

Date: 5 December 2023

Arbitral Tribunal:

Ms. Claudia Salomon

Prof. Nassib G. Ziadé

Mr. José Emilio Nunes Pinto

RESPONDENT'S APPLICATION FOR SECURITY FOR COSTS

in the arbitration between:

Abdallah Andraous

Claimant

Counsel: Lindeborg Counsellors at Law, Charles Kotuby

against:

Kingdom of the Netherlands

Respondent

Counsel: Ministry of Foreign Affairs of the Kingdom of the Netherlands,
De Brauw Blackstone Westbroek N.V.

1 INTRODUCTION

1. In accordance with Article 26(1) of the 1976 UNCITRAL Arbitration Rules ("UNCITRAL Rules"), the Kingdom of the Netherlands ("the Netherlands") respectfully requests that the Tribunal order Mr Abdallah Andraous ("Andraous") to provide security for the costs that the Netherlands will incur in connection with the present proceedings (the "Application"). The exceptional circumstances of this case justify the requested measure.
2. As set out in Chapter 2, the Tribunal has the authority under the UNCITRAL Rules to grant the Application. An order for security for costs is warranted where there is a reasonable risk that the applicant will not recover costs awarded in its favour if it prevails in the arbitration, and such an order is not disproportionately harmful to the counterparty.
3. The Netherlands respectfully submits that these circumstances are present, as detailed in Chapter 3. First, Andraous has a track record of improper business conduct, including misappropriating and shifting assets in companies over which he has control, or in which he holds an interest, for his own benefit and to the detriment of the creditors of those companies and of his personal creditors (Sections 3.1 and 3.2). This includes, *inter alia*, improper business practices by partaking in non-arms' length transactions with entities affiliated to Andraous, and incurring costs of no benefit to the company that Andraous was controlling or managing. Second, Andraous has large outstanding debts amounting to USD 117,000,000 following the judgment of the Curaçao Court of Appeal, the amount of which will likely increase pending an assessment by a court-appointed quantum expert (Section 3.3). Third, Andraous' financial situation is unclear and he has repeatedly declined to explain how any adverse costs award would be paid (Section 3.4).
4. In view of Andraous' proven history of unlawful conduct to the detriment of creditors, and given Andraous' failure to demonstrate that his assets exceed all known existing – and at this time unpaid – debts, the Netherlands has a legitimate concern that it will not be able to recover its costs in the event of a costs award against Andraous. The Netherlands respectfully submits that it cannot reasonably be expected to be exposed to non-recourse for its costs in these circumstances (Section 3.5).
5. As detailed in Chapter 4, the requested security for costs is not disproportionately harmful to Andraous given that the Netherlands requests security by means of a bank guarantee, which is the least burdensome form of security. Moreover, the guaranteed amount requested is significantly

below costs generally incurred by States in investor-State arbitrations conducted under the UNCITRAL Rules. There is furthermore no indication that Andraous' ability to pursue this arbitration would be obstructed if security for costs were to be ordered in the amount of EUR 3,000,000 as requested by the Netherlands.

6. Finally, Chapter 5 contains the relief sought by the Netherlands.

2 AUTHORITY AND LEGAL STANDARD

7. Article 26(1) of the UNCITRAL Rules grants the Tribunal the power to take any interim measure it deems necessary in respect of the subject-matter of the dispute. An order for security for costs is one such interim measure. Several prior investment tribunals – including in arbitrations conducted under the UNCITRAL Rules – have granted security for costs.¹
8. In assessing applications for security for costs, prior investment tribunals have in particular considered the following circumstances:
 - (i) whether there is a reasonable risk that the applicant will not be able to recover the costs awarded in its favour from the counterparty (necessity), and
 - (ii) whether such an order will disproportionately harm the counterparty (proportionality).²
9. Some tribunals have also considered whether *prima facie* there is a reasonable possibility that an award would be rendered in favour of the

¹ **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023; **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018; **Exhibit RL-003**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, 13 August 2014; **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020; **Exhibit RL-005**, *Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020.

