EXCERPTS

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

MAZEN AL RAMAHI

Claimant

and

HUNGARY

Respondent

ICSID Case No. ARB/17/45

AWARD

Members of the Tribunal
Hon. Ian Binnie, C.C., Q.C., President of the Tribunal
Dr. Hamid G. Gharavi, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal
Ms. Marisa Planells-Valero

Date of dispatch to the Parties: April 19, 2021

REPRESENTATION OF THE PARTIES

Representing Mr. Mazen Al Ramahi:

Mr. António Andrade de Matos
Andrade Matos & Associados
Rua Alexandre Herculano
No. 23 – R/C
1250-008, Lisbon
Portugal

Representing Hungary:

Dr. Norbert Tátrai
Cabinet Office of the Prime Minister
Pozsonyi út 56., B épület
1133 Budapest
Hungary
and
Mr. András Nemescsói
Mr. Dávid Kőhegyi
Mr. Zoltán Fabók
Ms. Zsófia Deli
Ms. Kate Mala
DLA Piper Posztl, Nemescsói, Györfi-Tóth & Partners Law Firm
Csörsz u. 49-51
1124 Budapest
Hungary
and
Mr. Michael Ostrove
Mr. Theobald Naud
Ms. Clémentine Emery
DLA Piper France LLP
27 rue Laffitte
Paris, 75009
France

INDEX

TABLE OF SELECTED ABBREVIATIONS/DEFINED TERMS

Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings (2006)
BIT / Treaty	Agreement between the Republic of Hungary and the Hashemite Kingdom of Jordan for the Promotion and Reciprocal Protection of Investments, signed on June 14, 2007, and in force since March 9, 2008
CL- [#]	Claimant's Exhibit
Memorial	Claimant's Memorial on Jurisdiction, Merits and Quantum dated November 9, 2018
Reply	Claimant's Reply on the Merits and Quantum, and a Counter-Memorial on Objections to Jurisdiction dated January 23, 2020
CLA- [#]	Claimant's Legal Authority
Hearing	Hearing on Jurisdiction, Merits and Quantum held on September 23, 2020
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated March 18, 1965
ICSID or the Centre	International Centre for Settlement of Investment Disputes
[redacted]	[redacted]
[redacted]	[redacted]
R-[#]	Respondent's Exhibit
Counter-Memorial	Respondent's Counter-Memorial on the Merits and Quantum, and Objections to Jurisdiction dated August 2, 2019
Rejoinder	Respondent's Rejoinder on the Merits and Quantum, and a Reply on Jurisdiction dated April 27, 2020

RL-[#]	Respondent's Legal Authority
Transcript, [page:line]	Transcript of the Hearing
Tribunal	Arbitral Tribunal constituted on June 6, 2018
[redacted]	[redacted]

PART 1 - OVERVIEW

1. Mr. Mazen Al Ramahi, a citizen of the Hashemite Kingdom Jordan, is the sole shareholder of [redacted],[1] a company incorporated under the laws of Hungary, and owner of a luxury hotel in Budapest currently operating under the name of [redacted].[2] The hotel was previously known as the [redacted]. It opened to the public in 2010.

2. Mr. Al Ramahi brings this claim in his personal capacity as investor pursuant to the Agreement between the Republic of Hungary ("**Hungary**") and the Hashemite Kingdom of Jordan ("**Jordan**") for the promotion and reciprocal protection of investments (the "**Treaty**" or "**BIT**")[3] dated June 14, 2007, and which entered into force on March 9, 2009.

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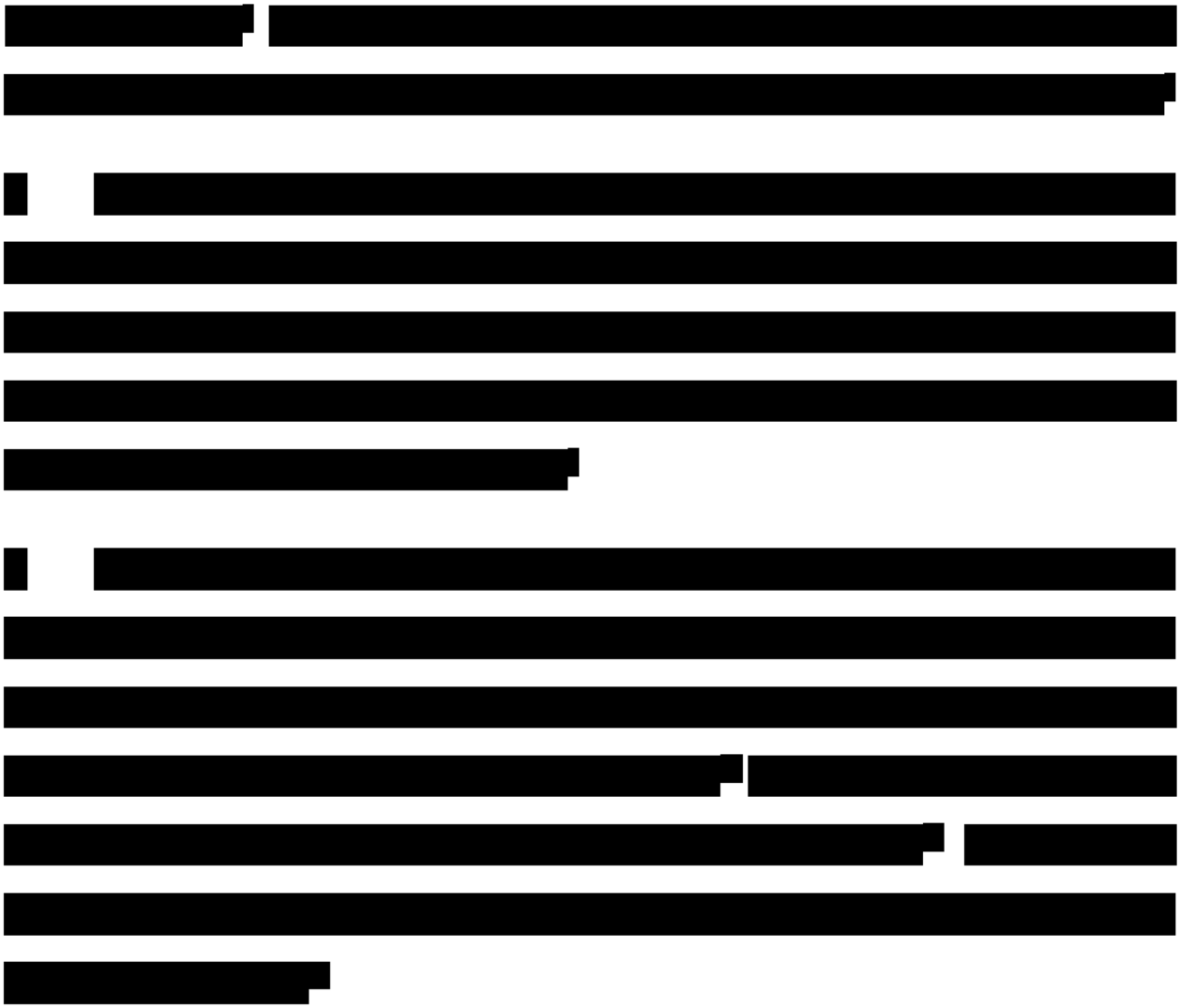

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PART 2 - PROCEDURAL HISTORY

A. Registration of the Request for Arbitration and Constitution of the Tribunal

21. On November 17, 2017, ICSID received a request for arbitration dated November 17, 2017, from Mr. Mazen Al Ramahi against Hungary (the "**Request**"). The Request was supplemented by the Claimant's letter of December 19, 2017.

22. On December 21, 2017, the Secretary-General of ICSID registered the Request in accordance with Article 36(3) of the ICSID Convention and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an

[35] Counter-Memorial, paras. 5-7.

arbitral tribunal as soon as possible in accordance with Rule 7(d) of ICSID's Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.

23. On February 15, 2018, the Parties agreed to constitute the Tribunal in accordance with Article 37(2)(a) of the ICSID Convention as follow: the Tribunal would consist of three arbitrators, one appointed by each Party and the third, presiding arbitrator, appointed by agreement of the Parties.

24. The Tribunal is composed of the Hon. Ian Binnie, C.C., Q.C., a national of Canada, President, appointed by agreement of the Parties; Mr. Hamid Gharavi, a national of France and Iran, appointed by the Claimant; and Professor Brigitte Stern, a national of France, appointed by the Respondent.

25. On June 6, 2018, the Secretary-General, in accordance with Rule 6(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the "**Arbitration Rules**"), notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Ms. Marisa Planells-Valero, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.

B. The First Session

26. In accordance with ICSID Arbitration Rule 13(1), the Tribunal held a first session with the Parties on July 25, 2018, by teleconference.

27. Following the first session, on August 22, 2018, the Tribunal issued Procedural Order No.1 recording the agreement of the Parties on procedural matters and the decisions of the Tribunal on disputed issues. Procedural Order No.1 provided, *inter alia*, that the applicable Arbitration Rules

would be those in effect from April 10, 2006, that the procedural language would be English, and that the place of proceeding would be Paris, France. Procedural Order No.1 also set out the agreed schedule of the proceedings in Annex A.

C. Parties' Written Submissions and Procedural Applications

28. On October 3, 2018, the Claimant informed the Tribunal of the Parties' agreement to modify the schedule of the proceedings and submitted an amended procedural schedule. On October 9, 2018, the Tribunal confirmed that the procedural schedule had been amended in accordance with the Parties' agreement and invited the Parties to confirm whether they wished to request an extension concerning the hearing dates. On November 19, 2020, the Respondent informed the Tribunal that the Parties were discussing additional amendments to the procedural calendar.

29. On October 20, 2018, the Respondent wrote on behalf of both Parties proposing that the hearing take place in March 2020. On October 23, 2020, the Claimant confirmed its agreement with the Respondent's proposal.

30. On October 24, 2020, the Tribunal proposed to hold the hearing during the week of March 30 to April 3, 2020 in Paris (France).

31. On October 26, 2020, both Parties confirmed their availability on the new hearing dates.

32. On November 1, 2018, the Claimant informed of the Parties' agreement to modify the procedural calendar and submitted an amended procedural schedule for the Tribunal's approval. On November 2, 2018, the Tribunal confirmed the Parties' agreement and issued a Revised Annex A to Procedural Order No. 1.

33. On November 9, 2018, the Claimant filed its Memorial on Jurisdiction, Merits and Quantum (the "**Memorial**"), without accompanying documentation. On November 12, 2020, the Secretary of the Tribunal acknowledged receipt of the Claimant's Memorial and reminded the Claimant of the filing requirements in Section 13.1 of Procedural Order No. 1.

34. On November 19, 2018, the Tribunal wrote to the Parties noting that the Claimant was yet to submit a copy of a document under the title "FTI Preliminary Report" and the 17 exhibits and 31 legal authorities cited in the Claimant's Memorial and invited the Claimant to provide an update on the matter by November 21, 2018.

35. On November 23, 2018, the Respondent requested the Tribunal to issue an order (i) taking note of the Claimant's failure to file the supporting documentation to its Memorial within the applicable time limit, and (ii) deciding that, absent Claimant justifying its failure on the basis of special circumstances within a reasonable deadline, any supporting documentation subsequently filed by the Claimant was to be disregarded by the Tribunal.

36. On November 30, 2018, the Tribunal noted the Claimants' failure to file the supporting documentation to its Memorial and renewed its invitation to the Claimant to comply with the filing requirements in Section 13 of Procedural Order No.1 by December 7, 2018.

37. On December 10, 2018, Mr. Antonio Andrade de Matos, counsel for the Claimant ("**Mr. Andrade de Matos**") wrote to the Tribunal indicating that he had been out of the office due to health reasons and requested an extension of the deadline to submit the supporting documentation to its Memorial until December 13, 2018. On the same date, the Respondent confirmed its agreement with the Claimant's extension request. In view of the Parties' agreement, the Tribunal granted the Claimant's request.

38. On December 13, 2018, the Claimant submitted an Index of Factual Exhibits, an Index of Legal Authorities, and a document under the title "FTI Memo – Damage Assessment", accompanied by Annexes FTI-1 to FTI-19 and 3 Excel Spreadsheets.

39. On December 14, 2018, the Tribunal reminded the Claimant of its obligation to submit copies of the factual exhibits and legal authorities in support of its Memorial and to comply with the additional filing requirements established in Section 13 of Procedural Order No.1. In particular, the Tribunal noted that the Claimant was yet to upload to the Box folder created for this proceeding the electronic versions of the Memorial and the accompanying documentation. The Claimant was also to courier to the Tribunal, the Secretariat and the Respondent hard copies of the entire submission (with the exception of the legal authorities).

