United Nations Commission on International Trade Law
Arbitration Rules 1976

Abdallah Andraous
- Claimant -

v

Kingdom of the Netherlands
- Respondent -

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# Statement of Claim on Jurisdiction and Merits

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22 February 2024

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## INTRODUCTION

1. This Statement of Claim on Jurisdiction and Merits ("**Statement of Claim**") is filed by Mr. Abdallah Andraous ("**Claimant**") against the Kingdom of the Netherlands ("**Respondent**" or "**The Netherlands**") in accordance with Article 18 of the Arbitration Rules of the United Nations Commission on International Trade Law in force as of 1976 (the "**UNCITRAL Rules**"). The Statement of Claim comprises this submission plus Claimant's factual exhibits **C-036 to C-089** and Claimant's legal exhibits **CLA-058 to CLA-230**.[1]

2. Claimant brings this application pursuant to the Agreement on the Encouragement and Reciprocal Protection of Investments between the Lebanese Republic and the Kingdom of the Netherlands signed on 2 May 2002, and which entered into force on 1 March 2004 (the "**Lebanon-Netherlands BIT**" or simply the "**BIT**").[2] Respondent's consent to arbitrate investment disputes is given under Article 9 of the BIT, and has not been contested.

3. This application is a consequence of the decision of the Central Bank of Curaçao and St. Maarten (the "**CBCS**") – formerly known as the Bank of the Netherlands Antilles – to take over Ennia Caribe Holding NV ("**Ennia**") after a series of inconsistent and fast-changing instructions, ultimately depleting Ennia of its value, and expropriating its assets and Claimant's investments. Claimant and the other shareholders of Parman International BV ("**Parman**") (i.e. Ennia's holding company) have been deprived of access to their investments for almost six years.

4. Below, the Claimant sets out (i) a description of the Parties (**Section I**), (ii) the factual background of the dispute (**Section II**), (iii) the reasons why this Tribunal has jurisdiction over the dispute (**Section III**), (iv) the breaches of the Lebanon-Netherlands BIT by the Respondent (**Section IV**), and (v) a statement of the relief sought (**Section V**).

[1] **As a preliminary remark**, it must be emphasised that to date, while in control of Claimant's company and related correspondence and files, Respondent has resisted any document production (see, for example, Letter from Respondent to the Tribunal dated 14 November 2023, pp 1-4), so that Claimant cannot argue its case to the best extent. Therefore, this Statement of Claim is necessarily limited to factual exhibits in Claimant's possession and Claimant's recollection of events. Where no evidence is provided, Claimant will do so at a later stage in this arbitration (if document production is not resisted further).

[2] **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).

# I. THE PARTIES

## A. The Claimant

5. Claimant in this arbitration is Mr. Abdallah Andraous, a national of the Republic of Lebanon ("**Lebanon**"),[3] and, since June 2023, a national of the Republic of France ("**France**"). Between 2000 and 2023 Claimant was also a national of the Kingdom of the Netherlands.[4]

6. Claimant is represented by Lindeborg Counsellors at Law, and has duly authorised Lindeborg Counsellors at Law to institute and present arbitration proceedings on its behalf.[5]

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


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[3] See **Exhibit C-001,** Passport of Mr Abdallah Andraous with No. RL 4119141; **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.

[4] As of 21 July 2023 (**Exhibit C-036-FRA**, Declaration of French Nationality), this nationality has been lost by operation of Dutch law (**Exhibit CLA-058-DUT**, Dutch Nationality Law, Art. 15(1)(a)).

[5] **Exhibit C-003**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 3 May 2022, attaching the original Power of Attorney dated 2 May 2022; **Exhibit C-004**, Letter from the Claimant to the Dutch Ministry of Foreign Affairs dated 10 October 2022, attaching the updated Power of Attorney dated 8 October 2022.

## B. The Respondent

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


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Dr. Annemarieke Künzli
Ms. Selma Blank
Mr. Oliver Whitehead
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9. The Respondent in this arbitration is represented by De Brauw Blackstone Westbroek, with counsel of record:


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## II. FACTUAL BACKGROUND OF THE DISPUTE

### A. Claimant's Move from Lebanon and Acquisition of his Investments

10. Claimant is a Lebanese national. He was born in Beirut, Lebanon on 2 January 1957,[6] and currently resides in Paris, France.[7]

11. He completed his secondary and university education in Lebanon,[8] and at various times between 1974 and 1984 worked for several Beirut-based companies and educational institutions, including:

    (i) G. Trad - Credit Lyonnais Bank SAL (Letters of Credit Department) (1974-1977);

    (ii) Medway Shipping Co. Ltd, a shipping agent of large container ships (Chief Accountant) (1977-1980);

    (iii) A & A Matar Junior SAL, the largest distributor of sportswear brands in the Middle East (Head of the Internal Audit department) (1980-1984);

    (iv) Institut Francel (Professor of Statistic, Probabilities and Financial Mathematics) (1979-1983).[9]

12. In 1983, he became a certified public accountant (CPA) in Lebanon.[10]

13. In 1978, Claimant married his wife, who is also Lebanese. They had two children in Lebanon (in 1981 and 1984).[11]

14. Despite having a successful career and upper-middle class lifestyle, Claimant and his family fled Lebanon in 1984 as the Lebanese Civil War intensified.[12] Around this same time he was presented with an opportunity at SunResorts Ltd NV ("SunResorts"), a real estate and hospitality company in St. Maarten (at the time part of the Dutch Antilles, and now a country within the Kingdom of the Netherlands), which was also owner and operator of the Mullet

[6] Exhibit C-001, Passport of Mr Abdallah Andraous with No. RL 4119141.

[7] 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.

[8] Annex I, Personal Statement of Abdallah Andraous, para. 5.

[9] Annex I, Personal Statement of Abdallah Andraous, para. 6.

[10] Exhibit C-037-ARA, Decree No. 65 of the Lebanese Ministry of Justice dated 9 September 1983.

[11] Annex I, Personal Statement of Abdallah Andraous, para. 6.

[12] Annex I, Personal Statement of Abdallah Andraous, para. 7.

Bay Resort & Casino.[13] Claimant and his family moved from Lebanon to St. Maarten, where, from 1984 to 1989, he worked as Internal Auditor and later as Chief Financial Officer at SunResorts.[14]

15. In 1989, in an effort to provide a better education for his children and to be geographically (and culturally) closer to his family in Lebanon, Claimant moved to France. Claimant and his wife welcomed a third child to the family and they obtained residency as Lebanese citizens.[15] While living in France, Claimant established a representation and marketing company under the name RJJ International Sarl and became its Managing Director until 1995 (when it was reduced to simple administration).[16] From 1994 to 2000, he was a member of the Board of Directors of IRI International, a Houston-based New York Stock Exchange Company.[17]

16. During his time in Paris, however, Claimant continued to work for SunResorts, commuting regularly between Paris and St. Maarten, with his family remaining in France.[18] On account of working for a Dutch Antilles company and to allow him to travel more easily between this workplace and home, in 2000 Claimant obtained Dutch citizenship.[19] He kept his Lebanese nationality at all times.[20]

[13] **Annex I,** Personal Statement of Abdallah Andraous, para. 8.

[14] **Annex I,** Personal Statement of Abdallah Andraous, para. 8. For his work at SunResorts, Claimant only received a stipend and rent allowance of about USD [redacted] per month (**Exhibit C-038**, Check Register SunResorts and Towers at Mullet Bay dated 5 July 2017).

[15] **Annex I,** Personal Statement of Abdallah Andraous, para. 9. Under French law, foreigners can apply for residence, which, if granted can be renewed on a yearly basis (temporary residence), and then for a period of 10 years (permanent residence) (**Exhibit CLA-059-FRA**, Arts. L-411-3 and L-433-7 of the French Code of Entry and Residence of Foreigners and of the Right to Asylum).

[16] **Annex I,** Personal Statement of Abdallah Andraous, para. 9.

[17] **Annex I,** Personal Statement of Abdallah Andraous, para. 9.

[18] **Annex I,** Personal Statement of Abdallah Andraous, para. 10.

[19] **Annex I,** Personal Statement of Abdallah Andraous, paras. 18, 20.

[20] **Annex I,** Personal Statement of Abdallah Andraous, para. 18.

17. In 2005 and 2006 respectively, Parman[21] had acquired Banco di Caribe ("**BDC**")[22] and Ennia with Claimant's help.[23] His previous experience in the mergers and acquisitions of four U.S. companies and the initial public offering of two companies on the New York Stock Market proved key in this regard.[24]

18. In addition, in 2006, Claimant became Director for Resorts Caribe, and later also Managing Director for Ennia Caribe Holding (and its subsidiaries Ennia Caribe Leven NV ("**Ennia Leven**"), Ennia Caribe Schade NV ("**Ennia Schade**") and Ennia Caribe Zorg NV ("**Ennia Zorg**") (together the "**Ennia Insurance Companies**")), for which he already was a member of the investment committee since 2006.[25] In 2017, Claimant became Director of EC Investments,[26] among others.[27] Claimant's functions can be summarised as follows:

[21] See paragraph 3 above.

[22] On 20 December 2005, Parman acquired 50.1% of the shares in BDC, following an agreement with its former owner, Mr. De Kort. The next month, on 25 January 2006, Mr. Hushang Ansary, the majority shareholder of Parman and Chairman of the Board of Directors, made a capital increase of BDC's share capital of 100 million Netherlands Antillean Guilder ("**ANG**") (for ease of reference, ANG 1 = USD 0.55) and a further ANG 98.5 million by way of shares in SunResorts, which were respectively approved by the shareholders. Thereafter, Parman held 79.88% of the shares in BDC, and BDC bought 80% of Ennia Caribe Holding, thus structuring Ennia as a vertical concern (see Notice of Arbitration, para. 16; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 2.10-2.15; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.12-3.16).

[23] **Annex I,** Personal Statement of Abdallah Andraous, para. 13. It is worth noting that on 27 September 2005 and 24 October 2005, two agreements were entered into between Mr. Ansary and Stewart & Stevenson ("**S&S**"), a company that focuses on the oil and gas industry. S&S LLC was established, with its shareholders Parman Capital and Ennia.

[24] **Annex I,** Personal Statement of Abdallah Andraous, para. 12.

[25] Notice of Arbitration, para. 13; **Annex I,** Personal Statement of Abdallah Andraous, para. 15. Claimant did not receive a salary for his work at Resort Caribe. In his other capacities, Claimant received fees in the amount of USD [redacted] net after taxes from BDC and the same amount from Ennia, which was increased to USD [redacted] each as of 1 January 2007. From 1 January 2009, a net USD [redacted] was added to his salary, bringing the total to USD [redacted] net after taxes. He also benefitted from the pension programmes of BDC and Ennia for an amount of ANG (about USD [redacted] per year), which the CBCS abruptly stopped in 2020 (**Annex I,** Personal Statement of Abdallah Andraous, para. 16; **Exhibit C-039**, Proof of pension dated 28 November 2018).

[26] 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.

[27] 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 **Annex I,** Personal Statement of Abdallah Andraous, para. 15).

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

19. However, Claimant was not paid a salary for his work on the acquisition negotiations and related due diligence work with regard to BDC and Ennia (which had lasted from 2001 to respectively 2005 and 2006). Rather, he was promised by Parman's director and majority shareholder, Mr. Ansary, that he would be given shares in Parman as a form of payment.[28] On 28 December 2011, as payment for the services, knowledge and experience he brought to the companies, this promise was made good and Claimant was paid 1% of the shares of Parman (equivalent to 25,000 shares).[29] In the period 2013-2015, Claimant received dividends on a yearly basis, for a total amount of USD [redacted].[30]

20. As stated in paragraph 5 above, on 21 July 2023, Claimant lost his Dutch nationality by virtue of obtaining French nationality.[31]

## B. The CBCS's Changing Regulatory Framework and the Grace Period

21. In the period between the acquisition of BDC and Ennia by Parman in 2005-2006 and the declaration of emergency measures (the "**Emergency Declaration**") in 2018 (see *infra* **Section II.D**), the CBCS continuously changed its regulatory framework. As will be set out below, over this period, it gave Ennia different and contradicting instructions, making it virtually impossible to comply with the CBCS's ever-changing regulations. Claimant

[28] **Annex I,** Personal Statement of Abdallah Andraous, para. 14.

[29] **Exhibit C-040**, Parman International B.V. Stock Register; **Exhibit C-041**, Parman International B.V. Stock Certificate; **Annex I,** Personal Statement of Abdallah Andraous, para. 14.

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

[31] The Netherlands does only allow dual nationality in certain circumstances, most notably – as was the case for Claimant – by being born in the country of other nationality (**Exhibit CLA-058-DUT**, Dutch Nationality Law, Art. 6(a)). Claimant's Dutch nationality, but not his Lebanese nationality, was therefore automatically lost when he acquired the French nationality (**Exhibit CLA-058-DUT**, Dutch Nationality Law, Art. 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).

concludes that, since the acquisition of Ennia, the CBCS targeted the company, ultimately culminating in the Emergency Declaration in July 2018.[32]

22. Some months after the BDC and Ennia acquisitions, in a letter dated 22 August 2006, the CBCS informed BDC (at the time the holding company of the Ennia Insurance Companies) that it had identified certain shortcomings, including a solvency deficit (mentioning the investments in S&S and SunResorts).[33]

23. However, after one and a half year of investigations (from December 2006 to May 2008), in three separate letters to each of the Ennia Insurance Companies, the investment decisions by Parman were applauded by the CBCS. In particular, the CBCS stated:

> *Based on our examination we wish to inform you that Ennia Caribe [Leven/Schade/Zorg] N.V. is in compliance with our rules and regulations. Since the acquisition of Ennia by the Parman Group, the management of the company has recorded impressive progress. Thanks to the investments decisions made by the group and additional capital infusion the company is now not only solvent but in a much stronger position.*[34]

24. Despite this praise, on 11 March 2009, the CBCS instructed the management of BDC to change from a vertical concern to the current horizontal structure (see Figure 1), which effectively led to the creation of intercompany accounts.[35] Ennia Holding became the parent company, with the Ennia Insurance Companies and BDC as subsidiaries. It also instructed Parman's shareholders to put the SunResorts investments under one of Ennia's subsidiaries, EC Investments – *despite the fact that these assets had been acquired long before the acquisition of BDC, and the shareholders were never paid for transferring this or any other interest.*[36]

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[32] **Annex I,** Personal Statement of Abdallah Andraous, para. 26.

[33] **Exhibit C-043**, Letter from the CBCS to BDC dated 22 August 2006; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.19; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.19.

[34] See, respectively, **Exhibit C-006**, Letter from the CBCS to Ennia Leven dated 23 September 2008; **Exhibit C-007**, Letter from the CBCS to Ennia Schade dated 23 September 2008; **Exhibit C-008**, Letter from the CBCS to Ennia Zorg dated 23 September 2008. See also **Annex I,** Personal Statement of Abdallah Andraous, para. 24; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.23; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.23.

[35] **Exhibit C-044**, Letter from the CBCS to BDC dated 11 March 2009; **Annex I,** Personal Statement of Abdallah Andraous, para. 26; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 2.24-2.25; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.24-3.25.

[36] See paragraph 17.

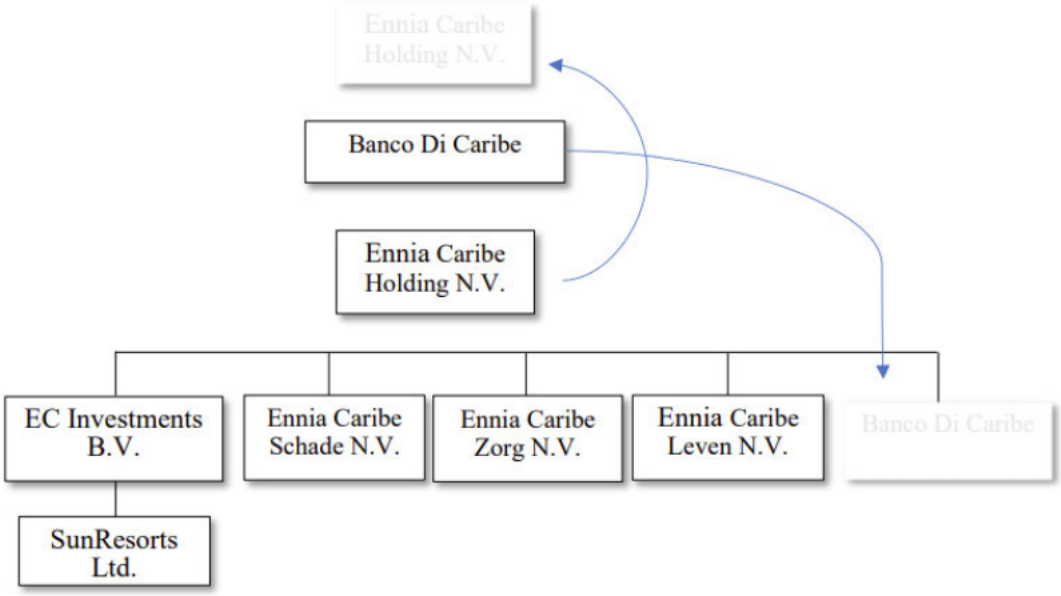


Figure 1: Restructuring of Ennia/BDC as requested by the CBCS (2009)

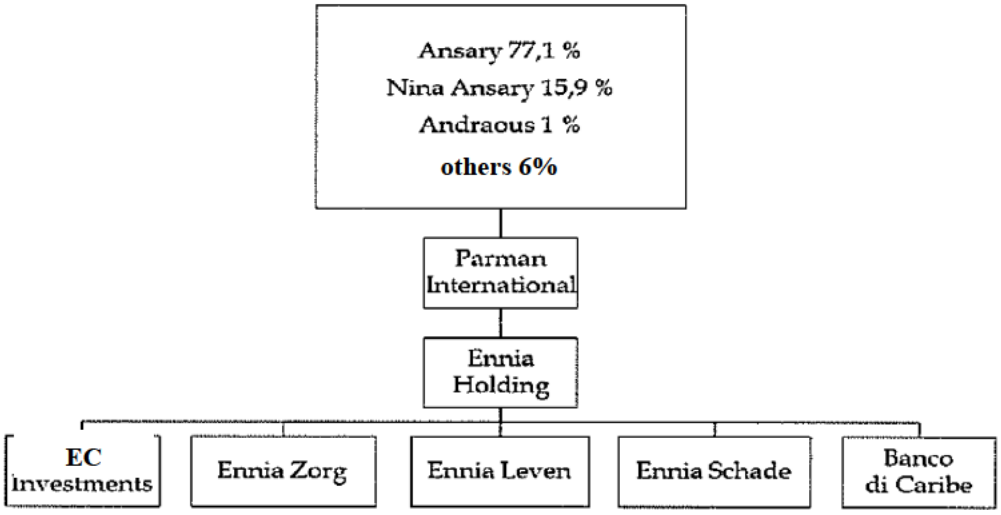


Figure 2: Structure of the companies in 2018

The management of Ennia and BDC complied and the companies were restructured as requested.[37] This new horizontal structure and the use of intercompany accounts was accepted by the CBCS for several years (i.e. until September 2015, see paragraph 31 below).

[37] **Exhibit C-045**, Letter from [redacted] (BDC) to the CBCS dated 9 April 2009.

25. In a letter of 27 January 2012, the CBCS further indicated that intercompany loans were admissible:

> *Management of the Ennia companies provided the Bank with insight in the 2010 financials of both Ennia Caribe Holding NV and ECI Investments BV. Both financial statements were audited by the firm KPMG and contained a clean auditor's report. Furthermore, from the financials it was deduced that both companies have a positive equity position as of year end 2010 and both closed the financial year with a profit. Based on this information die Bank will consider the loans as admissible assets.*[38]

26. In April 2012, the CBCS argued that only investments with at least a rating of BBB (S&P) or BAA (Moody's) would be allowed to be reported as admissible assets.[39] It stated that Ennia's investment in S&S bonds, amounting to 58% of the total, had a CCC (S&P) rating.[40] This was established after the CBCS issued an investigative report on Ennia Leven for the period 2010-2012, concluding that that the latter's investments were "risky and in conflict with policy" and the principle of prudent investments, that there was an unacceptably high concentration ratio, and that Mr. Ansary's role as majority shareholder and Chairman of the Supervisory Board was problematic.[41] It should be highlighted, however, that at the time the report was issued, the CBCS admitted that it was still "*in process of finalizing its valuation guidelines which should be used for the completion of the ARAS filings in the future*."[42]

27. On 14 August 2013, the CBCS reconfirmed that Ennia Schade was in compliance with the solvency requirements.[43]

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[38] **Exhibit C-046**, Letter from the CBCS to the Ennia Insurance Companies dated 27 January 2012.

[39] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.33; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.33.

[40] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.33; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.33.

[41] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.33; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.33.

[42] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.33; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.33.

[43] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.36; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.36.

28. By letter of 23 December 2013, however, the CBCS informed Ennia Schade that the financial figures for 2012 had been received and that a number of questions remained.[44] The letter further stated:

> *Finally, we refer you to the Valuation Guidelines developed by the Bank which were presented to the sector in December of 2011 and subsequently discussed with the sector which contains guidelines as to how assets reported in the ARAS filings should be valued.*
>
> *We also refer you to article 34 paragraph 2 of the National Ordinance Insurance Supervision (N.G. 1990, nr. 77) which stipulates that the technical provisions reported by an insurance company must be fully covered by assets and that the Bank can object to the nature and appraisal of the assets, whereupon the insurer shall take steps to meet the Bank's requirements. […] It concerns in particular the affiliated loans and receivables reported by [Ennia Schade] on its balance sheet.*[45]

29. In response to the CBCS's letter of 23 December 2013, Mr. Ralph Palm, then Director (CEO) of Ennia Holding, answered (on behalf of Ennia Schade) as follows:

> *We are aware of the several drafts of the Valuation Guidelines and the possible impact on [Ennia Schade] once the guidelines are formally issued. We are also aware that we need to take steps between now and the issuance of the final Valuation Guidelines to meet the revised solvency requirements. In the meantime, we are in compliance with the solvency requirements as confirmed in your letter dated August 14, 2013.*[46]

30. On 10 March 2014, the CBCS sent a letter to Ennia Leven stating, *inter alia*, that no additional loans should be granted by Ennia Leven to Ennia Holding or EC Investments and that the existing loans should not be extended on their maturity dates.[47] It reiterated that the assets on the balance sheet of EC Investments consisted mainly of investments in SunResorts and S&S, and that there was a concentration risk – *this despite the lack of regulation on concentration of investments in Curaçao, and the investments remaining the same* (the increase in value simply being the profits made on these investments). The CBCS on 5 January 2015 informed Ennia Leven that the concentration risk of Ennia Leven's investments should be reduced, that the loan agreement with EC Investments should not

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[44] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.35; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.35.

