

PCA Case No. 2022-49

In the Matter of an *Ad Hoc* Arbitration pursuant to the

**AGREEMENT BETWEEN THE GOVERNMENT OF  
THE ISLAMIC REPUBLIC OF IRAN  
AND  
THE GOVERNMENT OF THE AZERBAIJAN REPUBLIC  
ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

Between

**MOHAMMAD REZA KHALILPOUR BAHARI**

Claimant

and

**THE REPUBLIC OF AZERBAIJAN**

Respondent

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**CLAIMANT'S STATEMENT OF CLAIM**

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21 April 2023

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**DRAMATIS PERSONAE**

First Name	Last Name	Relationship/Relevance
Heydar	Aliyev	Former President of Azerbaijan; father of Ilham Aliyev; officiated grand opening ceremony of Caspian Fish
Ilham	Aliyev	Current President of Azerbaijan; shareholder of Caspian Fish; former VP and First VP of SOCAR; former MP; married to Mehriban Aliyeva; son-in-law to Arif Pashayev; father to Arzu and Leyla Aliyeva
Arzu	Aliyeva	Daughter of President Ilham Aliyev and VP Mehriban Aliyeva; granddaughter of Arif Pashayev; UBO of Caspian Fish (BVI); UBO of AHL Companies; UBO of Sahra FZCO, which holds 51% in Gilan Holding; UBO in AIMROC involved in mining corruption scandal; UBO of Pasha Bank
Leyla	Aliyeva	Daughter of President Ilham Aliyev and VP Mehriban Aliyeva; granddaughter of Arif Pashayev; UBO of Caspian Fish (BVI); UBO of AHL Companies; UBO of Sahra FZCO, which holds 51% in Gilan Holding; UBO in AIMROC involved in mining corruption scandal; UBO of Pasha Bank
Mehriban	Aliyeva, (née Pashayeva)	Current Vice-President of Azerbaijan; First lady of Azerbaijan; married to President Ilham Aliyev; mother of Arzu and Leyla Aliyeva; daughter of Arif Pashayev
Yusif	Allahyarov	Former local counsel for Mr. Bahari in Azerbaijan
Mohammad Reza Khalilpour	Bahari	Claimant and investor; Iranian national; 40% shareholder in Caspian Fish; 75% shareholder Coolak Baku JVA; owner of carpets and Ayna Sultan investments
Ahad	Gazai	Former Iranian Ambassador to Azerbaijan (also spelled Ghazai)
Kalamaddin	Heydarov	Current Minister of Emergency Situations; shareholder in Caspian Fish; reported owner of Gilan Holding conglomerate; reported owner of AZ Group

First Name	Last Name	Relationship/Relevance
Nijat	Heydarov	Son of Minister Heydarov; reported UBO of Caspian Fish; UBO of Shams al Sahra FZCO, which holds 49% of Gilan Holding; UBO of UEI Caspian Caviar Ltd. (UK); UBO of European Azerbaijan Society
Tale	Heydarov	Son of Minister Heydarov; reported UBO of Caspian Fish; UBO of Shams al Sahra FZCO, which holds 49% of Gilan Holding; UBO of UEI Caspian Caviar Ltd. (UK); UBO of European Azerbaijan Society
Manouchehr Ahadpour	Khanghah	Iranian businessman; shareholder in Caspian Fish; President of Caspian Fish MMC; negotiated Forced Sale Terms on behalf of Messrs. Aliyev, Heydarov and Pashayev; Chairman of AZ Group;
Serhat	Kilic	Former counsel for Mr. Bahari in Turkey
Dieter	Klaus	Former private banking advisor for Mr. Bahari at Commerzbank AG
Fereydoun	Kousedghi	Former Iranian Deputy Head of Mission to Azerbaijan
Naser Tabesh	Moghaddam	In-country manager for Mr. Bahari for Coolak Shargh, Coolak Baku, Caspian Fish
Arif	Pashayev	25% partner in Coolak Baku; Head of the Pashayev family; father to current VP and First Lady of Azerbaijan Mehriban Aliyeva; father-in-law to President Ilham Aliyev; grandfather of Arzu and Leyla Aliyeva
David	Pow	Director of Caspian Fish (BVI); representative to Mr. Heydarov, Tale and Nijat Heydarov; UBO of European Azerbaijan Society; established UEI Caspian Caviar Limited
Emil	Sultanov	Director for Caspian Fish MMC; Director for various AZ Group related companies; Director for various Gilan Holding related companies;
Rasim	Zeynalov	Former driver for Mr. Bahari in Azerbaijan; Director of ASFAN LTD LLC

<b>First Name</b>	<b>Last Name</b>	<b>Relationship/Relevance</b>
Alzamin	[Unknown]	Head of Baku police and senior member of Baku Courts; seized Mr. Bahari's carpets

## DEFINED TERMS

TERM	MEANING
AIMROC	Azerbaijan International Mineral Resources Operating Company Ltd.
Anya Sultan	1,000 m2 property on Ziya Bünyadov Street, Baku; owned by Mr. Bahari and a claimed Investment
Arblos	Arblos Management Corp., a Panamanian company
AHL Companies	Arblos Management Corp.; Hising Management SA; and Lynden Management Group Inc.
<a href="#">Allahyarov WS</a>	Witness Statement of Yusuf Allahyarov dated 17 April 2023
Antitrust Law	Law of the Republic of Azerbaijan on “Antitrust Activity” dated 4 March 1993, #526
ARHAD	Arhad Ltd.
ASFAN	ASFAN LTD, Coolak Baku JVA partner; <i>and/or</i> ASFAN LTD LLC, Tax Identification (TIN) Number 1400395441, incorporated 5 May 2003, with address at 25 Safar Aliyev Street, Baku
Authorized Fund	Initial capital fund for Coolak Baku JVA
Azeri Laundromat Scandal	Corruption scandal involving Azerbaijan’s use of \$2.9 billion Government slush fund to launder money and influence European politicians
Azerbaijan	Republic of Azerbaijan
<a href="#">Bahari WS</a>	Witness Statement of Mohammad Reza Khalilpour Bahari dated 19 April 2023
Baku-Shamakhi Land Plot	Plot of land on the Baku-Shamakhi Highway, location of Caspian Fish facility
BIT	Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments, signed 28 October 1996, with entry into force on 20 June 2002
BVI	British Virgin Islands
BVI Counsel	Appleby (BVI) Limited

<b>TERM</b>	<b>MEANING</b>
BVI Court	The Commercial Division of the Eastern Caribbean Supreme Court in the Territory of the Virgin Islands
Carnivore	Carnivore Capital Markets Limited, a BVI entity
Caspian Fish	Caspian Fish Co. Inc. (BVI), incorporated 5 March 1999
Caspian Fish (BVI)	Same as above
Caspian Fish MMC	Caspian Fish Co. Azerbaijan MMC, incorporated in Azerbaijan under Tax Identification Number (TIN) 3100064091
Chartabi Contracting	Chartabi Contracting Services
Charter	Charter of the representative office of Caspian Fish (BVI) in Azerbaijan dated 27 April 1999
Claimant	Mohammad Reza Khalilpour Bahari; Mr. Bahari
Coolak Baku	Coolak Baku Co., a joint venture established under the laws of Azerbaijan, with address at 25 Safar Aliyev Street, Baku, Azerbaijan
Coolak Baku JVA	Amended joint venture agreement dated 23 January 1998
Coolak Shargh	Coolak Shargh, an Iranian soft drink company
Current Investment Activity Law	Investment Activity Law (1995) was replaced by the Law of the Republic of Azerbaijan on "Investment Law" dated 22 June 2022
FHCS	Forbes Hare Corporate Services Limited
First NPO Application	Norwich Pharmacal Order application dated 15 February 2023
Forced Sale Terms	Document presented to Mr. Bahari by Mr. Khanghah dated 15 June 2002
Foreign Investment Law	Law on the Protection of Foreign Investments, Law No. 57 of 1992
Former State Registration Law	Law of the Republic of Azerbaijan on "State Registration of Legal Entities" dated 6 February 1996
Globex	Globex International LLP, an English LLP
Government	Republic of Azerbaijan

<b>TERM</b>	<b>MEANING</b>
Hising	Hising Management SA, a Panamanian company
ICCI	ICCI Limited, a BVI entity
Initial Directors	Initial Directors of Caspian Fish, Messrs. Bahari and Khanghah
Investment Activity Law	Law of the Azerbaijan Republic on Investment Activity, Law No. 952 of 1995
IRR	Iranian Rials
Jordans	Jordans Trust Company (BVI) Limited
Kaveh	Kaveh Tabriz (a/k/a Kaveh, a/k/a Kaveh Pharmaceutical Industries)
<a href="#">Klaus WS</a>	Witness Statement of Dieter Klaus dated 11 April 2023
<a href="#">Kousdeghi WS</a>	Witness Statement of Dr. Fereydoun Kousedghi dated 12 September 2022
Lacey	Lacey Enterprises SA, a Panamanian entity
Lanisten	Lanisten International SA, a Panamanian company
Law on Enterprises	Law of the Republic of Azerbaijan on “Enterprises” dated 1 July 1994
Lynden	Lynden Management Group Inc., a Panamanian company
<a href="#">Moghaddam WS</a>	Witness Statement of Tabesh Moghaddam dated 18 April 2023
Morgan	Morgan & Morgan Trust Corporation
Mirinda	Mirinda Limited
Museum	Planned museum to display Mr. Bahari’s antique Persian Carpets
NFF	Neftchala Fish Factory
Nasimi District Warehouse	Warehouse in the Nasimi District of Baku, which stored the shipments from Coolak Shargh, and later the Persian Carpets
OCCRP	Organized Crime and Corruption Reporting Project

<b>TERM</b>	<b>MEANING</b>
Persian Carpets	508 antique carpets purchased by Mr. Bahari, plus 7 modern carpets commissioned by Mr. Bahari for Caspian Fish
Purported IOT	Purported instrument of transfer
Registered Agents	Registered agents
Regulation on the Ministry of Foreign Economic Relations	Regulation on the Ministry of Foreign Economic Relations of the Republic of Azerbaijan approved by the Presidential Decree
Regulation on the Ministry of Trade	Regulation on the Ministry of Trade approved by the Decree of the President
Second NPO Application	Norwich Pharmacal application dated 9 March 2023
Safar Aliyev Land Plot	Grant to the Coolak Baku JVA of a production area covering 4,030 square meters and located at 25 Safar Aliyev Street, Baku
Shareholders Agreement	Shareholders agreement for Caspian Fish (BVI) dated 27 April 1999 between Messrs. Bahari, Aliyev, Heydarov and Khanghah
Shuvalan Sugar	Sugar refinery located in Shuvalan settlement of Baku; a separate business line under Coolak Baku
Shuvalan Shirniyat	Shuvalan Shirniyat JSC, Tax Identification Number (TIN) 1200132211, incorporated 26 April 2005, with address at Baku City, Khazar District, Shuvalan Stg, Almaz Ildirim (Shuvalan Quarter), Ev Dalan 1, AZ1044
SOCAR	The State Oil Company of the Azerbaijan Republic
Southmead	Southmead Management Limited, a BVI entity
Treaty	Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments, signed 28 October 1996, with entry into force on 20 June 2002
UBO	Ultimate beneficial owner
Vereinsbank	Vereins und Westbank AG in Hamburg, Germany

1. Claimant Mr. Mohammad Reza Khalilpour Bahari (“**Mr. Bahari**,” “**Claimant**”), by his undersigned Counsel, respectfully submits this Statement of Claim in support of his claim against the Republic of Azerbaijan (“**Azerbaijan**”), pursuant to the Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments, signed 28 October 1996, with entry into force on 20 June 2002 (“**Treaty**,” the “**BIT**”).<sup>1</sup>
2. This Statement of Claim is accompanied by the following documents in support:
3. Witness Statements:
  - Mohammad Reza Khalilpour Bahari dated 19 April 2023
  - Naser Tabesh Moghaddam dated 18 April 2023
  - Yusuf Allahyarov dated 17 April 2023
  - Dieter Klaus dated 11 April 2023
  - Dr. Fereydoun Kousedghi dated 9 December 2022
4. Expert Reports:
  - Kiran Sequeira and Alexander Messmer, Secretariat Advisors dated 21 April 2023 (Quantum)
  - William Iselin, Iselin Art Advisory Ltd dated 20 April 2023 (Persian Carpet Valuation)
5. Factual Exhibits set out in Appendix A – Fact Exhibit Index
6. Legal Authorities set out in Appendix B – Legal Authority Index

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<sup>1</sup> **CLA-001** – Agreement Between the Government of the Islamic Republic of Iran and the Government of the Republic of Azerbaijan on the Reciprocal Promotion and Protection of Investments – signed 28 October 1996, entered into force 20 June 2002.

## I. INTRODUCTION

[REDACTED]

*Heydar Aliyev, former President of the Republic of Azerbaijan  
(Plaque mounted outside the Caspian Fish Facility)<sup>2</sup>*

7. This claim involves the brazen seizure of Mr. Bahari's various investments in Azerbaijan by the most powerful members of Azerbaijan's government ("**Government**"), including the current President of Azerbaijan, Mr. Ilham Aliyev; the current Minister of Emergency Situations, Mr. Kamaladdin Heydarov; Mr. Arif Pashayev, the head of the powerful Pashayev ruling family, whose daughter, Ms. Mehriban Aliyeva (*née* Pashayeva), is married to President Aliyev, and is also the current Vice President of Azerbaijan; and Mr. Manouchehr Ahadpour Khanghah, a businessman acting at various times as an agent of Messrs. Aliyev, Heydarov, and Pashayev. Together, the Aliyev, Pashayev, and Heydarov families [REDACTED]  
[REDACTED]<sup>3</sup>
8. The evidence will expose an initial *reiderstvo*, or raider attack of Mr. Bahari's investments undertaken in broad daylight, followed by a complex series of fraudulent corporate transfers taken with the active support as well as acquiescence of various State ministries, with the ultimate purpose of placing and keeping Mr. Bahari's investments in the hands of the Aliyev, Pashayev, and Heydarov families. The details of these corporate asset transfers are obfuscated by Azerbaijan's opaque corporate regime, and by these Azeri ruling families' purposeful concealment.
9. The essential story, however, could not be simpler: Mr. Bahari invested millions of U.S. Dollars in Azerbaijan; Government officials stole these investments for themselves; and Mr. Bahari no longer owns or controls his investments.

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<sup>2</sup> Witness Statement of Dieter Klaus - 11 April 2023 ("**Klaus WS**"), ¶ 35. (Emphasis added.)

<sup>3</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, Politické vedy - 15 June 2016, at 75, available at: <http://www.politickevedy.fpvvmv.umb.sk/archiv-vydani/2016/2-2016/vincenc-kopecek.html>.



13. Mr. Bahari, already a successful serial entrepreneur from Iran, saw the potential of Azerbaijan's emerging economy, and, relying on the Government's specific promises of a stable investment environment and favorable treatment of foreign investors, brought his considerable entrepreneurial vigor, as well as his technical and business know-how to Azerbaijan, ultimately investing millions in several investment projects.
14. These investments included the following:
  - i. Coolak Baku Co. ("**Coolak Baku**"), a soft drink and beer manufacturing and distribution company;
  - ii. The Shuvalan Sugar refinery ("**Shuvalan Sugar**"), a separate business line under Coolak Baku which imported and refined sugar to supply Coolak Baku's soft drink business, and also to sell directly to the Azeri market;
  - iii. Caspian Fish Co. Inc. (BVI) ("**Caspian Fish**" or "**Caspian Fish (BVI)**"), a state-of-art fish processing facility that processed and packaged fish products, including high-end caviar from the Caspian Sea;
  - iv. Over 500 traditional and antique Persian carpets, which Mr. Bahari purchased and collected as part of his plan to build the world's largest Persian carpet museum in Baku ("**Persian Carpets**," "**Museum**"); and
  - v. A 1,000 square meter property in Baku, and known as Ayna Sultan ("**Ayna Sultan**").
15. After Mr. Bahari made these investments, Messrs. Aliyev, Heydarov, Khanghah, and Pashayev set in motion their scheme to seize the investments from Mr. Bahari. The operation involved a series of illegal actions undertaken or ordered by these individuals, relying on various organs of the State apparatus:
  - i. Government security forces forcibly removed Mr. Bahari from the grand opening ceremony of Caspian Fish; put him under house arrest for weeks without officially charging him; then expelled Mr. Bahari and his family from Azerbaijan;
  - ii. Government security forces repeatedly detained and physically beat Mr. Naser Tabesh Moghaddam, Mr. Bahari's in-country manager; later, Mr. Moghaddam was imprisoned for 5 years on falsified criminal charges;

- iii. Messrs. Aliyev, Heydarov, and Pashayev pressured Mr. Bahari to accept forced sale terms, threatening false tax audits and the continued takeover of Coolak Baku by agents under Mr. Heydarov's control;
  - iv. Messrs. Aliyev and Heydarov illegally transferred Caspian Fish (BVI)'s assets in Azerbaijan into a local LLC vehicle; subsequently, that LLC vehicle became a subsidiary of Gilan Holding, whose ownership is shared between the Aliyev, Pashayev, and Heydarov families;
  - v. Parallel to the above, Messrs. Aliyev, Heydarov, Pashayev, and Khanghah stripped and divested Mr. Bahari's rights in Caspian Fish (BVI), ultimately placing the company's shareholding interest with Talit and Nijat Heydarov (Mr. Heydarov's sons), as well as Leyla and Arzu Aliyeva (daughters of President Aliyev and Vice-President Aliyeva, and granddaughters of Mr. Pashayev);
  - vi. Coolak Baku was shut down, and its assets and operations have been transferred to ASFAN LTD, a company under the control of Mr. Pashayev; Shuvalan Sugar was also shut down and its assets possibly transferred to another company;
  - vii. Mr. Bahari's remaining assets, to include the valuable Persian Carpets and the Ayna Sultan property, were seized with the knowledge and assistance of Government security forces and other organs of the Government;
  - viii. Government officials, including Mr. Heydarov himself, issued various threats against Mr. Bahari and his representatives, as further means to intimidate Mr. Bahari and thwart his efforts to recover his investments.
16. Various State organs undertook and/or enabled the above actions. As the seizures were consummated, these and other State organs stood by, when they should have taken affirmative action to prevent or cure these illegal actions and safeguard Mr. Bahari's investments, as was promised under existing Azeri investment legislation and the Treaty. All of the actions taken by Messrs. Aliyev, Heydarov, Khanghah, and Pashayev, as well as the actions and inactions of various Government organs, are attributable to Azerbaijan.
17. Beyond taking his investments, Azerbaijan has turned Mr. Bahari's life, as well as those of his family and close associates, completely upside down. Since leaving Azerbaijan, Mr. Bahari has feared for his life, and led a semi-nomadic existence, for fear that Azerbaijan will learn of his whereabouts and engage in reprisals against him or his family.

18. Critically, the Government's sudden expulsion of Mr. Bahari meant that he was unable to bring out of Azerbaijan the bulk of his business records pertaining to his various investments. This is compounded by Azerbaijan's purposely opaque corporate laws, as well as its actions to thwart Mr. Bahari from investigating the disposition of his investments. Yet, Mr. Bahari will be able to present a detailed narrative that more than amply meets his evidentiary burden of proving his claim. Mr. Bahari's investigations are ongoing; just as importantly, the evidence presented in this Statement of Claim prompts and justifies a significant number of requests for document production from Azerbaijan: given the indications of systematic fraud enabled by the State apparatus, Azerbaijan must answer for the actions of Messrs. Aliyev, Pashayev and Heydarov, and divulge the exact means and methods utilized to carry out the seizure of Mr. Bahari's investments.
19. To date, Mr. Bahari has been unable to recover his investments and he has not been compensated for the losses and damage he has suffered. As a result, and as set out in further detail below, Azerbaijan breached multiple standards of protections under the Treaty, and Mr. Bahari is entitled to full reparation for losses and damages caused by Azerbaijan's wrongful conduct.

## **II. THE PARTIES**

### **A. CLAIMANT**

20. Claimant is Mr. Mohammad Reza Khalilpour Bahari, a natural person born in Tabriz, Iran, in 1960. Mr. Bahari holds a current valid Iranian passport,<sup>6</sup> and is a national of the Islamic Republic of Iran within the meaning of Article 1 of the Treaty.
21. Mr. Bahari has appointed Chang Law, Diamond McCarthy LLP, and Mr. Paul Cohen, as his legal representatives.

### **B. RESPONDENT**

22. Respondent is the Republic of Azerbaijan. Azerbaijan is a signatory and party to the Treaty.

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<sup>6</sup> **C-072** – Iranian Passport of Mohammad Reza Khalilpour Bahari, issued: 1 August, 2021.

### III. STATEMENT OF FACTS

23. The following Statement of Facts details the circumstances giving rise to Mr. Bahari's claims against Azerbaijan under the Treaty. To the extent possible, the Statement of Facts follows a chronological narrative, although many events occurred simultaneously, and the exact date of other events are currently unclear. Mr. Bahari expressly reserves the right to amend and supplement this Statement of Facts, where necessary, at an appropriate subsequent stage of the arbitral proceedings.

#### A. MR. BAHARI MADE SIGNIFICANT INVESTMENTS IN AZERBAIJAN

##### 1. Mr. Bahari was a successful entrepreneur prior establishing his investments in Azerbaijan.

###### a. Mr. Bahari has a track record as a serious entrepreneur.

24. Mr. Bahari is a successful serial entrepreneur originally from Tabriz in the eastern region of Iran, a region with close cultural and ethnic ties to Azerbaijan. Prior to investing in Azerbaijan, Mr. Bahari was already one of Iran's most successful and wealthy businesspeople. Thus, Mr. Bahari came into Azerbaijan as an investor of serious means and experience.

###### b. Mr. Bahari founded Kaveh Tabriz, a successful pharmaceutical manufacturing company in Iran.

25. In one of his initial successes, Mr. Bahari founded a pharmaceutical processing company in Tabriz called Kaveh Tabriz (also known as Kaveh Pharmaceutical Industries) ("**Kaveh**") in or around 1981.<sup>7</sup> Mr. Bahari was the Owner and Managing Director of Kaveh.<sup>8</sup> Among Kaveh's staff, Mr. Bahari employed Mr. Tabesh Moghaddam,<sup>9</sup> who would go on to work with Mr. Bahari in Azerbaijan and become a key trusted manager.

26. Kaveh produced various types of creams and medicines commonly found at typical modern pharmacies, such as toothpaste, shampoos, cleansers, topical medicines, and so on. Kaveh's products were unique in Iran at the time because they were packaged in uniform aluminum packaging. Mr. Bahari installed modern machinery from Sweden

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<sup>7</sup> Witness Statement of Mohammad Reza Khalilpour Bahari – 19 April 2023 ("**Bahari WS**") at ¶ 5; Witness Statement of Tabesh Moghaddam – 18 April 2023 ("**Moghaddam WS**") at ¶¶ 8-10.

<sup>8</sup> **Bahari WS** ¶ 5;

<sup>9</sup> **Moghaddam WS** ¶ 8; **Bahari WS** ¶ 5.

(Norden Materials) and Japan (Mizuho) to produce the standard packaging. While other pharmacies used whatever containers were available – some of which was of poor quality – Kaveh’s packaging was precise, uniform, and instantly recognizable for customers.<sup>10</sup>

27. Kaveh became highly successful, due in significant part to the new packaging technology that allowed for superior storage and transportation, and thus enabled greater sales to a larger customer base. Kaveh quickly acquired a large distribution network throughout Iran and became one of the largest employers in the Tabriz region of Iran.<sup>11</sup>

**c. Mr. Bahari founded Coolak Shargh, a highly successful soft drink company in Iran.**

28. In or around 1991, Mr. Bahari further established a highly successful soft drink company in Iran called Coolak Shargh (“**Coolak Shargh**”). Mr. Bahari was the Owner and Managing Director of Coolak Shargh,<sup>12</sup> and he brought on Mr. Moghaddam to assist him with this venture.<sup>13</sup> As will be described below, the success of Coolak Shargh directly led to his involvement in Azerbaijan.
29. Coolak Shargh primarily used polyethylene terephthalate, or PET bottles for its products. Coolak Shargh was the first Iranian drinks company to incorporate this type of packaging, and it was also the first Iranian company to produce Western-style soft drinks similar to Coca-Cola or Pepsi. Coolak Shargh benefitted from the same advanced packaging advantages as with Kaveh, and Mr. Bahari quickly established a broad customer base throughout Iran for the products.<sup>14</sup> Coolak Shargh’s facility consisted of three different processing lines.<sup>15</sup>
30. As with Kaveh, Mr. Bahari insisted on bringing in the latest state-of-the-art technology for Coolak Shargh, importing modern machinery and high-quality ingredients that were not available in Iran, including from foreign companies in Japan, Germany, Italy, and Switzerland.<sup>16</sup> For example, Mr. Bahari purchased a blow molding machine from Japan

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<sup>10</sup> Bahari WS ¶ 6; Moghaddam WS ¶ 9.

<sup>11</sup> Bahari WS ¶ 6; Moghaddam WS ¶ 10.

<sup>12</sup> **C-082** Coolak Shargh License to Mr. Bahari – 14 May 1996.

<sup>13</sup> Bahari WS ¶ 7; Moghaddam WS ¶ 11.

<sup>14</sup> Bahari WS ¶ 8; Moghaddam WS ¶ 12.

<sup>15</sup> Bahari WS ¶ 8; Moghaddam WS ¶ 14.

<sup>16</sup> Bahari WS ¶ 9; Moghaddam WS ¶ 13.

(Nissei) to produce the PET bottles. Mr. Bahari and Mr. Moghaddam traveled to Germany and Japan to purchase such equipment for Coolak Shargh.<sup>17</sup>

31. Beyond importing the latest technology, Mr. Bahari further improved on the design of the processing lines, even by Western standards. Coolak Shargh's production eventually became capable of producing more than 70,000 bottles a day, thus meeting the rapidly increasing demand in Iran (and abroad) for Western-style soft drinks.<sup>18</sup> Mr. Bahari would later take this engineering experience to Azerbaijan and found Coolak Baku and Caspian Fish, both of which were much more sophisticated processing plants.
32. Coolak Shargh rapidly succeeded. By 1994, Mr. Bahari began to expand Coolak Shargh's distribution to foreign markets, including Azerbaijan, Armenia, Georgia, Pakistan, and Iraq, all of which were eager for Western-style soft drinks.<sup>19</sup> Azerbaijan was slightly more than a half-day away by truck from Coolak Shargh's facility.<sup>20</sup> By late 1994, Mr. Bahari began to focus on exporting to Azerbaijan. He directed Mr. Moghaddam to move to Baku to monitor the business and supervise operations on a full-time basis.<sup>21</sup> By now Mr. Moghaddam had worked with Mr. Bahari for 20 years, and was a close and trusted colleague.<sup>22</sup>
33. Azerbaijan had great potential at the time, as there was no direct competition. Coolak Shargh could sell its soft drink products in Azerbaijan for nearly five times the price it could charge in Iran (in part because the Iranian Government set prices for domestic sales). For example, a bottle of Coolak Cola cost \$0.15 to \$0.20 to produce, and sold for approximately \$0.30 in Iran, which meant an average profit margin of 30% to 50%, which was a favorable return. However, the same bottle would cost around \$0.50 to produce and ship to Baku, but could sell for approximately \$1.50 there, which meant an average profit margin of approximately 66%, or \$1.00 per bottle.<sup>23</sup> Thus, Azerbaijan was a far more lucrative market than Iran.<sup>24</sup>

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<sup>17</sup> Bahari WS ¶ 9; Moghaddam WS ¶¶ 12-13.