40. On January 22, 2019, the Claimant submitted electronic copies of exhibits CL-001 to CL-017 and legal authorities CLA-001 to CLA-031 in support of its Memorial. On January 23, 2019, the Tribunal reiterated its invitation to the Claimant to comply with the additional filing requirements established in Section 13 of Procedural Order No. 1.

41. On January 31, 2019, the Respondent informed the Tribunal of the Parties' agreement to modify the agreed schedule of the proceedings and submitted an amended procedural schedule. On February 4, 2019, the Claimant confirmed his agreement with the amended procedural schedule. The Parties further invited the Tribunal to propose a suitable date for the hearing.

42. On February 12, 2019, the Tribunal proposed a new set of dates for the hearing. On February 18, 2019, the Parties confirmed their availability on the proposed dates.

43. On February 22, 2019, the Tribunal circulated an updated Annex A to Procedural Order No.1, incorporating the changes to the procedural calendar agreed by the Parties on February 4, 2019, and the new hearing dates (September 21-25, 2020).

44. On August 3, 2019, the Respondent filed its Counter-Memorial on the Merits and Quantum, and Objections to Jurisdiction dated August 2, 2019 (the "**Counter-Memorial**"), together with exhibits R-001 to R-043, legal authorities RL-001 to RL-048, and the Expert Report of [EXPERT] and [EXPERT] of [...].

45. On October 9, 2019, the Respondent wrote to the Tribunal to inform it, *inter alia*, that it had duly submitted its document production request to the Claimant on August 30, 2019 in accordance with Annex A of Procedural Order No.1. The Respondent further indicated that, as of that date, it had yet to receive the Claimant's response to its document production request or the Claimant's own document production request. The Respondent also stated that it had tried to reach out to the Claimant's counsel on several occasions regarding its document production request to no avail. Consequently, the Respondent requested that the Tribunal order the Claimant to produce all documents requested in its August 30, 2019 document production request within 15 days. On the same date, the Tribunal invited the Claimant to respond to the Respondent's request by October 18, 2019.

46. On October 28, 2019, in view of the lack of response by the Claimant, the Tribunal ordered the Claimant to produce the documents sought by the Respondent in its August 30, 2019 request. Additionally, the Tribunal informed the Parties that, in default of compliance, it would convene a teleconference with the Parties.

47. On November 19, 2019, the Tribunal invited the Parties to confirm whether the Claimant had produced the documents sought by the Respondent in its August 30, 2019 request or had otherwise communicated with the Respondent. The Tribunal also reminded the Parties that, in default of compliance, it would convene a conference call as indicated in its letter of October 28, 2020. On the same date, the Respondent confirmed that the Claimant had not produced the documents, nor had he or his counsel communicated with the Respondent. The Respondent also confirmed its availability for the conference call proposed by the Tribunal.

48. On November 21, 2019, Mr. Andrade de Matos informed the Tribunal that he had been away from the office for a long period of time due to health issues but that he was expected to return to work shortly and requested a 15-day extension to comply with the Respondent's document production request. Mr. Andrade de Matos also requested that Ms. Isabel Matos be added as counsel of record for the Claimant indicating that she was also representing Mr. Al Ramahi in this proceeding.

49. On November 27, 2019, the Tribunal held a conference call with the Parties to deal with the delays in the Claimant's documentary productions. On November 29, 2019, after hearing from both Parties, the Tribunal invited the Claimant to deliver the documentary productions requested by the Respondent as well as any related objections by December 9, 2019.

50. On December 13, 2019, the Tribunal held a follow-up teleconference with the Parties. Following the call, the Tribunal issued an amended procedural calendar pursuant to which the Claimant was granted an extension of time until January 23, 2020 to submit his Reply on the Merits and Quantum and Counter-Memorial on Jurisdiction.

51. On December 23, 2019, pursuant to the amended procedural calendar, the Respondent submitted its replies to the Claimant's objections to the Respondent's document production request of August 30, 2019.

52. On January 7, 2020, the Respondent informed the Tribunal that the Claimant had not availed itself of the right to reply to the Respondent's December 23, 2019 submission by December 30, 2019, as provided for in the amended procedural calendar. The Respondent also confirmed that it had no further comments regarding the issues raised by the Claimant's objections and invited the Tribunal to rule on its document production request.

53. On January 13, 2020, the Tribunal issued Procedural Order No. 2, deciding on the Respondent's document production request of August 30, 2019.

54. On January 23, 2020, pursuant to the amended procedural calendar, the Claimant filed its Reply and Answer on Objections to Jurisdiction (the "**Reply**"). In doing so, the Claimant indicated that "given the late hour, the exhibits and legal authorities and witness statement will follow in separate emails tomorrow." No further communication was received from the Claimant on this matter.

55. On January 24, 2020, in view of the Claimant's failure to submit any of the supporting documents referenced to in his Reply, the Respondent requested the Tribunal to disregard the witness statement and any and all supporting documents not submitted with the Claimant's Reply.

56. On January 27, 2020, the Tribunal invited the Claimant to provide by February 5, 2020 an explanation for its failure to submit the documentation supporting his Reply and a response to the Respondent's request for relief of January 24, 2020.

57. On February 4, 2020, the Respondent informed the Tribunal of the Claimant's failure to produce any documents pursuant to Procedural Order No. 2 or to offer any explanation for the absence of any production. The Respondent further expressed its intention to request, together with its upcoming submission, that the Tribunal draw the appropriate adverse inferences arising from the Claimant's failure to produce.

58. On February 19, 2020, in view of the Claimant's failure to file any of the supporting documents referenced to in his Reply and to complete his document production, and having received no response from him on February 5, 2020, the Tribunal proposed a teleconference between the Parties and the President of the Tribunal only. The Tribunal invited the Parties to confirm their availability for the proposed teleconference by February 28, 2020. The Respondent replied on February 21, 2020 confirming its availability. No response was received from the Claimant.

59. On March 15, 2020, the Tribunal wrote to the Parties noting the lack of response from the Claimant and confirming that the teleconference between the President of the Tribunal and the Parties would take place on March 19, 2020 at 10:00am (EDT).

60. On March 19, 2020 at 9:16am (EDT), Mr. Andrade de Matos wrote to the Tribunal explaining that his previous health problems had worsened and that a medical appointment scheduled for that day prevented him from joining the call. Mr. Andrade de Matos requested that the call be rescheduled and indicated that "all documents will be filed as soon as my health condition allows me to get back to work and Portugal current [sic] attempt emergency already declared is over."

61. The Respondent replied indicating that it wished to proceed with the teleconference as scheduled. In view of this, the President of the Tribunal decided to proceed with the teleconference with only the Respondent joining the call. At the end of the call, it was left that the Respondent would send a letter to the Tribunal setting out the relief sought in the circumstances. An audio recording of the teleconference was distributed to the Parties and to the Tribunal shortly after the conclusion of the call.

62. On April 1, 2020, the Respondent requested the Tribunal to order that the witness statement and supporting documents not submitted within the extended time limit for submission of the Claimant's Reply be disregarded in application of ICSID Arbitration Rule 26(3).

63. On April 3, 2020, the Tribunal invited the Claimant to submit comments on the Respondent's request by April 10, 2020 and, in particular, to show cause why the relief sought by the Respondent should not be granted. No response was received from the Claimant.

64. On April 20, 2020, the Tribunal issued Procedural Order No. 3 noting the absence of any explanation or communication from counsel for the Claimant in answer to numerous inquiries by the Tribunal, and the Claimant's persistent lack of compliance with the terms of Procedural Order No 1. In view of the above, the Tribunal decided that the Claimant would not be permitted to file the overdue witness statement or supporting documents referenced in his Reply or any other memorial or material in this arbitration without first obtaining leave of the Tribunal. Additionally, the Tribunal ordered that Procedural Order No. 3 be sent by courier directly to Mr. Al Ramahi.

65. On April 21, 2020, as ordered by the Tribunal, Procedural Order No. 3 was sent by courier to Mr. Al Ramahi to his last known address in Budapest and to the headquarters of [redacted] in Budapest.

66. On April 27, 2020, the Respondent filed its Rejoinder on the Merits and Quantum and Reply on Jurisdiction (the "**Rejoinder**"), together with legal authorities RL-049 to RL-061.

D. The Hearing

67. On June 10, 2020, in light of the uncertainty created by the COVID-19 crisis and the fact that no witnesses or experts would be testifying during the hearing, the Tribunal consulted with the Parties regarding the possibility of holding the hearing virtually and reducing the number of days reserved for the hearing.

68. On June 17, 2020, the Respondent informed of its availability to reduce the number of days reserved for the hearing, suggesting a one-day hearing and announcing its willingness to hold a "hybrid" hearing (with both in-person and videoconference participation). On the same date, the Claimant confirmed its agreement to hold a one-day hearing and stated its preference to hold an entirely virtual hearing.

69. On June 29, 2020, having considered the Parties' proposals, the Tribunal proposed that a one-day hearing be held virtually on September 23, 2020.

70. On July 9, 2020, having received no objections from the Parties, the Tribunal confirmed that the one-day hearing was to be held virtually by video conference on September 23, 2020. Pursuant to Section 19.1 and Annex A of Procedural Order No.1, the Tribunal invited the Parties to confirm their availability to hold a pre-hearing organizational meeting by conference call.

71. On July 17, 2020, in light of the Parties' agreement, the Tribunal confirmed that the pre-hearing organizational meeting was to be held by conference call on August 13, 2020.

72. On August 13, 2020, the Tribunal held the pre-hearing organizational meeting with the Parties by telephone conference to discuss the outstanding procedural, administrative, and logistical matters in preparation for the hearing.

73. On August 17, 2020, the Claimant informed the Tribunal, *inter alia*, of its intention "to ask for permission to file documents during this week."

74. On August 19, 2020, the Tribunal issued Procedural Order No. 4 setting out the procedural rules that the Parties had agreed upon and/or the Tribunal had determined would govern the conduct of the hearing.

75. On September 7, 2020, in accordance with Annex A to Procedural Order No.1, the Respondent submitted its Pre-Hearing Skeleton, with the instruction to share it with opposing counsel only after the Claimant's submission of its own Pre-Hearing Skeleton.

76. On September 10, 2020, the Tribunal noted that it had yet to hear from the Claimant in relation to his communication of August 17, 2020. The Tribunal further noted that the Secretary of the Tribunal had yet to receive the Claimant's Pre-Hearing Skeleton. The Tribunal invited the Claimant to provide an update on these matters and to submit its Pre-Hearing Skeleton by September 14, 2020.

77. On September 15, 2020, the Claimant informed the Tribunal that he would submit is Pre-Hearing Skeleton that day. No Pre-Hearing Skeleton was received from the Claimant.

78. On September 23, 2020, the Tribunal held the hearing on Jurisdiction, Merits and Quantum by video conference (the "**hearing**"). The following persons were present at the hearing:

Tribunal:

Hon. Ian Binnie, C.C., Q.C.	President
Dr. Hamid G. Gharavi	Arbitrator
Prof. Brigitte Stern	Arbitrator

ICSID Secretariat:

Ms. Marisa Planells-Valero	Secretary of the Tribunal

For the Claimant:

Mr. António Andrade de Matos	Andrade Matos & Associados

For the Respondent:

Mr. Michael Ostrove	DLA Piper France LLP
Mr. Théobald Naud	DLA Piper France LLP
Ms. Clémentine Emery	DLA Piper France LLP
Mr. Dávid Kőhegyi	DLA Piper Posztl, Nemescsói, Györfi-Tóth and Partners Law Firm
Ms. Zsófia Deli	DLA Piper Posztl, Nemescsói, Györfi-Tóth and Partners Law Firm
Ms. Kate Mala	DLA Piper Posztl, Nemescsói, Györfi-Tóth and Partners Law Firm
Mr. Zoltan Fabók	DLA Piper Posztl, Nemescsói, Györfi-Tóth and Partners Law Firm
Ms. Zita Ambrus	Cabinet Office of the Prime Minister, Department of State Representation
Ms. Nikolett Pilling	Cabinet Office of the Prime Minister, Department of State Representation

Court Reporter:

Mr. Trevor McGowan

E. Respondent's Challenge to Claimant's Failure to Submit Documents in Accordance with the Applicable Procedural Rules

79. In the course of the arbitration, as noted above, the Claimant repeatedly failed to comply with procedural orders for document production.[36] In some instances, documents referred to in the Claimant's pleadings were not produced at all. In other instances, the Claimant produced the original document in Hungarian without the required English translation. In yet other instances, the Claimant produced what purported to be an English translation but without the Hungarian original. The Respondent rightly called attention to these deficiencies and requested that non-compliant documents be struck from the record and sanctions applied against the Claimant. In the end, these non-compliant documents have played no role in the Award. It is noteworthy that in the hearing, counsel for the Claimant, in recognition of the Claimant's evidentiary problems, based his argument on the facts set out in the Respondent's Counter-Memorial and Rejoinder. He did not rely on any of the contested "facts" asserted by Mr. Al Ramahi and denied by the Respondent, apart from his assertion, and the Respondent's denial, that Mr. Al Ramahi had successfully established the fact of his investment. Apart from the proof of investment issue, which goes to jurisdiction and is dealt with below, the Tribunal is content to proceed on the basis of the facts set out by the Respondent (which were fairly and comprehensively presented) or facts which were

[36] Section 11 of Procedural Order No. 1. In its Counter-Memorial, the Respondent noted the Claimant's failure to produce, *inter alia*, (i) English translations of Exhibits CL-008, CL-014, CL-015, CL-017, and (ii) the original Exhibits CL-011, CL-012, CL-013, CL-016, CL-002, producing instead only "a purported English translation." The Respondent requested the Tribunal to strike from the record the documents produced in violation of the procedural rules and dismiss Claimant's claim entirely. The Respondent submitted that "absent the production of evidence, Hungary and, more importantly, the Tribunal are faced with an impossible task: they cannot verify the truth and accuracy of the contentions advanced by Claimant." *See* Counter-Memorial, paras. 135-138. In its Rejoinder, the Respondent also noted Claimant's failure to produce any evidence in support of his Reply, and reiterated its request that the Tribunal strike from the record the documents produced in violation of the procedural rules and dismiss Claimant's claims entirely on the basis that, absent the production of evidence, Claimant has failed to meet the burden of proving any of his allegations. *See* Rejoinder, paras. 12-18.

undisputed. In light of the outcome of these proceedings, the Tribunal dismisses the Respondent's application to strike out documents from the record as moot.

