**PCA CASE Nº 2022-49**

**IN AN ARBITRATION PURSUANT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN AND THE GOVERNMENT THE AZERBAIJAN REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

**MOHAMMAD REZA KHALILPOUR BAHARI**

**Claimant**

**-and-**

**THE REPUBLIC OF AZERBAIJAN**

**Respondent**

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# RESPONDENT'S OBJECTIONS TO JURISDICTION AND STATEMENT OF DEFENCE

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**22 December 2023**

**The Arbitral Tribunal**

Professor Gabrielle Kaufmann-Kohler
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# PART 1

# INTRODUCTION

1. These Objections to Jurisdiction and Admissibility and Statement of Defence (the **Defence**) are submitted on behalf of the Republic of Azerbaijan (the **Respondent** or **Azerbaijan**) pursuant to step 7 of scenario 2 in the timetable set out in Annex 1 to Procedural Order No. 1 dated 3 December 2022, in response to the Statement of Claim dated 22 April 2023 (the **Statement of Claim**) submitted by Mr Mohammad Reza Khalilpour Bahari (the **Claimant** or **Mr Bahari**) in PCA Case No. 2022-49 brought under the terms of the Iran-Azerbaijan bilateral investment treaty (the **Treaty**).

## I. EXECUTIVE SUMMARY

2. This case is the opportunistic and belated invention of an individual who left Azerbaijan nearly a quarter of a century ago, after being paid more than USD 5 million for his shares and interests in a BVI company that he founded with certain other Azerbaijani and Iranian individuals acting in their private capacities. Mr Bahari explains the inordinate delay in pursuing this action by claiming that he was unaware that he had a Treaty claim before 2017;[1] the truth is there is not, and has never been, any basis for a Treaty claim.

3. The story is in fact much more innocuous than Mr Bahari would have this Tribunal believe. In the mid-1990s, he co-founded a BVI company, Caspian Fish Co Inc (the **BVI Co**), allegedly with three individuals acting in their private capacities. Two of those individuals, Messrs Aliyev and Heydarov, had or subsequently entered into positions in the Azerbaijani Government. Excepting that tangential link (given Messrs Aliyev and Heydarov acted, at all times, in their private capacities), the facts are wholly unconnected to the State. The lynchpin of Mr Bahari's case on Azerbaijan's involvement is that these individuals, ostensibly due to their Government connections, "*used the Government apparatus*" to "*st*[eal]" Mr Bahari's investments.[2]

4. It remains to be explained by Mr Bahari how Azerbaijan's "apparatus", or indeed international responsibility, was engaged at all and indeed how it could possibly be said to be engaged in circumstances where the primary "investment" Mr Bahari claims was

[1] Notice of Arbitration, para. 71.

[2] Statement of Claim, paras 9 and 10.

taken are his shares in the BVI Co, over which Azerbaijan has no jurisdiction and in respect of which any taking could not have been carried out by virtue of State prerogative or power. The Statement of Claim provides little or no forensic analysis of how the alleged factual background translates into any legal case; its defining feature is to make generalised, sweeping and frequently offensive allegations without specificity.

5. That is not how investment treaty law operates. The limits of consent prescribe a sovereign State's obligations and vague and generalised allegations of breach will not suffice. On any analysis, it is plain that Mr Bahari's claims do not fall within the scope of the Treaty or disclose any Treaty breaches.

6. While Azerbaijan has no connection to the factual matters alleged, it has attempted in good faith to obtain documents and testimony responsive to the factual background pleaded. That has predominantly involved making requests of third parties. The process has been difficult, given the events in question occurred more than 20 years ago, and in some aspects, 25 years ago. Some evidence has been volunteered to it. That evidence demonstrates that there was a commercial dispute between Mr Bahari on the one hand and Messrs Heydarov and Khanghah on the other after Mr Bahari was found to have defrauded them by inflating the costs of work and pocketing the surplus.[3] The dispute was settled in September 2001, with Mr Bahari agreeing to exit the joint venture and transfer his shares in the BVI Co to one of his ex-partners, Mr Khanghah, for the sum of USD 4.5 million,[4] with further additional payments of approximately USD 800,000 subsequently also agreed and paid. Following this deal, Mr Bahari left Azerbaijan with his reputation tarnished.

7. At least USD 3.5 million of the share transfer sum had been paid at or by the time Mr Khanghah met with Mr Bahari in Dubai on 15 June 2002. Mr Bahari himself personally signed documents acknowledging his receipt of funds.[5] It appears that the purpose of the meeting in Dubai was to reschedule the payment of the outstanding USD 1 million and to agree on two further payments to cover certain interest and entitlement to profits.

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3 *See* Kerimov Statement, paras 12, 20; Zeynalov Statement, paras 31, 33, 34 and 38.

4 Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**.

5 Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**; Receipt for payment of USD 2 million signed by Mr Bahari, undated **R-52**.

Although Azerbaijan does not have the precise details of when the remaining sums were paid, they were indeed paid, as evidenced by Mr Bahari's own emails to the President's Office in 2013.[6]

8. Mr Bahari engaged in a number of commercial exploits in various jurisdictions, including in Dubai and Germany, after he left Azerbaijan in December 2001. These ventures were not successful and it is apparent that by 2013, he was in financial distress, leaving behind him unsatisfied debts, lawsuits, and aggrieved business partners. Options were seemingly limited and, more than a decade after his initial exit from Azerbaijan, he turned his mind to those historic ventures. This was the reason he returned Azerbaijan in October 2013, not fearful for his safety but with his 10 year old son in tow. It was an attempt to try to extort money from his old business partners, and the attempt was rejected.

9. Four years later, in September 2017, Mr Bahari engaged Slaney Advisors to send a Notice of Dispute under the Treaty to Azerbaijan marked for the attention of the Minister of Justice.[7] The letter threatened an arbitration but invited settlement discussions. Azerbaijan did not respond and no arbitration materialised.

10. A year later, in August 2018, new advisors to Mr Bahari, Winston & Strawn LLP, wrote to Azerbaijan, again threatening arbitration and at the same time seeking a settlement.[8] Again, Azerbaijan did not respond. Then, on 5 April 2019, Mr Bahari filed a Notice of Arbitration and Azerbaijan instructed Quinn Emanuel to respond.[9] Again Mr Bahari did not make good his threats. Within seven months of that filing, the claim had been withdrawn in its entirety.[10] It was of some surprise, therefore, when Azerbaijan was served with a fresh Notice of Arbitration three years later.

11. The delay with which this claim has eventually been brought may be explained by a number of factors. The facts upon which Mr Bahari bases his claim do not concern the Republic of Azerbaijan: even if his allegations can be established, which is denied, they are commercial matters between individuals acting in a private capacity and concern

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6 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

7 Letter from Slaney Advisors Limited to Minister of Justice dated 8 September 2017, **C-26**.

8 Letter from Winston & Strawn LLP to Minister of Justice dated 21 August 2018, **C-29**.

9 Notice of Arbitration dated 5 April 2019, **R-54**.

10 Letter from Winston & Strawn to H Gharavi and G Griffith dated 14 November 2019, **R-55**.

events significant aspects of which took place outside the territory of Azerbaijan.[11] They also almost exclusively took place before the Treaty entered into force on 20 June 2002.[12] The time that has passed since the events occurred has meant that there is an incomplete and insubstantial documentary record.[13] Most critically of all, however, it is apparent from even the most cursory of diligence that Mr Bahari's version of events bears no resemblance to the truth.

12. The "facts" upon which Mr Bahari bases his case are largely his own testimony, or testimony of witnesses who are his close allies who likely stand to gain in the event Mr Bahari's claim is successful. The witness evidence is directly contradicted by the documents that Azerbaijan discusses herein and is highly unreliable. Unfortunately, Mr Bahari has shown himself to be a fantasist who, at best, has a failing memory or, at worst, is a pathological liar.

13. Some of the more egregious misleading statements that have been exposed in the course of Azerbaijan's investigations into the factual background set out in the Statement of Claim include:

    (a) Mr Bahari's claim that he had "[redacted]".[14] This claim is wholly contradicted by the documentary record demonstrating Mr Bahari's signature on multiple documents relating to the establishment and operation of the LLC. The application to the Ministry of Justice requesting that the LLC be registered was signed by none other than Mr Bahari himself in the presence of a notary on 29 August 2000.[15] He signed the Charter of the LLC on 11 September 2000,[16] and on 18 September 2000, Mr Bahari signed a receipt

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11 *See* PART 2II below.

12 *See* PART 2III.A below.

13 *See* PART 2I below.

14 Bahari Statement, para. 90.

15 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**.

16 Charter of the LLC dated 11 September 2009, **R-57**.

from the Ministry of Justice, confirming that he had made a duty payment on behalf of the LLC.[17]

(b) Mr Bahari's claim that he and his family were forcibly expelled from Azerbaijan in March 2001.[18] The Azerbaijani State border records show not only that Mr Bahari and his family were in Azerbaijan in March 2001, but they freely exited and entered the country throughout 2001.[19] It was only in December 2001 that they left Azerbaijan on a long-term basis, with Mr Bahari and his son returning again in October 2013.[20]

(c) Mr Bahari's claim after the opening ceremony on 10 February 2001, he "[redacted]".[21] This is, according to the documentary record and the evidence of the witnesses who worked at Caspian Fish in Azerbaijan at the time, again untrue. Mr Bahari attended Caspian Fish's offices in the days immediately after the opening ceremony,[22] and he signed multiple documents on behalf of Caspian Fish in the following weeks and months;[23]

(d) Mr Bahari's claim that he [redacted].[24] This is, according to the documentary record which contains Mr Bahari's own signatures, also an outright lie. On 20 September 2001, under the terms of a "Buyer and Seller Agreement", Mr Bahari agreed to sell his 400,000 shares in BVI Co to Mr Khanghah for the sum of USD 4.5 million.[25]

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17 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**, p. 1.

18 Bahari Statement, para. 75 ("[redacted]").

19 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, **R-58**. *See* paragraphs 264 to 266 below.

20 *See* PART 3V.G below.

21 Bahari Statement, para. 75.

22 Zeynalov Statement, para. 36; Hasanov Statement, para. 14.

23 *See*, e.g. Letter from Caspian Fish to Caviar House dated 26 March 2001, **R-59**; Letter from Caspian Fish Co Azerbaijan to DFT GmbH dated 26 March 2001, **R-60**; Letter from Caspian Fish Co Azerbaijan to Baader GmbH dated 29 March 2001, **R-61**; Contract between Caspian Fish Co Azerbaijan and Caviar House dated 7 April 2001, **R-157**.

24 Bahari Statement, para. 89(iv) (emphasis in original).

25 Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**.

(e) Mr Bahari's claim that he "[redacted]".[26] Again, the documentary record reveals that Mr Bahari is not telling the truth. On or around 5 November 2001, Mr Bahari signed a document recording that he had received USD 1.5 million "[redacted]".[27] He subsequently signed a handwritten note in Farsi recording that he had received a further USD 2 million from Mr Khanghah.[28] Faced with these documents, Mr Bahari may attempt to suggest that they are forgeries. They are entirely consistent, however, with an email from Mr Bahari's personal email account [redacted] to Mr Heyadrov's assistant and the President's Office in late 2013,[29] confirming that he had indeed been paid not only the full amount of USD 4.5 million for the shares, but a further USD 861,000 comprising [redacted] and "[redacted].[30]

(f) Mr Bahari's claim that he "[redacted]",[31] when in fact Azerbaijan has copies of export declaration certificates and bills of lading which confirm that a very substantial number of carpets were shipped to him in late 2002 Dubai by Mr Rasim Zeynalov.[32] Mr Zeynalov confirms that he personally shipped all the remaining carpets in his possession without export declarations and certificates.[33]

(g) Mr Bahari's claim that he has "[redacted]"[34] in Ayna Sultan is highly misleading first by the suggestion that he owned any "land" in relation to Ayna Sultan: the land was not privatised; land cannot be owned by foreign nationals anyway; and he owned only a small immovable property at that address.[35] Second, he misleads by failing to inform the Tribunal that he sold it

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26 Bahari Statement, para. 89(iv) (emphasis included).

27 Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**.

28 Receipt for payment of USD 2 million signed by Mr Bahari, undated **R-52**.

29 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

30 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

31 Bahari Statement, para. 84.

32 Export Declaration by ATA-YOLU for 211 carpets to be sent to Petro Geshm dated 3 October 2002, **R-37**.

33 Zeynalov Statement, para. 50.

34 Statement of Claim, para. 96; see also para. 473(xi).

35 *See* paragraph 118 below.

on 14 December 1999, when he personally signed a sale and purchase agreement,[36] as well as a handwritten note in Farsi the same day confirming receipt of USD 70,000 in relation to the sale.[37]

(h) Mr Bahari's claim that he was "*never able to successfully file a claim in the Azeri courts and obtain a fair hearing*".[38] In fact, in 2009 Mr Bahari applied to the Baku Appellate Court for permission to bring an appeal against a 2005 decision of the Court in relation to one of his alleged investments, Ayna Sultan, despite the fact that the time for doing so had long since passed under the statute of limitations.[39] The Baku Appellate Court granted Mr Bahari permission to appeal,[40] but it was Mr Bahari who failed to progress the case any further.[41]

14. In other respects, it appears that the Claimant has fabricated entirely a series of events in a misguided attempt to construct a legal claim and garner sympathy:

(a) Mr Bahari did not collapse, lose consciousness and get admitted to Republic Hospital for a "[redacted]"[42] the day of, or shortly after, the Caspian Fish's opening ceremony on 10 February 2001. Republic Hospital has no records of him ever being admitted there[43] and a letter to Mr Bahari from Swiss transport company Kuehne & Nagel dated 14 February 2001 refers to "[redacted]", demonstrating that Mr Bahari conducted a business call in relation to Caspian Fish on 13 February 2001.[44]

(b) As confirmed by Mr Namig Abbasov, the Minister of National Security of Azerbaijan at the time, Mr Abbasov did not inform the Deputy Head of Mission for Iran in Azerbaijan that there was a "*Government plot to kill Mr Bahari*"[45] in

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36 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62**.

37 Receipt issued by Mr Bahari to Mr Gambarov for payment dated 14 December 1999, **R-63**.

38 Statement of Claim, para. 324.

39 Application to the Baku Appeal Court dated 2009, **R-172**.

40 Decision of the Appellate Court dated 26 May 2010, **R-159**.

41 *See* PART 3VI.B below.

42 Bahari Statement, para. 73.

43 Letter from the Republican Clinical Hospital to SSPI dated 22 December 2023, **R-176**.

44 Letter from Kuehne & Nagel to Caspian Fish dated 14 February 2001, **R-64**.

45 Statement of Claim, para. 146.

March 2001, or ever.[46] This is a fanciful and frankly incredulous allegation that, despite its memorable nature, was never raised in Mr Bahari's 34-page 2019 Notice of Arbitration. Similar goes for the suggestion that at an alleged meeting in 2013 Mr Bahari understood that he was being "*set* [] *up as a pawn in a likely internecine political war between Mr Heydarov and President Aliyev*".[47]

(c) His daughter was not "murdered" by the Azerbaijani State. Her untimely death was the result of a car accident, and the individual who struck her was arrested and imprisoned in Dubai.[48]

(d) The carpet photographed in the house of Mr Alzamin Khanmadov, a former employee of the Baku Prosecutors' Office, is not the "[redacted]", "[redacted]" carpet Mr Bahari allegedly had handmade for Caspian Fish in or around the year 2000.[49] The carpet in Mr Khanmadov's house was made by Iranian company "Pardisan Delian Carpets", a self-described "[redacted]" company which launched in 2011.[50] The "[redacted]" is described as "[redacted]", which corresponds to 10 March 2012, and the material is described as "[redacted]".[51]

15. This is not the plot of a political thriller seeking film rights. It is a Treaty claim which presents very serious and unfounded allegations against the Republic of Azerbaijan without proper evidence and there is no basis for it.

16. In a similar vein, the quantum of Mr Bahari's claim is grossly exaggerated. He seeks in the region on USD 500 to 800 million on the basis of a handful of documents, his own witness testimony, and the opinion of an expert who relies on a series of wholly unsound assumptions, such as the assumption that Caspian Fish had zero net debt and that it would have been able to process 99,000 metric tons of fish or caviar per annum,[52]

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46 Letter from N Abbasov to Quinn Emanuel dated 14 December 2023, **R-65**; A Abbasov Statement, para. 6.

47 Statement of Claim, para. 313.

48 Al Nisr, *Friends mourn death of 13-year-old killed in accident*, 24 May 2009, **R-66**.

49 Bahari Statement, para. 65.

50 Carpet Pardisan website, *About us*, accessed on 28 November 2023, **R-67**.

51 *See* Photographs of carpet in Mr Khanmadov's house, taken on 23 November 2023, **R-45**.

52 Secretariat Report, para. 5.17.

which is wholly unrealistic when in reality it was only able, at most, in the year 2001 to produce approximately 880 metric tons of finished product.[53]

17. Apparently, Mr Bahari's lawyers have been misled by him too. However, while they cannot verify all of his allegations for the same reasons that Azerbaijan cannot – due to the passage of time – what they should have done but they failed to do, and what they should be criticised for, is that they have wholly adopted his allegations without scrutiny.

18. Mr Bahari is right that this is an "*exceptional*" claim.[54] What is exceptional about it, however, is that the story lacks all meaningful support, and the claims even at their highest have very little connection to the Republic of Azerbaijan at all. It is not a typical treaty case and it does not involve typical investments; for instance, there is no coherent explanation why Mr Bahari's carpets amount to an investment at all. There are no documents to substantiate most of the other alleged investments too. The vast majority of the alleged conduct, and therefore any breach, occurred more than two decades ago and before the Treaty entered into force. Each of Mr Bahari's alleged investments suffer from fatal jurisdictional defects that will dispose of the case in its entirety including, specifically, that there was no approval to extend the benefits of the Treaty to any of them, as required by Article 9. Even without those issues, Mr Bahari cannot show a breach of Treaty on the facts alleged and his claim should be dismissed in its entirety with an indemnity award to Azerbaijan for its costs incurred in defending such a frivolous claim.

## II. SUPPORTING EVIDENCE AND AUTHORITIES

19. This Defence is accompanied by: (a) the witness statement of Ms Yegana Blakishiyeva dated 22 December 2023; (b) the witness statement of Mr Samir Valiyev dated 22 December 2023; (c) the witness statement of Mr Habib Aliyev dated 21 December 2023; (c) the witness statement of Mr Rasim Zeynalov dated 21 December 2023; (e) the witness statement of Mr Sabutay Hasanov dated 21 December 2023; (f) the witness statement of Mr Tahir Kerimov dated 21 December 2023; (g) the witness statement of

[53] Shi Report, Table 4.1.

[54] Statement of Claim, para. 10.

Kristina Ismaylova dated 20 December 2023; and (h) the witness statement of Mr Anar Abbasov dated 14 December 2023.

20. It is also accompanied by: (a) the expert report of Dr Mahnaz Mehrinfar dated 21 December 2023; (b) the expert report of Professor Kenneth J Vandevelde dated 20 December 2023; (c) the expert report of Mr Altay Mustafayev dated 22 December 2023; (d) the expert report of Rza Hasanov dated 21 December 2023; and (e) the expert report of Dr Min Shi dated 22 December 2023.

21. References to a witness's statement in this submission are described as "[Family name] Statement", and references to an expert's report are described as "[Family name] Report".

22. This Defence is also accompanied by supporting documents numbered consecutively from exhibit **R-6** to **R-178**, and legal authorities numbered consecutively from **RLA-88** to **RLA-197**.

## III. STRUCTURE OF THIS SUBMISSION

23. Part 1 of this Defence is this Executive Summary, presenting the basic issues in this case and an outline of the submission, as well as details of the supporting evidence and authorities used by the Respondent.

24. Because of the unusual nature of this case, Part 2 addresses the preliminary issues of evidence, attribution and jurisdiction before Part 3 develops the factual background. While Azerbaijan is not privy to the vast majority of the factual allegations made in the Statement of Claim, Part 3 pieces together the factual background based on the documentary record and the testimony of individuals who were involved in the relevant facts at the relevant time.

25. Part 4 addresses the relevant legal principles concerning merits, causation and remedies.

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## PART 2

## PRELIMINARY ISSUES, ADMISSIBILITY AND JURISDICTION

### I. EVIDENCE

26. It is necessary first to address an important sub-issue, which provides a backdrop to these proceedings and the lens through which the Tribunal should view this case. That is, the patent lack of credible evidence in support of Mr Bahari's claims. Pleading hyperbole is no substitute for documents and the testimony of Mr Bahari's witnesses can only take him so far. Mr Bahari's own testimony provides the majority of the evidence for the claims he makes. The statements given by his other witnesses are unashamedly creations of his lawyers, such that witnesses who are not prepared or able to give oral testimony in English have given written witness statements in English.[55]

27. Mr Bahari will claim that the reason for the dearth of documentary evidence is because the Respondent holds all the documents or has restricted his access to them. He makes a point in the Statement of Claim to foreshadow the wide-ranging document requests he will make of Azerbaijan in the disclosure phase of this proceedings. Mr Bahari is operating under a serious misapprehension, however. There are two issues. First, his claims do not concern the Republic of Azerbaijan. They concern the conduct of third parties acting in their private capacities, whose personal documents Azerbaijan does not possess or have a right to possess. Azerbaijan cannot force third parties to cooperate or otherwise provide documents. Second, insofar as there is evidence that would ordinarily be in the possession of Azerbaijan, the significant passage of time has meant that many documents which might have otherwise been available quite understandably have not been retained or are unable to be located. Mr Bahari's claims relate to matters which took place almost a quarter of a century ago, including in some cases before the use of electronic systems for record-keeping.

28. In any event, a significant number of documents should be in Mr Bahari's possession. Documents evidencing his alleged financial contribution to the relevant investments are

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[55] Mr Kousedghi has given written testimony in English, but states that he will only offer oral testimony in Farsi (Kousedghi Statement, para. 4); Mr Allahyarov has given written testimony in English, but states that he will only offer oral testimony in Azerbaijani (Allahyarov Statement, para. 4); and Mr Moghaddam has given written testimony in English, but states that he will only offer oral testimony in Farsi (Moghaddam Statement, para. 4). In addition, and notably, despite the terms of para. 7.3 of Procedural Order No. 1 dated 3 December 2022, which require witness statements to contain an affirmation as to the truth of its contents, Mr Bahari and Mr Klaus conspicuously fail to provide such affirmation.

not documents of Azerbaijan. On Mr Bahari's own case, he held bank accounts outside of Azerbaijan. Mr Bahari does not prove any of this.

29. Many of the claims made in his testimony are flatly contradicted by an even incomplete documentary record – his denial of knowledge of the LLC, when the documentary record shows his signature on multiple documents recording its establishment and operation;[56] his claim that he was forcibly expelled from Azerbaijan in March 2001, when the documentary record shows he travelled freely to and from Azerbaijan multiple times over the course of 2001;[57] his claim that he never agreed to sell his shares in Caspian Fish or was paid for them, when the documentary record shows that he signed an agreement to sell his shares and for receipt of the funds;[58] his claim that he owned Ayna Sultan at the time he left Azerbaijan, when the documentary record shows that he sold it in 1999;[59] his claim that his carpets were stolen and dispersed across Baku, when the documentary record proves that they were shipped to Dubai at his request.[60] These are only examples; Azerbaijan will demonstrate many more inconsistencies in the following sections of this brief. Insofar as the documentary record goes, however, the only conclusions that can be drawn are that Mr Bahari is lying, or that he has genuinely forgotten given the passage of time. Either way, his testimony is unreliable.

30. Why did Mr Bahari wait so long to bring this claim (and, indeed raise it first in 2017, and then in 2019 and then finally again in 2022)? The answer lies in the fact that, back in 2001 and 2002, he agreed to settle his disputes with his business partners and he was paid more than USD 5 million for it. He did not turn his mind to these matters again for a long time (conveniently, the one individual who might have been able to corroborate any suggestion that Mr Bahari remained concerned about his alleged investments as early as 2004 is understood to be uncontactable and likely deceased).[61] The Respondent does not know why Mr Bahari chose to resurrect his settled private

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56 *See* PART 3V.B.2 below.

57 *See* paragraphs 264 to 266 below.

58 *See* PART 3V.D below.

59 *See* PART 3VI.A below.

60 *See* PART 3VII.B below.

61 Serhat Kilic, the Turkish lawyer allegedly contacted by Mr Bahari in 2004 to "investigate possible legal proceedings against Messrs. Aliyev, Heydarov and Pashayev in the Azeri courts" (Statement of Claim, para. 188 and 189).

business matters in the form of a Treaty claim, but it can only conclude that its pursuit is opportunistic.

31. In the light of the lack of accommodating arbitral practice on the matter, the Respondent has not sought to argue that Mr Bahari's claim should be time-barred. However, the Respondent takes this opportunity to lay down a marker in respect of the significant waste of resources incurred, and that it will continue to incur, to defend a claim that cannot be proved on the balance of probabilities due to (being generous to Mr Bahari) the inordinate passage of time. All of the Respondent's rights in that regard are reserved.

## II. ATTRIBUTION

32. The entirety of Mr Bahari's case rests on the private acts of third parties, namely: Mr Aliyev (the current President of Azerbaijan, but who held no role in the Azerbaijani Government until August 2003, when he became Prime Minister);[62] Mr Heydarov (the Chairman of the State Customs Committee, and presently the Minister of Emergency Situations); Mr Khanghah (a private individual said by Mr Bahari, without evidence, to be acting as an "agent" of Messrs Aliyev and Heydarov);[63] and Mr Pashayev (a private individual who is not alleged by Mr Bahari to have had any role in Government whatsoever), each of whom are alleged (but not admitted) to be his business partners. The following discussion proceeds on the assumption that the allegations Mr Bahari has made against these individuals can be established in fact, but no admission is made that any of the alleged conduct in fact occurred.

33. The applicable laws are not in dispute: the Articles of Responsibility of States for Internationally Wrongful Acts developed by the International Law Commission and adopted by the United Nations General Assembly (the **ILC Articles**)[64] are widely accepted to be declaratory of the customary international law governing attribution.

34. In summary, the ILC Articles provide that:

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62 In footnote 583, the Claimant claims not to understand paragraph 9(b) of Azerbaijan's Response, namely that Mr Aliyev held no role in the Azerbaijani government prior to becoming Prime Minister in 2003, but he offers no explanation for why Mr Aliyev would be considered an organ of state prior to that date. (The Statement of Claim erroneously refers to Mr Heydarov, which is presumably a typographical error.)

63 Statement of Claim, heading VII.C.

64 The ILC Articles and their related Commentary are at **CLA-37**.

(a) The conduct of State organs performed in an official capacity is attributable to the State (Article 4);

(b) The conduct of a person or entity who is not a State organ, but who is exercising elements of governmental authority, is also attributable to the State (Article 5);

(c) The conduct of private parties will be attributable to the State if such person is acting on the instructions of, or under the direction or control of the State (Article 8); and

(d) Conduct not attributable to a State on any other basis shall be attributable to the State if the State acknowledges and adopts the conduct as its own (Article 11).

35. None of the alleged conduct of the Messrs Aliyev, Heydarov, Khanghah or Pashayev is attributable to Azerbaijan for the reasons set out below. The entirety of Mr Bahari's case can accordingly be disposed of with this preliminary issue.

### A. The alleged acts of Messrs Aliyev and Heydarov in their private capacity are not attributable to Azerbaijan

36. The Claimant states that "*during the relevant time period, Messrs. Aliyev and Heydarov were senior Azeri Government officials and are State organs, and their conduct is attributable to Azerbaijan*", pursuant to Article 4 of the ILC Articles.[65] No particularisation of the "relevant time period" is given (as to which, see PART 2III.A below).[66] In any event, however, the Claimant accepts that Messrs Aliyev's and Heydarov's conduct, even if organs of State, must have been carried out in an official capacity.[67] None of the conduct alleged to have been carried out by Messrs Aliyev and

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65 Statement of Claim, para. 471.

66 The Claimant has failed to establish that Mr Aliyev was a State organ at all the timeframes relevant to his claim. In particular, Mr Aliyev was not a State organ of the Republic until his appointment as prime minister in 2003. Prior to this time, Mr Aliyev was a member of parliament, which is not a State organ under Azerbaijani law: the Constitution of the Republic of Azerbaijan vests legislative power in the Milli Majlis, or Parliament, not in individual members of parliament (art. 81, **CLA-16**). Further, Article 8 of the Law on Civil Service lists Parliament as a State organ, but not individual legislators (**RLA-181**). *See* also *Burlington Resources, Inc.* v *Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 Dec. 2012, **CLA-144** para. 305 (the conduct of an individual member of a legislature is not attributable to the State). Nor was Mr Aliyev a State organ by virtue of his being a vice-president of SOCAR, which is not a State organ as a matter of Azerbaijani law (*see* Article 8 of the Law on Civil Service, **RLA-181**) and in any event SOCAR is not alleged to have any relevance to the matters at issue in these proceedings.

67 *See* Statement of Claim, para. 472 and 473.

Heydarov as pleaded in the Statement of Claim is attributable to Azerbaijan because all such conduct, even if it could be established, was carried out in a private capacity.[68]

37. The Claimant seeks to elevate the alleged conduct as having been carried out in an official capacity by arguing that Messrs Aliyev and Heydarov "*utilised their prerogatives of power over the State apparatus in a manner not available to normal private citizens…* [a]*s such, they acted in an actual or apparent official capacity, and/or under color of authority*".[69] The Claimant is unable, however, to establish this. There is a woeful lack of evidence for the so-called use of prerogatives and sovereign power, which allegations are based predominantly on his own testimony, or, in some cases, no evidence at all:

(a) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov directed "*State security forces or other State organs to forcibly remove Mr Bahari from the Caspian Fish grand opening ceremony*",[70] and to "*detain Mr Bahari and place him under house arrest*",[71] the only evidence that such conduct in fact occurred is the testimony of Mr Bahari's witnesses,[72] which is directly contradicted by the evidence of Azerbaijan's witnesses.[73] In any event, such alleged conduct occurred before the Treaty entered into force (see PART 2III.A below);

(b) Insofar as Mr Bahari claims that in March 2001, Messrs Aliyev and Heydarov directed "*Government security forces or other State organs to carry out the forced expulsion of Mr Bahari and his family from Azerbaijan, and to not allow Mr Bahari to return*",[74] the only evidence that such conduct in fact occurred is the testimony of Mr Bahari's witnesses,[75] which is demonstrably untrue: the documentary record shows that Mr Bahari freely entered and exited Azerbaijan

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68 *See*, e.g., *Mallén v USA*, Mixed Commission, Award (27 April 1927), **RLA-130**; *Kenneth P. Yeager v Iran*, IUSCT Case No. 10199, Award No. 324-10199-1 (2 November 1987), **RLA-131**, para. 65.

69 Statement of Claim, paras 472, 473.

70 Statement of Claim, para. 473(i).

71 Statement of Claim, para. 473(ii).

72 Bahari Statement, paras 67-74; Moghaddam Statement, paras 55-60; Klaus Statement, paras 47-48; Kousedghi Statement, paras 18-22.

73 Zeynalov Statement, para. 36. *See* paragraphs 257 to 259 below.

74 Statement of Claim, para. 473(iii).

75 Bahari Statement, paras. 75-76; Moghaddam Statement, para. 62; Kousedghi Statement, para. 25.

multiple times through the course of 2001.[76] In any event, such alleged conduct occurred before the Treaty entered into force;

(c) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov "*pressure*[d him] *to accept the terms of a forced sale agreement by threatening false tax audits and the continued takeover of Coolak Baku by Government security forces*",[77] the only evidence that such conduct in fact occurred is Mr Bahari's testimony,[78] which is directly contradicted by the documentary record: prior to the alleged "forced sale agreement", Mr Bahari freely agreed to sell his interests, did so, and was paid for them;[79] the "tax audit" was not "false" but in fact the documents demonstrate that Coolak Baku had unpaid taxes;[80] no "Government security forces" were ever in place at Coolak Baku, to the contrary, and for reasons unknown to Mr Bahari's joint venture partner, Mr Bahari himself had transferred the Coolak Baku facility to Mr Heydarov.[81] According to Mr Bahari's own admission given in a public interview in 2017, at the time of the June 2002 meeting, he was aware that his alleged business partners had not acted for the State in their dealings with Mr Bahari.[82] Further and in any event, such alleged conduct occurred before the Treaty entered into force;

(d) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov directed "*Government security forces or other State organs to detain repeatedly and unlawfully, physically assault, and eventually jail Mr Naser Tabesh Moghaddam, as a means to intimidate Mr Bahari and thwart his efforts to recover his investments*",[83] the only evidence that such conduct in fact occurred is the testimony of Mr Moghaddam himself,[84] which is directly contradicted by the

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76 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, **R-58**. *See* paragraphs 264 to 266 below.

77 Statement of Claim, para. 473(iv).

78 Bahari Statement, paras. 79-84.

79 *See* PART 3V below.

80 *See* paragraphs 214 and 286(c) below.

81 *See* paragraphs 212 to 213 below.

82 Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68** ("[redacted]")

83 Statement of Claim, para. 473(v).

84 Moghaddam Statement, paras. 64-87.

evidence of Azerbaijan's witnesses and the documentary record. In particular the evidence of Mr Moghaddam's wife, as well as the documentary record, demonstrates that: (i) Mr Moghaddam is a known drug user and has previously freely admitted to using narcotic substances, the possession of such substances being the reason Mr Moghaddam was arrested and detained, and not to intimidate Mr Bahari;[85] and (ii) Mr Moghaddam was not even in the country at the time of at least two of the alleged physical assaults;[86]

(e) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov directed "*the Chief of Police of Baku* [Mr Alzamin Khanmadov] *to seize Mr Bahari's Persian carpets*",[87] the only evidence that such conduct in fact occurred is the testimony of Mr Bahari's witnesses,[88] which is demonstrably false: Mr Khanmadov was never the Chief of Police of Baku,[89] and the allegation that he seized the carpets is directly contradicted by the evidence of Azerbaijan's witnesses.[90] It has already been noted that Mr Bahari is foolishly exposed in claiming that a carpet in Mr Khanmadov's house is one he allegedly had made, when it simply is not. In any event, the alleged conduct occurred before the Treaty entered into force and the evidence of Azerbaijan's witnesses and the documentary record demonstrates that Mr Bahari's carpets were all returned to him at his request in Dubai;[91]

(f) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov "*undert*[ook] *and facilitat*[ed]" the transfer of Caspian Fish,[92] Coolak Baku or Shuvalan Sugar[93] assets, or that they "*creat*[ed] *a local Azeri holding company… to hold the shares in Caspian Fish*",[94] or that they "[s]*eized and transferred the ownership*

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85 *See* paragraph 183 and paragraphs 354 to 358 below.

86 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues under the Ministry of Economy of the Republic of Azerbaijan, **R-58**. *See* paragraph 353(b) below.

87 Statement of Claim, para. 473(vi).

88 Moghaddam Statement, paras. 69-71; Bahari Statement, para. 78.

89 See paragraph 346 below.

90 Zeynalov Statement, para. 48.

91 *See* PART 3VII.B below.

92 Statement of Claim, para. 473(vii).

93 Statement of Claim, para. 473(x).

94 Statement of Claim, para. 473(ix).

*of the Ayna Sultan property*",[95] these allegations (which are denied) in themselves do not concern the use of "*State apparatus in a manner not available to normal private citizens*".[96] They are actions carried out in a purely private capacity.[97] To the extent Mr Bahari suggests that the State was involved by virtue of the alleged "*affirm*[ation] *and facilitat*[ion of] *the transfer of Mr Bahari's shares and assets to other Azeri or international companies*",[98] it is not clear precisely what conduct is alleged. The Claimant is required to specify the precise conduct he says amounts to a Treaty breach. Mere administrative conduct of Azerbaijan's State ministries, such as to approve changes to share registries of Azerbaijani entities, does not transform the alleged actions of Messrs Aliyev and Heydarov to conduct attributable to the State for the reasons set out at paragraphs 43 to 46 below;

(g) Insofar as Mr Bahari claims that "*Ayna Sultan property*[ was] *seized with the knowledge and assistance of Government security forces and other organs of the Government*",[99] Mr Bahari fails to provide any evidence in support of this claim at all: it is a bare assertion, not even supported by witness evidence. The documentary record clearly establishes that Ayna Sultan was sold by Mr Bahari to a private third party in 1999,[100] well before any alleged dispute arose; and

(h) Insofar as Mr Bahari claims Messrs Aliyev and Heydarov "[i]*ssu*[ed] *various threats of legal and physical harm against Mr Bahari over the years*",[101] the only evidence that such conduct in fact occurred is the testimony of Mr Bahari himself,[102] which is directly contradicted by Mr Bahari's own conduct, such as

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95 Statement of Claim, para. 473(xi).

96 Statement of Claim, para. 472.

97 In any event, the evidence of Azerbaijan's witnesses and the documentary record demonstrates that the corporate actions relating to Caspian Fish and Coolak Baku occurred either with Mr Bahari's knowledge, consent and participation (*see* paras. 245 to 248 below) or following his willing exit (for which he was duly compensated) from such entities (*see* PART 3V.D below). As to Ayna Sultan, Mr Bahari sold it himself prior to the Treaty entering into force: *see* PART 3VI.A below.

98 Statement of Claim, para. 473(viii).

99 Statement of Claim, para. 15(vii).

100 *See* Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Guliyev and Mr Bahari dated 28 September 1996, **R-79**. *See* PART 3VI.A below.

101 Statement of Claim, para. 473(xii).

102 Bahari Statement, paras. 70, 71, 77, 83, 84, 85, 92, 94, 96, 98, 99.

his multiple returns to Azerbaijan in 2001 and then in 2013 with his 10-year old son.[103] The vast majority of these alleged threats also occurred before the Treaty entered into force.

38. Accordingly, the alleged conduct of Messrs Aliyev and Heydarov cannot be attributed to the State of Azerbaijan under Article 4 of the ILC Articles:[104] such conduct (if established and none of which is admitted) was carried out in a private capacity and, as set out above, the Claimant is unable to evidence that any such conduct was carried out in an official capacity, nor while the Treaty was in force.

39. The Claimant further relies on Article 4 of the ILC Articles to attribute the conduct of "*other State organs involved in the treatment of Mr Bahari and his investments*"[105] to Azerbaijan. Mr Bahari's case appears to be that an innumerable list of Azerbaijani ministries and authorities[106] (the **Azerbaijani Ministries**) "*with oversight for administering* [various Azerbaijani] *laws and regulations actively facilitated and engaged in the unlawful treatment of Mr. Bahari and investments in clear breach of Azerbaijan's obligations under the Treaty*".[107]

40. There is no dispute that the Azerbaijani Ministries described by Mr Bahari are State organs. However, as the Claimant appears to recognise,[108] his case in respect of the alleged actions of the Azerbaijani Ministries is based on their alleged acknowledgment and adoption of the alleged actions of third parties. For the reasons set out at paragraphs

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103 *See* PART 3V.G below.

104 Mr Bahari does not rely on any other Article of the ILC Articles, but it is plain that the alleged conduct of Messrs Aliyev and Heydarov cannot be attributed to Azerbaijan on the basis of Articles 5 or 8 either. There is no suggestion by Mr Bahari that Article 5 is applicable as he claims Messrs Aliyev and Heydarov are state organs; even if they were not, for the same reasons that their alleged actions were carried out in a private capacity for the purposes of art. 4 of the ILC Articles, such alleged actions also cannot be said to carry elements of governmental authority pursuant to art. 5 ILC Articles. Nor has Mr Bahari suggested or presented any evidence to the effect that their alleged actions were carried out on the instructions or at the direction or control of the State for the purposes of art. 8 ILC Articles (to the contrary, Mr Bahari's case is that they *were* the State).

105 Statement of Claim, paras 476 to 478.

106 Including, he says, but not limited to the Ministry of Justice, the Antitrust Authority, the Ministry of Taxes, the Ministry of Economy, the State Tax Service, the Ministry of Economic Development; the Ministry of Trade; Ministry of Agriculture; Ministry of Ecology and Natural Resources; Ministry of Internal Affairs; State Migration Service; Ministry of Foreign Affairs; State Service for Property Issues; The State Statistics Committee; and the Cabinet of Ministers (see section V of the Statement of Claim).

107 Statement of Claim, para. 375.

108 Statement of Claim, footnote 596, which seems to acknowledge that in order to attribute the conduct impugned in section V of the Statement of Claim to Azerbaijan, one must consider art. 11 of the ILC Articles.

43 to 46 below, the alleged actions of these third parties cannot be attributed to Azerbaijan by virtue of the alleged actions of the Azerbaijani Ministries. Insofar as any allegation is made regarding any free-standing or independent action of the Azerbaijani Ministries, none of the alleged conduct described in section V of the Statement of Claim could or did amount to a breach of Treaty.[109]

### B. The acts of Mr Khanghah are not attributable to Azerbaijan

41. The Claimant further states that "*Mr Khanghah's actions are attributable to Azerbaijan under Article 8 of ARISIWA* [sic] *because… he acted on behalf of and under the direction of Minister Heydarov, who, in turn qualifies as a State organ*".[110] Mr Bahari also alleges that Mr Khanghah acted on behalf of and under the direction of Mr Aliyev.[111]

42. Azerbaijan has no direct knowledge of the acts of Mr Khanghah, nor whether they were carried out on the instruction of Mr Heydarov, Mr Aliyev or otherwise. The burden is on the Claimant to demonstrate that any conduct by Mr Khanghah was carried out as agent for any other person. Insofar as Mr Khanghah's actions are alleged to have been carried out at the instruction of Messrs Heydarov and Aliyev in the circumstances pleaded in the Statement of Case, however, as set out above, such alleged conduct was not carried out in Messrs Heydarov's or Aliyev's official capacity and is therefore not attributable to the State. Accordingly, any action of Mr Khanghah carried out on their behalf in that context is also not attributable to the State.

### C. Azerbaijan did not acknowledge or adopt the alleged acts of Messrs Aliyev, Heydarov, Khanghah or Pashayev

43. The Claimant's alternative case is that "[e]*ven if Messrs. Aliyev, Heydarov, Pashayev, and Khanghah are considered private persons not acting on behalf of Azerbaijan… their conduct is nonetheless attributable to Azerbaijan under Article 11 of ARISIWA* [sic]".[112] As a preliminary point, no allegation is made that Mr Pashayev is an organ of State or acted as an agent of the State. Accordingly, Article 11 of ILC Articles is in

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109 *See* paragraphs 410 to 411 and 416 to 420 below.

110 Statement of Claim, para. 479.

111 Statement of Claim, paras 480 and 481.

112 Statement of Claim para. 483.

fact Mr Bahari's primary case with respect to attribution of the acts of Mr Pashayev to Azerbaijan.

44. The core of the Claimant's case in respect of Article 11 ILC Articles appears to be that Azerbaijan acknowledged and adopted "*illegal corporate actions to (1) transfer Coolak Baku's physical assets and operations to ASFAN; and (2) similarly transfer Caspian Fish's physical assets and operations to Caspian Fish MMC*".[113] The pleading is unclear, however, as it cross refers to section V of the Statement of Claim, which raises broader conduct allegations against a vast number of Azerbaijani ministries and organs (see paragraphs 39 and 40 above). Insofar as the Claimant relies on Article 11, however, the administrative actions of the Azerbaijani Ministries to register the share transfers do not amount to acknowledgment or adoption under Article 11 of the ILC Articles.

45. Article 11 of the ILC Articles imposes a high standard to attributing otherwise non-attributable conduct to the State. It must be "*clear and unequivocal*" that the State has "*identifie*[d] *the conduct in question and ma*[de] *it its own*";[114] the State's actions are to be distinguished from "*mere support or encouragement*".[115] Critically, "*what is required is something more than a general acknowledgment of a factual situation*".[116]

46. The routine administrative approvals and authorisations on which the Claimant relies do not qualify. In rejecting a similar line of argument in *Resolute Forest Products* v. *Canada*,[117] the tribunal observed that accepting the claimant's submission

> would mean that many run-of-the-mill private conduct (e.g. the purchase of real property) would be rendered State acts simply because it is rubberstamped by the State (e.g. the registration in the land register). The same principle would apply to government approvals done for instance under competition laws, utility laws, or bankruptcy laws…[118]

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113 Statement of Claim, para. 484 (footnotes omitted).

114 *See* Commentary to ILC Articles, **CLA-37**, art. 11, paras 6 and 8 at internal p. 53. *Saint-Gobain Performance Plastics Europe v Venezuela,* ICSID Case No. ARB/12/13, Decision on Liability and the Principles of Quantum (30 December 2016), **RLA-132**, para. 461, citing the same.

115 *See* Commentary to ILC Articles, **CLA-37**, art. 11, para 6 at internal p. 53.

116 *See* Commentary to ILC Articles, **CLA-37**, art. 11, para 6 at internal p. 53.

117 *Resolute Forest Products Inc v Canada*, PCA Case No. 2016-13, Final Award (25 July 2022), **RLA-133**.

118 *Resolute Forest Products Inc v Canada*, PCA Case No. 2016-13, Final Award (25 July 2022), **RLA-133**, para. 303; see also para. 306 (adopting the same reasoning under ILC Articles, Art. 11).

## III. JURISDICTION

47. For all of the reasons set out above, the alleged conduct on which Mr Bahari bases his claims is not attributable to Azerbaijan. Should the Tribunal find that contrary to Azerbaijan's case, any such conduct is attributable to Azerbaijan, the Claimant's case fails in its entirety in any event for jurisdictional reasons.

48. The vast majority of the actions in respect of which Mr Bahari complains took place and were concluded before the Treaty came into force. As to those which remain (if any), the Claimant's alleged investments are not investments recognised by the treaty, and they were never drawn to the attention of the State in a way that was required by the Treaty under its Article 9.

49. The following discussion proceeds on the basis that the claimant's factual allegations in respect of the merits are established *pro tem*, in accordance with the standard ordinarily applied by investment tribunals to determine jurisdictional issues (though none of the Claimant's allegations are admitted by Azerbaijan).[119] Insofar as the Tribunal's jurisdiction rests on the existence of certain facts (such as Mr Bahari's ownership of an asset), however, they must be proven – by the Claimant – in order for the Tribunal to conclude it has jurisdiction.[120]

50. As a preliminary point, the Respondent notes that the way in which Mr Bahari's case is pleaded is convoluted, disordered and, at times, difficult to follow. Generalised sweeping statements are made without reference to specific issues. For these reasons, it is difficult to parse out precisely which assets Mr Bahari alleges were investments the subject of precisely which acts said to be a breach of Treaty. The Respondent has attempted to respond, as best as it can, to the case as currently pleaded. However all of its rights to amend or supplement this Defence in the event Mr Bahari clarifies his case are reserved.

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119 *See Gustav F W Hamester GmbH & Co KG* v *Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 Jun. 2010, **CLA-32** para. 143.

120 *Phoenix Action, Ltd. v Czech Republic*, ICSID Case No. ARB/06/5 (Award dated 15 April 2009), **CLA-99**, at paras 60 to 61.

### A. The acts in respect of which the Claimant complains took place before the Treaty came into force

51. The vast majority of the actions in respect of which Mr Bahari complains took place before the Treaty came into force, namely the allegations (each of which are denied) that:

(a) Mr Bahari was forcibly removed from the Caspian Fish Grand Opening Ceremony on 10 February 2001;[121]

(b) Azerbaijan's Minister of Intelligence confirmed a plan to assassinate Mr Bahari in or around February 2001;[122]

(c) State security forces put Mr Bahari under house arrest in or around February 2001;[123]

(d) State security forces expelled Mr Bahari and his family from Azerbaijan in or around late March 2001;[124]

(e) Mr Moghaddam was detained and beaten by Government security forces in April and June 2001;[125]

(f) The head of police seized Mr Bahari's carpets in August 2001;[126] and

(g) Messrs Aliyev, Heydarov and Khanghah attempted to impose a forced sale on Mr Bahari on 15 June 2002.[127]

52. All of these events pre-date the entry into force of the Treaty and are therefore *prima facie* incapable of forming the evidentiary basis for a Treaty claim. The Claimant is well aware of the limitations imposed by the principle of non-retroactivity, given the date of entry into force of the Treaty on 20 June 2002.[128] In an attempt to avoid this

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121 Statement of Claim, paras 133 to 134.

122 Statement of Claim, para. 146.

123 Statement of Claim, para. 149.

124 Statement of Claim, para. 152.

125 Statement of Claim, para. 158.

126 Statement of Claim, para. 161.

127 Statement of Claim, para. 168.

128 *See* Vienna Convention on the Law of Treaties, **CLA-36**, art. 28: a State is not bound by "any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty"; *see* Statement of Claim, para. 455.

difficulty, the Claimant argues that the Tribunal can assert jurisdiction over the pre-20 June 2002 acts on the basis that "*the situation created by the wrongful acts of Azerbaijan against Mr Bahari and his investments 'continued to exist after the Treaty entered into force"*", such that "*when the Treaty entered into force on 20 June 2022* [sic]*, Azerbaijan was already in breach*".[129] This flimsy construct holds no water.

53. The Claimant provides no analysis of how each or any of the acts in question could be said to give rise to a breach of a "continuing character", which is what would be required to establish the Tribunal's jurisdiction over those acts. The ILC Articles distinguish between: (a) breaches of international obligations where only the effects of the breach continue; and (b) breaches which themselves have a continuing character. Mr Bahari fails in his summary of the ILC Articles to make reference to the former type of breach,[130] which is explained in Article 14(1) as follows: "*breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue*".[131]

54. In *Mondev v USA*, a case cited by the Claimant without any analysis of its contents,[132] the tribunal said:

> …there is a distinction between an act of a continuing character and an act, already completed, which continues to cause loss or damage. Whether the act which constitutes the gist of the (alleged) breach has a continuing character depends both on the facts and on the obligation said to have been breached.[133]

55. Accordingly, each obligation that is said to have been breached by acts occurring prior to 20 June 2002 must be considered in turn. In considering the question of whether the act is of a continuing character, tribunals have looked at when the loss became final,[134] when the State's secondary responsibility (to make reparations for the breach) was

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129 Statement of Claim, para. 460.

130 Statement of Claim, para. 456.

131 Article 14(1), ILC Articles, **CLA-37**.

132 Statement of Claim, footnote 575.

133 *Mondev International Ltd v United States of America*, ICSID Case No ARB(AF)/99/2 Award (11 October 2002), **CLA-39**, paras 57-58.

134 *Mondev International Ltd v United States of America*, ICSID Case No ARB(AF)/99/2 Award (11 October 2002) **CLA-39**, para. 61.

engaged,[135] and whether the act was a discrete event[136] or occurred at a certain moment in time.[137] Several tribunals have confirmed that expropriation, by its nature, cannot be a continuing breach, given that it happens at the moment there is a taking of the property.[138]

### 1. Any acts giving rise to an alleged expropriation occurred and were completed before the Treaty came into force

56. Conveniently for the purposes of stitching together this claim, Mr Bahari alleges that "*the expropriatory acts do not manifest as a single direct breach in time; rather… there were composite and continuous acts which ripened into an indirect expropriation over a certain length of time*".[139] To that end, Mr Bahari states that "*Azerbaijan's detention and expulsion of Mr. Bahari between February and March 2001… amounted to an open, deliberate, and unequivocal physical act intended to ultimately deprive Mr. Bahari of his investments. As a singular act, however, Mr. Bahari's expulsion from Azerbaijan did* [sic] *in itself rise to the level of a direct expropriation*".[140] Similarly, Mr Bahari claims that the 15 June 2002 "forced sale" did not constitute "*a direct expropriation… because the legal and economic use of Mr. Bahari's investments had not been definitively lost*".[141]

57. At least Mr Bahari acknowledges that what is required to establish an indirect expropriation is a substantial deprivation "*in whole or significant part, of the property*

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135 *Mondev International Ltd v USA*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), **CLA-39**, para. 61.

136 *Paushok and ors v Mongolia*, UNCITRAL, Award on Jurisdiction and Liability (28 April 2011), **CLA-134**, para. 498.

137 *Impregilo SpA v Pakistan,* ICSID Case No ARB/03/3, Decision on Jurisdiction (22 April 2005), **RLA-134**, para. 312.

138 *Victor Pey Casado and anor v Chile*, ICSID Case No ARB/98/2, Award (8 May 2008), **RLA-135**, para. 608 (informal translation: "… expropriation [is] an instantaneous act that does not create a continuous situation of 'deprivation of right'."); *Mondev International Ltd v USA*, ICSID Case No. ARB(AF)/99/2, Award (11 October 2002), **CLA-39**, para 61 ("As to the loss of LPA's and Mondev's rights in the project as a whole, this occurred on the date of foreclosure and was final. Any expropriation, if there was one, must have occurred no later than 1991. In the circumstances it is difficult to accept that there was a continuing expropriation of the project as a whole after that date.").

139 Statement of Claim, para. 582.

140 Statement of Claim, paras 590-591. The Respondent assumes there is a typographical error in paragraph 591 of the Claimant's pleading, and that he intended to states that the expulsion did not give rise to a direct expropriation. *See also* para. 609.

141 Statement of Claim, para. 595.

*in or effective control of* [an investor's] *investment*".[142] At this point, however, the Claimant's case becomes contradictory:

(a) He claims that Azerbaijan's alleged "*expulsion… did not, in itself, deprive him permanently or irreversibly of his investments*",[143] yet he also claims that it was at the point of expulsion that he was "*shut off from his investments and any administrative or judicial means to recover them*".[144]

(b) He claims that as of 15 June 2002, "*the legal and economic use of Mr. Bahari's investments had not been definitively lost*",[145] yet elsewhere he claims that the alleged "forced sale agreement" is a "*remarkably candid admission that Mr. Bahari's investments had been unlawfully seized*".[146]

(c) He also claims that it is "*reasonable to select 1 January 2003 as the appropriate valuation date for restitution*",[147] ostensibly on the basis that this is when "the State first started to disregard its obligations under the Treaty",[148] but this date is an artificial construct to suit the jurisdictional difficulties with Mr Bahari's case and should be rejected. For the purposes of establishing the valuation date, Mr Bahari relies on the "composite acts" doctrine, citing Article 15 of the ILC Articles, which explains that a composite act occurs "*at the time at which the last action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act*".[149] On Mr Bahari's own case, therefore, the wrongful acts in relation to the expropriation had completed by 1 January 2003. Those acts can only be the acts set out by the Claimant as having occurred prior to the entry into force of the Treaty as listed at paragraph 51 above, because Mr Bahari does not plead nor rely on any alleged State acts between entry into force and 1 January 2003.

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142 Statement of Claim, para. 597; *AES Summit Generation v Hungary*, Award (23 September 2010), **CLA-128**, para. 14.3.1.

143 Statement of Claim, para. 591.

144 Statement of Claim, paras 473(iii), 609.

145 Statement of Claim, para. 595.

146 Statement of Claim, para. 169.

147 Statement of Claim, para. 463.

148 Statement of Claim, para. 635.

149 Statement of Claim, para. 632; ILC Articles, **CLA-37**, art. 15.

58. Whichever way he attempts to reframe the facts to suit his case, if he is able to establish that the actions of the relevant third parties are attributable to Azerbaijan (which is denied) and that the conduct he claims to have occurred in fact occurred on the balance of probabilities (which is further denied), there can be no doubt that the expropriatory act occurred and was completed before the Treaty entered into force. It was at this point that Mr Bahari had allegedly been expelled and was prevented from returning to Azerbaijan, and also at this point, on his case, that his investments were seized and he lost control. Whether or not the investor retains legal title to the property is irrelevant: what matters is the point at which the expropriatory act was complete.[150]

59. Further, Mr Bahari's reliance on the composite acts doctrine (seemingly for the purposes of establishing a post entry-into-force valuation date) is misplaced. It has no application where there is an identifiable act of taking. It is relevant to "creeping" expropriation claims, which have no similarity to the factual matrix of this case.[151] This case bears more similarity to *Berkowitz (Spence) v Costa Rica*, in which the tribunal declined jurisdiction over the claimant's expropriation claims on the basis that the relevant treaty had not entered into force at the time of the taking. The claimant sought to argue that its interests in land, which it claimed had been directly expropriated by the respondent through the transfer of title, had also been indirectly expropriated by the respondent's subsequent delay, failure to compensate and alleged breaches of due process. The tribunal explained as follows:

> An alleged breach will not come within the jurisdiction of the Tribunal if the Tribunal's adjudication would necessarily and unavoidably require a finding going to the lawfulness of conduct judged against treaty commitments that were not in force at the time. The Tribunal may have regard to pre-entry into force acts and facts for evidential and similar purposes, as discussed above. Such acts and facts cannot, however, form the foundation of a finding of liability even in respect of a post-entry into force, or a post-critical limitation date, actionable breach. To be justiciable, a breach that is alleged to have taken place within the permissible period, from a limitation perspective, must, if it has deep roots

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150 *Occidental v Ecuador (I)* LCIA Award (1 July 2004), **CLA-46**, para. 85 ("The Tribunal agrees with the Claimant in that expropriation need not involve the transfer of title to a given property…").