<sup>18</sup> Bahari WS ¶ 10; Moghaddam WS ¶ 14.

<sup>19</sup> Bahari WS ¶ 11; Moghaddam WS ¶¶ 15, 19.

<sup>20</sup> Bahari WS ¶ 11; Moghaddam WS ¶¶ 15.

<sup>21</sup> Bahari WS ¶ 11; Moghaddam WS ¶ 16.

<sup>22</sup> Bahari WS ¶ 11; Moghaddam WS ¶ 17.

<sup>23</sup> Bahari WS ¶¶ 11-12.

<sup>24</sup> Bahari WS ¶ 12.

34. Within a year of entering the Azeri market, sales there constituted more than 50 percent of Coolak Shargh's business, which later rose again to 75%. At that time, Coolak Shargh was exporting between 50,000 and 70,000 bottles a day to Azerbaijan.<sup>25</sup> Coolak Shargh products were also exported to neighboring countries, including Armenia, Georgia, Pakistan, and Iraq.<sup>26</sup>
35. Mr. Bahari leased a warehouse in the Nasimi District of Baku, which stored the shipments from Coolak Shargh (the "**Nasimi District Warehouse**"). Mr. Bahari wanted to ensure that he had physical control over Coolak Shargh's products and that the Nasimi District Warehouse could act as an operational center of his growing business in Azerbaijan.<sup>27</sup>
36. Eventually, Coolak Shargh's export grew to 90% of its products. The Iranian Government became increasingly upset that Coolak Shargh was exporting this much, and warned Mr. Bahari to focus on the Iranian market instead. By 1998, the Iranian Government started placing strict limits on exports, which significantly cut into Coolak Shargh's business. Eventually, Coolak Shargh was forced to stop exporting altogether.<sup>28</sup>

**2. Mr. Bahari invested in Coolak Baku, a highly successful soft drink and beer production company.**

**a. Mr. Bahari partnered up with Mr. Arif Pashayev.**

37. Given the restrictions in Iran, the considerable success Mr. Bahari had in exporting Coolak Shargh's products in Azerbaijan, and the still untapped potential of the post-Soviet Azeri commercial market, Mr. Bahari sought to establish a local manufacturing company in Azerbaijan, which he called Coolak Baku.<sup>29</sup>
38. By around 1994, Mr. Bahari travelled frequently to Azerbaijan to develop the export market for Coolak Shargh.<sup>30</sup> Mr. Moghaddam was already based in Baku, and lived on the first floor of an apartment building in Baku; Mr. Bahari eventually moved into the second floor of the same building. On the third floor lived Mr. Altay Hasanov. (Mr. Hasanov is the nephew of Mr. Arif Pashayev; today, he is the Head of the Secretariat of the First Vice-

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<sup>25</sup> Bahari WS ¶ 13; Moghaddam WS ¶¶ 20-21.

<sup>26</sup> Bahari WS ¶ 13; Moghaddam WS ¶¶ 19-21.

<sup>27</sup> Bahari WS ¶ 13; Moghaddam WS ¶ 22.

<sup>28</sup> Bahari WS ¶ 14; Moghaddam WS ¶ 24.

<sup>29</sup> Bahari WS ¶¶ 15-17; Moghaddam WS ¶ 25.

<sup>30</sup> Bahari WS ¶ 16.

President, Mehriban Aliyeva, Mr. Pashayev daughter and wife of Ilham Aliyev, the current President.) Messrs. Bahari and Moghaddam became friends with Mr. Hasanov, who eventually introduced Mr. Bahari to Arif Pashayev. At the time, all four individuals spent a good amount of social time together.<sup>31</sup>

39. Messrs. Bahari and Pashayev discussed a possible business venture, with Mr. Bahari as a foreign investor bringing capital and business know-how, and Mr. Pashayev as a local partner who would contribute land and an old building that could be refurbished.<sup>32</sup> In or around 29 February 1996, Mr. Bahari, and Mr. Pashayev's company, ASFAN LTD ("**ASFAN**"),<sup>33</sup> entered into a joint venture agreement to create Coolak Baku. (Mr. Bahari no longer possesses a copy of this 1996 document.) This agreement was amended on 23 January 1998 ("**Coolak Baku JVA**").<sup>34</sup> The purpose of the amendment is detailed below.
40. Mr. Pashayev himself did not sign the Coolak Baku JVA; his associate, Mr. Adil Aliyev – no relation to Ilham Aliyev – signed on behalf of ASFAN. Although Mr. Pashayev appears on no documents, it was clear to Messrs. Bahari and Moghaddam that he was the ultimate owner of ASFAN and the true partner behind the Coolak Baku JVA. All business discussions and interactions relating to Coolak Baku were with Mr. Pashayev.<sup>35</sup>
41. The Coolak Baku JVA was established as a legal entity under the laws of Azerbaijan and registered by its Ministry of Justice, and received a license to produce beer from the Ministry of Agriculture.<sup>36</sup> As such, the entity was approved by and known to the Azeri authorities.
42. The stated activities of the Coolak Baku JVA included production of alcoholic drinks, soft drinks, and juices, but also envisaged a wide array of potential future commercial activities.<sup>37</sup> An important difference between Coolak Shargh and Coolak Baku was that the latter was able to produce beer, because Azerbaijan did not have the same religious

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<sup>31</sup> Bahari WS ¶ 16; Moghaddam WS ¶ 27.

<sup>32</sup> Bahari WS ¶ 17; Moghaddam WS ¶ 28.

<sup>33</sup> Mr. Bahari has performed corporate search records in Azerbaijan to confirm Mr. Pashayev as the ultimate beneficial owner of ASFAN. As will be described below, Azerbaijan's laws were amended in 2012, making it difficult to obtain information on ownership of private companies. Mr. Bahari will request such information on ASFAN as part of the document request process.

<sup>34</sup> **C-001** Coolak Baku Joint Venture Agreement - 23 January 1998.

<sup>35</sup> Bahari WS ¶ 19; Moghaddam WS ¶ 28.

<sup>36</sup> **C-083** Coolak Baku License, 26 April 1999.

<sup>37</sup> **C-001** at Clause 2.1.

restrictions that existed in Iran about the consumption of alcohol. As with soft drinks, beer production was a very lucrative business with high profit margins.<sup>38</sup>

**b. Mr. Bahari was the sole foreign investor in Coolak Baku and brought all of the investment capital and know-how.**

43. Under the terms of the Coolak Baku JVA, ASFAN was to contribute the following to the joint venture:

- i. Grant to the Coolak Baku JVA a production area covering 4,030 square meters located at 25 Safar Aliyev Street, Baku (the “**Safar Aliyev Land Plot**”).<sup>39</sup> The JVA notes that the Safar Aliyev Land Plot was privatized by the State Property Committee under Certificate no. 05, dated 1 May 1997;
- ii. Arrange for necessary documents in accordance with Azeri legislation;
- iii. Contribute a plot of land covering more than four hectares located in the Shuvalan settlement of Baku (the “**Shuvalan Land Plot**”). The Shuvalan Land Plot was also privatized on 1 May 1997 by the Committee of State Properties under Certificate no. 06. Notably, the JVA specified that ownership of the Shuvalan Land Plot would be granted outright to Mr. Bahari. The land plot was owned by a company called Arhad Ltd., (“**ARHAD**”), which, like ASFAN, was controlled by Mr. Pashayev. Notably, whereas the Safar Aliyev plot was jointly owned by the JVA, the Shuvalan Land Plot would be owned outright by Mr. Bahari.<sup>40</sup> The JVA references ARHAD, and envisaged that ARHAD would formally join the Coolak Baku JVA (though it never did, as far as Mr. Bahari is aware);<sup>41</sup> and
- iv. Make a capital contribution of \$500,000.<sup>42</sup>

44. For his part, Mr. Bahari’s obligations to the Coolak Baku JVA included the following:

- i. Contribute all of the necessary construction and repair works on 2,000 square meters of the 4,030 square meter production facility on the Safar Aliyev Land Plot;

<sup>38</sup> Bahari WS ¶ 18; Moghaddam WS ¶ 26.

<sup>39</sup> C-001 at Clause 3.1. Google pin available at: <https://tinyurl.com/y6ohd7y4>.

<sup>40</sup> Bahari WS ¶ 20.

<sup>41</sup> C-001 at Clause 3.1.

<sup>42</sup> Bahari WS ¶ 20; *Id.* at Clauses 3.1 and 5.4.

- ii. Deliver and install the technology and equipment needed for the production of beer and soft drinks in 300 ML aluminum cans, as well as other know-how and technology;
  - iii. Provide marketing surveys which would assist the joint venture in the sale of its products;
  - iv. Provide training to the joint venture's staff;
  - v. Arrange for the sale and export of the production;
  - vi. Ensure production expansion and the launch of new equipment;
  - vii. Invest capital to purchase new technology and technical equipment in order to increase the range of products, expand production, use the production area effectively, and to purchase raw materials necessary for the production;<sup>43</sup> and
  - viii. Make a capital contribution of \$1,500,000.<sup>44</sup>
45. The Coolak Baku JVA envisaged an initial capital fund ("**Authorized Fund**") of \$2,000,000. As noted above, Mr. Bahari was to invest \$1,500,000, and ASFAN \$500,000.<sup>45</sup> The shareholding interests reflected this split, with Mr. Bahari retaining a 75% shareholding interest, and ASFAN a 25% shareholding interest.<sup>46</sup> In reality, however, Mr. Bahari advanced the entire \$2,000,000 sum; ASFAN/Mr. Pashayev never paid its \$500,000 share.<sup>47</sup> Elsewhere, the JVA provided for a Board of Directors, in which Mr. Bahari had a majority of votes.<sup>48</sup> In theory, no major decisions could be taken without Mr. Bahari's assent.
46. In the 1998 amended version of the Coolak Baku JVA, the parties envisaged a temporary derogation to the JVA's terms, in which it was agreed that Coolak Baku would be leased to ASFAN for a period of three years.<sup>49</sup> The reason for this leasing arrangement is that the parties agreed that during this time, Mr. Bahari would focus his efforts on building Caspian

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<sup>43</sup> *Id.* at Clause 3.2.

<sup>44</sup> *Id.* at Clauses 3.2 and 5.5.

<sup>45</sup> *Id.* at Clauses 3.1, 5.1 – 5.5.

<sup>46</sup> *Id.* at Clauses 5.4-5.5.

<sup>47</sup> Bahari WS ¶ 21.

<sup>48</sup> C-001 at Clause 7.

<sup>49</sup> C-001 at Clause 3.1. To Mr. Bahari's best recollection, production at Coolak Baku began in 1997. Bahari WS ¶ 22.

Fish (although he would continue some technical oversight of Coolak Baku). The leasing terms appear at Clause 3.1 of the Coolak Baku JVA. Under these terms, ASFAN would control management and operation of Coolak Baku for the first three years, and pay monthly fees to Mr. Bahari out of its earnings. At the end of the three years, Mr. Bahari would retake control of the company commensurate with his majority shareholding interest and voting power on the JVA Board.<sup>50</sup>

47. Under the same Clause 3.1, ASFAN would pay Mr. Bahari \$500,000 per month over the first three years of Coolak Baku's operation, by paying 20% of the Coolak Baku JVA's monthly earnings.<sup>51</sup> Thus, the JVA anticipated that Mr. Bahari would earn \$18 Million over the three year lease period, and that this was projected to be about 20% of Coolak Baku's total earnings during that time. ASFAN would therefore keep the remaining 80% of earnings (minus expenses) during this three-year period, and at the end of this period, the parties would go back to a split of profits along the 75% - 25% shareholding interest.
48. ASFAN never made any of the monthly \$500,000 payments to Mr. Bahari. During this three-year timeframe, Mr. Bahari made constant demands to Mr. Pashayev, who kept putting things off and asking for more time. Mr. Pashayev told Mr. Bahari there was no rush, especially in light of the fact that the Caspian Fish project was getting underway. According to Mr. Bahari, Mr. Pashayev stated that with Caspian Fish, Mr. Bahari possessed a "██████████," and he was arguing about a "██████████" (i.e., Coolak Baku).<sup>52</sup>
49. For his part, Mr. Pashayev was never involved in the daily operations or business decisions of Coolak Baku, which was normal since he had no real business experience to speak of. During the three-year lease period, Mr. Pashayev was involved with Coolak Baku only through his associate, Adil Aliyev. Mr. Bahari managed the machinery and also brought German consultants to help manage beer operations. (The only time Mr. Pashayev was at Coolak Baku was prior to the three-year lease period, when he would call from time to time to ask for a distribution of his share of the profits, or come to Coolak Baku facility to collect his share in person. Sometimes, Mr. Pashayev's driver also came to Coolak Baku to collect his share.<sup>53</sup>)

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<sup>50</sup> Bahari WS ¶ 22.

<sup>51</sup> C-001 at Clause 3.1.

<sup>52</sup> Bahari WS ¶ 23.

<sup>53</sup> Bahari WS ¶¶ 23-24; Moghaddam WS ¶ 29.

50. Notably, the end of the 3-year leasing period occurred on 23 January 2001, only weeks from the Caspian Fish grand opening ceremony, which took place on 10 February 2001. Mr. Bahari confirms that he never regained control of Coolak Baku at the end of this lease period, and in any event, as will be described below, he was soon to be expelled from Azerbaijan, and his investments seized from him.

**c. Mr. Bahari invested millions of USD into Coolak Baku.**

51. On his end, Mr. Bahari fully satisfied his obligations (and more) under the terms of the Coolak Baku JVA. Aside from paying the entire \$2 million Authorized Fund, Mr. Bahari procured the necessary equipment, and began construction works in order to create the soft drinks and beer manufacturing facility.

52. Mr. Bahari invested around \$27-28 million of his own money in Coolak Baku. For the bulk of the construction works, Mr. Bahari hired an Iranian contractor, Chartabi Contracting Services (“**Chartabi Contracting**”). (In addition to the Coolak Baku facilities, Chartabi Contracting also executed construction works on the Shuvalan Sugar Refinery and Caspian Fish projects, detailed in the sections below.) The Coolak Baku construction contract with Chartabi Contracting is dated 16 May 1996, with a value of **\$4,155,000**.<sup>54</sup> Chartabi Contracting performed civil works at the Safar Aliyev Land Plot, built an office block on the same site, and undertook a full renovation of pipes and electricity cables there. As project owner, Mr. Bahari oversaw the works and approved them.<sup>55</sup>

53. It took approximately a year to prepare the site and build the Coolak Baku facility. Coolak Baku construction began in or around 1996, with production beginning around January or February 1997.<sup>56</sup>

54. As with Kaveh and Coolak Shargh, Mr. Bahari spent significant sums to purchase and install state-of-the-art processing line equipment from foreign suppliers, predominantly from Bavarian suppliers. This included Hümmer, AR-S, and Martin Eberle Brauereibedarf, among others.<sup>57</sup> Mr. Bahari funded Coolak Baku’s construction costs and equipment by

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<sup>54</sup> **C-084** - Chartabi Contracting Coolak Baku Construction Contract - 16 May 1996.

<sup>55</sup> *Id.*; Moghaddam WS ¶ 30.

<sup>56</sup> Bahari WS ¶ 22.

<sup>57</sup> Bahari WS ¶ 25; Moghaddam WS ¶ 32.

using profits from his Coolak Shargh and Kaveh Tabriz businesses. Mr. Moghaddam managed the payments for the construction cost and equipment.<sup>58</sup>

55. Coolak Baku built two processing lines for soft drinks and beer. Although the facility was not as large as Coolak Shargh, Coolak Baku was more complex, and it was the most advanced beverage production facility in Azerbaijan at the time.<sup>59</sup>
56. Because he did not have experience producing alcoholic beer, Mr. Bahari, with the assistance of Mr. Moghaddam, consulted German beer manufacturing companies to learn specific production techniques and which equipment was required. To ensure quality production, Mr. Bahari brought five brewery consultants from Bavaria to Baku to train the Coolak Baku staff and run operations for a time. Mr. Bahari paid all of their expenses and consultancy fees.<sup>60</sup>

**d. Coolak Baku was a commercial success, with significant returns.**

57. Coolak Baku became a significant commercial success, leveraging already-existing distribution networks in Azerbaijan from Coolak Shargh. Demand for soft drinks, and especially Bavarian-style beer, was extremely strong, as Azerbaijan (and other export markets such as Armenia and Georgia) were in the early phases of having Western-style products in stores.<sup>61</sup>
58. According to Mr. Moghaddam, Coolak Baku produced approximately 40,000 bottles of soft drinks per day, and 50,000 to 70,000 Liters of beer per day. Coolak Baku had 25 beer tanks that could each hold 37,500 Liters of beer.<sup>62</sup> Mr. Bahari also recalls that initial beer production capacity was around 500 25-Liter barrels of beer per day, but once the second processing line was added, production capacity had an average of 2,000 barrels of beer per day.<sup>63</sup>
59. According to Mr. Bahari, Coolak Cola soft drinks sold for approximately \$1.00 (due to increasing competition in the soft drink space); 10 Liter kegs of beer sold for approximately \$30, and 20 Liter kegs sold for approximately \$50. While he does not recall specific

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<sup>58</sup> Bahari WS ¶ 25; Moghaddam WS ¶ 32.

<sup>59</sup> Bahari WS ¶ 25; Moghaddam WS ¶¶ 32-33.

<sup>60</sup> Bahari WS ¶ 26; Moghaddam WS ¶ 31; **C-076** Equipment Fees Invoice - 5 October 2000.

<sup>61</sup> Bahari WS ¶ 27; Moghaddam WS ¶ 33.

<sup>62</sup> Moghaddam WS ¶ 36.

<sup>63</sup> Bahari WS ¶ 25.

production costs, Coolak Baku's overall profits were around 50-60% (including both soft drinks and beer production).<sup>64</sup> Coolak Baku employed approximately 60 people; to meet the strong demand, the production lines ran on two shifts, one in the morning and one in the afternoon and evening, five days a week.<sup>65</sup>

60. Mr. Bahari has been unable to obtain much information about the current status of Coolak Baku. However, in 2020, Mr. Bahari prevailed on a colleague to visit Coolak Baku to see if the facility was still there and operating. The colleague informed Mr. Bahari that the Coolak Baku facility was gone. Instead, someone had begun construction on a high-rise building there.<sup>66</sup>
61. As explained below, Mr. Bahari was expelled from Azerbaijan in March 2001, and left without being able to take any business or financial records for Coolak Baku. The few records that he did possess he has provided to his Counsel and quantum expert.<sup>67</sup>

**3. Mr. Bahari invested in the Shuvalan Sugar refining facility as a related business line under Coolak Baku.**

62. In connection with the Coolak Baku project, Mr. Bahari developed Shuvalan Sugar, a sugar refinery that could provide a consistent sugar supply for both Coolak Baku and the larger refined sugar market in Azerbaijan.
63. In or around 1997, Mr. Bahari began developing the sugar refining facility on a land plot in the Shuvalan District area near Baku. On 10 July 1997, Mr. Bahari engaged Chartabi Contracting to build a 1,130 m<sup>2</sup> factory on the Shuvalan Land Plot.<sup>68</sup> The construction works involved carrying out 1,800 m<sup>2</sup> of tiling; reroofing; building a 300 m<sup>2</sup> dining hall with complete facilities; building 4.5 hectares of green space; and full renovation of pipes and electricity cables.<sup>69</sup> The total cost of the construction works was \$3,650,000.<sup>70</sup> Mr.

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<sup>64</sup> Bahari WS ¶ 27.

<sup>65</sup> Moghaddam WS ¶ 35.

<sup>66</sup> Bahari WS ¶ 29.

<sup>67</sup> Bahari WS ¶ 29.

<sup>68</sup> See **C-085** - Chartabi Contracting Shuvalan Sugar Construction Contract - 10 July 1997.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Chartabi reconfirmed being paid in full for the contract value by Mr. Bahari in his letter dated 7 January 2019.<sup>71</sup>

64. The sugar refinery began production around end of 1997. Mr. Bahari purchased raw sugar from Iran for import into Azerbaijan, where he then processed the product into refined sugar products. Shuvalan Sugar had a significant production. Azeri companies and private individuals would come directly to the refinery to purchase sugar, because of the limited supply in Azerbaijan at the time.<sup>72</sup> Mr. Bahari recalls that once the Shuvalan Sugar refinery was operational, it had a daily production of around 12 to 13 metric tons of refined sugar.<sup>73</sup>
65. To give an idea of the amount of imported raw sugar, Mr. Bahari recalls that at the time of his expulsion from Azerbaijan in early 2001, the Shuvalan Sugar refinery maintained an inventory of at least 2,000 tons of imported raw sugar (worth around \$400,000 at historic commodities prices). Mr. Bahari also possesses a document from a freight forwarder dated 16 January 1997, which shows shipment information for 20 lots of raw sugar, at 20 tons per lot.<sup>74</sup> The shipment origin was Sahlan, Iran, and the destination was Baku. Each 20-ton lot was shipped at a transportation cost of 2,650,000 Iranian Rials (“**IRR**”), or approximately \$1,510 at historic currency rates.
66. Mr. Bahari has been unable to obtain much information about the current status of Shuvalan Sugar. However, in 2020, he prevailed on a former colleague to visit the site to determine whether it was still operating. The facility was gone; in its place, two high-end villas had been built where the refinery was located, with a heavy private security presence. On information and belief, one villa belongs to or is occupied by President Aliyev, and the other belongs to or is occupied by members of the Pashayev family. Mr. Bahari will seek and request discovery as to who tore down the sugar refinery; the current disposition of the Shuvalan Sugar site, including any records of property sales or transfers; and information on ownership of the land and any buildings that have been built on it.

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<sup>71</sup> [C-086](#) Letter from Chartabi Contracting confirming cost of construction works; [Bahari WS ¶ 30](#).

<sup>72</sup> [Bahari WS ¶ 31](#); [Moghaddam WS ¶ 38](#).

<sup>73</sup> [Bahari WS ¶ 31](#).

<sup>74</sup> See [C-087](#) - Shahriar Corp. Freight Forwarding document - 16 January 1997. The Iranian date is 27/10/1375, which converts to 16 January 1997; [Bahari WS ¶ 31](#).

67. As with Coolak Baku, Mr. Bahari was unable to take any business or financial records for Shuvalan Sugar. The few records that he did possess he has provided to his Counsel and quantum expert.<sup>75</sup>

**4. Mr. Bahari invested in Caspian Fish, one of the largest foreign investments in Azerbaijan at the time.**

**a. Mr. Aliyev approached Mr. Bahari for investment opportunities.**

68. Soon after the establishment of Coolak Baku, Mr. Bahari was approached by Mr. Pashayev's son-in-law, Ilham Aliyev (who is the son of then-President Heydar Aliyev).<sup>76</sup> At that time, Ilham Aliyev was a Member of the Azeri Parliament, and was also the Vice President of The State Oil Company of the Azerbaijan Republic ("**SOCAR**"). Mr. Aliyev asked Mr. Bahari if he saw other opportunities for investing in Azerbaijan. Mr. Bahari discussed with Ilham Aliyev his idea for building a new facility for processing fish from the Caspian Sea, to produce caviar and other fish products.

69. Following his success with Coolak Baku and Shuvalan Sugar, and discussions with Ilham Aliyev about other investments in Azerbaijan, Mr. Bahari decided to establish a new company called Caspian Fish Co. Inc., (BVI) (previously defined as "**Caspian Fish**" or "**Caspian Fish (BVI)**").

70. Mr. Bahari discussed with Mr. Aliyev who else to bring into the project. Mr. Aliyev introduced Mr. Heydarov,<sup>77</sup> who at the time was the Chairman of the State Customs Committee of Azerbaijan.<sup>78</sup> Messrs Aliyev and Heydarov were already business partners, and Mr. Aliyev wanted to bring Mr. Heydarov into the Caspian Fish project. Together, Messrs. Aliyev and Heydarov, as local partners, would assist with the various necessary Azeri administrative formalities, such as the provision of the land on which to build the facility, and obtaining various permits, as well as exploitation rights to the Caspian Sea.<sup>79</sup> Messrs. Pashayev and Heydarov did not contribute any capital or know-how to the project. Mr. Bahari introduced Mr. Manouchehr Ahadpour Khanghah,<sup>80</sup> a businessman from

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<sup>75</sup> Bahari WS ¶¶ 32-33.

<sup>76</sup> Bahari WS ¶ 34; Moghaddam WS ¶ 40.

<sup>77</sup> Bahari WS ¶ 35; Moghaddam WS ¶ 41.

<sup>78</sup> Mr. Heydarov was subsequently appointed as the Minister of Emergency Situations of Azerbaijan in 2006.

<sup>79</sup> Bahari WS ¶ 35; Moghaddam WS ¶ 42.

<sup>80</sup> Bahari WS ¶ 36; Moghaddam WS ¶ 41.

Tabriz, Iran, whom Mr. Bahari had recently met. Mr. Khanghah was a modest entrepreneur selling cigarettes in bulk. He did not have the financial means to contribute any capital to the project; however, Mr. Khanghah persuaded Mr. Bahari that he had many contacts in the region that Caspian Fish could distribute products to. Mr. Bahari felt that Mr. Khanghah was clever and could get things done; his thought was that Mr. Khanghah could provide sweat equity on the project by assisting with day-to-day management and paperwork. Because of their shared Tabriz background, Mr. Bahari felt he could trust Mr. Khanghah, although subsequent events would unfortunately prove otherwise. Nevertheless, at the early stages of the Caspian Fish investment, Mr. Bahari's relations with Messrs. Aliyev, Heydarov, and Khanghah were positive.<sup>81</sup>

71. Mr. Bahari, as the investor who would bring all of the capital, technical know-how, and considerable business experience, would not only lead the project, but have control over the investment and the direction of the business.<sup>82</sup>

**b. Caspian Fish was set up as a foreign entity with a local Representative Office.**

72. Caspian Fish was incorporated in the British Virgin Islands on 5 March 1999.<sup>83</sup> (A separate section below discusses the details of that incorporation and follow-on events in the corporate life of the company.)
73. On 27 April 1999, Caspian Fish established a representative office in Azerbaijan pursuant to the terms of a charter ("**Charter**") which was signed and sealed by the Minister of Justice of Azerbaijan, and which was formally registered on the Azeri State Registry for Legal Entities under Certificate No. 496.<sup>84</sup> The representative office served as the local extension of Caspian Fish to conclude contracts and otherwise carry out the business of the company in Azerbaijan.<sup>85</sup> Consistent with its status as the legal extension of Caspian Fish in Azerbaijan, the Charter provided for Caspian Fish to be fully liable for the debts of its representative office,<sup>86</sup> to be the sole source of all funds, assets and other means

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<sup>81</sup> Bahari WS ¶¶ 36.

<sup>82</sup> Bahari WS ¶¶ 37.

<sup>83</sup> C-002 *bis* Memorandum and Articles of Association for Caspian Fish Co. Inc. – 5 March 1999.