F. The Post-Hearing Phase

80. On October 2, 2020, the Respondent submitted its suggested changes to the hearing transcript. No suggested changes were received from counsel for Claimant.

81. On October 7, 2020, the Tribunal informed the Parties that, having received no comments from the Claimant in connection with the hearing transcript, it was going to invite the court reporter to enter the Respondent's suggested changes to the hearing transcript and to issue a final version of the hearing transcript. The Tribunal further indicated that it did not have any remaining post-hearing questions to pose to the Parties and invited the Parties to submit their Statements of Costs by November 18, 2020.

82. The final version of the hearing transcripts was circulated to the Parties and the Tribunal on October 26, 2020.

83. On November 11, 2020, the Respondent requested an extension until November 23, 2020, for the submission of the Parties' Statements of Costs. On November 12, 2020, the Tribunal granted the extension requested by the Respondent.

84. On November 23, 2020, the Respondent submitted its Statement of Costs to the Secretary of the Tribunal only. On November 24, 2020, the Tribunal wrote to the Parties noting the Claimant's failure to submit its Statement of Costs and renewing its invitation to the Claimant to do so by November 30, 2020.

85. On December 2, 2020, the Tribunal wrote to the Parties noting the Claimant's further failure to submit its Statement of Costs. The Tribunal renewed its invitation to the Claimant to submit its Statement of Costs by December 16, 2020, together with an explanation for its failure to submit its Statement by the deadline. The Tribunal further invited the Respondent to submit a revised version of its Statement of Costs, if it wished to do so, also by December 16, 2020.

86. On December 17, 2020, the Tribunal indicated that, in view of the lack of response from the Claimant and unless it received an indication to the contrary by the next day, it would instruct the Secretary to circulate to the Claimant and the Tribunal the Respondent's Statement of Costs received by the Secretariat on November 23, 2020.

87. No additional communications regarding the Parties' Statements on Costs were received by the Tribunal. On December 18, 2020, in accordance with the Tribunal's instructions, the Secretary of the Tribunal transmitted the Respondent's Statement on Costs of November 23, 2020 to the Claimant and the Tribunal.

88. The proceeding was closed on April 1, 2021.

PART 3 - STATEMENT OF FACTS

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A. The Trademark Infringement Case

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(i) Background to the Trademark Dispute

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(ii) The First Trademark Infringement Order

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(iii) The Second Trademark Infringement Order

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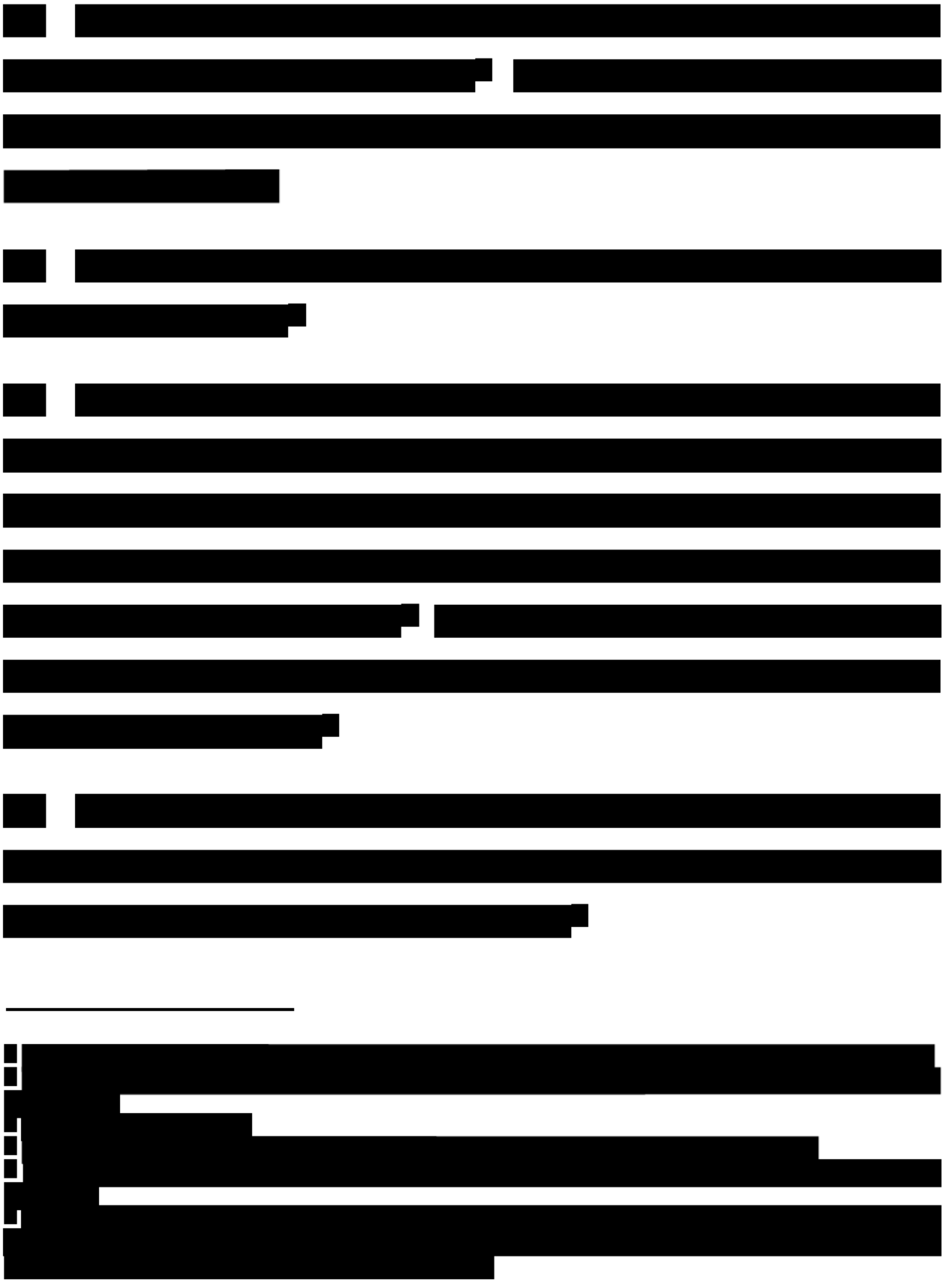

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B. The Liquidation Proceedings

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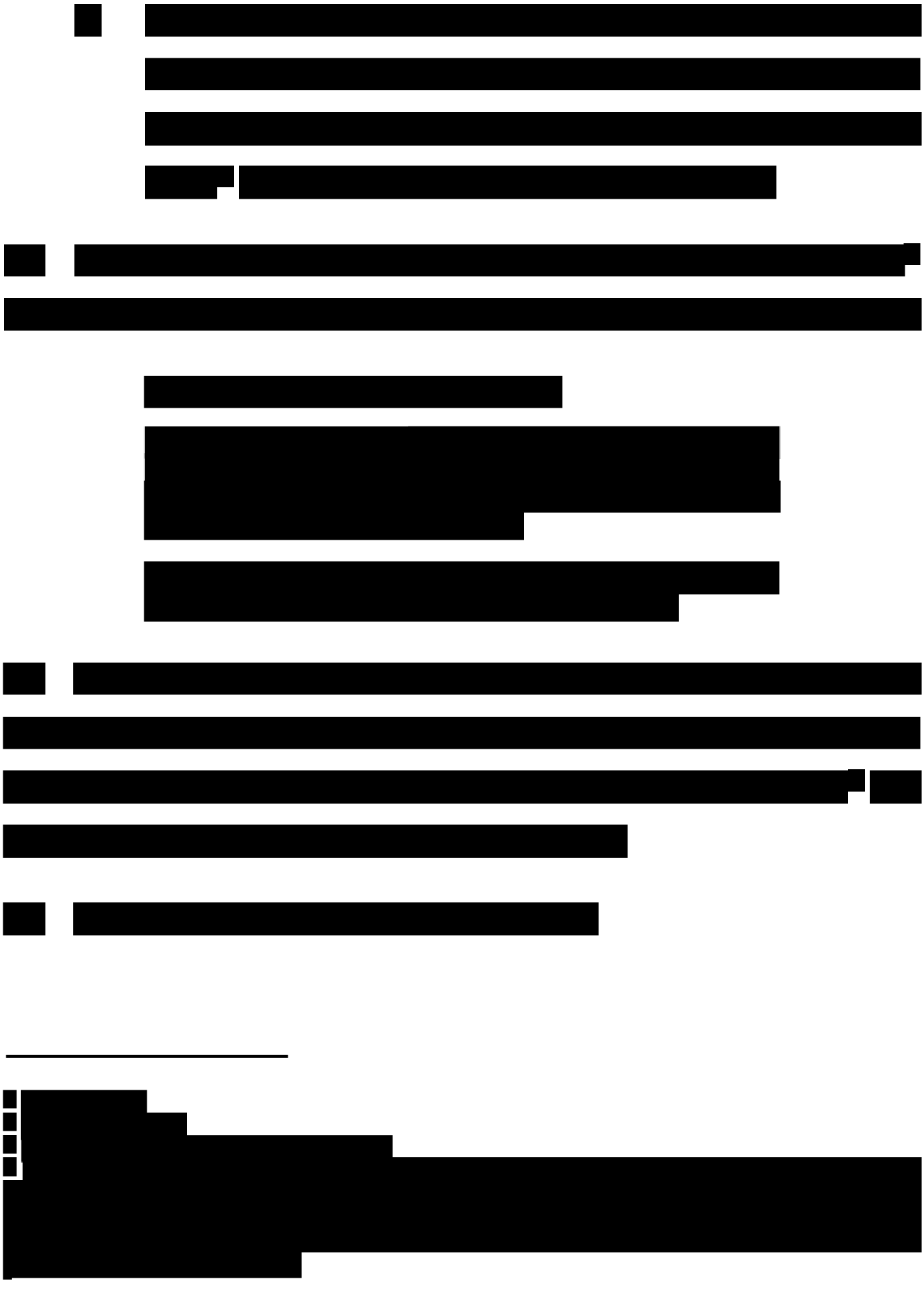

