

**IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF ARBITRATION OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AND
THE FREE TRADE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE SULTANATE OF OMAN**

ADEL A HAMADI AL TAMIMI,)
)
Claimant,)
)
v.)
)
SULTANATE OF OMAN,)
)
Respondent.)

REQUEST FOR ARBITRATION

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I. INTRODUCTION

1. In accordance with Article 10.15 *et seq.* of the Free Trade Agreement between the United States of America and the Sultanate of Oman (the “FTA” or the “U.S.-Oman FTA”),¹ Mr. Adel A Hamadi Al Tamimi (“Mr. Al Tamimi” or the “Claimant”), a citizen of the United States of America, hereby submits to arbitration at the International Centre for Settlement of Investment Disputes (“ICSID”) certain claims against the Sultanate of Oman (“Oman”). Pursuant to paragraph 1(a) of Article 10.15 of the FTA, Mr. Al Tamimi submits his claims in his capacity as an investor of the United States of America.

2. Mr. Al Tamimi invested tens of millions of dollars in Oman in reliance on the Government’s invitation and promises of support, the legal framework for foreign investment in the country, his assessment of the size of the local and regional market, as well as the Sultanate’s “*Vision 2020*”—an economic development plan for Oman’s economic future up to the year 2020, emphasizing, *inter alia*, the importance of private direct investment in a number of strategic sectors, such as mining.² His claims are based on breaches by Oman of the FTA relating to his

¹ Agreement between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area, entered into force 1 Jan. 2009 (“U.S.-Oman FTA”), *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/oman-fta/final-text> (last visited 29 Nov. 2011), Cl. Exh. C-1. Claimant’s supporting documents are referred to in this Request as “Cl. Exh. C-__.” English translations have been provided for documents that are in Arabic. All such translations are unofficial.

² See Sultanate of Oman, Ministry of National Economy, Second Long Term Development Strategy (1996-2020), *available at* <http://www.moneoman.gov.om/loader.aspx?view=planning-ds-slt&type=plan> (last visited 29 Nov. 2011), Cl. Exh. C-2 (“In order to . . . maximize the benefit from the positive developments on the national economy’s structure . . . as well as from the natural resources of the country [and] the distinguished geographical location of the Sultanate, . . . the Sultanate adopted . . . , in accordance with the Royal Decree No. (1/96), the long term development strategy for the period (1996-2020) represented in the Vision for Oman’s economy: Oman 2020.”). That vision aims in relevant part to “provide favourable conditions for economic advancement . . . to accomplish sustainable and renewable economic diversification” by “[c]reating the conditions for stable macro-economic climate with the aim of developing a private sector capable of the optimal use of the human and natural resources of the Sultanate” and “[p]roviding appropriate conditions for the realization of economic diversification

multi-million dollar investments to design, develop, and operate a limestone quarry in the Jebel Wasa region of Oman (the “Jebel Wasa Quarry” or the “Quarry”), pursuant to two lease agreements entered into between companies wholly or partially owned by Mr. Al Tamimi (and controlled entirely by him) and Oman Mining Company LLC (“OMCO”). OMCO is a state-owned enterprise that was established pursuant to royal decree. Also pursuant to royal decree, it is the concessionaire for metallic and minerals mining in Oman.³ The breaching measures consist of illegal actions taken by OMCO, Oman’s Ministry of Environment and Climate Affairs,⁴ and the Royal Oman Police, including: the failure by OMCO to obtain necessary permitting per its obligations under the lease agreements, and its misrepresentations regarding the permits it had obtained; the pretextual, arbitrary, and capricious termination of the lease agreements, which were never reinstated; the enforcement of the terminations through the improper arrest and detention of Mr. Al Tamimi himself and the forcible shutting down of the quarry site; the coercion of Mr. Al Tamimi to provide a commitment to cease permanently

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and working toward the optimum utilization of the natural resources and the geographically distinct location of the Sultanate.” *Id.*; see also Report - Environmental Impact Assessment - Proposed Limestone Quarry, As Sumayni, Adh Dhahirah Region, 17 Sept. 2006 (“Environmental Impact Assessment and Operations Plan,” or the “Plan”), at 13-14, Cl. Exh. C-3 (asserting that *Vision 2020* established as targets the growth of total government revenue to 16% of GDP, exports to 23% of GDP, and the mining and quarrying sectors from 0.6% (in 2000) to 2.0% of GDP by 2020; also asserting that the quarry project would contribute to achieving these goals by increasing tax payments and exports (through the sale of stone and aggregates abroad), and diversification (through increased mining and quarrying)).

³ OMCO is wholly owned by the Government of Oman. Pursuant to Royal Decree No. 11/81, OMCO is the authority through which the Government of Oman contracts with third parties regarding operation of its mining concessions. See Royal Decree No. 11/81, dated 4 Feb. 1981, Cl. Exh. C-4. OMCO has been described by Omani courts as a “company wholly owned by the [Omani] government under the supervision of the Ministry of Commerce and Industry,” see Judgment No. 214/2009 M, Ministry of Justice Court of Appeal, dated 6 June 2010, at 2, Cl. Exh. C-5, and in other sources as a government-run company.

⁴ The ministries responsible for environmental affairs have gone through a series of bureaucratic changes over the years. The current Ministry of Environment and Climate Affairs was created when its predecessor ministry, the Ministry of Regional Municipalities, Environment and Water Resources, was split into two separate ministries in 2006 and 2007. (The other ministry created in this split was the Ministry of Regional Municipalities and Water Resources.) Unless distinction is relevant in context, these ministries are collectively referred to herein as the

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quarrying and crushing operations as a condition of his release from police custody, which was never revoked; the threatening and forced dispersal of Mr. Al Tamimi's employees; and the auctioning of his quarrying equipment.

3. As described herein, Mr. Al Tamimi invested in Oman through two vehicles, Emrock Aggregate & Mining LLC ("Emrock") and SFOH Limited ("SFOH") (collectively, the "Companies"). In addition to making his investments through these vehicles, he also served as the Companies' Chairman and General Manager. In April 2006, Mr. Al Tamimi, on behalf of Emrock, entered into a lease agreement with OMCO to operate a limestone quarrying and crushing concession on a parcel of Government-owned land. In May 2006, he entered into a similar agreement on behalf of SFOH.⁵ Both Lease Agreements were finalized within the context of the Omani Government's much publicized plan for economic diversification through the development of private sector capabilities to exploit Oman's vast natural resources other than oil, as articulated in the Sultanate's *Vision 2020*.

4. In 2006, relying on the Lease Agreements, various assurances of support and cooperation from Omani Government officials, the Government's mandate as set forth in the Sultanate's *Vision 2020*, and the legal and regulatory framework applicable to mining in Oman,

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"Environmental Ministry"; any reference to the Environmental Ministry will serve as a reference to the operative environmental authority at the time.

⁵ Agreement of Lease for Limestone Quarrying Project between Oman Mining Company LLC and Emrock LLC, dated 8 Apr. 2006 ("Emrock Lease Agreement"), Cl. Exh. C-6; Agreement of Lease for Limestone Quarrying Project between Oman Mining Company LLC and SFOH LLC, dated 25 May 2006 ("SFOH Lease Agreement"), Cl. Exh. C-7. The lease agreements are in most material respects identical. As such, they are collectively referred to herein as the "Lease Agreements" and any reference to an individual lease agreement will serve as a reference to both documents, unless expressly distinguished.

Mr. Al Tamimi began making substantial investments in the Jebel Wasa Quarry. He invested tens of millions of dollars to construct and pave roads through the desert to the quarry site, hire employees, build residential quarters and other employee facilities, purchase and lease equipment, design and develop the quarry site, develop a customer base, transfer technology and know-how, and otherwise make the site operational. In the late summer and early fall of 2007, after receiving direct instructions from OMCO in a notice to proceed, the Companies began quarrying and crushing operations pursuant to the Lease Agreements.

5. Mr. Al Tamimi's design, engineering, development, and operation of the Jebel Wasa Quarry were strictly in accordance with the terms of the Lease Agreements, including the Environmental Impact Assessment and Operations Plan (the "Plan") and concession site plans attached to those Agreements, and the laws and regulations of the Sultanate of Oman, including Royal Decree No. 27/2003 establishing the mining law for the Sultanate of Oman. Nonetheless, Oman undertook a series of measures against Mr. Al Tamimi's multi-million dollar investments in violation of its investment protection and promotion obligations under the U.S.-Oman FTA. As noted above, these included, in part, OMCO's failure to secure all of the relevant permits and approvals for the quarrying and crushing operations in accordance with its contractual obligations and its misrepresentations to Mr. Al Tamimi regarding the permits and approvals that it claimed it had obtained; OMCO's arbitrary and capricious termination of the Lease Agreements, neither of which was subsequently reinstated; and the improper enforcement of the terminations, through the forcible shutting down of the concession site by the Environmental Ministry and the Royal Oman Police in coordination with OMCO.

6. Mr. Al Tamimi himself was arrested by the Royal Oman Police in May 2009. He was wrongly accused of stealing rocks, operating without certain permits, and operating outside of the area that had been approved for operations under the Lease Agreements, and then was summarily sentenced to three months imprisonment. That conviction and prison sentence were ultimately overturned on appeal. The three-judge appellate court's judgment makes it clear that neither Mr. Al Tamimi nor the Companies had committed any of the regulatory violations of which Mr. Al Tamimi had been accused, and which were asserted as part of the pretext for the cancellation of the Lease Agreements and the destruction of Mr. Al Tamimi's multi-million dollar investments.

7. Despite Mr. Al Tamimi's complete exoneration, the Government's actions effectively have prevented him from resuming any operations at the site: following the pretextual termination of the Lease Agreements and the enforcement of that termination through the compelled undertaking by Mr. Al Tamimi of a commitment to cease all operations at the Quarry (which actions have not been reversed or canceled), the Companies' machinery was seized and auctioned off and its employees were threatened and eventually forced to evacuate the site.

8. In short, Mr. Al Tamimi's investments in Oman have been destroyed. Oman's actions constitute breaches of its obligations under the U.S.-Oman FTA with respect to Mr. Al Tamimi's investments in Oman, and have caused losses and damages to Mr. Al Tamimi of approximately \$560 million. Mr. Al Tamimi also claims moral damages based on his false arrest, mistreatment, and significant damage to his personal and business reputation in Oman and the Gulf region.

9. As required by paragraph 2 of Article 10.15 of the FTA, more than 90 days have passed since Mr. Al Tamimi served the official designated by Oman in Annex 10-C of the FTA with a written notice of intention to submit claims to arbitration. Further, more than six months have elapsed since the events giving rise to Mr. Al Tamimi's claims. Thus, in accordance with paragraph 3 of Article 10.15, his claims may be submitted to arbitration. Finally, as the breaches at issue were completed in or about May 2009, no more than three years have elapsed since the date on which Mr. Al Tamimi first acquired or should have first acquired knowledge of the breaches he alleges herein and the damages arising therefrom. Thus, these claims are not barred by paragraph 1 of Article 10.17 of the FTA.

10. Pursuant to Article 10.14 of the FTA, Mr. Al Tamimi and the undersigned counsel have engaged in various efforts to seek an amicable resolution of this dispute through consultation and negotiation with the Government of Oman and its counsel. Those efforts have not been successful.

II. THE PARTIES

A. The Claimant

11. The claimant in this dispute is Mr. Adel A Hamadi Al Tamimi.⁶ He is a naturalized citizen of the United States of America.⁷ At no time has Mr. Al Tamimi ever been a national or citizen of Oman.