² See e.g. **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023, para. 91; **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, para. 191; **Exhibit RL-005**, *Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, paras. 63-67.

applicant, including for costs.³ To that end, it is sufficient at an early stage of the proceedings that there is at least a reasonable possibility that an award would be rendered in favour of the applicant, whether for lack of jurisdiction or merits. A recent decision notes that "to decide otherwise would require the Tribunal to pronounce itself on issues of liability, which would be inappropriate at this stage".⁴

10. In relation to the element of necessity (para. 8, item (i) above), prior investment tribunals have attached particular weight to the following factual circumstances:
 - (i) evidence of a claimant's improper behaviour or business practices;⁵
 - (ii) evidence that a claimant has shifted or concealed assets in a way that could limit their exposure to creditors;⁶ and
 - (iii) a claimant's track record of non-payment of costs awards or court orders in prior proceedings.⁷
11. Explicit evidence of misconduct is not required when the available evidence is sufficient "to raise justified and serious concerns about the Claimant's business practices and eventual willingness to comply with a costs order if one were to be made".⁸ In such a scenario, the concern is not *per se* a claimant's possible impecuniosity, but rather the detrimental effect of the dubious business conduct itself on creditors.⁹

³ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, para. 202; **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023, paras. 91-92.

⁴ **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023, para. 92.

⁵ **Exhibit RL-003**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, 13 August 2014, paras. 78, 81; **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, paras. 41, 59.

⁶ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 42.

⁷ **Exhibit RL-003**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on Saint Lucia's Request for Security for Costs, 13 August 2014, paras. 82, 85; **Exhibit RL-006**, *The Estate of Julio Miguel Orlandini-Agreda and Compañía Minera Orlandini Ltda. v. Bolivia*, PCA Case No. 2018-39, Decision on the Respondent's Application for Termination, Trifurcation and Security for Costs, 9 July 2019, para. 143.

⁸ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 41.

⁹ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 59.

12. The presence of any of these elements confirms the existence of 'exceptional' or 'extraordinary' circumstances, which in turn render the request for security necessary.¹⁰
13. In relation to proportionality (para. 8, item (ii) above), a balance needs to be struck between (a) the prejudice caused to the party applying for security for costs were it not to be granted, such as an inability to recover its costs; and (b) the prejudice to the other party from such an order, such as an inability to pursue their claim and access to justice or denial thereof.¹¹ To that end, the fact that providing security could make the pursuit of a claimant's claim more onerous is insufficient to establish lack of proportionality, because a security guarantee does not, in and of itself, cut off a claimant's access to justice and his pursuit of the claim.¹²
14. Accordingly, if the risks – in view of the exceptional circumstances – weigh in favour of the requested order for security for costs, the order must be granted.¹³

3 THE NETHERLANDS FACES A SERIOUS RISK OF NOT RECOVERING ITS COSTS

15. As foreshadowed in para. 3 above, the exceptional circumstances of the present case necessitate the granting of security for costs in view of the risk the Netherlands faces that its costs in these proceedings will not be met. This Chapter sets out the factual matrix pertaining to these circumstances.

3.1 Andraous has a history of improper business conduct, including misappropriating assets to the detriment of creditors

16. Andraous has a record of improper conduct in relation to the exercise of his business functions, including misappropriation of assets to the detriment of the creditors of the companies over which he has control or which he

¹⁰ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, paras. 28-31.

¹¹ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, paras. 231-237.

¹² **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, paras. 231-232.

¹³ **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023, para. 93.

manages. This has been confirmed by the judgments of the Curaçao Court of First Instance and the Curaçao Court of Appeal:¹⁴