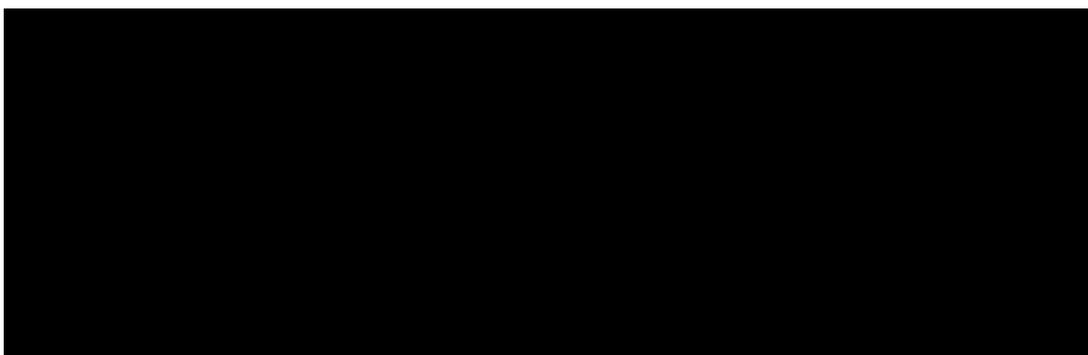
<sup>84</sup> C-003 Charter of the Representative Office of Caspian Fish Co. Inc. – 27 April 1999.

<sup>85</sup> *Id.* at Art. 1.

<sup>86</sup> *Id.*

required to carry out business in Azerbaijan, and for title to all assets and income to belong solely to Caspian Fish.<sup>87</sup>

74. Thus, from the start, Caspian Fish (BVI) and its local Azeri representative office were known to, and specifically approved by, the Government of Azerbaijan, as a foreign company and investment.
75. On the same day the Charter was established, Mr. Bahari concluded a shareholders agreement for Caspian Fish with Messrs. Ilham Aliyev, Heydarov, and Khanghah (“**Shareholders Agreement**”).<sup>88</sup> The Shareholders Agreement provided for Caspian Fish to operate under the name of “Caspian Fish Co. Inc.” and identified the corporate purpose as the joint industrial operation of a fish and caviar manufacturing facility to be located in Baku, Azerbaijan, including both the turnout of products as well as their export. The Shareholders Agreement further stated that the various Government permits and concessions required for the company’s operations had been established.<sup>89</sup> Messrs. Bahari, Aliyev, Heydarov, and Khanghah all signed the Shareholders Agreement:



(C-004 Excerpt.)

76. The Shareholders Agreement contained the following provisions regarding management and control of the company, as well as allocation of operational profits and losses:
- i. Mr. Bahari retained sole power and responsibility for the management and representation of the company;<sup>90</sup>

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<sup>87</sup> *Id.* at Articles 2 and 5.

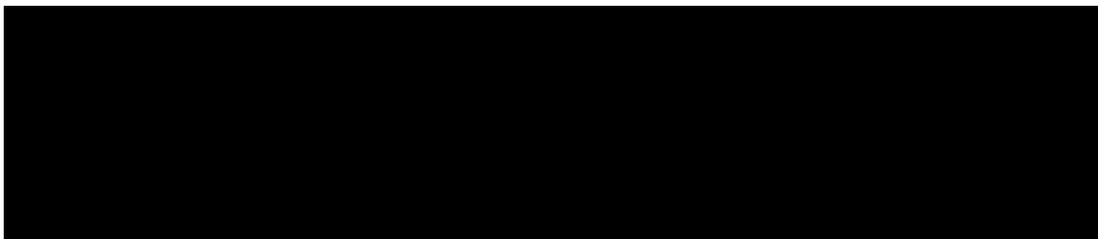
<sup>88</sup> C-004 Shareholders Agreement for Caspian Fish Co. Inc. – 27 April 1999.

<sup>89</sup> C-004 at Articles 2 and 3.

<sup>90</sup> *Id.* at Art. 4.

- ii. Mr. Bahari held a 40 percent ownership stake in Caspian Fish;<sup>91</sup>
- iii. Messrs. Ilham Aliyev and Heydarov each held a 25 percent ownership stake (50 percent total);<sup>92</sup>
- iv. Mr. Khanghah held a 10 percent ownership stake;<sup>93</sup>
- v. All profits would be paid into an account in the name of Caspian Fish with Vereins und Westbank AG in Hamburg, Germany (“**Vereinsbank**”);<sup>94</sup> and
- vi. Mr. Bahari was to have sole control over the transfer of any funds out of the account to the respective shareholders.<sup>95</sup>

77. Following this Shareholders Agreement, all four shareholders jointly opened a bank account with Vereinsbank in the name of Caspian Fish on 13 November 2000.<sup>96</sup> The Opening of Account statement bears the signatures of Messrs. Bahari, Ilham Aliyev, Heydarov, and Khanghah,<sup>97</sup> which match the signatures on the Shareholders Agreement:



(**C-007** Excerpt.)

78. As part of the process of setting up Caspian Fish, Messrs. Ilham Aliyev, Heydarov, and Khanghah, each provided copies of their passports.<sup>98</sup> Thus, Mr. Bahari possesses the following three sets of documents bearing the signatures, or otherwise clearly identifying, the current President of the Republic of Azerbaijan and the current Minister of Emergency

<sup>91</sup> *Id.* at Art. 6. Mr. Bahari received a share certificate evidencing this 40 percent ownership. See **C-006** - Mr. Bahari's Share Certificate in Caspian Fish Co. Inc. – 5 March 1999.

<sup>92</sup> **C-004** at Art. 6.

<sup>93</sup> *d.*

<sup>94</sup> *Id.* at Art. 7.

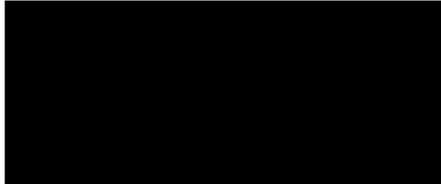
<sup>95</sup> *Id.* at Art. 8.

<sup>96</sup> **C-007** Vereinsbank Opening of Account Statement – 13 November 2000.

<sup>97</sup> *Ibid.*

<sup>98</sup> **C-008** Copy of Passport of President Ilham Aliyev – 10 May 1998; **C-009** Copy of Passport of Minister Kamaladdin Heydarov – 13 June 1998; **C-010** Copy of Passport of Ahadpour Khanghah – 31 October 1998.

Situations: (1) the Shareholders Agreement, (2) the Vereinsbank Opening of Account statement, and (3) the aforementioned passports.<sup>99</sup> As regards Mr. Aliyev, the signatures on all of the above documents match publicly available images of his official signature:<sup>100</sup>



(C-089 Excerpt.)

**c. Mr. Bahari invested \$56 million in Caspian Fish.**

79. Starting in 1999, Mr. Bahari financed a multi-million U.S. dollar construction contract for Caspian Fish, creating a large, state-of-the-art fish processing facility. Mr. Bahari's initial investment cost to build the Caspian Fish facilities was no less than \$56 million. Mr. Bahari confirms this amount,<sup>101</sup> as does Mr. Moghaddam,<sup>102</sup> and Mr. Bahari's private banker at the time, Mr. Dieter Klaus, further corroborates the significant sums spent. The \$56 million investment sum was also widely reported by the press at the time and since.<sup>103</sup> The website [www.caspianfish.com](http://www.caspianfish.com) also notes \$56 million in foreign investment.<sup>104</sup> Most notably, at the grand opening ceremony of Caspian Fish, then-President Heydar Aliyev

<sup>99</sup> C-004; C-007; C-008; C-009; C-010.

<sup>100</sup> See, e.g., C-088 "Ilham Aliyev" *Wikipedia*, Wikimedia Foundation, - 31 March 2023, available at: [https://tr.wikipedia.org/wiki/%C4%B0lham\\_Aliyev](https://tr.wikipedia.org/wiki/%C4%B0lham_Aliyev); C-089 "Fichier:Signature of Ilham Aliyev.svg." *Wikipedia*, Wikimedia Foundation, available at: [https://fr.m.wikipedia.org/wiki/Fichier:Signature\\_of\\_Ilham\\_Aliyev.svg](https://fr.m.wikipedia.org/wiki/Fichier:Signature_of_Ilham_Aliyev.svg).

<sup>101</sup> Bahari WS ¶ 38; Klaus WS ¶ 20.

<sup>102</sup> Moghaddam WS ¶ 45.

<sup>103</sup> C-043, Caspian Fish archived website - Main Page, accessed via 4 July 2014 snapshot through Google WayBack Machine, available at: <https://web.archive.org/web/20140704084812/http://www.caspianfish.com/lang/en/>; C-011 Azerbaijan State News Agency, Tajik *President Visited "Caspian Fish Co." in Baku* - 13 August 2007 (noting \$56 Million investment); C-012 Azerbaijan State News Agency, *Swiss President Familiarizes Himself with "Caspian Fish Co. Azerbaijan" Corporation* - 11 May 2008 (same); C-013 BastalInfo, *Kamaladdin Heydarov sells his famous company* - 26 March 2018, p. 2; see also C-090 "Caspian Fish." *Wikipedia*, Wikimedia Foundation, available at: [https://az.wikipedia.org/w/index.php?title=Caspian\\_Fish&oldid=5214265](https://az.wikipedia.org/w/index.php?title=Caspian_Fish&oldid=5214265). (Wikipedia entry for Caspian Fish, noting that [REDACTED]).

<sup>104</sup> C-043, Caspian Fish archived website - Main Page, accessed via 4 July 2014 snapshot through Google WayBack Machine, available at: <https://web.archive.org/web/20140704084812/http://www.caspianfish.com/lang/en/>; This is an archived website reference dating to July 2014. This date is important, because by then, Caspian Fish (BVI)'s physical assets and operations had been illegally transferred to a locally incorporated limited liability company (defined as "Caspian Fish MMC" below). As explained below, this Caspian Fish MMC entity is controlled by the Aliyev, Pashayev, and Heydarov families. So, the \$56 million investment figure is confirmed by the Caspian Fish MMC entity that is controlled by these individuals.

also noted the \$56 million investment sum.<sup>105</sup> Mr. Bahari alone funded the entire cost of Caspian Fish.<sup>106</sup>

80. Caspian Fish acquired several plots of land, including a plot of land on the banks of the Kura River (the largest river in the Southern Caucasus, and which bisects Azerbaijan, resulting in considerable resources of anadromous and semi-anadromous fish in the regional waters),<sup>107</sup> in order to develop a sturgeon farm, and another plot of land on the Baku-Shamakhi Highway (“**Baku-Shamakhi Land Plot**”).<sup>108</sup> On the Baku-Shamakhi Land Plot, Mr. Bahari financed the construction of buildings and factories, creating a fish processing facility.
81. On 10 May 1999, Mr. Bahari hired Chartabi Contracting to perform the works, which were valued at **\$28,800,000**,<sup>109</sup> and fully paid for by Mr. Bahari.<sup>110</sup> The construction included everything from civil engineering (earthworks) to construction of the facilities.<sup>111</sup>
82. The Chartabi Contracting agreement was the largest of the contracts for the construction of Caspian Fish. Mr. Bahari undertook a number of other contracts for other parts of the construction, as well as installation of various equipment. As noted below, due to his forced expulsion, Mr. Bahari was unable to bring records with him and he does not possess many of these agreements.<sup>112</sup>
83. Mr. Bahari also established and registered a local company, Mirinda Limited (“**Mirinda**”), at the Nasimi District Warehouse. Mr. Bahari’s intention was to use Mirinda to contract with suppliers because he did not want suppliers to know he was involved and try to overcharge him due to his reputation as a successful entrepreneur.<sup>113</sup> However, as the

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<sup>105</sup> **C-091** President Heydar Aliyev’s Opening Speech for Caspian Fish Co. Inc. – 10 February 2001.

<sup>106</sup> Bahari WS ¶ 38; Moghaddam WS ¶ 47; Klaus WS ¶ 11.

<sup>107</sup> **C-015** Salmonov, *Fisheries and Aquaculture in the Republic of Azerbaijan: A Review*, FAO - 2013 at pp. 22-23.

<sup>108</sup> Location of the facility on the Baku-Shamakhi Highway can be seen here: <https://tinyurl.com/y3mq5zcc>. Note that the Caspian Fish property extends north of the highway.

<sup>109</sup> **C-092** Chartabi Contracting Caspian Fish Construction Contract - 10 May 1999.

<sup>110</sup> **C-086** Letter from Chartabi Contracting confirming payment; Bahari WS ¶ 38.

<sup>111</sup> **C-091**.

<sup>112</sup> Bahari WS ¶ 39

<sup>113</sup> Bahari WS ¶ 38; Moghaddam WS ¶ 44.

project went on, Mr. Bahari did begin to deal with suppliers directly.<sup>114</sup> Mr. Bahari paid all Mirinda invoices himself.<sup>115</sup>

**d. Caspian Fish was a state-of-the-art facility.**

84. The construction project took approximately two years to complete.<sup>116</sup> As with Kaveh Pharmaceuticals, Coolak Shargh, and Coolak Baku, Mr. Bahari installed the most state-of-the-art technology available. This included high-end equipment manufacturers from Europe and Japan, such as Lubeca, ACB, Sudtronic, Nissei, and Baader (the latter of which was supplied and installed by an intermediary, DFT).<sup>117</sup>
85. Mr. Bahari was intimately involved in the design and development of the production processes for Caspian Fish, engaging with manufacturers to develop specific proprietary technologies and processes for Caspian Fish's three processing lines, as well as the canning and packaging machines. One such proprietary innovation was Mr. Bahari's development of a revolutionary process to extract sturgeon roe (eggs) without killing the sturgeon. This was a significant innovation due to the declining sturgeon stock in the Caspian Sea, which was a great ecological concern for Azerbaijan. The extraction process involves a delicate suction tube about the diameter of a pen, but longer, with a camera on the feed end. The tube is inserted through where the roe would be released from, and gently extracts the roe. Because of the physical properties of the tube, extraction is rather automatic, and can be performed on the sturgeon without any sedation of any sort, keeping the fish quite relaxed. The operator checks on live footage from the camera that the roe is fully extracted, then removes the tube, and simply releases the sturgeon.<sup>118</sup>
86. Azeri television news covered the grand opening of Caspian Fish, and Mr. Bahari has compiled 46 minutes of contemporaneous footage. The video provides extensive footage of Caspian Fish showcasing the sheer size and sophistication of the facility, the evident

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<sup>114</sup> Bahari WS ¶ 38.

<sup>115</sup> Bahari WS ¶ 38.

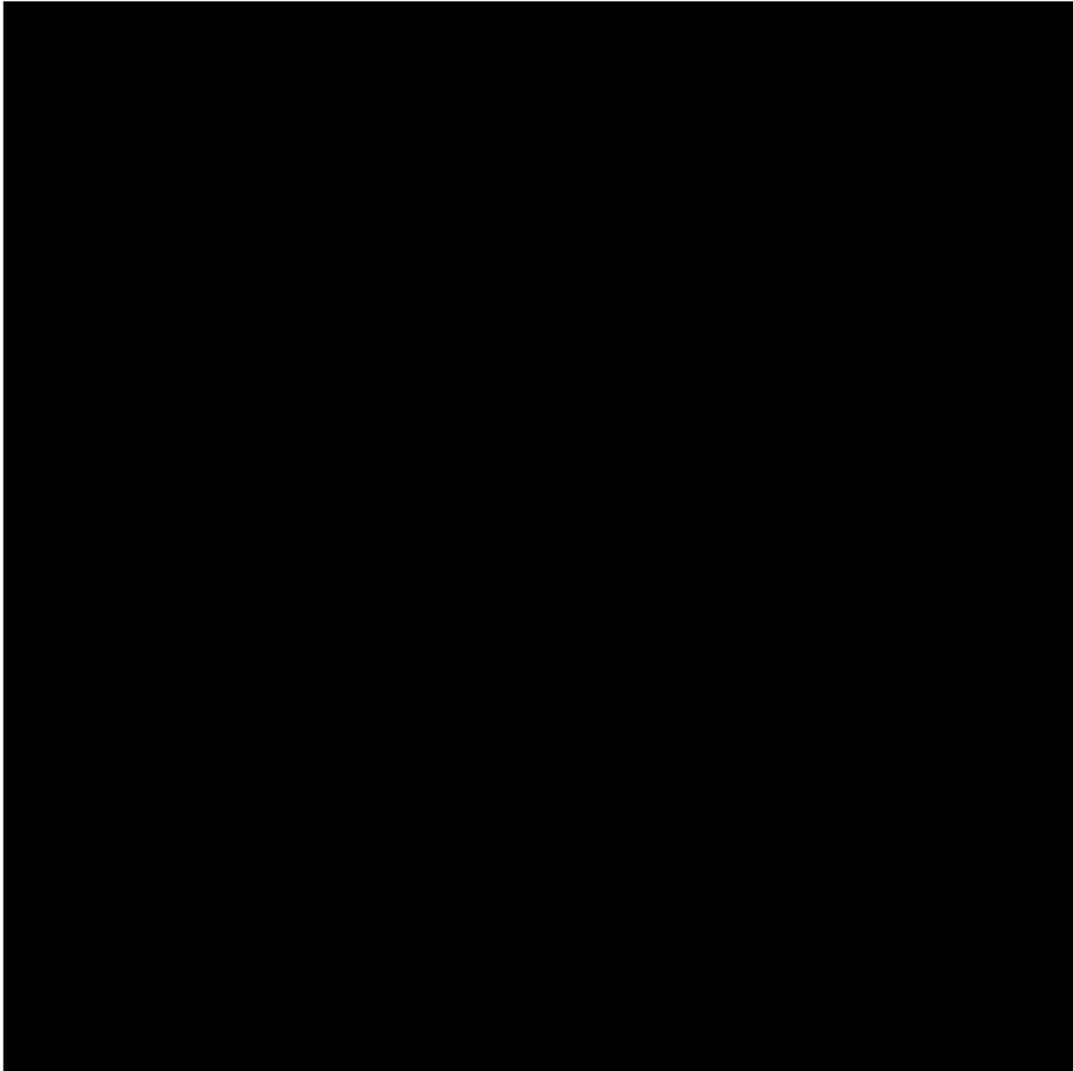
<sup>116</sup> Bahari WS ¶ 40; Moghaddam WS ¶ 45.

<sup>117</sup> Bahari WS ¶ 40; C-093 Caspian Fish archived website - Technologies, accessed via 4 July 2014 snapshot through Google WayBack Machine, *available at*: <https://web.archive.org/web/20140828094245/http://www.caspianfish.com/static,163/lang,az/>

<sup>118</sup> Bahari WS ¶ 41; Moghaddam WS ¶ 48.

room for future expansion. Short of an in-person tour, the Tribunal is encouraged to view this video to get the best sense of the dimensions and qualities of the facility.<sup>119</sup>

87. Ultimately, Caspian Fish contained no fewer than three processing lines.<sup>120</sup> The picture below, taken from the [www.caspianfish.com](http://www.caspianfish.com) website, shows a section of one of the processing lines, using Lubeca machinery:



(C-039 – Caspianfish.com image – processing line.)

88. Mr. Bahari was also closely involved in the interior design of Caspian Fish, from the grand staircase in the main hall (pictured below) to furniture. Mr. Moghaddam was responsible

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<sup>119</sup> C-094 – Video news report of Caspian Fish Grand Opening - 10 February 2001 [REDACTED]

[REDACTED] Highlights of the facility can be found at 04:16, 07:05, 11:14, 13:50, 24:30 and 35:10.

<sup>120</sup> Bahari WS ¶ 42.

for the construction and development of the interior space of Caspian Fish, including furnishings and other designs that Mr. Bahari had in mind.<sup>121</sup> Messrs. Bahari and Moghaddam utilized the Nasimi District Warehouse<sup>122</sup> as a carpentry workshop to support the Caspian Fish construction and for repairs.<sup>123</sup>



(Exhibit **C-054.**)

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<sup>121</sup> Bahari WS ¶ 43; Moghaddam WS ¶ 48.

<sup>122</sup> The warehouse was empty, as Mr. Bahari was no longer importing beverages from Coolak Shargh into Azerbaijan by 1998. Moghaddam WS ¶ 43.

<sup>123</sup> Bahari WS ¶ 43; Moghaddam WS ¶ 43.



sold in Azerbaijan and exported all over the world.<sup>129</sup> Caspian Fish was a significant local employer, with 800 employees when it opened.<sup>130</sup> Caspian Fish is a market leader in domestic caviar and is reputed to produce caviar of the highest quality in the world. Caspian Fish exports its products abroad, including regional markets, in the US, Europe, and other countries.<sup>131</sup>

93. The success that the company has enjoyed in subsequent years is directly attributable to Mr. Bahari's vision, ingenuity and business acumen. For example, the Caspian Fish website notes the activities of the Mingachevir Fishing Plant, and Siyazan Fish<sup>132</sup> – which did not exist at the time Mr. Bahari was in Azerbaijan. However, these were part of Mr. Bahari's original business plan to set up a sustainable fishing and fish breeding program. Mr. Bahari had planned to invest a further \$30 million to implement this second phase project.<sup>133</sup> President Heydar Aliyev specifically mentioned this additional projected \$30 million investment in his opening speech,<sup>134</sup> and it is further noted in a contemporaneous article reporting on the opening ceremonies.<sup>135</sup>
94. As with Coolak Baku and Shuvalan Sugar, Mr. Bahari was unable to take any business or financial records for Caspian Fish. The few records that he did possess he has provided to his Counsel and quantum expert.<sup>136</sup>

##### **5. Mr. Bahari invested in the Ayna Sultan property.**

95. While in Azerbaijan, Mr. Bahari invested in the acquisition of a plot of land in the exclusive Narimanov District of Baku, on Ziya Bünyadov Street, covering approximately 1,000 square meters, and known as Ayna Sultan. Mr. Bahari invested in the plot of land to build

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<sup>129</sup> **C-015** at pp. 23-24.

<sup>130</sup> **C-099** *President Inaugurates New Fishery*, Azernews: Business - 14 February 2001, available at: [https://www.bakupages.com/pubs/azernews/602\\_en.php](https://www.bakupages.com/pubs/azernews/602_en.php).

<sup>131</sup> **C-100** Caspian Fish archived website - Production of Caviar and Fish Products, accessed via 4 July 2014 snapshot through Google WayBack Machine, available at: <https://web.archive.org/web/20140828080214/http://www.caspianfish.com/static,161/lang,az/>.

<sup>132</sup> **C-039** Caspian Fish, About Us/Structure, last visited 4 July 2014, available at <https://web.archive.org/web/20140828092629/http://www.caspianfish.com/static,155/lang,az/>.

<sup>133</sup> Bahari WS ¶ 45.

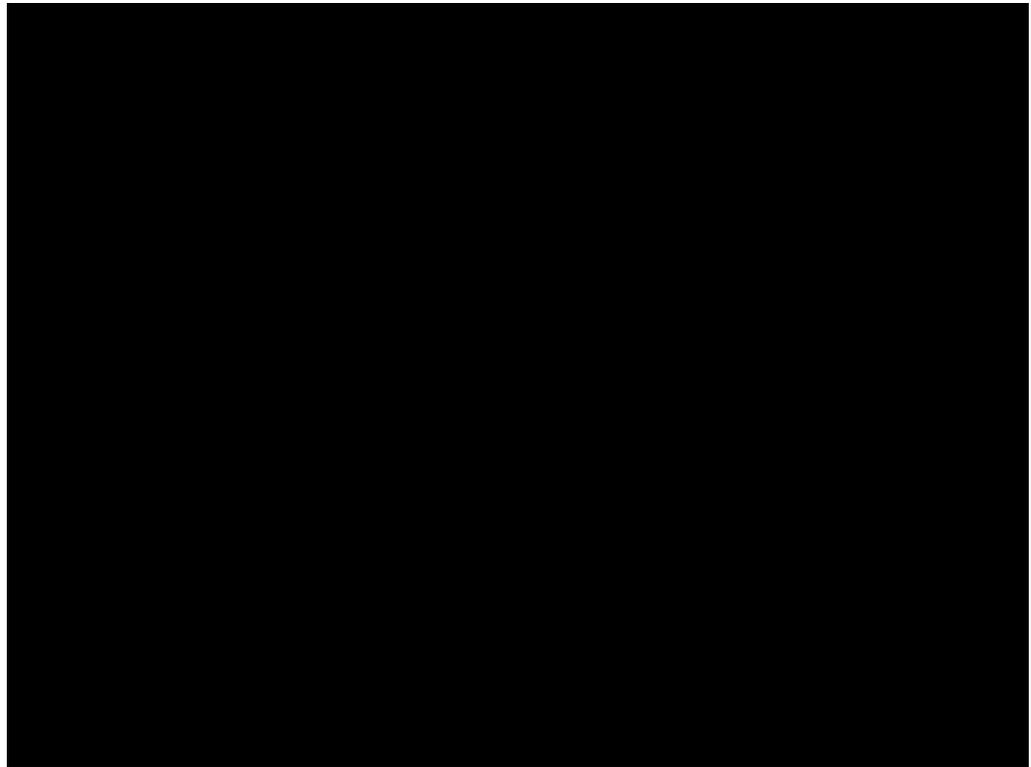
<sup>134</sup> **C-091** President Heydar Aliyev's Opening Speech for Caspian Fish Co. Inc. – 10 February 2001.

<sup>135</sup> **C-099** *President Inaugurates New Fishery*, Azernews: Business - 14 February 2001, available at: [https://www.bakupages.com/pubs/azernews/602\\_en.php](https://www.bakupages.com/pubs/azernews/602_en.php) (The article misquotes the figure as \$31 million.)

<sup>136</sup> Bahari WS ¶ 47.

a prestigious office building that would be the headquarters for his various Azerbaijan businesses.<sup>137</sup>

96. Mr. Bahari's ownership of the investment is evidenced by the Technical Passport,<sup>138</sup> a government-issued document that, among other things, shows that the government has privatized a specific piece of real property that is therefore capable of ownership by a foreign individual. The Technical Passport for the Ayna Sultan Real Estate was issued on 29 May 1996, under Technical Passport No. 30/707, and signed by Arif Garashov, the head of the Baku private property registration office.
97. Azerbaijan also issued a Registration Voucher confirming Mr. Bahari's legal title to the property. This Registration Voucher (marked Series MH, No. 109228) records that the Ayna Sultan Real Estate was registered to Mr. Bahari. The property rights were recorded in the land register at entry number 623 in Registry Book 93547.<sup>139</sup>
98. In September 2020, Mr. Bahari requested a colleague to take pictures of the Ayna Sultan property:<sup>140</sup>



(C-070 – Ayna Sultan Photograph 2 dated 25 September 2020.)

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<sup>137</sup> Bahari WS ¶ 48.

<sup>138</sup> C-016 Ayna Sultan Registration Voucher and Technical Passport – 29 May 1996, PDF pp. 3-6.

<sup>139</sup> C-016 Ayna Sultan Registration Voucher and Technical Passport – 29 May 1996, at PDF p. 2; Bahari WS ¶ 48.

<sup>140</sup> Bahari WS ¶ 49.

99. Where the property originally only had a small Russian-style dacha (as shown on the Technical Passport), there is at least one new apartment building on the land, and possibly another modern hotel directly North. Mr. Bahari does not know who built these buildings, and has no ownership rights or control of these buildings. It is possible that the land has been subdivided in the intervening years.<sup>141</sup>
100. Mr. Bahari will seek and request document production from Azerbaijan on the current disposition of the property and all buildings within the property, including all changes in ownership and any sales or subdivisions, that may have been registered with any Government agency between March 2001 and present day; property tax information; and so on.

