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ES CLAIMS TRIBUNAL

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CASE NO. 395

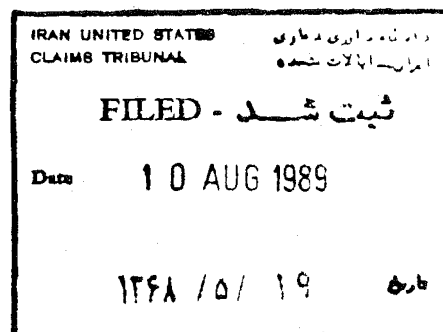
CHAMBER THREE

AWARD NO. 431-395-3

COMPONENT BUILDERS, INC.,
WOOD COMPONENTS CO. and
MOSHOFKY ENTERPRISES, INC.,
Claimants,

and

ISLAMIC REPUBLIC OF IRAN,
BANK MASKAN IRAN [SUCCESSOR TO
BANK RAHNI IRAN] and
INSURANCE COMPANY OF IRAN,
Respondents.

FINAL AWARDAppearances:

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Mr. Edward W. Moshofsky,
Chairman, Moshofsky
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Mr. Russell Krueger,
Representative of Moshofsky
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Mr. Edward L. Mobley,
Witness.

For the Respondents:

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Assistant to the Agent;
Dr. Ali Azmayesh,
Counsel for Bank Maskan;
Mr. Gholamreza Tehami,
Legal Advisor to Bank Maskan;
Mr. Mahmoud Hassani-Behabadi,
Representative of Bimeh Iran;
Mr. Reza Nakhshab,
Mr. Ali-Asghar Eslami,
Witnesses.

Also Present:

Mr. Michael F. Raboin,
Deputy Agent of the United
States of America.

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Claimants in this Case are COMPONENT BUILDERS, INC. ("Component Builders"), WOOD COMPONENTS CO. ("Wood Components") (together referred to as the "Contractors") and MOSHOFSKY ENTERPRISES, INC. ("MEI") (collectively the "Claimants"). The Contractors are corporations engaged in the manufacture, sale and erection of prefabricated buildings. MEI is engaged in the provision of financial support to Component Builders and Wood Components. The present claims arise out of (1) alleged breaches and underpayments in the net amount of U.S.\$2,309,268¹ under an agreement, referred to as the "Building Supply and Erection Agreement," entered into between the Contractors and BANK RAHNI IRAN ("Bank Rahni") for the supply and erection of 500 prefabricated housing units; (2) debts in the sum of U.S.\$258,148 allegedly due from BIMEH IRAN, IRAN INSURANCE CO. ("Bimeh Iran"); and (3) a claim for expropriation of materials and other property belonging to the Contractors valued at U.S.\$663,499, directed against THE ISLAMIC REPUBLIC OF IRAN ("IRAN").

2. On 18 January 1982 the Claimants filed a Statement of Claim naming IRAN as the Respondent and, specifically, Bank Rahni and Bimeh Iran. On 3 January 1983 Statements of Defence and Counterclaim were filed by IRAN, BANK MASKAN IRAN ("Bank Maskan") as successor to Bank Rahni, and Bimeh Iran (collectively referred to as the "Respondents").

3. On 27 May 1985 the Tribunal issued an Interim and Interlocutory Award (the "Interim Award"), Award No. ITM/ITL 51-395-3 (27 May 1985), reprinted in 8 Iran-U.S. C.T.R. 216, in which it ruled on certain jurisdictional and other issues. In the Interim Award the Tribunal made a prima

¹A part of this claim was later withdrawn.

facie finding as to the Claimants' nationality² and held that the Respondents fall within the definition of "Iran" as provided in the Claims Settlement Declaration³ and that the forum selection clause in the Building Supply and Erection Agreement did not constitute a bar to jurisdiction.⁴ The Interim Award concluded that "the Tribunal has jurisdiction over [the claims against Bank Rahni] insofar as they are based on the Building Supply and Erection Agreement."⁵ Finally, the Tribunal granted the Claimants' request for interim relief and requested IRAN and Bank Maskan "to take all appropriate measures to ensure that the proceedings now pending before Chamber 29 of the Public Court of Tehran against Wood Components Co. and Component Builders, Inc. . . . be stayed until final determination of this case by the Tribunal."⁶

4. Much of the procedural history of the Case is set forth in the Interim Award and all Parties have submitted extensive pleadings and documentary evidence on the issues.

5. A final Hearing was held on 1 December 1986.

6. On 14 January 1987 Bimeh Iran filed a Response to the Claimants' affidavit relating to legal fees, which had been filed on 17 November 1986, just prior to the Hearing. On 28 January 1987 Bank Maskan filed a similar Reply. On 26 January and 9 February 1987 the Claimants objected to these filings and requested that they be struck from the record.

²Interim Award at 6, reprinted in 8 Iran-U.S. C.T.R. at 220.

³Id. at 7, reprinted in 8 Iran-U.S. C.T.R. at 220-21.

⁴Id. at 12, reprinted in 8 Iran-U.S. C.T.R. at 225.

⁵Id. at 15, reprinted in 8 Iran-U.S. C.T.R. at 227.

⁶Id. at 15, reprinted in 8 Iran-U.S. C.T.R. at 228.

By Order dated 27 February 1987 the Tribunal reserved its decision on the admissibility of these documents until the present Award.

7. On 15 June 1987 Bank Maskan filed a further document containing its comments on the Claimants' objections to the previous filings and including an application to reopen the Hearing and a "Request for Consolidation of Case No. 395 and Case No. 12118." The Claimants filed an objection to this request on 22 June 1987 and, by Order dated 20 July 1987, the Tribunal determined that Bank Maskan "has set forth no 'exceptional circumstances' justifying reopening of the Hearing" and denied the request. Bank Maskan filed a further document on 9 September 1987 commenting on the Claimants' objection filed in June 1987, to which the Claimants filed a response on 17 September 1987, stating that they believed the Tribunal's Order of 20 July 1987 to be dispositive of the matter and asking that the Tribunal take these issues into account when making an award of interest and costs. On 29 May 1989 Bank Maskan filed a request to repeat the Hearing in this Case following the succession of Gaetano Arangio-Ruiz as Chairman of Chamber Three of the Tribunal.

8. The Tribunal has examined carefully the documents submitted by Bank Maskan and Bimeh Iran after the date of the Hearing. It has been the Tribunal's practice not to permit the filing of documents just prior or subsequent to the Hearing. An exception to this principle is to permit the filing of affidavits relating to costs, as by their very nature these cannot be prepared in advance. The Tribunal agrees that the submission made by Bimeh Iran includes arguments unrelated to the issue of costs and, in particular, contains a defense on the merits that had not been raised previously. The Tribunal therefore rejects the filing of this document, with the exception of the details of Bimeh Iran's own legal costs, as set out at page 6 thereof. Similarly, the submission by Bank Maskan, which

also attempts to discuss the merits of the Case, is rejected.

9. With regard to Bank Maskan's request to reopen the Hearing and consolidate this Case with Case No. 12118, the Tribunal confirms that its Order of 20 July 1987 is final and determinative of this issue. With regard to the request to repeat the Hearing, the Tribunal draws the Parties' attention to its Communication to the Parties of 22 February 1989 in which it decided not to repeat the Hearing held in this Case on 1 December 1986. The Tribunal notes that its decision was based on the consideration that the Parties' memorials and evidence as well as the Tribunal's record of the Hearing are sufficient from which to reach its decision. Bank Maskan's request is therefore denied.

II. JURISDICTION

10. As noted in paragraph 3, supra, a prima facie finding was made in the Interim Award as to the nationality of the Claimants. No specific rebuttal of that finding has been presented by the Respondents and the Tribunal therefore finds the Claimants to be nationals of the United States within the definition of the Claims Settlement Declaration.

11. It also was held in the Interim Award that the Respondents are within the definition of "Iran" as required by the Claims Settlement Declaration and that there is no forum selection clause bar to the Tribunal's jurisdiction. The Tribunal has already held that the subject matter of the breach of contract claims is within its jurisdiction, pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, and therefore concludes that it has jurisdiction over these claims and counterclaims. Consequently, the subject matter of these claims and counterclaims is outside the jurisdiction of any other court including the court in which proceedings heretofore have been stayed. See supra para. 3. Any continuance of the

proceedings before the Tehran Court would therefore be without legal effect insofar as they relate to the same subject matter and parties.

12. Bank Maskan has objected to the inclusion of MEI as a Claimant, as successor to the rights of the Contractors. In the alternative, if the validity of that succession is accepted, Bank Maskan objects to the continued inclusion of Component Builders and Wood Components as Claimants. The Claimants have submitted in evidence documents⁷ which show that on 27 December 1979 the Circuit Court of the State of Oregon for the County of Lane issued a Consent Decree against Wood Components and Component Builders in favor of MEI in the amount of U.S.\$1,654,995.46 (the "Decree"). In the Decree the Court confirmed an assignment⁸ of certain rights under contracts entered into by Component Builders and Wood Components, specifically including the Contractors' rights against Bank Maskan and Bimeh Iran. The Decree also made clear that MEI "expressly refuses to assume any liabilities under the contract between defendants and Bank Rahni Iran."

13. The Claimants state that this Decree effectively transferred the primary right to recover under the contracts at issue in this Case from the Contractors to MEI. Bank Maskan objects that MEI cannot be a proper Claimant because it was not a party to the contracts. It further argues that if the assignment is valid, then Wood Components and Compo-

⁷The Tribunal describes the evidence submitted in the Interim Award at 6 n.2, reprinted in 8 Iran-U.S. C.T.R. at 220 n.4.

⁸The assignment arose out of a contract dated 28 September 1976 by which it was agreed that MEI would provide the Contractors certain financial services in return for an agreed payment. As security, the Contractors granted to MEI a "first lien on all assets" of the Contractors and "assignments for security purposes, of all contracts and leases to which [the Contractors] were parties."

nent Builders have no further interest in this Case and should be removed as Claimants.

14. It appears to the Tribunal that the assignment of the claims to MEI, which occurred before the date of the Claims Settlement Declaration, was valid and effective in transferring the claims to MEI, at least insofar as necessary to satisfy the amount stated in the Decree, i.e., U.S.\$1,654,995.46. Thus MEI, being the legal entity presently seized of this claim, is a proper Claimant pursuant to the Tribunal's decision in First Travel Corp. and Government of the Islamic Republic of Iran, Award No. 206-34-1, p. 9 (3 Dec. 1985), reprinted in 9 Iran-U.S. C.T.R. 360, 366. The Claimants also have asserted, however, that should any recovery on these claims, together with any recovery on other contracts and assets also assigned to MEI by the Decree, amount to more than the quantum thereof, then the Contractors would be entitled to retain such excess amounts. They thus allege that the Contractors retain a financial interest in the claims. The Tribunal finds no reason to strike any of the Claimants in this Case. The Tribunal also determines that all amounts found to be due to the Contractors hereunder shall be awarded to MEI, on behalf of the Contractors, as the legal entity presently seized of this claim.

III. THE MERITS

A. THE CLAIMS AND COUNTERCLAIMS INVOLVING BANK MASKAN

1. Factual Background

15. Wood Components is a corporation formed in 1963 and specializing in the manufacture and supply of prefabricated housing units. In 1975 Wood Components entered into negotiations with Bank Rahni for the proposed construction of a major housing project to be financed by Bank Rahni. Following these discussions Component Builders was formed in

February 1976, as a subsidiary of Wood Components, to construct and erect such units in Iran.

16. Wood Components and Component Builders entered into the Building Supply and Erection Agreement with Bank Rahni, effective from 28 June 1976 (see infra para. 104), pursuant to which the Contractors were responsible for "the supply and importation, construction, erection, installation, equipping, testing and delivery to Owner of the Buildings, consisting of five hundred [500] individual housing units to be built on the Site provided by Owner, as more fully described in this Contract."

17. Bank Rahni also undertook specific responsibilities, as set out in Article 7 of the Building Supply and Erection Agreement, including, in particular, provision of the site and all basic utilities for connection by the Contractors to the individual units. The Building Supply and Erection Agreement originally provided for all 500 units to be built at two sites at Karaj and Ghazvin, Iran, but in December 1976 and January 1977 Bank Rahni notified the Contractors that the units were to be constructed at a site at Shahin Shahr. This necessitated an amendment to the Building Supply and Erection Agreement, Addendum No. 2,⁹ signed in January 1977,¹⁰ which also amended the contractual time schedule for completion so as to reflect the change of location.

18. Pursuant to Article 10.2 of this Addendum Bank Rahni was to have the Shahin Shahr site prepared by 20 February 1977 for handover to the Contractors, who were to complete the work within 341 days after the materials cleared Iranian Customs. A further eleven days were added by agreement in

⁹The Building Supply and Erection Agreement had already been amended once by Addendum No. 1, dated 15 August 1976, which amended the payment provisions.

¹⁰The precise date is not given.

January 1977. Article 10.4 of the Building Supply and Erection Agreement provided for the Contractors to pay liquidated damages of Rls. 700 per day per unit in case of delay. In addition, Bank Rahni had the discretionary right to terminate the contract if provisional acceptance was delayed by more than forty-five days. The Building Supply and Erection Agreement was further amended on 25 September 1977 by Addendum No. 3, which clarified the responsibilities of the Contractors as to transportation of the goods to the site, and on 30 August 1978 by a final amendment, Addendum No. 4, pursuant to which thirty units were to be constructed at a separate site, Rasht, for the University of Gilan.¹¹

19. The Contractors' performance under the Building Supply and Erection Agreement was monitored by T.C.S.B. Inc. ("TCSB"), consulting engineers for Bank Rahni, and the overall direction and management of the project was conducted by the firm of Owsia & Associates Inc., Contract Administration ("Owsia"), headed by Mr. B. Lotfi. Most of the Contractors' correspondence concerning the progress of the project was with these two entities.

20. The Building Supply and Erection Agreement provided in Articles 9.1 and 9.2 for two separate means of payment to the Contractors. For the work performed and materials supplied by Wood Components Bank Rahni was to pay U.S.\$14,999,533.35, the "Supply Price," payable wholly in U.S. dollars. For the actual construction of the housing units in Iran and related expenses Bank Rahni was to pay Component Builders, in Iranian rials, Rls. 435,447,781, being the "Service Price." The two sums together were referred to as the "Contract Price."

21. Article 1 of Addendum No. 1 provided for insurance costs to be deducted from the Supply Price to reach a "C & F

¹¹For detailed discussion of this amendment, see infra paras. 30-31.

Supply Price" of U.S.\$14,798,132.35. Ten percent of the C & F Supply Price was to be withheld as a performance guarantee, half of which was to be released pro rata on provisional acceptance of each unit and the balance on final acceptance, as described in Articles 12.1 and 12.2. The balance of the C & F Supply Price was to be paid as follows: 70% on shipment of the goods; 15% on arrival of the goods in Iran and delivery to the site; and the final 5% upon provisional acceptance of the units, so that a total of 10% of the C & F Supply Price was to be released on provisional acceptance. Similarly, 10% of the Service Price was paid in advance, with the balance, less withholdings as detailed below, payable as the work progressed. The mechanism for approval and payment of progress payments to Component Builders is contained in Article 9.5.2 of the Building Supply and Erection Agreement. Component Builders was required to submit a monthly Payment Certificate to Bank Rahni's representative at the end of each Iranian calendar month. Pursuant to Article 9.5.2.3 Bank Rahni was required to make payment to Component Builders within thirty days of submission of the Payment Certificates, less an 11% deduction for amortization of the advance payment, a 10% withholding as a performance guarantee as required by Article 11.2.2 of the Building Supply and Erection Agreement and deductions for taxes. Article 9.7.2 expressly permitted deduction of the "Tax on Contractor's Services." No deduction for social security premia for employees was required and Article 9.7.7 provided for the Contract Price to be adjusted if

the rate of any S.S.O. charges applicable to Contractor's employees [is changed] from the rate effective on the Effective Date of this Contract or any other Iranian tax or charge is levied to this Contract in addition to the taxes on Contractor's services as set forth in Article 9.7.2. above, or any changes are made in the method of assessment or rate of any existing tax, or any new tax or charge is enacted or imposed.

22. Delivery and acceptance of the work was to be effected in two stages. As each unit reached 97% completion the

Contractors were required by Article 12.1 to submit to Bank Rahni a proposed "Certificate of Provisional Acceptance," together with a list of items remaining to be completed. Within thirty days of receipt Bank Rahni was to satisfy itself as to the stated degree of progress and sign the Certificate of Provisional Acceptance. In the event that Bank Rahni failed to act within ninety days of submission of the Certificate by the Contractors, Article 12.1.1 provided that such inaction would be deemed to constitute approval by Bank Rahni. The one-year contractual warranty period was to commence at that time. Upon expiry of the warranty period, the Contractors were required to submit a certificate of completion to obtain final acceptance and release of the balance of the performance guarantees. Detailed provisions governing suspension and termination of the Building Supply and Erection Agreement are contained in Article 13.

23. The Building Supply and Erection Agreement also provided in Article 8 for amendment to the scope of the work at the request of either Bank Rahni or the Contractors. If requested by Bank Rahni the Contractors were to submit a cost and scheduling analysis for approval. This cost analysis would be deemed accepted if Bank Rahni then instructed the Contractors to proceed. Failure to respond within thirty days of submission of the analysis was deemed to be a rejection and the Contractors were not to carry out the additional work. If the modification was suggested by the Contractors and was not due to any failure on their part, Bank Rahni had thirty days in which to approve the modification, failing which it would again be deemed rejected. All modifications were required to be incorporated in written Change Orders and, in the event of any dispute, Bank Rahni could require the Contractors to proceed with the modification pending settlement.

24. Equipment and materials for the project began to arrive in Iran in early February 1977. The Contractors issued a "Statement of Readiness" on 18 March 1977, but this was not registered by Owsia until 27 March 1977. Most of the items needed had been delivered to the site by the end of June

1977.¹² Although Addendum No. 2 provided for delivery of the site to the Contractors on 20 February 1977, the first thirty-nine lots were made available on 30 April 1977 and a further eighty-six on 23 May 1977. It is not disputed that further delays occurred. The Claimants assert that Bank Rahni failed to provide adequate water and power supplies to the site and that when utilities were installed they were installed in such a fashion that they interfered with the Contractors' work. Bank Rahni alleges that the delays incurred were due to the fault of the Contractors.

25. In July 1976 the Iranian social security regulations were amended, altering the applicable rates and salary ceilings upon which payments were calculated and including for the first time within their ambit certain expatriate staff who had previously been exempt from making payments by virtue of payment of similar contributions in their home countries. The interpretation and application of these amended regulations were to prove an ongoing source of dispute between the Contractors and Bank Rahni throughout the life of the Building Supply and Erection Agreement and form one of the Claimants' claims. See infra paras. 95-109.

26. As may be expected with a project of this size, considerable amounts of correspondence passed among the Contractors, Bank Rahni and its representatives. Both the Claimants and Bank Maskan have submitted copies of relevant documents to the Tribunal evidencing the progress of the project and the relations between the Parties. The first indication in the record of any delay is a letter from Owsia to Wood Components which simply states "your work . . . is not progressing satisfactorily." Problems were also encountered with the plumbing designs and concrete foundations.

¹²Damage suffered by some of the materials while in transit is the subject of Wood Components' claim against Bimeh Iran on an insurance policy on the shipment.