151 *See* cases cited at fn. 728 of the Statement of Claim: *LG&E Energy Corp and ors v Argentina*, ICSID Case No. ARB/02/1, Decision on Liability (3 October 2006), **CLA-72**, which concerned regulatory measures imposed by the Argentinian government to deal with an economic crisis, *see* discussion at paras 185-200 on how such measures were relevant to creeping expropriation, although the tribunal did not find an expropriation on the facts); and *Fireman's Fund Insurance Company v Mexico*, ICSID Case No. ARB(AF)/02/01, Award (17 July 2006), **CLA-146**, which also concerned regulatory measures enacted by the Mexican government to combat a financial crisis.

> in pre-entry into force or pre-critical limitation date conduct, be independently actionable.[152]

60. The tribunal found that the claimant could not characterise acts subsequent to the act of expropriation as acts of indirect expropriation:

> …the Claimants' allegations, in all of their various permutations contained in the Claimants' seven-point matrix of alleged breaches and elsewhere, are all so deeply rooted in pre-entry into force conduct as not to be meaningfully separable from that conduct. …[153]

> Insofar as any issue of indirect expropriation arises in respect of these properties, this is inseparable from the alleged direct expropriation measures that the Tribunal has concluded are not justiciable. The relevant acts and facts took place before the entry into force of the CAFTA on 1 January 2009. Nor, for the same reasons, can the alleged indirect expropriation amount to a self-standing cause of action… [154]

61. Similarly, in *Carrizosa v Colombia*, the tribunal found there was no "independently actionable breach" where the majority of measures alleged by the claimant for the basis of her claims occurred before the relevant treaty entered into force, and only one measure post-dated the entry into force of the treaty.[155]

62. Mr Bahari claims that various acts subsequent to the Treaty's entry into force "*consummated* [the] *indirect expropriation*",[156] namely "*threat*[s] *and intimidat*[ion]",[157] an alleged restriction on access to "*administrative or judicial protection*",[158] and the ultimate transfer of Mr Bahari's investments to third parties.[159] None of these events constituted the relevant taking or act equivalent to a taking for the purposes of an expropriation claim: Mr Bahari lost control of his investments, on his case, prior to the date of entry into force of the Treaty. Nor can these events alone give

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152 *Aaron C Berkowitz and ors (formerly Spence International Investments and ors) v Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (Corrected, 30 May 2017), **RLA-136**, paras 222, 269 and 271.

153 *Aaron C Berkowitz and ors (formerly Spence International Investments and ors) v Republic of Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (25 October 2016), **RLA-136**, para. 269.

154 *Aaron C Berkowitz and ors (formerly Spence International Investments and ors) v Republic of Costa Rica*, ICSID Case No UNCT/13/2, Interim Award (25 October 2016), **RLA-136**, para. 271.

155 *Astrida Benita Carrizosa v Colombia*, ICSID Case No. ARB/18/5, Award (19 April 2021), **RLA-23**, paras 126, 151-167.

156 Statement of Claim, para. 608.

157 Statement of Claim, para. 610.

158 Statement of Claim, para. 611.

159 Statement of Claim, para. 613.

rise to any separate expropriation claim, based on the logic in *Berkowitz (Spence) v Costa Rica*.

63. Accordingly, the Claimant is unable to establish that any of the acts alleged to give rise to his expropriation claim, whether before or after the Treaty entered into force, fall within the jurisdiction of the Tribunal.

### 2. Any acts allegedly giving rise to breaches of FET or FPS occurred before the Treaty came into force

64. Outside of the claim for expropriation, Mr Bahari has not provided any analysis of the alleged "continuing" or "composite" nature of acts said to give rise to other breaches of Treaty.

65. As to the claim for breach of the fair and equitable treatment standard (**FET**), Mr Bahari relies on the following pre-20 June 2002 acts to establish a breach of Treaty: "*from the fateful day he was removed by the Government from the Caspian Fish grand opening, to the subsequent acts of intimidation, harassment and assault, and abuse of power*";[160] and "[b]*y expelling Mr. Bahari from Azerbaijan, and not allowing him to return without specific Government approval, Azerbaijan obstructed Mr. Bahari from pursuing any recourse whatsoever in Azerbaijan*".[161]

66. The core of Mr Bahari's FET case is that he was "obstructed" or prevented from pursuing recourse in Azerbaijan due to his expulsion, on the basis that "*because there is little practical transparency in Azerbaijan or an ability to purse rights there from abroad, Mr. Bahari was shut off from his investments and any administrative or judicial means to recover them*".[162] This act, if true, was complete as at the moment of Mr Bahari's alleged expulsion; while its effects may continue, the act itself did not.[163] It is not accordingly an act of a "continuing" character, and it cannot give rise to a continuing breach.

67. Similarly, as to the claim for breach of full protection and security (**FPS**), Mr Bahari relies on the following pre-20 June 2002 acts to establish a breach of Treaty:

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160 Statement of Claim, para. 521.

161 Statement of Claim, para. 529.

162 Statement of Claim, para. 609.

163 *See Nissan Motor Co Ltd v Republic of India*, PCA Case No. 2017-37, Decision on Jurisdiction (29 April 2019), **RLA-137**, at para. 325.

"*Azerbaijani forcibly detained and then expelled Mr. Bahari from Azerbaijan with the sole purpose of denying Mr. Bahari access to and control of his investments*".[164] Again, the act of detention and expulsion giving rise to the alleged denial of access and control was final and complete prior to the entry of the Treaty into force. It is not a continuing act giving rise to a continuing breach.

68. The remaining post-20 June 2002 events alleged by Mr Bahari to comprise breaches of the FET[165] and FPS[166] obligations were accordingly not separate breaches of Treaty, as the relevant alleged breach had already occurred and was completed before the Treaty entered into force, and it was only the effects of the alleged breach that could be said to have continued[167] (or even if they were continuing breaches, they caused Mr Bahari no additional substantial loss).

### 3. On the Claimant's own case, the dispute arose before the Treaty came into force

69. In any event, on the Claimant's own case, the Tribunal has no jurisdiction over the Claimant's case as the dispute arose and crystallised before the Treaty came into force.

70. Many tribunals have determined that their jurisdiction is limited to disputes arising only after entry into force of the treaty, even in the absence of express wording to that effect. Thus, in *Salini v Jordan*, the Tribunal said:

> the Tribunal notes that Articles 9(1) and (3) of the BIT cover "any dispute which may arise between one of the contracting Parties and the investors of the other contracting Party on investments". Such language does not

164 Statement of Claim, para. 568.

165 *See* Statement of Claim at paras 521 ("acts of intimidation, harassment and assault, and abuse of power, spanning almost two decades") and 529 ("When Mr. Bahari engaged his in-country manager or legal counsel to engage in investigations into the status of his investments so that he could seek legal or administrative proceedings to recover his investments, the Government issued stern warnings and veiled threats to his counsel not to look any closer. In the circumstances of Mr. Moghaddam, on at least three occasions he was detained, assaulted, threatened and, ultimately, he was jailed for five years on false charges.").

166 *See* Statement of Claim at paras 568 ("Azerbaijan further threatened and physically assaulted Mr. Bahari's manager, Mr. Moghaddam, unlawfully detained him for over a week, then, in 2009, imprisoned him on falsified criminal charges. Various State organs further threatened and intimidated Mr. Bahari, or his legal counsel, hindering Mr. Bahari from investigating the disposition of his investments and building a possible legal claim against Azerbaijan.), 569 ("various ministries and agencies stood by (or even took affirmative administrative actions), while the harmful conduct endured") and 570-573 (concerned the alleged failure of the Azerbaijani Ministries to take action in the light of the "unlawful seizure").

167 *See Société Générale v Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction (19 September 2008), **CLA-41** at para. 88 ("If it is merely the continuing effects of a one-time individual act that as such has ceased to exist that is involved, then the non-retroactivity principle fully applies.").

> cover disputes which may have arisen before the entry into force of the BIT, but only disputes arising after 17 January 2000.[168]

71. The tribunal in *MCI v Ecuador* found that:

> The non-retroactivity of the BIT excludes its application to disputes arising prior to its entry into force. Any dispute arising prior to that date will not be capable of being submitted to the dispute resolution system established by the BIT. The silence of the text of the BIT with respect to its scope in relation to disputes prior to its entry into force does not alter the effects of the principle of the non-retroactivity of treaties.[169]

72. In *Ping An v Belgium*, the tribunal said:

> If (which is doubtful) the Mavrommatis case stands for a principle that there is a presumption that the jurisdiction of a tribunal extends to disputes which arose prior to its establishment, such a principle finds almost no support in investor-State arbitration.[170]

73. The International Court of Justice (**ICJ**) has defined a dispute on various occasions by declaring that it is "*a disagreement on a point of law or fact, a conflict of legal views or interests between parties*".[171] Arbitral tribunals have applied the ICJ's definition of a dispute on numerous occasions.[172] A "dispute" requires a minimum level of communication between the parties, where one party positively opposes the other's views (although a failure to respond to a party's demands does not affect the existence of the dispute).[173]

74. On the Claimant's case (which is not accepted) the acts of individual actors (namely Messrs Khanghah, Aliyev and Heydarov) are attributable to Azerbaijan. Accordingly

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168 *Salini Costruttori SpA v Jordan*, ICSID Case No. ARB/02/13 ICSID, Decision on Jurisdiction (29 November 2004), **RLA-138**, at para. 170.

169 *MCI Power Group v Ecuador*, ICSID Case No. ARB/03/6, Award (31 July 2007), **RLA-71**, para. 61. See also *Impregilo SpA v Pakistan (II)*, ICSID Case No. ARB/03/3, Decision on Jurisdiction (22 April 2005) **RLA-134**, paras 299-300; *ABCI Investments Limited* v *Republic of Tunisia*, ICSID Case No. ARB/04/12, Decision on Jurisdiction (18 February 2011), **RLA-139**, para. 169.

170 *Ping An Life Insurance Company v Belgium*, ICSID Case No. ARB/12/29, Award (30 April 2015), **RLA-24**, para. 184.

171 *Case concerning East Timor (Portugal v Australia*), ICJ Reports 1995, p. 90, **RLA-140**, para 22.

172 *See* summary of jurisprudence set out in *Bahgat v Egypt (I),* PCA, Decision on Jurisdiction (30 November 2017), **RLA-141**, paras 294-300.

173 *See EuroGas v Slovakia* ICSID, Award of the Tribunal (18 August 2017), **RLA-142**, para. 437 ("As regards the occurrence of a dispute, the Tribunal agrees with the Respondent's submission that the relevant consideration is the articulation of opposing views and interests, as opposed to the articulation of a specific legal basis for the claim. The landmark case on this point remains the PCIJ Mavrommatis case, where the Court stated that a dispute is "[a] disagreement on a point of law or fact, a conflict of legal views or of interests between two persons").

at its highest, even on the Claimant's case (which is not accepted) the "dispute" with respect to the alleged expropriation of his investments arose on 15 June 2002, when according to him he made known to these individuals that he objected to any forced sale, and their opposing views were stated. As it in fact transpires, however, if the Claimant does intend to challenge the sale of his shares, he would have to accept that the dispute arose in September 2001 when Mr Bahari and Mr Khanghah entered into the 2001 Sale Agreement.

### B. The Claimant cannot demonstrate ownership of a protected investment in the host State at the date of the alleged breach

75. In any event, none of the assets that are the subject of Mr Bahari's claims qualify as investments under the Treaty. The Treaty contains three relevant threshold requirements for an asset to qualify for protection under the Treaty: (a) the asset must be an "investment"; (b) the investment must be owned by the investor at the date of the alleged breach; and (c) the investment must have been made in the territory of Azerbaijan. Each requirement is addressed in turn below.

76. First, Article 1(1) of the Treaty provides that "[t]*he term 'investment' (...) shall include every kind of asset*[]", followed by a list of assets which "*in particular*" shall be included. Applying Article 31 of the Vienna Convention on the Law of Treaties (**VCLT**), tribunals considering similar language have interpreted the word "investment" as requiring something over and above the mere existence of an asset (enumerated in a list or otherwise), namely a consideration of the objective and ordinary meaning of the term investment is required.[174] Any other construction would "*deprive*[] *the term 'investments' of any inherent meaning, which is contrary to the logic of* [the terms] *of the BIT*".[175] In *Doutremepuich v Mauritius*, the tribunal said:

> Article 1(1) only provides that the term "investments" – however to be defined – encompasses ("*comprend*") all types of assets ("*toutes les catégories de biens*"). Such a provision cannot play the gatekeeping role of establishing when a situation qualifies as an investment and when it does not. Nor can the non-exhaustive list of assets contained in Article 1(1) play such a role since, by its own terms, it only provides possible examples. The question of how to define investment therefore cannot be

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174 *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** para. 180; *Christian Doutremepuich and Antoine Doutremepuich* v *Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction, (23 August 2019), **RLA-20**, para. 117.

175 *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** para. 180.

found in Article (1) of the Treaty. It has to be found in the objective and ordinary meaning of the term "investments".[176]

77. Giving effect to the inherent meaning of the word "investment" avoids results that are "*manifestly absurd or unreasonable*".[177] The Claimant's simplistic construction by reference only to the list of assets set out in the Treaty "*would eliminate any practical limitation to the scope of the concept of 'investment'*"[178] whereby every asset would be elevated to a qualifying investment under the Treaty, "*even if the contract is a simple one-off sales transaction*",[179] or if the movable is a single rubber eraser. Considering the Treaty's object and purpose in line with Article 31 VCLT, it is clear that the investments the State Parties intended to protect are not mere one-off commercial transactions.[180]

78. Generally speaking, tribunals in both ICSID and non-ICSID cases have adopted the *Salini* criteria, or a variation thereof, to establish the objective and ordinary meaning of the term investment.[181] Those criterion incorporate contribution, duration, an expectation of return and an element of risk as the hallmarks of an "investment".[182]

79. Second, the Claimant is also required to show that he owned the relevant investment at the time of alleged breach.[183] The ownership requirement arises from the plain meaning

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176 *Doutremepuich v Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction (23 August 2019), **RLA-20** para. 117.

177 Vienna Convention on the Law of Treaties, 23 May 1969, **RLA-22** Art. 32(b); *see also Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** paras 184-185.

178 *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** para. 185.

179 *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** para. 187.

180 See Treaty, **CLA-1**, Preamble, third recital ("[r]ecognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Parties") and fourth recital (achieving "maximum effective utilization of economic resources" is a purpose of the Treaty).

181 *Nova Scotia Power Incorporated v Venezuela*, ICSID Case No. ARB(AF)/11/1, Award (30 April 2014), **RLA-67**, para. 80 ("It cannot be the case that the scope of "investment" in a bilateral investment treaty changes depending on the arbitral forum. No matter what the forum, the ordinary meaning of investment in the relevant bilateral investment treaty derives from something more than a list of examples and calls for an examination of the inherent features of an investment."). *See* also *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19**, para. 207; *Alps Finance v Slovakia,* Ad Hoc Arbitration, Award (5 March 2011), **RLA-84**, para. 241.

182 *Romak SA v Uzbekistan*, PCA Case No. 2007-07/AA280, Award (26 November 2009), **RLA-19** paras 207, 214, 225, 227, 229-231.

183 *Emmis International Holding and ors v Hungary*, ICSID Case No. ARB/12/2, Award (16 April 2014), **RLA-143**, para. 169.

of the words "asset",[184] "expropriat[e]" in Article 4 of the Treaty,[185] and "of" in Article 2(3) of the Treaty, where the promise of fair and equitable treatment (**FET**) is made in respect of "*the investments of the investors of the other Party*".[186] Similar language features in the Preamble, and Articles 6 and 8 of the Treaty.

80. It is trite law that ownership of the alleged investment is determined by the host State's law.[187] Where the alleged ownership has not vested, or is impossible or contrary to the laws of Azerbaijan, such an asset cannot qualify as an investment for the purposes of the Treaty.[188]

81. As explained by the tribunal in *Apotex v USA*, the "*critical enquiry must be as to the nature of the alleged 'property' as at the date of the alleged breach*",[189] there being no relevant investment for the State's obligations to attach to if ownership cannot be established at the date of the alleged breach.

82. Third, though implicit in the language of Article 1(1) addressed above, Article 10 makes express that an investment which is the subject of an investor-State dispute must be made in the territory of the host State.[190] Consequently, in the present case, alleged investments that are not made in the territory of Azerbaijan are not qualifying investments.

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184 Article 1(1) of the Treaty, **CLA-1**, provides that an "investment" will include "every kind of assets". As the tribunal in *Emmis v Hungary* held, the plain and ordinary meaning of "asset" is "an item of property owned by a person or company, regarded as having value and available to meet debts, commitments or legacies" (see **RLA-143**, para. 161).

185 Meaning to "take [property] from its owner": see *Emmis International Holding v Hungary*, ICSID Case No. ARB/12/2, Award (16 April 2014), **RLA-143**, para. 165.

186 **CLA-1**, emphasis added.

187 *Emmis International Holding v Hungary*, ICSID Case No. ARB/12/2, Award (16 April 2014), **RLA-143**, para. 162; *Europe Cement Investment and Trade S.A.* v *Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award (13 August 2009), **RLA-144** para. 140; *Vladislav Kim and others* v *Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction (8 March 2017), **RLA-145**, para. 268.

188 *Emmis International Holding v Hungary*, ICSID Case No. ARB/12/2, Award (16 April 2014), **RLA-143**, para. 168; *Generation Ukraine Inc v Ukraine*, ICSID Case No. ARB/00/9, Award (16 September 2003), **CLA-157** para. 22.1.

189 *Apotex Inc v USA*, UNCITRAL, Award on Jurisdiction and Admissibility (14 June 2013), **RLA-146**, para. 215.

190 Treaty, **CLA-1**, art. 10(1), limiting the tribunal's jurisdiction to "dispute[s] between a Party in whose territory an investment is made and one of more investors of the other Party with respect to an investment", 10(2), and 10(5).

### 1. The Claimant's shares and rights in Caspian Fish are not assets in the territory of Azerbaijan; nor is his alleged "participation" otherwise a qualifying investment

83. In respect of Caspian Fish, Mr Bahari's primary claim appears to be that the qualifying investment is his "*participation, rights and interests in Caspian Fish*" via the Shareholders Agreement,[191] although elsewhere he seems to claim that the shares themselves are or form part of a protected investment.[192] As to the latter claim: BVI Co is a BVI entity and, accordingly, shares in it are not assets located within the territory of Azerbaijan. To the extent that the Claimant claims his BVI shares are his investments, the Tribunal should find it has no jurisdiction.

84. As to the Shareholders Agreement which Mr Bahari asserts conferred rights by contract in respect of Caspian Fish,[193] these too are not rights located in the territory of Azerbaijan. They are *in personam* rights against the shareholders of Caspian Fish, not choses-in-action that constitute intangible property situated in Azerbaijan.[194] Mr Bahari's rights under the Shareholders' Agreement (if any) accordingly fall to be enforced against the shareholders in the BVI and are not investments in the territory of Azerbaijan.

85. Insofar as Mr Bahari complains that Caspian Fish's assets were transferred into a local Azerbaijani vehicle,[195] he appears to concede that any such transfer (on his case) took place after the "*initial seizure*" of his alleged investments.[196] In any event, a case based on the LLC is deeply problematic for Mr Bahari: the documentary record establishes that Mr Bahari was at all times aware of the incorporation of the LLC:[197]

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191 Statement of Claim, para. 436.

192 Statement of Claim, para. 613(i).

193 Statement of Claim, para. 436; Purported Company agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah dated 27 April 1999, **C-4**.

194 *See The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al. (May 2014), Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations, **RLA-148**, pp. 383 ("…in the investment treaty context pure *in personam* rights that are not choses-in-action and are not subject to alienation because they cannot readily be converted into a fixed sum of money cannot qualify as an investment in and of itself…").

195 Statement of Claim, section III.G.

196 Statement of Claim, para. 289. There is no suggestion by Mr Bahari that such transfer caused him (or indeed Caspian Fish) to suffer any additional loss.

197 See paragraphs 245 to 247 below.

(a) the LLC was a wholly owned subsidiary of Caspian Fish;[198]

(b) Mr Bahari was issued a power of attorney by BVI Co to take all actions required for the registration of the LLC in Azerbaijan.[199] Quite distinct from the application to register Caspian Fish's representative office (the **Representative Office**, which was also personally signed by Mr Bahari),[200] Mr Bahari signed the application for the LLC's registration with the Ministry of Justice in the presence of a notary, as well as its Charter;[201] and

(c) Mr Bahari signed a receipt from the Ministry of Justice, confirming that he had made a duty payment on behalf of the LLC.[202]

86. Accordingly, the only possible interest Mr Bahari can be said to have had in a company in Azerbaijan is his participation in the LLC via BVI Co. However, it is not the Caspian Fish entities that are alleged by Mr Bahari to have suffered any loss on account of the alleged breaches of Treaty. Rather, his case is that he was ousted from participation in Caspian Fish: he was "*fraudulently stripped* [] *of his shareholding rights in Caspian Fish BVI*".[203] Such conduct, if established, is not conduct of Azerbaijan, nor over which Azerbaijan had any jurisdiction and, accordingly, cannot be the subject of a Treaty claim.[204]

87. Mr Bahari also claims that he "*purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-*

198 *See* Charter of the LLC dated 11 September 2009, **R-57**, art. 3.1.

199 Power of Attorney from BVI Co to Mr Bahari dated 29 August 2000, **R-69**.

200 Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

201 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**; Charter of the LLC dated 11 September 2009, **R-57**.

202 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**, p. 1.

203 Statement of Claim, section III.F.

204 *See The Foundations of International Investment Law: Bringing Theory into Practice*, Zachary Douglas (ed.) et al. (May 2014), Chapter 12 "Property, Investment and the Scope of Investment Protection Obligations, **RLA-148**, pp. 382-383 ("A problem with the investment-as-contractual rights conception in meeting the jurisdictional threshold for the existence of an investment is establishing the requisite the territorial link to the host state. As was previously explained, this territorial link is necessary because a state's jurisdiction in international law to enforce its laws and regulations is territorial and the raison d'être of an investment treaty is precisely to reduce the sovereign risk associated with a state's enforcement jurisdiction.").

*how*" and that "*Caspian Fish was also issued a license by the Government to exploit natural resources in Azerbaijan*".[205] Mr Bahari fails to prove these assertions.

88. First, Mr Bahari did not fund the purchase of the equipment or the construction of the buildings. The only evidence Mr Bahari provides of his alleged contribution to the construction is a contract dated 10 May 1999 between "Caspian Fish Company" (not Mr Bahari) and Chartabi Contracting Services (**Chartabi**).[206] It is unclear precisely which legal entity is being referred to where the contract uses the term "Caspian Fish Company". Nevertheless, given the contract is not in Mr Bahari's name, it is not suggestive of any payment by Mr Bahari for these services. But the anomalous features of this alleged contract do not end there.

89. First, and foremost, the only entity which held a licence to carry out construction works was the LLC itself.[207] The documentary record and witness testimony make plain that Caspian Fish was using local builders to carry out the construction itself.[208] There was no "construction company" working on the Caspian Fish building site at any time, nor was one required.

90. As to the Chartabi contracts, of which there are three, respectively for Coolak Baku (dated 16 May 1996),[209] Shuvalan Sugar (dated 10 July 1997)[210] and Caspian Fish (dated 10 May 1999)[211] (the **Chartabi Contracts**) are curious. Each contract has been preserved in apparently pristine condition, despite dating back to 1996. The contracts appear in identical clarity, as do the signatures upon them, which each appear to have been written with exactly the same type of pen (a navy blue ball-point), despite being apparently being signed years apart. Mr Bahari claims that he was unable to take records from Azerbaijan,[212] but he does not explain where the Chartabi Contracts had been stored for the last 23 years, or how he managed to preserve them so well. No other

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205 Statement of Claim, para. 436.

206 Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

207 Licence granted to the LLC by the State Committee for Construction and Architecture dated 21 December 2000, **R-123**.

208 Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**; Zeynalov Statement, para. 28. *See* paragraphs 249 to 250 below.

209 Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**.

210 Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**.

211 Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

212 Statement of Claim, paras 61, 64 and 94.

documents in the record refer to Chartabi. Chartabi was not, and has never been, registered in Azerbaijan.[213] As such, it could not and did not have a licence or permit to carry out any construction works as required under the laws of Azerbaijan.[214] The Respondent was unable to identify any online presence of Chartabi, nor registered presence *anywhere*, globally, although a public obituary notice for Mr Ahad Chartabi, the signatory to the Chartabi Contracts (deceased September 2021), confirms that he is Mr Bahari's brother in law.[215] There is no contemporaneous invoice or payment document to evidence the payments allegedly made by Mr Bahari to Chartabi. Mr Bahari relies on a letter signed by Mr Chartabi more than 20 years after the fact,[216] yet on exactly the same Chartabi letterhead as the purported contract from 1996, issued on 7 January 2019 evidently in anticipation of the claims Mr Bahari sought to make in the 2019 Notice of Arbitration. In sum, Azerbaijan disputes the authenticity of the Chartabi Contracts and will be seeking inspection of the original documents in due course.

91. Mr Rasim Zeynalov, the only witness in these proceedings (other than Mr Bahari himself) who was working at Caspian Fish's premises at the time of the purported Chartabi contract, and who acted as "[redacted] to Mr Bahari,[217] recalls that a number of Mr Bahari's relatives were working on the construction of the plant,

213 Letter from State Tax Service to Khirdalan city attorney's office dated 18 December 2023, **R-86**.

214 At the time of the purported Chartabi Contract relating to Coolak Baku, a licence (special consent) was required for "Engineering-research" works activity, which is understood to be the same licence required for the activities under the contracts in basic construction: *see* art. 11 of the Law on Entrepreneurship activity, **RLA-189**, and Rules on works contracts in basic construction (art. 1.6, 2.3), **RLA-191**; at the time of the purported Chartabi Contract relating to Shuvalan Sugar, a licence was required for construction activity under Rules on works contracts in basic construction (art. 1.6, 2.3), **RLA-191**, and a licence (permit) was required for import of services for "Construction activities (engineering-research, project, construction-installation and commissioning works)" pursuant to art. 8 of the Rules of Regulation of Import-Export Transactions in the Republic of Azerbaijan, **RLA-192** and art. 4 of the Rules of giving an opinion (consent) to the contracts concluded for repair, construction and restoration works by foreign firms in the territory of the Republic of Azerbaijan, **RLA-193**; in addition, after October 1997, those works would be subject to the licence requirement under art. 13 of the List of types of activities requiring special consent (licence), **RLA-194**. At the time of the purported Chartabi Contract relating to Caspian Fish, a licence was for in the field of "Construction activity (engineering-research, project design, construction-installation and commissioning works)" pursuant to art. 13 of the List of types of activities requiring special consent (license), **RLA-194**, and for the import of such services pursuant to art. 8 of the Rules of Regulation of Import-Export Transactions in the Republic of Azerbaijan, **RLA-192**.

215 Obituary Notice for Mr Ahad Chartabi dated 23 September 2021, **R-70**.

216 Letter from Chartabi Contracting dated 7 January 2019, **C-86**.

217 Zeynalov Statement, para. 27.

including Mr Chartabi, who was a welder by trade.[218] According to Mr Zeynalov, Mr Chartabi was certainly not operating a construction company carrying out the construction works for the project.[219] Mr Zeynalov has retained a number of photographs from the construction at the time, which do not show any sign of Chartabi (or any construction company) at the building site.[220]

92. Mr Sabutay Hasanov, Caspian Fish's chief accountant from October 2000, who was working at the plant while the construction was still ongoing, does not recall Mr Chartabi and has never heard of Chartabi.[221] Mr Tahir Kerimov, a manager of Caspian Fish who carried out an audit of the construction in early 2001, confirms that he was never able to locate any formal records of construction, such as invoices or contracts with design, engineering or construction companies.[222]

93. As to the claim he purchased equipment, the documentary evidence that Mr Bahari has provided is woefully incomplete and does not support his claim that he spent any money on Caspian Fish at all.

94. There are only three documents Mr Bahari relies upon which concern his own personal bank accounts. Each fails to evidence that any money was spent at all, or that it was spent on Caspian Fish:

(a) Mr Bahari claims he spent USD 4.5 million of "[redacted]" on Caspian Fish, relying on a bank statement showing a transfer of USD 4.5 million into a one-month interest bearing account dated 18 December 1998.[223] Other than Mr Bahari's testimony, there is no evidence at all that these funds were in fact spent by Mr Bahari, or that they were spent on Caspian Fish at all.

(b) Mr Bahari relies on a Commerzbank statement which indicates that between 23 and 25 February 1998, Mr Bahari exchanged funds for MYR.[224] Again, these

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218 Zeynalov Statement, para. 28. Mr Sabutay Hasanov also recalls Mr Bahari's relatives working on the construction: *see* Hasanov Statement, para. 10.

219 Zeynalov Statement, para. 28.

220 Photographs of Caspian Fish Construction, **R-33**.

221 Hasanov Statement, para. 10.

222 Kerimov Statement, para. 14.

223 Commerzbank Transfer into Money Market Account dated 18 December 1998, **SEC-77**.

224 Commerzbank Statements dated 23-25 February 1998, **SEC-169**.

documents do not evidence the use of funds,[225] and it is simply not plausible, given their date of February 1998, that they concerned Caspian Fish, given BVI Co was not incorporated until more than a year later.

(c) Finally, Mr Bahari relies upon a Commerzbank transfer receipt to "Dried Fruit Trading" (**DFT**) and a cheque issued by him to "Dried Fruit Co", which he claims relate to a contract dated 21 December 1998 between DFT and Baader for the supply of fish processing equipment.[226] There is no evidence that this document concerns Caspian Fish (noting again its date precedes the incorporation of BVI Co). Mr Bahari does not explain why he is in possession of a cheque that he apparently issued 25 years ago (nor is there evidence that the cheque was cashed). Nevertheless, DFT was a company established in Germany in April 1989 by Iranian individual Mr Goudarz Rassai, who was its sole shareholder and director.[227] By 1999, it had been struck off the Hamburg company registry due to lack of assets.[228] While Azerbaijan is not privy to the details of the personal relationship between Mr Rassai and Mr Bahari, they were plainly known to one another. Mr Bahari himself describes DFT as being a company which "[redacted]"[229] Mr Bahari has not provided a copy of the invoice from Baader to DFT, nor any evidence of payment by DFT to Baader.[230] In any event, as explained in the following paragraph, it is not clear that the funds Mr Bahari transferred to DFT (if any) were his own.

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225 *See* Shi Report, p. 87.

226 Baader and DFT Contract 27492212-V398 dated December 1998, **SEC-65**; Commerzbank receipt from Mr Bahari to DFT dated 23 December 1998, **SEC-66**; Cheque issued by Dresdner Bank to DFT signed by Mr Bahari, **SEC-67**.

227 Extract from the Commercial Register for DFT Dried Fruits Trading GmbH (Hamburg), accessed 26 July 2023, **R-87**, p. 1.

228 Extract from the Commercial Register for DFT Dried Fruits Trading GmbH (Hamburg), accessed 26 July 2023, **R-87**. DFT was re-registered in the Schwerin district, *see* extract from Company Register (Schwerin) for DFT Dried Fruits Trading GmbH, accessed 26 July 2023, **R-88**, p. 1; where it was ultimately dissolved (March 2004, p. 2) and struck off the Schwerin company registry due to lack of assets (July 2010, p. 3).

229 Secretariat Report, para. 5.43, first bullet, internal p. 52.

230 Similarly, there is no evidence of payment to DFT of the sum of invoices Mr Bahari relies issued by DFT invoices to Mirinda: *see* Shi Report, p. 86 (referring to **SEC-68** and **SEC-69**).

95. The remaining documents Mr Bahari relies upon are not bank transfer records or payments receipts, but contracts or invoices which do not evidence that Mr Bahari paid them.[231] In fact, it is apparent from the documents Azerbaijan has been provided from Caspian Fish's archives that a significant number of payments were made for equipment from a Caspian Fish account at "Atabank". This includes direct payments to suppliers under the very contracts that Mr Bahari asserts were paid by him personally,[232] as well as payments to Mr Bahari's bank account at Commerzbank to put him in funds to pay certain suppliers.[233]

96. One such striking example is Mr Bahari's claim that he personally paid a USD 782,000 invoice from Nissei ASB to Caspian Fish pursuant to a contract dated 16 June 1999.[234] The Atabank payment instructions show that not only were sums of USD 500,000 transferred from Caspian Fish to Nissei on 7 January 2000[235] (following a complaint from Nissei that the sums remained outstanding)[236] and USD 87,500 on 10 August 2000,[237] but a sum of USD 187,500 was transferred by Caspian Fish to Mr Bahari on 18 August 2000 specifically for Mr Bahari to pay Nissei "[redacted]

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231 Mr Bahari relies on documents which are addressed to Caspian Fish, and he does not provide evidence that he personally made payments on behalf of Caspian Fish: *see* Shi Report, Appendix 4 p. 85-87, addressing **SEC-70**, **SEC-71**, **SEC-68**, **SEC-72**, **SEC-73**, **SEC-165**, **SEC-166** and **SEC-167**.

232 Mr Bahari relies on a contract between Nissei ASB and "Caspian Fish Company" for USD782,000 dated 16 June 1999, **SEC-72**. Azerbaijan has been provided copies of various Atabank payment orders to Nissei ASB indicating that transfers of USD 500,000, USD 187,000 and USD 87,500 were made to or for the benefit of Nissei: *see* Atabank funds transfer request dated 7 January 2000 from "Caspian Fish Co. In." to Nissei ASB, **R-89**, Atabank payment order dated 10 August 2000 from "Caspian Fish Co. Inc." to Nissei ASB, **R-90**, and Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank, **R-91**. Mr Bahari relies on Victorplex invoices to "Caspian Fish Co" dated 17 June 2000 for USD18,211.70, **SEC-193**, and 4 October 2000 for USD 1,149, **SEC-196**; Azerbaijan has been provided copies of Atabank payment orders to Victorplex dated 10 May 2000 for USD88,750, **R-92**, and 1 September 2000 for USD 75,907, **R-93** (referring to an invoice dated 25 August 2000). Mr Bahari also relies on an invoice from RFC Electronic dated 17 October 2000 for DM 7,561, **SEC-187**, and a waybill for items shipped by RFC Electronic to "Caspian Fish & Co" dated 26 October 2000, **SEC-188**; Azerbaijan has been provided a copy of an Atabank payment order to RFC Electronic to "Caspian Fish & Co" dated 10 August 2000 for USD207,500, **R-94**. Mr Bahari relies on an invoice from Schiller & Mayer to "Caspian Fish" dated 29 August 2000 for 96,767 DM and 73,238 DM, **SEC-167**; Azerbaijan has been provided a copy of an Atabank payment order to Schiller & Mayer dated 1 September 2000 for USD 15,700, **R-95**.

233 Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank for the sum of USD187,500, referring to "Partial payment according to the contract N 99611-RR1 DD 16/06/99", **R-91**.

234 Contract between Nissei ASB and "Caspian Fish Company" dated 16 June 1999, **SEC-72**.

235 Atabank funds transfer request dated 7 January 2000 from "Caspian Fish Co. In." to Nissei ASB, **R-89**.

236 Letter from Nissei ASB to Caspian Fish Company dated 20 December 1999, **R-71**.

237 Atabank payment order dated 10 August 2000 from "Caspian Fish Co. Inc." to Nissei ASB, **R-90**.

[redacted]".[238] These documents refute Mr Bahari's claims that he personally paid for the development of Caspian Fish.

97. Mr Zeynalov also confirms that money spent on Caspian Fish was provided to Mr Bahari, and not by Mr Bahari.[239] Messrs Kerimov and Hasanov confirm their understanding that Mr Heydarov or his holding company Gilan was the ultimate investor behind the project.[240] Mr Hasanov in particular explains in detail in his witness statement that cash for expenditure was provided by "[redacted]".[241]

98. Second, as to the alleged "know-how", "design" or "good-will" Mr Bahari claims to have provided, there is no evidence of it at all, other than his own witness testimony,[242] which is directly contradicted by the evidence of Azerbaijan's witnesses.[243]

99. Third, other than his own testimony, Mr Bahari provides no evidence of a licence issued – on his case – to BVI Co[244] – he relies on an archived copy of Caspian Fish's website which says only that "[redacted]

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238 Atabank payment order dated 18 August 2000 from "Caspian Fish Co. Inc." to Mr Bahari's account at Commerzbank, **R-91**.

239 Zeynalov Statement, para. 30.

240 Hasanov Statement, para. 8; Kerimov Statement, para. 20.

241 Hasanov Statement, para. 11.

242 Bahari Statement, para. 41 ("[redacted]").

243 Hasanov Statement, paras 19-21 ("[redacted]"). *See* paragraph 253 below.

244 Statement of Claim, para. 90.

[redacted]".[245] Azerbaijan did not issue any caviar "processing" or "export" licence to BVI Co (or, indeed, the Representative Office or LLC). Pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**), Caspian Fish was authorised to process and export caviar, but Caspian Fish was not the only entity doing so: at least three other companies had the right to do so.[246]

100. Even if Mr Bahari could evidence his allegations, however:

(a) the mere purchase of equipment for Caspian Fish would not qualify as an investment as it is a one-off transaction lacking elements of duration, return and risk;[247] in any event, such equipment was bought by or transferred to Caspian Fish and was therefore not owned by Mr Bahari at the time of any alleged breach (nor does he suggest it was);

(b) construction or refurbishment of a building is not an asset which itself could qualify as an investment; it may be a contribution to an investment in immovable property, but any such immovable property was not owned by Mr Bahari (nor does he suggest it was);

(c) design, know-how or goodwill allegedly contributed to Caspian Fish by Mr Bahari[248] also cannot qualify as an investment, as it is a one-off transaction lacking the elements of duration, return and risk; and

(d) as to any licence allegedly granted to Caspian Fish (BVI or otherwise), this is not an asset belonging to the Claimant and therefore cannot qualify as an investment owned by the Claimant.

101. Finally, and in any event, the Claimant cannot show he owned an investment relating to Caspian Fish in Azerbaijan at the time of the alleged breach because, by the time the

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245 Caspian Fish archived website - General Information, 4 July 2014 snapshot, **C-95**.

246 *See* CITES Notification No. 2002/068 to Parties concerning Azerbaijan (caviar) dated 19 December 2002, **R-12**; CITES Notification No. 2003/005 to Parties concerning Azerbaijan (caviar) dated 7 February 2003, **R-10**; CITES Notification No. 2003/056 to Parties concerning Azerbaijan (caviar) dated 29 September 2003, **R-11**; and Hasanov Statement, para. 18.

247 *See Joy Mining v Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction (6 August 2004), **RLA-149**, para. 55 ("the procurement of highly sophisticated railway or aircraft equipment would [not amount to an investment], despite the fact that such equipment would require additional activities such as engineering and design, spare parts and incidental services").

248 *See* Statement of Claim, para. 85.

Treaty came into force, Mr Bahari had freely relinquished his interests in Caspian Fish in exchange for the sum of USD 4.5 million. The documentary record will show how, despite Mr Bahari's claims that he never came to a deal with his former business partners regarding his various interests, the truth is that he did do a deal. In September 2001, he agreed to relinquish his shares in Caspian Fish for the price of USD 4.5 million,[249] and by the time of the 15 June 2002 meeting, USD 3.5 million of that sum had been paid.[250] The June 2002 meeting was intended to deal with the remaining USD 1 million, and also secured Mr Bahari a further USD 820,000 in "[redacted]" and "[redacted]".[251] Irrespective of whether it was signed, it was performed, and Mr Bahari received a grand total of over USD 5 million from Mr Khanghah, as evidenced by his own confirmation of receipt.[252] Mr Bahari accordingly had no ownership interest in Caspian Fish, or any indirect interest in any of its assets, at the date the Treaty came into force.

### 2. The Claimant's alleged "participation" in Coolak Baku is not a qualifying investment

102. The Claimant describes his investment in relation to Coolak Baku as his "*participation and interests in the Coolak Baku joint venture*".[253] It is unclear what is meant by "participation". Insofar as the Claimant means his shares in the Coolak Baku joint venture, no allegation of breach of Treaty is in fact made with respect to Mr Bahari's shares in Coolak Baku. This is no doubt because, as far as Azerbaijan understands, Mr Bahari still retains them.[254]

103. As a preliminary point, it must be noted that in 1999, Mr Bahari and his business partner in Coolak Baku, ASFAN, revised the terms of their joint venture agreement in relation to Coolak Baku to remove all references to the production of soft drinks and beer, as well as removing any specific obligation on the parties to contribute assets or perform

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249 Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**.

250 Receipt for USD 1.5 million dated 5 November 2001, **R-51**; and receipt for USD 2 million signed by Mr Bahari, **R-51**, p. 2.

251 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

252 *See* email from Mr Bahari to Arguj Kalantarli, copied to the President's Office dated 4 December 2013, **R-53**.

253 Statement of Claim, para. 437.

254 See para. 223 below.

any obligation under the joint venture.[255] Following this agreement, well before the Treaty entered into force, the only interest Mr Bahari could be said to have was his shareholding in Coolak Baku (which is not the subject of his claim).

104. Notwithstanding the above, if what is meant by "participation" is Mr Bahari's alleged "*financial*[] *contribut*[ion] *to the Coolak Baku JV*" through the "*purchase*[ of] *land and equipment, construct*[ion of] *immovable property, and provi*[sion of] *industrial and technical process design, as well as goodwill and know-how*" and that he was "*entitled to business rights, including claims to money and rights to legitimate performance having financial value*",[256] Mr Bahari fails to specify precisely what is meant by these general statements. In any event, there is no evidence for his assertions.

105. First, although he claims at paragraph 437 of the Statement of Claim to have "*purchased land*" this is imprecise and if intended, it is wrong. The term "*land*" appears to be a catch-all, given nowhere in the rest of the pleading or his evidence does he suggest that he personally ever purchased land in connection with Coolak Baku. To the contrary, his case is that "*Mr. Pashayev as a local partner… would contribute the land and an old building that could be refurbished*",[257] which is also wrong. In fact, the land had not at that time been privatised and the privatisation certificate referring to ASFAN's contribution described in the Joint Venture Agreement upon which Mr Bahari relies concerns the "production facilities", i.e. the buildings, and not any land.[258] Nor could Mr Bahari have owned any land, because Azerbaijani law prohibits the ownership of land by foreign nationals.[259]

106. Similarly, the claim at paragraph 437 of the Statement of Claim that Mr Bahari constructed immovable property is contradicted by the documentary record provided by Mr Bahari himself, which confirms that the production facility was already in

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255 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**. *See* PART 3III.C below.

256 Statement of Claim, para. 437.

257 *See* Statement of Case, para. 39; *see also* para. 43.

258 Certificate of Ownership issued by the State Property Committee to ASFAN dated 1 May 1997, **R-96**.

259 The Land Code of the Republic of Azerbaijan No. 254-XII, 9 November 1991 applicable at the time provided that "[l]and plot is not given to the ownership of foreign citizens, as well as foreign legal entities, and lifetime ownership through inheritance" (**RLA-15**, art. 11). The same prohibition applies today (Land Code of the Republic of Azerbaijan approved by the Law of the Republic of Azerbaijan No. 695-IQ, 25 Jun. 1999, **RLA-81**, art. 5(2)).

existence and was only to be refurbished and renovated.[260] As to that refurbishment, the only evidence of Mr Bahari's alleged contribution to the refurbishment of the production facility is the purported Chartabi Contract dated 16 May 1996 between Coolak Baku (not Mr Bahari) and Chartabi,[261] the veracity of which is not accepted for the reasons set out at paragraph 90 above. No contemporaneous invoice or payment document to evidence any alleged payment by Mr Bahari has been provided, and the documentary record and evidence of Azerbaijan's witnesses is that there was never any significant refurbishment carried out on the property, nor was it carried out by any company (let alone one called Chartabi).[262]

107. Second, as to the claim that Mr Bahari purchased equipment, with the exception of one handwritten note recording a payment of approximately USD 800,000 by Mr Bahari (which again is not evidence of the source of the funds Mr Bahari allegedly used), the documentary evidence that Mr Bahari has provided fails to record that he himself, as opposed to Coolak Baku or some other person, actually paid for any of equipment he references.[263] Indeed, the documentary record indicates that the funds used to purchase equipment were not his own funds,[264] and that he failed to pay for certain of these items, incurring debts in on Coolak Baku's behalf, and that he removed from the joint venture and sold various equipment before he left Azerbaijan.[265]

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260 *See* Agreement between ASFAN and Mr Bahari relating to "Coolak Baku Co" dated 23 January 1998, **C-1**, cl. 3.2 ("[redacted]").

261 Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**.

262 *See* paragraph 207 below. Zeylanov Statement, para. 14 ("[redacted].").

263 *See* Shi Report, Appendix 3, pp. 79-82; *see* paragraph 207 below.

264 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26** ("[redacted]").

265 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted].").

108. Contrary to Bahari's claims that approximately USD 9 million was spent on imported equipment,[266] Coolak Baku's contemporaneous import records demonstrate that only approximately USD 800,000 was spent on imported equipment between the years 1996 and 1999, while approximately USD 1.13 was spent on importing sugar.[267] These records do not indicate that Mr Bahari personally paid for any of it. In any event, it is clear that the vast majority of imports recorded by Coolak Baku were imports of granulated sugar. It appears that Mr Bahari led his partners to believe that these imports were required in connection with the production of soft drinks,[268] but instead of using the sugar to produce soft drinks, he on-sold it or processed it for other purposes (see paragraph 226 below). One such sale was the sale of 2,000 tons of granulated sugar to "Miri Pak" in April 1997, the proceeds from which Mr Bahari appears to have funded the purchase of equipment.[269]

109. Certain of the documents Mr Bahari relies on are highly suspect, having been concluded with entities with whom he had very close ties and which had no apparent experience in the trade of specialised drink or beer production equipment, such as DFT and "Mirinda Holding Associates" (**Mirinda**). Mirinda was an Irish company established by Mr Bahari and Mr Zeynalov in equal shares on 6 May 1998,[270] but was struck off just two years later, in May 2000,[271] and ultimately dissolved in December 2003.[272] One such invoice from DFT to Mirinda, worth approximately USD 10 million in today's money, is relied upon by Mr Bahari as evidence of his investment.[273] The

266 Secretariat Report, para. 5.41.

267 Reference Certificates on the export-import operations of Coolak Baku Co for the years 1996 to 1999, **R-73** to **R-76**.

268 H Aliyev Statement, para. 21; Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted]").

269 Agreement No. 01/97 between Coolak Baku and Miri Pak dated 1 April 1997, **R-32**; Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26**.

270 *See* Irish Companies Online Registration Environment search for Mirinda Holding Associates, accessed on 22 December 2023, **R-179**, and Mirinda Annual Return dated 29 January 2001, **R-150**, p. 2.

271 *See* Irish Companies Registration Office archived strike-off list dated 19 May 2000, **R-77**.

272 *See* Irish Companies Online Registration Environment search for Mirinda Holding Associates, accessed on 22 December 2023, **R-178**.

273 Invoice issued by DFT to Mirinda dated 3 November 1998, **SEC-74**.

invoice itself states that delivery will be made 6 months after payment, and there is no evidence that Mr Bahari paid anything (or that delivery was ever made).[274]

110. Third, as to the alleged "know-how", "design" or "good-will" he claims to have provided, there is no evidence of it at all, other than his own witness testimony,[275] which is directly contradicted by the evidence of Azerbaijan's witnesses.[276]

111. Fourth, he does not particularise at all which rights, claims to money or performance he refers to, leaving Azerbaijan to guess at the investments he claims to have lost. That does not suffice for Mr Bahari to establish, on the balance of probabilities, his ownership of an asset in the territory of Azerbaijan.

112. Even if he could evidence his assertions, however:

(a) the mere purchase of equipment for the joint venture, does not qualify as an investment as it is a one-off transaction lacking elements of duration, return and risk;[277] in any event, such equipment was transferred to the joint venture and therefore not owned by Mr Bahari at the time of any alleged breach (nor does he suggest it was);

(b) construction or refurbishment of a building is not an asset which itself could qualify as an investment; it may be a contribution to an investment in

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274 *See also*, e.g., Invoice issued by DFT to Mirinda dated 1 April 1999, **SEC-68**, for USD 3.8 million. Azerbaijan has been provided from Caspian Fish's archives a copy of an apparently identical invoice no. 362 dated 1 April 1999, where the "Total Price" is stated to be USD 13,900, instead of USD 3.8 million **R-78**.

275 Bahari Statement, para. 25 ("[redacted]"), para. 26 ("[redacted]").

276 Zeynalov Statement, paras 18-19 ("[redacted]").

277 *See Joy Mining v Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction (6 August 2004), **RLA-149**, para. 55.

immovable property, but any such property was at all times owned by ASFAN[278] and was therefore never owned by Mr Bahari, at the time of any alleged breach or otherwise (nor does he suggest it was);

(c) design know-how or goodwill allegedly contributed to the joint venture by Mr Bahari also cannot qualify as an investment, as it is a one-off transaction lacking the elements of duration, return and risk;

(d) Mr Bahari provides no specification of the alleged business rights or claims to money or financial performance. Insofar as it is alleged that these rights constitute the alleged USD 500,000 monthly payments to be made by ASFAN to Mr Bahari,[279] that outlandish claim is wholly implausible for the reasons set out at paragraphs 204 to 206 below, but even if it was not, there is no suggestion that these rights were affected by any alleged breach of Treaty; put simply, they do not form part of the assets said to be the subject of wrongdoing on the part of Azerbaijan, nor could they, given they are purely commercial contractual rights against a private party which have long been time-barred. Moreover, Mr Bahari has not demonstrated that his alleged entitlement to USD 500,000 survived the conclusion of the 1999 Agreement (discussed at paragraph 209 below).[280]

### 3. The Claimant's alleged "participation" in Shuvalan Sugar is not a qualifying investment

113. The Claimant describes his "*participation and interests in the Shuvalan Sugar Refinery*" as qualifying investments, ostensibly on the basis that he was entitled to "*business rights, including claims to money*" and that he "*purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how*".[281]

114. Shuvalan Sugar is not (nor it is alleged by Mr Bahari to be) a company, nor was it a business of any kind. At most, it was a potential business activity under Coolak Baku

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278 Certificate of Ownership issued by the State Property Committee to ASFAN dated 1 May 1997, **R-96**. *See* paragraphs 190, 193, 202 and 222 below.

279 Statement of Claim, paras 47-48.

280 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**, art. 5.2.

281 Statement of Claim, para. 438.

that never materialised.[282] It appears that it was located in a small warehouse (150-200 square metres in size) where Mr Bahari occasionally engaged in a basic process of heating granulated sugar to form lumps.[283] Again, the pleading is grossly deficient, failing to particularise which alleged business rights or claims to money Mr Bahari could possibly to said to have; even with the exercise of diligence, the Respondent is unable to conclude from the remainder of the pleading or the evidence filed in support of it what rights or claims to money Mr Bahari claims to have in Shuvalan Sugar. The Tribunal should accordingly reject any suggestion that Mr Bahari's had an investment in the form of business rights or claims to money with respect to Shuvalan Sugar, as he has failed to plead one.

115. As to the claims regarding the purchase of equipment, construction of immovable property and the contribution of know-how, Mr Bahari fails to specify precisely what is meant by these general statements, and in any event, there is no evidence for his assertions:

(a) although he claims at paragraph 438 of the Statement of Claim to have "*purchased equipment*" or provided "know-how", "design" or "good-will", this appears to be the result of typographical repetition of arguments in relation to Caspian Fish or Coolak Baku, given nowhere in the rest of the pleading or his evidence does he suggest that he ever purchased equipment or provided know-how, design or good-will in connection with Shuvalan Sugar; nor could he in circumstances where Shuvalan Sugar was merely the location of a property which he occasionally used; and

(b) the claim that he constructed immovable property on the Shuvalan Sugar land plot is directly contradicted by the evidence of Azerbaijan's witnesses, who deny that any construction was ever carried out by Mr Bahari on that land.[284] The land did not (and could not) belong to Mr Bahari,[285] nor did the property on it,[286] and the documents do not evidence that Mr Bahari was entitled to carry

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282 *See See* paragraph 203 and PART 3IV above.

283 See paragraph 226 below.

284 H Aliyev Statement

285 *See* n. 259; *see also* H Aliyev Statement, para. 20.

286 *See* Certificate of Ownership issued by State Property Committee to ARHAD dated 1 May 1997, **R-42** and paragraph 203 below.

out any work on it; to the contrary, the evidence of Azerbaijan's witnesses is that Mr Bahari only occasionally used a small part of the property to process sugar.[287] Further, the only evidence in support of Mr Bahari's construction claim in respect of Shuvalan Sugar is the purported Chartabi Contract dated 10 July 1997 between Coolak Baku (not Mr Bahari) and Chartabi, the veracity of which is not accepted for the reasons set out at paragraph 90 above.[288] No contemporaneous invoice or payment document to evidence any alleged payment by Mr Bahari has been provided and, in any event, it is inconceivable that such a sum (USD 3.65 million) could have been spent on a property of 150-200 square metres.[289]

116. Even if Mr Bahari could evidence his assertions, however:

(a) the mere purchase of equipment does not qualify as an investment as it is a one-off transaction lacking elements of duration and risk; it is also unclear that any such equipment was owned by Mr Bahari at the time of any alleged breach;

(b) construction or refurbishment of a building is not an asset which itself could qualify as an investment; it may be a contribution to an investment in immovable property, but any such property was at all relevant times owned by ARHAD[290] and was therefore never owned by Mr Bahari, at the time of any alleged breach or otherwise;

(c) insofar as design know-how or goodwill are allegedly to have been contributed to the construction of the sugar refining facility, they cannot qualify as an investment, as they concern a one-off transaction lacking the elements of duration, return and risk.

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287 *See* H Aliyev Statement, para. 21 and paragraph 225 below.

288 Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Letter from Chartabi Contracting dated 7 January 2019, **C-86**.

289 H Aliyev Statement, para. 20.

290 See paragraph 226 below.

### 4. The Claimant had sold Ayna Sultan at the time of the alleged breach and in any event a small residential building is not a qualifying investment

117. The Claimant asserts that his "*ownership and contribution to the Ayna Sultan Real Estate… as immovable property*" constitutes a qualifying investment.[291] The Claimant fails, however, to evidence that he had any ownership of such a property at the time the Treaty entered into force (let alone the time of the breach). He did not.

118. The only evidence of ownership the Claimant provides[292] is a copy of a title registration certificate dated 28 January 1998 which certifies his "[redacted]".[293] The technical passport attached confirms that Ayna Sultan is a small dwelling totalling 45.2 square metres.[294] This is neither a "*plot of land*"[295] as alleged elsewhere in the Statement of Claim (nor could Mr Bahari have owned any land under Azerbaijani law, as described at paragraph 105 above), nor is it a "*1,000 square meter*[]" property on which Mr Bahari could have "*buil*[t] *a prestigious office building that would be the headquarters for his various businesses*".[296] The Ayna Sultan property is a small, 45.2 square metre dwelling.[297]

119. As to the dwelling itself, the documentary record makes plain that Mr Bahari sold his interest in Ayna Sultan on 14 December 1999 and was paid USD 70,000 for it.[298] Accordingly, Mr Bahari had no interest in Ayna Sultan that could be considered a qualifying investment at the time of the alleged breach.

120. Further and in any event, such a residential dwelling would never have qualified as an investment under the Treaty even if he had continued to own it at the time of the alleged

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291 Statement of Claim, para. 439.

292 *See* Statement of Claim, paras 96-97.