⁶ The name "Adel A Fadili" is another legal name for Mr. Al Tamimi. See Certificate No. 5635/2009 issued by the Dubai Personal Status Courts, dated 18 Oct. 2009, Cl. Exh. C-8 (confirming that the names "Adel Fadili" and "Adel Abdul Amir Hamadi Al Tamimi" are for the same person). Some of the documents submitted with this request use the name Adel Fadili. Those documents refer to Mr. Al Tamimi.

12. The U.S.-Oman FTA entered into force on 1 January 2009.⁸ Pursuant to Article 10.16 of the FTA, Oman consented to the submission to arbitration of claims by investors of the United States alleging breaches of obligations under Section A of Chapter 10 of the FTA. At the time that the U.S.-Oman FTA entered into force, Mr. Al Tamimi was a citizen of the United States (as he was continuously since 1986 and is today), and thus had the nationality of a Party to the FTA and a Contracting State of the ICSID Convention.

13. Mr. Al Tamimi is a successful real estate developer and businessman in the United States and a prominent member of the New England business community. His address is as follows:

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Apt. 401
Wakefield, MA 01880
United States of America

Phone: 781.858.5544
Fax: (c/o Crowell & Moring LLP, below)
Email: af.tamimi@emirock.com

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⁷ See, e.g., U.S. passports issued to Mr. Adel A Fadili on 25 Apr. 2006 and 26 Sept. 2008, and to Mr. Adel A Hamadi Al Tamimi on 20 Oct. 2009, Cl. Exh. C-9.

⁸ See Oman Free Trade Agreement, Office of the U.S. Trade Representative, *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/oman-fta> (last visited 29 Nov. 2011), Cl. Exh. C-10 (“The United States-Oman FTA . . . entered into force on January 1, 2009”); Free Trade Agreement between the Sultanate of Oman and the United States of America, Ministry of Commerce and Industry of the Sultanate of Oman, *available at* <http://www.mocioman.gov.om/Main-Menu/Agreements/wto/oman-us.aspx?lang=en-US> (last visited 29 Nov. 2011), Cl. Exh. C-11 (“The Royal Decree No. 109/2006, ratifying the Free Trade Agreement between the Government of the Sultanate of Oman and the Government of the United States of America, was issued 22 Ramadan 1427, corresponding to 15 October 2008. The Agreement entered into force on 1 January 2009.”).

14. Mr. Al Tamimi is represented in these proceedings by Crowell & Moring LLP.⁹

Contact details for all communications in relation to this matter are as follows:

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B. The Respondent

15. The Respondent in this case is the Sultanate of Oman, a sovereign State and a Party to the U.S.-Oman FTA, as well as a Contracting State under the ICSID Convention. Pursuant to Article 10.16 of the FTA, Oman consented to the submission to arbitration of claims by investors of the United States alleging breaches of obligations under Section A of Chapter 10 of the FTA.

16. Pursuant to Annex 10-C of the U.S.-Oman FTA, all documents relating to disputes that arise under Article 10 of the FTA are to be served upon:

Director General of Organizations and Commercial Relations
Ministry of Commerce and Industry
P.O. Box 550 P.C. 113 Muscat
Sultanate of Oman

Phone: + 968.2477.4159, + 968.248.16241

E-mail: moci.oman@yahoo.com

⁹ See Authorization to Submit Claims to ICSID Arbitration, dated 30 Nov. 2011, Cl. Exh. C-12.

The Director General of Organizations and Commercial Relations is Khalid Saeed Al-Shuaibi.

17. The Sultanate of Oman has appointed counsel as follows:

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III. SUMMARY OF FACTUAL BASES FOR THE CLAIMS

18. Summarized below are the factual bases for Mr. Al Tamimi's claims against Oman, without prejudice to his right to supplement the facts set forth herein during the course of this arbitration.

A. The Investor and the Investments

1. Mr. Al Tamimi, Emrock, SFOH

19. Mr. Al Tamimi invested in Oman through two United Arab Emirates (UAE) based investment vehicles, Emrock and SFOH. Until he was arrested in May 2009 and the Companies' operations were shut down by Omani authorities, the Companies were actively and lawfully engaged in the quarrying, crushing, screening, and sale of limestone and other natural stones in the territory of Oman. Mr. Al Tamimi contributed tens of millions of dollars to the Omani

economy,¹⁰ assumed risk, and expected to gain from his investments in the territory of Oman. As such, Mr. Al Tamimi is an investor of a Party (the United States), as that term is defined in Article 10.27 of the FTA.

20. As mentioned above, Mr. Al Tamimi invested in Oman through Emrock and SFOH. Emrock is established and registered pursuant to the laws of the UAE. It has a branch in Oman, Emrock Oman Branch LLC. Mr. Al Tamimi owns, either directly or indirectly, 49% of the shares of Emrock¹¹ and, as a result of an agreement between the Emrock shareholders, is entitled to 80% of the profits generated by Emrock;¹² he also has sole decision-making control over the Company.¹³

¹⁰ Mr. Al Tamimi made his investments consistent with the obligations contained in clause 5 of the Lease Agreements, relating to the "Contributions of the Tenant."

¹¹ Emrock's ownership structure is as follows: Mr. Al Tamimi directly owns 25% of the company. Mr. Al Tamimi indirectly owns another 24% through Atlas Capital Limited, a Jebel Ali Free Zone offshore company wholly owned by Mr. Al Tamimi for the purposes of satisfying UAE law corporate law formalities. The remaining 51% of Emrock is nominally owned by Mr. Al Tamimi's nephew, Mr. Mashal Sadek Abdullah Alrgawi, who is a citizen and resident of the UAE. See Memorandum of Association of Emrock Aggregate & Mining (L.L.C.) between Eurogulf LLC, Atlas Capital Limited, Mr. Mashal Sadek Abdullah Alrgawi, and Mr. Adel [Al Tamimi], Dubai Courts, dated 16 Apr. 2007, Cl. Exh. C-13 (establishing present share structure); Amendment to the Memorandum of Association of Emrock Aggregate & Mining (LLC) between Mr. Mashaal Sediq Abdullah [Alrgawi], Mr. Adel [Al Tamimi], and Atlas Capital Limited, Dubai Courts, dated 16 Apr. 2007, Cl. Exh. C-14 (showing ownership percentages); Memorandum of Association of Atlas Capital Limited, Jebel Ali Free Zone Authority, dated 3 May 2006, Cl. Exh. C-15 (incorporating Atlas Capital Limited and issuing share capital of 10,000 UAE Dirham, all in the name of Mr. Fadili, *i.e.*, Mr. Al Tamimi).

¹² Emrock's amended Memorandum of Association provides that Mr. Al Tamimi is directly entitled to 70% of Emrock's dividend distributions, and indirectly entitled to another 10% through Atlas Capital Limited. See Amendment to the Memorandum of Association of Emrock Aggregate & Mining (LLC) between Mr. Mashaal Sediq Abdullah [Alrgawi], Mr. Adel [Al Tamimi], and Atlas Capital Limited, Dubai Courts, dated 16 Apr. 2007, Cl. Exh. C-14 (adjusting dividend allotment and allocating 20% to Mr. Alrgawi, 70% to Mr. Fadili (*i.e.*, Mr. Al Tamimi), and 10% to Atlas Capital Limited).

¹³ See Memorandum of Association of Emrock Aggregate & Mining (LLC) between Eurogulf LLC and Atlas Capital Limited, Dubai Courts, dated 14 June 2006, art. 11, Cl. Exh. C-16 (the original Memorandum of Association, naming Mr. Fadili, *i.e.*, Mr. Al Tamimi, the General Manager of the company and granting him "all the powers necessary for the management of the Company," an arrangement not modified by the two 16 April 2007 memoranda). Mr. Alrgawi is a passive "sponsor," as required by UAE law when a national from another State seeks to register a company in the UAE. Mr. Al Tamimi's full control of the company is evidenced by the numerous

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21. SFOH is established and registered pursuant to the laws of the Jebel Ali Free Zone, in Dubai, UAE. SFOH is entirely owned by Mr. Al Tamimi.¹⁴ In January 2007, SFOH and Emrock entered into an agreement pursuant to which Emrock agreed to serve as the operator for SFOH's Lease Agreement with OMCO. This arrangement was approved by OMCO, and was put in place to reflect the practical reality that the quarrying operations underlying both contracts were to be financed and managed by Mr. Al Tamimi.¹⁵

2. The Lease Agreements

22. In 2005, after having achieved considerable success as a result of various business ventures in the United States, and given his Middle Eastern roots and the prominence of his family in the Arabian Gulf, Mr. Al Tamimi was actively looking for investment opportunities in the region. Mr. Al Tamimi, an engineer by training, as well as a successful real estate investor in the New England region of the United States, was aware of the construction boom in the Gulf and was particularly interested in investing in the construction and real estate sectors in the region. In 2004 and 2005, Mr. Al Tamimi met with various friends and family contacts in the local construction industry and learned of the vast regional demand for commercial-grade limestone, mixed rock, and other stone and aggregate. He thus began to explore opportunities related to quarrying and limestone supply. Around the same time, Nakheel Properties, a major

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decisions he made on Emrock and SFOH's behalf with respect to the operation of the investments in Oman, including executing the Lease Agreements that form the basis for the investments in Oman.

¹⁴ See Memorandum of Association of SFOH Limited, Jebel Ali Free Zone Authority, dated 15 May 2006, Cl. Exh. C-17 (incorporating SFOH Limited and issuing share capital of 10,000 UAE Dirham, all in the name of Mr. Fadili, *i.e.*, Mr. Al Tamimi).

¹⁵ Agreement for Production of Limestone Quarrying and Crushing Project between Emrock and SFOH, dated 15 Jan. 2007, Cl. Exh. C-18; Memorandum from Emrock to OMCO, dated 4 July 2008, Cl. Exh. C-19 (forwarding to OMCO the 15 January 2007 agreement between Emrock and SFOH, per OMCO's request).

real estate developer in the UAE and a UAE state-owned enterprise that is responsible for such well-known land reclamation projects as the artificial Palm Islands, was actively seeking a reliable supply of limestone and other hard rock for its various development projects, including the Palm Islands. Nakheel therefore approached Mr. Al Tamimi to ascertain his interest in building, managing, and operating a quarry in the Buraimi region of Oman near the UAE-Oman border. Nakheel also offered to and did ultimately introduce Mr. Al Tamimi to the relevant Omani authorities. There is ample evidence demonstrating the Omani Government's enthusiasm that Mr. Al Tamimi invest in the country and its express encouragement that he do so.