[45] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.35; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.35.

[46] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.36; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.36.

[47] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.38; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.38.

have been extended, and requested financial statements of EC Investments, S&S, SunResorts and Ennia Holding.[48] On 25 June 2015, the CBCS contacted the Ennia Insurance Companies once again and informed them that its instructions were not being complied with.[49]

31. Then, in September 2015, in an inexplicable *volte-face* and completely contradicting its previous instructions, the CBCS radically changed its regulations whereby it no longer took into account intercompany accounts.[50] This would be solved effectively if the company returned to its original vertical structure. The new regulations (ARAS v 2.7 (General Valuation Guidelines)) disregarded any receivables owed by related parties (regardless of their value) for regulatory capital purposes, receivables that were accepted for this purpose.[51]

32. In that context of uncertainty, on 6 October 2015, the Ennia Insurance Companies received a further letter from the CBCS, stating that there is a solvency deficit, on the basis that there was still an increase in the number of unauthorised investments and receivables from affiliated entities, which the CBCS classified as non-admissible assets.[52]

33. On 4 August 2016, the CBCS urged Ennia to implement several instructions, including the instruction that further loans to and receivables from affiliated entities are no longer permitted, and that existing loans must be repaid or reduced within a period of not more than three years.[53] The CBCS granted the Ennia Insurance Companies a period of *three years, until August 2019*, to restructure their investments (the "**Grace Period**").[54] The CBCS

[48] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.38; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.38.

[49] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.39; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.39.

[50] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.40; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.40.

[51] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.40; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.40.

[52] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.41; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.41.

[53] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.42; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.42.

[54] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016, pp 2-3; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.42; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.42.

also ordered Ennia to sell Mullet Bay and the shares in S&S within a period of not more than three years and to use the proceeds from the sale for investments permitted by the CBCS.[55]

34. In a letter of 22 September 2016 addressed to the Ennia Insurance Companies, the CBCS reiterated the above points, adding that

> *[…] the Bank is of the opinion that, in view of the points outstanding as of the date of this letter, Ennia has not sufficiently complied with its instructions. In light thereof, the Bank considers the measure pursuant to article 31 paragraph 3 a) of the LTV (as amended) to be necessary.*[56]

35. Only a week later, on 29 September 2016, the CBCS appointed silent curators at Ennia Leven.[57] This meant that, from that date onwards, all or certain bodies of Ennia Leven, including the representative, could only exercise powers subject to the approval of two persons appointed by the CBCS. This intervention – which cannot be regarded as a light measure – took effect on 1 October 2016.[58]

36. In parallel, in 2017, the Dutch Central Bank (*De Nederlandsche Bank*, the "**DNB**") informed Claimant – as well as other supervisory directors – that he had not passed certain ability tests.[59] This despite having received the necessary permits from the CBCS in 2011 to run Ennia as Managing Director.[60] Claimant was invited to sit for a test on the island of Bonaire, presided by [redacted] (at the time at the DNB before being transferred to the CBCS, and later Co-Manager of the Ennia Insurance Companies, see **Section II.D**).[61] The test was focused on the Claimant's political and religious views (and his relationship with Mr. Ansary) rather than his sectorial knowledge and experience.[62]

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[55] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016; **Annex I,** Personal Statement of Abdallah Andraous, para. 33; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.42; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.42.

[56] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.43; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.43.

[57] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.44; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.44.

[58] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.44; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.44.

[59] **Annex I,** Personal Statement of Abdallah Andraous, para. 35.

[60] **Annex I,** Personal Statement of Abdallah Andraous, para. 35.

[61] **Annex I,** Personal Statement of Abdallah Andraous, para. 36.

[62] **Annex I,** Personal Statement of Abdallah Andraous, para. 36.

37. A couple of weeks later, Claimant received a call from [redacted] informing him that he had failed the test, and that he had to resign as Managing Director within two weeks and otherwise would be disqualified.[63] Claimant opted to continue his duties and was disqualified from managing the Bonaire operation (a branch of the Curaçao subsidiary) but surprisingly not as Managing Director of the Curaçao subsidiary.[64]

38. The DNB also instructed Ennia to create a separate fund for the Bonaire branch. This was contradicted by instructions from the CBCS, which opined that such would create preferential treatment for pensioners on Bonaire.[65] In the end, when the CBCS agreed with such preferential treatment, Ennia had to comply.[66]

39. On 3 July 2018, *prior to the expiration of the Grace Period* (i.e. August 2019[67]) and while consultations between CBCS and the Ennia group were still taking place, the CBCS revoked the licenses of the Ennia Insurance Companies.[68] In the next days, it would take control of all property belonging to Ennia, including Parman's right to direct how its only assets are managed.[69] On several occasions, the CBCS suggested that reverting back to a vertical structure would eliminate the intercompany accounts and would make the company more than solvent. As set out in the Sections below, it did not.

## C. The Restructuring Agreement

40. To meet the concerns of the CBCS, and despite its previous instructions, the management of Ennia agreed with the CBCS on 31 May 2018 to restructure the company back in its original vertical form with the purpose of eliminating the intercompany accounts (the "**Restructuring Agreement**").[70] The focus of the Restructuring Agreement was the reduction of affiliated balances of Ennia Leven. Once it had eliminated its affiliated balances, it would reduce the balances of the other two operating entities, Ennia Schade and Ennia Zorg, to comply with the new admissibility and solvency requirements.[71] The Restructuring Agreement contained a detailed breakdown of the affiliated balances and the changes in

[63] **Annex I,** Personal Statement of Abdallah Andraous, para. 37.

[64] **Annex I,** Personal Statement of Abdallah Andraous, para. 37.

[65] **Annex I,** Personal Statement of Abdallah Andraous, para. 38.

[66] **Annex I,** Personal Statement of Abdallah Andraous, para. 38.

[67] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016.

[68] **Exhibit C-048-DUT**, Letter from the CBCS to the Ennia Insurance Companies dated 3 July 2018.

[69] **Annex I,** Personal Statement of Abdallah Andraous, para. 43.

[70] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018.

[71] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 1.

equity before and after restructuring for Ennia Leven, Schade and Zorg. In summary, it stipulated that:

(i) BDC would return assets worth ANG 300 million to Ennia Leven via Ennia Caribe Holding, acquiring shares of SunResorts;[72]

(ii) BDC and Ennia Caribe Leven (Aruba) would be sold to Ennia Leven, and Ennia Caribe Holding would sell BDC and the Aruba operations to Ennia Leven at net equity value of ANG 325 million for BDC and ANG 45 million for the Aruba operations. The purchase amounts would be offset with amounts due from Ennia Caribe Holding and Ennia Leven;[73]

(iii) EC Investments would return the principal amount used for the acquisition of S&S;[74]

(iv) EC Investments would transfer the proceeds of the remaining oil rigs (USD 12 million) to Ennia Leven;[75]

(v) EC Investments would transfer the repayment of the S&S real estate loan (USD 12.51 million) to Ennia Leven;[76]

(vi) The amount of ANG 186 million would be distributed and offset by amounts due from Ennia Caribe Holding. The equity of Ennia Leven, but also the amounts due from Ennia Caribe Holding to Ennia Leven would be reduced by ANG 186 million;

(vii) The related interest owed on above distributions and on the SunResorts transaction(s) in the amount of ANG 215 million would also be reversed, i.e. distributed from Ennia Leven equity and offset with amounts due from Ennia Caribe Holding. The equity of Ennia Leven and the amounts due from Ennia Caribe Holding to Ennia Leven would be reduced by ANG 215 million.[77]

41. The result of these actions was that:

(i) Ennia Leven would be the 100% shareholder of BDC;

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[72] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 1.

[73] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 1.

[74] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, pp 1-2.

[75] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 2.

[76] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 2.

[77] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 2.

(ii) BDC would own ANG 300 million worth of SunResorts shares;

(iii) BDC would distribute the ANG 300 million worth of SunResorts shares to its parent Ennia Leven, effectively creating a deficit in BDC equity of ANG 125 million;

(iv) Ennia Leven would deposit the required ANG 125 million as equity in BDC in admissible assets;

(v) the equity deficit in Ennia Leven of the distribution (ANG 186 million) and related interest (ANG 215 million) would result in a total deficit in Ennia Leven of ANG 312 million which would be deposited in admissible assets, making sure that the affiliated balances due to Ennia Leven in the amount of ANG 1.322 million would have been repaid in full and the Ennia Insurance Companies would be compliant.[78]

42. Simply put, upon repayment of related-party receivables covered by the assets of EC Holding and EC Investments in New York, Ennia would move BDC and/or a portion of SunResorts to be held by one of the Ennia Insurance Companies, in a cashless restructuring that did not require the sale of any assets. To recall, as a matter of fact and law, these companies were not and therefore should not have been the subject of the Emergency Declaration in the first place.[79] Upon completion of the Restructuring Agreement, Ennia would be (again) in compliance with the new regulatory laws for the benefit of all stakeholders, including the U.S. shareholders. Thus, Ennia tried to mitigate the effects of the CBCS's supervision: if all the affiliated balances, including interest due to Ennia Leven, were repaid in full, the issue (as created by the CBCS) would have been solved.[80]

43. While the CBCS announced that it would implement the Restructuring Agreement,[81] it did not sign nor execute it as agreed: it changed the ownership structure of Ennia, but did not proceed to the corollary elimination of intercompany receivables. The transfer of the USD

[78] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 2.

[79] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation), p 1 ("the investment entity, … is not under the supervision of the Central Bank"), and p 3 ("[a] key point in this is also that we have not requested the emergency measure only for the three companies of Ennia, we have also requested it for the holding and for the investment company, precisely because these were the key for us to be able to restructure the group a lot faster."). See also **Exhibit C-011,** 'Sun Resorts Lien Follows Ennia Emergency Ruling' (The Daily Herald, 9 July 2018), available at: https://www.thedailyherald.sx/islands/n-sun-resorts-lien-follows-ennia-emergency-ruling (demonstrating that although [redacted] knew that BDC was a separately managed entity acquired by Parman before they purchased their interests in the Ennia Group and did not fall under the emergency measure, he intended to utilise the Emergency Declaration to "exert indirect influence on BDC").

[80] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 3.

[81] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation).

280 million cash and shares from EC Investments to Ennia Leven[82] should have sufficed to return the companies to regulatory compliance, so that there was no need to sell BDC (see Section II.G).[83] Parman's request to enter into negotiations with a view to (again) agreeing a restructuring of the Ennia group was not granted by the Court.[84]

44. Later, in its judgment of 31 January 2019, the Court made clear that the Ennia Insurance Companies did not meet the solvability requirements imposed by the CBCS in 2015 *exactly* because they were dependent on intercompany receivables from EC Investments and Ennia Holding.[85] Moreover, this finding was made without the benefit of a solvency calculation, underscoring once more the arbitrariness in the conduct of the CBCS.

## D. The Takeover of Ennia

45. As stated above,[86] despite the existence of the Restructuring Agreement, merely two months later – and well before the end of the Grace Period – the CBCS revoked the licences of the Ennia Caribe Leven, Schade and Zorg and requested the declaration of emergency measures by the Court.[87] The latter not only for the Ennia Insurance Companies, but also for EC Investments and Ennia Caribe Holding, two non-regulated entities of the Ennia group.[88] It also requested the Court to make ANG 500,000 (ca. USD 275,000) from Ennia's funds available to carry out the emergency measures.[89]

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[82] As ordered by the New York courts: **Exhibit C-049**, Order of the Bankruptcy Court for the Southern District of New York dated 29 January 2019.

[83] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018, p 4.

[84] **Exhibit C-016**, Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation), para. 3.1.b), 5.1.

[85] **Exhibit C-016** Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation), para. 4.8-4.9.

[86] See paragraph 43.

[87] **Exhibit C-048-DUT**, Letter from the CBCS to the Ennia Insurance Companies dated 3 July 2018; **Exhibit C-050**, Request for emergency measures dated 3 July 2018; **Exhibit CLA-002**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Art. 60.

[88] **Exhibit C-050**, Request for emergency measures dated 3 July 2018; **Annex I**, Personal Statement of Abdallah Andraous, para. 40.

[89] **Exhibit C-013**, Curaçao Court of First Instance, *Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al.*, Judgment of 4 July 2018, ECLI:NL:OGEAC:2018:160 (translation), para. 3.13; **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 6.

46. The CBCS did so under the pretext that it needed to restructure Ennia in order to restore its solvency, which was only worsening further.[90] According to the CBCS "this would only be possible if it dismantle[d] the [...] structure and [took] control of the underlying assets of the insurance company".[91]

47. The Court issued the Emergency Declaration on 4 July 2018. For a correct interpretation of the facts leading to the Emergency Declaration, the following needs to be highlighted:

    (i) The Emergency Declaration was issued in an expedited manner – only a few hours after the CBCS had requested it – with no corroborated facts or evidence. In particular, no calculation of solvency or audited financial statements were submitted to the Court.[92]

    (ii) The CBCS used the heaviest tool in the National Ordinance on Supervision of the Insurance Industry (*Landsverordening Verzekeringsbedijf*, the "LTV") and did not opt for less draconian measures, such as penalty payment.[93]

    (iii) Ennia's management was given only a few hours to get a lawyer to respond to the Court and prepare its defence. Moreover, it occurred when Claimant was not present in Curaçao as he had travel to Paris to take care of his wife whose cancer had resurfaced.[94]

    (iv) An emergency declaration is not subject to appeal under the laws of Curaçao (limiting the supervising role of the courts to cost issues).[95] The Ennia Insurance Companies did have the possibility to appeal the revocation of the licences, which they did. However, this was to no avail since the Court decided, as requested by the

[90] **Exhibit C-050**, Request for emergency measures dated 3 July 2018. It must be noted that, during the amicable negotiations under the BIT, Respondent suggested that the alleged solvency deficit has *increased* since the Emergency Declaration. This despite the transfer of USD 280 million (see paragraph 43 above). When Claimant subsequently questioned the CBCS's management skills, Respondent sufficed by stating that inactive investments simply decrease in value.

[91] **Exhibit C-012-DUT**, Letter from [redacted] to CBCS dated 11 November 2019, p 2.

[92] **Annex I**, Personal Statement of Abdallah Andraous, para. 44.

[93] **Exhibit CLA-002**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Art. 51-54.

[94] **Annex I**, Personal Statement of Abdallah Andraous, para. 41.

[95] Email from the Judge to the CBCS dated 19 July 2016 as cited in **Exhibit C-012-DUT**, Letter from [redacted] to CBCS dated 11 November 2019, p 6.

CBCS, to immediately enforce the Emergency Declaration.[96] This left Ennia without any legal protection.[97]

(v) The emergency measures were declared despite the fact that Ennia had filed an appeal against the withdrawal of the licences of the Ennia Insurance Companies, which decision was still pending. The Court, without examining the merits of that appeal, simply decided that "it [was] not plausible that the trial court w[ould] find that CBCS acted unlawfully by making the application under Article 60 (1) LTV".[98]

(vi) While the CBCS requested ANG 500,000 (USD 275,000) in fees to carry out the emergency measures,[99] the Court initially approved only ANG 100,000 (USD 55,000).[100] However, until today, the CBCS has likely spent over USD 30 million in legal fees, all taken from Ennia's funds.[101]

(vii) As stated above, the CBCS saddled Ennia with the emergency arrangement at a time when the previously granted three-year period had not yet expired.[102] This was contrary to the assurances given by the CBCS that there was no relevant change of circumstances justifying the CBCS's decision to act itself rather than allow Parman to implement the Restructuring Agreement.[103]

(viii) Indeed, the CBCS requested the emergency measures while consultations with the Ennia group were still ongoing. In fact, on 22 June 2018, an Investment Management Agreement was signed by [redacted] member of the Supervisory Board of

[96] **Exhibit C-013**, Curaçao Court of First Instance, *Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al.*, Judgment of 4 July 2018, ECLI:NL:OGEAC:2018:160 (translation), para. 4.1-4.3.

[97] **Annex I**, Personal Statement of Abdallah Andraous, para. 42.

[98] **Exhibit C-013**, Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation), para. 4.19; **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.53.

[99] See paragraph 45 above; **Exhibit C-013**, Curaçao Court of First Instance, *Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al.*, Judgment of 4 July 2018, ECLI:NL:OGEAC:2018:160 (translation), para. 3.13; **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 6.

[100] **Exhibit C-013**, Curaçao Court of First Instance, *Central Bank of Curaçao and St Maarten v ENNIA Caribe Holding N.V. et al.*, Judgment of 4 July 2018, ECLI:NL:OGEAC:2018:160 (translation), para. 3.14; **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 6.

[101] **Annex I**, Personal Statement of Abdallah Andraous, para. 46; **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 7 (noting legal expenses of ANG 8 million at the time of writing).

[102] See paragraph 33 above; **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016.

[103] See paragraph 40-42 above; **Exhibit C-009**, Restructuring Agreement dated 31 May 2018.

Ennia Holding, Claimant on behalf of EC Investments, and Mr. Ansary on behalf of S&S, which *inter alia* stated:

1. *[The successor of S&S] will accept and manage the investment of US$250 million, of which US$100 million of [EC Investments] funds be transferred now and the balance at later dates.*

2. *[The successor of S&S] guarantees a return on investment of funds deposited with it of 6.5% per annum from the date of the receipt of each tranche by [S&S], such guaranteed return to be payable semi-annually.*[104]

(ix) The CBCS requested the emergency measures partly on the basis that an amount of USD 100 million had been transferred to a company that was separate from the Ennia group but controlled by the shareholder (Parman Enterprises LLC). This deposit with S&S's successor bearing interest of over 6% per annum did provide Ennia and its policyholders with benefits; to wit, at that time, and because of the sale of S&S, Ennia had over USD 300 million in cash in its bank accounts, and the interest rate on deposits was around 0.5% per annum with no possibility of investing such amount locally.[105]

According to the CBCS this meant that a substantial amount had been taken beyond the reach of Ennia Insurance Companies and therefore there was a need to prevent a similar transaction from happening again in the future. However, the truth is the CBCS had approved such transaction. In any case, a couple of weeks later, this deposit was voluntarily returned to Ennia. While all this information was provided to the Court, the judge decided to ignore these facts and dismissed them.[106]

(x) Neither the Ennia Insurance Companies nor the Claimant did have access to the records of the Ennia group, nor to the correspondence from and to the Ennia group when the request was filed by the CBCS. This included, for instance, information on all minutes of meetings and resolutions of the Supervisory Boards of Ennia Holding and BDC between 2006 and 2018, as well as complete financial statements and annual reports and accounts. As a result, the Ennia Insurance Companies could not adequately defend themselves against the allegations made by the CBCS (both in the

[104] **Exhibit C-051**, Investment Management Agreement dated 22 June 2018.

[105] The maximum allowed investment in the bank and insurance sector in the Dutch Caribbean at the time was ca. USD 50 million/year.

[106] **Exhibit C-013**, Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation), para. 4.14.

proceedings relating to the emergency measures itself as the liability case, on which see *infra* Section II.F).[107]

This concern persists until today.[108] At no point, any calculation substantiating the claim of insolvency has been made public. This despite Curaçao law and a U.S. court order.[109] In addition, no audited financial statement can be made, as the CBCS has not appointed a supervisory board (as required by Book 2 of the civil code of Curaçao), which would be authorised to approve financial statements.[110] Further evidence, in particular audited statements for the years 2017-2022, is needed in order to prove that the company was insolvent.[111]

The reluctance of the CBCS to disclose relevant information has been criticised by others. As stated in a letter by [redacted] (the then President of the Ennia Leven's Board of Supervisory Directors), in an effort to conceal its personal enrichment and to justify its continued exercise of control over Ennia, the CBCS did not share financial statements, shareholder resolutions or decisions since the Emergency Declaration, leaving shareholders and Ennia's directors completely in the dark.[112] In particular, with regard to the CBCS's secrecy, [redacted] contended that:

a) "no clarity is given regarding the status of th[e] [situation]",[113] that "since October 2018 no information has been provided by the CBCS regarding the operating companies",[114] and that the CBCS "never participated in a meeting of the [Board of Supervisory Directors]",

[107] Ultimately, the Court, in a judgment of 18 January 2021, ordered the CBCS to produce certain documents (**Exhibit C-017**, Curaçao Court of First Instance, *ENNIA Caribe Holding N.V. et al. v Hushang Ansary et al.*, Judgment of 18 January 2021, Case No. CUR201903842/3843/3796/3844/3845/3846 (translation)).

[108] See footnote 1 and 5 above.

[109] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 5.

[110] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 4, 6.

[111] In March 2023, the CBCS presented to the Court of Appeal a set of draft (unsigned) financial statements, which still do not prove the existence of insolvency.

[112] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 7; **Annex I**, Personal Statement of Abdallah Andraous, para. 52. At the time of writing, for Curaçao, these statements were also not published on Ennia's website, edited by the CBCS: **Exhibit C-018**, Ennia, Financial Highlights, available at https://www.ennia.com/en/about-ennia/financial-highlights/.

[113] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 3.

[114] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 5.

which made it easier for them to avoid providing explanations to the Board.[115]

b) the expenses for the emergency measures – to be paid out of Ennia Leven's funds[116] – had not been communicated to or approved by the Board of Supervisory Directors and surpassed the amounts as determined by the Court "significantly" (at the time of writing the letter already at ANG 8,000,000 while the Court had set the amount to be spend on emergency measures at ANG 100,000).[117]

[redacted] concluded that "the way the CBCS discharges its responsibilities as Managing Director in the operating companies is not in accordance with the [Civil Code]" as these require to inform the Board of Supervisory Directors of the strategies and policies for the operating companies.[118]

[redacted] was fired by the CBCS shortly after writing this letter.[119]

48. As a result of the Emergency Declaration, one day later, on 5 July 2018, the CBCS appointed itself as the director of Ennia (the "**Takeover**"). Once in control, the CBCS withdrew Ennia's appeal against the revocation of the insurance licences. Since the Takeover, the CBCS has been acting as the managing director, the shareholder and the regulator of the companies.

49. The same day, the CBCS's then-acting President, [redacted] explained in a press conference that the Ennia group would be restructured as a means to ensure that it complied with the solvency rules.[120] According to [redacted] this would be done in a manner that "w[ould] not hamper the continuity of [Ennia's] entities".[121] Moreover, [redacted] stressed that "what [was] being discussed [was] not *at all* the payment of pensions, nor the fact that when one has a policy and suffers damage or has medical expenses that these are

[115] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 5.

[116] See paragraph 45 above; **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 7.

[117] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, pp 6-7; **Annex I**, Personal Statement of Abdallah Andraous, para. 52(3).

