

UNDER THE CONVENTION OF THE SETTLEMENT OF INVESTMENT DISPUTES
BETWEEN STATES AND NATIONALS OF OTHER STATES AND THE
INSTITUTION RULES AND ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES
AND
TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ARMENIA
CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

(1) MR. EDMOND KHUDYAN
(2) ARIN CAPITAL & INVESTMENT CORP.

Claimants,

v.

THE REPUBLIC OF ARMENIA

Respondent.

REQUEST FOR ARBITRATION

18 September 2017

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I. INTRODUCTION

1. Mr. Edmond Khudyan and Arin Capital & Investment Corp. (“Claimants”) submit this Request for Arbitration (“Request”) to the Secretary-General of the International Centre for the Settlement of Investment Disputes (“ICSID” or the “Centre”) in accordance with Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “ICSID Convention”) and the Rules of the International Centre for the Settlement of Investment Disputes (the “ICSID Rules”).

2. The Request concerns a legal dispute between Claimants and the Republic of Armenia (“RA,” “Armenia” or “Respondent”), under Article VI of the Treaty Between the United States of America and the Republic of Armenia Concerning the Reciprocal Encouragement and Protection of Investment (the “Treaty” or the “BIT”).¹

II. THE PARTIES

3. Claimant Mr. Edmond Khudyan is a citizen only of the United States of America.²

4. Claimant Arin Capital & Investment Corp. is a real estate investment company incorporated under the laws of California.³ Its address is as follows:

1625 West Glenoaks Blvd.
Suite 303
Glendale, CA 91201
U.S.A.

1. The BIT is attached hereto as **CE-1**.

2. See Passport of Mr. Edmond Khudyan (**CE-2**).

3. See Articles of Incorporation of Arin Capital & Investment Corp. (**CE-3**); Entry in California Secretary of State Database of California Entities for Arin Capital & Investment Corp. (**CE-4**).

VI. JURISDICTION

57. The jurisdiction of ICSID over this dispute is established under Article VI of the BIT and Article 25 of the ICSID Convention.

a. THE JURISDICTIONAL REQUIREMENTS OF THE BIT ARE SATISFIED

58. All jurisdictional requirements of the BIT are satisfied. Article 6 of the BIT contains Respondent's agreement to arbitrate investment disputes with nationals of the United States.

59. This dispute is between a party to the Treaty, on the one hand, and a national and companies of the other party, on the other. Respondent is a party to the Treaty. Claimants Mr. Edmond Khudyan and Arin Capital USA are a national and a company of the other party, respectively. Article I(1)(c) defines "national of a Party" as "a natural person who is a national of a Party under its applicable law." As a citizen of the United States, Mr. Khudyan is a "national of a Party." Article I(1)(b) defines "company of a Party" as "any kind of corporation ... legally constituted under the laws and regulations of a Party or a political subdivision." As a company established under the laws of the State of California, a political subdivision of the United States, Arin Capital USA is a "company of a Party."

60. The dispute arises out of Respondent's breaches of Claimants' rights created by this Treaty with respect to an investment. Article I(1)(a) defines "investment" as "every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt and service and investment contracts[.]" Article 1(a) then includes a list of examples of investment, including "a company or shares of stock or other interests in a company or interests in the assets thereof." (See Article I(1)(a)(ii)). Claimant Mr. Edmond Khudyan's investment consisted of both his 61.1% of the shareholding of Arin Capital Armenia and his indirect interest in the 33/1 Mashtots and 33A Mashtots buildings

owned by Arin Capital Armenia. Arin Capital Armenia is established under the laws of Armenia, and is therefore in the territory of a Party. It is also a company that Claimant Mr. Edmond Khudyan, as its majority shareholder, controls directly. Thus, it is an investment under the Treaty. The 33/1 Mashtots and 33A Mashtots buildings are tangible property located in Armenia, and are controlled indirectly by both Claimants through Arin Capital Armenia. Therefore, the 33/1 Mashtots and 33A Mashtots buildings are also investments under the Treaty. Arin Capital USA is owed receivables from Arin Capital Armenia in connection with its transfer of \$3,481,000 for investment in the development 33/1 Mashtots building. These receivables constitute an investment within the meaning of Article I(1)(a)(iii) of the BIT.

61. The Parties initially sought to resolve their dispute by negotiation. On 28 August 2014, Claimants sent a letter to Respondent notifying Respondent of its multiple violations of the Treaty. This letter is exhibited as **CE-5**. The Parties have engaged in settlement negotiations since that date. These culminated in April 2017, with the Parties unable to reach a resolution. More than six months have elapsed since the dispute arose.