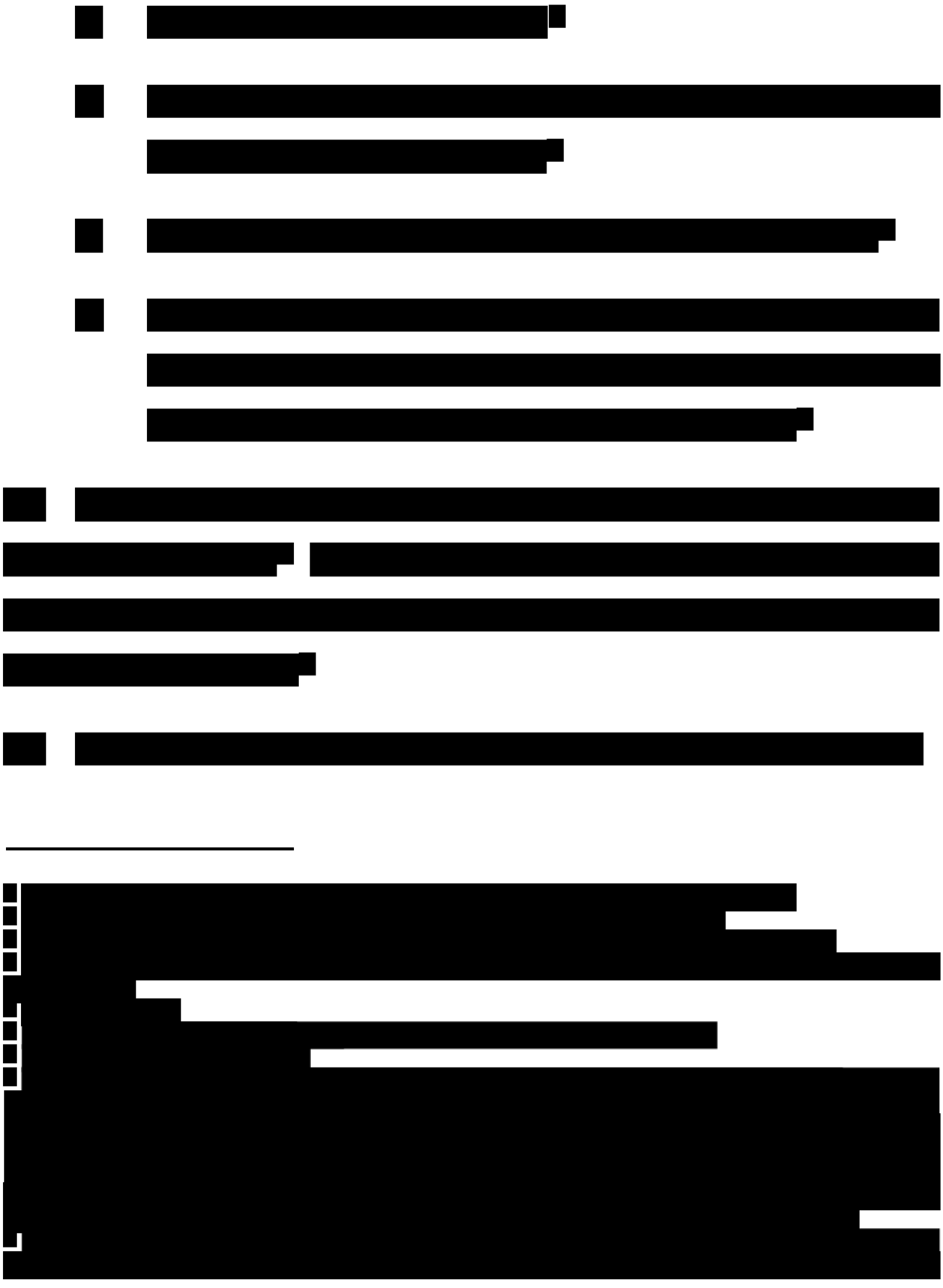

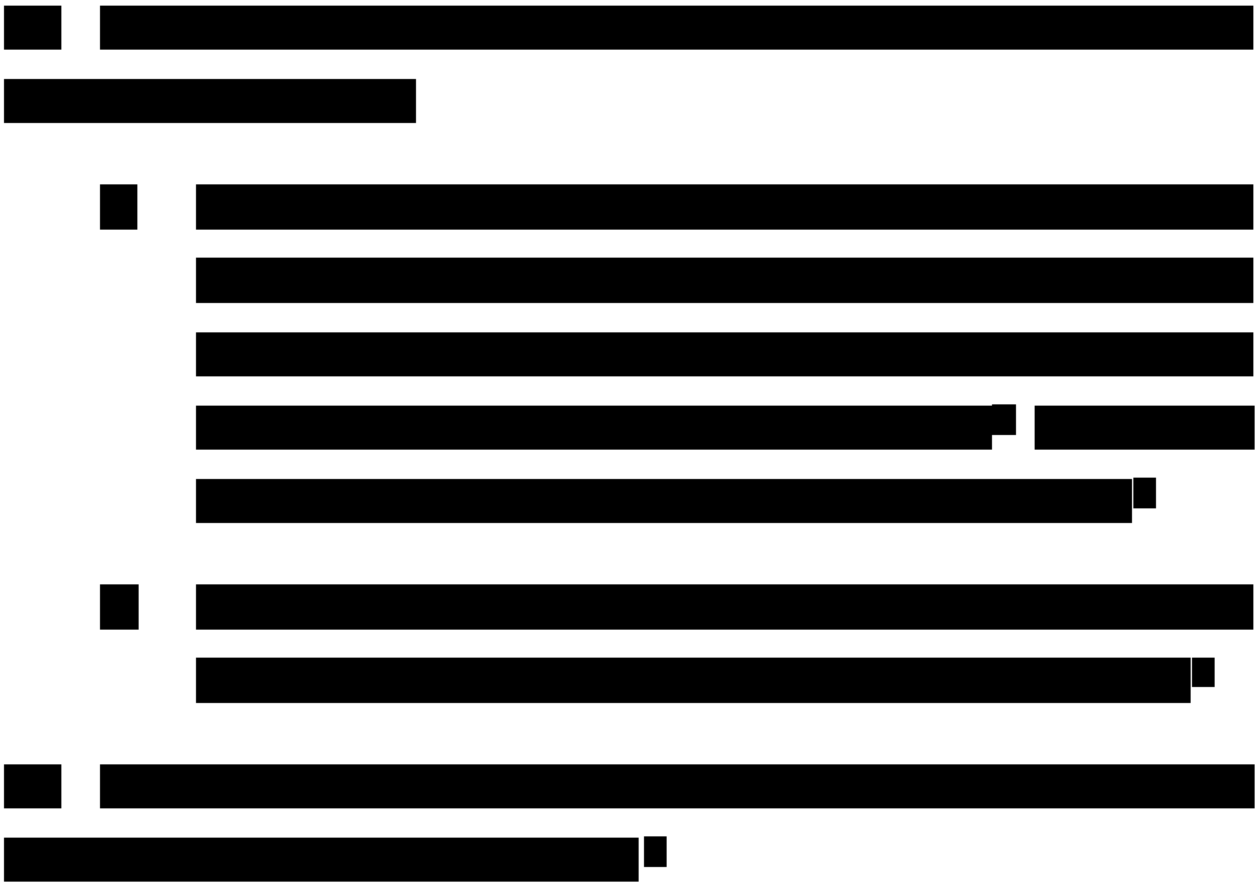

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C. ***Designation of*** [redacted] ***as a Company of Strategic Importance to the Hungarian Economy***

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D. Hungary's 8 Billion Euro Claim Arising Out of Trademark Infringement

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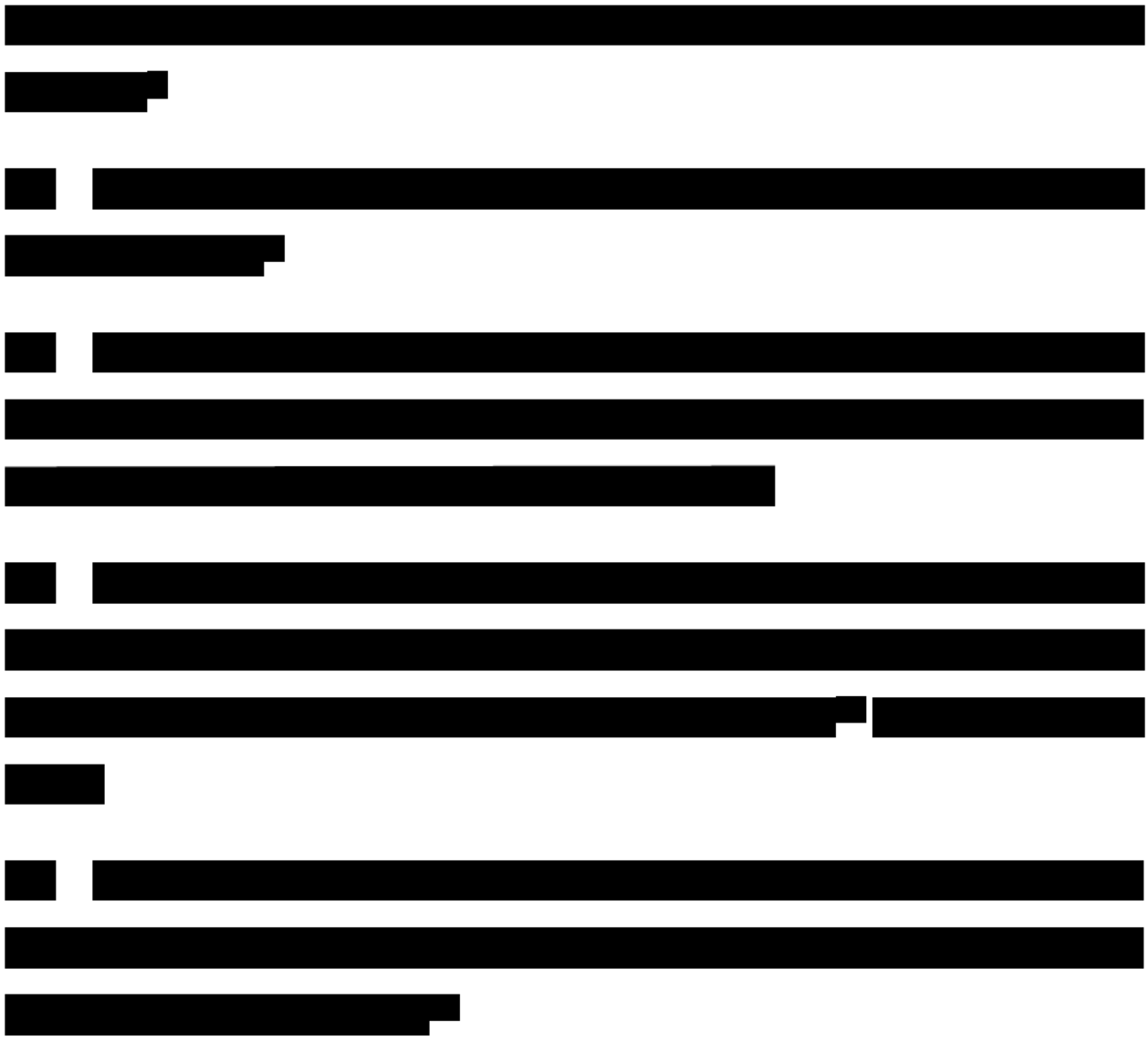

E. Termination of the Liquidation Proceedings

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F. The Aftermath of the Liquidation Proceedings

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[redacted]

PART 4 - JURISDICTION

136. Article 25 (1) of the ICSID Convention provides:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties have given their consent, no party may withdraw its consent unilaterally.

137. Article 8 of the BIT records the parties' agreement to the resolution of "[a]ny dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of the other Contracting Party."[111]

138. Mr. Al Ramahi contends that the conditions for establishing jurisdiction are satisfied:

(a) Hungary and Jordan have signed and ratified the ICSID Convention;

[redacted]

[111] **Exhibit CL-001**. Agreement between the Republic of Hungary and the Hashemite Kingdom of Jordan for the promotion and reciprocal protection of investments.

(b) Mr. Mazen Al Ramahi and Hungary have a legal dispute;

(c) such dispute arises directly from an investment;

(d) the dispute is between a Contracting State and a national of another Contracting State;

(e) the parties to the dispute have consented to submit their disputes to ICSID.[112]

139. The Respondent acknowledges that Mr. Al Ramahi has Jordanian nationality and does not hold nor has he ever held any other nationality.[113] However, the Respondent notes that the Claimant has failed to produce any evidence that he contributed to the capital of the company and argues, on this basis, that "the Claimant has failed to establish that he '*made*' an investment or '*invested'* in [...]."[114]

140. Additionally, the Respondent notes that, even if Mr. Al Ramahi is held to have made an investment in shares of [...], the Claimant can make no actual claim of any loss to his shareholding in [...], which remains intact and valuable.[115] On this point, the Respondent notes that, while Mr. Al Ramahi asserts that "the value of his investment decreased", he produces no evidence in support of this contention. Rather, Mr. Al Ramahi claims that the damages he has suffered consist principally of judicial costs and legal fees and a loss of opportunity to restructure

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[112] Memorial, para. 8

[113] *See* Rejoinder, para. 20, withdrawing its original jurisdictional objection *ratione personae* with respect to Mr. Al Ramahi's claims under the Treaty. The Respondent noted that while Mr. Al Ramahi did not produce any evidence in support of his statement that "he has Jordanian nationality since birth", he did provide a copy of his birth certificate and passports during the document production phase. On the basis of these documents, Hungary indicates that "it is "satisfied that Mr. Al Ramahi has Jordanian nationality" and "understands that Mr. Al Ramahi does not hold and has never held any other nationality."

[114] Counter-Memorial, para. 178. Rejoinder, para. 24.

[115] Counter-Memorial, para. 184.

