United Nations Commission on International Trade Law
Arbitration Rules 1976

Abdallah Andraous
- Claimant -

v

Kingdom of the Netherlands
- Respondent -

Statement of Reply on Jurisdiction

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1 October 2024

LINDEBORG
COUNSELLORS AT LAW

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INTRODUCTION

1. This Statement of Reply on Jurisdiction (the "**Reply**") is filed by Mr. Abdallah Andraous ("**Claimant**") against the Kingdom of the Netherlands ("**Respondent**" or "**The Netherlands**") in accordance with the Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands (the "**Lebanon-Netherlands BIT**" or simply the "**BIT**"),[1] and Articles 21 and 22 of the Arbitration Rules of the United Nations Commission on International Trade Law in force as of 1976 (the "**UNCITRAL Rules**"). The Reply comprises this submission plus Claimant's factual exhibits **C-090 to C-115** and Claimant's legal authorities **CLA-231 to CLA-262.**

2. As set out in the Statement of Claim,[2] these arbitral proceedings are a consequence of the decision of the Central Bank of Curaçao and St. Maarten (the "**CBCS**") to take over Ennia Caribe Holding NV ("**Ennia**"), the subsidiary of Parman International BV ("**Parman**"), after a series of inconsistent and fast-changing instructions, ultimately depleting Ennia of its value, effectively expropriating its assets and Claimant's investments. Claimant and the other shareholders of Parman have been deprived of access to their investments for over six years.[3]

3. Respondent's consent to arbitrate investment disputes under Article 9 of the BIT (*ratione voluntatis*), and the Tribunal's territorial and temporal jurisdiction (*ratione loci* and *ratione temporis*),[4] have not been contested. In its Statement of Defence on Jurisdiction (the "**Statement of Defence**"), Respondent limits its objections to personal and material jurisdiction of this Tribunal. In this Reply, the Claimant recalls that this Tribunal does have jurisdiction over the dispute, and restates its reasons in this respect.

4. **By way of preliminary remark**, Claimant wishes to object to Respondent's presentation of the factual narrative in its Statement of Defence on Jurisdiction. It is recalled that the Parties agreed that these proceedings are bifurcated, with a first round of pleadings on the issue of

[1] **Exhibit CLA-001**, 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).

[2] *See* Statement of Claim, Sections II and IV.

[3] Unlike Respondent argues (Statement of Defence, para. 13), the subject matter of this dispute (violation of the BIT following the unsubstantiated Takeover of Ennia) is different from the proceedings before the Curaçao courts (alleged director's liability). It is in this respect that Claimant stated that a duplication of the proceedings should be avoided, and nothing more. This does not mean that evidence submitted before these courts cannot be relied upon by Claimant.

[4] Statement of Claim, paras. 146-148.

jurisdiction, and a further round of submissions on the merits of the case.[5] In accordance with this agreement and Procedural Order No. 1, on 22 February 2024, Claimant submitted its Statement of Claim on Jurisdiction and Merits. Claimant thus provided the factual background on Claimant and its investments,[6] as well as on the breaches of the BIT by Respondent.[7]

5. For the third time since Claimant's Notice of Arbitration,[8] and again without it being the time nor place to do so, Respondent attempts to smear Claimant with regards to the merits of the case,[9] this time under the guise of "factual background to the jurisdictional objections".[10] However, at most nine (out of 46) paragraphs are somewhat relevant to the issue of jurisdiction, with no cross-references to this section in the remainder of the Statement of Defence. These attempts to discredit Claimant are amplified by Respondent's unwarranted and uncommon practice of including exhibits in the main text of its submissions, despite being aware that these proceedings are subject to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and thus published.[11]

6. For these reasons, Claimant respectfully requests the tribunal to disregard Section 2 of Respondent's Statement of Defence. In the event that Respondent wishes to provide an alternative factual background with regard to the merits of this case, it is requested to do so at a later stage in these proceedings, in accordance with Procedural Order No. 1 and the procedural timetable.

I. THIS TRIBUNAL HAS JURISDICTION *RATIONE PERSONAE* OVER CLAIMANT AS A LEBANESE NATIONAL

7. Respondent tries to dismiss this case for lack of jurisdiction *ratione personae*. In fact, it points almost all its arrows on this particular aspect, dedicating more than half of its Statement of Defence to its objection that Claimant does not hold the Lebanese but the Dutch nationality for the purposes of this case. For the reasons set out below, these attempts are futile and this Tribunal is guided to dismiss this objection.

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[5] Procedural Order No. 1, pp 9-10.

[6] Statement of Claim, Section II.A.

[7] Statement of Claim, Sections II.B to H.

[8] *See*, previously, Application for Security for Costs, paras. 16-32; Reply to Response to Application for Security for Costs, paras. 18-37; Respondent's Request for Document Production.

[9] Statement of Defence, paras. 33-60.

[10] Statement of Defence, para. 16.

[11] *See* Email from Claimant to the Tribunal dated 3 June 2024.

8. Claimant meets the jurisdictional threshold *ratione personae*. Article 1(b) of the Lebanon-Netherlands BIT defines 'investor' as comprising "[(1)] natural persons having the nationality of that Contracting Party [...] who [(2)] have made an investment in the territory of the other Contracting Party."[12] First, Claimant is a national of the Lebanese Republic ("Lebanon").[13] Second, for the reasons set out in Section II, Claimant has made an investment in the territory of the Netherlands. Therefore, Claimant is considered to be an 'investor' within the meaning of the BIT.

9. As noted in the Statement of Claim, while Claimant also once held a Dutch passport, this was lost by virtue of obtaining the French nationality.[14] His dual nationality (at the time Lebanese-Dutch, and currently Lebanese-French) does *not* preclude the Claimant's claim under the Lebanon-Netherlands BIT, whether on the law (see Section I.A) or on the facts (see Section I.B), each addressed in turn below.

10. While Claimant acknowledges that his French nationality is irrelevant with respect to territorial jurisdiction of this Tribunal (as the Republic of France is not a Contracting State to the BIT),[15] it is relevant for the wider context of this case. Actively pursuing French nationality, with the loss of Dutch nationality and all rights connected to that nationality in mind, demonstrates that Claimant has a limited connection to the Netherlands. Claimant's Lebanese and French nationality are therefore of more importance than his (lost) Dutch nationality.[16]

11. Claimant notes that there are several areas of agreement between the Parties:

[12] Exhibit CLA-001, 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) Art. 1(b)(i).

[13] See paragraph 5 above; Notice of Arbitration, para. 5; Exhibit C-001, Passport of Mr Abdallah Andraous with [redacted]; Exhibit C-002, 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.

[14] Statement of Claim, paras. 5,20. In accordance with Dutch law, Claimant's Dutch nationality was lost when he acquired the French nationality (Exhibit CLA-058-DUT, Dutch Nationality Law, Arts. 6(a) and 15A; Exhibit CLA-060, Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, signed on 6 May 1963).

[15] Statement of Claim, para. 139; Statement of Defence, para. 116.

[16] See Exhibit CLA-231, *Zaza Okuashvili v. Georgia* (Partial Final Award, 31 August 2022) SCC Case No. EA 2019/038, para. 156 ("A nationality one countenances to lose as a necessary and, in principle, inevitable sacrifice for obtaining another nationality cannot be regarded as predominant compared to the latter.").

(i) The Parties agree that dual nationals are not categorically excluded from BIT protection.[17]

However, Respondent misrepresents Claimant's position.[18] Claimant's position is, first, that dual nationals are not categorically excluded from protection (i.e. included) under the BIT and can claim against either Contracting Party, since the BIT presents no additional criteria.[19] Only subsidiarily, in the event that this Tribunal finds that a criterion of "dominant and effective nationality" applies, Claimant's case is that his Lebanese nationality is dominant.[20] In fact, Respondent states later that "Dutch nationals are not eligible to make claims under the BIT against the Kingdom of the Netherlands".[21] This is simply incorrect and inconsistent with its own position that dual nationals are not categorically excluded but that the "dominant and effective nationality" criterion applies.[22]

(ii) The initial burden of proof is on the investor to prove facts to establish jurisdiction.[23]

Claimant has done so at length in its Statement of Claim.[24] While it may be Respondent's opinion that this burden has not been met,[25] the burden of proof for any contention disputing a claimant's nationality (or existence of an investment) now rests upon Respondent, a burden which it has failed to meet for the reasons set out below.[26]

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[17] Statement of Claim, paras. 120-137; Statement of Defence, para. 63.

[18] Statement of Defence, para. 63. Respondent seems to be aware of its misrepresentation as it corrects itself later (at para. 95).

[19] Statement of Claim, para. 124.

[20] Statement of Claim, paras. 138-145. As noted by Claimant, which Respondent acknowledged, nowhere does Claimant dispute that Respondent's position is that of "dominant and effective nationality". *See* Statement of Claim, para. 138 ("It is worth noting that Respondent does not argue that dual nationals are categorically excluded from the BIT, only that the 'dominant and effective nationality' criterion applies"); Statement of Defence, para. 63.

[21] Statement of Defence, para. 72.

[22] Statement of Defence, para. 63.

[23] Statement of Claim, para. 139; Statement of Defence, para. 64.

[24] Statement of Claim, Section III.

[25] Statement of Defence, paras. 66, 100, 115.

[26] Article 24(1) of the UNCITRAL Rules states that "[e]ach party shall have the burden of proving the facts relied on to support his claim *or defence*" (emphasis added). See also **Exhibit RL-022**, *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, 19 May 2023, para. 67 (stating that respondent-States do not "*always* bear the burden of proving that the claimant does not have the requisite nationality") (emphasis added).

With regard to jurisdiction *ratione personae*, where the investor sets out why he meets the requisite nationality *on the balance of probabilities* (the standard in investment arbitration), such as is the case here, it is for Respondent to rebut this. In any case, in this Reply restates its reasons why this Tribunal has jurisdiction. Both an *effet utile* (i.e. to give effect to a treaty's provisions),[27] as well as a *contra proferentem* interpretation lead to a presumption in favour of including dual nationals like Claimant within the scope of the BIT.[28] This is precisely why Respondent's own courts decided to allow dual nationals to claim against their State under a bilateral investment treaty with a similar wording as this one.[29]

(iii) As a treaty, the BIT is subject to the Vienna Convention on the Law of Treaties (the "**VCLT**").[30]

Respondent, again, misrepresents Claimant's position when it states that Claimant argues that "every other element apart from the text is only relevant 'if the text were ambiguous'".[31] This is not what Claimant submitted. Claimant explicitly took into account all elements of interpretation, including the text,[32] context,[33] object and purpose,[34] subsequent practice and relevant rules of international law,[35] as well as supplementary means of interpretation under Article 32 VCLT (unlike Respondent which seeks to exclude these),[36] while noting that a treaty's text is the relevant "point of departure".[37] In fact, Claimant's consideration of these elements is far more detailed than Respondent's, which suffices with a mere reference to "of the other

[27] **Exhibit CLA-122**, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 45.

[28] **Exhibit CLA-156**, José Gregorio Torrealba and Alejandro Gallotti, 'A Never-ending Story? Dual Nationals in Investment Arbitration: A Commentary on Santamarta v Venezuela' (Kluwer Arbitration Blog, 29 November 2023) available at https://arbitrationblog.kluwerarbitration.com/2023/11/29/a-never-ending-story-dual-nationals-in-investment-arbitration-a-commentary-on-santamarta-v-venezuela/.

[29] **Exhibit CLA-132-DUT**, *Bahgat v. Egypt* (Judgment of the Hague District Court, 20 October 2021) PCA Case No. 2012-07, para. 5.51 (addressing the claimant's "dominant and effective nationality" merely as an *obiter dictum* at paras. 5.57-5.58).

[30] Statement of Claim, para. 124; Statement of Defence, paras. 68-75.

[31] Statement of Defence, para. 70.

[32] Statement of Claim, paras. 122-124.

[33] Statement of Claim, paras. 125-128.

[34] Statement of Claim, paras. 129-130.

[35] Statement of Claim, paras. 131-132.

[36] Statement of Claim, paras. 133-137; Statement of Defence, para. 76.

[37] Statement of Claim, para. 120.

Contracting Party" in Article 1(b), 9(1) and the preamble of the BIT (as respectively its text and context, and the object and purpose) to argue that Claimant's Dutch nationality precludes a claim against Respondent.[38]

12. Examining the interpretative elements of Articles 31 and 32 of the VCLT, the remainder of this Section concludes that there is nothing in the BIT that would disallow Claimant's claim against the Kingdom of the Netherlands.

A. The BIT does not impose Additional Requirements

13. It is recalled that the "point of departure"[39] is, and should always be, the BIT's text,[40] which defines 'investors' in Article 1(b) as "natural persons having the nationality of that Contracting Party […] who have made an investment in the territory of the other Contracting Party".[41]

1. *The Text of the BIT does not impose Additional Requirements such as "Dominant and Effective Nationality"*

14. Is true that, as the International Court of Justice has held, that "[i]nterpretation must be based above all upon the text of the treaty".[42] Moreover, "considerations relating to the

[38] Statement of Defence, paras. 72-74.

[39] Exhibit CLA-115-ESP, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, para. 166; Exhibit CLA-116, *Ibrahim Abou Kahlil v. Senegal* (Judgment of the Paris Court of Appeal, 12 October 2021) UNCITRAL, paras. 29-37; Exhibit CLA-117-FRA, *Maya Dangelas et al. v. Vietnam* (Judgment of the Paris Court of Appeal, 12 September 2023) PCA Case No. 2020-05, paras. 46-54; Exhibit CLA-118, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 135-136.

[40] Exhibit CLA-119, *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, [1994] ICJ Rep 6, para. 41 ("Interpretation must be based above all upon the text of the treaty."). Even when equal weight is given to context and object and purpose of a treaty: Exhibit CLA-120-ESP, *Fernando Fraiz Trapote v. Venezuela* (Final Award, 31 January 2022) PCA Case No. AA737, paras. 249, 252. See also Exhibit CLA-121-ESP, *Raimundo J. Santamarta Devis v. Venezuela* (Award, 26 July 2023) PCA Case No. 2020-56, para. 359 (while further noting that Exhibit CLA-115-ESP, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3 had persuasive authority).

[41] Statement of Claim, para. 120; Exhibit CLA-001, 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) Art. 1(b)(i).

[42] Exhibit CLA-119, *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, [1994] ICJ Rep 6, para. 41.

context, object and purpose of the treaty cannot be used to *modify* what the parties have agreed",[43] which Respondent purposedly omitted from its own legal authority.

15. It is submitted that, should the Contracting States have wished to exclude dual nationals from the scope of the BIT, or add an additional requirement of "dominant and effective nationality", as they have done so in other cases (see paragraphs 46-47 below), they would have done so in the BIT. This is not the case.

16. Article 1(b) of the BIT does *not* state that an investor, if a national of one Contracting State, cannot be a national of the "other" Contracting State (or a third state) as well. The text of the BIT is clear on this point – *ratione personae* is granted, in respect of "either Contracting Party," to "national persons having the nationality of that Contracting Party."[44]

17. Traditionally worded investment treaties, such as the BIT at issue, simply state that an investor must have the nationality of one State, and must make an investment in the other State. Dual nationals fully meet the BIT's criterion, namely the possession of the nationality of one of the Contracting Parties,[45] in this case Lebanon. The BIT does not state that the investor cannot be a national of the "other" State too. "One" (an *indefinite* article) simply signifies a contrast with "the other".[46]

18. This in contrast to other treaties which are more stringent and textually require nationality to be limited to one Contracting State "or" the other.[47] For treaties worded like the BIT at issue here, "the quality of national of one contracting party investing in the other [...] is not lost by the fact of also possessing the nationality of the State receiving the investment.

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[43] **Exhibit RL-025-SPANISH**, *Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Final Award, 31 January 2022, para. 250 (unofficial translation).

[44] **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, paras. 199-200; **Exhibit CLA-122**, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 10; **Exhibit CLA-120-ESP**, *Fernando Fraiz Trapote v. Venezuela* (Final Award, 31 January 2022) PCA Case No. AA737, paras. 258-259 (noting that this merely implied a positive requirement that the investor must hold the nationality of the State that is not the host State).

[45] **Exhibit CLA-231**, *Zaza Okuashvili v. Georgia* (Partial Final Award, 31 August 2022) SCC Case No. EA 2019/038, para. 108.

[46] **Exhibit CLA-122**, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 10.

[47] See, for example, **Exhibit CLA-123**, Algiers Declaration constituting the Iran-US Claims Tribunal, Art. VII(1)(a) ("[a] 'national' of Iran *or* of the United States, *as the case may be*, means … a natural person who is a citizen of Iran *or* the United States." (emphasis added). See paragraph 37 below.

Therefore, in principle, the investment of a [dual] national can also be classified as a [qualifying foreign] investment".[48]

19. Indeed, throughout the entirety of its provisions, the Lebanon-Netherlands BIT says *nothing* about the subject of dual nationality *at all*.[49] While some treaties have express provisions dealing with dual nationals,[50] *including one concluded by the Respondent*,[51] it opted *not* to include such a provision here. For its part, Lebanon has also included a provision limiting access to dual nationals in its bilateral investment treaty with the Islamic Republic of Iran – negotiated and executed prior to the BIT at issue.[52] In other words, the Contracting Parties knew how to exclude dual nationals, or add additional requirements, if they wanted to.[53]

20. This was also the conclusion of the tribunal in *Bahgat v. Egypt*, which held:

> *Significantly, neither of the BITs under which this arbitration has been brought contains a comparable prohibition on claims by dual nationals. Article 1(3) of the 2004 BIT defines investor as any natural person who is*

[48] Exhibit CLA-121-ESP, *Raimundo J. Santamarta Devis v. Venezuela* (Award, 26 July 2023) PCA Case No. 2020-56, para. 414.