23. Following the introductions made by Nakheel, and after lengthy negotiations between the parties, on 8 April 2006, Emrock (through Mr. Al Tamimi) and OMCO concluded an "Agreement of Lease for Limestone Quarrying Project." One month later, on 25 May 2006, SFOH (through Mr. Al Tamimi) executed a nearly identical agreement with OMCO to operate a limestone quarrying and crushing project.¹⁶

24. The purpose of the Lease Agreements is stated at the outset of each agreement: the Companies expressed their intention to "take up the Project for limestone and other stone materials quarrying and crushing operations,"¹⁷ and OMCO, in turn, agreed to lease the land subject to its concession to the Companies "for the unrestricted mining concessions it holds in the said area for the purpose of limestone and crushing operations to be managed by [the

¹⁶ Lease Agreements, Cl. Exhs. C-6 and C-7. During the negotiations for these agreements, Emrock and OMCO actually signed an agreement (dated 12 December 2005, with an addendum dated 27 March 2006) with substantially the same terms as the Lease Agreements. However, OMCO requested that a new agreement be signed, and, consequently, the parties concluded the final Lease Agreements in April and May 2006. Clause 13 of each of those Agreements specifically provides that they "supersede[] any previous agreement." *Id.*

Companies].”¹⁸ To this end, “OMCO . . . demise[d] to [the Companies] all the Quarry strata seams and beds of limestone which may be produced by quarrying, and excavations from the surface and by underground workings and crushing operations within and under the lands forming part of the area of Jebel Wasa in the Sultanate of Oman admeasuring two square kilometers (2 sq.Km)”¹⁹ and guaranteed that the Companies would “enjoy the license and the site without limitation, disruption, or any additional cost or conditions” other than those in the Lease Agreements.²⁰

25. In entering into the Lease Agreements, each party made warranties and undertook certain specific obligations. For its part, OMCO “confirm[ed] the suitability of the site, the availability of the licence[s] and the approval[s] from the relevant government authorit[ies,] and the accessibility of the site to be commercially utilized for [the Companies’] business.”²¹ More specifically, OMCO warranted “that the site [wa]s good for quarrying and suitable for the purposes of this contract;” that OMCO was “not aware at present of any laws and regulations or conditions that [would] obstruct [the Companies] from carrying out [their] business or in any way make the operation impossible;” that it was “fully authorized to enter into th[e] contract;” and that it would “apply its best endeavors in securing all permits required.”²²

(continued . . .)

¹⁷ *Id.* preamble.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* clause 2.

²⁰ *Id.* clause 3.

²¹ *Id.* preamble.

²² *Id.* clause 2.

26. OMCO also undertook various affirmative obligations, the most significant of which were set forth under the heading “Contributions by OMCO.” The Lease Agreements provided that:

(i) OMCO shall contribute to the Project the *unrestricted* use of the mining concessions that it holds in the area in question which is more properly described in the plan and the concession as well as any and all other rights attached thereto, which will be necessary or required for quarrying and operation during the period of the Lease subsists as referred to as *Exhibit Two (Copy of the concession and all other related documents)*.

(ii) OMCO shall use its best endeavors in obtaining . . . the necessary environmental and operating permits . . . based on and subject to the operation plans and environmental management plan prepared by [the Companies] referred to as *Exhibit Three (Copy of the operation plan)* to the satisfaction of the relevant authorities.²³

Underscoring these obligations, OMCO promised again in Clause 5 to “be responsible for using its best endeavors in obtaining all permits and licenses that may be required,”²⁴ and a third time in Clause 7, stating that it would “[u]se its best endeavors in obtaining the license for [the Companies] to enable [them] to carry out [their] business.”²⁵ Finally, OMCO promised “[t]o inform [the Companies] of . . . [any] requirement that [they] may have to fulfill as part of [their] operation, as it becomes known to OMCO.”²⁶

27. In consideration for their rights under the Lease Agreements and OMCO’s commitments, the Companies agreed to “contribute any or all investment in the plant, equipment

²³ *Id.* clause 4 (emphasis added).

²⁴ *Id.* clause 5(ii).

²⁵ *Id.* clause 7(i).

and working capital necessary to establish and maintain the quarrying and crushing operation,” and to “be responsible for the day-to-day technical and financial management and administration of the project.”²⁷ The Companies agreed to pay OMCO both a lease payment calculated according to the amount of limestone quarried in the first 12 months of operation and the amount of limestone sold thereafter (1 UAE Dirham per metric ton in each case), plus “[a] royalty of 5% (Five percent) of Gross Revenue.”²⁸ Additionally, they agreed to be “responsible for all the losses incurred by the Project.”²⁹

28. Further emphasizing the importance of the permitting process and OMCO’s duty to resolve all such issues before the Companies’ obligations began, the parties were clear that the Lease Agreements would commence only “upon [the Companies] [being] given full access and control of the site and the issuance of all relevant license[s], permits and approvals from the relevant authority at the Sultanate of Oman.”³⁰ They were equally clear as to duration: the initial term of each Lease Agreement was ten years, renewable for three additional terms of five years each.³¹

29. Importantly for the purposes of this dispute, and reflecting the understanding of the parties at the time of contracting, the three exhibits to the Lease Agreements established the

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²⁶ *Id.* clause 7(iv).

²⁷ *Id.* clause 5(i)-(ii).

²⁸ *Id.* clause 6(ii)(a)-(b).

²⁹ *Id.* clause 6(i).

³⁰ *Id.* clause 2.

³¹ *Id.* clause 3.

scope of the project, defining the area in which the Companies would undertake their operations, and articulating in detail the nature of the anticipated operations. More specifically, attached as Exhibit One to each Lease Agreement was a location plan, stamped by OMCO and Emrock and OMCO and SFOH, respectively, showing the lease boundaries.³² Attached as Exhibit Two were various plans of the proposed concession and the surrounding area.³³ Finally, several months after the Agreements were signed, an Environmental Impact Assessment and Operations Plan, required by Article 4(ii) of the Agreements, was developed by the Companies in close coordination with OMCO and attached as Exhibit Three to the Agreements.³⁴ This Plan described in some detail the scope of the project, the number of screens and crushers to be used, the size of the labor camp that would be necessary to provide the manpower to operate a project of this size, the intended total production levels of the Companies of up to 30 million tons per year (*i.e.*, for both the Emrock and the SFOH Lease Agreements together), and, significantly, the location of the anticipated quarry site, as shown on a site plan identical to those in Exhibit 1.³⁵

30. As discussed briefly below, and as will be demonstrated in the course of this arbitration, Mr. Al Tamimi spent tens of millions of dollars in implementing his obligations under

³² See Proposed site plan for Jebel Wasa Quarry for Emrock, dated 24 May 2006, Cl. Exh. C-20; Proposed site plan for Jebel Wasa Quarry for SFOH, dated 24 May 2006, Cl. Exh. C-21.

³³ See, *e.g.*, Proposed concession plan for the Jebel Wasa Quarry site, dated 19 Nov. 2005, Cl. Exh. C-22 (showing a proposed rectangular concession area of 20.1825 sq. km, attached to OMCO's 23 November 2005 letter to the Commerce Ministry requesting authorization to quarry).

Comparison with the subsequent concession plans ultimately issued by the Housing Ministry and OMCO shows that although the original proposed concession had a surface area of approximately 20 sq. km, it was later reduced by the Housing Ministry to 14.7 sq. km. See Initial approved Housing Ministry concession plan, dated 5 Mar. 2007, Cl. Exh. C-23; Updated site plan prepared by OMCO, dated 4 Oct. 2007, Cl. Exh. C-24; Final approved Housing Ministry concession plan with attached certification receipt, dated 7 June 2008, Cl. Exh. C-25.

³⁴ Environmental Impact Assessment and Operations Plan, dated 17 Sept. 2006, Cl. Exh. C-3.

³⁵ See, *e.g.*, *id.* at 1-2, 9-13, figure 3.

these Agreements. From building a road to the quarry site, to designing a modern quarrying operation, developing the site, employing and training hundreds of laborers, creating a market presence, and leasing and purchasing equipment, Mr. Al Tamimi did whatever was required to realize his and OMCO's joint objectives for the exploitation of OMCO's concession. Photographs of Mr. Al Tamimi's concession operations are provided as exhibits to this request.³⁶

B. The Dispute

1. OMCO Directs the Companies to Begin Operations

31. As previously mentioned, under the Lease Agreements, the parties had made it abundantly clear that, as the concessionaire, OMCO had the obligation to obtain all of the requisite permits and approvals to enable the quarrying and crushing operations to proceed. Accordingly, after the Lease Agreements were executed, the Companies provided OMCO the information it required to obtain the necessary authorizations. Most significantly, Mr. Al Tamimi collaborated with OMCO³⁷ to prepare the required Environmental Impact Assessment and Operations Plan described above.³⁸ Once incorporated into the Lease Agreements and as contemplated by the parties at the time of contracting, this Plan formed the foundation for OMCO's application for an environmental permit for the quarry site, which it submitted for the Environmental Ministry's approval in November 2006.³⁹ Citing the Plan extensively, OMCO's environmental permit application detailed the anticipated quarrying and crushing operations and

³⁶ See Photographs of the Jebel Wasa Quarry Site, variously dated from 2005-2008, Cl. Exh. C-26.

³⁷ See, e.g., Letter from OMCO to Emroek, dated 22 May 2006, Cl. Exh. C-27; Letter from OMCO to Emroek, dated 7 June 2006, Cl. Exh. C-28; Lease Agreements clause 4(ii), Cl. Exhs. C-6 and C-7.

³⁸ See footnotes 34-35, *supra*, and accompanying text.

³⁹ See Application for Environmental Permit, dated 3 Nov. 2006, Cl. Exh. C-29.

additional facilities required, and incorporated by reference the location plan referenced in the Environmental Impact Assessment and Operations Plan, which mirrored those attached as Exhibit 1 to the Lease Agreements.⁴⁰

32. Around the same time, OMCO represented to Emrock, SFOH, and their customers that it was exercising its best efforts to obtain *all* of the requisite permits and approvals as expeditiously as possible.⁴¹ OMCO described the state of affairs to Nakheel, one of Emrock's main customers of limestone, as follows:

While the final local approval process has taken longer than expected, Oman Mining Company (OMCO) staff, Mr. Adel Al Tamimi and [Ali bin Said Abdullah Al-Waily, General Manager of OMCO] have been working hard to make it certain that *all the approval and permitting* to be completed in accordance to the terms of the agreement that was executed between OMCO and EMROCK LLC.

There is every indication that in approximately four weeks time most likely we will have *all the approvals and permits required to start the quarry at Jebel Wassa*.⁴²

33. Then, on 8 January 2007, OMCO informed Emrock and SFOH, through letters entitled "Permission to mobilize and commence work at Jebel Wasa Lime Stone Quarrying

⁴⁰ See generally *id.* See also Environmental Impact Assessment and Operations Plan, dated 17 Sept. 2006, at figure 3, Cl. Exh. C-3.

⁴¹ See, e.g., Letter from OMCO to Nakheel, dated 14 Dec. 2006, Cl. Exh. C-30. Mr. Al Tamimi was copied on this letter. The letter, sent by OMCO's General Manager, Ali bin Said Abdullah Al-Waily, was intended to assure Nakheel, which had been involved during the early negotiations for the Lease Agreements and had a strong financial interest in the future products of the Quarry, that work at the Quarry would begin soon. The letter is also notable for what OMCO had to say at the time regarding all of the effort and money that Mr. Al Tamimi had invested: "Please note that, Mr. Adel on behalf of Emrock LLC has contributed his great effort and investment for some time now and we trust that he will be in a unique position to meet your requirement with the best suited wide range of products of rock. We will also be in full support to contribute to the success of Nakheel." *Id.*

⁴² *Id.* (emphasis added).

Project,” that the Directorate General of Minerals in the Ministry of Commerce and Industry (“Commerce Ministry”) had given permission for quarrying operations to begin in the concession area while the application for environmental permitting was pending.⁴³ OMCO stated:

As per the Agreement[s] dated 8th April 2006, please find herewith attached a copy of letter (in Arabic) dated 8th January 2007 from the Directorate General of Minerals, Ministry of Commerce & Industry, Muscat, addressed to Oman Mining Company LLC allowing us to mobilize equipment and machinery and begin quarrying operations at our Jebel Wasa concessions, such activities are pending the environmental permission. You being the Tenant/Lessee for the above project please take note of the above and proceed accordingly.