These are referred to in letters and minutes of a meeting held on 9 August 1977, at which it was agreed that Change Order No. 4 would be issued for U.S.\$26,600 to pay for an amendment to the plumbing designs for 207 units. These minutes also refer to Bank Rahni's request to build thirty of the 500 units at Rasht at a proposed extra cost of Rls. 1,200,000. Problems with the textured finishes of the units were noted by TCSB in late September 1977 and in a subsequent letter it rejected parts of the plumbing test procedure and concrete pouring. More importantly, this letter (of which only pages 6 to 9 are in evidence) indicates that Component Builders was sixty days behind schedule and in TCSB's opinion would only be able to have fifty units ready for provisional acceptance by 30 November 1977, rather than 110 as scheduled.

27. On 16 October 1977 a fire occurred at the Shahin Shahr site. In November Owsia again noted delay on the part of Component Builders, remarking that although fifty units were due to be submitted for provisional acceptance within seven days no exterior finishing work had been done. On 3 December 1977 Owsia wrote to Component Builders pointing out that the Contractors were now in delay and requested an explanation of the reasons therefor. Bank Rahni continually rejected the Contractors' allegations that it had been responsible for delay in the preparation of foundation pads for the units and, through TCSB, criticized Component Builders' staffing and supervisory ratios. A dispute also arose over the actual size of the finished units and whether the Contract Price needed to be reduced accordingly.

28. By the end of 1977 it was evident that the contractual schedule would have to be revised. A new schedule was agreed upon at a meeting held on 12 December 1977, evidenced by a letter from Owsia dated 4 January 1978. The revised schedule provided for seventy units to be ready by late January 1978 and the rest at monthly intervals through the end of May 1978. At this time the location for twenty-two

units had not yet been designated. However, by 11 January 1978 Component Builders expressed doubt as to whether the seventy units would be ready, citing illness of American supervisors and local flooding among the reasons for the delay. On 20 February 1978 Owsia wrote again to Component Builders complaining of the failure to meet the schedule and rejecting the Contractors' complaints as to delays on the part of Bank Rahni and other alleged breaches, stating:

[W]e confirm that Site Work was carried out in a slower pace than it was supposed to be, however since no erection delay can be attributed to this factor, and considering the fact that scheduling of the Site sub-contractors work was done after consultation with you, the issue is resolved as far as we are concerned.

29. By April 1978 details of the thirty units to be built at the Rasht site had been agreed upon, although the delivery schedule was still under negotiation. The Rasht site was delivered to Component Builders on 12 May 1978. On 21 May 1978 it was agreed at a weekly meeting that all Shahin Shahr units would be submitted for provisional acceptance by 21 October 1978, failing which Bank Rahni would be entitled to claim liquidated damages under Article 10.4 of the Building Supply and Erection Agreement.

30. These agreements and understandings were then incorporated into the Building Supply and Erection Agreement by means of Addendum No. 4, which, although undated in the English language version submitted to the Tribunal, is dated 30 August 1978 under the signature on the Persian language version. The Addendum records the agreement to build thirty units at Rasht for an additional mobilization fee of U.S.\$198,000 with provisional acceptance scheduled for 20 September 1978. The Addendum also confirmed the understanding that the 448 units at the Shahin Shahr site would be submitted progressively up to 21 October 1978.

31. Addendum No. 4 included a waiver of claims between the Parties. Article 7 reads:

The parties hereby waive any and all claims each party may have or may have made with respect to the Contract against the other party, upto [sic] this date, with the exception of Contract Price outstanding bills, errors in accounting and adjustments/differences in the base of Social Insurance premiums which may have come into effect after the date of Entry into Force of the Contract.

This Waiver of claim includes Contractor's claim for Social Insurance Organisation premium exemption subject of Contractor's letters dated [25 July 1977, 5 December 1977 and 4 April 1978] and Contract Administration's replies thereto, letters [dated 17 August 1977, 1 January 1978 and 16 April 1978] respectively.¹³

32. Despite these various disputes and difficulties, including a further fire that occurred on 7 August 1978 and severely damaged two units, work at Shahin Shahr progressed and Component Builders was able to present its first invoice for provisional acceptance of fifty units on 16 June 1978 (Submittal and Invoice No. 1). A further seventy units were invoiced on 5 July 1978 (Submittal and Invoice No. 2) and forty on 30 September 1978 (Submittal and Invoice No. 3) to reach a total of 160 units invoiced out of 200 submitted for testing. These submittals and invoices for payment to both Wood Components and Component Builders have been produced in evidence.

33. By 3 October 1978 the Contractors were able to submit twenty-one of the thirty units at Rasht for testing for provisional acceptance, and the final nine were submitted for testing a few days later, on 14 October 1978, as shown by Component Builders' letters of submission. Although

¹³The letters from Owsia are in evidence before the Tribunal. The Claimants' letters have not been submitted.

there is no specific evidence of testing and acceptance of these units by TCSB, TCSB's letter to Owsia, dated 21 October 1978, reflects provisional acceptance of twenty units and a second letter, dated 29 October 1978, also indicates that the first twenty-one units were granted provisional acceptance, even though TCSB states: "[T]he lack of exterior paint, soffit work and A/C installation would not ordinarily constitute provisional acceptance." No invoices were issued for these thirty units. In December 1978 Component Builders confirmed to Bank Rahni that the Rasht site had been cleared and all equipment removed and requested payment of Rls. 2,079,000 for the remaining 15% of the additional fee due under Addendum No. 4. With the exception of one subsequent letter, dated 16 January 1979, which states that "certain units of the Gilan Project have already been submitted by Bank Rahni Iran to the Gilan University and occupied by the professors of the said University," this is the last communication concerning the site at Rasht.

34. Work at the Shahin Shahr site continued and three further submissions were made for testing a further 116 units in October 1978. Invoices Nos. 4 to 6 were issued for 125 units in November 1978 to reach a total of 285 invoiced units. The final 132 units were submitted for testing on 3 December 1978 as shown by Component Builders' letter of the same date. The Claimants assert that, after this date, they were able to make only very limited progress to complete the remaining work on the project due to disruptions, strikes and shortages of goods, and state that most of their expatriate workers had left Iran by the end of November 1978.

35. On 6 December 1978, after several days of heavy rain, a flood occurred in Shahin Shahr which damaged 165 of the units. The actual cause of the flood is disputed. The Claimants alleged at the Hearing that the site drainage ditches had not been adequately constructed while Bank

Maskan asserted that the flood was caused by the Contractors' waste allegedly having been thrown into the canal. Owsia wrote to Component Builders in November 1978 concerning this matter and requested Component Builders to remove the waste, stating that "in case of failure on your part, [Rls. 3,000,000] shall be deducted from the following Statement of Work of your Company." A site meeting was held on 26 December 1978 to discuss the damage and the responsibility for repair. The minutes of this meeting indicate that the damage was substantial, as TCSB estimated that repairs would take six months. The minutes also state: "Contractor was reminded that all sections of the Buildings shall be tested and inspected, and the damaged Components shall be replaced and/or repaired, as the case may be."

36. The Contractors were in frequent communication with both Bank Rahni and Owsia throughout December 1978 as they tried to complete the project. In particular, Component Builders prepared a number of summaries of billings for the project, which indicate the status of the work at this time. It appears to have been Component Builders' practice to prepare a "T.C.S.B. Inspection Request" when units were ready for testing for provisional acceptance. Such a request has been exhibited for submission No. 7, marking with a square outline the units then ready for testing. After testing by TCSB, Component Builders issued a "Provisional Acceptance Submittal," as exhibited for submissions Nos. 1 to 6, on which only those units which had passed inspection were so marked and the appropriate number invoiced. This procedure is confirmed by the information set out in Component Builders' letter of 23 December 1978, in which the list of submittals shows that all 448 units at Shahin Shahr were submitted for testing between June and December 1978, whereas the number of units for which invoices have been issued relates to the number of units which had been approved as shown on those "Provisional Acceptance Submittals." When referring to the tested units the letter states: "The following units have been inspected and

approved by the Bank[']s Consulting Engineers, tested by [Component Builders] and invoiced for payment, with punch lists and test certificates attached." On subsequent submissions the units that had already been tested and accepted were marked with a circle on both the T.C.S.B. Inspection Request and the Provisional Acceptance Submittal.

37. The letter of 23 December 1978 indicates that, of the 316 units submitted for inspection by TCSB by the end of November 1978, 285 units had been approved, thus implying that thirty-one either had not yet been tested or had not been accepted. A second letter from Component Builders of the same date indicates that as of that date the 132 units submitted for inspection on 3 December 1978 had not been tested. This letter also contains the first specific reference on record to the problems Component Builders encountered in completing the project, in particular problems with customs procedures and obtaining supplies, and the worsening civil disturbances and strikes. In this letter Component Builders also sought to rely upon its contractual right to request an extension of time for performance due to force majeure, stating:

The civil disturbances, strikes, closures and generally difficult conditions here in Iran, from late September until now, have, for the most part, been responsible for the delay in the submittal of units to the Bank, and will continue to effect [sic] the completion of the remaining work. Since these events are outside of the Contractor's control, we are seeking protection under Articles 10.3.1(c), 10.3.2. and 15.7 of the Contract.

The only response to this letter in evidence is a letter from Owsia, dated 3 January 1979, stating that the matter had been forwarded to TCSB for review.

38. Although the Building Supply and Erection Agreement provided for the construction of 500 houses it is not disputed that only 478 were built. However, Bank Rahni never designated or prepared the sites for the remaining

twenty-two houses, and on 24 January 1979 it wrote to Component Builders exercising its right under Article 8.3 of the Building Supply and Erection Agreement to reduce the total number of houses to be built from 500 to 478.

39. On the same day Bank Rahni also informed Component Builders by separate letter that "the prevailing conditions shall be considered as Force Majeure events, and consequently, the works subject of the Agreement shall be suspended till further notice." This letter was signed and accepted on behalf of Component Builders on the same day. On 3 February 1979 the last four of Component Builders' expatriate employees left Iran. One of the employees, Mr. Russell Krueger, was assigned to put in order all of the Contractors' equipment and material for storage and security. Before leaving Mr. Krueger took photographs of the storage yard at the Shahin Shahr site, which have been submitted in evidence. A few days later Bank Rahni also terminated its contract with TCSB, effective 28 January 1979.

40. In mid-April 1979 the Claimants' attorney in Tehran, Mr. Katirai, reported to the Contractors in the United States that Bank Rahni was interested in completing the project. On 18 April 1979 Mr. Moshofsky, President of Wood Components, telexed Bank Rahni, care of Owsia, agreeing with its decision to restart operations and stating that Component Builders had already alerted key employees to be ready to return to Iran. Mr. Moshofsky also referred to a number of outstanding issues, including payment of amounts due on already approved billings, and requested Owsia's assistance in resolving these matters. Bank Rahni responded by letter of 25 April 1979¹⁴ as follows: "We hereby inform you that the special conditions on which the force majeure was based

¹⁴The text of the letter was telexed to Wood Components in the United States by Mr. Katirai on 28 April 1979.

now expired, therefore you are asked to start within 10 days after receipt of this letter all work that was suspended from 24.1.79." On 30 April 1979 the Claimants' accountant in Tehran reported to Wood Components that Bank Rahni had refused to make any further payment "until the work is resumed" and that "the Bank representative has told our representative that your properties will be taken over shortly unless they hear a response regarding the resumptio[n] of the work to their letter delivered to [y]ou through your attornies [sic]."

41. On 4 May 1979 Wood Components responded by telex to Bank Rahni's statement of termination of force majeure conditions and request for recommencement of work as follows:

While we are pleased to have received official confirmation of your intent to complete the project, and even though we have every intent to complete the project, we are not satisfied that all conditions which caused the suspension have been sufficiently eliminated to the extent that our ex-patriates can, without undue risk, return to the project. In addition, it is not known by us whether the insurance, customs and general supply problems are resolvable to the point that work can be started. We are in hope that, with the Bank's help, these problems and others can be resolved quickly, but the ten day time frame you have mentioned will not be possible. In order to clarify the situation we have listed below some of the matters that need to be resolved before the resumption of the work.

1. Considering what appears to be a continued unsettled condition in Iran it is essential that any of [the Contractors'] expatriates must be exempt from any personal liability that may have accrued as a result of our company's presence in Iran. A very important aspect of this condition is that we must be able to pay the company's obligations in Iran from funds now due [the Contractors]. . . .

2. Insurance claims with Bimeh Iran, must be settled including damage claims on the marine policy, fire claims on the site policy and (most important) claims for damage due to the flood. . .

3. We must have on hand all supplies from customs now in Iran and assurance of supplies from Iran (such as paint) before work can commence. . .

4. We need adequate guarantees from the Government that payments for progress billing, provisional billings, and final billings will be made when due, and assurance that surplus funds collected can be transferred.

On 11 May 1979, not having received any response from Bank Rahni, Mr. Moshofsky telexed again as follows:

In preparation for the start up of the project we will need multiple entry visas for several American ex-patriates. The Iranian Consulate in San Francisco advised us that they must receive a telex from Bank Rahni Iran advising the Consulate that certain Americans are needed for the completion of Contract No. 1135 and that you are requesting that multiple entry visas be issued. . .

With reference to our telex of May 4 - would you please advise what is possible to be done concerning the items mentioned.

On 18 May 1979 Mr. Moshofsky telexed Bank Rahni again, requesting a response to the previous two telexes and reaffirming that

Wood Components Company continues to take actions necessary for resumption of work in Iran, particularly with respect to materia[1]s evaluation and ex-patriot [sic] labor recruitment, however if we are to continue with a positive approach to the project resumption and eventual completion, we will require an affirmative response from [Bank Rahni] to [our previous] messages prior to [24 May 1979].

42. On 20 May 1979 the Claimants were informed by their attorneys that Owsia had advised that "no action is taken on [r]equest for giving entry visa to two expatriates because of uncertainty of work status." On 2 June 1979 Bank Rahni telexed the Claimants as follows:

We think that it is of at most [sic] importance to have the works resumed as soon as possible. For this purpose, we suggest that a meeting be held in Tehran with your presence for reaching a final understanding for immediate resumption of works, during which meeting the points raised by you in your above referred telex may also be discussed and settled.

. . . .

. . . [W]e would like to advise [sic] you that the conditions in Iran have now settled [sic] to the normal and there should not be any problem concerning those expatriates that are authorized by the Government of Iran to stay and work in Iran.

2. As to the payments to be made to you we would like to advise you that:

(I) Your statement for month of Aban has already been paid.

(II) As to payment of your statement for month of Azar (which has been approved by us) and other items of your last statement (which are being reviewed by us) considering that due to elimination of the 22 housing units from the scope of your work under the agreement, the total price of the agreement will have, as agreed, to be adjusted. The amount of the foregoing statements will be taken into account in determining the financial picture of the project this also will be discussed and determined in the course of the proposed meeting and should, after taking into account the above referred adjustment. Then still be any amounts payable to you, such amounts will be paid upon resumption of works.

. . . .

. . . [T]hus we are awaiting to hear from you as to the date of your arrival to Iran in order to fix the meeting.

43. The Claimants responded by telex of 15 June 1979 stating that, in their view, conditions in Iran were not normal and emphasizing that the remainder of the project work would need to be funded from current and future payments due to the Claimants. Wood Components stated: "There is a sufficient amount of funding from outstanding contractual [sic] payments from [Bank Rahni to Wood Components] and (flood) insurance claims to successfully complete the

remainin [sic] work and still allow transfer of surplus funds to the USA." The Claimants then specified three conditions to be met before they could agree to resume the work. These included payment of progress and miscellaneous billings and provision by Bank Rahni of the necessary telex to the Iranian Consulate in San Francisco in order to obtain work and residence permits for expatriate staff. The telex also stated:

The remaining points listed below are those upon which [Wood Components] must have an agreement in principal from [Bank Rahni] prior to meeting[.]

. . . .

4. Provisional Acceptance and Payment. In view of the fact that [the Contractors have] actually completed 98 percent of the work on 478 units, exclusive of flood damage repair, it appears reasonable that all remaining units should be provisionally accepted and the requirements of the bank guarantee eliminated. All of these units have been submitted to [Bank Rahni] for provisiinal [sic] inspection, although, 193 of the units have not been invoiced. Of the 193 units, 30 units in Rasht were submitted for inspection in September, 1978 and in fact, 21 of those units were turned over to the University of Gilan by [Bank Rahni] and then occupied by the German professors. Of the remaining 163 units in Shahin Shahr, 31 units were submitted for inspection on October 21, 1978 and the last 132 units were submitttd [sic] for inspection December 4. . . . Although some of the 193 units may be short of 97 percent completion as required for provisional acceptance, on the average they are substantially within the requirements. The reason we could not bring all of these units up to 97 percent is that customs closed shutting off the supply of necessary items.

. . . .

6. Flood Insurance[.] [The Contractors are] not in a position to finance the flood damage repairs. [Bank Rahni] is to agree to fund flood damage repair in the event that a sufficient settlement with Bimeh Iran is not concluded prior to anticipated resumption for the work.

44. On 25 June 1979 the Contractors received notification that Bank Rahni had prevented the sale by one of Component Builders' Iranian employees of certain surplus materials owned by the Contractors that had been left at the Shahin

Shahr site. The Contractors protested to Bank Rahni that the sale had been authorized by them, but Bank Rahni responded on 16 July 1979 that, given the dispute between the parties, the Contractors "may, in no case, remove any of the goods at the site, otherwise Bank Rahni Iran shall be forced to take appropriate legal action."

45. On 26 June 1979 Bank Rahni telexed the Contractors reiterating that "conditions in Iran have completely returned to normal" and that "nothing now prevents the resumption of works of the project." Bank Rahni warned that unless the Contractors agreed "to resume the works of the project" by 10 July 1979 the Bank would act pursuant to its letter terminating the force majeure suspension and the provisions of the Contract. Wood Components responded by telex on 10 July 1979 expressing its disapproval of Bank Rahni's response and stating:

Your refusal to pay amounts due us and lack of any formal assurance that future billings will be paid and monies transferrable is not an acceptable situation and we sincerely believe your position is unreasonable.

Under the circumstances, we must inform you that unless we have a more satisfactory response from you to our effort to establish a sound and equitable basis for continuation of the work, we will be forced to initiate termination and pursue all claims we have under the Contract.

46. By letter dated 25 July 1979¹⁵ Bank Rahni formally gave notice that it would terminate the Building Supply and Erection Agreement under Article 13.2 thereof (Termination for Cause) on the basis of the Contractors' failure to resume work and refusal to participate in a meeting, stating:

¹⁵The letter appears to have been signed on 25 July but is dated 28 July 1979.

Therefore we do consider your Companies in default from the date of expiry [sic] of the ten days period referred to under our letter [of 25 April] thus causing unreasonable and unnecessary delay in resumption of the Works of the Project.

Pursuant to the foregoing we do hereby and in accordance [sic] with Article 13.5 of the Contract notify you that unless you have rectified your default and resumed the Works of the Project within 30 (thirty) days from the date hereof, the Contract shall be terminated for cause. . . .

47. There is no evidence in the record of any response to this letter from the Claimants and, on 28 August 1979, Bank Rahni wrote to the Contractors stating that because the Contractors "have not acted . . . to rectify your default and resume the works of the Project" the Building Supply and Erection Agreement was terminated for cause as of that date pursuant to Articles 13.2 and 13.5 thereof. Bank Rahni nominated a Mr. Borhani to prepare a final statement of work and requested the Contractors to notify it within one week of their nominee pursuant to Article 13.7 of the Building Supply and Erection Agreement.

