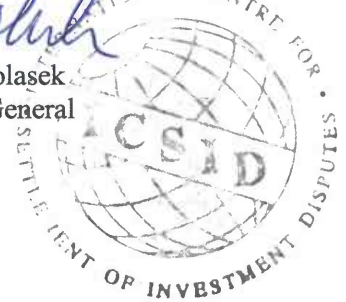


CERTIFICATE**ZAUR LESHKASHELI AND ROSSERLANE CONSULTANTS LIMITED**

v.

REPUBLIC OF AZERBAIJAN**(ICSID CASE NO. ARB/20/20)**

I hereby certify that the attached document is a true copy of the Tribunal's Award dated March 21, 2025.


Martina Polasek
Secretary-General


Washington, D.C., March 21, 2025.

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ZAUR LESHKASHELI AND ROSSERLANE CONSULTANTS LIMITED

Claimants

and

REPUBLIC OF AZERBAIJAN

Respondent

ICSID Case No. ARB/20/20

AWARD

Members of the Tribunal

Dr. Laurent Lévy, Presiding Arbitrator

Mr. David Haigh KC, Arbitrator

Dr. Eduardo Silva Romero, Arbitrator

Secretary of the Tribunal

Mr. Oladimeji Ojo

Assistant of the Tribunal

Dr. Magnus Jesko Langer

Date of dispatch: 21 March 2025

REPRESENTATION OF THE PARTIES

*Representing Zaur Leshkasheli and
Rosserlane Consultants Limited:*

Mr. Alexander A. Yanos
Mr. Mike H. Shanlever
Mr. Jamie S. George
Ms. Tamar Sarjveladze
Mr. Christopher Williams
Mr. Thomas P. Grantham
Alston & Bird LLP
90 Park Avenue
15th Floor
New York, NY 10016-1387
United States of America

Representing the Republic of Azerbaijan:

Ms. Helen Davies KC
7-8 Essex St.
Temple
London WC2R 3LD
United Kingdom

and

Mr. Andrew Cannon
Mr. Marco De Sousa
Ms. Hannah Ambrose
Mr. Craig Tevendale
Ms. Louise Barber
Mr. Divyanshu Agrawal
Ms. Caitlin Poysden
Ms. Tanesha Singh
Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG
United Kingdom

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TABLE OF ABBREVIATIONS

Amended MPA	Amended Master Projects Agreement between Shirvan Oil, CEG and Schlumberger Overseas S.A. of 28 August 2002
Arbitration Rules	ICSID Arbitration Rules in force as of 10 April 2006
Ashmore	Ashmore Group
Ashmore Loan	Loan Agreement Between CEG and Ashmore of 11 August 2006
Azerbaijan	Republic of Azerbaijan or the Respondent
Azerbaijan-Georgia BIT or Treaty or BIT	1996 Agreement between the Government of the Republic of Azerbaijan and the Government of the Republic of Georgia for the Promotion and Protection of Investments
bcm	Billion cubic meters
Berghoff	Berghoff Trading Limited
BIT	Bilateral Investment Treaty
Blandford	Blandford Trading Limited
bopd	Barrels of oil per day
BSG	Beny Steinmetz Group Resources
BTC Pipeline	Baku-Tbilisi-Ceyhan Pipeline
BVI	British Virgin Islands
C-	Claimants' Exhibits
CEG	Caspian Energy Group LP
CEG BVI	BVI Company Caspian Energy Group Limited
CFO	Chief Financial Officer
Charter	SOCAR Charter 2003
CIS	Commonwealth of Independent States
CL-	Claimants' Legal Authorities
Claimants	Dr. Zaur Leshkasheli and Rosserlane Consultants Limited
Companies Act	Isle of Man Companies Act 1931

Counter-Memorial	Respondent's Counter-Memorial on the Merits and Objections to Jurisdiction and Admissibility of 27 September 2021
Cornhill	Cornhill Nominees Limited
C-PHB1	Claimants' First Post-Hearing Brief of 31 March 2023
C-PHB2	Claimants' Second Post-Hearing Brief of 2 June 2023
Credit Suisse Loan	Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch of 14 December 2006
Credit Suisse Proceedings	Proceedings brought by Rosserlane and Swinbrook against Credit Suisse before the High Court
CS	Credit Suisse Group AG (Switzerland)
CSI	Credit Suisse International
CSS	Credit Suisse Securities (Europe) Limited
DCF	Discounted Cash Flow
Decree No. 85	Decree No. 85 of the President of the Republic of Azerbaijan on the Application of the Energy Law of the Republic of Azerbaijan
Draft PO1	Draft version of Procedural Order No. 1
Draft PO3	Draft version of Procedural Order No. 3
Drilling Loan	Second tranche of USD 12 million for new drilling in the Kurovdag Field under an approved work program under the Credit Suisse Loan
ECT	Energy Charter Treaty
Erdingside	Erdingside Services Limited
Energy Law	Law on Energy of the Republic of Azerbaijan
ER	Expert Report
ER1	First Expert Report

ER2	Second Expert Report
EOR	Enhanced Oil Recovery
FET	Fair and Equitable Treatment
Finch Loan	Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane of 8 November 2005
FMV	Fair Market Value
Foreign Investments Law	Law of the Azerbaijan Republic on the Protection of Foreign Investments No. 57 of 1992
FPS	Full Protection and Security
FTS	FTS Worldwide Corporation
GEA	GEA Holdings Limited
GEAZ	Global Energy Azerbaijan Limited
Georgia	Republic of Georgia
Hague Convention	Hague Convention on the Law Applicable to Trusts and their Recognition of 1 July 1985
Hartman	Hartman Development Corp
High Court	English High Court
ICJ	International Court of Justice
ICSID	International Centre for the Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ILC	International Law Commission
ILC Articles	ILC's Articles on State Responsibility
IPO	International Public Offering
JV	Joint Venture
JVA	Joint Venture Agreement between SOCAR and CEG dated 25 December 1995

Khamar	Khamar Holdings Limited
Khamar Loan	Loan Agreement Between CEG and Khamar Holdings Ltd dated 31 May 2006
The Lances	Mark Richard Lance and Jennifer Christine Lance
LMO	Local Market Oil
Mayfair	Mayfair Energy Group Limited
M&A	Mergers and Acquisitions
Memorial	Claimants' Memorial of 26 March 2021
Ministry of Energy	Ministry of Fuel and Energy
mmbo or MMstb	Million barrels of oil
Momentum Contract	Contract between Shirvan Oil and Momentum of 15 December 2005
MPA	Master Project Agreement
ONGC	Oil and Natural Gas Company
Organic Law	Organic Law of Georgia on Georgian Citizenship of 25 March 1993, amended in 2010 and 2014
PHB	Post-hearing brief
PHB-1	First Post-Hearing Briefs of 31 March 2023
PHB-2	Second Post-Hearing Briefs of 2 June 2023
PO	Procedural Order
PO1	Procedural Order No. 1 of 14 December 2020
PO2	Procedural Order No. 2 of 6 January 2022
PO3	Procedural Order No. 3 of 13 September 2022
PO4	Procedural Order No.4 of 23 November 2022
Protocol of Consent	Protocol of Consent between CEG and Shirvan Oil of 8 February 2006
PSA	Production Sharing Agreement
PSA Termination Agreement	Agreement on Termination of the Product Sharing Agreement of 7 September 2007

R-	Respondent's Exhibits
Rafi Oil	Rafi Oil Corp
Rejoinder	Respondent's Rejoinder on the Merits and Reply on Jurisdiction and Admissibility of 19 August 2022
Reply	Claimants' Reply on the Merits and Counter-Memorial on Jurisdiction of 14 April 2022
Respondent	Republic of Azerbaijan
RFA	Claimants' Request for Arbitration of 2 June 2020
RL-	Respondent's Legal Authorities
Roanoaks	Roanoaks Trading Limited
Rosserlane	Rosserlane Consultants Limited
R-PHB1	Respondent's First Post-Hearing Brief of 31 March 2023
R-PHB2	Respondent's Second Post-Hearing Brief of 2 June 2023
RPS	RPS Energy Limited
RPS1	RPS Energy Report on Evaluation of Caspian Energy Group's Kurovdag Field of 1 September 2006
RPS2	RPS Energy Report on Evaluation of Water-Flooding of Caspian Energy Group's Kurovdag Field of 26 April 2007
RSA	Risk-Sharing Agreement
Russia	Russian Federation
Schlumberger	Schlumberger Overseas Limited
SCP	South Caucasus Pipeline
Shirvan or Shirvan Oil	Shirvan Oil Limited Liability Enterprise
SOA	SOCAR Oil Affiliate
SOCAR	State Oil Company of the Azerbaijan Republic
SOCAR Trading	SOCAR Trading S.A.
Swinbrook	Swinbrook Developments Limited
Tr. (day) [page:line]	Transcript of the hearing in Washington DC of 10 to 21 October 2022

UBO	Ultimate Beneficial Owner
UK	United Kingdom
Union Grand	Union Grand Energy
USD	United States Dollar
Vazirov Report	Report of Farrukh Vazirov, Analysis of activity of JV “Shirvan Oil”
VCLT	Vienna Convention on the Law of Treaties entered into force as of 27 January 1980
Vitol Loan	Loan Agreement between CEG and Vitol of 22 March 2002
Whitehall	Whitehall International Traders LP
WMO	World Market Oil
WS	Witness Statement
WS1	First Witness Statement
WS2	Second Witness Statement

I. INTRODUCTION

1. The present arbitration arises out of Article 26 of the Energy Charter Treaty (the “ECT”)¹ and Article 9(2) of the 1996 Agreement between the Government of the Republic of Azerbaijan and the Government of the Republic of Georgia for the Promotion and Protection of Investments (the “Treaty”, the “Azerbaijan-Georgia BIT”, or the “BIT”),² as well as Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”), in connection with an investment made by Dr. Zaur Leshkasheli and Rosserlane Consultants Limited in the onshore oilfield industry in the territory of the Republic of Azerbaijan.

A. THE PARTIES

(1) Claimants

2. The Claimants in this arbitration are Dr. Zaur Leshkasheli and Rosserlane Consultants Limited (the “Claimants”).
3. Dr. Zaur Leshkasheli claims to be a dual national of the Republic of Georgia (“Georgia”) and of the Russian Federation (“Russia”).
4. Rosserlane Consultants Limited (“Rosserlane”) is a company existing under the laws of the Isle of Man, with registration number 068332C, that was incorporated on 25 May 1994 as a limited liability company.³ Its registered office address is 153 Woodbourne Road, Douglas, Isle of Man, IM2 3BB.⁴
5. The Claimants are represented in this arbitration by:

Mr. Alexander A. Yanos
Mr. Mike H. Shanlever
Mr. Jamie S. George

¹ Energy Charter Treaty, 2080 U.N.T.S. 100 (16 April 1998) (“ECT”) (C-1).

² Agreement between the Government of the Republic of Azerbaijan and the Government of the Republic of Georgia for the Promotion and Protection of Investments, 7 October 1996 (C-2 and R-2).

³ Certified Rosserlane Documents, 21 March 1997, p. 6 of the pdf document (“Certificate of Incorporation” dated 25 May 1994) (R-91).

⁴ Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207).

Ms. Tamar Sarjveladze
Mr. Christopher Williams
Mr. Thomas P. Grantham
Alston & Bird LLP
90 Park Avenue
15th Floor
New York, NY 10016-1387
United States of America
alex.yanos@alston.com
mike.shanlever@alston.com
jamie.george@alston.com
tamar.sarjveladze@alston.com
thomas.grantham@alston.com
chris.williams@alston.com

(2) Respondent

6. The Respondent is the Republic of Azerbaijan (“Azerbaijan” or the “Respondent”).
7. The Respondent is represented in this arbitration by:

Ms. Helen Davies KC
7-8 Essex St.
Temple
London WC2R 3LD
United Kingdom
helen.davies@brickcourt.co.uk

and

Mr. Andrew Cannon
Mr. Marco De Sousa
Ms. Hannah Ambrose
Mr. Craig Tevendale
Ms. Louise Barber
Mr. Divyanshu Agrawal
Ms. Caitlin PoysdenEaton
Ms. Tanesha Singh
Herbert Smith Freehills LLP
Exchange House
Primrose Street
London
EC2A 2EG

United Kingdom
andrew.cannon@hsf.com
marco.desousa@hsf.com
hannah.ambrose@hsf.com
craig.tevendale@hsf.com
louise.barber@hsf.com
divyanshu.agrawal@hsf.com
caitlin.poysden@hsf.com
tanisha.singh@hsf.com

B. THE TRIBUNAL

8. The Arbitral Tribunal is composed of:
 - Dr. Laurent Lévy, a dual Swiss and Brazilian national, President;
 - Mr. David Haigh KC, a Canadian national, Arbitrator; and
 - Dr. Eduardo Silva Romero, a dual Colombian and French national, Arbitrator.
9. The Secretary-General appointed Dr. Laura Bergamini as Secretary of the Tribunal. By letter dated 8 August 2022, Mr. Oladimeji Ojo was assigned to replace Dr. Bergamini as Secretary of the Tribunal.
10. With the consent of the Parties, the Tribunal appointed Dr. Magnus Jesko Langer, a lawyer with the President's law firm, as Assistant to the Tribunal. His *curriculum vitae* and a declaration of impartiality and independence were circulated to the Parties on 20 and 27 October 2020.

II. PROCEDURAL HISTORY

11. On 2 June 2020, the Claimants filed a Request for Arbitration, accompanied by 19 factual exhibits (C-1 to C-19). The Centre registered that request on 25 June 2020.
12. On 17 August 2020, the Claimants appointed Mr. David Haigh KC as arbitrator. On 27 August 2020, Mr. Haigh KC accepted his appointment.
13. On 23 September 2020, the Respondent appointed Dr. Eduardo Silva Romero as arbitrator. Dr. Silva Romero accepted his appointment the following day.

14. On 9 October 2020, the Claimants accepted the Respondent’s proposal to appoint Dr. Laurent Lévy as President of the Tribunal.
15. On 16 October 2020, Dr. Lévy confirmed his acceptance of the appointment as President of the Tribunal. On the same day, the Centre informed the Parties that Dr. Laurent Lévy, Mr. David Haigh KC and Dr. Eduardo Silva Romero had all accepted their appointments as arbitrators, such that the Tribunal was deemed to have been constituted, and the proceedings to have begun, pursuant to ICSID Arbitration Rule 6.
16. On 19 October 2020 and pursuant to ICSID Administrative and Financial Regulation 14(3), the Centre requested that each Party make an advance payment to ICSID of USD 150,000 by 18 November 2020.
17. On 20 October 2020, the Tribunal proposed to the Parties certain dates for the first session and suggested the appointment of Dr. Magnus Jesko Langer as an assistant to the Tribunal.
18. On 2 November 2020, the Centre confirmed receipt of the Claimants’ portion of the advance requested on 19 October 2020.
19. On 3 November 2020, the Centre circulated to the Parties a draft version of Procedural Order No. 1 (“draft PO1”) and requested that the Parties provide their comments, which the Parties did on 24 November 2020.
20. On 15 December 2020, the Centre confirmed receipt of the Respondent’s share of the advance requested on 19 October 2020.
21. On 1 December 2020, the Tribunal and the Parties held a first session to discuss the draft PO1 and the procedural calendar.

Tribunal:

Dr. Laurent Lévy	President
Mr. David Haigh KC	Arbitrator
Dr. Eduardo Silva Romero	Arbitrator

ICSID Secretariat:

Dr. Laura Bergamini	Secretary of the Tribunal
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Assistant to the Tribunal

Dr. Magnus Jesko Langer	Assistant to the Tribunal
-------------------------	---------------------------

For the Claimants:

Mr. Alex Yanos	Alston & Bird LLP
Mr. Rajat Rana	Alston & Bird LLP
Mr. Mike Shanlever	Alston & Bird LLP
Mr. Carlos Ramos-Mrosovsky	Alston & Bird LLP

For the Respondent:

Ms. Paula Hodges QC	Herbert Smith Freehills LLP
Mr. Andrew Cannon	Herbert Smith Freehills LLP
Ms. Caitlin Eaton	Herbert Smith Freehills LLP
Mr. Iain Maxwell	Herbert Smith Freehills LLP
Ms. Zoe Asher	Herbert Smith Freehills LLP

22. On 14 December 2020, the Tribunal issued Procedural Order No. 1 (“PO1”).
23. On 26 March 2021, the Claimants filed their Memorial (the “Memorial”), accompanied by the witness statements of Dr. Zaur Leshkasheli, Mr. Shane de Beer and Dr. Valery Kushnirov, the expert reports of Ms. Laura Hardin and Mr. Lawrence Brun Hilbert, as well as 165 factual exhibits (C-20 to C-184) and 94 legal authorities (CL-1 to CL-94).
24. On 26 April 2021, the Respondent confirmed that it did not intend to request bifurcation of the proceedings and stated that it would address its jurisdictional objections in its Counter-Memorial.
25. On 27 September 2021, the Respondent filed its Counter-Memorial on the Merits and Objections to Jurisdiction and Admissibility (the “Counter-Memorial”), accompanied by the witness statements of Messrs. Rovnag Abdullayev and Eldar Orujov, the expert reports of Mr. Tom Gunningham and Dr. Richard Hern, as well as 83 factual exhibits (R-1 to R-83) and 98 legal exhibits (RL-1 to RL-98).
26. On 27 October 2021, the Parties submitted simultaneous requests to produce documents in the form of Redfern Schedules.
27. On 29 October 2021, the Parties produced non-objected documents and submitted their respective objections to the remaining document production requests.
28. On 13 December 2021, each Party provided the Tribunal with its Redfern Schedule containing the objections raised by the opposing Party and its replies thereto. The Claimants’ replies were accompanied by legal exhibits CL-95 and CL-96.

29. On 6 January 2022, the Tribunal issued Procedural Order No. 2 (“PO2”) concerning the Parties’ outstanding document production requests.
30. On 3 February 2022, the Claimants requested that the Tribunal schedule a case management conference on 25 February 2022 to discuss the Respondent’s alleged failure to produce documents pursuant to PO2.
31. On 11 February 2022, the Respondent answered that it conducted reasonable and proportionate searches for responsive documents, but that it was unable to locate additional documents, such that a case management conference would be unnecessary.
32. On 12 February 2022, the Claimants provided further explanations for its request to hold a case management conference. Those explanations were accompanied by factual exhibits C-185 to C-187.
33. On 16 February 2022, the Respondent further explained why it deemed it unnecessary to hold a case management conference.
34. On 17 February 2022, the Tribunal decided that the circumstances did not warrant holding a case management conference to address compliance with PO2 and that any alleged deficiencies regarding document production should be addressed in the Parties’ subsequent written submissions and at the Hearing.
35. On 28 February 2022, the Respondent informed the Tribunal that the Parties had agreed to amend PO1 to include a provision governing the confidentiality of documents in the arbitration. On the same day, the Claimants confirmed their agreement to include a confidentiality provision in PO1. Accordingly, the Tribunal issued a revised version of PO1 on 1 March 2022.
36. On 9 March 2022, the Claimants requested a three-week extension to file their Reply Memorial.
37. On 14 March 2022, the Respondent informed the Tribunal that it did not object to the requested three-week extension and agreed to postpone by three weeks the rest of the dates in the procedural calendar until the pre-hearing conference call, while reserving its right to request an additional three weeks.

38. On 15 March 2022, the Centre informed the Parties that the Tribunal decided to grant the Claimants' extension request and distributed a revised procedural calendar.
39. On 14 April 2022, the Claimants filed their Reply on the Merits and Counter-Memorial on Jurisdiction (the "Reply"), accompanied by the witness statements of Dr. Zaur Leshkasheli, Dr. Marat Modelevsky, Mr. Jose Salas, Mr. Klaus Eriksen and Mr. Rodger Littlechild, the expert reports of Ms. Laura Hardin, Dr. Hannes Meissner and Dr. Lawrence Brun Hilbert, as well as 135 factual exhibits (C-188 to C-322) and 56 legal authorities (CL-97 to CL-152).
40. On 15 July 2022, the Respondent requested a three-week extension to file its Rejoinder Memorial.
41. On 18 July 2022, the Tribunal decided to extend until 19 August the deadline for the filing of the Respondent's rejoinder memorial and the Centre distributed a revised procedural calendar.
42. On 10 August 2022, in preparation for the pre-hearing organizational meeting, the Centre, on the Tribunal's behalf, sent to the Parties a draft procedural order no. 3 (the "draft PO3") and invited them to provide their comments thereon by 7 September 2022.
43. On 11 August 2022 and pursuant to ICSID Administrative and Financial Regulation 15(1)(c), the Centre requested that each Party make an additional advance payment to ICSID of USD 200,000 by 12 September 2022.
44. On 12 August 2022, the Claimants paid USD 200,000, corresponding to their portion of the advance requested the day before, which payment the Centre confirmed on 17 August 2022.
45. On 19 August 2022, the Respondent filed its Rejoinder on the Merits and Reply on Jurisdiction and Admissibility (the "Rejoinder"), accompanied by the witness statements of Messrs. Rovnag Abdullayev, Eldar Orujov, Davud Yagubov, Ulvi Agayev and Mammad Imanov, the expert reports of Mr. Tom Gunningham and Dr. Richard Hern, as well as 129 factual exhibits (R-84 to R-212) and 29 legal authorities (RL-99 to RL-127).

46. On 2 September 2022, the Parties identified the witnesses and experts they intended to cross-examine at the Hearing. They further confirmed that they wished to hold the hearing in person in Washington D.C.
47. On 8 September 2022, the Parties filed their comments to the draft PO3.
48. On 12 September 2022, the Tribunal and the Parties held a pre-hearing organizational meeting to discuss the draft PO3 and the organization of the Hearing.

Tribunal:

Dr. Laurent Lévy	President
Mr. David Haigh KC	Arbitrator
Dr. Eduardo Silva Romero	Arbitrator

ICSID Secretariat:

Mr. Oladimeji Ayobobola Ojo	Secretary of the Tribunal
Ms. Maria-Rosa Rinne	Paralegal

Assistant to the Tribunal

Dr. Magnus Jesko Langer	Assistant to the Tribunal
-------------------------	---------------------------

For the Claimants:

Mr. Alex Yanos	Alston & Bird LLP
Mr. Rajat Rana	Alston & Bird LLP
Ms. Tamar Sarjveladze	Alston & Bird LLP
Mr. Christopher Williams	Alston & Bird LLP
Mr. Mike Shanlever	Alston & Bird LLP
Mr. Jamie George	Alston & Bird LLP

For the Respondent:

Mr. Andrew Cannon	Herbert Smith Freehills LLP
Mr. Marco de Sousa	Herbert Smith Freehills LLP
Ms. Caitlin Eaton	Herbert Smith Freehills LLP
Mr. Divyanshu Agrawal	Herbert Smith Freehills LLP
Ms. Tanesha Singh	Herbert Smith Freehills LLP
Ms Sonia Martinez	Herbert Smith Freehills LLP
Ms. Lala Xudiyeva	State Oil Company of the Azerbaijan Republic (SOCAR)

49. On 13 September 2022, the Tribunal issued Procedural Order No. 3 (“PO3”).
50. On 16 September 2022, the Claimants sought leave to introduce four categories of additional documents pursuant to paragraph 17.3 of PO1.

51. On 20 September 2022, the Respondent paid USD 200,000, corresponding to its portion of the advance requested by the Centre on 11 August 2022.
52. On 22 September 2022, the Respondent responded to the Claimants' application of 16 September 2022. The Claimants replied on 28 September 2022 and the Respondent rejoined on 30 September 2022.
53. On 3 October 2022, the Tribunal ruled on the Claimants' application of 16 September 2022, and, on 5 October 2022, the Claimants introduced 6 factual exhibits (C-323 to C-328) into the record.
54. From 10 to 21 October 2022, the Tribunal and the Parties held a hearing on preliminary objections and the merits in the premises of the World Bank in Washington D.C. The following persons attended the Hearing in whole or in part:

Tribunal:

Dr. Laurent Lévy	President
Mr. David Haigh KC	Arbitrator
Dr. Eduardo Silva Romero	Arbitrator

ICSID Secretariat:

Mr. Oladimeji Ayobobola Ojo	Secretary of the Tribunal
-----------------------------	---------------------------

Assistant to the Tribunal

Dr. Magnus Jesko Langer	Assistant to the Tribunal
-------------------------	---------------------------

For the Claimants:

Mr. Alex Yanos	Alston & Bird LLP
Mr. Rajat Rana	Alston & Bird LLP
Ms. Tamar Sarjveladze	Alston & Bird LLP
Mr. Christopher Williams	Alston & Bird LLP
Mr. Mike Shanlever	Alston & Bird LLP
Mr. Jamie George	Alston & Bird LLP
Mr. Thomas Grantham	Alston & Bird LLP

Dr. Zaur Leshkasheli	Claimant
----------------------	----------

Dr. Valery Kushnirow	Fact Witness
Dr. Marat Modelevsky	Fact Witness
Mr. Jose Salas	Fact Witness
Mr. Klaus Eriksen	Fact Witness
Mr. Rodger Littlechild	Fact Witness
Mr. Shane De Beer	Fact Witness

Ms. Laura Hardin	Expert Witness
------------------	----------------

Mr. James Toal	Expert Witness
Mr. Brun Hilbert	Expert Witness
Mr. Julian Hillai	Expert Witness
Dr. Hannes Meissner	Expert Witness
Mr. Vladimir Leshkasheli	Claimant's son
<i>For the Respondent:</i>	
Ms. Helen Davies KC	Brick Court Chambers
Mr. Andrew Cannon	Herbert Smith Freehills LLP
Mr. Marco de Sousa	Herbert Smith Freehills LLP
Ms. Caitlin Eaton	Herbert Smith Freehills LLP
Mr. Divyanshu Agrawal	Herbert Smith Freehills LLP
Ms. Tanesha Singh	Herbert Smith Freehills LLP
Mr. Nurlan Mstafayev	Party Representative
Ms. Lala Xudiyeva	Party Representative
Mr. Amin Mammadov	Party Representative
Mr. Farid Sadigov	Party Representative
Mr. Eldar Orujov	Fact Witness
Mr. Ulvi Agayev	Fact Witness
Mr. Rovnag Abdullayev	Fact Witness
Mr. Mammad Imanov	Fact Witness
Mr. Davud Yagubov	Fact Witness
Mr. Tom Gunningham	Expert Witness
Dr. Richard Hern	Expert Witness
Mr. Kardin Somme	Expert Witness
<i>Court Reporter:</i>	
Ms. Dawn Larson	Dawn Stenos the World
<i>Interpreters:</i>	
Ms. Julia La Villa	US Department of State
Ms. Leonid S. Chekin	Independent Interpreter
Ms. Julia Karpeisk	Independent Interpreter
Ms. Anna Sophia Chapman	Independent Interpreter
Ms. Cynthia Quintaie	Independent Interpreter
Ms. Yvonne Fisher	Independent Interpreter
Ms. Mehriban Aliyeva	Independent Interpreter
Mr. Fuad Akhundov	Independent Interpreter
Mr. Kamran Akhmedov	Independent Interpreter
<i>Technical Support Staff:</i>	
Mr. Shams Badaruddin	OPUS
Ms. Ariane Molinatti	OPUS

55. The Tribunal heard opening statements by Messrs. Alex Yanos, Mike Shanlever, Jamie George and Rajat Rana (for the Claimants) and by Mr. Andrew Cannon and Ms. Helen Davies KC (for the Respondent).
56. With leave of the Tribunal, the Claimants introduced 7 factual exhibits (C-329 to C-335) into the record during the Hearing and the Respondent introduced 9 factual exhibits (R-213 to R-220).
57. The Hearing was interpreted to and from English, Azerbaijani, Spanish and Russian. It was also audio-recorded and transcribed verbatim, in real time, in English. Copies of the sound recordings and the transcripts were delivered to the Parties.
58. On 23 November 2022, the Tribunal issued Procedural Order No. 4 (“PO4”) relating to post-hearing matters. Therein, the Tribunal put the following questions to the Parties to be addressed in their post-hearing briefs (“PHBs”):⁵
- a. What are the exact dates and place(s) of Dr. Leshkasheli’s marriages with and divorce from Ms. Tatiana Kisiliova? What was or were the governing law(s) for the personal and pecuniary effects of both marriages and divorce?
 - b. What legal framework applied to the assets and revenues of Dr. Leshkasheli and Ms. Tatiana Kisiliova, as held individually or jointly, during their marriages and in the period between their divorce and re-marriage? In particular did the spouses enter into any pre- or post-nuptial agreements with respect to their pecuniary relationship?
 - c. Please explain the legal notion of ultimate beneficial ownership under any applicable laws, including Russian law and the laws of the British Virgin Islands. There is no mention of international law because the Tribunal is unaware of any specific rules thereunder and will be happy to receive the Parties’ confirmation or comments, if deemed fit.

⁵ Procedural Order No. 4, 23 November 2022, para. 10.

- d. Relying on the existing record, please explain in detail what contribution(s) Dr. Leshkasheli made to the investment subject to the present dispute and, in the case of financial contributions, please specify the origins of any funds invested.
 - e. Other than the 25 March 2003 Minutes of the Board of Directors (see C-211), what evidence in the record is there showing that Rosserlane held board meetings in the Isle of Man (or elsewhere)? Is there a requirement at its place of incorporation or elsewhere that Rosserlane hold annual board meetings?
 - f. What evidence in the record supports the assertion that Messrs. Ismayilov, Imanov, Abdullayev, Anar Aliyev and Gutseriev are “cronies” of President Aliyev, or that they worked under his control and/or pursuant to his directions to orchestrate the alleged corrupt scheme to force and interfere with the sale of CEG [i.e. Caspian Energy Group LP]?
 - g. What evidence in the record supports the assertion that President Aliyev or his family were beneficiaries of the alleged corrupt scheme orchestrated by Messrs. Ismayilov, Imanov, Abdullayev, Anar Aliyev, and/or Gutseriev?
 - h. What evidence in the record supports the assertion that President Aliyev or his family benefitted from the sale of CEG to Mr. Gutseriev?
59. On 2 December 2022, the Respondent requested the Claimants to produce the following documents:
- a. A copy of Decree No. 144 of the President of Georgia dated 11 March 2011 terminating Dr. Leshkasheli’s Georgian nationality;
 - b. Copies of all of Dr. Leshkasheli’s Russian passport(s) for international travel, including but not limited to the period from May 1998 to October 2011;
 - c. Complete copies of Dr. Leshkasheli’s Russian “internal” passports covering the period from 1991 to 2019;
 - d. Copies of Dr. Leshkasheli’s “internal” Georgian passports or Georgian IDs covering the period from 1995 to date;

- e. Copies of any marriage or divorce registration documents issued by the relevant Civil Registry in Moscow showing the specific dates of all of Dr. Leshkasheli's marriages to and divorces from Tatiana Kisiliova from 1985 to date; and
 - f. Copies of any relevant agreements concluded between Dr. Leshkasheli and Tatiana Kisiliova, including pre- or post-nuptial agreements, and court judgments or orders setting out the legal framework governing their assets and revenues (whether held jointly or individually) during the periods when they were married and when they were divorced from 1985 to date.
60. The Respondent further requested Dr. Leshkasheli's written consent to the disclosure of any of the documents mentioned in the previous paragraph held by Georgian and Russian authorities.
61. On 6 December 2022, the Claimants answered that they would produce any responsive documents in their possession, custody or control by 30 December 2022.
62. On 19 December 2022, the Respondent informed the Tribunal about these exchanges, explaining that its document production requests arose out of the Tribunal's questions (a) and (b) in PO4 (see above at paragraph 58). It added that it would approach the Tribunal for appropriate relief should the Claimants fail to produce all of the requested documents by 30 December 2022.
63. On 27 December 2022, the Claimants produced a number of documents that were responsive to the Respondent's request of 2 December 2022.
64. On 23 January 2023, the Respondent asserted that the Claimants' production of documents on 27 December 2022 was incomplete and that the documents the Claimants had produced contradicted their case as well as Dr. Leshkasheli's testimony. On that basis, the Respondent requested that the Tribunal order the Claimants to produce additional documents and to provide Dr. Leshkasheli's consent that the Respondent seek to obtain additional documents from national authorities in Georgia and Russia. The Respondent also reserved its right to seek an extension for the filing of the PHBs.
65. The Claimants responded to that request on 23 January 2023. The Respondent replied on 3 February 2023 and the Claimants rejoined on 10 February 2023. The Respondent

sent an additional message on 15 February 2023. In its reply, the Respondent further requested that the Claimants (i) confirm that Dr. Leshkasheli and Ms. Kisiliova had no marriages or divorces in any States, other than Russia and Georgia and (ii) produce all documents relating to Dr. Leshkasheli's name change to "Kiselev", and any subsequent changes in surname, including all passports and relevant identity documents covering the period from 2007 to date. In addition, the Respondent requested a two-month extension for the filing of the PHBs.

66. On 13 February 2023 and pursuant to ICSID Administrative and Financial Regulation 15(1)(c), the Centre requested that each Party make an additional advance payment to ICSID of USD 300,000 by 15 March 2023.
67. On 15 February 2023, the Tribunal ruled on the Respondent's requests of 23 January and 3 February 2023.
68. On 23 February 2023, the Claimants requested leave to introduce additional documents into the record by arguing that they were relevant to the Tribunal's questions in PO4.
69. On 3 March 2023, the Respondent responded to the Claimants' request of 23 February 2023.
70. On 12 March 2023, the Tribunal ruled on the Claimants' request of 23 February 2023.
71. On 21 March 2023, the Centre confirmed receipt of wire transfers for USD 300,000 each from the Claimants and the Respondent, corresponding to the Parties' respective portions of the advance requested by the Centre on 13 February 2023.
72. On 31 March 2023, the Parties simultaneously filed their first PHBs ("First Post-Hearing Briefs" or "PHB-1"). The Claimants' PHB was accompanied by 22 factual exhibits (C-336 to C-357) and 1 legal authority (CL-153). The Respondent's PHB was accompanied by 34 factual exhibits (R-221 to R-254) and 15 legal authorities (RL-128 to RL-142).
73. On 30 May 2023, the Respondent sought leave to introduce two additional documents into the record.

74. On 1 June 2023, the Tribunal stated that, subject to any compelling reasons of the Claimants to be filed on the same day, it was minded to grant the Respondent's request of the previous day to introduce two documents together with its second PHB, it being specified that the Claimants could thereafter file any observations concerning those documents by 16 June 2023.
75. On the same day, the Claimants responded to the Respondent's request of 30 May 2023, requesting in turn that the Tribunal condition the introduction of the two documents on the Respondent's confirmation that (i) it would produce all documents received in relation to one of the two documents and (ii) there was no other correspondence with Georgia in relation to the arbitration following the conclusion of the Hearing.
76. On 2 June 2023, the Respondent responded to the Claimant's letter of the previous day.
77. On the same day, the Tribunal granted leave to the Respondent to introduce the two documents with its second PHB. It further invited the Respondent to confirm by 5 June 2023 whether any other correspondence with Georgia exists other than the one document already in the record.
78. Still on the same day, the Parties simultaneously filed their second PHBs ("Second Post-Hearing Briefs" or "PHB-2"). The Claimants' brief was accompanied by 1 legal authority (CL-154). The Respondent's brief was accompanied by 3 factual exhibits (R-255 to R-257) and 9 legal authorities (RL-143 to RL-151).
79. On 5 June 2023, the Respondent requested an extension until 8 June 2023 to provide the confirmation requested by the Tribunal on 2 June 2023.
80. On 8 June 2023, the Respondent stated that there had been two other exchanges between the Respondent and Georgia between 6 December 2022 and 31 March 2023. It further requested that the Tribunal order the Claimants to produce all communications between them and Georgian authorities should the Tribunal accede to the Claimants' request of 1 June 2023.
81. On 15 June 2023, the Claimants commented on the two documents put into the record by the Respondent together with its PHB-2 and responded to the Respondent's letter of 8 June 2023. In doing so, the Claimants requested that the Tribunal order the

Respondent to produce all its correspondence with Georgia following the conclusion of the Hearing.

82. On 20 June 2023, the Tribunal ruled on the Parties' requests of 1, 8 and 15 June 2023, ordering both Parties to file the additional documents by 27 June 2023 together with any brief comments and allowed them to briefly comment by 4 July 2023 on the documents filed by the other Party and its observations.
83. On 27 June 2023, in conformity with the Tribunal's instructions, the Claimants produced two factual exhibits (i.e. a document registration card and contract dated 15 December 2022, and a reminder card dated 26 December 2022), and the Respondent produced 4 factual exhibits (R-258 to R-261).
84. On 4 July 2023, each Party filed brief comments on the documents produced by the other Party on 27 June 2023.
85. The Parties simultaneously filed their statements of costs on 28 July 2023.
86. On 18 August 2023, the Respondent commented on the Claimants' statement of costs. Those comments were accompanied by two legal authorities (RL-152 and RL-153).
87. On 21 August 2023, the Claimants confirmed that they had no comments on the Respondent's statement of costs.
88. The proceedings were closed on 25 February 2025.

III. THE MAIN FACTS

89. The following summary provides a general overview of the present dispute. Additional facts will be discussed in the Tribunal's analysis when appropriate. Except where otherwise stated, the facts in the following section are undisputed or deemed established.

A. THE POLITICAL SITUATION IN AZERBAIJAN

90. The Republic of Azerbaijan proclaimed its independence from the Soviet Union on 30 August 1991 and became independent on 25 December 1991 following a nationwide referendum. The country's first democratically elected President was Mr. Abulfaz Elchivey. In 1993, Mr. Heydar Aliyev acceded to the Presidency and remained President until October 2003. His son, Mr. Ilham Aliyev, became Prime Minister on 4 August 2003 and, on 15 October 2003, was elected President of Azerbaijan, which he remains until today.⁶

B. THE REGULATION OF THE OIL AND GAS SECTOR IN AZERBAIJAN

91. The production of oil in Azerbaijan dates back to the 19th century. The first modern oil wells were drilled in 1847 in Bibheybat and Balakhany.⁷ By 1901, Azerbaijan was the world's leading oil producer with 11.5 million tons of oil per year, and in 1941 Azerbaijan produced over 70% of the oil produced in the Soviet Union with 23.5 million tons per year.⁸ In 1949, Azerbaijan became the first offshore oil producer with the discovery of the Neft Dashlari.⁹ In 1994, Azerbaijan opened the door to foreign investments in the oil and gas sector.¹⁰
92. The following image depicts Azerbaijan's principal on- and offshore oil and gas production fields:¹¹

⁶ Republic of Azerbaijan, "President of the Republic of Azerbaijan – Biography", undated, p. 2 (C-33).

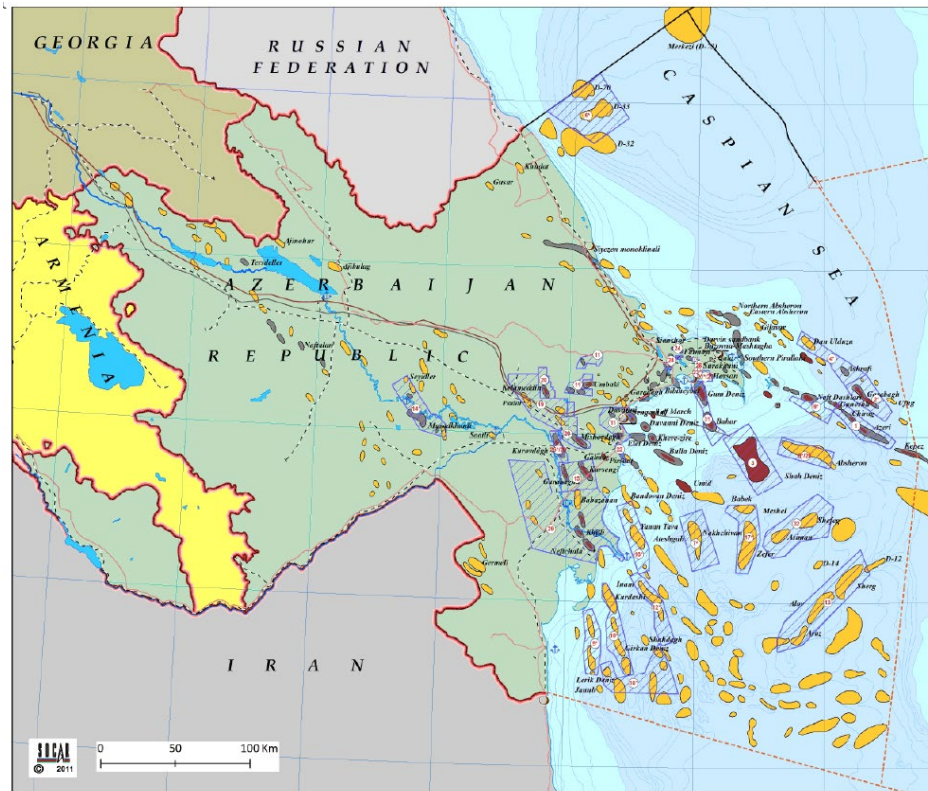
⁷ SOCAR, Oil History in Azerbaijan, p. 3 (C-27).

⁸ SOCAR, Oil History in Azerbaijan, p. 4 (C-27).

⁹ SOCAR, Oil History in Azerbaijan, p. 5 (C-27).

¹⁰ SOCAR, Oil History in Azerbaijan, p. 7 (C-27).

¹¹ SOCAR's Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 76 (C-121).



93. Under Article 14 of the Constitution of the Republic of Azerbaijan of 12 November 1995, the natural resources of Azerbaijan belong to the State.¹² The Law on Subsoil of 13 February 1998 further affirms the State’s ownership over the subsoil.¹³ In 1992, Azerbaijan adopted Law No. 57 on the Protection of Foreign Investments (the “Foreign Investments Law”). Pursuant to Article 40 of that law, the Cabinet of Ministers could conclude “concession agreements” with foreign investors to grant the “right for search, exploration and development of natural resources”, which agreements had to be approved by the State’s Supreme Council.¹⁴
94. In 1996, Azerbaijan envisaged the creation of the Ministry of Fuel and Energy (the “Ministry of Energy”) to develop the State’s policy on the use of energy resources,

¹² Constitution of the Republic of Azerbaijan, 12 November 1995 (R-1). See SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 120 (C-121).

¹³ Law on Subsoil No. 439-IQ (as amended), 13 February 1998 (R-94). See SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 120 (C-121).

¹⁴ Law of the Azerbaijan Republic on the Protection of Foreign Investments No. 57 of 1992 (UNCTAD English translation), Article 40 (R-84).

including oil and gas.¹⁵ The Ministry of Fuel and Energy was finally established in 2001, and renamed the Ministry of Industry and Energy in 2004.¹⁶

95. On 24 November 1998, Azerbaijan adopted the Law on Energy (the “Energy Law”). That law reiterates the State’s “exclusive right of ownership” over energy resources and requires individuals or legal entities to obtain a permit and enter into energy agreements with the “relevant executive bodies” if they wished to engage in the exploration, exploitation, production, processing, storage, transportation, distribution or use of oil and natural gas.¹⁷
96. On 1 February 1999, the President of Azerbaijan adopted Decree No. 85 on the Application of the Energy Law (the “Decree No. 85”).¹⁸ This decree was amended on various occasions, including by Decree No. 345 dated 21 October 2010.¹⁹

C. SOCAR

97. On 13 September 1992, following the merger of Azerbaijan’s prior two State-owned oil companies Azerineft and Azerneftkimya, the President established the State Oil Company of the Republic of Azerbaijan (“SOCAR”) “in order to use oil resources in accordance with a consistent national policy, improve the management structure of the oil industry, and develop the energy industry”.²⁰
98. SOCAR’s initial charter was approved by presidential decree of 14 November 1992.²¹ A new charter replaced it on 5 April 1994.²² The latest charter was approved by

¹⁵ See, for instance, Law on the Use of Energy Resources No. 94-IQ, 30 May 1996, Article 9 (R-86).

¹⁶ Reply, para. 38; Rejoinder, para. 391; Orujov WS2, para. 15. See “Azerbaijan: One-Stop Shopping”, in Oksan Bayulgen, *Foreign Investment and Political Regimes: The Oil Sector in Azerbaijan, Russia, and Norway*, Cambridge University Press (2010), p. 104 (CL-31).

¹⁷ Law on Energy of the Republic of Azerbaijan, undated, Articles 5, 10 and 13 (C-318). See SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 119 (C-121).

¹⁸ Decree No. 85 of the President of the Republic of Azerbaijan on the Application of the Energy Law of the Republic of Azerbaijan, undated (C-319).

¹⁹ See Decree No. 85 of the President of the Republic of Azerbaijan on the Application of the Energy Law of the Republic of Azerbaijan, undated, Article 2(9) and Note 10 (C-319).

²⁰ SOCAR, *History of SOCAR*, p. 3 (C-31); SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, pp. 1, 74 and 115 (C-121).

²¹ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 115 (C-121).

²² SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 115 (C-121).

presidential decree of 24 January 2003 (the “Charter”),²³ and was amended by presidential decrees of 22 April 2010, 1 September 2011 and 29 November 2011.²⁴

99. Pursuant to the Charter, the President of Azerbaijan approves SOCAR’s corporate structure, including its management structure.²⁵ The President of Azerbaijan also appoints and dismisses SOCAR’s president, senior vice-president and the two other vice-presidents.²⁶ SOCAR’s board is a “consultative body” carrying out its activities “under the Company’s president”.²⁷ It meets at least once a month and its decisions are taken by simple majority, with the president of SOCAR having a casting vote in case of evenly divided decisions.²⁸ SOCAR’s president appoints and dismisses managers of enterprises belonging to SOCAR’s structure and concludes agreements with foreign companies.²⁹ Mr. Ilham Aliyev was SOCAR’s vice-president and first vice-president from 1994 until August 2003.³⁰
100. According to its Charter, SOCAR is a wholly-owned State entity that engages in commercial activities in the hydrocarbons sector.³¹ Its assets belong to the State; they comprise fixed assets, circulating assets, and other tangible and intangible assets.³² It is a legal entity, capable of suing and being sued.³³ It bears liability for its obligations and it is not liable for the obligations of the State.³⁴ Except in cases provided for by the law, the State is not liable for SOCAR’s obligations.³⁵

²³ SOCAR Charter, 2003 (C-132); SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 115 (C-121).

²⁴ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 115 (C-121).

²⁵ SOCAR Charter, 2003, Article 4.1 (C-132).

²⁶ SOCAR Charter, 2003, Articles 5.3 and 5.5 (C-132). See SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 15 (C-121).

²⁷ SOCAR Charter, 2003, Article 5.7 (C-132).

²⁸ SOCAR Charter, 2003, Article 5.8 (C-132).

²⁹ SOCAR Charter, 2003, Article 5.4(iv) and (viii) (C-132).

³⁰ Republic of Azerbaijan, “President of the Republic of Azerbaijan – Biography”, undated, p. 2 (C-33).

³¹ SOCAR Charter, 2003, Article 1.2 (C-132); SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 2 (C-121).

³² SOCAR Charter, 2003, Articles 3.1 and 3.2 (C-132).

³³ SOCAR Charter, 2003, Articles 1.4 and 1.6 (C-132).

³⁴ SOCAR Charter, 2003, Article 1.7 (C-132).

³⁵ SOCAR Charter, 2003, Article 1.7 (C-132).

101. SOCAR’s activities consist of “ensuring the effective functioning and development of the petroleum industry as an integrated system and the reliable satisfaction of consumers’ demand for fuel”.³⁶ Its “primary objective” is “the implementation of exploration, discovery, preparation and development of both on- and offshore oil and gas fields, the transportation, processing and sale of oil, gas, condensate and products obtained from them, the stable and sustainable satisfaction of consumers’ demand for fuel and other works and services, and profit generation”.³⁷
102. SOCAR conducts “vertically-integrated upstream, midstream and downstream operations” throughout Azerbaijan.³⁸ It directly engages in hydrocarbon activities, and, as of 2010, it controlled about 20% of Azerbaijan’s crude oil production.³⁹ Its structure comprises 22 wholly-owned entities, 7 wholly-owned special purpose companies and numerous jointly-controlled entities and associates.⁴⁰ Its revenue exceeded USD 65 billion in 2018.⁴¹
103. SOCAR exports oil to two ports in Georgia, as well as one port in Turkey and another one in Russia.⁴² It has “significant interests” in the Baku-Tbilisi-Ceyhan Pipeline (the “BTC Pipeline”) and the South Caucasus Pipeline (the “SCP”).⁴³ SOCAR moreover conducts sale activities through SOCAR Trading S.A. (“SOCAR Trading”), of which it owns 50% of the shares.⁴⁴ SOCAR owns and operates the domestic oil and gas pipeline networks, including 771 km of oil pipelines and 40,800 km of natural gas pipelines.⁴⁵ SOCAR further owns two crude oil refineries in Baku, as well as a network of gasoline stations throughout Azerbaijan.⁴⁶

³⁶ SOCAR Charter, 2003, Article 1.1 (C-132).

³⁷ SOCAR Charter, 2003, Article 2.1 (C-132).

³⁸ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 1 (C-121).

³⁹ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 1 (C-121).

⁴⁰ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 74 (C-121).

⁴¹ “SOCAR Reveals Its Net Profit”, *Azernews*, 4 June 2019 (C-32).

⁴² SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 2 (C-121).

⁴³ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 1 (C-121).

⁴⁴ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 2 (C-121).

⁴⁵ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 2 (C-121).

⁴⁶ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 2 (C-121).

104. In addition to its own hydrocarbon activities, SOCAR concludes joint venture agreements (“JVAs”), production sharing agreements (“PSAs”) and risk-sharing agreements (“RSAs”) with domestic and foreign investors to enhance oil and gas production throughout Azerbaijan.⁴⁷ In contrast to offshore fields, for which PSAs have generally been used, SOCAR typically concluded JVAs with foreign investors during the 1990s for old onshore fields, but progressively started to transition onshore JVAs to PSAs from 1999 onwards.⁴⁸ JVAs were initially used to rehabilitate old onshore fields with existing infrastructure, whereas PSAs were used for offshore fields that “entailed greater technological and financial risks, and needed greater political and legal protection”.⁴⁹
105. As noted above, Presidential Decree No. 345 dated 21 October 2010 amended Decree No. 85. Pursuant to paragraph 9 of Clause 2 of Decree No. 345, SOCAR was designated as a “relevant executive body” for the purposes of Articles 11.5, 13.1, 14.1, 14.3, 20.2, 21.1, 21.3, 26.2, 27.3 and 27.5, as well as certain paragraphs of Articles 15.1, 16.1, 24.2 and 25.2 of the Law on Energy.⁵⁰
106. According to a 2012 prospectus, SOCAR is the largest contributor to Azerbaijan’s government revenue, and it is the largest employer in Azerbaijan, with over 80,000 employees.⁵¹ Its revenues in 2009 amounted to 12.1% of Azerbaijan’s gross domestic product, which number increased to 12.6% in 2010.⁵²

⁴⁷ Yagubov WS, para. 6; Rejoinder, Appendix 3, para. 1.1. See SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 1 (C-121).

⁴⁸ “It Is Possible That in 2000, All Oil-Producing JVs in Azerbaijan Would Change Their Form of Agreement”, *Trend News Agency*, 14 December 1999 (C-190).

⁴⁹ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 86 (C-121). See Yagubov WS, paras. 10-11.

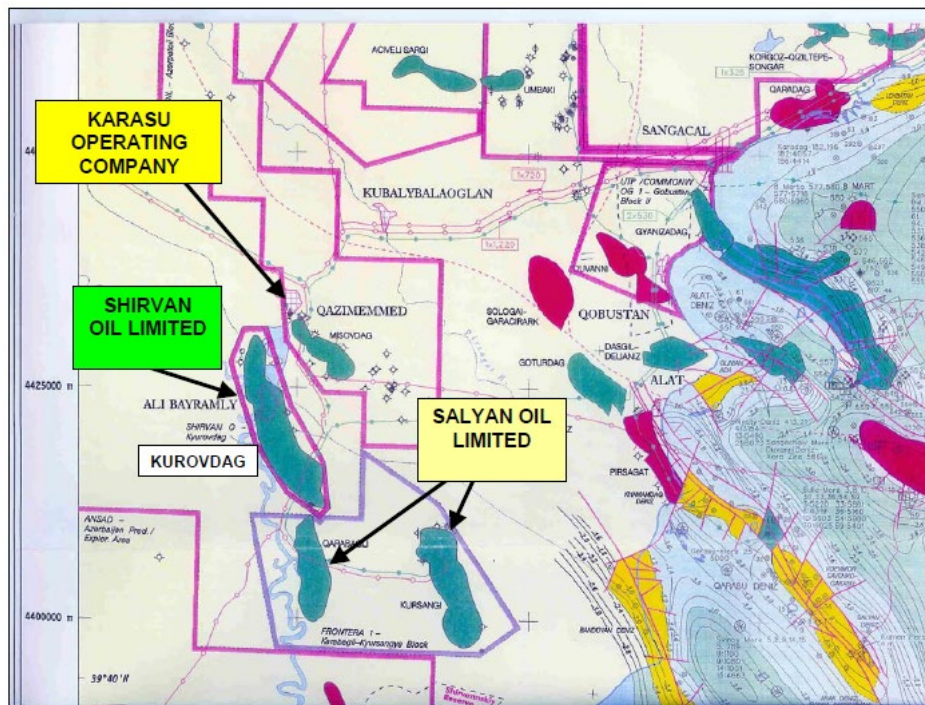
⁵⁰ See Decree No. 85 of the President of the Republic of Azerbaijan on the Application of the Energy Law of the Republic of Azerbaijan, undated, Article 2(9) and Note 10 (C-319).

⁵¹ SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, pp. 2-3 (C-121).

⁵² SOCAR’s Prospectus for Senior Unsecured Notes Due 2017, 7 February 2012, p. 3 (C-121).

D. THE KUROVDAG FIELD

107. The Kurovdag Field is an onshore field covering 105 km² in the Kura River Basin some 120 km southwest of Baku. The length of the field is about 21 km and its width 2 km.⁵³ The following illustration shows the location of the Kurovdag Field:⁵⁴



108. The field was discovered in 1929 and production started in 1955. Production peaked at 42,741 barrels of oil per day (“bopd”) in 1966 and steadily declined thereafter until 1996 to reach on average 3,905 bopd.⁵⁵ By early 2005, Shirvan Oil had increased production to achieve an average of 4,900 bopd.⁵⁶
109. Between 1955 and 2005, the field had produced more than 266 million barrels of oil (“mmbo” or “MMstb”) and 1.5 billion cubic meters (“bcm”) of gas.⁵⁷ Of that,

⁵³ Evaluation of Caspian Energy Group’s Kurovdag Field, RPS Energy Report, 1 September 2006 (“RPS1”), p. ii (C-13).

⁵⁴ RPS1, p. 18, Figure 2.1 (C-13).

⁵⁵ Rehabilitation and Production Program for the Kurovdag Oil Field in the Azerbaijan Republic, 30 November 2005, p. 8 (C-67); RPS1, p. ii (C-13). See Hilbert ER1, para. 74 and Figure 10.

⁵⁶ Rehabilitation and Production Program for the Kurovdag Oil Field in the Azerbaijan Republic, 30 November 2005, p. 8 (C-67). See Klaus Eriksen WS, para. 13.

⁵⁷ Rehabilitation and Production Program for the Kurovdag Oil Field in the Azerbaijan Republic, 30 November 2005, p. 8 (C-67). See Gunningham ER1, para. 31.

251 mmbo had been produced between 1955 and 1995, and 17 mmbo between 1996 and 2006.⁵⁸

E. THE CORPORATE STRUCTURE OF THE CLAIMANTS

110. On 8 July 1994, Whitehall International Traders (“Whitehall”) was registered as a Scottish limited partnership.⁵⁹ Its founding partners were Rosserlane and Erdingside Services Limited (“Erdingside”), with Rosserlane holding 90% of the shares as general partner and Erdingside the remaining 10% as limited partner.⁶⁰ Whitehall was renamed Caspian Energy Group LP (“CEG”) in 2002⁶¹ and, as noted below, Erdingside transferred its 10% interest to Swinbrook Developments Limited (“Swinbrook”) in 2006. This Award will henceforth refer to Whitehall as CEG.
111. On 18 September 1995, the Alamar Trust was established under the laws of the British Virgin Islands (“BVI”).⁶² The Alamar Trust Deed identifies Mr. André Zolty as the trustee and Ms. Tatiana Kisiliova as the beneficiary.⁶³ As noted by the Claimants, the “initial trust fund consisted of 100% of the shares of Rosserlane and Erdingside – which owned the 90% and 10% interest in CEG (then called Whitehall), respectively”.⁶⁴ On 17 April 2000, Mr. Zolty resigned as trustee and was replaced by the Panamanian company FTS Worldwide Corporation (“FTS”).⁶⁵
112. As explained in further detail below, CEG and SOCAR entered into a joint venture agreement on 25 December 1995 to rehabilitate and develop the Kurovdag Field. The Claimants contend that they directly and indirectly owned an interest in CEG at all relevant times. They rely on the English High Court’s (the “High Court”) finding that Dr. Leshkasheli beneficially owned Rosserlane and Erdingside/Swinbrook at all

⁵⁸ Hilbert ER1, para. 74 and Figure 10.

⁵⁹ See Application for Registration of Whitehall International Traders, 27 July 1994 (C-208).

⁶⁰ See Application for Registration of Whitehall International Traders, 27 July 1994 (C-208).

⁶¹ Certificate of Registration of a Limited Partnership on Change of Name, Partnership No. 2497, 28 January 2002 (C-188).

⁶² The Alamar Declaration of Trust, 18 September 1995, Article 17 (C-325).

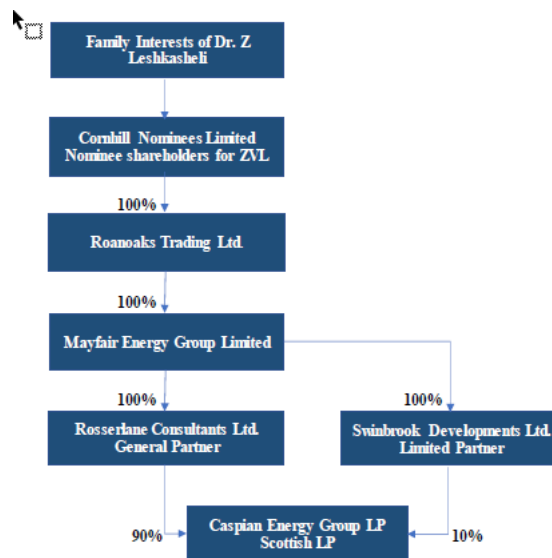
⁶³ The Alamar Declaration of Trust, 18 September 1995, pp. 1 and 15 of the pdf document (C-325).

⁶⁴ C-PHB1, para. 289; The Alamar Declaration of Trust, 18 September 1995, pp. 14-15 of the pdf document (C-325).

⁶⁵ The Alamar Declaration of Trust, 18 September 1995, p. 17 of the pdf document (C-325).

relevant times.⁶⁶ According to them, Dr. Leshkasheli directly or indirectly owned 100% of Rosserlane and Erdingside/Swinbrook. In turn, Rosserlane and Erdingside/Swinbrook owned 90% and 10% of CEG, respectively.

113. The following illustration depicts the Claimants' presentation of Dr. Leshkasheli's interest in Rosserlane and CEG as of 15 February 2008:⁶⁷



114. The Claimants explained that their interest in CEG evolved as follows from 1994 to 2008:

- Between 1994 and 2003, Dr. Leshkasheli owned 90% of CEG (formerly Whitehall) through his indirect ownership of Rosserlane, which he owned through Cedargrove Limited and Rovercroft Limited, and the remaining 10% of CEG through Erdingside.⁶⁸ According to the Claimants, Dr. Leshkasheli directly owned Erdingside in that period.⁶⁹

⁶⁶ See First Witness Statement of Dr. Leshkasheli from English High Court Proceeding, 19 May 2014, para. 1 (A&M-26); *Rosserlane Consultants Ltd and another v Credit Suisse International*, [2015] EWHC 384 (Ch), 20 February 2015, para. 7 (para. 42 [sic]) (C-17).

⁶⁷ Memorial, para. 165; Hardin ER1, para. 3.2.4, Figure 1.

⁶⁸ Reply, paras. 31(a) and 198(a), referring to Application for Registration of Whitehall International Traders, 27 July 1994 (C-208); *Rosserlane Consultants Limited*, 19 March 2009 (C-209); *Rosserlane Consultants Limited, Beneficial Owners*, 8 November 2000 (C-210).

⁶⁹ Reply, paras. 31(a) and 198(a).

- Between 26 March 2003 and 23 February 2006, Dr. Leshkasheli directly owned Rosserlane and Erdingside.⁷⁰
- Between 23 February and 7 July 2006, Erdingside transferred its interest in CEG to Swinbrook and Dr. Leshkasheli directly owned Swinbrook.⁷¹ As regards Rosserlane, Dr. Leshkasheli owned Cornhill Nominees Limited (“Cornhill”), which owned Roanoaks Trading Limited (“Roanoaks”), which owned Mayfair Energy Group Limited (“Mayfair”), which in turn owned Rosserlane.⁷²
- Between 7 July and 18 August 2006 and between 21 December 2006 and 11 July 2008, Cornhill held its interest in Roanoaks first on behalf of Dr. Leshkasheli and then on behalf of the Alamar Trust.⁷³ The Claimants specified that, although Mr. Mark Richard Lance and Ms. Jennifer Christine Lance (the “Lances”) owned the Cornhill Group, which in turn owned Cornhill, these two individuals “solely provide[d] company management services to Dr. Leshkasheli”.⁷⁴ They added that the Alamar Trust was established in 1995 “to manage the assets of Dr. Leshkasheli’s mother, Lamara, and his family” and that once Dr. Leshkasheli became “the main beneficiary of the Trust, he had the Alamar Trust hold the interest in his companies”.⁷⁵

⁷⁰ Reply, paras. 31(b) and 198(b), referring to Rosserlane Consultants Limited, 19 March 2009 (C-209); Rosserlane Consultants Limited Resolution, 25 May 2003 (C-211); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Consultants Written Resolution, 26 March 2003 (C-213).

⁷¹ Reply, paras. 31(c) and 198(c), referring to Statement Specifying the Nature of a Change in Caspian Energy Group, 22 February 2006 (C-214).

⁷² Reply, paras. 31(c) and 198(c), referring to Rosserlane Consultants Limited, 19 March 2009 (C-209); Mayfair Energy Group Limited, Register of Members of Share Ledger, 24 January 2022 (C-215); Declaration of Trust, Cornhill Nominees Limited, 2 March 2006 (C-216).

⁷³ Reply, paras. 31(d) and 198(d and 198(a)), referring to Declaration of Trust, Cornhill Nominees Limited, 18 July 2006 (C-217).

⁷⁴ Reply, para. 33, referring to Cornhill Group Limited’s Register of Persons with Significant Control, 16 September 2021 (R-47).

⁷⁵ Reply, para. 33 (footnote omitted); C-PHB1, para. 289.