[...]'s bank loan. The Respondent contends that these "investments" belong to [...], a company that does not qualify as an investor under the Treaty.[116]

141. Accordingly, the Respondent submits that Mr. Al Ramahi's claims "must be dismissed for want of jurisdiction *ratione materiae*."[117]

142. It is true that Mr. Al Ramahi has failed to produce, as requested by the Respondent, and as ordered by the Tribunal, the customary documentation of his investment in [...]. However, while the Respondent rightly protests the impoverished state of Mr. Al Ramahi's documentary production, contested facts are to be determined based on the entire record, and an acknowledgement of facts by the opposing party is among the strongest forms of proof. The following facts were acknowledged as correct by the Respondent, including the corporate history submitted by the Respondent itself, namely:

(a) The Respondent acknowledged in its Counter-Memorial that Mr. Al Ramahi both incorporated [...] and held at least 90% of its shares at all times relevant to this arbitration:

[...][118]

[116] Counter-Memorial, paras. 185-196.
[117] Rejoinder, para. 27.
[118] Counter-Memorial, para. 39.

(b) The Respondent submitted that Mr. Al Ramahi's wife was shareholder in [...] from the date of registration of the company until March 13, 2016;

(c) According to the corporate history submitted by the Respondent, Mr. Al Ramahi and his wife are or have been the only shareholders in [...];[119] and [...] owns [...] a luxury hotel in the tourist area of Budapest;[120]

(d) Mr. Al Ramahi and his wife have sole control over the hotel operations, as the Respondent recognizes at paragraph 87 of its Counter-Memorial:

[...]

(e) Mr. Al Ramahi's wife makes no claim in these proceedings;

(f) there is no suggestion in the materials of any other source of capital for [...] to purchase the hotel building. There is no "white knight" identified in the corporate history who is said by the Respondent to have volunteered capital to enable [...] to buy the hotel without taking back shares or security or other recognition of the investment.

[119] **Exhibit R-005**, Company History of [...] at para. 1.
[120] Memorial, para. 16

143. While in the ordinary course, a tribunal would expect documentary evidence in support of the contribution, in light of the Respondent's own submissions, the only rational conclusion is that Mr. Al Ramahi (and perhaps his wife as to 10%) is the source of the capital investment and the Tribunal so finds on a balance of probabilities. There is no air of reality to the Respondent's speculation that perhaps [...] was somehow secretly financed by someone who would wind up with no shares or other financial interest in the company. In opposition to this conclusion, the Respondent cites the award in *Caratube v. Kazakhstan*:

> [E]ven if Devincci Hourani acquired formal ownership and nominal control over CIOC, no plausible economic motive was given to explain **the negligible purchase price** he paid for the shares and any other kind of interest and to explain his investment in CIOC.[121] (emphasis added)

144. However, in *Caratube*, the tribunal found in assessing evidence that the contribution of the alleged investor, Devnicc Hourrani in CIOC was negligible, and that another company had been the main capital provider to CIOC, so the capital contribution must have come from elsewhere, and the more general observations in the *Caratube* Award have to be read in light of that finding.

145. The Respondent then points out that even if Mr. Al Ramahi is held to have made an investment in shares of [...], the only losses he pleads are losses of [...] not Mr. Al Ramahi personally[122] (apart from damage to his reputation which is a claim Mr. Al Ramahi seems largely to have abandoned).[123] It is true that Mr. Al Ramahi's claimed losses (judicial costs, legal fees, loss of the opportunity to restructure [...]'s bank loans and "expropriation" of the

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[121] **Exhibit RL-012**, *Caratube Int'l Oil Co., LLP v. Kazakhstan*, ICSID Case No. ARB/08/12, Award, June 5, 2012, para. 455.
[122] Rejoinder, paras. 28-30.
[123] Memorial, para. 76.

building without compensation) are losses of [...] not Mr. Al Ramahi personally. However, Mr. Al Ramahi defines his investment as the shares that he holds in [...]. In the context of such a closely held company, the company's losses flow through to Mr. Al Ramahi (and, until March 13, 2016 his wife as to 10%).[124] If Mr. Al Ramahi's allegation of expropriation of the building were to be established, the hotel business would be devastated by the loss of its only substantial "brick and mortar" asset, and in that situation, it is obvious that the value of the family company and therefore Mr. Al Ramahi's shares, would suffer a serious loss.

146. Mr. Al Ramahi formulates his claim as a decrease in share value[125] as a result of the Respondent's actions. The Hungary-Jordan BIT includes "shares" in the definition of investment.[126] Loss of share value, if established, is compensable. On this point, as will be seen, the Claimant has failed to establish any corporate loss but that is a merits issue not a jurisdictional issue.

147. Accordingly, the Tribunal rejects the Respondent's jurisdictional objections *ratione materiae*.

PART 5 - LIABILITY

148. Mr. Al Ramahi alleges the following violations of the Hungary-Jordan BIT:

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[124] In this respect, Mr. Al Ramahi relies on *Continental Casualty Company v. The Argentine Republic*, ICSID Case No. ARB/03/9, Decision on Jurisdiction, February 22, 2006 [**Exhibit RL-049**] and *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Jurisdiction, December 8, 2003 [**Exhibit RL-050**]. The Respondent says that these cases are distinguishable based on the wording of the respective BITs. Mr. Al Ramahi states that by reason of the marriage, his wife's shares belong to him [Reply, para. 15] but it is unnecessary to address the point as 90% of the shares is still a protected investment.
[125] Transcript, p. 76: 14-16; Memorial, para. 64.
[126] Reply, para. 34. Hungary-Jordan BIT, Article 1(1).

(a) the process directed by Section 27(2)(a) of the Bankruptcy Act violates the FET standard;

(b) the Metropolitan Court's application of Section 27(2)(a) of the Bankruptcy Act in addition to the essential unfairness of the statutory process, amounts to a denial of justice;

(c) the appointment of a State Liquidator violated the FET standard;

(d) Hungary's filing of a groundless creditor's claim for 8 million Euro violated the FET standard;

(e) the conduct of the State Liquidator violated the FET standard;

(f) the Hungarian Courts undue delay in the liquidation proceeding amounted to a denial of justice;

(g) Hungary failed to provide full protection and security for Mr. Al Ramahi's investment in [...];

(h) Hungary expropriated Mr. Al Ramahi's investment in [...]. [127]

149. The Tribunal will address each of these allegations in turn.

[127] Memorial, Section 5.

A. Does Section 27(2)(a) of the Bankruptcy Act Violate the FET Standard?

150. In his Memorial, Mr. Al Ramahi contends that "Section 27(2)a) of the Hungarian Bankruptcy Act…is absolutely preposterous and violates the FET standard."[128] This provision deems a debtor insolvent if (i) it has failed to make timely payment of an invoice and (ii) it has not made a timely challenge to the unpaid invoice in writing.

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[128] Memorial, para. 115; see **Exhibit R-002**, Hungarian Bankruptcy Act in force as on March 7, 2012 (relevant excerpts):

> Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Winding-up
> Chapter III
> Liquidation
> *Commencement of liquidation*
> […]
> Section 26
> (1) The court shall investigate the insolvency of the debtor.
> (2) …
> (3) If requested by the debtor, the court may allow a maximum period of 45 days for the debtor to settle his debt, except if the liquidation proceedings had been opened according to Section 21/B directly after bankruptcy proceedings. In the absence of the debtor's statement to that effect, settlement of the debt shall not be considered as acknowledgement of the debt, and it shall not preclude the filing of a civil action to reclaim it.
> (3a) Requests for the commencement of liquidation proceedings may be withdrawn without the consent of the opposing party before the time of the commencement of liquidation proceedings. Termination of the proceedings shall fall within the purview of the court before which proceedings are pending at the time of the withdrawal.
> (4) Discontinuance may be granted only if requested jointly by the debtor and the creditors filing for the liquidation proceedings, before the court's decision for commencement of liquidation proceedings becomes final.
> Section 27
> (1) The court shall order the liquidation of the debtor by order, if it finds that the debtor is insolvent. The court shall declare liquidation within 60 days of receipt of the petition for the liquidation proceedings. The commencement of liquidation proceedings is the date of publication of the final order of liquidation. (Section 28).
> (2) The court shall declare the debtor insolvent:
> a) upon the debtor's failure to settle or contest his previously undisputed and acknowledged contractual debts within twenty days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice, or
> b) upon the debtor's failure to settle his debt within the deadline specified in a final court decision on, or
> c) if the enforcement procedure against the debtor was unsuccessful, or
> d) if the debtor did not fulfill his payment obligation as stipulated in the composition agreement of the bankruptcy proceedings;
> e) …
> f) …

151. Mr. Al Ramahi mounted a furious attack on Section 27(2)(a) in his Memorial:

[...]

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[...]

152. Mr. Al Ramahi calls in aid the criticism of several commentators including the charge that

the Bankruptcy Act has become a method of "legal extortion to get debts paid."[131]

153. In his oral submission to the Tribunal, counsel for Mr. Al Ramahi elaborated as follows:

[...]

[129] Memorial, para. 115.
[130] Memorial, para. 117.
[131] **Exhibit CLA-015**, "Hungary's proposed insolvency law reforms – hope for the future?", by Dr. Akos Eros, Csaba Vari and Thomas J. Salerno, Esq., Squire, Sanders & Dempsey, L.L.P., 2005/06, pp. 92-93:

> The large number of liquidation proceedings is also due to the legal definition of insolvency. As a rule, the Courts will adjudicate the debtor insolvent if the debtor fails to pay its non-disputed debts within 60 days of their due date. In the present Court practice, the Court only examines whether the debtor has disputed the given claim in any manner at all prior to the submission of the liquidation petition. If the answer is no, then irrespective of the company's actual financial situation the Court determines that the company is insolvent and orders its liquidation. Following this, the debtor is unable to efficiently dispute the creditor's claims in any manner…Put simply, if the debtor is able but unwilling to pay, it can be forced to do so by the timely submission of a liquidation petition. That is because if the debtor is not insolvent, the only way it may avoid liquidation is if it manages to agree with the creditor initiating the liquidation proceedings.
> Bankruptcy law has become, in effect to some settlement, legal extortion to get debts paid.

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[...].

[...].[132]

Nevertheless, the Claimant agreed that the Bankruptcy Act is clear that "if a liquidation proceeding is filed against an alleged debtor, that debtor has only two options: to pay, or to demonstrate that it has challenged in writing the existence of the alleged debt. There is no other possible defence in these proceedings."[133] Mr. Al Ramahi had the benefit of legal advice.[134]

154. The Respondent's position is that:

(a) Mr. Al Ramahi cannot challenge, under the auspices of the FET standard, provisions of Section 27(2)(a) of the Bankruptcy Act that were already in force prior to his alleged investment;

(b) the provisions of Section 27(2)(a) are in any event far from "absolutely preposterous" on their face or when compared to the insolvency regulations in force in other jurisdictions;

[132] Transcript, p. 18:21-25 and p. 19:2-10; **Exhibit CL-011**, Award rendered in the judicial proceeding initiated by [...] against [...] (Original in Hungarian not provided).
[133] Transcript, p. 15:20-25.
[134] Transcript, p. 17, 19-22, p. 21:2-16.

(c) there was no assurance to Mr. Al Ramahi that the Bankruptcy Act would be changed to "promote his investment."[135]

155. As Respondent's counsel observed:

> If Mr. Al Ramahi did not like the law, he was at liberty not to invest in Hungary. But he certainly cannot invest, and then argue that the existing laws must be changed, or must not apply to him. And really that's what's being argued here. We heard opposing counsel [say] at the end of his presentation: if the law was different, we would not be here [in an arbitration]. Well, the law is what it is.
>
> And clearly, Mr. Al Ramahi never received assurances from the state that the Bankruptcy Act would be amended or repealed. He had no legitimate investment-backed expectation of a more favourable insolvency regime.[136]

The Tribunal agrees. Section 27(2)(a) of the Bankruptcy Act entered into force more than a decade prior to Mr. Al Ramahi's investment in [...] and remained in force through the relevant period. The critical date for the purposes of assessing the reasonableness and legitimacy of an

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[135] Counter-Memorial, paras. 217-219. At the hearing, Respondent's counsel elaborated as follows:

> That legislation came into effect well before Claimant purported to invest in Hungary and [has] remained virtually unchanged since; **the only changes have been slightly beneficial to debtors**. And on that basis alone, it cannot support a bilateral investment treaty claim.
> Earlier today we heard that, although given the opportunity, having that issue pointed out directly to him, Claimant's counsel was unable to provide a good explanation – or any explanation really – a**s to why a pre-existing piece of legislation could amount to a violation of international law**. And despite a belated effort to say that: well, the state's statements that it was joining the European Union and was progressing in its methodology and its laws. That is the closest that the Claimant has even come close to date to try to allege some kind of legitimate expectation.
> **But, the Claimant never received any assurances or undertakings from the state that the content of the Bankruptcy Act would change in order to facilitate and promote his investment. There is simply so investment-backed legitimate expectation that the Bankruptcy Act would change.**
> During opening, we heard the word "shocking" used about 17 or 18 times, according to the word index; the claims that the application of the law by the court was somehow shocking. **But actually, what Claimant finds shocking is that the courts applied the law as written.** That's really what the complaint was about. Because, as we'll see in more detail, all of the issues about instituting the insolvency proceedings are based on an application of the law that really can't be contested. **So, there is no basis for a fair and equitable treatment claim, and certainly not a denial of justice.** (Transcript, p. 68:6 to p. 69:15) (emphasis added)

[136] Transcript, p. 116:8-19.

investor's expectations is the date when the investor invested in the host State.[137] In making the investment, Mr. Al Ramahi had to take the law as he found it.