48. Finally, on 4 November 1979, a representative from the Isfahan District Court carried out an inspection of the site and took an inventory of the articles and equipment there. Parts of this report (the "Isfahan Court report"), dated 18 December 1979, and inventory have been submitted in evidence by both Parties. The Isfahan Court report was used by Engineer Mostafa Katirai, an expert from the Ministry of Justice, as the basis of a separate opinion (the "Katirai opinion"), dated 10 April 1982, which contains unit price valuations for certain of the items in question.

2. The Claims

49. The Claimants have raised five separate claims against Bank Maskan under the Building Supply and Erection Agreement, namely: (1) payment of unpaid progress invoices for

the Iranian calendar months of Aban and Azar 1357¹⁶ in the total sum of U.S.\$120,252; (2) amounts due for work performed at Bank Rahni's request pursuant to contract modifications in the total sum of U.S.\$87,539; (3) reimbursement of increased social security payments amounting to U.S.\$73,464; (4) payment and release of Service and Supply Price fees of U.S.\$1,070,325 due on provisional acceptance; and (5) payment and release of Service and Supply Price fees of U.S.\$1,004,229 due on final acceptance.

50. In the Statement of Claim the Claimants also requested compensation of U.S.\$656,590 by way of additional damages allegedly suffered as a result of Bank Rahni's failure to perform certain of its contractual obligations. Subsequently, however, the Claimants determined that the waiver of claims contained in Addendum No. 4 to the Building Supply and Erection Agreement barred the assertion of these claims as they all arose within the operative period of such waiver. Therefore the Claimants have forgone this portion of the claim.

51. The Claimants also have asserted a claim for wrongful expropriation of their materials and equipment remaining at the Shahin Shahr site, which is based, in part, on actions of Bank Rahni. As the issue of termination of the Building Supply and Erection Agreement is relevant to the determination of certain of the Claimants' claims, the Tribunal will address the issues of termination and appropriation by Bank Rahni first.

¹⁶In the Statement of Claim the Claimants also alleged that the progress payment for the previous month of Mehr had been only partly paid. This claim appears to have been abandoned.

a. Termination Of The Building Supply And
Erection Agreement And The Ownership Of
Materials And Equipment

(i) Facts and Contentions of the Parties

52. As described in paragraphs 39-48, supra, the Building Supply and Erection Agreement was terminated by Bank Rahni on 28 August 1979 without the Contractors having returned to the site. At that time the Contractors had purchased or acquired equipment, building materials and other supplies which were left at the Shahin Shahr site pending resumption of the work.¹⁷ An Iranian employee of the Contractors was designated to take charge of the Shahin Shahr site and storage yard. As described in paragraph 44, supra, in June 1979 Bank Rahni intervened to prevent the sale of certain of these assets. On 4 November 1979 the Isfahan Court report was prepared by a court official at the request of Bank Rahni. It is not disputed that these items remained in Iran and that they form the basis of actions in the Tehran Public Courts which have been ordered to be suspended pending the conclusion of these arbitral proceedings.

53. The Claimants contend that Bank Rahni acted improperly by purporting to terminate the Building Supply and Erection Agreement for cause pursuant to Article 13.2 thereof. The Claimants assert that the Contractors "were not in default on any count asserted in those letters or provided for in the Agreement" and that the conditions of force majeure still existed at the time of termination. Therefore, it is

¹⁷For the purposes of this Award and as indicated by Article 5.3.1 of the Building Supply and Erection Agreement, Component Builders is deemed to have been the owner of the equipment under this part of the claim. Similarly, Wood Components is deemed to have been the owner of the materials shipped from the United States until their incorporation into the work.

argued: "Such a termination [under Articles 13.2 and 13.5] was not legally possible, and [Bank Rahni] did not choose to terminate for convenience or on account of force majeure." The Claimants also allege that Bank Rahni has not given notice of an intent to invoke its rights under Article 5.3.1 of the Building Supply and Erection Agreement.

54. The Claimants conclude: "[I]t is evident that [Bank Rahni] and Iran had disposed [sic] [the Contractors] of their property wrongfully, for which action Claimants are entitled to compensation under general principles of international law" The Claimants initially asserted this claim against IRAN and claimed the sum of "not less than \$663,499, plus damages" as the value of the property remaining in Iran. However, in subsequent filings in October and December 1984, the Claimants introduced affidavit evidence from a contract management expert, Mr. Mobley, in which the value of the property is stated to be U.S.\$1,174,493 (the "Mobley valuation"), together with photographs of the site and equipment and other documentary evidence of the claim. The Claimants also have stated that they are willing to accept the valuations of particular items prepared by Mr. Katirai.

55. Although this claim was directed against IRAN, Bank Maskan has responded to it and asserts that Bank Rahni acted correctly in terminating the Building Supply and Erection Agreement for default, relying on numerous alleged breaches of contract by the Contractors as set out in its Statement of Defence. Bank Maskan contends that all of Bank Rahni's actions following termination were taken in accordance with Article 13.7 of the Building Supply and Erection Agreement and that it was entitled to take possession of the materials and equipment left at the site. Bank Maskan concludes: "The Owner has minutely observed the contents of the contract and the said terms."

56. Bank Maskan also objects to the attempted increase in the quantum of the claim, noting that, in the Statement of Claim, the Claimants' valuations of the equipment and materials were explicitly said to be based on "the formula in the Agreement for computing the price" and on "the cost of such materials."

(ii) The Tribunal's Decision

57. The Tribunal concurs that this claim is properly attributable to Bank Maskan rather than to IRAN. The actions complained of clearly are those of appropriation by Bank Rahni rather than expropriation by the sovereign state of IRAN.

58. The Tribunal must therefore determine whether or not Bank Rahni was entitled to terminate the Building Supply and Erection Agreement and, if so, whether it acted in accordance with the termination provisions thereof.

59. The answer hinges on whether or not the Contractors were justified in not returning to the project after Bank Rahni notified them of the cessation of force majeure conditions. There is ample evidence in the record to show that, at the time the Contractors departed from Iran, they intended to return to complete the project. Bank Rahni considered that the force majeure conditions had come to an end in April 1979. Although the Contractors originally concurred with the decision to resume work, they imposed certain conditions on such return, as is shown by their telex of 4 May 1979. The Tribunal finds it understandable that the Contractors hesitated to return to the project, not only because of the circumstances in Iran at the time, but also due to the relationship between the Parties. Bank Rahni at that time had failed to make certain payments which were due to the Contractors (see infra paras. 73-74, 91-94) and other disputes had arisen during the life of the project as well. By the time of Bank Rahni's final demand for the

resumption of work the Parties had arrived at a stage where continuation of the contract was de facto impossible. However, the Contractors did not take any formal action to suspend the contract or to declare the continued existence of force majeure conditions. Consequently, the Parties remained bound by the terms of the Building Supply and Erection Agreement. It was evident that the contract could not remain in a state of non-implementation indefinitely and it was therefore logical for one of the Parties to attempt to terminate it. Bank Rahni did so by invoking the termination for cause provision contained in Article 13.2 and proceeded to act pursuant to Article 13.7.1 which governs such a termination. The Tribunal finds, however, that, taking into account all the relevant circumstances, the termination should more properly have been made pursuant to Article 13.3 entitled "For Convenience by Owner." The Contractors were given thirty-days notice of termination as required by Article 13.3. The termination by Bank Rahni therefore may be seen as a legitimate termination for convenience.

60. Article 13.3 of the Building Supply and Erection Agreement provides for the Contractors to prepare a termination claim and refers to the procedures to be applied upon termination set out in Articles 13.7 and 13.8. These procedures require, inter alia, that in the event of a termination by the Owner for cause the Contractors are to be paid for any construction equipment and materials retained in order to complete the project. Article 13.7.2, which specifically refers to termination for convenience, also requires the Owner to establish a fund to secure the Contractors' termination costs. Although not all of these contractual provisions are applicable to these circumstances, the Tribunal sees no reason not to apply the contractual provisions governing post-termination procedures by analogy, as far as is possible.

61. Following termination, Bank Rahni proceeded to act pursuant to Article 13.7.1 of the Building Supply and Erection Agreement which applies to termination by the Owner for cause. It thus follows that the rights of the Contractors subsequent to a termination for convenience would not be less than those specified in Article 13.7.1. Article 13.7.1 requires the Owner to take control of all the equipment and materials, to take an inventory of such items, to evaluate the goods required by the Owner and to pay the Contractors for all items retained. The Contractors are required to remove all other materials and equipment from the site within three months of termination, failing which the Owner may dispose of them and debit the Contractors for any costs incurred. Thus there is a clear obligation under Article 13.7.1 for the Owner to pay for any materials and equipment retained by it. However, Bank Maskan did not at any time notify the Contractors as to which items it wished to retain and therefore argues that the Contractors were under an obligation to remove all the items in question and that Bank Maskan has no responsibility as a result of the Contractors' failure to do so.

62. The Tribunal finds such an argument unpersuasive for three reasons. First, Article 13.7.1, being the article under which Bank Rahni purported to act, requires the Owner to "take under his control" all supplies and equipment remaining at the site. The primary responsibility for these items thus shifts from the Contractors to Bank Rahni. Second, the Katirai opinion prepared in April 1982 shows that Bank Maskan has since used certain of the items retained and states: "[S]ince [the Isfahan Court report was] prepared, such materials have been disposed of and used for completion of the unfinished buildings." In addition, the rebuttal affidavits of Mr. Eslami, a technical employee of Bank Maskan, and Mr. Nakhshab, one of its directors, indicate that Bank Rahni completed the work on the project and Mr. Eslami asserts it was completed "in a period of much less than one year since the abandonment of work by the

contractor." Under any interpretation of Article 13.7, Bank Maskan is required to pay the Contractors for those items actually used. Third, the purpose of the provision in Article 13.7.1 requiring the Contractors to remove any surplus items is to ensure that an owner terminating for cause is not unreasonably required to store and care for items that it does not itself require. Bank Rahni had practical control over the remaining items and, according to its view of the termination, would also have been legally empowered to dispose of them. Neither Bank Rahni nor Bank Maskan did so, nor did they, at any time prior to the commencement of these proceedings, require the Contractors to remove the surplus items. On the contrary, prior to termination, Bank Rahni had telexed the Contractors asserting that none of the goods were to be removed from the site. Article 13.7.1 also required Bank Maskan to take "whatever action . . . may be required for the protection [of the items]." It therefore seems unreasonable to the Tribunal to apply in isolation the limited provisions of that part of Article 13.7.1 which requires the Contractors to remove the goods when such provisions are not directly applicable to a termination for convenience and in circumstances where Bank Rahni had full physical control over the materials and equipment.

63. The Tribunal thus finds that Bank Rahni was entitled to take possession of any materials and equipment at the site necessary for the completion of the project and, on termination, became responsible for the care and protection of all other items at the site. Bank Maskan is thus required to pay to the Contractors the value of any equipment and materials actually used by it, together with the value of all the additional items remaining at the site, with the exception only of any materials required to complete the 478 units actually constructed and for which Bank Rahni has or is deemed by this Award to have made payment pursuant to Article 13.6(b).

64. The Tribunal must therefore determine what materials and equipment remained at the site and place a value thereon. The Tribunal has before it five different listings and valuations of the items: first, the Claimants' valuation in the Statement of Claim of U.S.\$415,999 for equipment and U.S.\$247,500 for materials "measured by the formula in the Agreement for computing the price at which Bank Rahni . . . had the option to purchase such equipment"; second, listings of materials and equipment prepared by Mr. Krueger, giving a cost price of U.S.\$516,357 for equipment and an "on-site cost" valuation of U.S.\$254,005.11 for imported materials as per an inventory dated 1 February 1979; third, the Mobley valuation of a "fair market value" of U.S.\$768,081 for equipment and U.S.\$406,412 for materials based on the listings prepared by Mr. Krueger; fourth, the Katirai opinion prepared from the Isfahan Court report which provides a unit price valuation of certain materials; and fifth, a valuation submitted by Bank Maskan of Rls. 48,583,460 which is stated to have been prepared at some time after October 1984 by "experienced experts of the Engineering Department of Bank Maskan" and which apparently takes into consideration the views and recommendations of four unidentified experts from the Ministry of Justice.

65. The Tribunal finds that if it were to follow Article 13.7.1 of the Building Supply and Erection Agreement, it would have to take the Isfahan Court report and the Katirai opinion as the basis of its valuation. Article 13.7.1 required each party to appoint a representative to prepare an inventory of the goods at the site. If either representative failed to appear the other could proceed in the presence of a court official. A similar procedure is specified for the appointment of an expert to value the items so inventoried. Bank Rahni followed this procedure by asking the Contractors to nominate a representative and then requesting that the inventory be prepared by a court official in the absence of the Contractors' representative and subsequently having a valuation prepared through the

Ministry of Justice. Although it was not possible for the Contractors to attend in person it would have been possible for them to appoint an Iranian representative to attend on their behalf. Irrespective of such attendance, Article 13.7.1 provides that both the inventory and the valuation "shall be indisputable" for both contracting parties.

66. However, Article 13.7.1 relates to actions following termination for cause. Article 13.7.2, governing termination for convenience, refers only to the Contractors being able to recover the costs of disposal of the materials and equipment "less salvage or resale value." The Tribunal must therefore determine the proper method of valuing these items. Article 5.3.1 of the Building Supply and Erection Agreement provides for the Owner to purchase the Contractors' construction equipment on completion of the project at "the depreciated value thereof (determined on a straight line basis over the useful life of the Construction Equipment as set forth in Annex F) assuming normal wear and tear, plus any Iranian taxes and customs fees for which Contractor is liable." Although the Claimants argue that they are entitled to the fair market value of these items, the Tribunal sees no reason why this contractually agreed upon method of valuation on completion of the project should not be used in the case of a termination for convenience.

67. The Katirai opinion and the Isfahan Court report are both prepared on the basis specified in Article 5.3. However, it is impossible for the Tribunal to make an effective valuation from these two reports alone, as they do not contain sufficient information as to the quantities of material and equipment remaining. The Tribunal therefore determines that the residual value of the equipment as shown in the Mobley valuation should be taken as the basis of its

valuation, as it is the only other detailed valuation¹⁸ which follows the procedure specified in Article 5.3. This valuation is consistent with Mr. Krueger's assessment of the cost of the items and adds delivery costs and other expenses to that valuation to arrive at an on-site cost as referred to in Article 5.3 and Annex F of the Building Supply and Erection Agreement. This is then depreciated on a straight line basis over a twenty-four-month period, as also required by Article 5.3. Although Bank Maskan has attempted to challenge certain elements of the Mobley valuation for lack of supporting evidence, the Tribunal finds the Mobley valuation and its attachments to be sufficiently detailed to satisfy the burden of proof on the Claimants and to establish their entitlement to a sum in excess of that first claimed in the Statement of Claim.

68. The Tribunal therefore awards Component Builders the residual value of the U.S.- and Iran-purchased equipment, as shown on the Mobley valuation, of U.S.\$400,840 plus U.S.\$118,137, to reach a total of U.S.\$518,977 in respect of the equipment. Pursuant to Article 5.3 of the Building Supply and Erection Agreement the Claimants are also entitled to recover any Iranian taxes and customs duties paid on the equipment. As the Tribunal has no evidence of any such amounts having been paid, no further sum is awarded in respect of the equipment.

69. Turning to the valuation of the materials, the Tribunal notes that, once again, the basic unit price in the Mobley valuation and the amount listed by Mr. Krueger in the

¹⁸ Although the figure referred to in the Statement of Claim is also said to have been prepared pursuant to the formula in the agreement and is lower than the figure here awarded, it is not accompanied by any documentation or calculations which would permit the Tribunal to compare and contrast it with the later, higher valuation.

inventory dated 1 February 1979 are the same, U.S.\$254,005.11.¹⁹ However, the valuation of the materials submitted by Bank Maskan is substantially higher, i.e., Rls. 35,995,860 (approximately U.S.\$514,225). Bank Maskan's valuation is undated but appears to have been prepared at some time between 2 October 1984 and 13 January 1986 (the date of filing). The accompanying affidavit from Mr. Nakhshab states that it was prepared "[w]ith reference to the comments made by Mr. Edward L. Mobley on 2nd October 1984" on the basis of "the expertise price and the cost of price list of the Ministry of Plan & Budget" and that such price list reflects "all factors such as inflation, increase or reduction of prices." However, by comparing the lists on which this valuation is based with the list of materials in the Mobley valuation,²⁰ it is evident that the Bank Maskan valuation is based upon all of the items at the site, including items required to fully complete the 478 units, and is not limited to only the items in excess of those required for such completion. In the absence of sufficient correlation between the two listings to permit the Tribunal to make its own calculation of the amount admitted by Bank Maskan, a different basis must be found. Again, the Mobley valuation provides the only detailed listing and valuation of these items, giving an "on-site cost" of U.S.\$254,005.11 and an alleged "fair market value" of U.S.\$406,412.25, an increase of 60% over the on-site cost. The Claimants have not explained the basis on which they amended their claim for materials from the cost valuation given in the Statement of Claim to a fair market valuation, other than to state that "it is evident that [Bank Rahni] and Iran had disposedd [sic] [the Contractors] of their property wrongfully, for

¹⁹ Again, the amount claimed in the Statement of Claim, U.S.\$247,500, is slightly lower.

²⁰ For example, the Bank Maskan listing shows 960 units of aluminium windows whereas the Mobley valuation refers to a maximum number of 220.

which action Claimants are entitled to compensation under general principles of international law." Although the supporting data on which the Mobley valuation is based is not in evidence, the Tribunal finds the on-site cost valuation of U.S.\$254,005.11 in the Mobley valuation to be convincing. However, the Tribunal is not satisfied that the Claimants have fully evidenced the basis on which they claim an additional 60% over this figure. Therefore, the Tribunal awards Wood Components the sum of U.S.\$254,005.11 as compensation for the materials appropriated by Bank Maskan. The Tribunal also determines on the evidence before it that the materials in respect of which this award is made include materials supplied for the twenty-two units deleted from the scope of the project but not items needed to complete the 478 units nor unusable items for which insurance claims have been lodged. See infra paras. 127, 180.

b. Unpaid Progress Payments

(i) Facts and Contentions of the Parties

70. The Claimants allege that the sums of Rls. 5,586,102 and Rls. 2,831,571 are outstanding to Component Builders under Progress Payment Invoices Nos. 17 and 18 for the months of Aban and Azar 1357 (23 October to 21 December 1978), respectively. Both invoices have been submitted in evidence.²¹ Invoice No. 18, issued on 10 January 1979, is signed by Mr. Moshofsky and approved by Mr. Roy Decatur of TCSB. Invoice No. 17, issued on 16 December 1978, is not so approved but the amount referred to therein is incorporated and evidenced in Invoice No. 18. The Claimants also rely upon the telex from Bank Rahni of 2 June 1979 (see supra para. 42), which acknowledges receipt of the billings for both Aban and Azar and states: "(I) Your statement for month

²¹The invoice for Aban is erroneously numbered 16.

of Aban has already been paid. (II) As to payment of your statement for month of Azar (which has been approved by us) [this] amount . . . will be taken into account in determining the financial picture of the project."