- First, the Curaçao Court of Appeal found that Andraous was involved in the unlawful sale of shares in S&S Inc ("S&S") held by the Ennia group ("Ennia") to Parman Capital ("Parman"),¹⁵ the entity through which Andraous allegedly holds an interest in Ennia. The Curaçao Court of Appeal held that the investment was sold by Ennia to Parman for a price that was "far too low".¹⁶ The Curaçao Court of Appeal also found that Andraous – an officer of Ennia at the time and involved in the transaction – was "personally to blame" for allowing Mr Hushang Ansary ("Ansary") to determine the sales price when as a fellow shareholder of Parman, and as chairman of the board and of the executive committee in S&S, he had a "clear conflict of interest".¹⁷ The Curaçao Court of Appeal further found that there were at the time of the transaction "clear indications" that the investment was worth considerably more than the sales price to be received from Parman.¹⁸ For this unlawful act, Andraous was held liable, jointly and severally with Ansary and one other officer, to pay Ennia USD 117,000,000 for "improper performance of duties".¹⁹
- Second, the courts held that Andraous also improperly performed his duties as an officer of Ennia by permitting the distribution of funds from Ennia to its shareholder Parman based on an overvaluation of an allegedly important asset of Ennia – a piece of real estate called Mullet Bay.²⁰ In relation to that conduct, the Curaçao Court of First Instance found that "there is nothing to show that the defendants actually made an effort to arrive at a valuation that was as realistic as possible, even though there should have been every reason for those concerned [...] to doubt the value assigned to Mullet Bay in the books and as a result the

¹⁴ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.68; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 10.27, 10.30.

¹⁵ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.55, 3.68.

¹⁶ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 10.25.

¹⁷ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 10.27.

¹⁸ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 10.27.

¹⁹ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 10.27, 10.63.

²⁰ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 11.26, 11.39.

equity capital of [Ennia]".²¹ The Curaçao Court of First Instance ordered Andraous to pay NAf 188,975,969 (USD 104,860,497).²² After the Curaçao Court of Appeal confirmed that Andraous is liable for this improper conduct, it decided that the quantum of damage will be determined following an assessment by a court-appointed expert.²³

- Third, Andraous allowed large amounts to be paid by Ennia to advisors for services not rendered to Ennia, but rather to Ansary. The Curaçao Court of First Instance found that "without further explanation [...] which is lacking, it is impossible to see why [Ennia] should reasonably have to pay these costs."²⁴ Likewise, the Curaçao Court of Appeal held that "[n]o reasonable director would have made such large payments without any performance in favor of the company he manages".²⁵ The Curaçao Court of Appeal found that Andraous could be "seriously blamed" for allowing these payments to be made.²⁶ Andraous was held jointly and severally liable to pay NAf 568,750 (USD 316,044) for this conduct.²⁷
- Fourth, Andraous permitted persons affiliated with Ennia to charge excessive travel expenses to Ennia, specifically for private jet flights, even when these costs had nothing to do with Ennia's business. As both the Curaçao Court of First Instance and the Curaçao Court of Appeal held, a substantial portion of the travel expenses "have no connection whatsoever" with the business of Ennia.²⁸ Records show that the flights were to destinations "within the United States, to and from the Bahamas or Mexico, to and from (sun) and vacation destinations in Italy, France, Mexico, the Bahamas, Canada and Morocco".²⁹
- Fifth, on 22 June 2018, Andraous, who was at that time a member of Ennia's investment committee, played a proactive role in the transfer

²¹ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.105.

²² **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.115.

²³ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.39.

²⁴ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.127.

²⁵ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.24.

²⁶ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.24. See also **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 5.129-5.130.

²⁷ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.29.

²⁸ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.144; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.54.

²⁹ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 12.53 and 12.55.

USD 100,000,000 from EC Investments B.V. ("Ennia Investments"), a subsidiary of Ennia, to S&S,³⁰ providing instructions for the transfer and informing the involved financial advisors accordingly.³¹ Ansary – Andraous' fellow shareholder in Parman – exercised significant control over S&S as chairman of the board and of the executive committee.³² The agreement pursuant to which the transfer was made was signed by Andraous on behalf of Ennia Investments and by Ansary on behalf of S&S.³³ The wire transfer authorization was, in turn, signed on behalf of Ennia Investments by both Andraous (as managing director) and by Ansary.³⁴ This transfer was executed despite the fact that it carried no benefit to either Ennia or to its policyholders. Thus, as noted by the Curaçao Court of First Instance, this conduct showed that "the interests of [Ennia] and its policy holders were no longer paramount" and that the "special duty of care that applies to the directors and supervisory directors of a (life) insurance company has to a large extent been neglected."³⁵ This is particularly worrisome given that Ennia's policy holders are also, among others, its creditors. Ennia in fact has a large amount of policy holders. Through its subsidiaries, it services half of Curaçao, Sint Maarten, Aruba and Bonaire's market for insurance policies and 80% of Curaçao's market for private (i.e. non-public) retirement plans.³⁶

17. Cumulatively, Andraous' conduct, as established by the Curaçao Court of First Instance and the Curaçao Court of Appeal, demonstrates a track record of misappropriating and shifting assets of companies over which Andraous holds influence, to the detriment of the creditors of those companies.