Therefore pursuant to Clause No.6(ii)(b)-1 of our Agreement, this permit triggers the one year period specified thereby as of the date of this letter for the purpose of record and accounting.⁴⁴

OMCO also included in its letter a copy of the Commerce Ministry’s letter granting the Companies permission to begin quarrying operations. The Commerce Ministry, in turn, stated:

We would like to inform you that we contacted the Directorate General of Environmental [A]ffairs on . . . 19 February 2006 [] regarding reconsideration of the suggested site. We continue to wait for the response of the Directorate General of Environmental [A]ffairs. Nevertheless, you can pursue the quarrying works on the site and [we] will inform you by a letter when we receive a reply from the Directorate General of Environmental [A]ffairs.⁴⁵

⁴³ See Letter from OMCO to Enrock, with attached letter from the Commerce Ministry, dated 8 Jan. 2007, Cl. Exh. C-31; Letter from OMCO to SFOH, with attached letter from the Commerce Ministry, dated 8 Jan. 2007, Cl. Exh. C-32.

⁴⁴ *Id.*

⁴⁵ *Id.*

34. However, unbeknownst to Mr. Al Tamimi at the time of these instructions, the Commerce and Environmental Ministries were engaged in active negotiations over the precise area in which the quarrying activities would be permitted to take place. Insofar as Mr. Al Tamimi was concerned, the Companies had been instructed to proceed in accordance with the concession coordinates and dimensions that had been discussed at length with OMCO, attached to the Lease Agreements, referenced in the Environmental Impact Assessment and Operations Plan, and discussed in OMCO's application for its environmental permit. He had been given no instructions to the contrary.

35. In reasonable reliance on OMCO's and the Commerce Ministry's instructions and assurances, the Companies commenced the significant work necessary to operate the Quarry, including entering into equipment lease, purchase, and a variety of other agreements; hiring employees; finalizing project site and engineering plans; building a tarmac road sufficient to enable heavy equipment to access the site, and much more. Millions of dollars were spent, as well as massive sweat equity by Mr. Al Tamimi and his team so that the quarrying and crushing operations could get underway as soon as full notice to proceed was provided.

36. Well after the Companies began making these significant investments based on the January instruction, on 25 April 2007, the Environmental Ministry issued an environmental permit to OMCO.⁴⁶ It stated that "the Ministry does not object in principle to the project [of the Limestone quarry, State of Mahda/Jebel Wasa]," provided that OMCO "[c]ompli[es] with

⁴⁶ See Environmental Ministry, Initial Environmental Approval, Project No. 9353/ZH, dated 25 Apr. 2007, Cl. Exh. C-33.

[various] conditions,” including most critically “[t]hat the information stated in the environmental permit application is accurate and represents the project that you will operate”⁴⁷— that is, the information contained in the environmental permit application based upon the Companies’ Environmental Impact Assessment and Operations Plan that OMCO had submitted in November 2006.

37. A month later, the Commerce Ministry provided a Quarrying Contract and issued a Quarrying Permit.⁴⁸ The Quarrying Contract also listed certain requirements, including that the quarry be limited to an area of four square kilometers and that OMCO “put clear and differentiating signs for the quarry’s boundaries.”⁴⁹ This was never done by OMCO, a significant omission given the fact that although the April 2007 Environmental Permit and the May 2007 Quarrying Permit each provided a set of coordinates, the two sets of coordinates did not match, and neither set matched the sets of coordinates represented in Exhibit 1 to the Lease Agreements, or the Housing Ministry-approved concession area, or the initial proposed concession area.

⁴⁷ *Id.*

⁴⁸ See Letter from OMCO to Emrock, with attached License Contract for the establishment of a quarry, dated 31 May 2007 (“Quarrying Contract”), Cl. Exh. C-34; Certificate of permission to establish a limestone quarry, Permission No. 1/1/39/2007, dated 4 June 2007 (“Quarrying Permit”), Cl. Exh. C-35. The Quarrying Contract and Quarrying Permit gave OMCO the right to establish a quarry to extract limestone.

⁴⁹ See Quarrying Contract, dated 31 May 2007, clauses 1, 18, Cl. Exh. C-34; Quarrying Permit, dated 4 June 2007, Cl. Exh. C-35.

38. Several weeks later, on 22 August 2007, OMCO informed Mr. Al Tamimi that OMCO had fulfilled its precedent obligations and that the Companies' *obligation* (not merely the right) to start production had been triggered.⁵⁰ For example, OMCO's letter to Emrock stated:

1. We are pleased to notify you that as of 1st September, 2007, OMCO has fulfilled its precedent obligations established in the Agreement[s] under Clause 4 Therefore, under Clause 2 of said Agreement[s], its terms and conditions can "commence and take effect" as of the indicated date. In particular, I wish to give you notice that the "period of implementation" indicated in Clause 6(ii) b) should commence effective 1st September 2007 (the indicated date) and expire on 31st August, 2008.⁵¹

2. Also, I wish to emphasize that, per Clause 2 of the Agreements: ". . . all the Quarry strata seams and beds of *limestone* . . .", and pursuant to the nature and subject of the mining concessions awarded by the Government to OMCO in the Jebel Wasa area, as well as the environmental and operating permits issued by the relevant authorities in the Sultanate of Oman, based on the operation plans and environmental management plan prepared by you, they are to be used for the exploitation of limestone rock products only.⁵²

As noted above, Clause 2 of the Agreements, to which the 22 August 2007 letters refer, states that "[t]his agreement and all its terms and conditions will commence and come to effect" when "[the Companies] [are] given full access and control of the site" and "all relevant license[s], permits and approvals from the relevant authority at the Sultanate of Oman" have been issued.⁵³ The 22 August 2007 letters amounted to confirmation that both of these preconditions had been met—

⁵⁰ See Letter from OMCO to Emrock, dated 22 Aug. 2007, Cl. Exh. C-36; Letter from OMCO to SFOH, dated 22 Aug. 2007, Cl. Exh. C-37.

⁵¹ *Id.* The "period of implementation" was a reference to the first twelve months after the start-up of operations, during which the lease payments were fixed at 1 UAE Dirham per metric ton of quarried material, as previously noted in ¶ 27, *supra*. See Lease Agreements clause 6(ii)(b), Cl. Exhs. C-6 and C-7.

⁵² See Letter from OMCO to Emrock, dated 22 Aug. 2007, Cl. Exh. C-36; see also Letter from OMCO to SFOH, dated 22 Aug. 2007, Cl. Exh. C-37.

that is, that (a) the tenant had been given full access and control of the site, and (b) all relevant licenses, permits, and approvals had been issued—and that, accordingly, the Companies’ obligations under the Lease Agreements, including the obligations to make payment to OMCO and to operate the Quarry, commenced as of the date of these letters.⁵⁴

39. As mandated by OMCO’s August 2007 notice-to-proceed letters and per the terms of the Lease Agreements, the Companies commenced full operations, including the drilling and blasting to develop the mountain quarry, on or about 1 September 2007.

2. The Omani Government Interferes with the Operation of the Quarry

40. Despite the fact that the Companies had been given an unequivocal commencement order from OMCO, including OMCO’s confirmation that it had the necessary permitting, within weeks of the Companies commencing full operations the Environmental and Commerce Ministries began complaining that the Companies did not have the permits needed for certain of their operational activities, that they were removing wadi materials⁵⁵ without authorization, and that they were operating outside of the permitted area.⁵⁶ These complaints came as a surprise to Mr. Al Tamimi. To his understanding, all of the activities that he had

(continued . . .)

⁵³ Lease Agreements clause 2, Cl. Exhs. C-6 and C-7.

⁵⁴ See *id.* clauses 5-6.

⁵⁵ The “wadi” refers to the valley, flatland, or dry riverbed adjacent to the mountains. Wadi materials refer to the sands and stone from the wadi.

⁵⁶ See, e.g., Letter from the Commerce Ministry to OMCO, dated 22 Sept. 2007, Cl. Exh. C-38 (asserting that OMCO was “working beyond the borders of the delimited site for operations, which is considered a violation of the quarrying contract entered into between you [OMCO] and the [Commerce] Ministry”); Infraction report issued by the Environmental Ministry, dated 25 Dec. 2007, Cl. Exh. C-39 (imposing a fine of 5,000 Omani Rial for, among other things, installing a crusher machine for the production of stones and sand without the necessary environmental permit). Wadi materials are the sands and stone on the surface of the land adjacent to the mountains.

commenced were in accordance with the Environmental Impact Assessment and Operations Plan and permit application, the required permitting, and instructions from OMCO. Moreover, OMCO itself had been involved in much of the operational planning and certainly all of the permitting. And as for any question regarding the location of the operations, the Companies were operating in the exact locations identified prior to the issuance of the Quarrying Contract, in reliance on the Commerce Ministry's 8 January 2007 notice to proceed. Nonetheless, Mr. Al Tamimi ceased operations based on the ministries' instructions; he was soon instructed by OMCO to continue, a stop-and-go pattern that would continue for the next few weeks.⁵⁷

41. Seemingly equally surprised and in response to these complaints, on 4 October 2007, OMCO prepared an updated survey drawing reflecting its understanding of the authorized area of quarrying operations. The site plan demarcated the exact locations of the Companies' quarrying and crushing operations and facilities within the 14.7 sq. km concession area approved by the Housing Ministry.⁵⁸ The site plan was provided to Mr. Al Tamimi. It would appear to have also been transmitted to the Commerce Minister.

42. On 8 October 2007, OMCO sent a letter to the Director General of Mining of the Commerce Ministry regarding the size of the concession area. The letter confirms OMCO's view at the time that the Companies were not operating beyond the limits of OMCO's concession. The letter is quoted below in substantial part:

⁵⁷ Work stoppages of the sort that took place as a result of the tussle between OMCO and the Environmental Ministry are especially disruptive and consequential from an operational and cost standpoint at the outset of the type of operations in which Mr. Al Tamimi was engaged.

⁵⁸ Updated concession plan prepared by OMCO, dated 4 Oct. 2007, Cl. Exh. C-24.

[W]e wish to notify you that the Company executing the project did not operate beyond the borders of the concession area granted to Oman Mining Company according to the survey drawing presented by the Company as well as the survey drawing approved by the Ministry of Housing and the local committee of Al-Baremi province in State of Mahadah.

Whereas the survey drawing registered in the name of the Ministry of Commerce and Industry for the benefit of Oman Mining Company includes 14.700 km², which is the area that was approved following reduction by more than half based on the request of the local committee of the State of Mahadah.

The Ministry of Environmental [A]ffairs approved from the environmental perspective the mining operations according to the coordinates presented by the Company; however, they limited the total area to be used for mining operations to a maximum of 2 x 2 km. This limitation had placed the Company in an embarrassing situation with the companies implementing the project.

Whereas [OMCO] has signed agreements with two companies: the first is [Emrock] to operate within an area of 2 km; the Second is [SFOH] to operate within an area of 4 km, both Companies would operate within the concession area granted to the Company.

We are addressing you to inquire about the area used for mining. Is it limited to 4 km² or 2 x 2 km as identified by the Ministry of Environmental [A]ffairs and any part beyond this area will be considered as a breach of the agreement? Or is the area approved by [the Ministry of] Housing to the Ministry of Commerce and Industry is the area where the mining operations are allowed? So we can identify for the executing companies the area agreed upon which reaches a total of six km².

