

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES**

In the arbitration proceeding between

**AMIR MASOOD TAHERI**

Claimant

and

**UNITED ARAB EMIRATES**

Respondent

**ICSID Case No. ARB/21/19**

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**AWARD UNDER ICSID ARBITRATION RULE 43(2)**

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***Members of the Tribunal***

Prof. Juan Fernández-Armesto, President of the Tribunal

Mr. Klaus Reichert SC, Arbitrator

Prof. Raúl Vinuesa, Arbitrator

***Secretary of the Tribunal***

Dr. Laura Bergamini

***Assistant to the Tribunal***

Mr. Felipe Aragón

*Date of dispatch to the Parties: 28 November 2022*

## **REPRESENTATION OF THE PARTIES**

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*Representing the United Arab Emirates*

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## 1. PROCEDURAL HISTORY

1. On 13 April 2021 Mr. Amir Masood Taheri [**“Claimant”**] submitted a request for arbitration in accordance with Art. 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [the **“ICSID Convention”**] and Art. 9 of the Agreement between the Government of the United Arab Emirates and the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments, dated 10 November 1999, in force as of 6 May 2000 [the **“UAE-Sweden BIT”**]. Claimant is a Swedish-Iranian national born on 24 February 1966, resident in Sweden. Respondent is the United Arab Emirates [**“Respondent”**]. Claimant and Respondent shall be jointly referred to as the **Parties**.
2. On 21 April 2021 the Secretary-General of ICSID registered the request for arbitration pursuant to Art. 36(6) of the ICSID Convention.
3. By correspondence of 30 April, 11 and 19 May, 17 and 22 June 2021 the Parties agreed to constitute the Tribunal in accordance with Article 37(2)(a) of the ICSID Convention, so that the Tribunal would consist of three arbitrators, one to be appointed by each Party, with the third arbitrator and President of the Tribunal to be appointed by agreement of the Parties.
4. On 31 August 2021 the Tribunal was constituted in accordance with the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings [**“ICSID Arbitration Rules”**], with Mr. Klaus Reichert SC (appointed by Claimant), Prof. Raúl Emilio Vinuesa (appointed by Respondent) and Prof. Juan Fernández-Armesto as President (appointed by the parties).
5. On 5 October 2021 Claimant informed the Tribunal and Respondent that he had entered into a funding arrangement [the **“Funding Agreement”**], to cover certain of Claimant’s costs in this arbitration.
6. On 7 October 2021 the Parties and the Tribunal held the first session by videoconference. The Parties confirmed that the Tribunal had been properly constituted and reached agreements on most procedural issues.
7. On 17 November 2021, after hearing the Parties on all outstanding matters, the Tribunal issued Procedural Order No. 1, setting forth the procedural calendar for the Parties’ written pleadings and the dates for the hearing.
8. On 26 November 2021, after hearing the Parties, the Tribunal issued Procedural Order No. 2 establishing the rules governing document production.
9. On 4 January 2022 the UAE filed an application requesting an order from the Tribunal directing Claimant to disclose certain information concerning the Funder and the Funding Agreement [**“TPF Application”**].
10. On 28 January 2022 Claimant presented his response to the TPF Application, rejecting it in its entirety.

11. On 28 February 2022 Claimant submitted its Memorial.
12. On 11 March 2022 the Tribunal issued Procedural Order No. 3 resolving the TPF Application, in which it ordered Claimant to disclose certain terms of the Funding Agreement concerning the event of a costs order against the Claimant.
13. On 17 March 2022 Claimant disclosed to Respondent and the Tribunal the information requested with respect to the Funding Agreement.
14. On 8 July 2022 Respondent filed an application requesting an order for the preservation and production of evidence and the suspension of the proceedings [the “**Authenticity Application**”]. In its Authenticity Application Respondent described certain incongruities and possible tampering or manipulation that affected six exhibits submitted by the Claimant with its Memorial [the “**Emails**”].
15. On 11 July 2022 the Tribunal invited Claimant to react to the Authenticity Application and ordered Claimant *pro tem* to take all necessary measures to preserve and safeguard all records and evidence related to the Authenticity Application.
16. On 13 July 2022 Claimant informed the Tribunal that it was investigating the alleged incongruities in the Emails. On that same day Respondent submitted a communication indicating that a Tribunal-supervised process to collect all the relevant evidence was necessary and requested an extension to file its Counter-Memorial.
17. On 16 July 2022 the Tribunal granted Respondent a two-week extension to file its Counter-Memorial. The Tribunal also instructed Claimant to attempt to retrieve the original electronic communications from the server.
18. On 28 July 2022 Claimant informed the Tribunal that the original electronic communications were deleted and no longer retrievable; and provided some potential explanations of a technical nature for the discrepancies that affected the Emails.
19. On 1 August 2022 Respondent filed its Counter-Memorial.
20. On 4 August 2022 Respondent submitted a communication stating that Claimant’s explanations regarding the incongruities of the Emails were unconvincing and it reiterated its request to suspend the proceedings until the issue regarding the authenticity of the Emails be clarified.
21. On 10 August 2022 Claimant informed the Tribunal that it was still trying to obtain the original electronic communications. On 11 August 2022 Respondent replied stating that only a Tribunal-supervised process of retrieving the original electronic documents could guarantee the integrity and fairness of the proceedings.
22. On 15 August 2022 the Tribunal issued a communication rejecting the request for suspending the proceedings and proposed an updated procedural calendar