- Between 18 August and 12 December 2006, Ashmore Management Company Limited and Shellbourne Trustees (BVI) Limited were nominally registered as Rosserlane's shareholders.⁷⁶

115. The Respondent disputes that Dr. Leshkasheli is a beneficiary of the Alamar Trust and contends that he did not own CEG at all relevant times (whether directly, indirectly or beneficially).⁷⁷ The Claimants answer that, although Ms. Tatiana Kisiliovna is the "sole initially named beneficiary of the Alamar Trust", Dr. Leshkasheli held an "ownership interest in the trust assets under Georgian law through his wife, Ms. Tatiana Kisiliovna".⁷⁸

F. THE JOINT VENTURE AGREEMENT

116. On 23 October 1995, CEG expressed its interest to SOCAR about investing in Azerbaijan's oil sector.⁷⁹

117. As noted above, on 25 December 1995, CEG and SOCAR executed a 30-year JVA establishing Shirvan Oil Limited ("Shirvan Oil" or "Shirvan" or the "JV") for the purpose of exploring, developing and producing oil and gas from the Kurovdag Field.⁸⁰ On the same day, they executed By-Laws of Shirvan Oil.⁸¹ The JVA and the By-Laws were signed by Dr. Leshkasheli on behalf of CEG and by Mr. Ilham Aliyev, in his capacity as vice president of SOCAR, on behalf of SOCAR.⁸² Shirvan Oil was registered on 27 June 1996.⁸³

⁷⁶ Reply, paras. 31(e) and 198(e), referring to Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 3 (C-178).

⁷⁷ See, for instance, R-PHB1, paras. 98-102.

⁷⁸ See, for instance, C-PHB2, para. 70.

⁷⁹ Letter of 23 October 1995 from Whitehall International Traders (C-174).

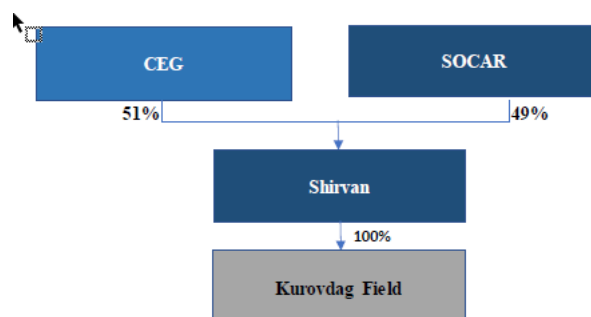
⁸⁰ Agreement between State Oil Company of the Azerbaijan Republic and Whitehall International Traders about Establishment of Joint Venture Shirvan Oil (the "Joint Venture Agreement"), 25 December 1995, p. 1, Articles 2 and 29.2 (C-8).

⁸¹ By-Laws of the Joint Venture "Shirvan Oil" (the "By-Laws"), 25 December 1995 (C-9).

⁸² Joint Venture Agreement, 25 December 1995, p. 31 (C-8).

⁸³ Shirvan Oil Certificate of State Registration, 27 June 1996 (C-39).

118. Under the terms of the JVA and the By-Laws, the share capital of Shirvan Oil amounted to USD 100,000.⁸⁴ CEG owned 51% of the JV's shares and paid USD 51,000 for its interest in the JV.⁸⁵ SOCAR owned the remaining 49% and paid USD 49,000 for its interest in the JV.⁸⁶ The following image depicts CEG's and SOCAR's interests in the Kurovdag Field through Shirvan Oil:⁸⁷



119. Shirvan Oil's Administration Board, the highest body of the JV, comprised three SOCAR-appointed and three CEG-appointed members.⁸⁸ SOCAR appointed the chairperson of the Administration Board and CEG the deputy chairperson.⁸⁹ The Administration Board had to meet at least twice a year, usually in Baku.⁹⁰ Decisions of the Administration Board had to be taken unanimously,⁹¹ including the annual work programs and annual budgets, as well as expenses exceeding USD 100,000.⁹²

⁸⁴ Joint Venture Agreement, 25 December 1995, Article 4.3 (C-8); By-Laws, 25 December 1995, Article 4.1 (C-9).

⁸⁵ Joint Venture Agreement, 25 December 1995, Article 4.5 (C-8); By-Laws, 25 December 1995, Article 4.2 (C-9).

⁸⁶ Joint Venture Agreement, 25 December 1995, Article 4.5 (C-8); By-Laws, 25 December 1995, Article 4.2 (C-9).

⁸⁷ Memorial, para. 165; Hardin ER1, para. 3.4.3, Figure 3.

⁸⁸ Joint Venture Agreement, 25 December 1995, Article 3.1 (C-8); By-Laws, 25 December 1995, Article 6.1 (C-9).

⁸⁹ Joint Venture Agreement, 25 December 1995, Article 3.1 (C-8); By-Laws, 25 December 1995, Article 6.1 (C-9).

⁹⁰ By-Laws, 25 December 1995, Article 6.2 (C-9).

⁹¹ Joint Venture Agreement, 25 December 1995, Article 3.1 (C-8); By-Laws, 25 December 1995, Article 6.2 (C-9) ("Decisions of the Administration Board must be unanimous").

⁹² Joint Venture Agreement, 25 December 1995, Article 3.1 (C-8); By-Laws, 25 December 1995, Article 6.4(e) (C-9) ("[...] (e) approves Estimate of Operation Expenditures and Capital Costs, Programme of Works and Annual Working Programmes, staff schedule for a year, approves changes in said estimates, plans and schedules, approves drafts of contracts which involve expenses over one hundred thousand (100,000.00) US dollars"). Article 1.6 of the JVA defines the "Annual Working Programme" as "the

120. The Board of Directors, headed by the general director, had to carry out the decisions taken by the Administration Board and conduct the day-to-day operations of the JV.⁹³ SOCAR appointed the general director, whereas CEG appointed the technical and financial directors.⁹⁴ The general director exercised overall control over the JV's current and long-term plans, and approved expenses not exceeding USD 100,000.⁹⁵ He had to submit annual business plans to the Administration Board, as well as quarterly reports on the JV's activities.⁹⁶ The technical director controlled the implementation of the annual working program.⁹⁷ He also could approve expenses not exceeding USD 100,000.⁹⁸ The financial director controlled the financial and administrative activity of the JV,⁹⁹ and prepared the JV's financial reports and related documents.¹⁰⁰
121. Article 5 of the JVA sets out the obligations of SOCAR and CEG.¹⁰¹ SOCAR had to (i) assist the JV in obtaining entry and exit visas, as well as work permits for foreign members of the Administration Board, foreign employees and their families, (ii) assist the JV in obtaining licenses for the JV, (iii) supply the JV with utilities at existing rates (including water, gas, electricity, telephone lines), (iv) provide access to port, repair and production facilities of SOCAR necessary for hydrocarbons operations, (v) assist the JV in the purchase of "equipment, materials, spare parts, fuel and electric power", (vi) "assist the JV in hiring local personnel", (vii) assist the JV with the import of

document describing (itemized) Operations with Hydrocarbons which must be implemented within a Calendar Year on the Contractual Territory and approved by the Administration Board". Article 1.5 of the JVA defines the "Budget" as "proposed and distributed through different expenditure items Capital Costs and Operating Expenditures in connection with Operation with Hydrocarbons described in Annual Working Programme".

⁹³ Joint Venture Agreement, 25 December 1995, Article 3.2 (C-8); By-Laws, 25 December 1995, Article 7.1 (C-9).

⁹⁴ Joint Venture Agreement, 25 December 1995, Article 3.2 (C-8); By-Laws, 25 December 1995, Article 7.1 (C-9). According to the information provided by the Parties upon request of the Tribunal, the JV's general directors between 1997 and 2008 were as follows: Mr. Mehman Babayev (1997-1999); Mr. Rashid Gasanov (2000); Mr. Tofik Gasanov (2001); Mr. Alinazim Mamedtagizade (2002-2005); Mr. Mammad Imanov (2006-2008). See C-PHB1, Annex B; Respondent's Answers to the Tribunal's Requests for Further Information in Paragraph 8 of Procedural Order No. 4, 31 March 2023.

⁹⁵ By-Laws, 25 December 1995, Article 7.1(a)-(b) (C-9).

⁹⁶ By-Laws, 25 December 1995, Articles 7.4 and 7.5 (C-9).

⁹⁷ By-Laws, 25 December 1995, Article 7.2(a) (C-9).

⁹⁸ By-Laws, 25 December 1995, Article 7.2(b) (C-9).

⁹⁹ By-Laws, 25 December 1995, Article 7.3(a) (C-9).

¹⁰⁰ By-Laws, 25 December 1995, Article 7.3(d) (C-9).

¹⁰¹ Joint Venture Agreement, 25 December 1995, Article 5 (C-8).

equipment and clearing customs, and (viii) assist the JV in concluding contracts with subcontractors, suppliers and service companies.¹⁰²

122. For its part, CEG had to (i) provide visa support for members of the Administration Board and employees when travelling abroad, (ii) furnish the JV's offices with "all necessary equipment and facilities", (iii) train local personnel, (iv) assist the JV in hiring foreign personnel, (v) assist the JV in the purchase of and, if necessary, supply equipment, materials and spare parts necessary for hydrocarbons operations and the activities of the JV, (vi) provide financial funds to the JV, (vii) assist the JV in concluding agreements with subcontractors, suppliers and service provides, and (viii) provide lawyers' services.¹⁰³
123. Pursuant to Supplement 3 of the JVA, the working program was to be implemented "step by step" in three phases: the first phase consisted of establishing reserve estimates, refurbishing existing production facilities and commissioning "as many as possible nonproductive wells" ("Phase 1"). The second phase consisted of commissioning the remaining "temporarily shot-in wells", drilling new wells, horizontal drilling and improving the efficiency of operating wells ("Phase 2"). The third phase consisted of completing the coverage of the field reserves, horizontal drilling and increasing the oil production rate ("Phase 3").¹⁰⁴
124. On 6 December 1996, about a year since the conclusion of the JVA, SOCAR wrote to Dr. Leshkasheli that SOCAR would terminate the JVA if CEG did not provide written assurances by an "internationally recognized Western bank" about CEG's "financial solvency and creditworthiness".¹⁰⁵ CEG provided to SOCAR a letter from Lehman Brothers dated 20 December 1996 confirming that CEG had USD 3 million on its account.¹⁰⁶

¹⁰² Joint Venture Agreement, 25 December 1995, Article 5.2 (C-8).

¹⁰³ Joint Venture Agreement, 25 December 1995, Article 5.3 (C-8).

¹⁰⁴ Joint Venture Agreement, 25 December 1995, Supplement 3 (C-8).

¹⁰⁵ Letter of 6 December 1996 from SOCAR to Whitehall (R-87).

¹⁰⁶ See Letter of 7 February 1997 from SOCAR to Whitehall (R-89A).

125. On 7 February 1997, SOCAR “officially” notified CEG of the termination of the JVA because of its failure to pay USD 51,000 towards the JV’s share capital and to submit the annual work program and budget for 1996.¹⁰⁷
126. Notwithstanding this notification, SOCAR formally approved the JVA on 22 August 1997.¹⁰⁸ On the same occasion and date, SOCAR appointed Messrs. Latifov, Husseyinov and Ibrahimov to Shirvan’s Administration Board, as well as Mr. Mehman Babayev as general director of the JV.¹⁰⁹ Dr. Leshkasheli became the Deputy Chairman of the Administration Board, a position he retained until 2005. He was also the JV’s technical director until 2000, when Mr. Valery Kushnirov replaced him.
127. On 31 September 1997, CEG transferred USD 51,000 in consideration for its 51% interest in the JV, as required under Article 4.5 of the JVA.¹¹⁰

G. THE EFFORTS TO REHABILITATE AND MODERNIZE THE KUROVDAG FIELD

128. As noted above, the JVA contemplated a working program to be implemented “step by step” in three phases. Phase 1 consisted of establishing reserve estimates, refurbishing existing production facilities and commissioning “as many as possible nonproductive wells”. To that effect, CEG had to conduct the following operations:

- “- installation of special flowmeter continuously measuring the output at the field;*
- setting-up and repair of equipment necessary for operation of air compressors;*
- optimization of operation of airlift devices;*
- increase of number of airlift wells;*
- repair and restoration of temporarily shut-in pumping wells;*

¹⁰⁷ Letter of 7 February 1997 from SOCAR to Whitehall (R-89A).

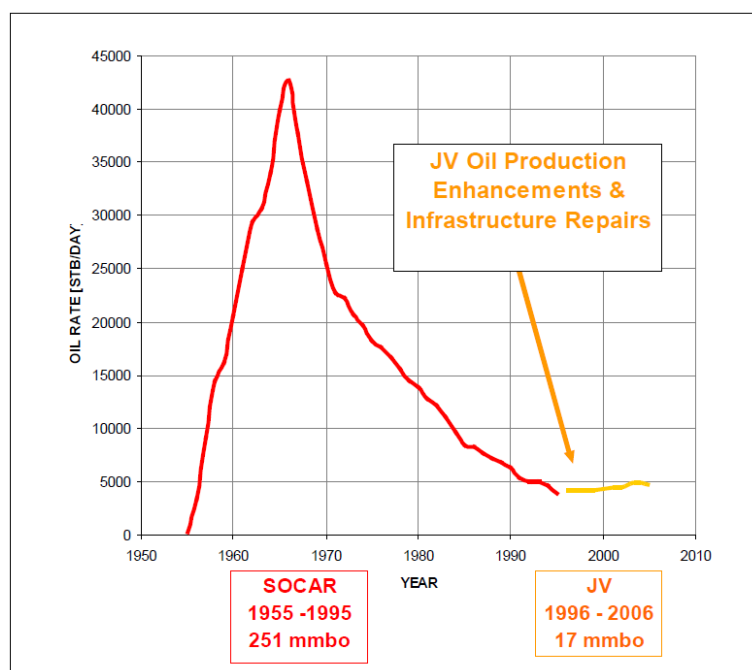
¹⁰⁸ Extract from the Minutes No. 57 of the Board of SOCAR, 22 August 1997 (C-184).

¹⁰⁹ Extract from the Minutes No. 57 of the Board of SOCAR, 22 August 1997 (C-184).

¹¹⁰ Letter of 1 October 1997 from Glenn Nobes to Shirvan Oil’s General Director Mekhman Babayev (C-189).

- *restoration of separation equipment for further sand and gas control;*
- *restoration of repair workshops and other field facilities;*
- *cleaning and restoration of wellhead pipelines;*
- *repeated logging and repeated perforating (shooting) of wells using perforators and frequent shootings after the overhaul;*
- *cleaning and putting into operation of all existing equipment;*
- *training personnel”.*¹¹¹

129. According to Dr. Leshkasheli, “improvements” to the Kurovdag Field “reversed the field’s 20-year production decline” and production stabilized around 5,000 barrels per day by September 1997.¹¹² The following graph illustrates the historical oil production from the Kurovdag Field from 1955 through 2006:¹¹³



¹¹¹ Joint Venture Agreement, 25 December 1995, Supplement 3 (C-8).

¹¹² Leshkasheli WS1, para. 33.

¹¹³ Caspian Energy Group Presentation, November 2006, slide 15 (A&M-10); Hilbert ER1, para. 74, Figure 10.

130. The following image shows the cumulative historical oil production between 1956 and 2007:¹¹⁴

Table 1. Kurovdag Historical Cumulative Production and Reserve Estimates

Year	Cumulative Production (MMbbls)	Remaining Proved (1P) Reserves (MMbbls)
1956	0.1	20
1970	137	88
1991	247	51
1997	257	47
2003	263	41
2003	263	127
2004	265	209
2004	265	242
2007	268	64

131. In July 1997, Suregrove produced an appraisal of the Kurovdag Field.¹¹⁵
132. On 22 August 1997, SOCAR's Board agreed that the JV's operations would begin on 1 September 1997.¹¹⁶ Pursuant to SOCAR's Order No. 58 of the same day, Shirvanneft was liquidated, and its assets were transferred to the JV.¹¹⁷
133. In February 1998, Petroconsultants produced an expert opinion relating to the Kurovdag Field.¹¹⁸
134. Following a request by CEG dated 6 August 1999, SOCAR confirmed on 9 August 1999 that, under the JVA, CEG was allowed to build a crude oil rail loading gantry.¹¹⁹ CEG commissioned Blandford Trading Limited ("Blandford") on 28 August 1999 to build the gantry.¹²⁰

¹¹⁴ Hilbert ER1, p. 29, Table 1.

¹¹⁵ Appraisal of the Kyurovdag Oil & Gas Field Development Proposed by the Joint Venture, Shirvan Oil, Azerbaijan, Suregrove, July 1997 (C-245).

¹¹⁶ Extract from the Minutes No. 57 of the Board of SOCAR, 22 August 1997 (C-184).

¹¹⁷ SOCAR Order No. 58, 22 August 1997 (R-213).

¹¹⁸ Kyurovdag Oil and Gas Field, Expert Opinion, Petroconsultants Company, February 1998 (C-267).

¹¹⁹ Letter of 6 August 1999 from SOCAR to CEG, 9 August 1999 (C-41).

¹²⁰ Contract relating to Construction of Crude Oil Gantry for JV Shirvan Oil in Ali-Bayramli, 28 August 1999 (C-42).

135. On 24 October 2001, CEG and Shirvan entered into a Master Project Agreement (“MPA”) with Schlumberger to evaluate and develop the Kurovdag Field.¹²¹ The commercial basis for that agreement was a “risk/reward participation mechanism” related to increased hydrocarbon production targets starting with 220,000 tons in 2002 and increasing to 1.25 million tons in 2005.¹²² Under the MPA, Shirvan had to provide Schlumberger all the data and information it “owned” or that was in its possession or otherwise available to it to allow Schlumberger to evaluate the Kurovdag Field.¹²³ The JV’s Board approved the MPA on 5 November 2001.¹²⁴
136. On 22 July 2002, CEG commissioned PetroAlliance S.A. to conduct a 3D seismic study of the Kurovdag Field.¹²⁵ That study was produced in June 2004 and approved by the JV’s technical committee on 30 November 2004.¹²⁶
137. During a meeting in London on 30 July 2002, Schlumberger notified CEG that the data it had received was “incomplete and incorrect”.¹²⁷ Following a proposal by Schlumberger dated 7 August 2002,¹²⁸ the MPA was amended on 28 August 2002 to replace the production-linked reward mechanism with a schedule of fixed prices for certain services, supplemented by a bonus payable to Schlumberger for achieving certain production targets (the “Amended MPA”).¹²⁹

¹²¹ Master Projects Agreement between Shirvan Oil Ltd., Whitehall International Traders, L.P., and Schlumberger Overseas S.A., 24 October 2001 (C-44).

¹²² Master Projects Agreement between Shirvan Oil Ltd., Whitehall International Traders, L.P., and Schlumberger Overseas S.A., 24 October 2001, pp. 10 and 42-43 of the pdf document (C-44).

¹²³ Master Projects Agreement between Shirvan Oil Ltd., Whitehall International Traders, L.P., and Schlumberger Overseas S.A., 24 October 2001, Attachment 1, Article 2.3, p. 21 of the pdf document (C-44).

¹²⁴ Protocol No. 42, Meeting of the Board of JV “Shirvan Oil”, 5 November 2001 (C-46).

¹²⁵ Protocol No. 51, Meeting of the Board of JV “Shirvan Oil”, 22 July 2002 (C-243). See Letter from Shirvan Oil to PetroAlliance, 10 July 2003 (R-135).

¹²⁶ Report on the Results of Detailed 3D CDP Seismic Survey within the Kyurovdag Field, 2004 (C-176); Minutes No. 62 of the Meeting of the Technical Committee of JV Shirvan Oil, 30 November 2004 (R-0143).

¹²⁷ See Letter of 7 August 2002 from Schlumberger to Dr. Leshkasheli (C-47). Without referring to supporting documentation, the Claimants’ witnesses, respectively Dr. Leshkasheli and Mr. Shane De Beer, contend that Schlumberger informed CEG about the inaccurate data on 21 June 2002 and “June 2002”. Leshkasheli WS1, para. 44; De Beer WS, para. 10.

¹²⁸ Letter of 7 August 2002 from Schlumberger Overseas S.A. to CEG (C-47).

¹²⁹ Amended Master Projects Agreement between Shirvan Oil, CEG and Schlumberger Overseas S.A., 28 August 2002, Article 7 (C-45).

138. Following receipt of Schlumberger's final report on the reserves estimates,¹³⁰ on 16 December 2004 the JV's Administration Board met to discuss *inter alia* the work program for 2005.¹³¹ Based on Mr. Kushnirov's statement that the JV was set to complete Phase 1 of the work program in the first half of 2005 and his proposal to thereafter enter into Phase 2, the Board approved the work program and budget for new drilling to start in the second half of 2005.¹³²
139. On 5 August 2005, in the context of CEG's negotiations to transition towards a PSA (see below), SOCAR established a joint working group to conduct an inventory of the JV's assets.¹³³
140. In August 2005, Halliburton issued a report on enhanced recovery by water flooding for the Kurovdag Field and a drilling proposal.¹³⁴ On 24 August 2005, Halliburton issued its final report on a production enhancement project.¹³⁵
141. On 1 September 2005, AMEC produced a report on the rehabilitation of the infrastructure of the Kurovdag Field.¹³⁶
142. On 7 September 2005, Shirvan Oil conducted preliminary discussions for the drilling of new wells.¹³⁷
143. On 25 September 2005, Shirvan Oil and CEG on the one hand and Schlumberger on the other hand terminated the Amended MPA by entering into a deed of settlement and

¹³⁰ Reserves Estimates by Volumetric and Decline Curve Analysis Methods for the Kyurovdag Field, Schlumberger, December 2004 (C-52).

¹³¹ Minutes No. 63 of the Meeting of the Administration Board of JV Shirvan Oil, 16 December 2004 (C-195).

¹³² Minutes No. 63 of the Meeting of the Administration Board of JV Shirvan Oil, 16 December 2004, item 6, p. 4 (C-195).

¹³³ SOCAR Order No. 86, 5 August 2005 (R-10).

¹³⁴ Report on Enhanced Recovery by Water Flood, Halliburton, August 2005 (C-54); Geological Proposal, Halliburton, August 2005 (C-55).

¹³⁵ Report on Production Enhancement, Halliburton, 24 August 2005 (C-53).

¹³⁶ "Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 1 – Site Survey Report", AMEC, September 2005 (C-57); "Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 2 – Recommendations on Repairs, Reorganisation or Abandonment", AMEC, September 2005 (C-29); "Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 3 – Recommendations for New Facilities", AMEC, September 2005 (C-77).

¹³⁷ Shirvan Oil Joint Venture Tender Announcement for Drilling of Wells, 2005 (C-263).

waiver.¹³⁸ Under that settlement, Shirvan Oil and CEG agreed to pay Schlumberger USD 3.5 million.

144. On 29 September and 21 October 2005, CEG met with SOCAR to discuss drilling locations.¹³⁹
145. On 9 December 2005, Mr. Abdullayev was appointed as the new President of SOCAR.¹⁴⁰ He then appointed Mr. Imanov as the new General Director of Shirvan Oil on 16 December 2005, and the JV's Administration Board approved this appointment on 19 December 2005.¹⁴¹
146. On 15 December 2005, Shirvan Oil and Momentum entered into a contract for the supply of a drilling rig and drilling services for the Kurovdag Field (the "Momentum Contract").¹⁴²
147. On 26 December 2005, SOCAR issued Order No. 134 on the transportation, export and sales of oil and oil products between SOCAR's facilities and contractors.¹⁴³ The Claimants contend that this order amounted to an "export ban".
148. In the light of the inventory process started in August (see above), SOCAR issued Order No. 141 on 29 December 2005 to conduct an audit of Shirvan Oil's accounts and performance. The audit commission comprised solely SOCAR representatives. According to SOCAR, this audit was necessary because the goals set forth in the JVA had not been achieved, the work program had not been fulfilled, and CEG had failed to provide the required funding.¹⁴⁴ In addition, CEG had accrued debts towards the JV

¹³⁸ Deed of Settlement and Waiver, 25 September 2005 (C-192). See also Deed of Relinquishment of Responsibilities between CEG, Shirvan and Schlumberger, undated (C-50).

¹³⁹ See Email of 3 October 2005 from Phil Maxwell to Alinazim Mamedtagizada, Valery Kushnirov with Meeting Minutes (C-320).

¹⁴⁰ Abdullayev WS1, para. 6; Leshkasheli WS1, para. 65.

¹⁴¹ See Abdullayev WS2, para. 31; Imanov WS, para. 7; Leshkasheli WS1, para. 65.

¹⁴² Momentum Contract, 15 December 2005 (C-262).

¹⁴³ SOCAR Order No. 134, 26 December 2005 (R-11).

¹⁴⁴ SOCAR Order No. 141, 29 December 2005 (R-12).

exceeding USD 10 million for proceeds received from the sale of “world market oil” (“WMO”).¹⁴⁵

149. Still on 29 December 2005, the JV’s Administration Board met to discuss the 2006 work program and budget.¹⁴⁶ Since the documents relating to the program and the budget were not yet ready, the Board did not approve the work program and budget on that occasion.
150. On 1 January 2006, Shirvan Oil concluded an agreement with two SOCAR entities for the sale of “local market oil” (“LMO”).¹⁴⁷
151. On 14 January 2006, a meeting was held in Baku between CEG and the management of Shirvan Oil. The commercial and energy secretary of the British embassy also attended that meeting on invitation of CEG. During that meeting, CEG complained about the involvement of Mr. Fahraddin Ismaylov, described in the meeting minutes as “representative of ‘Rafi Oil’ who represented himself as a representative of SOCAR”. In particular, CEG complained during that meeting about Mr. Ismaylov’s alleged harassment of CEG’s employees and CEG’s representatives sought to convene an urgent meeting of the JV’s Administration Board to discuss these matters.¹⁴⁸
152. CEG sent a formal letter on the same day to the JV’s Administration Board (with SOCAR in copy) to convene an “urgent meeting” of the Administration Board on 20 January 2006 to discuss the JV’s operations and in particular the proposed 2006 work program and budget.¹⁴⁹ CEG thereafter sent various letters to the JV’s management and SOCAR in relation to Mr. Ismaylov’s involvement in the JV’s activities.¹⁵⁰

¹⁴⁵ See Joint Venture Shirvan Oil Financial Statements, 2005, p. 17 of the pdf document (A&M-98).

¹⁴⁶ See Letter from the Chairman of the Board of JV Shirvan Oil, Mr. Bashirov, to CEG in response to CEG’s letter dated 9 September 2006, undated (R-49).

¹⁴⁷ Agreement for the Sale of Local Market Oil, 1 January 2006 (C-63).

¹⁴⁸ Minutes of the Meeting with the Management of Shirvan Oil JV, 14 January 2006 (C-256).

¹⁴⁹ Letter of 14 January 2006 from CEG to the Administration Board (C-249).

¹⁵⁰ See, for instance Letter of 18 January 2006 from CEG to Rovnag Abdullayev (C-282); Letter of 19 January 2006 from CEG to Mr. Bashirov (C-283).

153. On 18 January 2006, the Chairman of the JV's Administration Board, Mr. Bashirov, rejected CEG's request for an urgent meeting.¹⁵¹
154. Around the end of January 2006, SOCAR's audit commission issued its report. Although the full report is not part of the record (according to the Respondent it is no longer available), the Respondent produced a report prepared by Mr. Farrukh Vazirov, a member of the audit commission (the "Vazirov Report").¹⁵² The Vazirov Report mentions "massive violations of contractual obligations by the JV and the Foreign partner", including CEG's failure to finance the JV and to train local personnel.¹⁵³
155. On 8 February 2006, CEG and Shirvan Oil entered into a protocol of consent, pursuant to which CEG agreed to reimburse Shirvan Oil USD 3,103,622 and to bear the costs associated with the future drilling program for USD 14,910,753.¹⁵⁴ In turn, Shirvan Oil agreed to convene a board meeting to discuss the 2006 work program and budget (the "Protocol of Consent").¹⁵⁵
156. On 18 February 2006, the JV's Administration Board met to discuss the 2006 work program and budget. The board approved neither the work program nor the budget but instructed the JV to "prepare and submit to the Board a draft annual Work Program for 2006 and an annual budget for 2006".¹⁵⁶ On 28 February 2006, the JV's general director, Mr. Imanov, wrote to the Chairman of the Administration Board, Mr. Bashirov, recommending the approval of the 2006 work program and budget.¹⁵⁷
157. On 10 March 2006, Mr. Imanov requested that Messrs. Kushnirov and Stuppard to submit the 2006 work program and budget, since it was their "direct responsibility" to do so in their capacities of the JV's technical director and chief financial officer

¹⁵¹ Letter of 18 January 2006 from Mr. Bashirov to Eric Stuppard (C-250).

¹⁵² Report of Farrukh Vazirov, Analysis of activity of JV "Shirvan Oil", undated (R-211).

¹⁵³ Report of Farrukh Vazirov, Analysis of activity of JV "Shirvan Oil", undated, p. 4 of the pdf document (R-211).

¹⁵⁴ Protocol of Consent, 8 February 2006, p. 7 of the pdf document (C-244).

¹⁵⁵ Protocol of Consent, 8 February 2006, p. 3 (C-244).

¹⁵⁶ See Letter of 28 February 2006 from the Director General of Shirvan Oil to the Chairman of the Board of Shirvan Oil, p. 1 of the pdf document (R-13).

¹⁵⁷ Letter of 28 February 2006 from the Director General of Shirvan Oil to the Chairman of the Board of Shirvan Oil, p. 2 of the pdf document (R-13).

respectively.¹⁵⁸ It appears undisputed that no work program or budget was approved for 2006.¹⁵⁹

158. On 22 March 2006, Shirvan Oil entered into an agreement with a SOCAR entity, pursuant to which that entity would become the exclusive off-taker of the JV's WMO.¹⁶⁰
159. On 14 April 2006, Mr. Imanov cancelled the Momentum Contract on the stated ground that Momentum had failed to comply with customs regulations and to make the drilling rig "ready for the drilling".¹⁶¹
160. On 16 June 2006, CEG repaid the USD 3.1 million due to Shirvan Oil under the Protocol of Consent.¹⁶² Further evidence in the record suggests that, around that time, CEG also repaid the USD 10,836,123 it owed to the JV from the sale of the WMO in 2005.¹⁶³
161. On 1 September 2006, RPS Energy ("RPS") produced a reserve analysis for the Kurovdag Field and valued CEG's 51% interest in the JV at USD 536.9 million ("RPS1").¹⁶⁴
162. On 29 January 2007, a draft work program and a draft budget for 2007 were finalized. According to the record, SOCAR wished to meet Dr. Leshkasheli to discuss the work program and budget before approving it.¹⁶⁵

¹⁵⁸ Letter of 10 March 2006 from Shirvan Oil to CEG Board Members (R-14).

¹⁵⁹ Tr. (Day 1), 76:21-77:2 (Claimants' Opening Statement); Claimants' Opening Presentation, slide 87; R-PHB1, paras. 9.4, 191 and 525.3.

¹⁶⁰ Agreement for the Sale of World Market Oil, 22 March 2006 (C-194).

¹⁶¹ Letter of 14 April 2006 from Mr. Imanov to Momentum (C-265).

¹⁶² See Letter of 8 June 2007 from SOCAR to CEG, p. 4 (R-21); Joint Venture Shirvan Oil Financial Statements, 2005, p. 21 (A&M-98); Orujov WS1, para. 37.

¹⁶³ See Caspian Energy Group Financials, 2006, p. 1 (A&M-91); Letter from SOCAR to CEG in response to CEG's letter dated 9 September 2006, undated (R-49); Letter of 5 October 2007 from Shirvan Oil to the President of SOCAR, p. 2 of the pdf document (R-24).

¹⁶⁴ Evaluation of Caspian Energy Group's Kurovdag Field, RPS Energy Report, 1 September 2006 ("RPS1") (C-13).

¹⁶⁵ See Email of 12 February 2007 from Eric Stuppard to Zaur Leshkasheli (C-322; C00003985).

163. On 12 February 2007, Mr. Stuppard told Dr. Leshkasheli that SOCAR was awaiting his arrival to discuss the 2007 work program and budget.¹⁶⁶ It appears undisputed that the 2007 work program and budget were never approved by the JV's Administration Board.¹⁶⁷
164. RPS produced a second reserve analysis on 26 April 2007 and valued CEG's interest in the JV at USD 966.9 million on the assumption of an enhanced oil recovery ("EOR") program comprising water-flooding ("RPS2").¹⁶⁸

H. NEGOTIATIONS TO TRANSITION TO A PSA

165. As noted above, Azerbaijan increasingly started in 1999 shifting from JVs to PSAs as regards onshore oil fields. According to Dr. Leshkasheli, he met Mr. Majid Karimov, the Minister of Fuel and Energy, on 24 December 2002 to discuss the possibility of concluding a PSA.¹⁶⁹
166. On 13 January 2003, again according to Dr. Leshkasheli, Mr. Mamedtagizadeh, Shirvan Oil's general director had a "confidential meeting" at SOCAR's Baku offices, where he was told that concluding a PSA would "require the inclusion of an additional local 'partner'".¹⁷⁰
167. On 6 September 2003, SOCAR and CEG concluded an Agreement on Basic Commercial Principles and Provisions of a PSA.¹⁷¹
168. On 1 July 2004, the President of Azerbaijan issued Order No. 297 delegating authority to SOCAR to negotiate and sign a PSA and submit it for approval to the Parliament.¹⁷²

¹⁶⁶ Email of 12 February 2007 from Eric Stuppard to Zaur Leshkasheli (C-322; C00003985).

¹⁶⁷ See Claimants' Opening Presentation, slide 88; R-PHB1, paras. 9.4 and 525.3.

¹⁶⁸ Evaluation of Water-Flooding of Caspian Energy Group's Kurovdag Field, RPS Energy Report, 26 April 2007 ("RPS2") (C-3).

¹⁶⁹ Leshkasheli WS1, para. 52. See also Yagubov WS, para. 25; Orujov WS1, para. 31.

¹⁷⁰ Dr. Leshkasheli affirms that Mr. Mamedtagizadeh was CEG's "director", but the record shows that he only was the JV's general director. Leshkasheli WS1, para. 53.

¹⁷¹ Agreement on Basic Commercial Principles and Provisions of Rehabilitation, Development and Production Sharing Agreement for the Kurovdag Field, 6 September 2003 (R-7).

¹⁷² Decree of the President of the Republic of Azerbaijan, 1 July 2004 (C-60).

169. On 19 August 2004, Cornhill established the BVI company Caspian Energy Group Limited (“CEG BVI”) with the purpose of becoming a contracting party in the PSA.¹⁷³ Cornhill transferred to CEG its shares in CEG BVI on 9 May 2005.¹⁷⁴
170. According to Dr. Leshkasheli, SOCAR expressed its interest on 1 September 2004 to resume discussions towards a PSA.¹⁷⁵
171. On 5 November 2004, SOCAR, SOCAR Oil Affiliate (“SOA”) and CEG BVI signed a PSA.¹⁷⁶ Under the terms of the PSA, CEG BVI and SOA each held a 50% interest in the Kurovdag Field.
172. On 29 November 2004, CEG provided a guarantee to SOCAR in respect of CEG BVI.¹⁷⁷
173. On 3 December 2004, the Prime Minister of Azerbaijan issued a guarantee to CEG in relation to the PSA.¹⁷⁸
174. According to Dr. Leshkasheli, President Aliyev called Dr. Leshkasheli to a meeting in Baku on 18 April 2005 to tell him that the Parliament would only approve the PSA if he agreed that the BVI company Rafi Oil Corp. (“Rafi Oil”) be granted a 50% stake in CEG, which Dr. Leshkasheli says he accepted reluctantly and “in part” only by agreeing that Rafi Oil receive a 50% share in CEG BVI.¹⁷⁹ Still according to Dr. Leshkasheli, he told President Aliyev that he would only authorize the transfer of assets from CEG to

¹⁷³ Certificate of Incorporation of CEG BVI, 19 August 2004 (C-193); Register of Members and Share Ledger, Caspian Energy Group Limited, 1 June 2005 (C-177). See Counter-Memorial, para. 163; Reply, para. 26(y).

¹⁷⁴ Register of Members and Share Ledger, Caspian Energy Group Limited, 1 June 2005 (C-177).

¹⁷⁵ Leshkasheli WS1, para. 56, referring to Presidential Direction No. 297, 1 July 2004 (C-60).

¹⁷⁶ Production Sharing Agreement between SOCAR, CEG and SOCAR Oil Affiliate, 5 November 2004 (C-61).

¹⁷⁷ Ultimate Parent Company Guarantee from Caspian Energy Group UK LLP to SOCAR in respect of CEG BVI, 29 November 2004 (R-144).

¹⁷⁸ Guarantee and Undertaking from the Government of the Azerbaijan Republic to CEG, 3 December 2004 (R-8).

¹⁷⁹ According to the Claimants, President Aliyev called Dr. Leshkasheli on 15 March 2005 to summon him for that meeting. Leshkasheli WS1, para. 61; Leshkasheli WS2, para. 47, referring to Dr. Leshkasheli’s 2005 Diary, 15 March 2005 entry (C-246).

CEG BVI if there were transparency over the beneficial owners of Rafi Oil.¹⁸⁰ The Respondent disputes these assertions.

175. Still according to Dr. Leshkasheli, he met twice with General-Major Beylar Eyyubov in the Presidential Palace over the following two days.¹⁸¹ He further contends that Mr. Rovnag Abdullayev, the then director of the Heydar Aliyev Baku Oil Refinery, was present during the second meeting and that he thereafter introduced him to Mr. Fakhraddin Ismayilov as the person who would “oversee the day-to-day cooperation between CEG and Rafi Oil”.¹⁸² The Respondent disputes these assertions.¹⁸³
176. On 29 April 2005, the Parliament passed a law approving and ratifying the PSA and President Aliyev enacted that law on the same day.¹⁸⁴ According to Dr. Leshkasheli, the PSA came into force on 15 May 2005.¹⁸⁵ By contrast, Mr. Yagubov states that the PSA never entered into force because of CEG BVI’s failure “to fulfil the final condition precedent relating to the transfer of assets from the JV to the new Operating Company”.¹⁸⁶
177. Still according to Dr. Leshkasheli, he met again with President Aliyev on 10 May 2005 to allegedly ask about the identity of the beneficial owners of Rafi Oil.¹⁸⁷ According to him, the President called him after that meeting and “promised” to disclose the identity of those beneficial owners.¹⁸⁸ Dr. Leshkasheli adds that he met with Mr. Abdullayev

¹⁸⁰ Leshkasheli WS1, para. 61.

¹⁸¹ Leshkasheli WS2, paras. 50-51, referring to Dr. Leshkasheli’s 2005 Diary, 19-20 April 2005 entries (C-246).

¹⁸² Leshkasheli WS2, para. 51.

¹⁸³ Abdullayev WS2, paras. 40-41.

¹⁸⁴ Decree of the President of the Republic of Azerbaijan, 29 April 2005 (R-9).

¹⁸⁵ See Leshkasheli WS1, para. 61.

¹⁸⁶ Yagubov WS, paras. 29 and 32.

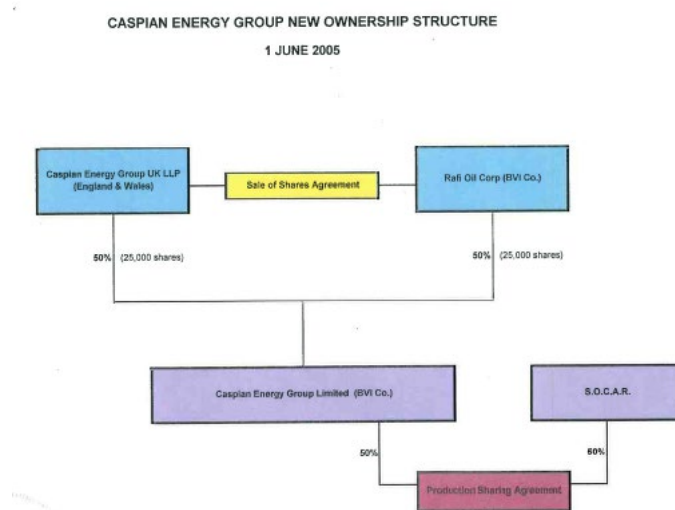
¹⁸⁷ Leshkasheli WS2, para. 52, referring to Dr. Leshkasheli’s 2005 Diary, 10 May 2005 entry (C-246).

¹⁸⁸ Leshkasheli WS2, para. 52.

on 13 May 2005 to discuss further Rafi Oil's inclusion in the PSA structure.¹⁸⁹ The Respondent disputes these assertions.¹⁹⁰

178. In June 2005, Mr. Mammad Imanov was appointed production manager “to the Baku representative office of Rafi Oil in Azerbaijan”.¹⁹¹

179. On 8 June 2005, CEG and Rafi Oil entered into a share transfer agreement, effective 21 June 2005, under which CEG agreed to transfer 25,000 shares in CEG BVI to Rafi Oil for USD 25,000.¹⁹² According to that agreement, the new corporate structure under the PSA would be as follows:¹⁹³



180. As noted above, on 5 August 2005, SOCAR issued Order No. 86 establishing a joint working group to conduct an inventory of the JV's assets to be transferred under the PSA.¹⁹⁴

¹⁸⁹ Leshkasheli WS2, para. 53.

¹⁹⁰ See Abdullayev WS2, para. 40.

¹⁹¹ Imanov WS, para. 6.

¹⁹² Share Transfer Agreement, Caspian Energy Group UK LLP and Rafi Oil Corp., 8 June 2005 (C-327); Register of Members and Share Ledger, Caspian Energy Group Limited, 1 June 2005, pp. 2-3 of the pdf document (C-177).

¹⁹³ Share Transfer Agreement, Caspian Energy Group UK LLP and Rafi Oil Corp., 8 June 2005, p. 5 of the pdf document (C-327).

¹⁹⁴ SOCAR Order No. 86, 5 August 2005 (R-10).

181. According to Dr. Leshkasheli, he met with Mr. Abdullayev on 22 and 24 September 2005, as well as on 22 November 2005.¹⁹⁵ The Respondent disputes these assertions.¹⁹⁶
182. As noted above, after becoming SOCAR's new President on 9 December 2005, Mr. Abdullayev appointed Mr. Imanov as the new General Director of Shirvan Oil on 16 December 2005, which appointment the JV's Administration Board approved on 19 December 2005.¹⁹⁷
183. As noted above, on 29 December 2005, SOCAR issued Order No. 141 to conduct an audit of Shirvan Oil's accounts and performance, since (according to SOCAR) the goals set forth in the JVA had not been achieved, the work program had not been fulfilled and CEG had failed to provide the required funding.¹⁹⁸
184. As noted above, on 8 February 2006, CEG and Shirvan Oil concluded the Protocol of Consent under which CEG agreed to repay the JV for costs it had incurred at the JV's expense.¹⁹⁹
185. Around that time, Dr. Leshkasheli started discussing with the Indian company Oil and National Gas Company of India ("ONGC") the possibility of selling CEG, and ONGC started a year-long technical and financial due diligence process.²⁰⁰
186. According to Dr. Leshkasheli, he met President Aliyev on 6 April 2006 to discuss the role of Rafi Oil. He asserts that President Aliyev further suggested that he partner with Mr. Mikhail Gutseriev if he were not willing to partner with Rafi Oil.²⁰¹ The Respondent disputes these assertions.

¹⁹⁵ Leshkasheli WS2, para. 54, referring to Dr. Leshkasheli's 2005 Diary, 22 September and 22 November 2005 entries (C-246).

¹⁹⁶ Abdullayev WS2, para. 40.

¹⁹⁷ Abdullayev WS2, paras. 6 and 31; Imanov WS, para. 7; Leshkasheli WS1, para. 65.

¹⁹⁸ SOCAR Order No. 141, 29 December 2005 (R-12).

¹⁹⁹ Protocol of Consent, 8 February 2006 (C-244). See Letter of 26 June 2006 from the General Director of Shirvan Oil to the Finance Director and Technical Director of Shirvan Oil (R-15); Letter of 8 June 2007 from SOCAR to CEG (R-21).

²⁰⁰ First Witness Statement of Dr. Leshkasheli from High Court Case, 14 May 2019, paras. 39-40 (A&M-26). See also CEG Credit Committee Memo prepared by Credit Suisse, December 2006, p. 6 (A&M-8).

²⁰¹ Leshkasheli WS1, para. 69; Leshkasheli WS2, paras. 72-75, referring to Dr. Leshkasheli's 2006 Diary, 6 April 2006 entry (C-247).

187. Still according to Dr. Leshkasheli, he met Mr. Abdullayev on 17 and 20 April 2006 to raise his concerns about Rafi Oil and Mr. Gutseriev.²⁰² Although Mr. Abdullayev acknowledges that a meeting took place on 17 April, he disputes that Rafi Oil had been discussed on that occasion and that the second meeting took place.²⁰³
188. On 3 June 2006, Dr. Leshkasheli met with Mr. Abdullayev during an oil and gas conference in Baku. According to Dr. Leshkasheli, the meeting concerned Rafi Oil and Mr. Abdullayev “agreed in principle to the removal of Rafi Oil from the CEG BVI’s structure”.²⁰⁴ Although Mr. Abdullayev does not dispute that he met Dr. Leshkasheli on that occasion, he disputes Dr. Leshkasheli’s account of the meeting and denies having discussed Rafi Oil with him.²⁰⁵
189. On 27 July 2006, SOCAR adopted Order No. 130 creating a joint working group comprising representatives of SOCAR, CEG and the JV, to finalize the inventory of the JV’s fixed assets to be transferred under the PSA.²⁰⁶
190. According to the Claimants, Dr. Leshkasheli sent a letter dated 25 August 2006 to Rafi Oil’s BVI address to insist that Mr. Ismayilov remove Rafi Oil from the PSA structure.²⁰⁷ Mr. Abdullayev appears to have been put in copy (without any address). The version of this letter in the record is unsigned and Mr. Abdullayev disputes having received this letter or seeing it before this arbitration.²⁰⁸
191. According to Dr. Leshkasheli, Rafi Oil was removed from CEG BVI “by November of 2006” because Rafi Oil never paid its share of CEG BVI’s capital.²⁰⁹

²⁰² Leshkasheli WS1, para. 71; Leshkasheli WS2, para. 76, referring to referring to Dr. Leshkasheli’s 2006 Diary, 17 April 2006 entry (C-247); Business Cards of Rovnag Abdullayev (C-248).

²⁰³ Abdullayev WS2, para. 43.

²⁰⁴ Leshkasheli WS1, para. 71.

²⁰⁵ Abdullayev WS2, para. 54.

²⁰⁶ SOCAR Order No. 130, 27 July 2006 (R-16). See Orujov WS1, para. 37.

²⁰⁷ Letter of 25 August 2006 from CEG to Rafi Oil (C-62). See Leshkasheli WS1, para. 73.

²⁰⁸ Abdullayev WS2, para. 54.

²⁰⁹ See Leshkasheli WS1, para. 80.

192. On 28 November 2006, the PSA inventory process had been completed, and SOCAR, CEG and Shirvan Oil finalized an “Inventorization” Report.²¹⁰
193. On 31 January 2007, CEG notified SOCAR that it did not wish the PSA “to remain in place” and that it preferred operating under the JVA.²¹¹
194. SOCAR responded in or around February 2007 that it remained “interested in the effective implementation” of the PSA and that the procedure for transferring the JV’s assets to the PSA operating company should be completed.²¹²
195. SOCAR followed up on that letter on 12 April 2007 requesting that CEG sign the PSA documents to transfer the JV’s assets to the PSA operating company.²¹³ It reiterated that request in the course of that month and again on 1 May 2007.²¹⁴
196. CEG responded on 2 May 2007 by stating that it would sign the relevant documents by 10 May 2007 and requested a meeting to discuss the possibility of revising the production targets under the PSA due to delays in its implementation.²¹⁵
197. SOCAR rejected CEG’s proposal and stated that it understood CEG’s wish to discuss the PSA as an “actual refusal” to sign the relevant documents and an “unwillingness to ensure the entry into force” of the PSA, with the consequence that SOCAR “no longer consider[ed] itself bound” by the PSA and intended to request Azerbaijan’s authorities to repeal the law approving the PSA.²¹⁶
198. On 15 May 2007, CEG answered that SOCAR’s letter was “both sudden and unexpected” and put forward a number of arguments “why it is no longer suitable to conduct Kurovdag oil operations within a PSA framework”, including delays in the PSA’s implementation and “drastic” changes in prevailing economic conditions.²¹⁷

²¹⁰ Inventorization Report of Shirvan Oil JV (R-217).

²¹¹ Letter of 31 January 2007 from CEG to SOCAR (R-17).

²¹² Letter from SOCAR to CEG in response to CEG’s letter dated 31 January 2007, undated (R-50).

²¹³ Letter of 12 April 2007 from SOCAR to CEG (R-18).

²¹⁴ Letter from SOCAR to CEG referring to SOCAR’s letter dated 12 April 2007, undated (R-51); Letter of 1 May 2007 from SOCAR to CEG (R-19).

²¹⁵ Letter of 2 May 2007 from CEG to SOCAR (R-52).

²¹⁶ Letter from SOCAR to CEG in response to CEG’s letter dated 2 May 2007, undated (R-53).

²¹⁷ Letter of 15 May 2007 from CEG to SOCAR (R-20).

Based on that, CEG stated that it was no longer “appropriate” to approve the documents needed to transfer the JV’s assets to the PSA operating company.

199. SOCAR responded on 8 June 2007 that CEG’s attempts to shift the blame on SOCAR for delays in implementing the PSA were “unjustified” and “misleading” and set forth a series of arguments why any delays were attributable to CEG.²¹⁸ SOCAR added that CEG’s refusal to sign the documents to transfer the JV’s assets breached Article 27 of the PSA, that SOCAR therefore did not consider itself bound by the PSA, that it would therefore seek the repeal of the law approving the PSA, but that it hoped to pursue its cooperation with CEG “through the JV”.²¹⁹
200. On 7 September 2007, CEG BVI, SOCAR and SOA agreed to terminate the PSA (the “PSA Termination Agreement”).²²⁰

I. CEG’S ATTEMPTS TO OBTAIN FUNDING TO OPERATE THE KUROVDAG FIELD

201. On 22 March 2002, Vitol S.A., a company registered in Geneva, Switzerland, provided to CEG a loan of USD 13 million “to be used for the general working capital requirements” of CEG (the “Vitol Loan”).²²¹
202. On 21 October 2002, Mr. Robert Finch, a “private investor”, loaned USD 2 million to Dr. Leshkasheli.²²² On 23 December 2004, Mr. Finch further loaned USD 11 million to Rosserlane, with the latter also assuming the obligation to repay the USD 2 million loan by 28 February 2005.²²³ That deadline was thereafter extended until 31 December

²¹⁸ Letter of 8 June 2007 from SOCAR to CEG (R-21).

²¹⁹ Letter of 8 June 2007 from SOCAR to CEG (R-21).

²²⁰ Agreement on Termination of the Product Sharing Agreement, 7 September 2007 (R-23). See Leshkasheli WS1, para. 80, note 15.

²²¹ Loan Agreement between CEG and Vitol, 22 March 2002, Article 1.1 (R-114). According to the Khamar Loan, the debt owed to Vitol had increased to USD 18,033,463.96 by 31 May 2006. Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, p. 8, Article 1.1 (“Vitol Loan Agreement”), and Article 12(1)(r)(iii) (C-65).

²²² See Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, p. 2 of the pdf document (R-150). See also Loan Agreement between CEG and Ashmore, 11 August 2006, p. 8, Article 1.1 “Private Investor Loan Agreement” (C-197); Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, Article 1.1, p. 6 “Private Investor Loan Agreement” and Article 12.1(r)(i) (C-65).

²²³ See Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, p. 6, Article 1.1 “Private Investor Loan Agreement” (C-65).

2005 in exchange for an extension fee and a revised interest rate.²²⁴ According to the information in the record, Mr. Finch loaned Rosserlane a total of USD 18.2 million (the “Finch Loan”).²²⁵

203. In the first half of 2006, CEG sought to secure additional funding. On 10 May 2006, Credit Suisse offered CEG a loan for USD 65 million. According to Dr. Leshkasheli, he did not entertain that offer because another lender with whom he was negotiating, Khamar Holdings Limited (“Khamar”), a Russian fund registered in the Marshall Islands, offered conditions that were “commercially better”.²²⁶
204. On 31 May 2006, Khamar agreed to provide to CEG a loan in the amount of USD 40 million with 18% interest and a USD 2.7 million lender’s fee (the “Khamar Loan”).²²⁷ The loan’s purpose was to repay (i) the Vitol Loan (in the amount of USD 18,033,463.96), (ii) all debts due to Shirvan Oil for oil sales (in the amount of USD 14,881,810.09), (iii) all debts due to CEG’s lawyers at Chadbourne (in the amount of USD 487,481.52), and (iv) to finance capital and operating expenses of Shirvan Oil.²²⁸ This short-term loan was due within 75 days on 13 August 2006. It was amended on 5 June 2006 to provide Khamar with additional security in respect of CEG BVI.²²⁹ Pursuant to that amendment, CEG agreed that the PSA should not come into effect until the repayment of the loan and that Shirvan Oil would continue operating under the

²²⁴ Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, Article 2.1 (R-150).

²²⁵ See Loan Agreement between CEG and Ashmore, 11 August 2006, p. 8, Article 1.1 “Private Investor Loan Agreement” (C-197). According to the Khamar Loan, the debt with interest amounted to USD 20 million in August 2006. By the time CEG entered in the Credit Suisse Loan in December 2006 (see below), the debt amounted to USD 24,902,352.04. Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, Article 12.1(r)(i) (C-65); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 12, Article 1.1, p. 12 and p. 104 Schedule 3” (C-178), “Private Investor Loan Agreement means the loan agreement dated 21 October 2002 (as amended, restated, novated or supplemented from time to time) between Rosserlane as borrower, Sanston as co-borrower and the Private Investor as lender pursuant to which a series of loans in the aggregate principal amount of eighteen million two hundred thousand Dollars (\$18,200,000) has been provided to Rosserlane”.

²²⁶ First Witness Statement of Dr. Leshkasheli from High Court Case, 14 May 2019, para. 42 (A&M-26).

²²⁷ Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006 (C-65).

²²⁸ The Khamar Loan also provided for a second loan to Rosserlane in the amount of USD 20 million to repay the Finch Loan. Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, Articles 2, 5 and 6 (C-65). See Leshkasheli WS1, para. 72.

²²⁹ Amendment to the Loan Agreement between CEG and Khamar, 5 June 2006 (R-157).

- JVA.²³⁰ On 10 August 2006, Khamar assigned the loan to the company Pollonio, which company, according to Dr. Leshkasheli, had neither telephone number nor bank details.²³¹
205. On 11 August 2006, CEG obtained a loan of USD 44.5 million from the Ashmore Group (“Ashmore”), a British investment fund, allowing CEG to pay off the Khamar Loan (the “Ashmore Loan”).²³² At the same time, Rosserlane obtained a loan of USD 15 million to finance the costs of the work program under either the JVA or the PSA, of which Ashmore only released USD 5,810,000 in two tranches on 1 September and 6 October 2006.²³³ The loan agreement provided for a USD 25 million penalty in case the PSA did not become operational by 15 December 2006.²³⁴ Since the PSA had not become operational by that date, the USD 25 million penalty became due.
206. In a letter sent on 24 January 2007, CEG complained to Ashmore that the failure to release the shortfall of USD 9,910,000 had “damaged” CEG’s business in Azerbaijan, since it had “not been able to present itself in Azerbaijan as fully in control of its finances”.²³⁵ CEG further added that Ashmore’s “lack of urgency” had contributed “to reducing the business’ standing and credibility in Azerbaijan, as well as to its value as a going concern”.²³⁶
207. On 14 December 2006, CEG entered into a USD 127 million loan facility with Credit Suisse International (“CSI”), with a 12-month term, which included a loan agreement, a participation agreement, security agreements and other ancillary agreements (the “Credit Suisse Loan”).²³⁷ The loan consisted of a first tranche of USD 115 million to repay previous debts, including the Finch Loan, which had increased to

²³⁰ Amendment to the Loan Agreement between CEG and Khamar, 5 June 2006, Article 3.8 (R-157).

²³¹ Leshkasheli WS1, para. 72.

²³² Loan Agreement between CEG and Ashmore, 11 August 2006, Articles 2.1(a) and 2.2 (C-197).

²³³ Loan Agreement between CEG and Ashmore, 11 August 2006, Articles 2.1(b) and 2.2 (C-197).

²³⁴ Loan Agreement between CEG and Ashmore, 11 August 2006, Article 6 (C-197). See Leshkasheli WS1, para. 74.

²³⁵ Letter of 24 January 2007 from CEG to Ashmore (R-163).

²³⁶ Letter of 24 January 2007 from CEG to Ashmore (R-163).

²³⁷ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006 (C-178).

USD 24,902,352.04 due to accrued interest, and the Ashmore Loan in the amount of USD 76,999,703.27 (including the USD 25 million penalty).²³⁸ It further included a second tranche of USD 12 million for new drilling in the Kurovdag Field under an approved work program (the “Drilling Loan”).²³⁹ The Credit Suisse Loan had to be repaid by 14 December 2007, but on 13 December 2007, the repayment was extended until 15 February 2008.²⁴⁰

208. Under the Participation Agreement, CEG agreed to a two-stage sales process, starting with a voluntary sales process of CEG followed by a mandatory sales process. It authorized CSI to control the sales process if CEG had not been sold within 8 months (the “Voluntary Sales Process”), meaning that a mandatory sale of CEG would be triggered by 14 July 2007 (the “Mandatory Sales Process”).²⁴¹ Under the Mandatory Sale Process, CSI’s affiliate, Credit Suisse Securities (Europe) Limited (“CSS”), had an exclusive sale mandate and CEG entered into an M&A Agreement with CSS to that effect. CSS also acted as CEG’s advisor during the Voluntary Sales Process.
209. The Participation Agreement contemplated various sale scenarios. The midrange case envisaged a sale of CEG between USD 180 and 400 million, in which case CSI was entitled to USD 180 million and to a 27% financial interest in any sale above USD 180 million. In the top range case, that is any sale above USD 400 million, CSI was entitled to USD 180 million, and a 27% interest between USD 180 and 400 million as well as a 12% interest on any amount exceeding USD 400 million.²⁴²
210. On 15 March 2007, Mr. Akhundov, CEG’s chief financial officer, told CSI’s Mr. Peter Firmin that drilling had been approved and on that basis requested to draw down

²³⁸ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, Article 2 and p. 104 “Schedule 3” (C-178).

²³⁹ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, Article 2 (C-178).

²⁴⁰ Deed of Amendment and Restatement relating to Loan Agreement, 13 December 2007 (A&M-23).

²⁴¹ Participation Agreement between Caspian Energy Group Limited Partnership and the Equity Owners and Credit Suisse International, 14 December 2006, Article 4 (C-71).

²⁴² Participation Agreement between Caspian Energy Group Limited Partnership and the Equity Owners and Credit Suisse International, 14 December 2006, Article 3 (C-71).

USD 6 million of the Drilling Loan.²⁴³ Mr. Firmin responded on the same day asking for a breakdown of expenditures and for the timing of the drilling. He received that information on 27 March 2007 and informed investors that SOCAR had approved the drilling program, and that drilling was expected to commence “early July”.²⁴⁴

211. In or around August 2007, CSI became aware that the funds provided under the Drilling Loan had not been used for drilling and requested the return of those funds if SOCAR would not approve drilling.²⁴⁵ Later, in October and November 2007, CSI learned that the funds had been transferred to Blandford for unspecified services.²⁴⁶

J. THE VOLUNTARY SALES PROCESS

212. The Voluntary Sales Process began on 14 December 2006 and lasted until 14 August 2007. Prior to that, as of the spring of 2006, Dr. Leshkasheli had already started discussing with various companies the possibility of selling CEG, including ONGC and Gazprom.²⁴⁷ On 7 November 2006, after reviewing the first report of RPS, ONGC made a first indicative offer of USD 212 million to acquire CEG’s interest in the Kurovdag Field.²⁴⁸ On 2 December 2006, ONGC increased its offer to USD 400 million on condition of exclusive negotiations.²⁴⁹
213. On 4 December 2006, CSI valued CEG in the range of USD 214 to 407 million, with a mean average of USD 300 million.²⁵⁰

²⁴³ Email of 15 March 2007 from Vugar Akhundov to Peter Firmin (C-322; C00005075). See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 78 (C-135).

²⁴⁴ See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, paras. 78-79 (C-135).

²⁴⁵ See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 139 (C-135).

²⁴⁶ See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, paras. 140-141 (C-135).

²⁴⁷ First Witness Statement of Dr. Leshkasheli from High Court Case, 14 May 2019, paras. 39-40 and 44-45 (A&M-26). See also CEG Credit Committee Memo prepared by Credit Suisse, December 2006, p. 6 (A&M-8).

²⁴⁸ ONGC Offer for CEG, 7 November 2006 (A&M-106).

²⁴⁹ ONGC Offer for CEG, 2 December 2006 (A&M-27).

²⁵⁰ See Witness Statement of Igor Urkrasin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 15 May 2014, para. 9 (C-85).

214. Various offers to acquire CEG were made during the Voluntary Sales Process, all of which Dr. Leshkasheli rejected. These offers included:
- On 2 March 2007, ONGC made an indicative offer of USD 400 million, plus an additional USD 30 million upon recovery of the upfront investment, subject to discussions with SOCAR, additional due diligence and approval from the Indian government and reserve bank;²⁵¹
 - On the same day, PKN Orlen made an indicative offer of USD 450 million, subject to additional due diligence and regulatory approvals;²⁵²
 - Still on the same day, PCG Turicum made an indicative offer of USD 600 million, subject to approvals by their clients;²⁵³
 - Still on the same day, Petrovietnam made an indicative offer of USD 1.2 billion to acquire “the asset”, subject to additional due diligence and approval from the Vietnamese government;²⁵⁴ and
 - On 18 May 2007, after meeting with President Aliyev and SOCAR on 28 April,²⁵⁵ ONGC reduced its offer to USD 300 million, plus an additional USD 50 million upon recovery of the upfront investment, subject to a revision if the PSA were to be terminated, as well as discussions with SOCAR, additional due diligence and approval from the Indian government and reserve bank.²⁵⁶
215. None of these indicative offers led to formal bids and CEG was not sold during the Voluntary Sales Process.

²⁵¹ Letter of 2 March 2007 from ONGC Videsh Limited to Credit Suisse (C-322; C00004364).

²⁵² Orlen Offer to Credit Suisse, 2 March 2007 (A&M-119).

²⁵³ On 18 May 2007, PCG Turicum informed Credit Suisse that its “client” would not make a formal bid because it did not want to “enter a costly bidding process” without being “assured of succeeding in the process”. Letter of 2 March 2007 from PCG Turicum to Credit Suisse (C-322; C00004375); Letter of 18 May 2007 from PCG Turicum to Credit Suisse (C-99).

²⁵⁴ Letter of 2 March 2007 from Petrovietnam to Credit Suisse (C-93).

²⁵⁵ See Email of 28 April 2007 from ONGC to Dr. Leshkasheli (C-91).

²⁵⁶ Letter of 18 May 2007 from ONGC-Mittal Energy Ltd to Credit Suisse (A&M-114).