[49] Exhibit CLA-001, 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).

[50] Exhibit CLA-126, Free Trade Agreement between Central America, the Dominican Republic and the United States of America (CAFTA) (signed on 5 August 2004, entered into force on 1 March 2006) Art. 10.28 ("investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality"). See also Exhibit CLA-004, 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.") (emphasis added).

[51] Exhibit CLA-127, Agreement between the Kingdom of the Netherlands and the Macao Special Administrative Region of the People's Republic of China on encouragement and reciprocal protection of investments (signed on 22 May 2008, entered into force on 1 May 2009) Art. 1(b) (excluding Dutch nationals who also have a Resident Identity Card of the Macao Special Administrative Region) (see paragraph 135 below).

[52] Exhibit CLA-128, Agreement between the Government of the Lebanese Republic and the Government of the Islamic Republic of Iran on the Reciprocal Promotion And Protection of Investments (signed on 28 October 1997, entered into force on 14 May 2000).

[53] Exhibit CLA-115-ESP, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, in particular paras. 180-81; Exhibit CLA-129-FRA, *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela* (Judgment of the Paris Court of Appeal, 25 April 2017) PCA Case No. 2013-3, UNCITRAL, p 6. See also Exhibit CLA-130, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 170; Exhibit CLA-131-ESP, *Victor Pey Cassado v. Chile (I)* (Award, 8 May 2008) ICSID Case No. ARB/98/2, paras. 412-418.

> *a national of either Contracting Party in accordance with its laws . Article 1(2) of the 1980 BIT states that the term national means [i]n respect of Finland, an individual who is a citizen of Finland according to Finnish law. The plain text of the BITs only imposes the positive requirement that an individual claimant be a national of the other contracting party, not the negative requirement that the individual claimant is also not a national of the host state.*
>
> *[…] [T]he UNCITRAL Rules that govern this arbitration do not contain any prohibition on claims being brought by dual nationals. Therefore, the determination of Claimants nationality must be made solely in accordance with the 1980 BIT and 2004 BIT. As the applicable BITs do not state that a Finnish national for purposes of the treaties cannot also be an Egyptian national, in order to establish jurisdiction* ratione personae. *Claimant need only prove Finnish nationality. Claimant's Finnish nationality at relevant points of time has been clearly established in the SAC Judgement, which, as stated already above, was not successfully challenged by the Respondent.*[54]

21. The decision in *Bahgat v. Egypt* was confirmed by Respondent's own courts,[55] to which no reference is made by Respondent in its Statement of Defence at all (unlike its own courts' judgments relating to some of the merits of the case).[56] As in this Reply, the claimant's "dominant and effective nationality" was addressed merely as an *obiter dictum*, noting the irrelevance of the criterion under the BIT (which was similarly worded as this one).[57]

[54] **Exhibit CLA-134**, *Bahgat v. Egypt* (Decision on Jurisdiction, 30 November 2017) PCA Case No. 2012-07, UNCITRAL, paras. 222, 224 (emphasis added).

[55] **Exhibit CLA-132-DUT**, *Bahgat v. Egypt* (Judgment of the Hague District Court, 20 October 2021) PCA Case No. 2012-07.

[56] Conversely, while it may indeed seem surprising that Respondent's courts did then confirm the tribunal's decision in *Manuel García Armas et al. v. Venezuela* declining jurisdiction (Statement of Defence, para. 89), this is explained that, under Dutch law (as interpreted by the Dutch Supreme Court), only decisions *confirming* jurisdiction can be challenged and set aside. See **Exhibit CLA-232**, Johannes Hendrik Fahner and Darius Eckenhausen, 'Asymmetrical Avenues for Annulment: The Continuing Controversy over the Setting Aside of Negative Jurisdictional Decisions' (Kluwer Arbitration Blog, 16 January 2024).

[57] **Exhibit CLA-132-DUT**, *Bahgat v. Egypt* (Judgment of the Hague District Court, 20 October 2021) PCA Case No. 2012-07, paras. 5.57-5.58.

22. Indeed, it would be nonsensical and unjustified to read additional requirements in the BIT (such as a "dominant and effective nationality" requirement).[58] Stating otherwise would lead to a "tacit, but far-reaching, limitation whereby the nationality of one Contracting Party would in effect be subject to the other Contracting Party's nationality law".[59]

23. In *Leopoldo Castillo Bozo v. Panama*, the tribunal rejected the application of such additional requirements, stating that while other treaties specifically require the application of the "dominant and effective nationality" test (such as the Dominican Republic - Central America Free Trade Agreement which was considered in *Ballantine v. Dominican Republic*), the applicable treaty (like the Lebanon-Netherlands BIT) contained no similar provision and should therefore not be read into it:

> *The Arbitral Tribunal confirms that the analysis carried out in Michael Ballantine was necessary due to the fact that art. 10.28 of the DR-CAFTA demanded that in case of dual nationality, effectiveness and dominance be demonstrated. The BIT between Panama and the Dominican Republic, however, does not contain such a requirement; therefore, it is debatable whether Mr. Casillo, Venezuelan and Dominican, must demonstrate that his Dominican nationality is the effective and dominant one. Furthermore, in Michael Ballantine investors did not hold the nationality of a third State outside the applicable treaty, as in this case is Venezuela, but they shared the nationality of the State to which they were suing. It is important to highlight that Mr. Casillo is not suing his State of nationality.* [60]

24. In sum, according to the ordinary meaning of the provision,[61] dual nationals cannot be prohibited to file claims against *either* State of nationality.[62] Imposing such a requirement

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[58] **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, paras. 117-119; **Exhibit CLA-131-ESP**, *Victor Pey Cassado v. Chile (I)* (Award, 8 May 2008) ICSID Case No. ARB/98/2, para. 415 (*obiter*, as the relevant issue was renunciation of nationality); **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, in particular paras. 200, 206.

[59] **Exhibit CLA-231**, *Zaza Okuashvili v. Georgia* (Partial Final Award, 31 August 2022) SCC Case No. EA 2019/038, para. 112.

[60] **Exhibit CLA-163-ESP**, *Leopoldo Castillo Bozo v. Panama* (Award, 8 November 2022) PCA Case No. 2019-40) UNCITRAL, para. 207 (unofficial translation).

[61] See **Exhibit CLA-133**, *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic* (Award, 30 June 2014) MCCI Case No. A-2013/29, para. 144 (upholding the plain and ordinary meaning of the definition of investor in the underlying treaty without applying additional means of interpretation).

[62] **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, para. 206; **Exhibit CLA-134**, *Bahgat v. Egypt* (Decision on Jurisdiction, 30 November 2017) PCA Case No. 2012-07, UNCITRAL, para. 222.

on an investor would be atextual and unjustified. One cannot add an additional requirement to the BIT,[63] or distinguish where the treaty's text does not distinguish (*ubi lex non distinguit, nec nos distinguere debemus*).[64] Lebanese-Dutch nationals are, for the purposes of the BIT, not separate from Lebanese nationals. Lebanese-Dutch nationals fully meet the criterion of the BIT, namely the possession of the nationality of one of the Contracting Parties. Dual nationals can therefore sue one of their States, depending on which State violated its investment obligations.[65]

25. For the sake of completeness, the following sections will set out that even if Article 1(b) of the BIT is interpreted in accordance with the Vienna Convention on the Law of Treaties (the "VCLT"), the same conclusion is reached.

2. *The Context of Article 1 does not argue for the Imposition of Additional Requirements*

26. Article 31(1) VCLT states that, together with the text, a treaty provision's context can provide additional interpretive guidance if any is needed.[66] Relevant to the discussion here, the "context" of Article 1 under the VCLT is the rest of the treaty's text, including its preamble and annexes.

27. Nowhere in the BIT can an additional requirement of "dominant and effective nationality" be found" (or indeed implied). It deserves noting that there is not a single reference to dual nationals in the UNCITRAL Rules, which apply to this dispute via Article 9 of the BIT, neither in the 1976 version (which are applicable to this dispute) nor under any revised Rules.[67] With no exclusion of dual nationals or additional requirement in the BIT, nor the applicable arbitration rules, there is little reason to imply one. While the BIT also permits the investor to opt for ICSID arbitration, and while the ICSID Convention includes a prohibition on dual nationality,[68] that prohibition has no effect here. The choice between UNCITRAL and ICSID arbitration is "the investor['s] choice," and here Claimant has chosen the former.

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[63] Exhibit CLA-131-ESP, *Victor Pey Casado v. Chile (I)* (Award, 8 May 2008) ICSID Case No. ARB/98/2, para. 415.

[64] Exhibit CLA-135-FRA, *Tatneft v. Ukraine* (Judgment of the Paris Court of Appeal, 29 November 2016) PCA Case No. 2008-8, para. 15; Exhibit CLA-129-FRA, *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela* (Judgment of the Paris Court of Appeal, 25 April 2017) PCA Case No. 2013-3, UNCITRAL, p 6.

[65] See Exhibit CLA-122, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, paras. 23, 27.

[66] Exhibit CLA-054, Vienna Convention on the Law of Treaties.

[67] UNCITRAL Arbitration Rules (1976); Exhibit CLA-136, UNCITRAL Arbitration Rules (as revised in 2010); Exhibit CLA-137, UNCITRAL Arbitration Rules (as adopted in 2013); Exhibit CLA-138, UNCITRAL Arbitration Rules (as adopted in 2021).

[68] Exhibit CLA-139, ICSID Convention, Art. 25(2)(a).

28. In any case, as acknowledged by Respondent, the context of Article 1(b) and preamble of the BIT "on its own does not answer the question of the Tribunal's jurisdiction over [Claimant's] claim".[69]

3. *The Object and Purpose of the BIT is to Increase Foreign Investment, which would be Limited by Additional Requirements*

29. Although it is not exhaustive, a treaty's preamble typically refers to its overall object and purpose.[70] The preamble of the BIT here states in relevant part:

> *[…] Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,*
>
> *Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable, […]*[71]

30. To be sure, the preamble does not expressly refer to dual nationals, but states that it is to increase foreign investment. This is also acknowledged by Respondent.[72] Respondent, however, misinterprets Claimant's argument. It is Claimant's position that the realisation of the BIT's object and purpose would always be furthered – not diminished – by giving standing to Lebanese-Dutch, or Dutch-Lebanese nationals, and therefore a broader range of investors, to make use of investment agreements.[73] Excluding them from the BIT's scope

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[69] Statement of Defence, para. 73.

[70] See, for example, **Exhibit CLA-140**, Kit De Vriese, 'How To?: A Methodological Guide to Identify a Treaty's Object and Purpose' (2022) 21(1) Law and Practice of International Courts and Tribunals 35, 49-61. Going further: **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 52 ("The prime source for an investigation into a treaty's object and purpose is its preamble.").

[71] **Exhibit CLA-001**, 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) preamble.

[72] Statement of Defence, para. 73 ("While this on its own does not answer the question of the Tribunal's jurisdiction over [Claimant's] claim, these two provisions underscore that the object and purpose of the BIT (and of investment treaties in general) is to protect foreign, not domestic, investors").

[73] **Exhibit CLA-129-FRA**, *Serafín García Armas v. Venezuela* (Judgment of the Paris Court of Appeal, 25 April 2017) PCA Case No 2013- 3, UNCITRAL, 6; **Exhibit CLA-116**, *Ibrahim Abou Kahlil v. Senegal* (Judgment of the Paris Court of Appeal, 12 October 2021) UNCITRAL, para. 33; **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 172; **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of

would discourage rather than "stimulate the flow of capital and technology and economic development",[74] as an entire class of potential investors would be denied the opportunity to rely upon an investment agreement's protections, especially having regard to the fact that many multinational investors today have more than one nationality.[75] Respondent's argument, that allowing Claimant would be contrary to the object and purpose of the BIT, would be true if Claimant were solely a Dutch national and therefore domestic investor. This is not the case. Subjecting Lebanese-Dutch nationals to different standards than Lebanese nationals would put them on an unequal footing with the latter.

31. Moreover, apart from encouraging cross-border investment, the rationale of international investment law is that foreign investors need an effective remedy at the international level to protect them from subjection to the host State's law.[76] Denying Claimant a neutral, international forum would go against the BIT's object and purpose. Also, undue emphasis on a criterion like "dominant and effective nationality" may mean that dual nationals have no recourse at all, for example because there is no dominant nationality.[77]

32. Finally, as stated in a leading textbook on international investment law, part of the object and purpose of investment treaties is exactly the non-application of the rules on diplomatic protection because of the latter's shortcomings:

> *In the first place, it is evident that on many issues, States have entered into investment treaties precisely in order to remedy perceived gaps or limitations in the protections afforded by customary international law in the field of the treatment of aliens. The law of diplomatic protection*

Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 53; **Exhibit CLA-122**, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 34; **Exhibit CLA-118**, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 136.

[74] See **Exhibit CLA-142**, *KT Asia Investment Group B.V. v. Republic of Kazakhstan* (Award, 17 October 2013) ICSID Case No. ARB/09/8, para. 20 (emphasising the flow of capital and technology, referring to the BIT's preamble and object and purpose).

[75] **Exhibit CLA-116**, *Ibrahim Abou Kahlil v. Senegal* (Judgment of the Paris Court of Appeal, 12 October 2021) paras. 33-34 (allowing dual nationals through the treaty's object and purpose, in light of the "very substantial number of dual nationals").

[76] See, for example, **Exhibit CLA-165-ESP**, *Antonio del Valle Ruiz et al. v. Spain* (Final Award, 13 March 2023) PCA Case No. 2019-17, UNCITRAL, para. 478 (unofficial translation); **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, paras. 55-58.

[77] **Exhibit CLA-233**, Robert D. Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 Harvard International Law Review 1, 17-18.

> *imposes a number of strict pre-conditions upon the exercise of an international claim. Conditions such as the requirement to exhaust local remedies, or the strict rule on nationality of claims, make good sense in the context of a remedy of last resort between sovereign States. But, as will be seen, it was part of the very object and purpose of investment treaties, with their provision for direct investor-State arbitration, to remedy the perceived shortcomings in diplomatic protection. This objective would be fundamentally undermined if restrictions of this kind were to be re-imported into investment treaties by the back door of interpretation. In any event, many of the rights found in investment treaties require the express agreement of States. […]*[78]

4. *There are no Additional Requirements in Subsequent Practice or Agreements*

33. Article 31(3) VCLT directs tribunals to "take[] into account, together with the context" of the BIT:

> *(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
>
> *(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*
>
> *(c) any relevant rules of international law applicable in the relations between the parties.*[79]

34. To the Claimant's knowledge, there is no subsequent agreement between the Contracting Parties regarding the interpretation of the BIT or the application of the BIT's provisions. While the new Dutch Model BIT incorporates the criterion of dual nationality (without describing what it entails),[80] such a unilateral instrument can never qualify as subsequent practice of both Contracting States to the BIT.[81] And, in any event, its clarity on the point supports Claimant here. The new Dutch Model BIT demonstrates plainly that Respondent is aware

[78] **Exhibit CLA-234**, Campbell McLachlan, Laurence Shore, Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (2nd ed, Oxford University Press, 2017), para. 1.70 (emphasis added).

[79] **Exhibit CLA-054**, Vienna Convention on the Law of Treaties, Art. 31(3).

[80] **Exhibit CLA-144**, Netherlands Model BIT (2019), Art. 1(b).

[81] **Exhibit CLA-117-FRA**, *Maya Dangelas et al. v. Vietnam* (Judgment of the Paris Court of Appeal, 12 September 2023) paras. 47-49 (rejecting Vietnam's attempt to rely on the USA's position on the dual nationality issue with respect to other treaties, an expert opinion by Kenneth Vandevelde (a former treaty negotiator), and a diplomatic note issued in April 2023 by the US embassy in Hanoi, finding that such evidence could not be used to identify the common intent of the treaty's contracting parties at the time of its conclusion. Only a *joint* committee could have decided on the treaty's interpretation at an inter-state level.).

that the rules of diplomatic protection, and in particular that of dominant and effective nationality, do *not* apply by default, is never implied, and needed to be included expressly in the governing treaty.[82] If Respondent wanted to include this stringent rule in the Lebanon-Netherlands BIT, it knew full well how to do so, but did not.

35. Moreover, if the Parties wished to change the interpretation of the BIT *ex post facto*, they could have adopted a subsequent agreement in the sense of Article 31(1)(a) VCLT, for example through an additional or interpretative memorandum, or to adopt a new treaty. The States Parties to North American Free Trade Agreement (the "**NAFTA**"),[83] for example, found it necessary to incorporate the "dominant and effective nationality" criterion in its successor-treaty, the United States-Mexico-Canada Free Trade Agreement.[84] The Contracting Parties to this BIT did not.

5. *The "Relevant Rules of International Law" do not include the Rules on Diplomatic Protection*

36. In its Statement of Defence, Respondent argues that the "origins" of the "dominant and effective nationality principle" lie in the rules of diplomatic protection as the "relevant rules of international law".[85]

37. However, the application of the rules of diplomatic protection to investment disputes has been disputed, noting the limited relevance, indeed irrelevance of these to investment disputes.[86] The *Nottebohm* case, for example, which is referred by Respondent as one of the

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[82] See **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, paras. 178-181; **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, paras. 170-172; **Exhibit CLA-118**, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 136. See also: **Exhibit CLA-113**, *Saluka Investments v. Czech Republic* (Partial Award, 17 March 2006) UNCITRAL, para. 229 (on companies); **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 166 (finding the requirement immaterial even if the claimant was dominantly and effectively Mauritian, dismissing the case on the basis of the mandatory reference to the ICSID Convention, at paras. 174-179, while not disagreeing with *Pey Casado* and *Serafin*, at para. 172); **Exhibit CLA-145**, *Siag v. Egypt* (Decision on Jurisdiction, 11 April 2007) ICSID Case No. ARB/05/15, para. 153; **Exhibit CLA-146**, *Ioan Micula et al. v. Romania* (Decision on Jurisdiction, 24 September 2008) para. 79.