71. The Claimants acknowledge that Component Builders has received part of the payment under the Aban statement, as evidenced by a telex from Wood Components dated 15 June 1979 and a Bank Rahni internal ledger entry showing a deposit of the sum of Rls. 4,598,866 on 3 April 1979 in favor of Component Builders, but assert that they advised Bank Rahni that such part payment had been used to cover costs incurred as a result of Bank Rahni's suspension of the Building Supply and Erection Agreement for force majeure and that "[t]hese costs are the obligations of [Bank Rahni], therefore, this amount should not be deducted from [Component Builders] payments." The Claimants therefore seek payment of the full amount of both invoices.

72. Bank Maskan denies any liability for such payments, contending that "the Claimants have produced no proof and evidence to substantiate their claim" and that "no invoice made out in accordance with contractual provisions and confirmed by employer or his authorised representative have [sic] been appended to Claimants' submitted documents." However, Bank Maskan has introduced a memorandum sent on 22 January 1983 from its Engineering Department to its Legal and Properties Department in which it is conceded that Rls. 2,713,730 is payable on account of the Azar invoice. Bank Maskan has not referred to that statement in its memorials. Subsequent to the Claimants' reference to the telex of 2 June 1979 Bank Maskan asserted that the Claimants had conceded receipt of the full amount of Invoice No. 17.

(ii) The Tribunal's Decision

73. The invoices submitted by the Claimants to the Tribunal appear to be valid and contemporaneous documents. Payment

was due on these invoices thirty days after submission pursuant to Article 9.5.2.3 of the Building Supply and Erection Agreement. The Tribunal finds the memorandum of 22 January 1983, which was submitted by Bank Maskan itself, to be an admission that the sum of Rls. 2,713,730 referred to therein is payable. The Tribunal is unable to account for the discrepancies in the two calculations and therefore awards Component Builders the full amount of Rls. 2,831,571 as claimed for Invoice No. 18, less the required deductions to be made pursuant to Article 9.5.2.3 of 5.5% contractor's tax and a retention of 10% of the gross payment to reach a net figure of Rls. 2,392,678.

74. The amount due under Invoice No. 17 is also reflected in the subsequent Invoice No. 18. However, the Tribunal is unable to find any contractual support for the Claimants' assertion that the costs of suspension were to be borne by Bank Rahni. The Building Supply and Erection Agreement was suspended by agreement for reasons of force majeure. Article 15.7 of the Building Supply and Erection Agreement provides for each party to bear its own costs in such an event. The amount received by the Claimants must therefore be credited against the value of Invoice No. 17. After deduction of contractor's tax and the ten percent withholding, Component Builders should have received a net sum of Rls. 4,720,256. The Tribunal awards Component Builders Rls. 121,390, the balance due under Invoice No. 17 after deduction of Rls. 4,598,866, which, absent specific and persuasive evidence to the contrary, the Tribunal finds to have been paid. As the full amount of this invoice should have been paid no later than 15 January 1979 Component Builders is also entitled to receive interest on the sum of Rls. 4,598,866 from that date to the date of actual payment. See infra para. 195.

c. Work Performed Pursuant To Contract
Modifications

75. The Claimants next seek payment of amounts allegedly

due to Component Builders under seven modifications to the scope of the Building Supply and Erection Agreement, namely: (1) balance of payment for plumbing relocations in the sum of U.S.\$13,122; (2) costs of additional foundation reinforcement of Rls. 413,800; (3) utility installation fees at Rasht in the sum of Rls. 463,254; (4) Rls. 2,079,000, being the balance of the Rasht mobilization fee; (5) Rls. 740,000, being the balance of extra costs incurred as a result of a change in the cement specification; (6) Rls. 813,900 for excess delivery charges; and (7) the balance of Rls. 699,213 of the agreed fee of Rls. 2,873,830 for final testing of utilities at Shahin Shahr.

(i) Facts and Contentions of the Parties

76. Plumbing relocation -- The Claimants allege that on 7 July 1977 Bank Rahni approved a contract modification to compensate Component Builders for the cost of relocating plumbing fixtures in 207 units at Shahin Shahr. The change involved relocating the plumbing tie-in point on some of the units to reduce the distance from underground utility lines and allegedly was made to reduce the expense to Bank Rahni of connecting sewer and water lines to the units as a result of its alteration of the site. The Claimants have submitted a copy of Change Order No. 4 entitled "Utility Service Relocation" providing for payment of U.S.\$26,650 for the described work on 207 units. The Change Order is dated 7 July 1977 and is signed by TCSB and approved by Bank Rahni's on-site representative, Mr. H. Mehrmarzadeh.²² The Claimants also have submitted invoices for work performed under Change Order No. 4, including a summary invoice dated 7 October 1978 reflecting the work done on all 207 units under the

²²Mr. Mehrmarzadeh was designated by Bank Rahni as its on-site representative with authority to approve changes which did not exceed Rls. 3,000,000.

Change Order and showing a total amount billed of Rls. 1,865,500 (U.S.\$26,650 converted at Rls. 70 to U.S.\$1), together with an amount of Rls. 946,992²³ as already paid and an amount outstanding of Rls. 918,508. It is this latter amount that the Claimants allege is still due.

77. By way of defense Bank Maskan argues that the claim is "proofless" and states that "[the] Claimants failed to produce the related Change Order." It also asserts that the work was not performed and that it is illogical that a Change Order that purportedly was intended to result in savings to Bank Rahni could be the subject of invoices for additional amounts.

78. Foundation reinforcements -- The Claimants state that, after the Building Supply and Erection Agreement was signed, ten of the houses at Shahin Shahr were designated by Bank Rahni to be built on a filled canal bed and that, to avoid damage by settling, the foundations for those units required additional reinforcement not contemplated in the contract specifications. The Claimants allege that the costs of and need for such reinforcement were agreed to by Bank Rahni and TCSB. The Claimants have submitted in evidence an invoice for the work submitted to Bank Rahni by Component Builders dated 9 September 1978 in the sum of Rls. 413,800, together with minutes of a "Weekly Meeting" held on 21 May 1978 reflecting TCSB's approval of the foundation design for the affected houses, an invoice from the supplier of the reinforcement materials used to perform the work, and an extract from Component Builders' monthly report dated 22 August 1978 which states: "[Component Builders] has finished the 10 'canal lots' foundations and has installed the required

²³The statement of account submitted by Bank Maskan shows a single payment on 22 January 1978 of Rls. 1,123,360 "on account of difference in the cost of piping." However, this has not been referred to by Bank Maskan, and there is no specific evidence to relate it to this claim.

reinforcing steel as per the Mortier²⁴ detail and T.C.S.B. and Bank Rahni instructions. These units are now complete with floor slab." The Claimants allege that no payment was ever received for this work and that the sum of Rls. 413,800 is due to Component Builders.

79. Bank Maskan rejects the claim as unsupported. It does not dispute that the work was performed but states that no instruction bearing Bank Rahni's written endorsement was appended to the record and that, "[e]ven if the work was reported in the Mordad 1357 report, this cannot be relied on against the Employer."

80. Utility installation at Rasht -- Pursuant to Article 7.3.4(b) and Annex P of the Building Supply and Erection Agreement Bank Rahni was required to install all site utilities prior to the start of construction. The Claimants allege, however, that when Bank Rahni's subcontractor failed to complete such work on schedule Bank Rahni asked Component Builders to quote a price for the work. Component Builders submitted a price quotation of Rls. 463,254 to TCSB on 13 June 1978. The Claimants assert that the proposal was approved and that the work was performed, relying on an invoice dated 13 October 1978 billing Bank Rahni for the installation of sewer and water lines in Rasht in the amount of Rls. 463,254, which allegedly remains unpaid.

81. Bank Maskan argues that the claim is unsupported by evidence, rejecting the Claimants' exhibit as "[the] Claimant's own fabrication."

82. Rasht mobilization fee -- As evidenced by Article 2.1 of Addendum No. 4 to the Building Supply and Erection

²⁴Mr. E. Mortier was the independent engineer appointed by Bank Rahni to ensure conformity of materials as they were shipped from the United States.

Agreement, it was agreed that Bank Rahni would pay an additional U.S.\$198,000 "equal to Rials 13,860,000" to compensate Component Builders for any additional costs incurred as a result of the decision to build thirty units at Rasht rather than at Shahin Shahr. Article 2.2(c) specified that the final 15% of the fee would be paid "upon completion of the work and delivery of the Site to Owner" and required Component Builders to submit all the units for provisional acceptance by 20 October 1978.

83. Component Builders submitted a "Final billing" to Bank Rahni for the mobilization fee, dated 16 December 1978, which states: "The site cleanup is completed and all equipment has been removed from the Rasht job site." The billing indicates the final amount due for Rasht mobilization to be Rls. 2,079,000, subject only to 5.5% deduction for contractor's tax. The Claimants state that, as shown in the two letters submitting the units to Bank Rahni, twenty-one of the houses at Rasht had been delivered for provisional acceptance on 3 October 1978 and the remaining nine units were delivered on 14 October 1978. The Claimants have also submitted a letter dated 29 October 1978 from TCSB to Owsia attaching the minutes of a meeting held at the site in Rasht on 2 October 1978, which states that as of 2 October the first twenty-one houses were completed except for exterior painting and that, upon an "extensive inspection," TCSB recommended provisional acceptance of the units.

84. Bank Maskan does not deny that Component Builders is entitled to the mobilization payment upon "work completion and hand over of work[site] to employer." Bank Maskan denies, however, that the work was completed. It further rejects the invoice as a fabrication and, while it acknowledges that TCSB recommended provisional acceptance of the units, it asserts that the houses were not in fact completed. Bank Maskan relies, in part, on TCSB's statement in its letter of 29 October 1978 that the standard of the work "would not ordinarily constitute provisional acceptance."

85. Change in cement specifications -- The Claimants allege that when Bank Rahni first changed the project site to Shahin Shahr the soils engineering consultant, Dames & Moore, determined that the "type I" cement originally specified in the Building Supply and Erection Agreement for use at the initial location would be unsuitable at Shahin Shahr because of the high salt content of the soil there. The Claimants allege that Component Builders is entitled to reimbursement from Bank Maskan of the difference in cost between the type I cement originally specified and the type V cement actually used. The Claimants rely on two letters sent by Component Builders to TCSB and Bank Rahni, dated 9 July 1977 and 2 April 1978, respectively, to evidence the instruction to use a different cement and notification to Bank Rahni of the additional cost of Rls. 900 per ton of cement. The letter of 2 April 1978 requested payment of the additional amount for 1160 tons of cement. It is not disputed that this amount was paid by Bank Rahni without objection. In its subsequent billing dated 28 December 1978 Component Builders acknowledged that the correct increase should have been Rls. 800 per ton and credited the appropriate amount to Bank Rahni against later deliveries to reach a balance due to Component Builders of Rls. 740,000.

86. Bank Maskan rejects the claim, arguing that no letter of agreement or Change Order authorizing the change in the type of cement was submitted by the Claimants and contending that the "works claimed have not been performed."

87. Cement freight charges -- The Claimants allege that due to cement shortages in Iran Component Builders could not obtain all the cement needed for the project on the open market but that because of its connections with the Ministry of Housing Bank Rahni was able to obtain cement and sell it to Component Builders. The Claimants allege that Component Builders agreed to buy cement from Bank Rahni at a fixed price which included a delivery charge of Rls. 500 per ton. Later Bank Rahni allegedly provided cement delivered from

Shiraz, which is further from the Shahin Shahr site, with a correspondingly higher delivery charge. The Claimants state that when the cement deliveries were made Bank Rahni's representative, Mr. Eslami, asked Component Builders to pay the increased delivery charge because he had no funds at the site with which to make such a payment and allegedly promised to reimburse Component Builders for any excess over the normal Rls. 500 delivery charge. The Claimants have submitted in evidence a list dated 28 December 1978 which purports to show all cement deliveries made to Component Builders from the Shiraz plant together with the total freight paid by Component Builders. Also in evidence is Component Builders' invoice to Bank Rahni for Rls. 813,900, dated 28 December 1978, entitled "Freight charges paid by [Component Builders]," which states that Component Builders "agreed to pay . . . based upon reimbursement to [Component Builders] of the charges over the normal 500 rials per ton." The bill also recites that "Mr. Eslami and [M]r. Williams discussed this matter at the time of the first delivery and at that time the above reimbursement was confirmed."

88. Bank Maskan dismisses the request for reimbursement as a "strange claim" and argues that no evidence was submitted substantiating Bank Rahni's agreement to reimburse excess freight charges. Bank Maskan rejects the proffered invoice as invalid since it is not in the form stipulated for monthly progress billings in Article 9.5.2.1 of the Building Supply and Erection Agreement. Bank Maskan also relies upon an affidavit from Mr. Eslami denying that he had asked Component Builders to pay the excess charges or promised to reimburse it for the payments "since financial and payments matters were required to be decided at top level."

89. Final utilities testing -- Addendum No. 4 to the Building Supply and Erection Agreement provides in Article 6.1: "Due to non-availability of permanent utilities at the Shahinshahr Site, [Bank Rahni] shall pay [Component Builders Rls. 2,873,830] for the execution and completion of all

tests required in accordance with the Contract documents" The Claimants allege that pursuant to this article Component Builders billed Bank Rahni for a total of Rls. 2,007,832²⁵ for the testing of 313 units, of which Rls. 1,308,619 was paid by Bank Rahni in December 1978. The balance of Rls. 699,213 is still outstanding. In evidence the Claimants have submitted Component Builders' invoice dated 27 December 1978, entitled "Final testing of housing units at Shahinshahr - per contract addendum," which shows the amounts already paid and requests payment of the balance of Rls. 699,213. The Claimants have also submitted a chart which purports to show which houses had been tested and were being billed under the December 1978 invoice.

90. Bank Maskan disputes the validity and relevance of the Claimants' exhibits and denies that the work was performed, rejecting the submitted invoice as lacking "an iota of approval from the Owner's representatives."

(ii) The Tribunal's Decision

91. The Tribunal finds that, for each of these claims, the Claimants have submitted contemporaneous evidence and documentation to support their assertions. In addition, the memorandum of Bank Maskan's Engineering Department referred to in paragraph 72, supra, states, without specific discussion, that "Contractor is entitled to \$57,825" of the total U.S.\$87,539 claimed for these claims. The Engineering Department rejected only the claim for the balance of the Rasht mobilization fee. With the exception of the Rasht mobilization claim, this memorandum confirms that the work on which these claims are founded was performed and

²⁵The difference between the contractual price and the amount billed is accounted for by the fact that only 313 units were tested, whereas the Addendum provided for testing of 448 units.

therefore these amounts are due to Component Builders. The Tribunal also notes that in many instances Bank Rahni has paid part or all of previous billings for similar work by Component Builders without objection. Such a finding also renders unnecessary any discussion of the proper format for submissions of such modifications pursuant to Article 8 of the Building Supply and Erection Agreement. The Tribunal therefore awards Component Builders the sum of Rls. 4,048,675 in respect of the six claims conceded by Bank Maskan.

92. Of this amount, Rls. 158,800 of the fee for foundation work and the entire sum of Rls. 740,000 in respect of the cement supplied relate to material supplies on which contractor's tax is not levied. The amount awarded is therefore reduced by 5.5% contractor's tax only on the value of the services (Rls. 3,149,875) to reach a net figure of Rls. 3,875,432.

93. As regards the Rasht mobilization fee, the Tribunal notes that it is not disputed between the Parties that the amount claimed is equal to 15% of the agreed additional mobilization fee and that such sum is to be released "upon completion of the work and delivery of the Site to Owner." Therefore the only issues for the Tribunal to decide are whether the work was completed and whether the site was delivered to Bank Rahni. The Tribunal notes that, although these matters are closely linked to provisional acceptance, the conditions are not the same as for provisional acceptance under Article 12.1 of the Building Supply and Erection Agreement. It is clear from the documents submitted to the Tribunal that twenty-one units were submitted for inspection on 3 October 1978 and the final nine on 14 October 1978. Although it appears that TCSB and Owsia required additional work to be carried out on the nine units, there is nothing to indicate that they were not all delivered to Bank Rahni as required. Indeed, if that were not the case it seems probable that Bank Rahni would have shown some

contemporaneous objection, as it was itself under considerable pressure to deliver the units to the University of Gilan for occupation by its staff. It is also evident that by 16 January 1979 most of the units at Rasht had not only been submitted to Bank Rahni but were actually occupied by the Gilan University staff. Furthermore, the invoice submitted by the Claimants dated 16 December 1978 recites: "The site cleanup is completed and all equipment has been removed from the Rasht job site." The Tribunal finds the Claimants' claim to be proven and awards Component Builders the sum of Rls. 2,079,000 as invoiced, less 5.5% contractor's tax.

94. The Tribunal therefore awards Component Builders the sum of Rls. 1,964,655 in respect of the Rasht mobilization fee to reach a total award under this part of the claim of Rls. 5,840,087.

d. Claim For Reimbursement Of Increased
Social Security Costs

(i) Facts and Contentions of the Parties

95. The Claimants' next claim is for the reimbursement to Component Builders of U.S.\$49,417²⁶ in increased social security contributions for expatriate staff pursuant to Article 9.7.7 of the Building Supply and Erection Agreement, whereby Bank Rahni was to bear the costs of any changes in the rates of, inter alia, Social Security Organization contributions after the Building Supply and Erection Agreement came into force. The relevant language of Article 9.7.7 is set out in paragraph 21, supra.

²⁶The amount originally claimed was U.S.\$33,350 for expatriate staff and an additional U.S.\$40,114 for Iranian staff.

96. The Claimants contend that (1) the rates at which such premia were calculated were changed during the life of the Building Supply and Erection Agreement; (2) an exemption for expatriate employees from such charges effective at the date of entry into force of the Building Supply and Erection Agreement was revoked by a law passed on 7 July 1976 and published on 25 August 1976, but allegedly not effective until 10 September 1976; and (3) the maximum ceiling for annual chargeable income was increased on 21 March 1977 to Rls. 69,040 per month and again on 21 March 1978 to Rls. 120,000.

97. The Claimants acknowledge that part of their claim was waived by the execution of Addendum No. 4 to the Building Supply and Erection Agreement, which included a mutual waiver of most outstanding claims between the Parties up to the date of its execution, 30 August 1978, including:

Contractor's claim for Social Insurance Organisation premium exemption subject of Contractor's letters dated [25 July 1977, 5 December 1977 and 4 April 1978] and Contract Administration's replies thereto, letters [dated 17 August 1977, 1 January 1978 and 16 April 1978] respectively.

98. The Claimants also acknowledge that there is some confusion as to the effective date of the Building Supply and Erection Agreement. The Claimants have submitted in evidence a letter from the Chairman of the Board of Bank Rahni, addressed to Wood Components and dated 6 July 1976, which refers to approval of the Building Supply and Erection Agreement by the Plan and Budget Organization and states, "we consider the Contract as having been entered into force as of June 28, 1976 (the date on which the Contract was signed)." The letter continues: "If you are in agreement with the above-stated entry into force date, please sign . . . and return [the letter] to this Bank." The letter is countersigned for the Contractors with a date of 7 July 1976. The Claimants acknowledge the existence of another letter of the same date which gives the effective date as 10

August 1976. Although the Claimants state that this letter also has been submitted to the Tribunal, no such letter is in the record.

