CBCS has breached *inter alia* the following fiduciary duties which should be expected of a central bank: (i) failing to complete the Restructuring Agreement as promised, despite having all corporate authority to do so; (ii) wasting company assets including millions of dollars on legal and financial fees, in particular for changing from a vertical to a horizontal structure (and now back); (iii) causing the unnecessary, ill-timed, and below-market-value sale of BDC to an indisputably unsuitable purchaser; (iv) operating Ennia without the requisite transparency, including by failing to timely publish financial statements as required by Curaçao law and a US court order; and (v) refusing to return the shares in SunResorts to the Claimant and the other shareholders for economic and political reasons. These violations have caused, and are continuing to cause, significant harm to the Claimant.

75. Although he will particularise his request for relief later in these proceedings, including but not limited to full compensation for the Respondent's breaches under the Treaty, Claimant respectfully requests that the Tribunal order the Netherlands to cease its plans to sell Ennia's assets with immediate effect.

76. The Claimant's losses arising from the Kingdom of the Netherlands' treatment of his investment in Ennia are substantial and may amount to more than USD 132,850,633.44. This because, by judgment of the Court of 29 November 2021, Mr Andraous was found (jointly and severally) liable to pay NAf 237,233,274 (at the time, USD 132,850,633.44 or EUR

116,244,304.26) to Ennia.[47] This judgment was held to be immediately enforceable – despite the fact that the judgment itself is subject to appeal and cassation according to the laws of Curaçao. A breakdown of the damages payable by Mr Andraous was provided as follows:[48]

Andraous	
with respect to	**amount (in NAf)**
(dividend) distributions	188,975,969
donations	10,217,470
Consultancy fee	4,436,250
Salaries to persons not employed	4,237,392
Supervisory Board	9,486,423
NetJets	19,879,770
total	**237,233,274**

77. The Claimant reserves the right, in due course, to claim damages in respect of the losses that have been and are being caused by Respondent's breaches of the Lebanon-Netherlands BIT. Such losses – which, so far as possible, the Claimant seeks to avoid by a claim for injunctive relief – will be quantified and supported by evidence in this arbitration in due course.

V. REFERENCE TO ARBITRATION

78. Under Article 9 of the Treaty, the Kingdom of the Netherlands has given its unconditional consent to submit the dispute to arbitration should amicable consultations be fruitless. Among the different forums available, the investor can choose to submit the dispute to an *ad hoc* UNCITRAL tribunal pursuant to Article 9(2) of the Treaty:

> *1) In case of disputes regarding investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case, as far as possible, amicably.*

[47] **Exhibit C-27**, Court of First Instance of Curaçao, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846.
[48] **Exhibit C-27**, Court of First Instance of Curaçao, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 29 November 2021, Case No. CUR201903842/3843/3796/3844/3845/3846, para. 5.149.

2) If these consultations do not result in a solution within three months from the date of written request for settlement, the investor may submit the dispute, at his choice, for settlement to:

a) the competent court of the Contracting Party in the territory of which the investment has been made; or

b) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington, on March 18, 1965, in case both Contracting Parties have become members of this Convention; or

c) the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a Contracting State of the Convention as mentioned in paragraph 2 b) of this Article; or

d) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute international arbitration in accordance with the provisions of this Article.

79. In accordance with Article 9(2) of the Treaty and the parties' obligation to negotiate in good faith, the Claimant may thus file its Notice of Arbitration on the merits of its claims not earlier than after the expiration of the three-month consultation period (or 'cooling-off period').