[83] **Exhibit CLA-235**, North American Free Trade Agreement, Art. 1101.

[84] **Exhibit CLA-236**, United States-Mexico-Canada Free Trade Agreement, Chapter 14, Art. 14.1.

[85] Statement of Defence, paras. 81-82.

[86] **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, paras. 167-173; **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 44; **Exhibit CLA-118**, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual

"origins" of the "dominant and effective nationality" criterion, actually concerned *recognition, withdrawal and opposability* of one's nationality,[87] only referring to dual nationals in passing.[88] Indeed, the application of the rules of diplomatic protection to investment disputes has been described as "present[ing] certain difficulties",[89] or an "extremely delicate question".[90] Also the text and circumstances of the Algiers Declaration, from which the case law of the Iran-United States Claims Tribunal ("IUSCT") derives, are very specific,[91] despite synergies with investment arbitration.[92] Article VII(1)(a) of the Algiers Declaration constituting the IUSCT defines 'investor' as "[a] 'national' of Iran *or* of the United States, *as the case may be*, means … a natural person who is a citizen of Iran *or* the United States."[93] Here, the wording is narrower, suggesting that the investor can only be a national of one

Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 143; Exhibit CLA-237, *Feldman v. Mexico* (Interim Decision on Preliminary Jurisdictional Issues, 6 December 2000) ICSID Case No. ARB(AF)/99/1, para. 32; Exhibit CLA-124, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, paras. 68-70 (relying on Dolzer's Expert Opinion stating that "the rules of nationality in a BIT do not follow the rules of customary international law as they pertain to the right of diplomatic protection between the two states which have both granted nationality to the same person.", whilst noting that *Nottebohm* and *Case A/18* of the IUSCT could not supersede the clear language of the BIT); Exhibit CLA-[x], *Rompetrol v. Romania* (Decision on Jurisdiction, 18 April 2008) ICSID Case No. ARB/06/3, para. 101; Exhibit CLA-146, *Ioan Micula et al. v. Romania* (Decision on Jurisdiction, 24 September 2008) para. 99; Exhibit CLA-238, *Olguín v. Paraguay* (Award, 26 July 2001) ICSID Case No. ARB/98/5, para. 62; Exhibit CLA-239, *AES v. Argentina* (Decision on Jurisdiction, 26 April 2005) ICSID Case No. ARB/02/17, para. 99; Exhibit CLA-240, *Merrill and Ring Forestry v. Canada* (Award, 31 March 2010) ICSID Case No. UNCT/07/1, para. 205; Exhibit CLA-081, *Camuzzi v. Argentina (I)* (Decision on Objections to Jurisdiction, 11 May 2005) ICSID Case No. ARB/03/2, paras. 138-139; Exhibit CLA-241, *Azurix. v. Argentina* (Award, 14 July 2006) ICSID Case No. ARB/01/12 (regarding the possibility for shareholders to bring claims for losses suffered by their subsidiary, albeit a field that many BITs explicitly regulate).

[87] Exhibit CLA-231, *Zaza Okuashvili v. Georgia* (Partial Final Award, 31 August 2022) SCC Case No. EA 2019/038, para. 110; Exhibit CLA-242, Hussein Haeri and David Walker, '"And you are…?" – Dual Nationals in Investment Treaty Arbitration' (2016) 3(2) BCDR International Arbitration Review 153, 157.

[88] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22. Claimant does not deny that it refers to *criteria* developed by, among others, the International Court of Justice in *Nottebohm*, *when the "dominant and effective nationality" criterion is applied* (see paragraph 50 below).

[89] Exhibit RL-025-SPANISH, *Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Final Award, 31 January 2022, para. 387 (unofficial translation).

[90] Exhibit CLA-231, *Zaza Okuashvili v. Georgia* (Partial Final Award, 31 August 2022) SCC Case No. EA 2019/038, para. 151.

[91] Exhibit CLA-124, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, paras. 66-76; Exhibit CLA-242, Hussein Haeri and David Walker, '"And you are…?" – Dual Nationals in Investment Treaty Arbitration' (2016) 3(2) BCDR International Arbitration Review 153, 161.

[92] Exhibit CLA-165-ESP, *Antonio del Valle Ruiz et al. v. Spain* (Final Award, 13 March 2023) PCA Case No. 2019-17, UNCITRAL, para. 467.

[93] Emphasis added.

State, which arguably led the IUSCT to develop the "dominant and effective nationality" criterion.

38. The investment treaty and diplomatic protection regimes are perpendicular, with the former derogating from the latter as *lex specialis*,[94] and not the other way around.[95] The rules of diplomatic protection – including the "dominant and effective nationality" criterion – were developed at a time when States were the only bearers of rights and obligations under international law.[96] International investment law, an area almost completely, if not completely, made up of treaty law,[97] has departed and derogated from this traditional system by allowing investors to vindicate their own rights directly,[98] most notably by allowing the investor to seize an international tribunal *or* the local courts. This is not the case for diplomatic protection, in which the State enforces its own rights. According to the Draft Articles on Diplomatic Protection, investment treaties take the upper hand: "[s]uch treaties abandon or relax the conditions relating to the exercise of diplomatic protection, particularly the rules relating to the nationality of claims and the exhaustion of local remedies".[99] Indeed, as has been noted by commentators, "aside from the common context of international dispute settlement, similarities between the two fields stop short. Their

[94] Exhibit CLA-134, *Bahgat v. Egypt* (Decision on Jurisdiction, 30 November 2017) PCA Case No. 2012-07, UNCITRAL, para. 231 (holding that general international law must yield to investment treaties, which is *lex specialis*); Exhibit CLA-066, *Dayyani et al. v. Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, para. 74.

[95] Exhibit CLA-165-ESP, *Antonio del Valle Ruiz et al. v. Spain* (Final Award, 13 March 2023) PCA Case No. 2019-17, UNCITRAL, paras. 462, 476 (unofficial translation) (reading the Draft Articles *a contrario* as giving weight to the diplomatic protection rules in the absence of conflicts).

[96] Exhibit CLA-141, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 28.

[97] Exhibit CLA-122, *Manuel García Armas et al. v. Venezuela* (Second Legal Opinion of Professor Christoph Schreuer, 31 May 2018) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 28.

[98] Exhibit CLA-124, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, paras. 69-76; Exhibit CLA-243, *Case Concerning Ahmadou Sadio Diallo (Guinea v. Democratic Republic of the Congo)*, Preliminary Objections [2007] ICJ Rep 582, paras. 88-90 (noting that the settlement of disputes of companies and their shareholders are now largely governed by investment treaties, and that diplomatic protection [therefore] "somewhat faded", restricting it to situations when there is no (effective) treaty in place); Exhibit CLA-157, Draft Articles on Diplomatic Protection with commentaries (2006) 51 ("The dispute settlement procedures provided for in BITs and ICSID offer greater advantages to the foreign investor than the customary international law system of diplomatic protection, as they give the investor direct access to international arbitration, avoid the political uncertainty inherent in the discretionary nature of diplomatic protection and dispense with the conditions for the exercise of diplomatic protection."); Exhibit CLA-118, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 145.

[99] Exhibit CLA-157, Draft Articles on Diplomatic Protection with commentaries (2006) Art. 17(1).

different nature precludes the importation of the principle of effective nationality to investment arbitration disputes."[100]

39. Even if "dominant and effective nationality" is a principle of diplomatic protection, it is not necessarily part of customary international law. At the very least, there is both a lack of consistent State practice and *opinio iuris*, questioning whether any rule of "dominant and effective nationality" and, more generally, of diplomatic protection, apply to investment disputes as customary international law. And even if so, it is questionable whether such a principle would qualify as "relevant rules of international law" in the sense of Article 31(3)(c) VCLT. Only (i) those rules amounting to rules of international law, which are (ii) relevant, and (iii) applicable in the relations between the parties can be taken into account. The rules on diplomatic protection do not meet these criteria. The tribunal in *KT Asia v. Kazakhstan*, for example, stated that a requirement of "real and effective" nationality does not pertain to such rules, noting that investment law is a specific regime.[101] Moreover, whether the rules of diplomatic protection are indeed customary international law is further questioned by the uncertainty of, for example, a requirement for there to be a genuine link,[102] or for nationality to be "effective".[103]

40. In its discussion of the "origins" of the "dominant and effective nationality" criterion, Respondent refers the Draft Articles on Diplomatic Protection, noting that its Article 17 states they "will be applicable to investor-State treaties to the extent that they are inconsistent with the provisions of the treaty in question".[104] This is exactly what Claimant claims, namely that the rules of diplomatic protection, including any "dominant and effective nationality" criterion *are* inconsistent with the investment treaty regime and thus the BIT.

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[100] **Exhibit CLA-118**, Stavros Michalopoulos and Edward Hicks, 'Dual Nationality Revisited: A Modern Approach to Dual Nationals in Non-ICSID Arbitrations' (2019) 35(2) Arbitration International 121, 144.

[101] **Exhibit CLA-142**, *KT Asia Investment Group B.V. v. Republic of Kazakhstan* (Award, 17 October 2013) ICSID Case No. ARB/09/8, paras. 125, 128. See also **Exhibit CLA-113**, *Saluka Investments v. Czech Republic* (Partial Award, 17 March 2006) UNCITRAL, para. 241; **Exhibit CLA-145**, *Siag v. Egypt* (Decision on Jurisdiction, 11 April 2007) ICSID Case No. ARB/05/15, para. 201; **Exhibit CLA-124**, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, para. 64.

[102] **Exhibit CLA-145**, *Siag v. Egypt* (Decision on Jurisdiction, 11 April 2007) ICSID Case No. ARB/05/15, para. 198; **Exhibit CLA-146**, *Ioan Micula et al. v. Romania* (Decision on Jurisdiction, 24 September 2008) paras. 79, 101 (finding it an illegitimate additional condition to the applicable investment treaty). The International Law Commission – preferring the term "predominant nationality" – has explicitly removed any reference to the latter: **Exhibit CLA-157**, Draft Articles on Diplomatic Protection with commentaries (2006) Arts. 6(3) and 7(4).

[103] **Exhibit CLA-086**, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 61 (noting that "tribunals were generally been unimpressed by arguments concerning the effectiveness of a nationality").

[104] Statement of Defence, para. 83, referring to **Exhibit CLA-157**, Draft Articles on Diplomatic Protection with commentaries (2006) Art. 17.

Relying on the Draft Articles as *lex specialis*, the *Serafín* tribunal held that – even if the BIT did not regulate the issue of dual nationals (and despite the fact that the BIT included "rules and principles of international law" as applicable law[105]) – the "dominant and effective nationality" criterion was not consistent with the BIT's nationality requirement.[106]

41. The correct default position, therefore, is that, unless specifically incorporated in the treaty, the "dominant and effective" criterion does not apply to the investment treaty context.[107]

6. *Supplementary Means of Interpretation argue against Adding Additional Requirements to the BIT*

42. It was Claimant's case that the text of the BIT is clear and the Article 31 VCLT guidance support that same result, resort to subsidiary means of interpretation is unnecessary.[108] Like Claimant, Respondent argues that recourse to Article 32 VCLT is only warranted to confirm the meaning of Article 31 or if interpretation according to Article 31 leaves the meaning "ambiguous or obscure" or leads to a result that is "manifestly absurd or unreasonable".[109] It is exactly this that warrants recourse to Article 32: Claimant referred to the supplementary means of interpretation to *confirm* the interpretation of Article 1(a) of the

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[105] Art. XI(4) Spain-Venezuela BIT, which the Paris Court of Appeal considered only applied to the merits of the case, not jurisdiction (**Exhibit CLA-129-FRA**, *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela* (Judgment of the Paris Court of Appeal, 25 April 2017) PCA Case No. 2013-3, UNCITRAL).

[106] **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, para. 166.

[107] **Exhibit CLA-141**, *Manuel García Armas et al. v. Venezuela* (First Legal Opinion of Professor Christoph Schreuer, 5 July 2017) ICSID Case No. ARB(AF)/16/1 and PCA Case No. 2016-08, para. 71; **Exhibit CLA-131-ESP**, *Victor Pey Casado v. Chile (I)* (Award, 8 May 2008) ICSID Case No. ARB/98/2, para. 415 (allowing a claim by a dual national against the State of dominant nationality, stating that it was sufficient that the claimant had the nationality of one State); **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 166; **Exhibit CLA-169**, *Champion Trading v. Egypt* (Decision on Jurisdiction, 21 October 2003) ICSID Case No. ARB/02/9, p 16; **Exhibit CLA-145**, *Siag v. Egypt* (Decision on Jurisdiction, 11 April 2007) ICSID Case No. ARB/05/15, para. 150; **Exhibit CLA-146**, *Ioan Micula et al. v. Romania* (Decision on Jurisdiction, 24 September 2008) para. 79.

[108] See Statement of Claim, para. 133, referring to **Exhibit CLA-147-ESP**, *Manuel García Armas et al. v. Venezuela* (Award on Jurisdiction, 13 December 2019) PCA Case No. 2016-08, para. 724 (holding that interpretation under Article 31 VCLT had led to a "clear" result, resort to subsidiary means of interpretation was unnecessary, e.g. treaties were the relevant States had excluded dual nationals). Cf. **Exhibit CLA-148-FRA**, *Rawat v. Mauritius* (Judgment of the Brussels Court of First Instance, 30 June 2021) UNCITRAL, p 10 (holding that supplementary means were not only available where an interpretation under Article 31 left the meaning of a text obscure or ambiguous (or led to an absurd result), but they were also available to confirm any interpretation under Article 31, and that the treaty's preparatory works were not the only element that could be taken into consideration under Article 32 VCLT, noting that this was only an illustrative example).

[109] Statement of Defence, para. 76.

BIT,[110] and to clarify the "ambiguous or obscure" meaning that exists considering the Parties' opposite stances on the matter. This is, among others, acknowledged by Respondent when it states that the context of Article 1(b) and preamble of the BIT "on its own does not answer the question of the Tribunal's jurisdiction over [Claimant's] claim".[111]

43. Since Claimant has no access to the *travaux préparatoires* of the Lebanon-Netherlands BIT, and Respondent has not invoked these in its Statement of Defence, it is unlikely that these shed light on the issue of dual nationals (if they exist at all). Reference is therefore made to exchanges made in light of the Energy Charter Treaty, which is crystal clear: "with the exception of ICSID arbitration, there is nothing in the ECT that would prohibit dual nationals to bring claims against *one of [its]* States".[112]

44. It is in this light, i.e. the need to refer to "supplementary means of interpretation" and inexistence of *travaux préparatoires* (at least on the matter of dual nationals) that Claimant refers to other investment agreements concluded by the Contracting States.[113] This is also confirmed by Respondent. Following its statement that "subsequent investment treaties concluded between Lebanon and third parties or between the Kingdom of the Netherlands and third parties are irrelevant for the interpretation of the present BIT",[114] Respondent, in the next paragraph, refers to case law that held otherwise.[115]

45. As noted above, these confirm rather than reject the conclusion that dual nationals are included in the BIT's scope and that additional requirements need to be explicitly included to restrict the jurisdictional scope of the BIT. Lebanon concluded *one* BIT (with Canada) that

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[110] **Exhibit CLA-054**, Vienna Convention on the Law of Treaties, Art. 32 ("Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.").

[111] Statement of Defence, para. 73.

[112] **Exhibit CLA-149**, Kai Hobér, *The Energy Charter Treaty: A Commentary* (OUP, 2020) 113 (referring to Comments of the Canadian Delegation regarding the Basic Agreement of 19 June 1992, 31/92 BA 13; Letter from Michael Lennard, Attorney General Department, Australia, to Mr. Leif Ervik, European Energy Charter Conference Secretariat, 1 December 1992) (emphasis added).

[113] Statement of Claim, para. 135, referring to **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, paras. 176-181. See also **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 170.

[114] Statement of Defence, para. 76 (cross-reference omitted).

[115] Statement of Defence, para. 77, citing **Exhibit RL-025-SPANISH**, *Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Final Award, 31 January 2022, para. 271 ("[…] While the comparison between different treaties concluded by the Contracting Parties with third parties may be relevant as a matter of interpretation […]") (unofficial translation).

excluded claims by dual nationals against either of their States: "[i]n the case of persons who have both Canadian and Lebanese citizenship, they shall be considered Canadian citizens in Canada and Lebanese citizens in Lebanon."[116] The Netherlands has virtually the same history of practice. As acknowledged by the Respondent's own courts, It too ratified *one* BIT that expressly excluded dual nationals.[117] The Netherlands-Macao BIT states that "[w]ith respect to physical persons, an individual who possesses both the nationality of the Kingdom of the Netherlands and is entitled to the Resident Identity Card of the Macao Special Administrative Region at the time of the investment, who invests in the Macao Special Administrative Region, shall not be considered an investor of the Kingdom of the Netherlands, for the purposes of this Agreement".[118] Again, the Netherlands knew what it had to do if it wanted to exclude dual nationals from the scope of a BIT, or, as in its new Model BIT, to include additional requirements such as that of "dominant and effective nationality".[119]

46. The fact that the new Dutch Model BIT expressly incorporates a criterion of "dominant and effective" nationality confirms the general rule that the older Dutch BIT(s) expressed the general rule and broad definition of 'investor' (*expressio unius est exclusio alterius*),[120] and that Respondent found it necessary to deviate it from it and limit it explicitly.[121] Respondent's

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[116] **Exhibit CLA-150**, Agreement between the Government of Canada and the Government of the Lebanese Republic for the Promotion and Protection of Investments (signed on 11 April 1997, entered into force on 19 June 1999), At. 1(e).