62. Claimants have not submitted their investment dispute concerning Respondent's breaches of the BIT for resolution in Armenian courts. Claimants' challenges to the deficiencies of the bankruptcy proceedings in the Armenian courts did not constitute a choice to submit their investment dispute for resolution to the Armenian courts within the meaning of Article VI(3). Therefore, Claimants have fulfilled the Treaty's requirements for initiating arbitration.

b. THE JURISDICTIONAL REQUIREMENTS UNDER THE ICSID CONVENTION ARE SATISFIED

63. All jurisdictional requirements under the ICSID Convention are also satisfied. Article 25(1) of the Convention states:

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State ... and a national of another

Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

64. This dispute involves “a Contracting State” and “national[s] of another Contracting State.” The United States and Armenia are both Contracting States to the ICSID Convention.¹⁶ As a U.S. citizen and California corporation respectively, Claimants Mr. Edmond Khudyan and Arin Capital USA are and have at all relevant times been nationals of the United States within the meaning of Article 25 of the ICSID Convention. Mr. Khudyan is not a citizen of Armenia.

65. Claimants also have “investments” within the meaning of Article 25(1) of the Convention. Although Article 25 does not itself define “investment,” Claimants’ interest in an Armenian company and in real property in Armenia both constitute investments under the definition of investment in the BIT.

66. Claimants’ dispute is a legal one and arises directly out of their investments, as more fully described in Sections III and IV.

67. The Parties have also consented in writing to submit this dispute to arbitration before ICSID. Respondent’s consent in writing to submit investment disputes to ICSID Convention arbitration is contained in Article VI(4)(a) of the Treaty. Claimants hereby provide their written consent to submit this dispute to arbitration under the ICSID Convention.

68. Therefore, all procedural requirements of the Centre have been met. Claimants have provided with this Request for Arbitration the information and materials specified in ICSID Institution Rules 2 and 3. Pursuant to ICSID Institution Rule 2(1)(f), Claimants affirm that they

16. See ICSID, List of Contracting States and Other Signatories of the Convention (as of April 12, 2016), <https://icsid.worldbank.org/en/Documents/icsiddocs/List%20of%20Contracting%20States%20and%20Other%20Signatories%20of%20the%20Convention%20-%20Latest.pdf> (CE-6).

have taken all internal actions necessary to authorize this Request for Arbitration. Attached as Exhibits **CE-7** and **CE-8** are signed powers of attorney from Claimants Mr. Edmond Khudyan and Arin Capital USA, respectively. Claimants have also paid the \$25,000 filing fee required under ICSID Administrative and Financial Regulation 16. A copy of the wire transfer order is attached as Exhibit **CE-9**. Accordingly, all procedural requirements under the ICSID Convention and ICSID Institution Rules are satisfied.

VII. RELIEF REQUESTED

69. Pursuant to this Request, Claimants respectfully request compensation from Respondent for the latter's violations of the BIT, including accrued interest, in excess of US\$ 10 million, which will be more precisely specified in Claimants' subsequent submissions.

70. In particular, Claimants seek the following:

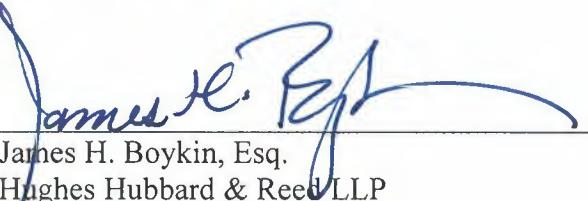
- a. An award of the Tribunal declaring that Respondent has breached its obligations under the BIT
- b. An award of the Tribunal of compensation for damages suffered by the Claimants due to Respondent's breaches of its obligations under the BIT, including accrued interest, in excess of US\$10 million, to be fully specified in the course of the arbitration.
- c. An award of the Tribunal for recovery of all costs and legal fees incurred by Claimant in connection with this arbitration in accordance with Article 61(2) of the Convention.
- d. An award of the Tribunal for payment of interest on any monetary award from the date of the award until the date of final payment, at the applicable rate as may be determined by the Tribunal.
- e. Any other relief that the Tribunal may deem appropriate.

VIII. CONSTITUTION OF THE TRIBUNAL

71. As contemplated by Article 37(2)(a) and Article 40 of the ICSID Convention and Rule 2 of the ICSID Arbitration Rules, the Claimants propose to the Respondent the appointment

of a sole arbitrator to be appointed by the Secretary General and that the Secretary General is free to appoint the sole arbitrator from outside the Panel of Arbitrators.

Respectfully submitted,


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