3.2 Andraous has in the past removed or shifted personal assets to the detriment of his own creditors

18. In 2018 Andraous placed a total sum of USD 500,000 out of his creditors' reach into a private trust fund, ██████████, set up in the name of his son,

³⁰ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.48; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.48.

³¹ **Exhibit R-001**, Wire transfer authorization of Ennia Investments of 22 June 2018.

³² See e.g. **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.55-3.56.

³³ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.48; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.48.

³⁴ **Exhibit R-001**, Wire transfer authorization of Ennia Investments of 22 June 2018.

³⁵ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 5.42-5.43.

³⁶ **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.6; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.2.

██████████.³⁷ This amount consists of a loan of USD 250,000 to The ██████████ pursuant to a loan agreement dated 12 April 2018, which ran for the period 15 April 2018 to 14 April 2019.³⁸ In addition, under a second loan agreement, ██████████, in which Andraous has a substantial interest, lent another USD 250,000 to ██████████ for the same time period.³⁹

19. Given the substantial fear of embezzlement stemming from, *inter alia*, those transactions, Ennia submitted an attachment request on 27 August 2020 to the Curaçao Court of First Instance, in which it requested an order to freeze Andraous' assets.⁴⁰ The attachment request was granted on 1 September 2020, confirming the seriousness of Ennia's concerns.⁴¹
20. This shows that Andraous has on multiple occasions also shifted personal assets for the benefit of himself and his close circle of associates but to the detriment of his own creditors.

3.3 Andraous faces large outstanding amounts following the Curaçao court judgments

21. In the context of the domestic proceedings in the courts of Curaçao as referenced in Section 3.1 above, Andraous has been ordered to pay Ennia large amounts of damages – that remain unpaid to date – as a result of his unlawful behaviour and improper business conduct detailed therein.
22. On 29 November 2021, the Curaçao Court of First Instance ordered Andraous to pay Ennia NAf 237,233,274 (USD 132,532,504) as compensation for unlawful acts committed by him as officer of Ennia.⁴² While the judgment was immediately enforceable regardless of any appeal, Andraous did not make the payment as ordered by the Curaçao Court of First Instance.
23. Following an appeal brought by Andraous against the judgment, on 12 September 2023, the Curaçao Court of Appeal determined that Andraous is liable to pay Ennia USD 117,000,000 and NAf 568,750 (USD 316,044).⁴³ These amounts are likely to increase in view of other improper conduct for which Andraous was found liable by the Curaçao Court of Appeal, and are

³⁷ Exhibit R-002, Email communication regarding the ██████████ of January 2018 (Redacted).

³⁸ Exhibit R-003, Loan agreement between Andraous and ██████████.

³⁹ Exhibit R-004, Loan agreement between ██████████.

⁴⁰ Exhibit R-005-DUTCH, Attachment request of Ennia against Andraous of 27 August 2020.

⁴¹ Exhibit R-006-DUTCH, Attachment order against Andraous of 1 September 2020.

⁴² Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.149.

⁴³ See further Section 3.1.

pending a quantum assessment by a court-appointed expert.⁴⁴ The Netherlands notes in that respect that prior investment tribunals have attached evidentiary value to the facts stated in court decisions even if "the facts mentioned are not *res judicata*".⁴⁵