[118] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 5; **Annex I**, Personal Statement of Abdallah Andraous, para. 52(2).

[119] **Annex I**, Personal Statement of Abdallah Andraous, para. 54.

[120] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 1.

[121] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2.

covered".[122] He further added that "Ennia [was] in a position to continue fulfilling its obligations" in that regard.[123]

50. The latter seems to be in immediate contradiction with the basis on which an emergency measures can be declared under Article 60 LTV, that is "when the interest of the collective creditors of the Insurer, of which the licence has been withdrawn, warrant a special measure".[124] If the interests of the collective creditors were safe, why was there an urgency to adopt such an invasive measure against the Ennia Insurance Companies?

51. Despite this incoherence, [redacted] went on to explain that "the conditions existed to create a group of companies that would be solvent again" soon.[125] In fact, only a few days after the Takeover, the CBCS said that "the restructuring of Ennia [was] proceeding smoothly".[126] The fact that today, *almost six years later*, the measure still continues indicates not only that the CBCS has not implemented the Restructuring Agreement – nor indeed any restructuring at all – but that the CBCS was not at the time nor now of the opinion that it must do so within a limited time.[127] This while the Takeover was avowedly for a specific and limited purpose (i.e. the restructuring of the group to bring the insurance companies into regulatory compliance).

52. The CBCS also stated in court (and publicly in a press release) that the emergency control of the Ennia Insurance Companies in 2018 was under the guise of implementing a "very extensive and well thought-out" restructuring developed after careful study over a period of six months,[128] basically "by bringing back into the company, especially into Ennia Caribe Leven, the assets that are located elsewhere, in such a way that the company becomes solvent again."[129] And further that "[the CBCS] do[es] not focus on an emergency measure process that will take years, yet [it is] talking about a much shorter process since [it] believe

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[122] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2 (emphasis added).

[123] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2.

[124] **Exhibit CLA-002**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Art. 60.

[125] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2 ("…Our approach is that this process does not have to become avery long one. Meaning, we do not focus on an emergency measure process that will take years, yetwe are talking about a much shorter process since we believe that the conditions exist to create anEnnia that is solvent again.").

[126] **Exhibit C-011**, 'Sun Resorts Lien Follows Ennia Emergency Ruling' (The Daily Herald, 9 July 2018), available at: https://www.thedailyherald.sx/islands/n-sun-resorts-lien-follows-ennia-emergency-ruling

[127] **Exhibit CLA-002**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Art. 72.

[128] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 3.

[129] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2.

that the conditions exist to create an Ennia that is solvent again."[130] In this sense, restructuring should be a very simple task, being merely a question of re-ordering the ownership of the assets within the group.[131] The truth is, however, that a detailed Restructuring Agreement had already been agreed and set out in May 2018, after several months of negotiations with the CBCS (see *supra* Section II.C).[132] While this plan would have made Ennia solvent according to the contemporary regulations,[133] the CBCS never implemented it. Instead, it decided to take matters in its own hands.

53. All of this points to the conclusion that there was no actual "emergency" in the first place. It also demonstrates a lack of interest in "rapidly" fixing anything and a lack of commitment to return the companies to their shareholders. This leads Claimant to believe that the CBCS, partly to cover Curaçao's own economic losses, is refusing to let go of Ennia's lucrative business because it can earn substantially higher interest rates on its funds than was possible at the time.[134] It is likewise concerning that the CBCS is purportedly seeking to ensure Ennia's solvency by initiating a "civil liability lawsuit against the (ultimate) shareholders and former board members of the Ennia group [...] with the aim to recover as much as possible of the financial damage and solvency shortage" (see *infra* Section II.F).[135]

54. As stated above, on 43, Parman requested the Court to order that the CBCS should enter into consultation with Parman in order to, again, achieve a mutually acceptable restructuring of the Ennia group.[136] These requests were rejected by the Court, which opined that the CBCS was entitled to request the application of the emergency measures also with regard to Ennia Leven.[137]

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[130] **Exhibit C-010**, Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2.

[131] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation) p 2 ("This restructuring implies that all the assets and properties that are in fact owned by Ennia but that are located elsewhere, will re-enter Ennia's balance sheet, and that way the problem will be solved.").

[132] **Exhibit C-009**, Restructuring Agreement dated 31 May 2018; **Annex I**, Personal Statement of Abdallah Andraous, para. 32.

[133] See paragraph 40-42 above.

[134] Notice of Arbitration, para. 29.

[135] **Exhibit C-020**, 'The restructuring of the ENNIA group' (Ennia News, 1 October 2021), available at: https://www.ennia.com/en/about-ennia/news/2021/restructuring/.

[136] See paragraph 43 above.

[137] **Exhibit C-016**, Curaçao Court of First Instance, *Parman International B.V. v Central Bank of Curaçao and St Maarten*, Judgment of 31 January 2019, ECLI:NL:OGEAC:2019:15 (translation).

## E. The Lack of Default

55. The above chronology exposes the failure of process; likewise, as will be shown below, there was no legal or factual reason for the CBCS's draconian behaviour to intervene by way of emergency measures either.

56. As Ennia's Asset Liability Management Study of 2016 (the "**ALM Study**") shows, Ennia has always had strong solvency ratios above those required by applicable law and regulations.[138] As had been confirmed by the DNB in 2015, prior to the Takeover by the CBCS, Ennia's financial standing was sound, and its short term liquidity ratio stood well over 100% for all portfolios,[139] thus ensuring it had sufficient assets to meet the claims of its lenders, shareholders and insured.[140] Ennia had complied with all its obligations in the last four years before the Emergency Declaration.

57. Although the CBCS argues that Ennia did not comply with certain solvency *requirements*, this was due to the change in regulations and horizontal structure imposed by the CBCS in 2009 that created the intercompany accounts in the first place. This does not *ipso facto* mean that the company was *insolvent*.[141] In any case, at no point the CBCS has presented such a solvency calculation.[142]

58. Like any insurance company, the Ennia Insurance Companies have always reinvested policy holder premiums in order to satisfy future long-term liabilities. In fact, at the time of the CBCS's exercise of emergency measures (see *supra* **Section II.D**), EC Investments held approximately USD 280 million (i.e. almost 50% of its balance sheet) in cash and marketable securities at Merrill Lynch in New York (to which the CBCS was later given access by the U.S. courts[143]). In other words, Ennia was in no need of any emergency liquidity assistance when the intervention occurred nor thereafter. Concluding it was insolvent was certainly incorrect.

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[138] **Exhibit C-005**, Asset Liability Management Study 2016.

[139] **Exhibit C-005**, Asset Liability Management Study 2016.

[140] **Exhibit C-005**, Asset Liability Management Study 2016.

[141] By way of an aside, the damages to which the Claimant was condemned by the Curaçao courts do not reflect any alleged insolvability.

[142] See for instance, footnote 1 and paragraph 47 above.

[143] **Exhibit C-049**, Order of the Bankruptcy Court for the Southern District of New York dated 29 January 2019.

59. It must be recalled that Article 60(1) LTV only allows for the Court to impose an emergency measure "when the interest of the collective creditors of the Insurer" is at risk.[144] One can never intervene in a company when there is no solvency problem.[145] In this case, there was never a danger of imminent, real and substantial harm to assets of the creditors, including the insured – the 2,500 pension holders have always been paid their pension – and therefore no justification for denying the Claimant's basic due process rights. Apart from two policy holders (in accordance with the Emergency Declaration), all creditors and policy holders have been paid on time. Indeed, this was confirmed by [redacted] in the press statement announcing the emergency measures.[146]

60. Even if, *arguendo*, there was an issue of solvency, that is a long-term problem that could have been resolved – in particular through the Restructuring Agreement.[147] Regulatory authorities faced with a financial institution whose underlying solvency is uncertain must make a series of decisions, including how and when to intervene. Although it said it did, the CBCS failed to conduct the necessary study to calibrate its intervention. Empirical evidence demonstrates that it is often optimal to delay intervention in financial institutions, as it increases the chance that information appears that reveals actual (in)solvency.[148] This shows that there were other policy options available to the CBCS which would have addressed any legitimate concern, without the need to invoke the emergency powers.[149]

61. Despite it being unnecessary, the "emergency" intervention has lasted for almost six years. After merely one year, it attracted the attention of the International Monetary Fund, which stressed that "[t]o strengthen the insurance sector, the authorities should design a strategy

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[144] See paragraph 50 above; **Exhibit CLA-002**, National Ordinance No 77 of 1999 containing Regulations concerning the Supervision of the Insurance Industry, Art. 60.

[145] **Exhibit CLA-061,** Tobias Asser, *Legal Aspects of Regulatory Treatment of Banks in Distress* (IMF, 2001) 6.

[146] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation), p 2 ("it is also important that we stress that what is being discussed is not at all the payment of pensions, nor the fact that when one has a policy and suffers damage or has medical expenses that these are covered. None of this is a point of discussion at this time, Ennia is in a position to continue fulfilling its obligations."). Moreover, that the financial health of Ennia is perfectly sound at this moment is also evidenced by the many anthropological causes the company supports, including the career of Curaçao's first ever Olympic athlete (**Exhibit C-014**, Ennia, 'Terrence Agard Sponsored by ENNIA until the 2024 Olympic Games' (27 February 2022), available at: https://www.ennia.com/en/about-ennia/news/2022/terrence-agard-sponsored-by-enniauntil-the-2024-olympic-games/).

[147] See paragraph 40-42 above; **Exhibit C-009**, Restructuring Agreement dated 31 May 2018.

[148] **Exhibit CLA-003**, Philipp Koenig, Paul Mayer and David Pothier, 'Optimal Timing of Policy Interventions in Troubled Banks', Deutsche Bundesbank Discussion Paper No. 10/2022.

[149] See paragraph 47 above.

for Ennia's successful exit from the CBCS's special administration regime."[150] In the same year, the Court encouraged the parties to seek an out-of-court settlement through mediation.[151] Despite the advice, no steps have been taken by the CBCS to return the assets to the Ennia Insurance Companies.

62. Finally, already on 11 November 2019, [redacted] had "learned from the proxyholders that [the] CBCS ha[d] indicated a while ago that the emergency measure could be terminated for [Ennia Schade] and [Ennia Zorg], however the termination never happened."[152] In particular, the Board of Supervisory Directors "learned that the current *status quo* is maintained to obtain a better position in the liability cases against the previous management, supervisory board and shareholder[s]."[153] In 2021, this situation was confirmed, but it was not until 2023 that the CBCS revealed that two of three of the assets of the Ennia Insurance Companies had indeed been restored to regulatory compliance two years ago, in the first quarter of 2021.[154] Thus, as confirmed by a press release, by managing the intercompany balances, solvency was restored to these entities without the need for any additional capital.[155]

## F. The 'Liability Case'

63. On 11 October 2019, the CBCS (in the capacity of Managing Director of Ennia) filed a complaint against Claimant, Mr. Ansary, Mr. Palm, Ms. Nina Ansary, and Mr. Gijsbert Van Doorn, asking the Court to hold them liable for damages to Ennia. At some point it held Claimant liable for a staggering ANG 910 million (ca. USD 500.5 million) in easily the largest amount of damages requested in the Kingdom of the Netherlands for comparable cases.[156]

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[150] **Exhibit C-015**, International Monetary Fund, Article IV Consultation report 2019 (April 2020), para. 31.

[151] Notice of Arbitration, para. 36; **Exhibit C-052-DUT**, Curaçao Court of First Instance, *Ennia et al. v. Husang Ansary et al.*, Judgment of 26 October 2020, para. 2.4.

[152] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 8.

[153] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 8.

[154] **Exhibit-C-053**, Report on the Audit of the Financial Statements 2017 dated 3 September 2021; **Exhibit-C-054,** CBCS, 'Ennia Restructuring Process Update' (Press Release No. 2023-033), 7 October 2023.

[155] **Exhibit C-020**, Ennia, 'The Restructuring of the ENNIA Group (1 October 2021), available at: https://www.ennia.com/en/about-ennia/news/2021/restructuring/ ("Meanwhile, the solvency of ENNIA Caribe Schade NV and ENNIA Caribe Zorg NV is up to par again. These businesses are thus fully able to meet their obligations and are functioning normally. Taking the group-wide approach of the restructuring into account, release of these entities from under the emergency measure is being assessed.").

[156] **Exhibit C-055-DUT**, Seizure dated 1 September 2020; **Annex I**, Personal Statement of Abdallah Andraous, para. 68.

64. While this case is not determinative for these arbitration proceedings,[157] especially since it is still on appeal,[158] and while a duplication of that procedure in this arbitration should be avoided, the case deserves to be briefly discussed as background, not least as it concerns points of contention in this dispute.

65. In summary, the CBCS alleged that (i) S&S was sold at a loss (despite its own instruction to sell it promptly,[159] and its own disastrous sales after the Takeover[160]), (ii) Ennia's assets were spent on salaries, advisors and travel expenses, (iii) there was a solvency deficit – without the CBCS calculating the latter (on which see *supra* Sections II.D and E), and (iv) the value of Mullet Bay was inflated by Parman's shareholders and management (on which see *infra* Section II.H).[161]

66. The Court issued its judgment a mere six weeks later, in which it condemned defendants jointly and severally to ANG 237,233,274 with immediate effect (excluding Mr. Ansary and legal fees).[162] Claimant and the other defendants appealed to the Joint Court of Appeal for Aruba, Curaçao, St Maarten, Bonaire, Sint Eustatius and Saba (the "Court of Appeal"), but only after judges from the Netherlands were flown in to deal with this complicated case, proceedings continued.[163] The Court of Appeal drastically lowered the amount of damages, to ANG 568,750 (with ANG 117 million deferred to a separate procedure),[164] dismissing the claims against one defendant entirely following her claims against the CBCS in the U.S. courts.[165]

67. While noting that S&S was sold at a loss – not surprisingly since it used the average between a 2016 valuation by PricewaterhouseCoopers and an inflated valuation by Ennia's CFO with

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[157] See Response to Application for Security for Costs, paras. 22-26; Rejoinder to Response to Application for Security for Costs, paras. 3-5 (arguing that the entire regime of investment arbitration would be a hollow shell if held otherwise) (despite Respondent extolling the findings of its own courts as "the best possible evidence" of Claimant's alleged "unlawful" conduct: Reply to Response to Application for Security for Costs, paras. 29 et seq.).

[158] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 13-14.

[159] See paragraph 33 above.

[160] See Section II.G below.

[161] Annex I, Personal Statement of Abdallah Andraous, para. 68.

[162] Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 6.1-6.7.

[163] Annex I, Personal Statement of Abdallah Andraous, para. 69.

[164] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 10.27, 10.63, 12.76(b).

[165] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 13.3; Exhibit C-033, *Nina Ansary v. Central Bank of Curaçao and Sint Maarten*, Complaint filed in the US Federal Court for the District of Columbia (17 January 2023).

no experience in the oil and energy sector –,[166] it also questioned the conversion of S&S equity into a debt,[167] and referred the matter to separate proceedings.[168] Most notably, the Court of Appeal asked for a new appraisal of Mullet Bay to find out if the value would explain certain management decisions.[169]

68. After the judgment of the Court of Appeal, the CBCS (on behalf of Ennia) asked for leave to appeal to the Dutch Supreme Court in the Hague and withdraw its request for a new appraisal of Mullet Bay. The Court of Appeal refused both: it ordered to continue the proceedings in Curaçao,[170] and will choose a new appraiser[171] (and this likely tomorrow, 23 February 2024).

## G. The Sale of Certain Stocks and Banco di Caribe

69. Once in charge of Ennia, the CBCS made several bad business judgments, which decreased the companies' assets.

70. First, the CBCS decided to sell certain stocks the company held in its investment portfolio. On 31 July 2008, i.e. not long after the Takeover, Ennia held stocks for a total value of USD 144,909,244, which can be broken down as follows:

    (i) Kirby Corp Com (KEX) (1,047,091 shares at USD 83.45/share);

    (ii) Nabors Industries Ltd (NBR) (3,000,000 shares at USD 5.98/share);

    (iii) Snap Inc CL A (SNAP) (1,000,000 shares at USD 12.50/share); and

    (iv) Twitter Inc (TWTR) (850,000 shares at USD 31.87/share).[172]

71. By 31 August 2021, however, only 600,000 shares of Kirby Corp Com (KEX) and 60,000 of Nabors Industries Ltd (NBR) remained.[173] The other stocks had been sold at inopportune

[166] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 10.27, 10.31-10.33.

[167] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.55-3.72.

[168] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 13.2.

[169] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 11.26-11.73.

[170] **Exhibit C-056-DUT**, Email from the Curaçao Court of Appeal dated 3 November 2023; **Annex I**, Personal Statement of Abdallah Andraous, para. 70.

[171] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.74; **Annex I**, Personal Statement of Abdallah Andraous, para. 70.

[172] **Exhibit C-057**, Overview Stock Portfolio (2018-2021).

[173] **Exhibit C-057**, Overview Stock Portfolio (2018-2021).

times. The price of both Snap and Twitter increased significantly after the sale. The only stock that should have been sold, Nabors Industries (at over USD 362 per share then), was kept in the portfolio. At no stage was a third-party expert used.[174] The result of this and other decisions is that the CBCS continues to operate Ennia with loss or almost no return on investment. This is not surprising, as the CBCS operates with huge losses itself, which causes doubts about its capability to lead Ennia.[175]

72. Second, the CBCS was of the opinion that, to bring Ennia into regulatory compliance, it had to eject its banking operation, Banco di Caribe. This despite Ennia having demonstrated that BDC was solvent, and reported a profit of on average ANG 21,781,000 per year (2011-2018).[176] However, even if it is argued that the sale was necessary to bring the Ennia Insurance Companies into regulatory compliance (*quod non*), the CBCS sold BDC (i) at a price *below* what the *same purchaser* had offered *in the past* (ii) without a proper marketing process, (iii) at the wrong time, and (iv) to an *unsuitable* purchaser (whether or not for private or public gain).

73. In June 2022, the CBCS orchestrated the sale of BDC to United Group Holdings BV, owned by [redacted], a local businessmen with strong ties to [redacted][177] for ANG 120 million (ca. USD 66 million), *i.e. ANG 60 million below the bank's book value* (ANG 180 million).[178]

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[174] See also **Annex I,** Personal Statement of Abdallah Andraous, para. 55.

[175] **Exhibit C-058**, CBCS, Profit and Loss Statement (2022) (noting a total of realised and unrealised losses of ANG 59.2 million in 2021 and ANG 64.7 million in 2022, and using its own gold reserves – which cannot be realised when not sold – as a fictitious gain); **Exhibit C-059**, CBCS, 'CBCS Publishes Annual Report 2021: Centrale Bank van Curaçao en Sint Maarten ends 2021 with approximately NAf 2.9 million loss' (Press Release No. 2022-021), 31 May 2022 (ending 2021 with approximately an ANG 2.9 million loss, *inter alia* admitting that the realised gain on gold was because of selling and buying gold on the same day).

[176] **Exhibit C-060**, BDC Consolidated Financial Statements (2012); **Exhibit C-061**, BDC Consolidated Financial Statements (2013); **Exhibit C-062**, BDC Consolidated Financial Statements (2015); **Exhibit C-063**, BDC Consolidated Financial Statements (2017); **Exhibit C-064**, BDC Consolidated Financial Statements (2018); **Annex I,** Personal Statement of Abdallah Andraous, para. 58.

[177] See, for example, **Exhibit C-021**, 'United Group Buys BDC' (St. Maarten News, 18 September 2021), available at: https://stmaartennews.com/banking/united-group-buys-banco-di-caribe/ (stating that he is the "uncrowned king of the largest offshore online gambling and money laundering network in the world", and that he was subject to a Dutch parliamentary inquiry in 2017 following his appearance in the Panama Papers); **Exhibit C-022**, 'The Gambling Sector Rules in Curaçao' (Curaçao Chronicle, 25 May 2022), available at: https://www.curacaochronicle.com/post/main/research-platform-investico-the-gambling-sector-rules-in-curacao. These concerns about BDC's new owner also led ING, a venerable Dutch multinational bank, to stop serving as its long-time correspondent bank for international transactions (**Exhibit C-023**, BDC, 'New Correspondent Bank for Euro and GBP Transfers').

[178] See, for example, **Exhibit C-024**, 'BDC Sale is Difficult' (Curaçao Chronicle, 29 September 2021), available at: https://www.curacaochronicle.com/post/local/banco-di-caribe-sale-is-difficult/. Concerns about [redacted] were also shared by the Central Bank of Aruba, another important stakeholder of BDC: it outright vetoed [redacted] as the

This after taking out its cash and cash equivalent amounting to ANG 175 million (with which it could thus have paid ANG 355 million of the intercompany debt).[179] The sale was surprising, considering that the CBCS had blocked Ennia's planned sale *for ANG 180 million* to the *same* [redacted] on the basis that he was not a suitable and trustworthy buyer.[180] To make matters worse, [redacted] latter indicated he could not transfer the funds, whereafter the Curaçao General Pension Fund (*Algemeen Pensioenfonds*, the "**APC**") granted him a loan (after intervention by the CBCS).[181]

74. It is true that not everyone at the CBCS was in favour of this decision. Liquidation of this profitable long-term investment asset, especially during the most inopportune time for a sale (a pandemic followed by a recession), seemed even a bridge too far for the CBCS's leadership. Ultimately, however, the DNB stepped to side with [redacted] over his superiors to push the sale to proceed.[182] Indeed, there are strong indications that the latter – having strong ties to [redacted] and about to leave the CBCS for a position at BDC – was responsible for the sale.[183]

75. The sale was done despite Ennia's Articles of Incorporation, which state that a shareholder resolution by Priority Shareholder A (i.e. Parman) was needed to sell any assets of ENNIA

ultimate owner of BDC's Aruba subsidiary. As a result, BDC had to quickly sell off at a further-depressed price its Aruba operations.

[179] **Annex I,** Personal Statement of Abdallah Andraous, para. 56.

[180] **Annex I,** Personal Statement of Abdallah Andraous, para. 56.

[181] **Annex I,** Personal Statement of Abdallah Andraous, para. 56.

[182] **Exhibit C-024**, 'BDC Sale is Difficult' (Curaçao Chronicle, 29 September 2021), available at: https://www.curacaochronicle.com/post/local/banco-di-caribe-sale-is-difficult/ (" [I]t seems that 'a game' is being played about the selling price. Insiders from the financial sector estimate the current book value of Banco di Caribe at around 180 million, nevertheless the agreed price for Banco di Caribe would be only 120 million. Financial experts do not understand the price difference and are now also questioning the role of CBCS. CBCS is the selling party, but nevertheless it seems as if CBCS is helping the buyer. In addition, CBCS itself has two warring groups. One group absolutely does not want to sell Banco di Caribe and certainly not at such a ridiculously low price, while the other group is actually in favor of the sale. The financial sector wonders what 'favor' is granted after the sale.").