[117] **Exhibit CLA-132-DUT**, *Bahgat v. Egypt* (Judgment of the Hague District Court, 20 October 2021) PCA Case No. 2012-07, para. 5.53.

[118] **Exhibit CLA-127**, Agreement between the Kingdom of the Netherlands and the Macao Special Administrative Region of the People's Republic of China on encouragement and reciprocal protection of investments (signed on 22 May 2008, entered into force on 1 May 2009) Art. 1(b).

[119] See paragraph 34 above.

[120] **Exhibit CLA-130**, *Rawat v. Mauritius* (Award on Jurisdiction, 6 April 2018) UNCITRAL, para. 170 ("The Tribunal accepts, as argued by Rawat, that we are not to add conditions to the BIT, as drafted and ratified by France and Mauritius. There is no express exclusion of dual nationals from protections under the BIT, *unlike other investment treaties entered into by both Mauritius and France* […]. This would seem to point to the inclusion, rather than the exclusion, of dual nationals within the scope of the France-Mauritius BIT.") (emphasis added). See also **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, paras. 176-181 (noting that the exceptional exclusion of dual nationals in those other treaties confirms the standing of dual nationals); **Exhibit CLA-154**, *Pugachev v. Russia* (Award on Jurisdiction, 18 June 2020) UNCITRAL, paras. 385-386 (concluding that because both France and Russia had included an exclusion for dual nationals in their treaties with third countries, this demonstrated that "if either of the Contracting States had intended to exclude dual nationals from the scope the France-USSR BIT, they would have done so expressly").

[121] In this sense, see also Russia's amendments to its Foreign Investment Law: **Exhibit CLA-155**, 'Investment Treaty Arbitration: Russia' (Global Arbitration Review, 13 September 2023) available at https://globalarbitrationreview.com/insight/know-how/investment-treaty-arbitration/report/russia ("[O]n 31

reference to its Model BIT to support its claim that the "principle" of "dominant and effective nationality" applies in all cases of dual nationality is inapposite as, following Respondent's own logic, treaties with third parties, leave alone *unilateral*, instruments can be used to *affirm* rather than deny the application of additional requirements.

B. In any Case, Claimant's "Dominant and Effective Nationality" is his Lebanese Nationality

1. *Respondent Restates the "Dominant and Effective Nationality" Test*

47. It must be noted at the outset that Respondent does not argue that dual nationals are categorically excluded from the BIT, but only that the "dominant and effective nationality" applies,[122] a criterion found in its new Model BIT which postdates the Lebanon-Netherlands BIT *with 17 years*.[123] It is submitted, however, that even if the Tribunal is minded to graft an atextual requirement of "dominant and effective nationality" onto the Treaty (which it should not do), then Claimant undeniably satisfies it.

48. Under the "dominant and effective nationality" test, Claimant would need to demonstrate that his Dutch nationality is less dominant than his Lebanese nationality, which is the "dominant and effective nationality".

49. Because this BIT does not include any criterion of "dominant and effective nationality", it provides no guidance on how to apply it. Therefore, as Respondent acknowledges,[124] this Tribunal would have to consider criteria developed in the *inter-State* law of diplomatic protection (which has been picked up by some investment tribunals applying the "dominant and effective nationality" criterion, often without legal basis in the applicable treaty). While Claimant denies the application of the "dominant and effective nationality" criterion,[125] he acknowledges that should the "dominant and effective nationality" criterion be applied, *factors* to determine the latter are needed.

50. Aware of its lack of convincing legal and factual arguments, the best Respondent can muster is to *restate* the test to determine any "dominant and effective nationality" by cherry-picking

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May 2018, Russia enacted amendments to its Foreign Investment Law stipulating, inter alia, that foreign nationals who also have Russian nationality shall not be considered foreign investors in the meaning of the Foreign Investment Law. In light of these, it is expected that future Russian BITs will expressly exclude from protection investments made by dual nationals. It is noteworthy that the tribunal in a recent but yet unpublished award in *Pugachev v Russian Federation* rejected Russia's argument that the Russia-France BIT did not allow claims by dual nationals.").

[122] See paragraph 11(i) above; Statement of Defence, para. 63.

[123] Exhibit CLA-144, Netherlands Model BIT (2019), Art. 1(b).

[124] Statement of Defence, Section, 3.2.1.

[125] See Section I.A above.

and focusing on *four* elements considered by courts and tribunals applying such a criterion.[126] All four of these factors are moreover *company-related*, which only proves that Claimant's investment, and indeed Parman, are located in the Netherlands, a requirement under the BIT. Respondent presents an incomplete analysis of the "dominant and effective" nationality test, rife with incorrect and inconsistent statements.[127]

51. Respondent does not only attempt to add an additional requirement of "dominant and effective nationality" – a criterion that, it is recalled, not found in the BIT – it also attempts to argue that it must be "predominant with regard to that very same investment".[128] This is not a correct statement of the "dominant and effective nationality" test applied by those courts and tribunals that considered it relevant. Not least because, again in Respondent's own words, its origins lie in the field of diplomatic protection,[129] which never considered that a certain nationality must be predominant *with regard to [an] investment*.

52. In fact, while it blames Claimant for not proving that his "dominant and effective nationality" is Lebanese on the basis that it did not consider economically-related factors,[130] Claimant provided a much more detailed account of all relevant factors – on Respondent's own account, not less than *thirty* factors considered by international courts and tribunals.[131] Claimant applied all these factors at some point in its Statement of Claim and grouped these under 13 headings (for ease of reference), concluding that Claimant is a Lebanese – and not a Dutch – national for the purposes of this arbitration.

53. Acknowledging the existence of other factors considered by international courts and tribunals (as addressed by Claimant), Respondent tries to refute the facts presented by Claimant as "subjective" and "of lesser weight".[132] However, the cited legal authorities never held that these are "of lesser weight", rather the opposite. It is undeniable that in *Nottebohm*, a case referred to by Respondent as one of the "origins" of the "dominant and effective

[126] Statement of Defence, para. 104.

[127] So does it consider that "the centre of economic interests" is a "key factor[] emerg[ing] from the case law as essential to the determination of the dominant and effective nationality of a dual national" to state only two paragraphs later that "[t]ribunals *increasingly* place the main emphasis on the centre of economic interest". See Statement of Defence, paras. 104, 106 (emphasis added). Respondent then relies on "reasons behind the voluntary act of naturalization" as a "key" objective factor, while reasons are inherently subjective. See Statement of Defence, paras. 104 (third bullet point), 120, 136.

[128] Statement of Defence, para. 135.

[129] Statement of Defence, Section 3.2.1.

[130] Statement of Defence, paras. 100, 113. These were considered, however, see Statement of Claim, para. 144(iii)(x).

[131] Statement of Defence, para. 113. See Statement of Claim, paras. 141-142.

[132] Statement of Defence, paras. 105, 156.

nationality" criterion,[133] the International Court of Justice mainly referred to personal factors, including "the habitual residence of the individual concerned, […] the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc. […]"[134] and further, "his tradition, his establishment, his interests, his activities, […], his intentions for the near future […]".[135]

54. Moreover, the International Court of Justice in *Nottebohm* explicitly held that *none* of these factors are "key" as there is no hierarchy between them and that "[d]ifferent factors are taken into consideration, and their importance will vary from one case to the next".[136] Respondent later admits that any assessment is *holistic* in nature.[137] The International Court of Justice's clear statement does not stop Respondent from attempting to mould these "subjective" factors in its favour, rejecting Claimant's presentation of the facts and factors as "manifestly selective",[138] referring to its own selective factors (*see* Section I.B.2(g) below).

55. In what follows, Claimant will provide an overview of all factors originally set out in its Statement of Claim.[139] The unavoidable conclusion is that Claimant's Lebanese nationality, as predominant nationality, takes priority over his lost Dutch nationality.

2. *Claimant's "Dominant and Effective Nationality" is Lebanese*

(a) Respondent omits Claimant's key objective factors pointing to Lebanon

56. It must be noted at the outset that Respondent, emphasising certain "key" "objective" factors, ignores or discards purely objective factors presented by Claimant, such as the place of birth, marriage, or even the existence of cultural ties with Lebanon as being "subjective".[140]

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[133] Statement of Defence, para. 81.

[134] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22.

[135] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 24.

[136] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22. See also Exhibit CLA-157, Draft Articles on Diplomatic Protection with commentaries (2006) Art. 7(5) ("None of these factors is decisive and the weight attributed to each factor will vary according to the circumstances of each case.").

[137] Statement of Defence, paras. 106-107, referring to Exhibit RL-027-SPANISH, *Raimundo Santamarta Devis v. Bolivarian Republic of Venezuela*, PCA Case No. 2020-56, Award on Jurisdiction, 26 July 2023, para. 499 and Exhibit CLA-167, *Ballantine v. Dominican Republic* (Final Award, 3 September 2019) PCA Case No. 2016-17, UNCITRAL, para. 558.

[138] Statement of Defence, para. 159.

[139] Statement of Claim, paras. 140-142.

[140] Statement of Defence, para. 157.

However, these factors are clearly objective and demonstrate his affiliation with Lebanon, including:

(i) **Claimant's family ties –** without further explanation, Respondent states that the continued presence of Claimant's extended family in Lebanon, while correct, is "misleading".[141] It further ignores the fact that Claimant married his wife and had his first two children in Lebanon,[142] that both Claimant and his oldest son married in Lebanon, and none of his family members have lived in the Kingdom of the Netherlands for years;[143]

(ii) **Claimant's (place, curricula and language of) education –** Claimant was educated in Beirut, Lebanon, where he went to elementary, primary, secondary school, and university (Saint Joseph University).[144] Among its curriculum, Claimant studied specific Lebanese courses, including "*Langue Arabe et sa Littérature*" and "*Histoire des Sciences chez les Arabes*".[145]

(iii) **Claimant's professional history in Lebanon** – Claimant spent the first ten years of his professional career in Lebanon, before he had to move with his family due to the precarious situation in the country;[146]

(iv) **Claimant's military service –** Claimant completed his military service in Lebanon;[147]

(v) **Claimant's lifespan** – Claimant held the dual Lebanese-Dutch nationality for one third of his life.[148] By contrast, Claimant has always been a Lebanese national;[149]

(vi) **Claimant's possession and use passport –** As Claimant possessed both a Lebanese and Dutch passport (and now a French passport instead of the latter), this is of limited relevance as evidence here. Claimant used his Lebanese passport for

[141] Statement of Defence, para. 161.

[142] Statement of Claim, paras. 144(vi); Personal Statement of Abdallah Andraous, para. 6.

[143] Statement of Claim, para. 144(vi).

[144] Statement of Claim, para. 144(v); Personal Statement of Abdallah Andraous, para. 5.

[145] **Exhibit C-088-FR**, Certificate of Baccalaureate Degree dated 3 September 1974.

[146] Statement of Claim, para. 11; Personal Statement of Abdallah Andraous, para. 6.

[147] Statement of Claim, para. 144(vii); Personal Statement of Abdallah Andraous, para. 5; **Exhibit C-088-FR**, Certificate of Baccalaureate Degree dated 3 September 1974.

[148] Statement of Defence, para. 111.

[149] Statement of Claim, para. 144(i-ii); Personal Statement of Abdallah Andraous, para. 18.

international travel.[150] The fact that Claimant may have used his Dutch passport to enter the Netherlands is of limited relevance in this context;[151] and

(vii) **Claimant's lack of participation in Dutch public life** – Claimant is a member of several social groups in Lebanon.[152] He is not a member or affiliate of any Dutch political party, association, or social club. He does not participate in public life in the Netherlands, only voting once in Dutch elections (in 2000).[153]

57. Permeating throughout this case as perhaps the key "objective" factor, *against which all other factors have to be seen*, is the unique situation of Lebanon and the diaspora of the Lebanese people, of which many necessarily live abroad. The war that started in Lebanon between Christians, Palestinians and Syrians in 1975 developed in 1982 into a larger scale war with Israel. Living in the Christian area east of Beyrouth (close to the demarcation line between Christians and Palestinians), Claimant was justifiably concerned about the health and safety of his family, and rightly so. When an opportunity presented itself in St Maarten, an island with a Dutch *and a French* side, Claimant took it and his family followed; together they formed a little Lebanese community away from home. From 1984 to 1989 Claimant lived in St Maarten, before moving to Paris, France where he has resided for more of his time outside Lebanon and resides today.[154] He is not alone. Due to the close historical, cultural and linguistic ties with France, many Lebanese nationals who fled the civil war in their home country are based in France, and many have taken dual citizenship there.[155]

(b) Claimant's tradition, interests and activities, and intention for the future

58. Referring to certain "key" *company-related* factors, Respondent, in its (dismissive) discussion of "subjective" factors, omits what are usually considered as key factors, namely, in the words of the International Court of Justice, "his tradition, […], his interests, his activities, his family ties, [and] his intentions for the near future".[156]

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[150] Statement of Claim, para. 144(xii); Personal Statement of Abdallah Andraous, para. 20.

[151] **Exhibit CLA-165**, *Antonio del Valle Ruiz et al. v. Spain* (Final Award, 13 March 2023) PCA Case No. 2019-17, UNCITRAL, para. 482.

[152] Statement of Claim, para. 144(vii); Personal Statement of Abdallah Andraous, para. 18.

[153] Statement of Claim, para. 144(vii); Personal Statement of Abdallah Andraous, para. 18.

[154] Statement of Claim, paras. 14-16.

[155] **Exhibit C-084**, 'THE WORLD; A French Presence in Lebanon, A Lebanese Presence in France' (The New York Times, 3 September 1989) available at: https://www.nytimes.com/1989/09/03/weekinreview/the-world-a-french-presence-in-lebanon-a-lebanese-presence-in-france.html ("Since the civil war began in 1976, as many as 120,000 Lebanese have moved to Paris and many of them carry dual citizenship").

[156] **Exhibit CLA-158**, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 24.

59. Claimant's traditions, interests and family ties lie in Lebanon. It is recalled that, while the Netherlands is a protestant country, Claimant is a devout Melkite Greek Catholic – a subsection of Christianity unique to Lebanon.[157] Unable to access church in Lebanon in person, Claimant is member of, and donates regularly to, the Lebanese church in Paris (Saint Julien le Pauvre) where most of his children and grandchildren were baptised. In addition, he participates virtually in Sunday mass of his hometown church in Lebanon every week (broadcasted live for those who are abroad).[158] Most of his family still lives in Lebanon, and one of his children was married there when the situation permitted it.[159]

60. Claimant has a close network of Lebanese and French friends, also in the Dutch Caribbean where the Lebanese form close networks as a little Lebanese cocoon away from home.[160] It is surprising therefore that, as culmination of Respondent's selective account of facts and the factors above, it uses Claimant's presence at social gatherings with *non-Dutch* (Lebanese and French) citizens on St Maarten (for the most part from the French side of the island) as evidence for the fact that he is "dominantly and effectively" Dutch.[161] In fact, all Respondent could muster of Claimant's time on the island are pictures from Mr. [redacted]'s Instagram account (a *French* national).[162]

61. While Claimant has intentions to return to Lebanon,[163] his wife's treatment of metastatic cancer in Paris, and the current unstable situation, and persisting and increasing conflict in Lebanon, have not permitted them to return.

(c) Claimant's attachment to Lebanon and how Claimant views himself

62. Also the "attachment shown by him for a given country and inculcated in his children",[164] another key factor set out in the *Nottebohm* case, demonstrates that Claimant has little connection with the Netherlands apart from his economic interests in Parman. While he does not deny he once held the Dutch nationality, Claimant has no cultural ties with the Netherlands whatsoever, nor do his children. Neither the Claimant nor his children speak

[157] Statement of Claim, para. 144(viii); Personal Statement of Abdallah Andraous, para. 18.

[158] Statement of Claim, para. 144(viii); Personal Statement of Abdallah Andraous, para. 18.

[159] Statement of Claim, para. 144(viii); Personal Statement of Abdallah Andraous, para. 19.

[160] Statement of Claim, para. 144(ii).

[161] Statement of Defence, para. 162.

[162] Statement of Defence, para. 162.

[163] Statement of Claim, para. 144(xiii); Personal Statement of Abdallah Andraous, para. 21.

[164] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22.

Dutch, which is not surprising since they have not been educated in the Netherlands.[165] None of his two married children were married in the Netherlands or under Dutch law.[166]

63. While it may be relevant how the respective States view Claimant,[167] in this case this is not conclusive as the Netherlands sees him as predominantly Dutch, and Lebanon views him, as all Lebanese people, as predominantly Lebanese. However, it is clear that for all reasons described in this Section, Claimant views himself as Lebanese (which is also a relevant factor[168]).

(d) Claimant's use of language

64. Claimant is fluent in Lebanese and Arabic, as well as French, which he uses on a daily basis with his family and friends, and this at the time he lived in respectively Lebanon, and the Netherlands and France.