99. As the waiver of claims contained in Addendum No. 4 is specifically stated to apply to all claims up to the date thereof, the Claimants assert that they are entitled to recover U.S.\$17,743 for their costs incurred after 30 August 1978 as a result of abolition of the exemption relating to expatriate staff, that only costs actually incurred up to that date were waived, and that "[Component Builders'] rights to reimbursement of the Social Security charges accruing after that date on account of that change, however, remain unaffected." The calculation of the figure claimed is shown in a table prepared by the Assistant Secretary of Component Builders and submitted in evidence by the Claimants. It is the inclusion of these costs that increases the amount of the claim for expatriate staff over that formerly claimed, the Claimants having previously stated: "The Contractors agreed to absorb the cost of the July 7, 1976 elimination of the SSO exemption for expatriate employees."

100. The Claimants have also submitted in evidence translations of Social Security Organization Circulars Nos. 400 Technical and 126-3, dated 10 May 1977 and 12 February 1978, respectively. Circular No. 400 relates to the removal of the exemption for expatriate staff and sets out the relevant rates for payment, stating that such persons are subject to the provisions of the Social Security Act as of 7 July 1976. Circular No. 126-3 records the increase of the ceiling for calculation of charges to Rls. 120,000.

101. Article 7 of Addendum No. 4 also states that "differences in the base of Social Insurance premiums which may have come into effect after the date of Entry into Force of the Contract" are not included in the waiver. The Claimants therefore assert a right to reimbursement of the sum of U.S.\$31,674 in respect of changes in the base rate upon

which the social security charges were calculated as a result of the two increases in the ceiling. As evidence of this calculation the Claimants have submitted calculation sheets prepared from income reports remitted to the Contractors' U.S. headquarters during the life of the project in Iran by the Assistant Secretary to the Contractors, Erma Hansen, who states: "During the years 1975 and through 1981 . . . I was responsible for the maintenance of all of the official financial records of [the Contractors]." Although this part of the claim relates to contributions paid for both Iranian and expatriate staff, the Claimants have included only amounts claimed in respect of expatriate staff, as the Claimants no longer have access to the relevant records for Iranian staff which were kept in Iran.

102. Bank Maskan rejects the claim as unfounded. Bank Maskan relies upon a letter dated 16 April 1978 from Owsia to Wood Components in which it is stated that the effective date of the Building Supply and Erection Agreement is 10 August 1976. This date is obtained by reference to another letter, dated 6 July 1976, apparently the same letter referred to in paragraph 98, supra, which is said to be signed by a representative of Wood Components. Bank Maskan does not submit this second letter in evidence. Bank Maskan asserts that the law abrogating the exemption for expatriates was passed on 7 July 1976 and therefore these charges were already in operation on the effective date of the Building Supply and Erection Agreement. Bank Maskan relies upon a letter dated 3 January 1978 from the Social Security Organization, which states that the exemption for expatriates lapsed on 16 Teer 1355 (7 July 1976), the date on which the law granting the exemption was cancelled. Bank Maskan then argues that the "Claimants have accepted without term or condition, the enforcement of Social Security regulations over the contract and therefore, the question of differentiating between various basis [sic] and the sales [sic] of minimum or maximum, were not the intention of the parties."

103. Finally, Bank Maskan asserts that the Claimants have failed to prove that any changes have been made to the social security rates or that Component Builders actually paid such premiums and concludes that the Claimants have no right to claim reimbursement of any amount.

(ii) The Tribunal's Decision

104. The first issue for the Tribunal to address is the effective date of the Building Supply and Erection Agreement. Although the Claimants at one time stated that the Building Supply and Erection Agreement "apparently had an Effective Date of August 10, 1976," the Tribunal finds evidence of an ongoing dispute between the Parties as to the effective date. As there is a letter in the record signed by both Parties, including the Chairman of Bank Rahni, stating that the effective date is 28 June 1976 and none of the Parties has produced the other letter which purports to specify 10 August 1976 as the effective date, the Tribunal determines the effective date to be 28 June 1976.

105. The Tribunal also finds that the exemption for expatriate staff was abolished as from 7 July 1976. This part of the claim therefore falls within Article 9.7.7 of the Building Supply and Erection Agreement but also partly within the waiver of claims recorded in Addendum No. 4. The Tribunal concurs with the Claimants' position that the claim for reimbursement for such charges incurred before 30 August 1978 has been waived.

106. As to the claim for reimbursement of charges incurred after that date, the Tribunal notes that this part of the claim was not clearly articulated until the rebuttal stage of the proceedings. Furthermore, the Claimants have not submitted any direct evidence of payment of the new charges to the Social Security Organization. However, the Tribunal notes that the language of Article 9.7.7 of the Agreement, upon which this claim is based, does not provide for

"reimbursement" of any such charges, but states, "the Contract Price shall be correspondingly adjusted and Owner shall pay Contractor the amount of such adjustment." The Tribunal concludes that the Claimants have established the imposition of an additional liability after 30 August 1978 as a result of which they are entitled to an increase in the Contract Price.

107. Bank Maskan has objected to the Claimants' calculation of this part of the claim for lack of evidence. The document presented by the Claimants consists of a table of calculations, giving the name of the employee, the date of employment, monthly salary and term of reimbursement, to which a factor of 27% of the base rate is applied. The accuracy of this table is attested to by the Supplemental Affidavit of Erma Hansen, the Assistant Secretary to the Contractors, in which it is stated: "These records were based on actual and detailed data transmitted from Iran up to July 1978; but were based on a reconstruction from monthly summaries thereafter." None of the additional data referred to has been submitted or offered in evidence. The Tribunal finds that this document does not constitute sufficient evidence of the proper adjustment to be made to the Contract Price after July 1978 and dismisses this part of the claim.

108. The Tribunal also finds that the increases as a result of the changes in ceilings in March 1977 and 1978 were changes that are specifically excluded from the waiver contained in Addendum No. 4. However, the Tribunal does not find that the Claimants have submitted adequate proof of the legal basis for the first increase, in March 1977, and therefore rejects the portion of the claim for the period from 23 September 1977 to 21 March 1978. Furthermore, the Tribunal finds the calculations submitted in support of the balance of the claim for the period from 21 March to 30 August 1978 to be insufficient evidence to fulfill the burden of proof upon the Claimants.

109. Therefore, Component Builders' claim for adjustment of the Contract Price as a result of changes in the rates of social security contributions is dismissed in full.

e. Payment And Release Of Monies Due On
Provisional Acceptance

(i) Facts and Contentions of the Parties

110. Article 12 of the Building Supply and Erection Agreement contains the procedure for submission of units for provisional acceptance. Inter alia, the units were required to be at least 97% complete at the time of submission with the remaining work being capable of completion within thirty days. Bank Rahni was required to inspect the units within thirty days and to issue a "Certificate of Provisional Acceptance." If within ninety days Bank Rahni did not either issue such a certificate or reject the unit as unsatisfactory Article 12.1.1 provided that "such inaction shall be deemed approval of the said certificate by Owner." On issue of the Certificate of Provisional Acceptance, Wood Components became entitled to payment of 10% of the Supply Price, being 5% of the pro rata payments under Article 9.5.1.1(3)(D) of the Building Supply and Erection Agreement, plus one half of the 10% withholding made by Bank Rahni, pursuant to Article 11.2.1.2, while Component Builders became entitled to the release of one half of the 10% withholding of the Service Price made by Bank Rahni, pursuant to Article 11.2.2.3.

111. The Claimants contend that by the time they were forced to leave the Shahin Shahr site due to the events of force majeure in January 1979 all 478 units had been submitted to Bank Rahni for provisional acceptance, of which 448 were at Shahin Shahr and 30 at Rasht, but that Bank Rahni had only made the appropriate payments due on provisional acceptance

for 170²⁷ of those units. Therefore, they claim payment of all monies due on provisional acceptance for the remaining 308 units.

112. In particular, the Claimants assert that by 25 November 1978 TCSB had tested and approved for provisional acceptance 285 units at Shahin Shahr and 30 units at Rasht. Component Builders had billed Bank Rahni for these 285 units at Shahin Shahr on 16 June 1978 (50 units), 5 July 1978 (70 units), 30 September 1978 (40 units), 22 October 1978 (40 units), 23 November 1978 (38 units) and 25 November 1978 (47 units). As of 23 November 1978 Bank Rahni had made payments due on provisional acceptance of U.S.\$466,287.64 of the Supply Price and Rls. 6,775,061 of the Service Price. No further payments of the Supply Price were made but Rls. 5,450,848, being all but Rls. 172,766 of the Service Price for these units, was subsequently paid by Bank Rahni as indicated on Service Invoice No. 6.

113. Of the remaining 193 units, 30 units at Rasht were submitted for testing on 3 and 14 October 1978 and 132 at Shahin Shahr were submitted for testing on 3 December 1978. The final thirty-one units are said to have been submitted for testing with Submittal No. 6 but were not tested by TCSB, which did not conduct any testing after 27 November 1978. The Claimants assert that Bank Rahni did not "disapprove or reject any of those units within the 90-day period specified in the Agreement" and therefore also seek payment of the unbilled Service and Supply Price fees for these 193 units.

114. The Claimants therefore request an award of U.S.\$376,557.48 of the Supply Price and Rls. 172,766 of the Service Price for the 125 units billed but not paid as

²⁷The documents submitted indicate that this figure should be 160 units.

evidenced by the Claimants' Supply Invoice No. 6 and Service Invoice No. 6, both dated 25 November 1978, plus U.S.\$571,233.58, being the unbilled portion of the Supply Price due on provisional acceptance of 193 units, and U.S.\$120,065.77, said to be the equivalent of Rls. 8,404,604, for the unbilled portion of the Service Price for those 193 units.

115. Bank Maskan has raised a number of defenses to this claim arguing, in particular, that the units were incomplete, i.e., that they were not 97% completed, that the documents submitted by the Claimants were not in accordance with Article 12 and Annex H of the Building Supply and Erection Agreement and so cannot constitute an application for provisional acceptance and that it has already made payments to the Contractors in excess of the agreed Contract Price.

116. In support of its first argument Bank Maskan relies on: (i) the Isfahan Court report, which refers to items being missing and "other minor defects"; (ii) a progress report from TCSB for November 1978, which refers to a "total percentage of completed works 93.1%"; and (iii) affidavit evidence from Mr. Eslami and Mr. Nakhshab. As to its second line of defense, Bank Maskan asserts that (a) the Claimants have not submitted any evidence of testing or approval by TCSB and have failed to submit other documents required by Article 12.1 of the Building Supply and Erection Agreement; (b) because no valid submission for provisional acceptance of these units was ever made to it the ninety-day period referred to in Article 12.1.1 did not come into operation; and (c) provisional acceptance was never granted. The defense of prior payment is supported by copies of internal accounting records.

117. By way of rebuttal the Claimants reconfirm their contentions and state: "[The] submissions were, as required by the Agreement, substantially in the form required by

Annex H. If, indeed, there were any variations, surely [Bank Rahni] would not have paid invoices based on those submissions. The practice and acts of the parties in these cir- [sic] speak volumes." However, at the Hearing it was acknowledged by the Claimants' representatives that of the 132 units submitted in December 1978 60 units were no more than 92% completed at the time the Contractors' expatriate staff left Iran.

(ii) The Tribunal's Decision

118. The Tribunal notes that the submissions made by the Claimants in respect of Invoices Nos. 4, 5 and 6 are in the same format as those for Invoices Nos. 1, 2 and 3. Thus, there seems no dispute that a total of 285 units were tested by TCSB and recommended for provisional acceptance. Bank Rahni's failure to object within ninety days to the submission of the 125 units for which it has not made payment constitutes provisional acceptance of the units pursuant to Article 12.1.1 of the Building Supply and Erection Agreement. Bank Maskan is therefore required to pay to Wood Components the final 5% of the Supply Price, pro rata for these 125 units, and to release to both Wood Components and Component Builders one half of the sums withheld pro rata from the Supply Price and the Service Price, respectively.²⁸ The Tribunal awards Wood Components the sum of U.S.\$376,557.48 and Component Builders the sum of Rls. 172,776, as claimed, in respect of these units.

²⁸ Although the Building Supply and Erection Agreement provides for release of 50% of the amount actually withheld, Provisional Acceptance Invoices Nos. 1 to 6 are all calculated on the basis of release of 5% of the Service Price (which is slightly higher than the contractual provision). However, as TCSB approved these invoices and Bank Rahni paid all but one of them in full, without comment, the Tribunal adopts the practice established between the Parties.

119. The Tribunal also finds sufficient evidence in the file to confirm the Claimants' contention that the thirty units constructed at Rasht were provisionally accepted by Bank Rahni. As to the twenty-one units submitted on 3 October 1978 the Tribunal finds the letters of 29 October 1978 and 16 January 1979 to be persuasive, referring as they do to the fact that TCSB recommended provisional acceptance and to certain units having been submitted by Bank Rahni to the University for occupation. Approval of those units is also evidenced by a letter from TCSB to Owsia dated either 17 or 21 October 1978 submitted in evidence by Bank Maskan. Although this letter refers to a number of defects in the nine units submitted separately for inspection, it refers to an inspection made on 7 and 8 October 1978, i.e., prior to the date on which these units were submitted for approval. In the absence of any evidence to indicate that these additional units were rejected by TCSB after further inspection, they are deemed to have received provisional approval on 12 January 1979, i.e., ninety days after submission,²⁹ pursuant to Article 12.1.1 of the Building Supply and Erection Agreement. The Tribunal awards Wood Components the sum of U.S.\$91,056.60, being the final 5% plus one half of the sums withheld pro rata of the Supply Price, and awards the sum of Rls. 1,346,880 to Component Builders, being 5% of the gross Service Price pro rata in respect of these thirty units.³⁰

120. The remaining 163 units comprise the 132 units submitted for inspection in December 1978 and the 31 units which had been submitted previously but allegedly not tested by

²⁹ See infra para. 142.

³⁰ The unit rates can be calculated from the Supply and Service Invoices Nos. 4-6 as follows: 10% of the per unit Supply Price is U.S.\$3,035.22 for a 3-bedroom unit and U.S.\$2,688.46 for a 2-bedroom unit; 5% of the per unit Service Price is Rls. 44,896 for a 3-bedroom unit and Rls. 38,698 for a 2-bedroom unit.

TCSB. There is no evidence before the Tribunal to suggest that these units were, in fact, tested but rejected by TCSB. It is not disputed that the 132 units were never tested prior to the termination of the Building Supply and Erection Agreement. Therefore the Tribunal must take into account the circumstances surrounding the submissions and determine the factual and financial relationships between the Parties. The crucial issue therefore is whether the Claimants have been able to establish to the satisfaction of the Tribunal that the work on these units was at least 97% complete so as to qualify for provisional acceptance. The Claimants' representatives conceded at the Hearing that at the time the Claimants left Iran sixty units were not completed to 97%. The Tribunal finds that the Claimants are not entitled to the contractual payments due on provisional acceptance in respect of those sixty units. However, the remaining 103 units had been submitted by the Claimants for inspection by TCSB and so the duty to act had shifted to Bank Rahni. Given that the Building Supply and Erection Agreement was first suspended for reasons of force majeure and subsequently terminated by Bank Rahni, the Tribunal finds it unreasonable to now apply the strict procedures and time limits set out in Article 12.1. Rather, if, after the force majeure conditions had ended, Bank Rahni determined that certain of these units did not warrant provisional acceptance, it should have stated so at that time. The Tribunal is not convinced that any of the evidence submitted by Bank Maskan indicates that any of these particular units were not 97% completed when submitted or that these were the units affected by the flood. Although the November 1978 report from TCSB states that the "total percentage of completed works [is] 93.1%," it is evident from the introduction to that report that this percentage was calculated on the basis of a total of 500 units in the project and not the reduced figure of 478 units. Even the Isfahan Court report refers only to minor defects and not to the actual percentage of completion. The Tribunal therefore awards the Claimants the

full amounts due on provisional acceptance of these 103 units.

121. The Tribunal is unable to determine precisely how many of the sixty units acknowledged to be less than 97% completed were 2-bedroom units and how many were 3-bedroom units. As shown on the Submittal Sheets, a total of 372 3-bedroom units and 106 2-bedroom units were actually constructed pursuant to the Building Supply and Erection Agreement, i.e., 22% of the project consisted of 2-bedroom units. By applying this percentage to the sixty units it can be presumed that, rounding to the nearest whole unit, thirteen of those units would have been 2-bedroom units and forty-seven 3-bedroom units. The T.C.S.B. Inspection Request No. 7 shows that, of the 132 units submitted on 3 December 1978, thirty-one were 2-bedroom units and 101 were 3-bedroom. By comparing these figures with the previous submittal, it can be seen that, of the remaining thirty-one units, eleven were 2-bedroom units and twenty 3-bedroom units, a total of forty-two 2-bedroom units and 121 3-bedroom. Thus, of the 103 units for which payment is due, twenty-nine may be considered to have been 2-bedroom units and seventy-four to have been 3-bedroom units. The Tribunal therefore awards Wood Components the sum of U.S.\$302,571.62 and Component Builders the sum of Rls. 4,444,546 in respect of these units, calculated at the unit rates described in note 30, supra.

122. The Tribunal must now address Bank Maskan's defense of prior payment to the Claimants. The Tribunal finds it impossible to relate the evidence submitted to the amounts claimed and is therefore unable to determine whether any adjustment is, in fact, warranted. The Tribunal thus awards under this part of the claim a total amount of U.S.\$770,185.70 to Wood Components and Rls. 5,964,202 to Component Builders. Because contractor's tax of 5.5% has already been deducted from the gross value of the work performed as progress payments were made, no further

deduction is required to the award of fees due on provisional acceptance.

f. Release Of Monies Due On Final
Acceptance

(i) Facts and Contentions of the Parties

123. The Claimants contend that, although there was no formal final acceptance of any of the units, all 478 units were submitted to Bank Rahni for provisional acceptance and, as Bank Rahni did not notify them of any objection to or rejection of any of the units within the one-year guarantee period, the Claimants are entitled to the release of the remaining 5% of both the Supply Price and Service Price for these units in the total amount of U.S.\$1,004,229. The Claimants acknowledge an offset to Bank Maskan of U.S.\$145,387, of which U.S.\$91,687 is said to represent the cost of materials and U.S.\$53,700 additional labor costs to complete the project.

124. The Claimants initially asserted this claim against IRAN (including Bank Rahni) stating that "Iran prevented the Contractors from performing any work that might have been required under the Agreement during the one-year Guarantee Period, and therefore Iran is liable for the full amount of U.S.\$1,004,229 that would have been due to the Contractors at the end of that period." Subsequently the Claimants have argued that "conditions of force majeure obtained in Iran such as to prevent continued performance by [Component Builders] under the Agreement." They concluded: "There was really no way that [Component Builders] could have functioned in Iran in the period from late 1978 to the time when the U.S. Embassy and the hostages were seized." In support of these contentions the Claimants cite the Tribunal's previous decisions in Blount Brothers Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 215-52-1 (6 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 56, and, as

to the continued existence of force majeure conditions, International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Partial Award No. 186-302-3 (19 Aug. 1985), reprinted in 9 Iran-U.S. C.T.R. 10; Gould Marketing, Inc. and Ministry of National Defense, Interlocutory Award No. ITL 24-49-2 (27 July 1983), reprinted in 3 Iran-U.S. C.T.R. 147; Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298; and Touche Ross & Co. and The Islamic Republic of Iran, Award No. 197-480-1 (30 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 284.