293 Title Registration Certificate issued by the Executive Authorities of Baku City to Mr Bahari and Technical Passport dated 28 January 1998, **C-16**, PDF p. 7.

294 Title Registration Certificate issued by the Executive Authorities of Baku City to Mr Bahari and Technical Passport dated 28 January 1998, **C-16**, PDF p. 10. The title document refers to "apartment" as that was the form of the document, however the property is in fact a dwelling (building).

295 Statement of Claim, para. 95.

296 Statement of Claim, para. 95.

297 Title Registration Certificate issued by the Executive Authorities of Baku City to Mr Bahari and Technical Passport dated 28 January 1998, **C-16**.

298 *See* Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Guliyev and Mr Bahari dated 28 September 1996, **R-79** and PART 3VI.A below.

breach. The *Seo v Korea* tribunal, when considering whether a residential dwelling could qualify as an investment under the Korea-U.S. Free Trade Agreement, found that houses which were not predominantly used for rental purposes did not meet the criterion of a return (described in the relevant Treaty as an "expectation of gain or profit") inherent in the meaning of investment.[299] In a similar vein, in the present case there is no evidence, other than Mr Bahari's testimony, that he intended to use Ayna Sultan for business purposes.

### 5. The Claimant's alleged "contribution and ownership" of the carpets is not a qualifying investment

121. The Claimant asserts that his "*ownership and contribution to… the Persian Carpets, as movable property*" constitutes a qualifying investment.[300] On analysis, this allegation is neither evidenced nor sustainable.

122. There is a paucity of evidence concerning Mr Bahari's ownership of the carpets he claims as investments; other than his own testimony, he relies on a ledger recording the details of 508 carpets (the **Ledger**) that, on his own case, is incomplete.[301] At least 30 of the carpets in the Ledger are described as having been sold by Mr Bahari,[302] and so cannot comprise investments owned by Mr Bahari at the date of the alleged breach; 19 are described as being "[redacted]",[303] a further four are described as having been "[redacted] or "[redacted]" *Iran*,[304] and so cannot comprise investments located in the territory of Azerbaijan at the date of alleged breach; one is described as "[redacted]"[305] and at least three have been double recorded.[306] At least 10 others are described as being at specific locations such as "[redacted]" or "[redacted]", with it being unclear whether such locations are in Azerbaijan, Iran or elsewhere.[307] At its highest,

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299 *Jin Hae Seo* v *Korea*, HKIAC Case No. 18117, Final Award (27 September 2019), **RLA-150**, paras 123, 126.

300 Statement of Claim, para. 439.

301 *See* Bahari Statement, para. 60; Ledger, undated **C-79**; Statement of Claim paras. 117-118.

302 *See* Iselin Report, para. 50.

303 Iselin Report, Appendix A – Master List, Col. 1 No. rows 4, 79, 105, 142, 156, 198, 210, 232, 237, 258, 263, 283, 317, 324, 363, 375, 403, 462 and 476.

304 Iselin Report, Appendix A – Master List, Col. 1 No. rows 282, 337, 364 and 491.

305 Iselin Report, Appendix A – Master List, Col. 1 No. row 168.

306 Iselin Report, Appendix A – Master List, Col. 1 No. rows 342, 399 and 504.

307 Iselin Report, Appendix A – Master List, Col. 1 No. rows 37, 59, 67, 214, 239, 271, 290, 301, 436 and 487.

the ledger accordingly provides the details of 451 carpets alleged to have been acquired by Mr Bahari. It is not, however, evidence of ownership.

123. As to the alleged contribution, the ledger is the best available documentary record of Mr Bahari's contribution. A column in the ledger titled "price" (which neither Mr Bahari nor his other witnesses or experts speak to) presumably indicates the price at which each carpet was purchased in US dollars. This can be deduced from the "Notes" column, which records the price of the any carpets that were sold expressly in US dollars,[308] generally at a small premium to its cost. The contemporaneous document records that the total maximum spend by the Claimant on the carpets retained by him in Azerbaijan is approximately USD 183,000. This stands in stark contrast to the alleged "[redacted]" Mr Moghaddam (and not even Mr Bahari himself) asserts was spent.[309]

124. As to the seven silk and wool carpets Mr Bahari alleges he had made for Caspian Fish, there is no evidence that Mr Bahari in fact did so, or (if he did) that he paid for them for the reasons set out at paragraph 343 below. Moreover, Mr Bahari does not suggest that they were owned by him, but rather that they belonged to Caspian Fish.

125. Even if Mr Bahari were able to establish ownership of any number of carpets located in the territory of Azerbaijan, such assets do not fall within the objective meaning of the term investment, because there is no element of return or risk in the territory of Azerbaijan. There is nothing in the storage of movables in Azerbaijan (purchased, on the Claimant's case, from abroad) that fulfils the objective criteria of an investment. Mr Bahari was not investing in a carpet business. At best, on his own testimony, he entertained the idea of establishing a carpet museum,[310] and even that does not explain the seven carpets that were allegedly commissioned for Caspian Fish.[311] No evidence is provided for his assertions in respect of the alleged museum; however Mr Bahari may have internally characterised his rationale for collecting these carpets, none of this can

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308 *See*, e.g. Iselin Report, Appendix A – Master List, "Column 6 Notes", row 71 "[redacted]".

309 Moghaddam Statement para. 53.

310 *See* Bahari Statement, para. 54. Mr Bahari asserts that he engaged a Mr Golchini (notably, no first name given) to produce initial sketches of the carpet museum. No further particulars are given for this assertion, nor any contemporaneous evidence provided.

311 Bahari Statement, para. 60.

elevate their acquisition, import or storage to an investment. In *Eyre and Montrose Developments v Sri Lanka*, the Tribunal said that an investment in a plot of land for development into a hotel complex could not constitute an investment in circumstances where:[312]

> The Claimants have not proven, on a balance of the probabilities, that the Hotel Project was anywhere near a certainty… The record reflects that Mr Eyre has not obtained formal planning permission… Further, Mr Eyre has not, despite obviously substantial efforts, actually executed contractual commitments with architects, hotel management firms or financiers. The Claimants may be right in stating in the Memorial that the Hotel Project was recognised as "potentially lucrative", but more than potential is necessary. There must have been substantive commitments and arrangements entered into, involving specific commitments and financial costs, all of which would entail both certain risks as well as possible benefits.
>
> The Tribunal can find only that the Hotel Project remained at best aspirational…

126. Finally, as described in section PART 3VII.B below, in May 2002 Mr Bahari himself arranged for his carpets to be shipped to him in Dubai. This shipment was complete by October 2002.[313] While it appears that the relevant date for the allegation of breach of Treaty in respect of the carpets in fact pre-dates the entry into force of the Treaty (see paragraph 51(f) above), insofar as any allegation of breach is made after that date, Mr Bahari did not own an investment in the territory of Azerbaijan.

### C. None of the Claimant's investments were approved by the Competent Authority

127. Even if the Claimant is able to establish the existence of any otherwise qualifying investment, his case still fails in its entirety for jurisdictional reasons. As a threshold issue, Article 9 of the Treaty provides that "[t]*his Agreement shall only apply to the investments approved by the competent authorities of the host Party*" (the **Competent Authority**).[314] The Competent Authority for Azerbaijan designated in the Treaty is the

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312 *Eyre and Montrose Developments v Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020), **RLA-21**, paras 301-302. *See also Mihaly International Corporation v Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 March 2002), **RLA-151**, para. 61 ("The Tribunal is consequently unable to accept as a valid denomination of "investment", the unilateral or internal characterization of certain expenditures by the Claimant in preparation for a project of investment.").

313 Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for the period from 26 July 2002 to 26 October 2002, **R-36**; Export Declaration for 211 Carpets dated 3 October 2002, **R-37**.

314 Treaty, **CLA-1**, art. 9.

Ministry of Foreign Economic Relations (**MFER**), which was the ministry with charge of Azerbaijan's foreign investment policy at the time the Treaty was signed in 1996.[315] The Claimant did not obtain approval from the MFER or any Competent Authority for any of his investments and, accordingly, the Tribunal does not have jurisdiction to hear his claims.

128. The Claimant argues that because the MFER had been abolished by the time the Treaty entered into force, "*that clause* [of the Treaty]*, if not the entire Article,* [is] *inoperative*".[316] This overly-optimistic submission reveals a fundamental misunderstanding of both the Treaty and Azerbaijani law.

### 1. The Treaty requires the investor to obtain approval from a Competent Authority in Azerbaijan

129. As to the Treaty, the term "Competent Authority" must be interpreted to mean the authority in the Republic of Azerbaijan competent to address the matter of foreign investment, designated in the Treaty at the time as the MFER, but including any subsequent body assuming the MFER's functions and therefore competent to provide such approval. This is the only interpretation of the Treaty that gives effect to the parties' intentions and effect to the provision itself.

130. Under Article 31(1) of the VCLT, the Treaty is to be interpreted "*in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpos*e".[317] Article 32 confirms that recourse may be had to the "*preparatory work of the treaty and the circumstances of its conclusion*" if the meaning when interpreted according to Article 31 "*leads to a result which is manifestly absurd or unreasonable*".[318] The internationally applied principle of *effet utile* also requires that treaty clauses be interpreted to avoid rendering them superfluous or depriving them of significance for the relationship between the parties.[319]

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315 Mustafayev Report, paras. 21, 23; Valiyev Statement, para. 9.

316 Statement of Claim, para. 447.

317 VCLT, **C-36**, art. 31(1).

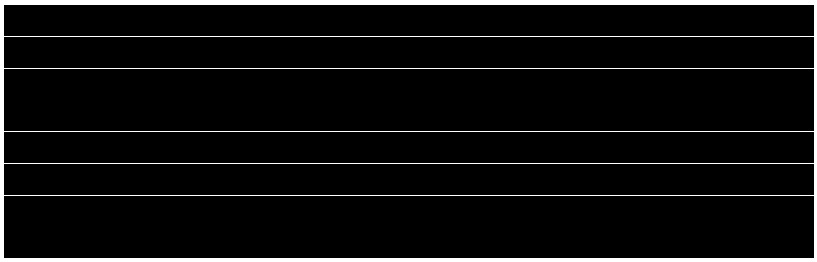
318 VCLT, **C-36**, art. 32(b).

319 *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russia)*, Preliminary Objections, (2011) ICJ Rep. 70, **RLA-152**, para 134.

131. Pre-approval requirements, such as that in Article 9, differ from general admission requirements,[320] such as the requirement in Article 1(1) of the Treaty that investments are to be made "*in conformity with the hosting Party's laws and regulations*".[321] Article 9 does not directly control entry of investment into Azerbaijan. Rather, Article 9 is intended to retain for the host State a measure of discretion in the application of the Treaty in respect of specific investors or investments. Such requirements provide a mechanism by which a designated government entity is empowered to review, on a case-by-case basis, requests for treaty protection from the nationals of the other State. As explained by the tribunal in *Desert Line*, a case cited by the Claimant, provisions like Article 9:

> ha[ve] a legitimate policy rationale, in the sense that the Governments of such States evidently wish to execute a qualitative control on the types of investments which are indeed to be promoted and protected.[322]

132. Thus, pre-approval provisions allow States to preserve their regulatory power over foreign investments, while pursuing the objective of investment promotion.[323] The exercise of discretion to admit an investment is an exercise of sovereignty. Professor Kenneth J. Vandevelde, a senior scholar and practitioner focused on the negotiation and drafting of investment treaties, explains this model of investment promotion and protection in his expert legal opinion:



320 *Öztaş Construction v Libya*, ICC Final Award, 14 June 2018, **RLA-154**, para. 115 ("the phrase 'in conformity with the hosting Contracting party's laws and regulations' is intended to exclude from the BIT's protection illegal investments rather than to create a requirement that investments be preapproved by the host State in order to qualify for protection"); Y*aung Chi Oo Trading v Myanmar*, ASEAN I.D. Case No. ARB/01/1, Award (31 March 2003), **CLA-33**, para. 58 ("The Tribunal notes that under Article II of the 1987 ASEAN Agreement, there is an express requirement of approval in writing and registration of a foreign investment if it is to be covered by the Agreement. Such a requirement is not universal in investment protection agreements: it does not apply, for example, under the 1998 Framework Agreement. In this respect Article II goes beyond the general rule that for a foreign investment to enjoy treaty protection it must be lawful under the law of the host State.").

321 Treaty, **CLA-1**, art. 1(1).

322 *Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31** para. 108.

323 Vandevelde Report, paras 44, 60.

[redacted].[324]

133. Designation of a competent authority is important to the analysis. As Professor Vandevelde explains, a country's foreign investment policy can have numerous implications for a country's economic development policy, as well as its foreign policy, including its exchange rate policy, trade policy, national security, and diplomatic relations.[325] A ministry that has a portfolio related to some combination of these policies would be more likely to have the competencies to make the determination whether to approve the foreign investment than a ministry without such a portfolio.[326]

134. In the case of the Treaty at hand, its primary objective is to "*promote greater economic cooperation*" between Azerbaijan and Iran, particularly with respect to foreign investments.[327] The starting point, therefore, is to consider the state of Azerbaijan-Iranian economic cooperation at the time the Treaty was concluded. The MFER was the body responsible at the time for implementing Azerbaijan's foreign economic policy.[328] As Mr Valiyev, the Head of the Economic Department of the MFER at the time the Treaty was concluded, explains:

[redacted].[329]

135. The approvals requirement in Article 9 was introduced into negotiations by the government of Iran.[330] As described in the Mehrinfar Report, Iran's investment treaties generally require qualifying investments to be approved by the designated Iranian

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324 Vandevelde Report, para. 46.

325 Vandevelde Report, para. 51.

326 Vandevelde Report, para. 51.

327 Treaty, **CLA-1**, preamble, para. 1.

328 Mustafayev Report, para. 21(a).

329 Valiyev Statement, para. 30.

330 Arts. 1(3), 1(4), 1(5), 3 and 4(1) of the Revised draft Treaty between Iran and Azerbaijan, proposed by Iran, *see* Note Verbale from the Embassy of the Islamic Republic of Iran in Baku to the Ministry of Foreign Affairs of the Republic of Azerbaijan, 19 January 1996, **RLA-100**, enclosing Revised draft Treaty between Iran and Azerbaijan, proposed by Iran, 19 January 1996, **RLA-101**.

government entity, namely the Organization for Investment, Economic, and Technical Assistance of Iran (**OIETAI**).[331] The approvals process is strict, requiring an application by the investor to the OIETAI for a licence under the Iranian Foreign Investment Promotion and Protection Act, which the OIETAI has a wide degree of discretion to grant,[332] and only after rigorous consideration as to whether the investment qualifies against specified criteria set out in the law (such as, among others, bringing about economic growth, whether the investment could be considered to be a possible threat to the public interest or a monopoly interest).[333] The practice in Iran supports Azerbaijan's submission that the requirement in Article 9 cannot be simply dispensed with, or deemed to be satisfied by other generic processes that would apply equally to nationals and foreign nationals of any nationality.

136. In the light of the relationship between Iran and Azerbaijan at the time, Azerbaijan sought to ensure mutuality in its control over the grant and allocation of treaty protection to investments made by Iranians in the territory of Azerbaijan, and it is for this reason that a reciprocal approvals requirement was introduced into the Treaty on the part of Azerbaijan.[334]

137. With this background, and bearing in mind the principle of *effet utile*, the Claimant's argument that Article 9 is "inoperative" on account of the replacement of the MFER with another Ministry must surely fail. His argument is wrong as a matter of international law. No doctrine of the law of treaties would apply to render Article 9 inoperative in the present circumstances. Insofar as the Claimant argues that the Treaty required an amendment,[335] that is not so: the Tribunal must make every effort to ensure the effectiveness of the Treaty's provisions through interpretation.[336]

138. Azerbaijan took care to specify that approval should be granted by a Competent Authority, and it cannot have intended that it lose its ability to control the investments

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331 Mehrinfar Report, para. 11.

332 Mehrinfar Report, para. 21.

333 Mehrinfar Report, para. 19.

334 Valiyev Statement, para. 9.

335 Response to Request for Bifurcation, paras 31, 33.

336 *See*, e.g., Oppenheim's International Law 1280-81 (R. Jennings & A. Watts eds., 9th ed. 2008) **RLA-151** ("an interpretation is inadmissible which would make a treaty provision meaningless, or ineffective").

entitled to protection in the event that a different ministry assumed the functions of the MFER. As the Respondent's Azerbaijani law expert, Mr Altay Mustafayev, explains, the relevant Minister's approval under Article 9 was discretionary, based on the policy considerations at the time,[337] and it is not open to the Tribunal to make that determination for itself. But even if it were to do so (which respectfully, it should not), the Tribunal would have to put itself in the shoes of the Minister at the time the Treaty entered into force, at which time Mr Bahari had already exited Caspian Fish following a fall out with his business partners and departed Azerbaijan for Dubai. The Tribunal cannot presume that an Article 9 approval would have been granted.

### 2. Under Azerbaijani law, the Competent Authority is the MFER or a body assuming its functions

139. The Claimant's arguments in the Response to Request for Bifurcation wrongly focus on the "abolition" of the MFER.[338] This is misguided: it is the term "Competent Authority" which should form the focus of any inquiry, and the identity of the Competent Authority is necessarily a matter of Azerbaijani law. While the original Ministry was abolished, a successor Ministry was specifically established pursuant to Azerbaijani law that, among other things, had the power in law to carry out the functions and duties of the previous Ministry.[339]

140. The mere fact that another Ministry had succeeded the functions of the MFER by the date of entry into force of the Treaty does not end the inquiry, either for the Tribunal or for a diligent investor at the time wishing to gain the benefits of the Treaty. The Claimant's own evidence indicates that a legitimate, diligent investor would have enquired as to the appropriate Ministry if it wished to benefit from the Treaty's protections. For instance, the Claimant relies on a 1997 Presidential Decree entitled "*On the Abolition of the Ministry of Trade and the Ministry of Foreign Economic Relations and the establishment of a new Ministry*".[340] The title of the Decree alone alerts the reader to the prospect that a successor Ministry had been established. This is further borne out in Article 1 of the 1997 Presidential Decree, which provides:

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337 Mustafayev Report, para. 42.

338 Response to Request for Bifurcation, paras 34-37, paras 73-74.

339 Mustafayev Report, paras 13-36.

340 Statement of Claim, para. 446, referring to Decree of the President of the Republic of Azerbaijan No. 607 dated 24 June 1997, **C-233** (emphasis added).

> The Ministry of Trade of the Republic of Azerbaijan and the Ministry of Foreign Economic Relations of the Republic of Azerbaijan should be abolished and on the basis thereof, the Ministry of Trade of the Republic of Azerbaijan should be established.[341]

141. The suggestion by the Claimant that "[redacted]"[342] overlooks that fact that any investor aware of the abolition of the MFER would also be aware of its successor Ministry, and any investor writing to the former MFER under the address set out in the Treaty would have been redirected to the appropriate Competent Authority; there is no reason to presume that even a letter addressed to the MFER would not have reached the correct decision-maker.

142. Contrary to the suggestions in the Response to Request for Bifurcation,[343] it was not necessary for these ministries to have specified in their competencies that they were the Competent Authority for the purposes of the Treaty, and it is entirely unrealistic to expect that such a narrow and specific responsibility would be so specified. The MFER itself did not specify that it was the Competent Authority under Article 9 of the Treaty,[344] but carried out a broad range of duties in relation to Azerbaijan's foreign economic policy including the supervision of the implementation of obligations arising from international agreements on trade and economic cooperation of the Republic of Azerbaijan by the relevant state bodies.[345] Given the broad mandate of the MFER regarding foreign economic relations and foreign trade, the MFER was designated by the Republic of Azerbaijan in the Treaty as the Competent Authority at the time the Treaty was signed in 1996. What is important is that, under Azerbaijani law, the new ministry had assumed the functions of the MFER.

143. On 24 June 1997, the MFER was abolished and the Ministry of Trade was established "[redacted]" the MFER and another Ministry.[346] As a result, there was a transfer of functions and duties from the MFER to the Ministry of Trade. In particular, the

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341 Decree of the President of the Republic of Azerbaijan No. 607 dated 24 June 1997, **C-233**, art. 1 (emphasis added). The Respondent does not agree with the Claimant's translation of this provision and suggests that the word "should" read "shall" in both instances.

342 Response to Request for Bifurcation, para. 41.

343 Response to Request for Bifurcation, paras 44, 46, 49.

344 Mustafayev Report, para. 23.

345 Mustafayev Report, para. 22.

346 Mustafayev Report, para. 24.

duties of the Ministry of Trade were specified to include (a) preparation and submission of proposals on measures to ensure the fulfilment of international agreements of the Republic of Azerbaijan in the field of foreign economic cooperation and (b) participation in the implementation of investment projects and attraction of investments in the Republic of Azerbaijan.[347] Accordingly, for the period from 24 June 1997 to 30 April 2001, under Azerbaijani law, the Ministry of Trade assumed the responsibility of the Competent Authority of Azerbaijan for the purpose of the Treaty.[348]

144. On 30 April 2001, the Ministry of Trade was abolished and the Ministry of Economic Development was established "[redacted]", among other ministries, the Ministry of Trade. As a result, there was a transfer of functions and duties from the Ministry of Trade to the Ministry of Economic Development.[349] In particular, the duties of the Ministry of Economic Development were specified to include supervising the fulfilment of the obligations of the Republic of Azerbaijan arising from international agreements on cooperation in the field of investment.[350] For the period from 30 April 2001 to 22 October 2013, and therefore at the time the Treaty entered into force on 20 June 2002, under Azerbaijani law, the Ministry of Economic Development assumed the responsibility of the Competent Authority of Azerbaijan for the purpose of the Treaty.[351]

145. The Ministry of Economic Development was succeeded by the Ministry of Economy and Industry in 2013,[352] which was renamed the Ministry of Economy in 2016, and which remains in existence today.[353]

146. The Claimant did not seek or obtain approval from the Ministry of Economic Development when the Treaty entered into force in 2002, nor even did he attempt to

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347 Mustafayev Report, para. 25.

348 Mustafayev Report, para. 27.

349 Decree of the President of the Republic of Azerbaijan No. 475 dated 30 April 2001, **RLA-78**, art. 1: "[redacted]"

350 Mustafayev Report, para. 29.

351 Mustafayev Report, para. 31.

352 Mustafayev Report, para. 32.

353 Mustafayev Report, para. 35.

submit any application for approval to the MFER, or the "Competent Authority", and he accordingly holds no protected investment. Mr Bahari has not even asserted any attempt to contact the MFER or its successor ministries, in circumstances where a government office has always stood at the designated address since the signing of the Treaty, and the contact details of successor Ministries are publicly available. Indeed, on the Claimant's own case, he had no expectations at all that the Treaty would apply when he made his investments, and nor could he, as he only learned of its protections in 2017.[354] He cannot speak to any uncertainty or confusion as to the application process nor whom to address it, since he was not even aware of the potential Treaty protections until 2017. This is despite having had access to the Deputy Head of Mission for the Iranian Embassy in Azerbaijan, who was "[redacted]"[355] and presumably aware of the Treaty and its gating conditions.

147. As a result, the Tribunal should dismiss entirely any suggestion that the Claimant made "*good faith efforts*"[356] to come within the scope of the Treaty, or that the Claimant relied on the existence of the Treaty. He did neither. He had no expectation of protection from the Treaty since his own evidence is that he was not even aware of such protections. Nor, evidently, was he aware of the conditions he must satisfy to obtain such protections. Even if he had sought approval at the time the Treaty entered into force, he had by this point left Azerbaijan and ceased to manage his alleged investments. As a result, the Competent Authority of Azerbaijan would likely not have granted the approvals required under Article 9, nor would there have been any incentive to apply the protection regime to the Claimant and his alleged investments.

### 3. The matters the Claimant relies on are not approvals for the purposes of Article 9

148. The Claimant argues that Article 9 does not require approvals to be in writing or any specific process to be followed, and it is a "general approval" requirement[357] which he satisfied because he "*acted in good faith or* [] *the Azeri Government approved his investments*".[358] This construction contradicts the express terms of the Treaty, as set

354 Notice of Arbitration, para. 71.

355 Kousedghi Statement, para. 14.

356 Statement of Claim, para. 450.

357 Statement of Claim, para. 448.

358 Statement of Claim, para. 451.

out above: the Claimant was required to obtain specific approval from the Competent Authority.[359]

149. In *Gruslin v Malaysia (II)*, the Belgo-Luxembourg Economic Union and Malaysian investment treaty contained the following language in its definition of "investment":

> The term "investment" shall comprise every kind of assets…
>
> provided that such assets when invested:--
>
> (i) in Malaysia, are invested in a project classified as an "approved project" by the appropriate Ministry in Malaysia, in accordance with the legislation and the administrative practice, based thereon;[360]

150. The investment at issue consisted of shares of companies listed on the Kuala Lumpur Stock Exchange. The Tribunal found that the language required that covered investments receive "*something constituting regulatory approval of a 'project', as such, and not merely the approval at some time of the general business activities of a corporation*".[361] On the facts, the Tribunal found that while the shares received the approval of the Capital Issues Committee, such approval did not "*satisfy the requirements of proviso (i) as an approved project*."[362]

151. The Claimant fails to engage with the point that Article 9 of the BIT specifies that the approval must come from an authority competent to give such approval under Azerbaijani law.[363] None of the alleged approvals the Claimant refers to concern that authority (namely, the MFER's successor Ministry). Even if approval from the

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359 This is exactly the same position as in Iran, where "[redacted]": *see* Mehrinfar Report, para. 14.

360 Belgo-Luxembourg Economic Union-Malaysia Inter-governmental Agreement, Article 1(3), cited in *Philippe Gruslin v Malaysia (II)*, ICSID Case No ARB/99/3, Award (27 November 2000), **RLA-18**.

361 *Philippe Gruslin v Malaysia (II)*, ICSID Case No ARB/99/3, Award (27 November 2000), **RLA-18**, para. 25.5 (emphasis added). See also para. 24.2.

362 *Philippe Gruslin v Malaysia (II)*, ICSID Case No ARB/99/3, Award (27 November 2000), **RLA-18**, para. 25.6.

363 None of the authorities on which the Claimant relies concerned treaties which specified a particular approving Ministry: *Desert Line*, **CLA-31**, relied on by the Claimant at para. 449 of the Statement of Claim, concerned but required the investment to be "accepted, by the host Party, as an investment according to its laws and regulations, and for which an investment certificate is issued" (see para. 92); *Fraport v Philippines*, **CLA-35**, relied on by the Claimant at para. 450 of the Statement of Claim, does not concern pre-approval requirements at all, but concerns admission requirements for investments being made in accordance with host State laws (see paras 283 and 284).

MFER's successor was not required, however, none of the alleged "informal" or "de facto" approvals the Claimant alleges would qualify to meet the requirements of Article 9, as the majority of these alleged approvals go to establishing the existence of an asset under Azerbaijani law[364] or are otherwise routine administrative permits:

(a) As to the Ministry of Justice, for "*register*[ing] *the charter of Caspian Fish's representative office*",[365] it is unclear how the charter of Caspian Fish's representative office is said to relate to Mr Bahari's alleged investments: this was not an approval of Mr Bahari's shares in BVI Co, nor an approval of any of the other assets Mr Bahari claim comprised his "investment" in Caspian Fish (indeed, the representative office itself is not said to be an investment). That notwithstanding, the Claimant's argument is unsustainable: the Ministry of Justice registers the charters of *all* representative offices of foreign entities;[366] it is a registration formality, in respect of the representative office of a BVI company, and not a de facto approval or recognition by the Ministry of Justice under Article 9 of the Treaty that an Iranian investor has made an investment qualifying for protection under the Treaty.

(b) As to reliance on the statement that "*the Shareholders' Agreement for Caspian Fish and its representative office expressly states that 'state permits and concessions for the start-up of the company have been issued'*",[367] again, this is not a serious submission. Mr Bahari does not even identify which State authority provided the alleged de facto approval, and he relies on the terms of a private contract governing the relationship of shareholders of a BVI company as evidence. There is no evidence which "permits and concessions" were granted, if any – indeed, it would not have even been possible for the representative office to have obtained a permit or concession on very the day it was registered,[368] as the Shareholders' Agreement suggests.[369] In any event,

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364 See n. 187.

365 Statement of Claim, para. 441(i).

366 Mustafayev Report, para. 57.

367 Statement of Claim, para. 441(ii).

368 Mustafayev Report, paras 58-61.

369 Purported Company agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah dated 27 April 1999, **C-4**, clauses 3 and 5.

administrative permits or registrations, which any legal entity in Azerbaijan must obtain, whether it be a foreign investor or a local company, cannot be equated with an approval under Article 9, which is a condition to extending Treaty benefits specifically to qualifying Iranian investors.

(c) As to the Ministry of Justice for "*register*[ing] [Coolak Baku] *on the State Register of Legal Entities*":[370] this submission suffers the same defects identified in respect of Caspian Fish at paragraph 151(a) above. Any right Mr Bahari claims to have can only be assessed by reference to its existence under Azerbaijani law;[371] registration, which establishes under Azerbaijan law a company in which Mr Bahari may have had rights, is entirely separate to the requirement to obtain approval for protection under the Treaty in Article 9.

(d) As to the Ministry of Justice "*approvals and registration*" of Shuvalan Sugar "[a]*s part of the Coolak Baku JV*",[372] this submission is embarrassing for lack of particularisation. No explanation of what "Shuvalan Sugar" even comprises is provided. To the extent Mr Bahari alleges that "Shuvalan Sugar" is the building where he refined sugar, the Ministry of Justice had nothing to do with its approval or registration.

(e) As to the "*Azeri Government*" "*issu*[ing] *a Technical Passport*"[373] in respect of Ayna Sultan, it is not the Technical Passport which evidences ownership, but the Registration Voucher (see paragraph 321 below). In any event, for reasons similar to those expounded at paragraph 151(c) above, this is not a serious submission. Mr Bahari does not even bother identifying which part of the Government allegedly gave the approval. A document confirming, under Azerbaijani law, the existence of an ownership interest in property is not equivalent to approval and recognition of a foreign investment qualifying for protection under the Treaty.

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370 Statement of Claim, para. 441(iii).

371 See n. 187; *see EnCana Corporation v Ecuador*, UNCITRAL Award (3 February 2006), **RLA-154**, at para. 184: "the rights affected must exist under the law which creates them".

372 Statement of Claim, para. 441(iv).

373 Statement of Claim, para. 441(v).

(f) Finally, as to the "*Azeri Government*" granting approval on the basis it "*knew about the Persian Carpets and Mr. Bahari's intent and preparations to use them for a new future museum in Baku*":[374] again, Mr Bahari fails to specify what is meant by the "Azeri Government" or how or what it "*knew*". Elsewhere, he suggests that he "*spoke to Mr. Aliyev about the project, who thought it was a great idea*" and he "*gave a copy of the design* [of the eventual Museum building] *to Mr. Aliyev*".[375] Leaving aside the fact that there is no evidence of this conversation other than Mr Bahari's own testimony, Mr Aliyev was not a representative of the Azerbaijani Government. He was a member of parliament and the vice-president of SOCAR at the time, and cannot be said to have been acting in an official capacity. In any event, a discussion with Mr Aliyev about a possible future museum cannot possibly constitute an "approval" of the carpets as investments (not the idea of a museum) in the manner contemplated by Article 9 of the Treaty.

152. Finally, Mr Bahari's argument that his investments were "[redacted]" and so Azerbaijan should be [redacted] from arguing that the investments did not meet sufficient approvals is misconceived.[376] This is for the following reasons.

153. First, Mr Bahari offers no explanation for the suggestion his investments were encouraged or approved by the Azerbaijani government, acting in such capacity, save for the reference to a plaque on Caspian Fish's entrance.[377] There is no suggestion that his other alleged investments are relevant to this submission.

154. Second, Mr Bahari's reliance on *Desert Line* is misplaced. The treaty language in *Desert Line* was:

> The term 'Investment' shall mean every kind of assets (…) that is accepted, by the host Party, as an investment according to its laws and regulations, and for which an investment certificate is issued.[378]

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374 Statement of Claim, para. 441(vi).

375 Statement of Claim, para. 107.

376 Response to Request for Bifurcation, paras 57-58.

377 Response to Request for Bifurcation, para. 57.

378 *Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, at para. 92.

155. This language is not analogous to the Azerbaijan-Iran BIT. As the tribunal in *Rizvi v Indonesia* noted, in *Desert Line* "*the investment treaty* [did not] *have the specificity of BIT Article 2(1), which requires a grant of admission in accordance with a particular law*".[379] Similarly, here, the Treaty specifies that approval must be given by the Competent Authority.

156. Further and in any event, the facts supporting the claimant's estoppel argument in *Desert Line* are in no way analogous to those alleged in the present case. In *Desert Line*, the claimant construction company entered into a series of contracts with Yemen to build roads in the country, at the invitation of the president of Yemen. The Tribunal found that in respect of those contracts, there was "*overwhelming evidence of the lengthy dealings between the Parties at the highest level, namely the President of the Republic, the Prime Minister, the Minister of Finance, and the Minister of Public Works*".[380] The "*whole contractual narrative*" demonstrated that the claimant relied on "*successive written and oral promises made by the Respondent's senior officials, in particular the Yemeni President*".[381]

157. In the present case, the State had no role in the establishment of the investments whatsoever. As the *Rizvi* tribunal noted, the finding of waiver in *Desert Line* relied on a *"mass of uncontradicted written and oral evidence*".[382] A plaque offered for PR purposes at an opening ceremony is not comparable to the extensive State involvement in the investments in *Desert Line.*

### D. The Tribunal does not have jurisdiction over the FPS claims

158. Mr Bahari seeks to rely on the MFN clause in Article 2(3) of the Treaty to import an FPS standard from other BITs concluded by Azerbaijan with third states into the Treaty.[383] This reliance on the MFN clause is misplaced. The Tribunal does not have jurisdiction over any FPS claim by virtue of the MFN clause in Article 2(3) because:

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379 *Rafat Ali Rizvi v Republic of Indonesia*, ICSID Case No ARB/11/13, Award on Jurisdiction (16 July 2013), para. 197.

380 *Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, para. 105.

381 *Desert Line Projects LLC v Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, para. 182.

382 *Rafat Ali Rizvi v Republic of Indonesia*, ICSID Case No ARB/11/13, Award on Jurisdiction (16 July 2013), para. 197.

383 Statement of Claim, para. 544.

(a) the scope of Article 2(3) is restricted to the FET standard; (b) Article 2(3) cannot be relied upon to import a standard of protection foreign to the main treaty and the Claimant has failed to identify any actual discriminatory treatment as between him and a third State's investor; and (c) in any event, the comparator treaties upon which the Claimant relied only bind Azerbaijan from their entry into force.

### 1. The scope of the MFN in Article 2(3) is restricted to the FET standard

159. Article 2(3) provides:

> Each Party shall ensure fair and equitable treatment within its territory to the investments of investors of the other Party. This treatment shall not be less favourable than that accorded by each Party to investments made within its territory by its own investors or than that accorded by each Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.[384]

160. A plain reading of Article 2(3) indicates that it applies only to more favourable guarantees of fair and equitable treatment. This is evident by the reference only to the FET standard in the first sentence. *Ejusdem generis* is a well-established principle of treaty interpretation. Indeed, the Claimant invokes *ejusdem generis* in his Response on Bifurcation, but leapfrogs over the specific wording of Article 2(3).[385] The proper application of the *ejusdem generis* principle requires that "*general words when following and sometimes when preceding special words are limited to the* genus*, if any, indicated by the special words*".[386] With respect to the clear language of Article 2(3), the Tribunal should adopt a "sensu stricto *application of the* ejusdem generis *principle* [that] *focuses on the interpretation of a phrase by reference to what is said in the preceding sentence*".[387] In the words of the Commission in the *Ambatielos Claim*, "*the most-favoured-nation clause can only attract matters belonging to the same category of subject as that to which the clause itself relates*".[388]

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384 Treaty, **CLA-1**, art. 2(3) (emphasis added).

385 Response on Bifurcation, paras. 122-123.

386 Lord McNair, *The Law of Treaties* (1986), **RLA-155** at 393.

387 F. Baetens, "Chapter 7: Ejusdem Generis and Noscitur a Sociis" in J. Klingler, Y. Parkhomenko, et al. (eds), *Between the Lines of the Vienna Convention? Canons and Other Principles of Interpretation in Public International Law* (2018), **RLA-156** at 145.

388 *Ambatielos Claim*, Award (6 March 1956), **RLA-160** at 107 (Emphasis added).

161. Applying *ejusdem generis* correctly to Article 2(3) means that the word "treatment" in the second sentence is limited by the specific language of the first sentence, *i.e.* fair and equitable treatment. This construction is further justified by the use of "this" to qualify the "treatment" subject to the MFN treatment guarantee. In other words, "This treatment" refers to the promise of fair and equitable treatment made in the first sentence.

162. The tribunals in *Quasar de Valores v Russia* and *Paushok v Mongolia* reasoned similarly when rejecting attempts to rely on an MFN clause linked to FET to expand the tribunal's jurisdiction.[389] In *Quasar de Valores*, the claimants attempted to rely on an MFN clause linked to an FET guarantee to broaden the tribunal's jurisdiction beyond expropriation claims. In its relevant parts, Article 5 of the Russia-Spain BIT provides:

> 1. Each Party shall guarantee fair and equitable treatment within its territory for the investments made by investors of the other Party.
>
> 2. The treatment referred to in paragraph 1 above shall be no less favourable than that accorded by either Party in respect of investments made within its territory by investors of any third State.[390]

163. The tribunal found that the *ejusdem generis* principle is the key consideration in interpreting Article 5(2) of the Russia-Spain BIT.[391] Relying on the reasons of the Commission in the *Ambatielos Claim*, the tribunal held that:

> The MFN promise affects only matters within the scope of Article 5(2) of the Spanish BIT which turn covers only "treatment referred to in paragraph 1 above". The treatment in question is 'fair and equitable treatment" ("FET").[392]

164. Further, the tribunal distinguished the Russia-Spain BIT from other treaties which contain a broader MFN clause:

> This then becomes the crux of the matter: the Spanish BIT does not contain an MFN clause entitling investors to avail themselves in generic terms of more favourable conditions found "in all matters covered" by other

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389 *Quasar de Valores and ors v Russia*, SCC Case No. 24/2007, Award on Preliminary Objections (20 March 2009), **RLA-70**; *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 April 2011), **CLA-134**.

390 *See Quasar de Valores and ors v Russia*, SCC Case No. 24/2007, Award on Preliminary Objections (20 March 2009), **RLA-70**, para. 68.

391 *Quasar de Valores and ors v Russia*, SCC Case No. 24/2007, Award on Preliminary Objections (20 March 2009), **RLA-70**, para. 100.

392 *Quasar de Valores and ors v Russia*, SCC Case No. 24/2007, Award on Preliminary Objections (20 March 2009), **RLA-70**, para. 103.

> treaties. Instead it establishes the right to enjoy a no less favourable level of FET.[393]

165. In *Paushok*, the main treaty's MFN clause was analogous to that in *Quasar de Valores*.[394] In that case, the claimants attempted to rely on the MFN clause, subordinate to an FET guarantee, to bring umbrella claims against the Russian Federation. The Tribunal did not allow such claims. It held:

> The Treaty is quite clear as to the interpretation to be given to the MFN clause contained in Article 3(2): the extension of substantive rights it allows only has to do with Article 3(1) which deals with fair and equitable treatment.[395]

166. Though the treaty language in *Quasar de Valores* and *Paushok* differs from the Treaty, the structure of the clause is similar. The promise of MFN treatment is not made with respect to all matters covered by the Treaty, but only addresses FET. As it is undisputed between the Parties that FET and FPS are separate and distinct standards of protection,[396] the Claimant has no basis upon which to bring FPS claims in this arbitration.

167. The Respondent's position on the scope of the Article 2(3) does not deprive it of meaning or effect. In *Paushok*, the tribunal went on to apply a broader FET clause in the Denmark-Mongolia BIT, which provided that "[e]*ach Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management,*

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393 *Quasar de Valores and ors v Russia*, SCC Case No. 24/2007, Award on Preliminary Objections (20 March 2009), **RLA-70**, para. 105.

394 Article 3(2) of the Mongolia-Russia BIT provides:

> 1. Each Contacting Party shall, in its territory, accord investments of the other Contracting Party and activities associated with investments fair and equitable treatment excluding the application of measures that might impair the operation and disposal with investments.
>
> 2. The treatment mentioned under paragraph 1 of this Article, shall not be less favorable than treatment accorded to investments and activities associated with investments of its own investors or investors of any third State.

*See*: *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 April 2011) **CLA-134**, paras. 514, 563.

395 *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 April 2011), **CLA-134**, para. 570.

396 Statement of Claim para. 546.

*maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment…*".[397]

168. The Claimant argues that [redacted], relying on the case of *Bayindir v Pakistan*.[398] However, the tribunal in *Bayindir* made no pronouncement on the specific effect of the exclusions clause. It said only that "*the ordinary meaning of the words in Article II(2) [the MFN] clause together with the limitations provided in Article II(4) show that the parties to the Treaty did not intend to exclude the importation of a more favourable substantive standard of treatment*".[399] In any event, the MFN clause in that case is wholly distinguishable from the present Treaty, because the MFN clause in *Bayindir* was a standalone protection, broadly drafted to cover investments once established, and not limited to the terms of any other treaty protection.[400] In the present case, no relevant exclusionary language features in Article 2(4) of the Treaty with respect to MFN because the limitation to MFN treatment is provided within Article 2(3) itself.

169. The Claimant also relies on the Decision on Annulment in *MTD Equity* v. *Chile* as authority for the proposition that MFN clauses combined with FET provisions "*continue to attract any more favourable treatment extended to third State investments, and do so unconditionally*".[401] Again, the Claimant fails to consider the specific terms of the treaty in that case. The MFN clause in *MTD* was not expressly limited to the

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397 *Sergei Paushok and ors v Mongolia*, Ad Hoc Arbitration, Award on Jurisdiction and Liability (28 April 2011), **CLA-134**, paras. 570-572.

398 Response to Request for Bifurcation, para. 121.

399 *Bayindir v Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction (14 November 2005), **CLA-104**, para. 157.

400 Article II(2) of the Pakistan-Turkey BIT provides:

Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

*See*: *Bayindir v Pakistan (I)*, ICSID Case No. ARB/03/29, Award (27 August 2009) **CLA-206**, para. 156.

401 Statement of Claim para. 543; *MTD* v *Chile*, ICSID Case No. ARB/01/7, Decision on Annulment (21 March 2007), **CLA-108**.

FET standard, as it is in this case.[402] In *MTD*, the relevant provision required the State to accord two types of "treatment" to covered investments. First, "treatment which is fair and equitable". Second, "*treatment which is (...) not less favourable than that accorded to investments made by investors of any third State*". In other words, the MFN obligation in the Chile-Malaysia BIT is not made in relation to "fair and equitable treatment" as it is in the Treaty.

### 2. In any event, Article 2(3) cannot be relied on to import substantive protections foreign to Treaty

170. In any event, an MFN clause cannot be relied upon to import substantive protections that are wholly foreign to the basic treaty. The MFN clause is not drafted to have 'automatic' or *de facto* "multilateralising' effect. Article 2(3) is only engaged to the extent the Claimant can identify actual treatment accorded by Azerbaijan to the investor of a third State.

171. This operation of the MFN promise was recognised by the tribunal in *Hochtief v Argentina*.[403] Notably, the MFN clause in that case was broadly worded, unlike in the present case. The MFN also contained no restriction of its application as between investors in similar situations. The tribunal observed as follows:

> …it cannot be assumed that Argentina and German[y] intended that the MFN clause should create wholly new rights where none otherwise existed under the Argentina-Germany BIT. The MFN clause stipulates a standard of treatment and defines it according to the treatment of third parties. The reference is to a standard of treatment accorded to third parties, not to the extent of the legal rights of third parties. …The MFN clause is not a *renvoi* to a range of totally distinct sources and systems of rights and duties: it is a principle applicable to the exercise of rights and duties that are actually secured by the BIT in which the MFN clause is found.[404]

172. The MFN promise is designed to protect against actual discrimination as between foreign investors. The Claimant's position would override the States Parties' intent in

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402 The relevant provision of the Chile-Malaysia BIT provides: Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State: *see MTD* v *Chile*, ICSID Case No. ARB/01/7, Decision on Annulment (21 March 2007), **CLA-108**, para. 27.

403 *HOCHTIEF* v *Argentina*, ICSID Case No. ARB/07/31, Decision on Jurisdiction (24 October 2011), **RLA-158**.

404 *HOCHTIEF* v *Argentina*, ICSID Case No. ARB/07/31, Decision on Jurisdiction (24 October 2011), **RLA-158**, para. 81 (emphasis added).

negotiating the Treaty, which in the present case includes their decision not to agree to an FPS clause. Treatment "accorded to" an investment must mean treatment actually granted.[405] The Claimant has not identified any such treatment granted to any investment of a third State.

### 3. The comparator treaties relied upon by the Claimant only bind the Respondent from their entry into force

173. The Tribunal also has no temporal jurisdiction over FPS claims. The Claimant relies on the Republic's BITs with Serbia and Switzerland to bring his FPS claims.[406] These treaties entered into force on 14 December 2011 and 25 June 2007, respectively.[407] Consequently, if Article 2(3) functions to bind the Republic to FPS guarantees in comparator treaties, which it does not, then this obligation only arises from the entry into force of the comparator treaties.

174. The International Law Commission's *Draft Articles on Most-Favoured-Nation Clauses*, at Article 20(1), provides:

> The right of the beneficiary State, for itself or for the benefit of persons or things in a determined relationship with it, to most-favoured-nation treatment under a most-favoured nation clause not made subject to a condition of compensation arises at the moment when the relevant treatment is extended by the granting State to a third State or to persons or things in the same relationship with that third State.[408]

175. The accompanying commentary elaborates on this principle:

> It is to be understood that, if the third State that enjoys that treatment already at the moment of the entry into force of the [MFN] clause, i.e. the treaty or international agreement containing it, then the beneficiary State becomes immediately entitled to the same treatment. If, however, the relevant treatment is extended to the third State later, it is at that later time that the right of the beneficiary State arises.[409]

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405 *İçkale İnşaat Limited Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Award (8 March 2016), **RLA-87**, paras. 328-329.

406 Though the Claimant also refers to "[v]arious other BITs" concluded by the Republic that contain a FPS clause, he cites no authority in support of this contention (see Statement of Claim para. 544).

407 UNCTAD, Table of Azerbaijan's Bilateral Investment Treaties, retrieved 20 December 2023, **RLA-161**.

408 International Law Commission, Draft Articles on Most-Favoured-Nation Clauses with commentaries, **RLA-159**, art. 20(1).

409 International Law Commission, Draft Articles on Most-Favoured-Nation Clauses with commentaries, **RLA-159**, at p. 55, para. 11.

176. The Claimant has not adverted to the temporal requirements of engaging an MFN obligation. Nonetheless, should such a case be made out, it suffers the same fatal defects as his claims under the main treaty. First, the dispute or disputes between the Claimant and the Respondent fall outside of the scope of the main treaty's dispute resolution provision, Article 10. Second, even accepting the Claimant's factual allegations *pro tem*, no claims of FPS violations arises after either the Swiss or Serbian BIT's entry into force. This arises principally because, on the Claimant's case, the expropriation of his alleged investments occurred and was complete well before 2007, i.e. the entry into force of the Swiss BIT. Without a covered investment as of 25 June 2007, no FPS claims can arise.

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## PART 3

## FACTUAL BACKGROUND

### I. THE FACTS OF THIS CASE ARE OUTSIDE THE RESPONDENT'S KNOWLEDGE

177. Mr Bahari's claims have nothing to do with the State. His claims involve his business relationship with third parties acting in their private capacities. For these reasons, Azerbaijan does not have direct knowledge of the vast majority of factual matters raised in the Statement of Claim. Azerbaijan has, however, considered its own records, such as documents kept with State Ministries, insofar as they may relate to the matters raised in the Statement of Claim. Further, and without anything in this Defence amounting to a waiver of privilege, in order to respond as fully as possible to Mr Bahari's claims, and in good faith, Azerbaijan has also made enquiries of third parties, who have voluntarily provided witness evidence on behalf of Azerbaijan. In particular, Azerbaijan requested specific documents and categories of documents from Caspian Fish and some of these were located and made available. To the extent third parties voluntarily agreed to provide documents, Azerbaijan has exhibited documents that it has been able to obtain.

178. Again, strictly without any waiver of privilege, on the basis that Mr Bahari's claims are an improper attempt to embarrass Azerbaijan, do not concern the Government nor involve any exercise of sovereign powers, Messrs Aliyev and Heydarov have not provided witness statements on Azerbaijan's behalf.

179. Insofar as Azerbaijan understands the factual background to Mr Bahari's case, and based on the information it has been able to obtain, the claim is riddled with patent inaccuracies and brazen lies. The documentary record demonstrates that Mr Bahari agreed to sell his interest in Caspian Fish in 2001 and was paid for it. He retained (and to this day, still retains) his interest in Coolak Baku. He never had any interest in Shuvalan Sugar. He sold any interest he had in Ayna Sultan in 1999. And lastly, his carpets were returned to him in late 2002.

180. Certain of these matters, such as Mr Bahari's claim he was expelled from Azerbaijan in March 2001, were exposed as untrue by the simplest of due diligence: checking the State border records. It is unclear what Mr Bahari expected Azerbaijan to find in response to his allegations; he has either a very concerning misplaced confidence in his own lies, or a severely impaired recollection. For the reasons that shall be developed

below, the Respondent respectfully suggests that his evidence should be given little to no weight at all.

## II. MR BAHARI HAS FAILED TO EVIDENCE THAT HE WAS A "SUCCESSFUL ENTREPRENEUR" PRIOR TO COMING TO AZERBAIJAN

181. Several pages of the Statement of Claim are devoted to describing Mr Bahari's prior business ventures in Iran, in order to support the conclusion that he was "*one of Iran's most successful and wealthy businesspeople*" and "*came into Azerbaijan as an investor of serious means and experience*".[410]

182. The only evidence upon which these assertions are based is witness testimony of Mr Bahari himself, and Mr Tabesh Moghaddam, Mr Bahari's self-described "[redacted]"[411] associate who allegedly assisted Mr Bahari in the running of each of the business he described in both Iran and Azerbaijan. Mr Moghaddam is presumed to have a financial interest in the outcome of these proceedings.

183. In fact, Mr Moghaddam is a convicted criminal. As described further at paragraphs 354 to 358 below, contrary to the evidence he gives in these proceedings that he "[redacted]",[412] he testified before the Azerbaijani Criminal Courts that he had [redacted] and, when apprehended by police officers at his home, he voluntarily "[redacted]" the drugs in his possession.[413] Those drugs were found to be "[redacted]",[414] The Court found Mr Moghaddam's possession to be consistent with the intention of selling and he was accordingly convicted.[415] Mr Moghaddam's (separated) wife, Ms Izmaylova, also confirms in her evidence that Mr

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410 Statement of Claim, para. 24.

411 Moghaddam Statement, para. 17.

412 Moghaddam Statement, paras 83 and 84.

413 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, p. 3.

414 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, p. 3.

415 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, p. 5 ("[redacted]"). *See* excerpts of the Criminal Code of Azerbaijan adopted on 30 December 1999, **RLA-125** (arts. 234.4.3 and 206).

Moghaddam frequently smoked opium[416] (from which heroin is derived). Mr Moghaddam claims in his witness statement in these proceedings that the police located "[redacted]" at his house,[417] but this is an entirely different drug to the drug Ms Izmaylova recalls him taking and the Azerbaijani courts convicted him of possessing with intent to sell.[418]

184. That is the extent of the evidence Mr Bahari provides for his claims to wealth and success in respect of his prior businesses. These businesses were not located in Azerbaijan and they are not the subject of any alleged restriction on access to materials. Mr Bahari could have provided documents in support of his asserted wealth, such as financial statements, bank statements, tax returns, and so forth, but he has not. This is either because no such documents exist, or whatever documents do exist do not support the claims made in the witness testimony. Mr Bahari also should not be believed that he cannot, through bank statements, payment instructions and other formal documents, evidence his own expenditure on his investments, if any of it is true.

185. In the light of the above, Mr Bahari has failed to prove any of his claims in relation to Kaveh Tabriz[419] or Coolak Shargh.[420] While the majority of his allegations are outside the knowledge of Azerbaijan, according to public records:

(a) Contrary to Mr Bahari's claim that he was "[redacted]" of Kaveh Tabriz,[421] its establishment documents provide that "[redacted]", while Mr Bahari was the chairman of the board of directors.[422] Dr Memarvar appears to have contributed the specialist pharmaceutical knowledge for the business.[423] In 1984, Mr Bahari was demoted to vice-chairman, while Mr Haj Jafar Manavi Azar was appointed

416 Izmaylova Statement, para. 7.

417 Moghaddam Statement, para. 83.

418 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-97**, p. 5.

419 Statement of Claim, paras 25-27.

420 Statement of Claim, paras 28-36.

421 Bahari Statement, para. 5.

422 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Establishment on 15 March 1982 dated 6 May 1982, **R-80**, numbered para. 4.

423 Salamati24.com profile on Rahim Memarvar, accessed on 14 December 2023, **R-81**.

chairman of the board (and Dr Memarvar remained managing director).[424] It appears that at no time was Mr Bahari the sole owner of Kaveh Tabriz: from its establishment, he was one of two owners, and two years later in 1984 he was one of three equal shareholders in the company.[425]

(b) While Mr Bahari claims that Coolak Shargh was a "*highly successful soft drink company*" that he owned and controlled,[426] he does not mention that in June 1997, publicly listed company Refah Chain Stores purchased a 50% shareholding in Coolak Shargh for approximately USD 4,200,[427] before exiting entirely in August 1999;[428] and in April 1999, Azerbaijan Development Investment Company invested approximated USD 5,000 in return for a 40% shareholding in the company.[429] By December 1999, Mr Bahari was no longer a shareholder in Coolak Shargh.[430] According to Coolak Shargh's publicly available financial statements for the year ending September 2013, "[redacted]" owed Coolak Shargh "[redacted]" (equivalent to approximately USD 4 million at the relevant time), which was described in the following terms:

[redacted][431]

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424 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Amendments on 6 April 1984 dated 24 April 1984, **R-82**, numbered para. 3.

425 *See* Extract from Official Gazette of the Islamic Republic of Iran, Notice of Amendments on 6 April 1984 dated 24 April 1984, **R-82**, numbered paras 1 and 2.

426 Statement of Claim, para. 28.

427 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 9 June 1997 dated 23 June 1997, **R-83**.

428 *See* Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 18 July 1999 dated 11 August 1999, **R-83**.

429 Extract from Official Gazette of the Islamic Republic of Iran, Notice of Decisions on 18 March 1999 dated 19 April 1999, **R-175**.

430 *See* Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company's Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

431 Coolak Shargh Financial Statements for the year ending September 2013, dated 21 December 2013, **R-161**.

Coolak Shargh's financial statements recorded the debt as "[redacted]". At a board meeting on 31 December 2015, Coolak Shargh directors noted that "[redacted][432]

186. The relevance of Mr Bahari's allegations with respect to Kaveh Tabriz and Coolak Shargh is not clearly pleaded. However, to the extent that these claims are being made by Mr Bahari to support a more general assertion that he was of the financial means to make investments in Azerbaijan (which Azerbaijan does not in any event accept is demonstrated by his allegations in respect of the Iranian entities), that is not evidence that he in fact made any such financial contribution in respect of any investment in Azerbaijan. At most, it is background information from which no inferences can be drawn.

## III. COOLAK BAKU WAS A FAILED JOINT VENTURE BETWEEN PRIVATE PARTIES THAT MR BAHARI REMAINS A SHAREHOLDER IN TO THIS DAY

187. Azerbaijan has no knowledge of the matters pleaded at paragraphs 37 to 39 insofar as they concern Mr Bahari's relationships or discussions with third parties with whom he claims he was "*friends*" and with whom he "*spent a good amount of social time*".[433]

188. Mr Bahari claims that further to those discussions, "[i]*n or around 29 February 1996, Mr Bahari, and Mr Pashayev's company, ASFAN LTD*[] *entered into a joint venture agreement to create Coolak Baku*",[434] but he no longer possesses a copy of the document. Azerbaijan has obtained from the State Tax Service a copy of an Agreement on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996 (the **1996 Agreement**) registered with the Ministry of Finance at the time, which describes the parties' intent to create a joint venture for the production of soft drinks and juices.[435] Contrary to Mr Bahari's assertions, Mr

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432 Coolak Shargh Financial Statements for the year ending September 2016, dated 19 December 2016, **R-162**.