#### **6. Mr. Bahari invested in over 500 antique Persian Carpets.**

##### **a. Mr. Bahari sought to build the world's largest Persian carpet museum in Baku.**

101. Mr. Bahari's investments in Azerbaijan included antique Persian carpets that he purchased as part of his plan to develop and build the world's largest Persian carpet museum in Baku. "Oriental" carpets, commonly referred to as Persian, were woven in urban centers and tribal areas primarily across modern-day northwestern Iran, Turkey and Azerbaijan from the 16th century onwards.<sup>142</sup>
102. Mr. Bahari and his family are from Tabriz, in northwestern Iran, which historically and today is a principal urban center for Persian carpet weaving and trade.<sup>143</sup>
103. Before starting his businesses in Azerbaijan, Mr. Bahari sought to create an institute in Tabriz to train young people to make and repair Persian carpets. Mr. Bahari would have financially supported the institute through his Coolak Shargh beverages business. That Tabriz institute never came to fruition due to a lack of support from the Iranian Government. Nevertheless, Mr. Bahari remained keenly interested in collecting Persian carpets and showcasing the region's exceptional craftsmanship and artisans.<sup>144</sup>

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<sup>141</sup> Bahari WS ¶ 49.

<sup>142</sup> Bahari WS ¶ 50.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* ¶ 51.

104. As Mr. Bahari began to spend considerable time in Baku to focus on Coolak Baku, he noticed that Azerbaijanis had a significant number of antique carpets from around the region, particularly from the pre-Soviet era. The Azerbaijanis would typically hang carpets on their walls as decoration and art, they did not put these artisan carpets on the floor. When Mr. Bahari visited people's businesses or houses, he inquired about their carpets, including their provenance, the material, the specifics of how they were made, etc. Many of the carpets were rare antiques, well over 100 years old.<sup>145</sup>
105. From this experience in Baku, Mr. Bahari presumed that throughout Azerbaijan and the surrounding areas there was potentially a significant amount of rare and antique carpets that were not found anywhere else in the world. This was, in large part, likely due to the Soviet-era closed economy, and because Azerbaijanis generally did not place significant economic value on these carpets as foreign buyers had not yet focused on this nascent market.<sup>146</sup>

**b. Mr. Bahari engaged in a methodical plan to purchase antique carpets and build his collection.**

106. In or around 1996, Mr. Bahari engaged in a concerted effort to purchase antique carpets in and around Azerbaijan to build his collection. Instead of building a center in Tabriz as he had originally planned, Mr. Bahari decided Baku would be a suitable future location for a world-class Persian Carpet Museum.<sup>147</sup>
107. Mr. Bahari spoke to Mr. Aliyev about the project, who thought it was a great idea, and even suggested that he could provide the land where the Museum could be built. Mr. Bahari began to plan for the Museum, and hired an Iranian gentleman from Tabriz, Mr. Golchini, to design conceptual art for the eventual Museum building. Mr. Golchini produced initial sketches, then conceptual designs by computer-assisted design, or CAD. Mr. Bahari gave a copy of the design to Mr. Aliyev.<sup>148</sup>
108. Mr. Bahari's interest in purchasing rare and antique carpets quickly became known by people in the carpet trade and private owners. It helped that Mr. Bahari's notoriety in Baku was quickly increasing with the continued success of Coolak Shargh's sales and Mr.

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<sup>145</sup> *Id.* ¶ 52.

<sup>146</sup> *Id.* ¶ 53.

<sup>147</sup> *Id.* ¶ 54.

<sup>148</sup> *Id.*

Bahari's development of Coolak Baku. People looking to sell Mr. Bahari carpets approached him directly, from local carpet traders at the Bazar, to people with family heirlooms. Mr. Bahari was also active at the bazar in the Old City of Baku, engaging with various carpet traders that had contacts throughout the region, including outside of Azerbaijan. At one point, Mr. Bahari had three to four people who were purchasing carpets for him in Baku and in small villages or towns throughout the region.<sup>149</sup>

109. If someone had an antique high-quality carpet that they were looking to sell, they were told to find Mr. Bahari. At the time, sellers were bringing in carpets from surrounding countries, such as Turkmenistan, Russia, Georgia, Armenia, and Kazakhstan, to sell to Mr. Bahari.<sup>150</sup>
110. Mr. Bahari paid cash when purchasing his carpets. At this time, in the late 1990s, Azerbaijan did not have a sophisticated or reliable commercial banking system that would have allowed Mr. Bahari or his associates to transfer money or write checks to pay for the carpets. Azerbaijan was very much a cash economy at this point in time.<sup>151</sup>
111. Many of the carpets that Mr. Bahari purchased were unique and the only style represented in the world from a particular region. This was exactly what Mr. Bahari wanted to showcase for his museum in Baku. For example, Mr. Bahari purchased rare and valuable carpet that was a gift from the Nader Shah Afshar of Iran (c. 1736 – 1747) to the Czar of Russia. The Shah's carpet was not only historically valuable, but it was massive for such a high-quality antique carpet: approximately 60 square meters and weighing more than 100 kilograms. Mr. Bahari paid approximately \$500,000 for the carpet, which included a significant fee for a middleman who transported the carpet to Baku. The old carpet was not in perfect condition; it had noticeable tears, and other repairs were needed. Mr. Bahari hired 18 skilled artisans from his home city of Tabriz to come to Baku to repair the carpet. It took them more than six months to repair the Shah's carpet to the standard that Mr. Bahari considered museum quality. At some point, a London-based carpet dealer visiting Baku offered Mr. Bahari \$10 million for the Shah's carpet. Mr. Bahari did not accept the offer as he wanted the carpet to be a centerpiece of his museum in Baku.<sup>152</sup>

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* ¶ 56.

112. Mr. Bahari's efforts to locate and identify antique high-quality carpets, and his willingness to pay top prices for such quality, eventually increased the overall market price for carpets in and around Azerbaijan. It also started to attract more foreign buyers who had not previously sought out antique carpets in Azerbaijan.<sup>153</sup>
113. From time to time, foreign buyers would make significant offers to Mr. Bahari to purchase one or more of the carpets Mr. Bahari had collected. While Mr. Bahari did sell a number of the carpets he had purchased, overall, he chose not to sell the most valuable and unique carpets because of his plan for the museum.<sup>154</sup>
114. As Mr. Bahari's businesses in Baku continued to rapidly grow, he eventually stepped back from having direct involvement in purchasing carpets and instead engaged two brothers – Adil Sharabiani and Mostafa Sharabiani – to assist him in locating and purchasing carpets for Mr. Bahari. The Sharabiani brothers were from an Iranian family that had a history in carpets, and Adil Sharabiani was known as a carpet expert in the region.<sup>155</sup>

**c. Mr. Bahari created a ledger of his antique carpets.**

115. In 1999, Mr. Bahari asked Adil Sharabiani to put together a ledger indexing Mr. Bahari's carpet collection.<sup>156</sup> The ledger was supposed to show the provenance of each carpet, the specific age and size, and specific characteristics that would allow Mr. Bahari to identify them. While many of the carpets were individually named and had significant historical and artistic value, Adil Sharabiani's list was somewhat rudimentary and did not capture these details.
116. For example, instead of providing a specific or approximate date of a carpet, Adil Sharabiani wrote general descriptions. For example, where the ledger says, "[REDACTED]", "[REDACTED]", "[REDACTED]" or "[REDACTED]", these indicated that the carpet was dated before the 1800s. These very old carpets are extremely rare, and if in the right condition, very valuable. Mr. Bahari was able to purchase a number of these in good condition, while others needed repairs because of their age. In each case, Mr. Bahari was always looking for museum quality carpets. For completeness, where the ledger says, "[REDACTED]" or "[REDACTED]", these carpets were from approximately the

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<sup>153</sup> *Id.* ¶ 55.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* ¶ 57.

<sup>156</sup> **C-079** Carpet Ledger.

1800s to the 1850s; and the “[REDACTED]” carpets were from the 1850s to the 1930s. The majority of Mr. Bahari’s carpets were more than 100 years old.<sup>157</sup>

117. Notably, the carpet from the Nader Shah Afshar of Iran, discussed above, is not included in the ledger. Also not included in that ledger are seven large “modern” carpets that Mr. Bahari had custom made by carpet weavers in Tabriz for the Caspian Fish facility. These were extremely high craftsmanship and quality materials. Mr. Bahari required that all of these carpets were made of both wool and silk, and they all had 70 to 75 “knots” per square centimeter, which creates an exceptionally fine and soft carpet. Some of the carpets for Caspian Fish took more than 18 months to weave. They were exceptionally crafted modern carpets, at the time worth approximately \$30,000 to \$70,000.
118. Most notably, the carpet from the Nader Shah Afshar of Iran is not included in the ledger. Also not included in that ledger are seven large “modern” carpets that Mr. Bahari commissioned from carpet weavers in Tabriz for the Caspian Fish facility. These carpets were of extremely high craftsmanship and quality materials. Mr. Bahari required all of these carpets to be crafted with both wool and silk, and all had 70 to 75 “knots” per square centimeter, resulting in exceptionally fine and soft carpets. Some of these carpets took over 18 months to weave. They were exceedingly well-crafted modern carpets, at the time worth approximately \$30,000 to \$70,000. The list below provides details on these seven modern carpets, including size, knot density, the material, and the fabrication cost to Mr. Bahari:<sup>158</sup>

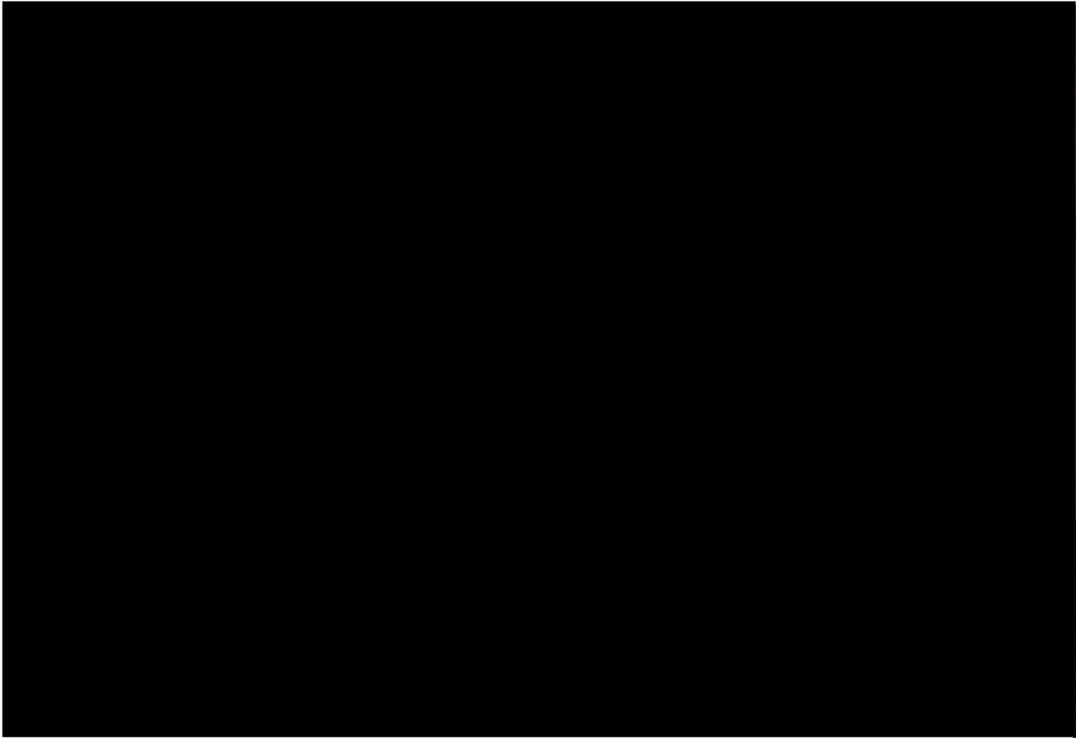
<b>Size and shape</b>	<b>Knot density</b>	<b>Material</b>	<b>Cost</b>
60m2 (rectangular)	75	Silk and wool	Unavailable
36m2 (round)	70	Silk and wool	US\$ 50,000
24m2 (rectangular)	70-75	Silk and wool	US\$ 70,000
24m2 (rectangular)	70-75	Silk and wool	US\$ 70,000
100m2 (rectangular)	75	Silk and wool	Unavailable
23-25m2 (elliptical)	70-75	Silk and wool	Unavailable
12 or 16 m2 (rectangular)	70-75	Silk and wool	US\$30,000 or 40,000

119. There are surviving images of some of these carpets, from pictures and videos taken at the grand opening of Caspian Fish on 10 February 2001. As just one example, Mr. Dieter

<sup>157</sup> Bahari WS ¶ 59.

<sup>158</sup> Bahari WS ¶ 60.

Klaus, took two pictures of Mr. Bahari's office at Caspian Fish on the grand opening day.<sup>159</sup> One of these pictures shows a large round carpet that corresponds to the 36 square meter round carpet in the list above.<sup>160</sup>



(Exhibit C-058.)

120. Mr. Bahari's Witness Statement displays several other images of the carpets at Caspian Fish.<sup>161</sup>
121. Mr. Bahari kept his vast carpet collection in a secure room at the Nasimi District Warehouse. Mr. Moghaddam was the general manager of this building and its operations, and was one of the only people entrusted with a key. Similar to his other properties, Mr. Bahari had security to guard the Warehouse in particular his carpets.<sup>162</sup>
122. After Mr. Bahari's expulsion, the carpets were seized from the Nasimi District Warehouse. The circumstances of this seizure are described below.

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<sup>159</sup> Klaus WS ¶ 33.

<sup>160</sup> Bahari WS ¶ 61.

<sup>161</sup> Bahari WS ¶¶ 61-65.

<sup>162</sup> Bahari WS ¶ 66.

**B. IN 2001, MESSRS. ALIYEV, HEYDAROV, PASHAYEV, AND KHANGHAH ILLEGALLY EXPELLED MR. BAHARI FROM AZERBAIJAN USING GOVERNMENT SECURITY FORCES**

**1. The grand opening ceremony was a high-visibility event attended by President Heydar Aliyev.**

123. As discussed above, Caspian Fish's opening ceremony took place on 10 February 2001. Mr. Bahari spent many months preparing for this event, as it represented the culmination of his efforts and investments in Azerbaijan.<sup>163</sup>
124. Mr. Bahari was present at the Caspian Fish facilities prior to the start of the formal ceremonies, and personally greeted many of the important guests who arrived that day. High-profile guests included the Iranian Ambassador to Azerbaijan, the Honorable Ahad Gazai, as well as the Iranian Embassy's Deputy Head of Mission, Dr. Fereydoun Kousedghi.<sup>164</sup> Mr. Bahari was relaxed, in good spirits, and enormously proud of his project.<sup>165</sup>
125. Security at the event was extremely tight. All 400-500 guests had to file into a small room for a security check by Government security agents in plain clothes. Security was heightened once then-President Heydar Aliyev arrived.<sup>166</sup>
126. As the largest non-oil, non-energy-related foreign investment in Azerbaijan at the time,<sup>167</sup> Caspian Fish grand opening was a high-visibility event to celebrate a prestige project for Azerbaijan, and it was widely covered in the press, and on television.<sup>168</sup> Indeed, the investment was of such great importance that President Heydar Aliyev officiated its grand opening. Mr. Dieter Klaus, who provided banking services to Mr. Bahari and who was invited to the ceremony as a guest, took several photographs capturing the pomp and circumstance of the event, and President Heydar Aliyev's attendance. Two photographs

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<sup>163</sup> Bahari WS ¶ 67; Moghaddam WS ¶ 55.

<sup>164</sup> Since its opening, other high-profile figures have visited Caspian Fish's facilities. For example, the President of Tajikistan, Emomali Rahmon, visited in August 2007 (C-011), and the then-President of the Swiss Confederation, Pascal Couchepin, visited in May 2008 (C-012).

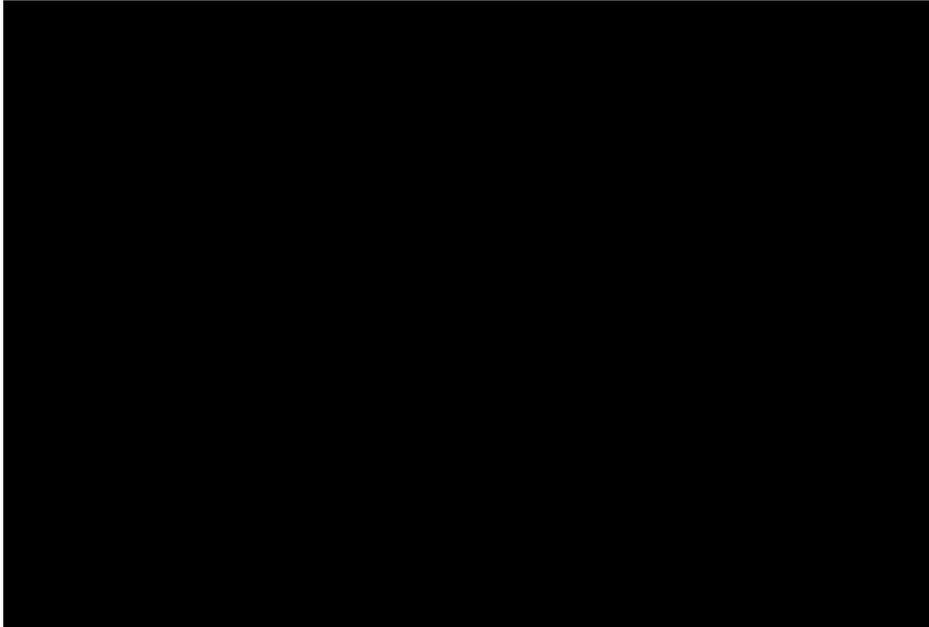
<sup>165</sup> Bahari WS ¶ 67; Klaus WS ¶ 22.

<sup>166</sup> Witness Statement of Dr. Fereydoun Kousedghi - 9 December 2022 ("Kousedghi WS"), ¶ 16.

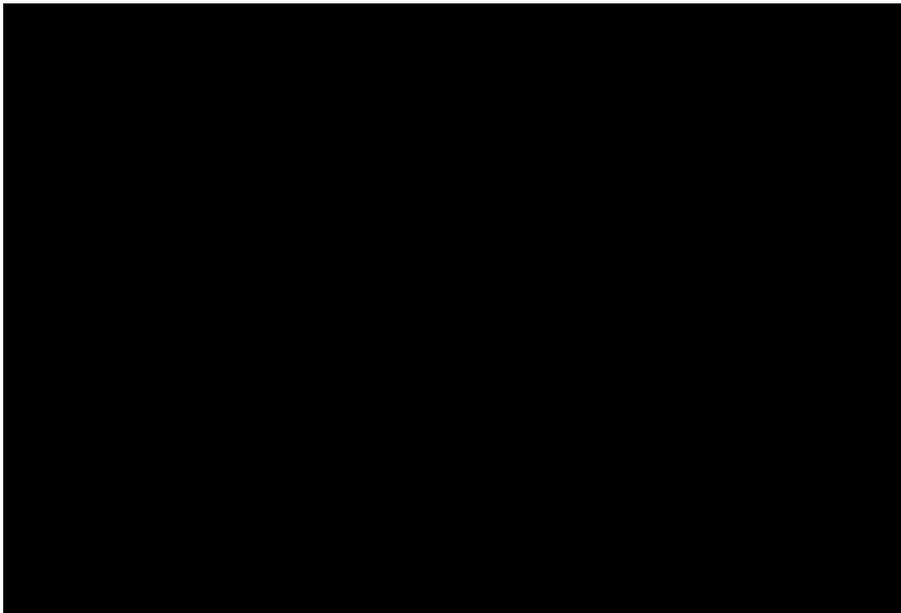
<sup>167</sup> Kousedghi WS ¶ 14(a).

<sup>168</sup> C-099 *President Inaugurates New Fishery*, Azernews: Business - 14 February 2001, available at: [https://www.bakupages.com/pubs/azernews/602\\_en.php](https://www.bakupages.com/pubs/azernews/602_en.php) ; Klaus WS ¶¶ 27, 36; Bahari WS ¶ 68.

below capture President Heydar Aliyev and his entourage, including Government security personnel:<sup>169</sup>



(Exhibit C-065.)



(Exhibit C-067.)

127. Caspian Fish's spacious main hall was used to seat an audience of 400-500 guests, and television crews set up cameras to record the event.<sup>170</sup>

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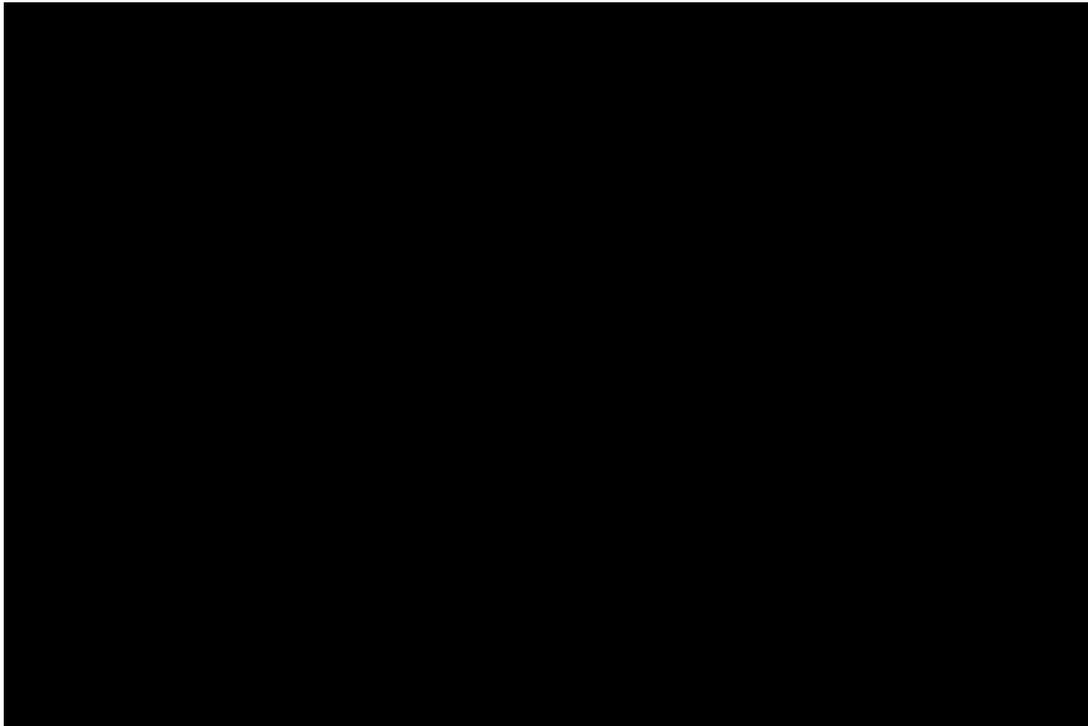
<sup>169</sup> Klaus WS ¶¶ 39-42.

<sup>170</sup> *Id.* ¶¶ 26-27, 36-37; Bahari WS ¶ 68.

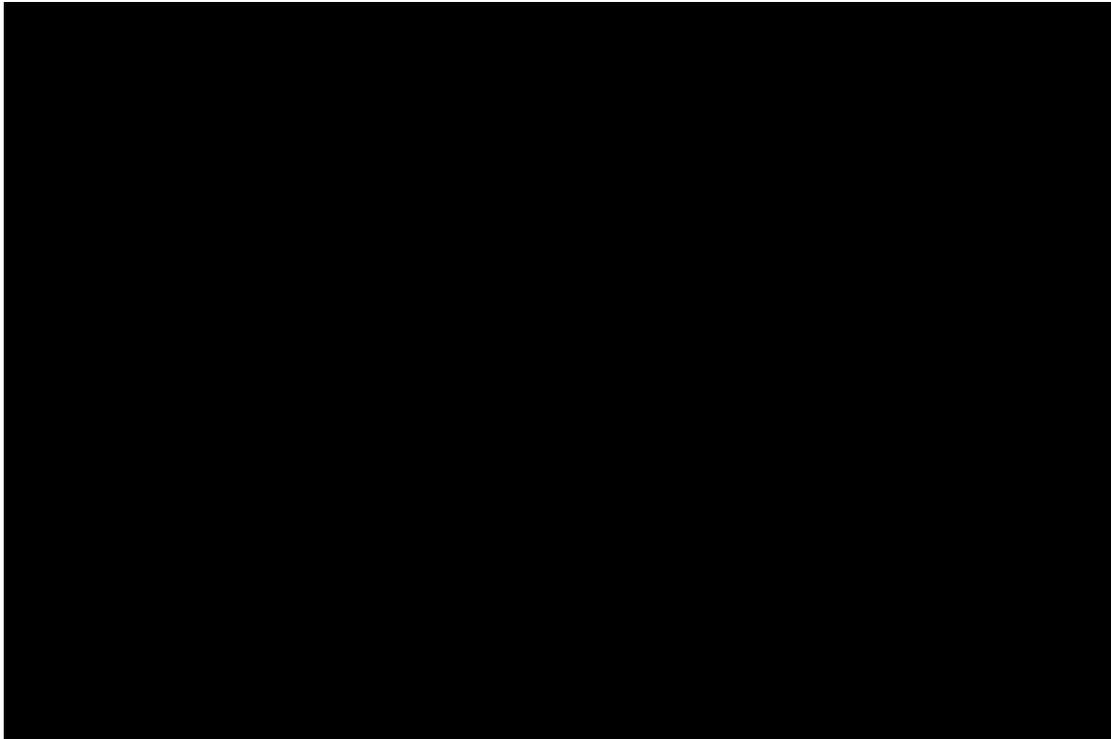


(Exhibit C-053.)

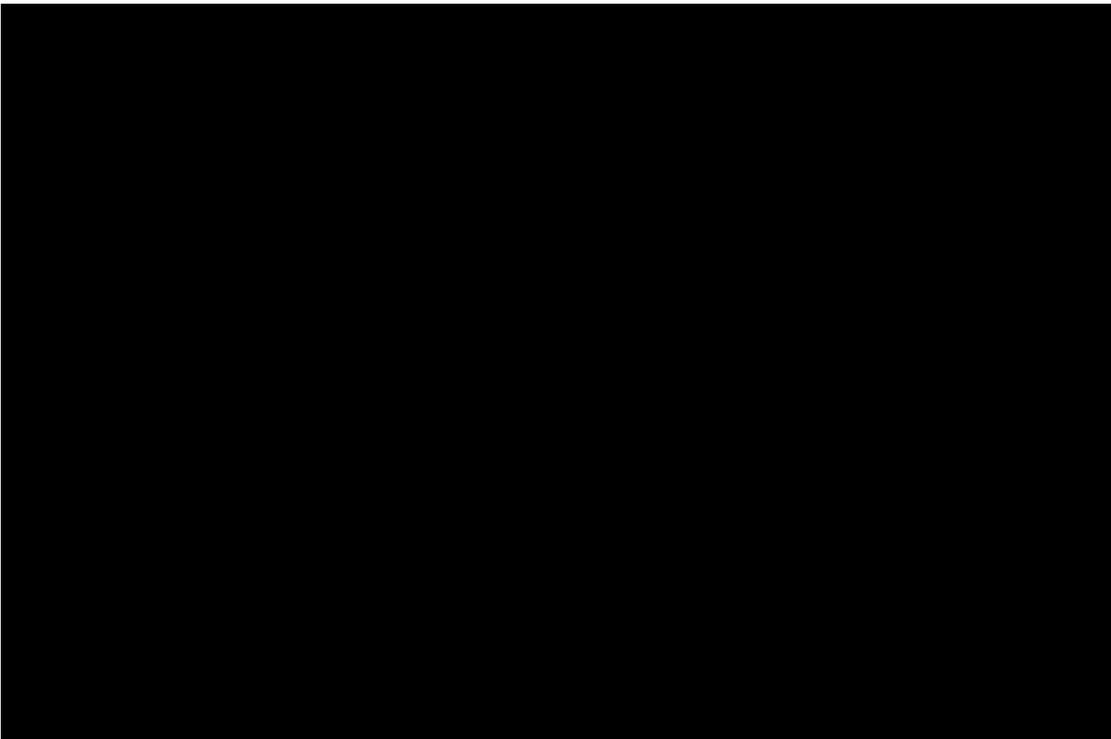
128. The following three photographs show President Heydar Aliyev touring the facilities, as reported in local press:



(C-101, Excerpted photos from Absheron District Administration article 10 February 2001)



(Id.)