3.4 Andraous' financial situation is uncertain

24. Andraous has refused to disclose information demonstrating his ability to meet an adverse costs award if one were to be rendered against him.
25. In letters dated 6 July 2023 and 9 October 2023, respectively, the Netherlands requested Andraous (i) to disclose whether his costs are being met by a third-party funder and, if so, whether this third-party funder would also meet any adverse costs orders that may be made by the Tribunal against him, or (ii) to otherwise provide adequate information on his assets, other than his purported interests in Ennia, currently available to him in light of the costs being accrued during the course of the arbitral proceedings.⁴⁶
26. While Andraous has now separately confirmed that no third-party funding arrangement that would meet adverse costs orders is in place,⁴⁷ he has provided no answer to the Netherlands' letters, particularly as to how he would cover any adverse costs award. Nor has Andraous provided any information as to his assets. He has not responded to the letters at all.
27. Given his failure to provide information on what assets are in his possession, it is unclear whether those assets exceed the significant amounts owed by Andraous to Ennia under the judgments rendered by the Curaçao courts, which are, as previously mentioned, likely to further increase.

3.5 Conclusion: the exceptional circumstances justify the granting of security for costs

28. Each of the exceptional circumstances outlined above is in itself sufficient to raise concern. Taken together, they underscore that the risk of not recovering

⁴⁴ **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 10.63, 11.26, 12.24.

⁴⁵ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 35.

⁴⁶ **Exhibit R-007**, Letter of the Ministry of Foreign Affairs to Andraous of 6 July 2023; **Exhibit R-008**, Letter of the Ministry of Foreign Affairs to Andraous of 9 October 2023.

⁴⁷ Procedural Order No. 1 of 23 November 2023, 23 November 2003 para. 41.

costs awarded in favour of the Netherlands – if it prevails in the arbitration – is evident and indeed serious.⁴⁸

29. Security for costs has been granted where there is "*prima facie* evidence of unusual business practices of the Claimant", coupled with there being no "evidence of the assets which the Claimant owned at the time he filed his Request for Arbitration".⁴⁹ Both circumstances are present here.
30. As noted in Section 3.1 above, Andraous' role and personal blame in the sale of investments by Ennia to Parman below value in a non-arms' length transaction, as established by the Curaçao Court of Appeal, is a telling case of improper business conduct. This was an arm-in-arm transaction that benefitted Andraous as a shareholder of Parman and was to the detriment of Ennia's creditors. Similarly, the distribution of funds from Ennia to its shareholder Parman, based on an overvaluation of Mullet Bay as a result of Andraous' behaviour, disadvantaged creditors of Ennia whereas Andraous as a shareholder of Parman benefitted from the distributions. Both (a) the excessive travel expenses and Andraous' improper conduct in relation to the exercise of his business functions as officer of Ennia and (b) the USD 100,000,000 transfer from Ennia Investments to S&S, which benefitted Andraous' fellow shareholders in Parman and again disadvantaged Ennia's creditors, further illustrate a track record of this type of behaviour. Andraous' conduct has also jeopardized the ability of half of the insurance policy holders of Curaçao, Sint Maarten, Aruba and Bonaire and 80% of Curaçao's private retirement plan holders to recover amounts owed to them under their insurance policies and retirement plans (see para. 16, last bullet point, above).
31. Furthermore, unless Andraous is able to provide satisfactory evidence of his assets, it is clear that the Netherlands will not have its costs met if a costs order is rendered against him.⁵⁰ The Curaçao Court of Appeal has held Andraous liable to pay Ennia USD 117,000,000, and this amount is likely to increase pending a quantum assessment by a court-appointed expert. Even

⁴⁸ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, para. 190; **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 31.

⁴⁹ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 49.

⁵⁰ **Exhibit RL-005**, *Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, para. 59.

leaving aside the amounts Andraous must pay pursuant to the Curaçao courts judgments, Andraous' silence about his assets calls into question whether he is able to cover any adverse costs award.

32. Taken together, the risks stemming from such exceptional circumstances warrant the requested order for security for costs.⁵¹

4 A SECURITY ORDER WOULD NOT DISPROPORTIONATELY HARM ANDRAOUS

33. The Netherlands submits that an order for security for costs would not disproportionately harm Andraous.

34. First, the Netherlands seeks an order for security in a form that is the least burdensome to the counterparty. To that end, the Netherlands is requesting Andraous to provide a bank guarantee or, alternatively, another form of security that the Tribunal deems appropriate. Prior tribunals have taken the view that an irrevocable guarantee from a first-class international bank is the least burdensome form of security.⁵²

35. Second, security for costs by means of a bank guarantee is essential to preserving the Netherlands' right of recourse for its costs in these proceedings, should a costs order be granted against Andraous. If it later appears that there is no longer a need for such bank guarantee, it can be revoked. Conversely, Andraous' significant debt obligations established in the Curaçao court judgments, proven track record of behaviour detrimental to creditors, and his potential impecuniosity render the risk too serious to leave the Netherlands without such security for costs. Granting a security order is thus proportionate.