establishing specific written submissions to address the issue regarding the authenticity of the Emails: by 16 September 2022 Claimant should file his Authenticity Submission, presenting “allegations and evidence to substantiate his position with respect to the authenticity of the Emails” and producing “the communications exchanged with the Third Parties and any documentation or data that he may have retrieved from the server that is related to the Emails”. The Respondent would its response by 30 October 2022.

23. On 17 September 2022 the Parties informed the Tribunal that they had agreed to discontinue the proceedings and that they intended to transmit a settlement agreement to the Tribunal to be recorded in the form of an award.
24. On 20 September 2022 Claimant informed the Tribunal of the termination of the Funding Agreement.
25. On 25 October 2022 the Parties transmitted to the Tribunal the settlement agreement signed on 19 October 2022 [the “**Agreement**”].

## 2. AWARD

26. Pursuant to the Parties’ request and in accordance with ICSID Arbitration Rule 43(2), the Tribunal decides that the Agreement, as set out below, shall be recorded *verbatim* as an Award on agreed terms.
27. The Tribunal notes the agreement of the Parties in paragraph 36 (c) and (d) of the Agreement in accordance with which (i) the Claimant shall pay the entirety of fees and expenses of the Arbitral Tribunal as well as administrative charges and direct costs of ICSID; and (ii) each Party shall bear its respective costs and fees in connection with these proceedings. Accordingly, the Tribunal so orders.

## ***Settlement Agreement***

***between***

***Mr. Amir Masood Taheri and the Government of the United Arab Emirates***

This settlement agreement (the “Settlement Agreement”) is entered into between Mr. Amir Masood Taheri, born on 24 February 1966, and the Government of the United Arab Emirates (together, the “Parties to the Settlement Agreement”). The Settlement Agreement concerns the withdrawal, with prejudice, of Mr. Taheri’s claim as indicated *inter alia* in his Notice of Dispute of 12 May 2014, his letter to the Dubai Government of 8 April 2015, his further Notice of Dispute of 8 February 2021, his Request for Arbitration of 13 April 2021 and his Memorial of 28 February 2022, the proceedings “*Amir Masood Taheri v. United Arab Emirates* (ICSID Case No. ARB/21/19),” and any other claim by Mr. Taheri related to, or originating from the facts alleged therein.

***The Parties to the Settlement Agreement, recalling that:***

### **The Claimant and his Claim**

1. Mr. Amir Masood Taheri (the “Claimant”) is a Swedish-Iranian national born on 24 February 1966, resident in Sweden. The Claimant alleged that in 2011 the United Arab Emirates (the “UAE” or the “Respondent”) failed to renew his permit to reside in the UAE and that, by so doing, the Respondent violated the Agreement between the Government of the United Arab Emirates and the Government of the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments of 10 November 1999 (the “UAE-Sweden BIT”), in respect of alleged investments made by the Claimant in the UAE between 1999 and 2009, in the field of import-export and distribution of optical discs, as well as the trading of general commodities, through the companies Epoch and Reezmouj (the “Claim”).

### **The Request for Arbitration of 13 April 2021**

2. The Claimant brought the Claim to the attention of the UAE by formal notices of dispute dated 12 May 2014 and 8 February 2021.
3. On 13 April 2021, the Claimant submitted the Claim to arbitration in accordance with Article 36 of the Convention of the International Centre for the Settlement of Investment Disputes (“ICSID”) and Article 9 of the UAE-Sweden BIT.
4. In his request for arbitration, the Claimant sought an order from the Tribunal that the Respondent: (a) pay damages to the Claimant, in an amount to be quantified at a later date together with interests; and (b) bear the costs of the entirety of the

proceedings, including the Claimant's fees and the fees of ICSID and the Arbitral Tribunal.