156. Mr. Al Ramahi had no legitimate expectation that the law would be changed to afford his investment greater protection against insolvency proceedings than it had at the outset. Mr. Al Ramahi's "legitimate expectations" argument demanding change rather than stability turns the usual FET argument on its head. No authority is cited in support of this novel interpretation.

157. The provisions of Section 27(2)(a) are not complicated. As stated, Mr. Al Ramahi had the benefit of independent legal advice.[138] His failure to survive [...]'s Section 27(2)(a) application was self-inflicted.

B. Did the Metropolitan Court's Application of Section 27(2)(a) of the Bankruptcy Act Amount to a Denial of Justice?

158. In his Memorial, Mr. Al Ramahi contended that, even if the Bankruptcy Act itself is not a breach of FET, "the Metropolitan Court decision to put [...] in liquidation…infringes the very same principle and the Treaty."[139]

159. Mr. Al Ramahi complains that nothing in the Bankruptcy Act obliged the Metropolitan Court to ignore his evidence that the [...] debt was contested, that he had launched judicial proceedings against [...] for damages for faulty performance, and that he had deposited with his lawyer funds in escrow to pay the [...] debt, should payment be required.

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[137] **Exhibit RL-051**, *9REN Holding S.a.r.l v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award, May 31, 2019, para. 289.
[138] See para. 153 *supra*.
[139] Memorial, paras. 115-116.

160. The Respondent contends that steps in the course of a judicial proceeding are only actionable if they result in a denial of justice which both Parties agree was satisfactorily defined in the *Loewen* case as a "[m]anifest injustice in the sense of a lack of due process leading to an outcome which offends a sense of judicial propriety."[140] The Respondent argues that an erroneous decision issued by an incompetent judge does not constitute an international wrong[141] and here, according to the Respondent, there was no erroneous judicial decision.

161. The Respondent then goes further and contends that a denial of justice requires a "clear and malicious misapplication of the law."[142] The Tribunal does not accept that Mr. Al Ramahi needs to prove malice. Judicial errors by the hypothetical "incompetent judge" that would result in a claimant not knowing the case against him, or that deprived him of a reasonable opportunity to respond, might well amount to a denial of justice even if caused by incompetence rather than malice.

162. Nevertheless, Mr. Al Ramahi's essential complaint is that the Court's failed to take into account matters which Section 27(2)(a) of the Bankruptcy Act deems irrelevant. The judges were not authorized to explore the rights and wrongs of his fight with [...], or to accept a deposit of funds with his lawyer as equivalent to "performance" within the meaning of Sections 283 to 287 of the Hungarian Civil Code.[143] Compliance with Section 27(2)(a) of the Bankruptcy Act would

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[140] **Exhibit CLA-007**, *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award, June 26, 2003, para. 132 cited at Memorial, para. 95 and Counter-Memorial, para. 211.
[141] Counter-Memorial, para. 213, citing **Exhibit RL-024**, *White Industries Australia Limited v. Republic of India*, UNCITRAL, Final Award, November 30, 2011, para. 10.4.8.
[142] Counter-Memorial para. 212.
[143] Rejoinder, para. 60. **Exhibit CL-010**, Order of the Metropolitan Court of Appeal Order no. 12.Fpkf.44.776/2013/4, p. 3:

> It is also unfit for refuting the assumption of insolvency because the debtor put the entire amount claimed by the creditor in a deposit with an attorney. Pursuant to the provisions laid down in Articles 283 to 287 of the

have been a simple matter. It is difficult to perceive the logic behind risking a mountain of litigation over a disputed 6,000 Euro debt. Mr. Al Ramahi's refusal to cause [...] to pay 6,000 Euro to [...] is particularly puzzling because if his counterclaim were found to be correct (and he says it was later vindicated in the courts), [...] would recover back the 6,000 Euro from [...] in an ordinary civil action.[144]

163. According to the Claimant, "it is noteworthy that the Court of Appeal determined that emails (in the case the ones sent by [...]), in the absence of an enhanced security electronic signature, failed to qualify as written documents to dispute a purported creditor's claim." [145] The Tribunal considers that the requirement of an "enhanced security electronic signature"[146] is a procedural detail which is entirely within the competence of the Court and does not rise to the level of a denial of justice.

Civil Code concerning the mode of performance lodging the amount of claim in an attorney's custody shall not be deemed to be performance. According to Article 287 of the Civil Code, provided the condition precedents included therein apply, claims can be settled by lodging the amount in the custody of the court, but in the present case the statutory conditions for this solution did not exist, thus the debtor could have avoided ruling of his insolvency only and exclusively by the settlement of the entire outstanding amount of the debt to the creditor's hands. Having regard to the last sentence of Article 27 paragraph (3) of the Bankruptcy Act, namely, provided the challenge laid by the debtor is late, settlement of the debt is not deemed to be the acknowledgement of the debt, and does not exclude reclaiming of the performance under a civil procedure.

[144] Counter-Memorial, paras. 23-27. According to the Respondent, once the court orders the commencement of the liquidation proceeding, the debtor can terminate the proceeding at any stage by paying off its debt to its creditor [**Exhibit R-001**, Bankruptcy Act, s. 27(6)] until the date of publication of the final and binding liquidation order in the Company Gazette. Once the final and binding liquidation order is published, other creditors may file their claims and join the proceeding which is governed by a court appointed official, the liquidator [**Exhibit R-001**, s. 27A]. The liquidator is mainly entrusted with registering the claims of creditors and with selling the debtor's assets in order to satisfy the registered claims. The debtor may avoid liquidation in this second stage by concluding a composition agreement with the creditor(s) (agreeing to settle all or an agreed portion of its debt(s)). The composition agreement must be approved by the court. In this event, the proceeding is terminated, and the debtor regains full autonomy [**Exhibit R-001**, s. 60(2)]. In the event that no composition agreement can be found, the assets of the company are sold in order to satisfy the registered claims.

[145] Memorial, para. 37.

[146] Counter-Memorial, para. 82.

164. The evidence seems clear that [...] was using the Bankruptcy Act as a debt collection device rather than acting out of any serious concern about [...]'s solvency. It is of cold comfort to Mr. Al Ramahi that on April 20, 2017, the Metropolitan Court of Appeal ruled that not only did [...] not owe any money to [...], but that [...] should compensate [...] in the amount of about HUF 1 million.[147]

165. Nevertheless, if provisions of the Bankruptcy Act do not violate the BIT, nothing done by the Hungarian Courts in putting [...] into liquidation in compliance with its provisions constituted an independent "stand alone" treaty violation.

C. Did the Appointment of a State Liquidator Violate the FET Standard?

166. The appointment of the State Liquidator resulted from the designation of the [...] as deserving of "cultural heritage protection" and the classification of [...] as "strategically important." [148] Mr. Al Ramahi contends that the designation was not justified

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[147] **Exhibit CL-011**, Award rendered in the judicial proceeding initiated by [...] against [...], p. 14 [...].
[148] **Exhibit R-002**: Hungarian Bankruptcy Act in force as of March 7, 2012 (relevant excerpts):
Bankruptcy Act, Section 65

> (1) The Government may classify – by means of an order – **as major economic operators of preferential status for strategic considerations** those economic operators specified under Subsection (3) to whom the following criteria applies:
> a) settlement of the debts of such operators, **composition with creditors** or reorganization **is in the interest of the national economy** or is of particular common interest, or
> b) the winding up of such operators without succession – **where the lack of funding and insolvency cannot presumably be resolved** – in a simplified, transparent and standardized procedure is given priority due to economic considerations.
> (2) The Government shall publish the order mentioned in Subsection (1), in the case of bankruptcy proceedings:
> a) **within fifteen days from the time of the opening of bankruptcy proceedings** [Subsection (1) of Section 10],
> b) **in the case of liquidation proceedings, within thirty days from the time of the commencement of liquidation proceedings** [Subsection (1) of Section 27, Subsection (1) of Section 28],

under Section 65(3) of the Bankruptcy Act. [redacted]

[redacted]

3) 'Major economic operator of preferential status for strategic considerations' shall mean **any economic operator**:

a) that operates in **fields that may be construed to be of national importance** for reasons of national security, defense, law enforcement, military, energy safety, energy supply, industrial safety, disaster relief and emergency response, nature preservation, environmental protection, public health, public utility, infrastructure development, **cultural heritage**, public information, communications, transport, transportation safety, research and development and public health considerations, or as related to basic public functions or to ensuring basic food supplies to the general public, as well as for reasons of national and international trade and employment, or for reasons of supplying district heat and other public utility services to the general public. (emphasis added)

[149] Memorial, para. 48.

[redacted]

[redacted] The Tribunal is certainly not in a position to second guess the cultural significance of the building. In any event, despite Mr. Al Ramahi's protestations that the delay occasioned by the changeover from a private Liquidator to the State Liquidator caused loss and damage, the Tribunal is not satisfied that the mere substitution, as such, of a State Liquidator, created significant prejudice, as will be discussed. Accordingly, the Tribunal concludes that the appointment of the State Liquidator did not violate the FET standard.

D. Did Hungary's Filing of an 8 Billion Euro Claim Under a Court Decision Previously Set Aside on Appeal Violate the FET Standard?

168. In his Memorial, Mr. Al Ramahi contends that it is "absolutely preposterous" that the President of the Metropolitan Court filed an 8 billion Euro claim on behalf of the Hungarian State when the order levying the fine had earlier been vacated on appeal.[153]

169. The 8 billion Euro claim, even had the order not been vacated, was totally lacking in proportionality to the underlying misconduct, namely the wrongful use of the name [...] in the name of a Budapest [...]. The situation was aggravated by Mr. Al Ramahi's intransigence in the face of a series of adverse court judgments:

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[152] As Respondent's counsel put it:

[redacted]

[153] Memorial, para. 120.

(a) Mr. Al Ramahi had been warned by judicial order on November 21, 2008, even before the [...] opened in 2010, that the use of the name [...] would infringe the trademark owned by [...];[154]

(b) nevertheless, in contravention of the Court order to cease and refrain from infringement, the hotel opened as [...];[155]

(c) by further Order dated September 8, 2010, the Metropolitan Court gave [...] three days to cease infringing the trademark and comply with the judgment.[156] The Metropolitan Court also notified [...] that non-compliance would lead to the application of a daily fine that would double each month until the trademark infringement finally ceased;[157]

(d) in December 2010, [...] applied to the District Court of Budapest fo r declaration that it had complied with the judgment by changing the name "[...]" for "[...]" in the [...]'s name (replacing the first "a" with a diamond);[158]

(e) the application was rejected and by Order dated February 8, 2011, [...] was ordered to pay a fine then calculated at approximately 9,500 Euro;[159]

(f) Mr. Al Ramahi caused [...] neither to pay the fine nor cease infringement;

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[154] **Exhibit R-009**, Judgment of First Instance of the Metropolitan Court n° 1.P.22.966/2008/15, November 21, 2008.
[155] *See* para. 6 *supra*.
[156] **Exhibit R-011**, Order of the Metropolitan Court no. 0100-1.Vh.401.807/2010/2, September 8, 2010.
[157] **Exhibit R-011**, Order of the Metropolitan Court no. 0100-1.Vh.401.807/2010/2, September 8, 2010, p. 1.
[158] *See* para. 100 *supra*.
[159] **Exhibit R-012**, Order of the Central District Court of Pest no. 0101-I.Vh.333/2011/5, February 8, 2011, p. 1.