80. The Claimant has certainly respected such obligation prior to filing this Notice of Arbitration. On 5 February 2022, Claimant served his trigger letter on the Kingdom of the Netherlands notifying it of the dispute and requesting that the Kingdom meet with the Claimant in an

attempt to settle the dispute amicably in accordance with Article 9 of the Treaty.[49] Only replying on 26 April 2022, the Kingdom requested a power of attorney and, doubting whether the Lebanon-Netherlands BIT applies to the dispute considering Claimant's dual nationality, it argued that the consultation period of three months specified in the Treaty did not commence until a power of attorney and clarity regarding Claimant's nationality were provided.[50] These were swiftly provided by the Claimant on 3 May 2022.[51] On 27 May, the Kingdom of the Netherlands finally expressed its willingness "to schedule a consultation meeting at a mutually to be agreed day and time at the Kingdom's Ministry of Foreign Affairs".[52] On 29 July 2022, Claimant clarified personally that he has always retained his Lebanese nationality, and requested, again, documents in the hands of CBCS to prepare its claim.[53] Subject to receiving those documents, Claimant furthermore proposed a tentative meeting at the Ministry of Foreign Affairs in The Hague on 30 September 2022.[54] However, on 23 September 2022, the Kingdom of the Netherlands noted that it was not available to have a meeting earlier than November.[55] Claimant swiftly replied to that proposal saying that his team was available in the first week of November,[56] and reiterated its request for document production.[57] This was again denied outright.[58]

81. Claimant submits that the late replies to his letters of 5 February 2022 and 29 July 2022, in which Respondent proposed a meeting not earlier than November 2022 and the latter's requests regarding Claimant's nationality in particular, n.b. more than two months after the trigger letter, were an attempt to simply postpone the commencement of the three-month consultation period specified in the Treaty beyond the prescribed limits. That period expired

[49] **Exhibit C-28**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 5 February 2022.
[50] **Exhibit C-29**, Letter from the Dutch Ministry of Foreign Affairs to the Claimant dated 26 April 2022.
[51] **Exhibit C-3**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 3 May 2022, attaching the original Power of Attorney dated 2 May 2022.
[52] **Exhibit C-30**, Letter from the Dutch Ministry of Foreign Affairs to the Claimant dated 27 May 2022.
[53] **Exhibit C-19**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 29 July 2022. See also **Exhibit C-2**, Certificate of Lebanese nationality dated 10 November 2022, as attached to Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 12 November 2022.
[54] **Exhibit C-19**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 29 July 2022.
[55] **Exhibit C-31**, Letter from the Dutch Ministry of Foreign Affairs to the Claimant dated 23 September 2022.
[56] **Exhibit C-4**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 10 October 2022, para. 1.
[57] Ibid., paras. 5-7.
[58] **Exhibit C-32**, Letter from the Dutch Ministry of Foreign Affairs to the Claimant dated 19 October 2022.

sensu stricto on 5 May 2022 as more than three months had then lapsed since the Claimant served the trigger letter on the Netherlands. By November 2022, the consultation period had lapsed not one, not two, but three times. At the time of filing this Notice, the consultation period has lapsed four times.

82. As a pure formality, the fact that Claimant's power of attorney was shared with the Kingdom on 3 May 2022 – i.e. within the original three-month period – should not be an impediment to the commencement of that consultation period. Simple procedural requests by the respondent State cannot extend the consultation period unilaterally. In any case, since Claimant provided the Netherlands with the requested power of attorney and clarifications, the consultation period has lapsed another three times, and therefore he is perfectly entitled to initiate arbitration proceedings.

83. In a first meeting at the premises of the Dutch Ministry of Foreign Affairs on 3 November 2022, Claimant set out the factual and legal bases for his claim, as well as two proposals to solve this dispute, respectively by appointing external directors or by way of a fact-finding committee. The Kingdom of the Netherlands was given hard copies of these proposals, as well as with several documents to prove Claimant's allegations.

84. However, in a second meeting on 9 December 2022 and a third meeting on 26 January 2023, it became clear that the Kingdom was not interested in these proposals, leaving arbitration as the only viable alternative.

85. Most importantly, the Respondent is pursuing actions that will inevitably lead to the sale of Mullet Bay and the devaluation of Ennia's assets. Claimant's only option is to seek redress in the present arbitration proceedings. It is more than likely that, in the nearest future, Ennia will be sold and/or its assets completely depleted. The impending sale of the assets of Ennia will cause immediate and irreparable harm to the Claimant. Any further delay in this procedure will therefore only aggravate the harm already suffered by the Claimant.