36. Third, Andraous has confirmed there is no third-party funder involved on his part, which suggests he has the financial means to pursue this arbitration, both in relation to jurisdiction and merits, until its completion. He has engaged a counsel team consisting of highly experienced practitioners that, as per the timetable he proposed in the Parties' discussions leading up to Procedural Order No. 1, would work and have to be remunerated for the next 2.5 years, until the first half of 2026.

⁵¹ **Exhibit RL-001**, *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 11, 14 July 2023, para. 93.

⁵² **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 66.

37. Fourth, there is no indication otherwise that Andraous' access to justice would be obstructed if an order to post a limited amount of security were granted.
38. The Netherlands respectfully requests that Andraous be ordered to provide security for the costs of defending against Andraous' claims in the amount of EUR 3,000,000. This sum is proportionate and in line with amounts ordered by previous tribunals.⁵³ It is also considerably below what respondent States on average may incur in arbitrations conducted under the UNCITRAL Rules in legal costs (USD 3,800,000 or approximately EUR 3,500,000), as well as tribunal fees (USD 1,050,000 or approximately EUR 970,000).⁵⁴
39. If the Tribunal were minded to defer its decision on the Application, the Netherlands requests, in the alternative, that Andraous be ordered to provide satisfactory evidence of his assets in order to prove his ability to meet an adverse costs order. For instance, in *García Armas v. Venezuela*, the tribunal ordered the claimants to produce documents demonstrating their solvency in a reliable manner within a period of 40 days.⁵⁵ In particular, the tribunal was interested in gathering knowledge on documents, accounts and lists of assets in the claimants' possession relating to their economic and financial capacity, including an indication of the jurisdiction(s) where the assets were located, and any other evidence submitted in a form which was appropriate under the circumstances.⁵⁶ The Tribunal considered that this was necessary to ascertain the existence and amount of any funds available to the claimants.⁵⁷ Such necessity of ascertainment is at the very least also applicable in the present proceedings.

⁵³ **Exhibit RL-004**, *Eugene Kazmin v. Republic of Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 68; **Exhibit RL-005**, *Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, Chapter VIII.

⁵⁴ **Exhibit RL-009**, British Institute of International and Comparative Law, Allen & Overy, *2021 Empirical Study: Costs, Damages and Duration in Investor-State Arbitration*, 1 June 2021, pp. 11 and 13.

⁵⁵ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, paras. 4-7.

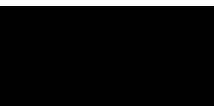
⁵⁶ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, para. 7.

⁵⁷ **Exhibit RL-002-SPANISH**, *Domingo García Armas, Manuel García Armas, Pedro García Armas and others v. Bolivarian Republic of Venezuela*, PCA Case No. 2016-08, Procedural Order No. 9 (Decision on the Respondent's Request for Provisional Measures), 20 June 2018, para. 7.

5 ORDER SOUGHT

40. On the basis of the foregoing, the Netherlands respectfully requests that the Tribunal:
- (a) order Andraous to provide, within 15 days from the order, security for any costs award that may be made in favour of the Netherlands in these proceedings in the form of an irrevocable guarantee from a first-class international bank in the amount of EUR 3,000,000, or in such other form or amount as the Tribunal deems appropriate;
 - (b) alternatively, order Andraous to provide evidence of solvency within 40 days such that both the Tribunal and the Netherlands are satisfied that Andraous will be able to meet prospective costs order(s) in these proceedings; and/or
 - (c) order Andraous to undertake any other measures as the Tribunal deems fit.

Respectfully submitted on behalf of the Kingdom of the Netherlands.



Ministry of Foreign Affairs of the Kingdom of the Netherlands
De Brauw Blackstone Westbroek N.V.