K. THE MANDATORY SALES PROCESS

216. On 14 August 2007, in the absence of a sale of CEG, CSI took over the sales process pursuant to Article 4 of the Participation Agreement.²⁵⁷
217. Credit Suisse received the following offers:
- On 21 September 2007, Beny Steinmetz Group Resources (“BSG”) made an indicative offer of USD 300 million;²⁵⁸
 - On 27 September 2007, Perenco made an indicative offer of USD 300 million, subject to a “clear statement” by SOCAR and the Azerbaijani government “that they have no objection to Perenco acquiring Caspian and becoming the operator of Shirvanoil”;²⁵⁹
 - On 28 September 2007, Petrovietnam made an indicative offer of USD 295 million on the assumption that operations would be conducted under a PSA;²⁶⁰
 - On the same date, Tata Petrodyne Limited made an indicative offer of USD 300 million, subject to additional due diligence and approvals from SOCAR and the Azerbaijani government;²⁶¹
 - Still on the same date, Hecton Investments Limited made an indicative offer of USD 500 million, subject to additional due diligence;²⁶²
 - On 11 October 2007, Dogan made an indicative offer of USD 325 million;²⁶³

²⁵⁷ Trigger letter of 14 August 2007 from Credit Suisse to Dr. Leshkasheli (C-100).

²⁵⁸ Internal Credit Suisse email of 21 September 2007 (C-322; C00009844).

²⁵⁹ Letter of 27 September 2007 from Perenco to Credit Suisse (C-322; C00009980).

²⁶⁰ Letter of 28 September 2007 from Petrovietnam to Credit Suisse (C-322; C00010091).

²⁶¹ Letter of 28 September 2007 from Tata Petrodyne Limited to Credit Suisse (C-322; C00010102).

²⁶² Emails of 28 September 2007 from Hecton Investments Limited to Credit Suisse (C-322; C00010107 and C00010108).

²⁶³ See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 133 (C-135); First Witness Statement of Igor Ukrasin from High Court Case, 15 May 2014, para. 101 (A&M-33); *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, para. 240 (C-17).

- On 9 November 2007, Petrovietnam made an indicative offer of USD 324 million, subject to meeting SOCAR and the “relevant Azerbaijan governmental authorities”, and visiting the Kurovdag Field;²⁶⁴
 - On or shortly before 15 November 2007, BSG made an indicative offer of USD 220 million;²⁶⁵ and
 - On 21 November 2007, Vitol stated that it believed CEG’s value ranged from USD 50 million to USD 100 million.²⁶⁶
218. None of these potential bidders submitted formal bids before the maturity of the Credit Suisse Loan. Consequently, on 14 December 2007, CSI and CEG agreed to a two-month loan extension, i.e. until 15 February 2008, in exchange for a USD 10 million extension fee and an increase in the equity upside in favor of CSI from 27% to 33% of the sale price above USD 180 million.²⁶⁷
219. Following this extension, the following offers were submitted either to CSI or Dr. Leshkasheli:
- On 14 December 2007, BSG reduced its previous offer to “a price below USD 200 million”;²⁶⁸
 - BSG reduced its offer to USD 175 million on 21 December 2007;²⁶⁹

²⁶⁴ Letter of 9 November 2007 from Petrovietnam to Credit Suisse (C-199).

²⁶⁵ See Witness Statement of Dr. Phillips in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 29 May 2014, para. 45 (C-315).

²⁶⁶ See Leshkasheli WS1, para. 95; First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 115 (C-135); Email of 21 November 2007 from Victoria Pavlova to Vadim Benyatov, Igor Ukrasin and Peter Firmin (C-322; C00012643).

²⁶⁷ See “Caspian Energy Group: Loan Facility Extension”, Credit Suisse, December 2007 (C-103); Internal Credit Suisse Email, 17 December 2007 (C-97); Deed of Amendment and Restatement relating to Loan Agreement, 13 December 2007 (A&M-23); *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, paras. 23, 28 and 54 (C-17); *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2009] EWCA Civ 413, 19 May 2009, para. 17 (R-27).

²⁶⁸ See Witness Statement of Vadim Benyatov in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 1 August 2014, para. 28 (C-110); First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 166 (C-135).

²⁶⁹ See Witness Statement of Dr. Phillips in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 29 May 2014, para. 47 (C-315).

- On 22 January 2008, BSG made an indicative offer of USD 230 million;²⁷⁰
- On 25 January 2008, according to Dr. Leshkasheli, Mittal made an indicative offer of USD 230 million;²⁷¹
- On 8 February 2008, according to Dr. Leshkasheli, BSG reiterated its offer of USD 230 million “accompanied by a side letter demanding a US\$ 50 million” personal indemnity from Dr. Leshkasheli;²⁷²
- Dr. Leshkasheli further claims that, on 12 February 2008, he had a meeting in Moscow with GazpromNeft “for discussions based on a starting price of US\$ 700 million for CEG”;²⁷³
- On 13 February 2008, Berghoff Trading Limited (“Berghoff”) and GEA Holdings (“GEA”), both entities controlled by Mr. Gutseriev, made an offer of USD 260 million;²⁷⁴
- On 14 February 2008, Mittal increased its offer to USD 242.5 million and Mr. Gutseriev reduced his offer to USD 240 million for a non-consensual sale; and
- On 15 February 2008, Berghoff and GEA increased their offer to USD 245 million, which offer CSI ultimately accepted.²⁷⁵

220. Having rejected a request from Rosserlane dated 7 February 2008 to further extend the loan,²⁷⁶ on 15 February 2008, CSI consequently exercised its right to sell CEG to

²⁷⁰ See Witness Statement of Dr. Phillips in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 29 May 2014, para. 67 (C-315).

²⁷¹ See Leshkasheli WS1, para. 96; First Witness Statement of Sr. Leshkasheli from High Court Case, 14 May 2014, para. 151 (A&M-26).

²⁷² See Leshkasheli WS1, para. 97.

²⁷³ See Leshkasheli WS1, para. 99.

²⁷⁴ See *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, para. 259 (C-17).; Witness Statement of Vadim Benyatov in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 1 August 2014, para. 28 (C-110); First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 166 (C-135).

²⁷⁵ See *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, paras. 44, 259 and 262 (C-17).

²⁷⁶ See First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 188 (C-135).

Berghoff and GEA for USD 245 million.²⁷⁷ CSI made this sale without Rosserlane's consent.²⁷⁸

221. On 6 March 2008, Credit Suisse confirmed having transferred USD 64,185,480.38 onto Rosserlane's account.²⁷⁹
222. On 20 March 2008, Bergoff and GEA sold their interest in the Kurovdag Field to Global Energy Azerbaijan Ltd ("GEAZ") for USD 245 million.²⁸⁰ The Claimants contend that Union Grand Energy and GEA owned GEAZ, and that Mr. Anar Aliyev controlled Union Grand Energy, with the result that Mr. Gutseriev in reality paid USD 245 million for half of CEG's interest in the Kurovdag Field.²⁸¹ The Respondent rejects this assertion as unsupported.²⁸²

L. PROCEEDINGS BEFORE THE BRITISH COURTS

223. Faced with Dr. Leshkasheli's refusal to accept the forced sale as valid, Berghoff, GEA and CEG commenced legal proceedings in the English High Court against Rosserlane, Swinbrook and Dr. Leshkasheli.²⁸³ On 19 March 2008, the High Court declared the sale of CEG to be valid.²⁸⁴ Rosserlane notified the court on 1 April 2008 that it intended to file a counterclaim, sought leave to do so on 8 May 2008 and served its counterclaim

²⁷⁷ See *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2009] EWCA Civ 413, 19 May 2009, para. 18 (R-27); First Witness Statement of Peter Firmin in *Rosserlane Consultants Ltd and another v Credit Suisse International*, 16 May 2014, para. 213 (C-135).

²⁷⁸ See *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, paras. 44 and 262 (C-17).

²⁷⁹ Other evidence in the record suggests that Rosserlane received USD 62,653,082.13 as capital and USD 250,000 as interest. Email of 6 March 2008 from Credit Suisse to Rosserlane (C-322; C-00016247); Letter of 2 April 2008 to Hartman Development Corp. (C-323); Letter of 2 April 2008 to Hartman Development Corp. (C-324).

²⁸⁰ Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, para. 6 (C-113).

²⁸¹ Memorial, paras. 146-147; Reply, para. 475; C-PHB1, paras. 10 and 16; C-PHB2, paras. 2(l), 8(g) and 42.

²⁸² Rejoinder, paras. 705-707; R-PHB1, paras. 5.1, 75 and 620-621; R-PHB2, para. 31.3.

²⁸³ *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2008] EWHC 1785 (Comm), 28 July 2008 (R-26).

²⁸⁴ *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2008] EWHC 1785 (Comm), 28 July 2008, para. 11 (R-26). See Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, para. 7 (C-113).

on 9 June 2008 claiming USD 176,906,883 from CEG for the alleged payment of CEG's debt under the Credit Suisse Loan Agreement.²⁸⁵

224. On 21 May 2008, Mr. Glenn Nobes, a former business consultant of CEG, commenced legal proceedings against CEG before the High Court claiming GBP 35,418,281 for alleged outstanding consultancy fees.²⁸⁶
225. On 11 June 2008, Berghoff and GEA dissolved CEG on the purported ground to avoid "becoming embroiled in litigating the claims by Rosserlane and Mr Nobes".²⁸⁷
226. On 14 June 2008, Rosserlane obtained a freezing injunction against Berghoff, GEA and CEG.²⁸⁸
227. On 23 July 2008, Rosserlane and Mr. Nobes petitioned the Scottish Court of Session to appoint a judicial factor over CEG's estate, which request was first granted but then recalled on 20 August 2008 because Rosserlane had not made out a *prima facie* case that it was CEG's creditor and Mr. Nobes had not substantiated that its consultancy agreement with Dr. Leshkasheli dated 1 July 1996 was known to anyone else other than themselves.²⁸⁹
228. On 20 August 2008, in a summary judgment, the High Court dismissed Rosserlane's counterclaim and decided that the freezing injunction should continue if an appeal was lodged.²⁹⁰ The High Court's decision was upheld on appeal on 19 May 2009.²⁹¹
229. Subsequently, Rosserlane and Swinbrook sued Credit Suisse before the English High Court on two grounds (the "Credit Suisse Proceedings"). First, they claimed under the

²⁸⁵ *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2008] EWHC 1785 (Comm), 28 July 2008 (R-26). See Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, paras. 7 and 10 (C-113).

²⁸⁶ See Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, para. 9 (C-113).

²⁸⁷ Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, paras. 19 and 24-25 (C-113).

²⁸⁸ Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, para. 10 (C-113).

²⁸⁹ Petition of Rosserlane Consultants Ltd, [2008] CSOH 120 (Outer House, Court of Session) No. 5104, 20 August 2008, para. 12 (C-113).

²⁹⁰ *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2008] EWHC 1785 (Comm), 28 July 2008 (R-26).

²⁹¹ *Berghoff Trading Ltd v Swinbrook Developments Ltd* [2009] EWCA Civ 413, 19 May 2009 (R-27).

Participation Agreement that Credit Suisse breached its duty during the Mandatory Sales Process “to take reasonable precautions and exercise reasonable care to obtain the best price reasonably obtainable for CEG”.²⁹² Second, they claimed that Credit Suisse breached its duty of care in tort as a matter of common law.²⁹³

230. The High Court dismissed Rosserlane and Swinbrook’s claims on 20 February 2015 rejecting the contention that Credit Suisse was under a duty to obtain the best price for CEG and that, even if it had been under such a duty, its conduct did not cause any losses.²⁹⁴

IV. PARTIES’ POSITIONS

A. ON JURISDICTION AND ADMISSIBILITY

(1) The Respondent’s Position

231. The Respondent contends that the Centre and the Tribunal lack jurisdiction over the claims and/or that the claims are inadmissible. It objects on the following grounds to the jurisdiction of the Centre, the competence of the Tribunal and the admissibility of the claims:

- (1) The Claimants failed to prove that they are qualifying investors with qualifying investments under the ECT;
- (2) Dr. Leshkasheli failed to prove that he is a qualifying investor with a qualifying investment under the BIT;
- (3) The Claimants do not meet the jurisdictional requirements of the ICSID Convention;
- (4) The fundamental basis of the claims is contractual;

²⁹² *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, para. 45 (C-17).

²⁹³ *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, para. 45 (C-17).

²⁹⁴ *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384(Ch), 20 February 2015, paras. 128 and 263 (C-17).

- (5) The claims are time-barred under international law;
- (6) Dr. Leshkasheli failed to comply with the notice requirements under the ECT and the BIT;
- (7) Dr. Leshkasheli's failure to comply with the notice requirements under the BIT prevented the Contracting Parties of the BIT to negotiate before the commencement of the arbitration; and
- (8) The Respondent denies the benefits of the ECT to Rosserlane.²⁹⁵

232. Concisely, the Respondent argues that the Claimants neither proved a sufficient connection to their alleged investments nor complied with the threshold requirements of the ECT and the BIT.²⁹⁶ In particular, they failed to evidence ownership of their alleged investments and to comply with the notice requirements under the ECT and the BIT.²⁹⁷ Furthermore, the claims are contractual in nature and they are in any event time-barred. Finally, the Respondent purports to deny the benefits of the ECT to Rosserlane.

233. First, the Respondent contends that the Claimants failed to prove that they are qualifying investors with qualifying investments under the ECT.²⁹⁸ In the same vein, it argues that Dr. Leshkasheli is not a qualifying investor with a qualifying investment under the BIT.²⁹⁹ For the Respondent, the Claimants did not prove ownership of the alleged investments for which they request damages, but instead rely on "unsupported assertions" made by Dr. Leshkasheli.³⁰⁰ The Respondent highlights in this context that the English High Court and Court of Appeal characterized Dr. Leshkasheli as an "unreliable" witness.³⁰¹ The "complex and opaque" ownership structure over "five or

²⁹⁵ Rejoinder, para. 199.

²⁹⁶ Rejoinder, paras. 193-196.

²⁹⁷ Rejoinder, para. 197.

²⁹⁸ Counter-Memorial, paras. 212-216; Rejoinder, paras. 200-228; R-PHB1, paras. 248-363; R-PHB2, paras. 101-105.

²⁹⁹ Counter-Memorial, paras. 256-278; Rejoinder, paras. 229-248; R-PHB1, paras. 384-385.

³⁰⁰ Rejoinder, para. 200.

³⁰¹ Rejoinder, para. 200, referring to *Rosserlane Consultants Ltd v Credit Suisse International* [2017] EWCA Civ 91, para. 61 (R-38); R-PHB1, para. 248.

more levels” dissolves, so says the Respondent, into “an obscure family trust, the Alamar Trust”, of which none of the Claimants are beneficial owners.³⁰²

234. Starting with Dr. Leshkasheli, the Respondent contends that he was not a Georgian national at all relevant times and therefore cannot claim protection as a Georgian national under either the BIT or the ECT.³⁰³ Although the Claimants provided in their Reply copies of Dr. Leshkasheli’s Georgian passport,³⁰⁴ the Hearing and the post-hearing phase confirmed that he was never eligible to hold Georgian citizenship at all,³⁰⁵ considering that Georgian law proscribes dual nationality and that Dr. Leshkasheli misled the Georgian authorities about his Russian citizenship.³⁰⁶ Moreover, his Georgian nationality being revoked in 2011 and reacquired in 2019 was “abusive and akin to corporate restructuring”.³⁰⁷ Even if Dr. Leshkasheli had Georgian nationality at all relevant times, that nationality was neither his dominant nor effective nationality, since his “vital interests were in Russia”.³⁰⁸
235. Moreover, in addition to making “no active contribution” and assuming no risk,³⁰⁹ Dr. Leshkasheli did not establish any ownership of the alleged investments.³¹⁰ Despite the Claimants’ contention that “all roads led to Dr. Leshkasheli”,³¹¹ the evidence shows – so says the Respondent – that Dr. Leshkasheli is not the beneficial owner of the Alamar Trust;³¹² he has “no claim to the trust property nor any ownership or control

³⁰² Rejoinder, paras. 202 and 212; R-PHB1, paras. 301-322.

³⁰³ Rejoinder, para. 211; R-PHB1, paras. 251-291; R-PHB2, paras. 70-76.

³⁰⁴ Rejoinder, para. 206, referring to Reply, para. 193; Passport of Dr. Leshkasheli, 3 July 2019 (C-119); Passport of Dr. Leshkasheli, 30 October 1996 (C-201); Passport of Dr. Leshkasheli, 20 May 2000 (C-202); Passport of Dr. Leshkasheli, 3 November 2001 (C-203); Passport of Dr. Leshkasheli, 10 January 2005 (C-204); Passport of Dr. Leshkasheli, 20 July 2006 (C-205); Passport of Dr. Leshkasheli, 3 July 2009 (C-206).

³⁰⁵ R-PHB1, paras. 251-291; R-PHB2, paras. 70-76.

³⁰⁶ Rejoinder, paras. 207-208, referring to Organic Law of Georgia on Georgian Citizenship, 30 April 2014, Article 21 (R-185); R-PHB2, paras. 71-72.

³⁰⁷ R-PHB1, paras. 287-291; R-PHB2, para. 75.

³⁰⁸ R-PHB1, paras. 278-286.

³⁰⁹ Rejoinder, paras. 204 and 223-228; R-PHB1, paras. 364-383.

³¹⁰ Counter-Memorial, paras. 225-226, 229 and 233; Rejoinder, paras. 204 and 212; R-PHB1, paras. 292-353.

³¹¹ R-PHB1, para. 293.

³¹² R-PHB1, paras. 301-342.

over it”.³¹³ In fact the Trust Deed shows that “the beneficial interest in 100% of the shares in Rosserlane (owner of 90% of the shares in CEG) and 100% of the shares in Erdingside (owner of 10% of the shares in CEG) was held on trust for Tatiana Kisiliova as sole beneficiary”.³¹⁴ The Respondent further disputes that Dr. Leshkasheli was the *de facto* beneficiary of the Alamar Trust through “his relationship with Ms. Kisiliova”, since Ms. Kisiliova’s interest in the Alamar Trust was acquired after their first divorce under Russian law and before their alleged Georgian marriage.³¹⁵ In any event, even if Ms. Kisiliova is the sole beneficiary of the Alamar Trust, she is neither the owner of the property held in the trust, nor enjoys any control over that property.³¹⁶ Accordingly, Dr. Leshkasheli did not make any investment.³¹⁷ In addition, Dr. Leshkasheli’s purported beneficial interest would in any event be “too remote”.³¹⁸ Even if such interest were to be taken at face value, Dr. Leshkasheli’s interest was held at the time of the forced sale “through at least five intermediary shell companies”.³¹⁹

236. Turning now to Rosserlane, the Respondent contends that there is no evidence that Rosserlane “contributed anything of value”.³²⁰ It is an empty shell that “contributed nothing” and “bore no risk”.³²¹ There is no evidence either showing that Rosserlane owned the alleged investments and its interest is in any event “too remote”.³²² According to the Respondent, the ECT “requires an investment and not a mere holding of shares which have been acquired without any consideration”.³²³ In fact, CEG’s payment of USD 51,000 to acquire 51% of Shirvan Oil’s shares represented the charter capital required to register the company: such payment was only a “pass through of a loan to CEG by Lehman Brothers”, and thus “not a contribution from Rosserlane or

³¹³ R-PHB1, para. 296.3.

³¹⁴ R-PHB1, para. 307.

³¹⁵ R-PHB1, paras. 310 and 334-353.

³¹⁶ R-PHB1, paras. 312-322.

³¹⁷ R-PHB1, paras. 334-336.

³¹⁸ Rejoinder, paras. 204 and 220-222.

³¹⁹ Rejoinder, para. 220.

³²⁰ Rejoinder, para. 223.

³²¹ Rejoinder, para. 223.

³²² Rejoinder, para. 205.

³²³ R-PHB1, para. 365.

Dr. Leshkasheli”.³²⁴ Even if the “nominal US\$ 51,000 can be regarded as a contribution, the Claimants did not make any other contributions either”.³²⁵ According to the Respondent, the Claimants accept that “no injection of fresh capital” was made, and there is neither evidence that the sums alleged to have been made “flowed from or through the Claimants themselves” nor that “many of the alleged payments” were made at all.³²⁶

237. Second, the Respondent contends that “the same defects that apply to Dr. Leshkasheli’s claim under the ECT apply to his claim under the BIT”.³²⁷ Here again, Dr. Leshkasheli does not qualify as a protected investor under the BIT and he made no qualifying investments.³²⁸ First, he was not a Georgian national at all relevant times and his dominant and effective nationality was Russian.³²⁹ Second, he did not own the alleged investment at the relevant time.³³⁰ Third, there is no evidence that he made any contribution or assumed any risk.³³¹ In the words of the Respondent, “Dr. Leshkasheli: (i) paid nothing for his alleged investment; (ii) leveraged that alleged investment to obtain financing (none of which involved any risk for Dr. Leshkasheli given that the amount of the loans never exceeded the value of CEG); (iii) repaid all of those loans following the sale of CEG; and (iv) walked away with a profit”.³³²
238. Third, the Respondent submits that the Claimants do not meet the jurisdictional requirements of Article 25 of the ICSID Convention and thus cannot access the protections of the ECT or the BIT.³³³ According to the Respondent, the Claimants fail to satisfy the *Salini* criteria of significant contribution, duration, risk and economic

³²⁴ R-PHB1, para. 365 (footnote omitted).

³²⁵ R-PHB1, para. 376 (footnote omitted).

³²⁶ R-PHB1, para. 379 (footnotes omitted).

³²⁷ R-PHB1, paras. 384-385.

³²⁸ Counter-Memorial, paras. 256-278; Rejoinder, paras. 229-248; R-PHB1, paras. 384-385.

³²⁹ R-PHB1, para. 384.1.

³³⁰ R-PHB1, para. 384.2.

³³¹ R-PHB1, para. 384.3.

³³² Counter-Memorial, para. 278.

³³³ Counter-Memorial, paras. 279-289; Rejoinder, paras. 249-261; R-PHB1, paras. 386-390.

development of the host State.³³⁴ There is no evidence of “any contribution”, let alone that Dr. Leshkasheli or Rosserlane actually provided the funds to pay the USD 51,000 contribution to the partnership fund, or to pay social obligations, salaries, taxes and supplier debts and exploration costs.³³⁵ Nor is there evidence showing that CEG actually incurred USD 20 million for drilling a well. Even if CEG paid that amount “there is no evidence that the Claimants provided those funds”.³³⁶ The absence of “any proven contribution” moreover means that there is no evidence showing that the Claimants assumed “any risks at all”.³³⁷ They “paid nothing (or at best, only a nominal sum)” to acquire an interest in the JV that operated the Kurovdag Field and bore “no risk”.³³⁸ In addition, CEG “utterly failed to rehabilitate and modernize” the Kurovdag Field and thus failed to contribute anything to Azerbaijan’s economic development.³³⁹

239. Fourth, the Respondent argues that the claims are not treaty claims, since their “fundamental basis” is contractual.³⁴⁰ The “core complaints” of the Claimants relate to “alleged breaches of the JVA by SOCAR”, which the Claimants “dressed up as treaty claims” rather than directly pursuing SOCAR under the JVA, in order to avoid the risk of counterclaims and to evade time limitations.³⁴¹ The Respondent specifically contends that the following claims are in reality alleged contractual breaches of the JVA: “(i) the provision of allegedly false data to Schlumberger”, (ii) the so-called export ban, and “(iii) the alleged failure by SOCAR to approve new drilling”.³⁴²
240. Fifth, the Respondent submits that the claims are time-barred as a matter of international law and thus are inadmissible under principles of “equitable prescription and repose”.³⁴³ Although the Claimants accept that the “relevant criteria to determine

³³⁴ Counter-Memorial, paras. 281-282; Rejoinder, para. 250, referring to *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco [I]*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 31 July 2001 (“*Salini*”), para. 52 (CL-18).

³³⁵ Rejoinder, para. 251.1; R-PHB1, para. 388.1.

³³⁶ Rejoinder, para. 251.2.

³³⁷ Rejoinder, para. 256; R-PHB1, para. 388.2.

³³⁸ Rejoinder, para. 258.

³³⁹ Rejoinder, para. 259.

³⁴⁰ Rejoinder, paras. 262-267; R-PHB1, paras. 391-393.

³⁴¹ Rejoinder, paras. 263-264 (footnote omitted).

³⁴² R-PHB1, para. 391, footnote 913.

³⁴³ Rejoinder, paras. 268-299; R-PHB1, paras. 394-410.

equitable prescription” are “unreasonable delay” attributable to the Claimants and that that delay caused prejudice to the Respondent, they wrongly argue that domestic statutes of limitation are irrelevant.³⁴⁴

241. The Respondent explains that events relied on by the Claimants date as far back as 1995, when Mr. Ilham Aliyev allegedly gave assurances of fair treatment to Dr. Leshkasheli. The most recent allegation dates back to the forced sale of CEG by Credit Suisse in February 2008.³⁴⁵ For the Respondent, the Claimants’ “admitted delay” is unreasonable and it is incorrect to argue, as the Claimants do, that Azerbaijan’s alleged conduct was “concealed from the Claimants until the English High Court Proceeding ended”.³⁴⁶ The Claimants’ argument in their Memorial that they were reluctant to pursue claims against Azerbaijan so as to avoid directly implicating President Aliyev in a corrupt scheme shows that they were “aware of the material circumstances” about the forced sale on which they now rely.³⁴⁷ Their argument that they only had actual or constructive knowledge from 2017 onwards is therefore “not remotely credible”.³⁴⁸
242. The Respondent adds that the delay caused it to suffer prejudice.³⁴⁹ Had the Claimants notified their intention to file a claim in 2008, the Respondent could have kept a better documentary record and secured the recollection of people involved in the events to defend against a claim “of this detail and complexity, spanning many years, containing very serious allegations of State-level corruption, and involving claims of such high value”.³⁵⁰ The consequence is that the Respondent is “left with an understandably incomplete record”, including the absence of original field data and other

³⁴⁴ Rejoinder, para. 271.

³⁴⁵ Rejoinder, para. 269.

³⁴⁶ Rejoinder, para. 274 citing Reply, para. 238.

³⁴⁷ Rejoinder, para. 276.

³⁴⁸ Rejoinder, paras. 277-279.

³⁴⁹ Rejoinder, paras. 284-291.

³⁵⁰ Rejoinder, para. 286.

contemporaneous documents.³⁵¹ In the same vein, persons with first-hand knowledge of the events are “either deceased or no longer available”.³⁵²

243. In addition, the Respondent argues that the Claimants’ conduct demonstrates that they were in “repose” and that they abandoned their claims.³⁵³ The Claimants’ “unsubstantiated allegations of corruption” to argue that the Respondent cannot rely on the “equitable doctrine” of repose without having clean hands is unavailable, since there is “no evidence of corruption, nor bad faith by the Respondent”.³⁵⁴ Arbitral tribunals have distinguished between circumstances where a claimant acted promptly, diligently and persistently pursued its claims and those where the claimant neglected its rights, the latter situation applying here.³⁵⁵
244. The Respondent further argues that the claims are time-barred under the three-year limitation set in Azerbaijani law, which law governs the JVA, especially since the claims are contractual in nature.³⁵⁶
245. Sixth, the Respondent claims that Dr. Leshkasheli failed to comply with the notice requirements under Article 26(2) of the ECT and Article 9(2) of the BIT, both of which use “mandatory language” and impose a three- and six-month waiting period, respectively.³⁵⁷ The Trigger Letter does not identify Dr. Leshkasheli as either a claimant or an investor, nor does it mention the BIT. Instead, it refers to the UK-Azerbaijan BIT, which is not invoked in this arbitration.³⁵⁸ The Claimants’ “disingenuous” argument that the failure to abide by these notice requirements is immaterial flies in the face of arbitral case law showing that such requirements are “essential” and “fundamental”, and that non-compliance therewith bars claims from

³⁵¹ Rejoinder, para. 287.

³⁵² Rejoinder, para. 289.

³⁵³ Rejoinder, paras. 292-293.

³⁵⁴ Rejoinder, paras. 292-293.

³⁵⁵ Rejoinder, para. 295.

³⁵⁶ Rejoinder, paras. 296-299.

³⁵⁷ Rejoinder, paras. 300-329.

³⁵⁸ Rejoinder, para. 300.

being heard.³⁵⁹ Dr. Leshkasheli's failure to comply with these notice requirements means that the Respondent "has not consented to address" his claims in this arbitration and that the Tribunal accordingly has no jurisdiction over them.³⁶⁰

246. Seventh, the Respondent argues that Dr. Leshkasheli's failure to notify the existence of a dispute, either to Azerbaijan or Georgia, prevented the Contracting Parties to the BIT from entering into negotiations prior to commencing the arbitration, as required under Article 9(1) of the BIT.³⁶¹ In *Nasib Hasanov v. Georgia*, which also applied Article 9(1) of the BIT, the tribunal confirmed that inter-State negotiations are a pre-condition to arbitration.³⁶² The Claimants do not deny that no negotiations took place between Georgia and Azerbaijan and they do not contend having notified or attempted to notify Georgia of the dispute.³⁶³
247. Eighth, the Respondent contends that, because it denied Rosserlane the benefits of the ECT pursuant to Article 17.1 of that treaty, Rosserlane's claims are inadmissible.³⁶⁴ According to the Respondent, Rosserlane is a "passive shell company" owned and controlled by a Panamanian Alamar Trust that has no substantial business activities in the UK and whose activities entailed no "reciprocal flow of benefits" between the UK and Azerbaijan.³⁶⁵ Other than one board meeting in the Isle of Man on 25 May 2003 involving a transfer of shares, there is no evidence that Rosserlane had business activities in the UK, for instance that it paid any taxes in the UK, conducted annual audits, paid dividends, had premises, employed permanent staff, engaged any services in the UK, had bank accounts or transferred funds.³⁶⁶ In the words of the Respondent,

³⁵⁹ Rejoinder, paras. 301-305, referring to *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010, paras. 312 and 315 (RL-38); *Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, 5 March 2013 ("Tulip"), paras. 71-72 (RL-51); *Murphy Exploration and Production Co International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction, 15 December 2010, paras. 140-157 (RL-41).

³⁶⁰ Rejoinder, paras. 307 and 327.

³⁶¹ Rejoinder, paras. 330-345.

³⁶² Rejoinder, para. 334, referring to *Nasib Hasanov v. Georgia*, ICSID Case No. ARB/20/44, Decision on Respondent's Inter-State Negotiation Objection, 19 April 2022, paras. 88-89 (RL-126).

³⁶³ Rejoinder, para. 343.

³⁶⁴ Rejoinder, paras. 346-360.

³⁶⁵ In its Rejoinder, the Respondent argued that, on the Claimants' case, Rosserlane was owned or controlled by Dr. Leshkasheli, who is a "national of a third state". Rejoinder, para. 356; R-PHB1, paras. 456-473.

³⁶⁶ Rejoinder, para. 358; R-PHB1, paras. 461-463 and 470.

“there is simply no evidence of any activity in the UK at all (much less ‘substantial’ business activities)”.³⁶⁷ Relying on *Limited Liability Company Amto v. Ukraine* (“Amto”), *Ulysseas, Inc. v. The Republic of Ecuador* (“Ulysseas”), *Empresa Eléctrica Del Ecuador, Inc. v. The Republic of Ecuador* (“Empresa Eléctrica”), and *Guaracachi Amercia, Inc. and Rurelec PLC v. Plurinational State of Bolivia* (“Guaracachi”), the Respondent argues that it validly denied the benefits after the initiation of the arbitration as “there is no justification for interpreting Article 17.1 as requiring prospective application of the right to deny benefits”.³⁶⁸ Accordingly, the Tribunal should disregard the “investor-centric approach” adopted in *Plama Consortium Limited v. Republic of Bulgaria* (“Plama”), *Khan Resources Inc., Khan Resources B.V. and CAUC Holdings Company Ltd. v. Government of Mongolia and Monotom Co., Ltd.* (“Khan”), and *Yukos Universal Limited (Isle of Man) v. The Russian Federation* (“Yukos”).³⁶⁹ Finally, the Claimants’ contention that reliance on Article 17 of the ECT amounts to a “free-standing claim for breach of the FET standard” is “absurd”.³⁷⁰

248. Finally, and ninth, the Respondent argues in its Rejoinder that the full protection and security (“FPS”) and free transfer claims are inadmissible, since the former standard was raised for the first time in the Memorial, i.e. it was not mentioned in either the Trigger Letter or in the Request for Arbitration, and the second one similarly was only raised in the Request for Arbitration.³⁷¹

³⁶⁷ Rejoinder, para. 359 (emphasis in the original).

³⁶⁸ Rejoinder, paras. 347-353; R-PHB1, paras. 440-443, referring to *Limited Liability Company Amto v. Ukraine*, SCC Case No. 080/2005, Award, 26 March 2008 (“Amto”), para. 61 (RL-25); *Ulysseas, Inc. v. The Republic of Ecuador*, UNICTRAL, Interim Award, 28 September 2010 (“Ulysseas”), paras. 172-173 (RL-110); *Empresa Eléctrica Del Ecuador, Inc. v. The Republic of Ecuador*, ICSID Case No. ARB/05/9, Award, 2 June 2009 (“Empresa Eléctrica”), para. 71 (RL-105); *Guaracachi Amercia, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (“Guaracachi”), para. 378 (RL-56).

³⁶⁹ R-PHB1, paras. 438-440, 448 and 453, referring to *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005 (“Plama”) (CL-116); *Khan Resources Inc., Khan Resources B.V. and CAUC Holdings Company Ltd. v. Government of Mongolia and Monotom Co., Ltd.*, PCA Case No. 2011-09, Decision on Jurisdiction, 25 July 2012 (“Khan”) (CL-109); *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. 2005-04/AA227, UNCITRAL Interim Award on Jurisdiction and Admissibility, 30 November 2009 (“Yukos”) (CL-1).

³⁷⁰ Rejoinder, para. 360 (footnote omitted).

³⁷¹ Counter-Memorial, paras. 585 and 598; Rejoinder, paras. 617 and 631.

(2) The Claimants' Position

249. The Claimants contend that the Centre and the Tribunal have jurisdiction over the dispute and that the claims are all admissible. Accordingly, they argue that the State's jurisdictional and admissibility objections "must fail" and they request the Tribunal to dismiss all preliminary objections and proceed to the merits.³⁷²
250. First, the Claimants contend that they are qualifying investors with qualifying investments under the ECT.³⁷³ According to them, Dr. Leshkasheli, as a Georgian citizen, and Rosserlane, as an Isle of Man company, are protected investors under the ECT.³⁷⁴ They explain that Dr. Leshkasheli obtained his Georgian passport in 1996 and that he remained a Georgian citizen at all relevant times, as contemporaneous evidence such as the Khamar Loan agreement and the Credit Suisse Loan agreement establish.³⁷⁵ Similarly, the Isle of Man Companies Registry confirms that Rosserlane is an Isle of Man company.³⁷⁶
251. They further explain that Dr. Leshkasheli indirectly, and Rosserlane directly, owned CEG at all relevant times.³⁷⁷ The Respondent's allegations to the contrary are "baseless".³⁷⁸ The evidence shows, so say the Claimants, that Dr. Leshkasheli owned Rosserlane at all relevant times.³⁷⁹ The Khamar and Credit Suisse loans show that Dr. Leshkasheli was the ultimate beneficial owner of CEG.³⁸⁰ In addition, the evidence

³⁷² Reply, para. 189.

³⁷³ Reply, paras. 190-217; C-PHB1, paras. 278-318.

³⁷⁴ Reply, paras. 190-195.

³⁷⁵ Reply, para. 193, referring to Passport of Dr. Leshkasheli (C-119); Passport of Dr. Leshkasheli, 30 October 1996 (C-201); Passport of Dr. Leshkasheli, 20 May 2000 (C-202); Passport of Dr. Leshkasheli, 3 November 2001 (C-203); Passport of Dr. Leshkasheli, 10 January 2005 (C-204); Passport of Dr. Leshkasheli, 20 July 2006 (C-205); Passport of Dr. Leshkasheli, 3 July 2009 (C-206); Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, p. 2 (C-65); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 3 (C-178).

³⁷⁶ Reply, para. 194, referring to Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207).

³⁷⁷ Reply, paras. 190 and 196-204.

³⁷⁸ Reply, para. 196.

³⁷⁹ Reply, paras. 196-197.

³⁸⁰ Reply, para. 197 referring to Loan Agreement between CEG and Khamar Holdings Ltd., 31 May 2006, p. 2 (C-65); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, A.S.S.I.S.T. Protector Limited, Roanoaks Trading Ltd.,

confirms that Rosserlane owned 90% of CEG between 1994 and February 2008 and that therefore Dr. Leshkasheli, through a “chain of companies”, owned CEG at all relevant times.³⁸¹ Specifically, from 1994 to 2003, Dr. Leshkasheli owned 90% of CEG through Rosserlane, which he owned through Cedargrove Limited and Rivercroft Limited, and the remaining 10 % through Erdingside.³⁸² Dr. Leshkasheli then directly owned Rosserlane between 26 March 2003 and 23 February 2006.³⁸³ Thereafter, until 7 July 2006, next to Swinbrook having replaced Erdingside, Rosserlane was owned by MEG, which was owned by Roanoaks, which in turn was owned by Cornhill Nominees on Dr. Leshkasheli’s behalf and then, between 7 July and 18 August 2006 and from 12 December 2006 to 11 July 2008, on the Alamar Trust’s behalf.³⁸⁴ Because of the Ashmore Loan, between 18 August and 12 December 2006, Ashmore and Shellbourne Trustees (BVI) Limited nominally owned Rosserlane, but the Credit Suisse Loan confirms that Dr. Leshkasheli remained the beneficial owner of Rosserlane even in that period.³⁸⁵

252. The Respondent is moreover incorrect when arguing that the Lances owned Rosserlane, since they were hired by Dr. Leshkasheli to hold in trust the Cornhill Nominees’ shares in Roanoaks on his behalf and then on behalf of the Alamar Trust,³⁸⁶ that trust in turn holding the interest in CEG on Dr. Leshkasheli’s behalf.³⁸⁷ The Respondent also errs when arguing that Maltravers, Milford and Swanston owned CEG, since those entities

MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 3 (C-178).

³⁸¹ Reply, paras. 196 and 198.

³⁸² Reply, para. 198(a), referring to Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000 (C-210).

³⁸³ Reply, para. 198(b), referring to Rosserlane Consultants Limited, 19 March 2009 (C-209); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 1 (C-211); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Consultants Written Resolution, 26 March 2003 (C-213).

³⁸⁴ Reply, para. 198(c)-(d), referring to Declaration of Trust, Cornhill Nominees Limited, 2 March 2006 (C-216); Declaration of Trust, Cornhill Nominees Limited, 18 July 2006 (C-217).

³⁸⁵ Reply, para. 198(e).

³⁸⁶ Reply, paras. 196 and 199, referring to Declaration of Trust, Cornhill Nominees Limited, 2 March 2006 (C-216); Declaration of Trust, Cornhill Nominees Limited, 18 July 2006 (C-217); Leshkasheli WS2, para. 9.

³⁸⁷ Reply, paras. 196 and 200, referring to Resolution of the Trustees of The Alamar Trust of 18 September 1995, 2 April 2008 (C-218); Leshkasheli WS2, para. 34.

owned CEG LLP, the parent company of CEG BVI, and Dr. Leshkasheli was the beneficial owner of those companies as well.³⁸⁸

253. The Claimants add that Dr. Leshkasheli and Rosserlane made an active contribution to their investment,³⁸⁹ even if they deny that the ECT contains an “active contribution” requirement,³⁹⁰ as “[m]ost” tribunals (e.g., *Abaclat and others v. Argentine Republic* (“*Abaclat*”), *Ambiente Ufficio S.p.A. and others v. Argentine Republic* (“*Ambiente Ufficio*”), *Alemanni and others v. Argentine Republic* (“*Alemanni*”), *Vladislav Kim and others v. Republic of Uzbekistan* (“*Kim*”), and *Garanti Koza LLP v. Turkmenistan* (“*Garanti Koza*”)) have “consistently” confirmed,³⁹¹ and Respondent’s authorities (*Alapli Elektrik B.V. v. Republic of Turkey* (“*Alapli*”), *Clorox Spain S.L. v. Bolivarian Republic of Venezuela* (“*Clorox*”), and *Standard Chartered Bank v. The United Republic of Tanzania* (“*Standard Chartered Bank*”)) are “inapposite” since they are of no relevance to the ECT.³⁹² For the Claimants, ownership of shares should be enough for a qualifying investment, especially where the ECT speaks of ownership or control of assets not “assets invested by investors” or investments “made by” an investor as was the case in the treaties under review in *Clorox* or *Standard Chartered Bank*.³⁹³ In addition, Dr. Leshkasheli and CEG “transferred vast sums of money to Azerbaijan”,³⁹⁴ including for the payment of Shirvan Oil’s employees’ salaries, taxes and “other expenditures”, for instance, for a new oil loading gantry, a local pipeline, geological

³⁸⁸ Reply, paras. 196 and 201-203.

³⁸⁹ Reply, paras. 190 and 210-217.

³⁹⁰ Reply, paras. 210 and 213.

³⁹¹ Reply, para. 213, referring to *Abaclat and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011 (“*Abaclat*”), paras. 393, 401 and 421 (CL-101); *Ambiente Ufficio S.p.A. and others v. Argentine Republic*, Decision on Jurisdiction and Admissibility, 8 February 2013 (“*Ambiente Ufficio*”), para. 322 (CL-102); *Alemanni and others v. Argentine Republic*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, 17 November 2013, paras. 261-273 (CL-103) (“*Alemanni*”); *Vladislav Kim and others v. Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017 (“*Kim*”), paras. 310-312 (CL-100); *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award, 19 December 2016 (“*Garanti Koza*”), paras. 229-231 (CL-104).

³⁹² Reply, para. 214, referring to *Alapli Elektrik B.V. v. Republic of Turkey*, ICSID Case No. ARB/08/13, Award, 16 July 2012 (“*Alapli*”), paras 364-380 (RL-48); *Clorox Spain S.L. v. Bolivarian Republic of Venezuela*, PCA Case No. 2015-30, Award, 20 May 2019 (“*Clorox*”), paras. 801-802 and 821 (RL-85); *Standard Chartered Bank v. The United Republic of Tanzania*, ICSID Case No. ARB/10/12, Award, 2 November 2012 (“*Standard Chartered Bank*”), paras. 196-225 (RL-49).

³⁹³ Reply, paras. 210 and 215-216, referring to *Clorox*, paras. 801-802 (RL-85); *Standard Chartered Bank*, paras. 196-225 (RL-49).

³⁹⁴ Reply, para. 211 (footnote omitted).

seismic, engineering, and other expert reports.³⁹⁵ The Claimants also affirm having “invested over \$20 million” on a drilling plan, secured financing deals with third parties (Rosserlane having been a party to the Khamar Loan), and raised a total of USD 250 million in trade and commercial financing to modernize and rehabilitate the Kurovdag Field.³⁹⁶ They add that Dr. Leshkasheli was involved in the management of Shirvan Oil, including when attending board meetings as Deputy Chairman.³⁹⁷

254. The Claimants also reject the contention that Dr. Leshkasheli’s interest in CEG was too remote, especially in circumstances where the ECT does not include a “remoteness” test and covers indirect investments.³⁹⁸ Relying on *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic* and *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, they argue that Azerbaijan was aware that Dr. Leshkasheli “was the investor behind CEG” and that he was involved in managing that company.³⁹⁹ Moreover, Mr. Ilham Aliyev encouraged him to invest in Azerbaijan.⁴⁰⁰
255. Second, the Claimants contend that Dr. Leshkasheli also qualifies as a protected investor under the BIT, again pointing to his Georgian citizenship, with a qualifying investment.⁴⁰¹ Referring to their explanations under the ECT, the Claimants reiterate that, at all relevant times, Dr. Leshkasheli indirectly owned and was the ultimate beneficial owner of CEG through a “chain of wholly owned corporate entities”, and that he was actively involved in the decision to invest in Shirvan Oil and in its management.⁴⁰² They reject the Respondent’s “new argument” and “baseless claim”

³⁹⁵ Reply, para. 212.

³⁹⁶ Reply, para. 212.

³⁹⁷ Reply, paras. 212 and 216, referring to Minutes No. 31 of the Meeting Minutes of Board of Shirvan Oil JV, 22 August 2000 (C-313).

³⁹⁸ Reply, paras. 190 and 205-209.

³⁹⁹ Reply, paras. 207-208, referring to *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004, paras. 55-57 (RL-14); *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, UNCITRAL, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, para. 50 (RL-29).

⁴⁰⁰ Reply, paras. 207-208.

⁴⁰¹ Reply, paras. 218-223; C-PHB1, paras. 278-309.

⁴⁰² Reply, paras. 218 and 223.

that the BIT does not protect indirect investments, by arguing that a good faith interpretation of the “broad general definition” of investment in the BIT, i.e. “any type of investment”, must lead to the conclusion that indirect investments are also covered, especially where Azerbaijan’s BIT practice shows that it adopts specific language when it is intended to limit the definition of “investment” to direct investments.⁴⁰³

256. Third, the Claimants contend that they meet the jurisdictional requirements of the ICSID Convention, and in particular the elements of contribution and risk adopted by tribunals when assessing the existence of an investment.⁴⁰⁴ They aver having made “significant contributions of money” and thus assumed a risk, by paying “over \$10 million” for salaries, taxes and other expenditures, and a new oil loading gantry, USD 8.5 million for geological and seismic studies, and investing USD 20 million in a drilling plan, to which must be added Dr. Leshkasheli’s involvement in the management of the JV.⁴⁰⁵
257. Fourth, the Claimants reject the Respondent’s objection that their claims are in reality contract claims.⁴⁰⁶ They contend that this case concerns Azerbaijan’s “misuse of its powers” and that their claims address breaches of international law obligations stemming from the ECT and the BIT, including breaches of the expropriation, FET and FPS standards.⁴⁰⁷
258. Fifth, the Claimants reject the assertion that the claims are time-barred as a matter of international law.⁴⁰⁸ Although they accept that international law recognizes the principles of equitable prescription and the doctrine of repose, they assert that the conditions of those doctrines are not met and emphasize that international law does not impose specific time limits to submit a claim.⁴⁰⁹ First, they argue that their two-year delay in initiating the claim was “reasonable”, since they only became aware “of certain of Azerbaijan’s disruptive actions” in 2017, when the High Court proceedings revealed

⁴⁰³ Reply, paras. 219 and 221 (footnote omitted).

⁴⁰⁴ Reply, paras. 224-231; C-PHB1, paras. 319-320.

⁴⁰⁵ Reply, para. 227 and 229.

⁴⁰⁶ Reply, paras. 232-234; C-PHB1, paras. 320-323.

⁴⁰⁷ Reply, paras. 232-233.

⁴⁰⁸ Reply, paras. 235-244; C-PHB1, paras. 324-334.

⁴⁰⁹ Reply, paras. 235-236 and 242.

that SOCAR had colluded with BSG to frighten off potential bidders for CEG.⁴¹⁰ It follows, second, that the delay was not attributable to them because of their lack of awareness of the extent of Azerbaijan’s interference.⁴¹¹ Moreover, and third, the delay did not prejudice the State.⁴¹² Finally, the concealment of this information and the State’s attempt in a corrupt scheme show that the State did not act in good faith, such that it cannot now appeal to equitable principles.⁴¹³

259. Sixth, the Claimants contend that Dr. Leshkasheli complied with the notice requirements under the ECT and the BIT “by sending” a Notice of Dispute on 1 October 2019.⁴¹⁴ The fact that the Notice did not “explicitly identify” him as a potential claimant is immaterial according to the Claimants, since it was sufficient to describe the dispute and manifest the desire to seek an amicable settlement.⁴¹⁵ For the Claimants “it is not essential for all the eventual claimants to be explicitly identified” and “express reference to the Treaty is unnecessary”.⁴¹⁶ Moreover, the Notice “unambiguously identified” Dr. Leshkasheli as the “ultimate beneficial owner and investor in Azerbaijan” and identified Rosserlane as a potential claimant under the ECT.⁴¹⁷ This is sufficient, as the tribunal in *Enkev Beheer B.V. v. Republic of Poland* confirmed, since it would have made “no material difference” if Dr. Leshkasheli had been expressly identified as a potential claimant in the Notice.⁴¹⁸ Moreover, in *B-Mex, LLC and Others v. United Mexican States* (“*B-Mex*”), jurisdiction was confirmed over claims from additional claimants not included in the notice of dispute and added after the filing of a request for arbitration, since their claims were “co-extensive with those” asserted by the original claimants.⁴¹⁹ By contrast, in *Almasryia for Operating & Maintaining*

⁴¹⁰ Reply, paras. 238-239.

⁴¹¹ Reply, para. 240.

⁴¹² Reply, para. 241.

⁴¹³ Reply, para. 242.

⁴¹⁴ Reply, paras. 245-256; C-PHB1, paras. 335-336.

⁴¹⁵ Reply, para. 248.

⁴¹⁶ Reply, para. 248 (footnote omitted).

⁴¹⁷ Reply, para. 249, referring to Notice of Dispute, 1 October 2019, p. 2 (C-4).

⁴¹⁸ Reply, para. 253, referring to *Enkev Beheer B.V. v. Republic of Poland*, PCA Case No. 2013-01, First Partial Award, 29 April 2014, paras. 317-318 and 321 (CL-5).

⁴¹⁹ Reply, para. 254, referring to *B-Mex, LLC and Others v. United Mexican States*, ICSID Case No. ARB(AF)/16/3, Partial Award, 19 July 2019 (“*B-Mex*”), paras. 132-133 and 273 (CL-6).

Touristic Construction Co. L.L.C. v. State of Kuwait, the case on which the Respondent relies, no affiliate of the claimant had informed the State about the existence of a dispute.⁴²⁰ In any event, the State’s conduct “manifestly demonstrates that further negotiation” would have been futile.⁴²¹

260. Seventh, the Claimants reject the claim that the BIT requires inter-State negotiations before an arbitration can be initiated and the Tribunal should therefore dismiss this objection.⁴²²
261. Eighth, the Claimants submit that the FPS and free transfer claims are admissible, since a reference to the subject matter underlying new claims is sufficient under the ECT’s and the BIT’s notice and waiting period requirements, and because those claims qualify as ancillary claims under Article 46 of the ICSID Convention and ICSID Arbitration Rule 40.⁴²³
262. Ninth and finally, the Claimants contend that the Respondent may not deny the benefits of the ECT to Rosserlane.⁴²⁴ According to the Claimants, neither of the two cumulative requirements of Article 17(1) of the ECT are met, since Rosserlane is not owned or controlled by nationals of a third State and because Rosserlane has substantial business activities in the UK.⁴²⁵ In any event, a “decided majority of tribunals” confirms that the exercise of the right to deny benefits cannot operate retrospectively.⁴²⁶

B. ON ATTRIBUTION

⁴²⁰ Reply, para. 255, referring to *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*, ICSID Case No. ARB/18/2, Award on the Respondent Application under Rule 41(5) of the ICSID Arbitration Rules, 1 November 2019, para. 45 (RL-90).

⁴²¹ Reply, para. 256.

⁴²² Reply, paras. 257-266; C-PHB1, paras. 337-339.

⁴²³ Reply, paras. 267-275; C-PHB1, para. 340.

⁴²⁴ Reply, paras. 276-279; C-PHB1, paras. 341-345.

⁴²⁵ Reply, para. 278; C-PHB1, paras. 343-344.

⁴²⁶ Reply, para. 277; C-PHB1, para. 342, referring to *Plama*, para. 165 (CL-116); *Yukos*, para. 458 (CL-1); *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010 (“*Liman*”) (CL-117), para. 225; *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Award, 16 May 2018 (“*Masdar*”), paras. 235 and 239 (CL-118 and RL-141); *Anatolie Stati and others v. Republic of Kazakhstan*, SCC Case No. V (116/2010), Award, 19 December 2013 (“*Stati*”), para. 745 (CL-26); *Khan*, para. 419 (CL-109).

(1) The Claimants' Position

263. The Claimants submit that all aspects of Azerbaijan's "unlawful conduct", including the conduct of SOCAR, is attributable to the Respondent as a matter of international law.⁴²⁷ First, the Claimants argue that SOCAR is a State organ under Article 4 of the ILC Articles on State Responsibility (the "ILC Articles"): "SOCAR was born and remains as a *State organ* – an executive body charged with direct responsibility for the regulation of the oil sector in Azerbaijan".⁴²⁸ The Claimants explain that SOCAR is wholly owned and financed by the State, that it functioned as a government ministry until 2001 and continued to have "many of the same functions" thereafter, that it was designated as an "executive body" under the 1998 Law on Energy and its implementing Presidential Decree No. 85, enjoyed "regulatory powers" as well as immunities, signed all PSAs as a "government authority", and required the Government's consent to enter into and terminate PSAs.⁴²⁹ In addition, as a matter of fact, SOCAR meets the "complete dependence" test, since it performed core governmental functions, was in direct day-to-day subordination to the central government, and lacked any operational autonomy.⁴³⁰
264. Second, the Claimants assert that SOCAR exercised governmental authority delegated to it under the laws of Azerbaijan and its conduct is therefore attributable to the Respondent under Article 5 of the ILC Articles.⁴³¹ In particular, the President of Azerbaijan delegated to SOCAR the power to conclude PSAs, which it did as governmental authority, and the PSAs became the law of the Azerbaijani State.⁴³² Moreover, SOCAR used its governmental authority to perform "the acts giving rise to Claimants' claims", including by pursuing illegal drilling and providing the JV with "false data", prohibiting CEG from drilling new wells, imposing an "export ban under

⁴²⁷ Reply, paras. 280-345; C-PHB1, paras. 217-276.

⁴²⁸ Reply, para. 280.

⁴²⁹ C-PHB1, paras. 218-228.

⁴³⁰ C-PHB1, paras. 243-255.

⁴³¹ C-PHB1, paras. 256-264.

⁴³² C-PHB1, para. 258.

the guise of a WMO agreement”, and discouraging potential bidders during the Credit Suisse auction process.⁴³³

265. Alternatively, even if SOCAR had not acted under its governmental authority, the Respondent would still be responsible for SOCAR’s “*ultra vires* acts” pursuant to Article 7 of the ILC Articles, including for SOCAR’s “measures aimed at forcing Claimants to sell CEG and interfering with the sale process”.⁴³⁴
266. Third, the Claimants contend that the Respondent would in any event be responsible for SOCAR’s conduct because SOCAR was “at all relevant times, acting under the direction and/or control of the Azerbaijani government”, thus fulfilling the requirements set forth in Article 8 of the ILC Articles.⁴³⁵ Regarding direction, the Respondent provided “planning, direction and support” to SOCAR to force the Claimants to accept Rafi Oil as a partner in the PSA and prevent them from financing the project “outside of the Rafi Oil/PSA structure”.⁴³⁶ Regarding effective control, President Aliyev’s demand that the Claimants accept Rafi Oil as a partner in the PSA shows that the State specifically controlled SOCAR. In addition, “circumstantial evidence” shows that SOCAR was under the instructions of the State to harm the Claimants, including the State’s ownership of SOCAR, the day-to-day management of SOCAR by the State, President Aliyev’s warning that the PSA would only be approved by the Parliament if Rafi Oil was included within CEG-BVI, President Aliyev’s instructions, relayed by Mr. Abdullayev, that Dr. Leshkasheli partner with Mr. Gutsierev, and the latter’s admission that he acted at the behest of President Aliyev.⁴³⁷ On that basis, the Claimants request that the Tribunal find that “all of SOCAR’s measures intended to pressure Dr. Leshkasheli into accepting Rafi Oil were directed by Azerbaijan”.⁴³⁸

⁴³³ C-PHB1, para. 262.

⁴³⁴ C-PHB1, para. 263.

⁴³⁵ C-PHB1, paras. 265-276.

⁴³⁶ C-PHB1, para. 272.

⁴³⁷ C-PHB1, para. 274.

⁴³⁸ C-PHB1, paras. 275.

(2) The Respondent's Position

267. For the Respondent, none of SOCAR's alleged conduct can be attributed to the Respondent under international law.⁴³⁹ The Respondent argues that SOCAR is not a State organ, and it acted neither in the exercise of governmental authority, nor under the instructions of, or at the direction or control of the State.⁴⁴⁰ Since all the claims are based on acts allegedly carried out by SOCAR, not Azerbaijan, and none of those acts are attributable to the Respondent, the claims should be dismissed in their entirety.⁴⁴¹
268. First, the Respondent contends that SOCAR is neither a *de jure* nor a *de facto* organ of the State for the purposes of Article 4 of the ILC Articles.⁴⁴² It is a corporate entity that engages in commercial activities and has separate legal personality under Azerbaijani law and its Charter.⁴⁴³ Moreover, SOCAR neither performs governmental functions, nor is it subordinated to the Government, nor lacks operational autonomy.⁴⁴⁴ Relying on cases, the Respondent argues that it is insufficient to say that SOCAR is a *de facto* State organ because it is State-owned and engages in the development of natural resources.⁴⁴⁵ In fact, "SOCAR enjoys a large degree of operational independence and is not required to obtain approval from ministers when making decisions".⁴⁴⁶ In addition, SOCAR enjoys financial autonomy, has its own budget, owns its own bank

⁴³⁹ Counter-Memorial, paras. 386 and 508; Rejoinder, paras. 361-514; R-PHB1, paras. 474-517; R-PHB2, paras. 120-140.

⁴⁴⁰ Rejoinder, paras. 362 and 365.

⁴⁴¹ Counter-Memorial, para. 496; Rejoinder, para. 514; R-PHB1, para. 517.

⁴⁴² Counter-Memorial, paras. 393-436; Rejoinder, paras. 366-435; R-PHB1, paras. 479-507; R-PHB2, para. 122.

⁴⁴³ Counter-Memorial, paras. 401-402; Rejoinder, paras. 373-374; R-PHB1, para. 476, referring to SOCAR Charter, 24 January 2003, paras. 1.2, 1.4, 1.6 and 1.7 (C-6).

⁴⁴⁴ Counter-Memorial, para. 406.

⁴⁴⁵ Counter-Memorial, paras. 407-409; R-PHB1, para. 480; R-PHB2, para. 129, referring to *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008, paras. 158-162 (RL-30); *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010, paras. 186-187 (RL-39); *Mr. Kristian Almås and Mr. Geir Almås v. The Republic of Poland*, PCA Case No. 2015-13, Award, 27 June 2016, para. 213 (RL-73); *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018, paras. 9.97-9.98 (RL-82); *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award, 29 April 2020, para. 177 (CL-25); *Venezuela US, S.R.L. (Barbados) v. The Bolivarian Republic of Venezuela*, PCA Case No. 2013-34, Partial Award, 5 February 2021, paras. 188-191 (RL-96).

⁴⁴⁶ R-PHB1, para. 477.3; R-PHB2, para. 130.

accounts, holds property in its own name and pays taxes.⁴⁴⁷ Moreover, it bears liability for its own obligations and it can sue and be sued in court.⁴⁴⁸

269. Second, SOCAR was not empowered under Azerbaijani law to exercise governmental authority for the purposes of Article 5 of the ILC Articles and none of SOCAR's alleged conduct involved the exercise of such authority.⁴⁴⁹ Neither the designation in 2010 of SOCAR as an executive body under the 1998 Law on Energy, nor its description as a "Governmental Authority" under the PSA, nor the mention in the JVA that, on authorization from the Government, SOCAR could implement the right to exploit hydrocarbons demonstrate that SOCAR was empowered under Azerbaijani law to exercise governmental authority within the meaning of Article 5 of the ILC Articles.⁴⁵⁰ Similarly, the Claimants' "baseless" assertions that SOCAR exercised governmental functions prior to and following the establishment of the Ministry of Energy do not detract from the fact that SOCAR was never expressly empowered under domestic law to exercise any governmental authority.⁴⁵¹ In addition, the Claimants failed to demonstrate that SOCAR's alleged acts were carried out pursuant to its powers as an "executive body" under the 1998 Law on Energy or as a "Governmental Authority" under the PSA or the JVA.⁴⁵² In fact, all of SOCAR's impugned acts, so says the Respondent, were "obviously contractual or commercial in nature".⁴⁵³ The allegation that SOCAR provided false data to Schlumberger relates to a contractual obligation under the JVA.⁴⁵⁴ The alleged refusal to approve drilling programs concerns the exercise of SOCAR's power as a shareholder and involved no exercise of governmental authority.⁴⁵⁵ Similarly, neither the alleged export ban, nor the alleged harassment of

⁴⁴⁷ Counter-Memorial, para. 426.3; Rejoinder, paras. 421-422; R-PHB1, para. 485.

⁴⁴⁸ Counter-Memorial, para. 401.

⁴⁴⁹ Counter-Memorial, para. 437-472; Rejoinder, paras. 436-472; R-PHB1, paras. 508-513; R-PHB2, para. 122.

⁴⁵⁰ Rejoinder, paras. 443-444.

⁴⁵¹ Rejoinder, paras. 453-455.

⁴⁵² Rejoinder, paras. 459-461.

⁴⁵³ Rejoinder, para. 464.

⁴⁵⁴ Rejoinder, para. 465.

⁴⁵⁵ Rejoinder, para. 467.

CEG's management, nor the alleged interference in the sale process involved any exercise of public authority.⁴⁵⁶

270. Third, the Claimants' reliance on Article 7 of the ILC Articles is "misplaced" since that provision only applies to State organs or entities empowered to exercise governmental authority, none of which applies to SOCAR.⁴⁵⁷ Moreover, the acts of SOCAR that the Claimants complain about are contractual and commercial falling outside the scope of Article 7 of the ILC Articles.⁴⁵⁸
271. Fourth, the Respondent argues that SOCAR was neither instructed, nor directed, nor controlled by the State for the purposes of Article 8 of the ILC Articles.⁴⁵⁹ The Claimants do not meet the "high threshold" required under that Article 8, since they failed to demonstrate that the Respondent exercised both general control over SOCAR and that each of SOCAR's impugned acts were specifically carried out on the instructions of, or at the direction or control of the State.⁴⁶⁰ According to the Respondent, Article 8 of the ILC Articles includes a "requirement of specificity", meaning that it must be shown that the State gave "specific directions, relating to each specific act which is alleged", something the Claimants have failed to demonstrate.⁴⁶¹ The fact that SOCAR is owned by the State and thus may be subject to its general control is insufficient for the purposes of Article 8, since the State would only be responsible if the impugned act was "carried out pursuant to specific instructions for the State or if the State exercised specific control in relation to that act".⁴⁶² The assertion that President Aliyev's alleged involvement in forcing Rafi Oil onto CEG means that he directed all of SOCAR's impugned conduct is not only "wrong as a matter of law", but also "completely unsupported by any evidence":⁴⁶³ there is "no evidence whatsoever to suggest that President Aliyev had any role in Rafi Oil's dealings with

⁴⁵⁶ Rejoinder, paras. 469-471.

⁴⁵⁷ Rejoinder, paras. 473-481.

⁴⁵⁸ Rejoinder, paras. 477-478.

⁴⁵⁹ Counter-Memorial, paras. 473-488; Rejoinder, paras. 481-513; R-PHB1, paras. 514-516; R-PHB2, para. 122.

⁴⁶⁰ Counter-Memorial, para. 474; R-PHB1, para. 515; R-PHB2, para. 138.

⁴⁶¹ Rejoinder, paras. 485 and 488.

⁴⁶² Counter-Memorial, para. 480.

⁴⁶³ Counter-Memorial, para. 487.