We address you—as the concession grantor of the mining area—to clarify for us the mining field within the total area in the survey drawing approved by the Ministry of Housing.⁵⁹

⁵⁹ Letter from OMCO to the Commerce Ministry, dated 8 Oct. 2007, Cl. Exh. C-40 (citing the Quarrying Permit, dated 4 June 2007, Cl. Exh. C-35, which incorporates by reference the Quarrying Contract, dated 31 May 2007, Cl. Exh. C-34).

43. On 12 November 2007, the Director General of Mining replied, confirming that the area for quarrying operations was that which had been approved by his ministry (*i.e.*, the Commerce Ministry) pursuant to the Quarrying Contract and Permit.

In reference to your letter . . . concerning the issue that the Company operated beyond the borders of the Quarry of Jebel Wasa, we would like to inform you that the quarrying contract between you and the Ministry number 1/1/39/2007 issued on date 4 June 2007, which includes the coordinates of the Company's worksite where the Company is allowed to operate. Such coordinates are the ones to be relied upon, and not any other coordinates issued by any other entities, because the Ministry is responsible for issuing mining licenses according to the Sultanic Decree No. 27/2003.⁶⁰

44. OMCO found itself in a predicament. On the one hand, it had provided Mr. Al Tamimi with one set of instructions regarding the available area for quarrying and had entered into contracts reflecting that area. On the other hand, and clearly to its surprise, both its parent ministry and the Environmental Ministry were of the view that the available area for quarrying was somewhat different, and smaller, than the contractually agreed area for quarrying. After receiving another stop-work order from the Environmental Ministry, the Companies' Mining Manager, Subodh Gupta, outlined the prevailing points of confusion vis-à-vis the Environmental Ministry in an internal memorandum, which Mr. Al Tamimi forwarded to OMCO in December 2007. Mr. Gupta explained:

EMROCK's approval for Environment . . . was based on our Application for Permit. Our application for the Environment was exhaustive and covers all the related line items like crusher and screen, diesel storage tank, camp facility, blasting and all other necessary infrastructure for a full functioning of the quarry project.

⁶⁰ Letter from the Commerce Ministry to OMCO, dated 12 Nov. 2007, Cl. Exh. C-41.

The reasons for notice cited for closure of work is beyond comprehension as there are only camp, crusher, screen and diesel storage facility being mentioned as been built without the permit but it is hard to understand why the other infrastructure is not being mentioned like the weighbridge, asphalted road construction and others which have been constructed within the same environmental permit.

As recent as this notice, it has been mentioned that we do not even have the permission to work in the mountain. How could one government agency extend the permission of drilling and blasting based on the same Environment[al] permit and the other government agency mentions that there is no such permit? It is something beyond comprehension and I fail to understand the reasoning for being very choosy on the subject matter and have a continuous re-iteration in all the notices.

Earlier stoppage of works was on account of environmental measures like dust control and trees being uprooted, which we are in full compliance including planting many palm trees in the quarry area. Now it is entirely on the non availability of permit to work in the area. This shows the intentions of being very finicky to sabotage and disturb the project activity, without being very professional.

Buraimi Office's continuous interference is upsetting the operation and there are no reasonable bases as per my understanding for these fines, which continue to setback our operation and increase our cost of production.⁶¹

45. For his part, Mr. Al Tamimi understood that OMCO had undertaken to obtain all of the necessary permitting, and had only months earlier provided full notice to proceed on the basis that all of the required permits had been secured per the terms of the Lease Agreements. At least at this juncture, OMCO did not disagree. The Companies, therefore, proceeded on the basis of what they understood to be OMCO's current directives, especially as the 4 October 2007 concession plan was consistent with what had been included in the Lease Agreements, as well as

⁶¹ Letter from Emrock to OMCO with attached internal memorandum of 26 Dec. 2007, dated 29 Dec. 2007, Cl. Exh. C-42.

the plans that had served as the basis for the preparation of the Environmental Impact Assessment and Operations Plan.

46. The Environmental Ministry, however, continued to insist that the only area in which quarrying operations could be conducted was the area that it had identified in the environmental license. It, therefore, continued to impose fine after fine on OMCO, as the concessionaire and environmental license holder.

47. In the circumstances, OMCO now had to make a choice: it could fulfill its obligations under the Lease Agreements, which would mean disobeying or confronting the Environmental and Commerce Ministries, or it could use whatever leverage it had over the Companies and exert every effort to get them to suspend their operations until a solution could be found to the permitting issues. It chose the latter.

48. In April 2008, OMCO notified the Companies that, in light of the complaints being raised and fines levied by the Environmental Ministry on account of the Companies' alleged unauthorized processing and haulage of wadi material from outside of the concession area, work in the wadi area had to stop immediately. In the event that the Companies refused to comply with the stop order, OMCO threatened to terminate the Lease Agreements altogether. The Companies complied and all work in the wadi area was immediately stopped.⁶² The Companies' collection of wadi materials never resumed, even as drilling and blasting in the mountain continued.

49. Notwithstanding the Companies' acquiescence to OMCO's demands regarding stopping operations in the wadi area, OMCO found other reasons to complain. It began pressing the Companies to indemnify it for all of the fines associated with the Companies' allegedly unauthorized quarrying and crushing activities—that is, the very same activities outlined in the Environmental Impact Assessment and Operations Plan and permit application, and for which OMCO had assured them it had secured the necessary permits months before.⁶³

50. The Housing Ministry again approved the Companies' concession area on 7 June 2008,⁶⁴ and a few days later, the Omani Government, through the Minister of Commerce and Industry, confirmed the Companies' right to continue quarrying operations.

51. On 12 June 2008, Mr. Al Tamimi met with H.E. Maqbool Bin Ali Sultan, the Minister of Commerce and Industry, to seek his assistance in resolving the ongoing interruptions. As a result of the meeting, Mr. Al Tamimi firmly believed that a defined plan of action for all concerned had been agreed with respect to the pending permitting issues, and that OMCO would proceed to secure any remaining permits and approvals, as it was required to do under the terms of the Lease Agreements. As a further outcome of the meeting, Minister Maqbool confirmed to

(continued . . .)

⁶² See Letter from Emrock to OMCO, dated 28 Apr. 2008, Cl. Exh. C-43.

⁶³ See Letter from OMCO to Emrock, dated 22 Aug. 2007, Cl. Exh. C-36; Letter from OMCO to SFOH, dated 22 Aug. 2007, Cl. Exh. C-37.

⁶⁴ See Final approved Housing Ministry concession plan with attached certification receipt, dated 7 June 2008, Cl. Exh. C-25.

Mr. Al Tamimi that the Companies could re-commence their quarrying and crushing operations, and OMCO agreed to provide the Companies with all permits it had previously secured.⁶⁵

52. Despite the June understanding reached between the Companies and the Minister of Commerce, and much to Mr. Al Tamimi's surprise, the Environmental Ministry continued issuing new citations to OMCO associated with the Companies' operations. Moreover, notwithstanding repeated requests from Mr. Al Tamimi, OMCO refused to provide him with copies of the various permits in accordance with what had been agreed at the June meeting.

3. OMCO Wrongfully Terminates the Lease Agreements

53. Instead, rather than providing the Companies with copies of their permits, on 17 February 2009, OMCO sent two letters to Emrock stating it was terminating "Our Agreement Dated 8 April 2006" on the grounds of Emrock's alleged "non-compliance with payment obligations."⁶⁶ A purported termination based on a payment deficiency was particularly

⁶⁵ See Letter from Emrock to OMCO, dated 22 Feb. 2009, Cl. Exh. C-44 (stating that during the meeting with Commerce Minister Maqbool, Emrock was "instructed to continue the operation pending the resolution of this matter" and that Emrock had "rel[ied] on... the terms of the [Lease] [A]greements" and the "commitment of the [Commerce] Ministry," as well as the "advice letter [dated] August 22, 2007" in increasing its investments in the quarry).

⁶⁶ See Letter from OMCO to Emrock regarding the demobilization plan, dated 17 Feb. 2009, Cl. Exh. C-45; Letter from OMCO to Emrock regarding the 8 April 2006 Agreement, with attached Outstanding Statement of Account, dated 17 Feb. 2009, Cl. Exh. C-46 (invoking the termination clause of the Lease Agreements "due to Emrock's non-compliance with payment obligations"). Additional reasons were described in one of the letters as follows:

(continuation . . .)

surprising given that Mr. Al Tamimi had invested tens of millions of dollars in the development of the quarry site and was purportedly delinquent in the payment of just 35,440 Omani Rial (less than US \$100,000).⁶⁷ Mr. Al Tamimi responded by making it clear that he was willing to settle any outstanding financial obligations.⁶⁸ Nonetheless, Emrock was ordered to “immediately . . . stop quarry operations in the [Jebel] Wasa belonging to OMCO.”⁶⁹ It was further ordered to remove all of its equipment from the site, to provide a handover date, and “not to quarry, process or remove any material from the site.”⁷⁰

54. For every pretextual charge or justification raised by OMCO for terminating the Lease Agreements, the Companies had a documented response. The Companies sent several letters—some of which are annexed hereto—to OMCO, in which they outlined their consistent record of payments, strict compliance with the letter and spirit of the Agreements, and

(continued . . .)

- Despite repeated warnings, you have always persisted, right up till now, in illegal activity regarding wadi material.
- You failed to meet your 35% Omanisation requirement.
- You failed to rent all equipment from Omani sources.
- You have violated the good faith principle by failing to maintain third party insurance.
- You fail to give timely information about limestone production and sales figures.
- You have not given us verifiable data regarding the amount of wadi material you have extracted and sold since the inception of the Agreement. This amounts to unjust enrichment.

Letter from OMCO to Emrock regarding the 8 April 2006 Agreement, with attached Outstanding Statement of Account, dated 17 Feb. 2009, Cl. Exh. C-46.

⁶⁷ See Letter from OMCO to Emrock regarding the 8 April 2006 Agreement, with attached Outstanding Statement of Account, dated 17 Feb. 2009, Cl. Exh. C-46. In addition, the Companies had made the required payment of RO 44,477.736 in October 2008.

⁶⁸ See Letter from Emrock to OMCO, dated 16 Mar. 2009, Cl. Exh. C-47.

⁶⁹ Letter from OMCO to Emrock regarding the demobilization plan, dated 17 Feb. 2009, Cl. Exh. C-45.

⁷⁰ *Id.*

willingness to make any payment necessary to address any shortfalls as required under the contract.⁷¹

55. Despite the Companies' responsiveness and willingness to accommodate OMCO's various demands, OMCO insisted that the Lease Agreements had been terminated, and on 19 April 2009, it informed the Companies that not only was their "continued presence on the Site . . . illegal," but that the Companies should "immediately contact the Public Prosecutor at the office of the General Prosecution at Buraimi Governorate relating to Police Station Case No 223-224-225 in connection with [their] breaches of the environmental laws of Oman."⁷²

56. On 4 May 2009, the Chief Engineer of the Housing Ministry inspected the Companies' Quarry site, confirmed that the Companies' operations were within the approved OMCO concession area, and confirmed that there were no violations of the site plans that had been signed by OMCO, SFOH, and Emrock. The Housing Ministry issued a site approval certificate for the Companies' Quarry operations that same day.⁷³ On that basis the Companies recommenced operations.