433 Statement of Claim, para. 38. *See also* paras 48 and 49 of the Statement of Claim.

434 Statement of Claim, para. 39.

435 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 2.1.

Bahari was not a party to this agreement. The parties were ASFAN and Coolak Shargh.[436]

189. Mr Bahari describes ASFAN as "*Mr. Pashayev's company*".[437] While the Respondent has no direct knowledge of these matters, it has located a copy of ASFAN's incorporation agreement in the State Tax Service files, which was filed with the relevant authority at the relevant time.[438] ASFAN was incorporated on 26 September 1995 with five shareholders and Mr Pashayev held only a 20% interest in the company. The 1996 Agreement was signed by Mr Adil Aliyev (no relation to Ilham Aliyev), who was also a 20% shareholder in the company.[439] Mr Bahari refers to Mr Adil Aliyev as Mr Pashayev's "*associate*", and claims that "[a]*ll business discussions and interactions relating to Coolak Baku were with Mr. Pashayev*",[440] but the documentary record and the evidence of Mr Adil Aliyev's son, Mr Habib Aliyev, suggest otherwise: Mr Bahari regularly communicated with Mr Adil Aliyev in relation to the affairs of Coolak Baku.[441] Azerbaijan understands from the contents of certain documents it has obtained in the circumstances described at paragraph 196 below that Mr Pashayev was the Chairman of the Management Board of Coolak Baku.[442]

### A. Mr Bahari failed to fulfil his obligations under the 1996 Agreement

190. Under the terms of the 1996 Agreement, ASFAN was obliged (among other things) to [redacted][443] and Coolak Shargh was obliged (among other things to [redacted]

436 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**.

437 Statement of Claim, para. 39.

438 ASFAN Incorporation Agreement dated 26 September 1995, **R-41**.

439 *See* Statement of Claim, para. 40. The same signature for ASFAN appears on the 1996 Agreement and the 1998 Agreement (defined at paragraph 200 below) described as the "Coolak Baku JVA" in the Statement of Claim.

440 Statement of Claim, para. 40.

441 *See* H Aliyev Statement, paras 8-15; Letters from ASFAN to Mr Bahari, various dates, at **R-25**, **R-26**, **R-27**, **R-28**, **R-29**. At paragraph 49 of the Statement of Claim, Mr Bahari also admits that "*Mr Pashayev was involved with Coolak Baku only through his associate, Adil Aliyev*".

442 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28**.

443 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 3.1.

[redacted][444]

191. The authorised capital of the Coolak Baku was USD 250,000,[445] split 7% to ASFAN and 93% to Coolak Shargh.[446] ASFAN was described as including to its share of the capital "[redacted]".[447] Coolak Shargh was described as including to its share of the capital among other things "[redacted]".[448]

192. On 7 March 1996, an application was made to the Ministry of Finance for the registration of Coolak Baku, which included a copy of the Coolak Baku Charter.[449] Both documents were signed by Mr Adil Aliyev on behalf of ASFAN. On 15 March 1996, Coolak Baku was registered by the Ministry of Finance in the State Register of Joint Enterprises.[450]

193. On 28 March 1996, an addendum to the 1996 Agreement was signed by Coolak Shargh and ASFAN (the **1996 Addendum**), under which the specific production facilities agreed to be transferred by ASFAN to Coolak Baku's balance sheet in the 1996 Agreement were defined:[451]

[redacted].

444 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 3.2.

445 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 5.1.

446 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, arts 5.4 and 5.5.

447 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 5.6.

448 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 5.7.

449 Application by Coolak Shargh to the Ministry of Finance for the registration of Coolak Baku enclosing Coolak Baku Charter dated 7 March 1996, **R-99**.

450 Certificate of Registration for Coolak Baku dated 15 March 1996, **R-100**.

451 Addendum to the 1996 Agreement dated 28 March 1996, **R-101**, para. 1.

194. Those production facilities were located, per the terms of the 1996 Agreement, at 25 Safaraliyeva St (the **Safaraliyeva Production Facilities**).[452]

195. Under the terms of the 1996 Addendum:

(a) Coolak Shargh also agreed to "[redacted]";[453]

(b) The parties recorded a previous agreement that such production would "[redacted]", that is "[redacted]" per square metre.[454] Azerbaijan understands that the agreement was that this profit would be paid to ASFAN in return for its contribution of the Safaraliyeva Production Facilities: Coolak Baku was effectively leasing the Safaraliyeva Production Facilities from ASFAN;[455] and

(c) The parties agreed that [redacted].[456]

196. Azerbaijan has obtained from Mr Zeynalov copies of certain letters written by ASFAN to Mr Bahari in the late 1990s and early 2000s. As is apparent from the content of those letters, which are corroborated by the recollections of Mr Adil Aliyev's son,[457] Mr Bahari failed to fulfil his obligations under the 1996 Agreement. Coolak Baku's contemporaneous import records reveal that the only thing imported in 1996 was

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452 Agreement between Coolak Shargh and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 29 February 1996, **R-98**, art. 1.3.

453 Addendum to the 1996 Agreement dated 28 March 1996, **R-101**, para. 2; *see also* Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 1.

454 Addendum to the 1996 Agreement dated 28 March 1996, **R-101**.

455 *See* Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28** ("[redacted]"); Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[redacted]"); Zeynalov Statement, para. 11.

456 Addendum to the 1996 Agreement dated 28 March 1996, **R-101**; See *also* Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**.

457 H Aliyev Statement, para. 14.

granulated sugar.[458] By 8 January 1997, nearly 12 months after the 1996 Coolak Agreement, limited refurbishment had taken place and only one machine had been installed within the premises:

[redacted][459]

197. The letter indicated that ASFAN would seek a greater percentage of the share capital in the light of Coolak Shargh's failures.[460]

198. Plainly, according to the documentary record, the reference to USD 28 million in ASFAN's letter is not indicative of an amount that was in fact spent by Coolak Shargh. Conveniently, this is the precise amount of money that Mr Bahari now claims he spent on Coolak Baku (which is denied for the reasons set out at paragraphs 107 to 109 above).[461] However, the contemporaneous documentary records demonstrate that this was the amount Coolak Shargh had promised it would spend, but in fact did not.[462] The January 1997 letter coincides with around the time that Refah Chain Stores purchased a 50% stake in Coolak Shargh for USD 4,200 as discussed at paragraph 185(b) above. Mr Bahari's own evidence is that in or around this time, Coolak Shargh was unable to

458 Reference Certificates on the export-import operations of Coolak Baku Co for the year 1996, **R-73**.

459 Letter from ASFAN Ltd to Mr Bahari dated 8 January 1997, **R-24**.

460 Letter from ASFAN Ltd to Mr Bahari, President of Coolak Shargh, dated 8 January 1997, **R-24**.

461 See Statement of Claim, para. 52.

462 *See* Letter from ASFAN to Mr Bahari dated 22 December 1997, **R-25** ("[redacted]"); Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28** ("[redacted].").

perform properly, which "[redacted]".[463] The idea that it had USD 28 million to invest is not plausible in the light of this background.

### B. Mr Bahari failed to fulfil his obligations under the 1998 Agreement

199. It appears from the content of the ASFAN letters that in the course of 1997, as corroborated by the evidence of Messrs Habib Aliyev and Zeynalov,[464] Mr Bahari sought to change production at Coolak Baku from soft drinks to beer, which was not well received by ASFAN. On 22 December 1997, ASFAN wrote to Mr Bahari to complain that

[redacted]

200. On 23 January 1998, Mr Bahari (personally) and ASFAN concluded a new agreement in respect of Coolak Baku (the **1998 Agreement**), which is the document the Claimant

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463 Bahari Statement, para. 14.

464 H Aliyev Statement, para. 10; Zeynalov Statement, para. 16.

465 Azerbaijan understands the reference to "sacred" "water" to be intended as a contrast with sinful beer production.

466 Letter from ASFAN Ltd to Mr Bahari dated 22 December 1997, **R-25**.

exhibits to the Statement of Claim.[467] The 1998 Agreement provided that it rendered the 1996 Coolak Agreement null and void,[468] and its objective was revised to include the [redacted]".[469] The Ministry of Justice confirmed in a letter to Coolak Baku's founders dated 1 July 1999 that Mr Bahari replaced Coolak Shargh as a shareholder in Coolak Baku.[470]

201. The 1998 Agreement significantly changed the share percentages from the 1996 Coolak Agreement so that ASFAN received 25% in Coolak Baku, representing a share of the authorised capital of the company in the sum of USD 500,000,[471] and Mr Bahari held 75%, representing a share of the authorised capital in the sum of USD 1,500,000.[472] The Respondent understands these changes to reflect the shortfall in expected investment made by Coolak Shargh in breach of its obligations under the 1996 Agreement.[473] Mr Bahari alleges that he advanced the "*entire $2,000,000 sum*" towards the authorised capital fund, but there is no evidence of that other than Mr Bahari's testimony.[474]

202. The 1998 Agreement reiterated ASFAN's obligation to contribute the Safaraliyeva Production Facilities to the joint venture, specifying the details of the privatisation certificate that recorded ASFAN's ownership of the facilities.[475] Mr Bahari describes the Safaraliyeva Production Facilities as a "*Land Plot*"[476] but this is a misnomer: the

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467 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**.

468 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, cl. 16.

469 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, cl. 2.1.

470 Letter from Ministry of Justice to Coolak Baku's founders dated 1 July 1999, **R-158**.

471 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, Clause 5.4, **C-1**.

472 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, Clause 5.5, **C-0**.

473 Letter from ASFAN Ltd to Mr Bahari dated 22 December 1997, **R-25**.

474 Statement of claim, para. 45; Bahari Statement, para. 21.

475 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, clause 3.1. Indeed, cl. 3.1 of the 1998 Agreement refers to a "production area" in relation to ASFAN and not land.

476 Statement of Claim, para. 43(i).

land itself was not privatised and ASFAN had rights only to the immovable property located on the land.[477]

203. Mr Bahari similarly misreads the terms of the 1998 Agreement with respect to what he describes as a "*plot of land*"[478] in the Shuvalan settlement of Baku referred to in clause 3.1 of the 1998 Agreement. The property referred to is not a plot of land, but a series of buildings, and the privatisation certificate referred to in the 1998 Agreement confirms that to be so (the **Shuvalan Buildings**).[479] Mr Bahari claims that ASFAN was obliged to contribute this property directly to Mr Bahari, and although he admits that the property was not owned by ASFAN, he claims that ARHAD, the company which owned the land, was "*controlled by Mr Pashayev*".[480] As far as Azerbaijan understands, both assertions are inaccurate:

(a) The plain words of clause 3.1 of the 1998 Agreement confirm that the Shuvalan Buildings were to be transferred to Mr Bahari by ARHAD "[redacted]".[481] This is the only construction of the agreement that makes sense, given the Shuvalan Buildings did not belong to ASFAN and ARHAD was not a party to the 1998 Agreement. It is common ground that ARHAD never became a shareholder in Coolak Baku.[482] Accordingly, no property was ever transferred to Mr Bahari.[483]

(b) Insofar as Mr Bahari claims that ARHAD was controlled by Mr Pashayev, this is mere assertion and Azerbaijan has found no evidence to support it. According to the documents in the State Tax Service files, on its establishment in 1995 ARHAD was owned in equal shares by Mr Pashayev, Mr Adil Aliyev and Mr

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477 Certificate of Ownership issued by the State Property Committee to ASFAN dated 1 May 1997, **R-96**.

478 Statement of Claim, para. 43(ii).

479 Certificate of Ownership issued by the State Property Committee to ASFAN dated 1 May 1997, **R-96**.

480 Statement of Claim, para. 43(ii).

481 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, clause 3.1.

482 Statement of Claim, para. 43(ii).

483 Azerbaijan notes that while there was plainly no formal transfer of the Shuvalan Buildings or any part thereof to Coolak Baku (let alone to Mr Bahari), two of the ASFAN letters in this period to refer to the production of sugar at ARHAD's facilities: *see* letters dated 2 July 1998, **R-26** and 20 September 1999, **R-28**. This may explain the source of Mr Bahari's misguided attempts to claim "Shuvalan Sugar" as an investment. However, all Mr Bahari had was informal use of a small warehouse in the Shulavan Buildings at which he occasionally processed sugar: *see* paragraph 226 below.

Habib Aliyev.[484] By 1 October 2002, Mr Habib Aliyev was the sole shareholder of ARHAD.[485]

204. The misinterpretation continues with Mr Bahari's gross perversion of a clause in the 1998 Agreement which he claims was intended to earn him *"$18 Million over* [a] *three year lease period, and* [] *this was projected to be about 20% of Coolak Baku's total earning during that time*".[486] The clause itself records:

[redacted].[487]

205. The construction of this clause is uncomplicated: it provides that Mr Bahari shall be paid up to a *total* amount of USD 500,000 over the course of three years, with payments deriving from 20% of ASFAN's earnings per month. That this is the natural and ordinary meaning of the words is evident in the fact that this is the same construction given by Mr Bahari himself when he initially filed a Treaty claim in 2019. In the 2019 Notice of Arbitration, Mr Bahari described this clause of the 1998 Agreement in the following terms:

[redacted].[488]

206. His new spin on this clause is wrong. Mr Bahari goes on to claim that the commercial rationale for this provision can be found within the "*terms appear*[ing] *at Clause 3.1 of the* [1998 Agreement]", according to which, Mr Bahari claims, "*ASFAN would control management and operation of Coolak Baku for the first three years, and pay monthly fees to Mr. Bahari out of its earnings*" so that Mr Bahari could "*focus his efforts on building Caspian Fish*".[489] This is a fiction. Nothing in the terms of clause 3.1 of the 1998 Agreement lends support for the claim made in the Statement of Claim (and

484 ARHAD Foundation Agreement dated 26 September 1995, **R-166**.

485 Extract from the State Register of Commercial Organisations (ARHAD) dated 1 October 2002, **R-40**.

486 Statement of Claim, 47. *See also* para. 50.

487 Agreement between Mr Bahari and ASFAN on Coolak Baku Co Azerbaijan-Iran Enterprise in the form of a limited liability company dated 23 January 1998, **C-1**, Clause 3.1.

488 Notice of Arbitration dated 5 April 2019, **R-54**, para. 19.

489 Statement of Claim, para. 46.

notably, Mr Bahari does not quote from the terms of the 1998 Agreement). Indeed, Mr Bahari's claim that he "[redacted]"[490] between 1998 and 2001 is inconsistent with his case that he purchased equipment and "[redacted]" during this time.[491] The contemporaneous documents in fact indicate that the payment was "[redacted]",[492] although it appears that the sums used to purchase the brewing equipment were not advanced directly by Mr Bahari but "[redacted]" and ASFAN subsequently sought the return of the funds it had advanced.[493]

207. While Mr Bahari alleges that he "*fully satisfised his obligations*" under the 1998 Agreement[494] and, in particular, that he "*invested around $27-28 million of his own money into Coolak Baku*",[495] he provides little to no documentary support for his assertions. As far as Azerbaijan understands from the available documentary record and the testimony of its witnesses, Mr Bahari's assertions are unsupported or inaccurate. Thus:

(a) Mr Rasim Zeynalov, who appears as a witness for Azerbaijan, was appointed by Mr Bahari to manage Coolak Baku's affairs.[496] Mr Bahari describes Mr Zeynalov as his "*driver*" who "*principally worked for Mr. Bahari at Coolak Baku taking care of various menial office tasks*",[497] but Mr Zeynalov has provided the Respondent with a copy of a wide-ranging power of attorney dated

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490 Bahari Statement, para. 22. Hence, Mr Bahari claims, the "[redacted]" to "[redacted]".

491 *See* Bahari Statement, paras 24-26.

492 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

493 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26** ("[redacted]").

494 Statement of Claim, para. 51.

495 Statement of Claim, para. 52. Notably, in a public interview from 2017, Mr Bahari claimed that only approximately a third of that amount had been invested in Coolak Baku, and he suggested (although his statements were contradictory) that the money had been given to him: "[redacted]"), *see* Transcript of Facebook Interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

496 Zeynalov Statement, para. 13; Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

497 Statement of Claim, para. 295.

17 December 1999 to manage Mr Bahari's affairs.[498] That power of attorney indicates that Mr Bahari himself recognised Mr Zeynalov as more than his driver. Mr Zeynalov's evidence is that there was "[redacted]" at Coolak Baku, "[redacted]"; the "[redacted]" purchased for the production of soft drinks was "[redacted]", "[redacted]"; and the equipment for beer production was purchased "[redacted]".[499] In particular, Mr Zeynalov notes that (directly contrary to Mr Bahari's claims that he "innovat[ed]" a process) they did not allow the beer to ferment long enough, which meant it was low quality and could not break into the market.

(b) Mr Habib Aliyev, who visited Coolak Baku frequently between 1997 and 1999 also confirms that "[redacted]".[500] These recollections are consistent with the contemporaneous ASFAN letters, which record that as of September 1999 "[redacted]",[501] and as of November 2002 "[redacted]".[502] Coolak Baku only obtained a licence to produce beer in April 1999, almost a year and a half after the 1998 Agreement was signed.[503]

(c) It appears that Mr Bahari was absent for long periods of time (indeed, on his own case he claims that he was not involved in Coolak Baku at this time, although any suggestion that this was "agreed" between ASFAN and Mr Bahari

498 Power of Attorney issued by Mr Bahari to Mr Zeynalov dated 17 December 1999, **R-38**.

499 Zeynalov Statement, para. 17.

500 H Aliyev Statement, para. 12.

501 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28**.

502 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 1.

503 Licence issued by Ministry of Agriculture to Coolak Baku dated 26 April 1999, **C-83**.

is denied for the reasons set out at paragraph 206 above).[504] According to a letter sent by ASFAN to Mr Bahari on 2 July 1998, Mr Bahari "[redacted]" and the "[redacted]".[505] Mr Zeynalov explains that "[redacted]" and that he understood that "[redacted]".[506] In that connection, Azerbaijan understands that Petroqeshm International Trading LLC (**Petroqeshm**) was ultimately incorporated in the UAE in or around August 2001 by Mr Bahari, although information as to its owners and directors is not publicly available and will be sought from Mr Bahari in the disclosure phase of these proceedings. This may explain Mr Bahari's long absences from Coolak Baku and, as detailed at paragraph 257(a) below, Caspian Fish.

(d) There is no evidence at all, save for Mr Bahari's own testimony, that he "[redacted]" capital fund. Mr Bahari cannot prove on the balance of probabilities that he contributed anything towards the capital fund.

(e) While Mr Bahari claims that he funded Coolak Baku's construction using "*profits from his Coolak Shargh and Kaveh Tabriz businesses*",[507] the contract upon which he relies is a contract between Coolak Baku, not Mr Bahari, and Chartabi.[508] The veracity of the Chartabi contracts is rejected for the reasons set out at paragraph 90 above.

(f) While Mr Bahari also claims that he personally funded the purchase of Coolak Baku's equipment,[509] none of the documents he relies upon in fact confirm the that he himself made any payment, as set out at paragraphs 107 to 109 above. The contemporaneous documentary record indicates that "[redacted]

504 Statement of Claim, para. 46.

505 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

506 Zeynalov Statement, para. 42.

507 Statement of Claim, para. 54.

508 Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**.

509 Statement of Claim, para. 54.

[redacted]" was "[redacted]" and "[redacted]",[510] and not Mr Bahari's profits from Coolak Shargh or Kaveh Tabriz as he claims.

(g) Mr Bahari's claim that he "[redacted]" of "[redacted]" is supported by only his witness testimony.[511] He refers twice to a document dated 5 October 2000, which he describes as an "equipment fees invoice",[512] but it unclear how this document has anything to do with the alleged German beer consultants, particularly in circumstances where on its face it refers to Caspian Fish.[513]

(h) From the documentary record, it appears that Mr Bahari invested no more than USD 1.4 million (if that) into Coolak Baku,[514] but even then whether Mr Bahari himself was the source of these funds remains unclear, as well as where and how such funds were invested (if at all). It appears from Coolak Baku's import records, that funds may have been generated from the import of granulated sugar discussed in section PART 3IV below,[515] but it is not clear that these funds were Mr Bahari's, as opposed to the joint venture's.[516]

208. The ASFAN letters in this period record a number of concerning activities on the part of Mr Bahari. In particular, the letters indicate that Mr Bahari purchased "[redacted]",[517] "[redacted]",[518] and [redacted] used the stamp of Iranian company Coolak Shargh in

510 Letter from ASFAN to Mr Bahari dated 2 July 1998, **R-26**.

511 Statement of Claim, para. 56; Bahari Statement, para. 26.

512 Statement of Claim, paras 56 and 295.

513 Act of Customs Department and Mr Zeynalov dated 5 October 2000, **C-76**.

514 Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**.

515 Reference Certificates on the export-import operations of Coolak Baku Co for the year 1996, **R-73**.

516 *See* Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26** ([redacted]").

517 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

518 Letter from ASFAN Ltd to Mr Bahari dated 2 July 1998, **R-26**.

Azerbaijan.[519] Whatever Mr Bahari was doing, the documentary record makes plain that it was not focusing on the core activity of the joint venture.

### C. In September 1999, the joint venture parties amended their agreement, extinguishing Coolak Baku's rights under the prior agreements

209. On 9 September 1999, ASFAN and Mr Bahari concluded yet another agreement in relation to Coolak Baku (the **1999 Agreement**).[520] The 1999 Coolak Agreement expressly terminated all previous agreements.[521]

210. While the shareholdings of the parties remained unchanged,[522] the 1999 Agreement was of much shorter form. Gone were the references to the contribution of any property to the joint venture by ASFAN, gone were the repair and refurbishment obligations on Mr Bahari.

211. Notably, the 1999 Agreement made no reference to the production of soft drinks or beer, but instead included a long list of possible operations of the company (ranging from import-export, to the production of sports products, to the process and sale of agricultural products, and everything in between) "[redacted].[523] While Azerbaijan has no direct knowledge of the changes to the joint venture agreement, it appears that the 1999 Agreement was an attempt to start over following the difficulties between the parties evident from the ASFAN letters.

212. Shortly after the 1999 Agreement was signed, on 20 September 1999 ASFAN wrote to Mr Bahari to raise certain complaints.[524] From the content of that letter, it appears that [redacted]". The suggestion was that Mr Bahari had obtained the agreement of, and made a partial payment to, three of ASFAN's

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519 Letter from ASFAN Ltd to Mr Bahari dated 22 July 1998, **R-27**.

520 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**.

521 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**, art. 5.2.

522 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**, art. 3.1.

523 Contract between ASFAN and Mr Bahari in relation to Coolak Baku Co dated 9 September 1999, **R-72**, art. 2.

524 Letter from ASFAN Ltd to Mr Bahari dated 20 September 1999, **R-28**.

shareholders to exit the joint venture. However, [redacted]. Mr Aliyev complained that "[redacted]", and that the Chairman of the Management Board of Coolak Baku (Mr Pashayev) was concerned that Mr Bahari had "[redacted]".

213. Mr Habib Aliyev recalls that it was around this time that "[redacted]"[525] and that Malik went on to instal equipment at the facility, although it was not of high quality.[526] Mr Zeynalov also corroborates this evidence, confirming Mr Bahari had told him that "[redacted]" without informing Mr Adil Aliyev or ASFAN in general.[527] These statements are also consistent with a document dated October 2000 Azerbaijan has been provided from Caspian Fish's archive, which is signed by Mr Bahari in his capacity as a founder of Coolak Baku and "[redacted]" (understood to have no relation to Mr Ilham Aliyev).[528] This evidence fully refutes Mr Bahari's claims that Mr Heydarov "*relied on agents to physically seize Coolak Baku*" which he describes as "*Government personnel*" or "*agents… act*[ing] *at the direction of Mr. Heydarov, who himself was a powerful senior Government official*".[529] Mr Bahari purported to transfer Coolak Baku to Mr Heydarov, without ASFAN's consent.

214. The September letter also contained complaints that Mr Pashayev's signature had been "[redacted]" in order to purchase 3,400 tons of granulated sugar, leaving USD 400,000 in taxes remained outstanding, and more than USD 1 million owed to the company who shipped the granulated sugar.[530] ASFAN complained that Mr Bahari had caused it to suffer USD 2 million of damage. As to the tax debt, Mr Zeynalov explains that the tax

525 H Aliyev Statement, para. 16.

526 H Aliyev Statement, para. 18.

527 Zeynalov Statement, para. 23.

528 Invoice and Act of Transfer and Acceptance from M Aliyev to Mr Bahari dated 10 October 2000, **R-106**.

529 Statement of Claim, para. 179(ii).

530 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28**.

was incurred in relation to the sale of imported sugar.[531] Azerbaijan assumes that Mr Bahari sold sugar for a profit and failed to pay applicable profit taxes.

### D. Coolak Baku was never a commercial success and in 2005 ASFAN withdrew from the joint venture

215. It is apparent that the parties did not embark on any new commercial venture as envisaged under the 1999 Agreement. Azerbaijan understands that following a deal reached between Mr Bahari and Mr Heydarov (the details of which are discussed at PART 3V.E below), Mr Malik Aliyev relinquished the facility back to Coolak Baku in June 2002.[532]

216. As the contemporaneous records show, by November 2002:

(a) Mr Bahari had "[redacted]" Azerbaijan, and had showed a "[redacted]";[533]

(b) "[redacted]";[534]

(c) "[redacted]";[535]

(d) "[redacted] imported from Iran had been "[redacted]";[536]

(e) "[redacted]

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531 Zeynalov Statement, para. 21.

532 H Aliyev Statement, para. 17; Zeynalov Statement, para. 25. *See* Minutes of the Meeting of the Shareholders of Coolak Baku dated 18 June 2002, **R-104**.

533 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 2.

534 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 1.

535 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 1.

536 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, pp. 1-2.

[redacted]";[537]

(f) [redacted]";[538]

(g) In spite of all of this, Mr Bahari expected a "[redacted]" and to this end "[redacted]";[539]

(h) At a meeting of the Coolak Baku staff on 11 November 2002, which Mr Zeynalov attended as Mr Bahari's represenative, Mr Adil Aliyev proposed, among other things, that [redacted]", and that [redacted]".[540] The total damage stated by Mr Aliyev to have been suffered by ASFAN on account of Mr Bahari's actions was USD 4 million.[541] At the meeting, Mr Zeynalov requested "[redacted]".[542] As Mr Zeynalov confirms, he indeed continued to speak to Mr Bahari after he left Azerbaijan, but Mr Bahari showed no interest in the Coolak Baku business.[543]

217. Mr Bahari's claim that "[redacted]" is a total fabrication.[544]

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537 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 2.

538 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 2.

539 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 2.

540 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, pp. 2-3.

541 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 2.

542 Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**, p. 3.

543 Zeynalov Statement, para. 26.

544 Statement of Claim, para. 58.

These assertions are made on the basis of the witness testimony of Mr Moghaddam, who – even on his own evidence[545] – had no role at Coolak Baku at any time. Mr Zeynalov also confirms that Mr Moghaddam did not have any involvement in the Coolak Baku business.[546] While Mr Moghaddam claims he "[redacted]" for Mr Bahari concerning Coolak Baku's construction and equipment,[547] there is no explanation of how such management would make Mr Moghaddam privy to Coolak Baku's production data. In any event, there are no documents to support the assertion that he managed Mr Bahari's payments. To the contrary, Mr Bahari's evidence indicates that it was Mr Zeynalov who handled payments, if anyone.[548]

218. The documentary record, and testimony of individuals who were managing or directly involved in the operation of Coolak Baku at the time, confirms that Coolak Baku never produced any soft drinks at all.[549] Further, Mr Bahari's evidence, that "[redacted]"[550] is absurd in the light of the Ministry of Economy's confirmation that between 1996 and 2000 a 0.5 litre size bottle of the well-known Coca-Cola brand sold consistently for USD 0.37.[551] Coca-Cola was already active in the Azerbaijani market when Mr Bahari was allegedly attempting to establish his own investment.

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545 Moghaddam Statement, para. 28 "[redacted]".

546 Zeynalov Statement, para. 20.

547 Moghaddam Statement, para. 32.

548 Bahari Statement, para. 28(iii) and (iv): "[redacted]". *See also* Zeynalov Statement, para. 13.

549 Letter from ASFAN to Mr Bahari dated 20 September 1999, **R-28** ("[redacted]"); Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29** ("[redacted]."); Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[redacted]."); Zeynalov Statement, para. 15; H Aliyev Statement, para. 12. This is evidence is contrary to the suggestion in Mr Moghaddam's evidence that Coolak Baku was producing approximately 40,000 bottles of soft drinks a day (Moghaddam Statement, para. 36).

550 Statement of Claim, para. 59.

551 Letter from the Ministry of Economy to Quinn Emanuel dated 21 December 2023, **R-103**.

219. A small amount of beer was produced, and Coolak Baku continued to produce beer after Mr Bahari's departure.[552] However, these attempts were not commercially successful.[553] By April 2004, given "[redacted]",[554] ASFAN resolved to withdraw from the joint venture.[555]

220. On 19 January 2005, ASFAN made an application to the Azerbaijani Economic Court seeking: (i) to void the registration certificate of Coolak Baku, (ii) an order that ASFAN be released from the debts of Coolak Baku and (iii) an order that ASFAN resign as founders of Coolak Baku.[556] Notably, the same Mr Yusif Allahyarov who appears as a witness on Mr Bahari's behalf in these proceedings represented ASFAN in the proceedings before the Azerbaijani Courts, no mention of which is made in his witness statement.[557]

221. According to documents that Mr Allahyarov presented to the Azerbaijani Courts on behalf of ASFAN:

[redacted][558]

552 Zeynalov Statement, para. 18.

553 Minutes of Meeting of ASFAN's founders dated 27 April 2004, **R-30** ("[redacted]"); Zeynalov Statement, para. 18; H Aliyev Statement, para. 12.

554 Zeynalov Statement, para. 26.

555 Minutes of a meeting of ASFAN's founders dated 27 April 2004, **R-30**.

556 Decision on the acceptance of ASFAN's Statement of Claim dated 19 January 2005, **R-168**. Azerbaijan notes that the reference to "founders" are original shareholders or participants, and the term "founder" is used to connote "shareholders", that is "founders", "shareholders" and "participants" are used interchangeably.

557 *See* Judgment of the Economic Court dated 4 April 2005, **R-105**, p. 1.

558 Judgment of the Economic Court dated 4 April 2005, **R-105**, p. 1.

222. On 4 April 2005, the Court granted ASFAN's claim that it be removed from the register of founders of Coolak Baku, and the remainder of the claim was dismissed.[559] The Court further recorded that [redacted]". The Safaraliyeva Production Facilities were accordingly returned to ASFAN and it was removed as a founder in Coolak Baku, effective 14 July 2005.[560] Mr Bahari claims that "*ASFAN took over Coolak Baku's business*", ostensibly on the basis that ASFAN "*produced a Bavarian-style beer in Azerbaijan called 'Attila Premium' as late as 2008*".[561] Mr Habib Aliyev explains that it is true that ASFAN produced beer at the Safaraliyeva Production Facilities until around 2014.[562] This was, however, following ASFAN's exit from the Coolak Baku joint venture and the return of its production facilities, and such production had nothing to do with Coolak Baku. The facilities were sold to a residential construction cooperative in October 2014.[563]

223. Azerbaijan does not hold any more record of recent activity by Coolak Baku. There is also no record of its liquidation. Following ASFAN's exit, Mr Bahari accordingly remains the sole shareholder of Coolak Baku.[564]

224. While Mr Bahari complains that he "no *longer had any control, or visibility, into Coolak Baku, including Shuvalan Sugar, following his expulsion from Azerbaijan*",[565] that is not so. He was never "expelled" from Azerbaijan (see paragraphs 264 to 266 below). When he returned to Azerbaijan in 2013, he had a meeting with Mr Zeynalov,

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559 Judgement of the Economic Court dated 4 April 2005, **R-105**.

560 Writ of Execution in case No 1-96/03-45/2005 dated 12 April 2006, **R-106**.

561 Statement of Claim, para. 293.

562 H Aliyev Statement, para. 28. Azerbaijan understands that following the entry into force of the new Civil Code of Azerbaijan in 2000, ASFAN was re-registered under the new regime, at which point Mr Zeynalov was recorded as the director of ASFAN. Mr Bahari claims that Mr Zeynalov was placed "*as a front man for ASFAN in a bid to conceal the true beneficial ownership of* [ASFAN]" (para. 295), but this is untrue: ASFAN was jointly owned by six different individuals, each with varying share percentages, but the majority of its shares (82%) are held by Mr Adil Aliyev's family: *see* Charter of ASFAN dated 5 May 2003, **R-39**, cl. 6.3. Mr Pashayev previously had a 20% ownership interest in ASFAN (see paragraph 189 above), which was reduced to 5% in 2003.

563 Sale and Purchase Contract between ASFAN and Mars-N dated 22 October 2014, **R-43**.

564 Letter from State Tax Service to Khirdalan city attorney's office dated 14 December 2023, **R-109**.

565 Statement of Claim, para. 292.

who took him to see the Safaraliyeva Production Facilities.[566] Mr Bahari's account of this visit (that he visited the Safaraliyeva Production Facilities of his own accord where he "[redacted] Mr Zeynalov and "[redacted]")[567] is contradicted by Mr Zeynalov's evidence, who confirms that they did not exchange any heated words at all.[568] Mr Bahari was already aware that ASFAN had exited the Coolak Baku joint venture, because Mr Zeynalov had previously advised him of this.[569] Indeed, as is apparent from the Court file, Mr Bahari was notified at an address in Iran with ASFAN's application of 19 January 2005,[570] as well as the Court's ruling of 4 April 2005.[571] Mr Bahari has never taken steps to exercise any control over Coolak Baku. As far as Azerbaijan understands, since early 2000 Mr Bahari chose not to participate in the joint venture and, had he attempted to do so, there would have been no restriction in him doing so, as he remains a shareholder in Coolak Baku to this day.

## IV. MR BAHARI NEVER HAD ANY INTEREST IN "SHUVALAN SUGAR"

225. The Statement of Claim is even more vague when it comes to describing Mr Bahari's alleged investment in "Shuvalan Sugar", which is described as a "*sugar refining facility*" that Mr Bahari allegedly developed on the "*Shuvalan Land Plot*".[572] For the reasons set out at paragraph 203 above, there was no privatised plot of land upon which Mr Bahari could have developed anything at the relevant time. ARHAD owned the Shuvalan Buildings, but, as set out above, Mr Bahari never obtained any interest in them or rights to construct over them. As Mr Habib Aliyev confirms, Mr Bahari never carried out any construction work on the Shuvalan Buildings (nor was he entitled to do so),[573] and certainly nothing approaching the USD 3.6 million worth of work he claims to have done.[574] The Chartabi documents upon which Mr Bahari relies are highly suspect for the reasons set out at paragraph 90 above.

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566 Zeynalov Statement, para. 52.

567 Bahari Statement, para. 97.

568 Zeynalov Statement, para. 53.

569 Zeynalov Statement, para. 52.

570 Service of Process summons sheet from Judge to Mr Bahari dated 27 January 2005, **R-107**.

571 Judge's notification of Judgment to Mr Bahari dated 12 May 2005, **R-108**.

572 Statement of Claim, para. 63.

573 H Aliyev Statement, para. 23.

574 Statement of Claim, para. 63.

226. In any event, the Shuvalan Buildings were not a sugar refining facility, but a series of buildings, not part of the same complex nor necessarily located immediately next to each other.[575] A small warehouse of approximately 150-200 square metres within the Shuvalan Buildings (the **Shuvalan Warehouse**) contained a tank in which granulated sugar could be heated to form lumps, and this warehouse was used by Mr Habib Aliyev to process granulated sugar into sugar cubes from time to time.[576] It appears from the terms of the Coolak Baku joint venture agreements that Shuvalan Sugar was merely a potential business activity under Coolak Baku that never materialised.[577] Mr Aliyev explains that given Mr Bahari was importing granulated sugar from Iran, allegedly for the production of soft drinks, Mr Aliyev occasionally allowed him to use the Shuvalan Warehouse too.[578] The suggestion that Shuvalan Sugar "*maintained an inventory of at least 2,000 tons of imported raw sugar*"[579] in early 2001 (or indeed that Mr Bahari had any interest in Shuvalan Sugar) is a fiction: there was no "refining facility" nor was sugar stored at the Shuvalan Buildings.[580]

227. Mr Bahari relies on a freight forwarding document suggesting that a shipment of "*20 lots of raw sugar, at 20 tons per lot*" was made on 16 January 1997 from Iran (Sahlan) to Baku.[581] Nothing in this document, nor any of the evidence, connects this import to any alleged interest in Shuvalan Sugar. To the contrary, Mr Bahari's quantum experts consider that the only amount invested by Mr Bahari into Shuvalan Sugar is the Chartabi Contract,[582] which is addressed above.

228. As Mr Habib Aliyev explains, the land upon which the Shuvalan Buildings stood was eventually privatised and in 2008, Mr Habib Aliyev and his brother purchased a number of parcels, including the land upon which the Shuvalan Warehouse stood.[583] He subsequently chose to demolish the Shuvalan Warehouse and construct a residential

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575 H Aliyev Statement, para. 20.

576 H Aliyev Statement, para. 20.

577 *See* paragraph 203 above.

578 H Aliyev Statement, para. 21.

579 Statement of Claim, para. 65.

580 H Aliyev Statement, para. 21.

581 Statement of Claim, para. 65; Shahriar Corp. Freight Forwarding document dated 16 January 1997, **C-87**.

582 Secretariat Report, Table 9.

583 H Aliyev Statement, para. 30.

property on the land, as did his brother.[584] Contrary therefore to Mr Bahari's "*information and belief*" (which is proving to be highly unreliable), the villas do not belong to or are occupied by Mr Ilham Aliyev and members of the Pashyev family.[585] They belong to Mr Habib Aliyev and his brother.[586] Shuvalan Shirniyat, the company Mr Bahari optimistically implies is connected to Shuvalan Sugar,[587] is wholly unrelated.[588]

## V. MR BAHARI WILLINGLY SOLD HIS INTEREST IN CASPIAN FISH AND WAS PAID MORE THAN USD 5 MILLION FOR IT

229. Azerbaijan has no knowledge of the matters pleaded at paragraphs 68 to 71 insofar as they concern Mr Bahari's alleged relationships or discussions with third parties acting in their private capacities (Messrs Aliyev, Heydarov and Khanghah). The discussions which took place (if any) were private commercial matters that did not concern the State.

230. As to the remaining allegations, Azerbaijan's understanding of the factual background is based on the available documentary record as set out in the following subsections.

### A. In March 1999, Caspian Fish was established in the BVI and its representative office was set up in Azerbaijan

231. "Caspian Fish Co. Inc", BVI Co, was established in the BVI on 5 March 1999.[589] The directors at the time of incorporation were Mr Bahari and Mr Khanghah and the shareholders were Mr Bahari (as to 40%), Mr Khanghah (as to 10%) and ICCI Limited (**ICCI**) (as to 50%).[590]

232. Mr Bahari alleges that ICCI, a BVI company, was "*owned or otherwise controlled*" by Messrs Aliyev and Heydarov, and foreshadows that he will seek "*document production in this Arbitration on ICCI from Mr Heydarov and/or Mr Aliyev*".[591] These submissions

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584 H Aliyev Statement, para. 30; Certificate of ownership of Habib Aliyev dated 7 May 2008, **R-44**.

585 Statement of Claim, para. 66.

586 H Aliyev Statement, para. 30.

587 Statement of Claim, para. 296.

588 H Aliyev Statement, para. 31.

589 Memorandum and Articles of Association for Caspian Fish Co. Inc., **C-2**.

590 Caspian Fish Co. Inc. Registers and Datasheet, **C-107**.

591 Statement of Claim, para. 203.

reveal a fundamental misunderstanding: Messrs Aliyev and Heydarov are not parties to this proceeding. Conduct in their private capacity is not attributable to Azerbaijan. There is no suggestion that Messrs Aliyev's or Heydarov's ownership or control of a BVI entity (if so established, which is not admitted) could be said to be an act of State attributable to Azerbaijan. Azerbaijan has no possession or right of control over the documents of these third parties. In any event, Azerbaijan has no direct knowledge of the ownership or control of ICCI.

233. Mr Bahari relies on the terms of a German-language self-titled "Company agreement" dated 27 April 1999 (the **Purported Shareholders Agreement**)[592] alleged to have been signed by Messrs Aliyev, Heydarov and Khanghah (described by Mr Bahari as a Shareholders Agreement), but no explanation is given by Mr Bahari as to why the agreement was drawn up in German, nor why these individuals (who are not said to be German speakers) would sign a document in a language they cannot read. The Purported Shareholders Agreement also contains suspect indications on its face: it refers to a bank account at "[redacted]" with "[redacted]",[593] but on Mr Bahari's own evidence the Vereinsbank account with number 105 32 034 was not opened until 13 November 2000, that is *one and a half years* after the Purported Shareholders Agreement was allegedly concluded.[594]

234. Under paragraph 7 of the Memorandum of Caspian Fish, the initial share capital was 50,000 shares. On the same date that Caspian Fish was incorporated, the directors resolved to increase the share capital from 50,000 to 1,000,000 shares.[595] Mr Bahari claims he "[redacted]" the "[redacted]" resolution to increase the share capital,[596] but the allegation that the resolution is "*falsified*" is made softly: in a footnote, and couched in tentative language ("[i]*t… appears that…*").[597] Rightly so: the very Share Certificate dated 5 March 1996 exhibited by Mr Bahari in support of his claim that he

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592 Purported Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah dated 27 April 1999, **C-4**.

593 Purported Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah dated 27 April 1999, **C-4**, cl. 7.

594 Vereinsbank Opening of Account dated 13 November 2000, **C-7**.

595 Caspian Fish Co. Inc. Directors Resolution, **C-110**.

596 Bahari WS, para. 89(ii).

597 Statement of Claim, n. 274.

held a 40% stake in Caspian Fish itself reflects the increased share capital of 1 million shares.[598]

235. On 19 April 1999, Mr Bahari signed an application for a representative office of Caspian Fish to be established in Azerbaijan.[599] On 27 April 1999, a representative office for Caspian Fish was registered in Azerbaijan.[600] Mr Bahari asserts without analysis that the representative office was the "*local extension*" of the BVI entity.[601] It is not understood what is meant by this. A representative office of a foreign company is not a legal entity. It is established purely to represent and protect the interests of its parent.[602]

236. Allegedly on the same day the representative office was established, the Purported Shareholders Agreement was executed. For the reasons set out at paragraph 233 above, no admissions are made as to the authenticity of that document, and Azerbaijan will seek inspection of the original in due course. Without prejudice to that reservation, it appears from the terms of that document that there was an agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah that "[redacted]".[603] Under the terms of that agreement, [redacted]".

### B. Caspian Fish's facilities were constructed over the following year, but Mr Bahari's account of his role and involvement in the project is untruthful

#### 1. Mr Bahari managed the construction project, but he did not fund it

237. It is apparent from the documentary record that Mr Bahari was involved in the management and operation of Caspian Fish in Azerbaijan:

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598 Statement of Claim, para.76(ii); Mr. Bahari's Share Certificate in Caspian Fish Co. Inc. **C-6**.

599 Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

600 Charter of the Representative Office of Caspian Fish Co Inc, **C-3**.

601 Statement of Claim, para. 73.

602 *See* Law of the Republic of Azerbaijan "On Enterprises" No. 847 dated 1 July 1994, **RLA-162**, art. 17.

603 Purported Shareholders Agreement between Messrs Aliyev, Heydarov, Bahari and Khanghah dated 27 April 1999, **C-4**.

(a) By virtue of a power of attorney notarised in Azerbaijan on 14 April 1999, Mr Bahari was given a broad and wide-ranging authority, including (among other things) the power to "[redacted]".[604]

(b) A number of documents relied upon by Mr Bahari in this period are addressed to him as the representative of Caspian Fish for the buying and selling of equipment.[605] In other instances, he relies upon contracts addressed to DFT, a company closely connected to him as described at paragraph 94(c) above,[606] or contracts concluded with "Mirinda Co",[607] which is presumed to be the same Mirinda in which he had a 50% shareholding, as described at paragraph 109 above. As an aside, the Respondent notes that Mr Bahari claims that Mirinda was a "[redacted]" of which "[redacted]".[608] No such company exists, or has ever existed, in Azerbaijan.[609] Mirinda was an Irish company established by Mr Bahari and Mr Zeynalov in 1998.[610] Curiously, Mr Bahari's own witness statement makes no reference to Mirinda being a "[redacted]"

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604 Power of Attorney from Caspian Fish BVI to Mr Bahari, notarised on 14 April 1999, **R-110**.

605 *See* Letter from Nissei ASB to "whom it may concern" dated 21 March 1999, **SEC-70**; Letter of Understanding and Contract between Caspian Fish and Nissei ASB dated 16 June 1999, **SEC-72**; Invoice from APV to Caspian Fish dated 24 March 2000; Letter from ELU-Klima to Caspian Fish dated 15 June 2000, **SEC-181**; Invoice from Victroplex to Caspian Fish dated 7 August 2000, **SEC-194** and 4 October 2000, **SEC-196**; Invoice from Tettauer to Caspian Fish dated 15 August 2000, **SEC-189** and **SEC-190**; Invoice from Schiller & Mayer to Caspian Fish dated 29 August 2000, **SEC-165** and **SEC-167**; Invoice from Ease Plc to Caspian Fish dated 21 September 2000, **SEC-180**; Invoice from RFC to Caspian Fish dated 17 October 2000, **SEC-187**; Invoice from Baader to Caspian Fish dated 20 October 2000, **SEC-177**.

606 *See* Baader and DFT Contract No. 27492212-V3/98 dated 21 December 1998, **SEC-65**; Invoice from DFT to "Mirinda Co" dated 1 April 1999, **SEC 68** and **SEC-69**.

607 Invoice from DFT to "Mirinda Co" dated 1 April 1999, **SEC 68** and **SEC-69**; Invoice (RE 0009/00294) from Sudtronic to "Mirinda & Co" with Mr Bahari noted in the header dated 11 September 2000 (**SEC-168**, pp. 22-23).

608 Secretariat Report, para. 5.43, second bullet on internal p. 53. *See also* Statement of Claim, para. 83.

609 Letter from State Tax Service to Khirdalan city attorney's office dated 18 December 2023, **R-86**.

610 See paragraph 109 above.

company,[611] although he must have read and approved the Statement of Claim, as well as the Secretariat Report which repeats its assertions.

238. Mr Zeynalov, who was working at Caspian Fish's premises during the construction and acted as "deputy director" to Mr Bahari, also confirms that Mr Bahari "*o* [redacted]",[612] while Mr Zeynalov "[redacted]" as well as "[redacted]".[613] Mr Bahari has attempted to minimise Mr Zeynalov's role by suggesting he was merely an "*uneducated*" "*driver*" with "*no formal education*" taking care of "*low-level tasks and errands*" and "*menial office tasks*".[614] This is a derogatory of Mr Zeynalov, to whom Mr Bahari himself saw fit to delegate a power of attorney. He was also appointed to a deputy director role by Mr Bahari, and was an equal shareholder with Mr Bahari in Mirinda.[615]

239. While there is evidence to support the suggestion that Mr Bahari had a managerial role at Caspian Fish, however, there is no evidence to support Mr Bahari's assertions that he "*alone funded the entire cost of Caspian Fish*", still less that the "*investment cost… was no less than $56 million*".[616] To the contrary, the available evidence demonstrates the opposite, as set out in the following paragraphs.

240. First, Mr Bahari cannot prove that he paid for anything. Chartabi did not carry out the construction, and Mr Bahari did not pay it to do so, for the reasons set out at paragraphs 90 above. The Chartabi Contracts are a fabrication. Nor did Mr Bahari fund the purchase of equipment (see paragraphs 93 to 97 above).

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611 Bahari Statement, para. 38.

612 Zeynalov Statement, para. 28.

613 Zeynalov Statement, para. 27. Mr Hasanov also explains that Mr Bahari acted as "[redacted]", *see* Hasanov Statement, para. 9.

614 Statement of Claim, para. 295. *See* also Bahari Statement, para. 97: "[redacted]".

615 *See* Zeynalov Statement, para. 32, Mirinda Annual Return dated 29 January 2001, **R-150**, (showing Mr Zeylanov as the company secretary, as well as a director and shareholder). *See also* documents signed by Mr Zeynalov as deputy director of the LLC: Agreement between the LLC and Construction Repair Department No. 121 dated 3 October 2000, **R-111**; Agreement between the LLC and Dilek Ltd dated 1 February 2001, **R-112**; Agreement between the LLC and RRG VAM International dated 14 March 2001, **R-113**.

616 Statement of Claim, para. 79.

241. Second, and in any event, the total investment cost was not USD 56 million. To make this assertion, and other than his own testimony, Mr Bahari relies on the speech of President Heydar Aliyev at the Opening Ceremony. However, as discussed at paragraph 255 below, this is at most evidence only of a figure that the President had been told and repeated. Mr Bahari also relies on the testimony of Mr Moghaddam,[617] who claims that he was "[redacted]".[618] There is no documentary evidence to support that Mr Moghaddam was "involved with payments" concerning Caspian Fish: while the names of other individuals, in particular Mr Zeynalov,[619] but also an individual called Mr Sharabiani,[620] appear in the underlying record, Mr Moghaddam's does not. Mr Zeynalov attests that the extent of Mr Moghaddam's involvement in Caspian Fish was to produce doors and other wooden items for Caspian Fish at the carpentry warehouse, as he was a carpenter by trade.[621]

242. Mr Bahari also relies on the testimony of Mr Dieter Klaus,[622] his former banking advisor. According to a German law affidavit provided to Azerbaijan by Mr Janke Hansen,[623] an acquaintance of Mr Bahari's who gave a speech at Caspian Fish's opening ceremony, Mr Klaus and Mr Bahari have a personal relationship that he has failed to explain in his evidence. It appears that Mr Klaus is indebted to Mr Bahari on account of a dispute arising between them concerning Mr Klaus's theft of Mr Bahari's

617 Statement of Claim, para. 79.

618 Moghhadam Statement, para. 45.

619 *See* e.g., Payment Order from the LLC to Mr Mr Malihi, signed by Mr Zeynalov dated 13 December 2000, **R-163**; Payment Order from the LLC to Mr Mr Malihi, signed by Mr Zeynalov dated 11 December 2000, **R-164**; Payment Order from the LLC to Al Habtoor Trading, signed by Mr Zeynalov dated 24 November 2000, **R-165**.

620 *See* e.g., Miscellaneous Shipping Documents at **SEC-78**, p. 5, referring to "Mostafa Sharabiany" as the shipper to "Mirenda"; Baader Faxes to Caspian Fish for the attention of Mr Sharabiany dated 15 February 2001, **R-171**.

621 Zeynalov Statement, para. 29.

622 Statement of Claim, para. 79.

623 Strictly without any waiver of privilege, Mr Hansen declined to provide a witness statement. Upon seeing the allegations set out in Mr Bahari's witness statement, however, he provided Azerbaijan with a German law affidavit setting out his comments on certain of Mr Bahari's allegations: *see* Affidavit of Janke Hansen dated 10 November 2023, **R-114**. Azerbaijan agreed to reimburse Mr Hansen for his time with a *per diem*, in an amount totalling USD 2,500.

money to fund a gambling addiction.[624] In any event, Mr Klaus's evidence does not confirm that Mr Bahari spent USD 56 million. To the contrary, he says that he "[redacted]" although he claims it is "[redacted]".[625] This comes nowhere close to discharging Mr Bahari's burden of proof.

243. Similar goes for the documentary evidence Mr Bahari relies upon in support of his assertion:

(a) Press articles referring to a sum of USD 56 million in foreign investment[626] are not proof that USD 56 million was actually invested (nor that Mr Bahari paid it). There are no documents which evidence that a sum of USD 56 million was spent, and the testimony of Azerbaijan's witnesses refutes it. Mr Kerimov in particular conducted an audit of the construction costs in or around the first quarter of 2001, and concluded that no more than USD 18-20 million could have been spent.[627] Mr Bahari's own valuation experts conclude that there is insufficient evidence to support an investment amount of USD 56 million, and rely instead on documents indicating an investment amount of USD 44.4 million.[628] But these presume that the Chartabi Contracts are authentic documents and proof that Chartabi carried out the construction works, when neither is true.

(b) Azerbaijan has been provided 41 copies of invoices from BVI company International N.A.T Limited (**INL**) issued monthly to Caspian Fish between February 1999 and December 2000.[629] Azerbaijan has very little information on the provenance of these documents. INL was incorporated in the BVI on 16 January 1998 with an initial share capital of USD 50,000.[630] Its owners and

624 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, paras 4 and 5.

625 Klaus Statement, para. 20.

626 *See* Statement of Claim, para. 79 and exhibits C-43, C-11, C-12, C-13, C-90.

627 Kerimov Statement, para. 19.

628 Secretariat 1, para. 5.52.

629 Invoices from International N.A.T Limited to Caspian Fish BVI, **R-31**; Summary of invoices from International N.A.T. Limited to Caspian Fish BVI, **R-48**.

630 Certification regarding International N.A.T. Limited dated 11 December 2023, **R-115**.

directors are not public. As of 1 November 2017, the company was struck off the BVI registry and dissolved due to non-payment of the annual registry fee.[631]

(c) It is unlikely that INL was in fact carrying out the construction services set out in the invoices, given the documentary record does not otherwise support the participation of INL in the construction of Caspian Fish; nor does Mr Zeynalov recall INL as a company involved in the construction at the time.[632] However, it appears that these documents, which describe the "performed work" as including the "construction of the Fish Plant", as well as the "Assembling of equipment", total USD 24.5 million, are contemporaneous records of the total amount invested in Caspian Fish. Evidently, Mr Bahari did not pay the INL invoices: he relies on the purported Chartabi Contract and fails to mention INL at all. While it is sufficient to establish that Mr Bahari did not contribute to the costs of these invoices, it is also apparent that the only other party who would have paid these costs is Mr Heydarov, or Gilan.[633] Azerbaijan notes in this connection that INL appears to have been registered at the same time as ICCI.[634]

(d) The documents relied on by Secretariat do not evidence that USD 44.4 million was spent on Caspian Fish for the reasons set out in the Oxera Report[635] and summarised at paragraphs 93 to 97 above.

244. Mr Bahari also asserts that Caspian Fish "*acquired several plots of land*",[636] but this is untrue.[637] The only piece of evidence Mr Bahari relies upon to make these assertions is an article published by the Food and Agricultural Organisation of the United Nations,[638] which says nothing whatsoever about Caspian Fish's ownership of land in

631 Certification regarding International N.A.T. Limited dated 11 December 2023, **R-115**.

632 Zeynalov Statement, para. 7.

633 Kerimov Statement, para. 20; Hasanov Statement, para. 8.

634 In this regard the Respondent notes that the company number of INL is 264391 and the company number of ICCI Limited is 264392. *See* Certification regarding International N.A.T. Limited dated 11 December 2023, **R-115**; ICCI Limited Register of Transfers, **C-115**.

635 Shi Report, paras. 3.4, 3.9.

636 Statement of Claim, para. 80.

637 See Hasanov Statement, para. 33 ("[redacted]").

638 Salmonov, *Fisheries and Aquaculture in the Republic of Azerbaijan: A Review*, FAO, 2013 **C-15**.

Azerbaijan. Nor did the claim that Caspian Fish owned such land form part of the allegations in the Notice of Arbitration (despite being included in the 2019 Notice of Arbitration,[639] and presumably deliberately excluded from the subsequent filing).

### 2. The LLC was set up by and with the full knowledge and participation of Mr Bahari

245. According to documents filed with the State Tax Service, on 29 August 2000, Caspian Fish submitted an application to the Ministry of Justice requesting that the LLC be registered in Azerbaijan.[640] This application was signed by Mr Bahari in the presence of a notary. Once again, Mr Bahari's claims – this time that he had "*no prior knowledge, ownership, or control of* [the LLC]"[641] – are proven by the documentary record to be patently untrue.