65. As Claimant stated, "[h]e does not speak a single word of Dutch" and speaks English even to its own (Dutch-speaking) counsel.[169] Respondent now desperately attempts to prove that Claimant is "dominantly and effectively" a Dutch citizen through his ability to speak English.[170] While it is true that English is an official (although not primary) language in St Maarten, it is so in *at least another 53 States and 22 non-sovereign countries*. Moreover, the fact that English is an official (*de jure*) language in St Maarten is of low value, considering that the four countries where the majority of the world's English speakers reside (the United Kingdom, the United States of America, Australia and New Zealand) do not consider English as an official language. Moreover, not less than *2 billion* people worldwide, i.e. a quarter of the world's population speak English as a native or second language. Claimant's ability to speak English is for these reasons entirely irrelevant for the purposes of determining any "dominant and effective nationality".

66. It also deserves to be mentioned here that, while English is an official language on St Maarten,[171] when requested by Claimant to hold the hearings in English, the Joint Court of

[165] Statement of Claim, para. 144(viii).

[166] Statement of Claim, para. 144(viii).

[167] Statement of Claim, para. 142.

[168] Statement of Claim, para. 142.

[169] Statement of Claim, para. 144(iv).

[170] Statement of Defence, para. 158.

[171] Statement of Defence, para. 158.

Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba held that Dutch would be the procedural language.[172]

(e) Claimant's social security insurance

67. Claimant does not deny that he relies on French social security since 1989 because it outweighs Lebanese social security coverage and covers most of his and his family's medical expenses.[173] In fact, the CBCS having cancelled Claimant's *private* medical and life insurance at Ennia,[174] were it not for his French medical insurance, his wife could not have been treated for metastatic cancer which resurfaced in June 2018, just before the Takeover.[175] It is no secret that Lebanese social security is unreliable, and can in any case only be accessed when based there. Claimant has intentions to return to Lebanon when his wife's condition and the country's situation ameliorate.[176]

(f) Claimant's habitual residence, centre of interests and place of family life, and visits to the other State

68. As noted above,[177] the situation in Lebanon and his wife's condition have not permitted Claimant to return to Lebanon indefinitely. Instead, after a brief period in St Maarten, Claimant has set up a 'home away from home' in Paris, France, where his the place of family is located, and this since 1989.[178] The choice for France was made in effort to provide a better education for his children and to be geographically and culturally closer to his family in Lebanon.[179]

69. From Paris, he has travelled to and from the Dutch Caribbean when required for his profession, often combined with a holiday (since it was easy to travel there possessing a Dutch passport). As requested by Respondent,[180] Claimant has produced his flight tickets to this effect, demonstrating that Claimant's stays in the Dutch Caribbean were temporary, and

[172] **Exhibit C-090**, Email dated 27 September 2021 regarding language of the proceedings.

[173] Statement of Defence, para. 159; Statement of Claim, para. 144(xi); Personal Statement of Abdallah Andraous, para. 17(4).

[174] Personal Statement of Abdallah Andraous, para. 17(4).

[175] Statement of Claim, para. 144(xi).

[176] *See* Statement of Claim, para. 144(xiii); Personal Statement of Abdallah Andraous, para. 21.

[177] See paragraph 67 above.

[178] Statement of Claim, para. 15.

[179] Statement of Claim, para. 15; Personal Statement of Abdallah Andraous, para. 9.

[180] Respondent's Request for Document Production, Document Request No. 5.

his habitual residence in Paris, France.[181] Claimant's visits to the Netherlands for at most a few times a year prove that his predominant nationality is not Dutch.

70. Indeed, Claimant's "habitual residence *in* the Kingdom of the Netherlands",[182] i.e. when he had to be present in the Kingdom of the Netherlands to access his investments and for the fulfilment of his duties at Parman, is irrelevant. Not to allow Claimant a place to stay in a country where he exercised his profession more than 6700 km away from his habitual residence in Paris, France, would be absurd.

71. Claimant does not deny that he resided in different *temporary* properties during his time in the Dutch Caribbean. However, this was in addition to his main and habitual residence in Paris, France which has remained unchanged for several years.[183]

72. Respondent's own evidence shows that nearly all of its places of residence were owned by Parman and were provided by the company to Claimant for the fulfilment of his duties. The only exception was an apartement [redacted],[184] which was acquired by Claimant as an investment,[185] and which is conflated by Respondent with another alleged property.[186] Most of the properties listed are hotels, as their name indicates (Towers at Mullet Bay, Blue Bay Resorts, Ocean Resort, Mullet Bay *Resorts and Casino*). This confirms that Claimant's residence in the Netherlands was temporary, never really settled and kept moving around, even in the Netherlands. The fact that Claimant occupied different residences throughout

[181] **Exhibit C-091**, Confirmation of flight 3 November 2008 (Air France, AF0488); **Exhibit C-092**, Airplane ticket 12 April – 20/27 June 2015 (Air France, Y2WXFX) (Paris-St Maarten); **Exhibit C-093**, Airplane ticket 5 July - 21 August 2015 (Air France, 4N3NKT) (Paris-St Maarten); **Exhibit C-094**, Airplane ticket 29 March – 5 August 2016 (Air France, 223NOT) (Paris-St Maarten); **Exhibit C-095**, Airplane ticket 23 April - 11 August 2017 (Air France, VC5CR2) (Paris-St Maarten); **Exhibit C-096**, Airplane ticket 17-22 November 2018 (KLM, VSKCSH) (Paris- Curaçao via Amsterdam); **Exhibit C-097**, Airplane ticket 30 May – 22 June 2019 (Air France, U9YXAG) (Paris-St Maarten); **Exhibit C-098**, Airplane ticket 14 August 2019 - 16 September 2019 (Air France, TPSPVG) (Paris-St Maarten); **Exhibit C-099**, Airplane tickets 13 January - 3 April 2020 (Air France, JFDIJ7) (Paris-St Maarten).

[182] Statement of Defence, Section 3.3.2.4 (emphasis added).

[183] See, for example, **Exhibit R-035-DUTCH**, Ennia Caribe Leven N.V. Data sheet for personal details of pension entitled insured filled out by Abdallah Andraous, and internal emails regarding payments and amounts, 24 January 2019; **Exhibit C-040**, Parman International B.V. Stock Register; **Exhibit C-100**,UBO Statement of ECH dated 31 December 2013; **Exhibit R-035-DUTCH**, Ennia Caribe Leven N.V. Data sheet for personal details of pension entitled insured filled out by Abdallah Andraous, and internal emails regarding payments and amounts, 24 January 2019.

[184] Statement of Defence, para. 145; **Exhibit C-101**, Deed purchase Apartment D-6, Blue Marine, St Maarten; **Exhibit C-102**, Sale agreement between [redacted] and BMA2 Private Fund Foundation of [redacted].

[185] As noted in Respondent's Request for Document Production, Document Request No. 4, Claimant also purchased a lot [redacted]) on which Claimant was building house. However, as stated in Statement of Defence, para. 150, this was destroyed by Hurricane Irma and sold as such in 2019.

[186] Statement of Defence, paras. 145-146 (effectively concerning the same [redacted]).

his time in the Dutch Caribbean merely demonstrates the instability of its establishment there.

73. At the very least, for Respondent's own reasons,[187] the factor of habitual residence is irrelevant to determine whether the Claimant's Lebanese or Dutch nationality is "dominant and effective", and should for that reason be ignored.[188] It merely demonstrates that Claimant's residence in the Dutch Caribbean was to have a foothold there for his professional and investment activities.

(g) Company-related factors: economic and financial relations, centre of economic interests, place of profession, company registration and legal residence

74. Claimant does not deny that Parman is a company constituted and registered in Curaçao. In fact, this represents the territorial requirement for Claimant to claim protection under the BIT. Therefore, unlike Respondent alleges, Claimant *does* consider its centre of economic interests (and main source of income) is Parman, and therefore Curaçao. In this regard, it is undeniable that economic and certain tax benefits (however, see paragraph 81 below) accrue to the Netherlands, as the State receiving the investment (which is arguably a reason why the national identity of the investor is less important).[189]

75. To consider that "numerous functions kept him 'economically centred' in the Kingdom of the Netherlands"[190] would make every expat holding the nationality of a foreign State with an investment in the host State a national of the latter.

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[187] Statement of Defence, para. 154, referring to **Exhibit RL-027-SPANISH**, *Raimundo Santamarta Devis v. Bolivarian Republic of Venezuela*, PCA Case No. 2020-56, Award on Jurisdiction, 26 July 2023, para. 503 ("the Claimant's place of residence cannot be used to determine whether he is predominantly Spanish or Venezuelan, as at the time relevant to this determination, he did not reside in either of these countries") (unofficial translation).

[188] See also Statement of Defence, para. 104 (citing it as the last factor while referring to **Exhibit RL-027-SPANISH**, *Raimundo Santamarta Devis v. Bolivarian Republic of Venezuela*, PCA Case No. 2020-56, Award on Jurisdiction, 26 July 2023, para. 503 ("The Court considers that habitual residence is the *first* factor or criterion analyzed by writers and courts facing the determination of dominant and effective nationality.") (unofficial translation)).

[189] **Exhibit CLA-244**, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2009) 162-163 (footnote omitted) ("So long as the existence of a covered investment is established, the national identity of the investor is less important to the objective of stimulating inward flows of private capital to the economy of one of the contracting states. The national contracting state of the claimant has only a marginal interest in the investor/state arbitration proceedings: whilst some economic activity might have been generated by expatriated profits (and the taxation thereof), the claimant's national contracting state has not benefited directly from the investment in the same way as the host contracting state, and, save for some rare exceptions, the national contracting state has no procedural right to participate in the arbitration proceedings. Hence a purposive interpretation of the nationality.").

[190] Statement of Defence, para. 123.

76. The economic benefits of its investment were collected on Claimant's bank accounts in France and the United States.[191] He has one inactive account in Curaçao for the simple reason that he had to receive a tax refund for overpayment of taxes and the tax office does not wire funds outside the Netherlands Antilles.[192]

(h) Claimant's motivation to become a dual national and reasons for presentation as Dutch national

77. However, referring to Claimant's statement that he "acquired Dutch nationality *because* of the investment, and not the other way around",[193] Respondent now tries to mould Claimant's motivation, an inherently personal factor into evidence that Claimant naturalised to acquire the investment. This is incorrect. Claimant acquired Dutch nationality for convenience, as he had to be present there for the fulfilment of his professional commitments which developed into the investment, for which steps had already been made (starting with Claimant's work for SunResorts in 1984). Having a Dutch passport simply made travel easier, making it possible to travel to and from the Netherlands without a visa,[194] most notably because there was no embassy or consulate on St Maarten for him to request such documents. In addition, it avoided requesting subsequent residence permits.

78. It is in this light that references to Claimant in Curaçao's and St Maarten's Commercial Register as "Dutch", respectively "Dutch (Dutch Caribbean)" has to be seen.[195] The Dutch nationality offered significant practical advantages, and was therefore another reason to acquire it. Indeed, as Respondent acknowledges, Claimant does not deny that he used his Dutch nationality to claim, for example, exemptions from some requirements pertaining to the assessment of the integrity and background of directors of financial institutions in the Dutch Caribbean.[196] Should it have been required or beneficial for Claimant to indicate that he was a Lebanese national, he would have done so. Reputational reasons attaching to Dutch (in contrast to Lebanese nationality) should also not be underestimated (and prevented Claimant to be deported on some occasions), which is yet another reason why Claimant only indicated the former on the above-mentioned documents. Claimant simply stated he was Dutch because he was in the Netherlands, and used what was at hand while he was there; requesting documents from Lebanon was difficult because of the situation of the country

[191] Statement of Claim, para. 144(ix); Personal Statement of Abdallah Andraous, para. 17(2).

[192] Personal Statement of Abdallah Andraous, para. 17(2). **Exhibit C-103**, Banco di Caribe current account (2010-2023).

[193] Statement of Claim, para. 144(iii); Statement of Defence, para. 118.

[194] Statement of Claim, para. 144(iii).

[195] Statement of Defence, paras. 124-125, 129-130.

[196] Statement of Defence, para. 132.

and distance. In any case, Claimant did (and does) hold the Lebanese nationality so such statements are at most half-correct. The Dutch authorities were (and are) perfectly aware of its Lebanese nationality as they processed its naturalisation request (whether or not he presented himself as Dutch for the above purposes[197]).[198]

79. The fact that Claimant's wife and children naturalised with him,[199] or that his son speaks "good Dutch"[200] (for a child who was merely 6 years old), which was a mere statement to convince the Dutch authorities[201]), is inapposite for demonstrating that *Claimant* at some point naturalised as Dutch. Having no choice than to follow the family's breadwinner, it was simply another practicality for Claimant to have its family naturalised with him. What the naturalisation of Claimant's parents in 1996 (i.e. only four years before Claimant's naturalisation[202]) demonstrates is that this was unrelated to Claimant's acquisition of its investment and own request for naturalisation. It was a (welcome) coincidence that Claimant's parents had been residing on St Maarten after also they had fled the war in Lebanon, and Claimant found professional and investment opportunities on the island through Mr. [redacted] and Parman. The irrelevance of Claimant's parents' naturalisation process is further explained by the need for Claimant to request naturalisation himself, not being automatic. Finally, while Respondent mentions Claimant's sister [redacted], it omits that his other sister [redacted] also holds the French (in addition to the Lebanese) nationality.

80. For these reasons, a "nationality of convenience", which Claimant's Dutch nationality was, should be disregarded by this Tribunal. This is also the practice of ICSID tribunals, which do not allow claims by dual nationals, and only consider one nationality (other than the one of convenience) to allow claims.[203]

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[197] Statement of Defence, para. 133.

[198] Respondent itself seems to be aware of this, referring to a personal questionnaire in the context of tax statements where Claimant indicated that his Lebanese nationality is his "previous" nationality. Whether this was a wrong translation from French and it was simply meant that the his Lebanese nationality *predates* the acquisition of Dutch nationality or not, it is simply wrong: Claimant was born as a Lebanese national and at all times kept his Lebanese nationality.

[199] Statement of Defence, para. 136.

[200] Statement of Defence, para. 158.

[201] In is in this context that Claimant proposed to renounce its Lebanese nationality, as last resort (which he, for the record, did not), see Statement of Defence, para. 138.

[202] Statement of Defence, para. 137.

[203] **Exhibit CLA-124**, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, paras. 77-78, referring respectively to **Exhibit CLA-168**, Anthony Sinclair, 'ICSID's Nationality Requirements' (2008) 32(1) ICSID Review - Foreign Investment Law Journal 57, 87, 92, and **Exhibit CLA-169**, *Champion Trading v. Egypt* (Decision on Jurisdiction, 21 October 2003) ICSID Case No. ARB/02/9, pp 16-17.

(i) Place of taxation

81. While Respondent places almost exclusive emphasis on economic factors – which for the reasons above, only prove that the source of Claimant's investments is located in the Netherlands, a requirement under the BIT –, it disregards what is perhaps the most determinative economic factor. Claimant was known as a foreign tax resident ("*buitenlands belastingsplichtige*") in the Kingdom of the Netherlands, filing subsequent tax statements under "Tax Return Form B", applicable to foreign tax residents.[204] This alone – as an *objective* factor (to which Respondent itself gives more weight) – is determinative of its status as *foreign* (i.e. Lebanese) investor.

82. It must be noted in this respect that Respondent acknowledges that Claimant is an expat/foreign investor when it tries to exclude Claimant and his investments from the scope of the BIT, stating that "as per its object and purpose, the BIT is meant to encourage foreign investment, not to attract *expat* employees"[205] and "[t]he BIT protects 'investors' who have sought to 'make' an 'investment', not *expatriate* employees claiming salary and pension rights subsequent to the termination of their employment".[206]

(j) Loss of Dutch nationality

83. Finally, perhaps determinative of this case are the applicable laws on nationality.[207] The fact that, under Dutch law, Claimant's Dutch nationality (and not the Lebanese nationality) was automatically lost by virtue of acquiring the French nationality[208] demonstrates that Claimant's Dutch nationality was by nature the weaker one. As noted above at paragraph 10, purposedly cutting these ties with the Netherlands must serve as evidence that Claimant's Dutch nationality is of less value, or at the very least, that he does not consider himself Dutch.

84. Under *all these factors*, Claimant's "dominant and effective" nationality is (and has always been) Lebanese. Put simply, every single factor in in the lists above points to Lebanon and/or away from the Netherlands (with the logical exception of Parman's incorporation in

[204] Statement of Claim, paras. 128, 144(x); Statement of Defence, para. 128. See **Exhibit C-104**, Dutch Tax Statement 2006-2007; **Exhibit C-105**, Dutch Tax Statement 2008; **Exhibit C-106**, Dutch Tax Statement 2011; **Exhibit C-107**, Dutch Tax Statement 2012; **Exhibit C-108**, Dutch Tax Statement 2013; **Exhibit C-109**, Dutch Tax Statement 2014; **Exhibit C-110**, Dutch Tax Statement 2015; **Exhibit C-111**, Dutch Tax Statement 2016; **Exhibit C-112**, Dutch Tax Statement 2017; **Exhibit C-113**, Dutch Tax Statement 2018.

[205] Statement of Defence, para. 211 (emphasis added).

[206] Statement of Defence, para. 227 (emphasis added).

[207] Statement of Claim, para. 145.

[208] See paragraph 10 above; Statement of Claim, paras. 5, 20.

Curaçao). Conversely, Respondent's arguments that Claimant's Dutch nationality is "dominant and effective" for the purposes of the BIT are futile, and its objections *ratione personae* fail.