86. The requirement of a cooling-off period in Article 9(2) of the Lebanon-Netherlands BIT has therefore been satisfied and Claimant is allowed to submit its Notice of Arbitration. The only

reason why he had not done so already was his good faith and his belief in an amicable settlement.

VI. PROCEDURAL MATTERS

A. Constitution of the Arbitral Tribunal

87. There is no agreement between the Parties regarding the number of arbitrators or the constitution of the Arbitral Tribunal as of yet. Pursuant to Article 5 of the UNCITRAL Arbitration Rules, if within 15 days after the receipt by the Respondent of this Notice of Arbitration the parties have not agreed that there shall be only one arbitrator, Claimant proposes that the Arbitral Tribunal consist of three arbitrators, i.e. two co-arbitrators appointed by respective parties who shall among themselves elect a president from a pre-recorded list of ten arbitrators, of which the respective parties propose five each.

88. In accordance with Article 3(4) of the UNCITRAL Arbitration Rules, Claimant hereby nominates Mr Nassib G Ziadé, whose contact details are as follows:

Nassib G Ziadé
[redacted]

89. To the best of the Claimant's knowledge, as affirmed by Mr Ziadé by email, he is willing to serve as arbitrator in these proceedings and is independent of all parties involved therein.

B. Language and Place of the Proceedings

90. Pursuant Article 17(1) of the UNCITRAL Rules, Claimant proposes that the arbitral proceedings be conducted in English.

91. Regarding the place of arbitration, Claimant proposes London as a convenient choice for the seat of these proceedings, and he is of the opinion that these should best be administered by the Permanent Court of Arbitration.

92. Finally, the Claimant proposes to apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration to this dispute pursuant Article 1(2)(a) of those Rules.

VII. RELIEF SOUGHT

93. In light of the above, Claimant respectfully requests the Arbitral Tribunal to:

(i) declare that the Kingdom of the Netherlands has breached its obligations;

(ii) order Respondent, and thus the CBCS, to cease its plans for the sale and further depletion of the assets of Ennia, including but not limited to Mullet Bay;

(iii) order Respondent, and thus the CBCS, to abstain from any negotiations, consultations, conversations or actions with any third parties which could prevent the due execution of the Treaty or otherwise frustrate its objects;

(iv) order Respondent to allow access to Claimant to documents necessary for its claim, including all audited financial statements of Ennia Caribe Holding NV, Ennia Caribe Leven NV, Ennia Caribe Schade NV and Ennia Caribe Zorg NV for the period 2017-2021, and all asset liability management studies of Ennia Caribe Holding NV, Ennia Caribe Leven NV and EC Investments BV for the period 2017-2021;

(v) order the Respondent to restore the Claimant's proprietary rights as per the date of the intervention, including compensation;

(vi) order the Respondent to compensate in full the Claimant for Respondent's breaches under the Treaty, which shall be quantified at a later stage but are estimated at at least USD 132,850,633.44 plus interest;

(vii) order Respondent to pay the Claimant the full costs of the arbitration, including but not limited to compensation for all arbitrators' fees and costs, legal fees and expenses incurred by the Claimant in connection with the present dispute; and

(viii) order Respondent to pay applicable interests to any amount awarded until the Kingdom of the Netherlands complies with such award.

94. Claimant reserves its right to modify or supplement the claims and prayer for relief stated in this Notice of Arbitration, to advance further claims, arguments, and prayers for relief and to produce further factual and/or legal evidence as may be necessary to complete or supplement the presentation of those claims, and to respond to any arguments or allegations raised by the Kingdom of the Netherlands.

95. For all the reasons set out above, Claimant respectfully requests that UNCITRAL registers this arbitration against the Kingdom of the Netherlands.

Yours faithfully,

[redacted]

[signature omitted]

7 February 2023