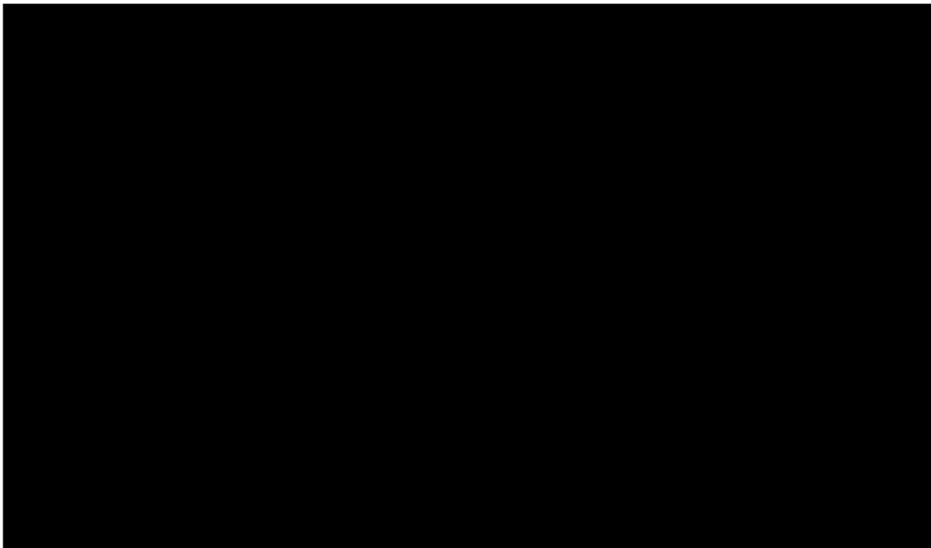
(Id.)



[REDACTED]

131. In a further instance of irony, President Heydar Aliyev prominently placed a plaque at the main entrance of the Caspian Fish facilities, in which he proclaimed that "[REDACTED]

[REDACTED]".<sup>178</sup>



(Exhibit C-062.)

## 2. Azeri Security forces forcibly removed Mr. Bahari from the Caspian Fish Grand Opening Ceremony.

132. Prior to the grand opening ceremony, and away from public view, Mr. Bahari was in his office, where Mr. Klaus had visited him earlier in the day.<sup>179</sup>

133. Shortly before then-President Heydar Aliyev was set to arrive for the ceremony, two large men in plain clothes, who introduced themselves as Government security officers, entered Mr. Bahari's office and asked Mr. Bahari to leave the site.<sup>180</sup>

134. When Mr. Bahari questioned the reason for their request, one of the men stated that Mr. Ilham Aliyev had ordered them to escort Mr. Bahari off the premises. After Mr. Bahari initially refused to leave, three more Government security officers joined the first two, and stated Mr. Bahari had to leave, or they would physically remove him. Mr. Bahari tried

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<sup>178</sup> *Id.* Klaus WS ¶ 35.

<sup>179</sup> Klaus WS ¶ 22; Bahari WS ¶ 69.

<sup>180</sup> Bahari WS ¶ 69.

calling Ilham Aliyev, but was unable to reach him. Mr. Bahari had no choice but to acquiesce and leave against his will. The security officers put Mr. Bahari into a Government vehicle, and drove him off the Caspian Fish premises.<sup>181</sup>

135. While in the car, Mr. Bahari reached Ilham Aliyev and had a conversation by telephone. The conversation quickly became very heated; Mr. Bahari asked Mr. Aliyev what was happening, and the reason for his actions. At first, Mr. Aliyev refused to provide an explanation; then, he stated that “ [REDACTED] ” meaning Caspian Fish. Mr. Bahari recalls Mr. Aliyev’s tone as “ [REDACTED] ” After the conversation ended, Mr. Bahari was dropped off at his Baku residence.<sup>182</sup>
136. Once home, the stress and anxiety of being forcibly removed from the premises of Caspian Fish and missing his own grand opening ceremony caused Mr. Bahari’s blood pressure to rise dangerously, and he momentarily lost consciousness. Mr. Bahari was taken to Republic Hospital that same night, where he was hospitalized for several days.<sup>183</sup>
137. Mr. Bahari’s recollection of the events of the grand opening ceremony is supplemented by several witnesses.
138. As noted, Mr. Dieter Klaus was invited to the grand opening as a guest of Mr. Bahari’s. He recalls that Mr. Bahari was not present at the ceremony itself, and that a stand-in named Yunke Hansen in lieu of Mr. Bahari. Mr. Klaus thought it odd that Mr. Bahari was not present and speaking, and thought at the time that Mr. Bahari may have been too shy to speak publicly.
139. Mr. Moghaddam was also at the grand opening day, and had worked with Mr. Bahari for months to organize for the event.<sup>184</sup> According to Mr. Moghaddam, Mr. Bahari was nowhere to be found shortly before the opening ceremony was to commence. He was also not answering a hand-held radio that he carried with him. Mr. Moghaddam thought that it was very strange for Mr. Bahari to be missing, as he was in charge of the opening ceremony and would be speaking about the Caspian Fish facility’s future production and contribution to the Azeri economy. Mr. Moghaddam realized something was very wrong

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<sup>181</sup> Bahari WS ¶ 70.

<sup>182</sup> Bahari WS ¶ 71.

<sup>183</sup> Bahari WS ¶ 72.

<sup>184</sup> Moghaddam WS ¶ 55.

when the ceremony started and someone other than Mr. Bahari read an opening address on behalf of Caspian Fish.

140. Dr. Fereydoun Kousedghi, an Iranian career diplomat who was the Deputy Head of Mission for the Republic of Iran in Azerbaijan from 1999 to 2003, also attended the event.<sup>185</sup> In his official role, Dr. Kousedghi was responsible for promoting investment from Iran into Azerbaijan, overseeing such investments once made, and to be a point of contact with the Azeri Government for those investors.<sup>186</sup> In this role, Dr. Kousedghi, and the Iranian Embassy generally, were aware of Mr. Bahari's investments in Azerbaijan, including Caspian Fish, Coolak Baku, and Shuvalan Sugar, Ayna Sultan, and the Persian carpets, specifically.<sup>187</sup>
141. Dr. Kousedghi confirmed that Mr. Bahari was the largest of four primary Iranian investors in Azerbaijan at the time, and one of the most successful businessmen in Iran. As such, he attended the grand opening event, along with the Iranian Ambassador to Azerbaijan at the time, the Honorable Ahad Gazai.<sup>188</sup>
142. Dr. Kousedghi and Ambassador Gazai met Mr. Bahari prior to the start of the ceremony, and, like Mr. Klaus, took their leave to attend a tour of the Caspian Fish facility.<sup>189</sup> When the ceremony began, Dr. Kousedghi did not see Mr. Bahari, and thought this



143. It was not until later that Messrs. Klaus, Tabesh, and Dr. Kousedghi realized what had happened to Mr. Bahari.

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<sup>185</sup> Kousedghi WS ¶ 7.

<sup>186</sup> *Id.* ¶¶ 12-13.

<sup>187</sup> *Id.* at ¶¶ 12-15.

<sup>188</sup> *Id.* ¶ 16.

<sup>189</sup> *Id.* ¶ 17.

<sup>190</sup> *Id.*

### 3. Azerbaijan's Minister of Intelligence confirmed a plan to assassinate Mr. Bahari.

144. Dr. Kousedghi was informed shortly after the ceremony that Government security personnel had removed Mr. Bahari from the Caspian Fish facility. He did not learn until a few days after that that Mr. Bahari had suffered a medical emergency and had been admitted to a hospital.<sup>191</sup>
145. Mr. Moghaddam also learned the day after the event that Government security agents had gone to Mr. Bahari's office and removed Mr. Bahari from Caspian Fish, and, further, that Mr. Aliyev had told Mr. Bahari to leave before the start of the ceremonies. Mr. Moghaddam heard about Mr. Bahari's medical emergency, and went to the hospital to check on him. According to Mr. Moghaddam, Mr. Bahari was in and out of consciousness, and very ill during this time. Mr. Moghaddam stayed by Mr. Bahari's side, sleeping in or outside of his hospital room, not only out of concern for his health, but also for his personal safety.<sup>192</sup>
146. For his part, Dr. Kousedghi contacted the then-Minister of National Security<sup>193</sup> for Azerbaijan, Mr. Namig Abbasov, to find out what had happened. Minister Abbasov's reply revealed an alarming Government plot to kill Mr. Bahari:
- Minister Abbasov informed me in confidence that Mr. Bahari's life was in danger; there was a plan to assassinate Mr. Bahari and make his death look natural. I pressured Minister Abbasov to protect Mr. Bahari against those who were seeking to harm him within the Azeri Government.<sup>194</sup>
147. Dr. Kousedghi took action in an attempt to neutralize the assassination plot by taking an automobile with Iranian diplomatic license plates to the hospital where Mr. Bahari had been admitted, and parking the car prominently in front of the hospital.<sup>195</sup>
148. Dr. Kousedghi did not receive information on the specific identity of the person or persons who, according to Azerbaijan's own Ministry of National Security, had plotted to assassinate Mr. Bahari.

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<sup>191</sup> *Id.* 18.

<sup>192</sup> *Moghaddam WS* ¶¶ 57-59.

<sup>193</sup> Dr. Kousedghi identifies Minister Abbasov as Minister of Intelligence, however, the correct official agency title is the Ministry of National Security of Azerbaijan, which existed from 1991 to 2015. *Kousedghi WS* at ¶ 19.

<sup>194</sup> *Id.* at ¶ 19.

<sup>195</sup> *Id.* ¶ 20.

#### **4. State Security forces put Mr. Bahari under house arrest for several weeks.**

149. Following his return from the hospital, Mr. Bahari was placed under house arrest for several weeks. Mr. Bahari recalls that Government security agents were placed outside of his house, and he was not allowed to leave.<sup>196</sup> Mr. Bahari's recollection is corroborated by Mr. Moghaddam, who states that every time he tried to visit Mr. Bahari during this period, the two plainclothes agents told him he was not allowed inside and that he should leave.<sup>197</sup>
150. Mr. Bahari's recollection of this unlawful detention is further corroborated by Dr. Kousedghi, who recalls the Government security agents posted outside Mr. Bahari's home and who kept him under house arrest.<sup>198</sup> In a conversation at that time, Dr. Kousedghi told Mr. Bahari that his life was in danger and strongly urged him to leave the country.<sup>199</sup> For this reason, Mr. Bahari requested protection from Mr. Kousedghi and the Iranian Embassy. However, Mr. Kousedghi informed him that the Iranian Embassy could not guarantee his safety, and urgently advised him that it was in his best interest to leave Azerbaijan.<sup>200</sup>
151. Mr. Bahari was never charged with any crime during his period of house arrest, and received no official explanation from the Government.<sup>201</sup>

#### **5. State security forces unlawfully expelled Mr. Bahari and his family from Azerbaijan.**

152. In or around late March 2001, three Government security agents visited Mr. Bahari's home, and told him that he and his family had to leave the country. The agents presented Mr. Bahari with airplane tickets, as well as his passport and those of his family, which they had evidently obtained from his safe at Caspian Fish. Mr. Bahari and his family had no choice but to pack what they could bring with them. The Bahari family went in one car driven by his driver, Mr. Rasim Zeynalov; their car was trailed by the Government agents, who drove in a separate car. At the airport, Mr. Bahari and his family were driven through

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<sup>196</sup> Bahari WS ¶ 74.

<sup>197</sup> Moghaddam WS ¶ 60.

<sup>198</sup> Kousedghi WS at ¶ 22.

<sup>199</sup> Bahari WS ¶ 74.

<sup>200</sup> Bahari WS ¶ 74.

<sup>201</sup> Bahari WS ¶ 74.

a VIP area straight onto the tarmac, and from there boarded the airplane directly. Mr. Bahari and his family left Azerbaijan bound for Dubai.<sup>202</sup>

153. Because Mr. Bahari had to leave Azerbaijan without prior notice and was escorted straight to the airport, he was unable to organize his affairs and gather more than a few records (such as financial or operating information) relating to his investments, including Caspian Fish, Coolak Baku, his Ayna Sultan real estate property, or his Persian Carpets. He had left many other valuable documents and various assets in his safe at Caspian Fish. Mr. Bahari has never recovered these records, documents and assets.<sup>203</sup>

154. Just as importantly, because Mr. Bahari was expelled barely weeks after Caspian Fish officially began operations, he has never received any dividends, payments, or other profits from Caspian Fish.

155. Dr. Kousedghi learned of Mr. Bahari's expulsion shortly thereafter, and recalls that  
" [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>204</sup>

156. Dr. Kousedghi further notes that while he never received official information from the Government of Azerbaijan about Mr. Bahari's status, he was unofficially informed by an Azeri Government official that Mr. Bahari was *persona non grata* – meaning he would not be able to return to Azerbaijan.<sup>205</sup>

## **6. In 2001, Government security forces detained and physically beat Mr. Moghaddam as a means to intimidate Mr. Bahari.**

157. Following Mr. Bahari's expulsion from Azerbaijan, his trusted manager, Mr. Moghaddam, stayed behind. This was partly because Mr. Moghaddam had established a life in Azerbaijan and did not wish to uproot his family, and partly because he wanted to be able to assist Mr. Bahari with his in-country investments.<sup>206</sup> Unfortunately, because Mr. Moghaddam stayed behind, and because of his association with Mr. Bahari and his efforts

<sup>202</sup> Bahari WS ¶ 75; Moghaddam WS ¶ 62.

<sup>203</sup> Bahari WS ¶ 76.

<sup>204</sup> Kousedghi WS ¶¶ 25-26.

<sup>205</sup> *Id.* ¶ 27,

<sup>206</sup> Moghaddam WS ¶ 63.

to help recover the investments, Mr. Moghaddam was repeatedly targeted by Government agents.<sup>207</sup>

158. Mr. Moghaddam was physically detained and assaulted twice in 2001 and 2002:



.<sup>208</sup>

159. Despite these serious assaults, Mr. Moghaddam stayed in Azerbaijan and continued to check on the investments and send Mr. Bahari periodic updates. Mr. Moghaddam agreed because, at that point,



<sup>209</sup>

160. Mr. Moghaddam continued to visit Caspian Fish, Coolak Baku, and Shuvalan Sugar from time to time, although security personnel at the facilities did not permit him to enter the

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<sup>207</sup> *Id.*

<sup>208</sup> *Id.* ¶¶ 64-65.

<sup>209</sup> *Id.* ¶ 66; Bahari WS ¶ 77.

premises.<sup>210</sup> Mr. Moghaddam made no inquiries to any Government authorities, because he did not want to attract further attention to himself, and remained very concerned for his safety and that of his family in light of his ordeal.<sup>211</sup>

#### **7. In August 2001, Baku's head of police removed Mr. Bahari's carpets.**

161. In August 2001, Mr. Moghaddam contacted a Government official to obtain further information about the disposition of Mr. Bahari's investments. Mr. Moghaddam contacted Baku's head of police and a senior member of the Baku courts, whose first name was Alzamin.<sup>212</sup> During the telephone conversation, Alzamin informed Mr. Moghaddam that he had been instructed to remove Mr. Bahari's Persian carpets from the Nasimi District Warehouse. Mr. Moghaddam did not want to hand over the keys to the warehouse to Alzamin, because it was not clear to Mr. Moghaddam who he could trust.<sup>213</sup>
162. Following the telephone conversation, Mr. Moghaddam went to visit the warehouse to check on Mr. Bahari's carpets. Upon arriving, Mr. Moghaddam witnessed a number of strangers inside the warehouse, and many of Mr. Bahari's carpets clearly missing. The individuals prevented Mr. Moghaddam from entering the warehouse. When Mr. Moghaddam asked where the carpets were being taken, one of the individuals told him they were being transferred for storage to the Coolak Baku facility.<sup>214</sup>
163. Mr. Moghaddam informed Mr. Bahari about this episode, which greatly upset Mr. Bahari.<sup>215</sup> Mr. Moghaddam followed up by inquiring with some Coolak Baku personnel he knew; these individuals told Mr. Moghaddam that, "[REDACTED]  
[REDACTED]"<sup>216</sup>
164. In the latter part of 2002, Dr. Kousedghi states that Alzamin took him to see a number of Mr. Bahari's carpets that were located in a storage facility and occupied two rooms. On another occasion, Dr. Kousedghi recalls seeing one of Mr. Bahari's carpets in Alzamin's

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<sup>210</sup> *Id.* ¶ 67.

<sup>211</sup> *Id.* ¶ 68.

<sup>212</sup> *Id.* ¶ 69. Mr. Moghaddam no longer recalls Alzamin's family name.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* ¶ 70.

<sup>215</sup> Bahari WS ¶ 78.

<sup>216</sup> Moghaddam WS ¶ 71.

home.<sup>217</sup> This is corroborated by Mr. Bahari, who, some years later, obtained a photograph taken at the home of Alzamin. The photograph shows Alzamin's wife sitting at home. Mr. Bahari immediately recognized a carpet as one that belonged to him and had been commissioned for Caspian Fish.<sup>218</sup>

**C. ON 15 JUNE 2002, MESSRS. ALIYEV, HEYDAROV, AND PASHAYEV ATTEMPTED TO IMPOSE A FORCED SALE ON MR. BAHARI.**

**1. The Forced Sale Attempt amounts to a written admission that Mr. Bahari's investments had been illegally seized.**

165. Following his expulsion, Mr. Bahari resettled in Dubai, UAE. Despite his distressing experiences and the threats made against him and his associate, Mr. Moghaddam, Mr. Bahari began efforts to protect his investments in Azerbaijan. Having founded and invested heavily in several substantial businesses, Mr. Bahari did not want to lose everything for which he had worked so hard.<sup>219</sup>
166. Mr. Bahari called Mr. Heydarov numerous times to discuss his situation; at that time, Mr. Bahari was not yet aware of Mr. Heydarov's involvement in the seizures. On the few occasions when Mr. Bahari was able to reach him by phone, Mr. Heydarov insisted that he was not at fault, blamed Ilham Aliyev for his expulsion from Azerbaijan, and explained Mr. Aliyev's motivation as not wanting an Iranian "[REDACTED]," referring to Caspian Fish. Mr. Heydarov stated he would try to help Mr. Bahari; thus, at that point, Mr. Bahari did not suspect Mr. Heydarov of participating in his expulsion and the scheme to seize his investments.<sup>220</sup>
167. Eventually, Mr. Heydarov proposed, as a solution, to purchase and take over Mr. Bahari's investments, and sent Mr. Khanghah to Dubai to present Mr. Bahari with terms, on behalf of himself and Mr. Aliyev.<sup>221</sup>
168. On or around 15 June 2002, Mr. Bahari met with Mr. Khanghah in Dubai. Far from an arms-length deal for the fair market value of the investments, Mr. Khanghah presented Mr. Bahari with a forced sale document ("**Forced Sale Terms**") from Messrs. Aliyev and

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<sup>217</sup> Kousedghi WS ¶ 31.

<sup>218</sup> Bahari WS ¶¶ 65, 78.

<sup>219</sup> Bahari WS ¶ 79.

<sup>220</sup> Bahari WS ¶ 79.

<sup>221</sup> Bahari WS ¶ 80.

Heydarov which improperly pressured Mr. Bahari into selling Caspian Fish at a price so low that the transaction amounted to little more than an *ex-post* papering over of the physical seizure of the investments that was already underway.<sup>222</sup>

169. The Forced Sale Agreement proposed to trade Caspian Fish (by far the most valuable investment) in exchange for the return and full ownership of Coolak Baku to Mr. Bahari.<sup>223</sup> This was a remarkably candid admission that Mr. Bahari's investments had been unlawfully seized, and were being bartered in exchange for a transfer of Mr. Bahari's shareholding interest in Caspian Fish. They also amounted to extortion, as Mr. Bahari was expected to essentially give away his biggest investment in exchange for another one of his own investments.<sup>224</sup>
170. Mr. Khanghah pressured Mr. Bahari to formally agree to sell his 40% shareholding in Caspian Fish to an unidentified buyer.<sup>225</sup> As purported consideration for transfer of his shareholding in the BVI entity, Mr. Bahari understood the terms to include a payment of \$4.5 Million, with \$3.5 Million in cash up front, and the remaining \$1 Million to be paid in installments; an additional \$380,000 for interest on loans which Mr. Bahari had previously taken out to finance the construction of the Caspian Fish factory; and \$440,000 as compensation for Mr. Bahari's share of the profits in Caspian Fish.<sup>226</sup> The terms also contemplated that Coola Baku would be "[REDACTED]" to Mr. Bahari; Mr. Bahari understood that this would be a 100% stake in Coolak Baku, not just the original 75% ownership. The deal was also subject to Mr. Bahari returning all paperwork and documentation relating to Caspian Fish.<sup>227</sup>
171. Mr. Khanghah attempted to coerce Mr. Bahari into accepting the deal, by threatening that Coolak Baku would be charged with some sort of unpaid back tax issue. Mr. Khanghah added that this would bar Mr. Bahari from ever returning to Azerbaijan. Mr. Bahari immediately understood this as a threat coming from Messrs. Aliyev, Heydarov, or Pashayev – or all of them. Coolak Baku had never had any tax issues; the threat made Mr. Bahari realize that he was not dealing with mere business partners, but men with

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<sup>222</sup> C-017 Settlement Proposal – 15 June 2002; Bahari WS ¶ 81.

<sup>223</sup> C-017, at 3-4.

<sup>224</sup> Bahari WS ¶¶ 81, 84.

<sup>225</sup> C-017 at 2.

<sup>226</sup> C-017 at 2-3.

<sup>227</sup> *Id.* at 4; Bahari WS at ¶¶ 81-83.



with any tax issues, and return the carpets to Mr. Bahari in Iran, at a location to be determined.<sup>232</sup>

175. Both men signed the document; however, Mr. Khanghah ultimately rejected the terms. For his part, Mr. Bahari refused the typewritten Forced Sale Terms, and accordingly never signed that document, as it came nowhere close to giving him the true value of his investment in Caspian Fish.<sup>233</sup> In any event, the Forced Sale Terms were never implemented; although Mr. Bahari kept his shareholding interest in Caspian Fish, he did not get Coolak Baku, Shuvalan Sugar, or his carpets back.<sup>234</sup>

**2. The Forced Sale Agreement shows that Messrs. Aliyev, Heydarov, Pashayev, and Khanghah colluded to seize Mr. Bahari's investments using the State apparatus.**

176. The Forced Sale Agreement was negotiated by Mr. Khanghah.<sup>235</sup> However, a plain reading of the terms of the Agreement clearly implicates Messrs. Aliyev, Heydarov, and Pashayev as being behind the coercive offer.<sup>236</sup>

177. To begin with, in exchange for Caspian Fish, the terms of the deal purported to give Mr. Bahari full control of Coolak Baku: "[REDACTED]  
[REDACTED]  
[REDACTED]."<sup>237</sup> The terms required Mr. Bahari to instruct his representatives in Baku to be available to finish all necessary paperwork and documentation for transfer of the Caspian Fish factory, as well as those relating to Mirinda and Coolak Baku, within two days.<sup>238</sup> Upon completion of the paperwork, Mr. Khanghah would instruct the management of Coolak Baku to hand over

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.* In any event, the terms of the Agreement were never implemented; Mr. Bahari didn't sell his shares, and received no money; he also did not regain control of Coolak Baku, Shuvalan Sugar, or his carpets.

<sup>234</sup> *Id.*

<sup>235</sup> **C-017** at p. 4 of PDF. Mr. Khanghah signed the main agreement (but Mr. Bahari did not). Mr. Khanghah's signature matches his signature on the Caspian Fish Shareholders Agreement (**C-004**), and the Vereinsbank account opening statement for Caspian Fish (**C-007**).

<sup>236</sup> At that point in time, Mr. Khanghah did not have the financial means to pay the offered terms for Mr. Bahari's interest in Caspian Fish, even at the undervalued price offered in the Forced Sale Agreement. Moreover, it was clear that Messrs. Aliyev, Heydarov, and Pashayev wielded far more power, and were the dominant personalities in the relationship, while Mr. Khanghah played a subservient role. *Bahari WS ¶¶ 80-81*.

<sup>237</sup> **C-017** at p. 4 of PDF.

<sup>238</sup> **C-017** at p. 4 of PDF.

that factory to Mr. Bahari's representative. This would include Shuvalan Sugar, which is also referenced at the second paragraph of the handwritten addendum.

178. Of course, since Mr. Khanghah had no ownership stake or other role in Coolak Baku, he could not purport to negotiate the handover of Coolak Baku to Mr. Bahari without Mr. Pashayev's agreement or participation. Thus, the very object of the Forced Sale Agreement – a global “settlement” involving not only Caspian Fish, but Coolak Baku as well – directly implicates Mr. Pashayev's participation in the matter, and more broadly, his collusion in the overall scheme to unlawfully seize Mr. Bahari's investments.<sup>239</sup>
179. The second paragraph of the handwritten annotation clearly references Mr. Heydarov – referred to by his first name, Kamaladdin – and makes clear his agents had physical control of Coolak Baku. Per the terms of this handwritten section, Mr. Bahari was to return all documents relating to Caspian Fish as soon as Mr. Heydarov's agents had been “[REDACTED]” from the Coolak Baku factory.<sup>240</sup> This section reveals several further critical facts:
- i. This reference corroborates Mr. Bahari's written testimony, and shows that Mr. Heydarov was also behind the Forced Sale Terms. Moreover, given Mr. Heydarov's powerful position at the time, the clear inference is that Mr. Khanghah was acting as an agent for Mr. Heydarov. This principal-agent relationship is supported by multiple press accounts showing that Mr. Khanghah has been a front man for Mr. Heydarov's various commercial ventures.<sup>241</sup>
  - ii. The reference to Mr. Heydarov indicates that he relied on agents to physically seize Coolak Baku. The inference is that these were Government personnel: as the then-Chairman of the State Customs Committee, Mr. Heydarov had law enforcement officers at his disposal. Even if these agents were not Government employees, they acted at the direction of Mr. Heydarov, who himself was a powerful senior Government official.

