

Christian DOUTREMEPUICH
and
Antoine DOUTREMEPUICH

v.

REPUBLIC OF MAURITIUS

Respondent's Closing Statement

The Hague, 13 June 2019

The Tribunal lacks jurisdiction *ratione materiae*

Om Kumar DABIDIN
 Permanent Secretary
 Prime Minister's Office

Attn: Ms S. Valere

Dear Sir,

Subject: Forensic DNA and paternity testing laboratory

We refer to the **meeting held on Monday 19 October at the premises of the Prime Minister's Office regarding the setting up of a Forensic DNA and Paternity testing laboratory in Mauritius.**

We wish to inform you that Prof Doutremepuich has provided us with a detailed business plan to

the local police force but also from the region on latest techniques in forensic DNA sampling, analysis and crime investigations. Such collaborations are already being done by the LHML with the gendarmerie francaise in France and other overseas departments including La Reunion. The laboratory will also extend its services to the countries in the region which again is in line with government's vision in promoting outward investment by local companies towards Africa.

Prof Doutremepuich is in advanced discussions with the University of Mauritius for the recruitment of fresh graduates in molecular biology. A training programme (theory and practical) of around 4-6 months will be carried out in Bordeaux under the supervision of the directors. The trained personnel will be sent back to Mauritius to work in the lab. The objective is to maintain the same quality of personnel as the lab in Bordeaux.

Subject: Forensic DNA and paternity testing laboratory

We refer to the **meeting held on Monday 19 October at the premises of the Prime Minister's Office regarding the setting up of a Forensic DNA and Paternity testing laboratory in Mauritius.**

The project is based on a similar laboratory, Laboratoire d'Hematologie Medico-Legale (LHML), which Professor Doutremepuich owns and runs in Bordeaux, France. The laboratory is accredited by the COFRAC (Comite Francais d'Accreditation) CEI ISO 17025 since 2003. The lab was a pioneer in such quality standards implementation which is a testament to the expertise and high reliability of results for such activities.

The LHML forms part of a network of excellence in DNA forensic laboratories in Europe, Euroforgen and ISFG (International Science Forensics Genetics). It organizes seminars and conferences regularly on different aspects of internal security, the lab is also planning to hold such events in Mauritius as well. Hence, worldwide experts will be coming to Mauritius for such events.

The project will also further enhance the reputation of Mauritius as an education hub. The laboratory will be looking to work in close collaboration with the government for the training of

The implementation of such a laboratory in Mauritius will be in line with the Government vision of encouraging research and innovation centres in the country and this will help to improve the ranking of Mauritius in the competitiveness and Innovation indices.

We thank you for your kind collaboration and remain at your disposal for further information that you may require.

Yours Sincerely,

Harvesh Seegoolam
 For Managing Director

E-mail from the BOI to the Claimants including a draft letter to the PM's office, C-14, p. 2 (pdf)



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The Rt. Honourable Pravind Kumar JUGNAUTH
PRIME MINISTER'S OFFICE
REPUBLIC OF MAURITIUS
New Treasury Building, Intendance Street
Port Louis, Mauritius

This updated Business Plan took duly into consideration the conclusions reached, and recommendations made, during the meeting held in the Government Centre, under the Chairmanship of Mr O.K. Dabidin on Tuesday 27 October 2015.

Re registered letter

So, the first concern of our Client is to make sure that your decision was taken on the right basis and in accordance with the law. In this respect, our Client remains at your disposal for

This updated Business Plan took duly into consideration the conclusions reached, and recommendations made, during the meeting held in the Government Centre, under the Chairmanship of Mr O.K. Dabidin on Tuesday 27 October 2015.

we are writing to you on behalf of the Chairman of the Board of Investment in connection with the Private DNA Laboratory project (hereinafter, "the Project").

By letter dated 14 October 2014, your office has instructed the Board of Investment that it had no objection to this Project.

Almost two years later, and after long and costly diligences carried out by Pr. Christian DOUTREMEPUICH for the setting up of this Project, your office finally informed that "the updated business plan submitted in October 2015 (...) has been examined anew and in view of the important implications thereof, the project has not been approved." (Emphasis added) (Letter dated 14 April 2016).

Given the importance of this Project for our Client as well as the amounts invested for its development, this situation needs to be clarified with your kind assistance.

On the one hand, your decision dated 14 April 2016 seems to be grounded on a Business Plan which is dated October 2015. However, our Client has respectfully submitted to your office's scrutiny, through the Board of Investment (Mr. Hanzy Mundil), an "updated" Business Plan dated 4 November 2015.