CEG, much less that Rafi Oil's involvement was a pre-requisite to the approval of the PSA or that any of SOCAR's conduct was directed at ensuring Rafi Oil's involvement in the project".⁴⁶⁴ Moreover, there is no evidence that President Aliyev met with potential bidders during the forced sale process or that he otherwise interfered in that process.⁴⁶⁵

⁴⁶⁴ Counter-Memorial, para. 487; Rejoinder, para. 506.

⁴⁶⁵ Rejoinder, para. 508.

C. ON THE MERITS

(1) The Claimants' Position

272. The Claimants contend that this arbitration “is about corruption”.⁴⁶⁶ According to them, President Aliyev and “his cronies” at SOCAR “sought to use the levers of State power” to coerce them into a “corrupt scheme to enrich themselves”.⁴⁶⁷ This scheme involved forcing the Claimants to accept Rafi Oil as a “silent partner” in the PSA structure in order to “divert half of the profits from the project to the Presidential family and SOCAR leadership”.⁴⁶⁸ When that “plan” failed, President Aliyev and SOCAR prevented the Claimants from financing the project and interfered in the subsequent sale process of CEG “in order to ensure that the investment would end up in the hands of cronies of the Aliyev regime who were willing to accept the same scheme for a price vastly below its fair market value”.⁴⁶⁹
273. The Claimants explain that their plan to “revitalize” the Kurovdag Field was first frustrated in 2001 when SOCAR undermined the development of the field by providing false well data to Schlumberger.⁴⁷⁰ According to the Claimants, the data provided “by SOCAR” was so “grossly inaccurate” that it made Schlumberger’s technical analysis “worthless”, and thus “completely” derailed the MPA.⁴⁷¹ In fact, this situation caused Schlumberger to terminate the MPA and “the opportunity was lost”.⁴⁷²
274. Subsequently, against the backdrop of rising oil prices and in order to attract project finance loans (on a non-recourse basis), Dr. Leshkasheli sought to convert the JVA into a PSA.⁴⁷³ However, President Aliyev “advised” him that a PSA “would only be approved if he agreed to take on Rafi Oil as a partner”.⁴⁷⁴ In addition, he “insisted” that

⁴⁶⁶ Memorial, para. 1.

⁴⁶⁷ Memorial, para. 1.

⁴⁶⁸ Memorial, paras. 1, 10.

⁴⁶⁹ Memorial, paras. 1, 11.

⁴⁷⁰ Memorial, paras. 7 and 56-71.

⁴⁷¹ Memorial, paras. 56-71.

⁴⁷² Memorial, para. 7.

⁴⁷³ Memorial, paras. 72-77.

⁴⁷⁴ Memorial, paras. 9 and 78-83.

Rafi Oil obtain a 50% stake in CEG BVI as “a condition of parliamentary approval”.⁴⁷⁵ Dr. Leshkasheli only agreed to partner with Rafi Oil on condition that its ultimate beneficial owner be disclosed, something President Aliyev and SOCAR refused to do, and which circumstance explains why he “never moved his investment to the PSA”.⁴⁷⁶ The Claimants contend that they only later came to understand “that the ultimate beneficiaries of Rafi Oil were the most powerful people in Azerbaijan – its President and the leaders of SOCAR”.⁴⁷⁷

275. In response to Dr. Leshkasheli’s decision not to transition towards the PSA, President Aliyev “and his cronies decided to starve the project of access to cash”.⁴⁷⁸ They did so, so say the Claimants, by “abruptly” imposing an export ban on WMO and by prohibiting any new drilling.⁴⁷⁹
276. The Claimants explain that they were then forced to sell CEG, but that President Aliyev and SOCAR interfered in the sales process by discouraging potential bidders and ensuring that CEG would be sold at a below market price to Berghoff, a company “controlled by Russian oligarch Mikhail Gutseriev”.⁴⁸⁰ Mr. Gutseriev shortly thereafter “transferred the asset to a new entity, GEAZ, in which a 50% share was owned by Union Grand Energy” (“Union Grand”), a company owned by Mr. Anar Aliyev, a “known middleman for corrupt officials in Azerbaijan”.⁴⁸¹ Three months later, Union Grand acquired Rafi Oil⁴⁸² and Mr. Gutsierev then allegedly conveyed to Dr. Leshkasheli an offer from President Aliyev for USD 25 million to waive any claims against SOCAR and Azerbaijan.⁴⁸³

⁴⁷⁵ Memorial, para. 81.

⁴⁷⁶ Memorial, paras. 10-11 and 82-83.

⁴⁷⁷ Memorial, para. 10.

⁴⁷⁸ Memorial, paras. 11 and 84-99.

⁴⁷⁹ Memorial, para. 12.

⁴⁸⁰ Memorial, paras. 15 and 100-153.

⁴⁸¹ Memorial, para. 15.

⁴⁸² Memorial, para. 15.

⁴⁸³ Memorial, para. 16.

277. The Claimants contend that the Credit Suisse Proceedings confirm their version of events.⁴⁸⁴ In those proceedings, the High Court is said to have found that SOCAR was “out to get” Dr. Leshkasheli, that there had been “extraordinary” collusion between SOCAR and “its preferred buyers”, and that SOCAR frightened off “any other bidders”.⁴⁸⁵
278. According to the Claimants, the Respondent’s conduct outlined above breached various provisions of the ECT and the BIT:

*“By undermining the development of the Field, seeking to coerce a corrupt deal with Rafi Oil, and rigging the auction of CEG, Azerbaijan breached its obligations under the ECT and Treaty: (a) not to expropriate investments without due process, for a public purpose, and only upon the payment of prompt, adequate, and effective compensation; (b) to accord investors and their investments fair and equitable treatment; (c) not to impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of a foreign investor’s investments (this obligation is found in the ECT alone); (d) to allow foreign investors freely to transfer the proceeds from the liquidation of their investments; and (e) under the ECT and the Treaty to afford Claimants’ investment full legal protection and security”.*⁴⁸⁶

279. First, the Claimants submit that the Respondent unlawfully expropriated the Claimants’ investments “by means of an indirect, creeping expropriation” in breach of Article 13 of the ECT and Article 6 of the BIT.⁴⁸⁷ It did so by undermining the development of the Kurovdag Field, forcing Rafi Oil upon the Claimants as a partner in the PSA, preventing the Claimants from financing the project “outside of the Rafi Oil/PSA structure”, ultimately forcing them to sell CEG, and interfering in the sales process.⁴⁸⁸ The result of these measures, which qualify as a creeping expropriation

⁴⁸⁴ Memorial, paras. 17 and 154-157.

⁴⁸⁵ Memorial, para. 17.

⁴⁸⁶ Memorial, para. 228.

⁴⁸⁷ Memorial, paras. 229-276; Reply, paras. 347-375; C-PHB1, paras. 149-163; C-PHB2, paras. 10, 39-40 and 60.

⁴⁸⁸ C-PHB1, para. 149.

according to the Claimants, was “to force a sale of CEG to a preferred bidder and at a depressed price”.⁴⁸⁹

280. For the Claimants, the testimony of Mr. Abdullayev and contemporaneous documents show that President Aliyev “and various other officials” “demanded that Claimants include Rafi Oil within the CEG BVI structure in exchange for converting the JVA into a PSA”.⁴⁹⁰ When Dr. Leshkasheli refused to transition to the PSA because of “Azerbaijan’s failure to provide Rafi Oil’s UBO”, the Respondent “implemented a series of measures” aimed at pushing the Claimants “to change their position and/or to prevent Claimants from independently financing Kurovdag”, including appointing Mr. Abdullayev as SOCAR’s president and Mr. Imanov as the JV’s general director, establishing an audit commission “to harass CEG”, imposing an export ban, refusing new drilling, and allowing Mr. Ismayilov to harass and threaten CEG’s employees.⁴⁹¹ These measures “financially starved” CEG and, coupled with the measures causing the forced sale of CEG, the Claimants contend that the ensuing “total loss of control” of their investment amounts to an indirect expropriation.⁴⁹² For these reasons, the Claimants submit that “the Tribunal should find that Azerbaijan expropriated CEG by forcing Claimants to sell it”.⁴⁹³
281. Second, the Claimants contend that the Respondent’s conduct also breached the fair and equitable treatment (“FET”) standard set forth in Article 10(1) of the ECT and Article 3(2) of the BIT.⁴⁹⁴ Specifically, the Claimants argue that the Respondent breached their purported legitimate expectations, that it did not act in a transparent manner and acted in bad faith.⁴⁹⁵ Relying on cases, they submit that legitimate expectations are “the primary concern” of the FET standard and that the right to

⁴⁸⁹ C-PHB1, paras. 151-152.

⁴⁹⁰ C-PHB1, para. 154 (footnote omitted).

⁴⁹¹ C-PHB1, paras. 155-156 (footnote omitted).

⁴⁹² C-PHB1, paras. 156 and 158.

⁴⁹³ C-PHB2, para. 60.

⁴⁹⁴ Memorial, paras. 277-289; Reply, paras. 376-389; C-PHB1, paras. 164-181; C-PHB2, paras. 13, 41, 48 and 60.

⁴⁹⁵ Memorial, para. 287; Reply, paras. 377 and 388.

transparency is “paramount among such legitimate expectations”.⁴⁹⁶ The Claimants add that, as in *El Paso Energy International Company v. The Argentine Republic*, there is a “sufficient causal link” between Azerbaijan’s measures and the forced sale of CEG to find a FET violation.⁴⁹⁷

282. The Claimants submit that they legitimately expected that (i) “Azerbaijan, acting through SOCAR” would provide accurate well data to Schlumberger, (ii) they would be allowed to enter into “a legitimate PSA” allowing them to obtain “non-recourse long-term financing”, (iii) they would not be punished for “refusing to acquiesce in the government’s plan to siphon profits from the Kurovdag project to the Presidential family”, and (iv) they would not be hindered in their efforts to sell CEG for a fair market price through “an arms’ length transaction”.⁴⁹⁸
283. According to them, the Respondent frustrated each of the four expectations mentioned in the previous paragraph. As regards (i) in paragraph 282 above, the Claimants argue that it was reasonable and legitimate to expect that the Respondent would provide accurate data about the Kurovdag Field, but instead it “knowingly perpetrated a scheme of false record-keeping designed to cover up illegal conduct” by keeping “two sets of books”, the first “official but inaccurate” and the second with “unofficial records” of illegal drillings.⁴⁹⁹ In doing so, “Azerbaijan, through SOCAR,” provided “false”, “incomplete” and “incorrect” data to CEG and the JV, resulting in “obliterate[ing] any chance” of developing the Kurovdag Field under the MPA.⁵⁰⁰
284. As regards (ii) in paragraph 282 above, the Claimants contend that when they signed the PSA with SOCAR, it was reasonable to expect that parliament would approve the PSA “without any unreasonable and corrupt preconditions” and that President Aliyev

⁴⁹⁶ Memorial, para. 280, referring to *Novenergia II – Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. The Kingdom of Spain*, SCC Case No. 2015/063, Final Award, 15 February 2018, para. 648 (CL-57); *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Award, 25 November 2015, para. 7.75 (CL-45); *Tecnicas Medioambientales Tecmed S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, para. 164 (CL-42); *Waste Management, Inc. v. United Mexican States (“Number 2”)*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, para. 138 (CL-58).

⁴⁹⁷ Memorial, para. 281, referring to *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, paras. 459, 488, 507 and 518 (CL-51).

⁴⁹⁸ Memorial, paras. 283, 284, 286 and 287.

⁴⁹⁹ Memorial, para. 283; Reply, para. 377.

⁵⁰⁰ Memorial, para. 283; Reply, para. 377.

would not abuse his authority to impose Rafi Oil as a PSA partner without disclosing its beneficial owner.⁵⁰¹ According to the Claimants, they had “a legitimate expectation that they would be allowed to enter into a legitimate PSA – one that would facilitate obtaining non-recourse long-terms financing and not risk placing Claimants in legal jeopardy or require them to participate in murky schemes”.⁵⁰²

285. As regards (iii) in paragraph 282 above, the Claimants argue that the Azerbaijani government punished them for refusing to accept President Aliyev’s corrupt “plan to siphon profits from the Kurovdag project”.⁵⁰³ It allegedly did so by replacing the JV’s general director and shutting CEG out of management, imposing an export ban on oil, refusing to approve drilling programs, refusing to approve annual programs and budgets, and providing false information to potential bidders during the sale process.⁵⁰⁴ These measures “aimed at financially starving CEG and shutting it out of the management of the Field”.⁵⁰⁵
286. As regards (iv) in paragraph 282 above, the Claimants contend that the State’s efforts to rig the auction during the sale process breached their expectation to enter into an “arms’ length transaction and sell for a fair market price”.⁵⁰⁶ According to them, the Respondent “grossly interfered with the sales process” by engaging “in bad faith conduct trying to rig the auction”.⁵⁰⁷ For instance, SOCAR wanted to ensure that Dr. Leshkasheli would not make “a large profit” by spreading false information and “adverse propaganda”, including by falsely accusing CEG of breaching the JVA or requiring SOCAR’s prior consent to any sale.⁵⁰⁸ Moreover, President Aliyev and Mr. Abdullayev “met with several bidders and convinced them either to withdraw or reduce their offers”.⁵⁰⁹

⁵⁰¹ Memorial, para. 284; Reply, para. 381.

⁵⁰² Memorial, paras. 284-285 (footnote omitted); Reply, para. 381.

⁵⁰³ Memorial, para. 286; Reply, para. 381.

⁵⁰⁴ Memorial, para. 286; Reply, para. 381.

⁵⁰⁵ Reply, para. 382.

⁵⁰⁶ Memorial, para. 287; Reply, para. 387.

⁵⁰⁷ Memorial, para. 287; Reply, para. 387.

⁵⁰⁸ Memorial, paras. 287-289; Reply, para. 387.

⁵⁰⁹ Reply, para. 387 (footnote omitted).

287. The Claimants further argue that “efforts on the part of the sovereign to manipulate its laws and regulations to punish an investor for refusing to participate in corrupt practices” amount to “a clear violation” of the FET standard.⁵¹⁰ They add that “Azerbaijan’s conduct toward Claimants – through which it torpedoed the MPA, tried to coerce Claimants into accepting Rafi Oil as a PSA partner, and rigged the auction for CEG – shattered any reasonable concept of fairness under the ECT and the Treaty”.⁵¹¹ In particular, devising a corrupt scheme and punishing a foreign investor for not participating in it breached “the principles of transparency and good faith”.⁵¹²
288. Third, the Claimants argue that the measures taken by the Respondent were unreasonable and discriminatory and thus in breach of Article 10(1) of the ECT.⁵¹³ These measures include President Aliyev’s “corrupt scheme” to impose Rafi Oil as CEG’s “silent partner” in the PSA, the Respondent’s “retaliatory measures imposing an export ban, prohibiting drilling new wells, and employing the State apparatus (from customs to local fire brigades) to harass Claimants and CEG’s management”, and its “interference in the sale process”.⁵¹⁴
289. Fourth, the Claimants submit that the Respondent failed to afford them FPS in breach of Article 10(1) of the ECT and Article 3(2) of the BIT.⁵¹⁵ Relying on cases, they argue that the FPS standard extends to legal security and requires the host State to ensure “legal protection for the investor”.⁵¹⁶ They add that the FPS standard is not limited to

⁵¹⁰ Memorial, para. 280; Reply, para. 383.

⁵¹¹ Memorial, para. 282.

⁵¹² Reply, para. 383 (footnote omitted).

⁵¹³ Memorial, paras. 290-297; Reply, paras. 390-397; C-PHB1, paras. 182-195; C-PHB2, paras. 24, 27, 32, 41 and 60.

⁵¹⁴ Memorial, paras. 294-297; Reply, paras. 391-397.

⁵¹⁵ Memorial, paras. 298-306; Reply, paras. 398-414; C-PHB1, paras. 196-211; C-PHB2, paras. 41, 48 and 60.

⁵¹⁶ Memorial, paras. 298-300; Reply, paras. 399-406, referring to *Saluka Investments BV (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, paras. 483-484 (CL-63); *RSM Production Corporation v. Grenada [III]*, ICSID Case No. ARB/10/6, Award, 10 December 2010, paras. 7.2.16-7.2.19 (CL-64); *Mr. Jürgen Wirtgen v. Czech Republic*, PCA Case No. 2014-03, Final Award, 11 October 2017, paras. 49-51 (CL-65); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, para. 180 (CL-38); *Frontier Petroleum Servs. Ltd. v. Czech Republic*, UNCITRAL, Final Award, 12 November 2010, para. 263 (CL-66); *National Grid P.L.C. v. Argentine Republic*, UNCITRAL, Award, 3 November 2008, paras. 187-190 (CL-60); *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, para. 613 (CL-43); *Československá Obchodní Banka A.S. v. The Slovak Republic*, ICSID Case

acts of third parties, but extends to acts of the host State.⁵¹⁷ On that basis, they argue that Azerbaijan did not maintain a secure investment environment and failed to take reasonable measures to ensure that President Aliyev and SOCAR would not coerce them into a corrupt scheme or harass them or their potential partners.⁵¹⁸

290. Fifth and finally, the Claimants contend that the Respondent impaired their right to freely transfer their investments in breach of Article 14(1)(e) of the ECT and Article 7(1) of the BIT.⁵¹⁹ For them, the forced sale of CEG below market value “to a politically-favored purchaser” restricted their ability to transfer the proceeds of their investments and Azerbaijan “unlawfully retained the balance of proceeds from the liquidation” of CEG.⁵²⁰

(2) The Respondent’s Position

291. The Respondent denies having breached the ECT or the BIT and requests that all claims be dismissed.⁵²¹ Those claims are “opportunistic, illegitimate and misconceived”, as well as “unfounded and abusive”.⁵²² In reality, they are “out-of-time contractual grievances” against SOCAR disguised as treaty claims in relation to conduct that cannot

No. ARB/97/4, Award, 29 December 2004, para. 170 (CL-124); *Azurix v. Argentina*, ICSID Case No. ARB/01/12, Award, 14 July 2006, para. 408 (CL-61); *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (“*Biwater*”), para. 719 (RL-26); *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007, para. 286 (CL-83); *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, para. 7.4.15 (CL-44); *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009, para. 246 (CL-125); *AES Summit Generation Limited and AES-Tisza Erőmű Kft v. The Republic of Hungary*, ICSID Case No. ARB/07/22, Award, 23 September 2010, para. 13.3.2 (CL-126); *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. The Argentine Republic*, UNCITRAL Decision on Liability, 30 July 2010, para. 173 (RL-40); *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010, para. 343 (CL-127); *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, para. 326 (CL-128); *Renée Rose Levy v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014, para. 406 (CL-129); *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, para. 646 (CL-130).

⁵¹⁷ Reply, paras. 407-408, referring to *Biwater*, para. 730 (RL-26); *Peter de Sutter and others v. Republic of Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020, para. 303 (RL-93).

⁵¹⁸ Memorial, paras. 303-306; Reply, paras. 410-414.

⁵¹⁹ Memorial, paras. 307-313; Reply, paras. 415-421; C-PHB1, paras. 212-216; C-PHB2, paras. 52 and 60.

⁵²⁰ Memorial, paras. 310-313; Reply, paras. 418-421.

⁵²¹ Counter-Memorial, paras. 497-609; Rejoinder, paras. 515-637; R-PHB1, paras. 518-552; R-PHB2, paras. 141-163.

⁵²² Rejoinder, para. 1; R-PHB1, para. 1.

be attributed to Azerbaijan.⁵²³ For the Respondent, the Claimants “misused an interest in the Shirvan Oil joint venture that was given to them practically for free (a nominal sum of US\$51,000), misappropriated the JV’s assets, and illegitimately leveraged that interest to enrich themselves”.⁵²⁴ Instead of providing the promised investment and technical expertise to rehabilitate and develop the Kurovdag field, the Claimants “invested nothing” and “seriously mismanaged the JV”, by “misappropriating millions of dollars of the JV’s funds”, only to sell their investment with a “substantial windfall of US\$245 million in 2008”.⁵²⁵ The Claimants’ “far-fetched tale” that President Aliyev and his cronies coerced Dr. Leshkasheli into a corrupt scheme is advanced “without a shred of evidence” and only serves “to distract from their hopeless case on the merits”.⁵²⁶

292. As regards the expropriation claim, the Respondent denies having breached Article 13(1) of the ECT and Article 6(1) of the BIT.⁵²⁷ According to the Respondent, none of the disputed measures amount to an indirect or a creeping expropriation.⁵²⁸ First, there was “no expropriatory conduct” that, individually or cumulatively, resulted in the “effective neutralization or a substantial deprivation of the Claimants’ alleged investment”.⁵²⁹ Neither Azerbaijan nor SOCAR provided false or inaccurate data to Schlumberger.⁵³⁰ The JV had access to all records and data since 1997 and Dr. Leshkasheli accepted that the “allegedly undisclosed perforations” were made by the JV, not SOCAR.⁵³¹ Moreover, neither President Aliyev nor SOCAR sought to coerce Dr. Leshkasheli into a “corrupt scheme”.⁵³² In fact, CEG decided to abandon the PSA and there was no deprivation, since the Claimants “continued to have the same

⁵²³ Counter-Memorial, paras. 1 and 385-496; Rejoinder, paras. 361-514; R-PHB1, paras. 479-517; R-PHB2, paras. 120-140.

⁵²⁴ Rejoinder, para. 1.

⁵²⁵ R-PHB1, para. 1.

⁵²⁶ R-PHB1, paras. 7-8.

⁵²⁷ Counter-Memorial, paras. 498-546; Rejoinder, paras. 517-561; R-PHB1, paras. 519-532; R-PHB2, paras. 143-148.

⁵²⁸ R-PHB1, para. 524; R-PHB2, para. 143.

⁵²⁹ R-PHB1, para. 525; R-PHB2, para. 145.

⁵³⁰ Rejoinder, paras. 535-538; R-PHB1, paras. 127-130 and 525.1; R-PHB2, para. 145.1.

⁵³¹ Rejoinder, paras. 539-540; R-PHB1, paras. 127-130 and 525.1; R-PHB2, para. 145.1.

⁵³² R-PHB1, para. 525.2; R-PHB2, para. 145.2.

rights under the JVA that they did prior to the attempted transition to a PSA”.⁵³³ In addition, neither Azerbaijan nor SOCAR took steps to prevent CEG from financing or developing the Kurovdag Field.⁵³⁴ The nomination of Mr. Imanov as the JV’s General Director was “legitimate” and “necessary” to address “CEG’s many violations of the JVA”.⁵³⁵ Moreover, there were no export or drilling bans, since CEG and the JV remained free to sell oil for export and continued to do so, and SOCAR was “entirely justified” not to approve the drilling plans in 2006 and 2007, since CEG had not yet completed the work program under Phase 1 envisaged in the JVA.⁵³⁶ Finally, neither Azerbaijan nor SOCAR interfered in or frustrated the sale process in 2007 and 2008.⁵³⁷ The failure of the first voluntary sale phase resulted from Dr. Leshkasheli’s “own conduct” and there is “no direct evidence” that SOCAR “or anyone representing the Republic of Azerbaijan” discouraged potential buyers during the subsequent forced sale phase.⁵³⁸

293. Second, the Respondent argues that none of the disputed measures can be attributed to the State, since they “were, at best, acts by SOCAR” in relation to “purely contractual issues” under the JVA and not acts “carried out in the exercise of the State’s sovereign powers”.⁵³⁹
294. Third, the Respondent submits that there is “no direct causal link” between the disputed measures and the sale of CEG.⁵⁴⁰ Specifically, that sale was not the only and unavoidable consequence of those measures.⁵⁴¹ In reality, so says the Respondent, it was always Dr. Leshkasheli’s “commercial strategy” to sell CEG, as the “potential IPO” in September 2004, the marketing of CEG in 2006 and Dr. Leshkasheli’s “own disruptive actions” during the first voluntary sale phase demonstrate.⁵⁴² Dr. Leshkasheli

⁵³³ R-PHB1, para. 525.2; R-PHB2, para. 145.2.

⁵³⁴ Rejoinder, para. 541; R-PHB1, para. 525.3 (footnote omitted); R-PHB2, para. 145.3.

⁵³⁵ Rejoinder, para. 541.1; R-PHB1, para. 525.3; R-PHB2, para. 145.3.

⁵³⁶ Rejoinder, paras. 541.2 and 541.3; R-PHB1, para. 525.3; R-PHB2, para. 145.3.

⁵³⁷ Rejoinder, para. 542; R-PHB1, para. 525.5; R-PHB2, para. 145.4.

⁵³⁸ R-PHB1, para. 525.5; R-PHB2, para. 145.4.

⁵³⁹ Rejoinder, paras. 518.1; R-PHB1, paras. 526 and 531; R-PHB2, para. 146.

⁵⁴⁰ Rejoinder, paras. 518.4; R-PHB1, para. 530; R-PHB2, para. 147.

⁵⁴¹ Rejoinder, paras. 518.2, 518.3 and 547-561; R-PHB1, para. 530; R-PHB2, para. 147.

⁵⁴² R-PHB1, para. 530; R-PHB2, para. 147.

“freely negotiated” the loan agreement with Credit Suisse, the latter taking control of the sale process under the terms of that agreement.⁵⁴³

295. Fourth, the Respondent argues that there was in any event “no loss in value”, let alone a substantial deprivation, since the Claimants realized USD 245 million from the sale of CEG, which amounts to a “windfall” considering they “paid nothing for CEG’s interest in the JV”.⁵⁴⁴
296. The Respondent further denies having breached the FET standard in Article 10(1) of the ECT and Article 3(2) of the BIT.⁵⁴⁵ It submits that it did not frustrate any legitimate expectations of the Claimants.⁵⁴⁶ First, the Claimants “did not identify any specific promise or representation” that could have engendered any legitimate expectation.⁵⁴⁷ Second, they did not demonstrate that they relied on any such expectations when deciding to invest in 1995.⁵⁴⁸ Finally, they did not demonstrate that any conduct attributable to the Respondent frustrated any of those expectations.⁵⁴⁹ Regarding the alleged false data provided to Schlumberger, the Respondent argues that it had “no involvement in the MPA between CEG, Shirvan Oil and Schlumberger” and adds that SOCAR neither provided false data nor was responsible for the failure of the MPA.⁵⁵⁰ As regards the PSA, there was no reasonable expectation in 1995 that the JVA would be converted into a PSA.⁵⁵¹ In any event, CEG “elected to withdraw from the PSA” and the Claimants’ case is premised on the “unsubstantiated assertion” that President Aliyev conditioned the PSA’s approval by parliament on the inclusion of Rafi Oil as a PSA partner.⁵⁵² The claim that the Respondent “punished” the Claimants for refusing to enter into the “corrupt scheme”, apart from being “factually incorrect” and relating to

⁵⁴³ R-PHB1, para. 530; R-PHB2, para. 147.

⁵⁴⁴ Rejoinder, paras. 518.5; R-PHB1, para. 527; R-PHB2, para. 148.

⁵⁴⁵ Counter-Memorial, paras. 547-570; Rejoinder, paras. 562-606; R-PHB1, paras. 533-540; R-PHB2, paras. 149-158.

⁵⁴⁶ Counter-Memorial, paras. 550-570; Rejoinder, paras. 562-568; R-PHB1, paras. 533-535; R-PHB2, para. 149.

⁵⁴⁷ Counter-Memorial, paras. 552 and 554-557; Rejoinder, para. 563; R-PHB1, para. 535.

⁵⁴⁸ Counter-Memorial, paras. 552 and 558; Rejoinder, para. 563; R-PHB1, para. 535.

⁵⁴⁹ Counter-Memorial, paras. 552 and 559-569; Rejoinder, para. 563; R-PHB1, para. 535.

⁵⁵⁰ Counter-Memorial, paras. 561-562.

⁵⁵¹ Counter-Memorial, para. 563.

⁵⁵² Counter-Memorial, paras. 564-565.

SOCAR, cannot amount “to a frustration of any reasonable or legitimate expectation”.⁵⁵³ Finally, the Respondent submits that it could not frustrate any expectation that CEG would be sold at fair market value, since the failure to sell CEG during the first phase was of Dr. Leshkasheli’s “own making”, the amount of USD 245 million realized in the forced sale “did represent more than fair market value” and, in any event, any conduct of SOCAR is not attributable to the State.⁵⁵⁴

297. The Respondent further rejects the Claimants’ contention that it acted in bad faith or that its conduct lacked transparency in relation to the well data, the PSA or the forced sale.⁵⁵⁵ It argues that there is no evidence that it consciously or deliberately intended to harm the Claimants or their investment, just as there is no evidence of any corrupt scheme or of State interference during the sale process.⁵⁵⁶
298. The Respondent moreover denies having impaired the Claimants’ investments through unreasonable or discriminatory measures in breach of Article 10(1) of the ECT.⁵⁵⁷ According to the Respondent, the Claimants’ case “rests entirely on their false factual narrative” that the State punished the Claimants for refusing to enter into a corrupt scheme and that it thereafter interfered in the sale process.⁵⁵⁸ Regarding SOCAR’s refusal to approve the drilling plans, there is “no evidence that Salyan Oil was in the same position as CEG”, since CEG “committed multiple breaches of the JVA” and failed to complete Phase 1 of the work program, to prepare “proper” work programs and budgets and “to put up the drilling funds”.⁵⁵⁹ The so-called “export ban” could not be discriminatory, since Order No. 134 only applied to SOCAR, not its partners, and it did not prevent Shirvan Oil from exporting oil.⁵⁶⁰ Moreover, other operators, such as Exxon, continued to “export oil outside of SOCAR’s operations”.⁵⁶¹ As regards the

⁵⁵³ Counter-Memorial, paras. 566-567.

⁵⁵⁴ Counter-Memorial, paras. 568-569.

⁵⁵⁵ Rejoinder, paras. 565-606; R-PHB1, paras. 536-540; R-PHB2, paras. 149-158.

⁵⁵⁶ R-PHB2, paras. 152-158.

⁵⁵⁷ Counter-Memorial, paras. 571-584; Rejoinder, paras. 607-616; R-PHB1, paras. 541-550; R-PHB2, paras. 159-162.

⁵⁵⁸ R-PHB2, para. 159.

⁵⁵⁹ R-PHB1, para. 548; R-PHB2, para. 160.

⁵⁶⁰ R-PHB1, para. 549; R-PHB2, para. 161.

⁵⁶¹ R-PHB2, para. 161.

audits, the reason the Surakhani PSA concluded with Rafi Oil was not subject to an audit is “because the Surakhani PSA had only been concluded a few months earlier”.⁵⁶² The Respondent adds that the Claimants did not point to any other company “which had been, like Shirvan Oil, in existence for a substantial period of time, and which was not audited”.⁵⁶³

299. The Respondent also rejects having failed to accord full protection and security to the Claimants’ investments and thus denies having breached Article 10(1) of the ECT or Article 3(2) of the BIT.⁵⁶⁴ It disagrees that the FPS standard extends to legal protection and submits that the “trend of more recent case law is to confirm the traditional approach that FPS only extends to physical protection”.⁵⁶⁵ In any event, none of the disputed measures “are capable of breaching” the FPS standard, especially since none of them relates to physical protection.⁵⁶⁶ Even if the FPS standard were to encompass legal protection, the Claimants neither pointed to any change in the legal framework nor argued that they were denied the possibility of seeking legal redress.⁵⁶⁷
300. Finally, the Respondent denies having breached the free transfer standard in Article 14(1) of the ECT and Article 7(1) of the BIT.⁵⁶⁸ Apart from arguing that this claim is inadmissible,⁵⁶⁹ the Respondent asserts that there is no evidence suggesting that the State restricted or delayed the transfer of proceeds of Credit Suisse’s forced sale of CEG.⁵⁷⁰ In fact, those proceeds were never located in Azerbaijan.⁵⁷¹ It further highlights that Rosserlane’s instructions to “hold the proceeds of the sale of CEG to its order and that of Dr. Leshkasheli” show that Rosserlane was “able to transfer the

⁵⁶² R-PHB2, para. 162.

⁵⁶³ R-PHB2, para. 162.

⁵⁶⁴ Counter-Memorial, paras. 585-597; Rejoinder, paras. 617-629; R-PHB1, para. 551; R-PHB2, para. 163.

⁵⁶⁵ Rejoinder, paras. 619-625, referring to *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, para. 623 (RL-98); *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 632 (CL-35).

⁵⁶⁶ Rejoinder, paras. 625 and 628.

⁵⁶⁷ Rejoinder, para. 629.

⁵⁶⁸ Counter-Memorial, paras. 598-609; Rejoinder, paras. 630-637; R-PHB1, paras. 551-552.

⁵⁶⁹ Counter-Memorial, para. 598; Rejoinder, para. 631.

⁵⁷⁰ Rejoinder, paras. 632-633.

⁵⁷¹ Rejoinder, para. 633.

proceeds of the sale of CEG”, and that there cannot therefore “have been a breach of the free transfer of funds provisions in the ECT and the BIT”.⁵⁷²

D. ON QUANTUM

(1) The Claimants’ Position

301. The Claimants submit that they are entitled to USD 718 million plus pre- and post-award interest as “full reparation for the severe economic damage Azerbaijan inflicted upon them through multiple treaty breaches”.⁵⁷³ They use the date of the alleged unlawful expropriation, i.e. 15 February 2008, as their valuation date.⁵⁷⁴ They further rely on their damages expert, Ms. Hardin, to assert that the fair market value (“FMV”) of their investments should be determined by using the discounted cash flow (“DCF”) method, since CEG’s cash flows “can be assessed with reasonable certainty based on past experience and detailed reservoir reserves studies and development plans”.⁵⁷⁵

(2) The Respondent’s Position

302. The Respondent submits that the damages claims should be rejected.⁵⁷⁶ Those claims are not only unsupported by law or fact, they are also grossly exaggerated.

V. REQUESTS FOR RELIEF

A. THE CLAIMANTS’ REQUEST FOR RELIEF

303. In their Memorial, the Claimants requested that the Tribunal:

“a. *DECLARE that Azerbaijan has breached:*

i. Article 13(1) of the ECT by unlawfully expropriating Claimants’ investments in Azerbaijan;

⁵⁷² R-PHB1, para. 552.

⁵⁷³ Memorial, paras. 314-360; Reply, paras. 422-493; C-PHB1, paras. 346-400; C-PHB2, paras. 96-103.

⁵⁷⁴ Memorial, para. 330; Reply, para. 426.

⁵⁷⁵ Memorial, para. 333; Reply, para. 428.

⁵⁷⁶ Counter-Memorial, paras. 610-686; Rejoinder, paras. 638-729; R-PHB1, paras. 554-634; R-PHB2, paras. 164-177.

- ii. *Article 6(1) of the Treaty by unlawfully expropriating Dr. Leshkasheli's investments in Azerbaijan;*

 - iii. *Article 10(1) of the ECT by failing to accord Claimants' investments in Azerbaijan fair and equitable treatment;*

 - iv. *Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli's investments in Azerbaijan fair and equitable treatment;*

 - v. *Article 10(1) of the ECT by impairing Claimants' investments through unreasonable or discriminatory measures;*

 - vi. *Article 10(1) of the ECT by failing to accord Claimants' investments in Azerbaijan full protection and security;*

 - vii. *Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli's investments in Azerbaijan full protection and security;*

 - viii. *Article 14(1) of the ECT by impairing Claimants' right to freely transfer their investments in Azerbaijan at fair market value without restrictions or delay; and*

 - ix. *Article 7(1) of the Treaty by impairing Dr. Leshkasheli's right to freely transfer his investments in Azerbaijan at fair market value without restrictions or delay.*
- b. *ORDER Azerbaijan to pay compensation to Claimants for its breaches of the ECT and the Treaty in the amount of \$1.89 billion in damages, which includes pre-award interest based on the borrowing rate of a company operating in the oil & gas production industry in Azerbaijan in accordance with Article 13.1 of the ECT and the Treaty, subject to post-award interest at same rate until payment of the Award;*
- c. *AWARD such other relief as the Tribunal considers appropriate; and*
- d. *ORDER Azerbaijan to pay all of the costs, attorney's fees, and expenses of this arbitration, including Claimants' legal and expert fees, the fees and expenses of any experts appointed by*

*the Tribunal, the fees and expenses of the Tribunal, and other costs of the arbitration”.*⁵⁷⁷

304. In their Reply, the Claimants requested that:

“a. *DECLARE that Azerbaijan has breached:*

i. Article 13(1) of the ECT by unlawfully expropriating Claimants’ investments in Azerbaijan;

ii. Article 6(1) of the Treaty by unlawfully expropriating Dr. Leshkasheli’s investments in Azerbaijan;

iii. Article 10(1) of the ECT by failing to accord Claimants’ investments in Azerbaijan fair and equitable treatment;

iv. Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli’s investments in Azerbaijan fair and equitable treatment;

v. Article 10(1) of the ECT by impairing Claimants’ investments through unreasonable or discriminatory measures;

vi. Article 10(1) of the ECT by failing to accord Claimants’ investments in Azerbaijan full protection and security;

vii. Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli’s investments in Azerbaijan full protection and security;

viii. Article 14(1) of the ECT by impairing Claimants’ right to freely transfer their investments in Azerbaijan at fair market value without restrictions or delay; and

ix. Article 7(1) of the Treaty by impairing Dr. Leshkasheli’s right to freely transfer his investments in Azerbaijan at fair market value without restrictions or delay.

⁵⁷⁷ Memorial, para. 361.

b. *ORDER Azerbaijan to pay compensation to Claimants for its breaches of the ECT and the Treaty in the amount of either: (i) \$1.62 billion in damages; or (ii) \$3.38 billion in damages, which amounts include pre-award interest based on the borrowing rate of a company operating in the oil & gas production industry in Azerbaijan in accordance with Article 13.1 of the ECT and the Treaty, subject to post-award interest at same rate until payment of the Award;*

c. *AWARD such other relief as the Tribunal considers appropriate; and*

d. *ORDER Azerbaijan to pay all of the costs, attorneys' fees, and expenses of this arbitration, including Claimants' legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal, and other costs of the arbitration".*⁵⁷⁸

305. In their first Post-Hearing Brief, the Claimants requested that the Tribunal:

"a. DECLARE that Azerbaijan has breached:

i. Article 13(1) of the ECT by unlawfully expropriating Claimants' investments in Azerbaijan;

ii. Article 6(1) of the Treaty by unlawfully expropriating Dr. Leshkasheli's investments in Azerbaijan;

iii. Article 10(1) of the ECT by failing to accord Claimants' investments in Azerbaijan fair and equitable treatment;

iv. Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli's investments in Azerbaijan fair and equitable treatment;

v. Article 10(1) of the ECT by impairing Claimants' investments through unreasonable or discriminatory measures;

⁵⁷⁸ Reply, para. 494.

vi. *Article 10(1) of the ECT by failing to accord Claimants' investments in Azerbaijan full protection and security;*

vii. *Article 3(2) of the Treaty by failing to accord Dr. Leshkasheli's investments in Azerbaijan full protection and security;*

viii. *Article 14(1) of the ECT by impairing Claimants' right to freely transfer their investments in Azerbaijan at fair market value without restrictions or delay; and*

ix. *Article 7(1) of the Treaty by impairing Claimants' right to freely transfer their investments in Azerbaijan at fair market value without restrictions or delay.*

b. *ORDER Azerbaijan to pay compensation to Claimants for its breaches of the ECT and the Treaty in the amount of USD 718 million plus pre-award interest based on the borrowing rate of a company operating in the oil & gas production industry in Azerbaijan in accordance with Article 13.1 of the ECT and the Treaty, subject to post-award interest at same rate until payment of the Award;*

c. *AWARD such other relief as the Tribunal considers appropriate; and*

d. *ORDER Azerbaijan to pay all of the costs, attorneys' fees, and expenses of this arbitration, including Claimants' legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal, and other costs of the Arbitration".*⁵⁷⁹

306. These requests remained unchanged.⁵⁸⁰

B. THE RESPONDENT'S REQUEST FOR RELIEF

307. In its Counter-Memorial, the Respondent requested the following relief:

"687.1A declaration that the Tribunal does not have jurisdiction over the Claimants' claims, and/or that the claims are not admissible;

⁵⁷⁹ C-PHB1, para. 401.

⁵⁸⁰ C-PHB2, para. 104.

687.2 A declaration that the acts complained of are not attributable to Azerbaijan;

687.3 If the Tribunal determines that it has jurisdiction and the acts are attributable to Azerbaijan, an order dismissing the Claimants' claims;

687.4 A declaration that the Claimants are not entitled to the damages sought;

687.5 An order that the Claimants pay the costs of the arbitration, including ICSID's administrative fees and the Tribunal's fees and expenses, and the Respondent's legal fees, together with interest on any sums awarded".⁵⁸¹

308. These requests were formulated in identical terms in the Rejoinder.⁵⁸² In its first Post-Hearing Brief, the Respondent requested:

"635.1 A declaration that the Tribunal does not have jurisdiction over the Claimants' claims, and/or that the claims are not admissible;

635.2 A declaration that the acts complained of are not attributable to Azerbaijan;

635.3 If the Tribunal determines that it has jurisdiction and the acts are attributable to Azerbaijan, an order dismissing the Claimants' claims;

635.4 A declaration that the Claimants are not entitled to the damages sought;

635.5 An order that the Claimants are jointly and severally liable to pay the costs of the arbitration, including ICSID's administrative fees and the Tribunal's fees and expenses, and the Respondent's legal fees, together with interest on any sums awarded."⁵⁸³

309. These requests remained unchanged.⁵⁸⁴

⁵⁸¹ Counter-Memorial, para. 687.

⁵⁸² Rejoinder, para. 734.

⁵⁸³ R-PHB1, para. 635.

⁵⁸⁴ R-PHB2, para. 178.

VI. PRELIMINARY MATTERS

A. PLACE OF PROCEEDING

310. Pursuant to Articles 62 and 63 of the ICSID Convention, Rule 26 of the Administrative and Financial Regulation, Rule 13(3) of the ICSID Arbitration Rules, and paragraph 11 of PO1, Washington, D.C., is the place of the proceeding.

B. APPLICABLE PROCEDURAL LAW

311. Pursuant to paragraph 1 of PO1, these proceedings are conducted in accordance with the ICSID Convention and the ICSID Arbitration Rules in force as of 10 April 2006 (the “Arbitration Rules”). In addition to the ICSID Convention and the Arbitration Rules, the Tribunal will also apply any relevant provisions contained in its procedural orders and in particular those of PO1, PO3 and PO4.

C. APPLICABLE SUBSTANTIVE LAW

312. Article 42(1) of the ICSID Convention provides as follows:

*“The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable”.*⁵⁸⁵

313. The Claimants have brought claims pursuant to the Azerbaijan-Georgia BIT and pursuant to the ECT.

314. The Azerbaijan-Georgia BIT does not contain any provision on the applicable law. It follows that, with respect to claims formulated under the BIT, the Tribunal will, in addition to the provisions of the BIT, apply the law of Azerbaijan and any rules of international law the Tribunal may deem applicable.

⁵⁸⁵ Convention on the Settlement of Investment Disputes between States and Nationals of other States, Article 42(1).

315. Pursuant to Article 26(6) of the ECT, this dispute shall be decided “in accordance with this Treaty and applicable rules and principles of international law”.⁵⁸⁶ It follows that for claims brought under the ECT, the Tribunal will apply the provisions of the ECT and applicable rules and principles of international law.
316. When applying the law, the Tribunal is of the view that it is not bound by the arguments and sources invoked by the Parties. The principle *iura novit curia* allows any tribunal to form its own opinion of the meaning of the law. What would be impermissible would be to surprise the Parties with a legal theory that was not subject to debate, was legitimately unknown to them and that they could not anticipate.⁵⁸⁷

VII. PRELIMINARY OBJECTIONS

317. The Respondent raises nine overall categories of preliminary objections.⁵⁸⁸ First, the Claimants are not qualifying investors with qualifying investments under the ECT (“First Preliminary Objection”). Second, Dr. Leshkasheli is not a qualifying investor with qualifying investments under the BIT (“Second Preliminary Objection”). Third, the Claimants do not meet the jurisdictional requirements of the ICSID Convention (“Third Preliminary Objection”). Fourth, the claims are contractual in nature and are not treaty claims (“Fourth Preliminary Objection”). Fifth, the claims are time-barred under international law (“Fifth Preliminary Objection”). Sixth, Dr. Leshkasheli failed to comply with the notice requirements under the ECT and the BIT (“Sixth Preliminary Objection”). Seventh, Dr. Leshkasheli failed to allow the Contracting Parties to the BIT to negotiate before the commencement of the arbitration (“Seventh Preliminary Objection”). Eighth, the Respondent denies the benefits of the ECT to Rosserlane (“Eighth Preliminary Objection”). Ninth, the FPS and free transfer claims are inadmissible (“Ninth Preliminary Objection”).

⁵⁸⁶ ECT, Article 26(6) (C-1).

⁵⁸⁷ See, for instance, *Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland)*, Merits, Judgment, [1974] ICJ Rep 175, 25 July 1974, para. 18; *Daimler Financial Services A.G. v. Argentine Republic*, ICSID Case No. ARB/05/1, Decision on Annulment, 7 January 2015, para. 295; *Albert Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL Case, Award, 23 April 2012, para. 141; *Vestey Group Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016 (“*Vestey*”), para. 118 (RL-72); *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, 6 December 2016, para. 236.

⁵⁸⁸ Rejoinder, para. 199; R-PHB1, para. 247.

318. The Tribunal notes that Azerbaijan, Georgia and the United Kingdom (the “UK”) ratified the ECT and that the ECT entered into force on 16 April 1998 as to the relationship among those countries.⁵⁸⁹ Moreover, the Azerbaijan-Georgia BIT was ratified by both States and that treaty entered into force on 3 October 1996.⁵⁹⁰ In addition, Azerbaijan, Georgia and the UK ratified the ICSID Convention on 18 September 1992, 7 August 1992 and 19 December 1966, respectively. The ICSID Convention entered into force on 18 October 1992 as regards Azerbaijan, on 6 September 1992 as regards Georgia, and on 18 January 1967 as regards the UK.
319. The Tribunal also notes that the Respondent did not – and rightly so – raise any objection *ratione temporis*. Indeed, it is undisputed that the protections in both the ECT and the BIT apply to investments made before their respective dates of entry into force.⁵⁹¹ The Respondent did not likewise raise any objection *ratione loci*, again, rightly so.
320. Finally, it is undisputed that the Claimants bear the burden of proving all the facts necessary to establish the Tribunal’s jurisdiction under the ECT, the BIT and the ICSID Convention.⁵⁹² As noted in *Spence International Investments, LLC, Berkovitz, et al. v. Republic of Costa Rica*, “the factual basis of an assertion of jurisdiction” must be proven “as part-and-parcel of a claimant’s case”.⁵⁹³ Asserted facts relating to jurisdiction must be proven on the balance of probabilities.⁵⁹⁴ The Tribunal shares the view expressed in

⁵⁸⁹ See Energy Charter Secretariat, Member Page: Republic of Georgia, undated (C-18); Energy Charter Secretariat, Member Page: United Kingdom, undated (C-19); Energy Charter Secretariat, Member Page: Republic of Azerbaijan, undated (C-140).

⁵⁹⁰ 1996 Agreement between the Government of the Republic of Azerbaijan and the Government of the Republic of Georgia for the Promotion and Protection of Investments (“Azerbaijan-Georgia BIT”) (C-134).

⁵⁹¹ See, for instance, Azerbaijan-Georgia BIT, Article 2 (C-134) (“The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of another Contracting Party, both before and after the entry into force of this Agreement”).

⁵⁹² *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Jurisdiction, Admissibility and Liability, 21 April 2015, para. 97 (RL-64); *National Gas S.A.E. v. Arab Republic of Egypt*, ICSID Case No. ARB/11/7, Award, 3 April 2014, para. 118 (RL-58); *Tulip*, para. 48 (RL-51); *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 192 (CL-9).

⁵⁹³ *Spence International Investments, LLC, Berkovitz, et al. v. Republic of Costa Rica*, UNCITRAL, Corrected Interim Award, 30 May 2017, para. 239.

⁵⁹⁴ *Emmis International Holding, B.V., Emmis Radio Operating, B.V., and MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. Republic of Hungary*, ICSID Case No. ARB/12/2, Award, 16 April 2014, para. 171 (RL-59).

Phoenix Action Ltd v. Czech Republic that it “cannot take all the facts as alleged by the Claimant as granted facts”.⁵⁹⁵ This is so because consent is foundational to the Tribunal’s jurisdiction and, as noted in *ICS Inspection and Control Services Limited (U.K.) v. The Argentine Republic*, the host State’s consent cannot be “presumed in the face of ambiguity”.⁵⁹⁶ Accordingly, the Claimant bears the burden of proving consent “with sufficient certainty” or else jurisdiction must be declined.⁵⁹⁷

321. With these considerations in mind, the Tribunal now turns to the Respondent’s preliminary objections, as necessary. As the analysis below will show, the Tribunal comes to the conclusion that Dr. Leshkasheli, although a qualifying investor under the ECT and the BIT, did not make a qualifying investment and that he therefore does not pass the jurisdictional hurdle under the ECT, the BIT and the ICSID Convention. Moreover, the Respondent was entitled to deny Rosserlane the benefits of the ECT, such that Rosserlane’s claims are inadmissible. It follows that all the claims must be dismissed on jurisdictional and admissibility grounds. Accordingly, the Tribunal only addresses the first (Section A below), second (Section B below), third (Section C below) and eighth (section D below) preliminary objections raised by the Respondent, since there is no need to further assess the fourth to seventh and ninth preliminary objections.

A. FIRST JURISDICTIONAL OBJECTION: ARE THE CLAIMANTS QUALIFYING INVESTORS WITH QUALIFYING INVESTMENTS UNDER THE ECT?

322. The Respondent contends that the Claimants failed to prove that they are qualifying investors with qualifying investments under the ECT. The Tribunal will first address the First Jurisdictional Objection in respect of Dr. Leshkasheli and then in respect of Rosserlane.

⁵⁹⁵ *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, paras. 60-61 (RL-32). See also *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011 (“*Libananco*”), para. 124 (RL-42).

⁵⁹⁶ *ICS Inspection and Control Services Limited (U.K.) v. The Argentine Republic*, UNCITRAL, Award on Jurisdiction, 10 February 2012 (“*ICS Inspection*”), para. 280.

⁵⁹⁷ *ICS Inspection*, para. 280.

(1) Dr. Leshkasheli

323. The Respondent contends that Dr. Leshkasheli (a) was not a Georgian national at all relevant times, (b) did not own or control a qualifying investment, and (c) did not make any contribution.

a. Was Dr. Leshkasheli a Georgian National at all Relevant Times?

(i) Parties' Positions

324. The Respondent submits that Dr. Leshkasheli was not a Georgian citizen or national at all relevant times and that he therefore is not a qualifying investor under the ECT.⁵⁹⁸ It argues that the Claimants' "shifting, misleading position on Dr. Leshkasheli's nationality" is a "hallmark of an abusive claim".⁵⁹⁹ Considering that the Claimants "belatedly" provided copies of Dr. Leshkasheli's Georgian passports and failed to disclose that he was a Russian national since 1993, the Respondent contends that "there is serious cause to question the legitimacy of Dr. Leshkasheli's claim to Georgian nationality", since Georgian law does not permit dual nationality and that therefore "his Georgian nationality would be invalidated".⁶⁰⁰ In fact, Dr. Leshkasheli "was never eligible to hold Georgian citizenship at all" between 1993 and 2019, and the Georgian government stripped him of his citizenship when it discovered that he was also Russian.⁶⁰¹ In addition, he misled the Georgian authorities when applying for his passports by failing to disclose that he was Russian.⁶⁰² Moreover, Dr. Leshkasheli "lied about his Georgian nationality throughout his witness statements", and, in particular, he concealed the fact that he was stripped on his Georgian nationality in 2011.⁶⁰³ The Respondent adds that Dr. Leshkasheli's restoring his Georgian nationality in 2019 is a "flagrant abuse of the investment treaty system, akin to a corporate restructuring after a dispute has arisen".⁶⁰⁴

⁵⁹⁸ Counter-Memorial, para. 221; Rejoinder, paras. 206-211; R-PHB1, paras. 251-291; R-PHB2, paras. 70-76.

⁵⁹⁹ R-PHB2, para. 70.

⁶⁰⁰ Rejoinder, para. 207; R-PHB1, paras. 260-277.

⁶⁰¹ R-PHB1, para. 253; R-PHB2, para. 71.

⁶⁰² R-PHB1, para. 268; R-PHB2, paras. 72 and 75.

⁶⁰³ R-PHB2, para. 71.

⁶⁰⁴ R-PHB1, paras. 254 and 259.

325. The Respondent further argues that Dr. Leshkasheli’s Georgian nationality was in any event not his “dominant and effective nationality as a matter of international law”, and that he therefore cannot claim the benefits of it.⁶⁰⁵

326. The Claimants answer that Dr. Leshkasheli was a Georgian national at all relevant times and that he therefore qualifies as a protected investor under the ECT.⁶⁰⁶

(ii) Discussion

327. A natural person qualifies as a protected investor under Article 1(7) of the ECT if that person has “the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law”.⁶⁰⁷ Since Dr. Leshkasheli claims to be a Georgian citizen, his citizenship or nationality must be determined in accordance with the laws of Georgia. As the Respondent says, whether Dr. Leshkasheli can validly claim to be a Georgian national is “a matter for Georgian law”.⁶⁰⁸ The Tribunal will thus first determine whether Dr. Leshkasheli is a Georgian national as a matter of Georgian law. If this is the case, and considering the Respondent’s arguments on effective nationality, the Tribunal will thereafter determine whether international law prevents Dr. Leshkasheli from relying on his Georgian nationality for the purposes of Article 1(7) of the ECT.

328. Dr. Leshkasheli was born in Tbilisi, Georgia, on 21 March 1956, at a time when Georgia was part of the Soviet Union.⁶⁰⁹ Dr. Leshkasheli asserts that he became a Georgian citizen upon Georgia’s accession to independence in 1991.⁶¹⁰ According to a letter from the Ministry of Justice of Georgia of 17 September 2022, Dr. Leshkasheli has been considered by the Georgian authorities “as a citizen of Georgia by birth”.⁶¹¹ The Tribunal understands from this letter that Dr. Leshkasheli was a citizen of the Soviet Union until 1991 and that he automatically became a Georgian citizen after the

⁶⁰⁵ R-PHB1, paras. 253 and 278-286; R-PHB2, para. 76.

⁶⁰⁶ Memorial, para. 160; Reply, paras. 193 and 195; C-PHB1, paras. 278-187.

⁶⁰⁷ ECT, Article 1(7) (C-1).

⁶⁰⁸ R-PHB1, para. 260.

⁶⁰⁹ See, for instance, Passport of Dr. Leshkasheli, 30 October 1996 (C-201); Passport of Dr. Leshkasheli, 26 May 1993 (C-331); Zaur Leshkasheli Information Card issued by the Ministry of Justice of Georgia, 7 April 2022 (C-326). See also Leshkasheli WS1, para. 4.

⁶¹⁰ Tr. (Day 2), 349:12-14 and 362:14-16 (Leshkasheli).

⁶¹¹ Letter from the Ministry of Justice of Georgia to Zaur Leshkasheli, 17 September 2022 (C-329).

dissolution of the Soviet Union. Relatedly, the Tribunal notes that, although not corroborated by similar evidence coming from official channels such as the Ministry of Justice, the Claimants' counsel wrote to opposing counsel on 7 October 2022 that Dr. Leshkasheli "acquired his Russian citizenship at the time of the dissolution of the Soviet Union and continues to be a Russian citizen as well as a Georgian National".⁶¹²

329. The record shows that Dr. Leshkasheli obtained his first Georgian passport in July 1996 and that he renewed this passport in May 2000, November 2001, January 2005, July 2006 and July 2009.⁶¹³ The record further shows that he obtained a Russian passport in May 1993 and that he renewed this passport in October 2011, May 2015 and June 2020.⁶¹⁴
330. It is further undisputed that Dr. Leshkasheli lost his Georgian citizenship on 11 March 2011 by Presidential Decree No. 144.⁶¹⁵ The stated reason for this loss was his "receiving the citizenship of other state".⁶¹⁶ Dr. Leshkasheli explained that the Georgian authorities became aware of his Russian citizenship because he travelled to Georgia with his Russian passport.⁶¹⁷ Presidential Decree No. 31 thereafter restored his Georgian nationality on 17 January 2019.⁶¹⁸ Dr. Leshkasheli then obtained a Georgian identity card on 4 April 2019 and a Georgian passport on 3 July 2019.⁶¹⁹

⁶¹² Email of 7 October 2022 from Alston & Bird to Herbert Smith Freehills (R-251). See also Tr. (Day 2), 362:9-13 (Leshkasheli).

⁶¹³ Passport of Dr. Leshkasheli, 30 October 1996 (C-201); Passport of Dr. Leshkasheli, 20 May 2000 (C-202); Passport of Dr. Leshkasheli, 3 November 2001 (C-203); Passport of Dr. Leshkasheli, 10 January 2005 (C-204); Passport of Dr. Leshkasheli, 20 July 2006 (C-205); Passport of Dr. Leshkasheli, 3 July 2009 (C-206).

⁶¹⁴ Passport of Dr. Leshkasheli, 26 May 1993 (C-331); Passport of Dr. Leshkasheli, 4 October 2011 (C-332); Passport of Dr. Leshkasheli, 19 May 2015 (C-333); Passport of Dr. Leshkasheli, 11 June 2020 (C-334).

⁶¹⁵ Decree of the President of Georgia No. 144 About Termination of Georgian Citizenship, 11 March 2011 (R-241); Georgian Presidential Decree No. 144, 11 March 2011 (C-342); Letter of 5 October 2022 from the Ministry of Foreign Affairs of Georgia to the Embassy of the Republic of Azerbaijan (R-215).

⁶¹⁶ Decree of the President of Georgia No. 144 About Termination of Georgian Citizenship, 11 March 2011 (R-241); Georgian Presidential Decree No. 144, 11 March 2011 (C-342).

⁶¹⁷ Tr. (Day 2), 363:5-8 (Leshkasheli).

⁶¹⁸ Georgia's Presidential Decree No. 31, 17 January 2019 (C-330); Letter of 5 October 2022 from the Ministry of Foreign Affairs of Georgia to the Embassy of the Republic of Azerbaijan (R-215).

⁶¹⁹ Zaur Leshkasheli Information Card issued by the Ministry of Justice of Georgia, 7 April 2022 (C-326); Passport of Dr. Leshkasheli, 3 July 2019 (C-119).

331. Based on this evidence, it appears, at least *prima facie*, that Dr. Leshkasheli was a dual Georgian and Russian national from 1991 to 2011 and again from 2019 until today. The Tribunal first turns to the issue of the validity of Dr. Leshkasheli’s Georgian citizenship as a matter of Georgian law.

332. The Georgian legislation governing citizenship in the relevant timeframe consists of the 1995 Constitution of Georgia, as amended, and the 1993 Organic Law on Georgian Citizenship, as amended for instance in 2010 or 2014 (the “Organic Law”).⁶²⁰ Article 12.2 of the Constitution provides that:

*“A citizen of Georgia may not have dual citizenship as a citizen of another state except as provided for by this paragraph. The President of Georgia may grant Georgian citizenship to an alien who has made a contribution of exception merit to Georgia. The President of Georgia may also grant Georgian citizenship to an alien based on state interests ”.*⁶²¹

333. This provision spells out the general rule that dual citizenship is not permitted in Georgia, subject to two exceptions. The Claimants have not rebutted the Respondent’s affirmation that the two exceptions were inserted into the Constitution in 2004, which means that prior to 2004 the prohibition of dual citizenship suffered no exceptions.⁶²²

334. Article 1 of the 1993 Organic Law confirms the prohibition of dual citizenship in the following terms:

*“A citizen of Georgia cannot be a citizen of another state at the same time ”.*⁶²³

335. Article 1(2) of the 2010 version of the Organic Law similarly prohibits dual citizenship, but incorporates the two exceptions inserted in the Constitution as amended in 2004:

“A citizen of Georgia shall not at the same time be a citizen of another state, save in exceptional cases established by the Constitution of Georgia. Citizenship of Georgia shall be granted

⁶²⁰ Georgia’s Constitution of 1995 with Amendments through 2013, 1995 (as amended) (R-238); Organic Law of Georgia on Georgian Citizenship, 25 March 1993 (R-240); Organic Law of Georgia on Citizenship of Georgia 1993 (as amended), 6 July 2010 (R-216); Organic Law of Georgia on Georgian Citizenship, 30 April 2014 (R-185).

⁶²¹ Georgia’s Constitution of 1995 with Amendments through 2013, 1995 (as amended), Article 12.2 (R-238).

⁶²² R-PHB1, para. 263, footnote 751.

⁶²³ Organic Law of Georgia on Georgian Citizenship, 25 March 1993, Article 1 (R-240).

*by the President of Georgia to a citizen of foreign country, who has a special merit before Georgia or granting the citizenship of Georgia to him/her is due to State interests”.*⁶²⁴

336. The Organic Law further provides for the loss of citizenship in case of acquisition of another citizenship. Article 32 of the 1993 version of the Organic Law, entitled “Loss of Georgian citizenship”, reads as follows:

“According to this law, a person will lose Georgian citizenship if they:

without the permission of the competent authorities of the Republic of Georgia, enter the military service of a foreign state, the police, justice bodies and other governing bodies or state authorities;

permanently reside in another state and have not appeared at the consular registration within 2 years for an illegitimate reason;

will acquire Georgian citizenship by submitting false documents;

*will receive the citizenship of another state”.*⁶²⁵

337. Similar wording is found in the 2010 and 2014 versions of the Organic Law. Article 32 of the 2010 version reads as follows:

“In accordance with this Law a person shall lose citizenship of Georgia if he or she:

[...]

*(c) [sic] acquires citizenship of another state”.*⁶²⁶

338. Article 21 of the 2014 version similarly provides that:

“1. A Georgian citizen shall lose Georgian citizenship if he/she:

⁶²⁴ Organic Law of Georgia on Citizenship of Georgia 1993 (as amended), 6 July 2010, Article 1(2) (R-216).

⁶²⁵ Organic Law of Georgia on Georgian Citizenship, 25 March 1993, Article 32 (R-240).

⁶²⁶ Organic Law of Georgia on Citizenship of Georgia 1993 (as amended), 6 July 2010, Article 32 (R-216).

[...]

*(c) acquires foreign citizenship”.*⁶²⁷

339. The Organic Law vests the President of Georgia with the powers to grant, revoke and restore Georgian citizenship. Article 33 of the 2010 version of the Organic Law provides as follows:

“President of Georgia may take decisions on the following issues:

(a) granting of citizenship of Georgia to aliens and stateless persons;

(b) restoration of citizenship of Georgia;

(c) abandonment of citizenship of Georgia; or

(d) loss of citizenship of Georgia.