[183] **Exhibit C-033**, *Nina Ansary v. Central Bank of Curaçao and Sint Maarten*, Complaint filed in the US Federal Court for the District of Columbia (17 January 2023) para. 21, 25, 27, 36, 81, 106-114; **Annex I,** Personal Statement of Abdallah Andraous, para. 58.

Caribe Holding, the sole shareholder of BDC.[184] Indeed, Parman attempted to stop the sale.[185] The CBCS simply decided to ignore these obstacles.[186]

76. In sum, there were no legal, economical or business reasons to effectuate the sale of BDC.[187] In the first place, BDC was not placed under the emergency measures as it was not part of the portfolio of the insurance company.[188] BDC was at all times compliant with all regulations and was very profitable, generating around ANG 21,781,000 of net profit per year.[189] Indeed, when BDC was sold at a loss of ANG 60 million, combined with the loss of net profit of ANG 21.781 million, this created a loss of ANG 81.781 million to Ennia, which should have been included in the audited financial statements for that year (which were not – and still have not been – produced).[190]

## H. The Impending Sale of Mullet Bay

77. Having sold BDC and certain stocks (both at a loss),[191] there are strong indications that the CBCS now intends to sell[192] – or outright expropriate[193] – a piece of property called Mullet Bay ("**Mullet Bay**" or the "**Property**").[194] Mullet Bay is one of the assets of SunResorts,[195] in which EC Investments has a 93.3% shareholding since 2009.[196] For the reasons set out below, a sale would be senseless and disastrous – if not the final blow – to Claimant's

[184] **Exhibit C-065**, Ennia Articles of Incorporation, Art. 8(10).

[185] **Exhibit C-066**, 'Central Bank Shoots down Parma's Objections against the Sale of Banco di Caribe (St Maarten News, 21 September 2021), available at: https://stmaartennews.com/banking/central-bank-shoots-down-parmans-objections-against-the-sale-of-banco-di-caribe/.

[186] **Annex I,** Personal Statement of Abdallah Andraous, para. 57.

[187] **Annex I,** Personal Statement of Abdallah Andraous, para. 58.

[188] See paragraph 42 above.

[189] See paragraph 72 above.

[190] **Annex I,** Personal Statement of Abdallah Andraous, para. 58.

[191] See **Section II.G** above.

[192] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016 (envisaging a sale by 2019); **Exhibit C-067-DUT**, 'Piece of Mullet Bay put up for Sale' (Antilliaans Dagblad, 15 October 2023), available at: https://antilliaansdagblad.com/nieuws-menu/28470-stukje-mullet-bay-te-koop-gezet, as attached to Letter from Claimant to Dutch Ministry of Foreign Affairs (Tribunal copied) dated 16 October 2023.

[193] See paragraph 95 below.

[194] In this Statement of Claim, and previously the Notice of Arbitration, what is referred to as "Mullet Bay" is the actual plot of land owned by SunResorts rather than the toponym given to that part of the Simpson Bay Lagoon.

[195] As is clear from paragraph 78 below, SunResorts also owns 49% of the Towers at Mullet Bay NV.

[196] See paragraph 91 below.

investments because the CBCS intends to sell the Property (i) at a price below fair market value (*at which it could have been sold in the past*[197]), (ii) without a proper marketing process, and (iii) to an unsuitable purchaser (and this whether or not for private or public gain).

78. Mullet Bay is a plot of land in the Lowlands region of St. Maarten of approximately 67.7 hectares (671,117 square meters).[198] Traditionally a golf resort and timeshare location, it was purchased in the 1980s by Mr. Ansary and others.[199] Mullet Bay does *not* include the Towers at Mullet Bay (the "**Towers Hotel**"), which is only for 49% owned by the SunResorts.

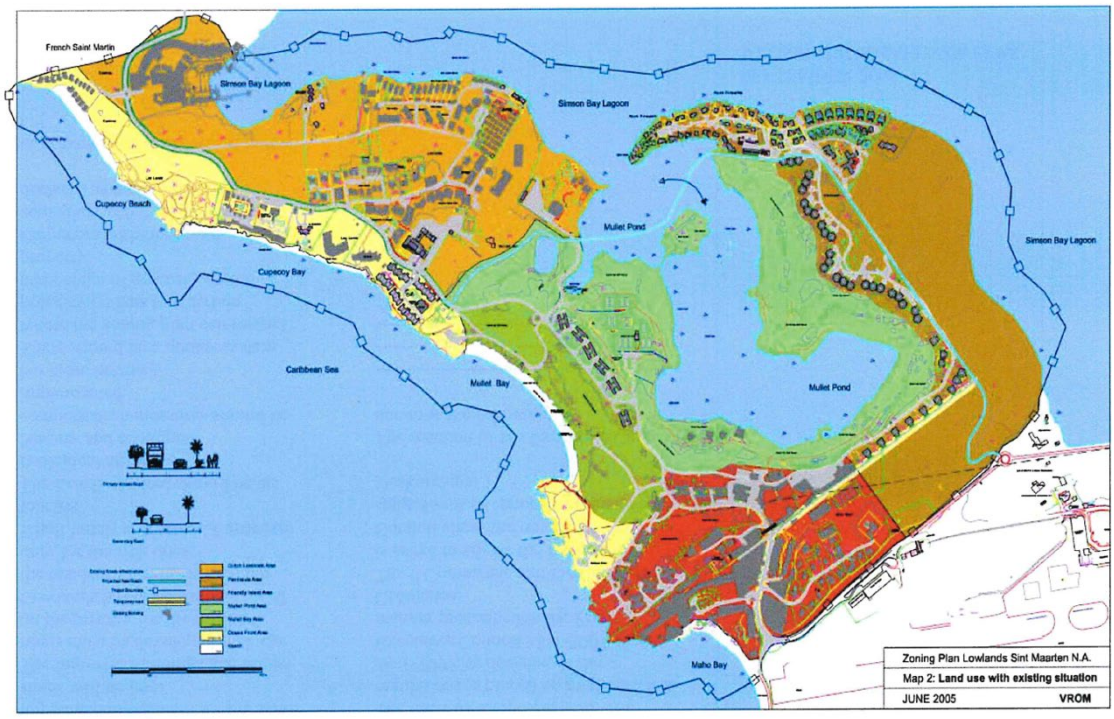


Figure 3: Map of Mullet Bay[200]

[197] See paragraph 73 above.

[198] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.75; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.75.

[199] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.75; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.75.

[200] **Exhibit C-068**, IEB valuation report dated 11 June 2018, p 10.

79. As was made clear in the Notice of Arbitration[201] and in the judgment of the Court of Appeal,[202] the issue regarding Mullet Bay, and thus one of the main points of contention in this dispute, concerns its valuation (and its consequences for a sale, if any). Indeed, it is acknowledged that the alleged solvency deficit described in Section II.E above is necessarily linked to the difference in valuation of Mullet Bay.[203] However, in the opinion of the Court of Appeal, dividend payments – for which it held profit is not necessary[204] – do not necessarily have to be refunded (whether as damages or unjust enrichment), as Mullet Bay could very well have a value similar to what was estimated in the valuation reports.[205]

80. As summarised by the Curaçao courts,[206] several valuation reports have been issued in respect of Mullet Bay. In general, according to the International Financial Reporting Standards (the "IFRS"), a valuation was done every two years, which was thereafter confirmed by the auditors in the financial statements of SunResorts, and then by another auditor in the audited (consolidated) financial statements of the Ennia group.[207] These were provided to the CBCS on a yearly basis, which accepted them until the Takeover in 2018.[208]

    (i) in May 2002, i.e. before the IFRS were adopted, Independent Consulting Engineers NV (thus using a book value rather than fair market value[209]) valued the land and associated facilities at USD 68.3 million, with the land itself at USD 54.7 million (USD 75/$m^2$);

    (ii) in June 2005, after the adoption of the IFRS (now using the fair market value), Mr. David Morrison valued Mullet Bay at USD 242.5 million (USD 337/$m^2$);

[201] Notice of Arbitration, para. 45.

[202] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.9.

[203] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.26.

[204] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.9.

[205] Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 11.26, 12.76(d). See also Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.107 ("the question is not so much what value may ultimately be attributed to Mullet Bay, but whether the defendants could, in view of all the risks, base their decisions to pay out to the shareholders on the (at least) questionable value assessments that were available.").

[206] Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 2.77; Exhibit RL-008-DUTCH, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 3.77.

[207] Annex I, Personal Statement of Abdallah Andraous, footnote 85 (noting that the first accountant, KPMG, resigned by mutual agreement when it had concerns about Mr. Ansary; KPMG was succeeded by Baker Tilly).

[208] Annex I, Personal Statement of Abdallah Andraous, para. 61.

[209] Exhibit CLA-062, International Financial Reporting Standard 13 (Fair Value Measurement).

(iii) in March 2006, [redacted] of Independent Expertise Bureau N.V. ("**IEB**") arrived at a (market) valuation of **USD 250.8 million (USD 365/m²)**;

(iv) on 1 December 2006, IEB appraised Mullet Bay at a market value of **USD 292 million (USD 426.5/m²)**;

(v) on 28 December 2006, IEB appraised Mullet Bay at a market value of **USD 337 million (USD 492.50/m²)**;

(vi) in January 2009, IEB valued Mullet Bay at a market value of **USD 386 million (USD 565/m²)**;

(vii) on 24 October 2011, IEB valued Mullet Bay at **USD 406 million (USD 595/m²)**;

(viii) on 1 December 2014, IEB valued Mullet Bay at **USD 422 million (USD 620/m²)**;

(ix) on 29 September 2016, a draft report issued by CBRE valued Mullet Bay at **USD 35.4 million (USD 53/m²)**;

(x) on 30 November 2016, *Conseils Evaluations Immobilieres* ( "**CEI**") valued Mullet Bay at **USD 436 million (USD 620/m²)**; and

(xi) on 11 June 2018, IEB valued Mullet Bay at **USD 419 million (USD 620/m²)**.

81. *On behalf of the CBCS*, i.e. after the Takeover, two additional valuation reports were issued:

(i) on 27 September 2018, Mullet Bay was valued by Cushman & Wakefield ("**C&W**") at **USD 50 million (USD 75.52/m²)**;[210] and

(ii) on 27 January 2021, Mullet Bay was valued by JLL at **USD 96.4 million**.

82. Several observations have to be made with regard to the last valuations reports:

(i) The CBRE report only seems to concern the Towers Hotel, with the land merely as a possible extension for development;[211]

[210] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018.

[211] **Exhibit C-070**, CBRE valuation report dated 29 September 2016.

(ii) The C&W report appraised Mullet Bay *at a fire sale price*,[212] "[did] not perform[] an internal and external inspection of the property",[213] "[did] not guarantee the completeness of the valuation report and its annexes",[214] did not carry out any survey into regulations, provisions and permits,[215] nor any "back testing" to previous appraisals (as it considered its own report as the first appraisal),[216] and is further rife with inconsistent[217] and incorrect statements[218] (which seems to have been the reason to remove it from the docket in the U.S. litigation). Also the Court of Appeal questioned the C&W report, not least because it was succeeded by the JLL report;[219]

(iii) The JLL report was based on a (fictitious) draft restrictive zoning plan;[220]

(iv) Both the C&W and JLL reports were done by experts with no experience in the St. Maarten real estate market;[221] and

(v) Several events, not least Hurricane Irma (2017) and the Covid-19 pandemic (2020-2022), were respectively not addressed in the C&W and JLL reports. Although this limitation was raised before the Court of First Instance, the latter likewise did not consider these facts.

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[212] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 2 ("possible forced sale"); **Annex I,** Personal Statement of Abdallah Andraous, para. 61 (noting that, on St. Maarten, it is difficult to have dinner for that price).

[213] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 28.

[214] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 28.

[215] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 6.

[216] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 7.

[217] See, for example, **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, pp 5 (relying on the comparative value and then ignoring all comparative sales mentioned), 18 et seq. (listing several "less attractive" comparable properties at a higher sale price to then arrive at a much lower value for Mullet Bay).

[218] See, for example, **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, pp 10 (stating that the golf course is owned by the Towers at Mullet Bay rather than SunResorts to then measure it using Google Maps rather than the cadastre), 11 (deducting the beach, Mullet Bay Pond, easement rights to apartments purchased by SunResorts from the total surface), 13 (ignoring zoning plans despite the fact that the purchaser of part of Mullet Bay received permits), and 26 ("the absence of a willing buyer", but see paragraph 90 below).

[219] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 12.74 (with regard to Resorts Caribe).

[220] **Exhibit C-071**, JLL valuation report dated 17 January 2021.

[221] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018; **Exhibit C-071**, JLL valuation report dated 17 January 2021 (stating that they have difficulties in appraising the land).

83. While Claimant does not dispute the existence of these valuation reports, he submits that it is not surprising that they are considerably lower than the earlier valuations. The CBCS is of the opinion that the value of the Property is much lower than the fair market value (at which price the Property could have easily been sold in the past[222]). Disregarded by the Court of First Instance, the Court of Appeal held that the fair market value should be used.[223] The CBCS argues that Mullet Bay is valued artificially high and that the plot represents too much of the assets in Ennia, i.e. that the "concentration risk" is too high.[224] To be sure, there is no regulation of concentration risk in Curaçao,[225] and, as recognised by the Court of Appeal, this argument says nothing about the *value* of Mullet Bay.[226]

84. What the discrepancy between valuation reports *does* demonstrate – with even the JLL report indicating a value almost twice as high as the C&W report, and almost three times the CBRE estimate[227] – is that it is not straightforward to calculate the market value of Mullet Bay. This is partly due to the fact that the real estate market on St. Maarten is not simple, nor extremely transparent.[228]

85. It is beyond doubt, however, that land is a valuable resource on St. Maarten (the Dutch part only being 34 square kilometres).[229] Properties in the immediate surroundings of Mullet Bay (Lowlands) have been sold for amounts easily surpassing the USD 500 mark.[230] In fact, in 2017, SunResorts had sold a piece of Mullet Bay, 9,674 $m^2$ at about USD 600/$m^2$ to a French

[222] See paragraph 86 below.

[223] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.8.

[224] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.101; **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 3.75-3.81.

[225] Notice of Arbitration, para. 20.

[226] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.26.

[227] The valuation by CBRE was clearly an anomaly and concerned the *buildings* on Mullet Bay (the "Towers at Mullet Bay"). Moreover, it is full of factual errors, not least on a fact so simple as the geographical location of the Property in its "neighborhood analysis", in which it situated the Caribbean Sea in the east and Simpson Bay in the west (instead of the other way around) (**Exhibit C-070**, CBRE valuation report dated 29 September 2016, pp 22-23).

[228] This in contrast to the French side of the island ("**Saint-Martin**"), where official data are collected by *la Chambre des Notaires (de la Guadeloupe, de Saint-Barthélémy et de Saint-Martin)* and the Ministry of Finance.

[229] Prices on the (larger) French side of the island are on average EUR 3,821/$m^2$ (over USD 4,100/$m^2$) (**Exhibit C-072-FRA**, 'Prix immobilier au m2 à Saint-Martin (97150)' (ParuVendu) available at: https://www.paruvendu.fr/immobilier/prix-m2/saint-martin-97150/).

[230] See, for example **Exhibit C-073**, Cadastre Lowlands and Simpson Bay (2018)] (listing properties that have been sold for USD 399, USD 490.67, USD 495.65, USD 505.62, USD 626.04, and even *USD 8,184.14* per square meter).

developer.[231] This was not even prime real estate, being situated more inland and not on the beachfront. Even the Court of First Instance – not considering fair market value – suggested that a sale price of USD 638.77/$m^2$ was reasonable.[232]

86. In 2019, during a court hearing in New York, the CBCS suggested that if SunResorts (as represented by Claimant) could negotiate a sale of Mullet Bay at a price close to the IEB valuation reports, it would bring the emergency measures to a close and return Ennia to its lawful owners.[233] As agreed, at all times, the CBCS was kept informed, through progress reports and emails, of all developments concerning these negotiations initiated by Claimant, and was invited to approve key steps – which it did.[234]

87. It did not take long for Claimant to find a suitable third party. Perhaps the most interesting offer at the time came from Meliá Hotels International ("**Melia**") (acting through Sotheby's International Realty), one of the world's leading international hotel groups, offering an "estimated" price of *not less than 750 USD/$m^2$* (for 20 acres, i.e. 80,937.1 square meters), either as an outright sale or a long-term lease.[235] And Melia was not the only interested party.[236] When Claimant informed the CBCS of the possibility of a joint venture,[237] the latter's answer was to go ahead with the negotiations – at no point indicating that a joint venture was not an option.[238]

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[231] **Exhibit C-074**, Deed of Sale dated 30 May 2017.

[232] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 5.142 (calculated as ANG 56,966,000 for 49,000 square meters, or ANG 1,162.57/$m^2$: "The claims. concerning the buy-out of apartment owners by SunResorts and the buy-out of the profit rights of Resorts Caribe for a total of NAf 56,966,000 shall also be dismissed. The payments made by Ennia Investments are (indirectly) offset by the acquisition of approximately 49,000 $m^2$ of land on which the apartments were located, without any further obligations towards the apartment owners and/or Resorts Caribe. In the substantiation by Ennia et al. of this part of its claim, the court sees insufficient leads to conclude that these transactions were clearly unfavourable to Ennia and that the defendants may be seriously blamed for these transactions concluded by Ennia Investments.").

[233] **Annex I,** Personal Statement of Abdallah Andraous, para. 63.

[234] **Annex I,** Personal Statement of Abdallah Andraous, para. 64.

[235] **Exhibit C-075**, Letter from Sotheby's International Realty to Mr. Andraous dated 11 March 2019; **Annex I,** Personal Statement of Abdallah Andraous, para. 63.

[236] **Exhibit C-075**, Letter from Sotheby's International Realty to Mr. Andraous dated 11 March 2019 ("Please note that in addition to the Melia Group, we have another interested party with whom we can follow up with in due course, in the event of your interest").

[237] **Exhibit C-076**, Progress Report dated 18 March 2019.

[238] **Exhibit C-077**, Chain of Emails between [redacted] and [redacted] dated 13 March 2019.

88. However, for some reason, the CBCS abruptly ordered to stop all negotiations with Melia and Sotheby's.[239] As Melia's offer was *ten times* higher than the CBCS's (C&W) estimate,[240] this can only be explained by the fact that (a) the CBCS did not want to acknowledge this and/or the fact that Claimant was more successful in negotiating than the CBCS (and the current directors of SunResorts which it appointed[241]), or (b) it had other plans with the Property.

89. Whatever the reason, the abrupt rejection by the CBCS, rather than any fault on behalf of Claimant or the other directors of Parman, explains why a final letter of intent by Melia has never been received.[242] In an email from 18 March 2019, a week after Sotheby's initial letter and after a meeting with Claimant, Melia stated that it would "start working on [its] proposal while [it] arrange[s] a meeting with [its] Chairman and CEO in Spain when possible".[243] The reason why Claimant did not respond to this email, or Melia's follow-up emails of 8 April and 3 June 2019 (in which it formally invited Claimant to start-up sale negotiations),[244] was because of the CBCS's intervention not to pursue this route.[245]

90. Thus, Melia's 2019 offer (of 750 USD/$m^2$) – and not the 75 USD/$m^2$ as proposed by the 2018 C&W report – is representative of the fair market value of Mullet Bay. As the offer is already 5 years old, it is safe to conclude that, in combination with the sale prices in the cadastre and the sale to the French developer,[246] USD 750/$m^2$ is the *minimum* market value, as prices have undoubtedly increased since.[247] And, after all, this was only Melia's *opening* offer. Such concrete offered prices, and sale of a (less important) piece of the Property, should be more decisive for the *real and fair market value* – a standard wielded by the IFRS[248] – than any valuation report, which is always an opinion and a snapshot in time – and, as can be seen

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[239] **Annex I,** Personal Statement of Abdallah Andraous, para. 64; **Exhibit C-078**, Letter from [redacted] to [redacted] and [redacted] dated 27 March 2019.

[240] See paragraph 81 above.

[241] See paragraph 97 below.

[242] **Exhibit C-078**, Letter from [redacted] to [redacted] and [redacted] dated 27 March 2019, p 2.

[243] **Exhibit C-079**, Chain of emails between Ms. Marina Carrillo Amengual (Melia) and Mr. Andraous, p 3.

[244] **Exhibit C-079**, Chain of emails between Ms. Marina Carrillo Amengual (Melia) and Mr. Andraous, pp 1-2.

[245] **Exhibit C-077**, Letter from [redacted] to [redacted] and [redacted] dated 27 March 2019, p 2.

[246] See paragraph 85 above.

[247] See, for example, **Exhibit C-072-FRA**, 'Prix immobilier au m2 à Saint-Martin (97150)' (ParuVendu) available at: https://www.paruvendu.fr/immobilier/prix-m2/saint-martin-97150/ (reporting a *5.16%* increase in real estate prices in Saint-Martin between 2022 and 2023, and, for the town (i.e. Marigot), an increase of not less than *51.46%* in the last five years).

[248] **Exhibit CLA-062**, International Financial Reporting Standard 13 (Fair Value Measurement).

from the above, can differ significantly.[249] Still, they are in line with the valuations done on behalf of Ennia's original management, and therefore demonstrate that the latter are correct. In particular, it deserves mentioning that the inspection carried out by C&W included several meetings with third parties, *except from* Sotheby's and/or Melia,[250] and was partly based on "the absence of a willing buyer"[251] (*quod non*).

91. Moreover, it must be noted that, while the CBCS resists any valuation of Mullet Bay higher than USD 96.4 million:[252]

(i) The CBCS had recognised that the value of the Mullet Bay shares was ANG 640 million based on the appraisal reports *when it approved* the purchase of 93.3% of the shares (ANG 300 million in 2005 and ANG 340 million in 2009) in SunResorts by EC Investments (financed by BDC) – which was done on the instructions of the CBCS in the first place.[253]

(ii) The CBCS *did accept* the valuation of Mullet Bay at (the conservative) USD 600 per square meter (as per the 2017 sale of part of the land[254]) when it approved the audited financial statements for that year.[255] No devaluation was deemed necessary by the CBCS.[256] Thus, the CBCS effectively claims that the value of Mullet Bay is USD 75 and, *at the same time*, USD 600 per square meter.

(iii) In May 2019, the CBCS used the same valuation used by the original management of Ennia in the preparation of the financial statements of BDC. CBCS used a report prepared under the original management of Ennia, valuing plots held by BDC at ANG 62.5 million, which had been approved by external shareholders, as well as by [redacted] and [redacted] on behalf of the CBCS by way of shareholder resolution.[257] A

[249] See paragraph 80-84 above.