### **The Registration of the Claim**

5. On 21 April 2021, ICSID registered the Claimant's request for arbitration as "*Amir Masood Taheri v. United Arab Emirates* (ICSID Case No. ARB/21/19)" pursuant to Article 36 of the ICSID Convention and Rules 6 and 7 of the ICSID Institution Rules. ICSID communicated the registration to the Claimant and the Respondent (together the "Parties to the Dispute") and invited them to constitute the Arbitral Tribunal as soon as possible.

### **The Constitution of the Arbitral Tribunal**

6. On 22 June 2021, the Parties to the Dispute informed ICSID that the Tribunal would consist of three arbitrators, and provided information about the agreed method of their appointment.
7. On 31 August 2021, the Arbitral Tribunal was constituted in accordance with ICSID rules and regulations, consisting of Professor Juan Fernández-Armesto, a national of Spain, as President of the Arbitral Tribunal; Professor Klaus Reichert, a national of Germany, as arbitrator appointed by the Claimant; and Professor Raúl Emilio Vinuesa, a national of Argentina, as arbitrator appointed by the Respondent. Dr. Laura Bergamini, legal counsel of ICSID, was appointed Secretary of the Tribunal. Mr. Felipe Aragon was appointed Assistant to the Tribunal.

### **The First Procedural Meeting and Procedural Orders nos. 1 and 2**

8. On 7 October 2021, the Arbitral Tribunal held its first procedural meeting with counsel and representatives of the Parties. On 17 November 2021, the Arbitral Tribunal issued Procedural Order no. 1, including procedural calendars of the arbitral proceedings. On 26 November 2021, the Arbitral Tribunal issued Procedural Order no. 2, concerning document production.

### **The Third Party Funding Disclosure Application and Procedural Order no. 3**

9. On 5 October 2021, in view of the First Procedural Meeting, the Claimant informed the Tribunal and the Respondent that it "ha[d] entered into a funding engagement with [a third party funder] under which [the third party funder] assumes certain of Claimant's costs in this arbitration".
10. On 13 October 2021, the Respondent, raising concerns regarding possible conflicts of interest and Claimant's ability to pay any adverse cost order, wrote to the Claimant requesting clarity on the identity of the third-party funder (the

“Funder”), including its corporate structure and ultimate beneficiaries, as well as details of the funding agreement (the “Funding Agreement”) between the Claimant and the Funder.

11. On 20 October 2021, the Claimant rejected the Respondent’s request to provide details of the Funding Agreement, but indicated that “Claimant is funded by [the Funder], which, as the risk bearing entity assumes certain of Claimant’s costs in the arbitration”. The Claimant further provided a chart describing the relationship between the Funder and other related entities.
12. On 29 October 2021, considering the information provided by the Claimant insufficient, the Respondent requested further details on (a) the identity of the Funder and its investors; (b) the terms in the Funding Agreement relating to the payment of adverse cost orders; and (c) the terms of the Funding Agreement regulating access to the arbitration documents by entities related to the Funder and its investors.
13. On 11 November 2021, the Claimant wrote to reject these requests as unreasonable and lacking any legal basis. On 25 November 2021, the Respondent provided additional reasons as to why the requested third-party funding information was necessary for the proper conduct of the proceedings, and the legal basis that in the Respondent’s view justified the request.
14. On 4 January 2022, the Respondent submitted to the Arbitral Tribunal an “Application for disclosure of information concerning third-party funding” (the “TPF Application”), requesting that Claimant be ordered to: “(a) disclose the identity of all his funders, including the investors holding shares in [the Funder], and all information that the Tribunal deems necessary to carry out meaningful conflict checks; (b) disclose any terms in the funding arrangement that address his funder’s commitment, or otherwise, to pay any adverse cost order that the Tribunal may make against the Claimant in due course”.
15. In the TPF Application, the Respondent indicated *inter alia* that there would be a risk, in addition to the situation in which the Respondent were to prevail on the merits, that the Respondent would end up unjustifiably bearing its costs for a meritless claim.
16. On 28 January 2022, the Claimant provided its response to the TPF Application (the “TPF Response”), requesting that the Tribunal deny the Respondent’s requests. The Claimant contended that ICSID case law did not require it to provide information about any funder in addition to that already provided, including for purposes of ascertaining possible conflicts of interest, and that in any case such request was unjustified given the nature and business model of the Funder. On the Funding Agreement, the Claimant rejected the disclosure of additional details but confirmed that it “includes coverage for adverse costs”. The Claimant indicated



in the TPF Response that disclosure of third-party funding agreements is only warranted in exceptional circumstances, including bad faith or proven history of failure to pay cost awards, none of which was applicable to the Claimant's situation.