125. Bank Maskan initially argued that the claim was directed against IRAN, rather than Bank Maskan, and that it was not answerable to such a claim. Bank Maskan also denies that any of the work has been accepted, either provisionally or finally, and therefore asserts that no further payment is due under the Building Supply and Erection Agreement. In particular, Bank Maskan asserts: "The work in-hand has been left in such a condition that 30% of it was uncompleted and whatever had been accomplished was left in a defective state" and "[the Contractors] have admitted that not having the work completed they have left the work unfinished and have decamped." Finally, commenting upon the Claimants' documentary evidence, Bank Maskan asserts that the Claimants were not released from performance of their obligations by reason of force majeure since Bank Rahni had advised the Claimants that force majeure conditions had ceased as of 25 April 1979 and that they were required to resume performance.

(ii) The Tribunal's Decision

126. The Tribunal has found that 418 units were completed to the required level for provisional acceptance (see supra paras. 118-20) over the period from 16 June 1978 to 3 December 1978. Article 12.2 of the Building Supply and

Erection Agreement provides for the issuance of Certificates of Final Acceptance at the expiry of a one-year guarantee period, i.e., between 16 June 1979 and 3 December 1979. To these dates must be added a period of time equal to the existence of conditions of force majeure. It is not disputed that those conditions lasted for at least ninety days. Therefore the relevant dates for expiry of the one-year guarantee period would in no case be prior to 16 September 1979. The Building Supply and Erection Agreement was terminated by Bank Rahni on 28 August 1979. Thus the Tribunal considers this claim as one for payment of monies due for work performed and goods supplied up to the date of termination, rather than for release of retention monies on expiry of the guarantee period.

127. It is not disputed that Wood Components supplied all of the materials required for 500 units and that only 478 were built. Although the Building Supply and Erection Agreement refers to the joint and several liability of the Contractors, the Tribunal is of the opinion that, with particular reference to the payment provisions of the contract, although the Contractors remain jointly and severally liable to Bank Rahni for the proper performance thereof, such provision does not present a bar to payment in full to one of the obligors for full performance of its obligations, even if, as found in this Award (see infra paras. 128-29), the co-obligor has only performed in part and is therefore entitled only to part payment. The Tribunal finds that Wood Components is entitled to receive the full amount of the C & F Supply Price of U.S.\$14,798,132.35, as defined in Article 9.5.1.1(1) of the Building Supply and Erection Agreement, as amended, less the value of the materials for the twenty-two units³¹ and less the

³¹The materials for the 22 units thus remained in the ownership of the Claimants and are included in the
(Footnote Continued)

acknowledged saving on materials. As the overall projection was for the erection of 109 2-bedroom and 391 3-bedroom units (see Invoices Nos. 3-6), and the total actually erected was 106 2-bedroom and 372 3-bedroom units, the amount due to Wood Components must be reduced by U.S.\$26,884.61 for each of three 2-bedroom units and U.S.\$30,352.20 for each of nineteen 3-bedroom units,³² a total of U.S.\$657,345.63. Wood Components is therefore entitled to receive the sum of U.S.\$14,140,786.72. With the inclusion of the amounts awarded by the Tribunal, Wood Components has received a total of U.S.\$13,814,885.83.³³ The Tribunal therefore awards Wood Components the balance of the reduced C & F Supply Price, less the acknowledged saving of U.S.\$91,687 for the additional materials that would have been required to complete the project, to reach a net figure of U.S.\$234,213.89.

128. As a result of its determination that this portion of the claim is to be considered as one for payment of monies due for work actually performed up to the date of termination of the Building Supply and Erection Agreement (see supra para. 126), the Tribunal is required to determine the degree of work actually completed by Component Builders, within the admitted parameters that sixty units were no more

(Footnote Continued)

appropriated items for which the Claimants have been compensated in this Award. In the absence of any specific evidence to the contrary, the Tribunal is satisfied on the strength of the evidence before it that the materials for which payment is here awarded have specifically been excluded from the list of materials appropriated by Bank Rahni and do not lead to any double recovery for the Claimants.

³²The unit rates are shown on Supply Invoices Nos. 4-6.

³³This sum is the total of U.S.\$10,358,692.64 (70% of the C & F Supply Price for 500 units) by letter of credit, U.S.\$2,219,719.85 (15%) paid on delivery, U.S.\$466,287.64 paid by Bank Rahni on provisional acceptance, and U.S.\$770,185.70 awarded by the Tribunal on provisional acceptance (see supra para. 122).

than 92% completed and 418 units were no less than 97% completed. However, the Tribunal is not required to enter into complex calculations to attempt to establish such figures. In paragraph 73, supra, the Tribunal has already found that Progress Billing No. 18 is a valid and contemporaneous document. This billing is dated 10 January 1979 and reflects work actually performed by Component Builders up to 21 December 1978. In view of the prevailing conditions in Iran which led to the suspension of the project on 24 January 1979 and the fact that no claim has been raised for any additional progress payments for work performed, the Tribunal finds it reasonable to infer that little, if any, additional work was performed in the period from 21 December 1978 to 24 January 1979. It is accepted that no further work was performed after 24 January 1979. Therefore, the Tribunal may rely upon Progress Billing No. 18 as an accurate reflection of the work performed up to termination of the Building Supply and Erection Agreement.

129. Progress Billing No. 18 evidences that Component Builders had received payment in full for all work actually performed to date, subject only to legitimate deductions of Rls. 22,284,097 contractor's tax plus an unidentified "assessment" of Rls. 857,642 and the contractual retention of Rls. 40,516,542. Therefore, it is not necessary for the Tribunal to calculate the actual degree of completion of any of the units, as this is already reflected in the payments made. With the ten percent deduction (Rls. 283,157) made in this Award on award of payment of the gross amount claimed in Progress Billing No. 18 (see supra para. 73), the total amount withheld from these payments is Rls. 40,799,699. Of this total, Rls. 18,190,111 has already been released to Component Builders by payment or award of monies due on Provisional Acceptance (see supra paras. 112, 122). The balance of Rls. 22,609,588 reflects monies due to Component Builders for work actually performed prior to termination.

130. In view of the Tribunal's decision that the claim is properly to be viewed as one for work actually performed, and in the absence of any specific submissions on this issue from the Parties, the Tribunal finds that the Claimants' claim for release of final acceptance payments must be deemed to include a claim for all amounts not otherwise released up to the date of termination of the Building Supply and Erection Agreement, thus increasing the amount claimed for this part of the claim to Rls. 23,243,680. As for the acknowledged saving of U.S.\$53,700 labor costs, the Tribunal finds that such saving is properly admitted against the Claimants' claim for release of final acceptance payments but that, in view of the Tribunal's determination that the claim is to be viewed as one for work actually performed, such a set-off is not proper in these circumstances. Therefore, the Tribunal awards Component Builders a total of Rls. 22,609,588 on termination of the Building Supply and Erection Agreement. Contractor's tax of 5.5% calculated on the gross figures has already been deducted from the progress payments actually received by Component Builders.

3. The Counterclaims

131. Bank Maskan has raised a number of counterclaims against the Claimants totalling U.S.\$6,308,362 which fall into five basic categories: (1) U.S.\$1,677,904 for overpayment of the advance payment in respect of the twenty-two units subsequently deleted from the scope of the Building Supply and Erection Agreement, plus overpayment of U.S.\$7,000,000 as a result of the Contract Price allegedly being higher than was prevalent in Iran at the time; (2) damages for delay in the sum of U.S.\$1,000,000; (3) damages incurred in completing the project and repairing various alleged defects in the units and other breaches of contract in the sum of U.S.\$2,961,283; (4) claims for taxes and social security contributions allegedly paid by Bank Maskan on behalf of the Contractors in the amount of U.S.\$2,144,421.91; and (5) damages allegedly incurred as a

result of the effects of inflation on the project in the sum of U.S.\$4,200,000.

a. The Counterclaim For Return Of Amounts Overpaid

132. It is not disputed that Bank Rahni paid the Contractors 85% of the total Supply Price for 500 units together with an advance payment of 10% of the Service Price for 500 units as required by Articles 9.5.1 and 9.4.2 of the Building Supply and Erection Agreement. Bank Maskan claims that it is entitled to the return of the part of this sum that relates to the twenty-two units subsequently deleted from the scope of work and calculates this amount to be U.S.\$1,677,904.

133. The Claimants acknowledge that they have received payments in respect of all 500 units but contend that Bank Maskan is only entitled to a set-off and credit of U.S.\$558,744 (i.e., 85% of the C & F Supply Price for twenty-two units) in respect of the Supply Price plus U.S.\$91,687 estimated costs of materials and U.S.\$53,700 additional labor costs to complete the project in case of a restart.

134. The Tribunal agrees that Bank Maskan is entitled to be credited with any payments made in respect of the twenty-two units. This credit has already been taken into consideration in paragraph 127, supra, where the full amounts paid by Bank Rahni on the basis of 500 units were offset against the amounts awarded to Wood Components for the 478 units actually erected. Wood Components received such payments under the terms of the Building Supply and Erection Agreement, as amended. Article 9.5.1.2 provides that, should Wood Components receive any "incorrectly calculated or incorrectly claimed" amounts under the letter of credit, Wood Components shall "immediately upon the Owner's request, reimburse the Owner the amount(s) so withdrawn or credited." Although these amounts were properly claimed and calculated

by Wood Components at the time of payment, it was accepted by both Bank Rahni and the Contractors in the letter of 24 January 1979 that a decrease in the Contract Price was required. Article 8.4 specifies that the contractual unit prices and specifications shall be used to calculate any such adjustment of the Contract Price and the Owner has thirty days in which to approve or reject any proposed prices for items not specified in the Price Breakdown. If the revised prices are approved, Article 8.4 requires the letter of credit to be adjusted accordingly. It thus appears to the Tribunal that the obligation to calculate the reduction in the Contract Price lay with the Contractors. The Contractors' ability to fulfill such obligation was not hampered by the existence of force majeure conditions in Iran at the time. As the unit prices were clearly applicable to such reduction there could have been no question of rejection by Bank Rahni, which would have been expected to approve the revision immediately. Therefore, the Tribunal finds that Bank Rahni is entitled to receive interest on the sum of U.S.\$558,743.79, i.e., 85% of U.S.\$657,345.63 from 23 February 1979, i.e., thirty days from the date on which the modification in scope was agreed, to the date of termination of the Building Supply and Erection Agreement, 28 August 1979. The Tribunal determines that for the purposes of implementation of this Award the amount of such interest is to be offset against the amounts awarded to Wood Components herein. As the full amount of the advance payment of the Service Price for 500 units has been amortized against actual progress payments, as shown on Invoice No. 18, no further credit or award of interest is due on that sum.

135. As to the second claim for overpayment, Bank Maskan contends:

[T]he Contractors imposed on the Employer a contract price 50% higher than that then prevailing in Iran for each constructed square metre. After the conclusion of the Contract the Employer took notice of the over charge and made an attempt to modify and reduce the contract price. However,

since, on the one hand, the contractors did not agree to reduce the contract price and the Employer honoured and had respect for its signature under [sic] the Contract, and, on the other hand, since the Employer hoped to benefit from the Contractor's expertise and experience, it complied with the Contractual prices and made payment to the contractors thereon.

Bank Maskan then asserts that the Claimants have requested "an amount equivalent to the total contract price as the difference between the actual contract price and the mutually agreed upon Contract Price." Bank Maskan further asserts that if the Claimants' claim is considered by the Tribunal it should take into account an overpayment allegedly made by Bank Rahni of U.S.\$7,000,000, since "according to the Iranian laws governing the Agreement, upon termination of the Agreement, costs of the works performed shall be determined on the basis of the prevalent prices on the date of production and offer and not on the basis of the contractual prices." In addition, Bank Maskan has submitted in evidence copies of internal accounting records which allegedly show that it has made payment to the Contractors in excess of the total Contract Price. See supra para. 116.

136. The Claimants have not offered any specific defense to this counterclaim but request the Tribunal in general terms to dismiss all of Bank Maskan's counterclaims.

137. Having found in the Interim Award that the Building Supply and Erection Agreement is a "valid and enforceable contract" such that the Claimants' claims are founded in contract, rather than on the basis of quantum meruit, it follows that Bank Maskan is bound by the contractual terms as to the amount of the Contract Price. The claim for overpayment is therefore dismissed.

b. The Counterclaim For Damages For Delay
And Abandonment

138. Bank Maskan asserts that the Claimants are in breach of

their obligations under Article 10 of the Building Supply and Erection Agreement to complete the work in accordance with the time schedule set out therein and as amended and that the Contractors have "confessed to a delay of 11 months." Bank Maskan originally requested damages for delay "to be assessed by experts" but subsequently quantified its claim at U.S.\$1,000,000. Bank Maskan has specifically requested an award of liquidated damages pursuant to Article 10.4 of the Building Supply and Erection Agreement in respect of the thirty units at Rasht.

139. The Claimants contend that any claim for delay in performance of the Building Supply and Erection Agreement is barred by the execution of Addendum No. 4 thereto, in which all claims arising up to that date were waived by the Parties.

140. Article 10.2 of the Building Supply and Erection Agreement, as amended by Addendum No. 2, provided for all 500 units to be ready for provisional acceptance within 341 days of clearance of materials from Iranian customs. Articles 3 and 4 of Addendum No. 4 to the Building Supply and Erection Agreement imposed specific dates for delivery of the 478 units actually constructed, requiring the thirty units at Rasht to be delivered for provisional acceptance by 20 September 1978 and the 448 units at Shahin Shahr to be delivered by 21 October 1978. Article 10.4.1 of the Building Supply and Erection Agreement also provides for payment of liquidated damages at the rate of Rls. 700 per day per unit for each day for which provisional acceptance is delayed in excess of ten working days up to the actual date of provisional acceptance.

141. Liquidated damages of this nature constitute an amount agreed between the Parties that is due without any obligation on the injured party to quantify its loss or damage. The Tribunal must therefore examine the dates on

which the units were completed and those on which provisional acceptance is deemed to have been given and to determine whether any such damages are due.

142. The Tribunal already has found that, of the thirty units at Rasht, twenty-one were submitted for provisional acceptance on 3 October 1978 and the final nine on 14 October 1978. In each case the date given is the date for submission to TCSB for testing. Although this does not constitute formal submission to Bank Rahni of the proposed Certificate of Provisional Acceptance required under Article 12.1.1 of the Building Supply and Erection Agreement, the Tribunal holds that it does constitute the required submission for testing so as to set in operation the time limits prescribed by Article 12. It is apparent from the evidence before the Tribunal that the units were inspected only once and that the subsequent submissions to Bank Rahni were a procedural means of requiring payment for those units which were accepted by TCSB as being 97% complete. The Tribunal has already found that these units were tested by TCSB (see supra para. 119) and therefore takes the date of submission for testing as the date of submission for provisional acceptance. Article 3 of Addendum No. 4 to the Building Supply and Erection Agreement required the thirty units at Rasht to be ready by 20 September 1978. Liquidated damages are therefore payable in respect of any unit which was not submitted for testing by 5 October 1978, i.e., 20 September 1978 plus ten working days. Thus, the Tribunal finds that liquidated damages are due for the period from 5 October 1978 to the date of provisional acceptance in respect of the nine units submitted for provisional acceptance by the Contractors on 14 October 1978.

143. No formal Certificate of Provisional Acceptance was ever issued for these units, but the Tribunal has already determined that the units are deemed to have qualified for such provisional acceptance. See supra para. 119. Article 12.1.1 provides for the Owner to inspect the units within

thirty days of submission and to issue the Certificate of Provisional Acceptance "forthwith" if the units qualify for provisional acceptance. The same article also provides for a maximum ninety-day period to elapse without action by the Owner, after which "such inaction shall be deemed approval of the said certificate by Owner."

144. It is clear from the language of Article 10.4.1 that once liquidated damages start to run liability continues throughout the period of inspection until issuance of the actual Certificate of Provisional Acceptance. As stated above, Article 12.1.1 requires the Owner to inspect the units within thirty days of submission. The Tribunal finds, however, that it would be inequitable for the Owner to continue to receive liquidated damages in respect of such units until the date on which the units are deemed to have been granted provisional acceptance as a result of the Owner's failure to inspect within the period specified in Article 12.1.1. The Tribunal therefore determines that liquidated damages are due in respect of the nine units from 5 October 1978 until thirty days after submission for provisional acceptance, i.e., to 13 November 1978. Therefore, the Tribunal awards Bank Maskan liquidated damages at the rate of Rls. 700 per day for thirty-nine days for nine units at Rasht, to reach an award of Rls. 245,700.

145. A similar approach must be taken with respect to the units at Shahin Shahr. These 448 units were scheduled for completion by 21 October 1978. Of the 200 units submitted for testing by the end of July 1978, 160 units had been recommended for provisional acceptance up to 30 September 1978. Of the balance, 45 units were submitted to TCSB for testing on 8 October 1978, 35 units on 14 October 1978, 36 units on 21 October 1978 and 132 units on 3 December 1978.³⁴

³⁴It is not known whether the 31 units not recommended
(Footnote Continued)

Liquidated damages are therefore due in respect of the 132 units submitted after 4 November 1978, i.e., 21 October 1978 plus ten working days.

146. Once again, no formal Certificate of Provisional Acceptance was issued for any of these units, but the Tribunal has already found that only seventy-two of these units were actually completed to 97% at the time of submission. In respect of those seventy-two units, liquidated damages therefore run from 5 November 1978 to 2 January 1979, i.e., 3 December 1978 plus thirty days, a total of fifty-eight days. The Tribunal therefore awards Bank Maskan liquidated damages of Rls. 700 per day for fifty-eight days for seventy-two units, i.e., Rls. 2,923,200.

147. As noted in paragraph 117, supra, the remaining sixty units have been acknowledged not to have been completed to 97% and so were not ready for provisional acceptance. Article 12.1.3 of the Building Supply and Erection Agreement provides that, if, on inspection, a unit is found not to be completed to 97%, the Contractors have thirty days within which to remedy such defects, after which liquidated damages may be levied. However, the same article also concludes: "In addition, if the Building has not achieved Provisional Acceptance by the appropriate Completion Date as set forth in Article X hereof, Contractor shall pay the Owner liquidated damages in accordance with Paragraph 10.4."

148. At the time that the force majeure conditions commenced Component Builders was in breach of its contractual obligation under Article 4.1 of Addendum No. 4 to submit all units at Shahin Shahr for provisional acceptance by 21

(Footnote Continued)

for provisional acceptance were tested and rejected by TCSB or merely not tested. In the absence of any evidence to indicate that they were rejected, the Tribunal does not deem it appropriate to award liquidated damages for these units.

October 1978. Therefore, liquidated damages were already due in respect of these units and, once the Contractors received notice of the cessation of the formal suspension of the contract on 28 April 1979, they continued to be in breach of this obligation until Bank Rahni acted to terminate the Building Supply and Erection Agreement in August 1979. The Contractors could have taken action themselves in April 1979 to formally and directly invoke the force majeure provisions of the Building Supply and Erection Agreement or even to terminate the agreement pursuant to Article 15.7.3 thereof. They did not do so. The Tribunal therefore determines that liquidated damages are due in respect of the sixty units from 5 November 1978 to the date of termination of the Building Supply and Erection Agreement, less the acknowledged period of force majeure and the ten-day start-up period. Thus, the Tribunal awards Bank Maskan liquidated damages of Rls. 700 per day for 192³⁵ days for sixty units, i.e., Rls. 8,064,000. The Tribunal determines that for the purposes of implementation of this Award all such damages are to be offset against the amounts awarded to Component Builders herein.