II. CLAIMANT MADE AN INVESTMENT

85. In its Statement of Defence, Respondent argues that "[t]he provisions of the BIT, [...], require an 'investment' to have been 'made'".[209] Claimant does not dispute this in his Statement of Claim.[210] Claimant made an investment.

86. On 28 December 2011, as payment for the services, knowledge and experience Claimant brought to Resorts Caribe, Parman and Ennia, and time he worked for the companies (including on the acquisition of Banco di Caribe and Ennia), the promise that Claimant would be given shares in Parman as a form of payment was finally made good.[211] Claimant was paid 1% of the shares of Parman (equivalent to 25,000 shares).[212] In the period 2013-2015, Claimant received dividends on a yearly basis, for a total amount of USD 784,000.[213]

87. Respondent's objections are focused on whether Claimant's contribution was aimed at obtaining the shares in Parman that he eventually received and that his services were rendered in the context of an employment relationship.[214]

88. It is submitted that the share transfer suffices to demonstrate that Claimant's investment of work, knowledge and time was not done gratuitously. While Respondent acknowledges in its document production request, citing an *unanswered* request by Claimant to Mr. [redacted],[215] that "informal financial arrangements between [Mr.] [redacted] and [Claimant] were not unusual",[216] this is true insofar these were usually made orally. However, there is no reason why shares would be transferred to Claimant free of charge. The shares were to be

[209] Statement of Defence, para. 173.

[210] Statement of Claim, para. 117.

[211] Personal Statement of Abdallah Andraous, para. 14.

[212] **Exhibit C-040**, Parman International B.V. Stock Register; **Exhibit C-041**, Parman International B.V. Stock Certificate; Personal Statement of Abdallah Andraous, para. 14; **Exhibit C-100**,UBO Statement of ECH dated 31 December 2013.

[213] **Exhibit C-042**, Parman International B.V. Dividend Distribution; Personal Statement of Abdallah Andraous, para. 16.

[214] Statement of Defence, paras. 188-189.

[215] Statement of Defence, para. 188.

[216] Respondent's Request for Document Production, Document Request No. 7 (Reply).

transferred to Claimant after the acquisition of Banco di Caribe and Ennia as *quid pro quo*, and were later replaced by shares in Parman.

89. Claimant's shareholding and assets constituted an investment within the definition provided in the BIT (*see* Section III). To wit, Claimant acquired and held "rights derived from shares" and "claims to money [...] having economic value" *in exchange for* his investment of services, expertise, goodwill and know-how. The value of the latter crystallised in the former; this was a classic unitary investment.

90. Making an investment does not require Claimant to have done anything more.[217] Investment tribunals have rejected the argument that the protection of an investment requires an active contribution by the current owner,[218] or that an investment must have been "actively made", finding, rather, that simple ownership suffices with there usually no additional requirements in the BIT.[219] As stated by Kriebaum, Dolzer and Schreuer in a leading textbook on international investment law:

> *A theory that requires an active contribution by each investor as a requirement for protection would require that every shareholder plays an active role in the investment. This would seriously undermine the position of shareholders as investors. Moreover, this theory leads to the unsatisfactory result that a person who has not been involved in the making of an investment but acquires an existing investment does not enjoy the status of an investor.*
>
> *A larger and weightier group of authorities suggest that the current owner of the assets is not required to have made an active contribution to qualify as an investor. To some extent, this debate hinges on the exact wording of the treaty in question. For instance, the ECT [Energy Charter Treaty] in its definition of investment in Article 1(6) does not refer to investments 'of' or 'by' an investor but refers to 'every kind of asset, owned or controlled directly or indirectly by an investor'. This would clearly cover passive shareholding. Tribunals have found that investors who simply owned assets qualified as investors.*

[217] Statement of Claim, para. 117.

[218] See, for example, Exhibit CLA-073, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, paras. 321; Exhibit CLA-112, *Vladislav Kim et al. v. Uzbekistan* (Decision on Jurisdiction, 8 March 2017) ICSID Case No. ARB/13/6, para. 306; Exhibit CLA-100, *Bernhard von Pezold et al. v. Zimbabwe* (Award, 28 July 2015) ICSID Case No. ARB/10/15, para. 312; Exhibit CL-246, *Gabriel Resources v. Romania* (Award, 8 March 2024) ICSID Case No. ARB/15/31, para. 350.

[219] Exhibit CLA-098, *Garanti Koza LLP v. Turkmenistan* (Award, 19 December 2016) ICSID Case No. ARB/11/20, paras. 229-231 (rejecting Respondent's argument based on Exhibit RL-046, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012).

> *Even without clear language to that effect, tribunals have held that mere ownership or control will be sufficient for the status of an investor.*
>
> *[…] the preponderant view is that mere ownership or control of the investment will suffice to bestow the status of an investor. In other words, according to the majority view, it seems that an active contribution by the current owner of the assets is not required.*[220]

91. Moreover, investing is not limited to establishing investments *ab initio*, but includes the acquisition of existing investments in the host State.[221] In the words of the *Mera v. Serbia* tribunal:

> *In the Arbitral Tribunal's view, "making investments" comprises more than the funding and acquisition of investments, but as well, the holding and management of investments. This is derived from the object and purpose of the BIT to provide broad investment protection, as well as an ordinary reading of Article 1(3)(b) of the BIT.*[222]

92. The original foreign investment – here Parman and its associated entities, which are considered to be investments in the legal and economic sense[223] – need *not* have been *initially* "made" by the investor bringing a claim in order to qualify as a covered investment.[224] The reinvestment of profits or the later acquisition of shares in a pre-existing investment in the host State both qualify as covered investments.[225] The fact that the investment was initially made or controlled by someone else does not denigrate the Claimant's investment or require further action either; "once […] *equity in a company is acquired*, [an investor need not] make further investments or be particularly active in the

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[220] **Exhibit CLA-086**, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 79, 81 (footnotes omitted, emphasis added).

[221] **Exhibit CLA-073**, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, paras. 320-324.

[222] **Exhibit CLA-245**, *Mera Investment Fund Limited v. Republic of Serbia* (Decision on Jurisdiction, 30 November 2018) ICSID Case No. ARB/17/2, para. 107 (cross-references omitted, emphasis added).

[223] **Exhibit CLA-066**, *Mohammad Reza Dayyani et al. v. Republic of Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, para. 46 (emphasis in original) ("an investment may be either property and assets *into* which the investor commits resources, which both parties agree are covered, and also property or assets *put in* by the investor").

[224] **Exhibit CLA-098**, *Garanti Koza v. Turkmenistan* (Award, 19 December 2016) ICSID Case No. ARB/11/20, paras. 229-231.

[225] **Exhibit CLA-073**, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, paras. 320-324; **Exhibit CLA-074**, *Levy v. Peru* (Award, 26 February 2014) ICSID Case No. ARB/10/17, para. 148. See also **Exhibit CLA-099**, *Mytilineos v. Serbia and Montenegro* (Partial Award on Jurisdiction, 8 September 2006) UNCITRAL, paras. 128-135; **Exhibit CLA-100**, *Bernhard von Pezold et al. v. Zimbabwe* (Award, 28 July 2015) ICSID Case No. ARB/10/15, para. 312; **Exhibit CLA-101**, *Orascom v. Algeria* (Award, 31 May 2017) ICSID Case No. ARB/12/35, para. 384.

management of the investment" in order to qualify for protection.[226] This conclusion is unavoidable here as Article 1(a) of the BIT (defining "investments") includes no active verbs linked to a particular person; it simply defines "'investments' [as] every kind of asset."

93. The BIT's reading, "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose"[227] confirms that 'investing' (i.e. making investments) includes the acquisition of investments. The Protocol to the BIT, which has to be interpreted as one whole with the BIT, for example, states that "[t]he provisions of article 3, paragraph 2, are not applicable to the *acquisition* of real estate or real estate rights, under Decree-Law No. 11614, dated January 4, 1969, in the territory of the Lebanese Republic".[228] This means that the BIT normally applies to acquisition of (investment) rights.

94. Nevertheless, Claimant's contribution to Parman *was* an active one, in the sense of Respondent's reference to *Standard Chartered Bank v. Tanzania* that "some action in bringing about the investment" and/or "an active role of some kind for that company [or national]" is required.[229] The specialist business knowledge and experience that Claimant brought to Parman is a specifically covered category of investment,[230] and were vital for the management and operation of the company (which is, in Respondent's words, an "accepted form[] of investment[]" itself[231]).

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[226] Exhibit CLA-102, *MNSS v. Montenegro* (Award, 4 May 2016) ICSID Case No. ARB(AF)/12/8, para. 204 (emphasis added).

[227] Exhibit CLA-054, Vienna Convention on the Law of Treaties, Art. 31(1).

[228] Exhibit CLA-001, 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) Protocol.

[229] Statement of Defence, paras. 178-181 (referring to Exhibit RL-046, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012, para. 222-225).

[230] See, for example, Exhibit CLA-107, *Tidewater v. Venezuela* (Award, 13 March 2015) ICSID Case No. ARB/10/5, para. 118 (holding that an investment, and objects of expropriation, includes goodwill and know-how as well as other tangible and intangible assets, including contractual rights); Exhibit CLA-096, *A11Y LTD. v. Czech Republic* (Award, 29 June 2018) ICSID Case No. UNCT/15/1, paras. 144-153; Exhibit CLA-091, *Sistem Mühendislik v. Kyrgyzstan* (Decision on Jurisdiction, 13 September 2007) ICSID Case No. ARB(AF)/06/1, paras. 94, 96; Exhibit CLA-246, *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic* (Decision on Jurisdiction and Liability, 8 January 2019) ICSID Case No. ARB/14/16, para. 885 (noting that when the investor contributes capital and know-how, and creates (or acquires) an enterprise, i.e. "an organization of capital and labour which produces goods or services to be placed in a market", located in the host country, there can be no discussion regarding whether the protected investment requirements have been met).

[231] Statement of Defence, para. 220.

95. While the tribunal in *Vladislav Kim* held that "the term 'made' does not necessarily entails [*sic*] a requirement that Claimants must have an *ongoing* 'active' role in the investment such that the term imposes a limitation on the definition of "investor" under the BIT",[232] a point on which the Parties agree,[233] Claimant undoubtedly *remained* active. Claimant was, among others, involved full-time in the day-to-day business of Parman since 7 July 2005 (as Managing Director), as Director of the Ennia companies since 9 February 2011, for which he already was a member of the investment committee since 2006,[234] and as Director of Resorts Caribe since 21 July 2006.[235] In 2017, Claimant became Director of EC Investments,[236] among others.[237]

96. Although not a monetary investment *per se*, but as a form of what is commonly known as 'sweat equity', it was an injection of "assets" that had real value. As such, there is a double-layered investment within the scope of this BIT – Claimant invested a covered "asset" into Curaçao and received a covered "asset" in return, which he thereafter held for a duration of time with all attendant risks so as to be considered an "investment" in the normal meaning of the term.[238]

97. There is no need for the injection of monetary capital in order to qualify as an investor/investment.[239] Even courts and tribunals applying investment treaties that only covered assets "invested by investors" – which is not found in this BIT– have held that no cash contributions are required as long as there is some transfer of value to the host

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[232] Exhibit CLA-112, *Vladislav Kim et al. v. Uzbekistan* (Decision on Jurisdiction, 8 March 2017) ICSID Case No. ARB/13/6, para. 310 (emphasis added). See, in particular, Exhibit CLA-113, *Saluka Investments v. Czech Republic* (Partial Award, 17 March 2006) UNCITRAL, paras. 203, 205 (holding that the Dutch Model BIT's definition of an investment as "every kind of asset" leaves "no room for doubt that a qualified investor's holding of shares in a […] company [of the other Contracting Party] […] constitutes an investment within the scope of the definition").

[233] Statement of Claim, para. 117; Statement of Defence, para. 185.

[234] Notice of Arbitration, para. 13; Personal Statement of Abdallah Andraous, para. 15.

[235] See also Notice of Arbitration, para. 13.

[236] EC Investments is a separate investment vehicle created at the end of 2012, which made loans to the Ennia Insurance Companies in exchange for fixed interest payments over time, generating a substantial positive return for the Ennia Insurance Companies.

[237] Other positions Claimant held were manager of National Investment Bank, a bank specialised in syndication and management of large infrastructure loans, and Ennia Caribe Holding Aruba. He was also a member of BDC's Credit Committee (see Personal Statement of Abdallah Andraous, para. 15).

[238] See also paragraph 92 above, referring to Exhibit CLA-066, *Mohammad Reza Dayyani et al. v. Republic of Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, para. 46 (emphasis in original) ("an investment may be either property and assets *into* which the investor commits resources, which both parties agree are covered, and also property or assets *put in* by the investor").

[239] See also Notice of Arbitration, para. 57.

State.[240] Other forms of participation, such as the transfer of equipment, know-how or personnel suffice,[241] which is not disputed by Respondent.[242] In the words of Kriebaum, Dolzer and Schreuer:

> *Moreover, the benefits of foreign investments accrue to host States not merely through a transfer of capital. Know-how, technology, business experience, entrepreneurship, and intellectual property are non-monetary assets that are essential to investments and serve the local economy.*[243]

98. By contrast, as Respondent acknowledges, the holding by the tribunal in *Standard Chartered Bank v. Tanzania* that the claimant in that case had "been unable to demonstrate its active participation in the investing process",[244] was premised on the fact that there was no action by that claimant that could be considered a contribution directed at acquiring the shares in question, nor any evidence that showed that the investment had been made at the direction of that claimant.[245] More specifically, that case hinged on the failure by claimant to show that it controlled the investment, and specially disavowed control over SCB Hong Kong, which was the entity that had purchased debt from Malaysian banks and thus made the investments.[246] Importantly, the tribunal stressed that "it takes no position on whether jurisdiction would have existed had Claimant actually engaged in the process of making an

[240] **Exhibit CLA-071**, *ECE and PANTA v. Czech Republic* (Award, 19 September 2013) PCA Case No. 2010-5, para. 3.161; **Exhibit RL-048-SPANISH**, *Clorox Spain S.L. v. Bolivarian Republic of Venezuela*, PCA Case No. 2015-30, Award, 20 May 2019, para. 824 (see also **Exhibit CLA-114-ESP**). See also **Exhibit CLA-066**, *Dayyani et al. v. Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, paras. 60-61 (does not consider the phrase invested by in the investment treaty definition of 'investment' broadens the definition by importing objective characteristics or requiring an active commitment of resources by the investor).

[241] See **Exhibit CLA-247**, *Bayindir v. Pakistan* (Decision on Jurisdiction, 14 November 2005) ICSID Case No. ARB/03/29, paras. 121, 131; and **Exhibit CLA-248**, *Saipem v. Bangladesh* (Decision on Jurisdiction, 21 March 2007) ICSID Case No. ARB/05/07, para. 100.

[242] Statement of Defence, para. 187.

[243] **Exhibit CLA-086**, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 102 (emphasis added).

[244] **Exhibit RL-046**, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012, para. 264.

[245] Statement of Defence, para. 182.

[246] **Exhibit RL-046**, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012, paras. 261-265.

investment by funneling funds through an intermediary such as a special purpose vehicle".[247]

99. Here, unlike in *Standard Chartered Bank v. Tanzania*, it is clear that *Claimant* made the investment, which, for the reasons above, qualifies as an "act of investing".

100. Also Respondent's reliance on the tribunal's holding in *Komaksavia v. Moldova* – in an attempt to argue that Claimant did not make an investment – is inapposite. In fact, Claimant does meet the definition proposed by that tribunal that there should be "a positive act that involves some sort of contribution to acquire the asset or enhance its value, coupled with an expectation or desire that the asset will produce a return over a period of time, with the possibility or risk that it may not do so".[248]

101. First, there was "a positive act that involves some sort of contribution to acquire the asset or enhance its value", namely the contribution of knowledge, time and work, in return of which shares were acquired by share transfer.[249] Second, there was an expectation of commercial return, i.e. shares in a publicly traded company and rights related thereto, including regular dividend payments, which are and continue to be dependent on how the company performs. Third, there was an assumption of risk, most basically that the resources Claimant transferred over the years would have been futile, for example because the acquisition of BdC and Ennia would not prove lucrative and decrease the value of Parman.

102. Given that had Claimant purchased shares in the company using his salary, it would have constituted an investment for the purposes of Article 1(a) of the BIT, there is no difference if he was allocated them in return for his knowledge and services to the company. The investment – that is, the "rights derived from [the] shares" – derives from his retaining the shares, rather than cashing them in when he was able to. While investments do not have to be marketable *per se*,[250] it suffices that Claimant assumes that the risks inherent in doing so in the expectation of a commercial return in the shape of dividends and/or an increase in the shares' value are realisable on their sale.

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[247] **Exhibit RL-046**, *Standard Chartered Bank v. United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012, para. 266.

[248] Statement of Defence, para. 183 (referring to **Exhibit RL-047**, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, para. 155).

[249] See paragraphs 89 above.

[250] **Exhibit CLA-066**, *Dayyani et al. v. Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, para. 40.