17. On 11 March 2022, the Tribunal issued Procedural Order no. 3 in which it decided the TPF Application and TPF Response. The Tribunal rejected the Respondent's first request. It accepted the Respondent's second request, ordering that the Claimant disclose "the terms of the specific clause or clauses in the Funding Agreement or in any other agreement entered into by Claimant (...) that regulate the event of a costs order against Mr. Taheri, including (a) the quantities and concepts of costs covered (b) the name of the entity responsible for payment; and (c) any other terms that may condition the recoverability of costs by Respondent".
18. On 17 March 2022, the Claimant disclosed to the Respondent a partially redacted clause of the Funding Agreement, providing that adverse costs of the proceedings would be assumed by the Funder up to a specific amount and that an after-the-event insurance was to be concluded to cover such adverse costs if awarded.

#### **The Claimant's Memorial, the Respondent's Counter-Memorial and the Parties' Document Production Schedules**

19. On 28 February 2022, the Claimant submitted its Memorial, seeking an order from the Tribunal to (a) declare that the UAE had breached its obligations toward the Claimant under the BIT; (b) order that the UAE pay to Claimant USD 110,831,687, together with interest thereon; and (c) order that the UAE compensate Claimant for his costs of arbitration, including legal fees, in an amount to be specified later together with interest thereon and, as between the Parties to the Dispute, alone bear the responsibility for the costs relating to the Arbitral Tribunal and ICSID.
20. On 1 August 2022, the Respondent submitted its Memorial on Jurisdiction and Counter-Memorial on Merits and Quantum (the "Counter-Memorial"). In its Counter-Memorial, the Respondent asked that the Tribunal (a) declare its lack of jurisdiction; (b) reject all the Claimant's claims on the merits and, in any case, (c) dismiss the Claimant's request for damages. Moreover, the Respondent asked the Tribunal (d) to order the Claimant to pay all costs and expenses derived from the proceedings, including ICSID administrative expenses, arbitrators' fees and the fees of the legal counsel of the UAE, their experts and advisors.
21. On 31 August 2022, in accordance with an updated procedural calendar, the Parties to the Dispute exchanged their document requests in their Document Production Schedules.

## **The Application Contesting the Authenticity of Certain Claimant's Exhibits ("Authenticity Track")**

22. On 8 July 2022, before submission of the Counter-Memorial, originally scheduled on 18 July 2022, the Respondent filed an urgent application for an order for the preservation and production of evidence and for the suspension of proceedings (the "Authenticity Application").
23. In the Authenticity Application, the Respondent described certain incongruities and possible tampering or manipulation that affected six Exhibits submitted by the Claimant (the "Emails"). In the Authenticity Application, moreover, the Respondent asserted that the viability of the Claimant's entire Claim, and in particular his entire request for damages, rested on these documents.
24. According to the Respondent and its experts, the Emails presented features that raised significant concern as to their authenticity. These included contradictory timestamps and conversation timelines, impossible dates, inconsistent formatting of automatically generated fields, and a case where an email appears to have been printed before it was received.
25. In the Authenticity Application, the Respondent asked the Tribunal: (a) to order that the Claimant preserve all evidence pertaining to the Emails and retrieve the original electronic communications; and (b) to suspend the arbitration proceedings for three months in order to preserve the integrity of the proceedings.
26. On 11 July 2022, the Tribunal granted to the Claimant an opportunity to react to the Authenticity Application, and declined *pro tem* the Respondent's request to suspend the proceedings. The Tribunal ordered instead to open a parallel track to the arbitration (the "Authenticity Track") to resolve authenticity issue of the Emails.
27. On 13 July 2022, the Claimant submitted its preliminary views, stating, inter alia, that the Claimant was investigating the alleged discrepancies identified by the Respondent. The Respondent replied to the Claimant's communication on the same day, indicating that a Tribunal-supervised process in collecting the relevant evidence, including originals of electronic communications, was necessary
28. On 16 July 2022, the Tribunal issued a revised procedural calendar, containing a two-week extension for the submission of the Counter-Memorial, until 1 August 2022, in light of the matters raised in the Authenticity Application. It also urged the Claimant to attempt to retrieve the original electronic communications, and provide an update to the Tribunal on such efforts by 28 July 2022 (the "Authenticity Update"), on which the Respondent could comment by 4 August 2022 (the "Authenticity Comments").