149. The Tribunal therefore awards Bank Maskan the total sum of Rls. 11,232,900 as liquidated damages for delay.

c. The Counterclaims For Defects In The
Performance Of The Work And Completion
Of The Project

150. Bank Maskan contends that the Contractors breached their obligations under Articles 4 and 5 of the Building Supply and Erection Agreement by failing to remedy certain defects which occurred in a number of the units and alleges

³⁵The period from 5 November 1978 to 28 August 1979 (296 days) less the period from 24 January 1979 to 8 May 1979 (104 days).

other breaches of contract by the Contractors. As a result it claims it is entitled to receive damages for the costs of completion of the project and repair of defects of at least Rls. 216,202,819. Bank Maskan has not attempted to relate any of these alleged defects specifically to the damage caused by flooding in December 1978 for which Component Builders remained liable in respect of certain unidentified units. See infra paras. 181-84.

151. In particular, Bank Maskan relies upon a second report prepared by Engineer Katirai on 31 December 1981 (the "Katirai status report") and the minutes of a Bank Rahni meeting held on 14 November 1981 to discuss potential claims against TCSB as evidence of the following defects:

- (a) gas valves not in conformity with specifications;
- (b) gas valves not installed in correct position;
- (c) engine room improperly located close to bedrooms;
- (d) waterheaters installed in rooms with inadequate ventilation;
- (e) cracks in edge of façades;
- (f) porch foundations improperly constructed;
- (g) paintwork, plasterwork and external façades defective; and
- (h) use of weak aluminum door and window frames.

Bank Maskan claims that it repaired these defects prior to selling the units and in so doing incurred damages of Rls. 216,202,819, comprising: (i) Rls. 41,924,509 for repair of porch foundations and exterior façades; (ii) Rls. 9,000,000 for repainting costs; (iii) Rls. 128,778,310 to demolish and replace windows, wall insulation and façades; and (iv) an additional amount of Rls. 36,500,000 "since the actual costs incurred by Bank Maskan to remove the defects . . . exceeds by some Rls. 36,500,000 . . . the amount estimated by the Expert." Bank Maskan has submitted in evidence correspondence with the Claimants and internal documentation relating to the alleged defects.

152. Bank Maskan also asserts counterclaims for miscellaneous breaches of the Building Supply and Erection Agreement, alleging various defaults by the Contractors. Although most of these counterclaims are not quantified, Bank Maskan "entrusts the Tribunal with the evaluation of the damages arising out of these breaches." One such counterclaim that is quantified is based upon a letter dated 16 November 1978 from Owsia to Component Builders complaining to Component Builders about waste materials and garbage being dumped into the drainage canal at Shahin Shahr. This letter confirms that a separate letter (which is not in evidence) had been sent to the Contractors by the Municipality of Shahinshahr estimating the costs of removal at Rls. 3,000,000. Owsia requested Component Builders to remove the waste, failing which "the above said amount shall be deducted from the following Statement of Work of your Company and Shahinshahr Municipality's account shall be credited with the same in order for them to take direct action in this regard."

153. To rebut these varied counterclaims the Claimants rely on the waiver of claims contained in Article 7 of Addendum No. 4 to the Building Supply and Erection Agreement, dated 30 August 1978, which states: "The parties hereby waive any and all claims each party may have or may have made with respect to the Contract against the other party, upto [sic] this date" The Claimants assert that this waiver renders most of these counterclaims "irrelevant." The Claimants also contend that most of the alleged defects relate to design elements which were not the Claimants' responsibility and argue, in particular, relying on their own translation of the Katirai status report: "The point that must be noted is that the above 8 types of defect arise from either a mistake in the design or faulty implementation, and in both cases the consulting engineer, T.C.S.B., is to blame." The Claimants conclude from this: "The point is that without agreeing with Bank Maskan as to the fact of a defect, if there were any defects in design, [Bank Rahni]

and its own consultants had set the design and signed off on this matter long before."

154. Finally, the Claimants argue that even if there were any defects attributable to them any obligation or liability in respect of such defects is barred by provisional acceptance of all units between 15 September 1978 and 3 March 1979, as a result of which the warranty and maintenance period for all units expired one year later without Bank Rahni having notified them of any defects. The Claimants cite the Tribunal's decision in Blount Brothers Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 215-52-1 (6 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 56, in support of this contention.

155. The Tribunal concurs with the Claimants' assertion that all claims arising on or before 30 August 1978 are barred by virtue of Article 7 of Addendum No. 4 to the Building Supply and Erection Agreement. Having examined the evidence before it, the Tribunal notes that, as of 30 August 1978, 120 units had been tested and submitted to Bank Rahni for provisional acceptance and that the thirty-day period for inspection by Bank Rahni had elapsed in respect of all 120 units without notice of objection. Without prejudice to the issue of whether such matters constitute design defects, the Tribunal finds that the claims based on the specifications and installation of gas valves, the location of the engine rooms and water heaters, construction of porch foundations, and the use of aluminum window and door frames are claims of a general nature which relate to all 478 units and which should have been objected to by TCSB or Bank Rahni at the time of inspection of the first units submitted for provisional acceptance. The Tribunal determines that failure to object to such defects at the time of provisional acceptance or at any time prior to termination of the Building Supply and Erection Agreement amounts to a waiver of any claim Bank Maskan may otherwise have had. The Tribunal therefore

rejects the counterclaims to the extent that they are based on these items.

156. The Tribunal also finds that the evidence submitted by Bank Maskan consists primarily of the Katirai status report prepared in December 1981 and later affidavit evidence. There is no direct contemporaneous evidence to indicate that Bank Rahni noted or objected to the alleged defects in the façades of certain units at any time between the waiver of 30 August 1978 and the meeting of 14 November 1981. This part of the counterclaim is therefore dismissed for lack of evidence that the claim was outstanding on 19 January 1981.

157. The part of Bank Maskan's counterclaim relating to repainting costs arises out of a shortage of imported paint. Although the paint itself and the quantities required were set out in the contractual specifications contained in Annex K to the Building Supply and Erection Agreement the Contractors found the quantity insufficient and in July 1978 notified Owsia that additional paint would be required and requested approval of the use of a locally manufactured paint. The Claimants proceeded to use a "plastic paint" on thirty-eight units but, according to the affidavit of Mr. Krueger, TCSB withheld formal approval of that paint pending the actual results at the end of the one-year warranty period. The thirty-eight units are identified in a note from Component Builders to TCSB dated 30 September 1978. It is thus apparent to the Tribunal that any claim arising out of paint defects in connection with these thirty-eight units was not waived by the execution of Addendum No. 4 to the Building Supply and Erection Agreement.

158. With the exception of one unit, No. 217, all of the thirty-eight units identified were tested by TCSB and submitted for provisional acceptance in submissions Nos. 4, 5 and 6. The one-year guarantee period for these units therefore commenced between 13 and 25 February 1979, i.e., three months from the date of the relevant invoices. Any

objection by Bank Rahni to the quality of the paintwork should therefore have been raised before the expiry of the one-year guarantee period, or, given the prior termination of the Building Supply and Erection Agreement, within a reasonable period of time thereafter. See supra para. 120. As Bank Maskan has not produced any evidence to indicate that any objection was raised or that a claim was outstanding prior to 19 January 1981, the claim is therefore dismissed.

159. The Tribunal must now address the various claims for minor breaches of the Building Supply and Erection Agreement raised by Bank Maskan. In the majority of cases Bank Maskan has produced no evidence of damage and the claims are therefore dismissed for lack of proof. With respect to the claim for removal of waste material from the site, the Tribunal notes that the letter dated 16 November 1978 on which Bank Maskan relies was submitted in evidence only in September 1986. Although Bank Maskan alleged a general breach of Article 5.7.5.4 of the Building Supply and Erection Agreement in its original Statement of Defence and Counterclaim filed on 3 January 1983, this claim was not further identified and quantified in any of the intervening submissions and the Claimants have not had any opportunity to respond to this particular part of the claim other than at the Hearing. Furthermore, the letter of 16 November 1978 merely indicates an intention to deduct the funds from the Contractors' account to be paid to the Municipality and does not evidence actual payment by Bank Rahni or any loss incurred by it. Therefore, this portion of the counterclaim is also dismissed.

160. Finally, the Tribunal rejects Bank Maskan's claim for payment of an additional Rls. 36,500,000 as additional costs of completing the project. This claim is merely an estimate and is unsupported by any evidence and is therefore not acceptable to the Tribunal as presented.

d. The Counterclaims For Taxes And Social Security Premia

161. Bank Maskan has raised counterclaims for Rls. 43,023,237 for taxes allegedly unpaid for the period ending 31 May 1978 and Rls. 113,519,573 for allegedly unpaid social security contributions. Bank Maskan has introduced in evidence two letters, one from the Ministry of Economic Affairs and Finance dated 25 November 1981 evidencing the amount claimed in respect of taxes and one from the Social Insurance Organization dated 25 January 1982 in respect of the social security premia. Bank Maskan contends that it has paid both amounts to the relevant authorities and therefore is entitled to reimbursement.

162. The Claimants contend that these counterclaims do not arise out of the same contract or transaction as any of the Claimants' claims and are therefore outside the jurisdiction of the Tribunal.

163. The Tribunal notes that Bank Maskan has not introduced any evidence to indicate that it has actually paid such amounts on behalf of the Contractors or that such payment was made prior to 19 January 1981. Consequently, there is no evidence to indicate that Bank Maskan's claim was outstanding as at 19 January 1981 and the claim therefore is dismissed. Similar counterclaims are dealt with in the section of this Award relating to claims brought by and against IRAN. See infra para. 189.

e. Damages Due To Inflation

164. Bank Maskan's final counterclaim is for damages allegedly incurred due to both domestic and international inflation. Bank Maskan asserts: "Since the damage was caused by the Contractors' failure to fulfill their undertakings, the Employer is entitled to be compensated for the damage" and seeks the sum of Rls. 206,600,000 or

U.S.\$4,200,000 on this account for completion of the project, reflecting a stated average annual inflation rate of 30%.

165. The Claimants do not respond specifically to this counterclaim other than by asking the Tribunal to reject all of the counterclaims and referring to the waiver contained in Addendum No. 4 to the Building Supply and Erection Agreement.

166. The Tribunal dismisses this counterclaim for lack of evidence. Bank Maskan has not provided any breakdown of the amount claimed or shown that it has, in fact, incurred such expenses.

4. Summary

167. The Tribunal therefore awards the following sums under the Building Supply and Erection Agreement:

(a) To Component Builders:

- (i) U.S.\$518,977 value of equipment appropriated by Bank Rahni;
- (ii) Rls. 2,514,068 payment of progress invoices;
- (iii) Rls. 5,840,087 additional work;
- (iv) Rls. 5,964,202 provisional acceptance fees;
and
- (v) Rls. 22,609,588 payment for work performed up to the date of termination.

(b) To Wood Components:

- (i) U.S.\$254,005.11 value of materials appropriated by Bank Rahni;
- (ii) U.S.\$770,185.70 provisional acceptance fees;
and
- (iii) U.S.\$234,213.89 balance of the C & F Supply

Price.

(c) To Bank Maskan:

(i) Rls. 11,232,900 liquidated damages for delay.

168. The Tribunal thus awards Component Builders the net amounts of U.S.\$518,977 and Rls. 36,927,945 plus interest on the sum of Rls. 4,598,866 as provided in paragraph 74, supra, and Wood Components the net amount of U.S.\$1,258,404.70, in respect of claims arising out of the Building Supply and Erection Agreement. Contractor's tax has already been deducted where required.

169. The Tribunal awards Bank Maskan Rls. 11,232,900 to be offset against the amounts awarded to Component Builders plus interest on the sum of U.S.\$558,743.79 as provided in paragraph 134, supra, to be offset against the amounts awarded to Wood Components.

B. THE CLAIMS AND COUNTERCLAIM INVOLVING BIMEH IRAN

1. Factual Background

170. Pursuant to Article 6.2.1 of the Building Supply and Erection Agreement the Contractors were required to obtain insurance for the project from Bimeh Iran. In particular, Wood Components obtained marine insurance policy No. 35/194310 to cover all consignments of materials shipped from the United States for the project and Component Builders obtained contractor's all risk policy No. 36/11690/21 to cover the works and materials until "taken over or put into service by the principal."

171. The materials and supplies for construction of the project were shipped to Iran in two shipments which arrived in March and June 1977. On arrival of the first shipment Wood Components noted that several of the packing containers

were damaged, mainly due to "carelessness and inexperience of the stevedores and the other crews," and notified Bimeh Iran accordingly on 27 March 1977, stating:

Since some of the boxes containing the goods have been damaged, and the goods in them has [sic] also been damaged, therefore this notice has been given in order that you may arrange for your company's representative to visit the job site to inspect and prepare a written report on the damage.

Bimeh Iran responded on 5 June 1977 referring to an intervening meeting on 8 April 1977 and authorizing the opening of the packages and inspection of the damaged goods. Also in April 1977 a TCSB report records: "Mr. Mir Sadeghi from Bimeh Iran Insurance is on site in Shahinshahr twice a week to document handling damage sustained on the first shipment." The Contractors then prepared a check list of the damaged packages and delivered an inventory of missing goods to TCSB on 11 May 1977.

172. Although the damage occurred in early 1977 and the Contractors' attorney was in correspondence with Bimeh Iran, it appears that the damaged goods were not inspected by Bimeh Iran until June 1978 when Dr. Rassekh, an independent engineer appointed by Bimeh Iran, visited the site. According to a letter from Bimeh Iran dated 1 July 1978, the damaged goods were stacked haphazardly and were not in a condition to be examined. However, Bimeh Iran acknowledged in that letter that a claim had been filed and requested the Contractors to arrange the goods in a manner permitting inspection. Dr. Rassekh returned to the site on 5 December 1978, at which time the Claimants assert that he was able to inspect the damaged goods. During his inspection Wood Components provided Dr. Rassekh with a detailed inventory and valuation of the damaged or missing goods prepared by Mr. P. Hansen, who had been employed by the Contractors specifically to handle the insurance claim. The value of the damaged goods is alleged to be U.S.\$174,866 plus

U.S.\$34,485 for damaged plywood and sheetrock, as valued separately by Mr. G. Moshofsky.

173. Meanwhile, on 7 August 1978, a fire had totally destroyed one of the units being constructed at Shahin Shahr and seriously damaged another. Component Builders notified Bimeh Iran's Isfahan branch office immediately and gave formal written notice to the head office on 13 August 1978. Engineer Moalemzadeh was sent by Bimeh Iran to examine the damage some days afterwards. Component Builders repaired the units and, through TCSB, submitted a list of materials and labor costs to Engineer Moalemzadeh on 13 October 1978 totalling Rls. 3,415,886, including demolition costs and expenses incurred in respect of the second unit. A similar claim was sent to Mr. Zand of Bimeh Iran on the same day.

2. The Claims

a. Contentions Of The Parties

174. The Contractors have raised two claims against Bimeh Iran, the first for payment of the sum of U.S.\$209,351 under the marine insurance policy, and the second for payment of U.S.\$48,798 (being Rls. 3,415,886 converted to U.S. dollars at a rate of U.S.\$1 to Rls. 70) under the contractor's all risk policy. In each case the Claimants contend that the claims arise out of risks covered by the policies at the time the damage was incurred and that a valid claim was lodged with Bimeh Iran but that no payment has been received. The Claimants rely on the documents referred to above to evidence their claim and have also submitted in evidence photographs of the damaged goods and units.

175. Bimeh Iran disputes any obligation to pay these amounts. Its main defense is that, as the claims relate to damage incurred in 1977 and 1978, they are barred by Article 36 of the Iranian Insurance Law, which allegedly provides for a two-year period of limitation for such claims. Bimeh

Iran further asserts that if any monies are payable under the policies they are due to Bank Maskan as the Claimants were acting as contractors to Bank Rahni at the time the damage was incurred. Bimeh Iran also argues that it has never entered into any contract with MEI and therefore no claim by MEI can lie against Bimeh Iran. Finally, Bimeh Iran contends that the Claimants have not submitted any evidence to prove the claim for fire damage and that the goods damaged in shipment were not available for examination. In support of this contention Bimeh Iran has submitted in evidence an undated note³⁶ from Dr. Rassekh confirming that he visited the Shahin Shahr site but was unable to inspect the damaged goods and that at the time of writing the Claimants had not notified Bimeh Iran of their readiness for inspection.

176. The Claimants deny the validity of Bimeh Iran's defenses, in particular asserting that Wood Components and Component Builders were jointly insured with Bank Rahni under the policies and that, as pursuant to Article 6 of the Building Supply and Erection Agreement the Claimants were to bear the risk of such loss or damage at the time it was incurred, they are also the parties entitled to receive the insurance proceeds.

177. In response to Bimeh Iran's defense based on the statute of limitations allegedly contained in the Iranian Insurance Law the Claimants argue that, even if such a limitation existed at the time the damages were incurred, "all Iranian statutes of limitation have been repealed and declared a nullity as being inconsistent with the principles and standards of Islam" and that, in any event, their claims were filed with Bimeh Iran within the required time period.

³⁶The note refers to a document dated 8 December 1977 and therefore may be presumed to have been prepared after that date.

In addition, the Claimants argue that it has been the practice of international arbitral tribunals "not to give effect to statutes of limitation, especially in circumstances such as this, where it is evident that claimant parties have only limited means if any to effectively assert their claims."

b. The Tribunal's Decision

178. The Tribunal finds the Claimants to have evidenced satisfactorily the damages which form the basis of these two claims. The documents submitted show that Bimeh Iran was notified promptly of the damage and of the existence and amounts of the claims and therefore Bimeh Iran is prima facie obligated to make payment under the two policies.

179. The Tribunal also finds that Bimeh Iran's defenses to payment are unfounded. Bimeh Iran has not submitted in evidence the text of the Iranian Insurance Law upon which it bases its defense. Accordingly, this defense is dismissed for lack of evidence and so the Tribunal need not consider whether such limitation was subsequently nullified. As to the argument that payment, if any, is due to Bank Maskan rather than to the Contractors, the contractual language of Article 6.2.1 of the Building Supply and Erection Agreement makes it clear that the policies were to be issued jointly "as their interests may appear." It is evident to the Tribunal that at the time the damage was incurred the risk of loss or damage under the Building Supply and Erection Agreement lay with the Contractors and not with Bank Rahni.

180. Mr. Krueger states in his affidavit that the materials listing prepared by him reflects the quantities of "useable construction items, materials and sub-assemblies." The valuation prepared by Mr. Hansen in support of this insurance claim indicates that all of the items in this part of the claim were unusable as the Claimants were seeking 100% of the value of each item. The Tribunal is therefore

satisfied that an award on this part of the claim would not lead to double recovery for the Claimants. Therefore, and in the absence of any evidence from Bimeh Iran as to the quantum of the claim, the Tribunal accepts the evidence submitted by the Claimants and awards Wood Components the sum of U.S.\$209,351 and Component Builders the sum of Rls. 3,415,886, as claimed.