*(e) in cases envisaged by the Constitution, granting citizenship of Georgia to foreign citizens”.*⁶²⁸

340. Similarly, Article 25(1) of the 2014 version states that:

*“The final decision on granting, retaining, refusing to grant or terminating Georgian citizenship shall be made by the President of Georgia”.*⁶²⁹

341. Finally, Article 32² of the 2014 version of the Organic Law – entitled “Temporary right to apply for restoration of Georgian citizenship” allows former Georgian citizens, who lost their citizenship because of having acquired another citizenship, to have their Georgian citizenship restored if they apply before 31 December 2022 and fulfill certain conditions:

“A former Georgian citizen, who has lost Georgian citizenship due to acquiring foreign citizenship, may, before 31 December 2022, apply to the Agency for granting him/her Georgian

⁶²⁷ Organic Law of Georgia on Georgian Citizenship, 30 April 2014, Article 21 (R-185).

⁶²⁸ Organic Law of Georgia on Citizenship of Georgia 1993 (as amended), 6 July 2010, Article 33 (R-216).

⁶²⁹ Organic Law of Georgia on Georgian Citizenship, 30 April 2014, Article 25(1) (R-185).

*citizenship by way of its restoration, under the conditions defined by this article”.*⁶³⁰

342. The Respondent argues that Dr. Leshkasheli was never validly a Georgian citizen, because the Georgian authorities were not aware in 1996 of his being a Russian national since 1991, when he acquired his first Georgian passport.⁶³¹ Relying on the *Hussein Nuaman Soufraki v. The United Arab Emirates* case, the Respondent argues that Dr. Leshkasheli lost his Georgian citizenship by operation of the law.⁶³² The Claimants answer that Dr. Leshkasheli was Georgian by birth, that the loss of his Georgian nationality in 2011 was not automatic but required an affirmative decision by way of Presidential decree, and that the fact that his Georgian citizenship was restored in 2019 shows that Georgian authorities did not consider his citizenship to be invalid between 1996 and 2011.⁶³³
343. The legal framework set out above confirms the Claimants’ position, namely that the loss of Georgian citizenship is not automatic but requires an intervening act by the President of Georgia. In this case, Presidential Decree No. 144 dated 11 March 2011 terminated Dr. Leshkasheli’s Georgian citizenship pursuant to Article 32(d) of the Organic Law.⁶³⁴ The use of the wording “to be terminated” in Decree No. 144 suggests that the loss of citizenship was prospective and had no retroactive effect.
344. This conclusion is further confirmed by the fact that Dr. Leshkasheli’s Georgian citizenship was “restored” on 17 January 2019 based on Article 32² of the 2014 version of the Organic Law, which concerns the restoration of Georgian citizenship for persons who had previously lost it due to their acquisition of a foreign citizenship.⁶³⁵ In other

⁶³⁰ Organic Law of Georgia on Georgian Citizenship, 30 April 2014, Article 32²(1) (R-185).

⁶³¹ R-PHB1, paras. 251-277.

⁶³² R-PHB1, paras. 274-276; R-PHB2, para. 73, referring to *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, 7 July 2004 (RL-128).

⁶³³ C-PHB1, paras. 284-285.

⁶³⁴ Decree of the President of Georgia No. 144 About Termination of Georgian Citizenship, 11 March 2011 (R-241); Georgian Presidential Decree No. 144, 11 March 2011 (C-342) (“According to subparagraph ‘D’ of Art. 32 of ORGANIC LAW OF GEORGIA ‘ON GEORGIAN CITIZENSHIP,’ to be terminated the citizenship of Georgia due to receiving the citizenship of other state”).

⁶³⁵ Organic Law of Georgia on Georgian Citizenship, 30 April 2014, Article 32² (R-185); Georgia’s Presidential Decree No. 31, 17 January 2019 (C-330); Letter of 5 October 2022 from the Ministry of Foreign Affairs of Georgia to Embassy of the Republic of Azerbaijan (R-215) (“Based on the temporary right of restoration citizenship Z. Leshkasheli applied to the LEPL Public Service Development Agency

words, the President of Georgia restored Dr. Leshkasheli's Georgian citizenship being fully aware that he was also a Russian citizen.⁶³⁶

345. The Tribunal is mindful that, contrary to the Claimants' assertion,⁶³⁷ the Georgian authorities appear not to have been aware of Dr. Leshkasheli's Russian citizenship when they first issued his Georgian passport in 1996, although he was under a duty to disclose his Russian citizenship.⁶³⁸ However, this does not alter the fact that he was a Georgian citizen from 1991 to 2011 and that the loss of his citizenship operated from 2011 onwards. There is no probative element in the record showing that the Georgian authorities considered Dr. Leshkasheli's Georgian citizenship between 1996 and 2011 to be invalid. Said differently, although Dr. Leshkasheli was liable to losing his Georgian citizenship because he simultaneously held a Russian passport, he retained his Georgian citizenship until it was terminated in 2011.
346. For the avoidance of doubt, the Tribunal does not share the Respondent's view that having his Georgian citizenship restored in 2019 amounts to abusive behavior to gain access to the protections of the ECT. As stated above, Dr. Leshkasheli was born in Georgia and, according to Georgian authorities, he is considered to have been Georgian by birth. He explained that he only became aware of the loss of his Georgian citizenship in 2018 when he applied for a new passport, which passport was due to expire on 3 July 2019.⁶³⁹ Although there is no evidence in the record corroborating that Dr. Leshkasheli

on October 15, 2018 and by Decree N° 31 of the President of Georgia dated January 17, 2019, Z. Leshkasheli as a citizen of the Russian Federation has been granted Georgian citizenship according to the right of restoration of citizenship”).

⁶³⁶ See, for instance, Zaur Leshkasheli Information Card issued by the Ministry of Justice of Georgia, 7 April 2022 (C-326).

⁶³⁷ C-PHB1, para. 280 (“At that time, in 1996, Dr. Leshkasheli was also a Russian citizen and this was known to Georgian officials when his passport was issued” (footnote omitted)). The Tribunal further notes the following explanation provided by Dr. Leshkasheli: “I’m saying this because I knew Mr. Shevardnadze personally. I also knew Mr. Lortkipanidze who used to be the Ambassador of Russia to the Soviet Union from Georgia, and, therefore, I was given the passport without satisfying the requirement that I would give up the Russian citizenship. It was known to everybody”. Tr. (Day 2), 357:11-17 (Leshkasheli).

⁶³⁸ Letter of 9 March 2023 from the Ministry of Justice of Georgia to the Ministry of Justice of the Republic of Azerbaijan (R-224) (“By the time, when the Ministry of Internal Affairs issued a Georgian passport in the name of Zaur Leshkasheli in 1996, the Georgian authorities were not aware of his Russian citizenship. The Ministry of Justice was not aware of Zaur Leshkasheli's Russian citizenship after 2004 when it was authorized to issue passports to Georgian citizens. Also, applicant for Georgian passport shall disclose his/her other citizenships which was not recorded in this case”).

⁶³⁹ Tr. (Day 2), 358:4-16 (Leshkasheli); Passport of Dr. Leshkasheli, 3 July 2009, p. 1 of the pdf document (C-206).

was unaware of the loss of his Georgian citizenship between 2011 and 2018, the fact that he continued to travel with his Georgian passport until 2018 tends to support his explanation.⁶⁴⁰ There is therefore nothing untoward in his seeking to have his Georgian citizenship restored after having previously lost it. In addition, Article 32² of the 2014 version of the Organic Law only provides for a “temporary” right to apply for restoration until 31 December 2022 and the Tribunal fails in these conditions to see any abusive behavior in the fact that Dr. Leshkasheli applied on 15 October 2018 to have his Georgian citizenship restored.⁶⁴¹

347. Having determined that Dr. Leshkasheli was a Georgian citizen from 1991 to 2011 and from 2019 until present, the Tribunal now turns to the Respondent’s argument that his Georgian citizenship is neither his dominant nor effective one as a matter of international law.
348. The Respondent contends that Dr. Leshkasheli’s Georgian citizenship is not his effective nationality under international law.⁶⁴² For the Respondent, his “dominant nationality” was Russian “throughout the period of the dispute”.⁶⁴³ The Claimants respond that Azerbaijan relies on “inapposite authorities” and argue that Dr. Leshkasheli’s dominant nationality is Georgian.⁶⁴⁴
349. While the Tribunal agrees with the Respondent’s general proposition that the “concept of dominant and effective nationality, as set out in the *Nottebohm Case (Liechtenstein v. Guatemala)* (“*Nottebohm*”), can be relevant to assessing nationality under international law”,⁶⁴⁵ it is not convinced that Dr. Leshkasheli having dual Georgian and Russian citizenship is a bar to him qualifying as a protected investor for the purposes of Article 1(7) of the ECT. First, the authorities on which the Respondent relies can be distinguished. The investment authorities invoked by the Respondent concern the situation either where the investor had the nationality both of the home and host States

⁶⁴⁰ Passport of Dr. Leshkasheli, 3 July 2009 (C-206).

⁶⁴¹ Letter of 5 October 2022 from the Ministry of Foreign Affairs of Georgia to Embassy of the Republic of Azerbaijan (R-215).

⁶⁴² R-PHB1, paras. 278-286.

⁶⁴³ R-PHB1, para. 278.

⁶⁴⁴ C-PHB2, para. 89.

⁶⁴⁵ R-PHB1, para. 280, referring to *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, Judgment [1955] ICJ Reports 4, 6 April 1955 (“*Nottebohm*”) (RL-129).

and/or where the investment treaties contained a rule on dual nationality, none of which applies here.⁶⁴⁶ As for the *Nottebohm case*, the International Court of Justice (the “ICJ”) held that Mr. Nottebohm became a citizen of Liechtenstein by way of naturalization and out of convenience, and that he lacked any “genuine connection of existence, interests and sentiments” with that State.⁶⁴⁷ This must be distinguished from the situation here where Dr. Leshkasheli was a Georgian citizen by birth and that, although he lost his Georgian citizenship in 2011, it was restored in 2019. This is thus not a case of “breaking a bond of allegiance” and of establishing “a new bond of allegiance” as was the case in *Nottebohm*.⁶⁴⁸

350. Second, the elements in the record do not paint a clear picture about whether his dominant and effective nationality is Georgian or Russian. Tribunals have developed various criteria or factors to be taken into consideration when seeking to determine dominant and effective nationality. In *Nottebohm*, the ICJ held that:

*“Different factors are taken into consideration, and their importance will vary one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.”*⁶⁴⁹

351. Dr. Leshkasheli was born in Tbilisi and Georgia considered that he was Georgian “by birth”.⁶⁵⁰ Both of his parents were Georgian.⁶⁵¹ His father served in the Soviet military and, while growing up, he lived in “Georgia, Western Russia, Siberia, the Baltic States, and Germany”.⁶⁵² His “native language” is Russian, something which is not necessarily surprising considering that Georgia was part of the Soviet Union when Dr. Leshkasheli

⁶⁴⁶ *Fernando Fraiz Trapote v. Venezuela*, UNCITRAL, PCA Case No. AA737, Award, 31 January 2022, paras. 407-415 (RL-130); *Ballantine v. Dominican Republic*, UNCITRAL, PCA Case No. 2016-17, Award, 3 September 2019, paras. 529-552 (RL-131); *Alberto Carrizosa Gelzis and others v. Republic of Colombia*, UNCITRAL, PCA Case No. 2018-56, Award, 7 May 2021, paras. 181-254 (RL-132).

⁶⁴⁷ *Nottebohm*, pp. 23 and 25-26 (RL-129).

⁶⁴⁸ *Nottebohm*, p. 24 (RL-129).

⁶⁴⁹ *Nottebohm*, p. 22 (RL-129).

⁶⁵⁰ Letter from the Ministry of Justice of Georgia to Zaur Leshkasheli, 17 September 2022 (C-329).

⁶⁵¹ Tr. (Day 2), 356:8-12 (Leshkasheli).

⁶⁵² Leshkasheli WS1, para. 4.

was young and that his father served in the Soviet military.⁶⁵³ As noted above, he received his first Russian passport in 1993 and his first Georgian passport in 1996. His wife, Ms. Kisiliova, was born in Russia and she obtained a Georgian passport in 1997.⁶⁵⁴ His children also obtained the Georgian citizenship in the 1990s.⁶⁵⁵ Dr. Leshkasheli contemporaneously represented on different occasions that he was either Georgian or Russian, with no clear pattern flowing from the elements in the record. He stated, for instance, that he was Georgian in 1998, 2005 and 2006, each time in connection with his activities connected to CEG's involvement in Azerbaijan.⁶⁵⁶ By contrast, he stated on different occasions that he was Russian in 1997, 2007 and 2015, the latter two dates in connection with his marriage with and divorce from Ms. Kisiliova in Russia.⁶⁵⁷ Similarly, Dr. Leshkasheli represented that he resided in Tbilisi in 1996 and 2003,⁶⁵⁸ in Moscow in 1997 and 1998,⁶⁵⁹ and in London in 2005, 2006 and 2007.⁶⁶⁰

⁶⁵³ Tr. (Day 2), 347:5 (Leshkasheli).

⁶⁵⁴ Georgian IDs of Dr. Leshkasheli, Ms. Kisiliova, and Mr. Vladimir Leshkasheli, 19 February 1997 (C-348). Although he was not certain about the exact dates, Dr. Leshkasheli testified that Ms. Kisiliova was a Georgian citizen in 1995, further adding: "In the 1990s, she received the passport and the citizenship". Tr. (Day 2), 383:9-11 (Leshkasheli).

⁶⁵⁵ Tr. (Day 2), 383:11-13 (Leshkasheli).

⁶⁵⁶ Rosserlane Annual Return, 25 May 1998, p. 4 of the pdf document (R-97); Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, p. 1 of the pdf document (R-150); Appointment of director or secretary of Mayfair Energy Group Limited, 23 February 2006, p. 1 (C-311); Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, p. 2, Article 1.1 "Beneficial Owner" (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006, p. 3 of the pdf document (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 6 of the pdf document (C-178).

⁶⁵⁷ Certified Rosserlane Documents, 10 March 1997, p. 9 of the pdf document ("Notice of change of directors or secretaries or in their particulars" dated 4 April 1997) (R-91); Certificate of Dr. Leshkasheli and Ms. Kisiliova's Marriage in Russia, 19 September 2007 (R-247); Certificate of Dr. Leshkasheli and Ms. Kisiliova's Divorce in Russia, 28 March 2015 (R-248).

⁶⁵⁸ See, e.g., Georgian IDs of Dr. Leshkasheli, Ms. Kisiliova, and Mr. Vladimir Leshkasheli, 19 February 1997 (C-348); Rosserlane Consultants Written Resolution, 26 March 2003, p. 3 of the pdf document ("Declaration of Trust" dated 26 March 2003) (C-213).

⁶⁵⁹ See, e.g., Certified Rosserlane Documents, 21 March 1997, p. 9 of the pdf document ("Notice of change of directors or secretaries or in their particulars" dated 4 April 1997) (R-91); Annual Return of Rosserlane Consultants Limited Resolution, p. 4 of the pdf document (R-97).

⁶⁶⁰ Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, p. 1 of the pdf document (R-150); Appointment of director or secretary of Mayfair Energy Group Limited, 23 February 2006, p. 1 (C-311); Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, p. 2, Article 1.1 "Beneficial Owner" (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006, p. 3 of the pdf document (C-197); Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 1 of the pdf document (C-322; C00003607).

From 2009 onwards, his permanent residence and the center of his economic, social and family life has been in the UK.⁶⁶¹ As noted above, Dr. Leshkasheli travelled internationally with his Georgian passport between 2009 and 2018, notwithstanding the fact that he had lost his Georgian citizenship between 2011 and 2018.⁶⁶² Moreover, according to Georgia’s Ministry of Justice, he has neither immovable property, nor registered business, nor investments in Georgia, and he does not pay taxes or social contributions there.⁶⁶³ That said, there is no evidence showing that he has property, a registered business or investments in Russia, or that he pays taxes or social contributions there either.

352. Based on the evidence available in the record, the Tribunal is unable to reach a definitive conclusion about Dr. Leshkasheli’s dominant and effective nationality. It is in particular unable to conclude that his Russian nationality takes precedence over his Georgian one at the relevant times, namely at the time of the disputed measures and of the initiation of this arbitration. In other words, the Respondent has not convincingly demonstrated that Dr. Leshkasheli’s dominant and effective nationality, to the extent that question is relevant, is not his Georgian nationality.
353. That said, considering that it lacks jurisdiction over Dr. Leshkasheli on other grounds, the Tribunal need not reach a definitive conclusion about Dr. Leshkasheli’s dominant and effective nationality, whether from a factual or legal perspective.
354. With these considerations in mind, the Tribunal concludes that Dr. Leshkasheli was a Georgian citizen at all relevant times, and it therefore rejects this limb of the Respondent’s objection *ratione personae*.

b. Did Dr. Leshkasheli Own a Qualifying Investment?

(i) Parties’ Positions

355. The Respondent contends that Dr. Leshkasheli (i) never owned or controlled any protected investment, (ii) is neither the ultimate beneficial owner (the “UBO”) of the

⁶⁶¹ C-PHB2, para. 89, referring to Passport of Dr. Leshkasheli, 3 July 2009, p. 13 of the pdf document (C-206). See also Rosserlane Consultants Limited, 19 March 2009, 19 March 2009, p. 1 (C-209) (“Zaur Leshkasheli – 3-4 Balfour Place, London, W1K 2AT”).

⁶⁶² Passport of Dr. Leshkasheli, 3 July 2009 (C-206).

⁶⁶³ Letter of 9 March 2023 from the Ministry of Justice of Georgia to the Ministry of Justice of the Republic of Azerbaijan (R-224).

Alamar Trust under BVI law and/or Georgian law and/or the FATF Guidelines, (iii) nor the *de facto beneficiary* of the Alamar Trust under Georgian or Russian community property law.⁶⁶⁴ It adds that Dr. Leshkasheli’s “alleged interest” in CEG would in any event be “too remote” to benefit from the protection of the ECT.⁶⁶⁵

356. The Claimants answer that Dr. Leshkasheli both owned and controlled CEG at all relevant times and argue that his investment qualifies as a protected investment under Article 1(6) of the ECT.⁶⁶⁶ As regards ownership, the Claimants argue that Dr. Leshkasheli beneficially owned CEG at all relevant times.⁶⁶⁷ They explain that Dr. Leshkasheli owned Rosserlane and Erdingside before contributing those assets to the Alamar Trust in September 1995.⁶⁶⁸ Specifically, he owned Rosserlane through Cedargrove and Rivercroft, and he was the “direct owner of Erdingside”, which Swinbrook replaced in 2006.⁶⁶⁹
357. The Claimants further argue that Dr. Leshkasheli is a beneficial owner of CEG as a matter of Georgian law by virtue of his Georgian marriage to Ms. Kisiliova in 1996.⁶⁷⁰ Relying on Article 1163 of the Georgian Civil Code, the Claimants contend that Dr. Leshkasheli “shares his wife’s interest in the trust assets through his marriage”, even if that marriage occurred after the formation of the Alamar Trust, because the expenses incurred during the marriage in relation to CEG have “significantly” increased CEG’s value.⁶⁷¹ It follows, so say the Claimants, that CEG must be deemed “matrimonial property” under Georgian law.⁶⁷² The fact that Dr. Leshkasheli received “the full payment for the sale of CEG (minus the fees paid to Credit Suisse) following the forced sale” further confirms that he was “CEG’s beneficial owner”.⁶⁷³

⁶⁶⁴ R-PHB1, paras. 292-353; R-PHB2, paras. 77-97.

⁶⁶⁵ R-PHB1, paras. 354-363; R-PHB2, paras. 98-100.

⁶⁶⁶ C-PHB1, para. 288.

⁶⁶⁷ C-PHB1, para. 301.

⁶⁶⁸ C-PHB1, para. 289.

⁶⁶⁹ C-PHB1, para. 289.

⁶⁷⁰ C-PHB1, paras. 297-299; C-PHB2, paras. 70-80.

⁶⁷¹ C-PHB1, paras. 297-299; C-PHB2, para. 75.

⁶⁷² C-PHB1, para. 300.

⁶⁷³ C-PHB1, para. 301; C-PHB2, para. 81.

358. The Claimants add that the Respondent’s witnesses confirmed that Dr. Leshkasheli also controlled CEG at all relevant times.⁶⁷⁴ Mr. Orujov testified that Dr. Leshkasheli owned CEG and that it was his understanding that he also was CEG’s beneficial owner.⁶⁷⁵ Similarly, Mr. Agayev stated that he understood that Dr. Leshkasheli “was the ultimate beneficial owner of CEG”.⁶⁷⁶ The evidence further confirms, so say the Claimants, that Dr. Leshkasheli made all relevant decisions related to CEG, including decisions “regarding CEG’s actions with respect to Shirvan Oil”, hiring personnel of CEG, signing loan agreements on behalf of CEG, and managing the sale of CEG.⁶⁷⁷ The Claimants add that Article 13 of the Alamar Trust Deed “left control of CEG entirely to Dr. Leshkasheli, and Dr. Leshkasheli exercised that control”.⁶⁷⁸ Since Dr. Leshkasheli controlled CEG “at all times”, he therefore is CEG’s ultimate beneficial owner.⁶⁷⁹

(ii) Discussion

359. Article 1(6) of the ECT reads in relevant part as follows:

“Investment’ means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

(a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;

(b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;

(c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;

⁶⁷⁴ C-PHB1, paras. 302-305.

⁶⁷⁵ C-PHB1, para. 303; C-PHB2, para. 64, referring to Tr. (Day 6), 1552:4-17 (Orujov).

⁶⁷⁶ C-PHB1, para. 303; C-PHB2, para. 64, referring to Tr. (Day 7), 1842:18-1843:10 (Agayev).

⁶⁷⁷ C-PHB1, para. 304; C-PHB2, paras. 65-67.

⁶⁷⁸ C-PHB2, para. 68.

⁶⁷⁹ C-PHB2, para. 69.

(d) *Intellectual Property;*

(e) *Returns;*

(f) *any right conferred by law or contract or by virtue of any licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.*

[...]

'Investment' refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by Contracting Party in its Area as 'Charter efficiency projects' and so notified to the Secretariat".⁶⁸⁰

360. The Parties agree that the assets listed in Article 1(6) of the ECT qualify as an investment if they are directly or indirectly owned or controlled by a qualifying investor. Since the Claimants do not argue that Dr. Leshkasheli directly owned or controlled an asset listed in Article 1(6) of the ECT, they must at least show that he indirectly owned or controlled any such asset.
361. It bears recalling that, on 8 July 1994, Rosserlane and Erdingside executed a partnership agreement to create CEG (then Whitehall), with Rosserlane holding 90% of the shares and Erdingside the remaining 10%.⁶⁸¹ On the same day, CEG (then Whitehall) was registered in Edinburgh, Scotland, under the Limited Partnerships Act 1907.⁶⁸² CEG (then Whitehall) and SOCAR entered into the JVA on 25 December 1995 to develop and modernize the Kurovdag Field.⁶⁸³ The JVA provided for the establishment of Shirvan Oil, in which CEG held a 51% shareholding and SOCAR the remaining 49%.⁶⁸⁴ It therefore appears that CEG's 51% shareholding in Shirvan Oil and the contractual rights deriving from the JVA could fall under the definition of an investment under Article 1(6)(b) and (f) of the ECT. However, the question before the Tribunal is

⁶⁸⁰ ECT, Article 1(6) (C-1).

⁶⁸¹ Application for Registration of Whitehall International Traders, 27 July 1994, p. 2 of the pdf document (C-208).

⁶⁸² Application for Registration of Whitehall International Traders, 27 July 1994, p. 1 of the pdf document (C-208).

⁶⁸³ Joint Venture Agreement, 25 December 1995 (C-8).

⁶⁸⁴ Joint Venture Agreement, 25 December 1995, Articles 2 and 4.5 (C-8).

whether Dr. Leshkasheli owned or controlled, either directly or indirectly, a protected investment for the purposes of Article 1(6) of the ECT.

362. The arguments raised by the Parties require the Tribunal to determine whether Dr. Leshkasheli was the beneficial owner or *de facto beneficiary* of CEG, or otherwise exercised any control over CEG. The Respondent rightly pointed out that the Claimants' case of Dr. Leshkasheli's ownership has dramatically changed over the course of this arbitration, shifting from the claim that he owned CEG, to the claim that he was its beneficial owner, then its main beneficiary, to finally argue that he was a *de facto beneficiary*. As the analysis below will show, the Tribunal finds that none of these iterations is borne out by the facts. Dr. Leshkasheli was neither the owner, nor the beneficial owner, nor the main beneficiary, nor the *de facto beneficiary* of CEG's interest in Shirvan Oil, nor did he otherwise exercise any control over that investment (other than in his capacity as President of CEG between 1994 and 2008) that would qualify for protection under the ECT.
363. Starting with ownership, it is common ground that the indirect ownership of shares constitutes an investment under Article 1(6)(b) of the ECT. As noted above, CEG was at all relevant times owned by Rosserlane and Erdingside (Swinbrook later replaced Erdingside), the former holding 90% of the shares and the latter the remaining 10%. Rosserlane's share register provides the following information about its shareholding between 1994 and 2008:
- Between 25 May 1994 and 26 March 2003, Cedargrove Limited and Rivercroft Limited each held 1000 shares in Rosserlane;
 - Between 26 March 2003 and 23 February 2006, Dr. Leshkasheli held all the shares in Rosserlane;
 - Between 23 February and 18 August 2006, Mayfair Energy Group Limited held all the shares in Rosserlane;
 - Between 18 August and 8 September 2006, Ashmore Management Company Limited held all the shares in Rosserlane;

- Between 8 September and 15 December 2006, Shellbourne Trading Limited held all the shares in Rosserlane;
- Between 15 December 2006 and 11 July 2008, Mayfair Energy Group Limited again held all the shares in Rosserlane; and
- From 11 July 2008 onwards, Roanoaks Trading Limited held all the shares in Rosserlane.⁶⁸⁵

364. According to this share register, Dr. Leshkasheli held all the shares in Rosserlane between 26 March 2003 and 23 February 2006. The Claimants did not otherwise argue that he owned at any time any shares in the chain of companies above Rosserlane, including Mayfair Energy Group Limited, Roanoaks Trading Limited and Cornhill Nominees Limited. That said, as will be discussed further below, Dr. Leshkasheli contributed all the shares in Rosserlane to the Alamar Trust on 18 September 1995.⁶⁸⁶ In other words, the Alamar Trust held all the shares in Rosserlane from 1995 onwards. It is unclear why the Rosserlane share register did not reflect this change. It is further unclear how Dr. Leshkasheli could directly own shares in Rosserlane between 2003 and 2006 when those shares had already been contributed to the Alamar Trust in 1995. When questioned about this issue at the Hearing, Dr. Leshkasheli was evasive at first, but ultimately stated that the “recommendation” he had been given by his lawyers might have been “mistaken” and that he did not directly own Rosserlane’s shares.⁶⁸⁷

365. However, even if the Tribunal were to accept at face value the information contained in Rosserlane’s share register, that would mean that Dr. Leshkasheli lost his shareholding in Rosserlane on 23 February 2006 and that he therefore did not indirectly own CEG at all relevant times, including at the beginning of this arbitration.

366. The same defects taint Dr. Leshkasheli’s contention that he owned Swinbrook, which replaced Erdingside in February 2006. In his second witness statement, Dr. Leshkasheli stated that “Erdingside’s interest in CEG was transferred to Swinbrook Developments

⁶⁸⁵ Rosserlane Consultants Limited, 19 March 2009 (C-209); Rosserlane Consultants Written Resolution, 26 March 2003 (C-213). See also Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212).

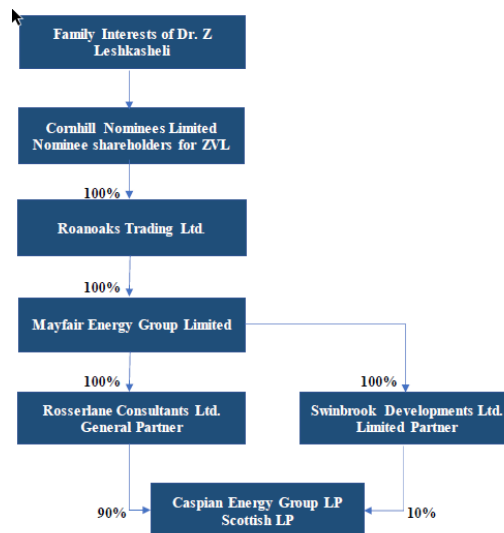
⁶⁸⁶ The Alamar Declaration of Trust, 18 September 1995 (C-325).

⁶⁸⁷ Tr. (Day 2), 397:3-401:5 (Leshkasheli).

Limited [...], a company I also owned”.⁶⁸⁸ Since Erdingside had been contributed to the Alamar Trust in 1995, as Dr. Leshkasheli conceded at the Hearing, his explanation that he owned Erdingside or Swinbrook as of 2006 is incorrect.⁶⁸⁹

367. To conclude, since Dr. Leshkasheli never owned any shares in the chain of companies above CEG, the Tribunal must reject the Claimants’ assertion that he indirectly owned CEG through the ownership of shareholding.

368. Turning now to beneficial ownership, the Claimants asserted in their Memorial that Dr. Leshkasheli was the “ultimate beneficial owner” of Rosserlane and the “entirety of CEG and of CEG’s interest in the Kurovdag Field through the Shirvan Joint Venture”.⁶⁹⁰ They included the following graph on the corporate structure “ultimately owned” by Dr. Leshkasheli or by the “Family Interests of Dr. Z”:⁶⁹¹



369. To support this assertion, the Claimants relied on an extract from the introductory part of the judgment in *Rosserlane Consultants Ltd v Credit Suisse International* (“*Rosserlane Consultants Ltd*”), in which the High Court described the claimants, i.e. Rosserlane and Swinbrook, as being “ultimately owned by Doctor Zaur Leshkasheli

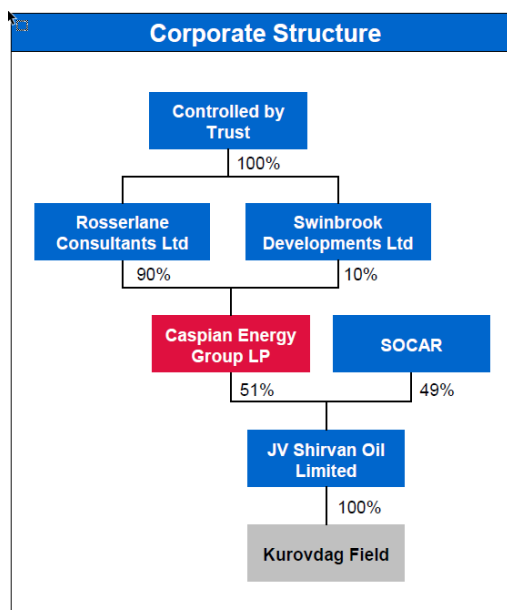
⁶⁸⁸ Leshkasheli WS2, para. 8(c), referring to Statement Specifying the Nature of a Change in Caspian Energy Group, 22 February 2006 (C-214).

⁶⁸⁹ Tr. (Day 2), 409:13-16 (Leshkasheli).

⁶⁹⁰ Memorial, paras. 23, 46 and 165.

⁶⁹¹ Memorial, para. 165.

(‘Dr L’) and his family interests”.⁶⁹² In those proceedings, Dr. Leshkasheli had submitted a witness statement in which he said that he was “one of the ultimate beneficial owners” of Rosserlane and Swinbrook, further specifying that the “ownership of these entities is held legally by [the] Alamar Trust which holds on trust for me and my family”.⁶⁹³ The Claimants also relied on a presentation made to Credit Suisse in April 2007, where Rosserlane and Swinbrook were described as being “[c]ontrolled by Trust”.⁶⁹⁴



370. In response to the Respondent’s argument that they failed to provide evidence of Dr. Leshkasheli’s “alleged beneficial interest in CEG”, the Claimants asserted in their Reply that “contemporaneous evidence” shows that Dr. Leshkasheli “owned CEG at all relevant times”.⁶⁹⁵ They referred in particular to the Khamar and the Credit Suisse loan agreements, which identify Dr. Leshkasheli as the “beneficial owner” of CEG.⁶⁹⁶ They also referred to two declarations of trust dated 2 March and 18 July 2006 whereby

⁶⁹² *Rosserlane Consultants Ltd and another v. Credit Suisse International*, [2015] EWHC 384 (ch), 20 February 2015, para. 7 (C-17).

⁶⁹³ Witness Statement of Zaur Leshkasheli from Credit Suisse Proceedings, para. 1 (A&M-26).

⁶⁹⁴ “Caspian Energy Group Management Presentation”, Credit Suisse, p. 5 (C-20). See also Credit Suisse Management Presentation – CEG, October 2007, p. 5 of the pdf document (A&M-158).

⁶⁹⁵ Reply, paras. 196-197 (footnote omitted).

⁶⁹⁶ Loan Agreement between Khamar Holdings Ltd., CEG & others, 31 May 2006 (C-65); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006 (C-178).

Cornhill Nominees Limited declared that it was holding the shares in Roanoaks in trust for Dr. Leshkasheli and the Alamar Trust, respectively, both of them being defined as beneficiaries.⁶⁹⁷ According to the Claimants, those documents show that “Cornhill Nominees held the shares in Roanoaks in trust for Dr. Leshkasheli and later also for his family”, and that he therefore indirectly owned CEG through Rosserlane and Swinbrook “at all relevant times”.⁶⁹⁸

371. The Claimants also argued in their Reply that “the Alamar Trust held the interest in CEG on Dr. Leshkasheli’s behalf”, without however providing the Alamar Trust Deed as supporting evidence.⁶⁹⁹ They explained that the Alamar Trust had been established in 1995 to manage the assets of Dr. Leshkasheli’s mother and of “his family”, and that after he had become “the main beneficiary of the Trust, he had the Alamar Trust hold the interest in his companies”.⁷⁰⁰ It followed, so they said, that the Alamar Trust “represented Dr. Leshkasheli’s family’s interests”.⁷⁰¹ According to the Claimants, the fact that the Alamar Trust made a distribution of income to Dr. Leshkasheli after CEG had been sold by Credit Suisse supports Dr. Leshkasheli’s beneficial interest in CEG.⁷⁰²
372. The Claimants introduced the Alamar Trust Deed into the record shortly before the Hearing.⁷⁰³ That document puts to rest the Claimants’ assertions that Dr. Leshkasheli was a beneficial owner of the Alamar Trust or its “main beneficiary”. In fact, Dr. Leshkasheli conceded at the Hearing that he was not a named beneficiary of the trust.⁷⁰⁴ The Alamar Trust was established on 18 September 1995 under the laws of the

⁶⁹⁷ Declaration of Trust, Cornhill Nominees Limited, 2 March 2006 (C-216); Declaration of Trust, Cornhill Nominees Limited, 18 July 2006 (C-217).

⁶⁹⁸ Reply, para. 199 (footnote omitted).

⁶⁹⁹ Reply, paras. 196 and 200.

⁷⁰⁰ Reply, para. 33 (footnote omitted); Leshkasheli WS2, para. 10 (“The Alamar Trust was established in 1995 to manage the assets of my mother, Lamara Leshkasheli, and my family. After I became the main beneficiary of the Trust, I decided that, for tax purposes, it would make more sense if the Alamar Trust held the interest in my companies”).

⁷⁰¹ Reply, para. 31(d).

⁷⁰² Reply, para. 200, referring to Resolution of the Trustees of The Alamar Trust of 18 September 1995, 2 April 2008 (C-218).

⁷⁰³ The Alamar Declaration of Trust, 18 September 1995, (C-325). That document also contains a Deed of Appointment of New Trustee and Retirement of Trustee dated 17 April 2000.

⁷⁰⁴ Tr. (Day 2), 405:11-20 (Leshkasheli) (“Q. You were not a named beneficiary of this trust, were you? A. Separately, no. Q. By ‘separately,’ you – I think we’re agree that you individually, Dr. Leshkasheli, were not a named beneficiary of the Alamar Trust? A. Separately, no. Yes, you’re right. Q. And you were never individually a named beneficiary of the Alamar Trust? A. Individually, no”).

BVI.⁷⁰⁵ The document shows that all the shares in Rosserlane and “100% of the rights” in Erdingside, which respectively owned 90% and 10% of CEG, were contributed to the Trust fund.⁷⁰⁶ Although not specifically identified in the Alamar Trust Deed, it is undisputed that Dr. Leshkasheli was the settlor of the Trust and that he contributed Rosserlane and Erdingside to the Trust fund in 1995.⁷⁰⁷ The Alamar Trust Deed further shows that Mr. André Zolty was the sole trustee until 17 April 2000 and that he was replaced by the Panamanian company FTS on that date.⁷⁰⁸ Nothing in the record suggests that FTS is no longer the trustee.

373. The Alamar Trust Deed further identifies Ms. Kisiliova and, in “the event of her demise”, her descendants as the “initial [b]eneficiaries” of the Trust.⁷⁰⁹ The Claimants accept that Ms. Kisiliova was “the sole initially named beneficiary of the Alamar Trust”.⁷¹⁰ In addition, they never asserted, let alone demonstrated, that Dr. Leshkasheli was ever added to the list of beneficiaries pursuant to the powers vested in the trustee under Article 2 of the Alamar Trust Deed.⁷¹¹ It therefore follows that Dr. Leshkasheli never was a named beneficiary of the Alamar Trust, let alone its “main beneficiary”. Quite to the contrary, the Alamar Trust Deed confirms that the shares in Rosserlane and Erdingside were legally owned by the sole trustee of the Alamar Trust since 18 September 1995 and that they were held in trust for Ms. Kisiliova.⁷¹²
374. The institution of trusts finds its origins in courts of equity in common law jurisdictions. As noted in *Yukos*:

⁷⁰⁵ The Alamar Declaration of Trust, 18 September 1995, Article 17 and p. 17 of the pdf document (C-325).

⁷⁰⁶ The Alamar Declaration of Trust, 18 September 1995, pp. 14-15 (C-325). Dr. Leshkasheli agreed during the Hearing that Swinbrook became part of the assets of the Alamar Trust, when Erdingside’s interests in CEG were transferred to it in 2006. Tr. (Day 2), 406:17-407:16 (Leshkasheli).

⁷⁰⁷ Tr. (Day 2), 390:18-20 (Leshkasheli) (“Q. You were the settler [sic] of the Alamar Trust, weren’t you? A. Yes”) and 396:2-6 (Leshkasheli) (“Q. But, in fact, we now see from the Alamar Trust deed that you had already contributed both Rosserlane and Erdingside into the Alamar Trust in 1995, hadn’t you? A. Yes. This is so”).

⁷⁰⁸ The Alamar Declaration of Trust, 18 September 1995, pp. 16-17 of the pdf document (C-325).

⁷⁰⁹ Alamar Trust Deed, p. 15 (C-325).

⁷¹⁰ C-PHB2, para. 70.

⁷¹¹ The Alamar Declaration of Trust, 18 September 1995, Article 2(1) (C-325) (“The Trustees may at any time or times during the Trust Period in their absolute discretion add to the Beneficiaries such one or more objects or persons”).

⁷¹² The Alamar Declaration of Trust, 18 September 1995 (C-325).

*“transferring ownership of assets to a trustee pursuant to a trust instrument is a centuries-old institution of the English common law. Settling certain properties into a trust, thus transferring legal ownership to the trustee and adopting provisions with regard to the beneficiaries – including leaving their establishment at the trustee’s discretion, subject to the powers of a protector as the case may be – is a well-established legal institution at common law, which is recognized internationally today pursuant to the Hague Convention on the Law Applicable to Trusts and their Recognition of 1 July 1985”.*⁷¹³

375. As noted above, the Alamar Trust is governed by the laws of the BVI. Since the Alamar Trust Deed was only produced shortly before the Hearing, none of the Parties put any BVI legislation on the law of trusts into the record prior to the Hearing. At the end of the Hearing, the Tribunal asked the Parties to explain in their post-hearing submissions the legal notion of ultimate beneficial ownership under any applicable laws, including the laws of the BVI.⁷¹⁴ Remarkably, neither Party produced the Trustee Act of the BVI, which appears to be the relevant legislation on the law of trusts in the BVI and which is publicly available.⁷¹⁵
376. The Claimants produced the Virgin Islands Anti-Money Laundering and Terrorist Finance Code of Practice, which defines an ultimate beneficial owner as “any individual who ultimately owns or controls the customer on whose behalf a transaction or activity is being conducted”.⁷¹⁶ They further produced the Virgin Islands Beneficial Ownership Secure Search System Act, which defines a beneficial owner as “the natural person who ultimately owns or controls a corporate or legal entity” and further specifies that “[w]here two or more persons hold any qualifying interest jointly, whether as joint owners or tenants in common, then each joint owner shall be a beneficial owner”.⁷¹⁷ However, the relevance of those documents to the issues at hand is not sufficiently explained, considering that they relate to the fight against money laundering and

⁷¹³ *Yukos*, para. 535 (CL-1).

⁷¹⁴ Procedural Order No. 4, 23 November 2022, para. 10(c).

⁷¹⁵ See footnote 719 below.

⁷¹⁶ C-PHB1, para. 4, footnote 9, referring to the Virgin Islands Anti-Money Laundering and Terrorist Financing Code of Practice, 2008, p. 7, Article 2 (C-336).

⁷¹⁷ C-PHB1, para. 4, note 9, referring to the Virgin Islands Beneficial Ownership Secure Search System Act, 2020, Article 6(1) and (4) (C-337).

terrorist financing and therefore adopt their own, expansive, notions of beneficial ownership.

377. For its part, the Respondent produced the Hague Convention on the Law Applicable to Trusts and their Recognition of 1 July 1985 (the “Hague Convention”), which defines a trust in its Article 2 as “the legal relationships created – *inter vivos* or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose”.⁷¹⁸ The Hague Convention further specifies that a trust has the following characteristics:

“a) the assets constitute a separate fund and are not a part of the trustee’s own estate;

b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;

*c) the trustee has the power and the duty, in respect of which he is accountable, to manage employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law”.*⁷¹⁹

378. The Claimants appear to accept that ownership and control deriving from the Alamar Trust must be ascertained by reference to the Alamar Trust Deed and the law determined as applicable under that instrument, here BVI law. Indeed, as was stated in *Yukos*, it is “within this framework of the trust documents themselves, interpreted in accordance with the applicable law of trusts”, that the issues of ownership and control must be addressed.⁷²⁰ The Claimants further accept as a general matter that the trustee

⁷¹⁸ The Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985, Article 2 (R-228).

⁷¹⁹ The Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985, Article 2 (R-228). To buttress this conclusion on the basis of the said Hague Convention, the Tribunal notes that a similar definition has been adopted in the publicly available Trustee Act of the BVI, Act 28 of 1961, as amended, which defines a trust as a “legal relationship created, either *inter vivos* or on death, by a settlor when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a special purpose”. The Trustee Act further specifies that a trust has the following characteristics: “(a) the assets constitute a separate fund and are not part of the trustee’s own estate; (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee; and (c) the trustee has the power and the duty in respect of which he is accountable to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law”. Trustee Act of the British Virgin Islands, Act 28 of 1961, Section 2, available at: https://www.bvifsc.vg/sites/default/files/trustee_act.pdf.

⁷²⁰ *Yukos*, para. 511 (CL-1).

holds legal title to the trust property and that the beneficiary has an “economic and financial interest in how the trust property is managed and whether it is duly protected”.⁷²¹ It follows that ownership in the trust assets is vested in the sole successive trustees of the Alamar Trust, not the settlor and not the beneficiary. In other words, neither Dr. Leshkasheli (as settlor) nor Ms. Kisiliova (as beneficiary) legally owned the assets of the Alamar Trust. At best, Ms. Kisiliova had an economic or financial interest in how the sole trustee managed the trust assets. By contrast, Dr. Leshkasheli had neither a right nor an interest in how the trust assets were to be managed. Indeed, the Alamar Trust Deed neither contains reservations of rights or powers for the benefit of the settlor, nor does the record contain any letter of wishes providing any guidance by the settlor on how the trustee was to exercise his discretionary powers. In sum, a review of the Alamar Trust Deed confirms that Dr. Leshkasheli was not a beneficial owner of the Alamar Trust and that he therefore cannot claim any standing in this arbitration on this count.

379. The other elements in the record upon which the Claimants rely to argue that Dr. Leshkasheli beneficially owned CEG are also of no assistance to their case. They relied in particular on the beneficial owner declaration of 8 November 2000, according to which Dr. Leshkasheli is the beneficial owner of Rosserlane,⁷²² and the declaration of trust of 2 March 2006, whereby Cornhill Nominees Limited declared that it held all the shares in Roanoaks Trading Ltd on trust for Dr. Leshkasheli.⁷²³ However, the Claimants failed to explain how these declarations could be reconciled with the fact that Rosserlane and Erdingside (later Swinbrook) had already been contributed to the Alamar Trust in 1995. The 2 March 2006 declaration cannot either be reconciled with the Declaration of Trust of 18 July 2006, whereby Cornhill Nominees Limited declared that it held the assets of Roanoaks Trading Limited on trust for the Alamar Trust. The Tribunal therefore gives no weight to these documents in the present context.

⁷²¹ C-PHB2, para. 80. Dr. Leshkasheli agreed at the Hearing that the Alamar Trust owned Rosserlane and Erdingside from 1995 onwards (“Q. And that means that the Alamar Trust, in fact, owned or controlled both Rosserlane Consultants Limited and Erdingside Services Limited from 1995, doesn’t it? A. Yes, that’s correct”). Tr. (Day 2), 394:7-11 (Leshkasheli).

⁷²² Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000 (C-210).

⁷²³ Declaration of Trust, Cornhill Nominees Limited, 2 March 2006 (C-216).

380. As for the judgment in *Rosserlane Consultants Ltd*, it is unclear on what basis the High Court described Rosserlane and Swinbrook as being “ultimately owned by Doctor Zaur Leshkasheli (‘Dr L’) and his family interests”.⁷²⁴ The Tribunal is unaware whether the Alamar Trust Deed was part of the record in those proceedings. The Claimants neither alleged that that was the case, nor rebutted the Respondent’s contention that “any conclusions reached by the High Court were reached in the absence” of the Alamar Trust Deed.⁷²⁵ It appears that the High Court relied on Dr. Leshkasheli’s witness statement where he stated that the ownership of Rosserlane and Swinbrook was legally held “by Alamar Trust which holds on trust for me and my family”.⁷²⁶ Another possible explanation may be that Credit Suisse itself believed since 2006 that Dr. Leshkasheli beneficially owned CEG and that this issue was not discussed in the Credit Suisse Proceedings. Indeed, the Claimants did not rebut the Respondent’s affirmation that Dr. Leshkasheli was not a party to those proceedings and that “the question of his alleged ‘de facto’ status as a beneficiary of the Alamar Trust was never in contention nor discussed”.⁷²⁷ The Tribunal therefore gives no weight to the introductory description of the Claimants in the proceedings before the High Court.
381. Finally, the fact that the proceeds of the CEG sale were distributed to Dr. Leshkasheli also does not evidence that he was a beneficiary of the Alamar Trust. The Claimants rely in this regard on three documents dated 2 April 2008. In the first document, Rosserlane appointed a Panamanian company, Hartman Development Corp (“Hartman”), as its nominee and requested that Hartman hold to Rosserlane’s order the proceeds of CEG’s sale, comprising USD 62,653,082.13 as capital and USD 250,000 as interest.⁷²⁸ In the second document, Rosserlane instructed Hartman to hold the amount of USD 250,000 to the order of Roanoaks and the amount of USD 62,653,082.13 to the order of Dr. Leshkasheli.⁷²⁹ Finally, the third document is a resolution from the trustee of the Alamar Trust resolving “to make a distribution of

⁷²⁴ *Rosserlane Consultants Ltd and another v. Credit Suisse International*, [2015] EWHC 384 (ch), 20 February 2015, para. 7 (C-17).

⁷²⁵ R-PHB1, para. 333.1.

⁷²⁶ Witness Statement of Zaur Leshkasheli from Credit Suisse Proceedings, para. 1 (A&M-26).

⁷²⁷ R-PHB1, para. 333.1.

⁷²⁸ Letter of 2 April 2008 to Hartman Development Corp. (C-323).

⁷²⁹ Letter of 2 April 2008 to Hartman Development Corp. (C-324).

income” in the amount of USD 250,000 to Dr. Leshkasheli.⁷³⁰ None of these documents identifies Dr. Leshkasheli as a beneficiary of the Alamar Trust. Moreover, the third document suggests that the proceeds of CEG’s sale were assets of the Alamar Trust. As noted by the Respondent, the Claimants did not explain how Rosserlane could distribute assets of the Alamar Trust to Dr. Leshkasheli.⁷³¹ The Tribunal notes in this regard that Articles 4 and 5 of the Alamar Trust Deed only allow the trustee to distribute the Trust assets or income generated therefrom to the beneficiaries,⁷³² and the Claimants acknowledge that “the trustee may only exercise its discretion to distribute income or capital of a trust in favor of a beneficiary”.⁷³³ Although it is unclear pursuant to which powers the trustee made this disbursement, the Tribunal is of the view that the 2 April 2008 resolution in any event does not substantiate that Dr. Leshkasheli is a beneficiary of the Alamar Trust.

382. Having concluded that Dr. Leshkasheli is not a beneficial owner or a beneficiary of the Alamar Trust, the Tribunal now turns to the argument that Dr. Leshkasheli was the *de facto* beneficiary of the Alamar Trust because he had an “ownership interest in the trust assets under Georgian law” due to his marriage with Ms. Kisiliova.⁷³⁴ The Claimants first argued at the Hearing that he was a *de facto* beneficiary of the Alamar Trust by virtue of the Russian law on community property. They did not pursue this line of argumentation in their post-hearing submissions⁷³⁵ and did not rebut the Respondent’s explanation that Russian courts do not recognize “a beneficial interest in a trust as a property right that can be included in the joint family property of spouses”.⁷³⁶ Instead, they argued that he was the *de facto* beneficiary by virtue of Georgian law principles of community property. Relying on Article 1163 of the Georgian Civil Code, they argue

⁷³⁰ Resolution of the Trustees of The Alamar Trust of 18 September 1995, 2 April 2008 (C-218).

⁷³¹ R-PHB1, para. 333.5.

⁷³² The Alamar Declaration of Trust, 18 September 1995, Articles 4 and 5 (C-325).

⁷³³ C-PHB2, para. 79.

⁷³⁴ C-PHB1, para. 297; C-PHB2, para. 70.

⁷³⁵ The Tribunal notes in this context that, on 27 December 2022, the Claimants provided to the Respondent a Certificate of Divorce showing that Dr. Leshkasheli and Ms. Kisiliova divorced in Russia on 5 May 2015, after signing a mutual declaration to that effect on 28 March 2015. Certificate of Dr. Leshkasheli and Ms. Kisiliova’s Divorce in Russia, 28 March 2015 (R-248).

⁷³⁶ R-PHB1, para. 341, referring to Decision of the Presninsky District Court of Moscow No. 2-4315/2015 (*Potantin*), 9 September 2015 (R-233); Appeal Ruling of the Moscow District Court No. 33-2311 (*Potantin*), 22 January 2016 (R-234).

that “Ms. Kisiliova’s trust property became matrimonial property as a result of Dr. Leshkasheli’s work to appreciate its value. As a result, Dr. Leshkasheli had an “ownership interest in CEG through marriage”.⁷³⁷

383. The question of Dr. Leshkasheli’s marriages to Ms. Kisiliova was the subject of intense debate during the Hearing and in the post-hearing submissions. The record contains the following elements:

- Dr. Leshkasheli and Ms. Kisiliova married a first time in Moscow on 19 June 1985;⁷³⁸
- They divorced on 30 August 1995;⁷³⁹
- The Alamar Trust was established on 18 September 1995;⁷⁴⁰
- According to the Claimants, Dr. Leshkasheli and Ms. Kisiliova remarried in Georgia on 20 December 1996, and they argue that the date of 11 May 1999 contained in the marriage certificate issued on 9 March 2023 is a “clerical error”;⁷⁴¹
- They married again in Russia on 19 September 2007;⁷⁴² and
- Their Russian marriage was dissolved on 28 March 2015.⁷⁴³

384. The Respondent does not accept that Dr. Leshkasheli and Ms. Kisiliova were married under Georgian law and it challenges the authenticity of the marriage certificate dated 20 December 1996 since there is no record thereof in the official Georgian civil registry.⁷⁴⁴ It adds that the Claimants failed to explain how they could re-marry in

⁷³⁷ C-PHB2, paras. 70 and 75, referring to Georgian Civil Code, Article 1163 (C-355).

⁷³⁸ Certificate of Dr. Leshkasheli and Ms. Kisiliova’s Marriage in Russia, 19 June 1985 (R-245).

⁷³⁹ Certificate of Dr. Leshkasheli and Ms. Kisiliova’s Divorce in Russia, 30 August 1995 (R-246).

⁷⁴⁰ The Alamar Declaration of Trust, 18 September 1995, p. 17 of the pdf document (C-325).

⁷⁴¹ C-PHB1, para. 291; C-PHB2, paras. 71-72, referring to Georgian Marriage Certificate, 20 December 1996 (C-353); Georgian Marriage Certificate, 9 March 2023 (C-356).

⁷⁴² Certificate of Dr. Leshkasheli and Ms. Kisiliova’s Marriage in Russia, 19 September 2007 (R-247).

⁷⁴³ Certificate of Dr. Leshkasheli and Ms. Kisiliova’s Divorce in Russia, 28 March 2015 (R-248).

⁷⁴⁴ R-PHB1, paras. 345-346; R-PHB2, para. 85, referring to Letter of 22 February 2023 from the Ministry of Justice of Georgia to the Ministry of Justice of the Republic of Azerbaijan (R-222).

Russia in 2007 if they were already married in Georgia since 1996 or 1999.⁷⁴⁵ For the Respondent, the “overlapping marriages in Russia and Georgia” are “prima facie fraudulent and tainted by illegality”.⁷⁴⁶

385. The Tribunal need not determine whether Dr. Leshkasheli and Ms. Kisiliova married in Georgia in 1996 or 1999.⁷⁴⁷ Neither does it need to discuss the issue of overlapping marriages and the Respondent’s contention that they are “tainted by illegality”.⁷⁴⁸ Whether they married in Georgia in 1996 or 1999 is of little relevance here. This is so, because Dr. Leshkasheli contributed Rosserlane and Erdingside to the Alamar Trust fund after his first Russian divorce and before his Georgian marriage. Accordingly, the assets of the Alamar Trust were never matrimonial property, whether under Russian or Georgian law on community property. The Claimants accept as much. However, based on Article 1163 of the Georgian Civil Code, they argue that Ms. Kisiliova’s “trust property” became matrimonial property “as a result of Dr. Leshkasheli’s work to appreciate its value” during the marriage, further adding that “there can be no dispute that the trust property increased significantly in value”.⁷⁴⁹
386. Georgian law generally distinguishes between separate and joint property of spouses. Article 1161 of the Georgian Civil Code defines “separated property” as follows:

“The following shall be the separate property of each spouse:

a) property that each of them owned before the marriage;

*b) property inherited or received as a gift during the marriage”.*⁷⁵⁰

⁷⁴⁵ R-PHB1, para. 347; R-PHB2, para. 85.

⁷⁴⁶ R-PHB2, para. 85.

⁷⁴⁷ The fact that Ms. Kisiliova’s Georgian passport dated 19 February 1997 identifies her as Tatiana Leshkasheli seems to support the Claimants’ position that she married Dr. Leshkasheli in 1996. See Georgian Passport of Ms. Kisiliova, 19 February 1997 (C-349).

⁷⁴⁸ R-PHB2, para. 85.

⁷⁴⁹ C-PHB2, paras. 70 and 75-76.

⁷⁵⁰ Georgian Civil Code, Article 1161 (C-355).

387. In turn, Article 1158(1) of the Georgian Civil Code provides that “matrimonial property” comprises:

*“Any property acquired by the spouses during their marriage shall be treated as their joint property (matrimonial property) unless otherwise determined by the marriage contract”.*⁷⁵¹

388. Georgian law, however, contains an exception to this dichotomy and contemplates the possibility of converting separate property into matrimonial property if the property of one spouse significantly increases in value due to “expenses” incurred during the marriage. Article 1163 of the Georgian Civil Code provides that:

*“The property of each spouse may be deemed to be the matrimonial property if it is discovered that the property has significantly increased in value as a result of the expenses incurred during the marriage (redesigning, completion of construction, reconstruction, etc.). This rule shall not apply if the marriage contract provides otherwise”.*⁷⁵²

389. The Tribunal can leave aside the contested issue whether Ms. Kisiliova’s beneficial interest in the assets of the Alamar Trust qualifies as property under Georgian law. Even if this were the case, the Tribunal is not convinced that Dr. Leshkasheli personally incurred any expenses during his Georgian marriage that would have significantly increased the value of the assets of the Alamar Trust, and in particular the value of CEG. The Claimants’ assertion to the contrary is unsubstantiated. While it is arguably true that CEG’s value increased between 1997, when it paid USD 51,000 to acquire a 51% stake in Shirvan Oil, and 2008, when CEG was sold for USD 245 million, there is insufficient evidence in the record showing that Dr. Leshkasheli incurred any expenses in relation to CEG during his marriage to Ms. Kisiliova.

390. The record does not corroborate the Claimants’ assertion that Dr. Leshkasheli “invested substantially” in the Kurovdag Field and that all those expenses were paid “either out of pocket by Dr. Leshkasheli or through funds raised by Dr. Leshkasheli”.⁷⁵³ Dr. Leshkasheli stated in his second witness statement, without providing any supporting evidence, that he “[i]nitially” paid “for all” of CEG’s investments “out of

⁷⁵¹ Georgian Civil Code, Article 1158(1) (C-355).

⁷⁵² Georgian Civil Code, Article 1163 (C-355).

⁷⁵³ C-PHB1, paras. 313-318; C-PHB2, para. 83.

pocket” and that “[l]ater” he “took personal loans from friends and family, without any contracts or guarantees”.⁷⁵⁴ He then testified at the Hearing that Shirvan Oil was “exclusively” financed by him during the first three years and that he personally invested USD 7 to 8 million in the first four to five years:

*“For the first three years, the Joint Venture existed completely on my own money, exclusively. And the first four or five years, the total amount of private money exceeded 7 or 8 millions, and I have all those payments. Everything was supported, so, with all due respect, I cannot agree to how the question was posed”.*⁷⁵⁵

391. Following the Hearing, the Tribunal asked the Parties to identify in the record the financial contributions made by Dr. Leshkasheli and the origins of any funds invested by him.⁷⁵⁶ The Claimants answered that Dr. Leshkasheli and Rosserlane “transferred significant sums of money to Azerbaijan” to (i) pay salaries, taxes and other expenditures of Shirvan Oil, (ii) invest in a new oil loading gantry and a local pipeline, (iii) invest in geological, seismic, engineering and other studies, (iv) invest “over” USD 20 million on a drilling plan, (v) reinvest around USD 26 million in relation to “Shirvan Oil’s retained earnings as of December 31, 2006”, and (vi) secure financing deals in the amount of USD 180 million with third parties.⁷⁵⁷ According to the Claimants, those funds were either paid “out of pocket by Dr. Leshkasheli (like the Shirvan Oil employee salaries) or through funds raised by Dr. Leshkasheli (like the financing deals)”.⁷⁵⁸
392. Other than to say that he paid the salaries of the employees of Shirvan Oil, the Claimants did not provide any detail about the amounts Dr. Leshkasheli paid out of his own pocket. The evidence does not substantiate or corroborate the assertion that Dr. Leshkasheli personally incurred expenses in relation to CEG or Shirvan Oil. The evidence rather shows that CEG (then Whitehall), not Dr. Leshkasheli, transferred all of the amounts mentioned above, including funds used to pay salaries.

⁷⁵⁴ Leshkasheli WS2, para. 35.

⁷⁵⁵ Tr. (Day 2), 425:15-21 (Leshkasheli).

⁷⁵⁶ Procedural Order No. 4, 23 November 2023, para. 10(d).

⁷⁵⁷ C-PHB1, para. 314 (footnote omitted).

⁷⁵⁸ C-PHB1, para. 315.

393. Regarding the salaries, the Claimants only refer to transfers made by Whitehall, not Dr. Leshkasheli.⁷⁵⁹ There is thus no evidence showing that Dr. Leshkasheli incurred any out-of-pocket expenses, for salaries or otherwise.
394. Similarly, the contract for the oil gantry with Blanford was entered into by Whitehall and there is no evidence that Dr. Leshkasheli paid USD 1 million out of his pocket.⁷⁶⁰
395. The same is true for the various studies commissioned by Shirvan Oil and the drilling plan. The Claimants refer to a number of studies commissioned between 1997 and 2005, but they do not provide any evidence showing that Dr. Leshkasheli paid for those studies.⁷⁶¹ In fact, there is evidence showing that Shirvan Oil paid for some of those

⁷⁵⁹ C-PHB1, para. 314, referring to Barclays Bank Wire for US\$ 600,000 for Payment of Shirvan Oil Salaries, 2 April 1998 (C-232) (Whitehall transferred US\$ 600,000 for the “financial support by Whitehall to Shirvan Oil for salaries”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 23 August 1999 (C-233) (Whitehall transferred US\$ 450,000 as “[t]emporary financial assistance for payment of wages and social allowances to JV Shirvan Oil workers for months V-VI-VII of 1999”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 11 October 1999 (C-234) (Whitehall transferred US\$ 170,000 as “[t]emporary financial assistance for payment of wages and social allowances to JV Shirvan Oil workers for September 1999”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 5 October 1999 (C-235) (Whitehall transferred US\$ 500,000 as “[t]emporary financial assistance for payment of Taxes to the State Budget of Azerbaijan”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 11 October 1999 (C-236) (Whitehall transferred US\$ 200,000 as “[t]emporary financial assistance for payment of credit indebtedness to suppliers”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 6 December 1999 (C-237) (Whitehall transferred US\$ 200,000 as “[t]emporary financial assistance for payment of wages and social allowances to JV Shirvan Oil workers for November 1999”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 26 January 2000 (C-238) (Whitehall transferred US\$ 100,000 as “[t]emporary financial assistance for payment of compensation to workers of Shirvan Oil”); Letter from Glenn Nobes to Bank Bruxelles Lambert (Suisse) S.A., 17 January 2000 (C-239) (Whitehall transferred US\$ 500,000 as “[t]emporary financial assistance for taxes and equipment”); Letter from Glenn Nobes to Shirvan Oil’s General Director Mekhman Babyev, 1 October 1997 (C-189) (Whitehall transferred US\$ 500,000 “to be used as follows: 1. US\$51,000 is Whitehall’s obligation to the Partnership Fund under Article 4.5 of the Joint Venture Agreement between SOCAR and Whitehall. 2. As for the balance of US\$449,000 and in consideration for the non-payment of salaries in May, June, July and August 1997, Whitehall has decided to provide immediate financial support to Shirvan Oil, by allowing the use of this US\$449,000 for the payment of September, October and November 1997 salaries. The financial assistance provided in 2 above is made available to Shirvan Oil on the simple condition that the funds are returned to Whitehall at the earliest opportunity when the necessary funds are in the account of Shirvan Oil”).

⁷⁶⁰ Contract relating to construction of crude oil gantry for JV Shirvan Oil in Ali-Bayramli, 28 August 1999 (C-42).