(g) [...] (owner of the [...] trademark) then took further proceedings resulting in a further cease and refrain order (this time directed to [...]) on June 10, 2011;[160]

(h) Mr. Al Ramahi caused [...] to appeal and on October 13, 2011, the appeal was dismissed;[161]

(i) By order dated May 2, 2012, the Metropolitan Court again gave [...] three days following delivery of the order to comply with the judgment. In the event of non-compliance, the fine of approximately 35 Euro/day would be doubled each month until the trademark infringement finally ceased.[162] The Court manifested a measure of impatience with Mr. Al Ramahi and [...]:

> During the procedure the applicant declared to the bailiff, and also **showed it by photos, that the debtor failed to comply with the cessation of the trademark's infringement.** Therefore, the bailiff acting in the case requested to set the further method of enforcement.
>
> As of the communication of the enforceable document, the debtor is aware of the enforcement procedure pending against it. Despite this, [...] has **failed to certify compliance** in accordance with Section 184/A(5) of the Enforcement Act, what is more, as shown in the available enforcement file, it has **failed to make any statement on the performance**.[163] (emphasis added)

(j) Inditex applied to the Hungarian Court bailiff for enforcement of the Order of May 2, 2012 and on June 12, 2014, [...] was ordered to pay HUF

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[160] **Exhibit R-013**, Judgment of First Instance of the Metropolitan Court no. 1.P.27.622/2010/11, June 10, 2011, p. 1.
[161] **Exhibit R-014**, Judgment of Second Instance of the Metropolitan Court of Appeal no. 8.Pf.21.360/2011/5, October 13, 2011, p. 1.
[162] **Exhibit R-015**, Order of the Metropolitan Court no. 0100-1.Vh.400.207/2012/2, May 2, 2012, p. 1.
[163] **Exhibit R-016** (**Exhibit C-015**), Order of the XVIII & XIX District Court of Budapest no. 0105.-1.Vh.580/2014/2, June 12, 2014, p. 1.

2,747,639,060,000 for infringement of the [...] trademark over the course of the two preceding years.[164]

(k) On November 27, 2014, the Metropolitan Court set aside this order, on procedural grounds, and remanded the case back to the District Court for new proceedings.[165]

(l) On January 22, 2015, the President of the Metropolitan Court filed a "disputed creditor's claim" before the State liquidator.[166]

170. Despite the aggravating circumstances, which do not credit to Mr. Al Ramahi, the pursuit by the President of the Metropolitan Court of an 8 billion Euro fine under a vacated judgment for a relatively garden-variety trademark infringement is shockingly disproportionate. However, the Hungarian courts self-corrected. It cannot be said that in the President's attempted "debt collection", the Hungarian Courts were guilty of a "lack of due process."

171. Counsel for the Respondent suggests that the President of the Metropolitan Court was motivated by fear of reputational damage if he allowed Hungary's supposed 8 billion Euro asset to slip away.[167] The President did not originate the fine, which was generated by simple arithmetic from the original order. Mr. Al Ramahi was aware of the original order and its monthly multiplier.

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[164] **Exhibit R-016** (**Exhibit C-015**), Order of the XVIII & XIX District Court of Budapest no. 0105.-1.Vh.580/2014/2, June 12, 2014, p. 2.
[165] **Exhibit R-27,** Submission by the State liquidator to the Metropolitan Court, January 23, 2015, p. 1.
[166] **Exhibit CL-13,** Letter from the State liquidator to CIB, February 16, 2015, p. 2.
[167] Respondent's counsel speculated:

> I'm sure we can all imagine ourselves in the shoes of the President of the Metropolitan Court. I mean, he had, I think, only a couple of days literally to file this claim, and I think – I mean, sorry to say this, to be personal, but if I were in his shoes, I would be rather scared that I have to deal with the amounts – I mean, it's such an extraordinary amount of money, that is even more than the entire budget of the entire court system in Hungary probably, and I have a couple of days to file this. So, I want to make sure that I file it: I preserve my right. **And then, because I'm bound by certain rules that actually bind public officials in their jobs,**

172. In the Tribunal's view, Mr. Al Ramahi's intransigence was as inexplicable as the 8 million Euro fine was disproportionate.

173. The Tribunal is satisfied that in pursuing the claim the President of the Metropolitan Court was acting not in his capacity as a private individual but as State official. He was a judge although his act was administrative rather than judicial. The Respondent acknowledges that "the President of the Metropolitan Court was the proper representative to file Hungary's creditors' claim."[168] In other words, he was acting *ex officio*. Rather surprisingly, the Respondent then argues that filing the claim was not a sovereign act for which redress may be sought under the BIT.[169] Instead, the Respondent argues, "in filing a creditor's claim, Hungary did not exercise any State prerogatives but acted like any other ordinary creditor seeking satisfaction of its claim in the event of the debtor's liquidation."[170]

174. This line of argument is not credible. The claim was not for a commercial debt, but a fine originally imposed (albeit later vacated) by a court. The "debt" was claimed not personally but on behalf of the State by the President of the Metropolitan Court (who throughout the Respondent's material is identified by his official title). Indeed, according to the Respondent itself, as soon as the President filed the claim, the proceeding had to be transferred to the Budapest Regional Court

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> **to make sure that they take due care in terms of managing the assets of the court or state**, I just step into the line and want to make sure, also as a private individual, that **nothing tarnishes my reputation**, in the sense that I pursued that claim to the best of my abilities. And he had the right to seek remedies, and he thought he was right, so he persisted. (Transcript, p. 100:6-25) (emphasis added)

[168] Transcript, p. 128:15-18.

[169] Transcript, p. 128:10-12; **Exhibit RL-052**, *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, June 18, 2010, para. 328: "The starting premise is that only the State as a sovereign can be in violation of its international obligations. This principle has been re-stated by many ICSID tribunals." See also, **Exhibit RL-053**, *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, April 22, 2005, para. 260: "Only the State in the exercise of its sovereign authority ('*puissance publique*'), and not as a contracting party, may breach the obligations assumed under the BIT."

[170] Rejoinder, para. 82.

to avoid any appearance of a conflict of interest between the Court conducting the liquidation proceedings and the President of the Court spearheading the collection effort.[171] The Respondent cannot avoid responsibility for the administrative acts of its Metropolitan Court President if indeed what he did was to constitute a Treaty breach.

175. The Respondent acknowledges that, at the time the President filed the claim, the initial order imposing the fine had been set aside.[172] Further proceedings had been ordered but had not reached judgment. Yet, it was obvious that filing the 8 billion Euro claim would destroy any possibility of a timely composition agreement with creditors that would extricate [...] from liquidation[173] triggered by a relatively minor 6,000 Euro trade debt.

176. In the end, some balance was restored. The State Liquidator having registered the 8 billion Euro fine as a "disputed claim" on January 26, 2015, reconsidered the registration and, on further reflection, reversed the registration six weeks later on March 10, 2015. So far as she was concerned, the situation complained of lasted about six weeks. Although the President of the Metropolitan Court took it on himself to launch an appeal, the appeal was denied by the Regional Court of Budapest on July 29, 2015[174] and by the Metropolitan Court of Appeal on November 11, 2015.[175] On this calculation, the total disruption caused by the filing of the 8 billion Euro claim lasted about ten months.

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[171] Counter-Memorial, paras. 259, 263; Rejoinder, para. 83.
[172] Counter-Memorial, para. 258.
[173] Rejoinder, para. 87. The Respondent acknowledges that "the claim, until the issue of its registration was ultimately determined, constituted an obstacle to a composition agreement between [...] and its creditors (who may or may not have reached an agreement otherwise), this is simply the ordinary course of similar proceedings."
[174] **Exhibit R-043**, Order of the Regional Court of Budapest n° 9.Fpkh.13-2015-0127-10-I, July 29, 2015.
[175] **Exhibit R-029**, Metropolitan Court of Appeal n° 12.Fpkhf.44.890/2015/2, November 11, 2015.

177. The Tribunal acknowledges the disruption occasioned to the detriment of Mr. Al Ramahi and [...] by the effort of Hungarian State officials to register a wholly disproportionate fine of 8 million Euro under a court judgment previously set aside. Although counsel for the Respondent defended the conduct of the President of the Metropolitan Court as best he could, counsel was not aware of any precedent for the President's intervention in the liquidation proceeding. He acknowledged that "it has never happened in my experience." [176] Nevertheless:

(a) to the extent fault is attributed to the State Liquidator for the initial registration, she self-corrected within six weeks. There can be no legitimate expectation on the part of any investor that the machinery of Government will function flawlessly. An administrative error, self-corrected after a six-week delay does not amount to a breach of the Treaty;

(b) the conduct of the President of the Metropolitan Court is more of a problem. His initial action, which was administrative not judicial, and subsequent appeals delayed by about ten months [...]'s exit from the liquidation process. While (unlike the State Liquidator) the President did not self-correct, nevertheless he was

[176] See Transcript, p. 107:4 to p. 108:19:

[...]

corrected by the Regional Court within six months and lost his appeal to the Metropolitan Court of Appeal 4 months thereafter. The Hungarian court system rectified the administrative problem created by the President of the Metropolitan Court within a reasonable time by a process quite consistent with fair and equitable treatment;

(c) Mr. Al Ramahi can have no complaint about the intervention of the Hungarian courts in these cases. Their decision favoured Mr. Al Ramahi's interest and did so within ten months which, in all the circumstances was a reasonable time;

(d) Leaving aside the conduct of the President, the courts were not part of Mr. Al Ramahi's 8 billion Euro problem. They were part of his solution.

E. Did the Acts of the State Liquidator Violate the FET Standard?

178. Apart from the original decision of the State Liquidator to register the 8 billion Euro "disputed claim", Mr. Al Ramahi complains that her conduct violated the FET standard on two grounds. The State Liquidator allegedly "advise[d] creditors to withdraw from the agreement with the debtor and its shareholder" and "ask[ed] for higher fees than the previous liquidator."[177]

179. As to the first complaint, it appears from the first composition proposal prepared by [...] on December 4, 2014 that negotiations with creditors were still on-going when the State Liquidator was appointed.[178] There was no concluded agreement from which to withdraw.

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[177] Memorial, para. 119.
[178] **Exhibit R-026**, [...]'s first composition proposal, December 4, 2014, p. 7 cited at Counter-Memorial, para. 102.

180. Undoubtedly, registration of the 8 billion Euro claim temporarily wrecked the prospect for a composition agreement. This was inevitable. However, the Tribunal has held that the registration itself did not result in a Treaty violation and it would be wrong to hold that the inevitable (and temporary) consequence of the registration constituted a stand-alone Treaty violation.

181. As to the complaint about the fees charged by the State liquidator, Mr. Al Ramahi has failed to adduce any evidence to support his contention that the fees were improper. The Respondent asserts that the fees requested by the State Liquidator, which the Budapest Regional Court subsequently approved as reasonable, were well within what the State Liquidator was entitled to receive by law.[179] In fact, the Respondent says the State Liquidator charged only one third of the standard fees.[180]

F. Did the Hungarian Courts Unduly Delay the Liquidation Proceeding Amounting to a Denial of Justice?

182. Mr. Al Ramahi's complaint about delay in the Hungarian courts is really a reformulation of his complaint about the Special Liquidator and the attempt by the President of the Metropolitan Court to file a "disputed claim" for 8 billion Euro. Insofar as these issues came before the courts there was no denial of justice.

183. [...] was put into liquidation in accordance with the Bankruptcy Act. Liquidation could easily have been avoided had Mr. Al Ramahi followed the procedures required by the Act and related rules easily discoverable with independent legal advice which Mr. Al Ramahi received.

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[179] Counter-Memorial, para. 254; Rejoinder, para. 77.
[180] Rejoinder, para. 77.

[...] was discharged from liquidation reasonably promptly on removal of the threat of the 8 billion Euro claim.

184. The litigation concerning the attempt by the President of the Metropolitan Court to file the 8 billion Euro claim was resolved in Mr. Al Ramahi's favour. He has not alleged any irregularity much less a denial of justice in those proceedings.

G. Did Hungary Fail to Provide Full Protection and Security Contrary to Article 2.2 of the Treaty?

185. While "[t]he concept of full protection and security has its origins in a guarantee of physical security for investors and investments,"[181] Mr. Al Ramahi cites Mr. Christoph Schreuer for the proposition that "the host state is under an obligation to provide a legal framework that enables the investor to take effective steps to protect its investment."[182] In the Tribunal's view, effective steps were available to Mr. Al Ramahi under Section 27(2)(a) of the Bankruptcy Act, but he failed to take them.

186. Mr. Schreuer, in turn, quotes another commentator, Mr. Thomas Wälde, regarding the application of the full protection and security standard to economic regulatory powers, as follows:

> This obligation would not only be breached by active and abusive exercise of State powers but also by the omission of the State to intervene **where it had the power and duty to do so** to protect the normal ability of the investor's business to function.[183] (emphasis added)

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[181] **Exhibit CLA-018**, Christoph Schreuer, "Full protection and Security", Journal of International Disputes Settlement, 2010, p. 16.
[182] **Exhibit CLA-018**, Christoph Schreuer, "Full protection and Security", Journal of International Disputes Settlement, 2010, p. 17.
[183] **Exhibit CLA-018**, Christoph Schreuer, "Full protection and Security", Journal of International Disputes Settlement, 2010, p. 7.

Mr. Al Ramahi has not identified the source of any such duty in this case.