[250] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 12.

[251] **Exhibit C-069**, Cushman & Wakefield valuation report dated 27 September 2018, p 26.

[252] See paragraph 81 above.

[253] See Section H above.

[254] See paragraph 85 above.

[255] **Exhibit C-080**, Ennia Caribe Holding NV Financial Statements (2017); **Annex I,** Personal Statement of Abdallah Andraous, para. 65.

[256] **Exhibit C-080**, Ennia Caribe Holding NV Financial Statements (2017); **Annex I,** Personal Statement of Abdallah Andraous, para. 65.

[257] See **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, para. 97.

dividend distribution of approximately ANG 62.5 million was made by BDC to Ennia, i.e. the one share that BDC holds in Resorts Caribe BV.

92. In other words, the CBCS uses a low valuation of Mullet Bay when it justifies its supervision for an alleged solvability deficit, and a valuation of over USD 400 million when it wants to sell BDC.[258] These observations demonstrate the CBCS's continuous change of opinion and misplaced insistence on a below USD 100 million valuation.

93. As stated above,[259] unlike the Court of First Instance,[260] the Court of Appeal did not follow the CBCS blindly and, aware of the difference in valuations, held that a new valuation should clarify the value of Mullet Bay.[261] Although the Court of Appeal seems to question the IEB valuations for their summary nature,[262] this does not negate the fact that there *has* been a valuation of Mullet Bay (not once, not twice, but not less than 11 times), which has moreover always been close to the market value. Claimant accepts the Court of Appeal's suggestion to value the property in more detail, and has, unlike the CBCS, proposed two different experts to the other party.[263] In fact, after the Court of Appeal issued this preliminary ruling, the CBCS asked for leave to appeal directly to the Dutch Supreme Court in the Hague to speed up the process (which was refused),[264] and asked the Court of Appeal to retract its call for a new appraisal of Mullet Bay, insisting that those appraisals done on its behalf were correct.[265] Lacking any agreement, the Court of Appeal should therefore appoint an appraiser (and this tomorrow, 23 February 2024).

94. In sum, there are strong indications that the reason why the CBCS values the Mullet Bay this low – and resists a new valuation – is because it wants to sell the Property to a third party at a low price, a scenario which is not merely hypothetical considering its previous stance with regard to BDC.[266] The CBCS has, on multiple occasions, made clear its intention to have

[258] Notice of Arbitration, para. 48.

[259] See paragraph 83 above.

[260] **Exhibit RL-007-DUTCH**, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 5.105-5.107.

[261] **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, paras. 11.26, 11.73, 13.3.

[262] Reply to Response to Application for Security for Costs, para. 30(ii), referring to **Exhibit RL-008-DUTCH**, Curaçao Court of Appeal, Judgment of 12 September 2023, para. 11.14.

[263] **Annex I,** Personal Statement of Abdallah Andraous, para. 70.

[264] **Exhibit C-056-DUT**, Email from the Curaçao Court of Appeal dated 3 November 2023; see paragraph 68.

[265] **Exhibit C-081**, Plea to refrain from ordering a new appraisal dated 23 January 2024; see paragraph 68.

[266] See **Section II.G**.

Ennia sell Mullet Bay.[267] Recently, for example, it was made public that the CBCS, currently in control of SunResorts (and which appointed [redacted] and [redacted] as directors), "is putting a plot of over 11,000 square metres (m2) up for sale", a part next to the Mullet Bay golf course and near Cupecoy (constituting 1.6% of the total plot).[268] While no further comments were given to the press, the explanation for this partial sale is to see whether the market is interested, and "to obtain the necessary liquid assets for the actual sale".[269] Based on the above, however, a sale price of *at least* USD 600 per square meter should be obtained.[270] This puts the CBCS in an embarrassing position: if the CBCS is indeed capable of doing so, this will only prove that Mullet Bay has always been valued correctly under Ennia's original management. If not, it shows that it is trying to sell off a valuable asset at a price below market value. This seems to be the reason why it still has not sold the Property despite its intentions for doing so.

95. Finally, it must be mentioned that in an absurd change of position, in a hearing before the Court of Appeal, [redacted] the Managing Director of the CBCS, informed the Court of Appeal of his intention to expropriate and donate Mullet Bay to the people of St. Maarten, by fraudulently claiming it is time to "return it to the people".[271] As a welcome boost to the economy of St. Maarten, which could and should have been achieved by selling Mullet Bay to Melia,[272] or by simply developing it, the country instead has begun a parliamentary inquiry to determine how to put [redacted] statement into practice in order to avoid later scrutiny.[273]

96. This would mean an almost complete depletion of Ennia's assets, without any equity in return. It goes without saying that by taking such decisions Ennia will certainly never be able

[267] **Exhibit C-047-DUT**, Letter from the CBCS to Ennia dated 4 August 2016 (envisaging a sale by 2019); **Exhibit C-082-DUT**, 'Mullet Bay Next Target' (Antilliaans Dagblad, 14 June 2022), available at: https://antilliaansdagblad.com/nieuws-menu/25828-mullet-bay-volgende-doel.

[268] **Exhibit C-082-DUT**, 'Piece of Mullet Bay put up for Sale' (Antilliaans Dagblad, 15 October 2023), available at: https://antilliaansdagblad.com/nieuws-menu/28470-stukje-mullet-bay-te-koop-gezet, as attached to Letter from Claimant to Dutch Ministry of Foreign Affairs (Tribunal copied) dated 16 October 2023.

[269] **Exhibit C-082-DUT**, 'Piece of Mullet Bay put up for Sale' (Antilliaans Dagblad, 15 October 2023), available at: https://antilliaansdagblad.com/nieuws-menu/28470-stukje-mullet-bay-te-koop-gezet, as attached to Letter from Claimant to Dutch Ministry of Foreign Affairs (Tribunal copied) dated 16 October 2023.

[270] As the area is adjacent to the part sold in 2017, and that purchaser seems to be interested, this would make sense. However, this is a conservative estimate considering that property prices have increased since then.

[271] **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation).

[272] **Annex I,** Personal Statement of Abdallah Andraous, paras. 63, 66.

[273] **Exhibit C-083**, Committee Parliamentary Inquiry Mullet Bay.

to pay back its shareholders, further exemplifying the incompetence of the CBCS.[274] The impending sale of Mullet Bay is all the more surprising considering that insurance companies need to have long-term investments as well, and that selling these assets in the current circumstances will deplete Ennia completely.[275]

97. In fact, this entire case seems to rest upon the ego of one man, [redacted]. Under previous directors of the CBCS, Ennia had always been found compliant. [redacted], who has been denied employment with Ennia,[276] either out of vengeance for lost career and business opportunities – or simply out of ignorance – sees this case as a personal crusade against Mr. Andraous, Mr. Ansary, and their partners.[277] It is no coincidence that [redacted] was the Executive Director of the CBCS from November 2017, and its acting President between 1 January and 7 August 2020, when the emergency measures and key decisions regarding Ennia were taken. [redacted] his successor, serves to further [redacted] agenda.[278] All this for the goal of personal gain – it would be no surprise to Claimant if [redacted] left the CBCS to become BDC's next President.[279]

[274] Notice of Arbitration, para. 51.

[275] Notice of Arbitration, para. 51.

[276] **Annex I,** Personal Statement of Abdallah Andraous, para. 39.

[277] Notice of Arbitration, para. 53.

[278] Notice of Arbitration, para. 53.

[279] **Annex I,** Personal Statement of Abdallah Andraous, para. 58.

## III. JURISDICTION

99. Under Article 9 of the Lebanon-Netherlands BIT, the following conditions must be met for the existence of an investment dispute:

(i) the dispute relates to an investment, as defined by Article 1(a) (see *infra* Section III.A);

(ii) between a Contracting Party and an Investor of another Contracting Party, as defined by Article 1(b) (see *infra* Section III.B);

(iii) relating to an investment in the territory of the former, as defined by Article 1(c) (see *infra* Section III.C).

100. In addition, the dispute must be within the temporal scope of the BIT (see *infra* Section D).

101. For the reasons below, the Claimant's claim set out in this Statement of Claim (and Notice of Arbitration) and Claimant's investments in the Netherlands are protected by the BIT, and this Tribunal has jurisdiction over the dispute.

### A. This Tribunal has Jurisdiction *Ratione Materiae* over a Multifaceted and Unitary Investment

102. Claimant's investments meet the definition of investment in Article 1(a) of the Lebanon-Netherlands BIT, which 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;*
>
> *(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.*

103. At the outset, it must be noted that 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 the listed categories only serving as examples (*ejusdem generis*) of the types of assets

covered.[280] Other tribunals constituted under the UNCITRAL Rules have considered that the wording "in particular" – or "more particularly" in this BIT – demonstrates the *open-ended* nature of the definition.[281] The list of possible investments is *non-exhaustive* and the categories exist independent of each other,[282] and assets are normally investments.[283] For these reasons alone, the Claimant's investments meet the definition in Article 1(a) of the BIT.

104. In any case, for the reasons set out below, the BIT explicitly covers, as specific categories of Article 1(a), (i) Claimant's shares (see *infra* Section III.A.1), and (ii) Claimant's pension and salary as "claims to money" (see *infra* Section III.A.2), which were both promised and received in return for Claimant's investment of his goodwill, know-how and services.

### 1. *Claimant's Shares in Parman Constitute an Investment under the BIT*

105. Claimant's shareholding in Parman qualifies as an investment under Article 1(a) of the BIT. Shares in a company are typically assets qualifying as investments. The BIT underlying these claims lists as one of the specific categories of investments "*rights derived from shares, bonds and other kinds of interests in companies and joint ventures*".[284] This provision demonstrates that the Claimant has an investment, a fact confirmed by numerous

[280] See Notice of Arbitration, para. 56, referring to 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 (stating that most, if not all, bilateral investment treaties concluded by the Kingdom of the Netherlands adopt this broad asset-based definition, protecting investments irrespective of whether they are significant, lasting, contribute to the host State's economic development, or even made in accordance with the host State's laws).

[281] Exhibit CLA-063, *Nordzucker v. Poland* (Partial Award on Jurisdiction, 10 December 2008) UNCITRAL, para. 166. See also Exhibit CLA-064, *Daimler v. Argentina* (Award, 22 August 2012) ICSID Case No. ARB/05/1, paras. 82-84.

[282] Exhibit CLA-065, *Azurix v. Argentina* (Decision on Jurisdiction, 8 December 2003) ICSID Case No. ARB/01/12, para. 63. 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. 37-38.

[283] Exhibit CLA-067, *Caratube v. Kazakhstan* (Award, 5 June 2012) ICSID Case No. ARB/08/12, para. 356 (citing Vandevelde's account that, in contrast to U.S. investment treaties, *European investment treaties usually do not distinguish between assets and investments*, i.e. an asset is covered by the definition of "investment).

[284] 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).

tribunals.[285] In other words, shareholders in a local company automatically meet jurisdiction *ratione materiae*.[286]

106. As set out in paragraph 18 above, 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 Ennia since 9 February 2011, and as Director of Resorts Caribe since 21 July 2006.[287] Claimant became a shareholder in Parman in December 2011 when shares were transferred by Mr. Ansary to Claimant in exchange for the knowledge, experience and services the latter invested in the company.[288]

107. The fact that the Claimant holds only 1% of the shares in Parman[289] does not exclude those shares from the ambit of a protected investment.[290] It is the *quality* of an investment, and

[285] 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.

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

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

[288] **Exhibit C-040**, Parman International B.V. Stock Register; **Exhibit C-041**, Parman International B.V. Stock Certificate.

[289] Notice of Arbitration, para. 57. See also paragraph 19 above.

[290] 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. 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. Moreover, it has been held that a minority 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): **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.

not the quantity, that matters in determine whether the treaty provides a blanket of protection. It is trite law that minority shareholders are protected by investment treaties, irrespective of the percentage of their shareholding; examples of cases in which tribunals have held so are legion.[291] 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.

108. These "rights" can create a periodic monetary benefit in the form of dividends, which themselves form another protected asset or investment under the BIT.[292] As stated above in paragraph 19, Claimant received dividends for on average USD [redacted] on a six-monthly basis.[293] These have been stopped by the CBCS since the Takeover, with no reasoning provided as to why the Claimant, albeit removed as Director from Ennia, could not receive any dividends in his capacity as *shareholder* (which he remained until this day).[294]

109. Claimant acquired these "*rights derived from [the] shares"* on 28 December 2011. He received 25,000 shares in exchange for his investment of services, time, expertise and personal "goodwill and know-how", most notably in mergers and acquisitions of several

[291] 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.

[292] **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).

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

[294] **Annex I,** Personal Statement of Abdallah Andraous, para. 50.

companies (including Ennia and BDC) by Parman,[295] which are likewise listed as a protected investment under Article 1(a)(iv) of the BIT.[296] Once the shares were acquired, the Claimant's holistic and unitary investment crystallised in their value and *remained* invested in the form of a shareholding in Parman.[297] 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. As held by the English High Court of Justice in the set-aside proceedings in *Dayyani v. Korea*, "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."[298] Claimant here has both.

110. The *ratione materiae* calculus ends there. The original foreign investment – here Parman and its associated entities – need *not* have been *initially* "made" by the investor bringing a claim in order to qualify as a covered investment.[299] The reinvestment of profits or the later acquisition of shares in a pre-existing investment in the host State both qualify as covered

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[295] See paragraphs 19 above; **Annex I,** Personal Statement of Abdallah Andraous, para. 14.

[296] In the words of a leading textbook on international investment law: "[T]he 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." (**Exhibit CLA-086**, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 102). Indeed, numerous investment tribunals have held that other forms of participation with economic value next to tangible monetary injections, such as know-how, management, the transfer of equipment or material, personnel, labour and services, are considered an investment. See **Exhibit CLA-087**, *Bayindir v. Pakistan* (Decision on Jurisdiction, 14 November 2005) ICSID Case No. ARB/03/29, para. 131; and **Exhibit CLA-088**, *Saipem v. Bangladesh* (Decision on Jurisdiction, 21 March 2007) ICSID Case No. ARB/05/07, paras. 100, 111; **Exhibit CLA-089-FRA**, *RFCC v. Morocco* (Decision on Jurisdiction, 16 July 2001) ICSID Case No. ARB/00/6, paras. 61-66; **Exhibit CLA-090**, *Malaysian Historical Salvors v. Malaysia* (Award on Jurisdiction, 17 May 2007) ICSID Case No. ARB/05/10, para. 109; **Exhibit CLA-091**, *Sistem Mühendislik v. Kyrgyzstan* (Decision on Jurisdiction, 13 September 2007) ICSID Case No. ARB(AF)/06/1, para. 86; **Exhibit CLA-092**, *Toto v. Lebanon* (Decision on Jurisdiction, 11 September 2009) ICSID Case No. ARB/07/12, para 86(a); **Exhibit CLA-093**, *Deutsche Bank v. Sri Lanka* (Award, 31 October 2012) ICSID Case No. ARB/09/2, para 297; **Exhibit CLA-094-ESP**, *Flughafen Zürich v. Venezuela* (Award, 18 November 2014) ICSID Case No. ARB/10/19, paras. 248-249; **Exhibit CLA-095**, *OI European v. Venezuela* (Award, 10 March 2015) ICSID Case No. ARB/11/25, para. 245; **Exhibit CLA-096**, *A11Y v. Czech Republic* (Award, 29 June 2018) ICSID Case No. UNCT/15/1, paras. 144-153; **Exhibit CLA-097**, *Mason v. Korea* (Decision on Respondent's Preliminary Objections, 22 December 2019) PCA Case No. 2018-55, UNCITRAL, para 216.

[297] **Exhibit C-040**, Parman International B.V. Stock Register; **Exhibit C-041**, Parman International B.V. Stock Certificate.

[298] **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).

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

investments.[300] The fact that the investment was initially made or controlled by someone else does not denigrate the Claimants' 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 management of the investment" in order to qualify for protection.[301] 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."

## 2. *Claimant's Salary and Pension Constitute an Investment under the BIT*

111. As part of his position and in exchange for his investment of time, know-how and goodwill, Claimant also received regular monthly payments before and – for some time – after the Takeover in the form of salary and pensions. These are "claims to money" and therefore investments under Article 1(a)(iii) of the BIT.[302]

[300] **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.

[301] **Exhibit CLA-102**, *MNSS v. Montenegro* (Award, 4 May 2016) ICSID Case No. ARB(AF)/12/8, para. 204 (emphasis added). See also **Exhibit CLA-103**, *Mera Investment Fund v. Serbia* (Decision on Jurisdiction, 30 November 2018) ICSID Case No. ARB/17/2, para. 107 ("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.") (cross-references omitted).

[302] **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).

112. These are contractual rights pertinent to Claimant's investment,[303] or more precisely payment obligations relating to a contract to provide services.[304] In other contexts, the non-payment of invoices under the services contract will result in a breach of the Treaty.[305] For instance, in *Société Générale v. Dominican Republic*, the tribunal held that a management fee arrangement in a complex corporate structure is a protected investment:

> *The Tribunal is next persuaded that the definition of investment under the Treaty Article I (I) relates protection not only to a formal ownership of shares or other such usual kind of transaction but also to a broader category of rights and interests of any nature. […] As long as the business undertaken and the pertinent legal arrangements are lawful, as is the case here, there will be no reason to refuse the protections of the Treaty. This in the end is the reason why investment law has always searched for the economic interest underlying a given transaction and if it is compatible with the terms of the law and the Treaty, such interest is recognized as entitled to protection.*[306]

113. Finally, 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*. The pensions and emoluments were no longer paid *exactly because of* the CBCS's intervention, acting by and on behalf of the State.[307]

114. 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

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[303] 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 (defining 'asset' as a right or claim having an economic value and deriving either from law or from contract towards a given debtor for the performance of a given obligation; it implies that the contract itself should qualify as an investment and that is should satisfy certain minimum requirements such as duration, contribution and risk); **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.

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

[305] **Exhibit CLA-109**, *SGS v. Paraguay* (Decision on Jurisdiction, 12 February 2010) ICSID Case No. ARB/07/29, paras. 153-157 (*in casu* of the observance of obligations clause).

[306] **Exhibit CLA-110**, *Société Générale v. Dominican Republic* (Award on Preliminary Objections to Jurisdiction, 19 September 2008) LCIA Case No. UN 7927, UNCITRAL, para. 48 (emphasis added).

[307] Notice of Arbitration, para. 58.

determining whether there has been an investment.[308] 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.

## B. This Tribunal has Jurisdiction *Ratione Personae* over Claimant as a Lebanese National

115. Claimant also 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."[309] First, as set out in **Section III.B.1**, Claimant has made an investment in the territory of the Netherlands. Second, as set out in **Section III.B.2,** Claimant is a national of the Lebanese Republic ("**Lebanon**").[310] Meeting these two requirements alone is sufficient for the Claimant to be considered an 'investor' within the meaning of the BIT.

### 1. *Claimant "Made an Investment"*

116. As described above, Claimant's assets in Curaçao constituted an investment within the definition provided in the BIT. 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.

117. That the BIT requires an investor to have "made an investment" in Article 1(b) does not require Claimant to have done anything more. As the Tribunal in *Vladislav Kim* held, "the term 'made' does not necessarily entails 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."[311]

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[308] **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.

[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(b)(i).

[310] See paragraph 5 above; Notice of Arbitration, para. 5; **Exhibit C-001,** Passport of Mr Abdallah Andraous with No. RL 4119141; **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.

[311] **Exhibit CLA-112**, *Vladislav Kim et al. v. Uzbekistan* (Decision on Jurisdiction, 8 March 2017) ICSID Case No. ARB/13/6, para. 310. 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

118. Nevertheless, Claimant's contribution to Parman *was* an active one. The specialist business knowledge and experience that Claimant brought to Parman[312] is a specifically covered category of investment,[313] and were vital for the management and operation of the company. 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,[314] and were defined as such under Article 1(a)(iv) BIT. There is no need for the injection of monetary capital in order to qualify as an investor/investment.[315] Even tribunals applying BITs that only covered assets "invested by investors" – which is not present in the underlying BIT here – have held that no cash contributions are required as long as there is some transfer of value to the host State.[316]

## 2. *Claimant "Ha[s] the Nationality" of the Lebanese Republic Throughout the Lifespan of this Investment*

119. Claimant is, and has always been, a Lebanese national. While he also once held a Dutch passport, and currently holds a French passport, his dual nationality does *not* preclude the Claimant's claim under the Lebanon-Netherlands BIT, whether on the law (Section III.B.2.a) or on the facts (Section III.B.2.b), each addressed in turn below.

### (a) The BIT Does Not Preclude Dual Nationals from Claiming Protection

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").

[312] See paragraph 17 above.

[313] 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.

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

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

[316] Exhibit CLA-071, *ECE and PANTA v. Czech Republic* (Award, 19 September 2013) PCA Case No. 2010-5, para. 3.161; Exhibit CLA-114-ESP, *Clorox Spain S.L. v. Bolivarian Republic of Venezuela* (Award, 20 May 2019) PCA Case No. 2015-30, para. 824. 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).

120. The "point of departure"[317] is, and should always be, the BIT's text,[318] 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*."[319] Nothing in this definition suggests that dual nationals do not deserve treaty protection. *See* Section III.B.1(i). Even if the text were ambiguous (which it is not), the context of Article 1 (Section III.B.1(ii)), the object and purpose of the BIT (Section III.B.1(iii)), subsequent practice (Section III.B.1(iv)) and other supplemental means of interpretation (Section III.B.1(v)) all point in the same direction.

### *(i) The Text of the BIT does not exclude Dual Nationals.*

121. Article 1(b) of the BIT does *not* state that the Claimant, 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."[320] This in contrast to other treaties which are more stringent and textually require nationality to be

[317] See Exhibit CLA-115-ESP, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, para. 166 (prioritising a textual approach if the treaty provision is not ambiguous, obscure or absurd); 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 (finding that the IIA's ordinary meaning was clear and seeing no reason to apply supplementary means of interpretation). See also 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 ("Tribunals appear to place more emphasis on the wording of the relevant IIAs than to international customary law. This preference primarily stems from the decentralization of international law and the lack of hierarchy within international legal courts and judicial bodies.").

[318] 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 (see paragraphs 121-130 below): 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).

[319] 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).