⁷⁶¹ C-PHB1, para. 314(c), footnote 837, referring to Appraisal Of the Kyurovdag Oil & Gas Field Development Proposed By the Joint Venture, Shirvan Oil, Azerbaijan, Suregrove, July 1997 (C-245); Kyurovdag Oil and Gas Field, Expert Opinion, Petroconsultants Company, 2004 (C-267); Report on Results of Detailed 3D CDP Seismic Survey within the Kyurovdag Field, PetroAlliance (C-176); Report on Production Enhancement, Halliburton, 24 August 2005 (C-53); Report on Enhanced Recovery by Water Flood, Halliburton, August 2005 (C-54); Geological Proposal, Halliburton, August 2005 (C-55); Miller and Lents Report in Rosserlane Consultants Ltd and another v Credit Suisse International, 4 November 2005 (C-56); Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 1 – Site Survey Report, AMEC, September 2005 (C-57); Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 2 –

studies, such as the 3D seismic study prepared by PetroAlliance.⁷⁶² Indeed, Dr. Leshkasheli said during the JV's technical committee meeting of 30 November 2004 that "[f]or the first time in Azerbaijan, a JV decided to conduct a seismic survey *at its own expense*".⁷⁶³ He confirmed at the Hearing that Shirvan Oil had paid for that study.⁷⁶⁴ Accordingly, the Claimants assertion that Dr. Leshkasheli paid for those studies is unsubstantiated.

396. As for the drilling plan, the Claimants assertion that they invested in 2006 "over \$20 million on a plan to drill in virgin terrain of the Field" is equally unsubstantiated.⁷⁶⁵ Their reliance on the Protocol of Consent dated 8 February 2006 is misguided, since that document merely contains an acknowledgement that CEG would be responsible for paying the drilling costs that were yet "to be implemented".⁷⁶⁶ It is undisputed that those drilling works were never implemented, which suggests that few costs, if any at all, were ever incurred. To the extent that CEG incurred costs to hire "a team of managers intended to drill new wells", as Messrs. Eriksen and Littlechild testified at the Hearing, there is no evidence showing that Dr. Leshkasheli paid for those costs.⁷⁶⁷ In any event, as the Respondent pointed out, there is no evidence that any monies were ever paid, let alone that Dr. Leshkasheli personally incurred any expenses in connection with that drilling plan.
397. As for the alleged reinvestment of "around USD 26 million" stemming from Shirvan Oil's retained earnings, there is no evidence showing that those monies were reinvested

Recommendations on Repairs, Reorganisation or Abandonment, AMEC, September 2005 (C-29); Kurovdag Oilfield Infrastructure Rehabilitation Study – Phase 3 – Recommendations for New Facilities, AMEC, September 2005 (C-77).

⁷⁶² Audited Financial Statements for Shirvan Oil for the year ended 31 December 2002, p. 11 (A&M-95); Audited Financial Statements for Shirvan oil for the year ended 31 December 2003, p. 14 (A&M-96); Minutes No. 62 of the Meeting of the Technical Committee of Shirvan Oil JV, 30 November 2004, p. 4 (C-180).

⁷⁶³ Emphasis added by the Tribunal. Minutes No. 62 of the Meeting of the Technical Committee of Shirvan Oil JV, 30 November 2004, p. 4 (C-180).

⁷⁶⁴ Tr. (Day 2), 511:4-7 (Leshkasheli) ("Q. Now, as these sums are recorded in the audited accounts of Shirvan Oil, they must, in fact have been paid by Shirvan, mustn't they? A. Yes").

⁷⁶⁵ Reply, para. 55 (footnote omitted); C-PHB1, para. 314(d) (footnote omitted).

⁷⁶⁶ Protocol of Consent, Addendums I and II, 8 February 2006, p. 7 of the pdf document (C-244).

⁷⁶⁷ C-PHB1, para. 314(d), footnote 838, referring to Tr. (Day 5), 1262:10-1264:16 (Eriksen) and Tr. (Day 9), 2217:14-15 (Littlechild).

out of Dr. Leshkasheli's own funds.⁷⁶⁸ Shirvan Oil's financial statements show retained earnings of AZN 47,986,163 in 2006.⁷⁶⁹ There is no evidence in the record showing that these retained earnings were paid out as dividends or, if that was the case, whether CEG reinvested its share of those earnings in Azerbaijan. In any event, the Claimants left unexplained how those retained earnings could be construed as funds invested personally by Dr. Leshkasheli.

398. Finally, as regards financing deals, while it is true that Dr. Leshkasheli was involved in negotiating loans with third parties, he did so in his capacity as President of Whitehall/CEG. Dr. Leshkasheli's statement that he "took personal loans from friends and family, without any contracts or guarantees" remains unsubstantiated and uncorroborated.⁷⁷⁰ The same is true for the loans allegedly provided by the trader Robert Finch between 2002 and 2008 to finance CEG.⁷⁷¹ As for the Vitol loan, it was entered into by CEG, not Dr. Leshkasheli.⁷⁷² Similarly, the subsequent loan agreements with Ashmore, Khamar and Credit Suisse were entered into by CEG, not Dr. Leshkasheli.⁷⁷³
399. In sum, there is no documentary evidence corroborating Dr. Leshkasheli's testimony that he personally incurred expenses in relation to CEG or Shirvan Oil. It follows that the Claimants cannot rely on Article 1163 of the Georgian Civil Code to argue that

⁷⁶⁸ C-PHBI, para. 314(e), referring to Joint Venture Shirvan Oil Financial Statements 2006, p. 6 (A&M-99).

⁷⁶⁹ Joint Venture Shirvan Oil Financial Statements 2006, p. 6 (A&M-99).

⁷⁷⁰ Leshkasheli WS2, para. 35.

⁷⁷¹ Leshkasheli WS2, paras. 35-36. The Khamar and Credit Suisse loans refer to a "Private Investor Loan Agreement" dated 21 October 2002 between Rosserlane, Sanston and a "private investor", likely Mr. Finch. This private investor loan agreement is not part of the record. The Respondent put into evidence a Supplemental Deed dated 8 November 2005 in which Rosserlane is identified as the "New Borrower". See Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005 (R-150); Loan Agreement between CEG and Ashmore, 11 August 2006, p. 8 (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 12 (C-178).

⁷⁷² Loan Agreement between CEG and Vitol, 22 March 2002 (R-114).

⁷⁷³ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006 (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006 (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006 (C-178).

Dr. Leshkasheli can lay claim to a share of Ms. Kisiliova’s interest in the Alamar Trust assets.

400. Having discarded all the arguments that Dr. Leshkasheli indirectly owned CEG, the Tribunal now turns to the Claimants’ argument that Dr. Leshkasheli controlled CEG.⁷⁷⁴ The Claimants contend that Dr. Leshkasheli was at all relevant times the “direct controller of CEG”.⁷⁷⁵ According to them, Azerbaijan “dealt with Dr. Leshkasheli for over a decade as the owner and responsible party with respect to CEG”.⁷⁷⁶ They highlight that all contemporaneous stakeholders considered that Dr. Leshkasheli controlled CEG. For instance, Mr. Orujov testified that he understood that Dr. Leshkasheli was the beneficial owner of CEG and Mr. Agayev testified that Dr. Leshkasheli was directing the operations of CEG.⁷⁷⁷ Credit Suisse also recognized that Dr. Leshkasheli was the beneficial owner of CEG and “was content with Dr. Leshkasheli signing loan agreements on behalf of CEG”.⁷⁷⁸ In addition, the Respondent did not dispute that Dr. Leshkasheli managed and controlled the first sale process of CEG.⁷⁷⁹ The Claimants further point to the fact that Dr. Leshkasheli “made decisions regarding CEG’s actions with respect to Shirvan Oil” and that he “made hiring decisions on CEG’s behalf”.⁷⁸⁰ Finally, they argue that Article 13 of the Alamar Trust Deed “left control of CEG entirely to Dr. Leshkasheli”, and add that Dr. Leshkasheli “exercised that control”.⁷⁸¹ Accordingly, since Dr. Leshkasheli controlled CEG “at all times”, he is “the ultimate beneficial owner of that asset” and CEG therefore qualifies as an investment under the ECT.⁷⁸²

401. As noted above, Article 1(6) of the ECT clarifies that a protected investment extends to any of the listed assets that are either “owned or controlled directly or indirectly by an

⁷⁷⁴ C-PHB1, paras. 302-305; C-PHB2, paras. 63-69.

⁷⁷⁵ C-PHB1, para. 2(a). See also Tr. (Day 2), 488:8-10 (Leshkasheli) (“The operational guidance and control was always performed by one person, and one person only. It was me”).

⁷⁷⁶ Reply, para. 196.

⁷⁷⁷ C-PHB2, para. 64.

⁷⁷⁸ C-PHB2, para. 65 (footnote omitted).

⁷⁷⁹ C-PHB2, para. 66.

⁷⁸⁰ C-PHB2, para. 67 (footnote omitted).

⁷⁸¹ C-PHB2, para. 68.

⁷⁸² C-PHB2, para. 69.

Investor”.⁷⁸³ The use of the conjunction “or” shows that ownership and control are “alternative bases of jurisdiction”.⁷⁸⁴ In other words, direct or indirect ownership of, for instance, “a company or business enterprise, or shares, stock, or other forms of equity participation” (Article 1(6)(b) of the ECT) should be sufficient to find jurisdiction without a need to show direct or indirect control.⁷⁸⁵ Of course, full ownership of a company and its shares may be the strongest form of control; a claimant with no ownership rights which proves control of such a company will need to rebut with cogent evidence the presumption of control associated with ownership (of a third party). Conversely, direct or indirect control also suffices to find jurisdiction without there being a necessity to show ownership.⁷⁸⁶

402. Most commonly, ownership and control are used to distinguish the powers attached to majority and minority shareholding. Thus, although both the majority and the minority shareholders have ownership rights (through their shares), it is generally assumed that the majority shareholders also have the capacity to exercise control, especially if they have the majority of voting rights. As noted in *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan* (“*AIG Capital*”), “for corporate entities, voting control of the stock held is generally determinative of control – whosoever may own that stock”.⁷⁸⁷ Thus, for instance, in *Venezuela Holdings B.V. and others (formerly Mobil Corporation and others) v. Bolivarian Republic of Venezuela*, the Dutch parent company’s indirect full ownership of its two Bahamian subsidiaries entailed control, without there being a need to further ascertain whether “control was exercised in fact”.⁷⁸⁸ The Tribunal concurs in this regard with the annulment committees in *Caratube International Oil Company LLP v. Republic of Kazakhstan*, and *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, when they stated that there is “a general

⁷⁸³ ECT, Article 1(6) (C-1).

⁷⁸⁴ *MAKAE Europe SARL v. Kingdom of Saudi Arabia*, ICSID Case No. ARB/17/42, Award, 30 August 2021 (“*MAKAE*”), para. 132.

⁷⁸⁵ ECT, Article 1(6)(b) (C-1).

⁷⁸⁶ *MAKAE*, para. 132.

⁷⁸⁷ *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6, Award, 7 October 2003 (“*AIG Capital*”), para. 10.2.2.

⁷⁸⁸ *Venezuela Holdings B.V. and others (formerly Mobil Corporation and others) v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, 10 June 2010, para. 160.

presumption that a majority shareholder also controls the company”, further adding that this presumption “can only be rebutted if there are special elements which create doubts about the owner’s control”.⁷⁸⁹

403. That being so, minority shareholders may also exercise control through a number of ways determined either in the corporate laws of the company’s State of incorporation, the company’s foundational documents or other legal instruments, such as shareholders’ agreements. As was held in *Aguas del Tunari, S.A. v. Republic of Bolivia*, in the case of a minority shareholder, “the legal capacity to control an entity may exist by reason of the percentage of shares held, legal rights conveyed in instruments or agreements such as the articles of incorporation or shareholders’ agreements, or a combination of these”.⁷⁹⁰ An example is the situation of different classes of shares, with voting rights vested only in certain classes of shares (for instance, “A” shares as opposed to “B” or “C” shares), and where a minority shareholder holds all the shares in the class having the voting rights, as was the case in *AIG Capital*.⁷⁹¹
404. In the present case, the Claimants aver that Dr. Leshkasheli controlled CEG at all relevant times. It has already been determined above that he did not own CEG, either directly or indirectly. Indeed, Rosserlane and Erdingside respectively owned 90% and 10% of CEG’s shares, and in turn Rosserlane and Erdingside had been contributed to the Alamar Trust on 18 September 1995.⁷⁹² In other words, Rosserlane and Erdingside directly owned CEG and the trustee of the Alamar Trust indirectly owned CEG. At first blush, this ownership structure entails a presumption that Rosserlane, as the general partner in CEG, directly controlled CEG and that the trustee of the Alamar Trust indirectly controlled CEG. The Claimants must thus provide sufficiently cogent evidence to rebut this presumption and to demonstrate that Dr. Leshkasheli in fact controlled CEG, either directly or indirectly.

⁷⁸⁹ *Caratube International Oil Company LLP v. Republic of Kazakhstan*, ICSID Case No. ARB/08/12, Decision on the Annulment Application of Caratube International Oil Company LLP, 21 February 2014, para. 271; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Annulment of the Award, 2 November 2015, para. 104 (footnote omitted).

⁷⁹⁰ *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction, 21 October 2005, para. 264.

⁷⁹¹ *AIG Capital*, para. 9.4.8.

⁷⁹² The Alamar Declaration of Trust, 18 September 1995, First Schedule, pp. 14-15 (C-325).

405. The distinction between *de jure* and *de facto* control is well established in investment arbitration.⁷⁹³ To quote *International Thunderbird Gaming Corporation v. The United Mexican States* (“*Thunderbird*”), “control can be exercised in various manners”.⁷⁹⁴ It is a “flexible concept” that “can only be determined case by case in the light of the particular facts”.⁷⁹⁵ As noted above, *de jure* control derives from majority ownership or other arrangements providing a minority shareholder the legal capacity to control a company. Typically, *de jure* control involves the right to appoint a majority of the board of directors and the capacity to exercise significant influence over the company’s decision-making process.
406. In *B-Mex*, for instance, the tribunal distinguished between minority shareholding “that is still sufficient in the specific circumstances to confer the legal capacity to control” (i.e., *de jure* control) and ownership of shares insufficient to confer such legal capacity to control but that “is otherwise able to exercise *de facto* control”.⁷⁹⁶ In that case, the tribunal thus differentiated between ownership conferring legal control and ownership that otherwise confers control in fact. However, as noted above, ownership and control are alternative bases for jurisdiction under the ECT, such that ownership is not required if control can otherwise be shown. As stated in *MAKAE Europe SARL v. Kingdom of Saudi Arabia*, proof of *de facto* control does not, per se, require “some ownership or other form of economic interest in an investment”.⁷⁹⁷ The tribunal in *Thunderbird* provided the following description of the difference between *de jure* and *de facto* control:

“It is quite common in the international corporate world to control a business activity without owning the majority voting rights in shareholders meetings. Control can also be achieved by the power to effectively decide and implement the key

⁷⁹³ *B-Mex*, para. 205; *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, 30 January 2023, para. 174 (“‘Control’ is generally ascertained through legal control founded on the percentage of ownership title of shares (direct or indirect), including an analysis of voting rights and shareholders’ agreements, or through actual control, which requires establishing the capacity to control and direct a company’s day-to-day management and activities”).

⁷⁹⁴ *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Arbitral Award, 26 January 2006 (“*Thunderbird*”), para. 106.

⁷⁹⁵ *United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Award, 21 June 2019, para. 366.

⁷⁹⁶ *B-Mex*, para. 205.

⁷⁹⁷ *MAKAE*, para. 132.

*decisions of the business activity of an enterprise and, under certain circumstances, control can be achieved by the existence of one or more factors such as technology, access to supplies, access to markets, access to capital, know how, and authoritative reputation. Ownership and legal control may assure that the owner or legally controlling party has the ultimate right to determine key decisions. However, if in practice a person exercises that position with an expectation to receive an economic return for its efforts and eventually be held responsible for improper decisions, one can conceive the existence of a genuine link yielding the control of the enterprise to that person”.*⁷⁹⁸

407. In the Tribunal’s view, where one entity or person asserts *de facto* control over a company in circumstances where *de jure* control is vested in another entity or person, *de facto* control can only be demonstrated by facts showing that the decision-making power over the company does not lie with the entity or person having *de jure* control.
408. The Respondent rightly noted in its reply post-hearing brief, that the notion of “control” in Article 1(6) of the ECT is informed by Understanding 3 to the ECT, which reads as follows:

“ECT’s Understanding with respect to Article 1(6):

For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an Investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor’s

(a) financial interest, including equity interest, in the Investment;

(b) ability to exercise substantial influence over the management and operation of the Investment; and

(c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

⁷⁹⁸ *Thunderbird*, para. 108.

*Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, an Investor claiming such control has the burden of proof that such control exists”.*⁷⁹⁹

409. Understanding 3 thus incorporates a “control in fact” test for ascertaining control under Article 1(6) of the ECT. This test requires examining “the actual circumstances” and considering “all relevant factors”. Although the term “including” shows that the list of factors is not exhaustive, the ECT Contracting Parties put particular emphasis on three “relevant factors” contained in Understanding 3, namely the investor’s financial interest, the ability to exercise substantial influence over the management and operation, or over the selection of directors and other managers. In this context, the tribunal in *Eskosol S.p.A. in Liquidazione v. Italian Republic* (“*Eskosol*”) held that:

*“The factors listed in the Understanding are each in a sense structural, deriving either from the distribution of company shares or from the distribution of powers regarding management, operation, and selection of board members, which generally are reflected in a company’s foundational documents”.*⁸⁰⁰

410. The Tribunal shares the view expressed in *Eskosol* that the three factors mentioned in Understanding 3 are “structural” and that the distribution of company shares or the distribution of powers regarding the management, operation and selection of board members are generally reflected in the company’s foundational documents.

411. In the present case, the Claimants have not put into evidence the foundational documents of CEG. They did not either point to any provisions in any company legislation applicable to CEG at its place of incorporation (Scotland) that would shed any light on any applicable rules regarding the corporate structure and management of CEG. In particular, the record contains no articles of association of CEG, which would show how its directors were appointed and how decisions about the company’s management and operations had to be taken.

⁷⁹⁹ R-PHB2, para. 94. See Final Act of the European Charter Conference, Section IV (“3. With respect to Article 1(6)”). The Tribunal notes that the Respondent did not include in its citation the final paragraph of Understanding 3 quoted above, which can be found at: <https://www.energychartertreaty.org/provisions/final-act-of-the-european-energy-charter-conference/>.

⁸⁰⁰ *Eskosol S.p.A. in Liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Respondent’s Application under Rules 41(5), 20 March 2017, para. 107 (RL-149).

412. The record contains certain uncontroverted facts. As noted above, Rosserlane and Erdingside, which respectively owned 90% and 10% of CEG's shares, were contributed to the Alamar Trust on 18 September 1995.⁸⁰¹ Dr. Leshkasheli was the President of Whitehall/CEG from 1994 to 2008.⁸⁰² He was moreover a member of Rosserlane's Board of Directors from 4 April 1997 to at least January 2007.⁸⁰³ As noted above, the Rosserlane share register also shows that Dr. Leshkasheli was Rosserlane's sole shareholder between 26 March 2003 and 23 February 2006, although it remains unexplained how this share transfer can be reconciled with the fact that all the shares in Rosserlane had been contributed to the Alamar Trust fund since 18 September 1995.⁸⁰⁴ Dr. Leshkasheli also was the Technical Director of Shirvan Oil from September 1997 to July 2000 and the Deputy Chairman of Shirvan Oil's Administration Board from August 2000 to December 2005.⁸⁰⁵
413. For a majority of the Tribunal, these elements are insufficient to show that Dr. Leshkasheli controlled CEG other than possibly in his capacity as President of CEG. The same is true about Dr. Leshkasheli's assertion at the Hearing that he was the one performing "operational guidance and control" over CEG.⁸⁰⁶ In the view of the majority of the Tribunal, there is insufficient evidence of him exercising either *de jure* or *de facto* control over CEG. Regarding *de jure* control, the Alamar Trust Deed specifies that the assets making up the Trust fund, namely Rosserlane and Erdingside/Swinbrook, had been placed under the control of the trustee.⁸⁰⁷ It follows

⁸⁰¹ The Alamar Declaration of Trust, 18 September 1995, First Schedule, pp. 14-15 (C-325).

⁸⁰² See C-PHB1, Annex B, table II.

⁸⁰³ Certified Rosserlane Documents, 21 March 1997, p. 9 of the pdf document (R-91); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211); Rosserlane Consultants Written Resolution, 26 March 2003 (C-213); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Annual Return, 25 May 2006, p. 5 of the pdf document (R-156); Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 1 of the pdf document (C-322; C-00003607).

⁸⁰⁴ Rosserlane Consultants Limited, 19 March 2009 (C-209).

⁸⁰⁵ See C-PHB1, Annex B, table I; Respondent's Answers to the Tribunal's Requests for Further Information in paragraph 8 of Procedural Order No. 4, p. 4, footnote 12.

⁸⁰⁶ Tr. (Day 2), 488:8-10 (Leshkasheli), full quotation above at footnote 775.

⁸⁰⁷ The Alamar Declaration of Trust, 18 September 1995, p. 1, recital (A) (C-325) ("Here has been transferred or delivered to the Trustees or otherwise placed under their control the property specified in the First Schedule hereto and from time to time further moneys, investments or other property may be paid or transferred to the Trustees by way of addition"). Article 13 further specifies that holding the whole or a majority of shares in a company carries "the control of the company". Alamar Trust Deed, Article 13 (C-325).

that the trustee exercised direct legal control over Rosserlane and Erdingside/Swinbrook and indirect legal control over CEG from 18 September 1995 onwards. The Claimants' reading of Article 13 of the Alamar Trust Deed is misguided. That provision merely states that the trustee is not bound to interfere in the management or conduct of the business of any company in which the Alamar Trust holds an interest, and that he "shall be at liberty to leave the conduct of its business" to the directors of those companies. The fact that the trustee has liberty to leave the directors of those companies conduct the daily business does not mean that the Alamar Trust Deed strips the trustee of his legal control over those companies and, thus, would not release him of his duties. In fact, Article 13 clarifies that he maintains ultimate control, since he must intervene if he receives notice "of any act of dishonesty or misappropriation of monies on the part of the directors having the management of such company".⁸⁰⁸

414. Moreover, other than the partnership agreement between Rosserlane and Erdingside creating CEG, the Claimants have not put into the record the foundational documents of CEG. Section 8 of the partnership agreement reads as follows:

"(i) Subject as aforesaid all matters relating to the conduct of the affairs of the Partnership including Partnership business shall be decided by a majority of the General Partners. Each General Partner shall have one vote for each percentum of capital that General Partner has contributed to the Partnership.

(ii) The day to day business of the partnership shall be managed by ROSSERLANE CONSULTANTS LIMITED as the Managing General Partner.

(iii) All income of the Partnership shall be deposited in the bank account of the Partnership and if collected by any of the Partners shall be accounted for and paid over to the Partnership without any deduction whatsoever within two banking days from the date of receipt.

⁸⁰⁸ The Alamar Declaration of Trust, 18 September 1995, Article 13 (C-325) ("The Trustees shall not be bound or required to interfere in the management or conduct of the business of any company wherever resident or incorporated in which this Settlement shall be interested although holding the whole or a majority of the shares carrying the control of the company but so long as the Trustees shall have no notice of any act of dishonesty or misappropriation of monies on the part of the directors having the management of such company the Trustees shall be at liberty to leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors and the Beneficiaries shall not be entitled to require the distribution of any dividend by any such company or require the Trustees to exercise any powers they may have of compelling any such distribution").

*(iv) Any General Partner where empowered by the Partnership may formally agree a contract by way of a director or secretary of that General Partner signing in the name of 'WHITEHALL INTERNATIONAL TRADERS'".*⁸⁰⁹

415. It follows from the above that Rosserlane was exercising direct legal control over CEG's day-to-day business as the managing general partner. In other words, there is no evidence that Dr. Leshkasheli exercised legal control over CEG, whether directly or indirectly.
416. Regarding *de facto* control, the Tribunal, by majority, does not believe that the Claimants satisfied their burden to demonstrate that Dr. Leshkasheli exercised such control over CEG. As regards the first factor mentioned in Understanding 3, the Claimants did not show that Dr. Leshkasheli had a financial interest in CEG, even less that he held an equity interest. As noted, all the equity in CEG was held by Rosserlane and Erdingside and the trustee of the Alamar Trust held ultimate control over CEG. Moreover, as seen above, the partnership agreement between Rosserlane and Erdingside provided that all of the partnership's income was to be deposited in the partnership's bank account. There is no evidence that Dr. Leshkasheli had any financial interest in CEG, other than possibly his remuneration as the company's president (which in any event has not been evidenced through documentary evidence).
417. As regards the second factor mentioned in Understanding 3, the partnership agreement states that Rosserlane and Erdingside decided by majority about the conduct of CEG's affairs. That agreement further specifies that Rosserlane conducts the day-to-day business activities of the company. The Claimants have not sufficiently shown that Dr. Leshkasheli exercised substantial influence over CEG's management and operations, other than in his capacity of CEG's President. There is no dispute that Dr. Leshkasheli was CEG's President from 1994 to 2008. It is therefore unsurprising, for instance, that he hired CEG's personnel, made decisions regarding CEG's actions in relation to Shirvan Oil, signed loan agreements on behalf of CEG, and communicated with bidders and potential buyers during the sale process of CEG. All these actions fall under the normal management duties of the CEO of a company. They are not evidence

⁸⁰⁹ Application for Registration of Whitehall International Traders, 27 July 1994, p. 3 of the pdf document, Section 8 (C-208).

of *de facto* control over CEG and even less of Dr. Leshkasheli being an ultimate beneficial owner or controller of CEG.

418. Moreover, Article 13 of the Alamar Trust Deed specifically provides that the trustee is at liberty to leave the conduct of CEG's business "wholly to the directors".⁸¹⁰ As the Respondent rightly points out, that is insufficient to establish that Dr. Leshkasheli had a role in the decisions taken by CEG in relation to Shirvan Oil or that third parties perceived him as being entitled to make those decisions. Indeed, as regards third parties and in particular the Respondent's officials or officials in SOCAR, there is no evidence of them being aware about the arrangements set forth in the Alamar Trust Deed. Similarly, the Claimants have not shown that CEG's lenders were aware of the contents of the Alamar Trust Deed. Accordingly, the understanding of Messrs. Orujov and Agayev or of CEG's lenders that Dr. Leshkasheli owned CEG or was its ultimate beneficial owner has no relevance to ascertaining *de facto* control.
419. For the sake of completeness, the Tribunal notes that, pursuant to a Board of Directors resolution dated 19 March 1997, Rosserlane granted Dr. Leshkasheli a power of attorney on 21 March 1997 for a period of 12 months.⁸¹¹ Since there is no evidence showing that this power of attorney was renewed after the 12-month period, the Tribunal need not further discuss the question whether this power of attorney could be construed as evidence of *de facto* control.
420. Finally, as regards the third factor mentioned in Understanding 3, there is no evidence beyond his own testimony that Dr. Leshkasheli exercised any influence, let alone substantial, over the selection of the members of CEG's board of directors or any other management body. As already stated, the Claimants did not put CEG's foundational documents into the record and there is no element showing how CEG's directors were appointed. Accordingly, the Claimants did not satisfy their burden to prove that Dr. Leshkasheli controlled CEG.
421. The Tribunal is of course mindful that Dr. Leshkasheli played a significant role in the decision to invest in Azerbaijan and, in particular, in the Kurovdag Field. That said, he decided to structure this investment in such a way that the Alamar Trust would

⁸¹⁰ The Alamar Declaration of Trust, 18 September 1995, Article 13 (C-325).

⁸¹¹ Certified Rosserlane Documents, 21 March 1997, pp. 1-5 of the pdf document (R-91).

indirectly own and control CEG through Rosserlane and Erdingside. The Tribunal is further mindful that the Alamar Trust Deed identifies Ms. Kisiliova as the sole beneficiary of the trust, although the deed was entered into at a time when she no longer was Dr. Leshkasheli's wife. It is unclear why Dr. Leshkasheli decided to contribute Rosserlane and Erdingside to the Alamar Trust. He explained at a late stage in the proceedings that his divorce was only a façade to shield Ms. Kisiliova from any of his potential misfortunes and that he structured the investment through the Alamar Trust for tax purposes.⁸¹²

422. Whatever the case may be, the Tribunal is of the view that Dr. Leshkasheli must live with the consequences of his decision. Although it cannot be denied that he exercised an important role in CEG's management, the evidence shows that he did so in his capacity as President of CEG. Based on the Alamar Trust Deed and the participation agreement between Rosserlane and Erdingside, the evidence suggests that the trustee of the Alamar Trust let Dr. Leshkasheli manage CEG for the benefit of the Alamar Trust, not that Dr. Leshkasheli actually controlled CEG. In this context, it is not established that the Alamar Trust was in fact controlled by Dr. Leshkasheli and that the trustee would have blindly and in disrespect of his own duties accepted Dr. Leshkasheli's instructions. In other words, even if the Tribunal were to find that Dr. Leshkasheli exercised substantial influence over the management and operation of CEG, such influence was exercised under the authority of the trustee of the Alamar Trust.
423. For the reasons stated above, the Tribunal concludes that Dr. Leshkasheli did not own or control⁸¹³ at all relevant times a qualifying investment under Article 1(6) of the ECT and therefore upholds the Respondent's jurisdictional objection that Dr. Leshkasheli did not make a qualifying investment under the ECT. This conclusion is further reinforced by the fact that Dr. Leshkasheli never made a contribution or assumed any risk, as the following section will show.

⁸¹² Tr. (Day 2), 397:18-21 and 398:5-8 (Leshkasheli); Tr. (Day 4), 1022:11-20, 1023:11-14 and 1025:3-12 (Leshkasheli); Leshkasheli WS2, para. 10.

⁸¹³ With respect to control, the Tribunal decides by majority only.

c. Did Dr. Leshkasheli Make a Contribution or Assume Any Risk?

(i) Parties' Positions

424. The Respondent further argues that Dr. Leshkasheli neither made an “active contribution” nor assumed any risk in relation to CEG’s investment in Shirvan Oil.⁸¹⁴

425. The Claimants answer that Dr. Leshkasheli “invested substantially in the Kurovdag Field, and all of those funds were paid either out of pocket by Dr. Leshkasheli or through funds raised by Dr. Leshkasheli”.⁸¹⁵ They argue that taking out loans is how large-scale investments work and that there is no personal, out-of-pocket expenditure requirement for an investment.⁸¹⁶ They rely on Dr. Leshkasheli’s testimony that he “completely” financed the first 3 years of the JV and that his “private money” in the first 4-5 years “exceeded” USD 7-8 million.⁸¹⁷ They further point to the following instances of Dr. Leshkasheli’s contributions:

- Paying the JV’s salaries, taxes and other expenditures in an amount exceeding USD 7-8 million, of which the Respondent “conceded” USD 3.6 million;⁸¹⁸
- Investing in a new oil-loading gantry and local pipeline in an amount of USD 1 million;⁸¹⁹
- Investing in various geological, seismic, engineering and other studies;⁸²⁰
- Investing over USD 20 million on a drilling plan;⁸²¹
- Reinvesting retained earnings in the Kurovdag Field;⁸²² and

⁸¹⁴ R-PHB1, paras. 364-383; R-PHB2, paras. 101-105.

⁸¹⁵ C-PHB2, para. 83 (footnote omitted).

⁸¹⁶ C-PHB2, para. 83.

⁸¹⁷ C-PHB2, para. 83(a).

⁸¹⁸ C-PHB2, para. 83(a), referring to Rejoinder, para. 59; R-PHB1, para. 107; Tr. (Day 2), 466:9-17 and 467:18-469:2 (Leshkasheli).

⁸¹⁹ C-PHB2, para. 83(b).

⁸²⁰ C-PHB2, para. 83(c).

⁸²¹ C-PHB2, para. 83(d).

⁸²² C-PHB2, para. 83(e).

- Securing financial loans in an amount exceeding USD 180 million.⁸²³

(ii) Discussion

426. For the reasons already stated above in relation to the question whether Dr. Leshkasheli incurred any expenses to increase the value of CEG during his Georgian marriage with Ms. Kisiliova (see paragraphs 390-399 above), the Tribunal can succinctly address this objection and conclude that the Claimants did not prove that Dr. Leshkasheli made any personal financial contribution to CEG or to CEG's investment in Shirvan Oil. There simply is no evidence that Dr. Leshkasheli transferred anything of value or allocated any of his personal resources.
427. As noted above, the salaries of Shirvan Oil's employees were paid by CEG, not Dr. Leshkasheli. Similarly, the record only shows that he secured loans for CEG in his capacity as president of that company, not in his personal capacity. Dr. Leshkasheli's statement that he "took personal loans from friends and family without any contracts or guarantees" is unsubstantiated.⁸²⁴ The Claimants mentioned, without any specification, that they "worked with Robert Finch, a trader, who loaned them money".⁸²⁵ The only evidence of such loans is recorded in a supplemental deed to an assignment of oil sale proceeds dated 8 November 2005, which refers to a loan agreement dated 23 December 2004 between Mr. Finch and Rosserlane pursuant to which the former loaned USD 11 million to the latter, this loan being defined as the "New Loan".⁸²⁶
428. While the supplemental deed also refers to an "Original Loan" and to Dr. Leshkasheli as an "Original Borrower", the Claimants did not put that original loan into evidence and the Tribunal is thus unaware of the terms of that original loan, the capacity in which Dr. Leshkasheli entered into that agreement, and whether the funds were meant to serve as working capital for Shirvan Oil. In any event, the deed indicates that the original loan

⁸²³ C-PHB2, para. 83(f).

⁸²⁴ Leshkasheli WS2, para. 35.

⁸²⁵ Reply, para. 56 (footnote omitted).

⁸²⁶ Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005 (R-150).

was thereafter assigned to Rosserlane and it thus appears that Rosserlane assumed all the rights and obligations of Dr. Leshkasheli (if any) under the original loan.⁸²⁷

429. The Tribunal also notes in this context that the Ashmore and Credit Suisse loans mention that Rosserlane, not Dr. Leshkasheli, entered into the “private investor loan agreement” dated 21 October 2002 with a “private investor”, whom the Parties agree was Mr. Finch.⁸²⁸ This suggests that Rosserlane, not Dr. Leshkasheli, entered both into “original” and “new” loans with Mr. Finch. Accordingly, the Claimants did not sufficiently substantiate their assertion that Dr. Leshkasheli made any contribution to Shirvan Oil.
430. It follows from the above that, in the absence of evidence of any contribution, it cannot be said that he assumed any risk in relation to CEG or Shirvan Oil.
431. The Tribunal therefore concludes that Dr. Leshkasheli neither contributed anything of value, nor assumed any risk, and that he therefore did not make a qualifying investment protected under the ECT. Accordingly, the Tribunal decides that it has no jurisdiction over Dr. Leshkasheli’s claims under the ECT.

(2) Rosserlane

432. The Respondent contends that Rosserlane is not a qualifying investor under the ECT (a) and that it did not make any contribution (b). The Tribunal will address these arguments in turn.

a. Does Rosserlane Qualify As an Investor?

(i) Parties’ Positions

433. The Respondent contends that Rosserlane does not qualify as a protected investor under Article 1(7) of the ECT.⁸²⁹ It argues that Rosserlane is a “defunct, empty corporate shell” and that its nationality was “manufactured” for the purposes of this arbitration to

⁸²⁷ Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, p. 2 of the pdf document (R-150).

⁸²⁸ Loan Agreement between CEG and Ashmore, 11 August 2006, p. 8 of the pdf document (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 15 of the pdf document (C-178).

⁸²⁹ Counter-Memorial, paras. 217-218, 222 and 250-251; Rejoinder, para. 200; R-PHB2, para. 70.

“recover value from potential legal claims”.⁸³⁰ According to the Respondent, Rosserlane therefore does not meet the “hallmarks of legitimate claimants”.⁸³¹

434. The Claimants answer that Rosserlane is an Isle of Man company and therefore qualifies as a protected investor under the ECT.⁸³²

(ii) Discussion

435. Under Article 1(7)(a)(ii) of the ECT, a company qualifies as a protected investor if it is “organized in accordance with the law applicable in that Contracting Party”, i.e. in accordance with the laws of the host State.⁸³³ The Respondent does not dispute that Rosserlane was incorporated in the Isle of Man in accordance with the Isle of Man Companies Act 1931 (the “Companies Act”).⁸³⁴ Nor does it dispute that, when it ratified the ECT on 13 December 1996, the UK extended its ratification to the Isle of Man.⁸³⁵ In other words, the Respondent accepts that companies registered in the Isle of Man qualify as protected investors of the UK for the purposes of Article 1(7) of the ECT.

436. The evidence shows that Rosserlane was registered in the Isle of Man at all relevant times. First, Rosserlane was incorporated in the Isle of Man on 25 May 1994.⁸³⁶ It thus came within the ambit of Article 1(7) when the ECT came into force on 16 April 1998. Moreover, it remained registered in the Isle of Man for the duration of the CEG’s operations in Azerbaijan until 2008 and thus at the time of the disputed measures. Second, although Rosserlane was notified on 18 July 2017 that it had been struck from the Isle of Man Companies Registry pursuant to section 273(5) of the Companies Act,

⁸³⁰ R-PHB2, para. 70. See also Counter-Memorial, paras. 29, 222 and 250-251; R-PHB1, para. 466, referring to Application by Rosserlane for Restoration of a Dissolved Company to the Company Register, 14 December 2018, p. 1 (R-41).

⁸³¹ Counter-Memorial, para. 31.

⁸³² Reply, paras. 194-195; C-PHB1, para. 310, referring to Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207).

⁸³³ ECT, Article 1(7)(a)(ii) (C-1). Article 1(7) of the ECT defines “Investor” in relevant part as follows: “(i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law; (ii) a company or other organization organized in accordance with the law applicable in that Contracting Party”.

⁸³⁴ R-PHB1, para. 464.

⁸³⁵ Energy Charter Secretariat, Member Page: United Kingdom, undated (C-19) (“The United Kingdom of Great Britain and Northern Ireland applies the Energy Charter Treaty to The Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey”).

⁸³⁶ Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207).

it was restored to that register on 19 December 2018 pursuant to sections 273(6) and 273B of that act and was “deemed to have continued in existence as if the company has not been dissolved”.⁸³⁷ Third, since the Respondent did not contend that Rosserlane was thereafter struck again from the Companies Registry, it follows that Rosserlane was an Isle of Man company when it provided notice of its claims in this arbitration on 1 October 2019 and initiated this arbitration on 2 June 2020.⁸³⁸

437. The Tribunal therefore concludes that Rosserlane was an Isle of Man company at all relevant times. For the avoidance of doubt, the Tribunal is not convinced by the Respondent’s argument that Rosserlane’s restoration was abusive and manufactured for the purposes of this arbitration. The evidence does not support the contention that Rosserlane was shopping for a nationality to gain access to arbitration; it merely reactivated (“*restored*”) its existence and the nationality it held since 1994. Neither the fact that the ground stated by Rosserlane when applying for restoration was “to recover value from potential legal claims”,⁸³⁹ nor the fact that it is – as the Respondent alleges – an empty shell with no substantial business activity in the UK, have any bearing on the issue of determining Rosserlane’s nationality for the purposes of the ECT. If necessary, the Tribunal will address those arguments in the context of the Respondent’s denial of benefits objection.
438. Since Rosserlane was at all relevant times registered as an Isle of Man company, the Tribunal cannot but dismiss the Respondent’s objection that Rosserlane does not qualify as an investor for the purposes of Article 1(7) of the ECT.

⁸³⁷ Letter of 18 July 2017 from Isle of Man Companies Registry to Rosserlane (R-39); Notice of Restoration in respect of Rosserlane, 19 December 2018 (R-42). See Isle of Man Companies Act 1931, sections 273(5)-(6) and 273B (R-229).

⁸³⁸ Notice of Intent to Submit Claim to Arbitration, 1 October 2019 (C-4); Request for Arbitration, 2 June 2020.

⁸³⁹ Application by Rosserlane for Restoration of a Dissolved Company to the Company Register, 14 December 2018 (R-41).

b. Did Rosserlane Make A Qualifying Investment?

(i) Parties' Positions

439. The Respondent contends that Rosserlane did not make an investment for the purposes of Article 1(6) of the ECT.⁸⁴⁰ It argues that Rosserlane “made no contribution at all, let alone a substantial or active contribution” and that it took no risks.⁸⁴¹ It also argues that Rosserlane was a “passive owner of shares in CEG”, was not involved in the management of CEG or Shirvan Oil, did not exercise any control over those companies, did not transfer something of value, such as money, know-how or expertise, and that its interest is “too remote”.⁸⁴²
440. The Respondent relies on the *Alapli* and *Standard Chartered Bank* cases to argue that to qualify as an investment it must be shown that Rosserlane made an “active contribution” by “transferring something of value” into the host State, and that to consider loans as an investment, Rosserlane must be “doing something as part of the investing process, either directly or through an agent or entity under the investor’s direction”.⁸⁴³
441. The Claimants answer that they transferred “significant sums of money” and that the “substantial investment in Kurovdag” qualifies as a protected investment under the ECT.⁸⁴⁴ They refer to the same “investments” mentioned in paragraph 425 above.⁸⁴⁵

(ii) Discussion

442. As noted above, Article 1(6) of the ECT (reproduced in paragraph 359 above) defines a protected investment as “every kind of asset, owned or controlled directly or indirectly by an Investor”.⁸⁴⁶ It is undisputed that the ECT’s protection extends to the assets listed in that provision that are both directly and indirectly owned or controlled by an investor.

⁸⁴⁰ Counter-Memorial, paras. 252-255; Rejoinder, paras. 57-63 and 223-228; R-PHB1, paras. 106-124 and 364-382; R-PHB2, paras. 101-105.

⁸⁴¹ R-PHB1, paras. 364-382; R-PHB2, paras. 101-105.

⁸⁴² Counter-Memorial, paras. 222 and 253-255 (footnote omitted).

⁸⁴³ Rejoinder, paras. 224-227, referring to *Alapli*, para. 360 (RL-48); *Standard Chartered Bank*, paras. 198, 200, 230 and 232 (RL-49).

⁸⁴⁴ Reply, paras. 210-217; C-PHB1, paras. 313-318.

⁸⁴⁵ C-PHB1, para. 314.

⁸⁴⁶ ECT, Article 1(6) (C-1).

443. Various arbitral tribunals interpreting Article 1(6) of the ECT have held that the term “investment” has an “inherent” or “objective” meaning that contains three components: a contribution or allocation of resources, duration and risk.⁸⁴⁷ For instance, as noted in *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*:

*“[T]he existence of an ‘investment’ requires a commitment or allocation of resources for a duration and involving risk”.*⁸⁴⁸

444. Referring to *Yukos* and *Mr. Franck Charles Arif v. Republic of Moldova* (“*Arif*”), the *Masdar* tribunal further held that Article 1(6) of the ECT contains no “origin of capital” requirement, such that the origin of the funds used in investments is immaterial.⁸⁴⁹ As noted in *Arif*:

*“Whether investments are made from imported capital, from profits made locally, from payments received locally or from loans raised locally, makes no difference to the degree of protection enjoyed”.*⁸⁵⁰

445. The evidence shows that Rosserlane directly held 90% of the shares in CEG, which in turn held 51% of the shares in Shirvan Oil. It follows that Rosserlane indirectly owned and controlled a stake in Shirvan Oil and that CEG made an investment in Azerbaijan that falls within the ambit of Article 1(6) of the ECT.

446. Rosserlane co-founded CEG (then Whitehall) in 1994 and owned 90% of its shares as its “general partner”.⁸⁵¹ In turn, CEG had a 51% stake in Shirvan Oil from 1995 to 2008.⁸⁵² Although the Respondent put the Claimants to proof in its Counter-Memorial to show that Rosserlane owned 90% of the shares in CEG at all relevant times,⁸⁵³ it appears that it no longer challenged Rosserlane’s ownership of 90% of CEG’s shares

⁸⁴⁷ *Masdar*, paras. 196-199 (CL-118 and RL-141); *Isolux Infrastructure Netherlands B.V. v. Spain*, SCC Case V2013/153, Final Award, 17 July 2016 (“*Isolux*”), paras. 685-686 (RL-142).

⁸⁴⁸ *Masdar*, para. 199 (CL-118 and RL-141).

⁸⁴⁹ *Masdar*, para. 201 (CL-118 and RL-141).

⁸⁵⁰ *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, para. 383 (footnote omitted) (RL-52).

⁸⁵¹ Application for Registration of Whitehall International Traders, Article 3(i), p. 2 of the pdf document (C-208).

⁸⁵² Joint Venture Agreement, 25 December 1995, Article 4.5 (C-8).

⁸⁵³ Counter-Memorial, para. 252.

in its subsequent submissions after the Claimants produced documents about CEG's registration and the partnership agreement between Rosserlane and Erdingside.

447. The Respondent nonetheless maintained its arguments that the mere passive ownership of shares in CEG was not sufficient and that the Claimants failed to prove that Rosserlane made any active contribution to CEG or Shirvan Oil or exercised control over those companies.⁸⁵⁴ It points to Article 10(1) of the ECT, which states that an investor must “make” an investment, to argue that the ECT only protects investments that involve an active contribution of funds flowing directly from an investor.⁸⁵⁵ In other words, the holding of shares is not sufficient, since an “action of investing is required”.⁸⁵⁶ The Respondent adds that interpreting the ECT in light of its object and purpose leads to the conclusion that “a mere holding of shares which have been acquired without any consideration” is insufficient to qualify as an investment.⁸⁵⁷
448. The tribunal in *Standard Chartered Bank* held that “[p]assive ownership of shares in a company not controlled by the claimant where that company in turn owns the investment is not sufficient”, further adding that “some activity of investing is needed, which implicates the claimant’s control over the investment or an action of transferring something of value (money, know-how, contacts, or expertise) from one treaty-country to the other”.⁸⁵⁸ As noted above, Rosserlane held 90% of the shares in CEG and thus controlled CEG. It follows that the Respondent’s reliance on *Standard Chartered Bank* is inapposite. Moreover, the record shows that Rosserlane not only held shares, but that it was involved in securing financing for Shirvan Oil’s activities in Azerbaijan and thus made a substantial contribution over a period of time that involved taking risks.
449. The Parties agree that Rosserlane is a holding company, although the Respondent adds that it is an “empty shell” with “no resources” and “no activity at all”.⁸⁵⁹ Its share capital is GBP 2,000, composed of 2,000 shares of GBP 1 each.⁸⁶⁰ In turn, CEG’s initial share

⁸⁵⁴ R-PHB1, paras. 364-382.

⁸⁵⁵ R-PHB1, para. 371.

⁸⁵⁶ R-PHB1, para. 372.

⁸⁵⁷ R-PHB1, para. 365.

⁸⁵⁸ *Standard Chartered Bank*, paras. 200, 230 and 232 (RL-49).

⁸⁵⁹ Reply, para. 278; Rejoinder, para. 223; R-PHB1, paras. 382 and 447.

⁸⁶⁰ Certified Rosserlane Documents, 21 March 1997, p. 7 of the pdf document (R-91).

capital was GBP 1,000 and Rosserlane acquired its 90% shareholding in CEG for GBP 900.⁸⁶¹ Expressed in US Dollars, CEG's share capital in early 2004 was USD 1,588, Rosserlane having contributed USD 1,429 and Erdingside USD 159.⁸⁶²

450. As regards Shirvan Oil, SOCAR and CEG agreed to set the share capital of Shirvan Oil at USD 100,000, and CEG accordingly acquired its 51% stake in Shirvan Oil for USD 51,000.⁸⁶³ The Respondent erroneously argues that CEG paid no consideration at all for its stake in Shirvan Oil. While it may be true that the amount of USD 51,000 could be seen as a nominal amount for a 51% stake in, on the Claimants' account, the "largest" onshore oilfield in Azerbaijan,⁸⁶⁴ the fact remains that this amount was agreed between the JVA partners and that CEG paid that amount in 1997.⁸⁶⁵ Moreover, CEG assumed various obligations under the JVA, most importantly to provide funds to the JV.⁸⁶⁶
451. The record confirms that CEG entered into various loan agreements to secure funds to be injected, at least in part, into Shirvan Oil's activities. For instance, under the Vitol Loan, CEG borrowed USD 13 million "to be used for the general working capital requirements" under the JVA.⁸⁶⁷ Although the Respondent argued that the loan was "nowhere near enough to carry out meaningful rehabilitation and development of the [Kurovdag] Field", it accepts that this was a "working capital loan" meant for the JV's activities in Azerbaijan.⁸⁶⁸ This loan agreement further required CEG to enter into a

⁸⁶¹ Application for Registration of Whitehall International Traders, 27 July 1994, p. 2 of the pdf document (C-208).

⁸⁶² Caspian Energy Group Financials 2004, p. 5 (A&M-90). See also Caspian Energy Group Financials 2006, p. 3 of the pdf document (A&M-91); Caspian Energy Group Financials 2007, p. 4 of the pdf document (A&M-92). The Tribunal notes that Dr. Leshkasheli agreed during cross-examination that CEG's share capital was USD 2,000. However, documentary evidence suggests it was USD 1,588. See Tr. (Day 2), 416:13-18 (Leshkasheli).

⁸⁶³ Joint Venture Agreement, 25 December 1995, Article 4.5 (C-8) ("Whitehall share in the Partnership Fund will constitute fifty one thousand (51,000.00) US dollars, making fifty one percent (51%)").

⁸⁶⁴ Memorial, para. 41.

⁸⁶⁵ Letter of 1 October 1997 from Glenn Nobes to Shirvan Oil's General Director Mekhman Babyev (C-189).

⁸⁶⁶ Joint Venture Agreement, 25 December 1995, Article 5.3 (C-8) ("According to paragraph 5.1 above Whitehall, within the limits of its authority: [...] (f) provides financial funds to JV").

⁸⁶⁷ Loan Agreement between CEG and Vitol, 22 March 2002, Article 1.1 (R-114). The agreement contemplated CEG's "intention" to convert the JVA into a PSA and that this would "preserve the full legal economic and other interests of the Lender [i.e., Vitol] in relation to its dealings with the Borrower [i.e., CEG]". See Loan Agreement between CEG and Vitol, 22 March 2002, Article 9 (R-114).

⁸⁶⁸ Rejoinder, para. 128.

“share warrant” with Rosserlane and Erdingside providing Vitol the option to convert any outstanding indebtedness by CEG due to late payments into a share interest in CEG.⁸⁶⁹ CEG thereafter entered into further loan agreements with Khamar, Ashmore and Credit Suisse, all of which secured funds meant to be injected, at least in part, into Shirvan Oil’s activities in the Kurovdag Field or repay prior loans connected to the JV’s activities in the Kurovdag Field.⁸⁷⁰ For instance, CEG borrowed USD 40 million from Khamar, *inter alia*, to repay all debts owed to Vitol, all the debts owned by Shirvan Oil, and “in relation to the balance, the financing of capital and operating expenses for, or substantially in connection with, the operation of the Joint Venture”.⁸⁷¹ It thus cannot be seriously contested that CEG invested funds in Azerbaijan pursuant to its financial obligations under the JVA.

452. The Tribunal is mindful of the Respondent’s allegations that CEG did not comply with its financial obligations under the JVA, that it mismanaged Shirvan Oil and even diverted funds. These allegations, however, have no bearing on the jurisdictional issue of whether Rosserlane made any contributions. The Tribunal will, as appropriate, revert to these arguments should it advance to the merits stage.
453. More importantly, the record shows that Rosserlane borrowed funds in connection with CEG’s activities in Shirvan Oil. For instance, Rosserlane entered into a loan agreement with Mr. Finch on 23 December 2004, followed by an amendment “on or about” the same date, to secure a working capital loan.⁸⁷² Although the record does not contain the 23 December 2004 loan agreement and the Tribunal is not able to ascertain with certainty whether that working capital was earmarked for the rehabilitation and development of the Kurovdag Field, the Respondent never argued that this was not the case. Since Rosserlane only held shares in CEG and CEG’s only activity appears to be

⁸⁶⁹ Loan Agreement between CEG and Vitol, 22 March 2002, Articles 1.2, 6.3, 6.4 and 7.4 (R-114).

⁸⁷⁰ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, Article 2.1(a) (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006 (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006 (C-178).

⁸⁷¹ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, Article 2.2 (C-65).

⁸⁷² See Loan Agreement between Robert Finch, Zaur Leshkasheli, Shirvan Oil, Rohini Patel and Rosserlane, 8 November 2005, p. 2 of the pdf document (R-150).

its involvement in Shirvan Oil, the Tribunal deems it more likely than not that the working capital was spent (or at least, initially meant to be spent) in the Kurovdag Field.

454. Whatever the case may be, the record contains additional evidence of Rosserlane's contributions to the rehabilitation and development of the Kurovdag Field. In particular, Rosserlane appears as a co-borrower in the Khamar and Ashmore loans and as guarantor in the Credit Suisse loan.⁸⁷³ Under the Khamar loan, Rosserlane borrowed USD 20 million to repay "all Private Investor Indebtedness", meaning "all of the Indebtedness incurred by the Group to the Private Investor" under the "Private Investor Loan Agreement" of 23 December 2004, i.e. the loan agreement Rosserlane entered into with Mr. Finch.⁸⁷⁴ This money thus was used by Rosserlane to repay the USD 18.2 million it owed Mr. Finch by December 2004.⁸⁷⁵ Here again, it is unclear whether the USD 18.2 million under the "Private Investor Loan Agreement" were spent in the Kurovdag Field, but it appears more likely than not that this was the case (or at least, that those monies were initially meant to be spent in the Kurovdag Field).
455. More importantly, under the Ashmore loan, Rosserlane (and the "PSA Borrower", i.e. CEG UK LLP) borrowed USD 15 million "during the Working Capital Facility Availability Project" for the purposes of financing the "Approved Work Programme Costs".⁸⁷⁶ Here again, although there is no evidence showing that Rosserlane (or CEG

⁸⁷³ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006 (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006 (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006 (C-178).

⁸⁷⁴ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, pp. 9-10 and 13, Articles 2.1(b) and 2.2 (C-65).

⁸⁷⁵ "Private Investor Loan Agreement" is defined as "the loan agreement dated 23 December 2004 (as amended, restated, novated or supplemented from time to time) between the Co-Borrower as borrower, Sanston as co-borrower and the Private Investor as lender pursuant to which a series of loans in the aggregate principal amount of eighteen million two hundred thousand Dollars (\$18,200,000) has been provided to the Co-Borrower [i.e. Rosserlane]". See Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, p.6, Article 1.1, "Private Investor Loan Agreement" (C-65).

⁸⁷⁶ Loan Agreement between CEG and Ashmore, 11 August 2006, Articles 2.1(b) and 2.2, pp. 13-14 of the pdf document (C-197). Working Capital Facility Availability Period is defined as: "the period from and including the Execution Date to and including 10 December 2006 (or such other date as the Funds may notify to the PSA Borrower)". Approved Work Programme Costs are defined as: "those costs and expenditures incurred by the Co-Borrower or the PSA Borrower, as applicable, in accordance with the relevant Annual Work Programme and approved by the Funds". In turn, Annual Work Programme is defined as: "the approved work programme in respect of: (a) Operations with Hydrocarbons (as defined in the Joint Venture Agreement); or (b) the Petroleum Operation (as defined in the PSA), as agreed and amended from time to time in accordance with the Joint Venture Agreement or the PSA, as applicable".

UK LLP) withdrew the funds and, if so, whether those funds were invested in the Kurovdag Field, it is clear that this loan was earmarked for the Kurovdag Field. In addition, the Ashmore Loan provided that Ashmore would loan USD 44,500,000 to Rosserlane, the latter “acting on behalf of” CEG, so that CEG could repay the Khamar Loan.⁸⁷⁷ The Credit Suisse Loan indicates that Ashmore ultimately provided USD 50,310,000 “to Rosserlane”.⁸⁷⁸

456. Similarly, Credit Suisse provided a first loan of USD 115 million to Rosserlane, “acting on behalf of” CEG, *inter alia*, to repay the Ashmore Loan and “financing certain Approved Work Programme Costs” connected to Shirvan Oil’s work programs under the JVA or the PSA.⁸⁷⁹ At the same time, Credit Suisse also provided a “Drilling Plan Loan” of USD 12 million to Rosserlane, again “acting on behalf of” CEG, to finance CEG’s proposed drilling plan.⁸⁸⁰ The Tribunal is mindful that the English High Court found that CEG misled Credit Suisse, since it never invested the USD 12 million for any drilling and Dr. Leshkasheli misappropriated these funds,⁸⁸¹ it is uncontroverted that at least some of the funds under the first loan were expended for Shirvan Oil’s activities in the Kurovdag Field.
457. This evidence shows that Rosserlane did contribute substantial funds over a period of several years and that it assumed a certain level of risk in relation to the rehabilitation and development of the Kurovdag Field. In other words, Rosserlane was not merely a

See Loan Agreement between CEG and Ashmore, 11 August 2006, Article 1.1, pp. 2-3 and 11 of the pdf document; “Annual Work Programme”; “Approved Work Programme Costs”; and “Working Capital Facility Availability Period” (C-197).

⁸⁷⁷ Loan Agreement between CEG and Ashmore, 11 August 2006, Articles 2.1(a) and 2.2, p. 13 of the pdf document (C-197).

⁸⁷⁸ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, pp. 2-3 (C-178).

⁸⁷⁹ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, Article 2.1(a), pp. 5 and 19 (C-178).

⁸⁸⁰ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, Article 2.1(b), p. 5 (C-178).

⁸⁸¹ *Rosserlane Consultants Ltd & Swinbrook Developments Ltd v. Credit Suisse International*, [2015] EWHC 384 (Ch), 20 February 2015, paras. 22, 167 and 265 (C-17).

“purely passive, nominal holder of shares”, as the Respondent contends,⁸⁸² it was actively involved in securing financing for Shirvan Oil’s activities in Azerbaijan.

458. It follows that Rosserlane made a qualifying investment for the purposes of Article 1(6) of the ECT, and the Tribunal therefore rejects the Respondent’s objection to the contrary.

B. SECOND JURISDICTIONAL OBJECTION: IS DR. LESHKASHELI A QUALIFYING INVESTOR WITH A QUALIFYING INVESTMENT UNDER THE BIT?

459. The Respondent argues that “the same defects” applying to Dr. Leshkasheli’s claim under the ECT apply to his claim under the BIT.⁸⁸³ More specifically, the Respondent submits that the Tribunal lacks jurisdiction over Dr. Leshkasheli because he does not qualify as an investor under the BIT (1) and because he did not make a qualifying investment under that treaty (2).

(1) Does Dr. Leshkasheli Qualify as a Protected Investor Under the BIT?

a. Parties’ Positions

460. The Respondent contends that Dr. Leshkasheli was not a Georgian citizen at all relevant times and that he therefore does not qualify as a Georgian national under the BIT.⁸⁸⁴ According to the Respondent, Dr. Leshkasheli was “never eligible to hold Georgian citizenship at all”, further adding that he “manufactured” and “lied about” his Georgian nationality.⁸⁸⁵ In any event, Dr. Leshkasheli’s dominant and effective nationality was not Georgian as a matter of international law and he “cannot therefore claim the benefits of it”.⁸⁸⁶

461. The Claimants answer that Dr. Leshkasheli was at all relevant times a Georgian citizen and that he therefore qualifies as a protected investor under the BIT.⁸⁸⁷

⁸⁸² R-PHB1, para. 469.

⁸⁸³ R-PHB1, para. 384.

⁸⁸⁴ Rejoinder, para. 229; R-PHB1, para. 384.1; R-PHB2, paras. 70-76.

⁸⁸⁵ R-PHB2, paras. 70-71.

⁸⁸⁶ R-PHB2, para. 76.

⁸⁸⁷ Memorial, paras. 181-182; Reply, para. 218(a); C-PHB1, paras. 278-287; C-PHB2, paras. 84-91.

b. Discussion

462. The Parties provided different English translations of the BIT. For present purposes, however, the differences in the wording do not have any material impact. The English version of Article 1(2)(A) of the BIT provided by the Claimants defines the term “Investor” as follows:

*“Any natural person, who has citizenship or permanent residence in accordance with the legislation of one of the Contracting Parties”.*⁸⁸⁸

463. The version provided by the Respondent reads as follows:

*“[A]ny individual who is a citizen or a permanent resident in any of the Contracting Parties in accordance with its laws”.*⁸⁸⁹

464. The Tribunal refers to its reasoning about Dr. Leshkasheli’s Georgian citizenship in the context of the ECT (see paragraphs 327 to 354 above). For the same reasons, the Tribunal concludes that Dr. Leshkasheli was a Georgian citizen at all relevant times, and it accordingly rejects all the Respondent’s arguments to the contrary. It also rejects the Respondent’s arguments about the dominant and effective nationality, since the BIT contains no rules about dual citizenship and Dr. Leshkasheli does not have the citizenship of the host State.

465. The Tribunal concludes that Dr. Leshkasheli qualifies as a protected investor under Article 1(2)(A) of the BIT and it therefore rejects the *ratione personae* limb of the Respondent’s objection.

(2) Did Dr. Leshkasheli Make a Qualifying Investment Under the BIT?

a. Parties’ Positions

466. The Respondent contends that Dr. Leshkasheli cannot claim access to the protections under the BIT because he did not own a protected investment and did not make any “active contribution” or assume any risk.⁸⁹⁰ Even if Dr. Leshkasheli could prove that

⁸⁸⁸ Azerbaijan-Georgia BIT, Article 1(2)(A) (C-2 and R-2).

⁸⁸⁹ Azerbaijan-Georgia BIT, Article 1(2)(A) (C-2 and R-2).

⁸⁹⁰ Counter-Memorial, paras. 272-273 and 275-278; Rejoinder, paras. 230 and 241-248; R-PHB1, paras. 384-385; R-PHB2, paras. 101-105.

he owned CEG, the BIT does not extend to indirect investments “and certainly not to investments held through at least five layers of intermediate shell companies”.⁸⁹¹ It follows, so says the Respondent, that Dr. Leshkasheli’s “remote and opaque alleged investments do not qualify for protection under the BIT”.⁸⁹²

467. The Claimants answer that Dr. Leshkasheli made a qualifying investment for the purposes of Article 1(1) of the BIT.⁸⁹³ They contend that the BIT covers indirect investments.⁸⁹⁴ They add that Dr. Leshkasheli owned and controlled CEG at all relevant times.⁸⁹⁵ They further argue that Dr. Leshkasheli made an active and substantial contribution to the Kurovdag Field.⁸⁹⁶

b. Discussion

468. The term “investment” is defined at Article 1(1) of the BIT. Here again, the different English versions provided by the Parties have no material impact for the question at hand. The Claimants’ version of that provision reads as follows:

“The term ‘investment’ includes any type of investment made by investors of one Contracting Party in accordance with the legislation of the latter in connection with economic activity in the territory of the other Contracting Party, and in a special case, but without exception.

(a) movable and immovable property and any property rights, including mortgage and pledge rights and similar rights;

(b) investment-related shares, securities, debt obligations, reinvestment income, target bank and financial resources;

(c) cash claims or any other rights relating to activities of financial value;

(d) investment-related copyright, trademarks, patents, industrial designs, industrial and intellectual property rights in

⁸⁹¹ Counter-Memorial, paras. 264-271; Rejoinder, paras. 231-240.

⁸⁹² Counter-Memorial, para. 274.