187. According to Mr. Al Ramahi,

> [I]t was the failure of Hungary to enact an insolvency regulation that allows companies to avoid liquidation and/or allows them to reorganize their business in the context of a liquidation proceeding and therefore safeguard its investment, that breached the full protection and security.[184]

For this proposition, Mr. Al Ramahi cites Redfern and Hunter's statement that the "'full protection and security clause' seeks to impose certain positive obligations of the host state to protect investments."[185]

188. Without necessarily disagreeing with these observations, the Respondent says they have no application.[186] Even an extended interpretation would do no more than prevent an adverse change to the regulatory framework existing at the time the investment was made. On this basis, Mr. Al Ramahi would have to establish specific assurances (which he does not allege) or that new measures were implemented that present "drastic or discriminatory" features (also not alleged). The Respondent relies upon the Award in *Toto Costruzioni Generali S.p.A. v. Lebanese Republic*:[187]

> In the absence of a stabilisation clause or similar commitment, which were not granted in the present case, changes in the regulatory framework would be considered as breaches of the duty to grant full protection and fair and equitable treatment only in case of a **drastic**

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[184] Memorial, para. 128.
[185] **Exhibit CLA-019**, Alan Redfern and Martin Hunter, with Nigel Blackaby and Constantine Partasides, *Law And Practice Of International Commercial Arbitration*, 4th Ed., London, Sweet and Maxwell, 2004, paras. 11-28.
[186] Counter-Memorial, Section V.B.
[187] Counter-Memorial, para. 276.

> **or discriminatory change** in the essential features of the transaction.[188] (emphasis added)

189. No such changes are alleged in this case. Mr. Al Ramahi has not identified the source of any such "positive obligation." He contends that Hungary ought to have reformed the legal and regulatory framework governing liquidation that was in existence at the time of his investment[189] but for the reasons already discussed, Hungary was not required to change its legislation to accommodate Mr. Al Ramahi's disinclination to follow liquidation procedures of general application.

H. Did Hungary Expropriate Mr. Al Ramahi's Investment Contrary to Article 5 of the Treaty?

190. Mr. Al Ramahi claims expropriation but there has been no taking. Mr. Al Ramahi still owns the shares in [...], and there is no evidence that they may have declined in value.

191. While Mr. Al Ramahi contends that the limited period during which [...] was placed in liquidation should be considered a "taking", he does not contend (nor could he) that the alleged

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[188] **Exhibit RL-039**, *Toto Costruzioni Generali S.p.A. v. Lebanese Republic*, ICSID Case No. ARB/07/12, Award, June 7, 2012, para. 244.
[189] Memorial, paras. 128-129; **Exhibit RL-040**, *Iurii Bogdanov, Agurdino-Invest Ltd. and Agurdino-Chimia JSC v. Republic of Moldova* I, Arbitral Award, September 22, 2005, para. 4.2.3.2: "[T]he full protection principle is not to be considered as a corrective of the host country's legislation but has to be applied in accordance with the host country's law."

"taking" was permanent[190] rather than "ephemeral."[191] In any event, the liquidation was self-inflicted by Mr. Al Ramahi's refusal to take the simple statutory requirements to avoid it.

192. It is untenable to suggest that steps taken by a creditor against an insolvent debtor under bankruptcy legislation that results in the temporary loss of control by the debtor constitutes a "taking" by the State that entitles the debtor to fair compensation. Bankruptcy law does not benefit only creditors. In fact, it disproportionately favours debtors by creating a procedure to extricate them from insolvency at the expense of creditors where the funds available to the insolvent estate are insufficient to pay the creditors in full.

193. The Tribunal therefore rejects Mr. Al Ramahi's claim that his shares in [...] were expropriated.

PART 6 - DAMAGES

194. In the absence of a finding of liability, there is no occasion for the Tribunal to consider the issue of damages. However, the Tribunal wishes to indicate that had damages not become a moot

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[190] The Respondent at para. 283 of its Counter-Memorial refers to the award in *Tecmed v. Mexico*, stating that:

> [M]easures adopted by a State, whether regulatory or not, are an indirect *de facto* expropriation if they are irreversible and permanent and if the assets or rights subject to such measure have been affected in such a way that "…any form of exploitation thereof…" has disappeared; *i.e.* the economic value of the use, enjoyment or disposition of the assets or rights affected by the administrative action or decision have been neutralized or destroyed. Under international law, the owner is also deprived of property where the use or enjoyment of benefits related thereto is exacted or interfered with to a similar extent, even where legal ownership over the assets in question is not affected, and so long as the deprivation is not temporary.

Exhibit RL-43, *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, May 29, 2003, para. 116.

[191] The Respondent cites at Rejoinder, para 282, Andrew Newcombe and Lluís Paradell, for the propositions that "the deprivation of property must be severe, fundamental or substantial and not ephemeral. Further, the UNCTAD Series on Issues in International Investment Agreements II on "Expropriation" similarly confirms the established rule: In order to constitute an expropriation, the measure should be definitive and permanent." (emphasis omitted)
Exhibit RL-042, UNCTAD Series on Issues in International Investment Agreements II, Expropriation, p. 69.

issue, any assessment would have been frustrated by Mr. Al Ramahi's almost complete refusal to produce relevant documents notwithstanding the Tribunal's order to do so.

195. As pointed out in argument by counsel for the Respondent:

> [Mr. Al Ramahi's] damages calculation purports to rely on a "preliminary memorandum": that's [EXPERT]'s own words about what it produced. That document that Claimant submitted is explicitly not an expert report…
>
> But, more importantly, the authors of the report, [EXPERT], drew the Claimant's attention in their preliminary memorandum to what he needed to do. They said that he needed to provide actual documented evidence in order for them to prepare an expert report that would be a formal expert. That's in their memo at paragraph 1.4.
>
> We don't know exactly what happened: either the Claimant didn't want to provide evidence, didn't want to pursue the expert report, or was unable to provide sufficient evidence…
> When Respondent's experts, [EXPERT], listed all the kinds of evidence, agreeing with [EXPERT] as to what needed to be produced, we even requested it in document production in order…to test Claimant's case, and Claimants [sic] failed there to provide the evidence even when order to do so by the Tribunal.[192]

196. Mr. Al Ramahi's behaviour in this respect echoes his refusal to resolve the trademark infringement situation in a timely and responsible way and his failure to address the [...] debt in accordance with Hungarian law.

PART 7 - COSTS

197. As indicated above, the Claimant has failed to provide the Tribunal with a Statement of Costs. [193] The Respondent seeks its costs of these proceedings on the basis that (1) costs ought to

[192] Transcript, pp. 63:1-64:14.
[193] See paras. 84-87 *supra*.

follow the event, and (2) Mr Al Ramahi's "failure[] to abide by the most basic deadlines…has upended the procedural calendar on more than one occasion, causing Hungary to incur significant amounts of time and costs in applying to the Tribunal for directions and orders."[194] The Tribunal accepts the first proposition and endorses the second.

198. The assessment of the quantum of the Respondent's costs is a more difficult issue. The sum total of detail provided by the Respondent is as follows:

Attorney Fees	
DLA Piper	HUF 295,000,000[195]
Expert Fees	
[EXPERT]	USD 30,000
ICSID Costs	
Advances	USD 300,000
TOTAL	**HUF 295,000,000 plus USD 330,000**

199. At current exchange rates HUF 295,000,000 equals approximately USD 1,003,000. This is a very substantial sum for a fairly straight-forward case. The Tribunal does not doubt that the Respondent's lawyers spent the time claimed, and wishes to express its appreciation for the high quality of their written and oral pleadings, not to mention their diligent search for and organization of many of the documents that ought to have been made available to the Tribunal by Mr. Al

[194] Respondent's Cost Submission, para. 5.
[195] Respondent's Cost Submission, fn. 26: "Counsel to Hungary notes that this figure is rounded down from the exact amount of HUF 295,990,384.90. Counsel to Hungary also notes that this figure also contains invoices in the amount of HUF 49,348,435.72 that are currently awaiting client approval. All the amounts denominated in HUF in this table contain the applicable VAT under Hungarian law."

Ramahi. However, a bill of costs justifiable to the client is not necessarily justifiable to impose on the opposing party. A client may demand more work to be done at a more senior level at a higher billing rate than was necessary, and while the client is entitled to have its demands respected, the question before the Tribunal is not whether the fees are reasonable as between DLA Piper and the Respondent. The question is whether as between Mr. Al Ramahi and the Respondent, Mr. Al Ramahi should be required to reimburse the Respondent for "Attorney Fees" in excess of a million US dollars.

200. Article 61(2) of the ICSID Convention provides:

> In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

201. This provision gives the Tribunal discretion to allocate all costs of the arbitration, including attorney's fees and other costs, between the Parties as it deems appropriate.

202. The costs of the arbitration, including the fees and expenses of the Tribunal and ICSID's administrative fees and direct expenses amount to (in USD):

Arbitrators' fees and expenses	
Ian Binnie	55,421.30
Hamid Gharavi	70,500.00
Brigitte Stern	38,709.00

ICSID's administrative fees	168,000.00
Direct expenses	6,664.24
Total	**339,294.54**

203. The above costs have been paid out of the advances made by the Parties in equal parts.[196] As a result, each Party's share of the costs of arbitration amounts to USD 169,647.27.

204. The Respondent acknowledges that the "loser pays principle is not…an absolute rule. Tribunals may also decide on the proper apportionment of costs [for example,] by taking into account the particular conduct of a party …." [197]

205. To some extent, there has been divided success. While the Respondent has won on the merits, its jurisdictional objection was ill-founded and, in that respect, Mr. Al Ramahi prevailed.

206. No particulars are presented to enable the Tribunal to assess which lawyer in which DLA Piper office (Budapest or Paris) spent what time and at what rates. There is no break-out of paralegal time. The Tribunal is not even presented with a break-out of disbursements (apart from the USD 30,000 account of the [EXPERT], which is certainly reasonable). Presumably an unknown amount of disbursements is rolled into the general category of "Attorney fees."

[196] The remaining balance will be reimbursed to the Parties in proportion to the payments that they advanced to ICSID.
[197] *See* Respondent's Cost Submission, para. 10.

207. There is also an access to justice issue. Investor-State arbitrations should not be limited to the big investors with deep pockets. Litigation is inherently expensive and the principle that the loser pays is a useful deterrent to frivolous cases. However extravagant cost awards undermine the usefulness of the system. Mr. Al Ramahi was entitled to call into question the treatment of his investment by the Hungarian State without handing a blank cheque to the Respondent for whatever legal costs the Respondent chose to incur.

208. At the same time, the Tribunal acknowledges that the Respondent's "Attorney Fees" were driven up unreasonably by Mr. Al Ramahi's lack of reasonable cooperation in the conduct of the arbitration.

209. In the circumstances the Respondent is awarded for "Attorney Fees" a sum equal to three quarters of its solicitor client bill or HUF 221, 250,000 (at current exchange rates this is equivalent to approximately USD 726,445). In addition, the Respondent is entitled to reimbursement in full for expert fees.

210. In light of the divided success, the costs of the arbitration USD 339,294.54 are to be divided equally.

211. With respect to post-Award interest, the BIT mandates that the interest be calculated based on a "commercially reasonable rate."[198] The Claimant suggested 5% per annum.[199] The Respondent disputed that 5% per annum is a "commercially reasonable rate" but did not offer an alternative.[200]

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[198] Hungary-Jordan BIT, Article 4.
[199] Memorial, para. 165.
[200] Counter-Memorial, para. 332.

212. Neither party addressed interest rates in the second round. The Tribunal finds that a rate within the 2% range is more in line with the practice of ICSID tribunals which is to grant Libor or Euribor + 2. The Hungarian commercial bank lending rate in February 2021 remained unchanged from January 2021 at 1.85%.[201] Based on the foregoing and the current Libor and Euribor rates, the Tribunal finds 1.85% to be appropriate. The interest thus calculated is to be compounded semi-annually.

PART 8 - DISPOSITION

213. For the reasons set forth above, the Tribunal decides as follows:

(1) The Respondent's objection *ratione materiae* is dismissed;

(2) The Claimant's claims are dismissed in their entirely.

(3) The Respondent is entitled to a contribution to its legal costs assessed at:

(i) Attorney's fees of HUF 221,250,000;

(ii) Expert fees of USD 30,000;

(4) The award of costs is to carry post-award interest at the rate of 1.85% compounded semi-annually from the date of this Award until payment.

(5) The costs of the arbitration are to be shared by the Parties equally.

[201] Source: National Bank of Hungary, tradingeconomics.com.

[signed]

Dr. Hamid G. Gharavi

Arbitrator

Date: April 16, 2021

[signed]

Professor Brigitte Stern

Arbitrator

Date: April 16, 2021

[signed]

Hon. Ian Binnie, C.C., Q.C.

President of the Tribunal

Date: April 15, 2021