103. To be sure, the tribunal in *Komaksavia v. Moldova* did not find the existence of an investment since it, in contrast to the facts of this case, it did not find any contribution by Komaksavia to acquire the shares in Avia Invest despite its alleged intention to make capital contributions under a loan facility agreement.[251] For this reason, the tribunal also held there was no risk, linking this requirement to that of contribution.[252]

104. In any case, the consideration 'paid' for the acquisition of the investments, or the type of consideration, is irrelevant. Investment tribunals do not deal with the adequacy of the consideration paid for the shares; as this would require them to qualify the express definition of investment by implying an additional requirement of a qualitatively adequate investment.[253] Unlike Respondent argues,[254] there is therefore no minimum level of investment needed for the BIT to apply.[255]

105. The fact that investment was acquired through a transfer of shares is inapposite.[256] In *Levy v. Peru*, the tribunal disagreed with respondent's objection that ownership resulting from a share transfer, *in contrast to this case free of charge*, did not make the claimant an investor:

> *It is clear that the Claimant acquired her rights and shares free of charge. However, this does not mean that the persons from whom she acquired these shares and rights did not previously make very considerable investments of which ownership was transmitted to the Claimant by perfectly legitimate legal instruments.*[257]

106. As stated at paragraph 88 above, the Claimant in this case acquired the investment not "free of charge", but as payment for his knowledge, experience and services brought to Parman.

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[251] **Exhibit RL-047**, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, paras. 174-175.

[252] **Exhibit RL-047**, *Komaksavia Airport Invest Ltd. v. The Republic of Moldova*, SCC Case 2020/074, Final Award, 3 August 2022, para. 177.

[253] **Exhibit CLA-249**, *Invesmart, B.V. v. Czech Republic* (Award, 26 June 2009) UNCITRAL, paras. 186-189.

[254] Statement of Defence, para. 201.

[255] **Exhibit CLA-250**, *Vannessa Ventures v. Venezuela* (Award, 16 January 2013) ICSID Case No. ARB(AF)/04/6, para. 126 (finding that the applicable investment treaty does not explicitly assert there is, beyond the requirement that the asset be owned or controlled in accordance with the host State's laws, a further requirement that the putative investment must qualify as a 'genuine' or 'substantial' investment in order to fall within the definition of 'investment').

[256] See Statement of Defence, paras. 170-171.

[257] **Exhibit CLA-074**, *Levy v. Peru* (Award, 26 February 2014) ICSID Case No. ARB/10/17, para. 148. See also **Exhibit CLA-251**, *Mytilineos v. Serbia and Montenegro* (Partial Award on Jurisdiction, 8 September 2006) UNCITRAL, paras. 128-135; **Exhibit CLA-100**, *Bernhard von Pezold et al. v. Zimbabwe* (Award, 28 July 2015) ICSID Case No. ARB/10/15, paras. 312-313; **CLA-101**, *Orascom v. Algeria* (Award, 31 May 2017) ICSID Case No. ARB/12/35, para. 384.

A fortiori, if a gratuitous transfer of shares can be considered an investment (as in *Levy*), the transfer of shares as payment (as in this case) certainly is. "[T]he person[] from whom []he acquired these shares and rights [who made] very considerable investments" in this case is Mr. [redacted] and there is no doubt that "ownership was transmitted to the Claimant by perfectly legitimate legal instruments".[258] The *intuitu personae* character of the investment does not itself put the claimant's ownership of shares in a company outside the scope of the BIT.[259]

107. To conclude, for the reasons above, Claimant acquiring shares in Parman/Ennia, itself an investment, qualifies as making an investment for the purposes of the BIT. The fact that the investment was initially made or controlled by someone else does not denigrate the Claimant's investment or require further action either. The later acquisition of shares in a pre-existing investment in the host State qualifies as covered investment,[260] especially when not received free of charge but acquired in return for the investment of services, time, know-how, business experience and entrepreneurship, which are themselves, while non-monetary, assets within the meaning of Article 1(a) of the BIT.

III. THIS TRIBUNAL HAS JURISDICTION *RATIONE MATERIAE* OVER CLAIMANT'S MULTIFACETED AND UNITARY INVESTMENT

108. To recall, Article 1(a) of the Lebanon-Netherlands BIT states:

> *the term "investments" means every kind of asset and more particularly, though not exclusively:*
>
> *(i) movable and immovable property as well as any other rights* in rem *in respect of every kind of asset;*
>
> *(ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;*
>
> *(iii) claims to money, to other assets or to any performance having an economic value;*

[258] See paragraph 86 above.

[259] **Exhibit CLA-250**, *Vannessa Ventures v. Venezuela* (Award, 16 January 2013) ICSID Case No. ARB(AF)/04/6, paras. 54, 147-154, 201.

[260] **Exhibit CLA-098**, *Garanti Koza v. Turkmenistan* (Award, 19 December 2016) ICSID Case No. ARB/11/20, paras. 229-231; **Exhibit CLA-073**, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, paras. 320-324; **Exhibit CLA-074**, *Levy v. Peru* (Award, 26 February 2014) ICSID Case No. ARB/10/17, para. 148. See also **Exhibit CLA-099**, *Mytilineos v. Serbia and Montenegro* (Partial Award on Jurisdiction, 8 September 2006) UNCITRAL, paras. 128-135; **Exhibit CLA-100**, *Bernhard von Pezold et al. v. Zimbabwe* (Award, 28 July 2015) ICSID Case No. ARB/10/15, para. 312; **Exhibit CLA-101**, *Orascom v. Algeria* (Award, 31 May 2017) ICSID Case No. ARB/12/35, para. 384.

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

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

109. It is also recalled that, in line with Respondent's practice,[261] Article 1(a) of the BIT adopts the typical broad, asset-based definition of investment, in which 'investments' are defined as "every kind of asset" with an *open-ended* (indicated by the words "more particularly") and *non-exhaustive* list of categories, which only serve as examples (*ejusdem generis*) of the types of assets covered.[262] For these reasons alone, the Claimant's investments meet the definition in Article 1(a) of the BIT.

110. In any case, for the reasons set out below, the BIT explicitly covers, as specific categories of Article 1(a), (i) Claimant's shares and rights derived therefrom (see *infra* Section III.A), and (ii) Claimant's "claims to money, to other assets or to any performance having an economic value" (see *infra* Section III.B), which were both promised and received in return for Claimant's investment of his services, time, goodwill and know-how (see *supra* Section II).

A. Claimant owns Shares in Parman and Rights Derived therefrom which Constitute an Investment under the BIT

111. As explained above at paragraph 86,[263] Claimant is the owner of 1% of the shares in Parman, a fact confirmed by Respondent's own courts.[264]

112. Claimant's shareholding in Parman, including rights therefrom, qualifies as an investment under Article 1(a) of the BIT. Shares in a company are typical assets qualifying as investments. The BIT is clear: it lists as one of the specific categories of investments "*rights*

[261] Exhibit CLA-004, Roos van Os and Roeline Knottnerus, *Dutch Bilateral Investment Treaties: A Gateway to 'Treaty Shopping' for Investment Protection by Multinational Companies* (SOMO 2011) 22.

[262] See Notice of Arbitration, para. 56; Statement of Claim, para. 103, referring, *inter alia*, to Exhibit CLA-063, *Nordzucker v. Poland* (Partial Award on Jurisdiction, 10 December 2008) UNCITRAL, para. 166.

[263] See also Statement of Claim, paras. 19, 106, 109.

[264] Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.4; Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.4.

derived from shares, bonds and other kinds of interests in companies and joint ventures".[265] The BIT does not specify, nor require, the manner of acquiring shares in a company.

113. Numerous investment tribunals have confirmed that this provision alone demonstrates the existence of an investment.[266] Once shares, constituting participation in a company, have been acquired, *which Claimant did*,[267] there is an investment within the meaning of the BIT.[268] How Claimant received the shares likewise makes no juridical difference under the text of the BIT to the question of *ratione materiae*. The protected investment – that is, the "*rights derived from [the] shares*" – comes from *owning* and *holding* shares and not the purchase or sale of them. Even if objective elements are added to this otherwise subjective definition,[269] *quod non*,[270] shares typically meet these.[271]

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[265] **Exhibit CLA-001**, 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) Art. 1(a)(ii) (emphasis added).

[266] See, for example, **Exhibit CLA-068**, *Suez et al. v. Argentina* (Decision on Jurisdiction, 16 May 2006) ICSID Case No. ARB/03/17, paras. 49, 51; **Exhibit CLA-069**, *HOCHTIEF v. Argentina* (Decision on Jurisdiction, 24 October 2011) ICSID Case No. ARB/07/31, paras. 115-119 (finding that the BIT is unequivocal when stipulating that an investment includes "shares, stocks in companies, and other forms of participation in companies" and therefore a claimant with a shareholding in a locally incorporated company has standing under the BIT); **Exhibit CLA-064**, *Daimler v. Argentina* (Award, 22 August 2012) ICSID Case No. ARB/05/1, para. 83 (finding that the claimant's shareholding in a local company constitutes a protected investment under the treaty); **Exhibit CLA-070**, *Ipek v. Turkey* (Award, 8 December 2022) ICSID Case No. ARB/18/18, para. 306 (accepting the claimant's ownership of shares in a Turkish company would constitute the legal materialization of its investment in Türkiye); **Exhibit CLA-071**, *ECE and PANTA v. Czech Republic* (Award, 19 September 2013) PCA Case No. 2010-5, para. 3.161 (holding that the definition of 'investment' encompasses the claimants' shareholdings or other participatory interests); **Exhibit CLA-072**, *Hulley v. Russia* (Interim Award on Jurisdiction and Admissibility, 30 November 2009) PCA Case No. 2005-03/AA226, para. 429 (accepting that international law does not require the tribunal to look at the beneficial ownership of the investment, i.e. shares, and holding that the simple legal ownership of shares qualifies as an investment under Article 1(6)(b) of the Energy Charter Treaty); **Exhibit CLA-073**, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, paras. 320-324.

[267] See Section II above.

[268] **Exhibit CLA-252**, *Mabco v. Kosovo* (Dissenting Opinion on Jurisdiction of Professor August Reinisch, 29 October 2020) ICSID Case No. ARB/17/25, para. 20.

[269] Statement of Defence, para. 178.

[270] Such additional requirements cannot be found in the BIT, or indeed any of Respondent's investment treaties: **Exhibit CLA-004**, Roos van Os and Roeline Knottnerus, *Dutch Bilateral Investment Treaties: A Gateway to 'Treaty Shopping' for Investment Protection by Multinational Companies* (SOMO 2011) 22.

[271] **Exhibit CLA-253**, *Tomasz Czescik and Robert Aleksandrowicz v. Cyprus* (Final Award, 11 February 2017) SCC Case No. V2014/169, paras. 206-207 (emphasis in original).

114. In other words, shareholders in a local company automatically meet jurisdiction *ratione materiae*.[272] Respondent's objection is therefore incorrectly framed as one of jurisdiction rather than one of admissibility. In the words of Professor Douglas:

> *There is no difficulty in confirming the tribunal's jurisdiction* ratione personae *over a shareholder with the requisite nationality. There is also no difficulty in confirming a tribunal's jurisdiction* ratione materiae *over claims by that shareholder in relation to its investment in shares in a company incorporated in the host state. A shareholding is a ubiquitous inclusion in the list of assets entitled to investment protection in the first article of investment treaties [...].*[273]

115. At the very minimum, "rights derived from shares" include the right to dividends and proceeds from liquidation, the right to participate in the functioning and administration of the company, the right to exercise control and the right to participate in shareholder meetings.[274] Claims founded upon an investment treaty obligation which seek a remedy for the interference by the host State with the rights attaching to a shareholding in a company having the nationality of the host state are admissible.[275] It is without question that since the Takeover, Claimant's "rights derived from shares" have been thwarted.

116. In its Statement of Defence, Respondent tries to dismiss Claimant's shareholding in Parman by arguing that Claimant sold and transferred his shares in Parman to a separate legal entity, [redacted], relying on a handwritten note on Parman's stock register.[276] It argues that this aspect "remains unmentioned and unexplained throughout the [Statement of Claim] and the Personal Statement".[277]

117. Claimant acknowledges that the alleged sale and transfer of Claimant's shares in Parman to [redacted] was not explained in his Statement of Claim, for the simple reason that it is immaterial. While there was indeed a share sale and purchase agreement underlying the

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[272] **Exhibit CLA-074**, *Levy v. Peru* (Award, 26 February 2014) ICSID Case No. ARB/10/17, paras. 148-152.

[273] **Exhibit CLA-244**, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2009) 398 (emphasis added).

[274] **Exhibit CLA-254**, *Barcelona Traction (Belgium v. Spain)* [1970] ICJ Rep 4, 36 ("Whenever one of his direct rights is infringed, the shareholder has an independent right of action.").

[275] **Exhibit CLA-244**, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2009) 398 (emphasis added).

[276] Statement of Defence, paras. 192-193; **Exhibit C-040**, Parman International B.V. Stock Register.

[277] Statement of Defence, para. 194.

planned sale to [redacted],[278] which Claimant has shared with Respondent in the document production phase, the alleged sale never materialised. At no point, the purchase price was paid. The result is that *Claimant, and not* [redacted] remains the owner of its 25,000 class A shares in Parman, in its own name. Moreover, Claimant's shareholding in Parman has been acknowledged by Respondent's own courts.[279] and further documents produced by Respondent show Claimant as owner of 1% of the shares in Parman.[280]

118. In any case, even if the Claimant's shares were sold and transferred to [redacted] (*quod non*), it is trite that Claimant is the sole beneficiary of [redacted], a private foundation the purpose of which is to hold and protect investments of individuals. This is not only confirmed by declarations of ownership made by third parties, most notably Mr. [redacted] from United International Trust N.V., its Board Member,[281] the very name [redacted] refers to Claimant's children and wife ([redacted]), with the L standing for Lebanon. The manner in which an investor structures and holds its investments is irrelevant. Whether Claimant holds the investment in its own name, or through a vehicle (of which it is the 100% beneficiary), the result remains the same: Claimant holds 1% of Parman's shares.[282]

119. Finally, the fact that dividends were received by Claimant, as "rights derived from shares",[283] further evidences that he is the owner of its investments. These "rights" can create a periodic monetary benefit in the form of dividends, which themselves form another protected asset or investment under the BIT.[284] "[R]ights derived from shares" means that particular rights attached to shares may properly be treated as a form of intangible property that is itself

[278] **Exhibit C-114**, Share sale and purchase agreement between Claimant and [redacted] dated 1 December 2015.

[279] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.4; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.4.

[280] **Exhibit C-100**,UBO Statement of ECH dated 31 December 2013.

[281] **Exhibit C-115**, Declaration of Ownership of [redacted] dated 27 September 2019. On Mr. [redacted] see Statement of Claim, paras. 73-74.

[282] See also **Exhibit C-040**, Parman International B.V. Stock Register, p 5 (referring to, and equating, "Abdallah Andraous/[redacted]").

[283] **Exhibit CLA-001**, 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) Art. 1(a)(ii).

[284] **Exhibit CLA-085**, Giorgio Sacerdoti, 'The Admission and Treatment of Foreign Investment under Recent Bilateral and Regional Treaties' (2000) 1(1) Journal of World Investment 105, 118 ("The specific clause or clauses found in almost all BITS list the types of transfers covered by the agreement and the content of the obligation undertaken by the parties. Payments covered (the lists found in these provisions are declared as being merely illustrative and not exclusive) are those concerning the transfer of profits, returns and *dividends* from an investment, as well as the amounts derived from its total or partial sale or liquidation".) (emphasis added).

capable of being bought and sold; the term 'investment' denotes an asset belonging to the Claimant, which may have been created by contract, but which qualifies as property.[285] This means that dividends are also covered investments under the BIT.

120. As stated his Statement of Claim,[286] Claimant received dividends for on average USD 130,666.67 on a six-monthly basis.[287] These have been terminated by the CBCS since the Takeover, with no reasoning provided as to why Claimant, albeit removed as Director from Ennia, could not receive any dividends in his capacity as *shareholder* (which he remained until this day).[288] By terminating Claimant's regular dividend payments since the Takeover, with the CBCS in full control of the company and managing its day-to-day operations and therefore effectively expropriating Ennia,[289] Respondent breached the BIT and interfered with Claimant's proprietary rights. This alone makes his claims admissible.[290]

121. For these reasons, Claimant is the owner of the relevant shares and therefore his claim is admissible. This concludes the discussion regarding admissibility and jurisdiction *ratione materiae* of Claimant's claims as shareholder.

* * *

122. Claimant finds it necessary to address here Respondent's objections that its shareholding is "too remote" to constitute an investment.[291] Unlike what Respondent argues,[292] the fact that Claimant only holds 1% of the shares in Parman,[293] the immediate parent company above Ennia Holding, does not exclude those shares from the ambit of a protected investment. It must be recalled that it is the *quality* of an investment, and not the quantity, that matters in determining whether the treaty provides a blanket of protection.[294] It is trite law that minority shareholders are protected by investment treaties, irrespective of the

[285] **Exhibit CLA-070**, *Ipek v. Turkey* (Award, 8 December 2022) ICSID Case No. ARB/18/18, para. 305.

[286] Statement of Claim, para. 19.

[287] **Exhibit C-042**, Parman International B.V. Dividend Distribution; Personal Statement of Abdallah Andraous, para. 16.

[288] Personal Statement of Abdallah Andraous, para. 50.

[289] Cf. **Exhibit CLA-079**, *CMS v. Argentina* (Award on Jurisdiction, 17 July 2003) ICSID Case No. ARB/01/8, para. 263.

[290] **Exhibit CLA-244**, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2009) 417.

[291] Statement of Defence, Section 4.3.

[292] Statement of Defence, para. 195.

[293] See paragraph 86 above; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.4; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.4.