246. Two weeks later, on 11 September 2000, Mr Bahari signed the charter of the LLC, which described itself as wholly owned by BVI Co.[642] The activities of the LLC were listed among other things as the "[redacted]", "[redacted]" and "[redacted]".[643] It is nonsense for Mr Bahari to suggest that the LLC "*took over the assets*" of BVI Co.[644] As Mr Bahari is well aware, the LLC was an asset of BVI Co, and it was the LLC that was established to own and develop the local business.

247. On 18 September 2000, Mr Bahari signed a receipt from the Ministry of Justice, confirming that he had made a duty payment on behalf of the LLC in the sum of 825,000 old manats.[645]

248. The following day, on 19 September 2000, the LLC was registered in Azerbaijan.[646] A number of letters were subsequently sent to various State authorities on behalf of the

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639 Notice of Arbitration dated 5 April 2019, **R-54**, para. 29.

640 Application for the Registration of the LLC dated 29 August 2000, **R-56**, p. 2. Although the document refers to a "representative office", this was plainly intended to be a reference to a legal entity under Azerbaijani law, hence the reference to "Caspian Fish Co. Azerbaijan". *Compare* Application to the Ministry of Justice for the registration of the Representative Office dated 19 April 1999, **R-85**.

641 Statement of Claim, para. 255.

642 Charter of the LLC dated 11 September 2000, **R-57**.

643 Charter of the LLC dated 11 September 2000, **R-57**, para. 8.1.

644 Statement of Claim, paras 246(i) and (ii); para. 257.

645 Application for the Registration of the LLC dated 29 August 2000, **R-56**, p. 1.

646 Certificate of State Registration No. 893 for the LLC dated 19 September 2000, **R-116**.

LLC, with Mr Bahari's name and title as General Director appearing in the signature block.[647]

249. By October, commissioning works were underway on the production sites.[648] On 6 October 2000, at a meeting of the LLC at which Mr Bahari was present, Mr Zeynalov as Chairman explained that the construction was being carried out by the company's "[redacted]" and [redacted]".[649] It was resolved that [redacted]", "[redacted]" and "[redacted]".[650]

250. On 21 December 2000, the State Committee for Construction and Architecture issued a licence to the LLC granting it permission to carry out the various construction and installation works listed in an annex to the licence.[651] This corroborates Mr Zeynalov's evidence that Mr Bahari arranged for the construction works to be carried out by "[redacted]" and there was "[redacted]",[652] which is evident from the pictures of Caspian Fish's construction that Mr Zeynalov has provided to Azerbaijan.[653]

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647 Letter from the LLC to Absheron District State Social Protection Fund dated 9 October 2000, **R-117**; Letter from the LLC to Absheron District Labour and Employment Center dated 9 October 2000, **R-118**; Letter from the LLC to Absheron District Territorial Tax Department dated 9 October 2000, **R-119**; Letter from the LLC to Absheron District Statistical office dated 9 October 2000, **R-120**; Letter from the LLC to Absheron District State Social Protection for Disabled Persons dated 9 October 2000, **R-121**.

648 Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**.

649 Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**.

650 Protocol of LLC Meeting on addendum to Charter dated 6 October 2000, **R-122**.

651 Licence granted to the LLC by the State Committee for Construction and Architecture dated 21 December 2000, **R-123**. As discussed at paragraphs 90 to 92 above, no such permits have been located for Chartabi, a company which had no presence in Azerbaijan.

652 Zeynalov Statement, para. 28.

653 Photos of the construction of the Caspian Fish facilities, **R-33**.

### 3. Caspian Fish was not a "state-of-the-art" facility based on Mr Bahari's contributions

251. As to Mr Bahari's claim that he installed "*state-of-the-art technology*",[654] Mr Bahari relies only on his own testimony and the testimony of Mr Moghaddam, whose evidence in relation to Caspian Fish is addressed at paragraph 241 above, as well as a video of the opening ceremony, which he claims shows "*the sheer size and sophistication of the facility*".[655] A video cannot evidence whether the facilities were in fact of high quality, however. Only those who actually worked at the site and with the equipment are in a position to provide such evidence, and those of Azerbaijan's witnesses who indeed worked at Caspian Fish, tell the opposite story. Among other things:

(a) equipment installed was mostly purchased second hand, and re-painted in nickel or chrome paint;[656]

(b) Japan-made thermoplastic automatic equipment for fish oil packaging was damaged in transport and unusable;[657]

(c) glass jars brought from Germany could not be sealed properly;[658] and

(d) refrigerator units were improperly installed and not hermetically sealed;[659] their quality was poor meaning they could not withstand the cold temperatures required for storage of products.[660]

252. While Mr Bahari fixates on the size of the facility, he does not address the suitability of the facility for the processing of fish from the Caspian Sea. As Mr Kerimov explains: [redacted]".[661] For example, the production capacity of the Baader fish powder production equipment was 120 tons of

654 Statement of Claim, para. 84.

655 Statement of Claim, para. 86.

656 Kerimov Statement, para. 16.

657 Hasanov Statement, para. 38.

658 Hasanov Statement, para. 39.

659 Hasanov Statement, para. 40.

660 Kerimov Statement, para. 17(c).

661 Kerimov Statement, para. 15(c).

sprat per day, but there was no fishing fleet to catch sprat and, in any event, only approximately 2000 tons of sprat are caught in Azerbaijan each year meaning the equipment would have been grossly underused even if all the fish had been caught by just Caspian Fish.[662] Nor could Caspian Fish have imported and processed sprat at a profit.[663]

253. The Claimant also asserts that he was "*intimately involved in the design and development of the production processes for Caspian Fish, engaging with manufacturers to develop specific proprietary technologies and processes*".[664] Only one alleged "*proprietary innovation*" is provided as an example, that of the extraction of roe without killing the sturgeon.[665] Again, the only evidence of this is Mr Bahari's own testimony, which is refuted by the evidence of those working at Caspian Fish at the time. According to Mr Hasanov, who has been working in the fish industry for more than two decades, it would not be possible to extract caviar in the manner described by Mr Bahari, without destroying the caviar or the fish.[666] While there is certain "no-kill" caviar technology which exists today, the process involves the use of hormones (as described by the author of the very research paper Mr Bahari relies on)[667] and results in a much lower quality of caviar.[668] No such technology was ever employed at Caspian Fish.[669]

254. As to the claims that Mr Bahari was involved in the "[redacted]" of the main hall, and the design of a "[redacted]",[670] Mr Bahari provides no evidence, save for his own testimony, that he did so. Even if he did (which is not admitted), he is unable to point to any value arising from such efforts, nor any alleged "proprietary" technology; the design of furniture for a hallway or design of a security system is not

662 Hasanov Statement, para. 34.

663 Hasanov Statement, para. 34, Kerimov Statement, para. 17(a).

664 Statement of Claim, para. 85.

665 Statement of Claim, para. 85.

666 Hasanov Statement, para. 21.

667 Salmonov, *Fisheries and Aquaculture in the Republic of Azerbaijan: A Review*, FAO, **C-15**, pp. 18-19, which discusses the Khilly Sturgeon Hatchery modern equipment which can be used to extract eggs from live fish.

668 Hasanov Statement, para. 20.

669 Hasanov Statement, para. 19.

670 Bahari Statement, para. 43.

an asset under Azerbaijani law capable of amounting to an investment under the Treaty. Nor does it appear that Caspian Fish in fact benefitted from "top-end" security: Mr Hasanov confirms that only seven cameras were installed at that time, with most of them in the office building, and [redacted]".[671]

### C. Mr Bahari's account of the 10 February 2001 Opening Ceremony and subsequent events is untruthful

255. It is common ground that on 10 February 2001, Caspian Fish's opening ceremony took place, and that President Heydar Aliyev attended and gave a speech. Mr Bahari relies on that speech to assert that the President "[redacted]", but that is a mischaracterisation. What the President in fact said was [redacted], in other words, the former President was told by Caspian Fish that was the amount that had been spent. This is not evidence that such an amount had in fact been spent. At most, it is evidence that such a figure was communicated to the President, and consequently the press, as having been spent. Indeed, in a public interview from 2019, Mr Bahari himself explained that this was the number that "[redacted]".[672] Without wishing to speculate, it is quite possible that this figure was communicated in order to enhance the public perception of the magnitude of the project.

256. The Claimant's description of the President's speech as "*prais*[ing] *the foreign investment effusively*"[673] is misleading. The President's speech was largely focused on encouraging the development of the private sector in post-independence Azerbaijan.[674]

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671 Hasanov Statement, para. 43.

672 Extract of transcript of Mr Bahari's interview on Azerbaijan Saati with Mr Ganimat Zahid dated 6 April 2019, **R-124**.

673 Statement of Claim, para. 129.

674 President Heydar Aliyev's Opening Speech for Caspian Fish Co. Inc dated 10 February 2001, **C-91**: "[redacted]

There was little focus on foreign investment specifically, and the President at no point expressly acknowledged Caspian Fish as being a foreign owned company or existing a result of foreign investment.[675] Nevertheless, it is not disputed that the plaque at the entrance of the Caspian Fish facilities read "[redacted]",[676] although Mr Bahari does not explain what is meant by the President having "placed" it there.[677] The messaging on the plaque is consistent with the public relations contribution expected of the Caspian Fish caviar business.

257. While Azerbaijan has no direct knowledge of Mr Bahari's personal movements or state of mind on that day,[678] it denies that anyone, acting at the behest of the Government, attended Mr Bahari's office and asked him to leave.[679] Yet again, the only evidence for these assertions is Mr Bahari's demonstrably unreliable testimony.[680] As an unreliable witness, Mr Bahari's account of that day should be entirely disregarded. As far as Azerbaijan understands:

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[redacted]"

675 He said: [redacted]: *see* President Heydar Aliyev's Opening Speech for Caspian Fish Co. Inc dated 10 February 2001, **C-91**.

676 Dieter Klaus Photograph – Heydar Aliyev Plaque, **C-62**.

677 There is no evidence in the video footage Mr Bahari exhibits at **C-94** of the President "placing" the plaque anywhere; indeed, the plaque appears to be a heavy fixture that was mounted into the wall.

678 *See* Statement of Claim, paras. 123-124 and 132.

679 Statement of Claim, paras 133-134.

680 Bahari Statement, paras 69-70. Mr Moghaddam also claims that a Mostafa Sharabiani "[redacted]" (para. 57). Mr Moghaddam's testimony is not reliable for the reasons explained elsewhere in this pleadings. Notably, Mr Sharabiani has not given evidence of these alleged events and Mr Bahari relies only on hearsay.

(a) According to the testimony of Mr Zeynalov who was present at the opening ceremony, he did not see Mr Bahari attend the Caspian Fish opening.[681] Azerbaijan does not know the reason for his absence.

(b) It is common ground that Mr Janke Hansen, who had no prior or subsequent involvement with Caspian Fish,[682] gave a speech as a representative of Caspian Fish at the opening ceremony. What Mr Bahari fails to explain, however, is that the speech was drafted in advance and provided one or two days in advance to Mr Hansen to read out.[683] Mr Hansen understands that he was invited to speak to make the plant "[redacted]".[684] A photograph provided by Mr Zeynalov shows that a stand stating "[redacted]" was placed at the entrance close to the plaque;[685] plainly, the arrival of guests from Germany in particular was anticipated. Despite what Mr Bahari's witnesses now say about Mr Hansen's attendance (Mr Moghaddam in particular claims that [redacted]"),[686] it was plainly never intended that Mr Bahari give a speech, as Mr Bahari likely knew and approved.

258. As to the claim that Mr Ilham Aliyev (son of the then-President, Mr Heydar Aliyev) told Mr Bahari on a telephone call in the car on his way from the opening ceremony to his house in a "*threatening*" "*tone*" that "*it wouldn't do to have an Iranian in the company*",[687] this is based purely on Mr Bahari's testimony,[688] which is highly unreliable. It is also obviously contradicted by the reality of what transpired. Notably, Mr Khanghah, one of the shareholders in BVI Co, himself is an Iranian and there is no suggestion that he too was removed from the opening ceremony. Other Iranians attended the opening ceremony too. In another blow to his credibility, in a public

681 Zeynalov Statement, para. 36.

682 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

683 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 3.

684 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 3.

685 Photograph of Caspian Fish entrance, **R-47**.

686 Moghaddam Statement, para. 56.

687 Statement of Claim, para. 135.

688 Bahari Statement, para. 71.

interview from 2019, Mr Bahari offers a different story, claiming to have been physically taken to Mr Aliyev "[redacted]" from the opening ceremony, where he complained to Mr Aliyev that his removal from the ceremony was "[redacted]".[689] Mr Bahari has obviously told different stories, at different times, to try to embellish his claim. In any event, insofar as any such conversation took place (which is not admitted), Azerbaijan has no knowledge of it, being a conversation between private individuals acting in their private capacities. Nothing in this discussion (if it indeed happened, which is not admitted) indicates that Azerbaijan was involved in or sanctioned such a conversation.

259. Mr Bahari claims that once home, he "*lost consciousness*" and was "*taken to Republic Hospital that same night, where he was hospitalised for several days*",[690] and that on his return from hospital, Mr Bahari was placed under "*house arrest for several weeks*".[691] Again, this is story is a fabrication:

(a) Mr Bahari relies on his own testimony,[692] and the testimony of Messrs Moghaddam[693] and Kousedghi.[694] The testimony of Messrs Bahari and Moghaddam is unreliable.[695] As to Mr Kousedghi, the presentation of his evidence is concerning. He makes numerous assertions that are submission, rather than factual evidence.[696] In other instances, he simply parrots what Mr Bahari has said,[697] without identifying whether he has any personal knowledge of the statements he is making. This evidence will be tested at the hearing in

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689 Extract of transcript of Mr Bahari's interview on Azerbaijan Saati with Mr Ganimat Zahid dated 6 April 2019, **R-124**. There are further inconsistencies in Mr Bahari's story, such as in the 2019 Notice of Arbitration, Mr Bahari claims he spoke to Mr Aliyev before [redacted]" (para. 38), however, in his evidence in these proceedings is that he [redacted]" [redacted] (Bahari Statement, paras 70-71): *see* Notice of Arbitration dated 5 April 2019, **R-54**.

690 Statement of Claim para. 136.

691 Statement of Claim, para. 149.

692 Bahari Statement, paras 72-74.

693 Moghaddam Statement, paras 57-60.

694 Kousedghi Statement, paras 18, 20-22.

695 *See*, e.g., re: Mr Moghaddam, paragraphs 182 to 183 above

696 Kousedghi Statement, para. 25 ("[redacted]"); para. 29 ("[redacted]").

697 See, e.g. Kousedghi Statement, para. 30 ("[redacted]").

due course, but it bears noting that Mr Kousedghi has a doubtful past, having been reportedly "[redacted]".[698]

(b) Notably, in public interviews from 2017 and 2019, Mr Bahari makes no mention of being hospitalised or placed under house arrest. That story has only emerged more recently, as Mr Bahari has sought to embellish his claims. The claim of a house arrest is also conspicuous in its absence from the 2019 Notice of Arbitration.[699]

(c) The available documentary record is also inconsistent with Mr Bahari's claims. A letter to Mr Bahari dated 14 February 2001 from Swiss transportation company Kuehne & Nagel indicates that Mr Rolf Klawitter of Kuehne & Nagel and Mr Bahari had had a telephone conversation concerning the transportation of certain Baader equipment to Caspian Fish on 13 February 2001, i.e. three days after the opening ceremony.[700] Plainly, Mr Bahari was not hospitalised for several days after the opening ceremony; he was at work, as usual. Further, following specific enquiries with Republic Hospital, the hospital confirmed that it has no record that Mr Bahari was admitted at the relevant time.[701]

(d) Azerbaijan's witnesses and Mr Hansen also confirm that they saw Mr Bahari shortly after the opening ceremony. Mr Zeynalov saw Mr Bahari at Caspian Fish "[redacted]", nor does he recall Mr Bahari "[redacted]" or "[redacted]", as Mr Zeynalov saw Mr Bahari at the Caspian Fish premises in February and March 2001.[702] Mr Hansen met Mr Bahari at the Hyatt hotel in Baku [redacted][703] which is corroborated by a Hyatt invoice for Mr Hansen, which indicates he checked out

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698 Vertikal, *The head of Messenat Holding has set his sights on replacing Esabil Gasimov*, dated 13 April 2015, **R-125**.

699 Notice of Arbitration dated 5 April 2019, **R-54**, para. 10.

700 Letter from Kuehne & Nagel to Caspian Fish dated 14 February 2001, **R-64**.

701 Letter from the Republican Clinical Hospital to SSPI dated 22 December 2023, **R-176**.

702 Zeynalov Statement, para. 36.

703 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 3.

on 13 February 2001.[704] Mr Hasanov saw Mr Bahari at Caspian Fish "[redacted] the event.[705] All of this is consistent with business as usual for Mr Bahari in the days after the opening ceremony.

260. The Claimant also claims that Mr Kousedghi contacted the then-Minister of National Security, Mr Namig Abbasov, "[redacted]" and Mr Abbasov "[redacted]"[706] This submission beggars belief. There is not even an attempt by Mr Bahari to explain why, if there *was* such an assassination plot, a Minister of National Security would ever inform the target of such a plot. It is so farcical as to be nonsense. In any event, the claim is completely denied: Mr Abbasov confirms that no such plot exists or existed, and no such conversation was had.[707]

261. To make out the claim that there was a plot against his life, Mr Bahari relies on Mr Kousedghi's witness statement, but there are glaring inconsistencies in the witness testimony around this period. For example, from the witness testimony provided, it is evident that Mr Kousedghi never informed Mr Bahari at the time of his alleged conversation with Mr Abbasov.[708] It is, to say the least, surprising that Mr Kousedghi failed to inform Mr Bahari that he had specifically been told by a Government Minister that there was a "*Government plot*" to kill him.

262. Further, according to Mr Kousedghi's testimony, immediately upon hearing the news of the assassination plot, he says he went to see Mr Bahari in hospital, but Mr Bahari was "[redacted] and "[redacted]".[709] This is contrary to Mr Zeynalov's evidence, which is that he does not recall Mr Bahari ever being in a coma (despite being the person who drove Mr Bahari to hospital on another occasion, which he is certain was

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704 Invoice from Park Hyatt Baku to Caspian Fish Co Azerbaijan dated 13 February 2001, **R-126**.

705 Hasanov Statement, para. 14.

706 Statement of Claim, para. 146; Kousedghi Statement, para. 19.

707 Letter from N Abbasov to Quinn Emanuel dated 14 December 2023, **R-65**; Abbasov Statement, para. 6.

708 Mr Kousedghi says only that after he spoke with Mr Abbasov, he went to see Mr Bahari in hospital, but Mr Bahari was "[redacted]" and "[redacted]" (Kousedghi Statement, para. 21); he does not suggest that he later told Mr Bahari of the alleged assassination plot when he subsequently visited him at home (para. 24). Nor does Mr Bahari claim that Mr Kousedghi told him about the alleged conversation with Mr Abbasov.

709 Kousedghi Statement, para. 21.

not in the day or days after the opening ceremony).[710] Nevertheless, Mr Kousedghi claims he parked his Iranian diplomatic licence-plate car "[redacted]";[711] yet Mr Bahari was allegedly admitted for several days or weeks during February 2001,[712] and there is no suggestion that Mr Kousedghi spent this entire period at the hospital with Mr Bahari. Apparently Mr Bahari was only "[redacted]" for the brief hours that Mr Kousedghi visited while Mr Bahari was unresponsive.[713] Had Mr Kousedghi really been told by a Government Minister that the plan was to kill Mr Bahari and had Mr Kousedghi been truly concerned that Mr Bahari's "[redacted]",[714] it is surprising that he then chose to leave him there.

263. The story Mr Bahari tells in the Statement of Claim is also inconsistent with the story he told in his 2019 Notice, where he said that he was "[redacted]" at which point he "[redacted]"[715] Mr Bahari has not produced evidence from Mr Gazai.

264. Finally, Mr Bahari claims that "[i]*n or around late March 2001*", "*State security forces unlawfully expelled Mr. Bahari and his family from Azerbaijan*"[716] and that following the opening ceremony he "[redacted]".[717] This is one of the more egregious of Mr Bahari's lies, based again only on his own testimony[718] and the testimony of witnesses who merely parrot his language with no apparent direct knowledge (for example, Mr Kousedghi merely states: "[redacted]".[719] This is a submission, not factual evidence, and should be given no evidential weight whatsoever). Mr Bahari's lies again are easily exposed by the documentary record:

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710 Zeynalov Statement, para. 36.

711 Kousedghi Statement, para. 20.

712 Bahari Statement, para. 73.

713 Kousedghi Statement, para. 21.

714 Kousedghi Statement, para. 22.

715 Notice of Arbitration dated 5 April 2019, **R-54**, para. 39.

716 Statement of Claim, heading III.B(5); para. 152.

717 Bahari Statement, para. 75.

718 Bahari Statement, para. 75.

719 Kousedghi Statement, para. 25.

(a) The State Border records[720] show that Mr Bahari's wife at the time, Ms Yana Valeryevna Bokoyeva, had left Azerbaijan for the UAE on 17 February 2001.[721] The records do not confirm when she re-entered, but she did and she departed again on 7 July 2001 to the UAE.[722] She returned to Azerbaijan on 22 July 2001 and took another two week trip to the UAE (together with their late daughter, Gloria Bahari) in October 2001, before leaving again for the UAE on 24 December 2001.[723] Ms Bokoyeva subsequently returned to Azerbaijan throughout 2008, 2010, 2011, 2012, 2014, 2015 and 2016.[724]

(b) Mr Bahari himself is recorded as having departed from Azerbaijan for two weeks on 16 April 2001.[725] That is entirely inconsistent with his claim that he was deported in late March 2001, never to return. After his return to Azerbaijan on 1 May 2001, Mr Bahari stayed in Azerbaijan for more than two months, until 7 July 2001, at which point he left for the UAE (together with Ms Bokoyeva).[726] The records do not confirm when he re-entered, but he did because they show that he departed again on 15 September 2001 for the UAE, arriving back to Azerbaijan on 6 November 2001 from Germany, and leaving for Germany 10 days later on 16 November 2001.[727] Mr Bahari returned to Azerbaijan on 13

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720 The system for maintaining State border records is set out in the letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**. Any gaps in the record are a result of human error when manual input was required before the automated system for data collection was implemented in September 2001 or as a result of passport data being unable to be collected via a machine-readable strip.

721 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 2.

722 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 2.

723 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, pp. 2, 3.

724 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 2.

725 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

726 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

727 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

December and then left for the UAE on 24 December 2001 (together with Ms Bokoyeva).[728]

(c) Mr Kousedghi's claim that he was "[redacted]",[729] "[redacted]"[730] after allegedly being deported in March 2001,[731] is contradicted again by the State border records. Mr Kousedghi also fails to identify the "Azeri Government official" who allegedly informed him of this; he also fails to explain what is meant by "unofficially" informed. The State Migration Service of Azerbaijan confirms that it has not identified [redacted].[732] Notably, even in his own submissions, Mr Bahari cannot be consistent, which is the result of telling lies. Elsewhere in the Statement of Claim, Mr Bahari claims that at a meeting in Dubai on 15 June 2002, Mr Khanghah claimed that if Coolak Baku was charged with an unpaid back tax issue, "*this would bar Mr. Bahari from ever returning to Azerbaijan*".[733] Azerbaijan has no direct knowledge of this discussion and does not accept that it took place, however it is notable that it directly contradicts any suggestion that Mr Bahari was allegedly unable to return to Azerbaijan already since March 2001 (nor does Mr Bahari allege that Coolak Baku was ultimately charged with any tax issue that prevented him from returning to Azerbaijan).

(d) A number of documents provided to Azerbaijan from Caspian Fish's files post-dating the opening ceremony and Mr Bahari's alleged expulsion were signed by him personally or addressed to him in circumstances where it was clear he continued to work at Caspian Fish in Azerbaijan: on 14 February 2001, Mr Klawitter of Kuehne & Nagel wrote to Mr Bahari in respect of transportation of

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728 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

729 Kousedghi Statement, para. 27.

730 Statement of Claim, para. 156.

731 Statement of Claim, para. 156.

732 Letter from the Republic of Azerbaijan State Migration Service to SSPI dated 22 December 2023, **R-177**.

733 Statement of Claim, para. 171.

equipment for Caspian Fish, referring to the telephone call he had had with Mr Bahari the previous day;[734] on 26 March 2001, Mr Bahari signed a letter addressed to Mr Rassai of DFT;[735] on the same day, he wrote to Mr Marc Valluet of Caviar House noting that he looked "[redacted]";[736] on 29 March 2001, Mr Bahari wrote to Baader GmbH Co;[737] on 30 March 2001, Mr Bahari received a letter from Mr Valluet thanking him for his fax and confirming a meeting to take place in Baku on 6 April 2001;[738] on 7 April 2001, a memorandum of understanding was signed between Mr Bahari and Mr Khanghah on behalf of the LLC and Mr Valluet on behalf of Caviar House, presumably this being the product of the scheduled meeting referred to in the correspondence, and attended by Mr Bahari.[739]

265. The testimony of witnesses present in Azerbaijan at the time also discredits Mr Bahari's claims:

(a) Mr Zeynalov confirms that he did accompany Mr Bahari and his family to the airport when Mr Bahari and his family left Baku, but they travelled on a commercial flight, of their own accord, they were not accompanied to the airport by any "agents", nor did Mr Zeynalov drive Mr Bahari straight onto the tarmac near the planes.[740]

(b) Mr Kerimov, who began working at the plant in late February 2001, confirms that Mr Bahari was present and managing the facility at the time he began working there.[741] According to Mr Kerimov, Mr Bahari continued to work at

734 Letter from Kuehne & Nagel to Caspian Fish dated 14 February 2001, **R-64**.

735 Letter from Caspian Fish Co Azerbaijan to DFT GmbH dated 26 March 2001, **R-60**.

736 Letter from Caspian Fish Co Azerbaijan to Mr Marc Valluet dated 26 March 2001, **R-59**.

737 Letter from Caspian Fish Co Azerbaijan to Baader GmbH dated 29 March 2001, **R-61**.

738 Letter from Luxal France to Mr Bahari dated 30 March 2001, **R-127**.

739 Contract between Caspian Fish Co Azerbaijan and Caviar House dated 7 April 2001, **R-157**.

740 Zeynalov Statement, para. 42.

741 Kerimov Statement, para. 11.

Caspian Fish for approximately another two to three months, before he left and Mr Kerimov did not see him again.[742]

266. Notably, Mr Bahari's "expulsion" claims are contradicted by his very own prior statements. In the 2019 Notice of Arbitration, for example, Mr Bahari stated that upon the advice of Mr Kousedghi, he '[redacted]'[743] (a claim which is demonstrably untrue in any event according to the State border records). The "expulsion" or deportation claim is a brand new allegation made for the first time in these arbitration proceedings, despite Mr Bahari having extensively discussed the circumstances of his departure from Azerbaijan many times before. It is demonstrably untrue, and a further reflection of Mr Bahari's propensity to mislead to try to garner sympathy and attract attention to his claims.

### D. Mr Bahari agreed to sell his shares in Caspian Fish in September 2001 for USD 4.5 million

267. At some point in or around May 2001, Azerbaijan understands that Mr Bahari stopped working at Caspian Fish.[744] Azerbaijan is not privy to the reasons for this, but it understands from the documentary record and the testimony of the available witnesses that there was a dispute between Mr Bahari and Mr Heydarov, who was funding the project.

268. In particular, it appears that in his role as general manager and contractor, Mr Bahari was inflating the costs of the project by, among other things, the production of false invoices, and skimming the excess for himself. In February 2001, Mr Kerimov, an economist and director of H.Z.Taghiyev Fish Smoking OJSC (also known as the Nasosny fish factory), was asked by Mr Heydarov to conduct an audit at Caspian Fish to confirm how much had been spent on the project.[745] Mr Kerimov's understanding was that '[redacted][746]

742 Kerimov Statement, para. 11.

743 Notice of Arbitration dated 5 April 2019, **R-54**, paras 10 and 39.

744 Kerimov Statement, para. 11; Sabutay Statement, para. 15.

745 Kerimov Statement, para. 12.

746 Kerimov Statement, para. 12.

269. Mr Kerimov struggled to locate any formal records of construction, such as invoices, contracts with design, construction or engineering companies, or contracts for the supply of materials.[747] He instead devised a calculation based on the maximum amount that could have been spent on construction with reference to likely costs for, among other things, labour, materials, transportation and utilities.[748] The results of the audit led him to conclude that "[redacted] and he reported the same back to Mr Heydarov.[749]

270. In a similar vein, Caspian Fish's chief accountant at the time, Mr Hasanov, explains that he often quarrelled with Mr Bahari because Mr Bahari was unable to provide the documents necessary to evidence either the costs of construction or the import or purchase of machinery, which Mr Hasanov required to prepare accounting records of Caspian Fish.[750] This is consistent with the terms of a letter from the State Statistical Committee of Azerbaijan dated 25 April 2001 addressed to Mr Bahari as President of the LLC which notes that Mr Bahari had failed, despite numerous requests, to provide the State Committee with "[redacted]".[751]

271. Mr Hasanov ended up leaving Caspian Fish for a brief period in late February 2001, when matters came to a head with Mr Bahari, who told Mr Hasanov that he no longer wanted to work with him following the issues Mr Hasanov had raised with the missing paperwork.[752] Mr Hasanov's clear suspicion at the time was that Mr Bahari was "[redacted]".[753]

272. Of the witnesses in these proceedings, it is only Mr Bahari who knows the truth and the full extent of what he did. However, two of Mr Bahari's close former business

747 Kerimov Statement, para. 14.

748 Kerimov Statement, para. 14.

749 Kerimov Statement, paras 20 and 12.

750 Hasanov Statement, para. 12.

751 Letter from the State Statistical Committee to the LLC dated 25 April 2001, **R-128**.

752 Hasanov Statement, para. 14.

753 Hasanov Statement, para. 14.

associates have provided statements in support of Azerbaijan in these proceedings: Mr Zeylanov and Mr Hansen.

273. Mr Zeynalov's evidence is that "[redacted]";[754] that Mr Bahari "[redacted]", "[redacted]" and "[redacted]";[755] that he was "[redacted]".[756] Mr Zeynalov explains that "[redacted]"[757] and that he may have worked with DFT, the owner of whom Mr Zeylanoc understood to be Mr Bahari's "[redacted]", "[redacted]".[758] According to Mr Zeynalov, Mr Bahari actually possessed stamps for the very companies whose purported invoices he relies on in these proceedings,[759] including Nissei ASB and RFC.[760] There is unlikely to be any honest explanation for why Mr Bahari would possess the corporate stamps of suppliers to Caspian Fish.

274. After being introduced to Mr Bahari in February 2001, Mr Hansen and Mr Bahari became well acquainted and proceeded to engage in a number of business ventures together. Mr Hansen describes Mr Bahari as "[redacted]".[761] Mr Hansen provided Azerbaijan an affidavit, stating that:

> [redacted]…

754 Zeynalov Statement, para. 42.

755 Zeynalov Statement, para. 38.

756 Zeynalov Statement, para. 38.

757 Zeynalov Statement, para. 33.

758 Zeynalov Statement, para. 33.

759 Nissei ASB, Letter Confirming Sale and Delivery dated 21 March 1999, **SEC-70**; Handwritten Notes on Nissei ASB Letterhead, February 1999, **SEC-71**; Nissei ASB Contract and Shipping Documents, 1999, **SEC-72**; RFC Electronic Invoice 110800 5036 and supporting documentation, October 2000, **SEC-187**; RFC Electronics Shipping Documents, October 2000, **SEC-188**.

760 Zeynalov Statement, para. 34; *see* Photographs and patterns of stamps of MSC, Coolak Shargh, RFC and Nissei ASB exhibited to Zeylanov Statement, undated, **R-34**.

761 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 2.

[redacted]

…

[redacted][762]

275. While Azerbaijan is not privy to the discussions which took place thereafter, it has been provided a copy of a contract dated 20 September 2001 between Mr Bahari and Mr Khanghah (the **2001 Sale Agreement**), whereby Mr Bahari agreed:

[redacted][763]

276. The "[redacted]" was indeed completed by 5 November 2001, as Mr Bahari signed a slip "[redacted]".[764] At that date, the documents to transfer Mr Bahari's shares were to be completed. While Mr Bahari claims that he "[redacted]", this is plainly untrue. There was a very good reason for Mr Bahari to do so, namely the 2001 Sale Agreement, and it appears from the documentary record that he did, the timing of his resignation as recorded in Caspian Fish's Register of Directors (15 November 2001) closely coinciding with the receipt by him of the first USD 1.5 million, being the agreed first instalment under the 2001 Sale Agreement. Mr Bahari's case is that "*the disclosures fail to include any letter of resignation or any resolution purporting to remove Mr.*

762 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

763 Buyer and Seller Agreement between Mr Khanghah and Mr Bahari dated 20 September 2001, **R-50**.

764 Receipt for payment of USD 1.5 million signed by Mr Bahari dated 5 November 2001, **R-51**.

*Bahari as Director*".[765] Azerbaijan does not know why the BVI records do not contain a resignation letter or such a resolution, but there was plainly an agreement and a clear factual basis for his resignation.

277. Azerbaijan has also been provided an undated copy of a stock transfer form signed by Mr Bahari (the **Stock Transfer Form**).[766] It appears to be the same document produced by Mr Bahari in these proceedings, but a clearer copy. Mr Bahari denounces the Stock Transfer Form as a "*crude forgery*",[767] but it appears from its face that it was indeed signed by Mr Bahari, and the signature in the version provided to Azerbaijan, which is of a superior quality to the version exhibited to the Statement of Claim, appears in exactly the same form and style as the other signatures of Mr Bahari referred to as his "*true signature*" in the Statement of Claim.[768] Mr Bahari also claims that his name has been "misspelled", which is presumably a reference to "Mohamad" instead of "Mohammad".[769] This is strange submission, given Mr Bahari's name is derived from Arabic script and has multiple, valid transliterations into Latin script. Thus, Mr Bahari transliterated his name indeed as "Mohamad",[770] as well as "Mohamed",[771] and "Mohammed"[772] in various documents he signed where his name is written in Latin script.

278. It is likely that the Stock Transfer Form was signed in or around November 2001, following the receipt of the first instalment under the 2001 Sale Agreement. It is true that the Register of Members records the "Entry Date" of the share transfer as 5 March 1999 (the same date of incorporation).[773] Azerbaijan does not know the reason for back-dating this entry,[774] including whether it was done as agreed, in error, or

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765 Statement of Claim, para. 204.

766 Stock Transfer Form, undated, **R-129**.

767 Statement of Claim, para. 211.

768 Statement of Claim, para. 211(ii).

769 Statement of Claim, para. 211.

770 Application to the Ministry of Justice for the registration of the LLC dated 29 August 2000, **R-56**.

771 *See* Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**.

772 *See* also Contract between Super-Pufft Popcorn Corp and Mr Bahari dated 30 November 1998, **SEC-76**.

773 Caspian Fish Co. Inc. Registers and Datasheet, **C-109**.

774 Mr Bahari makes a series of complaints at paragraphs 213-216 of the Statement of Claim regarding the timing of the entry on the Register of Members. Azerbaijan has no knowledge of the circumstances in which the timing of his exit was recorded, but it is not unreasonable to assume that it was done in order

otherwise, but it is plain that the transfer reflected the terms of the 2001 Sale Agreement pursuant to which Mr Bahari's shares would be transferred following receipt of the first instalment payment. Under BVI law, the entry of the name of a person in the register of members as a holder of a share in the Company is *prima facie* evidence that legal title in the share vests in that person, subject to any application to rectify the register to the BVI Court.[775] Thus, under BVI law it is clear that Mr Bahari sold his shares and ceased to be a shareholder in BVI Co well before the Treaty even entered into force. That should be the end of his claims in respect of Caspian Fish. If Mr Bahari still maintains that he has a complaint, which would be surprising in the light of the documentary evidence he failed to mention, his claim is in the BVI, not in this arbitration.[776] This Tribunal has no jurisdiction to second-guess the legal title to shares under BVI law.

279. It was shortly prior to the execution of the 2001 Sale Agreement that Petroqeshm was incorporated by Mr Bahari in the UAE (see paragraph 207(d) above). On 7 November 2001, after Mr Bahari's receipt of the first instalment under the 2001 Sale Agreement, "Gheshm" Fish Processing Company (Closed Joint-Stock Company) (**GFPC**) was registered in Iran, with Petroqeshm as a member of the board of directors.[777] This appears not to be a coincidence. According to local media reports, Petroqeshm financed the construction and operation of GFPC's and contributed 70% of the share capital.[778] The object of Gheshm was similar to that of Caspian Fish and included the "[redacted].[779]

to ensure that the exiting shareholder is not entitled to historic benefits of the business that pre-dated his exit. Mr Bahari was also paid a "profit" under the terms of the 2002 Agreement, discussed at paragraph 283 below, so disfranchising him from the incorporation date has a reasonable possible explanation.

775 BVI Business Companies Act, 1 January 2020, **RLA-163**, ss. 42 and 43.

776 *See* Statement of Claim, para. 212.

777 Extract from Official Gazette of the Islamic Republic of Iran dated 2 December 2001, **R-130**.

778 Wayback Machine, "About the management team Qeshm Fish Processing Company", GFPC website from October 2011, accessed 17 August 2023, **R-131**. *See also* Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

779 Extract from Official Gazette of the Islamic Republic of Iran dated 2 December 2001, **R-130**.

280. At some point later, although the record is undated, Mr Bahari handwrote and signed a note in Farsi, confirming that he had "[redacted]".[780] Azerbaijan assumes that this payment of USD 2 million was made at some point between 5 November 2001 and 15 June 2002 (meaning a total of USD 3.5 million out of the USD 4.5 million sum under the 2001 Sale Agreement had been paid), because it was written on the back of an English-language type-written document which records that Mr Bahari had "[redacted]", and "[redacted]".[781] It appears that Mr Bahari did not sign the type-written document, but handwrote, in Farsi on its reverse, his own personal acknowledgment of receipt.

281. These documents are astonishing in the face of the claims Mr Bahari makes in the Statement of Claim. It appears that he has unashamedly lied to his counsel and his funder, and he is unashamedly lying to this Tribunal too.[782] Apparently he was not concerned, when signing his witness statement, that the truth would be revealed by the documentary record (indeed, his written witness statement, unlike others provided on his behalf, does not contain a statement of truth). This was despite the fact that Mr Bahari himself admitted in a public interview in 2017 that [redacted]",[783] albeit Mr Bahari claimed that this was for 50% of his stake in Coolak Baku as opposed to Caspian Fish, which was disingenuous or based on a faulty memory. Simply put, nothing Mr Bahari has said can be trusted.

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780 Receipt for payment of USD 2 million signed by Mr Bahari, undated **R-52**, p. 2.

781 Receipt for payment of USD 2 million signed by Mr Bahari, undated **R-52**, p. 1. *See also* Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**, discussed in PART 3V.E below, which records how Mr Khanghah would "*pay the 1,000,000… remaining from 4,500,000*".

782 Bahari Statement, paras. 81-84; Statement of Claim, Section III.C.

783 Transcript of Mr Bahari's interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

### E. Mr Khanghah paid Mr Bahari additional sums after a meeting in June 2002

282. Azerbaijan has no direct knowledge of the allegations set out in section III.C of the Statement of Claim, which concern the alleged acts of third parties acting in their private capacities. In particular, Azerbaijan denies that Mr Heydarov (or Mr Aliyev or Mr Khanghah) were acting on behalf of the State insofar as there is any suggestion to that effect with regard to the alleged discussions referred to at paragraphs 166 and 167 of the Statement of Claim.

283. As for the meeting of 15 June 2002, Azerbaijan was not privy to the discussion that took place. However, it is evident from the terms of the document exhibited by Mr Bahari (the **2002 Agreement**) that Mr Khanghah proposed a new schedule for the payment of the remaining USD 1 million, and he also proposed to pay a further USD 820,000, expressed "[redacted]".[784]

284. Mr Bahari has produced a signed copy of a handwritten addendum in Farsi was, recording (among other things) that Mr Khanghah would "[redacted]" and "[redacted]" while Mr Bahari would "[redacted]" (the **2002 Handwritten Addendum**).

285. Azerbaijan has been unable to locate a copy of the 2002 Agreement signed by both Mr Khanghah and Mr Bahari, but it is likely that it was signed by Mr Bahari. This inference can be drawn from Mr Bahari's own words. In particular, in a public interview in 2017, Mr Bahari confirmed that when "[redacted]".[785] At no

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784 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

785 Transcript of Mr Bahari's interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

point during this interview did Mr Bahari suggest that he had not signed the documents presented to him at the meeting.

286. Mr Bahari describes the 2002 Agreement as "Forced Sale Terms", complaining that Messrs Aliyev and Heydarov "*improperly pressured Mr. Bahari into selling Caspian Fish*".[786] Given Mr Bahari denies accepting its terms, it is a *non sequitur* to describe the document as a "forced sale". In any event, that characterisation is plainly untrue, as Mr Bahari had *already* agreed to sell, had *already* received USD 3.5 million of the agreed USD 4.5 million, and indeed had *already* transferred his shares in Caspian Fish to Mr Khanghah pursuant to the terms of the 2001 Sale Agreement. Mr Bahari also deliberately and untruthfully mischaracterises the remaining terms of the 2002 Agreement:

(a) Mr Bahari claims that the 2002 Agreement "*proposed to trade Caspian Fish… in exchange for the return and full ownership of Coolak Baku to Mr. Bahari*".[787] Because Mr Bahari does not engage with the language of the addendum itself, it is impossible to confirm precisely which terms of the document he relies upon to make this assertion. Nevertheless, the 2002 Agreement provides only that Mr Khanghah "[redacted][788] Azerbaijan understands this to be a reference to Malik's control of Coolak Baku, as discussed at paragraphs 212 to 213 above. Contrary to Mr Bahari's claims that the fact that "*Mr Heydarov's men controlled Coolak Baku*", "*revealed a coordination*" between Mr Pashayev and Mr Heydarov,[789] it was Mr Bahari who had transferred Coolak Baku to Mr Heyadrov (through Malik), to ASFAN's displeasure.[790] Mr Khanghah was confirming that he would seek to have it returned to Mr Bahari. As to the reference to Mirinda, Azerbaijan understands from Mr Zeynalov's evidence that certain Caspian Fish assets and

786 Statement of Claim, para. 168.

787 Statement of Claim, para. 169.

788 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**, internal p. 3.

789 Statement of Claim, para. 172; *see also* para. 178.

790 *See* 212 to 213 above.

goods had been purchased in Mirinda's name.[791] None of this was contingent on the sale of Mr Bahari's interest in Caspian Fish: he had already sold it.

(b) Mr Bahari claims that he "*understood the terms to include a payment of $4.5 Million, with $3.5 Million in cash up front, and the remaining $1 Million to be paid in installments*".[792] This is another misrepresentation. As Mr Bahari is well aware, because he signed the acknowledgements himself, USD 3.5 million had already been paid for his shares: Mr Bahari could not possibly have understood the 2002 Agreement to be promising another USD 3.5 million payment. Nor does Mr Bahari's "understanding" align with the express wording of the document, which says that Mr Khanghah "[redacted]".[793] Noticeably, in the 2019 Notice of Arbitration, Mr Bahari claimed that [redacted]",[794] which is consistent with Mr Bahari's receipt of USD 3.5 million under the 2001 Sale Agreement. Mr Bahari's revised interpretation of this document is yet a further demonstration of the extent to which Mr Bahari will go to make a case.

(c) Mr Bahari also claims that if he did not sign the 2002 Agreement, Mr Khanghah "*threatened that Coolak Baku would be charged with some sort of unpaid back tax issue*".[795] This, Mr Bahari claims, was a threat from "*men with immense powers who could direct a Government agency to create false accusations of tax fraud, or perhaps worse*".[796] Azerbaijan has no direct knowledge of this conversation, but it is not believable. Mr Bahari does not explain why, if the threat was credible and true, he did not capitulate and sign the addendum. Indeed, Mr Bahari's testimony is the only evidence in support of these claims, and that evidence is wholly unreliable. Mr Bahari also claims, for example, that "*Coolak Baku had never had any tax issues*", when the available documents demonstrate that to be untrue. As set out at paragraph 214 above, the

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791 Zeynalov Statement, para. 32.

792 Statement of Claim, para. 170.

793 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

794 Notice of Arbitration dated 5 April 2019, **R-54**, paras 11 and 42.

795 Statement of Claim, para. 171; *see also* para. 180.

796 Statement of Claim, para. 171; *see also* paras 181 to 182.

documentary record makes clear that Coolak Baku had a significant tax liability which needed to be paid.

287. As far as Azerbaijan understands, the terms of the 2002 Agreement were performed:

(a) Contrary to Mr Bahari's claim that the "*Forced Sale Terms were never implemented*",[797] the documentary record proves otherwise. Mr Bahari was initially paid USD 3.5 million under 2001 Sale Agreement, and a further USD 1.82 million under the terms of the 2002 Agreement, as he himself confirmed in an email to (among others) the President's Office in 2013.[798]

(b) As to Coolak Baku, at a meeting of Coolak Baku's shareholders on 18 June 2002, just three days after the Dubai meeting, Mr Malik Aliyev resigned as general director of Coolak Baku and, "[redacted]".[799] The minutes expressly referred to Mr Zeynalov's power of attorney to act for Mr Bahari. These terms are entirely consistent with the 2002 Agreement which set out that Mr Khanghah would "[redacted]".[800]

288. As to the 2002 Handwritten Addendum, Mr Khanghah promised to solve certain issues in relation to Coolak Baku, as well as "*deliver carpets*" to Mr Bahari. Mr Bahari claims that "*the inclusion of Coolak Baku and Shuvalan Sugar together with Caspian Fish in the overall Forced Sale Terms also directly connect Mr. Pashayev with Messrs. Heydarov and Aliyev in the overall plot to seize Mr. Bahari's investments*".[801] For the reasons set out above, the documentary record indicates that Mr Heydarov's involvement in Coolak Baku was unrelated to Mr Pashayev. Azerbaijan notes that Mr Khanghah made certain promises in relation to Coolak Baku and also to deliver Mr Bahari's carpets, which Mr Bahari describes as an "*admission that Messrs. Aliyev,*

797 Statement of Claim, para. 175.

798 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**; *see* paragraph 306 below.

799 Minutes of the Meeting of the Shareholders of Coolak Baku dated 18 June 2002, **R-104**.

800 Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

801 Statement of Claim, para. 179(iii).

*Heydarov, and Pashayev had illegally seized them in the first place*".[802] This is denied. As regards Coolak Baku, it is apparent that following Mr Bahari's transfer of Coolak Baku to Malik, discussed at paragraphs 212 to 213 above, Mr Heydarov was in control of it. As far as the carpets are concerned, they were never seized by anyone, and certainly not by any agent of the State, as addressed in section VII below. Mr Khanghah had nothing to do with the carpets and Mr Bahari had in fact already arranged for their return before he met Mr Khanghah in June 2002 (see paragraph 348 below). Nor is the implication Mr Bahari seeks to draw that Messrs Aliyev and Heydarov had a "*great concern to obtain the return of all Caspian Fish documents… which could implicate them*"[803] sound: there is nothing unusual in the remaining shareholders seeking to ensure the documents of the exiting shareholder are cancelled or returned to them.

### F. For the next decade, Mr Bahari pursued other ventures outside Azerbaijan with limited success

289. Azerbaijan understands that in the years following his exit from Azerbaijan, Mr Bahari commenced and then apparently abandoned a number of commercial ventures, some of which bear a striking similarity to Caspian Fish.

290. In particular, GFPC, the Iranian company in which Mr Bahari is understood to have had an ownership interest through Petroqeshm (see paragraph 279 above), reportedly began constructing a large fish processing factory on the coast of the island of Qeshm in 2001.[804] The factory was intended to process locally caught fish into fish powder and fish oil to be used in the production of animal and bird feed.[805] GFPC was to produce a sufficient amount of these products to fully satisfy Iran's demand for fish powder for animal feed production, with a surplus that could be exported to provide approximately USD 250 million in revenue each year.[806]

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802 Statement of Claim, para. 183.

803 Statement of Claim, para. 179(iv).

804 Dastchin Information Centre for Livestock, Poultry, and Fishery profile on Qeshm Fish Processing Company accessed 8 December 2023, **R-133**.

805 Dastchin Information Centre for Livestock, Poultry, and Fishery profile on Qeshm Fish Processing Company accessed 8 December 2023, **R-133**.

806 Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

291. The website of an Iranian company that conducted a feasibility study for the factory indicates that, in 2002, parts of the project were still in preliminary stages.[807] In an Iranian state media article from February 2002 regarding the partial opening of GFPC's factory, Mr Bahari is referred to as the "[redacted]", and as having coordinated the provision of German machinery to GFPC's fish processing plant.[808] Mr Bahari stated that the machinery was "[redacted]" and that, as of February 2002, 30% of the machinery had been transported to Qeshm.[809] He described three different phases of production at the facility, involving fish powder and oil, fish fillet and frozen fish and the production of vitamin capsule.[810]

292. Around the same time, in May 2003, Mr Bahari is understood to have registered IAV Industrie-Anlagen-Vetrieb GmbH (**IAV**) in Germany.[811] Between 26 January 2005 and June 2010, Mr Hansen was IAV's Managing Director.[812] Astonishingly, according to a captured screenshot of IAV's now defunct website,[813] IAV used the pictures of the LLC's production facilities and offices and presented them as its own, although no reference to a corporate relationship between these entities was identified in the public domain.[814]

293. IAV also appears to be linked to GFPC, as Mr Hansen publicly advertised in his capacity as director of IAV that he was looking to purchase fish oil to produce Omega

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807 Consulting Engineers Pouya Tarh Pars website, *Feasibility Studies and design of the quay and coastal protection system of Qeshm Fish Production Company*, **R-134**.

808 Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

809 Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

810 Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

811 *See* Extract from Company Register (Hamburg) for IAV Industrie-Anlagen-Vertrieb GmbH, accessed 16 January 2023 (referring to IAV's incorporation date on 21 May 2003), **R-135**; and letter from Mr Hansen to Mr Bahari dated 21 April 2010, **R-136** (referring to Mr Bahari's interest in IAV) submitted with his application to resign to the Hamburg Local Court Commercial Register, **R-137**, as confirmed in letter from Baek Law dated 10 June 2010, **R-160**.

812 *See* Extract from Company Register (Hamburg) for IAV Industrie-Anlagen-Vertrieb GmbH, accessed 16 January 2023, **R-138**.

813 The Wayback Machine only captures an archived page from 21 September 2016, but it is presumed that the content of this page was available as early as the website was first set up.

814 *Compare* Wayback Machine, *The future of fish processing*, IAV Website snapshot as at 21 September 2016, accessed 21 December 2023, **R-139**; and Wayback Machine, *Caspian Fish Co Azerbaijan*, Caspian Fish Website snapshot as at 29 March 2002, accessed 21 December 2023, **R-140**.

3 capsules for a plant located in Qeshm island, Iran.[815] These capsules appear to be the "[redacted]" of production identified by Mr Bahari in his interview to the Iranian State media as described at paragraph 291 above.[816]

294. Azerbaijan does not know the details of what happened with these various ventures of Mr Bahari's, but it understands that in or around late 2004, Mr Bahari transferred his shareholding in Petroqeshm to a third party. By August 2013, it had been dissolved.[817]

295. By 2011, IAV was in serious financial difficulty. According to an Austrian default judgment dated 15 June 2011, IAV had failed to pay a debt of more than half a million euros to MCI Mining Austria.[818] Azerbaijan understands this contract concerned a civil works project in Dubai. By 22 March 2012, the judgment had still not been paid and the judgment creditor had obtained a European enforcement order.[819] As far as Azerbaijan understands, the debt remains unpaid to this day.

296. On 11 December 2012, IAV was struck off the corporate registry due to a lack of funds.[820] Mr Hansen explains that his business involvement with Mr Bahari also terminated that year.[821] Apparently, Mr Bahari "[redacted]".[822] Mr Bahari then took "[redacted]"[823] Mr Hansen confirms that it is [redacted] that Mr Bahari "[redacted]

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815 21food.com post by Janke Hansen, General Director of IAC, undated, accessed 18 December 2023, **R-141**. While there is an indication that the "Date Posted" was "1 year ago", that is likely to be an automated function of the site that does not reflect the actual date of posting. The post itself is undated and it is likely that it was made during his tenure as Managing Director of IAV (i.e., between 2005 and 2010).

816 Islamic Republic News Agency, *The executive operation of the fish powder production unit in Qeshm has started* dated February 2002, **R-132**.

817 UAE Government Portal search regarding Petroqeshm International Trading LLC business licence, accessed on 7 December 2023, **R-142**.

818 District Court for Graz (Austria) default judgment against IAV GmbH dated 15 June 2011, **R-143**.

819 European Enforcement Order Certificate for judgment against IAV GmbH dated 22 March 2012, **R-144**.

820 Extract from Company Register (Hamburg) for IAV Industrie-Anlagen-Vertrieb GmbH, accessed 16 January 2023, **R-138**.

821 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 2.

822 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

823 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

[redacted][824] Mr Bahari claims that out of fear, he has "[redacted]".[825] The more likely explanation for his nomadic existence, according to the documentary record and witness testimony, is that Mr Bahari sought to escape commercial partners whom he had upset.[826]

### G. Mr Bahari returned to Azerbaijan with his 10 year old son in 2013

297. Not long after these events, Mr Bahari claims that in 2013 he was "[redacted]".[827] Mr Bahari gives no explanation or context for this so-called "sudden" alleged ability to contact Mr Heydarov. He cannot explain why a simple letter or email would not reach Mr Heydarov. He does not in fact suggest anywhere that he was unable to contact Mr Heydarov prior to 2013. Nor does he describe how he allegedly contacted Mr Heydarov. Azerbaijan does not have any direct knowledge of this contact, which (if true, which is not admitted) took place in Mr Heydarov's private capacity.

298. Azerbaijan does, however, have a copy of an email that was sent by Mr Bahari to Azerbaijan media group, ANS Press on 28 June 2013, that is, four months before his trip to Azerbaijan.[828] In that email, which was titled "[redacted]" (notably, despite its title, Mr Bahari claims he was not aware that he had a Treaty claim until four years later, in 2017),[829] Mr Bahari claimed that he had constructed Coolak Baku and Caspian Fish and a "[redacted]".[830] No doubt seeking to pre-empt any response that he had sold and been paid for his interest in Caspian Fish, Mr Bahari continued:

[redacted]

824 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

825 Bahari Statement, para. 94.

826 *See* Coolak Shargh Financial Statements for the year ending September 2013, dated 21 December 2013, **R-161**; Coolak Shargh Financial Statements for the year ending September 2016, dated 19 December 2016, **R-162**; Minutes of Coolak Baku Co Joint Venture Staff Meeting dated 30 November 2002, **R-29**; District Court for Graz (Austria) default judgment against IAV GmbH dated 15 June 2011, **R-143**; Zeynalov Statement, para. 21; Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 4.

827 Bahari Statement, para. 95.

828 Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

829 Notice of Arbitration, para. 71. During this time, there is no suggestion that Mr Bahari did not have access to lawyers and to legal advice concerning any claims under international law. He must have had such advice, and the inference is that he was advised that there was no viable Treaty claim.

830 Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

[redacted][831]

299. In fact, the documents demonstrating that a sale indeed happened and that he was paid under it, do indeed exist and Mr Bahari was well aware of this at the time his wrote the email. Mr Bahari claims, for example, that "[redacted]" because he "[redacted]".[832] This is untrue: the reason Mr Bahari did not "focus" on the BVI shares is because he knew they had been sold. It is implausible that he simply overlooked the payment he had received and ignored the status of his shareholding and any associated rights under the purported Shareholders' Agreement for over a decade, had he truly believed he had a complaint that he had been forced out or unfairly treated.

300. The 28 June 2013 email must be viewed in the light of Mr Bahari's deteriorating financial position, as set out in PART 3V.F above. Azerbaijan infers that it was an attempt to pressure improperly Mr Heydarov to provide Mr Bahari with funds, by threatening to suggest publicly that the State was involved (when it was not). Again, Azerbaijan is not privy to the detail of what subsequently occurred, as this concerns the conduct of third parties acting in their private capacities, but it seems that the content of this email was communicated to Caspian Fish and likely ultimately to Mr Heydarov as the primary investor in Caspian Fish.