[320] 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);

limited to one Contracting State "or" the other.[321] 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. Therefore, in principle, the investment of a [dual] national can also be classified as a [qualifying foreign] investment".[322]

122. Indeed, throughout the entirety of its provisions, the Lebanon-Netherlands BIT says *nothing* about the subject of dual nationality *at all*.[323] While some treaties have express provisions dealing with dual nationals,[324] *including one concluded by the Respondent*,[325] it opted *not* to include such a provision here. For its part, Lebanon has also included a provision limiting access to dual nationals in one of its treaties – and in a treaty negotiated and executed prior to this one.[326] The unavoidable implication is that both Contracting Parties knew how to exclude dual nationals if they wanted to. In *Serafín García Armas v. Venezuela*, the tribunal

[321] 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). On the differences between the Iran-US and investor-State regime, see **Exhibit CLA-124**, *Saba Fakes v. Turkey* (Award, 14 July 2010) ICSID Case No. ARB/07/20, paras. 66-76; **Exhibit CLA-125**, Hussein Haeri and David Walker, '"And you are…?" – Dual Nationals in Investment Treaty Arbitration' (2016) 3(2) BCDR International Arbitration Review 153, 161 ("IUSCT cases, such as those discussed above, are highly dependent on the specific wording of the tribunal's constituent charter. They are not determinative of issues beyond their context, and the application of these concepts to investment treaty arbitration in general is complex and contested.").

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

[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).

[324] **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).

[325] **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).

[326] **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).

gave weight to this point and held that, insofar as the relevant States had concluded other BITs in which they excluded dual nationals, they could have concluded the relevant treaty in a similar fashion but decided not to do so.[327]

123. The textual conclusion that this Treaty does not exclude dual nationals *has been endorsed and confirmed by Respondent's own courts.* In a case based on the similarly worded Finland-Egypt bilateral investment treaty, the Dutch courts held that:

> *The definition of investor (Article 1(3)(a)) and the regime for access to an investment arbitration (Article 9(1)) are broadly formulated. A reasonable interpretation implies that, with such broadly worded provisions, it is precisely not reasonable to exclude certain groups of investors, including those with dual nationality, from the protection of the . . . BIT. Such an interpretation does not lead to an incongruous and unreasonable interpretation of the BIT . . . . Moreover, neither provision expresses that investors with both Finnish and Egyptian nationality are excluded from protection of the BIT . . . . [T]he absence of a provision under which investors with dual nationality are excluded from protection of the BIT . . . should indeed be given the meaning that investors with Finnish and Egyptian nationality are not excluded from protection of the BIT.*[328]

124. In sum, according to the ordinary meaning of the provision,[329] dual nationals cannot be prohibited to file claims against either State of nationality.[330] Imposing such a requirement on an investor would be atextual and unjustified. One cannot add an additional requirement to the BIT,[331] or distinguish where the treaty's text does not distinguish (*ubi lex non distinguit,*

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[327] **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.

[328] **Exhibit CLA-132-DUT**, *Bahgat v. Egypt* (Judgment of the Hague District Court, 20 October 2021) PCA Case No. 2012-07, para. 5.52.

[329] 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).

[330] **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.

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

*nec nos distinguere debemus*).[332] Dutch-Lebanese nationals are, for the purposes of the BIT, not separate from Lebanese nationals. Dutch-Lebanese nationals fully meet the criterion of the BIT, namely the possession of the nationality of one of the Contracting Parties. 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: also the other elements of interpretation argue in favour of including, and against excluding, dual nationals from the scope of the BIT.

### *(ii) The Context of Article 1 in the Rest of the BIT points towards including Dual Nationals*

125. Article 31(1) VCLT states that, together with the text, a treaty provision's context can provide additional interpretive guidance if any is needed.[333] 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.

126. Moving through the BIT sequentially, Article 3(5) deserves particular attention. If *arguendo* the BIT excluded dual nationals from its scope (which it does not), jurisdiction *ratione personae* would then necessarily turn on the which of Claimants nationalities were "dominant and effective" under customary international law. Article 3(5), however, confirms that such rules of customary international law shall apply to this dispute only to the extent that they are *more favourable* to the investor.[334] Any alleged rule of "dominant and effective nationality" can *never* be more favourable to the Claimant than the BIT's own text (which is permissive as to dual nationals), insofar as that test utilises facts that may limit (rather than maintain/broaden) claims by dual nationals. The context of Article 1 alongside Article 3(5) is therefore determinative that the context of Article 1 support claims by dual nationals.

127. The context of Article 1 against the BIT's choice of arbitral rules in Article 9 points in the same direction. Article 9(2)(d) allows claimants to opt for the UNCITRAL Rules, which has been chosen as the legal framework to resolve this dispute. In that same provision, the Netherlands has given its "*unconditional consent*" to submit the dispute to arbitration should

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[332] 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.

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

[334] 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. 3(5) ("If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.").

amicable consultations be fruitless.[335] *None* of the tribunals rejecting claims by dual nationals under the UNCITRAL Rules were constituted on an investment treaty which contained a similar "*unconditional consent*" to arbitration. If it were the intention of the Contracting Parties to the BIT to make access to arbitration contingent upon not having the nationality of only one State, that would have been expressly stated in the BIT (*quod non*). By introducing a prohibition of dual nationality, Respondent would be introducing such an atextual condition across the full context of the BIT.

128. Going deeper into the context of Article 9, it deserves noting that there is not a single reference to dual nationals in the UNCITRAL Rules, neither in the 1976 version (which are applicable to this dispute) nor under any revised Rules.[336] With no exclusion of dual nationals 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,[337] 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.

### *(iii) The Object and Purpose of the BIT points towards including Dual Nationals*

129. A treaty's preamble typically represents its overall object and purpose.[338] 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*

[335] **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(2) *in fine*. See also Response to Application for Security for Costs, paras. 6-8.

[336] 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).

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

[338] 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.").

*Contracting Parties and that fair and equitable treatment of investment is desirable, […]*[339]

130. To be sure, the preamble does not expressly clarify whether dual nationals are allowed or denied standing under the BIT. This is particularly so for the first paragraph, which merely mimics the wording of Article 1(b) of the BIT. The second paragraph, however, leans towards the *inclusion* rather than exclusion of dual nationals. The realisation of the BIT's object and purpose would always be furthered – not diminished – by giving standing to dual nationals, and therefore a broader range of investors, to make use of investment agreements.[340] Excluding them from the BIT's scope would discourage rather than "stimulate the flow of capital and technology and economic development",[341] especially having regard to the fact that many multinational investors today have more than one nationality.[342] As Professor Douglas acknowledges: "[w]here [an] investment treaty is silent on the question of the standing of dual nationals, there is no reason to imply the default rule of diplomatic protection to the effect that dual nationals must be excluded from the tribunal's jurisdiction ratione personae. *To the contrary, such an inflexible rule would hardly serve the treaty's purpose of encouraging foreign investment because an entire class of potential investors would be denied the opportunity to rely upon the investment protections of the treaty."*[343]

### *(iv) Subsequent Practice and the "Relevant Rules of International Law" points towards including Dual Nationals*

[339] 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.

[340] 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 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.

[341] 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).

[342] 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").

[343] Exhibit CLA-143, Zachary Douglas, *The International Law of Investment Claims* (CUP, 2012) 321-322.

131. 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.*[344]

132. To the Claimant's knowledge, there is no subsequent agreement between the 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),[345] such a unilateral instrument can never qualify as subsequent practice of both Contracting States to the BIT.[346] And, in any event, its clarity on the point supports Claimants here. The new Dutch Model BIT demonstrates plainly that Respondent is aware that the rules of diplomatic protection, and in particular that of dominant and effective nationality, do *not* apply by default[347] and needed to be included expressly in the governing treaty. If Respondent wanted to include this stringent rule in this BIT, it knew full well how to do so, but did not.

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

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

[346] **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.).

[347] 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.

### *(v) Supplementary Means of Interpretation point towards including Dual Nationals*

133. Where, as here, the text of the BIT is clear and the Article 31 guidance support that same result, resort to subsidiary means of interpretation is unnecessary.[348] Nevertheless, the supplementary means of interpretation again *confirm* the exceptional nature of the exclusion of dual nationals.[349]

134. The Claimant has no access to the *travaux préparatoires* of the Lebanon-Netherlands BIT. But the likelihood that the Treaty's *silence* meant *exclusion* is unlikely. With regard to the similarly worded provision in the Energy Charter Treaty (which is also silent as to dual nationals), silence meant *inclusion*. As noted in exchanges between two State delegations negotiating that treaty, "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.[350]

135. Another source of interpretation often invoked as "supplemental" are other investment agreements concluded by the Contracting States.[351] As noted above, these confirm rather than reject the conclusion that dual nationals are included in the BIT's scope. Lebanon concluded *one* BIT (with Canada) that excluded dual nationals, and it did so *clearly*: "[i]n the case of persons who have both Canadian and Lebanese citizenship, they shall be considered

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[348] See **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).

[349] **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.").

[350] **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).

[351] **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, paras. 176-181; **Exhibit CLA-147-ESP**, *Manuel García Armas et al. v. Venezuela* (Award on Jurisdiction, 13 December 2019) PCA Case No. 2016-08, para. 725 (disregarding those treaties).

Canadian citizens in Canada and Lebanese citizens in Lebanon."[352] The Netherlands has virtually the same history of practice. It too ratified *one* BIT that expressly excluded dual nationals from its scope (as *acknowledged by the Respondent's own courts*).[353] 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".[354] Again, it knew what it had to do if it wanted to exclude dual nationals from the scope of a BIT.

136. But there is more that makes the Netherlands practice supportive of Claimant's position. The exclusion of dual nationals in the Netherlands-Macao BIT was likely purposeful, not coincidental or inadvertent. The Netherlands did *not* exclude dual nationals in the bilateral investment treaty with China,[355] and the two BITs signed immediately after (the one with Oman (2009)[356] and the United Arab Emirates (2013)[357]) revert back to the 'traditional' definition of 'investor' found in the Lebanon-Netherlands BIT. The fact that the new Dutch Model BIT expressly incorporates a criterion of "dominant and effective" nationality confirms

[352] **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).

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

[354] **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).

[355] **Exhibit CLA-151**, Agreement on encouragement and reciprocal protection of investments between the Government of the People's Republic of China and the Government of the Kingdom of the Netherlands (signed on 26 November 2001, entered into force on 1 August 2004) Art. 1(2)(a).

[356] **Exhibit CLA-152**, Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Sultanate of Oman (signed on 17 January 2009) Art. 1(c).

[357] **Exhibit CLA-153**, Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the United Arab Emirates (signed 26 November 2013) Art. 1(b).

the general rule that the older Dutch BIT(s) expressed the general rule (*expressio unius est exclusio alterius*),[358] and that Respondent found it necessary to deviate it from it explicitly.[359]

137. In addition to the foregoing elements of interpretation, both an *effet utile* (i.e. to give effect to a treaty's provisions),[360] as well as a *contra proferentem* interpretation lead to a presumption in favour of including dual nationals within the scope of the BIT.[361] This is precisely why *Respondent's own courts decided to include rather than exclude dual nationals from a bilateral investment treaty with a similar wording as this one*.[362]

### (b) The Claimant's "Dominant and Effective Nationality" is his Lebanese Nationality

138. 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. It is worth noting that Respondent does not argue that dual nationals are categorically

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[358] **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").

[359] 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 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.").

[360] **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.

[361] **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/.

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

excluded from the BIT, but only that the "dominant and effective nationality" criterion applies.[363]

139. Under the "dominant and effective nationality" test, only the nationality which is "predominant"[364] (the "effective" qualifier largely being an empty addition[365]) is considered as the nationality of the investor.[366] In other words, under this test, Claimant would need to demonstrate that his Lebanese nationality is more dominant than his (former) Dutch

[363] See Reply to Response to Application for Security for Costs, para. 56, first bullet point (which was already clear from the first amicable negotiations meeting). See also Venezuela's stance in **Exhibit CLA-115-ESP**, *Serafín García Armas v. Venezuela* (Decision on Jurisdiction, 15 December 2014) PCA Case No. 2013-3, UNCITRAL, para. 65. However, Venezuela then changed its argument in **Exhibit CLA-147-ESP**, *Manuel García Armas et al. v. Venezuela* (Award on Jurisdiction, 13 December 2019) PCA Case No. 2016-08, UNCITRAL, paras. 235, 237-241. See also **Exhibit CLA-120-ESP**, *Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela* (Final Award, 31 January 2022) PCA Case No. AA737, UNCITRAL, paras. 259-299.

[364] **Exhibit CLA-157**, Draft Articles on Diplomatic Protection with commentaries (2006) Art. 7; **Exhibit CLA-158**, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 24; **Exhibit CLA-159**, *Loss of Property in Ethiopia Owned by Non-Residents-Eritrea's Claim (Eritrea v. Ethiopia)* (Partial Award, 19 December 2005) 24 Eritrea-Ethiopia Claims Commission, para. 11.

[365] **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) para. 79, 101 (finding it an illegitimate additional condition to the relevant BIT); **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").

[366] See, however, **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).

nationality. As held by numerous investment tribunals, the status of nationality of a third-party State (such as France) is irrelevant.[367] The test should be applied restrictively.[368]

140. Because this BIT is silent on the "dominant and effective nationality" test, it provides no guidance on how to apply it. Therefore, this Tribunal would have to consider criteria developed elsewhere, most notably in the (less rigid[369]) law of diplomatic protection and arbitral jurisprudence. When doing so and as articulated below, *every single criterion* shows that the Claimant is a Lebanese – and not a Dutch – national for the purposes of this arbitration.

141. Although it does not necessarily apply to investment cases, the *Nottebohm* judgment on diplomatic protection is a good starting point for listing the factors that should be taken into account to determine a person's "real and effective nationality" (as it was put in that case). To wit, a Tribunal must consider "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. […] his tradition, his establishment,

[367] See Exhibit CLA-160, *Al Tamimi v. Oman* (Award, 3 November 2015) ICSID Case No. ARB/11/33, para. 274 ("In any event, as a matter of interpretation of Article 10.27, the Tribunal does not consider that the language of "dominant and effective nationality" is intended to prevent dual citizens of both the United States and a third-party State, such as the UAE, from invoking the US-Oman BIT – even where the nationality of the third-party State is predominant. Rather, the Tribunal considers that the provision is aimed at preventing claims by dual nationals of both State parties (ie the United States and Oman) from seeking to use the FTA to claim against their own State of dominant and effective nationality – thereby defeating the purpose of the FTA to apply investment protection only to "investors of the other Party"); Exhibit CLA-161, *Aven v. Costa Rica* (Award, 18 September 2018) ICSID Case No. UNCT/15/3, para. 214 (rejecting an objection that a US-Italian cannot claim under CAFTA against Costa Rica); Exhibit CLA-162, *Dominion Minerals v. Panama* (Award, 5 November 2020) ICSID Case No. ARB/16/13 (unpublished, as reported in IAReporter, 16 November 2020) (dismissing Panama's objection that someone with an interest in the claimant company was a dual US-Australian national as irrelevant, noting that the BIT did not disqualify U.S. nationals who were also nationals of a third State); Exhibit CLA-163-ESP, *Leopoldo Castillo Bozo v. Panama* (Award, 8 November 2022) PCA Case No. 2019-40) UNCITRAL, para. 207 (noting that the *Ballantine* arbitration (see footnote 384 below) had featured dual nationals who held the nationality of the respondent-State, while this claimant merely held the nationality of a third State, in addition to the Dominican nationality on which he relied).

[368] Exhibit CLA-159, *Loss of Property in Ethiopia Owned by Non-Residents-Eritrea's Claim (Eritrea v. Ethiopia)* (Partial Award, 19 December 2005) 24 Eritrea-Ethiopia Claims Commission, para. 11 ("a dominant and effective nationality test must be restrictively applied, and limited to cases where a claimant holds the nationality of the two disputing States. This is because international dispute settlement traditionally requires an international element that is absent if the claim involves a person with the nationality of the defendant State. The test only makes sense as a means to assess whether a claim in an international forum has this predominantly international character.").

[369] Exhibit CLA-145, *Siag v. Egypt* (Decision on Jurisdiction, 11 April 2007) ICSID Case No. ARB/05/15, para. 198 ("[d]evelopments in international law concerning nationality of individuals in the field of diplomatic protection includ[e], for example, greater flexibility in the requirement for the link of nationality").

his interests, his activities, his family ties, his intentions for the near future [...] [.][370] In the words of the International Court of Justice (the "ICJ") in that case, "th[e relative] importance [of these factors] will vary from one case to the next." The International Law Commission, in its Commentary on its Draft Articles on Diplomatic Protection, virtually mirrors these factors when it advises tribunals to consider the place of family life; the amount of time spent in each State; date of naturalisation ("i.e. the length of the period spent as a national of the protecting State before the claim arose"); place, curricula and language of education; use of language; bank accounts; social security insurance; visits to the other State of nationality; possession and use of passport of the other State; and place of military service.[371]

142. Other courts and tribunals have supplemented the list with: economic and financial relations with the relevant State;[372] "the closer and more effective bond with one of the two States";[373] place of profession/employment;[374] place of company registration,[375] or legal residence;[376] presentation as a national of a particular State;[377] place of taxation;[378] and the cutting of (economic) ties not to return to one State.[379] In *Ballantine v. Dominican Republic*, the claimants further – and rightly – argued that the *entire circumstances of the case* have to be taken into account, including: their motivation to become dual nationals; their lifespan;

[370] Exhibit CLA-158, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22, 24.

[371] Exhibit CLA-157, Draft Articles on Diplomatic Protection with commentaries (2006) Art. 7(5).

[372] Exhibit CLA-163-ESP, *Leopoldo Castillo Bozo v. Republic of Panama* (Award, 8 November 2022) PCA Case No. 2019-40, UNCITRAL, para. 208 (even if not applying the dominant and effective criterion).

[373] Exhibit CLA-164, *Florence Strusky Mergé (United States v. Italy)*, Italian-United States Conciliation Commission (Decision No. 55, 10 June 1955) 14 UNRIAA 236, 247.

[374] Exhibit CLA-120-ESP, *Fernando Fraiz Trapote v. Venezuela* (Final Award, 31 January 2022) PCA Case No. AA737, UNCITRAL, para. 414; Exhibit CLA-165, *Antonio del Valle Ruiz et al. v. Spain* (Final Award, 13 March 2023) PCA Case No. 2019-17, UNCITRAL, paras. 481-483.

[375] Exhibit CLA-163-ESP, *Leopoldo Castillo Bozo v. Republic of Panama* (Award, 8 November 2022) PCA Case No. 2019-40, UNCITRAL, para. 209 (even if not applying the dominant and effective criterion); Exhibit CLA-166, EU-Colombia-Peru-Ecuador Trade Agreement (2012), Art. 108.

[376] Exhibit CLA-131-ESP, *Victor Pey Casado v. Chile (I)* (Award, 8 May 2008) ICSID Case No. ARB/98/2, para. 548, 550; Exhibit CLA-166, EU-Colombia-Peru-Ecuador Trade Agreement (2012), Art. 108.

[377] Exhibit CLA-120-ESP, *Fernando Fraiz Trapote v. Venezuela* (Final Award, 31 January 2022) PCA Case No. AA737, UNCITRAL, para. 414 (the claimant previously presenting himself as a Venezuelan businessman in communications with the Venezuelan Government).

[378] Exhibit CLA-121-ESP, *Raimundo J. Santamarta Devis v. Venezuela* (Award, 26 July 2023) PCA Case No. 2020-56, para. 507.

[379] Exhibit CLA-163-ESP, *Leopoldo Castillo Bozo v. Panama* (Award, 8 November 2022) PCA Case No. 2019-40, UNCITRAL, para. 209 (even if not applying the dominant and effective criterion).

how they view themselves; how the relevant States view them; and any local laws regarding the acquisition of a nationality.[380]

143. Considering these factors, Claimant's "dominant and effective" nationality is (and has always been) Lebanese. Put simply, *every single factor* in the lists above points to Lebanon and away from the Netherlands.

144. The ICJ has made clear that there is no hierarchy between these factors,[381] so the most significant among them will be addressed below in rough chronological and topical order.

(i) The amount of time spent as a naturalized citizen of each State: Out of his 67 year life, Claimant has been a Lebanese citizen for all of them, and a Dutch citizen for 23 of them. Claimant was born a Lebanese national and remains one today. Claimant was naturalised as a Dutch national in 2000, a status which he lost in 2023.[382] Lebanon allows dual nationality, and under Dutch law dual nationals may keep their nationality obtained at birth.[383] Claimant became a French citizen in 2023; by operation of Dutch law, he then ceased to hold Dutch citizenship at that time.[384]

(ii) Claimant's habitual residence and the amount of time he has spent in each State: Out of his 67 year life, Claimant lived in Lebanon for 27 of them, and the Netherlands for 5 of them; the rest were spent living in France. The Claimant was born in Beirut, Lebanon on 2 January 1957,[385] where he continually resided until 1984, when he had to escape Lebanon because of the intensifying Lebanese Civil War.[386] Claimant was justifiably concerned about the health and safety of his family, and rightly so. When an opportunity presented itself in St Maarten, 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

[380] **Exhibit CLA-167**, *Ballantine v. Dominican Republic* (Final Award, 3 September 2019) PCA Case No. 2016-17, UNCITRAL, paras. 578-584.

[381] **Exhibit CLA-158**, *Nottebohm Case (Liechtenstein v. Guatemala)* (Merits) [1955] ICJ Rep 4, 22 ("[d]ifferent factors are taken into consideration, and their importance will vary from one case to the next"). 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.").

[382] **Annex I,** Personal Statement of Abdallah Andraous, para. 18.

[383] See footnote 31 above.

[384] See footnote 31 above.

[385] **Exhibit C-001,** Passport of Mr Abdallah Andraous with No. RL 4119141.

[386] **Annex I,** Personal Statement of Abdallah Andraous, para. 7.

he resides today, alongside several thousands other Lebanese nationals who fled the civil war in their home country – who had or have taken dual citizenship).[387]

(iii) The motivation of Claimant to become a dual national: The acquisition of Dutch nationality was a simple practicality to travel to and from Curaçao without a visa.[388] The Claimant acquired Dutch nationality *because of the investment*, and not the other way around. For this reason, such "nationality of convenience, or a nationality acquired involuntarily by an investor" should be disregarded (which even ICSID tribunals have done).[389]

(iv) The place and language of Claimant's education: Claimant was educated in Beirut, Lebanon, where he went to elementary, primary, and secondary school Thereafter, he went to the Saint Joseph University of Beirut, where he graduated in 1978.[390] As is usual in Lebanon, the languages of education are (Lebanese) Arabic and French.