⁷¹ See Letter from Emrock to OMCO, dated 22 Feb. 2009, Cl. Exh. C-44; Letter from Emrock to OMCO, dated 5 Mar. 2009, Cl. Exh. C-48; Letter from Emrock to OMCO, dated 16 Mar. 2009, Cl. Exh. C-47 (stating Emrock's readiness to correct any non-payment in the event the record showed amounts due); Letter from Emrock to OMCO, dated 23 Mar. 2009, Cl. Exh. C-49. For OMCO's responses, *see e.g.*, Letter from OMCO to Emrock, dated 3 Mar. 2009, Cl. Exh. C-50; Letter from OMCO to Emrock regarding the 5 March 2009 communication, dated 15 Mar. 2009, Cl. Exh. C-51; Letter from OMCO to Emrock regarding vacating the site, dated 15 Mar. 2009, Cl. Exh. C-52; Letter from OMCO to Emrock, dated 18 Mar. 2009, Cl. Exh. C-53.

⁷² Letter from OMCO to Emrock, dated 19 Apr. 2009, Cl. Exh. C-54.

⁷³ See Certificate No. 6/25710 issued by the Housing Ministry, dated 4 May 2009, Cl. Exh. C-55. The Certificate was formally issued to OMCO but delivered to the Companies to forward to OMCO.

57. Days later, however, by letter dated 19 May 2009, the Environmental Ministry requested the Royal Oman Police to stop operations at the quarry.⁷⁴ Undoubtedly acting at OMCO's insistence, the Environmental Ministry asserted that "the Company did not fulfill the applicable environmental requirements, it operated [a] number of crushers without obtaining the environmental approvals, and it carried out operations beyond the borders of the concession area of Oman Mining Company—the owner of the project," and continued operations despite notifications to cease.⁷⁵

4. Mr. Al Tamimi is Arrested and the Quarrying and Crushing Operations are Forcibly Shut Down

58. On 23 May 2009, the Royal Oman Police, in five heavily armed police cruisers and two unmarked cruisers, together with officials from the Environmental Ministry, entered the site and shut down all quarrying and crushing operations. Those operations were never allowed to resume. Mr. Al Tamimi was arrested in front of several hundred of the Companies' employees, subcontractors and customers. When he asked why he was being subjected to such treatment, the police eventually informed him that he had been accused of stealing rocks and stone materials from the very concession site that he had invested in and developed; operating without the required permits and licenses; and operating outside the concession area described in the Lease Agreements.

59. Mr. Al Tamimi was immediately brought to the police station and held for a period of several hours. He was eventually released, but only after agreeing to turn over his U.S.

⁷⁴ See Letter from the Environmental Ministry to the Royal Oman Police, dated 19 May 2009, Cl. Exh. C-56.

passport, posting a bail bond of 5,000 Omani Rial, and signing a document in which he agreed to permanently cease all quarrying and crushing operations at the Jebel Wasa site.⁷⁶ That document was never annulled, even after Mr. Al Tamimi was exonerated of all charges.

60. A criminal trial ensued, and on 8 November 2009, despite the fact that there were no witnesses to testify against him, Mr. Al Tamimi was summarily convicted of the following charges:

1. [I]n his capacity as the Chairman of Board of Directors of the company Emrock: [The Defendant] has stolen sands and stones from various areas in which the Company was running stone quarry production and operating crushers, in order to benefit from the rocks and soil, an action which requires obtaining a license, and that is, based on the text of the investigations.

2. [H]e violated the law on the protection of the environment and prevention of pollution in his capacity as director of the previously referenced company in that the Company ran stone quarry production and operated crushers without obtaining a license from the competent authority.⁷⁷

61. Mr. Al Tamimi was sentenced to three months in prison and a fine of 3,050 Omani Rial; the prison sentence was suspended, as he appealed immediately.⁷⁸

(continued . . .)

⁷⁵ *Id.*

⁷⁶ See Receipt of payment for financial guarantee, dated 25 May 2009, Cl. Exh. C-57 (confirming receipt of 5,000 Omani Rial for bail by the Royal Oman Police and public prosecution); Proof of Seizure of an Official Document, dated 23 May 2009, Cl. Exh. C-58 (confirming confiscation of passport).

⁷⁷ See Judgment No. 214/2009 M, Ministry of Justice Court of Appeals, dated 6 June 2010, at 2, Cl. Exh. C-5 (referencing Mr. Al Tamimi's convictions in the lower court).

⁷⁸ *Id.* at 1.

62. In June 2010, an Omani criminal appeals court overturned Mr. Al Tamimi's convictions. The appellate court, having reviewed the full documentary record and considered the testimony of the court's own experts, as well as the testimony of various witnesses, found Mr. Al Tamimi not guilty on both of the counts of which he had been previously convicted.⁷⁹ The appellate court's findings warrant quoting in substantial part:

In term of the subject matter, as it is established in the papers, there is a contract concluded by and between the Oman Mining Company, a governmental company under the supervision of the Ministry of Commerce and Industry and Emrock Aggregate and Mining Company on 8 April 2006. Under such contract, Emrock was granted the right to a mining concession in the area of Jebel Wasa, State of Mahda, Sultanate of Oman to invest in the limestone resources. Whereas Emrock Company leases the specified site through the Ministry of Commerce and Industry, which was determined by Oman Mining Company for a period of twenty-years based on the contract provisions in order to carry out stone quarry production within a quantity ranging from (20) to (30) thousand tons per day in return of AED 1 for each ton to be paid to Oman Mining Company. Such contract confirms without doubt that the presence of the company Emrock on the aforementioned site was pursuant to that contract and in execution of its provisions, such that the company Emrock's concession, in its capacity as [lessee] from Oman Mining Company, which holds concession rights granted to it, and according to the map enclosed to the contract, occurred after [OMCO] obtained all required governmental licenses and permissions to run stone quarry production and crushers operations. This is according to the submitted documents related to such matter which confirm the existence of this relationship. In addition, the company Emrock has received a map of the concession site and abscissas of the operation site. Whereas it has prepared the site, paved the road and purchased trucks, crushers, equipment and machinery to commence the stone quarry productions according to the aforementioned contract concluded with Oman Mining Company.

⁷⁹ *Id.* at 4-5.

Therefore, the presence of the Appellant in his capacity as the Chairman of the Board of Directors of the company Emrock in the site and running the Company's operations—in accordance with the contract concluded between him and the above-mentioned governmental body—makes the factors that constitute theft offense incomplete as mentioned in the first conviction, whether in term of material factors elements or moral factors represented through criminal intent.

Whereas according to the contract, the duration of using the site is twenty years. Besides, according to the documents, the area allocated for such usage has been amended from (500 m x 500 m) to be (2 km x 2 km). Furthermore, the duration of work from the date of commencing such operations till the date of the incident did not reach the limit of this stated long duration.

Whereas “[n]o crime without a text and no punishment without a law” is a confirmed legal principle. As mentioned above, the Appellant has been performing a legitimate work according to the contract concluded between the Appellant and the governmental body that has the concession right pursuant to the laws, regulations and requirements in force. Accordingly, the qualification of thief shall not be applicable to the Appellant in light of the absence of constituting factors of such offense.

If the Appealed judgment differs from this view, that means it failed to comprehend the facts of the case, which led to an error in applying the law. Thus, the judgment is reversed and overruled. We found the Defendant innocent of the charges attributed to him, pursuant to Article (1 / 217) of the Penal Procedure Code.

As for the Second conviction, which relates to the alleged violation of the law on protection of the environment and prevention of pollution, through operation of crushers and stone quarries without obtaining a license from the competent authority, such allegations are contradicted by the enclosed documents, which establish that Oman Mining Company has obtained the necessary environmental approvals. One of those documents is the agreement concluded on 8 April 2006 between the Appellant and Oman Mining Company, and the approval issued by the General Administration for Environmental Affairs dated 25 April 2007 and others. Such documents prove the innocence of the Appellant in this regards.

Therefore, we also found the Defendant not guilty of the charges attributed to him.⁸⁰

63. Even before May 2009, the Environmental Ministry's continued disruptions of the Companies' operations had had debilitating effects on Mr. Al Tamimi's investments; OMCO's wrongful termination of the Lease Agreements and Mr. Al Tamimi's arrest in May 2009 brought everything to an end. The Jebel Wasa Quarry has completely ceased to operate because of the unlawful termination of the Lease Agreements, the Environmental Ministry's enforcement of that termination, and the Royal Oman Police actions to carry out the Ministry's orders.

64. As a result of Mr. Al Tamimi's inability to operate the Quarry and earn returns on his investments, much of the Companies' equipment and machinery was confiscated by an order from a local court and sold at auction to local competitors, and Mr. Al Tamimi's workforce was disbanded.⁸¹ Surprisingly, the confiscation order was issued two days after the appellate court vacated Mr. Al Tamimi's conviction.

IV. JURISDICTION

A. ICSID Jurisdiction

65. Article 25(1) of the ICSID Convention defines the scope of the Centre's jurisdiction. The claims submitted here fall within that scope. Mr. Al Tamimi and Oman have a

⁸⁰ *Id.* at 3-4. Despite this complete acquittal, the Omani authorities refused to return the full amount of the bail that Mr. Al Tamimi had paid; only 1,950 Omani Rial of his 5,000 Omani Rial payment was returned. *See* Receipt of payment for financial guarantee, dated 25 May 2009, Cl. Exh. C-57 (confirming receipt of 5,000 Omani Rial for bail by the Royal Oman Police and public prosecution); Refund receipt and check for warranty refund, dated 2 Apr. 2011, Cl. Exh. C-59 (confirming payment by the public prosecution of 1,950 Omani Rial for a "warranty refund").

legal dispute that arises directly out of an investment; Mr. Al Tamimi is a national of the United States of America, a Contracting State to the ICSID Convention; Oman is a Contracting State to the ICSID Convention; and both Mr. Al Tamimi and Oman have consented in writing to ICSID arbitration.

1. Legal Dispute Arising from Investment

66. This dispute is a “legal dispute” within the meaning of Article 25(1) of the Convention because it involves allegations of breach of legal obligations by Oman under Chapter 10 of the FTA.

67. Further, the dispute arises directly out of Mr. Al Tamimi’s significant investments in Oman. Mr. Al Tamimi personally invested tens of millions of dollars of capital in establishing the quarry works in the concession area, including the building of facilities, the hiring of hundreds of employees, the creation of roads and additional infrastructure, and the buying and leasing of quarrying equipment. Mr. Al Tamimi made these investments in consideration for the exclusive right of the Companies he controls to quarry the concession area for at least 10 years and, most likely, for 25 years or longer. He did so in reliance on OMCO’s assurance that, as required by the Lease Agreements, OMCO would exercise its best efforts to acquire the necessary permits for the operation of the Quarry in the concession area. Mr. Al Tamimi’s investments provided lasting and significant benefits to Oman and its economy, including the creation of roads and other infrastructure in the Jebel Wasa area, the hiring of labor, and the

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⁸¹ See Notification / Emrock Aggregate and Mining Company, Ministry of Justice, Primary Court Madha, dated 8 June 2010, Cl. Exh. C-60.

payment of the lease and royalty fees to Omani Government agencies. Moreover, all of these goals were consistent with Oman's much-publicized mandate to diversify the Omani economy away from the oil industry.⁸²

2. Nationality

68. As stated above, the parties to the dispute are a State, Oman, and a natural person, Mr. Adel Al Tamimi, who is a national of the United States of America and an investor within the meaning of the FTA.⁸³ Oman and the United States of America have both signed and ratified the ICSID Convention and are therefore Contracting States within the meaning of Article 25(1) of the Convention. Oman signed the ICSID Convention on 5 May 1995 and deposited instruments of ratification on 24 July 1995. The ICSID Convention entered into force for Oman on 23 August 1995. The United States signed the ICSID Convention on 27 August 1965 and deposited instruments of ratification on 10 June 1966. The ICSID Convention entered into force for the United States on 14 October 1966.