301. Azerbaijan has no knowledge of any meeting that is alleged to have taken place between Mr Bahari and Mr Heydarov in October 2013,[833] and Mr Bahari has provided no evidence that he did in fact meet with Mr Heydarov at all. It is true, according to the State border records, that Mr Bahari entered Azerbaijan from Turkey on 10 October 2013, and left less than two weeks later on 22 October 2013.[834] He was accompanied by his son, Mr Ashkan Bahari, who was 10 years old at the time.[835] Mr Bahari claims that he felt "[redacted]" during his 2013

831 Email from Mr Bahari to ANS Press dated 28 June 2013, **R-145**.

832 Bahari Statement, para. 88. Insofar as Mr Bahari failed to deliver the share certificate to Mr Khanghah, he was obliged to do so under the terms of the 2002 Handwritten Addendum, and he knew that his shares had been sold, even if he failed to comply with his obligation to deliver the certificate.

833 Statement of Claim, para. 313.

834 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

835 Letter from the State Border Service to the State Service on Property Issues dated 2 November 2023, **R-58**, p. 3.

visit.[836] If that were true, Mr Bahari does not explain why he chose to take his 10 year old son with him, particularly in circumstances where he allegedly believed that Azerbaijan was responsible for the death of his daughter (a very sad but wholly spurious allegation, which is addressed at PART 3VIII.B below).[837] His allegations of feeling unsafe are also directly contradicted by his very own account of the trip in a public interview in 2017, where he alleged that "[redacted]".[838] No mention is made of any suspension of his alleged "persona non grata" status, because no such status existed.

302. According to Mr Zeynalov's testimony, Mr Bahari informed Mr Zeynalov that he was planning to meet Mr Heydarov, and they in fact arranged to meet Mr Heydarov together.[839] When Mr Zeynalov went to the Kempinski Hotel to take Mr Bahari to the meeting, however, he was not there.[840] Whether such a meeting with Mr Heydarov in fact took place is in considerable doubt. The only evidence in support of it is Mr Bahari's highly unreliable testimony. Mr Bahari says nothing in relation to the content of the alleged meetings, which is surprising given the allegation that there were three meetings, over three days, lasting between half an hour to three hours.[841] He produces no contemporaneous records, text messages, emails or notes which might have been made or sent at, or immediately after such a meeting. The only thing Mr Bahari says in respect of the alleged three days of meetings is that Mr Heydarov told him "[redacted]" and that Mr Heydarov would "[redacted]".[842] This is one of Mr Bahari's more inventive allegations, which is as bold as it is implausible. The claim that Mr Heydarov ever uttered such an outlandish thing is also contradicted by Mr Bahari's own words and statements.[843]

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836 Bahari Statement, para. 95.

837 Bahari Statement, para. 94.

838 Transcript of Mr Bahari's interview on Kanal Turan Facebook Channel aired live on 6 March 2017, **R-68**.

839 Zeynalov Statement, paras 52-53.

840 Zeynalov Statement, para. 53.

841 Bahari Statement, para. 96.

842 Bahari Statement para. 96.

843 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

303. If any such meeting took place (which is denied), it plainly took place in Mr Heydarov's private capacity. Nothing in Mr Bahari's claims of the substance of these alleged meetings would elevate them to a meeting with the State. He asserts without analysis that he met Mr Heydarov "*in the latter's capacity as a senior Government official, and the meetings took place at the Ministry of Emergency Situations*":[844] that submission is untenable in circumstances where the only alleged conversation (that Mr Heydarov would back Mr Bahari to sue Mr Aliyev) was plainly not an act of State, and the location of the alleged meeting also does not elevate any discussion that took place there into an act of State.

304. Mr Bahari further submits that Mr Heydarov was "*presumably*" able to lift Mr Bahari's *persona non grata* status and guarantee safe passage which was an "*act of State prerogative taken by an official with authority to execute*".[845] This is an absurd submission: Mr Bahari was never *persona non grata* (see paragraph 264(c) above), and there is no suggestion that Mr Heydarov used or threatened to use such ("presumed") power.

305. Finally, Mr Bahari claims that the conversation was an "*effective*[] *admi*[ssion] *that Mr. Bahari's investments had been illegally seized*".[846] That submission takes an extraordinary liberty with Mr Bahari's version of events even accepting them to be true (which is denied). On Mr Bahari's case, Mr Heydarov did not tell him to sue the State of Azerbaijan. He told him *to sue Ilham Aliyev personally*, in relation to actions which took place before Mr Aliyev became the President of Azerbaijan.[847] It is denied that Mr Heydarov said such words.

306. Mr Bahari complains that following these alleged meetings, he "*left Azerbaijan empty-handed*".[848] Approximately two months later, on 4 December 2013, Mr Bahari sent an email to Mr Heydarov's assistant, copied to the President's Office. In that email, he said that while it had been "[redacted]", "[redacted]

844 Statement of Claim, para. 314.

845 Statement of Claim, para. 314.

846 Statement of Claim, para. 315.

847 Bahari Statement, para. 96.

848 Statement of Claim, para. 313.

[redacted]".[849] He made a number of claims about the conduct of unspecified persons in relation to Caspian Fish and Coolak Baku, stating that the "[redacted]", and asking Mr Aliyev "[redacted]".[850] Critically, he confirmed that [redacted][851] This is consistent with and express confirmation that Mr Bahari was paid for his shares under the 2001 Sale Agreement and 2002 Agreement. The email appears to be a last-ditch attempt to wrangle something more from his former business partners following an unproductive visit to Azerbaijan. It did not succeed, and as far as Azerbaijan understands, the President's Office did not respond to this email.

307. Azerbaijan has no knowledge of the matters pleaded at paragraph 318 of the Statement of Claim. Insofar as Mr Bahari claims that "[redacted]", Mr Bahari cannot prove that such a discussion took place, it being based solely on his unreliable testimony.[852] Even if such a discussion occurred (which is not admitted) however, it was not said in any official capacity. Indeed, there is no evidence that it was made at Mr Heydarov's instruction, if made at all, as opposed to independently by a frustrated associate who was tiring of constantly being badgered by Mr Bahari. Nor is there any suggestion that such discussion concerned the use or threat of State powers, nor could it, given Mr Bahari was not living in Azerbaijan at the time and was not subject to its jurisdiction.

### H. There is no evidence that Caspian Fish was a "leader in the field of caviar" and it eventually ceased operations

308. Caspian Fish was not the success story Mr Bahari would have this Tribunal believe. Mr Bahari claims that it received "*an exclusive license for the processing and export rights to caviar, as well as further broad natural resource exploitation rights in the Caspian Sea*",[853] relying on his own testimony and an archived copy of Caspian Fish's website and emphasizing that "[t]*hese exclusive rights, licenses and permits were*

849 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

850 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

851 Email from Mr Bahari A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

852 Bahari Statement, para. 98.

853 Statement of Claim, para. 90 and n. 125.

*issued to Caspian Fish (BVI)*".[854] As set out at paragraph 99 above, no "*natural resource exploitation rights*" or other such licence was ever issued to Caspian Fish by Azerbaijan.[855]

309. After sturgeon exports from the Caspian Sea were limited by CITES in June 2001, and catch and export quotas were agreed for sturgeon and caviar, the LLC obtained authorisation from CITES to process and export caviar in February 2003.[856] But it was certainly not the only company to receive such an authorisation: Hazarbalig preceded it in December 2002,[857] and Orienta and KASPI Fishing Industrial Company[858] also had such rights.

310. Mr Bahari also claims that Caspian Fish obtained an ISO 22000 food safety certification, which he says he personally "*undertook much of the work towards obtaining… before he was expelled*".[859] What he fails to mention is the source he cites himself – Caspian Fish's archived website – explains that the certification was received in 2009, that is some eight years after Mr Bahari left the business.[860] It is simply not plausible that the certification came about as a result of work Mr Bahari allegedly undertook eight years prior, and indeed, those working at Caspian Fish at Mr Bahari's time refute any such suggestion. Mr Hasanov explains that Mr Bahari "[redacted]", giving an example that the refrigerators units he installed did not have hermetically sealed doors.[861] The

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854 WayBack Machine, *General Information*, Caspian Fish archived website, snapshot of 4 July 2014, **C-95**.

855 As to the Customs Union "licence" Mr Bahari optimistically claims was issued to Caspian Fish (Statement of Claim, para. 90), relying on a press article describing the LLC as a company with a licence to enter the Customs Union market, **C-96**, such licence was not a State licence issued by Azerbaijan and merely allowed Caspian Fish to export to the Customs Union. Nor is the "fishery products authorisation" Mr Bahari exhibits at **C-97** a licence issued by Azerbaijan.

856 CITES Notification No. 2003/005 to Parties concerning Azerbaijan (caviar) dated 7 February 2003, **R-10**. *See* Hasanov Statement, para. 18; prior to 2003, Caspian Fish could not process and harvest caviar, but it was able to export it.

857 CITES Notification No. 2002/068 to Parties concerning Azerbaijan (caviar) dated 19 December 2002, **R-12**.

858 CITES Notification No. 2003/005 to Parties concerning Azerbaijan (caviar) dated 7 February 2003, **R-10**; CITES Notification No. 2003/056 to Parties concerning Azerbaijan (caviar) dated 29 September 2003, **R-11**.

859 Statement of Claim, para. 91.

860 WayBack Machine, *Standards*, Caspian Fish archived website snapshot on 4 July 2014, **C-98**.

861 Hasanov Statement, para. 40.

installation issues were only fully resolved after Mr Bahari's departure, and still some years prior to the ISO 22000 certification, in 2005.[862]

311. Mr Bahari claims that the plant has "*the largest processing factory in the Caspian region*",[863] relying on a number of historic press articles and a research paper to allege that the plant has "[redacted]",[864] but this is not an accurate reflection of the true capacity of the plant. Again, it is mere puff, presumably for PR purposes. Mr Hasanov, a senior officer of Caspian Fish until 2014, explains that while this figure may have been externally communicated, it does not reflect the plant's true capacity because "[redacted]" and "[redacted]".[865] Notably, in the very article Mr Bahari relies on, the author notes specifically in relation to Caspian Fish that "[redacted]".[866] In addition, as already described, much of the equipment was not fit for purpose anyway; "[redacted]" in 2001 meant that nearly 54,500 kg of fish had to be sent to external fish processing facilities.[867] Mr Hasanov's understanding is that during his 13-year tenure the plant in fact only produced on average 2.5 tons of final product per day.

312. While there was some production in the early 2000s, Azerbaijan understands the plant was loss-making.[868] Based on documents Mr Hasanov was able to locate in Caspian Fish's archives, in 2001, for example, its revenue was not sufficient to cover its expenditure.[869]

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862 Hasanov Statement, para. 40.

863 Statement of Claim, para. 92.

864 Salmonov, *Fisheries and Aquaculture in the Republic of Azerbaijan: A Review*, FAO, 2013 **C-15**; Azerbaijan State News Agency, *Tajik President Visited "Caspian Fish Co." in Baku* dated 13 August 2007, **C-11**; Azerbaijan State News Agency, *Swiss President Familiarizes Himself with "Caspian Fish Co. Azerbaijan" Corporation* dated 11 May 2008, **C-12**. Mr Salmanov refers to imperial "tonnes", whereas it is understood that metric "tons" are the relevant measure.

865 Hasanov Statement, para. 35.

866 Salmonov, *Fisheries and Aquaculture in the Republic of Azerbaijan: A Review*, FAO, 2013 **C-15**.

867 Hasanov Statement, para. 29.

868 Hasanov Statement, para. 31.

869 Summary of Caspian Fish's operation for 2001, **R-13**.

313. Azerbaijan understands from Mr Zeynalov that Caspian Fish is no longer operational as a fish processing business, although until recently it has rented out some of its facilities to unrelated businesses, and continues to employ a skeleton staff to secure the property and assist with managing its tenants.[870] Mr Bahari is accordingly wrong to suggest that the company "*currently produces a wide range of different fish-related products that are… exported all over the world*";[871] even the press articles Mr Bahari relies on indicate that in March 2018 Mr Heydarov "[redacted]" and "[redacted]".[872]

314. The suggestion that "[t]*he success that* [Caspian Fish] *has enjoyed… is directly attributable to Mr. Bahari's vision, ingenuity and business acumen*"[873] is a fantasy that is, yet again, based only on the unreliable testimony of Mr Bahari himself. The witnesses of Azerbaijan who were working at Caspian Fish at the time of Mr Bahari's involvement evidence that the opposite was true: there were "[redacted]"[874], "[redacted]"[875] and missing "[redacted]".[876] The example Mr Bahari gives, of the implementation of his alleged "*original business plan to set up a sustainable fishing and fish breeding program*",[877] is wholly unsupported, and contradicted by the evidence of the witnesses from Caspian Fish.[878] There was no fish farming business implemented by Mr Bahari. More generally, Mr Bahari does not rely on or produce any written business plan to evidence this assertion. According to Mr Hasanov, there was no business plan for Caspian Fish.[879]

870 Zeynalov Statement, para. 39.

871 Statement of Claim, para. 92.

872 BastaInfo, *Kamaladdin Heydarov sells his famous company* dated 26 March 2018, **C-13**.

873 Statement of Claim, para. 93.

874 Hasanov Statement, para. 39.

875 Hasanov Statement, para. 44.

876 Hasanov Statement, para. 42.

877 Statement of Claim, para. 93.

878 Hasanov Statement, para. 35.

879 Hasanov Statement, para. 22.

## I. Azerbaijan has no knowledge of corporate actions in relation to Caspian Fish that took place outside its jurisdiction or corporate structures which may relate to Caspian Fish

315. Mr Bahari makes a number of complaints regarding various corporate actions and transfers of Caspian Fish's shares that took place in the BVI.[880] Azerbaijan has no knowledge of these matters, which concern the actions of third parties acting in their private capacities, and Azerbaijan has no jurisdiction over such matters (the proper place for any complaint about such conduct being the BVI). In any event, these allegations are wholly irrelevant in circumstances where Mr Bahari transferred his shareholding to Mr Khanghah in the circumstances described in PART 3V.D above.

316. As to Mr Bahari's claims regarding Caspian Fish's ownership,[881] its owners at time of its inception are self evident and known to Mr Bahari. Azerbaijan denies having any ownership interest in Caspian Fish today (or ever), and the legal relevance of its ownership today is not understood.

317. Mr Bahari refers to no fewer than 66 Azerbaijani and foreign companies which are wholly separate to the LLC,[882] claiming in a vague and unparticularised manner that he seeks to "*clarify and* [sic] *its corporate structure and relationship to Caspian Fish* [Azerbaijan]" and "*obtain financial information relevant to quantum*".[883] These submissions are absurd. These entities have nothing to do with Mr Bahari's claims in this arbitration. Even if they were somehow connected to Caspian Fish by being part of some wider group (which is not admitted), none of them are alleged to comprise any part of Mr Bahari's alleged investment. They cannot, therefore, have any possible relevance to his claims or the quantum thereof. In any event, these companies are not owned or controlled by Azerbaijan. To the extent Mr Bahari suggests that he will seek disclosure from Azerbaijan in relation to such entities, he may do so, but he is mistaken to think these companies' documents will be forthcoming from Azerbaijan. Azerbaijan has no possession or control of documents belonging to these entities.

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880 Statement of Claim, paras 195-197, section III.F(4), paras 245, 246(iii)-(iv) and 247-252.

881 Statement of Claim, section III.F(4)(e) and III.G(2).

882 Statement of Claim, paras 259-267, 272-273, 275, 278 (Caspian Fish Switzerland GmbH, Gilan Holding, Sahra FZCO, Shams al Sahra FZCO, UEI Caspian Caviar Limited, UEI Caspian Sea Caviar and companies allegedly in the AZ Group).

883 *See*, e.g., Statement of Claim, para. 274.

318. The only company which Mr Bahari asserts was owned by the LLC is Neftchala Fish Factory (**NFF**).[884] This submission is, however, wholly unsupported. Mr Bahari relies on the Neftchala District Executive Authority website, which states that "[redacted]" is "[redacted]",[885] and claims – based on various press Articles – that NFF and Banka Fish Combine "*are one and the same facility*".[886] Nothing in these documents reasonably leads to the conclusion that the LLC owns Banka Fish Combine (or NFF, if, on Mr Bahari's case, which is not admitted,[887] they are the same facility). Plainly, ownership and management are not the same thing. The very articles Mr Bahari relies on explain that [redacted]", that is, prior to Caspian Fish's incorporation.[888] As of 2016, "[redacted]"[889] and by 2018, its "[redacted]".[890]

319. Again, Mr Bahari claims that he seeks "[to] *clarify the corporate nexus between Caspian Fish* [Azerbaijan]*, NFF, and Pasha Holding*" and "*financial documents relevant to quantum*".[891] Even if it could be established that NFF was owned by the LLC, it is not clear what possible financial information Mr Bahari is hoping to find in the light of the public reports. In any event, NFF and indeed the LLC are not owned or controlled by Azerbaijan. To the extent Mr Bahari suggests that he will seek disclosure from Azerbaijan of these persons documents in relation to such entities, again he is

884 Statement of Claim, para. 280.

885 Neftchala District Executive Authority of the Republic of Azerbaijan, *Origin History*, accessed on 17 April 2023, **C-172**, p. 10 of PDF.

886 Statement of Claim, para. 282.

887 Public reports indicate that NFF was previously called Azerbaijan Fish Factory and subsequently renamed Azerbaijan Fish Farm, but it has never been Bank Fish Combine: *see* Toplum, *Company owned by 'Pasha Holding' is said to have been cancelled* dated 31 October 2018, **R-146**.

888 BBC News Azerbaijan, *Historical Bank – from fishing to poverty* dated 7 December 2016, **C-174**, pp. 3, 6.

889 BBC News Azerbaijan, *Historical Bank – from fishing to poverty* dated 7 December 2016, **C-174**, p. 6.

890 Report İnformasiya Agentliyi, *The property of Neftchala Fish Combine was auctioned due to tax debt* dated 8 August 2018, **C-173**.

891 Statement of Claim, para. 283.

mistaken. Azerbaijan has no possession or control of documents belonging to these entities or persons.

## VI. MR BAHARI SOLD THE PROPERTY AT AYNA SULTAN AND WAS PAID USD 70,000 FOR IT

320. Mr Bahari claims that he "*invested in the acquisition of a plot of land*", which is described as Ayna Sultan.[892] For the reasons set out at paragraph 118 above, the claim that he owned land is patently false: under Azerbaijani law, ownership rights over land could not be granted to foreign nationals and therefore were not granted to Mr Bahari.[893]

321. As to the immovable property on the land, Mr Bahari claims that his "*ownership of the investment is evidenced by the Technical Passport*",[894] which belies a basic misunderstanding of Azerbaijani law. The Technical Passport only refers to the specification of the property. It is not the Technical Passport which evidences ownership of property under Azerbaijani law, but the Registration Voucher. As explained at paragraphs 118 and 120 above, the only evidence of any ownership by Mr Bahari of any property is to a 45 square metre dwelling that could never have been used "*to build a prestigious office building*":[895] he had no right to build anything on land that he did not own, and the small dwelling in any event could never have been a "prestigious" 1000 square metre property as Mr Bahari claims.[896]

322. In any event, as set out in the following paragraphs, the documentary record irrefutably evidences that Mr Bahari sold his interest in Ayna Sultan before the Treaty came into force. He has been thoroughly dishonest, if not highly misleading, in the presentation of his case in relation to Ayna Sultan. Mr Bahari's failure to mention his history of dealing (presumably also his failure to mention this to his counsel, who would not be able honestly to present the case presented had they known the truth) in relation to Ayna Sultan is baffling. Azerbaijan obviously has access to the relevant records and it is baffling that Mr Bahari considered his lies would not be uncovered.

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892 Statement of Claim, para. 95.

893 Land Code of the Republic of Azerbaijan Law No. 254-XII, 1991(now repealed), art. 11, **RLA-15**, and Land Code of the Republic of Azerbaijan Law No. 695-IQ, approved on 25 June 1999 and entering into force on 31 August 1999, **RLA-16**, art. 48; Mustafayev Report, paras 68-69.

894 Statement of Claim, para. 96.

895 Statement of Claim, para. 95.

896 Statement of Claim, para. 95.

### A. Mr Bahari sold his interest in Ayna Sultan to Mr Gambarov before he left Azerbaijan

323. The documentary record in relation to the sale of Ayna Sultan property establishes the following facts:

(a) According to Registration Voucher No. 027510 dated 29 May 1996, the residential property located at 62 Karl Marx Street, Baku City, Azerbaijan[897] (referred to in these proceedings as Ayna Sultan) was registered to Mr Ilgar Guliyev, having been privatised by him that year.[898]

(b) Pursuant to the terms of a contract dated 28 September 1996, Mr Bahari purchased Ayna Sultan from Mr Guliyev for the sum of 16 million manats.[899] Notwithstanding the sale, and although they left Azerbaijan,[900] Mr Guliyev and his family members retained a right to reside in Ayna Sultan.[901]

(c) According to a dual-language (Azerbaijani and Farsi) handwritten contract dated 14 December 1999, Mr Bahari sold his interest in Ayna Sultan to Mr Azad Gambarov for the sum of USD 70,000 (the **Ayna Sultan Sale**).[902] The contract records that:

[redacted]

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897 The Respondent notes that the transliteration of this street from Azerbaijani in the English translation submitted with Mr Bahari's Statement of Claim at **C-16** is "Karl Marks". The better transliteration is "Karl Marx", which is the term used in this Defence.

898 Registration Voucher dated 29 May 1996, **R-167**.

899 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Guliyev and Mr Bahari dated 28 September 1996, **R-79**.

900 Decision of the Narimanov District Court dated 16 August 2004, **R-147**, p. 1 ("[redacted]").

901 Decision of the Narimanov District Court dated 16 August 2004, **R-147**, p. 2 ("[redacted]"). Although the judgments refer to "Bunyadov St", Karl Marx street was renamed as such.

902 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62** (handwritten original Azerbaijani and Farsi, with a typed Azerbaijani translation from the Farsi).

[redacted][903]

(d) Mr Bahari also signed, in a handwritten Farsi note, that he had received the sum of USD 70,000 from Mr Gambarov in exchange for the sale of Ayna Sultan.[904]

324. A number of proceedings in relation to the Ayna Sultan Sale subsequently took place in the Azerbaijani Courts, as described in the following paragraphs. Not only did Mr Bahari participate directly in those proceedings (and fail to mention these proceedings to this Tribunal), but Mr Allahyarov, a witness for Mr Bahari in these proceedings, actually represented one of the claimants in those and yet Mr Allahyarov too fails to mention that in his witness statement. Azerbaijan can only assume that Mr Allahyarov did not communicate to Mr Bahari's counsel that he was involved in the local dispute concerning ownership of the Ayna Sultan dwelling (assuming that to be the case, as Mr Bahari's counsel would not have been able honestly to present the case presented had they known the truth) because he did not wish to disclose that he had been previously convicted of fraud, as described below, and imprisoned in relation to the very activity of theft of residential property.

325. According to a judgment of the Narimanov District Court dated 16 August 2004 (the **First 2004 Judgment**), Mr Gambarov filed a claim against Mr Bahari seeking: (i) recognition of conclusion of the contract relating to the Ayna Sultan Sale and (ii) removal of Mr Guliyev's and his family's residence rights in relation to Ayna Sultan.[905] The First 2004 Judgment records that Mr Gambarov's complaint was that Mr Bahari '[redacted][906] The Court issued an appearance notice for Mr Bahari and members of Mr Guilyev's family, but since their place of residence was unknown, the Court proceeded

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903 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62** (handwritten original Azerbaijani and Farsi, with a typed Azerbaijani translation from the Farsi).

904 Receipt issued by Mr Bahari to Mr Gambarov for payment dated 14 December 1999, **R-63** (handwritten original Farsi, with a typed Azerbaijani translation from the Farsi).

905 Decision of the Narimanov District Court dated 16 August 2004, **R-147**, p. 1.

906 Decision of the Narimanov District Court dated 16 August 2004, **R-147**, p. 1.

to hear the case in their absence.[907] It granted the relief sought by Mr Gambarov and, on 29 September 2004, a Registration Voucher for Ayna Sultan was issued in Mr Gambarov's name.[908]

326. However, the Narimanov District Court also issued another judgment on 20 August 2004 in relation to Ayna Sultan (the **Second 2004 Judgment**). This judgment followed a claim filed against Mr Bahari on 29 April 2004 by Mr Samadgha Pashayev (no relation to Mr Arif Pashayev), who was represented by Mr Allahyarov. According to the decision, Mr S Pashayev claimed he had been using the property since 1999 following an (apparently oral) agreement with Mr Bahari in 1999 to purchase it, and that while Mr Pashayev had "[redacted]".[909] Mr S Pashayev relied on the testimony of witnesses Mr Baba Mahmudzada, who claimed to be Mr Pashayev's neighbour,[910] and Mr Ehtiram Ahmadov, who claimed to be one of Mr Pashayev's colleagues.[911] The Court decided that the agreement between Mr S Pashayev and Mr Bahari should be considered as having been executed.

327. Both judgments were appealed, respectively by Mr S Pashayev and Mr Gambarov. The Baku Appellate Court heard the appeals together and gave judgment on 24 June 2005 (the **Consolidated Appeal Judgment**), finding that the First 2004 Judgment should stand, and the Second 2004 Judgment be revoked.[912] Among other things, the Court's

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907 Decision of the Narimanov District Court dated 16 August 2004, **R-147**, p. 1.

908 *See* Baku Appellate Court Decision dated 24 June 2005, **R-149**, p. 6.

909 Decision of the Narimanov District Court dated 20 August 2004, **R-148**, p. 2.

910 Decision of the Narimanov District Court dated 20 August 2004, **R-148**, p. 1 ("[redacted]").

911 Decision of the Narimanov District Court dated 20 August 2004, **R-148**, p. 2 ("[redacted]").

912 Baku Appellate Court Decision dated 24 June 2005, **R-149**.

reasoning was that the witness statements relied on by Mr S Pashayev "[redacted]",[913] in particular:

[redacted][14]

328. In contrast, the contract for the Ayna Sultan Sale to Mr Gambarov (who had since passed away) was "[redacted]" and "[redacted]".[915] The allegation that Mr Gambarov had obtained Ayna Sultan not by sale but as a collateral against a debt was firmly rejected as being without any evidence.[916]

329. Notably, in or around the time of the Consolidated Appeal Judgment, the Baku City Prosecution Office opened a criminal case against Mr Allahyarov and other alleged members of his law firm. Mr Allahyarov was arrested on 11 January 2006.[917]

330. In a judgment that was upheld on appeal on 17 July 2007, the Baku Court of Grave Crimes determined that Mr Allahyarov had established an organised crime group for the purpose of stealing a number of different residential properties from vulnerable people by fraud and abuse of trust.[918] The members of organised group included, among others, the very Messrs Mahmudzada and Ahmadov who had appeared as witnesses for Mr S Pashayev in the 2004 proceedings, each of whom was found to be an "unofficial" employee (namely, a driver without an employment contract) of Mr Allahyarov's law firm, Togrul Law Firm.[919]

913 Baku Appellate Court Decision dated 24 June 2005, **R-149**, p. 4.

914 Baku Appellate Court Decision dated 24 June 2005, **R-149**, p. 4.

915 Baku Appellate Court Decision dated 24 June 2005, **R-149**, p. 5.

916 Baku Appellate Court Decision dated 24 June 2005, **R-149**, p. 6.

917 Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, p. 2.

918 Judgment of Baku Appellate Court dated 17 July 2007, **R-151**.

919 Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, pp. 10-11.

331. Although in reaching its judgment, the Grave Crimes Court was not referred to the facts underlying the Second 2004 Judgment, it is apparent from the findings the Court made in relation to other conduct of the organised group that the fact pattern in relation to the Second 2004 Judgment could have easily been part of a similar plan. For example, the Court found that after Mr Allahyarov discovered that a couple living in an apartment had passed away, he obtained a key and had one of the members of the group enter and locate the property's registration documents.[920] The plan to then execute a sale was interrupted by Mr Allahyarov's arrest. This is one of many examples referred to in the judgment of the Grave Crimes Court, the details of which are, to say the least, disturbing.[921]

332. Mr Allahyarov was sentenced to 11 years in prison following his conviction being upheld on appeal.[922] He was released on parole in June 2016.

### B. Mr Bahari commenced and then abandoned his challenge of the Ayna Sultan Sale before the Azerbaijani Courts

333. In the interim, Mr Bahari obtained notice of the 2004 Judgments and the Consolidated Appeal Judgment. According to a power of attorney notarised on 20 April 2009 in Dubai, Mr Bahari gave a Mr Hooshang Amirahmadi the power to act on his behalf in Azerbaijan.[923] It is curious that this document is not mentioned by Mr Bahari, in circumstances where he complains that his access to justice in Azerbaijan has been obstructed.[924]

334. Nevertheless, according to the available documentary record:

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920 Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, p. 6.

921 *See*, e.g., in 2005, Mr Allahyarov and his accomplices (including Mr Mahmudzada) obtained the trust of an alcoholic living alone by providing her with food and alcohol. They then drugged her and while she was unconscious, located the registration documents to her property. She was then convinced to mortgage the apartment to assist one of accomplices who had been providing her food and drink. The property was instead sold by the group, and the victim kept at various houses until she passed away in mysterious circumstances the following year: *see* Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, pp. 5-6.

922 Judgment of Baku Appellate Court dated 17 July 2007, **R-151**, p. 11.

923 Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

924 *See* Statement of Claim, para. 529: "Azerbaijan obstructed Mr. Bahari from pursuing any recourse whatsoever in Azerbaijan."

(a) On 1 May 2009, Mr Amirahmadi delegated his powers to Mr Abulfaz Kazimov to represent Mr Bahari in the courts of Azerbaijan;[925]

(b) On 7 May 2009, Mr Kazimov filed a petition in the Narimanov District Court to access the case file in relation to the Ayna Sultan Sale;[926]

(c) On 14 May 2009, Mr Kazimov obtained access to the case file, and received photocopies of documents from materials of the case on 15 May 2009;[927]

(d) On 11 August 2009, Mr Kazimov filed a petition to extend time for the filing of an appeal against the Consolidated Appeal Judgment, as the relevant limitation period had expired,[928] as well an appeal against the Consolidated Appeal Judgment;[929]

(e) On 30 September 2009, the Baku Court of Appeal granted Mr Bahari's petition to extend time to allow him to challenge the Consolidated Appeal Judgment;[930]

(f) Mr Gambarov's widow, Ms Gulshan Gambarova, appealed the Court of Appeal's decision to allow Mr Bahari an extension on time. On 21 January 2010, the Supreme Court of Azerbaijan granted Ms Gambarova's appeal on the basis that the Court of Appeal had not paid close attention to "[redacted]".[931] In particular, the Court of Appeal had failed to "[redacted]".[932] In a decision in fact seemingly

925 Decision of Supreme Court of Azerbaijan dated 21 January 2010, **R-153**, p. 5.

926 *See* Decision of Supreme Court of Azerbaijan dated 21 January 2010, **R-153**, p. 4; Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal dated 30 September 2009, **R-174**, p. 2.

927 Decision of Supreme Court of Azerbaijan dated 21 January 2010, **R-153**, p. 3.

928 Mr Bahari's Application to the Baku Appellate Court for an extension of time dated 11 August 2009, **R-172** (*see* Decision of the Baku Appellate Court on Mr Bahari's Cassation Appeal dated 30 September 2009, **R-174**, p. 2, which states that Mr Bahari's application was filed on 11 August 2009).

929 Mr Bahari's Cassation Appeal dated 11 August 2009, **R-173**.

930 Decision of the Baku Appellate Court on Mr Bahari's Appeal dated 30 September 2009, **R-174**.

931 Decision of the Supreme Court of Azerbaijan dated 21 January 2010, **R-153**.

932 Decision of the Supreme Court of Azerbaijan dated 21 January 2010, **R-153**.

protecting Mr Bahari's interests from a potential fraud against him, the case was remitted back to the Appeal Court for consideration.

(g) On 26 May 2010, the Baku Court of Appeal found that there was indeed "[redacted]".[934] It accordingly concluded that "[redacted]".[935] The petition filed by Mr Kazmov was returned and Mr Bahari was given 10 days to appeal the Court's decision.[936] He never did.

335. In summary, Mr Bahari can have no complaint about the Ayna Sultan Sale. He sold the property many years before the Treaty entered into force and was paid USD 70,000 for it. He was given access to the Azerbaijani Courts, where he belatedly sought to challenge the transaction. What possible grounds he considered he had for doing so is unclear, but he ultimately abandoned the attempt to do so. Most egregiously of all, he failed to mention any of this in his witness statement, in a troubling and seriously misguided attempt to mislead this Tribunal.

## VII. MR BAHARI'S CARPETS WERE RETURNED TO HIM IN DUBAI

### A. There is no evidence that Mr Bahari had a valuable carpet collection

336. Mr Bahari claims he had a collection of "*antique Persian carpets*" which were woven primarily in "*Iran, Turkey and Azerbaijan from the 16th century onwards*", which he purchased as part of a plan to develop a carpet museum.[937] Presumably as a self-professed expert in regional carpets, Mr Bahari did not correct his counsel (or expert) that the vast majority of the alleged carpets are not "*Persian*".[938] Leaving that point to one side, Azerbaijan has no knowledge of most of the matters pleaded in respect of these carpets at section III.A(6) of the Statement of Claim (nor do some appear to have

933 Technical Passport and Registration Voucher, **C-16**.

934 Decision of the Baku Appellate Court dated 26 May 2010, **R-159**, p. 2; Power of Attorney issued by Mr Bahari to Mr Amirahmadi dated 20 April 2009, **R-152**.

935 Decision of the Baku Appellate Court dated 26 May 2010, **R-159**, p. 2.

936 Decision of the Baku Appellate Court dated 26 May 2010, **R-159**, p. 3.

937 Statement of Claim, para. 101.

938 Hasanov Report, para. 4.

any relevance to these proceedings, such as his claim that he "*sought to create an institute in Tabriz to train young people to make and repair Persian carpets*").[939] Azerbaijan has instructed Mr Rza Hasanov, a Baku-based expert in the Azerbaijani carpet market. To the extent Azerbaijan is able to respond to certain of Mr Bahari's allegations based on the expertise of Mr Hasanov or the existing documentary record, it does so in the following paragraphs.

337. First, Mr Bahari claims that he "*noticed that Azerbaijanis had significant number of antique carpets from around the region*", "*many*" of which were "*rare antiques, well over 100 years old*".[940] These claims are based only on Mr Bahari's demonstrably unreliable testimony and Mr Hasanov's expert evidence refutes them. According to Mr Hasanov, [redacted]".[941]

338. Second, Mr Bahari opaquely claims that the carpets were purchased "*in and around Azerbaijan*".[942] Notably, these claims differ significantly from those made in the Notice of Arbitration. The Notice of Arbitration claimed that Mr Bahari had "[redacted][943] In the Statement of Claim, however, Mr Bahari claims that he purchased the "[redacted]" carpets in Azerbaijan from traders who brought them "[redacted]".[944]

339. According to Mr Hasanov's evidence, Mr Bahari's claims are dubious. Kazakhstan does not have a carpet-weaving tradition and carpets produced in that region are typically not valuable.[945] Turkmenistan is a closed economy with export restrictions on carpets.[946] Given the war between Armenia and Azerbaijan at the time, Mr Hasanov

939 Statement of Claim, para. 103.

940 Statement of Claim, para. 104.

941 Hasanov Report, para. 26.

942 Statement of Claim, para. 106.

943 Notice of Arbitration, para. 44.

944 Bahari Statement, para. 54; Statement of Claim, para. 109.

945 Hasanov Report, para. 34(b).

946 Hasanov Report, para. 34(c).

also doubts that carpets were being imported from Armenia.[947] According to Mr Hasanov, it is true that Mr Bahari was known to certain of the carpet sellers in Azerbaijan, however, the carpets that Mr Bahari purchased from these individuals were not significant or valuable, and Mr Bahari was not understood to be a serious collector of carpets, or someone who had significant knowledge of carpets, their provenance or their value.[948]

340. This is also apparent from the very document that Mr Bahari himself has submitted as evidence of his ownership of such carpets. The Ledger does not evidence the knowledge or sophistication he claims, and in fact reveals that the carpets were generally not unique and valuable, as he alleges:

(a) Of the 433 carpets allegedly owned by Mr Bahari in Azerbaijan according to the Ledger (see paragraph 122 above), only 19 of the carpets cost more than USD 1,000. Over half of the remaining 414 carpets were purchased for USD 200 or less. Mr Hasanov confirms that the carpets were sold by professional carpet tradesmen, who would not have sold any carpets at material undervalue.[949] As noted at paragraph 123 above, the evidence of Mr Moghaddam in relation to Mr Bahari's expenditure on carpets jars with the documentary record. The very carpets Mr Moghaddam claims were purchased by Adil Sharabiani for [redacted]",[950] Mr Sharabiani recorded in the Ledger as being worth USD 1000 or less. Plainly, the numbers in Mr Moghaddam's statement are misconceived.

(b) As to the 15 carpets listed in the Ledger as "extremely old", which Mr Bahari claims means from "*before the 1800s*",[951] the cost to Mr Bahari of purchasing these carpets was between USD 100 and 1100 each, with only one carpet indicated as having been purchased for USD 7,300.[952] According to Mr

947 Hasanov Report, para. 34(d).

948 Hasanov Report, para. 31(c).

949 Hasanov Report, para. 40(c).

950 Moghaddam Statement para. 53.

951 Bahari Statement, para. 59.

952 Iselin Report, Appendix A – Master List, Col. 1 No. row 179; Hasanov Report, para. 40(d).

Bahari's own evidence that the "[redacted]",[953] none of the old carpets he allegedly purchased could have been in good condition. Moreover, as Mr Hasanov notes, the Ledger fails even to record whether what was purchased was in fact a full carpet or simply a fragment.[954] Certain of the items described in the Ledger are not actually carpets at all. The Ledger includes shawls and other items of fabric, as well as flat weaved "kilim" rugs, which are inherently less difficult to weave, less valuable, and can originate from anywhere in the region.[955]

341. Conveniently for Mr Bahari, the most expensive carpets he claims he purchased or had made were not even listed in the Ledger,[956] hence there is no proof at all that he acquired them. As to Mr Bahari's claim that he purchased "[redacted]", there is also no evidence to support it (other than Mr Bahari's own testimony).[957] According to publicly available records, no such carpet was ever gifted by Nader Shah to Russia,[958] nor indeed does it appear that it could possibly have been intended as a gift to the Emperor of Russia[959] who had not even been born at the time the Embassy of Nader Shah left Iran and was Emperor for only a short period of 12 months before he was dethroned by his cousin Empress Elizaveta Petrovna.[960] Mr Hasanov does not believe that Mr Bahari could have purchased such a carpet.[961] A carpet of such significance in Azerbaijan would have been discussed by carpet traders

953 Bahari Statement, para. 59.

954 Hasanov Report, para. 40(e).

955 *See* e.g., Iselin Report, Appendix A – Master List, Col. 1 No. rows 21, 22, 23, 78, 87, 101, 113, 116, 135, 157, 161, 166, 177, 186, 187, 492, 496; Hasanov Report

956 Statement of Claim, para. 117.

957 Bahari Statement, para. 58

958 Gezalova, *Embassy of Nadir Shah Afshar to the Russian Court (1739-1742)*, August 2020, **R-154**.

959 Mr Bahari refers to a "Czar" but Russian monarchs were called Emperors starting from Peter the Great, not Czars.

960 *See* Gezalova, *Embassy of Nadir Shah Afshar to the Russian Court (1739-1742)*, August 2020, **R-154**: "[redacted]." Emperor Ivan VI was born on 28 October 1740, more than a year after the embassy of Nadir Shah left Iran with the gifts. Moreover, Ivan VI was dethroned in December 1741 by Empress Elizaveta Petrovna, who reigned until her death in 1762.

961 Hasanov Report, para. 35.

in Baku, and Mr Hasanov confirms that he has never heard of it.[962] None of Mr Bahari's witnesses, even Mr Moghaddam who blithely asserts (in spite of the direct documentary record to the contrary) that "[redacted]", recalls or refers to this allegedly extremely valuable, ancient carpet of great historic significance.[963]

342. While Mr Bahari claims he paid USD 500,000 for the carpet, including a fee to a middleman who allegedly transported it to Baku, and also claims that he hired an 18-man repair team to work on it, no documentary record supports his assertions.[964] Mr Bahari produces no sale contract for what is a high-value purchase, particularly for an item allegedly so rare and valuable. He fails to name the individual from whom he allegedly purchased the carpet, nor from where he purchased it. Nor does Mr Bahari submit evidence from even one of the 18 Iranian individuals who allegedly worked on repairing the carpet for six months. As Mr Hasanov explains, a carpet of such age and provenance would have required "[redacted]". Nor does Mr Hasanov consider that a carpet like this would have been repaired in Azerbaijan.[965] Finally, it also beggars belief that Mr Bahari was made (and indeed refused) an offer in the order of 20 times the amount for which he purchased it. Again, he does not submit any evidence from the "[redacted]" who allegedly made this offer.[966] In sum, Mr Bahari fails to prove that he ever purchased or owned such a carpet.

343. The stories do not end here, however. Mr Bahari goes on to claim that he commissioned seven custom-made silk and wool carpets for Caspian Fish which were worth between USD 30,000 and 70,000 each.[967] Notably, Mr Bahari does not claim that he personally paid the costs of the alleged craftsmanship of these carpets, which were not a part of the alleged carpet museum plan, but specifically "[redacted]".[968] If

962 Hasanov Report, para. 35.

963 Moghaddam Statement, para. 53.

964 Bahari Statement, para. 56.

965 Hasanov Report, para. 37.

966 Bahari Statement, para. 56.

967 Bahari Statement, para. 60.

968 Bahari Statement, para. 60.

Mr Bahari's claims are to be believed at all (which is not accepted), then it seems likely, as a Caspian Fish expense, that the costs ultimately were paid by Mr Heydarov.[969]

344. In any event, it is clear from at least one of the examples Mr Bahari gives that his version of events is extremely farfetched. He claims (without specifying when) that his sister was sent a photo of "[redacted]" allegedly on the "[redacted]" Mr Bahari allegedly commissioned for Caspian Fish.[970] Mr Alzamin Khanmadov was not Baku's head of police. He worked at the Baku Prosecutors' Office[971] and (even on Mr Bahari's own evidence), appears to have been a friend or acquaintance of Mr Bahari. Certainly they had the kind of relationship whereby Mr Khanmadov's wife would send Mr Bahari's sister pictures of herself in her home. Azerbaijan has obtained from Mr Alzamin a photograph of the carpet in question, as well as its origin label.[972] The carpet was made by Iranian company "Pardisan Delian Carpets", a self-described "[redacted]" company, which only launched in 2011.[973] The "[redacted]" is described as "[redacted]", which corresponds to 10 March 2012, and the material is described as "[redacted]".[974] The carpet pictured with Mr Alzamin's wife is not the one Mr Bahari claims to have had made.

345. Moreover, the claim that pictures of four of the seven carpets can be seen from the footage of Caspian Fish's opening ceremony is overstated:[975] as Mr Hasanov identifies, three of these allegedly distinct carpets in the photographs appear in fact to be the same carpet.[976] Azerbaijan has no knowledge of the location of this carpet, or the other round carpet seen in the photographs of Caspian Fish that Mr Bahari exhibits to the Statement of Claim.[977] According to Mr Zeynalov, there are carpets stored at the Caspian Fish

969 See paragraph 97 above.

970 Bahari Statement, para. 65.

971 Zeylanov Statement, para. 48.

972 Photographs of carpet in Mr Khanmadov's house, taken on 23 November 2023, **R-45**.

973 Carpet Pardisan website, *About us*, accessed on 28 November 2023, **R-67**.

974 *See* Photographs of carpet in Mr Khanmadov's house, taken on 23 November 2023, **R-45**, p. 2.

975 Bahari Statement, paras 61-64.

976 Hasanov Report, para. 44(b).

977 Photographs of round carpet at Caspian Fish Facility, **C-58** and **C-60**.

facility.[978] What is clear, however, is that Mr Bahari's evidence in relation to their origin and value is not reliable.

### B. In 2002, Mr Bahari's carpets were shipped to him in Dubai

346. Mr Bahari claims that the carpets were stored "*in a secure room at the Nasimi District Warehouse*", and that Mr Moghaddam was "*one of the only people entrusted with a key*".[979] According to the testimony of Messrs Moghaddam and Bahari, in August 2001, Mr Moghaddam contacted Mr Khanmadov, who informed him that "[redacted]".[980] The Statement of Claim repeats Mr Moghaddam's assertions as to his belief[981] as fact, adopting and asserting that Mr Khanmadov was "*Baku's head of police and a senior member of the Baku courts*".[982] Not only is this factually inaccurate, but it is also professionally irresponsible. The most cursory of due diligence would have established that it was not Mr Khanmadov, but Mr Maharram Aliyev who was the Chief of the Main Police Department of the City of Baku from 1993 to 2007.[983] Mr Khanmadov was an employee of the Baku Prosecutor's Office and has long since retired. Counsel for Mr Bahari appear yet again to have adopted without scrutiny the allegations of the witnesses, in circumstances where scrutiny is well merited.

347. Mr Moghaddam's account of his alleged conversation with Mr Khanmadov and the immediately subsequent events[984] (which all allegedly occurred prior to the entry into force of the Treaty in any event) is directly contradicted by the testimony of Mr Zeynalov and the documentary record, and appears to be a complete fabrication. As Mr Zeynalov explains, the carpets remained in the Nasimi District Warehouse until early 2002, when the lease on the warehouse expired and Mr Bahari owed a debt for unpaid rent.[985] Mr Zeynalov discussed next steps with Mr Moghaddam at the time and

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978 Zeynalov Statement, para. 39.

979 Statement of Claim, para. 121.

980 Moghaddam Statement, para. 69.

981 Moghaddam Statement, para. 69 ("[redacted]").

982 Statement of Claim, para. 161.

983 *See* Wikipedia entry for Maharram Aliyev, accessed on 19 December 2023, **R-155**.

984 Moghaddam Statement, para. 69.

985 Zeynalov Statement, para. 45.

they jointly decided that "[redacted]" and "[redacted]".[986] The carpets were then in Mr Zeynalov's custody, but it was evident by this point that they had been damaged by moths.[987]

348. Mr Zeynalov recalls that Mr Bahari specifically asked Mr Zeynalov to move the carpets to a location which Mr Zeynalov later understood to be connected to Mr Khanmadov.[988] Although Mr Zeynalov cannot now recall the precise order of events, he remembers that individuals from the Ministry of Culture came to inspect the carpets, and Mr Bahari sent Mr Zeynalov a copy of a contract between "Ata Yolu" company (as Seller) and Mr Bahari's company, Petrogeshm, (as Buyer) dated 15 May 2002 (**Carpet Sale Contract**).[989] The Carpet Sale Contract provided that the "[redacted]" was "[redacted]".[990]

349. Mr Zeylanov did not know the background to the Carpet Sale Contract, but assumed it was required in order to export the carpets to Dubai, as Mr Bahari asked him to arrange for the carpets to be shipped to him pursuant to the Carpet Sale Contract.[991] Mr Zeylanov accordingly applied for "protection certificates" for the carpets, permitted them to be exported abroad, which were granted by the Ministry of Culture on 26 July 2002.[992] On 3 October 2002, Mr Zeynalov shipped not only the 211 carpets which had protection certificates to Mr Bahari in Dubai,[993] but also all of the remaining carpets held in storage for Mr Bahari, including those that had not been granted protection certificates.[994] Mr Zeynalov had no doubt that Mr Bahari received all the carpets he

986 Zeynalov Statement, para. 45.

987 Zeynalov Statement, para. 46.

988 Zeynalov Statement, para. 48.

989 Zeynalov Statement, para. 48; Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, dated 15 May 2002, **R-35**.

990 Contract No. 2 between "ATA-YOLU" Independent Company and Petro Geshm International Trading, dated 15 May 2002, **R-35**.

991 Zeylanov Statement, para. 48.

992 Protection Certificate granted by the Ministry of Culture of the Republic of Azerbaijan for No. 300 issued on 26 July 2002, **R-36**.

993 Export Declaration by ATA-YOLU for 211 carpets to be sent to Petro Geshm dated 3 October 2002, **R-37**.

994 Zeylanov Statement, para. 50.

was expecting: he did not raise any complaint with Mr Zeynalov after receiving the shipment.[995]

350. Contrary to Mr Bahari's claims, therefore, the carpets were not transferred to "*unknown third parties*" in Azerbaijan.[996] They were all shipped to him by Mr Zeynalov in 2002, according to the documentary evidence, as also explained by Mr Zeynalov. No doubt it is for this reason presumably that no complaint concerning the carpets was mentioned by Mr Bahari in his email to the President's Office in 2013,[997] but it has developed into a full-throated claim in these proceedings. Unfortunately, Mr Bahari has, once again, demonstrated either a faulty or unreliable memory for the truth.

351. Mr Kousdeghi's evidence in relation to Mr Bahari's carpets is also puzzling. He claims that Mr Khanmadov "[redacted]",[998] but he provides no context for his interaction with Mr Khanmadov in the face of Mr Bahari's claims that he was denied the ability to obtain information about his investments in Azerbaijan (notably, according to his evidence Mr Kousedghi was in Baku until at least 2014, if not longer).[999] Mr Kousedghi repeats without qualification the allegation that Mr Alzamin was "[redacted]",[1000] although this is untrue and Mr Kousedghi was likely in a position to have known that to be so. He also asserts that he "[redacted]",[1001] although there is no suggestion that he had ever seen Mr Bahari's carpets anywhere else before. This can only be a claim therefore that Mr Bahari told Mr Kousedghi that one of his carpets was in Mr Khanmadov's home, yet Mr Kousedghi does not explain this, despite verifying that "[redacted]".[1002] These aspects of Mr Kousedghi's evidence will be tested at the oral

995 Zeylanov Statement, para. 51.

996 Statement of Claim, para. 613(vi).

997 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

998 Kousedghi Statement, para. 31.

999 Kousedghi Statement, paras 8-9.

1000 Kousedghi Statement, para. 31.

1001 Kousedghi Statement, para. 31.

1002 Kousedghi Statement, para. 2.

hearing in due course, but it suffices to say for present purposes that his testimony should be viewed with considerable scepticism.

## VIII. AZERBAIJAN HAS NEVER TAKEN STEPS TO PREVENT MR BAHARI FROM PURSUING OR ACCESSING HIS ALLEGED INTERESTS IN AZERBAIJAN

### A. Mr Moghaddam was never targeted by Azerbaijan

352. Mr Bahari claims that Mr Moghaddam was "[redacted]".[1003] The evidence in support of these claims consists of the testimony of Mr Moghaddam himself and the testimony of Mr Bahari, as the person to whom Mr Moghaddam relayed such information. The evidence of these witnesses, as amply demonstrated in the preceding sections, is unreliable. It is also directly contradicted by the evidence of Mr Moghaddam's (separated) wife, who is a witness for Azerbaijan, as well as the documentary record.

353. As to the incidents where Mr Moghaddam was allegedly physically targeted:

(a) Mr Moghaddam claims he was "[redacted]" in late April 2001, so that he "[redacted]" and he "[redacted]".[1004] The assault was allegedly repeated in June 2001, by "[redacted]".[1005] This evidence is flatly contradicted by the evidence of Ms Izmaylova, who states:[1006]

[redacted]

1003 Moghaddam Statement, para. 63.

1004 Moghaddam Statement, para. 64.

1005 Moghaddam Statement, para. 65.

1006 Izmaylova Statement, para. 9.

(b) Mr Moghaddam's account is also contradicted by the documentary record. Mr Moghaddam was not even present in Azerbaijan in late April 2001: he was, according to the State border records, in the UAE and only returned to Azerbaijan in May.[1007]

(c) Mr Moghaddam also claims that in late June 2002, he was "[redacted]".[1008] Again, Ms Izmaylova disputes Mr Moghaddam's account. Her evidence is that:

[redacted][1009]

(d) Mr Moghaddam's evidence in respect of the alleged June 2002 detection is also contradicted by the State border records. As Mr Bahari is no doubt aware, being in the UAE himself at the time, Mr Moghaddam was in the UAE between 23 May 2002 and 20 September 2002.[1010] Indeed, Mr Moghaddam confirms that he "[redacted]";[1011] it is submitted, given the evidentiary record, that those visits must have taken place in 2002 as well. Mr Moghaddam's account of the detention could be a mere lapse in memory, but more plausible is that it is indicative of the insincere nature of the evidence put forth by Mr Bahari in this case: Mr Bahari relies on the timing of the alleged June 2002 detention as the basis of his allegation that it was a "*threat… for having refused to sell his interest in Caspian Fish just days prior*".[1012] The 2002 detention claims have been invented to fit that narrative, which has already been demonstrated to be false.

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1007 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, **R-58**, p. 4.

1008 Moghaddam Statement, paras 73-75.

1009 Izmaylova Statement, para. 8.

1010 Letter from the State Border Service of the Republic of Azerbaijan to the State Service on Property Issues, **R-58**, p. 4.

1011 Moghaddam Statement, para. 79.

1012 Statement of Claim, para. 86.

(e) Further and in any event, Mr Moghaddam's account of the 2002 detention is internally inconsistent and contradicts other aspects of Mr Bahari's case. For example, as part of the alleged interrogation in June 2002, Mr Moghaddam claims [redacted]".[1013] This is despite Mr Bahari's claim that the detention took place directly as a result of Mr Khanghah's meeting with Mr Bahari, in Dubai: on his own case, "they" knew exactly where Mr Bahari was. Mr Moghaddam also claims that the men asked him if Mr Bahari [redacted]". If Mr Bahari was a *persona non grata*, as he claims, then he was not able to return even if he planned to,[1014] and those detaining Mr Moghaddam would have known that to be the case. None of this hangs together.

354. Mr Bahari also claims that "[i]*n 2009, Azerbaijan jailed Mr. Moghaddam on falsified criminal charges to further dissuade Mr. Bahari from recovering his investments*".[1015] The basis for these allegations lies in Mr Moghaddam's claim that [redacted]".[1016] It is this, Mr Bahari claims, that triggered his subsequent arrest in February 2009.[1017] Like Mr Moghaddam's alleged detention, the timing of his purported enquiries is highly convenient, but whether he made any such enquiries is not accepted. Mr Bahari does not identify why he chose suddenly to "*renew* [his] *efforts*" in relation to his alleged investments in 2009. Other than Mr Moghaddam's purported enquiries, there is no factual record to corroborate Mr Bahari's claims that he renewed his interest in Azerbaijan in 2009. Mr Moghaddam does not identify the individuals with whom he allegedly spoke, nor does he provide any documentary evidence such as notes of meetings or emails to Mr Bahari regarding the same.

355. In any event, the suggestion that Mr Moghaddam was arrested in February 2009 as a result of his "[redacted]

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1013 Moghaddam Statement, para. 76.

1014 *See* Statement of Claim, para. 156: "Mr. Bahari was persona non grata – meaning he would not be able to return to Azerbaijan."

1015 Statement of Claim, section III.I.

1016 Moghaddam Statement, para. 82.

1017 Bahari Statement, para. 92.

[redacted]"[1018] is completely wrong. The evidence shows that Mr Moghaddam was apprehended in possession of drugs for sale. As discussed at paragraph 183 above, Mr Moghaddam's entire account of this proceeding is riddled with falsehoods. Particularly jarring is the fact that in 2014, when he sought to appeal the Court's decision of 17 July 2009, he personally handwrote and signed a petition which confirmed that he "[redacted]", but sought only to challenge the length of his sentence.[1019]

356. In his efforts to portray the charges as "trumped up", Mr Bahari states that they were "[redacted]",[1020] being a "*52 year-old father of two*".[1021] Mr Moghaddam was not, however, a "family man". He frequently smoked opium, his wife confirms, and they separated in 2007, two years before he was arrested for possession.[1022] Given their separation, Ms Izmaylova only learned about Mr Moghaddam's arrest from the news and she was "[redacted]".[1023]

357. In fact, Mr Moghaddam was determined by the Court's Medical Examiner to have a drug addiction that required mandatory treatment.[1024] In the opinion provided to the Nasimi District Police Department by a group of doctors, they concluded that: "[redacted]"[1025] Mr Moghaddam also admitted to "[redacted]

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1018 Moghaddam Statement, para. 86.