(v) Claimant's use of language: Claimant speaks Lebanese, Arabic, native French and English on a daily basis, which he uses in interactions with his immediate family and counsel. He does not speak a single word of Dutch and his co-workers and locals on St Maarten addressed him in either English or French.[391]

(vi) Claimant's family ties and the locus of family life: Claimant's extended family (three uncles, four aunts, ten first degree cousins) is all in Lebanon. *Not a single member of his family lives in Curaçao or the mainland Netherlands*.[392] Claimant married his wife in Lebanon (1978) and together they had two ~~sons~~ children in Lebanon.[393] Their third child was born in Paris, so not a single member of his immediate family was

[387] **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"). See paragraph 14-16 above; **Annex I,** Personal Statement of Abdallah Andraous, para. 7; **Annex I,** Personal Statement of Abdallah Andraous, para. 7.

[388] See paragraph 16 above.

[389] **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.

[390] **Annex I,** Personal Statement of Abdallah Andraous, para. 5.

[391] **Annex I,** Personal Statement of Abdallah Andraous, para. 20.

[392] **Annex I,** Personal Statement of Abdallah Andraous, para. 9.

[393] **Annex I,** Personal Statement of Abdallah Andraous, para. 7.

born in the Netherlands.[394] His children were educated in France from elementary school onwards.[395] His children all speak Lebanese Arabic as well as French and English (but not Dutch).[396] His oldest son's marriage was celebrated in Lebanon in 2007 in the presence of the extended family.[397] [as amended 26 February 2024]

(vii) Claimant's participation in public life and military service: Claimant completed military service in Lebanon between 1971 and 1972.[398] Claimant does not participate in public life in the Netherlands; he voted only once in Dutch elections (in 2000). He is not member or affiliate of any Dutch political party, association, or social club. On the other hand, he is member of several such groups in Lebanon.[399]

(viii) Claimant's cultural attachments and traditions: Claimant is a devout Melkite Greek Catholic – a subsection of Christianity unique to Lebanon.[400] The Netherlands, on the other hand, is a Protestant country. Claimant is member of, and donates regularly to, the Lebanese church in Paris (Saint Julien le Pauvre) where his second and third ~~son~~ child (as well as their own children) were baptised. He participates virtually in Sunday mass of his hometown church in Lebanon every week (broadcasted live for those who are abroad).[401] On the other hand, Claimant has no cultural ties with the Netherlands whatsoever, nor do his children. Neither the Claimant nor his children speak Dutch and they have not been educated in the Netherlands. None of his two married children were married in the Netherlands or under Dutch law; one was married in Lebanon and the other in Greece.[402] [as amended 26 February 2024]

(ix) Claimant's bank accounts: Claimant's bank accounts were located in Lebanon, and thereafter in France and the United States (where he received his salaries for work performed to Parman).[403] He has one inactive account in Curaçao for the simple

[394] **Annex I,** Personal Statement of Abdallah Andraous, para. 9.

[395] **Annex I,** Personal Statement of Abdallah Andraous, paras. 9, 17(1).

[396] **Annex I,** Personal Statement of Abdallah Andraous, paras. 17(1), 19.

[397] **Annex I,** Personal Statement of Abdallah Andraous, para. 19.

[398] **Annex I,** Personal Statement of Abdallah Andraous, para. 5.

[399] **Annex I,** Personal Statement of Abdallah Andraous, para. 18.

[400] **Annex I,** Personal Statement of Abdallah Andraous, para. 18.

[401] **Annex I,** Personal Statement of Abdallah Andraous, para. 18.

[402] **Annex I,** Personal Statement of Abdallah Andraous, para. 19.

[403] **Annex I,** Personal Statement of Abdallah Andraous, para. 17(2).

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.[404]

(x) Place of taxation: As evidenced by its tax statements, even when residing in Curaçao, the Claimant paid taxes in France – and was known by the public authorities – as a foreign tax resident (*buitenlands belastingsplichtige*).[405]

(xi) Claimant's social security insurance: Claimant has benefitted from French social security since 1989 because it outweighs Lebanese social security coverage and covers most of his and his family's medical expenses.[406] These benefits were imperative for his wife's metastatic cancer treatments which resurfaced in June 2018. The Netherlands does *not* provide him with social security and medical insurance, and he had to request private insurance at Ennia.[407]

(xii) Claimant's visits to the Netherlands: Since the Takeover in 2018, Claimant visited Curaçao only twice for a couple of days (in 2019 and 2020) for the purpose of court hearings. In 2020, his stay was extended for several months because of the Covid-19 pandemic.[408] Claimant typically uses his Lebanese passport for international travels.[409]

(xiii) Claimant's intentions for the future: Claimant's wife is currently undergoing treatment for cancer in France. If not for this unfortunate circumstance, he would have already moved back to Lebanon. In fact, the Claimant went to Lebanon in August and September 2023 to start preparations for his return (including by finding a new job); when his wife is better, the Claimant intends to move back to Lebanon to reduce his living expenses and be closer to his extended family in his country of birth.[410]

[404] **Annex I,** Personal Statement of Abdallah Andraous, para. 17(2).

[405] **Annex I,** Personal Statement of Abdallah Andraous, para. 17(3); **Exhibit C-085**, Foreign resident tax form; **Exhibit C-086**, French tax form.

[406] **Annex I,** Personal Statement of Abdallah Andraous, para. 17(4).

[407] **Annex I,** Personal Statement of Abdallah Andraous, para. 17(4).

[408] **Annex I,** Personal Statement of Abdallah Andraous, para. 21.

[409] **Annex I,** Personal Statement of Abdallah Andraous, para. 20.

[410] **Annex I,** Personal Statement of Abdallah Andraous, para. 21.

145. Under *all of these factors*, and the entire circumstances of the case,[411] Lebanon is the State of which the Claimant possesses the dominant nationality.

## C. This Tribunal has Jurisdiction *Ratione Loci*

146. The scope of the BIT has been textually extended to the Netherlands Antilles and Aruba in Article 11, and Curaçao is one of the countries succeeding the Netherlands Antilles.[412] Put differently, the Netherlands is ultimately responsible for the acts and omissions of Curaçao.

147. While the fact that Parman is incorporated in Curaçao is irrelevant for purposes of jurisdiction *ratione materiae*, it confirms that Claimant's investment was made in the territory of the Netherlands. The incorporation of the local company is necessary by the need to have a local entity capable of implementing the underlying contract.[413] Investment tribunals have confirmed that shareholders may make claims on behalf of locally incorporated companies against the State where they are incorporated.[414]

## D. This Tribunal has Jurisdiction *Ratione Temporis*

148. The BIT entered into force on 1 March 2004 for both the Republic of Lebanon, the home State of the investor, and the Netherlands, the host State. It is thus binding on both as of that date forward. As set out in paragraph 19 above, the Claimant became an investor in the Netherlands in 2011, well after the treaty entered into force in the territory of the Netherlands. No objection *ratione temporis* could therefore be made.

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[411] **Exhibit CLA-167**, *Ballantine v. Dominican Republic* (Final Award, 3 September 2019) PCA Case No. 2016-17, UNCITRAL, paras. 597-600.

[412] **Exhibit CLA-170**, Declaration made by the Kingdom of the Netherlands dated 18 October 2010, available at https://treaties.un.org/pages/historicalinfo.aspx#Netherlands(Kingdomofthe) ("These changes constitute a modification of the internal constitutional relations within the Kingdom of the Netherlands. The Kingdom of the Netherlands will accordingly remain the subject of international law with which agreements are concluded. The modification of the structure of the Kingdom will therefore not affect the validity of the international agreements ratified by the Kingdom for the Netherlands Antilles: *these agreements, including any reservations made, will continue to apply to Curaçao and Sint Maarten*.") (emphasis added).

[413] See also **Exhibit CLA-171**, *Veolia v. Egypt* (Award, 25 May 2018) ICSID Case No. ARB/12/15, para. 91.

[414] See, for example, **Exhibit CLA-069**, *HOCHTIEF v. Argentina* (Decision on Jurisdiction, 24 October 2011) ICSID Case No. ARB/07/31, paras. 115-119; **Exhibit CLA-172**, *Fouad Alghanim et al. v. Jordan* (Award, 14 December 2017) ICSID Case No. ARB/13/38, para. 120.

## IV. RESPONDENT HAS BREACHED THE TREATY

149. The acts and omissions by the CBCS set out in **Section II** constitute a breach of several substantive protections of the Claimant's investments imposed by the BIT upon the Netherlands, and in particular:

(i) the fair and equitable treatment obligation (Article 3(1));

(ii) the prohibition of expropriation without compensation (Article 5); and

(iii) the free transfer of payments relating to the investment (Article 4).

### A. Respondent is Responsible for the CBCS's Conduct

150. As a preliminary remark, Respondent is responsible for the conduct of the CBCS, which is conduct of organs of a Contracting Party to the BIT because:

(i) Curaçao is a constituent country of the Kingdom of the Netherlands, one of the parties to the BIT,[415]

(ii) The Ministry of Finance of either St Maarten or Curaçao exercises technical and financial supervision over the CBCS.[416] and

(iii) For international law purposes, a State is a unitary entity so that the conduct of any State organ is attributable to the State.[417] Several investment tribunals have affirmed that the Articles on State Responsibility apply to central banks and have held respondent States responsible for their acts.[418] One UNCITRAL tribunal in particular has held that public statements by a central bank spokesperson are

[415] See **Section III.C** above.

[416] **Exhibit CLA-173-DUT**, CBCS Statute, Arts. 1, 2 and 11 ("The Bank may act as the banker of a Country and as such is responsible to the Minister of the Country concerned and accountable to the General Audit Office of the Country concerned. It performs these services at a cost").

[417] **Exhibit CLA-174**, Articles on State Responsibility, Art. 4(1) ("The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.").

[418] **Exhibit CLA-175**, *Genin v. Estonia* (Award, 25 June 2001) ICSID Case No. ARB/99/2, para. 327; **Exhibit CLA-176**, *Invesmart v. Czech Republic* (Award, 26 June 2009) UNCITRAL, para. 363; *PJSC v. Russia* (Partial Award, 4 February 2019) PCA Case No. 2015-21, para. 237.

imputable to the central bank and therefore attributable to the State.[419] This applies directly to this case.[420]

151. In any case, conduct of the CBCS, in the exercise of "elements of the governmental authority", are attributable to the Netherlands under Article 5 of the Articles on State Responsibility.[421] The CBCS is empowered by law to exercise functions of a public character which are normally exercised by State organs (e.g. monetary governance, to provide solicited and unsolicited advice to the Curaçao and St Maarten on matters within its jurisdiction, and supervise individuals, companies and institutions active in Curaçao or St Maarten).[422] The conduct of the CBCS at issue relates to the exercise of these functions.

152. Therefore, the acts complained of are attributable to Respondent. For the reasons below, they also constitute breaches of the BIT and therefore international wrongful acts. The CBCS's and Respondent's acts and omissions in relation to its supervision, takeover, management, and sale of Ennia's assets and Claimant's investments (which is still in progress[423]) constitute, separately and jointly, violations of the obligations imposed upon Respondent under the BIT.

## B. Breach of Fair and Equitable Treatment (Art. 3(1) of the BIT)

153. Articles 3(1) of the BIT prescribes fair and equitable treatment to the Claimant's investments. It states:

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

154. Article 3(1) guarantees a certain standard of treatment to foreign investors.[424] Although the relevant obligation(s) on the host State "must be appreciated *in concreto* taking into account

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[419] **Exhibit CLA-176**, *Invesmart v. Czech Republic* (Award, 26 June 2009) UNCITRAL, para. 363.

[420] See paragraphs 49-51 above; **Exhibit C-010,** Transcript of the Press Conference by [redacted] dated 5 July 2018 (translation).

[421] **Exhibit CLA-174**, Articles on State Responsibility, Art. 5; **Exhibit CLA-177**, *Sergei Paushok v. Mongolia* (Award on Jurisdiction and Liability, 28 April 2011) UNCITRAL, paras. 581-586, 592.

[422] **Exhibit CLA-173-DUT**, CBCS Statute, Chapter III, in particular Art. 8.

[423] See **Sections II.G and H**.

[424] **Exhibit CLA-178**, *Azurix v. Argentina* (Award, 14 July 2006) ICSID Case No. ARB/01/12, paras. 407-408. See also **Exhibit CLA-179**, Stephan Schill, "Fair and Equitable Treatment, the Rule of Law, and Comparative Public Law" in

the specific circumstances of each case",[425] the host State must observe a number of core duties, including:

(i) not to act arbitrarily or in bad faith;

(ii) to act with transparency, stability and consistency;

(iii) not to frustrate an investor's legitimate expectations; and

(iv) not to harass an investor or their investments.[426]

155. Respondent has done the exact opposite. The CBCS breached this obligation by, *inter alia*, seizing Ennia and Claimant's investments under the guise of quickly "restructuring" the company, retaining the company for almost six years now, monetising some of its assets and attempting to monetise others (sometimes for the benefit of private individuals), refusing to make required financial disclosures about them, refusing to return them to their rightful owner, and halting Claimant's payments relating to its investments. Moreover, the CBCS violated the Claimant's legitimate expectation that his investment would be held and operated free from interference from government regulations that have no appropriate public policy objectives, and by reneging on its written assurances that it would give Ennia (and in particular EC Investments) sufficient time to come into regulatory compliance with novel laws when it instead seized Ennia's assets well before this time expired. Such unreasonable (and discriminatory) measures have, quite obviously, impaired "the operation, management, maintenance, use, enjoyment or disposal [of Claimant's investments]".[427]

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Stephen Schill (ed), *International Investment Law and Comparative Public Law* (Oxford University Press, 2010) 151 et seq; **Exhibit CLA-180**, Campbell McLachlan, Laurence Shore and Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (2nd edn, OUP, 2017) chapter 7.2.

[425] **Exhibit CLA-181**, *Jan de Nul v. Egypt* (Award, 6 November 2008) ICSID Case No. ARB/04/13, para. 185. See also **Exhibit CLA-182**, *Tulip Real Estate v. Turkey* (Award, 10 March 2014) ICSID Case No. ARB/11/28, para. 430; **Exhibit CLA-183**, *Noble Ventures v. Romania* (Award, 12 October 2005) ICSID Case No. ARB/01/11, para. 164.

[426] **Exhibit CLA-184**, *Jan Oostergetel v. Slovakia* (Final Award, 23 April 2012) UNCITRAL, para. 221; **Exhibit CLA-185**, *Bayindir v. Pakistan* (Award, 27 August 2009) ICSID Case No ARBI03I29, para. 178; **Exhibit CLA-086**, Ursula Kriebaum, Christoph Schreuer and Rudolf Dolzer, *Principles of International Investment Law* (3rd edn, OUP, 2022) 205 et seq.; **Exhibit CLA-180**, Campbell McLachlan, Laurence Shore and Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (2nd Edition, OUP, 2017) 313-327; **Exhibit CLA-186**, Jeswald Salacuse, *The Law of Investment Treaties* (3rd Edition, OUP, 2021) 303 et seq. See also **Exhibit CLA-144**, Netherlands Model BIT (2019), Arts. 4-5, 8-9.

[427] **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. 3(1).

156. In particular:

(i) With regard to the CBCS's regulatory framework and the Grace Period,[428] the CBCS continuously changed its local insurance regulations, violating the obligation implied in Article 3(1) of the BIT to provide a stable, predictable and consistent regulatory framework and not to frustrate Claimant's legitimate expectations. The CBCS agreed with Ennia's vertical structure from its acquisition by Parman in 2006 to 2009, when it radically changed its regulations and suddenly required a horizontal structure,[429] despite having praised the Ennia Insurance Companies the previous year.[430] This was not the only contrary instruction.[431] Along the way, it restricted Ennia's investments and loans.[432] Then, in 2015, by way of another *volte-face*, it again changed to a vertical structure.[433] Moreover, following the change in regulations covering affiliate transactions in 2015, the CBCS expressly granted Ennia a 'grace period' until 2019 to come into regulatory compliance.[434] However, already in 2016 silent curators were appointed at Ennia Leven, merely a week after reminding Ennia of the new regulatory requirements.[435] In July 2018, *a year before the expiration of the Grace Period*, the CBCS effectively took control of Ennia.[436] In sum, the CBCS made it impossible for Ennia and Claimant to adapt (and when it was doing so in the form of the Restructuring Agreement, the CBCS frustrated its efforts). All the foregoing was exacerbated by opposite instructions from the DNB.[437]

(ii) With regard to the Restructuring Agreement,[438] its implementation as agreed with the CBCS would have brought the Ennia Insurance Companies into regulatory compliance without any need for the Emergency Declaration or the sale of any Parman group assets. The CBCS reneged on its implementation merely a month

[428] See Section II.B.

[429] See paragraph 21-24 above.

[430] See paragraph 23 above.

[431] See paragraphs 25-27 (stating, in a span of 4 months, that Ennia Schade was in regulatory compliance and that it did not meet the new regulations) and 28 (considering intercompany loans as admissible and then inadmissible).

[432] See paragraphs 30 and 33 above.

[433] See paragraph 31 above.

[434] See paragraph 33 above.

[435] See paragraph 35 above.

[436] See paragraphs 39 above.

[437] See paragraphs 38 above.

[438] See paragraphs 40-44 above.

after its agreement, an unmistakable violation of the obligation implied in Article 3(1) of the BIT to provide a stable regulatory framework and act in a predictable manner;

(iii) With regard to the Takeover of Ennia, the July 2018 Takeover of Ennia was contrary to the assurances given by the CBCS (in particular, that there was no relevant change of circumstances justifying the CBCS's decision to act itself rather than allow Parman to implement the Restructuring Agreement) and was avowedly for a specific and limited purpose (i.e. the restructuring of the group to bring the Ennia Insurance Companies into regulatory compliance).[439] Also, it deserves to be noted that less draconian measures were available to the CBCS.[440] No appeal against the Emergency Declaration was possible under local law.[441] As a true judge in its own cause, now effectively in control of Ennia, the CBCS immediately revoked the appeal filed by Ennia's original management against the withdrawal of the licences of the Ennia Insurance Companies.[442] Finally, since the Takeover, the CBCS has failed to act in a transparent manner, not disclosing financial statements and other documents needed for Ennia's and Claimant's defence[443] (a fact that has been noted by the Board of Supervisory Directors which were subsequently fired by the CBCS[444]). All of this – separately or concurrently – a clear breach of fair and equitable treatment;

(iv) With regard to the solvency question (as distinct from regulatory compliance), at no time has there been any default on the policies issued by the Ennia Insurance Companies and the group itself was never insolvent.[445] This has been admitted by the CBCS itself and there has never been any danger of it doing so.[446] This could therefore never have been a reason for the Takeover;[447]

(v) With regard to regulatory compliance (as distinct from the solvency question), by Q1 of 2021, two of the Ennia Insurance Companies had returned to regulatory

[439] See paragraphs 51 above

[440] See paragraph 47 above.

[441] See paragraph 47 above.

[442] See paragraph 48 above.

[443] See paragraph 62 above.

[444] See paragraph 47 above.

[445] See paragraph 49 above.

[446] See paragraph 49 above.

[447] Exhibit CLA-061, Tobias Asser, *Legal Aspects of Regulatory Treatment of Banks in Distress* (IMF, 2001) 6.

compliance with the other (as of September 2021) on the way.[448] If so, it would seem to follow that the transfer of the USD 280 million cash and shares from EC Investments sufficed (as already proposed in the Restructuring Agreement) to return the companies to regulatory compliance, so that there was no need to sell BDC. It also argues that the continued seizure of the companies (and the interference with Claimant's rights as a shareholder in Parman cannot legally be justified;

(vi) With regard to the sale of BDC and certain stocks,[449] this was unnecessary to bring the Ennia Insurance Companies into regulatory compliance. The CBCS did not act as could be expected from a reasonable and diligent investor and seller. The financials showed that BDC reported a profit of almost ANG 22 million/year. There was nothing on the facts that justified the ejection of a successful banking operation with a recurring income other than to liquidate Ennia's assets. The sale of BDC was not at all to the benefit of Ennia's policyholders – apparently the CBCS's intention.[450] An asset liquified in cash, especially an amount of this scope, is of no use to policyholders who only need to be paid on a regular basis. An insurance company needs long-term investments.[451] A sale of a long-term asset can only be justified when it is reinvested in an even more profitable asset. This was not the case. To the contrary, the CBCS's reinvestments have proven to be disastrous.[452]

Moreover, the sale of BDC (i) did not follow a proper marketing process, (ii) was not at fair market value, (iii) was a ill-timed sale, (iv) to an unsuitable purchaser, and (v) was effectuated in violation of Ennia's Articles of Incorporation.[453] In particular, a proposed sale by Ennia – on instruction of the CBCS – *to the same purchaser* had been rejected by the CBCS for the same reasons.[454] The latter, when in control of Ennia, thereafter sold BDC for *ANG 60 million* below the previous offer. Such loss, nor the loss of a ca. ANG 22 million/year asset was not indicated in the financial statements for 2022, in violation of the CBCS's obligations to transparency under Article 3(1) of the BIT.

(vii) With regard to Mullet Bay, its sale – as instructed, desired and prepared by the CBCS – is also unnecessary to bring the Ennia Insurance Companies into regulatory

[448] See paragraph 62 above.

[449] See Section II.G.

[450] Exhibit RL-007-DUTCH, Curaçao Court of First Instance, Judgment of 29 November 2021, paras. 5.42-5.43.

[451] Notice of Arbitration, paras. 12, 43, 51.

[452] See paragraph 69-76 above.

[453] See paragraphs 75 above.

[454] See paragraph 73 above.

compliance as insurance company needs long-term investments.[455] Moreover, such a sale would be disastrous for Ennia and Claimant's investments as substantial indicia exist that any sale will also be undertaken (i) without a proper marketing process, (ii) will not be at a fair market value, and/or (iii) be a sale to an unsuitable purchaser. Most importantly, for reasons unclear to Claimant, as evidenced by the CBCS's valuation reports, the latter intends to sell Mullet Bay at substantial undervalue, thereby depleting Claimant and the other shareholders of its investments. This is, among others, a violation of Article 3(1) of the BIT, which prohibits Respondent to act in bad faith.

157. In each situation, whether separately or concurrently, the CBCS acted in an unpredictable and inconsistent manner, providing all but a stable regulatory framework to which Ennia and Claimant could adapt. In particular, through its agents, the CBCS has breached *inter alia* the following fiduciary duties which should be expected of a central bank. Granting a grace period to come into regulatory compliance to then unilaterally renege on its written assurances alone would suffice for a breach of Article 3(1) of the BIT. However, the CBCS also pulled out of a comprehensive restructuring plan which would solve the issue of intercompany balances – a problem that the CBCS itself had created in the first place by moving from a vertical to a horizontal structure (and back). It failed to complete the Restructuring Agreement as promised, despite having all corporate authority to do so. It then took over Ennia, after which it all but quickly restructured the company, left Claimant and the other shareholders in the dark regarding their investments, including by failing to timely publish financial statements (thus violating its obligation to act in a transparent manner under Article 3(1) as well as Curaçao law and a U.S. court order),[456] violated Claimant's legitimate expectations to his investment (and proceeds) by ending them, sold off Ennia's assets on questionable conditions, and made a couple of disastrous (re-)investment decisions. In the process, it wasted millions of dollars on legal and financial fees.[457]

158. Moreover, from the above it is clear that there has been a 'creeping' violation of fair and equitable treatment (just like there has been a 'creeping expropriation', on which see paragraphs 169-174 below).[458] Even if any of the acts by the CBCS outlined above did not in itself constitute a violation of fair and equitable treatment (*quod non*), the series of acts (i.e. a "composite act") – cumulatively arbitrary and/or unreasonable – qualifies as a creeping

[455] Notice of Arbitration, paras. 12, 43, 51.