3. Liability For Flood Damage

181. As described in paragraph 35, supra, 165 units at Shahin Shahr were damaged by flooding in December 1978, just a few days after the final units had been submitted to TCSB for testing. The damaged units have not been identified. Component Builders asserts that it notified Bimeh Iran of the incident, but has not made any claim under the policy.

182. The Claimants assert that a number of the units had already received provisional acceptance at that time and therefore were not Component Builders' responsibility to insure or repair. The Claimants further contend that if any amount awarded to them is reduced by the Tribunal on account of the flood damage IRAN is liable to the Claimants for that damage under the contractor's all risk policy issued by Bimeh Iran and request a declaration "that they are not liable for any of the flood damage, for the reason that any obligation on the Contractors' part to compensate Iran (including Bank Rahni Iran) for such damages is offset by the obligation of Iran (including Bimeh Iran) to compensate the Contractors in the same amount under the All Risk Policy."

183. Bimeh Iran has not responded specifically to this contention. Bank Maskan agrees that it is entitled to receive the insurance proceeds "since the costs involved were incurred and met by the bank."

184. Article 6.1.1 of the Building Supply and Erection Agreement provides for the Contractors to insure the units up to the end of the Iranian calendar month in which provisional acceptance is obtained. The Tribunal finds that 160 units were deemed to have received provisional acceptance prior to 6 December 1978, the date of the flood, through expiry of the ninety-day period after submission. All of these had received provisional acceptance by 5 October 1978 and so were no longer Component Builders' obligation to insure. However, the remaining 288 units at Shahin Shahr were still required to be insured by Component Builders, which would have a prima facie claim against Bimeh Iran under the all risk policy in respect of any of these units damaged in the flood. However, Component Builders has not pursued such a claim and in view of its findings as to the degree of completion of the project and the lack of evidence as to which units were affected by the flood, the Tribunal need not address the issue further.

4. The Counterclaim

185. Bimeh Iran has raised a counterclaim for taxes allegedly unpaid by the Contractors in the sum of Rls. 63,964,255. As an identical counterclaim has been raised by IRAN this counterclaim is dealt within the section relating to claims against IRAN. See infra para. 189.

C. THE CLAIM AND COUNTERCLAIM INVOLVING IRAN

1. Facts And Contentions Of The Parties

186. As described in paragraphs 52-56, supra, certain items of equipment and materials belonging to Component Builders remained in Iran after termination of the Building Supply and Erection Agreement. The Claimants allege, not only did Bank Rahni act in breach of contract by preventing the sale of the items by the Contractors, but also: "As a result of

the hostile conditions and actions for which Iran is legally responsible . . . the Contractors have been prevented from traveling to Iran to retrieve or sell their property." They further allege: "Iran has taken the Contractors' equipment, building materials, supplies, and other tangible property at the Shahin Shahr job site discriminatorily and without compensation, thereby unlawfully expropriating such property and otherwise depriving the Contractors of their rights in such property."

187. IRAN denies that any claim is attributable to it and counterclaims for the sum of Rls. 63,964,255 for allegedly unpaid taxes. The counterclaim is based on a tax assessment dated 30 January 1980 which shows a total amount due of Rls. 43,023,237.

2. The Tribunal's Decision

188. The Tribunal finds that the claim for expropriation is disposed of by virtue of its determination that Bank Rahni duly terminated the Building Supply and Erection Agreement for convenience pursuant to its terms and the award of the value of the equipment in question to the Claimants. See supra paras. 57-69. No further allegations of expropriation have been evidenced against IRAN and the claim against IRAN is therefore dismissed.

189. The Tribunal dismisses, too, the counterclaim for unpaid taxes raised by IRAN. The Tribunal consistently has held that it has no jurisdiction over counterclaims relating to allegedly unpaid taxes when the obligation to pay such taxes does not arise out of the contract, transaction or occurrence that constitutes the subject matter of the claim in the same proceedings. See Houston Contracting Company and National Iranian Oil Company, et al., Award No. 378-173-3 (22 July 1988); International Technical Products Corp., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 196-302-3 (28 Oct. 1985), reprinted

in 9 Iran-U.S. C.T.R. 206; General Dynamics Telephone Systems Center, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 192-285-2 (4 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 153; Questech, Inc. and Ministry of National Defence, Award No. 191-59-1 (25 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 107; Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298; T.C.S.B., Inc. and Iran, Award No. 114-140-2 (16 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R. 160. The three Chambers have fully concurred on this finding. The Tribunal does not see any reason to depart from these precedents in the instant case.

IV. CURRENCY OF PAYMENT

190. The Building Supply and Erection Agreement provided in Article 9 for payment of the Supply Price to Wood Components in U.S. dollars and of the Service Price to Component Builders in Iranian rials. Similarly, the marine insurance policy obtained by Wood Components from Bimeh Iran was denominated in U.S. dollars, whereas the contractor's all risk policy obtained by Component Builders was denominated and payable in Iranian rials. As payment of all amounts awarded to the Claimants will be made out of the Security Account established pursuant to the Algiers Accords, all rial amounts awarded herein must be converted to dollars.

191. Although the Building Supply and Erection Agreement does not itself specify an exchange rate to be used by the Parties, the Price Breakdown contained in Annex F indicates that the Parties had agreed to use a rate of U.S.\$1 to Rls. 70 when pricing the work, which rate, the Claimant notes, has been used in certain of the documents submitted by Bank Maskan. Bank Maskan also has submitted documents which apply different exchange rates. The Tribunal determines that all amounts awarded herein in rials and payable by or

to Bank Maskan shall be converted to U.S. dollars at this rate.

192. With regard to the amounts awarded in rials herein and payable by Bimeh Iran, the Tribunal applies the principles set forth in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, et al., Award No. 225-89-3 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3. The Tribunal notes that the average Iranian rial/U.S. dollar conversion rate for the year 1978, when the obligation arose, was approximately Rls. 70.475 to U.S.\$1, whereas the present conversion rate, according to the latest published rate,³⁷ is Rls. 71.50 to U.S.\$1. The Tribunal is satisfied that this fluctuation in rate is not such as to be "in excess of what reasonably could have been foreseeable."³⁸

193. In view of the foregoing, the Tribunal determines that no further adjustment is required to the amounts awarded herein and that the sum of Rls. 3,415,886 payable by Bimeh Iran to Component Builders shall be converted to U.S. dollars at the present conversion rate according to the latest published rate prior to the date of this Award, Rls. 71.50 to U.S.\$1. See supra note 37 and accompanying text.

V. INTEREST AND COSTS

A. INTEREST

194. The Claimants seek interest on all amounts awarded by the Tribunal at the rate of 12% per annum, the rate alleged to have been the legal rate of interest in Iran during the

³⁷As of 3 August 1989, published on 4 August 1989 in the Financial Times, London.

³⁸McCollough, supra, para. 109.

period in which the Contractors were operating there, to the date of the Award. In the absence of any contractual provisions for payment of interest, the Tribunal finds it proper to fix the interest rate at 10%, pursuant to the principles and guidelines established by the Tribunal in McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, et al., Award No. 225-89-3 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 3.

195. Unless specified otherwise the interest payable on all amounts awarded is to be calculated from the date on which the sums became due and payable up to and including the date of instruction by the Escrow Agent to the Depositary Bank to make payment, as follows:

(a) To Component Builders:

- (i) On the sum of U.S.\$518,977, being the value of the equipment retained by Bank Rahni after termination of the Building Supply and Erection Agreement, interest shall run from 4 February 1980, i.e., three months after the date of the Isfahan Court inspection;
- (ii) On the sum of Rls. 2,392,678, being the net amount due under Progress Payment Invoice No. 18, interest shall run from 9 February 1979,³⁹ i.e., thirty days from the date thereof;
- (iii) On the sums of Rls. 121,390, being the net amount due under Progress Payment Invoice No. 17, and Rls. 1,964,655, being the net amount awarded for mobilization costs, interest shall run from 15

³⁹Bank Rahni's partial payment of Invoice No. 17 during the period of force majeure indicates that Bank Rahni was not prevented from making payment during this period and therefore the period of force majeure need not be excluded for the purposes of calculating interest on sums found to have been due and payable prior to the commencement thereof.

January 1979, i.e., thirty days from the date of the billings in respect thereof;

(iv) On the sum of Rls. 4,598,866, being the balance of Progress Payment Invoice No. 17, interest shall run from 15 January 1979, i.e., thirty days from the date thereof, up to and including 3 April 1979, i.e., the date of payment by Bank Rahni;

(v) On the sum of Rls. 867,990, being the net amount awarded under Change Order No. 4, interest shall run from 6 November 1978, i.e., thirty days from the date of the billing in respect thereof;

(vi) On the sum of Rls. 399,775, being the net amount awarded for foundation reinforcement work, interest shall run from 9 October 1978, i.e., thirty days from the date of the billing in respect thereof;

(vii) On the sum of Rls. 437,775, being the net amount awarded for utility installation, interest shall run from 12 November 1978, i.e., thirty days from the date of the billing in respect thereof;

(viii) On the sum of Rls. 660,756, being the net amount awarded for utilities testing, interest shall run from 26 January 1979, i.e., thirty days from the date of the billing in respect thereof;

(ix) On the sums of Rls. 740,000, being the amount awarded as a result of the change in cement specifications, and Rls. 769,136, being the net amount awarded for additional freight charges, interest shall run from 27 January 1979, i.e., thirty days from the date of the billings in respect thereof;

(x) On the sum of Rls. 172,776, being the amount outstanding under Invoice No. 6 on provisional acceptance, interest shall run from 7 June 1979, i.e., the date on which provisional acceptance of

the units reflected in this invoice is deemed to have been granted⁴⁰;

(xi) On the sum of Rls. 942,816, being the amount due on provisional acceptance of twenty-one units at Rasht, interest shall run from 1 January 1979, i.e., the date on which provisional acceptance of the units is deemed to have been granted;

(xii) On the sum of Rls. 404,064, being the amount due on provisional acceptance of nine units at Rasht, interest shall run from 12 January 1979, i.e., the date on which provisional acceptance of the units is deemed to have been granted;

(xiii) On the sums of Rls. 4,444,546, being the amount due on provisional acceptance for the additional 103 units, and Rls. 22,609,588, being the amount due on termination of the Building Supply and Erection Agreement, interest shall run from 28 August 1979, i.e., the date of termination of the Building Supply and Erection Agreement;

(xiv) On the sum of Rls. 3,415,886, being the amount due under the contractor's all risk insurance policy, interest shall run from 13 October 1978, i.e., the date on which the claim was submitted.

(b) To Wood Components:

(i) On the sum of U.S.\$254,005.11, being the value of the materials retained by Bank Rahni after termination of the Building Supply and Erection Agreement, interest shall run from 4 February 1980, i.e., three months after the date of the Isfahan Court inspection;

⁴⁰Excluding the period from 24 January to 8 May 1979 due to prevailing conditions of force majeure.

(ii) On the sum of U.S.\$376,557.48, being the amount outstanding under Invoices Nos. 4-6 on provisional acceptance, interest shall run from 7 June 1979, i.e., the latest date on which provisional acceptance of the units is deemed to have been granted⁴¹;

(iii) On the sum of U.S.\$63,739.62, being the amount due on provisional acceptance of twenty-one units at Rasht, interest shall run from 1 January 1979, i.e., the date on which provisional acceptance of the units is deemed to have been granted;

(iv) On the sum of U.S.\$27,316.98, being the amount due on provisional acceptance of nine units at Rasht, interest shall run from 12 January 1979, i.e., the date on which provisional acceptance of the units is deemed to have been granted;

(v) On the sums of U.S.\$302,571.62, being the amount due on provisional acceptance for the additional 103 units, and U.S.\$234,213.89, being the net amount due on termination of the Building Supply and Erection Agreement, after set-off of the acknowledged credit, interest shall run from 28 August 1979, i.e., the date of termination of the Building Supply and Erection Agreement;

(vi) On the sum of U.S.\$209,351, being the amount due under the marine insurance policy, interest shall run from 5 December 1978, i.e., the date on which the claim was finally quantified.

(c) To Bank Maskan:

(i) On the sum of Rls. 245,700, being the amount of liquidated damages due in respect of the nine

⁴¹ Id.

units at Rasht, interest shall run from 12 January 1979, i.e., the date on which provisional acceptance of the units is deemed to have been granted;

(ii) On the sums of Rls. 2,923,200, being the amount of liquidated damages due in respect of seventy-two units at Shahin Shahr, and the sum of Rls. 8,064,000, being the amount of liquidated damages due in respect of sixty units at Shahin Shahr, interest shall run from 28 August 1979, i.e., the date of termination of the Building Supply and Erection Agreement;

(iii) On the sum of U.S.\$558,743.79, being 85% of the value of the modification in scope, interest shall run from 23 February 1979, i.e., thirty days from the date on which such modification was agreed, up to and including 28 August 1979, i.e., the date of termination of the Building Supply and Erection Agreement.

B. COSTS

196. Both the Claimants and the Respondents seek an award of costs. The Claimants have submitted evidence to show that they have incurred costs (other than legal fees) of U.S.\$12,949.62 in connection with these proceedings, together with legal fees of U.S.\$74,173.65. Bimeh Iran has submitted a claim for costs amounting to U.S.\$17,432. The Tribunal considers it appropriate for each Party to bear its own costs of arbitration.

VI. AWARD

197. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent BANK MASKAN IRAN is obligated to pay to

MOSHOFSKY ENTERPRISES, INC., for and on behalf of
COMPONENT BUILDERS, INC.:

1. The sum of Five hundred eighteen thousand nine hundred seventy-seven United States Dollars (U.S.\$518,977.00) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 4 February 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
2. The sum of Thirty-four thousand one hundred eighty-one United States Dollars and Eleven Cents (U.S.\$34,181.11) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 9 February 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
3. The sum of Twenty-nine thousand eight hundred United States Dollars and Sixty-four Cents (U.S.\$29,800.64) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 15 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
4. The sum of One thousand four hundred three United States Dollars and Ninety-six Cents (U.S.\$1,403.96), being simple interest at the rate of ten percent (10%) per annum (365-day basis) from 15 January 1979 up to and including 3 April 1979 on the sum of U.S.\$65,698.09;

5. The sum of Twelve thousand three hundred ninety-nine United States Dollars and Eighty-six Cents (U.S.\$12,399.86) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 6 November 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
6. The sum of Five thousand seven hundred eleven United States Dollars and Seven Cents (U.S.\$5,711.07) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 9 October 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
7. The sum of Six thousand two hundred fifty-three United States Dollars and Ninety-three Cents (U.S.\$6,253.93) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 12 November 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
8. The sum of Nine thousand four hundred thirty-nine United States Dollars and Thirty-seven Cents (U.S.\$9,439.37) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 26 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
9. The sum of Twenty-one thousand five hundred fifty-nine United States Dollars and Nine Cents

(U.S.\$21,559.09) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 27 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

10. The sum of Two thousand four hundred sixty-eight United States Dollars and Twenty-three Cents (U.S.\$2,468.23) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
11. The sum of Thirteen thousand four hundred sixty-eight United States Dollars and Eighty Cents (U.S.\$13,468.80) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
12. The sum of Five thousand seven hundred seventy-two United States Dollars and Thirty-four Cents (U.S.\$5,772.34) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 12 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
13. The sum of Three hundred eighty-six thousand four hundred eighty-seven United States Dollars and Sixty-two Cents (U.S.\$386,487.62) plus simple interest due at the rate of ten percent (10%) per

annum (365-day basis) from 28 August 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) The Respondent BANK MASKAN IRAN is obligated to pay to MOSHOFSKY ENTERPRISES, INC., for and on behalf of WOOD COMPONENTS CO.:

1. The sum of Two hundred fifty-four thousand five United States Dollars and Eleven Cents (U.S.\$254,005.11) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 4 February 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
2. The sum of Three hundred seventy-six thousand five hundred fifty-seven United States Dollars and Forty-eight Cents (U.S.\$376,557.48) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
3. The sum of Sixty-three thousand seven hundred thirty-nine United States Dollars and Sixty-two Cents (U.S.\$63,739.62) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 1 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;
4. The sum of Twenty-seven thousand three hundred sixteen United States Dollars and Ninety-eight

Cents (U.S.\$27,316.98) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 12 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

5. The sum of Five hundred thirty-six thousand seven hundred eighty-five United States Dollars and Fifty-one Cents (U.S.\$536,785.51) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 28 August 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(c) The Respondent BIMEH IRAN, IRAN INSURANCE COMPANY is obligated to pay to MOSHOFSKY ENTERPRISES, INC., for and on behalf of COMPONENT BUILDERS, INC., the sum of Forty-seven thousand seven hundred seventy-four United States Dollars and Sixty-three Cents (U.S.\$47,774.63) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 13 October 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(d) The Respondent BIMEH IRAN, IRAN INSURANCE COMPANY is obligated to pay to MOSHOFSKY ENTERPRISES, INC., for and on behalf of WOOD COMPONENTS CO., the sum of Two hundred nine thousand three hundred fifty-one United States Dollars (U.S.\$209,351) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 5 December 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

- (e) All other claims of COMPONENT BUILDERS, INC., WOOD COMPONENTS CO. and MOSHOFSKY ENTERPRISES, INC. are hereby dismissed.
- (f) The Counterrespondent COMPONENT BUILDERS, INC. is obligated to pay to BANK MASKAN IRAN:
 - 1. The sum of Three thousand five hundred ten United States Dollars (U.S.\$3,510.00) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 12 January 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment to MOSHOFSKY ENTERPRISES, INC. out of the Security Account;
 - 2. The sum of One hundred fifty-six thousand nine hundred sixty United States Dollars (U.S.\$156,960) plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 28 August 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment to MOSHOFSKY ENTERPRISES, INC. out of the Security Account.
- (g) The Counterrespondent WOOD COMPONENTS CO. is obligated to pay to BANK MASKAN IRAN the sum of Twenty-eight thousand four hundred seventy-two United States Dollars and Ninety-seven Cents (U.S.\$28,472.97), being simple interest at the rate of ten percent (10%) per annum (365-day basis) from 23 February 1979 up to and including 28 August 1979 on the sum of U.S.\$558,743.79.

All other counterclaims of BANK MASKAN IRAN are dismissed.

- (h) The Escrow Agent is requested to calculate the amounts

due under this Award and to instruct the Depositary Bank to make payment out of the Security Account to MOSHOFSKY ENTERPRISES, INC. of the net amount due to WOOD COMPONENTS CO. and to COMPONENT BUILDERS, INC. after offset of the amounts due from WOOD COMPONENTS CO. and COMPONENT BUILDERS, INC. to BANK MASKAN IRAN.

- (i) The counterclaims of BIMEH IRAN, IRAN INSURANCE COMPANY and THE ISLAMIC REPUBLIC OF IRAN are dismissed.
- (j) Each Party shall bear its own costs of arbitration.

This Award is submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague,
10 August 1989

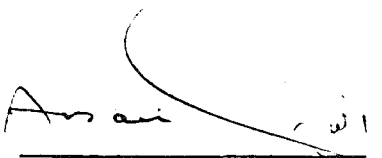


Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Charles N. Brower
Concurring and
Dissenting Opinion



Parviz Ansari Moin
Dissenting in part
Concurring in part