1019 Mr Moghaddam's Handwritten Appeal Petition, undated, and judgment of the Baku Court on Grave Crimes dated 30 April 2014, **R-156**.

1020 Bahari Statement, para. 92.

1021 Statement of Claim, para. 307.

1022 Izmaylova Statement, para. 6.

1023 Izmaylova Statement, para. 7.

1024 Decision of the Baku Court on Grave Crimes dated 17 July 2009, **R-151**, pp. 7, 11.

1025 Opinion No. 434 of the Republican Narcological Dispensary of the Ministry of Health of the Republic of Azerbaijan dated 5 March 2009, **R-170**, p. 2; Decision of the Nasimi District Police Department dated 27 February 2009, **R-169**.

[redacted]". The expert commission concluded that Mr Moghaddam had a developed a "[redacted]".[1026]

358. Although the relevance of this allegation is unclear, Mr Bahari claims he "*lobbied President Aliyev intensely via intermediaries*" apparently over a period of five years to secure Mr Moghaddam's release.[1027] Azerbaijan has no evidence of any such lobbying by Mr Bahari. Mr Moghaddam was pardoned on 26 May 2014, together with 170 other individuals, 13 of whom were Iranian.[1028] It is understood that this was a gesture of goodwill before the Iranian President's visit to Azerbaijan later that year.[1029] Mr Bahari does not identify the alleged intermediaries who lobbied on his behalf, nor explain why President Aliyev would allegedly succumb to any pressure to release Mr Moghaddam particularly if, on Mr Bahari's case, the very purpose of his detention was to deter Mr Bahari from pursuing his investments. These allegations cannot be taken seriously and should be rejected.

### B. Mr Bahari's daughter was never targeted by Azerbaijan

359. One of the more sensationalist of Mr Bahari's claims is that "*his daughter's death was an act of the Azeri Government to dissuade him from further attempts to recover his investments in Azerbaijan*".[1030] There is categorically no truth to this claim. Gloria Bahari was tragically killed in a car accident in Dubai in 2009 which had nothing to do with the State of Azerbaijan. Azerbaijan has no knowledge of the matters set out at paragraph 94 of Mr Bahari's witness statement, but according to contemporaneous local reports, the driver was arrested and detained at the scene.[1031]

360. Even Mr Bahari's counsel have not taken it on themselves to adopt this allegation. The Statement of Claim states: "[w]he*ther true or not, Mr. Bahari's reaction speaks to his*

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1026 Opinion No. 434 of the Republican Narcological Dispensary of the Ministry of Health of the Republic of Azerbaijan dated 5 March 2009, **R-170**, p. 2; Decision of the Nasimi District Police Department dated 27 February 2009, **R-169**.

1027 Statement of Claim, para. 311.

1028 Decree No. 513 of the President of the Republic of Azerbaijan, About the Amnesty of Convicted Persons dated 26 May 2014, **RLA-195**.

1029 Eurasianet press article, *Rouhani Visits Baku As Azerbaijan-Iran Conflicts Fade Into Past* dated 17 November 2014, **R-138**.

1030 Statement of Claim, para. 309.

1031 See Al Nisr, *Friends mourn death of 13-year-old killed in accident*, dated 24 May 2009, **R-66**.

*immense fear of the Government of Azerbaijan, and ongoing trauma stemming from his experiences*".[1032] This is difficult to believe in the light of Mr Bahari's subsequent return to Azerbaijan in 2013, with his 10-year old son. Had Mr Bahari truly believed that his 13-year old daughter had been killed by the Azerbaijani State outside the jurisdiction, in Dubai, it is simply not plausible that he would put his 10-year old son right in the lion's mouth.

361. Mr Hansen was in fact with Mr Bahari at his home in Dubai not long after his daughter passed away. He observed a handwritten message by Gloria on her bedroom wall that led him, at least, to believe she had committed suicide,[1033] although there may have been other interpretations of the message.

### C. Mr Bahari has failed to particularise his allegations with respect to Mr Kilic

362. Mr Bahari claims that he instructed a Mr Serhat Kilic, who [redacted]",[1034] to investigate his alleged investments in 2004, and after two months of enquiries, Mr Kilic was "*nervous and shaken, and abruptly declined to continue*", which Mr Bahari took to be "*the result of improper pressure by Azeri officials*".[1035] The only evidence in support of these allegations is Mr Bahari's testimony. He has not provided any details of Mr Kilic's place of business, registration or qualification, nor the name of the law firm or offices where he is said to have worked. Indeed, Mr Bahari has provided no information about Mr Kilic even to allow Azerbaijan to investigate the claim that Mr Kilic is deceased. He has not provided his correspondence with Mr Kilic, or copies of Mr Kilic's correspondence with "*various persons and organizations in Azerbaijan*", let alone specify who these alleged persons were.[1036] These are all documents that would be available to him to support his claims, were they true.

363. In the absence of further particularisation, Azerbaijan has no knowledge of the facts pleaded in relation to Mr Kilic, which have not been proven on the balance of

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1032 Statement of Claim, para. 309.

1033 Affidavit of Janke Hansen dated 10 November 2023, **R-114**, para. 6.

1034 Bahari Statement, para. 87.

1035 Statement of Claim, para. 188.

1036 Statement of Claim, para. 188.

probabilities and should be disregarded. The most likely explanation of these allegations is that they have been fabricated by Mr Bahari to counter the narrative that he did not pursue recovery of his alleged investments for several decades.

### D. Mr Allahyarov did not make enquiries in respect of Shuvalan Sugar and Coolak Baku in 2019

364. Mr Bahari claims that in or around 2017, he instructed Mr Allahyarov to "*investigate and determine the status and values of the properties for Shuvalan Sugar… and Coolak Baku*", apparently through Mr Moghaddam.[1037] Mr Moghaddam makes no reference to these instructions in his statement; nevertheless, it does not appear that any specific allegation is raised in respect of this instruction and Azerbaijan has no knowledge of Mr Allahyarov's public source investigation.[1038]

365. Apparently Mr Allahyarov attempted to make contact with Azerbaijani authorities again, in "[redacted]".[1039] A letter dated 14 January 2019 to the Chairman of the State Committee for Property Issues is exhibited to the Statement of Claim.[1040] Notably, the letter appears to form part of Mr Bahari's preparations for filing the 2019 Notice of Arbitration (as does the similarly dated Chartabi letter at C-86). Mr Bahari provides no evidence that this letter was in fact delivered, however. The letter does not contain the State Property Committee's address, nor is there any indication that it was faxed or emailed. While Mr Allahyarov claims it was "[redacted]",[1041] he does not specify by what means. Ms Yegana Balakishiyeva, head of the Legal Department of the State Service on Property Issues under the Ministry of Economy (formerly known as the State Property Committee) (**SSPI**) and a witness for Azerbaijan in these proceedings, confirms that there is no record of receipt of Mr Allahyarov's letter in the SSPI's files, which is a digitised system that is generally comprehensive and well organised.[1042] Ms

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1037 Statement of Claim, para. 320.

1038 Allahyarov Statement, paras 7-9.

1039 Allahyarov Statement, para. 10.

1040 Letter from Yusuf Allahyarov to Chairman of the State Committee for Property Issues, dated 14 January 2019, **C-68**.

1041 Allahyarov Statement, para. 10.

1042 Balakishiyeva Statement, paras 9-13.

Balakishiyeva does not believe that it would be possible for a letter not to be recorded in the relevant system.[1043]

366. In any event, as he very well knew, Mr Allahyarov would never have been able to obtain information on the status of the properties via the letter he wrote. Under Azerbaijani law, information in relation to immovable property is disclosable to: (i) the right-holder or its authorised representative under a power of attorney,[1044] or (ii) an advocate, for the purposes of providing legal representation to its client.[1045] Only advocates who are members of the Azerbaijani bar are entitled to apply for advocate's orders.[1046] Mr Allahyarov was well aware of this procedure, having previously requested information from the SSPI (in wholly unrelated matters) on the basis of his understanding of the procedure, but he failed to provide an advocate's order and was denied access to the information sought.[1047]

367. It is apparent that the reason Mr Allahyarov did not submit the relevant advocate's order is because he has never been a member of the Azerbaijani bar.[1048] Nor would he be able to be admitted to the Azerbaijani bar while his criminal conviction (discussed at paragraphs 329 to 332 above) remains unspent.[1049] This stands in stark contradiction to the claims made in his witness statement that he is "[redacted]

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1043 Balakishiyeva Statement, para. 12.

1044 Pursuant to Article 5.1 of the Law of the Republic of Azerbaijan "On state register of immovable property" No. 713-IIQ dated 29 June 2004 (the State Register Law), **RLA-111**, a certificate from the state register regarding the description of immovable property, state-registered rights and limitations imposed on them (encumbrance) is given to (i) the right holder, (ii) the person authorised by him/her, and (iii) the persons who have the right to inherit the property of the right holder by law or will based on their written or electronic applications.

1045 "Regulation on the Advocate's Order and procedure for using it" approved by the Presidium of the Azerbaijani Bar Association on 27 September 2018, art. 1.5, **RLA-113**.

1046 "Regulation on the Advocate's Order and procedure for using it" approved by the Presidium of the Azerbaijani Bar Association on 27 September 2018, art. 1.5, **RLA-113**.

1047 Balakishiyeva Statement, paras 14, 23-24. *Lee* Letter from Togrul Law Firm to Chairman of the State Service on Property Issues dated 1 July 2017, **R-16**; Letter from Togrul Law Firm to Absheron Territorial Administration No 4 dated 11 December 2018, **R-17**; Letter from Togrul Law Firm to Real Estate Cadastre and Address Registry Service dated 9 April 2021, **R-19**; Letter from SSPI to Togrul Law Firm, **R-22**.

1048 Letter from the Azerbaijani Bar Association to the State Service on Property Issues dated 24 August 2023, **R-23**. *See also* Balakishiyeva Statement, paras 25-26.

1049 Law of the Republic of Azerbaijan "On Advocates and Advocacy" No. 783-IQ dated 28 December 1999, Article 8.II, **RLA-112**. Mr Moghaddam was convicted for an especially grave crime. Under Article 83.3.5 of the Criminal Code, **RLA-125**, the term of conviction for such crimes is 8 years after the sentence has been served.

[redacted][1050] There is no licence for lawyers in Azerbaijan other than for a sub-group of lawyers, being advocates, to be a member of the Collegium of Advocates.

368. Azerbaijan denies in their entirety the allegations that Mr Allahyarov received a phone call after "sending" his letter and then met with the (female) Deputy Head of Legal of the SSPI, who told him that the properties referred to were "[redacted]" and he "[redacted]".[1051] As Ms Balakishiyeva explains, from March 2012 to June 2020 the Deputy Head of the Legal Department was a man: Mr Ulvi Nasibli.[1052] The Legal Department's policy is that only the Head or Deputy Head meets applicants in person, and, in any event, the only female employees of the Legal Department at the relevant time (none of whom were the Head of the Legal Department) confirm that they never interacted with Mr Allahyarov.[1053]

## IX. THE CLAIMANT'S CLAIMS REGARDING ALLEGED KLEPTOCRACY OR CORRUPTION IN AZERBAIJAN ARE NOT ACCEPTED AND IN ANY ARE EVENT IRRELEVANT

369. Mr Bahari spends nearly 20 pages of his Statement of Claim, as well as 41 exhibits, summarising a number of unsubstantiated media articles and public-source reports providing a commentary on the political and economic spheres of governance in Azerbaijan.[1054] The rationale for its inclusion, Mr Bahari states, is to "*corroborate his account of the illegal raid against his investments, and provide*[] *context and insight into the* modus operandi *of Azerbaijan's most powerful political figures*".[1055] None of the matters raised in those documents concern the substantive matters at issue in these proceedings. They are accordingly irrelevant and, in any event, not accepted.

370. Several tribunals have held that general reports concerning a country's system of governance cannot substitute for evidence of a treaty breach in a specific case.[1056] If

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1050 Allahyarov Statement, para. 6.

1051 Allahyarov Statement, para. 12.

1052 Balakishiyeva Statement, para. 15.

1053 Balakishiyeva Statement, paras 16-18.

1054 Statement of Claim, Section IV.

1055 Statement of Claim, para. 326.

1056 *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 303; *Gaspar v Costa Rica*, ICSID Case No. ARB/19/13, Award (29 June 2022), **RLA-164**, para. 466.

allegations are made on the basis of circumstantial evidence, the evidence can only lead to an inference if it is clear and convincing.[1057] In *Rumeli v Kazakhstan*, the tribunal made the following observations:

> The Tribunal has before it a number of documents, mostly in the form of press reports, which tend to establish that the whole country, the whole political system and the whole economy of Kazakhstan are controlled by President Nurabayev and his family, including an Article by the International Eurasian Institute for Economic and Political Research. The Tribunal was also shown a report by the UN Economic and Social Council which indicates that the judiciary is not independent and is prone to allegations of bribery, and another by the Bureau of Democracy noting that human rights are not respected and that "the constitution concentrates power in the hands of the presidency, permitting the president to control regional and local governments and to exercise significant influence over the legislature and judiciary ..."[1058]

371. The tribunal found that while this material was consistent with certain of its findings, it was "*unable on this material to conclude with the necessary degree of conviction that there was a wider conspiracy involving the President, or for his direct or indirect benefit*".[1059]

372. The material referred to by Mr Bahari is not evidence for his specific allegations relating to his purported investments in Azerbaijan. Azerbaijan is accordingly not required to engage with the wide-ranging scope of the material referred to by Mr Bahari. For the avoidance of doubt, none of the allegations made in relation to this material are admitted.

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[1057] *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 July 2008), **CLA-52**, para. 709.

[1058] *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 July 2008), **CLA-52**, para. 710.

[1059] *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 July 2008), **CLA-52**, para. 715.

## PART 4

## LEGAL ANALYSIS

373. For the reasons set out at PART 2 above, the Claimant's claims should be dismissed in their entirety for reasons of jurisdiction, admissibility and lack of attribution. Should the Tribunal conclude (contrary to the Respondent's primary position) that the merits of the Claimant's claims require consideration, the following sections of this pleading address the Treaty claims on their merits, without admission that any of the alleged facts can be proved.

374. Mr Bahari alleges that Azerbaijan has breached obligations to accord to Mr Bahari's investments FET (Article 2(3) of the Treaty)[1060] and FPS (imported through the MFN in Article 2(3) of the Treaty).[1061] He also alleges that Azerbaijan unlawfully expropriated Mr Bahari's investments (Article 4 of the Treaty).[1062]

375. In making a case for a Treaty breach, Mr Bahari bears the burden of proof to particularise clearly and precisely which acts or omissions that he has proven as a matter of fact amount to a breach of a the Treaty and to explain why. According to the Tribunal in *Binder v Czech Republic*:

> As a general rule, the Claimant has the burden of proof in respect of facts which are alleged to violate the BIT. Moreover, it is also incumbent on the Claimant to be specific in regard to his allegations. The obligations in the BIT are defined in general terms, such as fair and equitable treatment, arbitrary or discriminatory measures and full protection and security, and the Claimant should indicate which particular acts or omissions; or which domestic laws or regulations, he considers to have violated the Claimant's rights under the BIT. In so far as this has not been sufficiently specified by the Claimant, the Tribunal may find it appropriate, having regard also to the Respondent's right of defence to limit its examination accordingly.[1063]

376. The Claimant's pleadings in the present case are vague and fail to meet the standard set out in *Binder*. Nevertheless, the Respondent sets out its response to each of the alleged breaches, to the extent that they can be discerned, put forward in the Statement of Claim.

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1060 Statement of Claim, section VIII(A).

1061 Statement of Claim, section VIII(B).

1062 Statement of Claim, section VIII(C).

1063 *Binder v Czech Republic*, UNCITRAL, Final Award (15 July 2011), **CLA-79**, para. 392 (emphasis added).

## I. MR BAHARI HAS NO LEGAL CLAIM IN CIRCUMSTANCES WHERE HE FREELY AGREED TO RELINQUISH HIS INTERESTS IN AZERBAIJAN

377. As a preliminary point, the existence of the 2001 Sale Agreement and 2002 Amendment disposes of Mr Bahari's claims in their entirety.[1064] These documents, together with evidence of the sale of the Ayna Sultan dwelling,[1065] and the return of his carpets,[1066] address each of Caspian Fish, Coolak Baku and Shuvalan Sugar, and demonstrate that Mr Bahari freely and willingly relinquished any investment (or investment claim) he may have had in Azerbaijan (indeed, before the Treaty came into force) or, in the case of Coolak Baku and his carpets, these documents corroborate the evidence that his rights were never taken.

378. In *Staur v Latvia*, the tribunal concluded that it "*does not consider that the claimants can properly claim that their legitimate expectations have been frustrated and, accordingly, that their investments have been treated inequitably or unreasonably as a result of conduct that was the subject of a settlement between their investment vehicle and* [the relevant Latvian state-owned company]".[1067] The Tribunal dismissed the claimant's arguments that they were forced into accepting the settlement agreement as they could show no evidence to that effect.[1068]

379. In *SAUR v Argentina*, the tribunal described the effect of a settlement concluded between the claimant's investment vehicle and the State as having *res judicata* effect: "*the settlement agreement will prevent OSM from reopening the litigation and Sauri from including it in the expropriation measures for which it claims against the Republic*".[1069]

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1064 Buyer and Seller Agreement between Mr Bahari and Mr Khanghah dated 20 September 2001, **R-50**; Contract between Mr Khanghah and Mr Bahari (unsigned) dated 15 June 2002, **C-17**.

1065 Sale and Purchase Agreement for Apartment 62 Karl Marx Street between Mr Gambarov and Mr Bahari dated 14 December 1999, **R-62**.

1066 Export Declaration by ATA-YOLU for 211 carpets to be sent to Petro Geshm dated 3 October 2002, **R-37**.

1067 *Staur Eiendom AS and ors v Latvia*, ICSID Case No. ARB/16/38, Award (28 February 2020) **RLA-165**, para. 435.

1068 *Staur Eiendom ASand ors v Latvia*, ICSID Case No. ARB/16/38, Award (28 February 2020) **RLA-165**, para. 436.

1069 *SAUR International v Argentina*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability (6 June 2012) **RLA-166**, paras 358, 361.

380. While it is difficult to draw direct comparisons with these cases, given Mr Bahari's interactions were not with the State but were with individuals acting in their private capacities, to the extent Mr Bahari's claim (as it must be) is that these third parties acted on behalf of the State, any claim Mr Bahari could have against the State under the Treaty has been fully and finally settled.

## II. AZERBAIJAN HAS NOT BREACHED ARTICLE 2(3) OF THE TREATY

### A. FET does not differ materially from the minimum standard of treatment and the threshold to establish a breach of FET is high

381. Azerbaijan generally takes no issue with the propositions of law Mr Bahari recites in relation to the content and nature of the FET standard at paragraphs 492 to 497 of the Statement of Claim, save that it is not accurate to suggest that it is generally accepted that the autonomous FET standard is "*broader than the customary international law minimum standard of treatment*".[1070] In fact, many tribunals have determined that the "*the actual content of the treaty standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law*".[1071] In *Saluka v Czech Republic*, the tribunal explained that in practice, the difference between the two may be "*more apparent than real*".[1072] It said:

> To the extent that the case law reveals different formulations of the relevant thresholds, an in-depth analysis may well demonstrate that they could be explained by the contextual and factual differences of the cases to which the standards have been applied.[1073]

382. Relatedly, it bears emphasising that:

(a) the specific circumstances of the case are critical to any analysis of the FET standard. Because tribunals have a considerable degree of latitude in

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1070 Statement of Claim, para. 492.

1071 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, para. 592; *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 March 2006), **CLA-56**, para. 291; *Azurix v Argentina*, ICSID Case No. ARB/01/12, Final Award (14 July 2006), **CLA-57**, para. 361; *CMS v Argentina,* ICSID Case No.ARB/01/8, Award (12 May 2005), **CLA-71**, paras. 282-284; *Occidental v Ecuador*, LCIA Case No. UN3467, Award (1 July 2004), **CLA-149**, para. 190.

1072 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 March 2006), **CLA-56**, para. 291.

1073 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 March 2006), **CLA-56**, para. 291.

determining whether treatment was fair and equitable, the enquiry each time is highly case specific and dependent on the facts;[1074] and

(b) the threshold to establish a breach of the standard "*is a high one*".[1075] Language such as "*arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety*" has been used to describe conduct which would breach the standard.[1076] In the particular context of investor expectations, the *Biwater v Tanzania* tribunal noted that tribunals who had applied a lower threshold had been the subject of some criticism, citing the annulment decision in *MTD v Chile*, where the committee affirmed that: "*The obligations of the host State towards foreign investors derive from the terms of the applicable investment treaty and not from any set of expectations investors may have or claim to have*".[1077]

383. The minimum standard of treatment was described in *Waste Management v Mexico* in the following terms:

> the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.[1078]

### B. Azerbaijan gave no assurances that could give rise to legitimate expectations on the part of Mr Bahari

384. Mr Bahari claims that "*the protection of an investor's legitimate expectations is the dominant element of the FET standard*".[1079] None of the cases pleaded at paragraphs

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1074 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, para. 595.

1075 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, para. 597.

1076 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, paras 597-599.

1077 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, para. 600.

1078 *Biwater v Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127**, paras 597-599.

1079 Statement of Claim, para. 499.

499 to 502 of the Statement of Claim, however, have any relevance to the facts of this case.

385. First, Mr Bahari relies on *Crystalex v Venezula* in support of his claim that a State cannot "*induce an investor to make an investment, generating legitimate expectations, and then disregard the commitments that have generated these expectations*".[1080] In that case, Venezuela's Ministry of Environment sent a letter to Crystallex on 16 May 2007, requesting the payment of a bond to "*guarantee the implementation of the measures proposed in the document presented for the Environmental Impact Evaluation of the project, which have been analyzed and approved by this Office*".[1081] It was this letter that "*created a legitimate expectation in the Claimant that it had fulfilled all the conditions required to obtain the long-sought Permit*",[1082] and the subsequent denial of the relevant permit frustrated Crytallex's legitimate expectation arising out of the "*specific promise*" contained in that letter.[1083] No specific promise was ever made to Mr Bahari in this case; indeed, he does not identify one. Even if he could identify any such "specific promise", Mr Bahari would also have the difficulty of showing that such promise was made whilst the Treaty was in force, otherwise it could not be legally actionable.[1084] In the circumstances in which Mr Bahari had sold his shares in Caspian Fish and exited Azerbaijan even before the Treaty came into force, it is most unlikely he could overcome this hurdle.

386. Second, Mr Bahari claims that an investor's expectations can arise from representations or assurances, which "*can be found in legislation and treaties, as well as licenses and other approvals by a host State*", relying on *CMS v Argentina* and *LG&E v Argentina*.[1085] Both decisions are inapposite. They concern claims arising out of investments made as a result of the Argentinian government's privatisation policy,

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1080 Statement of Claim, para. 500.

1081 *Crystallex v Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), **CLA-66**, para. 38.

1082 *Crystallex v Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), **CLA-66**, para. 588.

1083 *Crystallex v Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), **CLA-66**, para. 597.

1084 Mr Bahari cannot claim to have had a legitimate expectation that any alleged commitment will be honoured in accordance with the terms of the Treaty, if there is no Treaty in existence at the time the promise is made. *See Société Générale v. Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction (19 September 2008), **CLA-41**, para. 84 (Tribunal has "jurisdiction for alleged treaty violations over the acts and events that have taken place after the entry into force of the Treaty on 23 January 2003, but not over those that have taken place before this date").

1085 Statement of Claim, para. 501.

pursuant to which specific laws were enacted to (among other things) ensure the adjustments of the tariff for gas transportation in accordance with the US PPI. The complaint focused on a change in the law which abrogated these rights, and the focus was on the investor's legitimate expectations as to the stability and predictability of the legal framework.[1086] As the Tribunal in *LG&E v Argentina* explains: "*Argentina prepared with the investment banks an attractive framework of laws and regulations that addressed the specific concerns of foreign investors with respect to the country risks involved in Argentina*", which gave rise to "*specific expectations among investors*".[1087]

387. This is in fact recognised by Mr Bahari, as he concedes in the following paragraphs that expectations can arise from the "*legal and business framework*" that are "*put in place with a specific aim to induce foreign investments*". Each of the cases he relies upon here confirm that the laws which were enacted created a legitimate expectation because they gave rise to specific entitlements with respect to specified foreign investors.[1088] As the tribunal noted in the case relied upon by Mr Bahari, "[r]*epresentations made by the host State are enforceable and justify the investor's reliance only when they are specifically addressed to a particular investor*".[1089] The present case has nothing to do with a change in the law or specific laws that had been enacted for the benefit of Mr Bahari or foreign investors in general, nor does Mr Bahari suggest so. Nor again, were any such assurances made or implied in order to attract investment from Mr Bahari while the Treaty was in force.

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1086 *CMS v Argentina,* ICSID Case No.ARB/01/8, Award (12 May 2005), **CLA-71***,* para. 274.

1087 *LG&E v Argentina*, ICSID Case No. ARB/02/1, Decision on Liability (3 October 2006), **CLA-72**, para. 133.

1088 *Micula and ors v Romania*, ICSID Case No. ARB/05/20, Final Award (11 December 2013), **CLA-67**, para. 674 ("the legislation created a generalized entitlement that could be claimed by qualifying investors, but this general entitlement was later crystallized with respect to qualifying investors through the granting of the PICs, becoming from that moment on a specified entitlement with respect to specified investors"); *AWG v Argentina*, UNCITRAL, Decision on Liability (30 July 2010**)**, **CLA-73**, para. 227 ("Argentina through its laws, the treaties it signed, its government statements, and especially the elaborate legal framework which it designed and enacted, deliberately and actively sought to create those expectations in the Claimants and other potential investors in order to obtain the capital and technology that it needed to revitalize and expand the Buenos Aires water and sewage system"); *Enron v Argentina*, ICSID Case No. ARB/01/3, Award (22 May 2017), **CLA-77**, para. 264 ("Argentina in the early 1990s constructed a regulatory framework for the gas sector containing specific guarantees to attract foreign capital to an economy historically unstable and volatile").

1089 *Total v Argentina*, ICSID Case No. ARB/04/1, Decision on Liability (27 December 2010), **CLA-75**, para. 119.

388. Each of Mr Bahari's claims that Azerbaijan induced any expectation on the part of Mr Bahari must accordingly be rejected:

(a) Mr Bahari's claim that he relied on "*specific formal assurances and approvals*" in the form of his investments being "*reviewed, approved and registered*" is unsound as a matter of Treaty law.[1090] Mr Bahari relies on *Mobil v Venezuela*, but that case is wholly distinguishable, as the tribunal found legitimate expectations arose out of Congress-authorised framework conditions which contained specific assurances to investors in an oil-exploitation joint venture project offered by Venezuela.[1091]

(b) While Mr Bahari does not identify the alleged reviews, approvals or registrations to which he refers, assuming him to mean the matters addressed at paragraph 151 above, no such conduct constituted an "approval"; to the extent that there was any review or registration, this was an administrative formality applicable to all companies (foreign or not), Mr Bahari did not make any investment relying on such alleged approval or registration (indeed, it was only by virtue of registration that it could be said that a right to an asset under Azerbaijani law arose in the first place),[1092] and there was not and could not have been any specific assurance legally protected by the Treaty made to Mr Bahari as a result of these existing general regulatory requirements, not least because the Treaty was not even in force when he made his investments.

(c) Nor can Mr Bahari claim that he had any legitimate expectation protected by the Treaty on the basis that his investments were "*known to and encouraged by senior Azeri Government authorities*".[1093] First, his alleged investments were made before the Treaty entered into force, and he therefore can only have relied on pre-entry into force "assurances", that were self-evidently not made in the context of the Treaty, and accordingly from which no actionable Treaty breach can arise.[1094] Second, for the reasons set out in section PART 2II above, even

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1090 Statement of Claim, para. 504.

1091 See Statement of Claim, n. 627; *Mobil v Venezuela*, ICSID Case No. ARB/07/27, Award (9 October 2014), **CLA-80**, paras 257-260.

1092 *See* Statement of Claim, para. 511.

1093 Statement of Claim, para. 505.

1094 See n. 1084.

if it were established that Messrs Aliyev and Heydarov were his business partners (which is not admitted in respect of both), they acted in their private capacities and not on behalf of the State. It is not the case, therefore, that merely by virtue of their interests that Mr Bahari's alleged investments were either "known to" or encouraged by the State. Further, there is nothing in the fact of Messr Aliyev's and Heydarov's participation that could be said to be a promise or guarantee that Mr Bahari took into account when making his investment.[1095] The case relied upon by Mr Bahari, *Kardassopoulous v Georgia*, is irrelevant as it concerned a contract concluded with the State and not third parties acting in their private capacities.[1096]

(d) Mr Bahari also relies on the then-President's presence at the Caspian Fish Opening Ceremony, describing his conduct – including the placement of a plaque – as "*welcom*[ing], *encourag*[ing], and *publicly tout*[ing] *Mr. Bahari's investment in Caspian Fish*".[1097] Again, this event took place before the entry into force of the Treaty. But in any event, as the tribunal in *El Paso* noted, "*political and commercial incitements cannot be equated with commitments capable of creating reasonable expectations protected by the international mechanism of the BIT*".[1098] Further, on Mr Bahari's own case, the President did not acknowledge any contribution by Mr Bahari to Caspian Fish, as Mr Bahari was not present at the ceremony. There was no specific assurance, promise or guarantee given by the then President to Mr Bahari. Crucially, Mr Bahari did not rely on any of this conduct to make the investment: it had already been made and so it cannot be said that he relied upon the then President's statements to make any investment, nor could any legally protected legitimate expectations arise from statements made prior to the entry into force of the Treaty.[1099]

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1095 *See Parkerings v Lithuania*, ICSID Case No. ARB/05/8, Award (11 September 2007), **CLA-63**, para. 331.

1096 Statement of Claim, n. 628; *Kardassopoulos v Georgia*, ICSID Case No.ARB/05/18, Decision on Jurisdiction (6 July 2007), **CLA-44**, para. 191.

1097 Statement of Claim, para. 505.

1098 *El Paso v Argentina*, ICSID Case No. ARB/03/15, Award (31 October 2011), **CLA-121**, para. 392.

1099 See Statement of Claim, para. 511.

(e) Finally, Mr Bahari asserts that he was "*was entitled to rely upon and expect treatment in accordance with the domestic laws* [the Investment Activity Law and Foreign Investment Law] *that Azerbaijan promulgated to both expressly promote and guarantee protection of foreign investors*".[1100] This claim, which is made by Mr Bahari without reference to any authority, is a non-starter. There was no change to those laws and, in any event, "[p]*rovisions of general legislation applicable to a plurality of persons or of category of persons, do not create legitimate expectations*".[1101] Moreover, Mr Bahari does not assert that he ever attempted to raise a claim for breach of the Azerbaijani laws to which he refers. In such circumstances, it is impossible to see how Mr Bahari could be said to have relied on them.[1102]

389. Mr Bahari includes a catch-all at paragraphs 512 and 513 of the Statement of Claim, asserting that he had a legitimate expectation that he would be "*treated fairly and equitably*". This is a circular argument that "*does not represent a separate legal basis for finding a breach of the FET standard*".[1103]

390. For all of the reasons set out above, each of the allegations summarised at paragraph 514 of the Statement of Claim are unsubstantiated rhetoric, not analytical pleading, and are denied.

### C. Azerbaijan did not otherwise breach the FET standard

391. Mr Bahari claims that the FET standard incorporates a host of other obligations which Azerbaijan has failed to observe, namely: the obligation to refrain from harassment, coercion and abusive treatment,[1104] as well as arbitrary and discriminatory treatment;[1105] the obligation to provide transparency and due process;[1106] and the obligation to act in good faith.[1107] While the legal claims are wide-ranging, Mr Bahari

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1100 Statement of Claim, paras 506-510.

1101 *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para. 426.

1102 *See* Statement of Claim, para. 511.

1103 *Marfin v Cyprus*, ICSID Case No. ARB/13/27, Award (26 July 2018), **RLA-167**, para. 1215. See also *Crystallex v Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), **CLA-66**, para. 551.

1104 Statement of Claim, section VIII.3.

1105 Statement of Claim, section VIII.5.

1106 Statement of Claim, section VIII.4.

1107 Statement of Claim, section VIII.6.

does little to particularise which conduct on the part of Azerbaijan is said to give rise to a breach of any of these generic obligations.

### 1. Azerbaijan did not breach any obligation to refrain from harassment, coercion or abusive treatment

392. Under the heading of the obligation to refrain from harassment, coercion or abusive treatment, Mr Bahari claims that "*Azerbaijan's treatment of Mr. Bahari and his investments, from the fateful day he was removed by the Government from the Caspian Fish grand opening, to the subsequent acts of intimidation, harassment and assault, and abuse of power, spanning almost two decades, is a textbook case*" of breach of the obligation. These general statements fail to meet the standard set out in *Binder* described at paragraph 375 above, and it is not for Azerbaijan to hazard a guess at which specific acts Mr Bahari claims are a breach of the standard. Without prejudice to this position, Azerbaijan has attempted to respond to the allegations in the following paragraphs insofar as they could be understood and concern acts which are alleged to have taken place after the entry of the Treaty into force.

393. While Mr Bahari does not particularise the conduct said to constitute acts of "*intimidation, harassment and assault*", to the extent they concern the alleged conduct addressed in PART 3VIII above, for the reasons set out in that section, Mr Bahari is unable to prove that:

(a) any such conduct in fact occurred (such as the alleged assault on Mr Moghaddam,[1108] or threats to Mr Bahari's person, Mr Kilic or Mr Allahyarov);

(b) or that it occurred as a result of a campaign against Mr Bahari's *investments* as opposed to natural persons connected to the investor (such as Mr Moghaddam's imprisonment, or the death of Mr Bahari's daughter).[1109]

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[1108] Only one of the alleged three physical assaults, the one allegedly carried out in June 2002, could have occurred after the Treaty entered into force. This claim suffers the serious difficulties identified at paragraphs 353(c) to 353(c) above, however: if it could be proved, the alleged detention can only have taken place after September 2002, when Mr Moghaddam returned to Azerbaijan, in which case its proximity to the 15 June 2002 meeting and alleged connection to Azerbaijan is severely diminished.

[1109] *Belokon v Kyrgyzstan*, PCA Case No. AA518, Award (24 October 2014), **RLA-168**, para. 245 ("The BIT however only requires FET in accordance with "investments of investors of either contracting party". Investments is a defined term of the BIT and does not encompass the former directors and management of Manas Bank.")

394. While the standard of proof remains the balance of probabilities, where there are "*serious allegations of sustained and coordinated misconduct*", such as "*organised harassment*", a "*sufficient weight of positive evidence – as opposed to pure probabilities or circumstantial inferences*" is required.[1110] While Mr Bahari relies on *Tokios* for the proposition that a "*deliberate State campaign against an investor*" is a breach of Treaty,[1111] he does not refer to the specific context of that case, where the alleged "*deliberate State campaign*" was "*to punish* [the investor] *for its impertinence in printing materials opposed to the regime, or to expose* [it] *as an example to others who might be tempted to do the same*".[1112] Those allegations bear no resemblance to the present proceedings. In any event, the tribunal in *Tokios* concluded that the claimant was unable to prove that what had occurred was more than merely "*disconnected incidents that were not politically motivated*",[1113] because the existence of such a campaign against the investor was "*a question of inference*"[1114] and certainly not "*the only feasible explanation of what took place*".[1115] Similar goes for Mr Bahari's reliance on *Waste Management*. Like *Tokios*, the facts of *Waste Management* directly concerned the acts of government agencies (unlike the present case), and yet the claimant still could not prove on the facts that there was any conspiracy to harm it.[1116]

395. While Mr Bahari claims that "*duress can influence what actions an investor takes to assert its rights*",[1117] he does not identify which action he is alleged to have taken (or been prevented from taking) to assert his rights under duress, nor the conduct which

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1110 *Rompetrol v Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013), **CLA-51**, paras. 182 and 273.

1111 Statement of Claim, para. 516.

1112 *Tokios Tokelés v Ukraine*, ICSID Case No. ARB/02/18, Award (26 July 2007), **CLA-82**, para. 123.

1113 *Tokios Tokelés v Ukraine*, ICSID Case No. ARB/02/18, Award (26 July 2007), **CLA-82**, para. 123.

1114 *Tokios Tokelés v Ukraine*, ICSID Case No. ARB/02/18, Award (26 July 2007), **CLA-82**, para. 137.

1115 *Tokios Tokelés v Ukraine*, ICSID Case No. ARB/02/18, Award (26 July 2007), **CLA-82**, para. 136.

1116 *Waste Management v Mexico*, ICSID Case No. ARB(AF)/00/3, Final Award (30 April 2004), **CLA-86**, para. 139.

1117 Statement of Claim, para. 517.

constituted duress.[1118] On his own case, he did not even agree to the terms of the 2002 Agreement,[1119] which contradicts his entire theory of duress.

396. Azerbaijan is not able to identify from the pleading what purported acts are alleged by Mr Bahari to be an "*abuse of power*" that constitute a breach of an obligation to refrain from harassment, coercion or abusive treatment. All of its rights are reserved should Mr Bahari particularise his claims in due course.

### 2. Azerbaijan did not breach any obligation to provide transparency or due process

397. Mr Bahari claims that the treatment of his investments "*lacked an iota of transparency or due process*", ostensibly on the basis that Mr Bahari was impeded from "*investigat*[ing what had] *happened to* [his] *investments, or* [] *seek*[ing] *recourse from administrative or judicial process that would provide due process*".[1120] Mr Bahari refers to his alleged expulsion (which pre-dates entry into force of the Treaty but is nevertheless dealt with at paragraphs 264 to 266 above) and the alleged conduct addressed at PART 3VIII above.[1121] For all of the reasons set out in those sections, there is no factual basis for Mr Bahari's claims. Whatever Mr Bahari's claims, the documentary record clearly demonstrates that he had access to the Azerbaijani Courts (see PART 3VI.B above), even if he chose ultimately not to avail himself of it.

398. Further and in any event, each of the authorities upon which Mr Bahari relies have no application to his claims, because they concern the application of the FET standard in the context of State decision-making processes, and no such process took place on these facts: *Saluka* concerned the Czech Government's decisions to provide State financial assistance to a failing bank;[1122] *Rumeli* concerned the Kazakhstan government's

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1118 The cases Mr Bahari cites at n. 637 of the Statement of Claim concern entirely different facts to the circumstances of this case: the act of potential duress in *Tecmed*, **CLA-40**, was the denial of a permit by a Mexican governmental agency, and in *Pope v Talbot*, **CLA-85**, it was conduct within the context of a review process carried out by a division of a bureau within Canada's Department of Foreign Affairs. In *Desert Line*, **CLA-31**, as a result of actions constituting duress (which included direct pressure from the Yemeni President, the subjection of the claimant's employees, family and equipment to arrest and armed interference), the claimant was left with "no realistic choice" but to accept half of what was owed by Yemen under an arbitration award against: *see* paras. 179 and 181.

1119 Statement of Claim, para. 173.

1120 Statement of Claim, para. 529.

1121 Statement of Claim, para. 529.

1122 *Saluka v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 March 2006), **CLA-56**.

decision to terminate an investment contract between the investor and the State Investment Committee,[1123] *OAO Tatneft* concerned the decisions of the local courts in local proceedings,[1124] as did *Krederi*[1125] and *Lion*;[1126] *Lemire* concerned the decisions of the State authority responsible for tender processes;[1127] *Tecmed* concerned the decision of a Mexican governmental agency to deny a permit;[1128] *ADC* concerned the State's decision to issue a decree to terminate the investor's operations;[1129] and *Tenaris* concerned the Venezuelan government's decision to nationalise the claimant's affiliate.[1130] None of these cases are analogous to the present facts. Indeed, in contrast, in this case, Mr Bahari does not rely on any decision of a Government body concerning his alleged investments which can be scrutinised to determine the propriety of the processes they undertook.

### 3. Azerbaijan's treatment of Mr Bahari was not arbitrary or discriminatory

399. As to Mr Bahari's claims that he was discriminated against and treated arbitrarily, Mr Bahari offers no explanation save that it was "*a textbook definition*" of such treatment, ostensibly on the basis that "[t]*he Government committed a 'volte-face' from its prior guarantee and conduct*".[1131] Repeated assertions without analysis that Azerbaijan's treatment of Mr Bahari and his investments was a "textbook definition" of breach[1132] is grossly deficient pleading that has no meaning and should be disregarded. Mr Bahari also fails to identify what possible "prior guarantee" he could be referring to – insofar as he has previously used the term "volte-face",[1133] those allegations are addressed in section PART 4II.B above.

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1123 *Rumeli Telekom and ors v Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 July 2008), **CLA-52**.

1124 *OAO Tatneft v Ukraine*, PCA Case No. 2008-08, Award (29 July 2014), **CLA-89**.

1125 *Krederi v Ukraine*, ICSID Case No. ARB/14/17, Award (2 July 2018), **CLA-90**.

1126 *Lion v Mexico*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, **CLA-91**.

1127 *Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 January 2010), **CLA-92**.

1128 *Tecmed v Mexico*, ICSID Case No.ARB(AF)/00/2, Award (29 May 2003), **CLA-40**.

1129 *ADC and ors v Hungary*, ICSID Case No.ARB/03/16, Award (2 October 2006), **CLA-93**.

1130 *Tenaris v. Venezuela (I)*, ICSID Case No. ARB/11/26, Award (29 January 2016), **CLA-94**.

1131 Statement of Claim, para. 533.

1132 *See* Statement of Claim, para. 533 and also para. 521.

1133 Statement of Claim, paras 510 and 514.

400. Again, the cases to which Mr Bahari refers have no application to the facts of this case. Discrimination requires a case to be "*treated differently from similar cases without justification*";[1134] arbitrariness is where "*prejudice, preference or bias is substituted for the rule of law*".[1135] In *Lemire*, the tribunal found that an instruction of the Ukrainian President sent to the National Council "*amounted to interference with the independent and impartial decision of the National Council in favour of two of Claimant's competitors*" and was thus an arbitrary or discriminatory measure.[1136] The "*apparently politically motivated preference for one competitor represent*[ed] *a discrimination against the Claimant, who was applying in the same tender processes for the same frequencies*".[1137] By contrast, in *Glamis*, the tribunal held that the claimant had failed to demonstrate that the measures taken by the Californian government as a result of environmental and cultural impact assessments were "*manifestly arbitrary*", that is "*some act far beyond the measure's mere illegality, an act so manifestly arbitrary, so unjust and surprising as to be unacceptable from the international perspective*".[1138]

401. Applying this standard, Mr Bahari has not identified how any alleged conduct could be said to be discriminatory, nor has he explained what measures are alleged to be arbitrary. No such conduct occurred in this case.

### 4. Azerbaijan acted in good faith at all times

402. Mr Bahari claims that Azerbaijan "*treated Mr. Bahari and his investments in bad faith*", by "*expel*[ling] *Mr. Bahari*" and in his absence "*taking all that Mr. Bahari had*".[1139] These are not serious submissions. There is no analysis of the meaning of good faith, or attempt to apply the legal standard to the alleged facts. Instead, Mr Bahari blithely

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1134 *Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 January 2010), **CLA-92**, para. 261.

1135 *Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 January 2010), **CLA-92**, para. 263.

1136 *Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 January 2010), **CLA-92**, para. 356.

1137 *Lemire v Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 January 2010), **CLA-92**, para. 356.

1138 *Glamis v United States*, Award (8 June 2009), **CLA-74**, para. 626 (emphasis in original).

1139 Statement of Claim, para. 540.

asserts that "[t]*hese acts were, without any doubt, what tribunals have repeatedly held constitutes bad faith on the part of a host State*".[1140]

403. To the contrary, none of cases Mr Bahari cites actually found that the State had acted in bad faith:

(a) In *Bear Creek*, where Mr Bahari makes the basic error of citing a proposition appearing under the "Claimant's Arguments" section of the Award as a finding of the tribunal,[1141] the tribunal considered there was no need to make any finding regarding FET in the light of its other conclusions,[1142] as was the case in the *UP and CD v Hungary* case (where Mr Bahari similarly cites a proposition put forth by the claimant as a finding of the tribunal).[1143]

(b) In *Siag v Egypt*, the tribunal made no independent finding that Egypt had acted in bad faith, but merely described good faith as a "*useful yardstick by which to measure the* [FET] *standard*", which encompassed "*such notions as transparency, protection of legitimate expectations, due process, freedom from discrimination and freedom from coercion and harassment*".[1144]

(c) The discussion in *Phoenix Action* concerning good faith was not in relation to FET at all, but the general principle of good faith in international law, as applicable to the manner in which investors make their investment.[1145] In that context, the tribunal found that Phoenix had engaged in an abuse of rights because the investment was "*an artificial transaction to gain access to ICSID*".[1146] It was not a finding on the meaning or application of the FET standard.

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1140 Statement of Claim, para. 540.

1141 *Bear Creek Mining Corporation v Republic of Peru*, ICSID Case No. ARB/14/21, Award (30 November 2017), **CLA-53**, paras. 517-528; Statement of Claim, para. 534 citing *Bear Creek,* para. 524.

1142 *Bear Creek Mining Corporation v Republic of Peru*, ICSID Case No. ARB/14/21, Award (30 November 2017), **CLA-53**, para. 533.

1143 *UP and CD Holding v Hungary*, ICSID Case No. ARB/13/35, Award (9 October 2018), **CLA-101**, paras 443, 493.

1144 *Siag and ors v Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009), **CLA-98**, para. 450.

1145 *Phoenix v Czech Republic*, ICSID Case No. ARB/06/5, Award (15 April 2009), **CLA-99**, para. 106-113.

1146 *Phoenix v Czech Republic*, ICSID Case No. ARB/06/5, Award (15 April 2009), **CLA-99**, para. 143.

(d) In *Oostergetel v Slovakia* the tribunal concluded that "*the State organs did not act in bad faith… The purpose behind the actions of the public organs involved in this case i.e. the collection of overdue taxes, was undoubtedly legitimate*".[1147]

(e) In *Waste Management*, the tribunal concluded that the claimant could not prove that the State had failed to act in good faith when (among other things) "*there are sufficient reasons to explain the collapse of the concession*" and "*there is no need to resort to conspiracy theories, unsupported by solid evidence*".[1148]

(f) The *Casinos Austria* decision cited is a decision on jurisdiction which only notes in passing that FET requires "*public authorities to administer the applicable law in good faith*" but makes no findings that the State acted in bad faith.[1149]

(g) In *Muszynianka v Slovakia*, the tribunal said that "*FET implies that State authorities are under an obligation to act in good faith in accordance with the law that governs them*"[1150] but, "[c]*ontrary to the Claimant's submissions, the record d*[id] *not indicate that the Constitutional Amendment was discriminatory or was otherwise adopted in bad faith*".[1151]

404. Finally, Mr Bahari claims, "*unfair motives of expulsion, if proven, are capable of founding a* [FET] *claim*".[1152] It is not clear what (if anything) this has to do with the requirement to act in "good faith", but nevertheless Mr Bahari would be required to prove that he was indeed expelled, and if so, there was a motive behind his expulsion that was unfair. For the reasons set out at paragraphs 264 to 266 above, he can prove neither.

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1147 *Oostergetel and ors v Slovakia*, UNCITRAL, Final Award (23 April 2012), **CLA-100**, para. 301.

1148 *Waste Management v Mexico*, ICSID Case No. ARB(AF)/00/3, Final Award (30 April 2004), **CLA-86**, para. 139.

1149 *Casinos Austria v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction (29 June 2018), **CLA-59**, para. 244.

1150 *Muszynianka v. Slovakia*, PCA Case No. 2017-08/AA629, Award (7 October 2020), **CLA-69**, para. 467.

1151 *Muszynianka v. Slovakia*, PCA Case No. 2017-08/AA629, Award (7 October 2020), **CLA-69**, para. 550.

1152 Statement of Claim, para. 539, citing *Bayindir v Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction (14 November 2005), **CLA-104**.

## III. AZERBAIJAN HAS NOT BREACHED ANY OBLIGATION TO ACCORD FULL PROTECTION AND SECURITY

405. For the reasons set out at PART 2III.D above, Azerbaijan does not owe any obligation of FPS to Mr Bahari. Should the Tribunal find (contrary to the Respondent's primary position) that it does, Azerbaijan has not breached such obligation.

406. As to the physical protection afforded by FPS:

(a) Mr Bahari claims that the FPS standard is breached by his "*forcibl*[e] *det*[ention] and … *exp*[ulsion]" from Azerbaijan.[1153] There is no evidence that this happened in reality, for the reasons set out in PART 3V.C above. Even if there was however, such action took place before the Treaty came into force and cannot form the basis of a breach of Treaty.

(b) Mr Bahari relies also on the alleged "*physical*[] *assault*[]" and "*det*[ention]" of Mr Moghaddam, which are also unproven for the reasons set out at paragraph 352 above, and in any event took place before the Treaty came into force.

(c) As to Mr Moghaddam's arrest and imprisonment in 2009, this had nothing to do with Mr Bahari for the reasons set out at paragraphs 354 to 358 above. Further and in any event, Mr Moghaddam is not entitled to FPS: it is Mr Bahari's "investments" which are entitled to FPS,[1154] and any action against Mr Moghaddam was not action against Mr Bahari's investments, given Mr Moghaddam was not employed by Caspian Fish or Coolak Baku.[1155]

407. It is not accepted that "*full protection and security extends to legal protection and security*".[1156] While some tribunals have found that to be so, that is a radical position, which departs from the traditional meaning of FPS, as well as the vast majority of tribunals, which have concluded that FPS concerns physical security only.[1157]

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1153 Statement of Claim, para. 568.

1154 Statement of Claim, para. 544.

1155 *See Enron Creditors Recovery Corporation and ors v Argentina*, ICSID Case No. ARB/01/3 (Award, 22 May 2007), **CLA-77** paras. 286-287 (FPS applies only in the context of the "company's officials, employees or facilities").

1156 Statement of Claim, section VII.B(5).

1157 *Saluka Investments BV v Czech Republic*, PCA Case No. 2001-04, Partial Award (17 March 2006), **CLA-56**, para. 484; *Olin Holdings Limited v Libya*, ICC Case No. 20355/MCP, Final Award (25 May 2018),

408. Without prejudice to that position, Mr Bahari has also failed to identify any authority to support his claims that "*threat*[s] *and intimidat*[ion]… [to] *hinder Mr. Bahari from investigating the disposition of his investments*" constitute a breach of the FPS standard.[1158] The authorities he cites establish that the State is under an obligation to "*make a functioning system of courts and legal remedies available to the investor*".[1159] Save for the proceedings concerning Ayna Sultan addressed in section PART 3VI.B above, in relation to which Mr Bahari was granted full access to the Respondent's legal system, but chose not to participate, at no point did Mr Bahari in fact attempt to bring a case in the Azerbaijani courts. He cannot seriously assert, without having actually attempted to file a case, that there was no system of legal remedies available to him. Moreover, the suggestion that he was too intimidated to do so is not credible in the light of the proceedings he in fact brought concerning Ayna Sultan. Finally, it is worth emphasising that it remains entirely unclear what claim Mr Bahari considers he might bring in Azerbaijan, when the majority of his complaint appears to relate to the conduct of third parties that is presumably within the jurisdiction of the BVI Courts.

409. The suggestion that there was a "*positive obligation*" on Azerbaijan to "*address the physical and legal seizure of Mr. Bahari's investments*" is mistaken.[1160] Leaving aside the fact there was no seizure of Shuvalan Sugar, Coolak Baku, Ayna Sultan or the carpets, and any "seizure" of Caspian Fish (which is denied) concerned Mr Bahari's shares in the BVI, there is once again no authority that Mr Bahari can rely on to support his allegation of a so-called "*positive obligation*".

410. Similarly, Mr Bahari claims, without reference to any authority, that Azerbaijan "*chose not to apply its own laws that would have offered Mr. Bahari protection*", ostensibly on the basis that the Ministry of Justice "*failed in its oversight role of registered legal entities in Azerbaijan, and never investigated the glaring discrepancy of Mr. Bahari's ouster*".[1161] These submissions are nothing short of astonishing. The Claimant cannot

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**RLA-169**, paras 362-366; *MTS v Turkmenistan* (II) ICSID Award, 14 June 2023, **RLA-170**, para. 395; *IMFA v Indonesia* PCA Final Award, 29 March 2019, **RLA-171**, para. 267 and cases cited therein.

1158 Statement of Claim, para. 568.

1159 Statement of Claim, para. 560, citing *Frontier Petroleum v Czech Republic*, PCA Case No. 2008-09, Final Award (12 November 2010), **CLA-123**, paras 263, 273.

1160 Statement of Claim, para. 569.

1161 Statement of Claim, para. 570. Similar submissions are made with respect to the Antitrust Authority at paras 571-572.

cite any authority for these wholly illogical propositions, the result of which would be to require a vast range of Governmental entities (but at a minimum, the Ministry of Justice) to investigate continuously the circumstances of routine administrative corporate actions, indeed in the absence of any specific issue being drawn to their attention. The relevant Ministries only have the powers afforded to them under law; they do not have the powers of investigation and intervention that Mr Bahari alleges.[1162] Although there is no authority that comes close to what the Claimant is suggesting, in the *Frontier* case he cites, the tribunal actually rejected the suggestion that "*government officials wrongfully failed to take action when alerted to the delay at the Regional Court*", because those officials "*were not under an obligation to intervene in court proceedings between private parties*" and no right of the claimant could be said to have been breached.[1163] Even in that case, the government officials had been alerted that there was potentially an issue with the relevant proceedings.

411. Critically, Mr Bahari recognises these claims required "*Azerbaijan to be aware of the unlawful seizure and taking of Mr. Bahari's investments*".[1164] For the reasons set out in section PART 2III.C.3 above, in no sense can it be said that Azerbaijan obtained an awareness of any what had allegedly happened to Mr Bahari's investments in a manner that would qualify to establish a breach of the FPS standard.

## IV. AZERBAIJAN HAS NOT EXPROPRIATED MR BAHARI'S INVESTMENTS

412. In characteristic fashion, Mr Bahari's expropriation claim is made without sound analysis. While he makes a number of broad ranging propositions of law,[1165] he fails to apply those principles to the facts of this case. He claims: that it is simply "*self-evident*" that there was an expropriation,[1166] when it is not; that the "*facts of the expropriation speak for themselves*", when the facts say nothing to support him; and that his "*claim for expropriation is one of* res ipsa loquitur – *what has happened is self-explanatory and incontrovertible*",[1167] which is a complete abandonment of legal

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1162 Mr Bahari has the burden of proof to establish otherwise.

1163 *Frontier Petroleum v Czech Republic*, PCA Case No. 2008-09, Final Award (12 November 2010), **CLA-123**, para. 337.

1164 Statement of Claim, para. 573.

1165 *See* Statement of Claim, paras 574-607.

1166 Statement of Claim, para. 582.

1167 Statement of Claim, para. 583.

precision. Bare assertions of breach supported by Latin maximums are no substitute for analytical pleading. Once again, Mr Bahari fails to identify how the facts he alleges (even if they could be made out) constitute expropriatory conduct.

413. Mr Bahari claims that there was no direct expropriation,[1168] but rather "*indirect expropriation through acts and omissions that accrued over time, until Mr. Bahari could no longer control or receive any economic benefit from his investments, and thus was substantially deprived of the same*".[1169] Those acts are described as:

(a) "*Azerbaijan expelled Mr. Bahari from Azerbaijan and prevented him from returning*".[1170] That is not true. Mr Bahari travelled to and from Azerbaijan throughout 2001, after the alleged expulsion in March, and Mr Bahari is unable to prove this allegation for the reasons set out at paragraphs 264 to 266 above;

(b) "*Azerbaijan repeatedly threatened and intimidated Mr. Bahari, including through his in-country employee and legal counsel*".[1171] There is no evidence of such threats and intimidation, let alone repeated instances, and Mr Bahari is unable to prove these allegations for the reasons set out at in section PART 3VIII above; and

(c) "*Azerbaijan facilitated and allowed*" the "*transfer*[] *to third parties using the State apparatus*" of (i) "*Caspian Fish (BVI)'s shareholding to daughters of* [the] P*resident*", (ii) "*Caspian Fish (BVI)'s assets… to* [the LLC]", (iii) "*Coolak Baku's assets… to ASFAN*", (iv) "*Shuvalan Sugar's assets to an Azeri company called Shuvalan Shirniyat JSC*", (v) "*Mr. Bahari's ownership of the Ayna Sultan property to unknown third parties*" and (vi) "*Mr. Bahari's Persian Carpets to unknown third parties*".[1172] Each of these factual allegations are wholly unproven: Azerbaijan had nothing to do with the transfer of any BVI shareholding; the LLC was a wholly owned subsidiary of BVI Co, which itself never held any assets in Azerbaijan besides the shares of the LLC;[1173] Coolak

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1168 Statement of Claim, para. 595.