[456] **Exhibit C-012-DUT**, Letter from [redacted] to the CBCS dated 11 November 2019, p 5.

[457] See paragraph 47 above.

[458] **Exhibit CLA-187**, *El Paso v. Argentina* (Award, 31 October 2011) ICSID Case No. ARB/03/15, para. 518.

violation of fair and equitable treatment and therefore a breach of the BIT.[459] In other words, whether or not individually significant, a succession of acts can build up to unfair and inequitable treatment in the sense of Article 3(1) of the BIT until the standard is breached.[460]

159. A creeping violation of fair and equitable treatment requires an inquiry into the particular facts. The relevant focus of the inquiry is the *effect or result* of the measures (as a package), as opposed to the purpose for which each measure was undertaken: the use of the term 'creeping' indicates that the entirety of the measures should be reviewed in the aggregate to determine their effect on the investment (rather than each individual measure on its own). In the words of the tribunal in *AMF v. Czech Republic*:

> *Such an inquiry requires the Tribunal to consider whether "fairness" for Claimant under the FET standard consists not only of fairness in process (in the sense that the trustees and courts at all times complied with applicable law), but also fairness in effect, in the sense of ensuring at the end of the legal proceedings, Claimant would be left in no worse position than before the proceedings started.*[461]

160. For the reasons set out above, the CBCS's and Respondent's conduct does not come close to meeting this standard.

161. In sum, the CBCS made various representations (which it breached), it intervened in Claimant's and Parman's affairs when it was unnecessary to do so and/or continued to do so when it was no longer necessary, and it sold and/or intends to sell Ennia's assets at an undervalue. In addition to causing the corporate group loss by doing so, it deprived Claimant and the other shareholders of their right as such, and refused to return the shares/investments to the Claimant and the other shareholders for economic and political reasons. These violations have caused, and are continuing to cause, significant harm to Claimant.

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[459] **Exhibit CLA-174**, Articles on State Responsibility, Art. 15(1) ("The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act."). See also **Exhibit CLA-188**, *Gold Reserve v. Venezuela* (Award, 22 September 2014) ICSID Case No. ARB(AF)/09/1, para. 566; **Exhibit CLA-187**, *El Paso v. Argentina* (Award, 31 October 2011) ICSID Case No. ARB/03/15, para. 518; **Exhibit CLA-189**, *Tatneft v. Ukraine* (Award on the Merits, 29 July 2014) PCA Case No. 2008-8, para. 413.

[460] **Exhibit CLA-187**, *El Paso v. Argentina* (Award, 31 October 2011) ICSID Case No. ARB/03/15, para. 518; **Exhibit CLA-073**, *Flemingo v. Poland* (Award, 12 August 2016) UNCITRAL, para. 536; **Exhibit CLA-190**, *B3 v. Croatia* (Excerpts of Award, 15 April 2019) ICSID Case No. ARB/15/5, para. 840.

[461] **Exhibit CLA-191**, *AMF v. Czech Republic* (Final Award, 11 May 2020) PCA Case No. 2017-15, para. 704 (emphasis added).

## C. Expropriation without Compensation (Article 5 of the BIT)

162. Article 5 of the BIT prohibits measures depriving, directly or indirectly, investors of the other Contracting Party of their investments.

163. While there has been no mandatory transfer of the legal title to Ennia, the CBCS is (and has been) in control of Ennia since the Takeover. As a result, its assets and Claimant's investments to the State are in the State's hands, too, creating an indirect expropriation. Measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they are deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner.[462] It is inapposite whether the expropriation was effected by judicial measures: indirect expropriation has been defined as any legislative, judicial or administrative act that significantly interferes with the use and enjoyment of the investment depriving it of its value without depriving the investor of its property and control.[463]

164. In summary, Claimant's investments have been expropriated. The CBCS, in charge of Ennia, has depleted its assets already (and is continuing to deplete them further), in effect expropriating *at least* the difference in the Claimant's shareholding permanently. At the same time, it has stopped all of Claimant's recurring payments, an inherent part of its original investment.

165. The test for indirect expropriation is met. Since the Takeover, the CBCS has:

    (i) irreversibly and permanently;

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[462] **Exhibit CLA-192**, *Metalclad v. Mexico* (Award, 30 August 2000) ICSID Case No. ARB(AF)/97/1, para. 103; **Exhibit CLA-193**, *Glamis Gold v. United States of America* (Award, 8 June 2009) UNCITRAL, para. 355 ("such an [indirect] expropriation does not occur through a formal action such as nationalization. Instead, in an indirect expropriation, some entitlements inherent in the property right are taken by the government or the public so as to render almost without value the rights remaining with the investor."); **Exhibit CLA-194**, *Venezuela Holdings et al. v. Venezuela* (Award, 9 October 2014) ICSID Case No. ARB/07/27, para. 286; **Exhibit CLA-195**, *AIG v. Kazakhstan* (Award, 7 October 2003) ICSID Case No. ARB/01/6, para. 10.3.1 (holding that expropriations ("or measures tantamount to expropriation") include not only open deliberate and acknowledged takings of property (such as outright seizure or formal or obligatory transfer of title in favour of the Host State) but also covert or incidental interference with the use of property which has the effect of depriving the owner in whole or in significant part of the use or reasonably to be expected benefit of property even if not necessarily to the obvious benefit of the Host State), footnote 65; **Exhibit CLA-196**, *OOO Manolium Processing v. Belarus* (Final Award, 22 June 2021) PCA Case No. 2018-06, para. 422. See also **Exhibit CLA-094-ESP**, *Flughafen Zürich v. Venezuela* (Award, 18 November 2014) ICSID Case No. ARB/10/19, para. 456 (adding that the definition of expropriation centres on the investor, not the State; it does not require proof that the State benefited from the expropriation or the dispossession was intended).

[463] **Exhibit CLA-197-ESP**, *Tenaris v. Venezuela (II)* (Award, 12 December 2016) ICSID Case No. ARB/12/23, para. 320.

(ii) deprived Claimant of the economic use and enjoyment of the rights to the investment, or of identifiable, distinct parts thereof; and

(iii) caused a loss of economic value to the investor.[464]

166. The CBCS, in *de facto* control of Ennia, has sold and is selling Ennia's assets at a loss, effectively expropriating the company of its assets and Claimant of its investments. The losses to Parman (and therefore Claimant) – created by the CBCS's bad business decisions – are irreversible. The loss on the sale of BDC, below market value, and its effects for possible intercompany transfers, can never be recovered as BDC is out of the equation. For similar reasons, the loss created by the sale of the stocks at an opportune time has created a loss that cannot be recovered. This explains why Claimant and the other shareholders resist any sale of Mullet Bay: a sale at the CBCS's estimated value would prove disastrous and create a further gap of over USD 300 million.

167. These losses trickle down to Claimant's investments. As such, the logic of *CME v. Czech Republic* applies, i.e. that this Tribunal must examine whether the host State expropriated the local company in question since the expropriation of the company's assets and rights affect the value of the claimant's shares, since shares are an investment (see Section III.A.1).[465] Without the underlying assets – or assets with a lower value – the company's shares are also worth considerably less. And, although the emergency measures should not be permanent – although they seem to be considering that they have been ongoing for almost six years despite the promised swift restructuring – the effects of the CBCS's measures above are permanent; the losses can never be recuperated.[466] Consequently, they have a negative effect on Claimant's shares, effectively expropriating the difference in value. As a result of the CBCS's measures, Claimant is prevented from generating a commercial return on its investments,[467] the Claimant has lost the expected economic benefit of its

[464] Exhibit CLA-198, *Plama v. Bulgaria* (Award, 27 August 2008) ICSID Case No. ARB/03/24, para. 193. See also Exhibit CLA-199, *Hydro et al. v. Albania* (Award, 24 April 2019) ICSID Case No. ARB/15/28, para. 686.

[465] Exhibit CLA-200, *CME v. Czech Republic* (Partial Award, 13 September 2001) UNCITRAL, para. 392. See also Exhibit CLA-201, *Busta v. Czech Republic* (Final Award, 10 March 2017) SCC Case No. V 2015/014, para. 191 (noting that arbitral case law has long accepted that shareholders may bring claims for indirect expropriation).

[466] Indeed, for indirect (and creeping) expropriation, the focus lies on the effect of the measures rather than their purpose. See Exhibit CLA-202, *Teinver v. Argentina* (Award, 21 July 2017) ICSID Case No. ARB/09/01, paras. 948-951; Exhibit CLA-203, *UP and CD Holding v. Hungary* (Award, 9 October 2018) ICSID Case No. ARB/13/35, para. 331.

[467] Exhibit CLA-204, Jonathan Bonnitcha, *Substantive Protection under Investment Treaties: A Legal and Economic Analysis* (CUP, 2014) 249-250; Exhibit CLA-205, 'The Notion of 'Indirect Expropiation' in Investment Treaties concluded by 88 Jurisdictions: A large Sample Survey of Treaty Provisions' (OECD, 19 October 2021).

investments,[468] *and* there has been a substantial deprivation of the investments' value. In particular, the corresponding right to dividend, salary and pension payments – part and parcel of Claimant's investments – have been stopped, all commandeered to fill the gaps in the CBCS-created losses on the sales of Ennia's assets.

168. Although Claimant retains ownership of his shares, he has been deprived of all or significant parts of his contractual and property rights[469] as a shareholder to such an extent that his investment has been expropriated without compensation *de facto* because he was substantially deprived of the economic use and enjoyment of his property and its fundamental attributes, including the right to use, enjoy and dispose of its investment.[470]

169. In fact, the CBCS's acts amount to a textbook example of a 'creeping expropriation', i.e.:

> *the incremental encroachment on one or more of the ownership rights of a foreign investor that eventually destroys (or nearly destroys) the value of its investment or deprives him or her of control over the investment. A series of separate State acts, usually taken within a limited time span, are then regarded as constituent parts of the unified treatment of the investor or investment.*[471]

170. Creeping expropriation is a specific form of (indirect) expropriation that results from a series of measures taken over time that cumulatively have an expropriatory effect, rather than

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[468] See **Exhibit CLA-204**, Jonathan Bonnitcha, *Substantive Protection under Investment Treaties: A Legal and Economic Analysis* (CUP, 2014) 250 ("The Metalclad approach looks exclusively to the effects of a measure. A measure that causes an investment to lose significant economic value will amount to an indirect expropriation, independent of an assessment of the measure's interference with legal rights in the investment.").

[469] **Exhibit CLA-209**, *Urbaser et al. v. Argentina* (Award, 8 December 2016) ICSID Case No. ARB/07/26, para. 1000.

[470] See **Exhibit CLA-210**, *Tecmed v. Mexico* (Award, 29 May 2003) ICSID Case No. ARB (AF)/00/92, para. 115; **Exhibit CLA-211**, *Crystallex v. Venezuela* (Award, 4 April 2016) ICSID Case No. ARB(AF)/11/2, para. 667; **Exhibit CLA-212**, *Biwater Gauff v. Tanzania* (Award, 24 July 2008) ICSID Case No. ARB/05/22, para. 452; **Exhibit CLA-196**, *OOO Manolium Processing v. Belarus* (Final Award, 22 June 2021) PCA Case No. 2018-06, para. 422. See also **Exhibit CLA-094-ESP**, *Flughafen Zürich v. Venezuela* (Award, 18 November 2014) ICSID Case No. ARB/10/19, para. 456; **Exhibit CLA-213**, *Kornikom v. Serbia* (Award, 20 September 2023) ICSID Case No. ARB/19/12, para. 391; **Exhibit CLA-214**, *Bahgat v. Egypt (I)* (Final Award, 23 December 2019) PCA Case No. 2012-07, para. 221; **Exhibit CLA-215**, *Mamidoil Jetoil v. Albania* (Award, 30 March 2015) ICSID Case No. ARB/11/24, para. 569 ("In its literal translation, expropriation describes a specific effect on property itself and not a damage inflicted to property. The effect can be a direct taking as it can be an indirect deprivation of one or several of its essential characteristics. These are traditionally defined by its use and enjoyment, control and possession, and disposal and alienation. If one of these attributes is affected, the resulting loss of value and/or benefit may lead to a claim for expropriation.").

[471] **Exhibit CLA-216**, 'Expropriation: A Sequel' (UNCTAD, 2012) 11. See also **Exhibit CLA-217**, *Generation Ukraine v. Ukraine* (Final Award, 16 September 2003) ICSID Case No. ARB/00/9, paras. 20.22-20.26.

from a single measure (or group of measures) that occur at one time.[472] As such, a creeping expropriation is a 'composite act' in the meaning of the Articles of State Responsibility, i.e. "[t]he breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act."[473] In the words of the *Siemens v. Argentina* tribunal:

> *By definition, creeping expropriation refers to a process, to steps that eventually have the effect of an expropriation. If the process stops before it reaches that point, then expropriation would not occur. This does not necessarily mean that no adverse effects would have occurred. Obviously, each step must have an adverse effect but by itself may not be significant or considered an illegal act. The last step in a creeping expropriation that tilts the balance is similar to the straw that breaks the camel's back. The preceding straws may not have had a perceptible effect but are part of the process that led to the break.*[474]

171. As a creeping expropriation requires an inquiry into the particular facts, the relevant focus of the inquiry is the *effect or result* of the measures (as a whole), as opposed to the purpose for which each measure was undertaken: the use of the term "creeping" indicates that the entirety of the measures should be reviewed in the aggregate to determine their effect on the investment (rather than each individual measure on its own).[475] The economic impact of the measures on the investment is considered to be the most important element to take into consideration in determining whether there has been an expropriation in general.[476]

172. Tribunals have found that there are different types of measures that may crystalise as a breach of creeping expropriation, such as State laws,[477] and termination of licence rights.[478] Respondent has used both of these types of measures in this case. Even if any of the single acts by the CBCS did not in itself constitute an expropriatory measure (*quod non*), the series

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[472] **Exhibit CLA-211**, *Crystallex v. Venezuela* (Award, 4 April 2016) ICSID Case No. ARB(AF)/11/2, para. 667; **Exhibit CLA-218**, *Tradex v. Albania* (Award, 29 April 1999) ICSID Case No. ARB/94/2, para. 191.

[473] **Exhibit CLA-174**, Articles on State Responsibility, Art. 15(1). See also **Exhibit CLA-212**, *Biwater Gauff v. Tanzania* (Award, 24 July 2008) ICSID Case No. ARB/05/22, para. 455.

[474] **Exhibit CLA-219**, *Siemens v. Argentina* (Award, 6 February 2007) ICSID Case No. ARB/02/8, para. 263.

[475] **Exhibit CLA-202** *Teinver v. Argentina* (Award, 21 July 2017) ICSID Case No. ARB/09/01, paras. 948-951; **Exhibit CLA-203**, *UP and CD Holding v. Hungary* (Award, 9 October 2018) ICSID Case No. ARB/13/35, para. 331.

[476] **Exhibit CLA-220**, *Tomasz Czescik and Robert Aleksandrowicz v. Cyprus* (Final Award, 11 February 2017) SCC Case No. V2014/169, paras. 212-214.

[477] See, for example, **Exhibit CLA-221**, *Yukos v. Russia* (Final Award, 18 July 2014) UNCITRAL, PCA Case No AA 227, paras. 1407, 1615.

[478] See, for example, **Exhibit CLA-222**, Christopher S. Gibson, 'Yukos Universal Limited (Isle of Man) v The Russian Federation: A Classic Case of Indirect Expropriation' (2015) 30(2) ICSID Review 303, 304.

of acts qualify as creeping expropriation and therefore a breach of the BIT.[479] If not the Takeover itself, already an expropriatory act in light of the CBCS's written assurances to a grace period and the Claimant's legitimate expectations,[480] the straw that broke the camel's back in this case was the sale (at a loss) of BDC and the stock options, depleting Ennia's assets and Claimant's investments of its value. If Mullet Bay is sold (as it stands, also at a massive discount), the camel would lose a hump and become a dromedary.

173. Article 5 of the BIT recalls that only reasonable governmental regulation is allowed. Only when

> *a) the measures are taken in the public interest and under due process of law;*
>
> *b) the measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given; [and]*
>
> *c) the measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants. The genuine value of the investment shall not reflect any change in value occurring because the expropriation had become publicly known earlier*[481]

there is no expropriation.

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[479] See **Exhibit CLA-223**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* (Award, 20 August 2007) ICSID Case No. ARB/97/3, paras. 7.5.31-7.5.34; **Exhibit CLA-224**, *Rumeli v. Kazakhstan* (Award, 29 July 2008) ICSID Case No. ARB/05/16, para. 700; **Exhibit CLA-225**, *Spyridon Roussalis v. Romania* (Award, 7 December 2011) ICSID Case No. ARB/06/1, para. 329; **Exhibit CLA-226-ESP**, *Valores Mundiales, S.L. and Consorcio Andino S.L. v. Venezuela* (Award, 25 July 2017) ICSID Case No. ARB/13/11, paras. 395, 398; **Exhibit CLA-227**, *Oxus Gold v. Uzbekistan* (Final Award, 17 December 2015) UNCITRAL, para. 740.

[480] **Exhibit CLA-210**, *Tecmed v. Mexico* (Award, 29 May 2003) ICSID Case No. ARB (AF)/00/92, paras. 122, 150; **Exhibit CLA-178**, *Azurix v. Argentina* (Award, 14 July 2006) ICSID Case No. ARB/01/12, paras. 316-321 (holding that expectations "are not necessarily based on a contract but on assurances explicit or implicit, or on representations made by the State which the investor took into account in making the investment"); **Exhibit CLA-228**, *Mobil Exploration et al. v. Argentina* (Decision on Jurisdiction and Liability, 10 April 2013) ICSID Case No. ARB/04/16, para. 828.

[481] **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. 5.

174. It cannot be argued that the exceptions set out in Article 5 apply to this case, whether alternatively or concurrently (the latter being the provision's requirement).[482] The CBCS has targeted the Claimant's rights and investments in Parman and Ennia, effectively expropriating these by taking discriminate measures to effect an indirect takeover, stripping Ennia of all of its value by liquidating assets and looting others, leaving it a worthless shell with no assets to control whatsoever. Parman's three main assets, i.e. its insurance businesses, its banking operation, and extremely valuable real estate have all been commandeered, operated for private and political gain, and sold (or readied for sale) at a bargain price to those associated with the CBCS and the Curaçao Government.[483] This is not a legitimate use of governmental powers, but a simple attempt to further private financial interests. By taking and retaining control of Ennia long after any conceivable "emergency" could have existed, the CBCS unlawfully expropriated Claimant's property interest in the companies and assets, without providing "just compensation",[484] in violation of international (and – for the record – Dutch[485]) law.

## D. Breach of Free Transfer of Payment relating to the Investments (Article 4 of the BIT)

175. The BIT explicitly protects the payments relating to Claimant's investments set out in Section III.A. Article 4 states:

> *The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:*
>
> *a) profits, interests, dividends and other current income;*
>
> *b) capital and additional amounts to maintain or increase the investment;*
>
> *c) funds in repayment of loans;*

[482] See Exhibit CLA-229, *Oschadbank v. Russia* (Award, 26 November 2018) PCA Case No. 2016-14, paras. 291-292.

[483] See Exhibit CLA-199, *Hydro et al. v. Albania* (Award, 24 April 2019) ICSID Case No. ARB/15/28, paras. 724-725 (holding that a political campaign deliberately interfering with the investment and compromising of several consecutive acts culminating in an expropriation is *not* a legitimate exercise of police powers and thus breaches Article 5 of the BIT).

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

[485] Exhibit CLA-230, Dutch Constitution (2018), Art. 14(1) ("Expropriation may only take place in the public interest and against compensation secured in advance, all in accordance with regulations to be established by or under the law.").

*d) royalties or fees;*

*e) earnings of natural persons;*

*f) the proceeds of sale or liquidation of the investment;*

*g) payments arising under the Articles 5, 6, 9 and 10.*

176. As such, *taking into account its non-exhaustive character*, the provision *at least* protects Claimant's "profits, interests, dividends and other current income", "royalties or fees" and "earnings of [Claimant]", any "proceeds of sale or liquidation of the investment", as well as "payments arising under Article 5 [on expropriation]". By intervening and taking over Ennia and Claimant's investments, the CBCS has effectively halted Claimant's regular payments relating to its investments, violating Article 4 of the BIT.

* * *

177. Finally, Claimant regrets the stance Respondent has taken in the domestic proceedings and this arbitration up to date,[486] i.e. its continuous *renvoi* to domestic court proceedings as determinative of the dispute and aversion to a neutral international forum. This is all but the behaviour of a State that upholds the international rule of law,[487] hosts several international organisations, and allows its courts to scrutinise conduct of sovereign States.[488] This is especially so in the light of Respondent's insistence that the actions taken by the CBCS – for which it is responsible under international law – were justified.[489] If so, however, it should have nothing to fear from giving individuals an effective legal remedy, i.e. arbitration by a third party in a neutral forum, the very object and purpose of the BIT. Even the most robust legal systems have flaws; Claimant should not be a victim of those.

## V. RELIEF SOUGHT

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

(i) declare that the Netherlands has breached its obligations under the Lebanon-Netherlands BIT;

[486] See, for example, Application for Security for Costs; Reply to Response to Application for Security for Costs.

[487] **Exhibit C-087**, World Justice Project Rule of Law Index (2023) 11, 132 (holding the seventh, previously the fifth, place globally).

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

[489] See Reply to Application for Security for Costs; Reply to Response to Application for Security for Costs.

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

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

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

(v) order the 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;[490]

(vi) 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

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

179. Claimant reserves its right to modify or supplement the claims and prayer for relief stated in this Statement of Claim; 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 the Respondent; and to claim damages in respect of the losses that have been and are being caused by Respondent's breaches of the BIT, which will be quantified and supported by further evidence in due course.

Respectfully submitted,

Dr Rutsel Silvestre J Martha

Lindeborg Counsellors at Law

[Signed]

22 February 2024

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