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<sup>239</sup> Bahari WS ¶ 81.

<sup>240</sup> C-017 at pp. 5-6 of PDF.

<sup>241</sup> According to released U.S. Department of State cables, Mr. Khanghah is a [REDACTED] C-005 at ¶ 9; C-036 (naming Mr. Khanghah as Director of a Heydarov-controlled company).

- iii. The reference also establishes Mr. Arif Pashayev's involvement since he was the joint venture partner on Coolak Baku and Shuvalan Sugar.<sup>242</sup> Mr. Heydarov's physical control of Coolak Baku reveals collusion with Mr. Pashayev.<sup>243</sup> More broadly, the inclusion of Coolak Baku and Shuvalan Sugar together with Caspian Fish in the overall Forced Sale Terms also directly connect Mr. Pashayev with Messrs. Heydarov and Aliyev in the overall plot to seize Mr. Bahari's investments. (It should be noted that at that time, there was already a long-standing political alliance between the Aliyev and Pashayev families, formed by the marriage between Ilham Aliyev and Mehriban Pashayeva in 1983, thus making Arif Pashayev Ilham Aliyev's father-in-law.<sup>244</sup>)
- iv. The second paragraph further refers to the return of "[REDACTED]" This refers to the Caspian Fish shareholders agreement.<sup>245</sup> This reference implicates President Aliyev;<sup>246</sup> indeed, Messrs. Pashayev and Heydarov's involvement in the Forced Sale Terms means that Mr. Aliyev was also necessarily involved in the scheme, given that he also had a 25% stake in Caspian Fish. The reference reveals Messrs. Aliyev and Heydarov's great concern to obtain the return of all Caspian Fish documents in Mr. Bahari's possession,<sup>247</sup> which could implicate them. During the negotiations in Dubai, Mr. Khanghah specifically stressed that, as part of this forced acquisition demand, Mr. Bahari must return all Caspian Fish documents in his possession – in particular, all documents bearing Ilham Aliyev's and Mr. Heydarov's signatures.

180. Crucially, Mr. Khanghah warned Mr. Bahari that if he did not agree to this forced sale, Azerbaijan would pursue Mr. Bahari for alleged unpaid back taxes by Coolak Baku, which would forever bar Mr. Bahari from returning to Azerbaijan to protect any of his investments.

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<sup>242</sup> Notice of Arbitration at ¶¶ 20-26.

<sup>243</sup> Given political dynamics, it is improbable that Mr. Heydarov could have acted alone and cheated Mr. Pashayev out of his interests in Coolak Baku. At all times, Mr. Pashayev has been politically more influential than Mr. Heydarov.

<sup>244</sup> **C-038** - Today.az, "[REDACTED]" - 26 August 2008, available at: <https://www.today.az/news/society/47196.html>.

<sup>245</sup> **C-004** – Shareholders Agreement for Caspian Fish Co. Inc.- 27 April 1999.

<sup>246</sup> Notice of Arbitration, ¶¶ 32-34. President Aliyev was also responsible for Mr. Bahari's physical expulsion at the Caspian Fish opening ceremony. Notice of Arbitration ¶¶ 44-47.

<sup>247</sup> **Bahari WS** ¶ 83.

This point is supported and confirmed by a reference in the first paragraph of the handwritten annotation, which promises to “ [REDACTED] .”<sup>248</sup>

181. Mr. Bahari understood this as a clear threat, since at no time had Coolak Baku ever been sanctioned, or even investigated, over alleged tax improprieties.<sup>249</sup> Mr. Khanghah’s threat of tax sanctions also reinforces that he was acting as an agent of Mr. Heydarov, since he (Khanghah) would not have the power, as a private individual, to threaten tax sanctions, nor resolve any purported tax issues. Mr. Heydarov, as a powerful Government official, was capable of such actions. Indeed, Mr. Heydarov was and is reported to wield wide influence over the Ministry of Taxes,<sup>250</sup> and maintains close political relations with key government ministers, including the Minister of Taxes, Mr. Fazil Mammadov, who had been appointed to the post in 2000, and was Mr. Heydarov’s former Deputy at the Customs Committee.<sup>251</sup>
182. The tax threat underscores the reality that Messrs. Aliyev, Heydarov, and Pashayev carried out their seizure of Mr. Bahari’s investments by exploiting their powers over the State apparatus.
183. Finally, the first paragraph of the written annotation also references Mr. Bahari’s 500-plus Persian carpets, which were of sufficient value to be a point of negotiation.<sup>252</sup> Mr. Khanghah’s agreement to return the carpets to Mr. Bahari is a remarkable admission that Messrs. Aliyev, Heydarov, and Pashayev had illegally seized them in the first place.<sup>253</sup>
184. Given that the Forced Sale Terms came nowhere near providing adequate compensation for the value of Mr. Bahari’s investments and the losses he would suffer, Mr. Bahari refused to sign the document. As a result, Mr. Bahari found himself in a situation where he had not signed away his shareholding rights to Caspian Fish, but was unable to check on the physical facilities and operations. Further, Mr. Bahari was unable to regain his other

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<sup>248</sup> [C-017](#) at 5-6; [Bahari WS](#) ¶ 83.

<sup>249</sup> [Bahari WS](#) at ¶ 83.

<sup>250</sup> [C-005](#) at 13; [C-020](#) at 74.

<sup>251</sup> [C-018](#) Wikileaks U.S. Cable, *Emergency Situations Minister Heydarov's Rising Influence* – 12 July 2007, p. 5, ¶ 11.

<sup>252</sup> By this time, Mr. Bahari’s in-country manager, Mr. Nasser Tabesh Moghaddam, had been arrested and beaten by plainclothes Azeri Secret Police (in or around April 2001), and Mr. Bahari’s carpets had been removed from their storage premises. Notice of Arbitration, ¶ 52. In the forthcoming Statement of Claim, Mr. Bahari will provide further evidence of Mr. Moghaddam’s illegal detention and beatings by Azeri Secret Police, as well as evidence of the removal of the valuable carpets from their storage location by and/or under the supervision of the Secret Police.

<sup>253</sup> [Bahari WS](#) ¶ 81.

investments, including Coolak Baku, Shuvalan Sugar, and the antique Persian Carpets – and in fact, has never managed to do so.

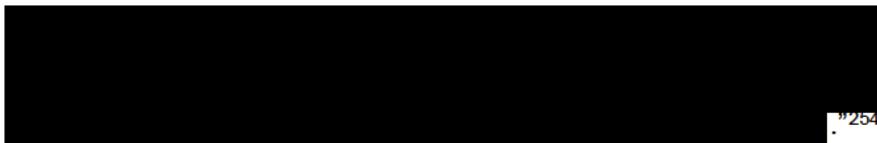
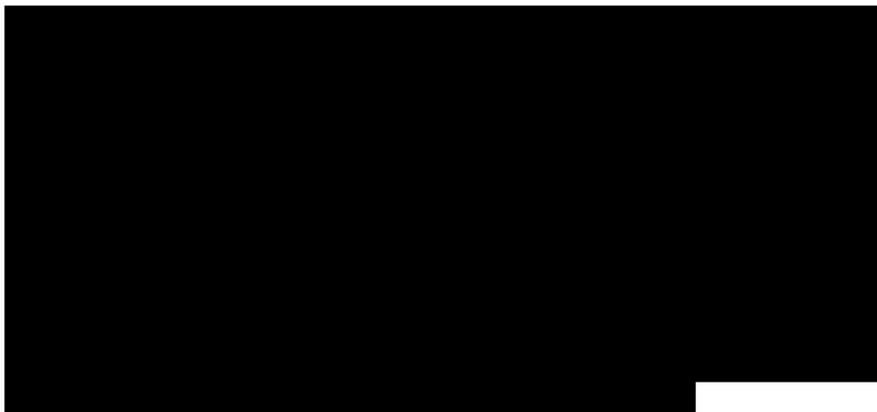
**D. IN JUNE 2002, GOVERNMENT FORCES UNLAWFULLY DETAINED MR. MOGHADDAM FOR OVER A WEEK AND INTERROGATED HIM AS A MEANS TO FURTHER PRESSURE MR. BAHARI.**

185. In late June 2002 – immediately after Mr. Bahari rejected and resisted the 15 June 2002 Forced Sale Agreement – Mr. Moghaddam suffered another alarming encounter with Government security agents. Mr. Moghaddam’s experience was extremely distressing, and is recounted in full here:

[REDACTED]

[REDACTED]

[REDACTED]



254

186. When Mr. Bahari learned of this, he understood it as a further threat to him, for having refused to sell his interest in Caspian Fish just days prior to Mr. Moghaddam's detention.<sup>255</sup>

**E. AZERBAIJAN THWARTED MR. BAHARI'S 2004 ATTEMPTS TO INVESTIGATE POSSIBLE LEGAL ACTIONS AGAINST MESSRS. ALIYEV, HEYDAROV AND PASHAYEV.**

187. Mr. Moghaddam's arrest and detention was a daunting setback and a deterrent for Mr. Bahari to pursue the return of his investments. The situation was immeasurably exacerbated a year later, in 2003, when Ilham Aliyev succeeded his father as President. Mr. Bahari now had to pursue his rights against the sitting President of Azerbaijan.

188. Nevertheless, in 2004, Mr. Bahari hired a Turkish lawyer, Mr. Serhat Kilic, to investigate possible legal proceedings against Messrs. Aliyev, Heydarov and Pashayev in the Azeri courts.<sup>256</sup> Mr. Kilic undertook initial due diligence work, including speaking with various persons and organizations in Azerbaijan. Roughly two months into his inquiries, Mr. Kilic spoke to Mr. Bahari; he was nervous and shaken, and abruptly declined to continue with the case, saying he could no longer represent Mr. Bahari in the matter. Mr. Bahari understood Mr. Kilic's sudden change of heart as the result of improper pressure by Azeri officials.

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<sup>254</sup> [Moghaddam WS](#), ¶¶ 73-77.

<sup>255</sup> [Bahari WS](#) ¶ 85.

<sup>256</sup> [Bahari WS](#) at ¶ 86. At that time, Mr. Bahari was not yet aware that he had a valid investment treaty claim. *Id.*

189. Unfortunately, Mr. Bahari has been unable to locate Mr. Kilic to request a witness statement from him. Given his advanced age at the time of the events, it is likely that Mr. Kilic has passed away.<sup>257</sup>

**F. MESSRS. ALIYEV, HEYDAROV, AND KHANGHAH FRAUDULENTLY STRIPPED MR. BAHARI OF HIS SHAREHOLDING RIGHTS IN CASPIAN FISH BVI.**

190. Parallel to the seizure of Mr. Bahari's assets in Azerbaijan, Messrs. Aliyev, Heydarov, and Khanghah (acting on behalf of these Government officials) furthered their collusive scheme by stripping Mr. Bahari from his shareholding rights in the Caspian Fish BVI entity. Messrs. Aliyev, Heydarov, and Khanghah were obliged to undertake these fraudulent actions in the British Virgin Islands ("BVI") because Mr. Bahari had rejected the 2002 Forced Sale Agreement and refused to sell his 40% shareholding interest in Caspian Fish BVI. This fraudulent corporate scheme in the BVI sheds further light not only on these Government officials' overall scheme to seize Mr. Bahari's investment, but also the broader *modus operandi* by which the ruling political families in Azerbaijan unlawfully enrich themselves.

191. Evidence of this fraudulent scheme follows an extensive forensic review of corporate transactions over two decades. Due to the intentionally opaque and convoluted nature of these fraudulent corporate actions, the narrative that follows requires granular exposition. The factual chronology and evidence detail Messrs. Aliyev, Heydarov, and Khanghah's multi-year process to denude Mr. Bahari of his shareholding interest in Caspian Fish BVI (as well as the company's underlying assets). This process was carried out in three broad stages:

- i. **Stage 1** consisted of the falsified transfer of Mr. Bahari's 400,000 shares in Caspian Fish (representing his 40% shareholding interest), as well as the falsified resignation of Mr. Bahari's directorship (**Sub-section 3 below**);
- ii. **Stage 2** consisted of a series of massive share dilutions and transfers to various opaque corporate shells, some of which were incorporated in the BVI, while others were incorporated in Panama. These share dilutions were so sizeable that even if Mr. Bahari's initial 400,000 shares had not been fraudulently transferred, they would have become worthless following the dilutions (**Sub-section 4 below**);

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<sup>257</sup> *Id.* at ¶ 87.

iii. **Stage 3** consisted of formally separating Caspian Fish BVI from its physical assets. A remarkable 2021 document reveals that Caspian Fish BVI's "[REDACTED]"<sup>258</sup> thus indicating that Caspian Fish's physical assets had been illegally transferred into a local LLC unknown to Mr. Bahari; (2) Caspian Fish's Director was "[REDACTED]"<sup>259</sup> and (3) once this step was taken, "[REDACTED]"<sup>260</sup> Caspian Fish was then left simply to be struck off (**Sub-section 5 below**).

**1. Mr. Bahari applied for BVI discovery orders to shed light on the disposition of his shareholding interest in Caspian Fish BVI.**

192. As noted above, Mr. Bahari had refused to sell his 40% shareholding interest as part of the 2002 Forced Sale Agreement. As such, Mr. Bahari believed throughout the years that his shareholding rights in Caspian Fish (BVI) remained technically intact.<sup>261</sup> Mr. Bahari therefore focused his efforts on his assets and rights in Azerbaijan.<sup>262</sup> As part of the factual investigation phase of this Arbitration, Mr. Bahari's Counsel performed due diligence to verify the current disposition of Mr. Bahari's shareholding in the Caspian Fish BVI entity. Counsel undertook an online search with the Registry of Corporate Affairs of the BVI Financial Services Commission. The Company Search Report produced a very limited number of documents;<sup>263</sup> nevertheless, these documents revealed suspicious corporate activities that Mr. Bahari never undertook or approved, including, for example, purported share capital increases which resulted in the significant dilution of Mr. Bahari's shareholding interest. As Board Director and the largest shareholder in Caspian Fish, Mr. Bahari should have been informed of these actions, and/or would have had to approve them.

<sup>258</sup> **C-102** Email communications between D. Pow and FHCS, Re: 2021 compliance review Part 2, at p. 11. – 23 September 2021. (Emphasis added.)

<sup>259</sup> *Id.*

<sup>260</sup> **C-103**, FHCS email communications Re: 2021 compliance review Part 3 (Emphasis added.) – 15 March 2022.

<sup>261</sup> Bahari WS at ¶ 88.

<sup>262</sup> *Id.*

<sup>263</sup> **C-104**, BVI Register of Companies Search Report - 10 November 2020.

193. Mr. Bahari, through his Counsel, engaged local BVI counsel, Appleby (BVI) Limited (“**BVI Counsel**”) to further look into the matter. On the basis of the suspicious activities revealed in the Company Search Report, BVI Counsel applied to the Commercial Division of the Eastern Caribbean Supreme Court in the Territory of the Virgin Islands (the “**BVI Court**”) for two separate *ex parte* “*Norwich Pharmacal*” discovery orders (“**NPO**”) directing the various BVI registered agents (“**Registered Agents**”) of Caspian Fish to disclose the statutory registers of Caspian Fish, together with categories of documents relating to the Registered Agents’ understanding of the legal and beneficial ownership of Caspian Fish.
194. The first NPO application (“**First NPO Application**”) was filed on 19 January 2023, and was granted by the BVI Court on 15 February 2023.<sup>264</sup> Caspian Fish’s various successive Registered Agents produced documents pursuant to the 15 February 2023 Order; these documents supported the initial suspicion that Mr. Bahari’s shares had been illegally transferred. On this basis, Mr. Bahari’s BVI Counsel therefore broadened the scope of its initial discovery application to include additional identified shell companies holding shares in Caspian Fish, and filed a second NPO application (“**Second NPO Application**”) on 9 March 2023. The Second NPO application was granted by the BVI Court on 30 March 2023.<sup>265</sup>

## 2. Caspian Fish changed Registered Agents multiple times, all without the knowledge or approval of Mr. Bahari.

195. As an initial matter, the NPO disclosures show that between 1999 and 2011, Caspian Fish had no fewer than three separate Registered Agents.
196. Between incorporation in 1999 and 29 January 2002, Caspian Fish’s Registered Agent was Morgan & Morgan Trust Corporation (“**Morgan**”).<sup>266</sup> Between 30 January 2002 and 21 January 2011, the Registered Agent became Jordans Trust Company (BVI) Limited (“**Jordans**”) (which later merged with Vistra (BVI) Limited in 2017).<sup>267</sup> Thereafter, Jordans

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<sup>264</sup> **C-105** BVI Order granting First NPO - 15 February 2023.

<sup>265</sup> **C-106** BVI Order granting Second NPO - 9 March 2023.

<sup>266</sup> **C-107** Caspian Fish Co. Inc. Registers and Datasheet – 1 February 2011 at 4.

<sup>267</sup> *Id.*, listing Registered Agent from 30 January 2002 to 21 January 2011 as an address at Geneva Place, Tortola, BVI; compare with **C-104**, BVI Register of Companies Search Report – 10 November 2020, at p. 1, listing Jordans Trust Company (BVI) Limited as Registered Agent with the same Geneva Place, Tortola, BVI address.

It is somewhat unclear who the first Registered Agent was; the Company Search Report suggests it was Jordans (see **C-104** at p. 1); however, Caspian Fish’s Memorandum of Association clearly lists Morgan as the initial Registered Agent. (**C-002** at p. 6 of PDF.) Likely, Jordans were providing services to Caspian Fish, but did not have a presence in the BVI, and thus worked alongside Morgan.

was replaced by Forbes Hare Corporate Services Limited (“**FHCS**”) which acted as Registered Agent from 2011 until 2022, when Caspian Fish was struck off the BVI Company Register.<sup>268</sup>

197. Mr. Bahari has no knowledge regarding these changes of Registered Agents, and never approved them.<sup>269</sup>

**3. Stage 1 involved the falsified transfer of Mr. Bahari’s 400,000 shares, and the further falsified resignation of Mr. Bahari as Director.**

**a. Upon incorporation, Mr. Bahari was issued 400,000 shares and was a Director of Caspian Fish.**

198. The NPO disclosures establish that upon incorporation on 5 March 1999, Mr. Bahari and Mr. Khanghah were the initial Directors of Caspian Fish (“**Initial Directors**”).<sup>270</sup> This was in line with Mr. Bahari’s initial intentions as the largest shareholder and the investor bringing significant capital and know-how; Mr. Khanghah’s directorship was also anticipated, as Mr. Bahari had relied on him to incorporate and manage the BVI entity.<sup>271</sup>

199. Also on 5 March 1999, the Initial Directors purportedly resolved by a written resolution to increase the share capital from 50,000 shares to 1,000,000 shares.<sup>272</sup> Notice of this increase was not submitted to the BVI Companies Registrar until 27 November 2006 (i.e., seven years later).<sup>273</sup> Mr. Bahari does not recall signing this resolution.<sup>274</sup>

200. The result is that on 5 March 1999, 1,000,000 shares were issued as follows:

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<sup>268</sup> **C-104** at 1, listing FHCS as Registered agent.

<sup>269</sup> Bahari WS ¶ 89.

<sup>270</sup> **C-108** Caspian Fish Co. Inc. Appointment of First Directors – 5 March 1999; **C-109** Caspian Fish Co. Inc. Registers and Datasheet at pp. 9-10 – 3 May 2007, listing Messrs. Bahari and Khanghah as Directors.

<sup>271</sup> Bahari WS at ¶ 89.

<sup>272</sup> **C-110** Caspian Fish Co. Inc. Directors Resolution - 5 March 1999; **C-111** IBC Notice of Change in Authorized Capital for Caspian Fish Co. Inc. – 27 November 2006; **C-112** Extract of Caspian Fish Co. Inc. Directors Resolution - 27 November 2006.

<sup>273</sup> *Id.*; **C-113** Extract of Directors Resolution Adopted by the Directors on 5 March 1999, - 27 November 2006.

<sup>274</sup> Bahari WS at ¶ 89. The signature at **C-110**, Directors resolution dated 5 March 1999, above does not correspond to his signature (*compare* **C-110** with Mr. Bahari’s signatures at **C-004**, **C-007**). Mr. Khanghah’s signature does match signatures on other documents (*compare* **C-110** with Mr. Khanghah’s signatures at **C-004**, **C-007**). It therefore appears that this Directors Written Resolution was falsified – very likely in 2006 – then backdated to 1999. This share increase was likely executed in order to execute the various follow-on fraudulent share transfers and dilutions.

Shareholder	No of Shares Allotted	Aggregate Total
Mr. Bahari	20,000 shares 380,000 shares	400,000
Mr. Khanghah	5,000 shares 95,000 shares	100,000
ICCI Limited (Aliyev + Heydarov)	25,000 shares 475,000 shares	500,000 shares

201. It therefore appears that two tranches of shares were issued on incorporation, because per its Articles of Association, Caspian Fish was initially authorized to issue only 50,000 shares;<sup>275</sup> thereafter, the Initial Directors purportedly resolved to increase the authorized share capital by a resolution the same day, and the second tranche of shares was then allotted.
202. The above initial share allotment conforms with the Shareholders Agreement, pursuant to which Mr. Bahari had a 40% shareholding interest in Caspian Fish, Messrs. Aliyev and Heydarov together received 50%, and Mr. Khanghah 10%.<sup>276</sup>
203. The third shareholder in the BVI entity was ICCI Limited (“**ICCI**”), a BVI-registered company.<sup>277</sup> Under the Shareholders Agreement, Messrs. Aliyev and Heydarov were to split a 50% shareholding interest in Caspian Fish. Thus, it can be concluded that ICCI was owned or otherwise controlled by these two individuals. This is confirmed in part by the fact that Mr. Heydarov himself is listed as one of ICCI’s Directors.<sup>278</sup> Mr. Khanghah is also listed as holding a Directorship in ICCI, further reinforcing his role as an agent of these Government officials.<sup>279</sup> Mr. Bahari will seek and request document production in this Arbitration on ICCI from Mr. Heydarov and/or Mr. Aliyev.

<sup>275</sup> **C-002 bis** Memorandum and Articles of Association for Caspian Fish Co. Inc., executed, at Art. 6.

<sup>276</sup> **C-004** at Art. 6.

<sup>277</sup> **C-114** ICCI Limited – FSC Search Report – 20 Feb 2023 at 2 of PDF.

<sup>278</sup> **C-115** ICCI Limited Register of Transfers – 6 January 2004, at p. 6 of PDF, listing Mr. Heydarov as Director as of 16 January 1998; **C-116**, ICCI Resolution of Directors - 16 January 1998, at p. 5 of PDF, showing Mr. Heydarov’s appointment as Director, and at p. 6 of PDF, showing Mr. Heydarov’s signature. The signature matches Mr. Heydarov’s signature on other documents – see **C-004**, **C-007**.

<sup>279</sup> **C-116** ICCI Resolution of Directors - 16 January 1998, at 5 of PDF, showing Mr. Khanghah’s appointment as Director; **C-117** Caspian Fish Historic Register of Directors – 1 October 2010 at 2.

**b. Mr. Khanghah falsified Mr. Bahari's resignation as Director of Caspian Fish.**

204. The Register of Directors and a 2007 Registers and Data Sheet of Caspian Fish show that Mr. Bahari purportedly resigned as a Director of Caspian Fish on 15 November 2001,<sup>280</sup> leaving Mr. Khanghah as the sole Director until 18 February 2021, when he was replaced by a certain Mr. David Pow.<sup>281</sup> Crucially, the disclosures fail to include any letter of resignation or any resolution purporting to remove Mr. Bahari as Director. Absent such documentation, and in the context of the other irregular corporate activities, Mr. Bahari's removal as Director was plainly fraudulent. In any event, it could not have been valid.
205. Mr. Bahari denies ever having resigned his position as Director.<sup>282</sup> As 40% shareholder and the investor who brought all of the capital to invest into Caspian Fish, such a resignation and loss of corporate control would have made no commercial sense.
206. The fraudulent removal of Mr. Bahari as Director was clearly intended to pave the way for further fraudulent actions, leaving Mr. Khanghah, as the remaining sole Director on paper, free to issue numerous Director's resolutions unhindered.

**c. Mr. Khanghah fraudulently transferred Mr. Bahari's shares to himself.**

207. Under BVI law at the time, a lawful share transfer would have required (a) a signed stock transfer form (also known as an instrument of transfer),<sup>283</sup> and (b) in practice, a director's resolution to authorize the company (or its Registered Agent) to update the Register of Members, absent which the transferee is not considered a shareholder.<sup>284</sup>
208. On the same date of incorporation, 5 March 1999, the 2007 Register of Members shows that Mr. Bahari purportedly transferred his 400,000 shares entirely to Mr. Khanghah.<sup>285</sup>
209. This transfer was manifestly fraudulent.

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<sup>280</sup> **C-109** Caspian Fish Co. Inc. Registers and Datasheet at pp. 9-10 – 3 May 2007, listing Messrs. Bahari and Khanghah as Directors.

<sup>281</sup> *Id.*; **C-119** FHCS Caspian Fish Co. Inc. Register of Directors & Officers, undated.

<sup>282</sup> Bahari WS at ¶ 89.

<sup>283</sup> **C-120** BVI International Business Companies Act (Cap. 291) 1994, Part III, §30(1); and BVI Business Companies Act 1994, Part III, Division 3, §54.

<sup>284</sup> **C-002 bis**, Art. 50.

<sup>285</sup> **C-109** at 12 of PDF.

210. *First*, Mr. Bahari categorically denies having agreed to and transferred his shares to Mr. Khanghah.<sup>286</sup>

211. *Second*, the disclosed “proof” of the share transfer is a crude forgery. The FHCS disclosure included a purported instrument of transfer (the “**Purported IOT**”) that is undated.<sup>287</sup> Mr. Bahari categorically denies having seen or signed this document.<sup>288</sup> Further:

- i. The Purported IOT does not bear Mr. Bahari’s signature. Although the scan quality of the disclosed copy is poor (possibly on purpose), there can be no doubt that it does not contain Mr. Bahari’s signature, or any signature at all, as it merely appears to be Mr. Bahari’s name, “Mohamad Reza Khalilpour Bahari,” written out – and misspelled – in longhand. Mr. Bahari did not write this, and would not have misspelled his own name. An image of the Purported IOT and Mr. Bahari’s forged signature is below:



Excerpt of **C-121**, Purported IOT, undated.

- ii. A quick comparison with Mr. Bahari’s true signature contained in reliable documents underscores the unsophisticated nature of the forgery:

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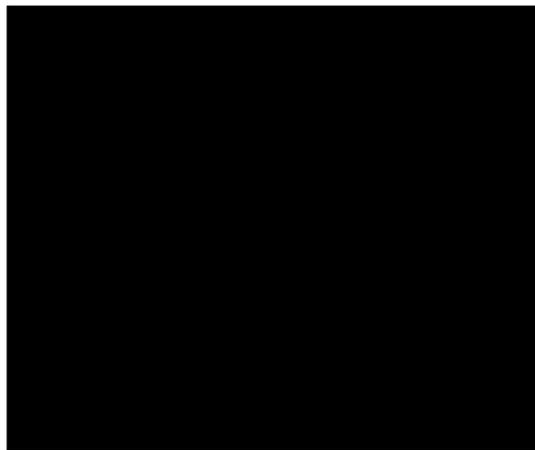
<sup>286</sup> Bahari WS at ¶ 89.