⁸⁹³ Memorial, paras. 183-184; Reply, paras. 218-223; C-PHB1, paras. 288-305; C-PHB2, paras. 63-83.

⁸⁹⁴ Reply, paras. 219-223; C-PHB1, paras. 306-309.

⁸⁹⁵ Reply, paras. 196-204; C-PHB1, paras. 288-305.

⁸⁹⁶ C-PHB2, para. 83.

the form of technological processes, know-how, trade secrets, trademarks and goodwill;

*(e) licenses and permits in accordance with the law, including concessions for the exploration, development, production and exploitation of natural resources: Any change in the form of investment does not affect their characterization as an investment”.*⁸⁹⁷

469. The Respondent’s version reads as follows:

“The term ‘investment’ shall include any type of assets invested in connection with the economic activity of investors of one Contracting Party in the territory of the other Contracting Party in accordance with the current legislation of the latter and shall include, in particular, but not exclusively:

a) movable and immovable property and any property rights, such as mortgage rights, rights of lien and similar rights;

b) shares, securities, debt obligations, reinvested income, targeted bank and financial deposits related to investment activities;

c) monetary claims or any other rights of claim related to the activity having financial significance;

d) intellectual property rights, including copyrights, trademarks, patents, industrial designs, processes, know-how, trade secrets, brand names and goodwill related to investments;

e) licenses and permissions pursuant to the legislation, including concessions for exploration, mining, development and exploitation of natural resources;

*Any change in the form in which assets are invested does not affect their investment status”.*⁸⁹⁸

470. Here again, the Tribunal refers back to its discussion about the existence of a qualifying investment under the ECT (see paragraphs 359 to 423 and 426 to 431 above). For the same reasons, the Tribunal concludes that the Claimants have not sufficiently

⁸⁹⁷ Azerbaijan-Georgia BIT, Article 1(1) (C-2 and R-2).

⁸⁹⁸ Azerbaijan-Georgia BIT, Article 1(1) (C-2 and R-2).

demonstrated that Dr. Leshkasheli made a qualifying investment under Article 1(1) of the BIT. Indeed, other than Dr. Leshkasheli's bare and unsupported assertions, there is no evidence showing that he made a contribution or that he assumed any risks in connection with Shirvan Oil's activities in Azerbaijan. Accordingly, the Tribunal upholds the Respondent's preliminary objection and decides that it has no jurisdiction over Dr. Leshkasheli's claims under the BIT.

C. THIRD JURISDICTIONAL OBJECTION: ARE THE JURISDICTIONAL REQUIREMENTS OF THE ICSID CONVENTION MET?

(1) Parties' Positions

471. The Respondent submits that the Claimants do not meet the jurisdictional requirements of Article 25(1) of the ICSID Convention.⁸⁹⁹ In reference to the so-called *Salini* test, the Respondent contends that the Claimants' alleged investments do not fall within the objective definition of "investment" under the ICSID Convention, since they neither contributed anything of value such as money or assets, nor assumed any risks nor contributed to the economic development of Azerbaijan.⁹⁰⁰
472. The Claimants request that the Tribunal reject the Respondent's "baseless challenge", since they satisfy the jurisdictional requirements of Article 25(1) of the ICISD Convention.⁹⁰¹ They submit that they satisfy the three "objective criteria" set identified by the *Salini* tribunal, namely contribution, duration and risk, and add that they in any event also satisfy the additional "subjective" criterion of contribution to the economic development of the host State.⁹⁰² The Claimants argue that they made "significant contributions of money", by paying Shirvan Oil's employees, taxes and other expenditures, investing in an oil-loading gantry, in various studies and drilling plans, and securing "loans worth millions of dollars to invest in Shirvan Oil".⁹⁰³ They add that the Respondent does not challenge that the investment was for a sufficient duration.⁹⁰⁴ In addition, they "took a risk by investing in Azerbaijan", a "newly independent State

⁸⁹⁹ Counter-Memorial, paras. 279-289; Rejoinder, paras. 249-261; R-PHB1, paras. 386-390.

⁹⁰⁰ Counter-Memorial, paras. 281-282, referring to *Salini*, para. 52 (CL-18).

⁹⁰¹ Memorial, paras. 190-194; Reply, paras. 224-231; C-PHB1, para. 319.

⁹⁰² Reply, para. 224.

⁹⁰³ Reply, para. 225; C-PHB1, para. 319.

⁹⁰⁴ Reply, para. 228; C-PHB1, para. 319.

coming out of 70-year period of planned (Soviet) economic activity”.⁹⁰⁵ Moreover, they aver having “certainly contributed to Azerbaijan’s economic development”, by modernizing the Kurovdag Field and increasing oil production, as well as paying for “social undertakings that SOCAR was supposed to fulfill”.⁹⁰⁶

(2) Discussion

473. Article 25(1) of the ICSID Convention provides that:

“The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre”.

474. Having decided above that Dr. Leshkasheli did not make a qualifying investment under the ECT and the BIT, the Tribunal will only address the Respondent’s objection in relation to Rosserlane.

475. It is common ground that, in addition to having to satisfy the requirements under the ECT, Rosserlane must also satisfy the jurisdictional requirements contained in Article 25(1) of the ICSID Convention (the so-called “double keyhole” requirement).

476. As noted, for instance, in *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia* or *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, the definition of an “investment” under the ICSID Convention is an objective one, the meaning of which must be ascertained in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties (the “VCLT”), namely on the basis of the term’s ordinary meaning, in its context, and in the light of the ICSID Convention’s object and purpose.⁹⁰⁷

⁹⁰⁵ Reply, para. 229; C-PHB1, para. 319.

⁹⁰⁶ Reply, para. 230; C-PHB1, para. 319.

⁹⁰⁷ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012 (“*Quiborax*”), para. 212 (CL-20); *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013 (“*KT Asia*”), para. 165 (RL-54).

477. Both Parties referred to the so-called *Salini* criteria and agree on at least three requirements, namely contribution, duration and risk. Although the Claimants argue that the fourth criterion of contribution to the economic development of the host State is only a “subjective” criterion, they argue that Rosserlane also satisfies this criterion.⁹⁰⁸
478. The *Salini* tribunal held that the term “investment” in Article 25(1) of the ICSID Convention has an objective meaning:
- “The doctrine generally considers that investment infers: contributions, a certain duration of performance of the contract and a participation in the risks of the transaction. In reading the Convention preamble, one may add the contribution to the economic development of the host State of the investment as an additional condition ”.*⁹⁰⁹
479. Although ICSID tribunals have adopted different approaches, the evolution of ICSID jurisprudence shows that the definition of “investment” comprises the following three elements: (i) a commitment or allocation of resources, (ii) duration and (iii) risk, which includes the expectation of a return or profit (albeit not necessarily fulfilled).⁹¹⁰ The Tribunal is of the view that Rosserlane’s indirect shareholding in Shirvan Oil fulfills those three elements and thus qualifies as an investment for the purposes of the ICSID Convention.
480. Indeed, as noted above, Rosserlane paid GBP 900 for its 90% shareholding in CEG, which in turn paid USD 51,000 for its 51% shareholding in Shirvan Oil. Although the Respondent argues that CEG did not fully live up to its commitment under Article 5.4

⁹⁰⁸ Reply, para. 224.

⁹⁰⁹ *Salini*, para. 52 (CL-18).

⁹¹⁰ *Saba Fakes v. Republic Turkey*, ICSID Case No. ARB/07/20, Award, 14 July 2010 para. 110 (CL-19); *Quiborax*, para. 227 (CL-20); *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012, para. 295 (CL-33); *KT Asia*, para. 173 (RL-54); *Vestey*, para. 187 (RL-72); *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Excerpts of Award, 2 July 2018, para. 237 (CL-135). See also *Consortio Groupement L.E.S.I. – DIPENTA v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/03/08, Award, 10 January 2005, para. II.13(iv); *L.E.S.I. S.p.A. and Astaldi S.p.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction, 12 July 2006, para. 72(iv); *Nova Scotia Power Incorporated (Canada) v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/1, Award, 30 April 2014, para. 84; *MNSS B.V. and Recupero Credito Acciaio N.V. v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, para. 189; *Hope Services LLC v. Republic of Cameroon*, ICSID Case No. ARB/20/2, Award, 23 December 2021, para. 159; *Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited v. Republic of Serbia*, ICSID Case No. ARB/18/8, Award, 29 June 2023, para. 228.

of the JVA to fund Shirvan Oil's activities, it does not deny that Shirvan Oil incurred significant expenses to rehabilitate and develop the Kurovdag Field and that CEG contracted loans to finance Shirvan Oil's expenses. Moreover, Rosserlane secured loans alongside CEG, either as co-borrower or guarantor. Those funds were, at least in part, earmarked to finance Shirvan Oil's working capital or used to repay loans secured by CEG to finance Shirvan Oil's activities. Accordingly, for the same reasons set forth in its analysis under the ECT at paragraphs 445 to 457 above, the Tribunal finds that Rosserlane made a monetary contribution in connection with its indirect shareholding in Shirvan Oil.

481. The argument that Rosserlane incurred no risk is contingent upon a finding that it made no contribution. The Respondent indeed argues that “in the absence of any contribution, there is no evidence that the Claimants themselves undertook any risk in connection with their alleged investment”.⁹¹¹ Having found that Rosserlane made a monetary contribution, it only logically follows that it also assumed a certain level of risk, including financial risk and the risk of not receiving any commercial return on its investment. For instance, Rosserlane assumed the risk of having to dilute its shareholding pursuant to a “share warrant” contained in the Vitol Loan, which share warrant was a condition precedent for the loan.⁹¹² Rosserlane also acted as guarantor of CEG's indebtedness under the Credit Suisse Loan and assumed the risk of a forced sale of CEG, and thus the loss of its shareholding, under the Participation Agreement entered into by CEG and Credit Suisse.⁹¹³
482. For these reasons, the Tribunal decides that Rosserlane satisfies the requirement of an “investment” under Article 25(1) of the ICSID Convention, and it therefore rejects the Respondent's preliminary objection to the contrary. For the avoidance of doubt, the Tribunal specifies that, since the Claimants did not substantiate that Dr. Leshkasheli

⁹¹¹ Rejoinder, para. 256; R-PHB1, para. 388.2.

⁹¹² Loan Agreement between CEG and Vitol, 22 March 2002, Preamble (B) and Articles 1.2, 6.3, 6.4 and 7.4 (R-114). Article 1.2 defines the share warrant as follows: “An option agreement for the subscription of a Partnership share in the Borrower between the Borrower, Rosserlane Consultants Limited, Erdingside Services Limited and the Lender of even date”.

⁹¹³ Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, Article 19 (C-178); Participation Agreement by and between CEG and CSI, 14 December 2006, Article 4 (C-71).

made a protected investment under the ECT and the BIT, he does not either satisfy the requirement of an “investment” under Article 25(1) of the ICSID Convention.

D. EIGHTH JURISDICTIONAL OBJECTION: DENIAL OF BENEFITS

(1) Parties’ Positions

483. The Respondent submits that it is entitled to and does deny the benefits of the ECT to Rosserlane.⁹¹⁴ The Respondent argues that Rosserlane (i) is owned and controlled by an entity in a third State outside the ECT regime (namely the trustee of the Alamar Trust, incorporated in Panama) and that Rosserlane (ii) does not have substantial business activities in the UK.⁹¹⁵ It therefore invokes Article 17(1) of the ECT to deny the benefits of the ECT to Rosserlane.
484. The Respondent argues that interpreting Article 17(1) of the ECT in accordance with Article 31 of the VCLT allows it to actively exercise the reserved right to deny the benefit in case-specific circumstances when both thresholds of Article 17(1) are satisfied.⁹¹⁶ It further argues that Article 17(1) contains no temporal requirement and that this provision can be applied retrospectively. It adds that the reasoning in *Plama*, *Yukos* and *Khan* has been contradicted by the ECT tribunal in *Amto* and non-ECT tribunals in *Ulysseas* and *Empresa Eléctrica*.⁹¹⁷ According to the Respondent, the context confirms this interpretation of the wording in Article 17(1). In particular, Articles 2 and 17(2) of the ECT show that the benefits of the ECT can be denied after a claim has been submitted to arbitration.⁹¹⁸
485. The Claimants respond that Article 17 of the ECT neither applies automatically nor retrospectively, but prospectively.⁹¹⁹ Consequently, the Respondent could only invoke

⁹¹⁴ Counter-Memorial, paras. 379-381; Rejoinder, paras. 346-360.

⁹¹⁵ R-PHB1, paras. 436, 456-473.

⁹¹⁶ R-PHB1, para. 437.

⁹¹⁷ R-PHB1, paras. 438-440, referring to *Amto*, para. 61 (RL-25); *Ulysseas*, paras. 172-173 (TL-110); *Empresa Eléctrica*, para. 71 (RL-105).

⁹¹⁸ R-PHB1, paras. 443-449.

⁹¹⁹ Reply, para. 277, referring to *Plama*, para. 165 (CL-116); *Yukos*, para. 458 (CL-1); *Liman*, para. 225 (CL-117); *Masdar*, paras. 235 and 239 (CL-118 and RL-141); *Stati*, para. 745 (CL-26); *Khan*, para. 419 (CL-109).

Article 17 of the ECT “before the dispute with Rosserlane arose”,⁹²⁰ and it should have made a general declaration in the official gazette, or included a statutory provision in its investment law or other laws, or mentioned it in an exchange of letters.⁹²¹ They add that neither of the two cumulative requirements of Article 17(1) ECT is met, since Rosserlane (i) is not owned or controlled by citizens or nationals of a third State, but by citizens of the ECT contracting States,⁹²² and (ii) meets the substantial business activities requirement.⁹²³ Finally, the Claimants contend that the Respondent’s “arbitrary” reliance on Article 17 gives rise to a new claim for breach of the FET standard pursuant to Article 46 of the ICSID Convention and Rule 40 of the ICSID Arbitration Rules.⁹²⁴

(2) Discussion

486. The Respondent invoked Article 17(1) of the ECT in its Counter-Memorial to deny Rosserlane the benefits of Part III of the ECT by arguing that Rosserlane is owned and controlled by citizens or nationals of a third State and that it has no substantial business activity in the UK.
487. Article 17 of the ECT, which is entitled “Non-application of Part III in certain circumstances”, reads as follows:

“Each Contracting Party reserves the right to deny the advantages of this Part to:

(1) a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized; or

(2) an Investment, if the denying Contracting Party establishes that such Investment is an Investment of an Investor of a third state with or as to which the denying Contracting Party:

⁹²⁰ Reply, para. 277.

⁹²¹ Reply, para. 277, referring to *Plama*, para. 157 (CL-116).

⁹²² Reply, para. 278 and footnote 724, referring to Energy Charter Secretariat, Member Page: Republic of Georgia (C-18); Energy Charter Secretariat, Member Page: United Kingdom (C-19 and C-141).

⁹²³ Reply, para. 278.

⁹²⁴ Reply, para. 279.

- (a) *does not maintain a diplomatic relationship; or*
- (b) *adopts or maintains measures that:*
 - (i) *prohibit transactions with Investors of that State; or*
 - (ii) *would be violated or circumvented if the benefits of this Part were accorded to Investors of that state or to their investments”*.⁹²⁵

488. Pursuant to Article 31 of the VCLT, the wording of this provision must be interpreted in good faith in accordance with the ordinary meaning of its terms, in the context in which they occur and in light of the ECT’s object and purpose.
489. At the outset, the Tribunal notes that Article 17 of the ECT relates to the denial of the substantive provisions contained in “this Part”, i.e. of Part III of the ECT. Since the dispute settlement provision of Article 26 of the ECT is found in Part V, the Tribunal deems that the denial of benefits clause does not affect the jurisdiction of this Tribunal over the claims and even less its jurisdiction to decide whether the conditions of Article 17 are met, but that it goes to the admissibility of the claims. This is in line with other ECT tribunals that have also held that Article 26 is unaffected by the operation of Article 17.⁹²⁶
490. Another preliminary issue concerns the burden of proof. Since the Respondent invokes Article 17 of the ECT to deny the benefits to Rosserlane, it bears the overall burden of proof to demonstrate that the requirements of Article 17(1) of the ECT are met. However, as was aptly held in *Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama*, considering that the Respondent has to prove a negative, namely that Rosserlane has no substantial business activities in the UK, and considering that such evidence is essentially held by the Claimants, it is appropriate to require the Claimants to demonstrate the extent of Rosserlane’s business activities in

⁹²⁵ ECT, Article 17 (C-1).

⁹²⁶ *Plama*, para. 148 (CL-116); *Yukos*, para. 441 (CL-1); *Khan*, para. 411 (CL-109); *Stati*, para. 745 (CL-26). See also *Isolux*, paras. 711-713; *Canepa Green Energy Opportunities I, S.à.r.l. and Canepa Green Energy Opportunities II, S.à.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/19/4, Procedural Order No. 3, Decision on Bifurcation, 28 August 2020, para. 90.

the UK once the Respondent has provided sufficient elements to cast doubt on the existence or extent of such activities.⁹²⁷

491. Article 17(1) of the ECT allows a Contracting State of the ECT to deny the benefits of the substantive protections in Part III of the ECT to a legal entity if two cumulative *ratione materiae* conditions are met. First, the legal entity in question must be owned or controlled by citizens or nationals of a third State. Second, that entity must have no substantial business activities in the home State, here the UK. In other words, it suffices that one of these two limbs is not met (i.e. to state the matter affirmatively, either that Rosserlane is owned or controlled by citizens or nationals of an ECT Contracting State or that it does conduct substantial business activities in the UK) to defeat the denial of benefits defense. If these two conditions are met, the Tribunal must address the contested issue at which point in time the Respondent could invoke Article 17 to deny the benefits of Part III of the ECT to Rosserlane. The Tribunal will address these issues in turn.

a. Is Rosserlane Owned or Controlled by Citizens or Nationals of a Third State?

492. The Claimants contend that Dr. Leshkasheli owns and controls Rosserlane, whereas the Respondent contends that Rosserlane is owned and controlled by the trustee of the Alamar Trust.

493. The analysis above at paragraphs 371 to 413 has shown that, under the Alamar Trust Deed, Rosserlane is owned and controlled since 18 September 1995 by the trustee of the Alamar Trust, not Dr. Leshkasheli. In fact, Dr. Leshkasheli admitted as much at the Hearing.⁹²⁸ In reference to the three factors mentioned in Understanding 3 (reproduced at paragraph 408 above), the Claimants have not sufficiently shown that Dr. Leshkasheli controlled in fact Rosserlane, such that the Tribunal would have to disregard the *de jure* control exercised by the trustee of the Alamar Trust.

⁹²⁷ *Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama*, ICSID Case No. ARB/16/34, Decision on Expedited Objections, 13 December 2017, para. 289.

⁹²⁸ Tr. (Day 2), 394:7-11 (Leshkasheli) (“Q. And that means that the Alamar Trust, in fact, owned or controlled both Rosserlane Consultants Limited and Erdingside Services Limited from 1995, doesn’t it? A. Yes, that’s correct”).

494. With respect to the first factor of Understanding 3, the Claimants did not sufficiently show that Dr. Leshkasheli had any financial interest, let alone an equity interest, in Rosserlane after 18 September 1995. Although the record contains one resolution adopted by Dr. Leshkasheli on 25 May 2003, in which he identifies himself as “the Sole Member of the company entitled to vote”, this description is irreconcilable with the fact that Rosserlane’s sole shareholder was at that time the trustee of the Alamar Trust.⁹²⁹ Similarly, the fact that Rosserlane’s share register identifies him as its sole shareholder between 26 March 2003 and 23 February 2006 is irreconcilable with the fact that all of Rosserlane’s shares had been contributed to the Alamar Trust fund since 18 September 1995.⁹³⁰ The Tribunal therefore attaches no weight to these two documents. In any event, the Tribunal notes that on the same day Rosserlane’s two directors, Dr. Leshkasheli and Ms. Yates, resolved to transfer Rosserlane’s shares to Dr. Leshkasheli,⁹³¹ Dr. Leshkasheli also signed a “declaration of trust” stating that he held those shares, and “all dividends and interest” associated therewith, as nominee “upon trust” for the trustee of the Alamar Trust and that he would “transfer, pay and deal with the said shares and the dividends” as the trustee “shall from time to time direct”.⁹³² This confirms that he did not have a financial interest deriving from the shares in Rosserlane.
495. With respect to the second factor of Understanding 3, the Claimants did not sufficiently show that Dr. Leshkasheli exercised substantial influence over Rosserlane’s management and operation. In fact, as the analysis in the following section will show, Rosserlane barely had any activities such that it is hardly possible to identify any real operations by the company or any management associated therewith. Be that as it may, the record shows that Dr. Leshkasheli was a director of Rosserlane from 4 April 1997

⁹²⁹ Rosserlane Consultants Limited Resolution, 25 May 2003, p. 1 of the pdf document (C-211).

⁹³⁰ Rosserlane Consultants Limited, 19 March 2009 (C-209).

⁹³¹ Rosserlane Consultants Written Resolution, 26 March 2003, pp. 1-2 of the pdf document (C-213).

⁹³² The Declaration of Trust reads in relevant part as follows: “I, Dr. Zaur V Leshkasheli of 6 Nicoladze Street, Tbilisi, Georgia (the ‘Nominee’) HEREBY DECLARE AND ACKNOWLEDGE THAT I hold Two Thousand (2,000) Ordinary Shares of one pound (£1.00) each in the capital of Rosserlane Consultants Limited of Clinch’s House, Lord Street, Douglas, Isle of Man, and that all dividends and interest accrued to or to accrue upon the same UPON TRUST and as nominee for Alamar Trust, c/o F.T.S. Worldwide Corporation, Panama City, Republic of Panama (‘the Beneficiary’) and the Nominee agrees to transfer, pay and deal with the said shares and the dividends payable in respect of the same in such manner as the Beneficiary shall from time to time direct and the Nominee HEREBY UNDERTAKES when called upon to do so by the Beneficiary to transfer the said shares to the Beneficiary or as he may direct”. Rosserlane Consultants Written Resolution, 26 March 2003, p. 3 of the pdf document (C-213).

to at least January 2007.⁹³³ The record further shows that Rosserlane’s board of directors always comprised at least two directors. In fact, Rosserlane’s board of directors was composed of four directors at least until 25 May 1998.⁹³⁴ It is unclear until when the board had four directors, but it appears that the board had two directors from November 2000 onwards.⁹³⁵ In this context, the Tribunal notes that the Claimants never argued that Dr. Leshkasheli was Rosserlane’s sole director at any given moment. They did not either argue, let alone demonstrate, that Dr. Leshkasheli was vested with more powers than the other directors on the board. The Tribunal therefore cannot determine what influence, if any, Dr. Leshkasheli exercised over Rosserlane’s management or operations that would in any way substantially differ from the influence exercised by the other directors, i.e. all his colleagues on the board of directors. Moreover, the “declaration of trust” Dr. Leshkasheli signed on 26 March 2003 (reproduced in footnote 932 above) tends to support the argument that he acted upon the directions of the trustee of the Alamar Trust and thus that the trustee maintained control over Rosserlane; while the record does not establish that the trustee did instruct Dr. Leshkasheli or the board of directors of Rosserlane, neither does it show that the trustee would have relinquished these powers and duties to Dr. Leshkasheli.⁹³⁶

496. With respect to the third factor mentioned in Understanding 3, there is no evidence whatsoever that Dr. Leshkasheli exercised any influence, let alone substantial, over the selection of the board members or any other managing body in Rosserlane.
497. Importantly, the Claimants did not produce the foundational documents of Rosserlane. Although the Tribunal understands that Rosserlane adopted a memorandum and articles

⁹³³ Certified Rosserlane Documents, 21 March 1997, p. 9 of the pdf document (R-91); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211); Rosserlane Consultants Written Resolution, 26 March 2003 (C-213); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Annual Return, 25 May 2006, p. 5 of the pdf document (R-156); Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 1 of the pdf document (C-322; C-00003607).

⁹³⁴ Certified Rosserlane Documents, 21 March 1997, pp. 3 and 9 of the pdf document (R-91); Rosserlane Annual Return, 25 May 1998, p. 4 of the pdf document (R-97).

⁹³⁵ Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000, p. 2 of the pdf document (C-210); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Consultants Written Resolution, 26 March 2003, p. 2 of the pdf document (C-213); Rosserlane Annual Return, 25 May 2006, p. 5 of the pdf document (R-156); Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 1 of the pdf document (C-322; C-00003607).

⁹³⁶ Rosserlane Consultants Written Resolution, 26 March 2003, p. 3 of the pdf document (C-213).

of association pursuant to the Companies Act,⁹³⁷ the record contains neither the memorandum nor the articles of association, which might allow ascertaining the applicable rules on the composition of the board of directors, the method of appointment, the quorum or the decision-making procedures of the board. The Claimants did not either produce Rosserlane's register of directors. In sum, the Tribunal is unable to find that Dr. Leshkasheli *de facto* controlled Rosserlane. The evidence rather suggests that the trustee of the Alamar Trust owned and retained control over Rosserlane. The fact that Article 13 of the Alamar Trust Deed gave liberty to the trustee to leave the conduct of Rosserlane's business to its directors does not detract that he retained ultimate control and had to intervene, for instance, if the directors misappropriated funds.⁹³⁸

498. To conclude, the Tribunal finds that the trustee of the Alamar Trust owned and controlled Rosserlane at all relevant times. Since 17 April 2000, the trustee of the Alamar Trust is the Panamanian company FTS.⁹³⁹ It is undisputed that Panama is not an ECT contracting State and that therefore FTS is a national of a "third State" for the purposes of Article 17(1) of the ECT. For the avoidance of doubt, the Tribunal also recalls that the Alamar Trust is governed by BVI law and notes that the UK did not extend the application of the ECT to the BVI. Since Rosserlane is owned and controlled by a Panamanian entity, the first limb of Article 17(1) is met.

b. Did Rosserlane Have Substantial Business Activities in the UK?

499. The Claimants further contend that Rosserlane has substantial business activities in the UK. They argue that Rosserlane is registered in the Isle of Man, that its board meetings are held in the Isle of Man, that the company's director and secretary reside in the Isle of Man, that its books of accounts are kept in the Isle of Man and that it has a bank account with Barclays Bank PLC in the Isle of Man.⁹⁴⁰
500. The Respondent argues for its part that Rosserlane has no substantial business activities in the UK and that the Claimants' assertion to the contrary is "wholly

⁹³⁷ See, for instance, Certified Rosserlane Documents, 21 March 1997, item 4, p. 1 of the pdf document (R-91); Rosserlane Consultants Limited Resolution, 25 May 2003 (C-211).

⁹³⁸ The Alamar Declaration of Trust, 18 September 1995, Article 13 (C-325).

⁹³⁹ The Alamar Declaration of Trust, 18 September 1995, p. 17 of the pdf document (C-325).

⁹⁴⁰ C-PHB1, para. 344; C-PHB2, para. 95.

unsubstantiated”.⁹⁴¹ It says the only evidence of board meetings is a meeting held on 19 March 1997 in Sark, the Channel Islands, during which the only item of business was to issue a power of attorney to Dr. Leshkasheli, and another one held on 25 March 2003 at Clinch’s House in the Isle of Man (with Dr. Leshkasheli joining by telephone) to transfer shares to Dr. Leshkasheli.⁹⁴² According to the Respondent, these decisions are “superficial and formalistic only” and provide “no evidence of substantial business decisions”.⁹⁴³ Beyond those elements, the Claimants provided “no evidence” that Rosserlane paid taxes in the UK, engaged independent auditors, received payment of dividends, had premises, employed permanent staff, engaged any services in the UK, had bank accounts, or transferred funds in or out for business purposes.⁹⁴⁴

501. Article 17(1) of the ECT does not define what constitutes a “substantial” business activity. As noted in *Amtó*:

*“The ECT does not contain a definition of ‘substantial’, nor does the Final Act of the European Energy Charter Conference that would serve as guidance for interpretation. As stated above, the purpose of Article 17(1) is to exclude from ECT protection investors which have adopted a nationality of convenience. Accordingly, ‘substantial’ in this context means ‘of substance, and not merely of form’. It does not mean ‘large’, and the materiality not the magnitude of the business activity is the decisive question”.*⁹⁴⁵

502. Accordingly, the Tribunal must be satisfied that there is some business activity beyond the aim of simply maintaining the company’s corporate existence. As noted in *Gran Colombia Gold Corp. v. Republic of Colombia* (“*Gran Colombia*”):

“The next word in the treaty text, ‘substantial,’ nonetheless provides an important materiality threshold. A business activity may not be mere cursory, fleeting or incidental, but must be of sufficient extent and meaning as to constitute a genuine connection by the company to its home State. That genuine connection is necessary to ensure that the company is one that

⁹⁴¹ R-PHB1, para. 460 (footnote omitted).

⁹⁴² R-PHB1, paras. 462-463, referring to Certified Rosserlane Documents, 21 March 1997 (R-91); Rosserlane Consultants Limited Resolution, 25 May 2003 (C-211).

⁹⁴³ R-PHB1, para. 463.

⁹⁴⁴ R-PHB1, para. 470.

⁹⁴⁵ *Amtó*, para. 69 (RL-25).

*the home State has an interest to protect, and which the host State would consider it appropriate for the home State to protect. The connection between the company and its home State cannot be merely a sham, with no business reality whatsoever, other than an objective of maintaining its own corporate existence. That requirement is reinforced by the last words in the treaty text, ‘business activities’; the activities of the company in its State of registration must be of a “business” nature. If the company has no activities in its home jurisdiction other than those required to maintain its bare registration, then it is impossible to conclude that it is conducting any ‘business’ there, in any real sense of that word”.*⁹⁴⁶

503. It is undisputed that Rosserlane is a holding company. As noted in *Tenaris S.A. and Talta-Trading E Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela*, holding companies have “little or no day-to-day operational activities” and their management activities are typically “very limited”.⁹⁴⁷ In *Pac Rim Cayman LLC v. Republic of El Salvador* (“*Pac Rim*”), the tribunal explained that the commercial purpose of holding companies is typically “to own shares in its group of companies, with attendant benefits as to control, taxation and risk-management for the holding company’s group of companies”.⁹⁴⁸ Indeed, to cite the tribunal in *9REN Holding S.a.r.l. v. Kingdom of Spain* (“*9REN*”), “[b]ricks and mortar are not the essence of a holding company, which is typically pre-occupied with paperwork, board meetings, bank accounts and cheque books”.⁹⁴⁹ Accordingly, the Tribunal must take “into account the precise nature of the company in question and its actual activities” when determining whether Rosserlane has any substantial business activities in the UK.⁹⁵⁰
504. The Claimants contend that the following elements should guide the assessment of substantial business activities of a holding company: (i) location of the company’s board meetings, (ii) the residence of the directors and secretaries of the company, (iii) the address of the registered office of the company, (iv) the location of the

⁹⁴⁶ *Gran Colombia Gold Corp. v. Republic of Colombia*, ICSID Case No. ARB/18/23, Decision on the Bifurcated Jurisdictional Issue, 23 November 2020 (“*Gran Colombia*”), para. 137 (CL-114).

⁹⁴⁷ *Tenaris S.A. and Talta-Trading E Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award, 29 January 2016 (“*Tenaris*”), para. 199 (CL-90).

⁹⁴⁸ *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on Jurisdictional Objections, 1 June 2012 (“*Pac Rim*”), para. 4.72 (RL-111).

⁹⁴⁹ *9REN Holding S.a.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award, 31 May 2019 (“*9REN*”), para. 182 (CL-119).

⁹⁵⁰ *Tenaris*, para. 200 (CL-90).

company's or its affiliates' books of accounts, and (v) the location of the company's bank accounts.⁹⁵¹ The Respondent adds the following elements: (vi) the payment of taxes, (vii) the engagement of independent auditors, (viii) the receipt of dividends, (ix) the location of premises, (x) the employment of permanent staff, and (xi) the engagement of services.⁹⁵²

505. To ascertain the existence and extent of business activities of a given company, arbitral tribunals, such as the one in *Gran Colombia*, have looked at the location of core corporate functions (such as corporate financing, fundraising, accounting, shareholder relations, legal, administration and IT support), the location of office space, the employment of permanent staff, the location of bank accounts, the location of purchases of goods and services, and the extent of financing activities.⁹⁵³ In *Amto*, for instance, the tribunal was satisfied that the claimant had substantial business activities in Latvia, because Amto conducted investment related activities from premises in Latvia, employed “a small but permanent staff” in Latvia, paid taxes in Latvia and held a multi-currency account in a Latvian bank.⁹⁵⁴
506. In relation to holding companies, more specifically, tribunals have looked at the location of offices, the location of annual meetings of the shareholders or the board of directors, the location of company books and records, the location of bank accounts or the location of auditors.⁹⁵⁵ In *Pac Rim*, the tribunal stated that holding companies, whose purpose is to own shares, “usually have a board of directors, board minutes, a continuous physical presence and a bank account”.⁹⁵⁶ In *9REN*, the tribunal considered “paperwork, board meetings, bank accounts and cheque books”.⁹⁵⁷ In that case, the tribunal accepted evidence showing that 9REN leased office space in Luxemburg, employed one permanent staff member there, maintained bank accounts in Luxemburg, held board meetings in Luxemburg, and that half of its directors resided in

⁹⁵¹ See, for instance, C-PHB2, paras. 93-95.

⁹⁵² R-PHB1, para. 470.

⁹⁵³ *Gran Colombia*, para. 139 (CL-114).

⁹⁵⁴ *Amto*, para. 69 (RL-25).

⁹⁵⁵ *Tenaris*, paras. 207-215 (CL-90).

⁹⁵⁶ *Pac Rim*, para. 4.72 (RL-111).

⁹⁵⁷ *9REN*, para. 182 (CL-119).

Luxemburg.⁹⁵⁸ In *Masdar*, the tribunal considered relevant the fact that the claimant owned various international investments, that it had an office in the home State, that its board of directors met regularly and that its decisions were not limited to administrative issues, but included for instance decisions on capital contributions.⁹⁵⁹ In *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, the tribunal considered that a holding company satisfied the substantive business requirement “as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts” in its State of incorporation.⁹⁶⁰

507. In the Tribunal’s view, the evidence available is insufficient to support a finding that Rosserlane held substantial business activities in the Isle of Man or the UK. In fact, the dearth of evidence about Rosserlane’s activities is remarkable, even for a holding company, and it appears more likely than not that Rosserlane was a passive shell company merely holding shares in CEG with no substantial business activities in the Isle of Man, or the UK more generally. The issue is primarily not whether this was acceptable under the laws of the Isle of Man but rather whether Rosserlane had a substantial business activity in the UK in order to comply with Article 17(1) of the ECT. The Claimants have not shown that Rosserlane carried out in the Isle of Man, or even in the UK, the minimum activity required to “hold” its participation in CEG, especially doing the necessary to efficiently exercise its shareholder’s rights. In other words, the Respondent sufficiently demonstrated that Rosserlane had no substantial business activities in the Isle of Man or the UK.

508. Under the Companies Act, a company limited by shares must have a memorandum of association stating the company’s name, registered office and object.⁹⁶¹ The Companies Act further provides for the possibility of such a company having articles of association “prescribing regulations for the company”.⁹⁶² As noted above, the record contains neither the memorandum, nor the articles of association, which would allow

⁹⁵⁸ 9REN, para. 180 (CL-119).

⁹⁵⁹ *Masdar*, paras. 224-226 and 254 (CL-118 and RL-141).

⁹⁶⁰ *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB/19/19, Award, 3 October 2023, para. 225.

⁹⁶¹ Isle of Man Companies Act 1931, Sections 1-2 (R-229).

⁹⁶² Isle of Man Companies Act 1931, Section 6 (R-229).

ascertaining the object or purpose of Rosserlane or any specific regulations, for instance, about general annual meetings or board meetings.⁹⁶³

509. Part IV of the Companies Act contains statutory provisions on the management and administration of companies registered in the Isle of Man, such as the obligation to keep a register of the company's members and of its directors and secretaries, to prepare annual returns, to hold annual general meetings and to keep books containing minutes of the general meetings at the company's registered office.⁹⁶⁴ As the analysis below will show, there is scant evidence in the record, if any, about these elements.
510. Rosserlane was incorporated in the Isle of Man on 25 May 1994 as a company limited by shares pursuant to the Companies Act.⁹⁶⁵ Although Rosserlane used a "correspondence address" in London on 27 July 1994 when it applied to incorporate CEG,⁹⁶⁶ its registered office in January 1997 was 26-28 Athol Street, Douglas, Isle of Man, IM1 1JB.⁹⁶⁷ Between March 1997 and March 2003, Rosserlane's registered office was a PO box in the Isle of Man with the following address: "PO Box 227, Clinch's House, Lord Street, Douglas, Isle of Man, IM99 IRZ".⁹⁶⁸ According to the record, its "registered address" between 2006 and 2008 was again at 26-28 Athol Street, Douglas, Isle of Man, IM1 1JB.⁹⁶⁹ In 2017, when it was struck from the Isle of Man Company

⁹⁶³ Rosserlane's 1998 Annual Return states that its "[p]rincipal trade or business" was "General Trader". Rosserlane Annual Return, 25 May 1998, p. 1 of the pdf document (R-97).

⁹⁶⁴ Isle of Man Companies Act 1931, Sections 96, 107, 111, 120 and 143 (R-229).

⁹⁶⁵ Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207).

⁹⁶⁶ It used the same London address, i.e. Bell House, 175 Regent Street, London W1R 7FB, in its partnership agreements with Erdingside dated 8 July 1994. It concluded another partnership agreement with Erdingside on 15 December 2003, using the following "correspondence address" in London: 6th Floor, 94 Wigmore Street, London W1U 3RF. See Application for Registration of Whitehall International Traders, 27 July 1994, pp. 1-2 of the pdf document (C-208); Rosserlane and Erdingside Partnership Agreement, p. 1 of the pdf document (C-322; C00003455).

⁹⁶⁷ Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 2 of the pdf document (C-322; C-00003607).

⁹⁶⁸ Rosserlane shared that same address with Rakestone Limited. See, for instance, Certified Rosserlane Documents, 21 March 1997, pp. 1, 4 and 7 of the pdf document (R-91); Rosserlane Annual Return, 25 May 1998, pp. 1 and 4 of the pdf document (R-97); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211).

⁹⁶⁹ Loan Agreement between CEG and Khamar Holdings Ltd, 31 May 2006, p. 5 of the pdf document (C-65); Loan Agreement between CEG and Ashmore, 11 August 2006, p. 1 of the pdf document (C-197); Loan Agreement between Caspian Energy Group, Rosserlane Consultants Limited, Caspian Energy Group Limited, Caspian Energy Group, Roanoaks Trading Ltd., MayFair Energy Group Limited, Swinbrook Developments Limited, Credit Suisse London Branch, 14 December 2006, p. 4 of the pdf document (C-178); Participation Agreement between Caspian Energy Group Limited Partnership and the Equity

Registry, its address was at 153 Woodbourne Road, Douglas, Isle of Man, IM2 3BB.⁹⁷⁰ It had the same address from 2018 onwards, when it was re-registered in the Isle of Man Company Registry and commenced this arbitration.⁹⁷¹

511. There is no evidence in the record or explanation about these address changes. In particular, the Tribunal is unaware about Rosserlane's address between March 2003 and early 2006. However, it appears (and the Respondent has not disputed) that Rosserlane was continuously registered in the Isle of Man at all relevant times, even if as a PO box between March 1997 and March 2003 (and possibly until 2006) and again between 2006 and 2008.
512. The Tribunal notes in this context that there is no evidence that Rosserlane leased any office space in the Isle of Man or that it employed any permanent staff. The scant evidence only shows that the board of directors held one meeting at Clinch's House on 25 March 2003.⁹⁷² The second partnership agreement between Rosserlane and Erdingside dated 15 December 2003 specified that the partnership's books of accounts were to be retained at Clinch's House, which may suggest among other possibilities that Rosserlane had some sort of physical location at that address.⁹⁷³ That said, absent any evidence showing that this was the case, the Tribunal is unable to ascertain with any level of certainty whether Rosserlane actually held physical premises at Clinch's House or at least paid for the use of premises to store its corporate/accounting documents.
513. Moreover, there is little information about Rosserlane's directors. In particular, the record contains no register of the company's directors or members, although such a register is mandatory under the Companies Act and it would presumably have been possible for the Claimants to put that register into the record. The record (only) contains

Owners and Credit Suisse International, 14 December 2006, p. 2 of the pdf document (C-71); Email of 5 March 2008 from Joel Steinhart to Credit Suisse, pp. 1-3 of the pdf document (C-322; C-00016247).

⁹⁷⁰ Letter from Isle of Man Companies Registry to Rosserlane, 18 July 2017 (R-39).

⁹⁷¹ Rosserlane Consultants Limited, *Isle of Man Government Company Registry*, undated (C-207); Request for Arbitration, para. 79.

⁹⁷² Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211).

⁹⁷³ Rosserlane and Erdingside Partnership Agreement, Article 7, p. 2 of the pdf document (C-322; C00003455) ("7. Proper books of accounts of Partnership shall be kept at PO Box 227, Clinch's House, Lord Street, Douglas, Isle of Man").

one notice of change of directors dated 4 April 1997, although various changes were effectuated later. The evidence suggests that, until 4 April 1997, Rosserlane's directors were Dr. Leshkasheli, Ms. Angela Jane Weir, Mr. Sheridan Ralph Gill and Ms. Hazel Gill.⁹⁷⁴ According to that evidence, the latter three individuals resigned as directors on that day. It is unclear whether any of them resided in the Isle of Man before their resignation. They were replaced on that date by Messrs. James William Grassick and Simon Peter Elmont,⁹⁷⁵ although Rosserlane's annual return of 1998 suggests that Ms. Weir stayed on as director.⁹⁷⁶ As regards the residence of the new directors, Dr. Leshkasheli indicated that he resided in Moscow, the two other gentlemen in Sark, Channel Islands, and Ms. Weir in the Isle of Man.⁹⁷⁷

514. It is unclear when exactly Ms. Weir and Messrs. Grassick and Elmont resigned as Rosserlane's directors. The evidence shows that, by November 2000, the company's directors were Ms. Karen Louise Yates and Dr. Leshkasheli,⁹⁷⁸ and that, by 2006, Mr. Albert Colin Knott had replaced Ms. Yates,⁹⁷⁹ who in turn was replaced by Mr. Brian Stanley Quayle in 2007.⁹⁸⁰ It is unclear whether Ms. Yates resided in the Isle of Man, but it appears that Messrs. Knott and Quayle did.⁹⁸¹
515. Notwithstanding the above, the Tribunal attaches little importance to the question of whether at least one director resided in the Isle of Man, since neither Party argued that this was a requirement under the Companies Act and the issue remains primarily and, in any circumstances whether Rosserlane complied with Article 17(1) of the ECT rather than with the Companies Act. In other words, in itself, the fact that a director may have

⁹⁷⁴ Certified Rosserlane Documents, 21 March 1997, pp. 3 and 9 of the pdf document (R-91).

⁹⁷⁵ Certified Rosserlane Documents, 21 March 1997, pp. 9-10 of the pdf document (R-91).

⁹⁷⁶ Rosserlane Annual Return, 25 May 1998, p. 4 of the pdf document (R-97).

⁹⁷⁷ Rosserlane Annual Return, 25 May 1998, p. 4 of the pdf document (R-97).

⁹⁷⁸ Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000, p. 2 of the pdf document (C-210); Rosserlane Consultants Limited Resolution, 25 May 2003, p. 2 of the pdf document (C-211); Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212); Rosserlane Consultants Written Resolution, 26 March 2003, p. 2 of the pdf document (C-213).

⁹⁷⁹ Rosserlane Annual Return, 25 May 2006, p. 5 of the pdf document (R-156).

⁹⁸⁰ Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, p. 1 of the pdf document (C-322; C-00003607).

⁹⁸¹ Rosserlane Annual Return, 25 May 2006, p. 5 of the pdf document (R-156); Isle of Man Financial Supervision Commission, Rosserlane Consultants Limited Certificate, 18 January 2007, p. 1 of the pdf document (C-322; C-00003607).

resided in the Isle of Man is of little relevance to determine whether Rosserlane had substantial business activities there.

516. By contrast, the lack of evidence of any annual general meeting is of particular relevance, considering that, under Section 111 of the Companies Act, Rosserlane had to hold a general meeting once every calendar year and within 15 months from the last general meeting and that was the only ostensible opportunity for a yearly corporate ascertainment/evaluation of the management and business of the company, i.e. its participation in CEG.⁹⁸² Moreover, considering that Section 120 of the Companies Act required Rosserlane to keep books containing minutes of the general meetings at its registered office, the Tribunal is surprised that no evidence of these books has been put into evidence.⁹⁸³ This suggests that Rosserlane did not periodically hold and possibly never held any general meetings. It thus appears that Rosserlane did not even engage in the minimum activities required to maintain its corporate form. Its “organs”, whether the board of directors, the auditors or the general meetings did not carry their (administrative) “business”, even less so at the seat of the company.
517. The record only contains minutes of two meetings of the board of directors. The first meeting was held in Sark, Channel Islands, on 19 March 1997.⁹⁸⁴ Its only purpose was to issue a power of attorney in favor of Dr. Leshkasheli. The second meeting was held at Clinch’s House on 25 March 2003 and was attended by Ms. Yates and Dr. Leshkasheli, who joined by telephone.⁹⁸⁵ Its sole purpose was to transfer Rosserlane’s shares to Dr. Leshkasheli. These meeting minutes do not show that Rosserlane engaged in any activities in the UK, or any investment decisions connected with CEG’s activities or those of Shirvan Oil. In addition, the fact that the directors only met twice over a period of 14 years (1994 to 2008) only serves to confirm that Rosserlane was a mere shell company that did not have any substantial business activities in the Isle of Man or the UK.

⁹⁸² Article 111(1) reads in relevant part as follows: “A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting”. Isle of Man Companies Act 1931, Section 111 (R-229).

⁹⁸³ Isle of Man Companies Act 1931, Section 120 (R-229).

⁹⁸⁴ Certified Rosserlane Documents, 21 March 1997, p. 3 of the pdf document (R-91).

⁹⁸⁵ Rosserlane Consultants Limited Resolution, 25 May 2003, pp. 2-3 of the pdf document (C-211).

518. The only other evidence about Rosserlane’s activities is a beneficial owner declaration signed by Ms. Yates on 8 November 2000 and three resolutions adopted between March 2003 and May 2004. The beneficial owner declaration purports to attest that Dr. Leshkasheli was Rosserlane’s beneficial owner.⁹⁸⁶ However, for the reasons discussed above, this declaration cannot be reconciled with the fact that Rosserlane had been contributed to the Alamar Trust in 1995. In any event, it cannot serve to show that Rosserlane conducted substantial business activities in the Isle of Man or the UK.
519. As for the three resolutions, Dr. Leshkasheli adopted the first one on 25 March 2003.⁹⁸⁷ Therein, he resolved that Rosserlane would be exempt “from the requirement to lay accounts before the company in a general meeting” and that it elected to “dispense with the requirements” relating to “the audit of accounts”. The second was adopted the following day by Ms. Yates and Dr. Leshkasheli to approve the transfer of Rosserlane’s shares to Dr. Leshkasheli.⁹⁸⁸ Finally, the third was adopted by Ms. Yates and Dr. Leshkasheli on 24 December 2004 to re-issue a share certificate for 1,200 shares that appear to have been lost in the meantime.⁹⁸⁹ Since these resolutions served either to exempt Rosserlane from statutory requirements or to transfer shares, they do not provide any support for a finding that Rosserlane engaged in substantial business activities in the Isle of Man or the UK.
520. The same conclusion must be reached in relation to annual returns, which Rosserlane had to prepare on a regular basis pursuant to Section 107 of the Companies Act.⁹⁹⁰ Notwithstanding this requirement, the record contains only two annual returns prepared in 1998 and 2006, respectively.⁹⁹¹ Even so, those annual returns only contain minimal information about Rosserlane’s share capital and shares. There is no information therein on Rosserlane’s accounting and the record does not otherwise contain any profit and loss statements that would show that Rosserlane had any business activities in connection with its purported investment in CEG or indirectly in Shirvan Oil.

⁹⁸⁶ Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000, p. 2 of the pdf document (C-210).

⁹⁸⁷ Rosserlane Consultants Limited Resolution, 25 May 2003, p. 1 of the pdf document (C-211).

⁹⁸⁸ Rosserlane Consultants Written Resolution, 26 March 2003, pp. 1-2 of the pdf document (C-213).

⁹⁸⁹ Rosserlane Consultants Limited Share Certificates, 24 December 2004 (C-212).

⁹⁹⁰ Isle of Man Companies Act 1931, Section 107 (R-229).

⁹⁹¹ Rosserlane Annual Return, 25 May 1998 (R-97); Rosserlane Annual Return, 25 May 2006 (R-156).

521. The record does not either contain any books of accounts or audited financial statements. As noted above, Dr. Leshkasheli resolved on his own in March 2003 to dispense with the requirement to present accounts to the general meetings and to have those accounts audited. This again suggests that Rosserlane had no substantial business activities. Although the Claimants argued that the partnership agreement between Rosserlane and Erdingside provided that the partnership's books of accounts were to be retained at Clinch's House,⁹⁹² they did not put those books into the record to rebut the Respondent's assertion that Rosserlane had no business activities in the Isle of Man or the UK. The Tribunal further notes that the Claimants did not rebut the Respondent's assertion that Rosserlane paid no taxes in the Isle of Man or the UK.
522. Finally, while the record shows that Rosserlane held a US dollar bank account at Barclays Bank in the Isle of Man, the evidence only shows that this account was used to receive a part of the proceeds of the forced sale in 2008.⁹⁹³ The record does not otherwise contain any bank statements from that account that would support the view that Rosserlane engaged in business activities in the Isle of Man, for instance, to pay taxes, to purchase any goods or services or to pay rent for the company's premises or any other disbursements at all.
523. All these elements inevitably lead to the conclusion that Rosserlane had no substantial business activities in the Isle of Man and that it was purely a letterbox or shell company. The absence of clarity about whether Rosserlane had any physical premises, the lack of staff, the lack of general meetings, only two board of director meetings and two annual returns over a period of 14 years, no financial statements, no books of accounts, no evidence of the payment of taxes or of any kind of expenses: all this points to the only possible conclusion that Rosserlane had no substantial business activities in the Isle of Man or the UK. Using the language in *Amto* (supra paragraph 501 above), Rosserlane appears to have been little more than a shell company having no activity at its seat, but rather a nationality of convenience: thus it cannot qualify as a genuine holding company that should be able to tend its investment by its own means and not rely on outside

⁹⁹² C-PHB1, para. 344(c), referring to Rosserlane and Erdingside Partnership Agreement, Article 7, p. 2 of the pdf document (C-322; C00003455).

⁹⁹³ Email of 5 March 2008 from Joel Steinhart to Credit Suisse, p. 3 of the pdf document (C-322; C-00016247); Letter of 12 March 2008 from Barclays to Rosserlane (R-173).

assistance that it neither instructs nor controls nor compensates for its purported assistance.

524. Worse and as noted by the tribunal in *Gran Colombia*, “[i]f the company has no activities in its home jurisdiction other than those required to maintain its bare registration, then it is impossible to conclude that it is conducting any ‘business’ there, in any real sense of that word”.⁹⁹⁴ Here, having failed to hold general meetings and to prepare annual returns (other than on two occasions in a 14-year period), as required under the Companies Act, Rosserlane did not even do what was necessary to maintain its bare registration.
525. This conclusion is reinforced by the fact that Rosserlane was struck from the Isle of Man Company Registry in 2017 pursuant to Section 273 of the Companies Act because it was not carrying on business or otherwise in operation by that time.⁹⁹⁵ Notably, the Claimants did not challenge the Respondent’s assertion that Rosserlane was struck from the register because it had failed “to file its annual returns for several years”.⁹⁹⁶ Although this assertion appears to be unsupported by the record, it is remarkable that the Claimants did not seek to rebut it in any meaningful way.
526. The Tribunal therefore concludes that the Respondent has sufficiently shown that the second limb in Article 17(1) of the ECT is met. Since both *ratione materiae* elements of Article 17(1) are met, the Tribunal must now proceed to decide whether the Respondent’s denial of benefits was timely.

c. Was the Respondent’s Denial of Benefits Timely?

527. The Parties disagree about whether the Respondent could invoke Article 17(1) of the ECT after the commencement of this arbitration. The Claimants argue that Article 17(1) can only be exercised prospectively, whereas the Respondent contends that it can be exercised retrospectively.

⁹⁹⁴ *Gran Colombia*, para. 137 (CL-114).

⁹⁹⁵ Isle of Man Companies Act 1931, Section 273(1) (R-229); Letter of 18 July 2017 from Isle of Man Companies Registry to Rosserlane (R-39). See also Counter-Memorial, para. 29; R-PHB1, paras. 465-466.

⁹⁹⁶ Counter-Memorial, para. 29 (footnote omitted).

528. The *chapeau* of Article 17 of the ECT states that the “Contracting Party reserves the right to deny the advantages” of Part III of the ECT. It is undisputed that this wording means that Article 17 does not operate automatically, but that the host State must actively deny the benefits to an investor (or a class of investors). The question is whether the host State must do so either before a dispute arises or before the commencement of an arbitration, or whether it can do so thereafter and, if so, until when it can do so. Seen in a different way, should an ECT Contracting Party issue a general denial under Article 17 of the ECT without reference to a specific dispute/arbitration or is it permissible for that State to issue its denial for a specific arbitration?
529. This question has been debated in arbitral proceedings and no uniform case law has emerged. On the one hand, ECT tribunals that have faced this question⁹⁹⁷ almost consistently took the position that Article 17(1) of the ECT can only be validly invoked before a dispute arose or before the commencement of an arbitration and that a denial of benefits only operates prospectively.⁹⁹⁸ On the other hand, at least one ECT tribunal and several non-ECT tribunals have adopted a different position by allowing a respondent State to invoke the denial of benefits clause after the commencement of an arbitration, thus holding that a denial of benefits can operate retrospectively.⁹⁹⁹ It is worthwhile to set out in some detail how the case law evolved to set the stage for the Tribunal’s subsequent analysis of this issue.
530. In ECT cases, tribunals have almost consistently followed the approach first adopted in *Plama*, where the tribunal distinguished between the existence of the right to deny the benefits under Article 17(1) of the ECT and its exercise, further adding that the exercise of such right would be fulfilled with “publicity or other notice”, such as a general

⁹⁹⁷ A number of tribunals have not made a determination on this issue because the substantive conditions of Article 17(1) of the ECT were in any event not met. See, for instance, *Mercuria Energy Group Limited v. Republic of Poland*, SCC Case No. 2019/126, Award, 9 December 2022, para. 578; *Amto*, para. 70 (RL-25). See also *Masdar*, para. 251 (CL-118 and RL-141), where the tribunal ultimately did not resolve the issue, although the majority signaled that it accepted that a host State could not deny benefits retrospectively.

⁹⁹⁸ *Plama*, paras. 155-165 (CL-116); *Yukos*, paras. 458-459 (CL-1); *Khan*, paras. 426-429 (CL-109). See also *Liman*, paras. 224-226 (CL-117); *Libananco*, para. 550 (RL-42); *Stati*, para. 745 (CL-26); *Isolux*, para. 715; *Masdar*, para. 239 (CL-118 and RL-141).

⁹⁹⁹ *Empresa Eléctrica*, para. 71 (RL-105); *Ulysseas*, paras. 172-173 (RL-110); *Pac Rim*, paras. 4.83-4.85 (RL-111); *Guaracachi*, paras. 375-379 (RL-56).

declaration in an official gazette, a statutory provision in investment or other laws, or an exchange of letters with a particular investor or a class of investors”:¹⁰⁰⁰

*“Given that in practice an investor must distinguish between Contracting States with different state practices, it is not unreasonable or impractical to interpret Article 17(1) as requiring that a Contracting State must exercise its right before applying it to an investor and be seen to have done so. By itself, Article 17(1) ECT is at best only half a notice; without further reasonable notice of its exercise by the host state, its terms tell the investor little; and for all practical purposes, something more is needed”.*¹⁰⁰¹

531. Based on that premise, the *Plama* tribunal expressed the view that a denial of benefits, properly notified, can only operate prospectively, not retrospectively. The tribunal’s reasoning on this point warrants to be quoted in full:

“159. Retrospective or Prospective Effect: The language of Article 17(1) ECT is not by itself clear on this important point. There is some slight guidance from Article 17(1) suggesting a prospective effect, given the use of the present tense to coincide with the right’s exercise (‘own or control’ ... ‘has no substantial activities’ ... ‘is organized’); and likewise, Article 17(2) ECT suggests only a prospective effect to a denial of advantages to an Investment (‘... if the denying Contracting Party establishes...’ etc). However, the Tribunal would not wish to base its decision on such semantic indications only.

160. The Tribunal returns to the object and purpose of the ECT under Article 31 of the Vienna Convention. The parties did not here invoke under Article 31(3) and (4) any subsequent agreement or practice between the ECT’s Contracting Parties or under Article 32 any of the ECT’s preparatory work. Accordingly, as with many issues of disputed interpretation turning on a relatively few words, it is a short point of almost first impression.

161. The covered investor enjoys the advantages of Part III unless the host state exercises its right under Article 17(1) ECT; and a putative covered investor has legitimate expectations of such advantages until that right’s exercise. A putative investor therefore requires reasonable notice before making any investment in the host state whether or not that host state has

¹⁰⁰⁰ *Plama*, paras. 155-157 (CL-116).

¹⁰⁰¹ *Plama*, para. 157 (CL-116).

exercised its right under Article 17(1) ECT. At that stage, the putative investor can so plan its business affairs to come within or without the criteria there specified, as it chooses. It can also plan not to make any investment at all or to make it elsewhere. After an investment is made in the host state, the 'hostage-factor' is introduced; the covered investor's choices are accordingly more limited; and the investor is correspondingly more vulnerable to the host state's exercise of its right under Article 17(1) ECT. At this time, therefore, the covered investor needs at least the same protection as it enjoyed as a putative investor able to plan its investment. The ECT's express 'purpose' under Article 2 ECT is the establishment of '... a legal framework in order to promote long-term co-operation in the energy field ... in accordance with the objectives and principles of the Charter' (emphasis supplied). It is not easy to see how any retrospective effect is consistent with this 'long-term' purpose.

162. *In the Tribunal's view, therefore, the object and purpose of the ECT suggest that the right's exercise should not have retrospective effect. A putative investor, properly informed and advised of the potential effect of Article 17(1), could adjust its plans accordingly prior to making its investment. If, however, the right's exercise had retrospective effect, the consequences for the investor would be serious. The investor could not plan in the 'long term' for such an effect (if at all); and indeed such an unexercised right could lure putative investors with legitimate expectations only to have those expectations made retrospectively false at a much later date. Moreover, in the present case, the Respondent asserts a retrospective effect from a very late date, even after the Claimant's Request for Arbitration and the accrual of the Claimant's causes of action under Part III ECT.*

163. *The Respondent has argued that by the very existence of Article 17(1) in the ECT, the Investor is put on notice before it makes its investment that it could be denied ECT advantages if it falls within that Article and, therefore, if it did so fall within Article 17(1) it would have no legitimate expectations of such advantages. Such an interpretation of the ECT would deprive the Investor of any certainty as to its rights and the host country's obligations when it makes its investment and must be rejected.*

164. *For the Investor, the practical difference between prospective and retrospective effect is sharp. The former accords with the good faith interpretation of the relevant wording of Article 17(1) in the light of the ECT's object and purpose; but the latter does not. Moreover, if (contrary to the Tribunal's decision), the effect could be retrospective, the Tribunal would have to decide whether, nevertheless, in the present case it was*

not so exercised, given the terms of the Respondent's letter dated 18 February 2003. In the circumstances, however, it is unnecessary to decide this further question.

*165. In conclusion, the Tribunal decides that the Respondent's exercise of its right under Article 17(1) ECT by its letter dated 18 February 2003 only deprived the Claimant of the advantages under Part III of the ECT prospectively from that date onwards".*¹⁰⁰²

532. In *Yukos*, the tribunal came to a similar conclusion based on its reading of the ECT's "purpose" of establishing a legal framework to promote long-term cooperation:

"458. In any event, if the passage in Respondent's First Memorial quoted above in paragraph 447 is construed as an exercise of the reserved right of denial, it can only be prospective in effect from the date of that Memorial. To treat denial as retrospective would, in the light of the ECT's 'Purpose,' as set out in Article 2 of the Treaty ('The Treaty established a legal framework in order to promote long-term cooperation in the energy field...') be incompatible 'with the objectives and principles of the Charter.' Paramount among those objectives and principles is 'Promotion, Protection and Treatment of Investments' as specified by the terms of Article 10 of the Treaty. Retrospective application of a denial of rights would be inconsistent with such promotion and protection and constitute treatment at odds with those terms.

*459. In sum, the Tribunal finds, on the basis of the evidence before it, that Respondent has not denied and cannot now be heard to deny, and will not be able to deny to Claimant in any merits phase of these proceedings, the advantages and the benefits of Part III of the ECT on the basis of Article 17".*¹⁰⁰³

533. In *Liman*, the tribunal held that the "only interpretation that can be drawn from the wording" in the *chapeau* is that Article 17 of the ECT contains a notification requirement.¹⁰⁰⁴ Such a requirement meant in turn, according to that tribunal, that a denial of benefits only operates prospectively and that Bulgaria's invocation of Article 17(1) in its counter-memorial was therefore belated. Consistent with *Plama* and

¹⁰⁰² *Plama*, paras. 159-165 (emphasis in the original) (CL-116).

¹⁰⁰³ *Yukos*, paras. 458-459 (CL-1).

¹⁰⁰⁴ *Liman*, para. 224 (CL-117).

Yukos, the tribunal held that a retrospective application of Article 17(1) would be incompatible with the ECT's object and purpose of promoting long-term cooperation:

*“With regard to the question of whether the right under Article 17(1) of the ECT can only be exercised prospectively, the Tribunal considers that the above mentioned notification requirement – on which the Parties agree – can only lead to the conclusion that the notification has prospective but no retroactive effect. Accepting the option of a retroactive notification would not be compatible with the object and purpose of the ECT, which the Tribunal has to take into account according to Article 31(1) of the VCLT, and which the ECT, in its Article 2, expressly identifies as ‘to promote long-term co-operation in the energy field’. Such long-term co-operation requires, and it also follows from the principle of legal certainty, that an investor must be able to rely on the advantages under the ECT, as long as the host state has not explicitly invoked the right to deny such advantages. Therefore, the Tribunal finds that Article 17(1) of the ECT does not have retroactive effect”.*¹⁰⁰⁵

534. In *Khan*, the tribunal held that the wording of Article 17(1) of the ECT did not provide a clear answer to the question whether a State could deny benefits after the commencement of an arbitration, and it therefore relied on the ECT's object and purpose to conclude that allowing a State to do so would put an investor in a “highly unpredictable situation” and that such “lack of certainty” would be contrary to the ECT's object and purpose.¹⁰⁰⁶ By contrast, having the State denying benefits provide proper and timely notice would be consistent with its obligation under Article 10(1) of the ECT to create “transparent conditions” for investments.¹⁰⁰⁷ After citing a passage of the reasoning in *Plama*, the tribunal added the following:

“It is difficult to imagine that any Contracting Party, whatever its general policy regarding mailbox companies, would refrain from exercising its right to deny the substantive protections of the ECT to an investor who has already commenced arbitration and is claiming a substantial sum of money. A good faith interpretation does not permit the Tribunal to choose a construction of Article 17 that would allow host states to lure investors by ostensibly extending to them the protections of the

¹⁰⁰⁵ *Liman*, para. 225 (CL-117).