3. Consent

69. In Article 10.16 of the FTA, Oman consented to the submission to arbitration, under the ICSID Convention and the ICSID Rules of Procedure, of claims that it has breached the obligations contained in Section A of Chapter 10 of the FTA.⁸⁴ Thus, ICSID has jurisdiction

⁸² See discussion of Oman's *Vision 2020* and Royal Decree 1/96 in footnote 2, *supra*.

⁸³ See discussion in ¶ 74, 76-77, *infra*. At no time has Mr. Al Tamimi been a citizen or national of Oman; thus, he does not have the nationality of the State party to this dispute for the purposes of Article 25(2)(a) of the ICSID Convention.

⁸⁴ U.S.-Oman FTA art. 10.16.1, Cl. Exh. C-1 ("Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.").

over this legal dispute. Pursuant to paragraph 2 of Article 10.16 of the FTA, that consent, together with Mr. Al Tamimi's submission of claims to arbitration, satisfies the requirements of Chapter II of the ICSID Convention.⁸⁵

B. Jurisdiction Under the FTA

70. The U.S.-Oman FTA entered into force on 1 January 2009.⁸⁶ Chapter 10 of the FTA addresses "Investment," including the substantive obligations owed to an investor of a Party to the FTA by the other Party (*i.e.*, the host State), as well as the mechanism for investor-State dispute settlement. Article 10.1 of the FTA defines the scope and coverage of Chapter 10 of the FTA. It provides that "[t]his Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of the other Party; [and] (b) covered investments" As detailed below, the actions taken by the Omani Government vis-à-vis Mr. Al Tamimi's investments are measures relating to an investor of the other Party and covered investments and thus are subject to Chapter 10 of the FTA.

1. Measures at Issue in this Dispute

71. Under the FTA, a "'measure' includes any law, regulation, procedure, order, requirement, or practice."⁸⁷ In this case, the Government of Oman has adopted and maintained several measures that have related directly to Mr. Al Tamimi and the operations of the investments he made in Oman. These measures include: (1) the failure by OMCO to obtain

⁸⁵ *Id.* art. 10.16.2 ("The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) . . . for written consent of the parties to the dispute . . .").

⁸⁶ See footnote 8, *supra*.

necessary permitting per its obligations under the Lease Agreements, and its misrepresentations regarding the permits it had obtained; (2) the pretextual, arbitrary, and capricious termination of the Lease Agreements, which were never reinstated, by OMCO; (3) the enforcement of the terminations through action by the Environmental Ministry to bring about the cessation of all activity at the Quarry, including by calling upon the Royal Oman Police to carry out the improper arrest and detention of Mr. Al Tamimi himself and the forcible shutting down of the quarry site; (4) the coercion of Mr. Al Tamimi to provide a commitment to cease quarrying and crushing operations permanently as a condition of his release from police custody, which was never revoked; (5) the threatening and forced dispersal of Mr. Al Tamimi's workforce; and (6) the auctioning of his quarrying equipment.

72. Since 23 May 2009, Mr. Al Tamimi has not engaged in any quarrying or crushing operations in the Jebel Wasa Quarry, and indeed he has been physically and legally prevented from doing so. Through OMCO's arbitrary and capricious termination of the Lease Agreements and the Environmental Ministry's actions in support of that termination, Respondent has taken the position that the Companies no longer have the right to operate a concession at the site. (As discussed above, the ostensible reason for terminating the Lease Agreements pursuant to which Mr. Al Tamimi had invested tens of millions of dollars in Oman was that the Companies allegedly had failed to pay OMCO an amount of less than US \$100,000, associated in part with fines which had been imposed on OMCO due to no fault of the Companies.) The enforced cessation of operations at the Quarry was bolstered by the authorities' requirement that Mr. Al

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⁸⁷ U.S.-Oman FTA art. 1.3, Cl. Exh. C-1.

Tamimi undertake a commitment to refrain from operating his investments as a condition of his release on 23 May 2009. As a consequence of the forced termination of quarrying operations, the Omani authorities either initiated or permitted the sale of equipment from the Quarry and the dissolution of the workforce. In short, operation and production on the site are no longer possible due to the obstacles Respondent has erected purportedly under Omani law.

73. The measures forming the basis of Mr. Al Tamimi's claims took place in 2009, after the entry into force of the FTA on 1 January 2009.

2. Mr. Al Tamimi is an "Investor of the other Party"

74. Chapter 10 of the FTA applies to "measures adopted or maintained by a Party relating to: (a) investors of the other Party; [and] (b) covered investments" ⁸⁸ Mr. Al Tamimi is an "investor of the other Party" within the meaning of this provision.

"Investor of a Party" is defined in Chapter 10 as follows:

[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 the other 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. ⁸⁹

As required by the definition, Mr. Al Tamimi (1) is a national of a Party to the FTA (the United States, in his case), and (2) has made investments in the territory of Oman, the other Party to the FTA. A "national," within the meaning of the FTA, means "with respect to the United States,

⁸⁸ *Id.* art. 10.1.1.

‘national of the United States’ as defined in Title III of the Immigration and Nationality Act.”⁹⁰

In turn, the Immigration and Nationality Act defines a “national of the United States” as:

(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.⁹¹

Mr. Al Tamimi is a naturalized citizen of the United States, a status he obtained in 1986 and has held without interruption since then.⁹² He thus meets the definition of a national of the United States. Moreover, he has made substantial “investments” in Oman. An investment is broadly defined in Article 10.27 of the FTA:

[I]nvestment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.

75. Through the two enterprises that he controls, Emrock and SFOH, Mr. Al Tamimi entered into long-term lease agreements with an Omani state-owned enterprise to operate the Quarry in Oman. He committed significant capital, assumed risk, and expected to gain from his investments in Oman. Having made investments in the territory of Oman and being a U.S. national, Mr. Al Tamimi is an “investor of the other Party” within the meaning of Chapter 10 of the FTA.

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⁸⁹ *Id.* art. 10.27.

⁹⁰ *Id.* art. 1.3.

⁹¹ Immigration and Nationality Act, 8 U.S.C. § 1101(a)(22)(A)-(B) (2010).

⁹² *See, e.g.*, U.S. passport issued to Mr. Adel A Hamadi Al Tamimi on 20 Oct. 2009, Cl. Exh. C-9.

3. Mr. Al Tamimi's Interest in the Quarry is a "Covered Investment," as are His Interests in Property Related to the Quarry

76. Chapter 10 of the FTA applies to measures relating not only to investors of another Party, but also to "covered investments." Under Article 1.3 of the FTA, a "covered investment"

means, with respect to a Party, an investment, as defined in Article 10.27 (Definitions), in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter.

Thus, to be a "covered investment," there must be: (1) an investment, as it is defined in Article 10.27; (2) in the territory of a Party; (3) of an investor of the other Party; (4) which was still in existence as of the date of entry into force of this Agreement, or which was established or expanded thereafter.

77. In this case, Mr. Al Tamimi, who is a U.S. investor, made substantial investments in the territory of Oman. As discussed above, "investment" is broadly defined in Article 10.27 of the FTA to include "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment" The definition expressly includes, in sub-paragraph (h), "property rights, such as leases." Thus, "every asset" having the characteristics of an investment is protected, including tangible property or other assets, as well as intangible assets such as shares and equity participation in an enterprise, concession contracts, and property rights, such as leases.

78. Concession rights in a quarry, such as were held by Mr. Al Tamimi, are property rights falling squarely within the definition of an investment. Mr. Al Tamimi's interest in those

rights carried with it the quintessential characteristics of an investment, including the expectation of reward and the risk of loss. Because Mr. Al Tamimi is a U.S. national, his investments constitute covered investments within the meaning of the FTA.

79. Furthermore, Mr. Al Tamimi's investments in Oman include equipment, machinery, spare parts, and services that he purchased to make the Quarry operational. These investments cost him tens of millions of dollars.

80. Thus, Mr. Al Tamimi's assets, including his property rights in the Quarry, qualify as assets amounting to covered investments entitled to protection under the FTA.

4. Mr. Al Tamimi Has Complied with all of the Necessary Procedural Requirements Mandated by the FTA

81. Before pursuing the legal remedies available under the FTA, Mr. Al Tamimi first brought his claims to the attention of senior Omani officials in late 2010 in an attempt to resolve the dispute through consultation and negotiation, as required by Article 10.14 of the FTA, without the need for arbitration. Only after those efforts were unsuccessful did Mr. Al Tamimi serve the official designated in Annex 10-C, Oman's Director General for Commerce and Industry, with a copy of a notice of intent to submit claims to arbitration on 19 April 2011, pursuant to paragraph 2 of Article 10.15 of the FTA. Finally, Mr. Al Tamimi filed this Request on 5 December 2011, and therefore has waited at least 90 days before filing this Request with ICSID, as required by paragraph 2 of Article 10.15.

82. As previously discussed, the events giving rise to this claim culminated in May 2009. Thus at least six months have elapsed since these events occurred, as required by

paragraph 3 of Article 10.15. In addition, as the breaches at issue were completed in or about May 2009, no more than three years have elapsed since the date on which Mr. Al Tamimi first acquired or should have first acquired knowledge of the breaches he alleges herein and the damages arising therefrom. Thus, these claims are not barred by paragraph 1 of Article 10.17 of the FTA.

83. As previously established, both the United States and Oman are parties to the ICSID Convention, and therefore Mr. Al Tamimi's claim may properly be submitted to that tribunal under paragraph 3 of Article 10.15 of the FTA.

84. As required by paragraph 6 of Article 10.15 of the FTA, Mr. Al Tamimi provides in Section VII, *infra*, the name of the arbitrator he appoints.

85. Finally, Mr. Al Tamimi provides the written waiver and consents required under Articles 10.17 and 10.18 of the FTA, attached as an exhibit to this Request.⁹³

V. OMAN'S BREACHES OF ITS OBLIGATIONS

86. Mr. Al Tamimi alleges that Oman has breached obligations under the following provisions of Section A of Chapter 10 of the FTA:

- (A) Article 10.6: Expropriation and Compensation;
- (B) Article 10.5: Minimum Standard of Treatment; and
- (C) Article 10.3: National Treatment.

A. Oman’s Breach of Article 10.6

87. Article 10.6 of the FTA prohibits expropriation, whether direct or indirect, except for a public purpose, in a non-discriminatory manner, in accordance with due process, and upon payment of prompt, adequate, and effective compensation.

88. For there to be an expropriation, there must be a “substantial deprivation” of the investor’s property rights as a result of the measures taken by the host State. An expropriation occurs when the “owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.”⁹⁴

89. Based on the above-described facts, Oman has breached its obligation under Article 10.6 of the FTA with regard to Mr. Al Tamimi’s investments in Oman.

90. The entire value of Mr. Al Tamimi’s investments in Oman derives from the right to quarry and crush limestone pursuant to the Lease Agreements. The combination of OMCO terminating the Lease Agreements and then the Environmental Ministry giving effect to the termination by ousting Mr. Al Tamimi from the premises and compelling him to cease all quarrying on the premises has wiped out the value of the investments for reasons other than a

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⁹³ Claimant’s written waiver and consents required under Articles 10.17.2 and 10.18.4 of the U.S.-Oman FTA, dated 30 Nov. 2011, Cl. Exh. C-61.