<sup>287</sup> **C-121** Purported Instrument of Transfer, undated. On a separate note, the Jordans disclosure, while including share registry information recording this purported share transfer, failed to include any form of Instrument of Transfer. This omission points to a possible deficient production by Jordans. Mr. Bahari reserves all rights to supplement this Statement of Claim with any further documents which may come to light following further request to Jordans and/or other Registered Agents.

<sup>288</sup> Bahari WS at ¶ 89.



Excerpt of [C-004](#), Caspian Fish Shareholders Agreement dated 27 April 1999



Excerpt of [C-007](#), Vereinsbank Opening of Account Statement.



Excerpt of [C-084](#)

- iii. The Purported IOT bears all the hallmarks of having been produced *ex post facto*, as a fraudulent attempt to regularize the corporate records. There is a strong

likelihood that the Purported IOT was created when FHCS became the Registered Agent in 2011. At that time, FHCS would have conducted an initial review of the corporate records; FHCS presumably found them deficient and requested a copy of any instrument of transfer. This is supported by the fact that the Purported IOT was contained in the FHCS disclosure, but not in the disclosures of the earlier Registered Agents.

212. *Third*, as noted above, in addition to a signed stock transfer form, corporate practice and the Articles of Association further required either a director's resolution or a shareholders resolution to authorize the company (or its Registered Agent) to update the Register of Members, absent which the transferee is not considered a shareholder.<sup>289</sup> No such resolution exists that is dated on 5 March 1999, the date that the purported share transfer occurred. This further confirms the fraudulent nature of the Purported IOT.
213. It appears that Caspian Fish did not regard the Purported IOT as being effective, either, because an undated resolution (clearly entered into at least after 2006 based on date references within the resolution, and perhaps later) appears to treat the subscription price for Mr. Bahari's second tranche of 380,000 shares as having been held by Caspian Fish in trust for him; the undated resolution further purports to approve the transfer to Mr. Khanghah with effect from the date of the resolution.<sup>290</sup> Of course, this undated resolution is itself equally fraudulent, because Mr. Khanghah conveniently bootstraps on the earlier fraudulent resignation of Mr. Bahari as Director, and, *as sole Director*, Mr. Khanghah retroactively resolves to transfer Mr. Bahari's 400,000 shares *to himself*.
214. *Fourth*, it is commercially illogical that Mr. Bahari would have issued 400,000 shares to himself on the date of incorporation, then immediately re-transferred those shares to Mr. Khanghah on the same day.
215. *Fifth*, it is even more absurd to suggest that Mr. Bahari would transfer away his entire shareholding in Caspian Fish in 1999, yet, over the next two years, proceed to invest millions – up to \$56 million – to complete construction on the facility and get the business up and operating;
216. *Sixth*, the supposed date of the Purported IOT, in 1999, is three years prior to the June 2002 Forced Sale Terms meeting. The object of the 2002 Forced Sale Terms was

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<sup>289</sup> **C-002 bis**, Art. 50.

<sup>290</sup> **C-122** Caspian Fish Co Inc, Director's Resolution in writing - undated, at Arts. 4.4, 5.1.

precisely Mr. Bahari's 40% shareholding interest in Caspian Fish. If Mr. Bahari had indeed transferred his 400,000 shares in 1999, there would have been no need for negotiations in 2002. What is more, the Purported IOT purports to show that \$4,500,000 was paid to Mr. Bahari as consideration for the transfer of his 400,000 shares.<sup>291</sup> Mr. Bahari never received any such funds.<sup>292</sup> Moreover, as with the terms of the 2002 Forced Sale Terms, this purported \$4,500,000 payment was risibly low, considering the millions Mr. Bahari invested into Caspian Fish.

217. In conclusion, the first stage exhibits a concerted effort to strip Mr. Bahari's powers and his shareholding interest in Caspian Fish. At this stage, Mr. Khanghah seems to act in his own interest, having transferred the 400,000 shares to himself and placed himself as sole Director.<sup>293</sup> However, the next stage, discussed below, reveals that, in fact, he acted as an agent of Messrs. Aliyev, Heydarov, and possibly Mr. Pashayev, and, as the "inside man" with Director powers, passed further fraudulent actions.

**4. Stage 2 involved massive share dilutions and share adjustments which ultimately benefited Messrs. Aliyev, Heydarov, and Khanghah, to Mr. Bahari's detriment.**

218. The second stage involved a series of actions which took place over a span of years. These actions were undertaken by Mr. Khanghah as Caspian Fish's sole Director, but were largely for the benefit of Messrs. Aliyev, Heydarov, and Khanghah.

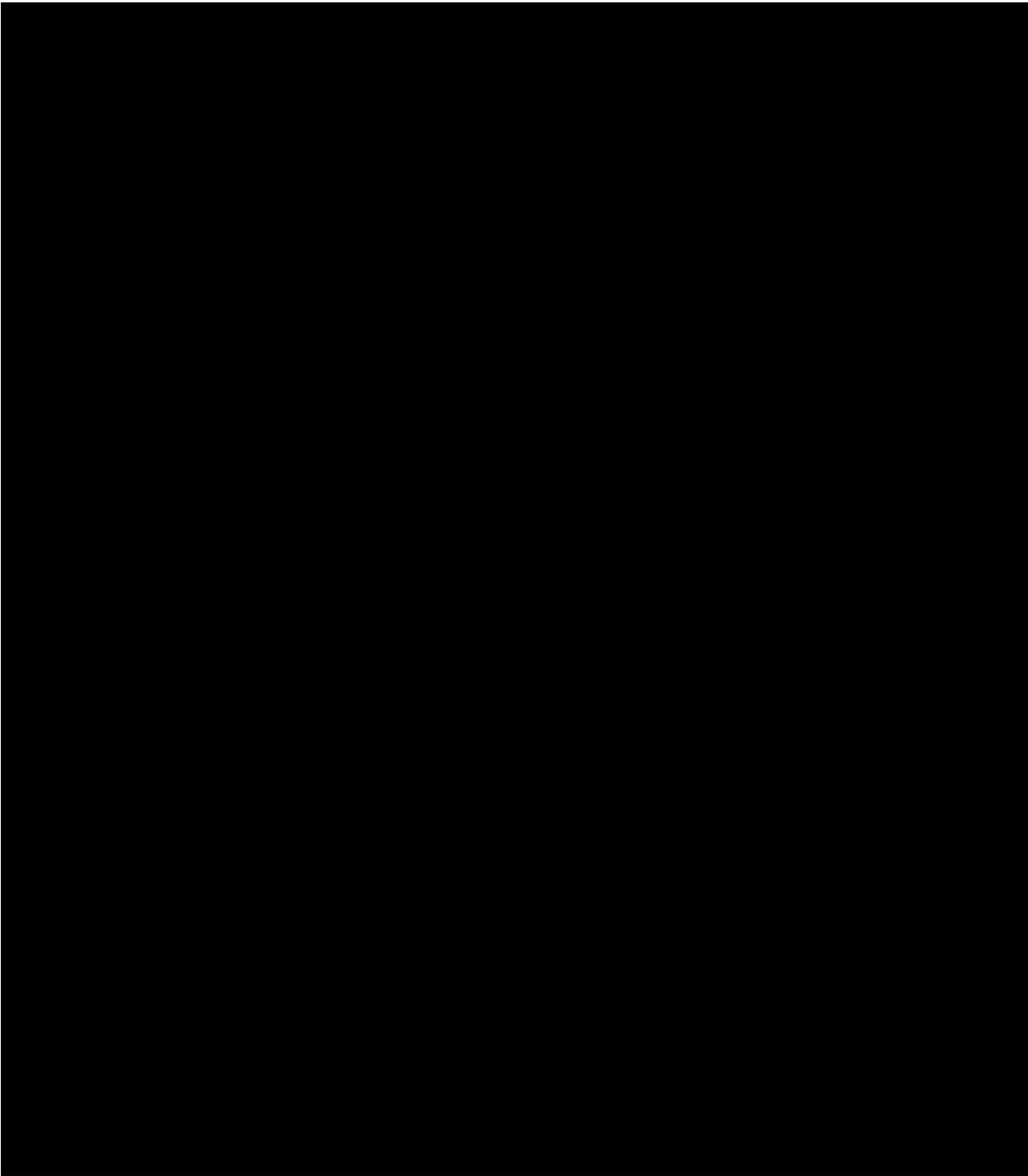
219. The following charts visually summarize the share dilutions and adjustments that will be further discussed below:

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<sup>291</sup> **C-121** Caspian Fish Co Purported Instrument of Transfer, undated.

<sup>292</sup> **Bahari WS** at ¶ 89.

<sup>293</sup> Note, however, that even at this first stage, Mr. Khanghah was acting as Director for ICCI, the corporate front holding Messrs. Heydarov and Aliyev's shares in Caspian Fish. **C-117** Caspian Fish Historic Register of Directors – at 3 of PDF.



**C-123** Caspian Fish Chronology of share transfers and share dilutions.

**a. On 8 December 2006, an increase of Caspian Fish’s share capital to 56,000,000 took effect.**

220. The FHCS disclosure contains a Director’s Resolution purportedly dated 3 September 2002 (after Mr. Bahari’s removal as Director), increasing the share capital of Caspian Fish from \$1,000,000 to \$56,000,000 shares at \$1 par value. The resolution is signed by Mr. Khanghah alone.<sup>294</sup> Notice of the purported share increase was not submitted to the Registrar of Corporate Affairs until 8 December 2006 (i.e., more than four years after the Resolution).<sup>295</sup>
221. It is unclear whether this resolution was backdated, or whether Mr. Khanghah did in fact issue it in September 2002. In either case, it is a fraudulent document, due to Mr. Bahari’s improper removal as Director. Further, as a matter of BVI law, the purported resolution (assuming it was legitimate) would not have taken effect until 8 December 2006, when notice was provided to the Registrar.<sup>296</sup>
222. Of note, the purported 3 September 2002 date of the share increase came a few short months after Mr. Bahari had rejected the 15 June 2002 Forced Sale Terms, thus suggesting that by the autumn of 2002, Messrs. Aliyev, Heydarov, and Khanghah had also begun to put into motion their scheme to strip Mr. Bahari’s legal shareholding interests in the BVI entity, in addition to physically and administratively seizing the company’s physical assets and rights in Azerbaijan. Equally, the share capital increase equals the exact amount of money that Mr. Bahari himself invested into the construction of Caspian Fish, thus reinforcing the accuracy and reliability of this expenditure for quantum purposes.
223. This share capital increase had the effect of diluting Mr. Bahari’s original 40% shareholding interest to a 0.71% shareholding.

**b. On 8 December 2006, Mr. Khanghah transferred his 500,000 shares to Southmead.**

224. A flurry of corporate activity took place on 8 December 2006. On that date, Mr. Khanghah transferred his 500,000 shares (which included Mr. Bahari’s 400,000 shares) to a

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<sup>294</sup> **C-124** Caspian Fish Co. Inc. Director’s Resolution in writing - 3 September 2002.

<sup>295</sup> **C-125** Caspian Fish Co. Inc. Extract of Director’s Resolution – 8 December 2006.

<sup>296</sup> **C-126** BVI Business Companies Act 2004, Part II, Division, §13(2).

corporate shell called Southmead Management Limited (“**Southmead**”), a BVI company of which he was a Director and sole shareholder.<sup>297</sup>

225. While the transfers to Southmead appear, on their face, to benefit Mr. Khanghah alone, there are indications that Mr. Heydarov, and possibly Mr. Aliyev, may have some interest in the company: at some point, it appears that Mr. David Pow took over as Director of Southmead, as evidenced by a 20 October 2017 letter from Jordans to Mr. Pow giving the latter notice of Jordan’s resignation as Registered Agent relative to Southmead.<sup>298</sup> This is the same Mr. Pow who became sole Director of Caspian Fish on 18 February 2021.<sup>299</sup> As discussed below, Mr. Pow acts on behalf of, among others, Mr. Heydarov and his two sons. Mr. Bahari will seek and request document disclosure in this Arbitration on Southmead from Messrs. Aliyev and Heydarov.
226. The transfer of the 500,000 shares from Mr. Khanghah to Southmead was illicit, because (a) the 500,000 shares included Mr. Bahari’s fraudulent transferred 400,000 shares; and (b) because Mr. Bahari had been fraudulently removed as Director.

**c. On 8 December 2006, a series of new share issues to various shell companies massively diluted Mr. Bahari’s interests.**

227. Also on 8 December 2006, Mr. Khanghah, as sole Director, undertook a series of new share issues for the benefit of Southmead, and two new corporate shells called Carnivore Capital Markets Limited (“**Carnivore**”), a BVI entity, and Lacey Enterprises SA (“**Lacey**”), a Panamanian entity:
- i. 4,450,000 further shares in Caspian Fish were purportedly issued to Southmead;<sup>300</sup>
  - ii. 22,400,000 new shares in were purportedly issued to Carnivore;<sup>301</sup>
  - iii. ICCI purported to transfer its entire 500,000 shares to Lacey;<sup>302</sup>

<sup>297</sup> **C-109**; **C-127** Southmead Management Limited Signed Director Consent Letter – 8 April 2009 at 2 of PDF; **C-128** Southmead Management Limited Registers and Datasheet – 1 May 2009 at 3 of PDF.

<sup>298</sup> **C-129** Jordans BVI Letter of Resignation – 20 October 2017

<sup>299</sup> **C-118** BVI Financial Services Commission Caspian Fish Co. Inc. Register of Directors – 26 February 2021; **C-119**.

<sup>300</sup> **C-109** at 15, 17 of PDF; **C-130** Southmead Share Application to Caspian Fish 2006.

<sup>301</sup> **C-109** at 11, 17 of PDF; **C-131** Caspian Fish Co. Inc. Stock Transfer Form, undated, issuing 22,400,000 shares to Carnivore Capital Markets Limited at 6 of PDF.

<sup>302</sup> **C-109** at 14, 19 of PDF.

iv. 28,060,000 (in two tranches of 28,000,000 + 60,000) new shares were purportedly issued to Lacey.<sup>303</sup>

228. Mr. Pow appears to have acted for Carnivore, as evidenced by Jordans email correspondence confirming that Mr. Pow paid for Carnivore's franchise tax and penalties.<sup>304</sup> Mr. Bahari will seek and request document disclosure in this Arbitration on Carnivore and Lacey from Messrs. Heydarov and/or Aliyev.

229. These new share issues and transfers further massively diluted Mr. Bahari's original 400,000 shareholding interest, rendering them worthless.

230. All of the above transfers were unlawful because Mr. Bahari had been fraudulently removed as Director and would not have approved this dilution of his interests. Moreover, under BVI law, directors must use their powers for a proper purpose: it is a "██████████" to exercise a power in a manner for which it was not conferred.<sup>305</sup>

**d. On 15 October 2007, a series of share transfers moved shares to a further set of shell companies.**

231. On 15 October 2007, a further series of share transfers occurred:

- i. Carnivore purported to transfer its 22,400,000 shares to a Panamanian company, Lanisten International SA ("**Lanisten**");<sup>306</sup>
- ii. Lacey purported to transfer its 28,560,000 shares equally between three Panamanian companies, Arblos Management Corp. ("**Arblos**");<sup>307</sup> Hising Management SA ("**Hising**");<sup>308</sup> and Lynden Management Group Inc. ("**Lynden**")<sup>309</sup> (together, the "**AHL Companies**").

232. Thus, after 2007, the shareholders in Caspian Fish were as follows:

<sup>303</sup> **C-109** at 7-8 of PDF; **C-132** Caspian Fish Co. Inc. Directors Resolution in writing – 8 December 2006, issuing 28,000,000 shares to Lacey Enterprises S.A.; **C-133** Lacey Share Application to Caspian Fish - 2006, issuing 60,000 shares to Lacey Enterprises S.A.

<sup>304</sup> **C-134**, Jordans Limited Correspondence Re: Carnivore Capital Markets, 11 April 2007.

<sup>305</sup> **C-135** *Antow Holdings Limited v. Best Nation Investments Limited* [2018] ECSCJ No. 253, BVIHCMAP2017/0010 (determined 21st September 2018) at 2-3, 18.

<sup>306</sup> **C-136** Caspian Fish Co. Inc. Register of Members, 17 August 2009 at 3, 7 of PDF; **C-137** Caspian Fish Co. Inc. Share Certificates – 15 November 2007, at 8 of PDF.

<sup>307</sup> **C-136** at 2, 8-9 of PDF; **C-137** at 2, 7 of PDF.

<sup>308</sup> **C-136** at 4, 8 of PDF; **C-137** at 4, 6 of PDF.

<sup>309</sup> **C-136** at 8-9 of PDF; **C-137** at 3, 5 of PDF.

- i. Southmead – 5,040,000 shares (9%);
  - ii. Lanisten – 22,400,000 shares (40%);
  - iii. Arblos – 9,520,000 shares (17%);
  - iv. Lynden – 9,520,000 shares (17%);
  - v. Hising – 9,520,000 shares (17%).
233. When added up, the total shares above equal 56,000,000 shares (diluting down Mr. Bahari's original 400,000 shares to a *de minimis* 0.71% interest).
234. All of the above transfers were unlawful because Mr. Bahari had been fraudulently removed as Director and would not have approved this dilution of his interests.

**e. The Ultimate Beneficial Owners of Caspian Fish are related to Mr. Aliyev and the Pashayev family.**

235. The AHL Companies are associated with and/or controlled by the Aliyev and Pashayev families. Ms. Arzu Aliyeva and Ms. Leyla Aliyeva, who are the daughters of Mr. Aliyev and the granddaughters of Mr. Pashayev, hold various positions within the AHL Companies:
- i. **Arblos:** Ms. Arzu Aliyeva and Ms. Leyla Aliyeva are both Directors; further, Ms. Arzu Aliyeva is the President, and Ms. Leyla Aliyeva is the Treasurer.<sup>310</sup>
  - ii. **Lynden:** Ms. Arzu Aliyeva and Ms. Leyla Aliyeva are both Directors; further, Ms. Arzu Aliyeva is the President, and Ms. Leyla Aliyeva is the Treasurer.<sup>311</sup>
  - iii. **Hising:** Ms. Arzu Aliyeva and Ms. Leyla Aliyeva are both Directors; further, Ms. Arzu Aliyeva is the President, and Ms. Leyla Aliyeva is the Treasurer.<sup>312</sup>
236. It is thus evident that the UBOs of Caspian Fish included members of both the Aliyev and Pashayev family. The conclusion is that Mr. Aliyev maintained control of Caspian Fish through his daughters, and can himself be considered a UBO of the company. Further, because Ms. Arzu Aliyeva and Ms. Leyla Aliyeva are also the daughters of Ms. Mehriban Aliyeva (the wife of President Aliyev and the Vice-President of Azerbaijan), and the granddaughters of Mr. Arif Pashayev, Caspian Fish is equally linked to the Pashayev family. This may make Mr. Pashayev another UBO of Caspian Fish. The possible collusion

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<sup>310</sup> **C-138** Arblos Management Corp. Amendment to Articles of Incorporation – 11 August 2006 at 17, 30 of PDF.

<sup>311</sup> **C-139** Lynden Management Group Articles of Incorporation - 17 August 2006 at 8, 18 of PDF.

<sup>312</sup> **C-140** Hising Management S.A. Amendment to Articles of Incorporation – 1 June 2012 at pp. 17-18 of PDF.

between the Aliyev and Pashayev families is consistent with their schemes to seize the physical assets and rights of Mr. Bahari's various investments, as shown in the 2002 Forced Sale Terms. The carving up of Caspian Fish between and among the Aliyev and Pashayev families would be consistent with their publicly reported actions.

237. As reported by the International Consortium of Investigative Journalists, President Aliyev and his wife, Vice-President Mehriban Aliyeva, have previously set up a number of other offshore companies in the name of their daughters.<sup>313</sup> The Aliyevs/Pashayevs also appear to have purchased assets through their son, Heydar Aliyev (who, as an 11-year old in 2009, was reported to have closed on nine waterfront properties in Dubai in his own name worth approximately \$44 million;<sup>314</sup> together, the three Aliyev children invested \$75 million in Dubai real estate<sup>315</sup>).
238. Further, the AHL Companies were designated Directors and/or Members (shareholders) of an English LLP, Globex International LLP ("**Globex**"), another company linked to President Aliyev and the Pashayev family. Globex was the focus of investigative reporting on Azerbaijan's establishment of the Azerbaijan International Mineral Resources Operating Company Ltd. ("**AIMROC**"). AIMROC was a consortium of companies which was granted mining licenses to the country's West; under the licensing agreement, AIMROC would keep 70% of profits, while the Azeri Government would keep 30%. The Mossack Fonseca leak revealed that Globex held 11% of Londex Resources, SA, the leading member of the AIMROC consortium (Londex held 45% of AIMROC).<sup>316</sup> Thus, as of 2007, Caspian Fish shared the same AHL Companies shareholders as Globex, placing it squarely within a complex corporate web involved in one of the most significant kleptocratic scandals in Azerbaijan that directly implicated the Aliyev and Pashayev families. (In a sign of the magnitude of the matter, one of the investigative journalists, Ms.

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<sup>313</sup> **C-141** Candea, Ismayilova, *Offshore companies provide link between corporate mogul and Azerbaijan's president*, ICIJ, 3 April 2013, available at <https://www.icij.org/investigations/offshore/offshore-companies-provide-link-between-corporate-mogul-and-azerbajians-president/>.

<sup>314</sup> **C-142** Higgins, *Pricey real estate deals in Dubai raise questions about Azerbaijan's president*, Washington Post, 5 March 2010, available at: <https://www.washingtonpost.com/wp-dyn/content/article/2010/03/04/AR2010030405390.html>.

<sup>315</sup> **C-143** Weiss, *How Azerbaijan Is Like 'The Godfather'*, The Atlantic, 11 July 2013, available at: <https://www.theatlantic.com/international/archive/2013/07/how-azerbaijan-is-like-em-the-godfather-em/277717/>.

<sup>316</sup> **C-144** Fitzgibbon, Patrucic, Rey, *How Family that Runs Azerbaijan Built an Empire of Hidden Wealth*, ICIJ, 4 April 2016, at 6 of PDF, available at: <https://www.icij.org/investigations/panama-papers/20160404-azerbaijan-hidden-wealth/>.

Khadija Ismayilova, was imprisoned in 2015, in what is widely believed to have been retaliation for her exposé.)<sup>317</sup>

239. Lanisten's corporate structure is even more opaque. One set of documents points to Belizean shell companies being named as Directors, President, and Secretary. These companies are incorporated in Belize and managed by Morgan.<sup>318</sup> A more recent search result identifies what appear to be local Panamanian Directors, President, Secretary, and Treasurer.<sup>319</sup> Counsel for Mr. Bahari are further investigating Lanisten, as it maintained the largest shareholding in Caspian Fish (40%) following the share dilutions in 2007.
240. Mr. Bahari will seek and request document disclosure in this Arbitration on the AHL Companies, Lanisten, and Globex from Messrs. Heydarov and/or Aliyev and/or Pashayev.

**f. FHCS's 2021-22 compliance efforts failed to perform KYC on the Aliyev daughters as UBOs of Caspian Fish.**

241. At the end of 2021 and into 2022, FHCS attempted to perform mandated KYC on Caspian Fish because the company had been assessed – perhaps not surprisingly – as a High-Risk Client.<sup>320</sup> However, FHCS ultimately failed (despite their endeavors) to obtain any KYC on Ms. Arzu Aliyeva and Ms. Leyla Aliyeva as the UBOs.
242. The FHCS disclosure includes a draft Beneficial Ownership Register,<sup>321</sup> which suggests that, as of 30 June 2017 (the date on the draft document), FHCS was led to believe that the UBOs were Tale and Nijat Heydarov – Mr. Heydarov's sons. However, this was clearly incorrect, or at least incomplete information, since, as explained above, as of 15 October 2007, the real UBOs were Ms. Arzu Aliyeva and Ms. Leyla Aliyeva (and by extension, Messrs. Aliyev and Pashayev).
243. As late as 16 March 2022, Mr. Pow, by then sole Director of Caspian Fish, continued to assert incorrectly to FHCS that the UBOs were Tale and Nijat Heydarov – Mr. Heydarov's

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<sup>317</sup> *Id.*

<sup>318</sup> **C-145** Lanisten International S.A. Stockholders Meeting Minutes – 11 July 2012 at 18, 19 of PDF. (The document lists [REDACTED] as Director and President; [REDACTED] as Director and Secretary; and [REDACTED] as Director and Treasurer.)

<sup>319</sup> **C-146** Corporate Information for Caspian Fish related entities, undated at 11-12 of PDF.

<sup>320</sup> **C-102**, at p. 12.

<sup>321</sup> **C-147**, FHCS Caspian Fish Co. Inc. Draft Register of Ultimate Beneficiary Owners - 30 June 2017

sons.<sup>322</sup> This misstatement is remarkable, as it was made in response to a KYC due diligence inquiry, and especially because Mr. Pow, as sole Director of Caspian Fish, would have been aware who the true UBOs were.

244. The end result is that FHCS was unable to carry out a proper KYC – and only asked for KYC on Messrs. Tale and Nijat Heydarov, without performing a similar KYC exercise on the actual UBOs of Caspian Fish’s shareholders, which included the AHL Companies. (As it is, the FHCS disclosure included a number of KYC documents relating to Messrs. Tale and Nijat Heydarov, although these appear to be from an earlier due diligence undertaken in 2019.)<sup>323</sup> In response to BVI Counsel’s requests that FHCS confirm whether it had KYC upon the companies registered as shareholders of Caspian Fish, FHCS confirmed in correspondence that it did not.

**5. Stage 3 involved the stripping of Caspian Fish’s physical assets and the shuttering of the Caspian Fish BVI entity.**

245. The third and final stage consisted of formally separating Caspian Fish BVI from its physical assets. When Mr. Pow<sup>324</sup> was contacted in 2021 by FHCS to provide KYC on Caspian Fish, he responded to the KYC questionnaire as follows:

The sole asset [of Caspian Fish BVI] is the shares in Caspian Fish LLC – an Azeri company. I regret I have no idea as to the value of the shares.

...

...I fear [ ] the company has just sat there since incorporation holding the shares in Caspian Fish LLC.<sup>325</sup>

...

<sup>322</sup> **C-148** FHCS Communication regarding Caspian Fish UBOs, at 2 of PDF.

<sup>323</sup> **C-149**, KYC bundle on Tale and Nijat Heydarov - 2019 - 2021.

<sup>324</sup> Mr. Pow is a retired English solicitor, formerly with Monro Wright & Wasbrough LLP. **C-150**, Checkcompany.com data on Mr. David Pow, *available at*: <http://www.checkcompany.co.uk/director/127070/MR-DAVID-POW>. He appears to have very close ties to Mr. Heydarov. For example, he notes in a letter of introduction that he has known Mr. Heydarov’s sons for 20 years, since they were children. **C-149**, KYC bundle on Tale and Nijat Heydarov - 2019 – 202 at 1-2 of PDF. Mr. Pow is also a beneficial owner of a company called the European Azerbaijan Society, along with Tale and Nijat Heydarov. **C-151**, The European Azerbaijan Society Company Search, GOV.UK, *available at*: <https://find-and-update.company-information.service.gov.uk/company/06635743/persons-with-significant-control>.