¹⁰⁰⁶ *Khan*, para. 426 (CL-109).

¹⁰⁰⁷ *Khan*, para. 427 (CL-109).

*ECT, to then deny these protections when the investor attempts to invoke them in international arbitration”.*¹⁰⁰⁸

535. In *Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Trading Ltd. v. Republic of Kazakhstan* (“*Stati*”), the tribunal also came to the conclusion that:

*“Art. 17 ECT would only apply if a state invoked that provision to deny benefits to an investor before a dispute arose and Respondent did not exercise this right”.*¹⁰⁰⁹

536. For the tribunal in *Isolux Infrastructure Netherlands B.V. v. Spain* (“*Isolux*”), it was “so obvious” that “the activation of the denial-of-benefit clause may never operate retroactively” and the tribunal shared the approach adopted in *Stati* that the “denial must be prior to the start of the dispute”.¹⁰¹⁰

537. In *Masdar*, the majority similarly held that applying the denial of benefits clause retrospectively “after an investment has been made and a dispute has arisen” would “contradict the text and the purposes of the ECT”.¹⁰¹¹ The majority further held that a retrospective application would “be contrary to the transparency, co-operation and stability objectives of the ECT” and would “lead to anomalous results”.¹⁰¹² It further added:

*“[B]efore disputes arise, a Contracting State must act, whether by adopting legislation denying benefits generally (or to a specific sector or sectors) or by promulgating measures directed at specific investors. That is both practical and consistent with the object and purpose of the ECT – co-operation, transparency and predictability”.*¹⁰¹³

538. In contrast to this consistent line of ECT cases, three recent ECT tribunals have adopted a slightly more flexible approach on the issue of timing and retrospective application,

¹⁰⁰⁸ *Khan*, para. 429 (CL-109).

¹⁰⁰⁹ *Stati*, para. 745 (CL-26).

¹⁰¹⁰ *Isolux*, para. 715 (footnotes omitted) (RL-142).

¹⁰¹¹ *Masdar*, para. 239 (CL-118 and RL-141).

¹⁰¹² *Masdar*, para. 239 (CL-118 and RL-141).

¹⁰¹³ *Masdar*, para. 239 (CL-118 and RL-141).

two by reference to case-specific circumstances and one clearly departing from previous case law by allowing for the retrospective application of Article 17 of the ECT.

539. In *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain* (“*NextEra*”), the tribunal appeared to accept the possibility of denying the benefits after the commencement of an arbitration, but it ultimately rejected Spain’s denial of benefits defense based on the general concept of good faith and the specific circumstances of that case, since Spain had been aware of NextEra’s corporate structuring since 2012 and its potential invocation of the ECT’s substantive protections. For the tribunal, Spain therefore should have denied the benefits under Article 17 of the ECT at that point in time and not waited until after the commencement of the arbitration.¹⁰¹⁴

“268. In the view of the Tribunal, once Spain became aware not just that it had a right to deny benefits but that Claimants were relying on Spain’s statements and actions and were reserving a right to invoke the provisions of the ECT, it was put on notice of a potential exercise of ECT rights by NextEra. To delay until its Memorial on Jurisdiction on 9 September 2015, more than three years later, to exercise its right to deny benefits under Article 17(1) of the ECT is hardly a good faith exercise of its right as contemplated by the Khan tribunal. During that period Spain gave assurances about the protection the NextEra investment would receive in full knowledge that it was an investment that, in Claimants’ view, was proceeding under and with the protections of the ECT. As a result, Claimants were justified in proceeding on the assumption that Spain would not exercise its right to deny benefits under Article 17 of the ECT.

269. Respondent was confronted on 15 March 2012 with a clear assertion that NextEra’s international Dutch investment company had rights under the ECT and that NextEra planned to exercise such rights. Faced with such an assertion, and knowing that it had the right to deny the benefits that Claimants were asserting, Respondent could not stay silent, but it did. Its conduct can only be viewed as acquiescence in Claimants’ assertion of ECT rights precluding Respondent from later seeking to assert a

¹⁰¹⁴ *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Decision on Jurisdiction, Liability and Quantum Principles, 12 March 2019, (“*NextEra*”) paras. 267-268.

right to deny benefits when it filed its Memorial on Jurisdiction on 9 September 2015".¹⁰¹⁵

540. In other words, the *NextEra* tribunal did not exclude the possibility of a denial of benefits being timely if invoked after the commencement of an arbitration, but stressed that this depended on a case-specific assessment on whether the host State was already aware of the existence of a potential investor and the possibility of that investor relying on the protections afforded in the ECT.¹⁰¹⁶
541. Most recently, although the tribunal in *ACF Renewable Energy Limited v. Republic of Bulgaria* (“*ACF*”) accepted that the right reserved in Article 17(1) of the ECT could “in principle” always be exercised, it nonetheless expressed the view that the logical implication of the text of Article 17 was that it must be exercised “before any such obligation was breached”.¹⁰¹⁷

“1467. The Tribunal also notes, in that regard, that Article 17(1) ECT does not dictate when or until when, at the latest, the right reserved under Article 17(1) ECT can be exercised. Accordingly, on the basis of the text of Article 17(1) ECT, an exercise of the right reserved under that Article is, in principle, always possible.

1468. What is doubtful, however, is whether, in case of a relatively late invocation of the right under Article 17(1) ECT, any such invocation could (still) have an effect on the alleged breaches, or the ongoing dispute in which the right was invoked, and under what conditions. In other words, it is doubtful whether a relatively late exercise of the right under Article 17(1) ECT could still be of relevance to an already ongoing dispute.

1469. In principle, though not always in detail, ECT-based case law on Article 17(1) is relatively clear and virtually unanimous in its answer to that last question: there is broad agreement that in any case after the commencement of an arbitration, an invocation of the right under Article 17(1) ECT cannot have an impact on the dispute raised in that arbitration. This is especially so, if in such a dispute one of the respondent’s first reactions to

¹⁰¹⁵ *NextEra*, paras. 268-269.

¹⁰¹⁶ The Annulment Committee in *NextEra* held that the tribunal’s interpretation and application of Article 17 was “tenable as a matter of law”, further observing that “various ICSID tribunals applying the ECT reached the same conclusions”, i.e. rejecting a denial of benefits defense “after an investment was made”. *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11 Annulment Proceeding, Decision on Annulment, 18 March 2022, paras. 192-193.

¹⁰¹⁷ *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award, 5 January 2024 (“*ACF*”), para. 1470.

an assertion of the rights under the ECT, or the request for arbitration, does not include a reference to Article 17(1) ECT and/or an inquiry about whether the conditions of that Article might be met.

1470. The Tribunal has no difficulty following that case law and its underlying logic in this case. Indeed, it is not evident from the text of Article 17(1) ECT that, as the Respondent argues, after a Contracting Party accorded the advantages of Part III to an investment and thus took upon itself the obligations of Part III of the ECT in relation to that investment, and after it then breached said obligations vis-à-vis that investment, the reserved right under the Article could be invoked retroactively to avoid liability for such a breach. Rather the opposite appears to be logically implied in the text of the Article, namely that, in order to free a Contracting Party from the obligations of Part III of the ECT vis-à-vis a certain investor, the right to deny of Article 17(1) ECT must have been invoked before any such obligation was breached”.¹⁰¹⁸

542. That said, although the *ACF* tribunal had “no difficulty” following prior ECT case law “and its underlying logic”, it did not exclude that case-specific facts could allow departing from the consistent approach adopted by prior ECT tribunals. Indeed, the tribunal added that the facts in that case provided “a particularly weak basis for deviating from the common denominator of ECT case law on the subject”, because the host State was “familiar with the structure of the Claimant from the beginning of the Investment onwards”, the claimant had asserted rights under the ECT in September 2012, and the “same legal team” for Bulgaria in *Plama* represented the respondent but “nevertheless took almost a year after the notification of the present dispute to invoke Article 17(1) ECT”.¹⁰¹⁹ In other words, although the *ACF* tribunal ultimately followed the approach adopted in prior ECT cases, it left the door open that case-specific circumstances allowed “deviating from the common denominator of ECT case law”.¹⁰²⁰
543. In *Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine* (“*Littop*”), an SCC arbitration, the tribunal most clearly broke with previous ECT case law when it concluded that Article 17(1) of the ECT could be invoked retrospectively albeit “within a reasonable period of time after the dispute

¹⁰¹⁸ *ACF*, paras. 1467-1470 (footnote omitted).

¹⁰¹⁹ *ACF*, para. 1471.

¹⁰²⁰ *ACF*, para. 1471.

arises and is known to both parties”, further adding that the specific circumstances and facts of each case should determine what is reasonable:

“592. The Tribunal agrees with previous tribunals which have expressed the opinion that investors seeking to benefit from the ECT know or should be aware of the possibility that the benefits agreed by the Contracting Parties and provided for in the ECT may be denied by the State party as provided by Article 17(1). The ECT is silent as to when Article 17 should be invoked and from what date the invocation should have effect. The Tribunal therefore also agrees with the views expressed by several tribunals that investors should not be misled by States as to whether or not they will invoke Article 17. For this reason, if Article 17(1) is to be invoked, the State should do so within a reasonable period of time after the dispute arises and is known to both parties. What is a reasonable time will depend on the circumstances and facts of each case, such as the timing of the notice of dispute, the nature of the attempts for amicable settlement, and the assurances given that Article 17 would not be invoked.

*593. Thus, the Tribunal is of the view that whether or not Article 17(1) can be invoked after an arbitration has commenced depends on the specific circumstances and facts of the dispute, coupled with the Tribunal’s analysis of Article 17(1) in light of the VCLT and consideration of relevant arbitral decisions”.*¹⁰²¹

544. The *Littop* tribunal expressed the view that denying the benefits retrospectively would not “necessarily” be contrary to the ECT’s object and purpose:

*“Invoking Article 17(1) to deny benefits is not necessarily contrary to the object and purpose of the ECT. Quite the contrary, the right of a State party to deny benefits under Article 17(1) is an expressly agreed and understood provision of the ECT accepted by all Contracting Parties. Its application per se cannot be seen as contrary to or undermining the object and purpose of the ECT. It is no different to any other legal rights or provisions existing before or at the time of the investment. Absent an agreement to the contrary there can be no obligation precluding the State from changing its laws”.*¹⁰²²

¹⁰²¹ *Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine*, SCC Case No. V 2015/092, Final Award, 4 February 2021 (“*Littop*”), paras. 592-593.

¹⁰²² *Littop*, para. 597.

545. The tribunal further added:

*“[A]n investor should be aware of the existence of Article 17 and its potential effect if invoked, in the same way it is aware of its rights and protections under the ECT. The investor can also see what requirements must be satisfied in order for a State’s invocation of Article 17(1) to be valid and effective. Article 17(1) ‘reserves the right’ of a State to deny the advantages of Part III to an entity that meets the provided criteria. For these reasons the Tribunal does not find it legally uncertain or unreasonable for a State to invoke a right under the ECT after the circumstances for exercising such right have come into existence, and within a reasonable time thereafter”.*¹⁰²³

546. In contrast to the situation in *NextEra*, the *Littop* tribunal held that the respondent’s denial of benefits “almost 6 months” after the commencement of the arbitration and “3 months after the Answer to the Request” was not belated, especially since the respondent “had sought details of the claim and information concerning the beneficial owners of Claimants”.¹⁰²⁴

547. Various tribunals in non-ECT cases have also accepted that States could deny benefits under applicable investment treaties after the commencement of an arbitration. For instance, in *Empresa Eléctrica*, the tribunal held that Ecuador’s denial of benefits was timely when it presented its jurisdictional objections:

“What Ecuador did was to invoke a clause in the Treaty, by which both the United States and Ecuador reserved ‘the right to deny to any company the advantages’ of the Treaty ‘if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations’ (Art. I(2) of the BIT). Since EMELEC is a ‘company of the other Party,’ Ecuador has the power to deny it the advantages of the BIT if the company has no substantial business activities in the United States. The Tribunal considers that Ecuador announced the denial of benefits to EMELEC at the proper stage of the proceedings, i.e. upon raising its objections to jurisdiction. If the Tribunal should agree to hear the merits of the present case, only then would it be appropriate to examine the substantive requirements for the denial of benefits, i.e. the determination of

¹⁰²³ *Littop*, para. 601.

¹⁰²⁴ *Littop*, para. 603.

whether EMELEC has substantial business activities in the territory of the United States".¹⁰²⁵

548. In *Ulysseas*, the tribunal expressed the view that the denial of benefits can apply retrospectively since the investor knew when it made its investment that the protections offered in the BIT could be denied "during the life of the investment":

"A further question is whether the denial of advantages should apply only prospectively, as argued by Claimant, or may also have retrospective effects, as contended by Respondent. The Tribunal sees no valid reasons to exclude retrospective effects. In reply to Claimant's argument that this would cause uncertainties as to the legal relations under the BIT, it may be noted that since the possibility for the host State to exercise the right in question is known to the investor from the time when it made its investment, it may be concluded that the protection afforded by the BIT is subject during the life of the investment to the possibility of a denial of the BIT's advantages by the host State".¹⁰²⁶

549. In *Pac Rim*, the tribunal decided that the denial of benefits clause in Article 10.12.2 of the CAFTA could be invoked validly after the commencement of an arbitration, among other reasons, because such a decision required "particular attention by the Respondent, to be exercised upon sufficient and ascertainable grounds".¹⁰²⁷ For the tribunal, such a decision "inevitably" required "careful consideration" and "also time", further adding that, in denying benefits after the commencement of the arbitration, the respondent did not appear to have "deliberately sought or indeed gained an advantage over the Claimant".¹⁰²⁸
550. In *Guaracachi*, the tribunal expressed the view that the claimants were aware of the risk that the host State could trigger the denial of benefits clause in the applicable BIT and that they "could have acted in such a way to preclude" the host State from being able to deny the benefits under the BIT, for instance, by undertaking substantial activities in the home State.¹⁰²⁹ Instead, they opted "to use an investment vehicle

¹⁰²⁵ *Empresa Eléctrica*, para. 71 (RL-105).

¹⁰²⁶ *Ulysseas*, para. 173 (RL-110).

¹⁰²⁷ *Pac Rim*, para. 4.84 (RL-111).

¹⁰²⁸ *Pac Rim*, para. 4.84 (RL-111).

¹⁰²⁹ *Guaracachi*, paras. 375 and 383 (RL-56).

controlled by a company of a third country, which has no substantial business activities” in the home State.¹⁰³⁰ The tribunal further held that host States “usually” only know whether the “objective conditions for the denial are met” when the investor invokes the benefits of the BIT and that it was therefore “proper” to deny benefits after the commencement of an arbitration.¹⁰³¹ The tribunal’s reasoning was as follows:

“375. This being the case, following the signature and final ratification of the BIT, the Claimants were fully aware of the denial of benefits clause and could have acted in such a way as to preclude the Respondent from being able to invoke that clause, and thereby avoid the risk of a denial of benefits, by having GAI undertake substantial activities in the USA or through some other equivalent solution. That did not happen. The Tribunal therefore finds that the Claimants’ reliance on the pacta sunt servanda principle is misplaced since the denial of benefits clause is part of the ‘pactum’ agreed by the Contracting Parties.

376. The same must be said in relation to the supposedly retroactive application of the clause. The Tribunal cannot agree with the Claimants when they argue that the Respondent is precluded from applying the denial of benefits clause retroactively. The very purpose of the denial of benefits is to give the Respondent the possibility of withdrawing the benefits granted under the BIT to investors who invoke those benefits. As such, it is proper that the denial is ‘activated’ when the benefits are being claimed.

377. The Contracting Parties to the BIT could have agreed otherwise, but they decided not to do so. Instead they agreed that a Contracting Party could deny benefits (including the benefit of having a dispute decided by an arbitral tribunal) subject to meeting certain conditions, none of which entails that such denial is only effective in relation to disputes arising after the notification of such denial or imposes any other limitation period that would occur before the Respondent’s submissions of its Statement of Defence.

378. On the contrary, the Tribunal agrees that the denial can and usually will be used whenever an investor decides to invoke one of the benefits of the BIT. It will be on that occasion that the respondent State will analyse whether the objective conditions for the denial are met and, if so, decide on whether to exercise

¹⁰³⁰ *Guaracachi*, para. 383 (RL-56).

¹⁰³¹ *Guaracachi*, paras. 376 and 378 (RL-56).

its right to deny the benefits contained in the BIT, up to the submission of its statement of defence.

379. *As a matter of fact, it would be odd for a State to examine whether the requirements of Article XII had been fulfilled in relation to an investor with whom it had no dispute whatsoever. In that case, the notification of the denial of benefits would – per se – be seen as an unfriendly and groundless act, contrary to the promotion of foreign investments. On the other side, the fulfilment of the aforementioned requirements is not static and can change from one day to the next, which means that it is only when a dispute arises that the respondent State will be able to assess whether such requirements are met and decide whether it will deny the benefits of the treaty in respect of that particular dispute.*

[...]

383. *The Tribunal is cognizant that this puts the investor in something of a fragile position, since the investor will never know if there might be a denial of benefits exactly when the investor needs them the most. At the same time, one cannot say that such a denial will come as a total surprise for the investor, since the BIT is not secret and we are dealing in this case with an investor who has opted to use an investment vehicle controlled by a company of a third country, which has no substantial business activities in the territory of the Contracting Party under whose laws it is constituted or organized”.*¹⁰³²

551. Finally, in *Gran Colombia*, after noting that the Canada-Colombia FTA contained no temporal limitation for denying benefits, the tribunal stated that it would have “great difficulty concluding that the FTA implicitly contains an additional (temporal) limitation on the Contracting Parties’ exercise of the right” to deny benefits.¹⁰³³ The Tribunal further added the following:

“For these reasons, the Tribunal declines the Claimant’s invitation to conclude that the Contracting Parties to the FTA may invoke Article 814(2) to deny benefits to an investor only up until the date the investor files its request for arbitration. As Article 814(2) contains no such temporal restriction, investors operating in Canada and Colombia must understand, ex ante, that any protections otherwise offered to them in Chapter Eight of the FTA (which includes both substantive protections and

¹⁰³² *Guaracachi*, paras. 375-379 and 383 (RL-56).

¹⁰³³ *Gran Colombia*, paras. 126-127 (CL-114).

*dispute resolution mechanisms) may be subject to their ability to demonstrate that they meet the ownership or control and substantial business activity requirements of that provision. This is little different from understanding, ex ante, that they may eventually be called upon to substantiate their claims of qualifying nationality, or their status of bona fide investors with qualifying investments, or any other core jurisdictional requirements of the Treaty. Moreover, the fact that the FTA effectively conditions Treaty protection on the Article 814(2) requirements – although State Parties may choose whether or not to invoke the conditions in a particular case – does not mean that the Treaty in that respect operates ‘retroactively,’ or in contravention of Article 25(1) of the ICSID Convention, as the Claimant contends. It simply means that by the terms of the FTA itself, investors are placed on notice in advance, from the time the FTA entered into force, that they may face a risk of not being able to rely on the FTA’s protections if they choose not to organize their activities in accordance with the standards set forth in Article 814’.*¹⁰³⁴

552. Having set out the approaches adopted in previous cases, the Tribunal now turns to its own assessment of Article 17(1) of the ECT. At the outset, the Tribunal wishes to emphasize that, although prior arbitral case law concerning Article 17(1) of the ECT or denial of benefits clauses in other investment treaties may provide valuable guidance, the Tribunal is not bound by those decisions, and it must reach its own conclusions based on its assessment of the wording of the ECT and all other relevant circumstances.
553. In the present case, the Respondent invoked Article 17(1) of the ECT for the first time in its Counter-Memorial to deny the benefits of Part III of the ECT to Rosserlane.¹⁰³⁵ The Tribunal must therefore determine whether the Respondent could validly deny Rosserlane the benefits of the ECT at that time or whether the denial was belated.
554. As already noted above, pursuant to Article 31 of the VCLT, the Tribunal’s starting point is to interpret Article 17(1) of the ECT in good faith in accordance with the ordinary meaning of its terms, taken in their context and in the light of the ECT’s object and purpose. The Tribunal shares in this regard the view expressed in *Gran Colombia*

¹⁰³⁴ *Gran Colombia*, para. 130 (footnotes omitted) (CL-114).

¹⁰³⁵ Counter-Memorial, paras. 379-381.

that “in assessing the terms of any particular treaty provision, it is relevant to consider not only what they say, but equally what they do not say”.¹⁰³⁶

555. The *chapeau* of Article 17 of the ECT states that each ECT Contracting Party “reserves its right to deny the advantages” of Part III of the ECT, provided the substantive conditions set forth in Article 17(1) are met.¹⁰³⁷ This provision neither specifies the manner in which the host State must exercise this right nor the moment in time at which it must do so.¹⁰³⁸ In the words of the *ACF* tribunal, this provision “does not dictate when or until when, at the latest” the denial can be exercised.¹⁰³⁹ Thus, although the Tribunal may share the views expressed in *Plama* and *Khan* that the wording of Article 17 does not provide any *clear* solution to the question of whether benefits may be denied after the commencement of an arbitration,¹⁰⁴⁰ it also agrees with the *ACF* tribunal that the text of Article 17 of the ECT suggests, at least on a first impression, that the denial of benefits “is, in principle, always possible”.¹⁰⁴¹
556. Significantly, the wording “reserves the right” denotes the existence of a discretionary right that each Contracting Party can exercise if the two substantive conditions in Article 17(1) of the ECT are cumulatively met. The ECT Contracting Parties could have included any additional requirements limiting their discretionary right, as is the case in other investment treaties,¹⁰⁴² but they have chosen not to. The Tribunal is therefore of the view that it should be cautious to read into Article 17 of the ECT any temporal

¹⁰³⁶ *Gran Colombia*, para. 126 (CL-114).

¹⁰³⁷ ECT, Article 17 (C-1).

¹⁰³⁸ *NextEra*, para. 262; *Littop*, para. 592.

¹⁰³⁹ *ACF*, para. 1467.

¹⁰⁴⁰ *Plama*, para. 159 (CL-116); *Khan*, para. 425 (CL-109).

¹⁰⁴¹ *ACF* para. 1467.

¹⁰⁴² See, for instance, North American Free Trade Agreement (“NAFTA”), 1 January 1994, Article 1113(2) (“Subject to prior notification and consultation [...]”); Agreement between the Government of the United Arab Emirates and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments (“UAE-Mexico BIT”), 19 January 2016, Article 30 (R-189) (“The Contracting Parties may decide jointly in consultation to deny the benefits of this Agreement to an enterprise of the other Contracting Party and to its investments [...]”); Agreement between the Government of the Republic of Moldova and the Government of the State of Qatar for the Reciprocal Promotion and Protection of Investments (Moldova-Qatar BIT), 10 December 2012, Article 8 (R-184) (“Following notification [...]”); Free Trade Agreement between Central America, the Dominican Republic and the United States of America (“CAFTA-DR”), 5 August 2004, Article 10.12(2) (R-141) (“Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits [...]”); Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (“AANZFA”), 27 February 2009, Article 11(1) (R-177) (“Following notification [...]”).

requirement that is not expressly included therein. As stated in *Gran Colombia*, the Tribunal “would have great difficulty concluding” that the ECT “implicitly contains an additional (temporal) limitation” absent any specific wording to that effect, and it agrees that it should give “considerable weight” to the fact that the ECT Contracting Parties did not include any limitation to “their mutual exercise of discretion”.¹⁰⁴³

557. Although the *Plama* tribunal was correct that the wording “reserves the right” suggests a distinction between the existence of a right and its exercise,¹⁰⁴⁴ this does not mean that such exercise is precluded after a certain deadline, be it either the making of an investment (for putative investors according to *Plama*), the moment of a treaty breach (according to *ACF*), the existence of a dispute (according to *Stati*, *Isolux* and the majority in *Masdar*) or the initiation of arbitral proceedings (according to *Khan*). Even if the *Plama* tribunal were right in holding that this wording suggests the existence of a notification requirement, this does not mean, absent specific wording, that the State is required to notify the denial of benefits in a certain manner or at a given time. The view expressed in *Liman* that the only logical conclusion deriving from such a notification requirement is that the denial of benefits can only operate prospectively finds no support in the wording of Article 17 of the ECT and this line of argumentation is not persuasive.¹⁰⁴⁵
558. The Tribunal also disagrees with the *Plama* tribunal that Article 17(1) of the ECT “is at best only half a notice” and with the suggestion that a proper notification should be made by way of a general declaration, such as in an official gazette or in statutory provisions in the host State’s investment or other laws.¹⁰⁴⁶ With the inclusion of Article 17 in the ECT, any investor became aware of the risk that the benefits of Part III may be denied if the conditions set in Article 17(1) are met. As noted in *Gran Colombia*, “investors are placed on notice in advance, from the time the [ECT] entered into force, that they may face a risk of not being able to rely on the [ECT’s] protections if they choose not to organize their activities in accordance with the standards set forth” in

¹⁰⁴³ *Gran Colombia*, para. 127 (CL-114).

¹⁰⁴⁴ *Plama*, para. 155 (CL-116).

¹⁰⁴⁵ *Liman*, paras. 225-226 (CL-117).

¹⁰⁴⁶ *Plama*, para. 157 (CL-116).

Article 17(1).¹⁰⁴⁷ Simply repeating the tenor of Article 17(1) of the ECT in an official gazette or in a law of the host State would be wholly redundant and would provide no more certainty to an investor than his awareness of the abovementioned risk. Moreover, for reasons explained further below, the Tribunal also disagrees that it would always be practical to notify specific investors *ex ante* in an exchange of letters that the benefits of Part III are denied if the conditions in Article 17(1) are met.

559. As for the wording of Article 17(1) of the ECT, the cumulative nature of the two substantive conditions denotes the intention of the ECT Contracting Parties to guarantee the possible limitation of the protections of Part III of the ECT only to legal entities that have a sufficiently genuine link to their home State. Said differently, a legal entity, although incorporated in an ECT Contracting Party, cannot expect to benefit from the substantive protections offered in Part III of the ECT if it has no substantial business activities in its State of incorporation and is owned or controlled by citizens or nationals of a non-ECT State.
560. In sum, the wording of Article 17 of the ECT creates a discretionary right for each ECT Contracting Party to deny the benefits of Part III provided the substantive conditions in Article 17(1) are met. The absence of any temporal limitation on the exercise of such right suggests, at least at first blush, that it can be exercised at any time, including after the commencement of an arbitration, subject to any applicable procedural rules on the timing of preliminary objections. Neither the wording of Article 17 of the ECT nor any logical inference that would flow by necessary implication of that wording suggest that the denial of benefits cannot operate “retrospectively” on the occasion of a given dispute resolution proceeding.
561. The context surrounding Article 17(1) of the ECT further supports this first impression. For instance, the wording in Article 17(2) of the ECT requires a Contracting Party to “establish” that a specific investment (“such investment”) meets the requirements in Article 17(2)(a) or (b).¹⁰⁴⁸ It is arguable that this must also be possible after a dispute arose or after the commencement of an arbitration, for instance if the host States adopts measures contemplated in subparagraphs (b)(i)-(ii). The wording “the denying

¹⁰⁴⁷ *Gran Colombia*, para. 130 (CL-114).

¹⁰⁴⁸ ECT, Article 17(2) (C-1).

Contracting Party establishes” also suggests that the denying State must provide sufficient evidence, for instance in the course of arbitral proceedings, showing that the conditions in subparagraphs (a) and (b) are met. If it were not possible to do so in the course of arbitral proceedings, this additional wording would serve no purpose. Thus, if Article 17(2) can be read to apply retrospectively, there appears to be no sound reason why Article 17(1) could only apply prospectively. The Respondent put forward this reading of Article 17(2) and the Claimants did not offer any convincing counterargument, if any at all. Be that as it may, other contextual elements appear more relevant and decisive.

562. In particular, it appears relevant that the definition of an “Investment” in Article 1(6) of the ECT extends to indirect investments. With the multiplication of entities within a corporate chain, ECT Contracting States often do not know who qualifies as an investor and thus potential claimant and they may only be put in a position to deny the benefits of the ECT once a claim is filed only to discover that a given claimant falls under the criteria set forth in Article 17(1) of the ECT. Since the ownership and control structure of an investor potentially evolves over the lifetime of an investment, it may indeed be impossible for an ECT Contracting State to know if the conditions in Article 17(1) of the ECT are met until it is faced with a claim from a particular investor. As noted in *Guaracachi*, the fulfilment of those conditions “is not static and can change from one day to the next”.¹⁰⁴⁹ The ECT contains neither a disclosure requirement for investors nor a duty on Contracting States to investigate and monitor the corporate structure of investors or the extent of their business activities in their State of incorporation. In other words, an ECT Contracting State may only be in a position to determine whether a legal entity is owned or controlled by citizens or nationals of a third State and whether it has substantial business activities once that entity has submitted a claim and initiated an arbitration. In practice, the respondent State may often only make its determination once it has obtained the relevant information from a putative claimant, for instance, after having raised the denial of benefits defense in the counter-memorial and requested additional evidence during the document production phase. In these circumstances, the discretionary right provided in Article 17 of the ECT would be rendered nugatory if the denial of benefits could only operate prospectively.

¹⁰⁴⁹ *Guaracachi*, para. 379 (RL-56).

563. It may well be that the domestic law of an ECT Contracting Party mandates the disclosure of a foreign investor's ownership and control structure. But even then, and assuming the State can properly monitor the evolution of that structure (first limb of Article 17(1) of the ECT), it is unclear how the State could in any relevant way determine whether any particular entity in a corporate chain is actually conducting substantial business activities in its State of incorporation (second limb of Article 17(1) of the ECT). Imposing such a significant burden on the ECT Contracting Parties appears impracticable for all relevant purposes and cannot be reconciled with the wording of Article 17 of the ECT. Contrary to the views expressed, for instance in *Khan*, the Tribunal also does not believe that imposing such a burden flows from the obligation in Article 10 of the ECT to create "transparent conditions" for foreign investors and investments.¹⁰⁵⁰
564. Other practical considerations, especially in the context of indirect investments, further militate against an exclusively prospective application of the denial of benefits clause in Article 17 of the ECT. As noted in *Guaracachi*, denying benefits to an investor, or an entity within its corporate chain, before any dispute has arisen "would – *per se* – be seen as an unfriendly and groundless act, contrary to the promotion of foreign investments".¹⁰⁵¹
565. In addition, if there were a duty to notify a denial of benefits either before the investment is made (*Plama*), the breach of an obligation contained in Part III (*ACF*), the existence of a dispute (*Stati*, *Isolux* and the majority in *Masdar*) or the commencement of an arbitration (*Khan*), the question arises about the continued effect of the denial if the investor were thereafter to restructure its investment and/or engage in substantial business activities in its State of incorporation so as to avoid falling within the scope of Article 17(1) of the ECT. If an investor could cure any defects following the notification of a denial of benefits, the denial would arguably thereafter no longer be effective and serve no further purpose.
566. By contrast, since the ECT's entry into force, investors seeking protection under the ECT know or should be assumed to know in advance that they must comply with the

¹⁰⁵⁰ *Khan*, para. 427 (CL-109).

¹⁰⁵¹ *Guaracachi*, para. 379 (RL-56).

requirements in Article 17(1) of ECT to avoid the risk of having benefits denied. As noted in *Littop*, “investors seeking to benefit from the ECT know or should be aware of the possibility that the benefits agreed by the Contracting Parties and provided for in the ECT may be denied by the State party as provided by Article 17(1)”.¹⁰⁵² Having the benefits denied, even after the commencement of an arbitration, cannot be seen as coming as a “total surprise for the investor” or as unpredictable.¹⁰⁵³ There is therefore nothing unreasonable for an investor to structure its investment in such a way so as to avoid the risk of having the host State deny benefits. The Tribunal accordingly does not share the view expressed, for instance in *Khan*, that an investor would find itself in a “highly unpredictable situation” running counter to legal certainty or transparency if benefits could be denied “at any moment after it has invested in the host country”.¹⁰⁵⁴

567. In sum, the Tribunal is of the view that the context rather confirms that the denial of benefits can be invoked after the commencement of an arbitration and that it therefore operates retrospectively.
568. Turning to the object and purpose of the ECT, Article 2, which is entitled “Purpose of the Treaty”, provides that the ECT “establishes a legal framework in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the Charter”.¹⁰⁵⁵ This provision thus contains the following three objectives or purposes: long-term cooperation, complementarities and mutual benefits. In the Tribunal’s view, it is difficult to image how extending the benefits of Part III of the ECT to legal entities that have no genuine link to their State of incorporation could serve the purposes of long-term cooperation based on complementarities and mutual benefits.
569. The Tribunal is in particular not persuaded by the approach taken in *Plama* and the subsequent line of ECT cases that adopted *Plama*’s interpretation of Article 2. Indeed, the tribunals in *Plama*, *Yukos*, *Liman* and *Khan* exclusively focused on the first element in Article 2, namely the promotion of long-term cooperation, to conclude that a denial

¹⁰⁵² *Littop*, para. 592.

¹⁰⁵³ *Guaracachi*, para. 383 (RL-56).

¹⁰⁵⁴ *Khan*, paras. 426-427 (CL-109).

¹⁰⁵⁵ ECT, Article 2 (C-1).

of benefits can only operate prospectively.¹⁰⁵⁶ Notably, the *Plama* tribunal omitted to cite the additional purposes of “complementarities” and “mutual benefits”, and instead focused entirely on the purpose of “long-term cooperation” to conclude that “[i]t is not easy to see how any retrospective effect is consistent with this ‘long-term’ purpose”:

*“The ECT’s express ‘purpose’ under Article 2 ECT is the establishment of ‘... a legal framework in order to promote long-term co-operation in the energy field ... in accordance with the objectives and principles of the Charter’ (emphasis supplied)”.*¹⁰⁵⁷

570. Similarly, the *Yukos* and *Liman* tribunals only referred to the purpose of promoting “long-term cooperation” and thus ignored the additional purposes of “complementarities” and “mutual benefits”:

*“To treat denial as retrospective would, in the light of the ECT’s ‘Purpose,’ as set out in Article 2 of the Treaty (‘The Treaty established a legal framework in order to promote long-term cooperation in the energy field...’) be incompatible ‘with the objectives and principles of the Charter’”.*¹⁰⁵⁸

*“Accepting the option of a retroactive notification would not be compatible with the object and purpose of the ECT, which the Tribunal has to take into account according to Article 31(1) of the VCLT, and which the ECT, in its Article 2, expressly identifies as ‘to promote long-term co-operation in the energy field’”.*¹⁰⁵⁹

571. In *Khan*, the tribunal cited the relevant passage in *Plama* (albeit incompletely and incorrectly) and concluded that a “good faith interpretation” of Article 17 cannot allow host States “to lure investors” to then deny them the ECT’s protections once they are invoked in arbitration.¹⁰⁶⁰ In turn, the majority in *Masdar* (although fully citing

¹⁰⁵⁶ *Plama*, paras. 161-162 (CL-116); *Yukos*, para. 458 (CL-1); *Liman*, para. 225 (CL-117); *Khan*, paras. 425-426 (CL-109).

¹⁰⁵⁷ *Plama*, para. 161 (CL-116).

¹⁰⁵⁸ *Yukos*, para. 458 (CL-1).

¹⁰⁵⁹ *Liman*, para. 225 (CL-117).

¹⁰⁶⁰ *Khan*, paras. 428-429 (CL-109).

Article 2 of the ECT) relied on the reasoning in *Khan* to opine that Article 17(1) of the ECT cannot be invoked after the start of an arbitration.¹⁰⁶¹

572. It thus appears that the consistent line of ECT cases that exclude a retrospective application of Article 17(1) of the ECT follow the reasoning adopted in *Plama*, either without engaging in their own assessment of the ECT’s object and purpose or simply reciting *Plama*, which, as seen above, did not consider the elements of “complementarities” and “mutual benefits” mentioned in Article 2 of the ECT.
573. It is unclear why the *Plama* tribunal (and the subsequent ECT tribunals adopting *Plama*’s reasoning) chose to disregard the elements of “complementarities” and “mutual benefits”. This omission is remarkable, since the *Plama* tribunal’s holding that Article 17 can only be invoked prospectively hinged not on its interpretation of the wording of Article 17, but on its (selective) reading of the ECT’s “purpose”. Such omission is in particular surprising because the purposes of achieving “complementarities” and “mutual benefits” arguably support the rationale of potentially excluding from the protection of the ECT legal entities that have no meaningful connection or genuine link with their State of incorporation. As noted in *Amtó*:

*“As the purpose of the ECT is to establish a legal framework ‘in order to promote long-term cooperation in the energy field, based on complementarities and mutual benefits...’ then the potential exclusion of foreign owned entities from ECT investment protection under Article 17 is readily comprehensible. ‘Long term economic cooperation’, ‘complementarities’ or ‘mutual benefits’ are unlikely to materialize for the host State with a State that serves as a nationality of convenience devoid of economic substance for an investment vehicle, or a State with which it does not enjoy normal diplomatic or economic relations”.*¹⁰⁶²

574. In this context, the Tribunal shares the view expressed in *Littop* that denying benefits “is not necessarily contrary to the object and purpose of the ECT” and that the “application *per se*” of Article 17(1), even after the commencement of an arbitration, “cannot be seen as contrary to or undermining the object and purpose of the ECT”.¹⁰⁶³

¹⁰⁶¹ *Masdar*, paras. 235-236 (CL-118 and RL-141).

¹⁰⁶² *Amtó*, para. 61 (RL-25).

¹⁰⁶³ *Littop*, para. 597.

The elements of “complementarities” and “mutual benefits” rather confirm that the ECT Contracting States only wished to guarantee the protections of Part III to legal entities that maintain a genuine link with their State of incorporation.

575. In sum, the Tribunal deems the line of ECT cases that followed the reasoning in *Plama* to be unpersuasive. Nothing in the wording of Article 17(1) of the ECT, nor in the context surrounding that wording, nor in the ECT’s object and purpose precludes a denial of benefits to operate “retrospectively”. Importantly, Article 17(1) contains a discretionary right without any temporal limitation and the Tribunal is disinclined to read such an implicit limitation into that provision. An interpretation of Article 17(1) pursuant to Article 31 of the VCLT reveals that there is no cogent reason to qualify a denial of benefit as belated if invoked after the commencement of an arbitration, provided the procedural rules to raise preliminary objections are complied with.

576. The Tribunal’s conclusion above is reinforced by the “agreement in principle” on the modernization of the ECT reached on 24 June 2022 during the Energy Charter Conference. Therein, the Contracting Parties addressed the timing of a denial and agreed that such denial can be invoked after the commencement of an arbitration:

*“Denial of benefits: To ensure effectiveness of the provision, the Treaty envisages the timeline for invoking the denial-of-benefits clause, including possibility to invoke it after the commencement of an arbitral proceeding. The denial-of-benefits clause will not be subject to an advance formal notification”.*¹⁰⁶⁴

577. Although this inclusion in a modernized ECT is not determinative for the Tribunal’s interpretation of Article 17(1) as it currently stands, it does tend to confirm the ECT Contracting Parties’ understanding that a denial of benefits can be invoked after the commencement of an arbitration.

578. The Tribunal is mindful that ECT and other arbitral tribunals that have envisaged a possible retrospective application of a denial of benefits clause have also considered whether denying benefits after the dispute arose or after the commencement of an arbitration was reasonable in the given circumstances. For instance, in *NextEra*, the

¹⁰⁶⁴ “Public Communication Explaining the Main Changes Contained in the Agreement in Principle – Finalisation of the negotiations of the Modernisation of the Energy Charter Treaty”, Energy Charter Conference, Brussels, 24 June 2022, p. 5 of the pdf document (emphasis in the original) (RL-127).

tribunal refused to accept as timely a denial invoked after the commencement of the arbitration in 2015, since Spain had been put on notice of potential claims by the investor and was apprised of its corporate structure since 2012.¹⁰⁶⁵ In *ACF*, the tribunal held that the fact that Bulgaria was aware of the claimant's structure from the beginning of the investment and the fact that it had waited almost a year after the notice of dispute to deny the benefits did not justify departing from "the common denominator of ECT case law".¹⁰⁶⁶ In turn, in *Littop*, the tribunal accepted as timely Ukraine's denial that came six months after the commencement of the arbitration and 3 months after the answer to the request for arbitration, because Ukraine had "sought details of the claim and information concerning the beneficial owners of Claimants" "[p]rior to the Request and after the notice of dispute".¹⁰⁶⁷

579. The Tribunal is not convinced that such an additional reasonableness test is required. For the Tribunal, there is nothing unreasonable in allowing a respondent State to submit a denial of benefits defense up until the moment provided in the applicable procedural rules to raise preliminary objections. A legal entity that meets the requirements of Article 17(1) of the ECT (i.e. an entity controlled by a citizen or national of a third State and with no substantial business activities in the State of incorporation) cannot legitimately expect to benefit from the substantive provisions of Part III of the ECT. Said differently, such entity must rather expect that the host State may invoke Article 17(1) of the ECT precisely because it entertains no genuine connection with the home State. Moreover, whether the respondent State makes enquires about a claimant's ownership and control structure and the extent of its business activities immediately after receiving the notice of dispute or the request for arbitration, as opposed to raising the denial of benefits in its counter-memorial and eventually seeking additional relevant information during the discovery process makes little practical difference. In fact, the claimant usually has the relevant information about its corporate structure and the extent of its business activities in the State of incorporation and a respondent State will only obtain it during document production.

¹⁰⁶⁵ *NextEra*, paras. 267-268.

¹⁰⁶⁶ *ACF*, para. 1471.

¹⁰⁶⁷ *Littop*, paras. 602-603.

580. But even if there were such a reasonableness test, the Tribunal has no difficulty in accepting in the present case that the Respondent could validly invoke Article 17(1) of the ECT at the time of its Counter-Memorial. There is no element in the record showing that the Respondent was aware of Rosserlane’s existence, let alone its ownership and control structure, before the Notice of Intent dated 1 October 2019.¹⁰⁶⁸ The Claimants have not alleged that that was the case. Although the Notice of Intent states that Dr. Leshkasheli had been approached in 1995 by SOCAR officials “who encouraged him and his companies, including Rosserlane, to invest in the Field”, there is no evidence in the record to corroborate that assertion.¹⁰⁶⁹ Dr. Leshkasheli did not even say as much in his witness statements.¹⁰⁷⁰ There is no evidence showing that the application to register CEG (then Whitehall) dated 27 July 1994 was ever provided to the Respondent.¹⁰⁷¹ Neither Whitehall’s expression of interest to invest in Azerbaijan dated 23 October 1995, nor its letter of intent dated 25 October 1995 mention Rosserlane.¹⁰⁷² The JVA and the By-Laws concluded between SOCAR and Whitehall on 25 December 1995 made no reference to Rosserlane.¹⁰⁷³ Although Articles 1.1 and 6.2 of the JVA refer to “Affiliated Companies”, there is no evidence showing that SOCAR, much less the Respondent, was aware of Rosserlane’s existence. The registration certificate of the JV dated 27 June 1996 does not either mention Rosserlane.¹⁰⁷⁴ Nothing shows that Rosserlane’s beneficial owner declaration of 8 November 2000 (which, as already explained, is in any event inconsistent with the Alamar Trust Deed) was shared with the Respondent.¹⁰⁷⁵ The extract of Azerbaijan’s State Registry of Commercial Entities dated 14 August 2002 concerning Whitehall’s change of name to CEG makes no mention of Rosserlane.¹⁰⁷⁶ Finally, none of the correspondence between CEG and the JV contained in the record refers to

¹⁰⁶⁸ Notice of Intent to Submit Claim to Arbitration, 1 October 2019 (C-4).

¹⁰⁶⁹ Notice of Intent to Submit Claim to Arbitration, 1 October 2019, p. 2 (C-4).

¹⁰⁷⁰ Leshkasheli WS1 and WS2.

¹⁰⁷¹ Application for Registration of Whitehall International Traders, 27 July 1994 (C-208).

¹⁰⁷² Letter of Intent, 25 October 1995 (C-175).

¹⁰⁷³ Joint Venture Agreement, 25 December 1995 (C-8); By-Laws, 25 December 1995 (C-9).

¹⁰⁷⁴ Shirvan Oil Certificate of State Registration, 27 June 1996 (C-39).

¹⁰⁷⁵ Rosserlane Consultants Limited, Beneficial Owner, 8 November 2000 (C-210).

¹⁰⁷⁶ Extract from the State Registry of Commercial Entities, Ministry of Justice of the Republic of Azerbaijan, 14 August 2002 (C-322; C00003451).

Rosserlane.¹⁰⁷⁷ The same appears to be true in respect of the correspondence between SOCAR and CEG,¹⁰⁷⁸ at least not until a letter sent by SOCAR on 5 February 2008 where SOCAR complained that it had not been notified about the replacement of Erdingside by Swinbrook in 2006 and requested the production of CEG’s partnership agreement.¹⁰⁷⁹ On 13 February 2008, Mr. Quayle, Rosserlane’s director, responded “on behalf of” CEG that SOCAR was seeking confidential information and that it had “no intention of disclosing” that information to SOCAR.¹⁰⁸⁰ In any event, this exchange does not show that the Respondent was aware of Rosserlane’s existence from 2008 onwards. In other words, the record does not show that the Respondent was aware of Rosserlane’s existence until 2019, more than eleven years after the forced sale of CEG.

581. In addition, the Claimants have been conspicuously opaque about their corporate structure throughout these proceedings. Until only a few days before the Hearing, the Claimants repeatedly asserted that Dr. Leshkasheli owned and controlled Rosserlane as the beneficial owner or ultimate beneficiary. In his witness statements, Dr. Leshkasheli asserted that he “owned Whitehall” and that he was “the ultimate beneficial owner of Rosserlane”.¹⁰⁸¹ At various points, the Respondent requested further information and evidence about such ownership, but did not obtain it until shortly before the Hearing. Following the filing of the Claimants’ Memorial on 26 March 2021, the Respondent’s counsel wrote on 15 April 2021 to the Claimants’ counsel requesting “further information and evidence regarding Dr. Leshkasheli’s alleged beneficial interest in CEG”, since none of the documents filed by the Claimants “evidence Dr. Leshkasheli’s status as the alleged beneficial owner of CEG”.¹⁰⁸² The Claimants’ counsel answered

¹⁰⁷⁷ See, for instance, Letter of 1 October 1997 from Glenn Nobes to Shirvan Oil’s General Director Mekhman Babyev, 1 October 1997 (C-189); Letter of 14 January 2006 from CEG to the Administration Board (C-249); Letter of 26 January 2006 from CEG to Shirvan Oil JV Chairman of the Administration Board (C-196); Letter of 16 November 2007 from CEG to Mammad Imanov (C-69).

¹⁰⁷⁸ See, for instance, Letter of 6 December 1996 from SOCAR to Whitehall (R-87); Letter of 11 December 1996 from Whitehall International Traders to SOCAR (R-3); Letter of 7 February 1997 from SOCAR to Whitehall (R-89A); Letter of 6 August 1999 from SOCAR to CEG (C-41); Letter of 18 January 2006 from CEG to Rovnag Abdullayev (C-282); Letter of June 2007 from CEG to SOCAR (C-74); Letter of 24 September 2007 from CEG to SOCAR (C-68); Letter of 5 February 2008 from SOCAR to CEG (C-111).

¹⁰⁷⁹ Letter of 5 February 2008 from SOCAR to CEG (C-111).

¹⁰⁸⁰ Letter of 13 February 2008 from CEG to SOCAR, p. 1 of the pdf document (C-139).

¹⁰⁸¹ Leshkasheli WS1, para. 1; Leshkasheli WS2, para. 1.

¹⁰⁸² Letter of 15 April 2021 from Herbert Smith Freehills LLP to Alston & Bird LLP, p. 1 (R-44).

on 22 April 2021 that “we do not agree that evidence supporting our position is missing” and asserted that the evidence in the record identified “Dr. Leshkasheli and his family as the beneficial owners of Rosserlane and Swinbrook”.¹⁰⁸³ On 21 June 2021, the Respondent’s counsel noted that “the Claimants have failed to provide any further information or evidence regarding Dr. Leshkasheli’s alleged beneficial interest” and added that “[t]his issue will be addressed further in the Government of Azerbaijan’s Counter-Memorial in due course”.¹⁰⁸⁴

582. In its Counter-Memorial, the Respondent stated that, despite having been requested to provide additional information, the Claimants had failed to provide evidence sufficient to show that Dr. Leshkasheli was “the alleged beneficial owner of CEG” and in particular “any information regarding [the] Alamar Trust”, further noting that the Alamar Trust was “not mentioned in the Claimants’ Memorial”.¹⁰⁸⁵ During the document production phase, the Respondent then requested that the Tribunal order the Claimants to produce “[d]ocuments showing Dr. Leshkasheli and Rosserlane’s purported beneficial interest in CEG at all relevant times between December 1995 and February 2008 (inclusive)”.¹⁰⁸⁶ Since the Claimants only agreed to produce responsive documents for the period 2000-2008, the Tribunal ordered production of documents responsive for the period 1995-2000.¹⁰⁸⁷ However, it appears that the Claimants only produced the Alamar Trust Deed a few days before the Hearing.
583. In other words, it was only shortly before the Hearing, once the Claimants produced the Alamar Trust Deed, that the Respondent became aware of the fact that Dr. Leshkasheli may not be the beneficial owner of Rosserlane, since the Deed showed that Rosserlane’s assets had been placed into the Alamar Trust since 18 September 1995. It was also only then that the Respondent learned that the trustee of the Alamar Trust was a Panamanian entity and that the sole beneficiary of the Alamar Trust was Ms. Kisiliova.
584. Considering that it has not been shown that the Respondent was aware of Rosserlane’s existence until 2019, when the dispute arose, and that the Claimants misrepresented

¹⁰⁸³ Letter of 22 April 2021 from Alston & Bird LLP to Herbert Smith Freehills LLP, p. 1 (R-45).

¹⁰⁸⁴ Letter of 21 June 2021 from Herbert Smith Freehills LLP to Alston & Bird LLP (R-46).

¹⁰⁸⁵ Counter-Memorial, paras. 223-229.

¹⁰⁸⁶ Procedural Order No. 2, 22 January 2022, Annex B, Request No. 1, p. 5.

¹⁰⁸⁷ Procedural Order No. 2, 22 January 2022, Annex B, Request No. 1, p. 5.

Rosserlane's ownership structure up until a few days before the Hearing, it is difficult to imagine how the Respondent could have made the necessary inquiries into the ownership structure of Rosserlane and made a determination on whether Rosserlane conducted substantial business activities in the Isle of Man or the UK prior to 2019. In these circumstances, the Tribunal finds that the Respondent timely denied the benefits of the ECT when it filed its Counter-Memorial, since that memorial was the Respondent's first submission in this arbitration and the timing of that objection complies with the deadline to raise preliminary objections pursuant to Rule 41 of the Arbitration Rules.

585. Finally, the Tribunal does not believe that this case falls within the circumstances mentioned in *Khan* of a host State luring an investor "by ostensibly extending to them the protections of the ECT, to then deny these protections when the investor attempts to invoke them in international arbitration".¹⁰⁸⁸ Indeed, in the present case, the investment in the Kurovdag Field preexists the entry into force of the ECT and the decision to invest therefore could not have been made expecting to benefit from the protections of the ECT.
586. To conclude, Rosserlane was aware or must be deemed to have been aware that the protections offered in Part III of the ECT could be subject to it meeting the ownership or control and substantial business activity requirements set forth in Article 17(1) of the ECT. Having chosen not to do so, it cannot now complain that the Respondent invoked Article 17(1) of the ECT to deny the benefits of Part III.
587. Since the conditions set forth in Article 17(1) of the ECT are met, the Tribunal decides that the Respondent validly and timely denied Rosserlane the benefits of Part III of the ECT, with the consequence that Rosserlane's claims are inadmissible.

E. CONCLUSION ON PRELIMINARY OBJECTIONS

588. For the reasons set forth above, the Tribunal makes the following determinations in respect of the Respondent's preliminary objections:

¹⁰⁸⁸ *Khan*, para. 429 (CL-109).

- The Tribunal lacks jurisdiction over Dr. Leshkasheli’s claims, since Dr. Leshkasheli did not make a qualifying investment under the ECT, the BIT and the ICSID Convention;
- The Tribunal has jurisdiction over Rosserlane’s claims, since Rosserlane is a protected investor that made a qualifying investment under the ECT and the ICSID Convention; and
- The Respondent validly and timely invoked Article 17(1) of the ECT to deny the benefits of Part III of the ECT, such that all of Rosserlane’s claims are inadmissible.

589. Since the Respondent succeeds in having the claims dismissed on these grounds alone, the Tribunal need not address the remaining preliminary objections, and it cannot entertain the merits of the claims. Having reached the conclusion that all the claims must be dismissed on jurisdictional and admissibility grounds, the Tribunal now proceeds to the issue of costs.

VIII. COSTS

590. The Parties submitted cost statements with a breakdown by cost category.¹⁰⁸⁹ Each side requests that its costs, fees and expenses incurred in the course of this arbitration be borne by the other side.¹⁰⁹⁰ Unlike the Claimants, the Respondent further requests the payment of interest on any sums awarded. It further requests that the Claimants be jointly and severally liable to pay the Respondent’s costs because Rosserlane is “a defunct shell company with no assets”.¹⁰⁹¹

591. The Claimants claim legal fees and costs in the amount of USD 7,665,833.61, including USD 675,000 in advances for the arbitration costs.¹⁰⁹² They request that the Tribunal allocate their costs against the Respondent.

¹⁰⁸⁹ Claimants’ cost statements of 28 July 2023; Respondent’s cost statements of 28 July 2023.

¹⁰⁹⁰ C-PHB1, para. 401(d); R-PHB1, para. 635.5.

¹⁰⁹¹ Rejoinder, para. 734.5; R-PHB1, para. 635.5; Letter of 28 July 2023 from the Respondent to the Tribunal, para. 6; Respondent’s Comments on the Claimants’ Statement of Costs, 18 August 2023, paras. 15-20.

¹⁰⁹² Claimants’ Statement of Costs, 28 July 2023, p. 1. The Claimants paid a USD 25,000.00 fee to register the Request for Arbitration, which has been included in its claim for advances paid towards the arbitration costs. This fee does not form part of the advances paid by the Parties towards the costs of the arbitration.

592. The Respondent claims to have incurred a total of GBP 6,959,799.13¹⁰⁹³ and USD 1,576,662 in legal costs, including USD 650,000 in advances for the arbitration costs.¹⁰⁹⁴ The Respondent argues that the Claimants’ conduct in the arbitration exacerbated its costs.¹⁰⁹⁵ In particular, the Claimants (i) waited for years to commence the arbitration, forcing the Respondent to search for “historic information”, (ii) took a “kitchen sink” approach, with unsupported allegations, (iii) withheld, misrepresented and mischaracterized evidence, or concealed evidence unfavorable to their case, and (iv) repeatedly changed their case “on fundamental matters”, including “major shifts in their case on jurisdiction”.¹⁰⁹⁶
593. Costs are divided into two categories: the costs incurred by the Parties for their representation, including the fees and expenses of counsel, as well as those of the experts, and other incidental costs; and the costs of the arbitration, including the fees and expenses of the Tribunal and the administrative costs of the Centre.
594. Under Article 61(2) of the ICSID Convention, the Tribunal has discretion to allocate costs as it deems appropriate. This provision states that the Tribunal shall:
- “[A]ssess the expenses incurred by the parties in connection with the proceedings, and shall decide how any by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid”.*
595. ICSID tribunals generally adopt one of two approaches in relation to costs. Under the first approach, each party bears its own costs, and the arbitration costs are borne equally between the parties. The second approach applies the principle of costs following the event, such that the losing party bears the entirety of the costs associated with the proceedings or, to be more precise, costs are allocated according to the respective success and failure of the parties.
596. Based on the circumstances described below and making use of its discretion, the Tribunal decides that the Claimants shall bear the entirety of the Respondent’s costs.

¹⁰⁹³ With an exchange rate of 1 GBP = 1,286174 USD on 18 July 2023, this amounts to USD 8,951,512.70.

¹⁰⁹⁴ Respondent’s Statement of Costs, 28 July 2023, p. 4.

¹⁰⁹⁵ Respondent’s Comments on the Claimants’ Statement of Costs, 18 August 2023, paras. 10-14.

¹⁰⁹⁶ Letter of 28 July 2023 from the Respondent to the Tribunal, para. 3.

First, the Claimants succumb at the stage of preliminary objections, since the Tribunal lacks jurisdiction over Dr. Leshkasheli's claims and Rosserlane's claims are inadmissible. In other words, the Respondent is the successful party in this arbitration. The Tribunal is mindful that the Respondent did not request to bifurcate the proceedings to address first its preliminary objections. That said, the Claimants did not either request a bifurcation, for instance, to save any costs associated with the merits of their case should the Respondent's preliminary objections succeed. The Claimants therefore can be taken to have accepted the risk of having to incur the costs associated with the Respondent's defenses on the merits. Moreover, although the Tribunal did not have to address all of the Respondent's preliminary objections and thus makes no determination on their respective merits or demerits, these additional objections are not frivolous, such that it cannot be said that the Respondent unjustifiably increased the costs associated with those objections.

597. Second, the Respondent had to incur substantial and additional costs over the course of the proceedings to address the Claimants' continuously changing positions including on jurisdictional matters, such as the shifting claims about Dr. Leshkasheli's alleged ownership or control of CEG and the accounts of his marriages and divorces. This procedural conduct also appears to explain, at least in part, why the Respondent's costs are somewhat higher than those of the Claimants (approx. USD 10.5 million versus USD 7.6 million, when converting the amount claimed in British pounds into US dollars). The Tribunal notes in this context that the Claimants refrained from commenting on the Respondent's cost statement and thus did not challenge any of the cost categories claimed by the Respondent.
598. The costs and expenses incurred for the Respondent's representation amount to GBP 6,959,799.13 and USD 926,662 (USD 1,576,662 minus USD 650,000 in advances for the arbitration costs). These costs appear reasonable considering the length and complexity of the case and the abovementioned reasons why the Respondent's costs are somewhat higher than those incurred by the Claimants.
599. Accordingly, the Claimants shall reimburse to the Respondent its costs of representation in the amounts of **GBP 6,959,799.13 and USD 926,662.**
600. The arbitration costs are as follows:

Fees and expenses of the Members of the Tribunal:

Laurent Lévy, President:	USD 324,302.20
David Haigh KC, Arbitrator:	USD 189,499.23
Eduardo Silva Romero, Arbitrator:	USD 159,250.22

Fees and expenses of the Assistant to the Tribunal:

Magnus Jesko Langer	USD 138,795.80
ICSID's administrative fees:	USD 220,000.00
Direct expenses:	USD 184,606.06
Total:	USD 1,216,453.51

601. The arbitration costs have been met by advance payments on an equal basis by the Parties in the amount of USD 650,000 each. According to its decision on the allocation of costs above, the Tribunal orders the Claimants to pay to the Respondent the sum of **USD 608,226.75** to cover its share of the arbitration costs.¹⁰⁹⁷
602. The Respondent further requests that the Claimants be held jointly and severally liable for its costs. The Claimants did not specifically oppose this request. It is uncontroverted that costs issues are in the Tribunal's discretion and ICSID tribunals have ordered claimants to be jointly and severally liable for reimbursing the costs of the respondent State.¹⁰⁹⁸ Here, the two Claimants have brought a single case, not individual claims. In particular, their quantum case rests on a single value, not separate heads of damages

¹⁰⁹⁷ The ICSID Secretariat will provide the Parties with a detailed financial statement of the case account. The outstanding balance will be reimbursed to the Parties in proportion to the advance payments that they have made to ICSID.

¹⁰⁹⁸ See, for instance, *Peteris Pildegovics and SIA North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11, Award, 22 December 2023, paras. 620 and 625-626.

claimed by each Claimant individually. This is further reinforced by the fact that their cost statement does not distinguish between the costs incurred by each Claimant. Consequently, the Tribunal decides by majority that the Claimants shall be jointly and severally liable to pay the amounts mentioned in paragraphs 599 and 601 above.

603. Finally, the Respondent requests interest on any costs award, although it did not specify what rate should apply and whether interest should be simple or compounded. In its written submissions, when responding to Claimants' claims for pre- and post-award interest, the Respondent argued in favor of a US risk-free rate since any damages would be awarded in US dollars and its expert used a rate based on short-term US treasury bills.¹⁰⁹⁹ The Claimants have not responded to the Respondent's request for interest on any costs award and the Tribunal therefore understands that they did not oppose it. Making use of its discretion, the Tribunal deems it appropriate to order the Claimants, jointly and severally, to pay simple interest based on the Secured Overnight Financing Rate from 60 days after the date of dispatch of this Award to the Parties until payment of the Respondent's costs.

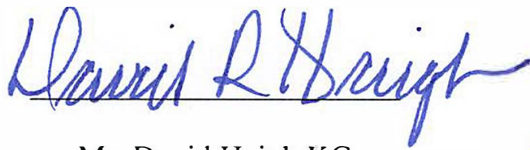
IX. OPERATIVE PART

604. For the reasons set forth above, the Tribunal:

- (1) DECIDES that it does not have jurisdiction over Dr. Leshkasheli's claims;
- (2) DECIDES that Rosserlane's claims are inadmissible;
- (3) ORDERS the Claimants to pay GBP 6,959,799.13 and USD 926,662 to the Respondent in respect of its legal costs and expenses, the Claimants being jointly and severally liable to make this payment;
- (4) ORDERS the Claimants to pay USD 608,226.75 to the Respondent in respect of the arbitration costs, the Claimants being jointly and severally liable to make this payment; and

¹⁰⁹⁹ Counter-Memorial, paras. 678-681; Rejoinder, para. 729, referring to Hern ER1, para. 408.

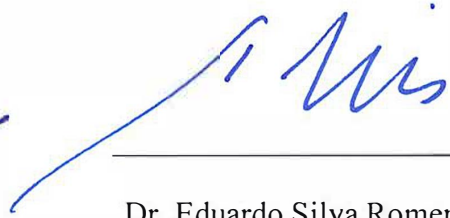
- (5) ORDERS the Claimants to pay simple interest based on the Secured Overnight Financing Rate from 60 days after the date of dispatch of this Award to the Parties until payment of the Respondent's costs mentioned in paragraphs 604(3)-(4) above.



Mr. David Haigh KC

Arbitrator

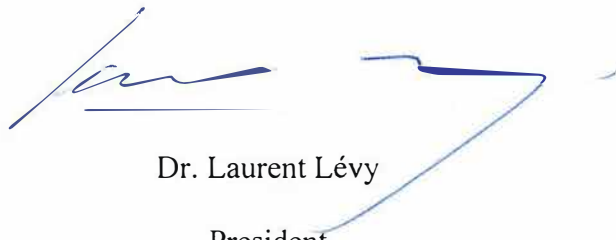
Date: 21 March 2025



Dr. Eduardo Silva Romero

Arbitrator

Date: 21 March 2025



Dr. Laurent Lévy

President

Date: 21 March 2025