SELAS a capital variable
446.083.709 (S.C.S.) - Numéro
Société d'Avocats inscrite au Barreau des Hauts-de-Seine
Membre du réseau Ernst & Young Global Limited
RHSB Paris & Yverdon - Avocats
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-1-

conference call with your office for clarification of the abovementioned issues. Copies of this correspondence are also delivered to interested officials.

In the meanwhile, please accept, dear Prime Minister, the assurance of our highest consideration.

Sincerely yours,

Bruno Poulain
Avocat à la Cour

Cc: *By email*

Prime Minister Office
Ms. S Valère [REDACTED]
Mr. Om Kumar DABIDIN [REDACTED]
By emails

Board of Investment
The Managing Director
Mr. Hanzy Mundil
[REDACTED]

E-mail from Claimants' counsel to the PM office, 20 March 2017, Pièce 13 (RfA), pp. 1-2

Business plan -Implantation d'un laboratoire d'analyses génétiques à l'île Maurice



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Updated Business Plan,
dated 4 November 2015,
C-17-1(RfA)/Pièce 17,
Annex 1, p. 2

Projet Ile Maurice

01 - Dépenses effectuées pour le projet

				US \$	MRu
				0,90	0,025
				TVA non récupérable incluse	
Conseil juridique France					
	15/10/2014	dossier assistance Delcade	7 300		
			Total	7 300	
Déplacements France - Ile Maurice					
Déplacement 1	octobre 2014	Martine Beaufrils-guillaume monique-antoine Doutremepuich-christian Doutremepuich 4 jours			
		Billet avion	4 000		
		hotel	2 400		
		voiture	300		
Deplacement 2	decembre 2014	Antoine, christian Doutremepuich 7 jours			
		avion	3 000		
		Hotel	1 246		
Deplacement 3	juillet 2015	Antoine 7 jours	3 000		
Deplacement 4		Antoine 10 jours	3 670		
			Total	17 616	
Assistance comptable et juridique locale (ABAX)					
	12/11/2014	Création International DNA Services	8 580	8 580	€
	12/11/2014	Création International DNA Services Holding	8 580	8 581	€
	12/11/2014	Création DNA Services Mauritius	5 115	8 582	€
	30/07/2015	Projections financières	2 810	3 163	US\$ 2 529
	18/10/2016	Fermeture des 3 sociétés	9 461	10 650	US\$ 8 515
			Total	34 546	
Terrain et construction					
	04/08/2015	Frais de dossier notaire	1 537	60 231	MRu 1 506
	21/07/2015	Architecte	20 111	788 900	MRu 19 723
	25/11/2015	Architecte	19 070	747 740	MRu 18 694
	28/10/2015	investigation geotechnique du terrain	5 168	202 754	MRu 5 069
			Total	45 886	
Mediacrossing					
	18/12/2014	Logo easypaternity	960		
	18/12/2014	Logo International DNA services	960		
	20/05/2016	Projet site web easypaternity	4 044		
	20/05/2016	Projet site web international DNA services	2 332		
			Total	8 296	
Salaires personnel dédié France					
			Total	353 825	
			Total	467 468	
			Hors salaires et charges France	113 643	

C-17(RfA)/Pièce 17,
Tableaux, p. 1 (pdf)

Evidence on the Claimants' expenditure

Total transferred through Mauritius Companies	
<i>(Piece 17/Annex 5)</i>	
Funds transferred by Claimant 1	300 000
Funds transferred back to Claimant 1	223 473
Balance spent	76 527
Total claimed as allegedly spent	
<i>(Piece 17/Tableau)</i>	
	Minus
Salaries of employees in France	353 825
Legal advice in France	7 300
Trips to Mauritius	17 616
Post April 2016 expenses:	
Winding up of companies	9 461
Website project (easypaternity)	4 044
Website project (In'tl DNA Services)	2 332
Balance spent	72 890