29. In his Authenticity Update of 28 July 2022, the Claimant provided a description of a system of archiving communications used in its companies Epoch and Reezmouj at the time of the communications, to explain why the original emails were deleted and no longer retrievable. The Claimant also provided some potential explanations of a technical nature for the discrepancies that affected the Emails, raised in the Respondent's Authenticity Application of 8 July 2022.
30. In the Authenticity Comments of 4 August 2022, the Respondent explained, also based on the advice of an IT forensics expert, that the explanations provided by the Claimant were unconvincing, and that the Claimant had failed to implement the Tribunal's directions regarding the Emails and the underlying documents. On 10 August 2022, the Claimant indicated that he was making efforts to retrieve the original electronic documents. On 11 August 2022, the Respondent replied, stating that only a Tribunal-supervised process of retrieving the original electronic documents could guarantee the integrity and fairness of the proceedings.
31. On 15 August 2022, the Tribunal established that the Parties to the Dispute exchange written submissions (the "Authenticity Submission(s)") "to address the authenticity issue". The Tribunal ordered that, by 16 September 2022, the Claimant file his Authenticity Submission, presenting "allegations and evidence to substantiate his position with respect to the authenticity of the Emails" and producing "the communications exchanged with the Third Parties and any documentation or data that he may have retrieved from the server that is related to the Emails". The Respondent would have had the right to respond with its Authenticity Submission, by 30 October 2022.

### **The Claimant's Offer to Settle with Prejudice and Communication of Funding Agreement's Termination**

32. On 14 September 2022, the Claimant presented the Respondent with an offer for settling his claims against the UAE, and requested that the Respondent agree to a one-week extension for the filing of the Claimant's Authenticity Submission due on 16 September 2022, pending consideration of the offer.
33. On 15 September 2022, the Claimant informed the Respondent that the Funding Agreement had been terminated.
34. On 16 September 2022, the Respondent shared with the Claimant a proposed set of terms under which it would accept the settlement offer. On the same day, the Claimant agreed to the terms of the settlement.
35. On 17 September 2022, the Claimant informed the Tribunal that it would not be submitting his Authenticity Submission due on 16 September 2022. On the same date, the Parties to the Dispute transmitted the terms of the settlement to the Tribunal.

36. On 20 September 2022, the Claimant sent a message informing the Tribunal of the termination of the Funding Agreement.

***Having regard to the above, the Parties to the Settlement Agreement hereby agree as follows:***

- a) The Claimant proposes to discontinue the proceedings *Amir Masood Taheri v. United Arab Emirates* (ICSID Case No. ARB/21/19) and the Respondent agrees.
- b) The Claimant withdraws, with prejudice, all of his claims in the proceedings against the Respondent “*Amir Masood Taheri v. United Arab Emirates* (ICSID Case No. ARB/21/19)”, as indicated *inter alia* in his Notice of Dispute of 12 May 2014, his letter to the Dubai Government of 8 April 2015, his further Notice of Dispute of 8 February 2021, his Request for Arbitration of 13 April 2021 and his Memorial of 28 February 2022, and any other claim related to, or originating from the facts alleged therein. The Claimant will not assign or sell these claims.
- c) The Claimant shall pay the entirety of fees and expenses of the Arbitral Tribunal, as well as administrative charges and direct costs of ICSID.
- d) The Claimant and the Respondent shall bear their respective costs and fees, including the costs and fees for their counsel, advisers and experts in connection with the proceedings *Amir Masood Taheri v. United Arab Emirates* (ICSID Case No. ARB/21/19).
- e) The Claimant and the Respondent agree that ICSID shall publish the award embodying this Settlement Agreement pursuant to Article 48(5) of the ICSID Convention, and Paragraph 25 of Procedural Order no. 1 of 7 November 2021.

[signed]

Mr. Klaus Reichert SC  
Arbitrator

Date: 4. NOV. 2022

[signed]

Prof. Raúl Vinuesa  
Arbitrator

Date: 22 Nov 22

[signed]

Prof. Juan Fernández-Armesto  
President of the Tribunal

Date: 15.11.22