⁹⁴ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (Award dated 24 July 2008), ¶¶ 463, 438 (quoting *Tippetts, Abbott, McCarthy, Stratton v. TAMS-AFFAA Consulting Eng’rs of Iran*, Case No. 7 (141-7-2), 6 Iran-US C.T.R. 219, 225 (Award dated 29 June 1984)).

public purpose, in a discriminatory manner, not in accordance with due process, and without providing prompt, adequate, and effective compensation.

91. Mr. Al Tamimi's investments have been destroyed by Oman's actions. As of sometime in the spring of 2009, OMCO terminated the Lease Agreements, which are the only basis for the Companies to be able to operate a quarry at the project site. Ostensibly due to non-payment of fees and fines amounting to less than \$100,000, OMCO expropriated Mr. Al Tamimi's rights in property he had spent tens of millions of dollars to improve and make operational and which promised to generate hundreds of millions of dollars of revenue over the life of the investments. But OMCO did not simply terminate the Lease Agreements. Rather, it brought to bear the full force of the police power of the State to ensure cessation of all activities related to the investments. Thus the combined actions of Omani officials included Mr. Al Tamimi's arrest, jailing, and forced relinquishment of his rights as an investor as a condition of his release. This was followed up by conduct of the State either initiating or, at a minimum, permitting the sale of Mr. Al Tamimi's quarrying equipment and the disbanding of his workforce.

92. Although the subsequent appeals court judgment vindicated Mr. Al Tamimi from criminal liability, the Government has taken no action to rescind its stop-work instructions. Mr. Al Tamimi has been deprived of the control, use, enjoyment, and economic value of his investments in Oman. This expropriation was not effected for any legitimate public purpose, was discriminatory, was not undertaken in accordance with due process of law, and was not accompanied by payment of compensation as provided by Article 10.6 of the FTA. Accordingly, Oman's conduct is in breach of Article 10.6.

B. Oman's Breach of Article 10.5

93. Paragraph 1 of Article 10.5 of the FTA requires Oman to “accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.” The customary international law obligation to accord fair and equitable treatment has been interpreted to require treatment in accordance with an investor’s legitimate, investment-backed expectations. Moreover, it has been interpreted as requiring protection of an investor from conduct attributable to the State and harmful to the investor

if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process.⁹⁵

In short, “the terms ‘fair’ and ‘equitable’ mean ‘just’, ‘even handed’, ‘unbiased’, [and] ‘legitimate.’”⁹⁶ The customary international law obligation to accord full protection and security has been interpreted to require not only physical protection of an investor’s investment, but also maintenance of “the stability afforded by a secure investment environment.”⁹⁷

⁹⁵ *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3 (Award dated 30 Apr. 2004), ¶ 98.

⁹⁶ *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8 (Award dated 6 Feb. 2007), ¶ 290.

⁹⁷ *Azurix Corp. v. Argentine Republic*, Award, ICSID Case No. ARB/01/12 (Award dated 14 July 2006), ¶ 408.

94. Mr. Al Tamimi spent tens of millions of dollars to develop the quarry concession area, including construction, equipment, recruitment, reports, studies, permits, and securing sales contracts with various clients, in reliance on representations by OMCO and the Commerce Ministry, which he believed to have been made in good faith. Those agents of Oman expressly represented to Mr. Al Tamimi that he could engage in quarrying and crushing of limestone in the concession area as of September 2007—and, indeed, that he was obligated to start doing so. Despite the fact that Mr. Al Tamimi operated the Jebel Wasa Quarry in accordance with the terms of the Lease Agreements, his activities have been undermined by the arbitrary conduct of the State. The principal rationale cited by OMCO for forcing Mr. Al Tamimi to cease quarrying operations in May 2009 was non-payment of fees and fines totaling less than \$100,000. On this basis, OMCO put a stop to an operation in which the investor had invested tens of millions of dollars and then enlisted other parts of the State to enforce its decision.

95. Oman's actions were grossly out of proportion to the alleged conduct of Mr. Al Tamimi to which they purportedly were responding. Even if it were the case that Mr. Al Tamimi was liable to OMCO for various fees and fines (a point which Mr. Al Tamimi does not concede), that would not justify the State's destruction of investments worth hundreds of millions of dollars. To say the least, the State's conduct constituted a stark departure from Mr. Al Tamimi's legitimate expectations, formed by Omani officials' own previous statements, assurances, and contractual obligations. By undermining his legitimate expectations, ignoring the pattern of conduct that had been established by allowing the quarrying concession to be developed and become operational, terminating the Companies' Lease Agreements, and eventually having Mr. Al Tamimi arrested and ordered to stop production, the Government of Oman failed to provide fair and equitable treatment, in violation of its obligations under Article 10.5 of the FTA.

96. Additionally, Oman failed to provide the protection and security to Mr. Al Tamimi's covered investments that were required by the FTA. In May 2009, the Royal Oman Police raided and shut down quarrying and crushing operations on the concession site. The police arrested Mr. Al Tamimi, the Chairman of Emrock and SFOH, and escorted him off of the project site in front of all of his employees and many subcontractors and customers in a step clearly designed to intimidate the employees and humiliate Mr. Al Tamimi. Mr. Al Tamimi was jailed on false charges, sentenced to three months in prison, and forced to defend himself in Omani courts in proceedings that lasted over a year. Unable to operate the Quarry, Mr. Al Tamimi could not meet financial obligations to banks and other subcontractors. Much of the machinery and equipment that Mr. Al Tamimi had purchased or leased to operate the Quarry production was removed from the concession site and auctioned off,⁹⁸ resulting in a multi-million dollar loss to Mr. Al Tamimi and subjecting him to significant additional liability for breach of lease and purchase contracts. Moreover, during the time the employees remained on the site awaiting arrangements for their departure and selling remaining inventory, they were repeatedly harassed and threatened by the police that they would be imprisoned. By wrongfully arresting the Companies' Chairman, allowing and assisting the auctioning of equipment, and intimidating the employees at the project site, the Omani Government failed to provide full protection and security to Mr. Al Tamimi's investments. Ultimately, Mr. Al Tamimi was fully exonerated of all charges against him by an Omani appeals court; the Omani Government did not appeal that decision.

⁹⁸ See Notification / Emrock Aggregate and Mining Company, Ministry of Justice, Primary Court Madha, dated 8 June 2010, Cl. Exh. C-60.

97. For all of the above reasons, Oman has denied Mr. Al Tamimi's investments the treatment required by Article 10.5 of the FTA, including fair and equitable treatment and full protection and security.

C. Oman's Breach of Article 10.3

98. Article 10.3 of the FTA requires Oman to accord an investor of the United States and that investor's investments in Oman "treatment no less favorable than that it accords, in like circumstances, to its own investors" and to "investments in its territory of its own investors." This obligation is known as the obligation to accord "national treatment."

99. There are multiple mining companies, including, for instance, the Omer Quarry, the Al Zabide Quarry, and the Al Ahila Quarry, located in close proximity to the site of the Companies' Jebel Wasa operations. These quarries, which Mr. Al Tamimi believes to be owned and controlled by nationals of Oman, are in like circumstances with the Jebel Wasa Quarry. For example, the Omer Quarry, located a few miles from the Companies' site (so close, in fact, that it uses the road constructed by the Companies to transport its materials in and out of its quarry), uses the exact same mountain range as its source of stone; operates in a similar manner, *i.e.*, with the use of approximately the same number of screens and crushers, and the same types of washing plants and other equipment; and occupies a land area of virtually the same size as the Companies' site. This and other Omani-owned quarries are operating, and have been operating, without the challenges faced by Mr. Al Tamimi, an investor of the United States. Oman's failure to treat the Companies' Jebel Wasa Quarry, operated and managed by Mr. Al Tamimi, in a manner "no less favorable" than the manner in which it treats locally owned investments in like circumstances constitutes a breach of Article 10.3 of the FTA.

VI. DAMAGES CLAIMED

100. As a result of Oman's breaches of its obligations under the FTA, Mr. Al Tamimi has incurred damages of approximately U.S. \$560 million, consisting principally of the value of the investments that were destroyed by Oman. That value is represented by the stream of net operating income (discounted back to present value) which the investments would have generated, but for the breaches. The Lease Agreements contemplated that the Companies would operate the Quarry for a period of up to 25 years (*i.e.*, an initial period of 10 years, followed by three extensions of up to 5 years each). The Environmental Impact Assessment and Operations Plan submitted by OMCO to the Environmental Ministry, on the Companies' behalf, allowed for combined operations of Emrock and SFOH at an output of 30 million tons of limestone per year. Based on these parameters, together with evidence of the substantial and growing demand for limestone products of the type and quality the Companies were producing, Mr. Al Tamimi is prepared to establish his claim of loss. Expert analyses support Mr. Al Tamimi's estimated damages claim. In addition to the value of the investments destroyed by Oman, Mr. Al Tamimi is prepared to demonstrate his entitlement to moral damages, based on the manner in which he personally was treated by the Omani authorities, including the meritless criminal prosecution based on his operation of the Quarry he developed.

VII. PROCEDURAL ISSUES

A. Number of Arbitrators and Method for Appointment

101. Article 10.18 of the FTA requires, unless otherwise agreed by the parties, that the arbitral tribunal shall consist of three arbitrators and that each party shall appoint one arbitrator and that the third, presiding arbitrator, shall be appointed by agreement of the parties.

102. Mr. Al Tamimi hereby appoints the Honorable Charles N. Brower to serve as an arbitrator in this arbitration. Judge Brower's contact details are as follows:

The Honorable Charles N. Brower
Arbitrator
20 Essex Street Chambers
20 Essex Street
London WC2R 3AL
England

Tel: +44 (0)20 7842 1200
U.S. Mobile: +1 (202) 361-8601
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E-mail: cbrower@20essexst.com

B. Language of Proceedings

103. Mr. Al Tamimi proposes that the proceedings be conducted in English.

C. Place of Arbitration

104. Mr. Al Tamimi proposes that the arbitral proceedings be held at ICSID in Washington, District of Columbia, United States.

VIII. RESERVATION OF RIGHTS AND RELIEF SOUGHT

105. As stated above, Mr. Al Tamimi reserves the right to advance further arguments and produce such further evidence, factual or legal, as necessary to complete or supplement the presentation of his claims or to respond to any arguments or allegations advanced by Oman. Mr. Al Tamimi also reserves the right to produce further documentary evidence and to produce witness evidence in order to supplement and support the claims made in this Request. Without

prejudice to his rights to amend, supplement, or restate the relief to be requested in arbitration,

Mr. Al Tamimi respectfully requests that the Tribunal grant him the following relief:

- (i) A declaration that the Sultanate of Oman has breached its obligations under the U.S.-Oman Free Trade Agreement;
- (ii) Compensation in an amount of approximately \$560 million for the damages caused by Oman's failure to provide Mr. Al Tamimi national treatment, fair and equitable treatment, and full protection and security and its expropriation of Mr. Al Tamimi's valuable interest in unrestricted mining concessions, which sum includes profits Mr. Al Tamimi reasonably could have expected to receive had the Government of Oman not deprived him of the opportunity through its breaches and indirect losses;
- (iii) Moral damages;
- (iv) Costs associated with these proceedings, including all professional fees and disbursements;
- (v) Pre-award and post-award interest at a rate to be fixed by the Tribunal; and
- (vi) Such further relief that counsel may advise and that the Tribunal may deem appropriate.

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