Sujet : Re: DNA Laboratory- Lot 17/18 BPML Rose Belle

De : Rawat Ahmed <[REDACTED]>

Date : 09/11/2015 12:04

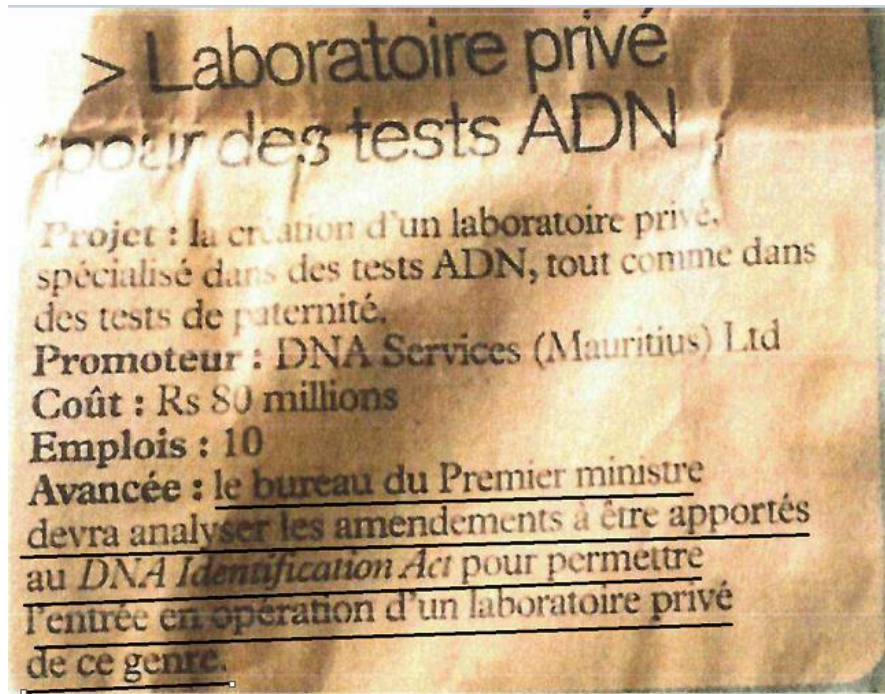
Pour : antoine doutremepuich <[REDACTED]>

Copie à : [REDACTED]

Bonjour Antoine,

Ci jointe une coupure de journaux apparue mercredi dernier concernant les projets en cours, inscrit dans le "fast track" du gouvernement.

Cordialement.



E-mail from
Mr Ahmed Rawat
to the Claimants,
9 November 2015,
Pièce 11 (RfA)/C-15,
pp. 1-2 (pdf)

The Tribunal lacks jurisdiction *ratione voluntatis*

CONVENTION

ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE
GOUVERNEMENT DE L'ILE MAURICE SUR LA PROTECTION DES
INVESTISSEMENTS, SIGNÉE A PORT-LOUIS LE 22 MARS 1973

Article 8.

Pour les matières régies par la présente Convention, les investissements des ressortissants, sociétés ou autres personnes morales de l'un des Etats contractants bénéficient de toutes les dispositions plus favorables que celles du présent Accord qui pourraient résulter de la législation actuelle ou future de l'autre Etat contractant.

Pour les matières régies par la présente Convention autres que celles visées à l'article 7, les investissements des ressortissants, sociétés ou autres personnes morales de l'un des Etats contractants bénéficient également de toutes les dispositions plus favorables que celles du présent Accord qui pourraient résulter d'obligations internationales déjà souscrites ou qui viendraient à être souscrites par cet autre Etat avec le premier Etat contractant ou avec des Etats tiers.

riques préférentiels en matière d'investissements, dans la mesure où ces avantages ne sont pas de nature à fausser les conditions du marché.

Article 8.

Pour les matières régies par la présente Convention, les investissements des ressortissants, sociétés ou autres personnes morales de l'un des Etats contractants bénéficient de toutes les dispositions plus favorables que celles du présent Accord qui pourraient résulter de la législation actuelle ou future de l'autre Etat contractant.

Pour les matières régies par la présente Convention autres que celles visées à l'article 7, les investissements des ressortissants, sociétés ou autres personnes morales de l'un des Etats

France-Mauritius BIT,
C-2, Art. 8

CONVENTION

ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE
GOUVERNEMENT DE L'ÎLE MAURICE SUR LA PROTECTION DES
INVESTISSEMENTS, SIGNÉE A PORT-LOUIS LE 22 MARS 1973

Article 9.

Les accords relatifs aux investissements à effectuer sur le territoire d'un des Etats contractants, par les ressortissants, sociétés ou autres personnes morales de l'autre Etat contractant, comporteront obligatoirement une clause prévoyant que les différends relatifs à ces investissements devront être soumis, au cas où un accord amiable ne pourrait intervenir à bref délai, au Centre international pour le règlement des différends relatifs aux investissements, en vue de leur règlement par arbitrage conformément à la Convention sur le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats.

est empêché ou s'il est ressortissant d'un des deux Etats, les nominations seront faites par le Vice-Président. Si celui-ci est empêché ou s'il est ressortissant d'un des deux Etats, les nominations seront faites par le membre le plus ancien de la Cour qui n'est ressortissant d'aucun des deux Etats.

A moins que les Etats contractants n'en décident autrement, le tribunal fixe lui-même sa procédure.

Les décisions du tribunal sont obligatoires pour les Etats contractants.

France-Mauritius BIT, C-2,
Art. 9

Article 9

Disputes between an Investor and a Contracting Party

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within three months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made; or

(b) to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or

(c) to any ad hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraphs 2(b) or 2(c) of this Article if, before a judgment has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and

withdraws the case.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

7. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by the date indicated in the award.