1169 Statement of Claim, para. 608.

1170 Statement of Claim, para. 609.

1171 Statement of Claim, para. 610.

1172 Statement of Claim, para. 613.

1173 See PART 3V.B.2 above.

Baku did not have assets that were transferred to ASFAN;[1174] Shuvalan Sugar, which was not even a legal entity, had no assets capable of transfer and Shuvalan Shirniyat is an unrelated company;[1175] Ayna Sultan was sold by Mr Bahari to Mr Gambarov before he left Azerbaijan;[1176] and the carpets were shipped to Mr Bahari in Dubai.[1177]

414. Assuming that Mr Bahari can establish these allegations as a matter of fact (which is denied), Mr Bahari's primary claim is that "[e]*ach of these affirmative acts or omissions by the Azeri Government substantially deprived Mr. Bahari of his investments*", or in the alternative they "*combined and cumulative*[ly]" amount to an indirect expropriation.[1178] None of Mr Bahari's claims can succeed.

415. First, as to the claim based on Mr Bahari's expulsion, the alleged expulsion took place before the Treaty entered into force. It accordingly cannot form a factual basis for a breach of Treaty for the reasons described in section PART 2III.A.1 above. Insofar as Mr Bahari alleges that his alleged continuing *persona non grata* status (which is denied) constitutes an expropriation, expropriation, by its nature, is not a continuing act.[1179] It happens at the moment there is a taking of the property, and, on Mr Bahari's case that act would be the moment at which the alleged status was imposed. Again, this predates the entry into force of the Treaty.

416. Second, as to the claims concerning a transfer of assets, as Mr Bahari himself recognises, what is required is a sovereign interference in the investor's rights.[1180] A mere commercial act, even if attributable to the State, will not suffice if taken in the state's commercial capacity.[1181] While Mr Bahari submits that expropriation can occur

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1174 See PART 3III above.

1175 See PART 3IV above.

1176 See PART 3VI.A above.

1177 See PART 3VII.B above.

1178 Notably, elsewhere Mr Bahari claims that "[a]s a singular act, however, Mr. Bahari's expulsion from Azerbaijan did in itself rise to the level of a direct expropriation" (Statement of Claim, para. 591). P

1179 *Pey Casado and ors v Chile (I)*, ICSID Case No ARB/98/2, Award (8 May 2008), **RLA-135**, para. 608 (informal translation: "… expropriation [is] an instantaneous act that does not create a continuous situation of 'deprivation of right'.")

1180 Statement of Claim, para. 613.

1181 *Impregilo SpA v Islamic Republic of Pakistan,* ICSID Case No ARB/03/3, Decision on Jurisdiction (22 April 2005), **RLA-134**, para. 281 ("[O]nly measures taken by Pakistan in the exercise of its sovereign

through State actions as well as omissions, relying on *CME* and *Eureko* for the propositions that "*inaction*" or a "*failure… to act*" can constitute expropriation, he does not engage in any discussion of the circumstances in which the tribunals' conclusions were drawn. In *CME*, the actions and inactions of the relevant Czech licensing authority were taken together as a whole, where the specific inaction concerned the authority's failure to respond to a request for clarification of the legal situation in the context of an ongoing dispute about the licensee's exclusivity arrangements.[1182]

417. Similarly in *Eureko*, the tribunal considered the "*acts and omissions… assessing the whole of the conduct and misconduct of the Respondent*".[1183] Specific inaction in this context included a refusal by the State to sign a prospectus to give the claimant an additional share in the State-owned insurance company in spite of the terms of the original privatisation strategy that the government had committed to.[1184]

418. The present facts bear no resemblance to the treaty cases in which expropriation has been found on the basis of omissions. To the extent therefore that Mr Bahari relies on the matters set out in section V of the Statement of Claim with respect to his claims that the transfer of his alleged investments constituted an expropriation,[1185] Mr Bahari's claims are bound to fail. None of the alleged conduct, specifically the Ministry of Justice's alleged failure "*to intervene and stop*" the alleged transfers,[1186] or the Antitrust Authority's failure to "*prevent*[] *the transfer of the investment's shares and assets*",[1187] but also the suggestion that "*the State organs were necessarily involved in facilitating and approving the ensuing corporate and asset transfers*"[1188] can amount to an expropriation.

419. As explained by the tribunal in *Olguín*:

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power ('puissance publique'), and not decisions taken in the implementation or performance of the Contracts, may be considered as measures having an effect equivalent to expropriation.").

1182 *CME v Czech Republic*, UNCITRAL, Partial Award (13 September 2001), **CLA-153**, paras 559-574.

1183 *Eureko v Poland*, Partial Award, 19 August 2005, **CLA-65**, para. 227.

1184 *Eureko v Poland*, Partial Award, 19 August 2005, **CLA-65**, para. 211.

1185 Again, the pleading is not clear because Mr Bahari does not expressly link section V of the Statement of Claim to his complaints regarding expropriation.

1186 Statement of Claim, para. 398.

1187 Statement of Claim, section V.3.

1188 Statement of Claim, para. 428.

> For an expropriation to occur, there must be actions that can be considered reasonably appropriate for producing the effect of depriving the affected party of the property it owns, in such a way that whoever performs those actions will acquire, directly or indirectly, control, or at least the fruits of the expropriated property. Expropriation therefore requires a teleologically driven action for it to occur; omissions, however egregious they may be, are not sufficient for it to take place.[1189]

420. The alleged acts concerning a transfer of which Mr Bahari complains do not any such purposive action. Indeed, the alleged transfer of a shareholding in the BVI does not involve the State of Azerbaijan's sovereign powers at all. As to alleged transfers which took place in Azerbaijan, the actions of the State authorities were not driven by the purpose of taking or facilitating the taking of Mr Bahari's alleged investments.

421. Third, as to the alleged conduct not yet addressed above, namely threats and intimidation to hinder his access to his investments, Mr Bahari does not identify how any such conduct resulted in a "substantial deprivation" of Mr Bahari's investment. Any deprivation occurred, on Mr Bahari's case, at the time he was allegedly expelled from the country and prevented from returning. On his case, it was not the fact of being prevented from obtaining information about his investments that deprived him of them: as early as June 2001, when the first alleged assault on Mr Moghaddam was made as a "[redacted]",[1190] a decision had already been taken that Mr Bahari would not have access to his investments, and each alleged attempt by Mr Bahari thereafter to do so was thwarted. If Mr Bahari's allegations are to be believed at all, it was at this time, before the Treaty entered into force, that any claim arose.

422. In the interests of economy, and given Mr Bahari makes no specific claim in relation to his submissions on the various cases he recites at paragraphs 576 to 581, 585, 587 to 589 and 596 to 607 of the Statement of Claim, Azerbaijan does not respond to Mr Bahari's summary of each and every case cited, but insofar as they have not been addressed, his propositions should not be taken to be accepted by Azerbaijan. Azerbaijan notes, however, that:

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1189 *Olguín v Paraguay*, ICSID Case No. ARB/98/5, Award (26 July 2001), **RLA-172**, para. 84 **(**emphasis added).

1190 Bahari Statement, para. 77.

(a) Insofar as Mr Bahari relies on *Biloune v Ghana* for the proposition that "*contact* [sic] *rights could be expropriated*",[1191] that case concerned the expropriation of concession rights under a contract between the investor and an agency of the Ghanaian government.[1192] No such rights exist in the present case; and

(b) Insofar as Mr Bahari relies on *Tidewater* for the proposition that "*intangible rights, such as goodwill, know-how, trademarks… are capable of being expropriated*",[1193] the tribunal concluded in that case that the property right capable of expropriation was the company established under Venezuelan law,[1194] and "other factors"[1195] (such as goodwill, know-how and other tangible and intangible assets including contractual rights)[1196] may be relevant to quantum but were not the property right for the purposes of the expropriation claim.[1197] The findings of the tribunal in that case does not therefore support the conclusions Mr Bahari draws. As to his reliance of *Philip Morris*, that case concerned thirteen trademark variants, which the tribunal described as property under Uruguayan law, "*their use by the registered owner* [being] *protected*".[1198] It therefore concluded that the claimants had "*property rights regarding their trademarks capable of being expropriated*".[1199] No such trademarks (or indeed any intangible right under Azerbaijani law) has been pleaded or in fact exists in this case.

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1191 Statement of Claim, para. 580.

1192 *Biloune v Ghana*, UNCITRAL, Award on Jurisdiction and Liability (27 October 1989), **CLA-140**, paras. 19, 29.

1193 Statement of Claim, para. 581.

1194 *Tidewater v Venezuela*, ICSID Case No. ARB/10/5, Award (13 March 2015), **CLA-138**, para. 119-120.

1195 *Tidewater v Venezuela*, ICSID Case No. ARB/10/5, Award (13 March 2015), **CLA-138**, para. 120.

1196 *Tidewater v Venezuela*, ICSID Case No. ARB/10/5, Award (13 March 2015), **CLA-138**, para. 118.

1197 *Tidewater v Venezuela*, ICSID Case No. ARB/10/5, Award (13 March 2015), **CLA-138**, para. 120.

1198 *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para. 273.

1199 *Philip Morris v Uruguay*, ICSID Case No. ARB/10/7, Award (8 July 2016), **CLA-141**, para. 274.

## V. DAMAGES AND QUANTUM

423. The Claimant alleges loss in respect of "*the entire value of his investments in Azerbaijan*".[1200] He seeks full reparation, as well as an award of moral damages.[1201]

424. For all of the reasons set out above in this brief, Mr Bahari is not entitled to damages. Should the Tribunal nevertheless consider, contrary to Azerbaijan's case, that it has jurisdiction to determine the claims, that the conduct complained of is attributable to Azerbaijan, and that Azerbaijan has breached the Treaty, Mr Bahari's claim for compensation and moral damages is not supported and must fail for the reasons set out in the following sections.

### A. There is no causal link between Azerbaijan's allegedly wrongful acts and Mr Bahari's alleged loss

425. It is an established principle in investment treaty arbitration that damages for any violation of the Treaty, whether in the context of unlawful expropriation or the breach of any other Treaty standard, will only be due if there is a sufficient causal link between the actual breach of the Treaty and the loss sustained by the Claimant.[1202]

426. The Claimant bears the burden of establishing a causal link between the conduct of the State and its alleged loss.[1203] It is not sufficient (although it is necessary) for the Claimant to show merely a connection between the actions of the State and the alleged injury, i.e. "but for" causation.[1204] A claimant must also demonstrate that the State's actions were the proximate cause of its injury, i.e. legal causation.[1205] This finding is

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1200 Statement of Claim, para. 617.

1201 Statement of Claim, para. 704.

1202 *See Biwater v Tanzania,* ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127***,* para. 779; Commentary to ILC Articles, **CLA-37**, Art. 31, cmt. 9.

1203 *Kardassopoulos v Georgia*, ICSID Case No. ARB/05/18, Award (3 Mar. 2010)*,* **CLA-165**, para. 453 ("the Claimants hold the burden of proving their loss in accordance with international law principles of causation"); S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, p. 162.

1204 Causation in fact addresses the question: "would the harm have occurred but for the unlawful conduct?". *See* S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, p. 135.

1205 *Biwater v Tanzania,* ICSID Case No. ARB/05/22, Award (24 July 2008), **CLA-127***,* para. 785 ("The requirement of causation comprises a number of different elements, including (inter alia) (a) a *sufficient* link between the wrongful act and the damage in question, and (b) a threshold beyond which damage, albeit linked to the wrongful act, is considered too indirect or remote").

affirmed by the commentary to the ILC Articles and has also been endorsed in arbitral practice.[1206] For example, in *Lauder v. Czech Republic*, the Tribunal found that:[1207]

> The question therefore arises if the breach by the Respondent of its Treaty obligations gives rise to any damages to be paid to the Claimant. … Even if the breach therefore constitutes one of several "sine qua non" acts, this alone is not sufficient. In order to come to a finding of a compensable damage it is also necessary that there existed no intervening cause for the damage.

427. This requirement of causation also stems from the standard of reparation under customary international law, which must:[1208]

> as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.

428. In the present case, there is no causal link between the Respondent's allegedly wrongful conduct and the Claimant's alleged heads of loss:

(a) Specifically with respect to "*Mr. Bahari's 40% shareholding in Caspian Fish*",[1209] Mr Bahari cannot establish that any alleged loss suffered was caused by Azerbaijan in circumstances where the actual transfer of his shareholding in Caspian Fish was actioned out by third parties whose conduct is not attributable to Azerbaijan, took place in the BVI, and was brought about by changes recorded in the BVI share registry. These acts broke the chain of causation.

(b) At a minimum with respect to Ayna Sultan (but also the other investments, insofar as the Tribunal finds that there was no conduct by Azerbaijan to deprive him of the enjoyment of his investments) it was Mr Bahari's own failure to pursue his interests that led to his loss. Thus, Mr Bahari's own actions broke the chain of causation when he voluntarily decided to abandon any attempt to reclaim his interest in Ayna Sultan.

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1206 *See* Commentary to ILC Articles, **CLA-37**, Art. 31, cmt. 10; *see also* Myers v Canada, UNCITRAL, Second Partial Award (21 Oct. 2002), **RLA-173**, para. 140.

1207 *Lauder v Czech Republic*, UNCITRAL, Final Award (3 Sept. 2001), **RLA-174**, para. 234.

1208 *Factory at Chorzów (Germany v Poland)*, Judgment, 1928 P.C.I.J. (ser. A.) No. 17, **CLA-162**, p. 47.

1209 Statement of Claim, para. 662.

### B. Any sum awarded must be reduced by sums received by Mr Bahari for his interest in Caspian Fish

429. Should the Tribunal find that Mr Bahari was forced to sell his shares in Caspian Fish at undervalue, and that he is entitled to damages, any sums already received by Mr Bahari for the sale of his interest in Caspian Fish should be offset against any damages awarded. This is a reflection of the principles enunciated in the *Chorzów Factory* decision (as set out at paragraph 427 above) and concluded:

> In essence, the Tribunal's "but for" analysis must undo not only the damages that have arisen for the Claimants but for the wrong, but must also restore the liabilities that were avoided but for the wrong.[1210]

430. On Mr Bahari's own admission he received a minimum of USD 5,361,000 for his interest in Caspian Fish.[1211]

### C. On Mr Bahari's case, the alleged breach occurred before the Treaty entered into force

431. Mr Bahari's case is that there has been a "*composite breach*", arising from a "*series of acts or omissions or course of conduct*".[1212] He then goes on to state that he "*quantifies damages he has incurred as a result of Azerbaijan's Treaty breaches as of 1 January 2003*", which he describes as "*the date on which Azerbaijan is deemed to have* [breached the Treaty]".[1213] Thus, Mr Bahari claims, he "*is* [] *entitled to pre-award interest from 1 January 2003*".[1214]

432. The effect of Mr Bahari's submission on the valuation date is that while Mr Bahari's quantum experts conclude that at their highest Mr Bahari's investments were worth a total of approximately USD 144 million as at 1 January 2003, the interest (based on Azerbaijan's sovereign rate of borrowing) is worth an eyewatering USD 655 million.[1215] This figure vastly exceeds any true level of compensation. Azerbaijan does

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1210 *Chevron v Ecuador*, PCA Case No. AA 277, UNCITRAL, Final Award (31 August 2011), **RLA-175**, para. 308 (emphasis added), relying upon *Factory at Chorzów (Germany v Poland)*, Judgment, 1928 P.C.I.J. (ser. A.) No. 17, **CLA-162**, p. 47.

1211 Email from Mr Bahari to A Kalantarli, copied to President's Office dated 4 December 2013, **R-53**.

1212 Statement of Claim, paras 630-631.

1213 Statement of Claim, para. 641.

1214 Statement of Claim, para. 641.

1215 Secretariat Report, p. 10, Table 3, "Summary of Claimant's Ex-Ante Damages Calculation", "Nominal Losses column, the sum of "Market Approach" for Caspian Fish and Persian Carpets and "Amounts Invested Approach" for Coolak Baku and Shuvalan Sugar.

not accept that Mr Bahari is entitled to any pre-Award interest on sums awarded for the reasons set out below.

433. Even if he was, however, Mr Bahari's submissions on the valuation date from when he claims interest should run reveal a fundamental inconsistency with his pleaded case because they implicitly recognise that that the alleged breach of Treaty took place before the Treaty entered into force (see at section PART 2III.A above).

434. Thus, Mr Bahari acknowledges that "*where there is a composite breach, restitution requires re-establishing the status quo ante to the situation as it was before the wrongful act, or compensation in the amount of the value of the investment immediately prior to the first act in the series*".[1216] His choice of valuation date of 1 January 2003, however, indicates that the *only* relevant acts upon which Mr Bahari relies to establish a breach of Treaty pre-date January 2003. None of the post-January 2003 acts are said independently or together to comprise a breach of Treaty. To the contrary, each of Mr Bahari's allegations of breach of Treaty involve some combination of acts pre-dating the Treaty's entry into force. And as he himself acknowledges, in the case of composite acts, the "*breach is dated to the first of the acts in the series*".[1217] The first of these "acts", and thus the breach, accordingly took place before the Treaty came into force.

435. Mr Bahari also offers what he described as an "ex-post" analysis (a "*current valuation date*"), on the basis that "*should additional information on Claimant's investments become available*", he is "*entitled to the higher of the damages calculated under either of these two frameworks*".[1218] These submissions are plainly opportunistic, as opposed to being grounded in any legal analysis. Mr Bahari's valuation experts conclude they are anyway only "*partially*" able to implement the ex post framework for Caspian Fish,[1219] but apparently Mr Bahari optimistically anticipates receiving information that would lead to a higher valuation than under the ex ante framework.

436. Mr Bahari offers no explanation for how his attempt to use the ex post framework squares with Article 4(2) of the Treaty, however, which provides that "[c]*ompensation should be equivalent to the market value of the expropriated investment immediately*

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1216 Statement of Claim, para. 633.

1217 Statement of Claim, para. 632.

1218 Statement of Claim, para. 654.

1219 Secretariat Report, para. 6.4.

*before the expropriatory action was taken or became known*".[1220] Notably, in the authority he relies on, *Karkey Karadenis*, the tribunal concluded that the ex post valuation was "*too often speculative and too often based on insufficient evidence*", and therefore used the ex ante valuation "*because the Tribunal found it more reliable*".[1221]

### D. The quantum of Mr Bahari's alleged loss is unproven

437. The Claimant bears the burden of proving the quantum of his alleged damages.[1222] As the Tribunal in *Joseph Charles Lemire v Ukraine* explained, it is one of the "*best settled rules of the law of international responsibility of States*" that no reparation for speculative or uncertain damages can be awarded:

> [I]t is a commonly accepted standard for awarding forward looking compensation that damages must not be speculative or uncertain, but proved with reasonable certainty. … Claimant … needs to provide a basis upon which the Tribunal can, with reasonable confidence, estimate the extent of the loss.[1223]

438. Mr Bahari suggests that there is distinction between the "*proving the fact of the loss and the amount of the loss*", with a lower standard of proof for the latter, whereby the "*a claimant need only provide a basis upon which* [it] *can* [be] *reasonably estimate*[d]".[1224] These conclusions are unsound for the reasons set out in the following paragraphs.

439. First, Mr Bahari relies on Ripinsky. However, Ripinsky does not support the points he makes. Ripinsky in fact states that "[t]*he cornerstone principle that determines the recoverability of lost profits is whether they can be established with reasonable*

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1220 Treaty, **CLA-1**, Article 4(2). In *CC/Devas v India*, PCA Case No. 2013-09 Award on Quantum (13 October 2020), paras 196, 199 ("Both Parties appear to agree that the valuation date should be immediately before the announcement of the Indian Cabinet Committee on Security ('CCS') decision of February 17, 2011… This approach is found specifically in Article 6(1) of the Treaty in relation to valuing property that has been expropriated. It says, in part, '[s]uch compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge.'").

1221 *Karadeniz v Pakistan*, ICSID Case No. ARB/13/1, Award (22 August 2017), **CLA-175**, para. 670.

1222 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, p. 162.

1223 *Lemire v Ukraine*, ICSID Case No. ARB/06/18, Award (28 Mar. 2011), **CLA-181**, para. 246; *Amoco v Iran*, Partial Award (14 July 1987), 15 Iran-US CTR 189, **RLA-176**, para. 238; Commentary to ILC Articles, **CLA-37**, Art. 36, cmt. 27 ("In cases where lost future profits have been awarded, it has been where an anticipated income stream has attained sufficient attributes to be considered a legally protected interest of sufficient certainty to be compensable").

1224 Statement of Claim, para. 646.

*certainty*".[1225] The section of Ripinksy upon which Mr Bahari relies refers to a case that confirms that absolute, as opposed to reasonable, "certainty" is not required. That is not controversial.[1226] It also refers to Gotanda, who summarises "*municipal practices*" that have no application here,[1227] and *Vivendi*, which discusses only the requisite standard for establishing the fact of profitability, without opining on the standard for establishing the amount of the loss.[1228] As Ripinsky in fact notes, many tribunals have not accepted the approach proposed by Mr Bahari on the basis that if it is impossible to quantify profits, it is an indication that the fact of a loss of profits has not been demonstrated with certainty,[1229] and should be rejected as unproven.

440. Second, as to Mr Bahari's suggestion that in *Vivendi* the tribunal "*relied in the absence of documentary evidence, on the testimony of two witnesses (accepting, inter alia, that the claimant had made an initial capital investment of $ 30 million, on the sole basis of a single witness affidavit)*",[1230] apparently Mr Bahari seeks to draw an analogy from the evidence submitted in those proceedings with the evidence in these proceeding, as opposed to providing any reasoned submission on the legal standard applied by the tribunal in *Vivendi*. In any event, Mr Bahari's submissions that there was no documentary evidence are entirely misconceived: among other things, the USD 30 million sum had been "*certified by CAA's independent auditors and recorded in CAA's shareholders' register*".[1231] No such documentary record exists in the present case.

441. Third, the *Gemplus* case Mr Bahari cites in support of the proposition that the evidential standard can be relaxed on that basis that "*the respondent State should not be rewarded*

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1225 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, p. 280 ("The cornerstone principle that determines the recoverability of lost profits is whether they can be established with reasonable certainty").

1226 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, internal p. 165 citing *SPP v Egypt*: "the fact that damages cannot be assessed with certainty is no reason not to award damages when a loss had been incurred" (emphasis added).

1227 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, internal p. 165.

1228 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, internal p. 16.

1229 S. Ripinsky and K. Williams, *Damages in International Investment Law* (BIICL, London 2008), **CLA-170**, internal p. 165, n. 229.

1230 Statement of Claim, para. 647.

1231 *Vivendi v Argentina I*, ICSID Case No. ARB/97/3, Award (20 August 2007), **CLA-49**, para. 5.6.8.

*for its misdeeds*"[1232] is completely inapposite: once again, Mr Bahari selectively cites from the pleading without any analysis of its application to the facts. In *Gemplus*, the premature termination of the relevant concession meant there was no existing project whose profits could be assessed.[1233] That is not the case here, where the alleged investments continued to operate at least for a time after Mr Bahari departed Azerbaijan.

442. Fourth and finally, the suggestion that Mr Bahari has adduced sufficient evidence to raise a presumption such that the burden is on Azerbaijan to disprove the quantum of his claims[1234] is absurd. Mr Bahari has failed to discharge his burden of proof at all, which remains upon him at all times. As explained by Dr Shi in her reports, it is not possible to value of Caspian Fish, Coolak Baku or Shuvalan Sugar on any of the approaches taken by Secretariat.[1235]

### 1. Mr Bahari has failed to prove the quantum of his alleged loss in relation to Caspian Fish

443. The Claimant's valuation experts, Secretariat, proffer two bases for valuing Caspian Fish:

(a) the "Market Approach", which is described as requiring (i) an identification of "[redacted]" and (ii) computing "[redacted]" that "[redacted]" to determine and apply an appropriate multiple for the subject company;[1236] and

(b) the "Amounts Invested Approach", which is explained on the basis that "[redacted]

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1232 Statement of Claim, para. 648.

1233 *Gemplus v Mexico*, ICSID Case No.ARB(AF)/04/3, Award (16 June 2010), **CLA-156**, para. 13-92 ("If there had been no such breaches, the Concessionaire would have had an opportunity to restore the project, as originally envisaged; and it could then have been seen, as actual facts, whether and, if so, to what extent the restored project would have been profitable for the Concessionaire and, indirectly, the Claimants.").

1234 Statement of Claim, para. 649.

1235 Shi Report, paras. 1.24, 1.30-1.31, 1.35.

1236 Secretariat Report, para. 4.24.

[redacted]". [1237]

444. As to the Market Approach, Secretariat estimate that the value of Mr Bahari's interest in the ex ante scenario based on their assessment of comparable publicly traded companies is "[redacted]", [1238] and in the ex post scenario "[redacted]" [1239] As set out in the Shi Report, Secretariat's conclusions are based on numerous flaws, "[redacted]". [1240]

(a) The companies identified by Secretariat are not in fact comparable to Caspian Fish. They are from countries that are not comparable to Azerbaijan, [1241] or significantly older and more established, [1242] as well as much larger than Caspian Fish, [1243] or more vertically integrated and covering more industry segments that Caspian Fish. [1244]

(b) The valuation multiple used by Secretariat (of enterprise value to processing capacity) is inappropriate. As Secretariat itself notes, "[redacted]", [1245] which Dr Shi explains is "[redacted]" [1246] The capacity of a company is a poor proxy for the company's ability to generate revenues, as it does not account for capacity utilisation or

1237 Secretariat Report, para. 4.28.

1238 Secretariat Report, para. 5.17.

1239 Secretariat Report, para. 6.47.

1240 Shi Report, para. 4.14.

1241 Shi Report, para. 4.21.

1242 Shi Report, para. 4.24.

1243 Shi Report, para. 4.26.

1244 Shi Report, para. 4.28.

1245 Secretariat Report, para. 4.25.

1246 Shi Report, para. 4.29.

selling volume and price, nor does it account for costs needed for generating the revenues.[1247] While Secretariat itself acknowledges that the earnings/cash flow multiple is "[redacted]", it claims that given "[redacted]", it therefore cannot use a multiple of earnings, and has instead used a sector specific multiple of enterprise value to processing capacity, on the basis that "[redacted]".[1248] However, as Dr Shi notes, "[redacted][1249]

(c) As to the 300 tonne figure appearing on Caspian Fish's website, it is not a reliable indicator of Caspian Fish's processing capacity for the reasons set out at paragraph 311 above.[1250] Moreover, and in any event, as Dr Shi identifies, Secretariat's estimate of Caspian Fish's capacity is inconsistent with their estimates of the capacities of the companies that they identify as comparable.[1251] Half the comparable companies present a figure for final product capacity as opposed to input or raw material capacity;[1252] two of the comparable companies use capacities of certain segments only as opposed to all segments of the business;[1253] and the use of salmon-producing comparable companies in the absence of any caviar-producing companies fails to take into account the other products produced by Caspian Fish.[1254]

(d) Secretariat overestimates the equity value of Caspian Fish by unreasonably assuming no net debt for Caspian Fish.[1255] The evidence indicates that it did.[1256] A reasonable alternative, for example, would have been to use the average net

1247 Shi Report, para. 4.29-4.30.

1248 Secretariat Report, paras 4.30 to 4.31.

1249 Shi Report, para. 4.31.

1250 *See* Hasanov Statement, para. 35.

1251 Shi Report, para. 4.33.

1252 Shi Report, paras 4.34-4.36.

1253 Shi Report, paras 4.37-4.39.

1254 Shi Report, paras 4.40-4.41.

1255 Shi Report, para. 4.43.

1256 Sabutay Statement, para. 11.

debt level of comparable companies as a proxy of the likely debt level of Caspian Fish.[1257]

445. As to the Amounts Invested Approach, Secretariat concludes on the basis of "[redacted]" that Mr Bahari invested at least USD 44.418 million in Caspian Fish.[1258] For the reasons set out at section PART 2III.B.1 and in the Shi Report,[1259] Mr Bahari is unable to prove that he invested these amounts, if anything, into Caspian Fish. These claimed amounts are not established and should be rejected. Moreover, as Dr Shi explains in her report, a number of factors can make the application of the Amounts Invested Approach unreasonable, such as where "[redacted]".[1260] Precisely those types of factors are at issue in these proceedings, and the Amounts Invested Approach is not an appropriate valuation methodology.

**2. Mr Bahari has failed to prove the quantum of his alleged loss in relation to Coolak Baku and Shuvalan Sugar**

446. Secretariat applies an Amounts Invested Approach for Coolak Baku and Shuvalan Sugar, ostensibly on the basis that they do not have sufficient information to apply any other valuation approach.[1261] For the reasons set out at sections PART 2III.B.2 and PART 2III.B.3 and in the Shi Report,[1262] Mr Bahari is unable to prove that he invested these amounts, if anything, into Coolak Baku and Shuvalan Sugar.

**3. Mr Bahari has failed to prove the quantum of his alleged loss in relation to the carpets**

447. Secretariat applies the Market Approach for the carpets, based on Mr Iselin's analysis of comparable transactions using "[redacted]".[1263] The value arrived at is USD 6,228,103,

1257 Shi Report, para. 4.44.

1258 Secretariat Report, para. 5.52.

1259 Shi Report, paras 3.9-3.10 and Appendix 4.

1260 Shi Report, para. 3.6.

1261 Secretariat Report, paras 4.34 to 4.36.

1262 Shi Report, paras 2.7-2.13, 2.15, Appendix 3.

1263 Secretariat Report, para. 5.24.

which "[redacted]".[1264] According to Secretariat, the Amounts Invested Approach cannot be used as "[redacted]".[1265]

448. Azerbaijan has already noted above that most of the carpets in the Ledger are not "*Persian*". It assumes that Mr Bahari misinformed his advisers as to their origin, or they wrongly ascribed this description themselves. Leaving that error to one side, taking the Amounts Invested Approach first, it is unclear how Secretariat, who rely on the Iselin Report which includes, at its Appendix A, a professional translation of the Ledger containing a column described as "Price", has reached the conclusion that "*Mr Bahari does not currently have records which show amounts he paid for… the Persian carpets*".[1266] As explained in the Shi Report, based on the prices set out in this column of the Ledger, and the discount proposed by Azerbaijan's carpet expert Mr Hasanov, a reasonable estimate of the market value of the carpets based on the Amounts Invested Approach is USD 202,037 as at 1 January 2003, or USD 145,915 as at March 2023.[1267]

449. As to the Market Approach, Mr Iselin himself appears to concede that his valuation approach is problematic: he states that it presents "[redacted]"[1268] in circumstances where [redacted]"[1269] and if that is impossible, "[redacted]".[1270] Because neither physical inspection or photographs are available to him, he concedes that his valuation criteria "[redacted]".[1271]

450. There is not, however, a "certain" margin of error in the Iselin Report's conclusions. It is a significant and serious degree of error that leaves Mr Bahari's valuation of his carpets wholly unreliable. As Mr Hasanov concludes, "[redacted]

1264 Secretariat Report, para. 7.2.

1265 Secretariat Report, para. 4.37.

1266 Statement of Claim, para. 660.

1267 Shi Report, paras 5.10.

1268 Iselin Report, para. 39.

1269 Iselin Report, para. 40.

1270 Iselin Report, para. 43.

1271 Iselin Report, para. 49.

[redacted]" and Mr Iselin's conclusions are therefore "[redacted]".[1272]

451. Even if Mr Iselin's approach was an appropriate valuation methodology, the Shi Report explains that Mr Iselin's analysis is fraught with difficulties. Mr Iselin categorises the carpets and provides the basis for his valuation of each category as follows:

(a) "super-antique", which he says "[redacted]", but uses comparative auction prices to conclude that Mr Bahari "[redacted]";[1273]

(b) the remaining carpets, being "antique and semi-antique", or "modern", which are largely analysed on the basis of their size (or geographical origin, if specified),[1274] and to which he applies comparative auction prices at a "[redacted]"[1275] and

(c) for the carpets allegedly commissioned by Mr Bahari for Caspian Fish, Mr Iselin reviews the "[redacted]"[1276] and relies on "[redacted]".[1277]

452. As set out in the Shi Report, Mr Iselin's use of the relevant auction data, and the application of the uplift, is significantly flawed. Among other things, he excludes vast amounts of relevant comparable data with no explanation,[1278] and he fails to net out the

1272 Hasanov Report, para. 49.

1273 Iselin Report, para. 67.

1274 Iselin Report, paras 72, 73 and 76.

1275 Iselin Report, para. 71.

1276 Iselin Report, para. 82.

1277 Iselin Report, para. 83.

1278 Shi Report, para. 5.14, p. 50.

costs of retail sales from his assessment of the fair market value of the carpets (while claiming that it is the additional costs themselves which give rise to the uplift).[1279]

453. Finally, Azerbaijan notes that Secretariat have applied Mr Iselin's valuation in both its ex ante and ex post calculations.[1280] The basis for Secretariat's application of Mr Iselin's conclusions to the ex ante valuation is unexplained: as Mr Iselin notes, he is unable to "[redacted]" for 1 January 2003.[1281]

#### 4. Mr Bahari has failed to put forward any case as to the quantum of his alleged loss in relation to Ayna Sultan

454. Mr Bahari has not put forward any positive valuation case for Ayna Sultan property on the basis that "[redacted]".[1282] Specifically, Secretariat states that "[redacted]".[1283] This statement is not understood. The location, coordinates and indeed certain photographs (as exhibited by Mr Bahari) are all available to Secretariat.[1284] As things stand, no damages can be due to Mr Bahari in respect of Ayna Sultan as there is no reasonably certain estimate of his alleged loss.

### E. Mr Bahari is not entitled to the interest he claims

#### 1. No interest is due where Mr Bahari delayed in bringing the claim

455. Mr Bahari claims that he is entitled to interest "*running from the approximate date of injury to the date of full payment of the award*", relying on Article 38 of the ILC Articles and a number of investment treaty cases which refer to it.[1285] What Mr Bahari fails to emphasise, however, is that Article 38 and the relevant jurisprudence do not automatically entitle a claimant to interest. Interest is payable in the tribunal's

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1279 Shi Report, para. 5.14, p. 51.

1280 Statement of Claim, para. 675. *See* Secretariat Report, paras 5.24-5.25 (ex ante) and para. 6.48 (ex post).

1281 Iselin Report, para. 57. *See also* Shi Report, para. 5.4.

1282 Secretariat Report, n. 64.

1283 Secretariat Report, para. 2.10.

1284 Ayna Sultan Registration Voucher and Technical Passport dated 29 May 1996, **C-16**; Ayna Sultan Photographs dated 25 September 2020, **C-69** and **C-70**.

1285 Statement of Claim, paras 636, 638.

discretion[1286] and only "*when necessary to ensure full reparation*".[1287] Pre-award interest is therefore an item of compensation and arbitral practice establishes that in certain circumstances such an order is unnecessary and inappropriate.[1288]

456. The delay with which Mr Bahari's claims have been brought disentitles him to an award of interest (see section PART 2I above). In circumstances where the breach of Treaty is alleged (but not accepted) to have occurred in or around 1 January 2003, almost two decades before Mr Bahari brought these proceedings, but no steps were taken by the Claimant to prosecute any claim until 2017, the Tribunal should not award the Claimant a windfall from his own delay in bringing the claim. Full reparation does not mandate the significant windfall Mr Bahari claims in interest (in the order of more than four times the principal of his claim); indeed, any award of interest in these circumstances would reward claimants for delaying in bringing a claim.

457. Further, where a breach of Treaty occurs "*as a result of a combination of factors over a period of time*",[1289] tribunals have found that there is no obligation to pay interest before the date of the award. On Mr Bahari's own case, there was no "*single direct breach in time*", but rather "*composite and continuous acts which ripened into an indirect expropriation over a certain length of time*".[1290]

458. In the alternative, and at the very least, no pre-award interest should be awarded for the period from 8 September 2017 (when Mr Bahari first sent a notice of dispute to Azerbaijan under the Treaty)[1291] to 11 July 2022 (when, following the abandonment of the initial claim, and then the filing and withdrawal of a subsequent claim, the notice of arbitration that commenced these proceedings was finally filed). In *Goetz v Burundi*

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1286 *Kardassopoulos v Georgia*, ICSID Case No.ARB/05/18, Decision on Jurisdiction, 6 July 2007, **CLA-44**, para. 659.

1287 Commentary to ILC Articles, **CLA-37**, Art. 38.

1288 *See* James Crawford, State Responsibility (Cambridge, 2013), **RLA-177**, p. 532, referring to Eritrea-Ethiopia Claims Commission said: "the amounts awarded in many cases reflect estimates and approximations, not precise calculations resting upon clear evidence. Like some other commissions, the Commission believes that this element of approximation reinforces the decision against awarding interest"; Thierry J. Sénéchal & John Y. Gotanda, Interest as Damages, 47 Colum J. Transnat'l L. 491 (2009)), **RLA-178**, at 500 ("Claims for interest may be denied if the payment of interest would result in injustice, be otherwise unconscionable or violate public policy. In addition, interest may not be awarded if there is laches, bad faith, duress, or fraud on the part of the claimant.").

1289 *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **RLA-179**, para. 618.

1290 Statement of Claim, para. 582.

1291 Notice of dispute dated 8 September 2017, **C-26**.

*(II)*, for example, the tribunal found that a three-year delay resolving a case due to the liquidation of the claimant's estate mid-proceedings disentitled the claimant from claiming interest during those years.[1292]

### 2. Mr Bahari is not entitled to compounded interest at the rates sought

459. Mr Bahari seeks annually compounded interest on the basis that it is "*common international practice*".[1293] While compound interest is often awarded in investment treaty cases, there is no rule of law that it must be awarded. Each case turns on its own facts. As the tribunal noted in *Rosinvest v Russia*, the practice to award compound interest "*is by no means unanimous*"[1294] and the tribunal was "[not] *bound to award compound interest. It must consider the damage done and nature of Claimant's investment in its assessment of the interest due*".[1295] It declined to award annually compounded interest on the basis that it "*would be unjust in light of the speculative nature of the investment*".[1296] Should the Tribunal find (contrary to Azerbaijan's position) that Mr Bahari is entitled to interest, the delay with which he brought his claims is a relevant factor to the question of compounding, and only simple interest should be awarded.

460. As to the rates proposed by Mr Bahari, Secretariat "*provides two different interest rate options for consideration*": (i) US Prime + 2%; and (ii) Azerbaijan's sovereign rate of borrowing.[1297] While the Tribunal has a significant margin of discretion, the interest rate must be "*reasonable*" and "*tak*[e] *due account of all pertinent circumstances*".[1298] For the reasons set out in the Shi Report as summarised below, Mr Bahari's proposed rates are not reasonable:

(a) Both rates are significantly higher than the risk-free rate and, therefore, not only compensate the Claimant for the time value of money (which is captured by the risk-free rate) but also include additional compensation for investment risks that

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1292 *Goetz and ors* v *Burundi (II)*, ICSID Case No. ARB/01/2, Award (21 June 2012), **RLA-180**, para. 302.

1293 Statement of Claim, para. 688.

1294 *Rosinvest v Russia*, SCC Case No. 079/2005, Final Award (12 September 2010), **RLA-147**, para. 689.

1295 *Rosinvest v Russia*, SCC Case No. 079/2005, Final Award (12 September 2010), **RLA-147**, para. 689.

1296 *Rosinvest v Russia*, SCC Case No. 079/2005, Final Award (12 September 2010), **RLA-147**, para. 690.

1297 Statement of Claim, para. 682.

1298 *McCoullogh v Ministry of Post*, 1 Iran–US CTR (16 April 1986) 3, **RLA-181**, para. 99.

the Claimant was not exposed to. Dr Shi's evidence is that it is speculative to include a return that corresponds to a certain level of investment risk, when there is no evidence regarding how the Claimant would have invested that sum of money.[1299]

(b) Secretariat does not explain how it arrives at the 2% margin estimate on top of the US Prime rate, neither does it assess the Claimant's actual cost of borrowing.[1300]

(c) As to the sovereign cost of borrowing, Secretariat incorrectly uses a constant sovereign rate estimate (of 8.83%) for the entire 2003 to 2023 period, when in fact both the US Treasury yield and Azerbaijan's credit rating (and hence its credit spread) changed during 2003 to 2023.[1301] It also uses of yields on the US 20-year Treasury as the base rate, which is inconsistent with the credit spread estimate it relies on, which is based on 10-year credit default swap with the same credit rating as Azerbaijan.[1302]

461. Dr Shi considers the LIBOR/SOFR rates to be the more appropriate measure, as it is a rate commonly used by arbitral tribunals that is a much closer proxy to risk-free rate than the US Prime rate.[1303]

462. Dr Shi's opinion is consistent with numerous arbitral decisions. In *National Grid v Argentina*, for example, where the tribunal concluded that "*the appropriate interest rate… should be an average interest rate which Claimant would have paid to borrow*", the tribunal said that "*in the absence of Claimant's borrowing rate in the record, the Tribunal will utilize a widely recognized conservative measure, which has been adopted in the awards of previous international arbitration tribunals, namely LIBOR plus 2%*".[1304]

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1299 Shi Report, para. 6.10.

1300 Shi Report, para. 6.8.

1301 Shi Report, para. 6.16.

1302 Shi Report, para. 6.16.

1303 Shi Report, paras 6.9-6.11.

1304 *National Grid v Argentina*, Award (3 November 2008), **CLA-115**, para. 294.

463. These is sparse arbitral practice applying a sovereign borrowing rate. In *Khan v Mongolia*, where the tribunal rejected the Claimants' argument that Mongolia's rate of borrowing was appropriate, it explained:[1305]

> the interest rate requested by the Claimants is too high and that using Mongolia's borrowing rate is not equivalent to a "commercially reasonable rate." The Tribunal considers that an interest rate based on LIBOR plus a small percentage reflects a commercially reasonable borrowing rate over the relevant period. This view is consistent with recent practice amongst ICSID tribunals and the prevailing scholarly view.

### F. Mr Bahari is not entitled to moral damages

464. Mr Bahari seeks "*moral damages equal to $10 million, or 5% (five present) of the total material damages awarded* […] *whichever is greater, and subject to post-award interest*"[1306] on the basis of the "*harassment, assault and detentions of Mr Bahari and his long-time manager, Mr Moghaddam*", which he asserts "*demonstrate the pain and suffering, and other severe, crippling affronts to personality, that Azerbaijan has imposed on Mr. Bahari, his family, and Mr. Moghaddam*".[1307] According to Mr Bahari, he "*lives in a perpetual state of fear for himself and his remaining family*".[1308]

465. As a preliminary point, the Respondent notes that the sensationalised statements in the quantum section of the Statement of Claim overstate the allegations in fact pleaded by Mr Bahari: Mr Bahari does not, for example, claim to have been physically assaulted himself (he says only that a threat to "*physically remove him*" from the opening ceremony was made, although not carried out),[1309] nor detained (he claims only that "*Government security agents were placed outside of his house, and he was not allowed to leave*").[1310] None of this conduct is admitted. Further and in any event, such conduct if proven (which is denied) pre-dates the entry into force of the Treaty and cannot therefore form the basis of any award of damages.

466. That aside, Mr Bahari's claim for moral damages should in any event be dismissed because there are no circumstances which would warrant an award of moral damages.

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1305 *Khan Resources v Mongolia,* UNCITRAL, Award on Merits (2 March 2015), **CLA-168**, para. 425.

1306 Statement of Claim, para. 709.

1307 Statement of Claim, para. 704.

1308 Statement of Claim, para. 705.

1309 Statement of Claim, para. 134.

1310 Statement of Claim, para. 149.

Further and in any event, the quantum of the award sought by Mr Bahari is grossly disproportionate.

### 1. The facts of this case do not warrant an award of moral damages

467. As Mr Bahari acknowledges, moral damages can only be awarded in exceptional circumstances.[1311]

468. The Respondent agrees that the proper test for an award of moral damages is that set out in *Lemire*, cited at paragraph 700 of the Statement of Claim:[1312]

> as a general rule, moral damages are not available to a party injured by the wrongful acts of a State, but … moral damages can be awarded in exceptional cases, provided that
>
> - the State's actions imply physical threat, illegal detention or other analogous situations in which the ill-treatment contravenes the norms according to which civilized nations are expected to act;
>
> - the State's actions cause a deterioration of health, stress, anxiety, other mental suffering such as humiliation, shame and degradation, or loss of reputation, credit and social position; and
>
> - both cause and effect are grave or substantial.

469. However, Mr Bahari's summary of the findings of that case is inaccurate. He states that the *Lemire* tribunal declined to award moral damages on the basis that the injury suffered "*could not be compared to that caused by physical threat, illegal detentions, deterioration of health, stress, anxiety, other mental suffering*".[1313] This statement elides the very clear distinction drawn in *Lemire* that first, the action of the State must be physical, and second the effect of the action is to cause a deterioration in health, stress, anxiety and other suffering. In addition, both the first and second elements must be grave and substantial. It is not the case, as Mr Bahari's conclusion implies, that any action causing stress and anxiety suffices for an award of moral damages.

470. Thus, where Mr Bahari claims that "*Azerbaijan has imposed*" "*pain and suffering, and other severe, crippling affronts to personality*"[1314] on Mr Bahari, such that he "*lives in*

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1311 Statement of Claim, para. 698.

1312 *Lemire v Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011), **CLA-181**, para. 333.

1313 Statement of Claim, para. 701.

1314 Statement of Claim, para. 704.

*a perpetual state of fear*",[1315] Azerbaijan cannot have any responsibility for Mr Bahari's state of mind in the absence of physical harm.[1316]

471. Thus, the first limb of the test is whether the action was physical,[1317] as well as being grave and substantial. The cases upon which Mr Bahari relies bear no resemblance to the present case:

(a) In *Desert Line v Yemen*, which awarded moral damages on the basis that the "*physical duress exerted on the executives of the Claimant*[] *was malicious*",[1318] armed tribes attacked the investor's premises "*opening fire with automatic weapons*"[1319] and the Yemeni military put the premises under siege.[1320]

(b) In *von Pezold v Zimbabwe*, the claimant investor's unchallenged evidence, which the tribunal found to be "*genuine and honest*", was that "[d]*uring* [] *invasions,* [he] *along with* [his] *staff, were humiliated, threatened with death and assaulted, had firearms put to our heads, and were kidnapped*".[1321]

(c) In *Zhongshan Fucheng v Nigeria*, the CFO of the investment vehicle was "*arrested at gunpoint, and was then deprived initially of food and water, intimidated, physically beaten, and detained for a total of ten days, by the police*".[1322]

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1315 Statement of Claim, para. 705.

1316 Notably, Mr Bahari does not seek to suggest that moral damages should be awarded on account of the death of his daughter: presumably he accepts that he cannot demonstrate that this had anything to do with Azerbaijan.

1317 Other tribunals whose findings Mr Bahari relies upon share that view: *see Lemire v Ukraine*, ICSID Case No. ARB/06/18, Award (28 Marxh 2011), **CLA-181**, para. 333 ("physical threat, illegal detention or other analogous situations"); *von Pezold and ors v Zimbabwe*, ICSID Case No. ARB/10/15*,* Award (28 July 2015), **CLA-117**, paras 920 ("physical violence and detainment"), 922 (noting that "in another ICSID decision, the Tribunal refused to award moral damages when there was an absence of physical duress (see *Europe Cement Investment & Trade S.A. v Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, [**RLA-144**]13 August 2009)"; *Zhongshan Fucheng v Nigeria,* Award (26 March 2021), **CLA-182**, para. 177.

1318 *Desert Line Projects LLC v Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, paras. 290.

1319 *Desert Line Projects LLC v Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, para. 20.

1320 *Desert Line Projects LLC v Republic of Yemen*, ICSID Case No. ARB/05/17, Award (6 February 2008), **CLA-31**, para. 185.

1321 *von Pezold and ors v Zimbabwe*, ICSID Case No. ARB/10/15*,* Award (28 July 2015), **CLA-117**, para. 918.

1322 *Zhongshan Fucheng v Nigeria,* Award (26 March 2021), **CLA-182**, para. 39.

472. The only relevant physical acts alleged by Mr Bahari are those alleged to have been carried out against Mr Moghaddam after the Treaty entered into force: possibly the alleged June 2002 detention[1323] (where on Mr Moghaddam's own evidence he was not "[redacted] and he "[redacted]"),[1324] and his 2009 arrest and imprisonment on drug possession charges. Action allegedly carried out against Mr Moghaddam cannot form the basis of an award for moral damages, however, and especially not incarceration following a judicial process. As Mr Bahari himself recites, in *von Pezold* the tribunal referred to *Desert Line* for the proposition that "*a corporation can receive damages based on actions that affected members of its staff*".[1325] Mr Moghaddam was not an employee of Caspian Fish or Coolak Baku, but even if he was, those corporates are not the claimants in this proceeding. Nor was Mr Moghaddam an employee of Mr Bahari. But again, even if he was, there is no authority that the same proposition extends to natural persons, such that a natural person can claim for moral damage to his employees. To the contrary, first principles demonstrate the opposite. As the Permanent Court of International Justice said in *Chorzów Factory*:[1326]

> …in estimating the damage caused by an unlawful act, only the value of property, rights and interests which have been affected and the owner of which is the person on whose behalf compensation is claimed, or the damage done to whom is to serve as a means of gauging the reparation claimed, must be taken into account. This principle, which is accepted in the jurisprudence of arbitral tribunals, has the effect, on the one hand, of excluding from the damage to be estimated, injury resulting for third parties from the unlawful act and, on the other hand, of not excluding from the damage the amount of debts and other obligations for which the injured party is responsible.

473. Mr Bahari accordingly has no standing to sue for damage allegedly inflicted on Mr Moghaddam.

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1323 See n. 1108.

1324 Moghaddam Statement, paras 75 and 73.

1325 Statement of Claim, para. 702.

1326 *Factory at Chorzów (Germany v Poland)*, Decision on Indemnity, 1928 PCIJ (Ser A), at 27, **CLA-162**. *See also* discussion in *von Pezold*, **CLA-117**, at para. 915, where the tribunal concluded that: "[o]n a strict legal approach, a tribunal would not have jurisdiction to make an award to the physical persons as their claim would not concern an "investment". In the Tribunal's view, Dr. Dumberry's analysis is accurate: the harm suffered by the executives is not the harm to the company" but considered, given the difficulty of obtaining relief locally, "*Desert Line* offers a pragmatic solution".

474. Even if Mr Bahari could overcome these hurdles, as well as prove the allegations made in respect of Mr Moghaddam (which is denied), however, such action does not rise to the level of the grave and substantial physicality required by the case law. In *Stati v Kazakhstan*, although the tribunal found "*intimidation*", "*harassment and coercion*" of the claimants' employees, as well as the unjustified arrest and imprisonment of the general manager, which caused other key employees to flee the country,[1327] it concluded that the "*very high threshold to show a liability for moral damages*" was not met.[1328]

### 2. In any event, the quantum of Mr Bahari's claim is grossly exaggerated

475. The Claimant relies on *von Pezold* for the proposition that "[i]*nvestment tribunals have held that they have discretion to determine the amount of moral damages*",[1329] but what the tribunal in fact says in *von Pezold* is that "*quantification is difficult for non-material harm*" and "*the Tribunal considers it should aim for some consistency with other ICSID decisions*".[1330]

476. In *Desert Line*, where the claimant sought approximately USD 15 million[1331] in moral damages, the tribunal awarded USD 1 million, stating that the sum sought by the claimant was "*exaggerated*" and a USD 1 million award was "*more than symbolic yet modest in proportion to the vastness of the project*".[1332]

477. In *Von Pezold*, the tribunal also awarded USD 1 million in moral damages, rejecting a claim for USD 5 million on the basis that the sum claimed was "*excessive in light of*

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1327 *Stati v Kazakhstan*, SCC Case No. V116/2010, Award (19 December 2013), **RLA-64**, paras 1119, 1120.

1328 *Stati v Kazakhstan*, SCC Case No. V116/2010, Award (19 December 2013), **RLA-64**, para, para. 1782. See also *Europe Cement v Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 Aug. 2009, **RLA-19**, para. 181 ("the Tribunal need not go this far as it does not consider that exceptional circumstances such as physical duress are present in this case to justify moral damages"); *Arif v Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013), **CLA-41**, para. 615 ("…the conduct of the Moldovan authorities provoked stress and anxiety to Claimant. However, the different actions did not reach a level of gravity and intensity which would allow it to conclude that there were exceptional circumstances which would entail the need for a pecuniary compensation for moral damages.").

1329 Statement of Claim, para. 707.

1330 *von Pezold and ors v Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015), **CLA-117**, para. 921.

1331 *Desert Line v Yemen*, ICSID Case No. ARB/05/17, Award, 6 Feb. 2008, **CLA-31**, para. 284 (OR 40 million converted into USD at the date of the Award).

1332 *Desert Line v Yemen*, ICSID Case No. ARB/05/17, Award, 6 Feb. 2008, **CLA-31**, para. 290.

*the decision in Desert Line*" in circumstances where "*the Claimant* [in Desert Line] *was exposed to conduct analogous with that evidenced here*".[1333] No explanation has been provided by the Claimant as to why he is entitled on the facts (which have materially less grave conduct in question) to – at minimum – double the amount rejected in *Von Pezold*.

478. In *Zhongshan Fucheng v Nigeria*, the tribunal awarded USD 75,000, which represented among other things a sum of USD 5,000 per day of the relevant CFO's mistreatment.[1334]

479. Mr Bahari refers also to *Al-Kharafi v Libya* in a footnote, citing it in support of his claim that "*an international tribunal awarded $ 30 million to a claimant in moral damages*".[1335] No analysis or explanation of the findings in that case is provided by Mr Bahari, which is surprising given Mr Bahari relies on it to support the quantum of the moral damages claimed. On any analysis, however, it transpires that *Al-Kharafi* has no applicability to the present case and cannot be followed by this tribunal. The applicable law in that case was Libyan law, which contained express provision that compensation includes moral damages,[1336] together with the Unified Agreement for the Investment of Arab Capital in the Arab States, which contains a lengthy expropriation clause unique from other investment treaty agreements in terms of form and content.[1337] The tribunal did not apply any investment treaty jurisprudence in reaching its conclusions. Notably, in the context of a subsequent application to annul the award, the Egyptian Court of Appeal also found that the award violated public policy by departing from "*the principle of proportionality and equivalence between the amount of compensation and incurred damages*".[1338]

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1333 *von Pezold and ors v Zimbabwe*, ICSID Case No. ARB/10/15*,* Award (28 July 2015), **CLA-117**, para. 921.

1334 *Zhongshan Fucheng v Nigeria,* Award (26 March 2021), **CLA-182**, para. 178.

1335 Statement of Claim, n. 863.

1336 *Al-Kharafi v Libya,* Award (22 March 2013), **CLA-183**, p. 3 and 365.

1337 *Al-Kharafi v Libya,* Award (22 March 2013), **CLA-183**, p. 349.

1338 *Al-Kharafi v Libya*, Cairo Court of Appeal (3 June 2020), **RLA-182**, para. 12. While this judgment was ultimately overturned by the Court of Cassation, this does not detract from the force of the points made by the Court of Appeal.

## PRAYER FOR RELIEF

480. For the foregoing reasons, the Respondent respectfully requests that the Tribunal:

(a) declare that it has no jurisdiction over the Claimant's claims and order the Claimant to bear all costs and fees incurred by the Respondent in connection with these proceedings, together with interest thereon at a rate to be determined; or

(b) dismiss in their entirety the claims over which the Tribunal determines it has jurisdiction and order the Claimant to bear all costs and fees incurred by the Respondent in connection with these proceedings, together with interest thereon at a rate to be determined.

Respectfully submitted,

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***Counsel to the Respondent***

22 December 2023