[294] Statement of Claim, para. 107.

percentage of their shareholding; examples of cases in which tribunals have held so are legion.[295]

123. Tribunals have consistently held that compensation available to minority shareholders for breach of States' treaty obligations correlates to damage caused to the protected investment, i.e. the diminution in value of investors' shareholding and/or reduction in anticipated future dividends.[296] Moreover, it has been held that a shareholder is not restricted to complaining about direct damage to its investment (i.e. its shareholding); it can also complain of injury done to the company as a whole (in which it owns an interest).[297]

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[295] See, for example, **Exhibit CLA-078**, *Webuild v. Argentina* (Decision on Jurisdiction and Admissibility, 23 February 2018) ICSID Case No. ARB/15/39, paras. 178-183 (noting that there is a substantial authority to the effect that claims of minority shareholders enjoy BIT protection, listing the relevant awards); **Exhibit CLA-079**, *CMS v. Argentina* (Award on Jurisdiction, 17 July 2003) ICSID Case No. ARB/01/8, paras. 48-52, 63-69 (finding no bar under the applicable investment agreement or international law in general to allowing claims by shareholders independently from those of the company, not even if those shareholders are minority or non-controlling shareholders); **Exhibit CLA-080**, *Enron and Ponderosa Assets v. Argentina* (Decision on Jurisdiction of Ancillary Claim, 2 August 2004) ICSID Case No. ARB/01/3, paras. 27-46; **Exhibit CLA-081**, *Camuzzi v. Argentina (I)* (Decision on Objections to Jurisdiction, 11 May 2005) ICSID Case No. ARB/03/2, paras. 63-64, 81-82; **Exhibit CLA-082**, *El Paso v. Argentina* (Decision on Jurisdiction, 27 April 2006) ICSID Case No. ARB/03/15, para. 138 (holding that an indirect minority shareholding in a local company is an 'investment" within the BIT's definition and the claimant therefore has *jus standi*); **Exhibit CLA-083-ESP** *SAUR v. Argentina* (Decision on Jurisdiction and Liability, 6 June 2012) ICSID Case No. ARB/04/4, paras. 435-437 (affirming that a minority shareholder (even if only indirect) can have a protected investment); **Exhibit CLA-084**, *Veteran Petroleum v. Russia* (Interim Award on Jurisdiction and Admissibility, 30 November 2009) PCA Case No. 2005-05/AA228, para. 372; **Exhibit CLA-255**, *Total S.A. v. The Argentine Republic* (Decision of the Tribunal on Objections to Jurisdiction, 25 August 2006) ICSID Case No. ARB/04/01, para. 81 (holding that since the claimant, a minority shareholder, invoked treaty rights concerning its investment, the claim could not be defined as an indirect or "derivative" claim, as if the claimant were claiming on behalf or in lieu of its subsidiaries in respect of rights granted under domestic law); **Exhibit CLA-256**, *ST-AD GmbH v. Republic of Bulgaria* (Award on Jurisdiction, 18 July 2013) PCA Case No. 2011-06, paras. 271, 275 (finding that an investor whose investment consists of shares of a company does not need to have a majority of those shares in order to be considered as a protected investor under the BIT); **Exhibit CLA-257**, *Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic* (Award, 9 April 2015) ICSID Case No. ARB/13/8, paras. 245-247 (affirming that a shareholder of a company incorporated in the host State may assert claims based on measures taken against such company's assets that impair the value of the claimant's shares); **Exhibit CLA-245**, *Mera Investment Fund Limited v. Republic of Serbia* (Decision on Jurisdiction, 30 November 2018) ICSID Case No. ARB/17/2, paras. 125, 135 (holding that an investor is free to choose the form of its investment, be it direct or indirect, such that it may bring claims not only for the impairment of the value of its shares in its subsidiary, but also for the impairment of its subsidiary's assets); **Exhibit CLA-074**, *Levy v. Peru* (Award, 26 February 2014) ICSID Case No. ARB/10/17, para. 144; **Exhibit CLA-258**, *Hassan Awdi, Enterprise Business Consultants, Inc. and Alfa El Corporation v. Romania* (Award, 2 March 2015) ICSID Case No. ARB/10/13, para. 194.

[296] See, for example, **Exhibit CLA-075**, *GAMI v. Mexico* (Final Award, 15 November 2004) UNCITRAL, para. 115; **Exhibit CLA-076**, *BG v. Argentina* (Award, 24 December 2007) UNCITRAL, paras. 190-191, 203-205.

[297] **Exhibit CLA-077**, *Strabag v. Libya* (Award, 29 June 2020) ICSID Case No. ARB(AF)/15/1, paras. 127-135; **Exhibit CLA-068**, *Suez et al. v. Argentina* (Decision on Jurisdiction, 16 May 2006) ICSID Case No. ARB/03/17, paras. 49, 51; **Exhibit CLA-075**, *GAMI v. Mexico* (Final Award, 15 November 2004) UNCITRAL, paras. 30-38.

124. To substantiate its arguments, Respondent refers to a minority position in the arbitral case law, most notably a decision on jurisdiction taken by the tribunal in *Enron v. Argentina*, to support its argument that there could be an "endless chain of claims" if Claimant's claim were allowed. It must be noted, in this respect, that while Respondent's reference and suggestion to certain cut-off points may be its and certain commentators' policy perspective,[298] this is only a minority opinion, and, for the avoidance of doubt, **not** the law. For the same reason, bootstrapping Claimant's shareholding to Respondent's dismissal of Claimant's investment, is not sufficient.[299]

125. Respondent further argues in this regard that it "cannot be deemed to have consented to arbitrate with regard to an alleged investor so remote from the allegedly affected companies".[300] This is inapposite. Claimant acknowledges that respondent-States under international investment agreements may not always anticipate who claimant-investors will be, but this is due to the very nature and purpose of the investor-State dispute settlement framework created and developed in the second half of the 20th century.[301] There is no requirement of awareness that a specific investor benefits from the protection of the BIT.[302] It suffices that Claimant demonstrates that he has an investment at the time of consenting to arbitration with its request for arbitration. In Article 9(2) of the BIT, Respondent gave its "unconditional consent to the submission of a dispute international arbitration", irrespective of the size of a claimant-investor's shareholding or any corporate structure.

126. Respondent also misstates the position adopted by the *Enron v. Argentina* tribunal (which, in its Decision on Jurisdiction of Ancillary Claim, held that, based on a nearly identical definition of investment, "[t]he [t]reaty language and intent is specific in extending this protection to minority or indirect shareholders"[303]). What the tribunal acknowledged was that it "*if minority shareholders can claim independently from the affected corporation*, this *could* trigger an endless chain of claims".[304] It goes without saying that any award of damages made in Claimant's favour in this arbitration would be discounted against any

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[298] Statement of Defence, paras. 200-201.

[299] Statement of Defence, para. 203.

[300] Statement of Defence, para. 195.

[301] **Exhibit CLA-259**, Jan Paulsson, 'Arbitration Without Privity' (1995) 10(2) ICSID Review - Foreign Investment Law Journal 232.

[302] Cf. Statement of Defence, para. 202.

[303] **Exhibit CLA-080**, *Enron and Ponderosa Assets v. Argentina* (Decision on Jurisdiction of Ancillary Claim, 2 August 2004) ICSID Case No. ARB/01/3, para. 29.

[304] **Exhibit RL-053**, *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004, para. 50 (emphasis added).

potential recourse sought by Parman to avoid double recovery (which is a matter for the merits, not jurisdiction[305]).

127. In any case, it is clear that in the case at issue there is no such "endless chain of claims". Claimant has a shareholding in Parman, which in turn holds the shares in Ennia Holding and its subsidiaries (the company taken over by the CBCS). This is a simple two-level structure – or in Respondent's representation a four-level structure with two intermediate (and otherwise empty) holding companies[306] – rather than an "endless" chain of legal entities. Unlike what Respondent alleges, Claimant's claim is not remote and does not go on infinitely: Claimant has a shareholding in Parman which includes Ennia Holding.

128. As the tribunal in *Noble v. Ecuador* held:

> *The Tribunal does not disagree with the statement made by the Enron tribunal. There may well be a cut-off point somewhere, and future tribunals may be called upon to define it. In the present case, the need for such a definition does not arise. Indeed, the cut-off point, whatever it may be, is not reached with two intermediate layers. The relationship between the investment and the direct shareholder, on the one hand, and the indirect shareholder, on the other, is not too remote.*[307]

129. For the reasons above, Claimant's shareholding in Parman is not indirect or too remote to qualify for investment protection and Respondent's objection fails.

B. Claimant's Claims to Money are an Investment under the BIT and are Claims Arising in connection with the Investment

130. Next to the Claimant's share of the profits of Parman,[308] Claimant's remuneration and pensions before and after the Takeover are "claims to money, to other assets or to any

[305] Exhibit CLA-081, *Camuzzi v. Argentina (I)* (Decision on Objections to Jurisdiction, 11 May 2005) ICSID Case No. ARB/03/2, para. 91.

[306] Statement of Defence, para. 22.

[307] Exhibit CLA-260, *Noble Energy v. Ecuador* (Decision on Jurisdiction, 5 March 2008) ICSID Case No. ARB/05/12, para. 82 (emphasis added).

[308] See above and Exhibit CLA-104, *Alpha Projektholding v. Ukraine* (Award, 8 November 2010) ICSID Case No. ARB/07/16, para. 303 (finding that a claim to a share of the profits of the project and/or the minimum monthly payments is a "claim to money which has been given in order to create an economic value" as provided for in the investment treaty and is therefore an investment).

performance having an economic value" as provided for in the Lebanon-Netherlands BIT.[309] As such, they are investments not least since they are legal property with economic value for the Claimant.[310] While they can thus be qualified as investments, they are also related to, and supplement, Claimant's other investment.[311]

131. Contrary to what Respondent alleges, certainly *not* analogous to "ordinary" sale and purchase agreements.[312] Respondent's own new Model BIT is clear: only the latter are excluded.[313]

132. Claimant also does not argue that employment agreements are investments in all contexts.[314] Indeed, all else being equal, foreign nationals engaging in work for a company constituted under the laws of the other Contracting State are usually not investors for the purposes of the BIT. In other words, while Claimant acknowledges that, in other circumstances, mere salary and pension rights under employment agreements, or indeed one-off sale-purchase agreements,[315] do not necessarily qualify as 'investments',[316] in this context, *loss of Claimant's position as director of Ennia and its resultant remuneration and pension rights are a consequences of Respondent's breaches of the BIT*. As noted in the

[309] **Exhibit CLA-001**, 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) Art. 1(a)(iii).

[310] **Exhibit CLA-104**, *Alpha Projektholding v. Ukraine* (Award, 8 November 2010) ICSID Case No. ARB/07/16, para. 303 (finding that a claim to a share of the profits of the project and/or the minimum monthly payments is a "claim to money which has been given in order to create an economic value" as provided for in the investment treaty and is therefore an investment); **Exhibit CLA-105-FRA**, *African Holding v. Democratic Republic of Congo* (Decision on Jurisdiction and Admissibility, 29 July 2008) ICSID Case No. ARB/05/21, para. 75 (noting that the broad definition of definition of investment includes not only debts but also all elements related to an investment, whether they be in the form of receivables or rights of execution having an economic value).

[311] See Section III.A above; **Exhibit CLA-001**, 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) Art. 9(1) (giving this Tribunal jurisdiction over all disputes regarding investments).

[312] **Exhibit CLA-261**, *Fedax v. Venezuela* (Decision on Objections to Jurisdiction, 11 July 1997) ICSID Case No. ARB/96/3, para. 42; **Exhibit CLA-262**, *Joy Mining v Egypt* (Award on Jurisdiction, 6 August 2004) ICSID Case No. ARB/03/11, para. 56; **Exhibit CLA-244**, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2009) 205; **Exhibit CLA-070**, *Ipek v. Turkey* (Award, 8 December 2022) ICSID Case No. ARB/18/18, para. 292.

[313] **Exhibit CLA-144**, Netherlands Model BIT (2019), Art. 1(a) ("'Claims to money' within the meaning of sub (iii) does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or legal in the territory of a Contracting Party to a natural or legal person in the territory of the other Contracting Party, the domestic financing of such contracts, or any related order, judgment, or arbitral award.").

[314] Statement of Defence, Section 5.

[315] Statement of Defence, paras. 216-217.

[316] Statement of Defence, Section 5.1.

Statement of Claim, these are not private contractual claims against Ennia and/or Parman but against Ennia *as governed by the CBCS, which is an arm of the Respondent State*.[317] The pensions and emoluments were no longer paid *exactly because of* the CBCS's intervention, acting by and on behalf of the State.[318] This alone is sufficient to allow Claimant's claim (and not necessarily whether the court judgments removing Claimant as Director of the Ennia companies constituted wrongful termination,[319] which concerns the merits of this dispute).

133. What distinguishes this case from normal employment relationships is that, by contributing services, time, know-how and goodwill, Claimant did make and acquire an investment, i.e. a shareholding in Parman, and received regular monthly payments before and – for some time – after the Takeover in the form of salary and pensions.[320] Thus, these are contractual rights pertinent to Claimant's investment,[321] or, more precisely, payment obligations relating to a contract to provide services,[322] "claims to money" and therefore investments under Article 1(a)(iii) of the BIT.[323]

134. Moreover, these are entitlements to a liquidated sum; in respect of a "claim[] […] to any performance having an economic value", it is the value represented by that performance that is the economic interest in question forming the basis of Claimant's investment. As the

[317] Statement of Defence, paras. 17-23.

[318] Statement of Claim, para. 113.

[319] Statement of Defence, para. 230.

[320] See Section II above.

[321] See, for example, **Exhibit CLA-107**, *Tidewater v. Venezuela* (Award, 13 March 2015) ICSID Case No. ARB/10/5, para. 118; **Exhibit CLA-108**, *Alps Finance v. Slovak Republic* (Award, 5 March 2011) UNCITRAL, paras. 232-236; **Exhibit CLA-066**, *Dayyani et al. v. Korea (I)* (Judgment of the English High Court of Justice, 20 December 2019) PCA Case No. 2015-38, para. 42.

[322] **Exhibit CLA-109**, *SGS v. Paraguay* (Decision on Jurisdiction, 12 February 2010) ICSID Case No. ARB/07/29, paras. 83-90.

[323] **Exhibit CLA-001**, 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) Art. 1(a)(iii); **Exhibit CLA-104**, *Alpha Projektholding v. Ukraine* (Award, 8 November 2010) ICSID Case No. ARB/07/16, para. 303 (finding that a claim to a share of the profits of the project and/or the minimum monthly payments is a "claim to money which has been given in order to create an economic value" as provided for in the investment treaty and is therefore an investment); **Exhibit CLA-105-FRA**, *African Holding v. Democratic Republic of Congo* (Decision on Jurisdiction and Admissibility, 29 July 2008) ICSID Case No. ARB/05/21, para. 75 (noting that the broad definition of definition of investment includes not only debts but also all elements related to an investment, whether they be in the form of receivables or rights of execution having an economic value). See also **Exhibit CLA-106**, *William Nagel v. Czech Republic* (Final Award, 9 September 2003) SCC Case No. 49/2002, paras. 300-302 (noting that the terms "asset" and "investment" refer to rights and claims that have a financial value for the holder; a claim can have a financial value if it at the very least creates a legitimate expectation of performance in the future).

right is an entitlement to a liquidated sum, i.e. a debt, it qualifies as an investment for the purposes of the BIT. For the avoidance of doubt, Claimant does not claim for past services rendered in relation to which remuneration has been paid.[324]

135. At the end of the day, the same investment of time, service, goodwill and know-how that entitled Claimant to "rights derived from shares," including their value and dividends, also entitled him to "claims to money" by way of salary and valuable pensions. These are, altogether, a holistic and unified investment made in the territory of Respondent. It is trite law that when a multi-faceted investment is made – such as this one – the Tribunal must look at the economic substance of the operation in question in a holistic manner when determining whether there has been an investment.[325] That is plainly the case here. Services, time, know-how and goodwill were delivered, which were then later quantified as a monetary investment, i.e. a shareholding in and contractual entitlements from a multi-million locally-incorporated company.

136. Finally, the fact that Claimant "has [...] left the basis and extent of his salary and pension rights claim unsubstantiated"[326] is due to the fact that the Parties agreed that issues of quantum shall only be addressed at a later stage in these proceedings.[327]

IV. RELIEF SOUGHT

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

(i) disregard Section 2 of Respondent's Statement of Defence;

(ii) declare that it has jurisdiction over this dispute;

(iii) declare that Respondent has breached its obligations under the BIT;

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

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

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[324] Statement of Defence, para. 229.

[325] Exhibit CLA-111, *Ambiente Ufficio et al. v. Argentina* (Decision on Jurisdiction and Admissibility, 8 February 2013) ICSID Case No. ARB/08/9, para. 428.

[326] Statement of Defence, para. 205.

[327] Procedural Order No. 1, p 9.

(vi) order Respondent to restore the Claimant's proprietary rights as per the date of the intervention;

(vii) order Respondent to compensate in full the Claimant for Respondent's breaches under the BIT, which shall be quantified at a later stage in these proceedings;[328]

(viii) 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

(ix) order Respondent to pay applicable interests on any amount awarded until it complies with such award.

138. Claimant reserves its right to modify or supplement the claims and prayer for relief stated in its Statement of Claim and this Reply; to advance further claims, arguments, and prayers for relief; to produce further factual and/or legal evidence as may be necessary to complete or supplement the presentation of those claims; to respond to any arguments or allegations raised by Respondent; and to claim damages in respect of the losses that have been and are being caused by Respondent's breaches of the BIT.

Respectfully submitted,

Dr Rutsel Silvestre J Martha

Lindeborg Counsellors at Law

[Signed]

1 October 2024

[328] See Procedural Order No. 1, p 9.