<sup>325</sup> **C-102** at p. 11

We are in the process of transferring these shares to a local Azeri company to act as holding company at which point we shall close down CF BVI.”<sup>326</sup>

246. These statements are remarkable, and provide a key insight into how Messrs. Aliyev, Heydarov, and Khanghah achieved the seizure of Caspian Fish’s physical assets in Azerbaijan:

- i. Following Mr. Bahari’s expulsion from Azerbaijan in 2001, Caspian Fish (BVI) no longer directly held the assets of the enterprise. Instead, Messrs. Aliyev, Heydarov, and Khanghah interposed an Azeri company called “Caspian Fish LLC” – a company unknown to Mr. Bahari and in which he has no ownership interests.<sup>327</sup>
- ii. Caspian Fish (BVI)’s sole asset thus became the shares in “Caspian Fish LLC”; in turn, “Caspian Fish LLC” presumably took over the assets of the enterprise – a fact which is confirmed by further investigation, and which will be discussed in detail below.
- iii. Further, Mr. Pow revealed the imminent creation of an Azeri holding company, into which the shares of “Caspian Fish LLC” would be transferred. This holding company would effectively substitute itself for Caspian Fish (BVI) as the shareholder in “Caspian Fish LLC.”
- iv. Following this substitution, Caspian Fish (BVI) would become an empty shell with no assets, and, according to Mr. Pow, would be shut down.

247. As a response to a KYC request, Mr. Pow’s reaction strongly suggests he was trying to avoid providing any KYC due diligence materials on Caspian Fish (BVI)’s UBOs. The creation of an Azeri holding company that would substitute itself in was meant to achieve this purpose.

248. By 15 March 2022, Mr. Pow had completed the transfer, and he informed FHCS the following:

[REDACTED]

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<sup>326</sup> *Id.*

<sup>327</sup> Bahari WS ¶ 90.



**1. Caspian Fish MMC holds the enterprise assets and is one and the same company as the “Caspian Fish LLC” mentioned in the BVI disclosures.**

254. Mr. Bahari has identified a “Caspian Fish Co. Azerbaijan MMC”<sup>331</sup> (previously defined as “**Caspian Fish MMC**”) (MMC is an acronym for “Məhdud Məsuliyyətli Cəmiyyət,” or “limited liability company”), Tax Identification Number (TIN) 3100064091, with an address at At-Yali Village, Aderon District, AZ 0100. Its charter capital is reported to be 100 Azeri Manat (about \$59 at current AZN to USD FOREX), and its director is Mr. Emil Sultanov (Rauf Ogulu).<sup>332</sup> A search of Azeri corporate records has turned up no other entity with the name “Caspian Fish” or other derivation thereof.
255. Mr. Bahari has no prior knowledge, ownership, or control of this MMC entity.<sup>333</sup>
256. Caspian Fish MMC published a website, [www.caspianfish.com](http://www.caspianfish.com), archived copies of which can be viewed on Google Wayback Machine. A 4 July 2014 archived copy of the website<sup>334</sup> lists the company name as “Caspian Fish Co. Azerbaijan,” which is the same name as the corporate records of Caspian Fish MMC.<sup>335</sup> Information on the website clearly shows that Caspian Fish MMC comprises the very same physical assets and operations as Caspian Fish (BVI):
- i. Caspian Fish MMC states that it was “[REDACTED],” the date of the grand opening ceremony of Mr. Bahari’s investment;<sup>336</sup>
  - ii. The main page prominently displays a photograph of President Heydar Aliyev at the grand opening ceremony;<sup>337</sup>

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<sup>331</sup> MMC is the Azeri acronym for a limited liability company (LLC).

<sup>332</sup> **C-153** Azerbaijan State Tax Service Caspian Fish Co State Registry of Commercial Enterprises.

Of note, Caspian Fish MMC’s registration date is listed as 19 September 2000. This date would have been at the tail end of Caspian Fish’s construction phase, and shortly before Mr. Bahari’s ouster from Caspian Fish on 10 February 2001. This suggests that Messrs. Aliyev, Heydarov, and Khanghah planned Mr. Bahari’s ouster from Caspian Fish and his expulsion from Azerbaijan as early as September 2000, if not earlier.

<sup>333</sup> Bahari WS at ¶¶ 90.

<sup>334</sup> The 4 July 2014 archived version is the last version available before the website went down on 5 July 2014, following rights to the domain name lapsed, and became available for purchase.

<sup>335</sup> **C-043** – Caspian Fish archived website - Main Page, accessed via 4 July 2014 snapshot through Google WayBack Machine, available at: <https://web.archive.org/web/20140704084812/http://www.caspianfish.com/lang/en/>.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

- iii. The same page notes "[REDACTED]"<sup>338</sup>
- iv. Under the "About Us/Structure" page, a photograph of the main Caspian Fish facility is displayed:<sup>339</sup>

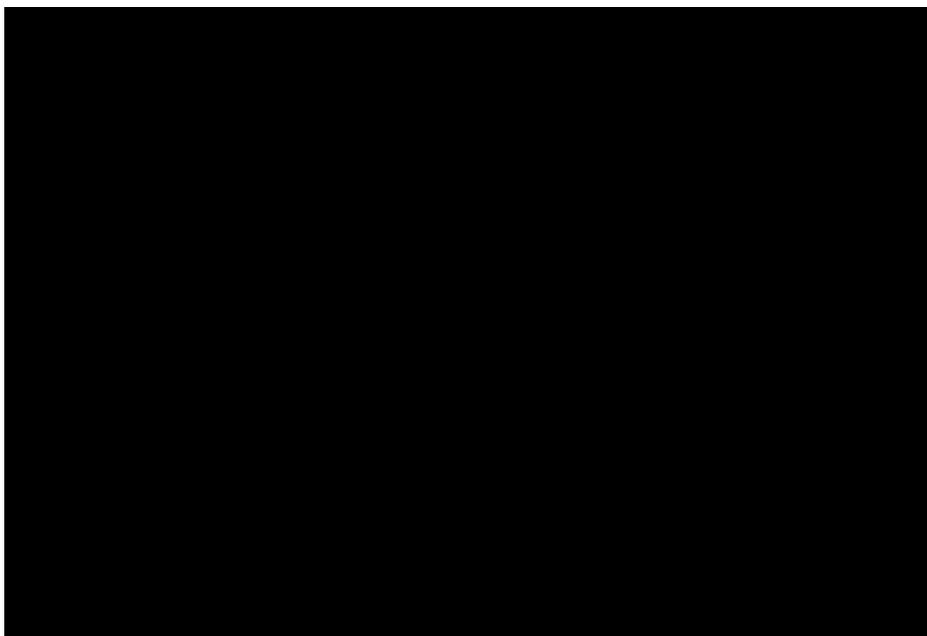


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<sup>338</sup> *Id.*

<sup>339</sup> **C-039** Caspian Fish, About Us/Structure, last visited 4 July 2014, *available at* <https://web.archive.org/web/20140828092629/http://www.caspianfish.com/static,155/lang,az/>

- v. As confirmed by Mr. Bahari himself,<sup>340</sup> this is plainly the same facility that Mr. Bahari built, as compared with photographs taken of the facility by Mr. Dieter Klaus during the grand opening ceremony on 10 February 2001:



(Exhibit **C-051**.)

- vi. The website goes on to describe the location of the Caspian Fish plant as being “[REDACTED],”<sup>341</sup> which is the location of Mr. Bahari’s investment.
- vii. The website also notes the Caspian Fish MMC’s plant’s operations, which include “[REDACTED]”<sup>342</sup> These are the same manufacturing activities that Caspian Fish (BVI) undertook, utilizing the very same top-end foreign equipment that Mr. Bahari paid for and installed.
- viii. Under the “About Us/Management” page, Mr. Khanghah is listed as the President of Caspian Fish MMC.<sup>343</sup>

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<sup>340</sup> Bahari WS at ¶ 91.

<sup>341</sup> **C-039**.

<sup>342</sup> *Id.*

<sup>343</sup> **C-154** Caspian Fish archived website - Management, accessed via 4 July 2014 snapshot through Google WayBack Machine, available at: <https://web.archive.org/web/20140828082750/http://www.caspianfish.com/static,159/lang,az/>

257. The evidence above confirms that that Caspian Fish MMC has taken over the assets and operations of Caspian Fish (BVI), and thus, Caspian Fish MMC is the one and same “Caspian Fish LLC” mentioned by Mr. David Pow in his 2021 correspondence to FHCS.<sup>344</sup> Mr. Bahari will seek and request document production in this Arbitration on Caspian Fish MMC to, *inter alia*, clarify its corporate structure, confirm its UBOs, and obtain financial information that may be relevant to quantum issues. Mr. Bahari reserves the right to apply to the Tribunal for permission to seek an order from the English Courts, pursuant to the English Arbitration Act 1996, to compel David Pow, or other relevant individuals, to provide evidence or testimony.
258. This conclusion is further supported by evidence (discussed below) revealing that Caspian Fish MMC became a subsidiary of Gilan Holding, and that Gilan Holding is owned and controlled by Mr. Heydarov. Further investigative articles report that President Aliyev and Vice-President Mehriban Aliyeva’s daughters, Ms. Arzu Aliyeva and Ms. Leyla Aliyeva, own a controlling stake in Gilan Holding. As explained below, there is also evidence that Caspian Fish was affiliated with “AZ Group,” a group of companies with ties to Mr. Heydarov.
259. Finally, Caspian Fish MMC is a shareholder in a Swiss limited liability company called Caspian Fish Switzerland GmbH. This Swiss company was incorporated in 2003, and dissolved in 2012. The listed nature of the business includes the importation of “[REDACTED]”<sup>345</sup> Mr. Bahari will seek and request document disclosure in this Arbitration on this Swiss entity in order to, *inter alia*, clarify its ownership structure and obtain financial information that may be relevant to quantum issues, and will further request discovery on any other Caspian Fish MMC subsidiaries or affiliates. As Caspian Fish MMC is a shareholder of Caspian Fish Switzerland GmbH, some or all of this information should be available from various Azeri ministries.

**2. Caspian Fish became a part of Gilan Holding, which is further owned and/or controlled by Mr. Heydarov and the Aliyev and Pashayev families.**

260. At some point in time following Mr. Bahari’s expulsion from Azerbaijan, Caspian Fish became part of Gilan Holding. Gilan Holding is a major Azeri conglomerate publicly

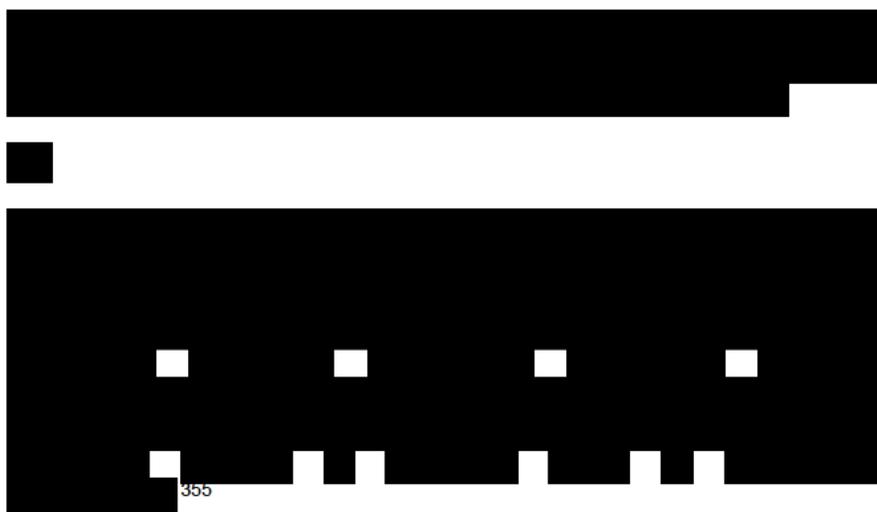
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<sup>344</sup> C-102 at p. 11.

<sup>345</sup> C-146 at 3 of PDF; C-155 – Caspian Fish Switzerland GmbH Corporate Information – 04 June 2004 at 6 of PDF.



264. Thus, Mr. Heydarov's ownership or control of Caspian Fish MMC is admitted and a matter of public record, and he has not bothered to conceal his takeover of the company via Gilan Holding. Mr. Heydarov's ownership of Caspian Fish MMC via Gilan Holding supports that Caspian Fish MMC is the same Azeri limited liability company mentioned in Mr. Pow's 2021 correspondence with Caspian Fish (BVI)'s Registered Agent.
265. Crucially, investigative reporting published in 2018 by the Organized Crime and Corruption Reporting (OCCRP) Project<sup>354</sup> revealed for the first time that the Aliyev and Pashayev families hold a controlling stake in Gilan Holding via President Ilham Aliyev and Vice-President Mehriban Aliyeva's daughters, Ms. Leyla Aliyeva and Ms. Arzu Aliyeva. The daughters are the UBOs of a Dubai-incorporated company called Sahra FZCO, which owns the controlling stake in Gilan Holding:



266. The investigative report found that Sahra FZCO had a 51% shareholding in Gilan Holding, with the remaining 49% held by a company called Shams al Sahra FZCO. Both companies are registered in the Dubai free zone of Jabel Ali.<sup>356</sup>

<sup>354</sup> The reporting was published by the Organized Crime and Corruption Reporting Project ("OCCRP"), a global network of investigative journalists present in six continents. **C-158** OCCRP, *The Magnitsky Human Rights Awards | Recognising brave journalists, politicians and activists in the field of human rights and anticorruption.*, available at: <https://www.magnitskyawards.com/bios/organised-crime-and-corruption-reporting-project-occrp>. As will be described in greater detail below, OCCRP has published influential reporting on corruption in Azerbaijan. OCCRP has won multiple awards and recognition for its investigative reporting.

<sup>355</sup> **C-159** Patrucic, et al. *Pilatus: A Private Bank for Azerbaijan's Ruling Elite*, OCCRP, 23 April 2018, available at: <https://www.occrp.org/en/thedaphneproject/pilatus-a-private-bank-for-azerbaijans-ruling-elite>, at 4, 6 of PDF.

<sup>356</sup> *Id.* at 7 of PDF. Curiously, the bank audit that revealed this information lists the owners of the two companies as belonging to Mr. Heydarov's sons, Nijat and Tale. *Id.* This information appears to be either outdated, or possibly an attempt to misdirect – as appears to have been the case with Caspian Fish (BVI), where, during the KYC review, Mr.

267. This key revelation establishing the Aliyev's ownership stake in Gilan Holding was also reported by The Guardian:



268. Shams al Sahra FZCO, which holds the remaining 49% of Gilan Holding, is reported to be registered to Heydarov's sons, Tale and Nijat.<sup>358</sup>

269. This link between the Aliyev, Pashayev, and Heydarov families via Gilan Holding demonstrates that all three families share ownership of Caspian Fish MMC. This is consistent with the share transfers and dilutions with Caspian Fish (BVI) that carved up shareholding between the same three families.

270. Mr. Bahari will seek and request document disclosure in this Arbitration on Sahra FZCO and Gilan Holding in order to, *inter alia*, clarify their exact corporate structure and UBOs, and confirm the ownership of Caspian Fish MMC. This will include any and all financial information relating to Caspian Fish MMC, which will be relevant to quantum issues.

**3. Mr. Heydarov owns or controls a number of Caspian Fish-related companies that distribute caviar and fish products around the world.**

271. Beyond Caspian Fish MMC and Caspian Fish (BVI), Mr. Heydarov also appears to own and/or control affiliated companies through his sons.

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Pow led FHCS to believe that the UBOs were Nijat and Tale Heydarov, when in fact Leyla and Arzu Aliyeva were the true UBOs.

<sup>357</sup> **C-160** Garsied et al., *Azeri Ruling Families Linked to Secret Investments via Maltese Bank*, The Guardian - 23 April 2018 at 2, 4 of PDF, available at: <https://www.theguardian.com/world/2018/apr/23/azeri-ruling-families-linked-to-secret-investments-via-maltese-bank> (Emphasis added.)

<sup>358</sup> **C-005** Wikileaks U.S. Cable, *Azerbaijan Who Owns What*, Vol. 2, ¶ 8. The U.S. cable notes that the Heydarov brothers planned to use Shams al Sahra FZCO to purchase a Gulfstream jet, which would be shared with Mr. Khanghah. *Id.*

272. A UK company called UEI Caspian Caviar Limited was incorporated in 2009 (and dissolved in 2013), and appears to have sold caviar. Notably, David Pow, the aforementioned Caspian Fish (BVI) Director, is listed on the company's 18 March 2009 Memorandum of Association as one of its first shareholders (Mr. Pow's son, Jeremy Pow, also an English Solicitor, is also a shareholder).<sup>359</sup> Later, Nijat and Tale Heydarov are listed as the company's Directors.<sup>360</sup> UEI Caspian Caviar Limited is one of a number of UK companies reported to be registered to the Heydarov sons.<sup>361</sup> U.S. Department of State cables observe that the UEI family of companies belongs to the Heydarov family.<sup>362</sup>
273. Caspian Fish MMC's website further lists a number of partners, which include a company called UEI Caspian Sea Caviar incorporated in Germany.<sup>363</sup>
274. Mr. Bahari will seek and request document discovery in this Arbitration on UEI Caspian Caviar Limited, as well as UEI Caspian Sea Caviar, in order to clarify and its corporate structure and relationship to Caspian Fish MMC, confirm its UBOs, and obtain financial information relevant to quantum issues. Mr. Bahari reserves the right to apply to the Tribunal for permission to seek an order from the English Courts, pursuant to the English Arbitration Act 1996, to compel David Pow, or other relevant individuals, to provide evidence or testimony.

#### **4. Caspian Fish appears to have become a subsidiary of AZ Group, which is linked to Mr. Heydarov.**

275. As noted above, Caspian Fish MMC's director is Mr. Emil Sultanov (Rauf Ogulu).<sup>364</sup> Mr. Sultanov is also the director of AZ MDF LTD,<sup>365</sup> and the director of several companies that appear to be part of AZ Group, as well as other companies within Gilan Holding's portfolio.

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<sup>359</sup> **C-161** UEI Caspian Caviar Limited Memorandum of Association, – 18 March 2009, at 6 of PDF.

<sup>360</sup> **C-146** at 2 of PDF; **C-162** UEI Caspian Caviar Limited Corporate Information, Companies House – 10 May 2012.

<sup>361</sup> **C-163** *Kamaladdin Heydarov transferred his business and properties to the name of an English lady* - Reportyor Reportror.info, <https://reportyor.info/heyd%C9%99rovlarin-biznes-imperiyasini-idar%C9%99-ed%C9%99n-jordan-kimdir-fotofakt/> (last visited Apr 17, 2023)

<sup>362</sup> **C-005** at 6 of PDF.

<sup>363</sup> **C-164** Caspian Fish archived website - Partners, accessed via 4 July 2014 snapshot through Google WayBack Machine, at 2 of PDF, *available at*: <https://web.archive.org/web/20140828082750/http://www.caspianfish.com/static,159/lang,az/>.

<sup>364</sup> **C-153** Azerbaijan State Tax Service Caspian Fish Co State Registry of Commercial Enterprises.

<sup>365</sup> **C-165** Azerbaijan State Tax Service AZ MDF LTD State Registry of Commercial Enterprises.

On information and belief, Mr. Sultanov is connected to the following AZ Group-affiliated companies, as well as Gilan Holding-affiliated companies:

Name	TIN
Artezian-I.K. LLC	4400000521
Azdəmir Ltd LLC	1301766541
Səidə LLC	1800681641
Aqrokompleks Ltd LLC	2000519321
A&Amp E LLC	1300688331
Delfin-Tikinti LLC	1300374871
Dəniz Co. LLC	1400130111
Evraziya Co. LLC	1700047231
Ntev LLC	4400006211
Str Imports And Distribution LLC	1304729611
Gilan Vegetables LLC	1304329081
Tovuz Qida Məhsulları Müəssisəsi LLC	7301189921
Gilan Orchards LLC	1304089821
Bio Box LLC	1303746931
Kaspia Real Estate Services LLC	1303581231
Kaspia Real Estate Group LLC	1303538101
Metro Cinema LLC	1601464091
Azcapital Services LLC	1304033681
İlandağ Services LLC	1303745451
İlandağ Investment Group LLC	1303745321
Hereti Real Estate LLC	1303715051
Gilan Aqro LLC	1402468001
Real Estate Management LLC	1303945231
Capital Tovvers LLC	1303598341
İlandağ Investment Management LLC	1303463151
Gilan Plastik LLC	1401788571
Caspian Botanika LLC	2001949341
Gilan Zeytun LLC	1401684851
Mes Seramik LLC	1301946421
Az Refrigerator Co Ltd LLC	1301500011
Qabil LLC	1800698061
Dizayn+ LLC	2000982041
Az Panel Ko Ltd LLC	1301214951
MNK LLC	1500846211
Az Sole Co Ltd LLC	1301214671
Gilan İnşaat LLC	1400965871

276. A search on archived versions of the Caspian Fish website shows that as early as June 2013, AZ Group is listed under the “About Us” tab, establishing a corporate link between

Caspian Fish and AZ Group.<sup>366</sup> AZ Group is listed on the Caspian Fish website until around 4 July 2014, around which time the website appears to have shut down.<sup>367</sup>

277. Mr. Khanghah is also affiliated with a number of AZ Group companies, and has been reported in a published article to be the Chairman of AZ Group.<sup>368</sup> The same article notes Caspian Fish's sturgeon farm as being part of AZ Group.<sup>369</sup>

278. Mr. Khanghah is further affiliated with the following AZ Group-related companies:<sup>370</sup>

Name	TIN	Date of the last change in the registry
"AZ REFRIGERATOR KO LTD" LLC	1301500011	24.01.2018
"AZ PANEL KO LTD" LLC	1301214951	24.01.2018
"AZ DUROCEM" LLC	1303445241	07.02.2017
"AZ TECHNOLOGY" LLC	1303363541	04.09.2013
"AZ MED M" LLC	1303011451	13.09.2012
"AZ AERO TECH CO LTD" LLC	1302798861	23.02.2012
"AZTİKİNTİYOL" LLC	1302178541	23.07.2015
"AZ SOLE CO LTD" LLC	1301214671	24.01.2018
"AZTRANSPORT-AP" LLC	1306050011	07.05.2019
"AZDƏMİR LTD" LLC	1301766541	24.01.2018
"AZ VARVARA" LLC	1304553851	04.06.2020
"AZ GLOBAL HOLDİNG" LLC	1303532131	24.01.2018
"AZ UNİVERSAL MOTORS" LLC	1303142121	04.06.2020
"AZ TRAILERS CO" LLC	1302945301	25.04.2019
"AZCONCRETE CONSTRUCTION CO" LLC	1302916771	06.06.2012
"AZFRUİTTİ CO" LLC	1302892931	08.05.2012
"AZALKO" LLC	1302866771	16.04.2012
"AZ TRANSPORT-A" LLC	1303801151	17.09.2014
"AZ AE" LLC	1303078861	02.03.2016
"AZ AQRO SƏNAYE" LLC	1303002841	04.09.2012
"AZMETAL STRUCTURE CO" LLC	1302917691	08.06.2012
"AZ EDU LTD" LLC	1302877781	24.04.2012
"AZTURBİNE ENERGY CO LTD" LLC	1302806401	28.02.2012

<sup>366</sup> **C-166** Caspian Fish archived website - AZ GROUP, accessed via 14 June 2013 snapshot through Google WayBack Machine.

<sup>367</sup> **C-167** Caspian Fish archived website - AZ GROUP, accessed via 4 July 2014 snapshot through Google WayBack Machine.

<sup>368</sup> **C-168** *Renaissance Man*, The Business Year – 24 June 2014, available at: <https://thebusinessyear.com/interview/renaissance-man/> (last visited Apr 17, 2023); **C-169** *Leader of the pack*, The Business Year – 6 June 2015, available at: <https://thebusinessyear.com/interview/leader-of-the-pack-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015-azerbaijan-2015/> (last visited Apr 17, 2023)

<sup>369</sup> *Id.* at 3 of PDF.

<sup>370</sup> **C-170** Jafarov, *Ahadpour sued again - Details*, [yeniavaz.com](https://www.yeniavaz.com/en/news/202389/ahadpour-sued-again-details) 28 September 2022, at 3 of PDF, available at: <https://www.yeniavaz.com/en/news/202389/ahadpour-sued-again-details> (last visited Apr 17, 2023).

279. The UBOs of AZ Group and its affiliated companies are not known. However, given Mr. Khanghah's involvement as Chairman, and Mr. Sultanov's involvement in Caspian Fish MMC, AZ Group companies, as well as Gilan Holding-controlled companies, there is a strong likelihood that AZ Group is linked to Mr. Heydarov. Mr. Bahari will seek and request document production in this Arbitration on some or all of the companies listed above, in order to, *inter alia*, further clarify the corporate nexus between Caspian Fish MMC, AZ Group, and Gilan Holding, confirm UBOs, and obtain financial information relevant to quantum issues.

##### 5. The Neftchala Fish Factory is owned by Caspian Fish, and is owned or controlled by Pasha Holding.

280. Mr. Bahari has identified a company called Neftchala Fish Factory ("**NFF**"), which appears to have been owned by Caspian Fish MMC.

281. According to a public press report dated November 2017, NFF was established at the same legal address as Pasha Holding (Neftchilar, 153, Nasimi District, Baku).<sup>371</sup> Pasha Holding is a vast conglomerate owned by the Pashayev family.<sup>372</sup> The head of NFF is Mr. Nariman Sardarly, the current CEO of Pasha Investments.<sup>373</sup>

282. According to the site of the Neftchala District Executive Authority website, "Caspian Fish Co." (presumably referring to the MMC entity) manages the "Bank Fish Combine" facility in the district.<sup>374</sup> NFF's facility and the Bank Fish Combine are one and the same facility.<sup>375</sup>

283. NFF further links Caspian Fish to Pasha Holding and the Pashayev family. Mr. Bahari will seek and request document production in this Arbitration on NFF and Pasha Holding, in order to, *inter alia*, further clarify the corporate nexus between Caspian Fish MMC), NFF,

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<sup>371</sup> **C-171** *Pasha Holding started another business of Kamaladdin Heydarov*, az24saat.org – 29 November 2017, at 2 of PDF, available at: <https://www.az24saat.org/pasa-holding-k-%c9%99mal%c9%99ddin-heyd%c9%99rovun-daha-bir-biznesin%c9%99-%c9%99l-qoydu/>.

<sup>372</sup> **C-031** - Wikileaks U.S. Cable, "Azerbaijan Who Owns What, Vol. 1 - The First Lady's Family," – 27 January 2010, at ¶ 9. Pasha Holding is described in greater detail below.

<sup>373</sup> **C-171** at 3 of PDF.

<sup>374</sup> **C-172** *Origin History*, Neftchala District Executive Authority of the Republic of Azerbaijan, at 10 of PDF, available at: <http://www.neftchala-ih.gov.az/az/page/11.html> (last visited Apr 17, 2023)

<sup>375</sup> Compare **C-173** *The property of Neftchala Fish Combine was auctioned due to tax debt*, Report Informasiya Agentliyi, - 8 August 2018, available at: <https://report.az/maliyye-xeberleri/neftcala-baliq-kombinatinin-emlaki-vergi-borcuna-gore-herraca-cixarilib> with **C-174** "Historical Bank – from fishing to poverty - BBC News Azerbaijan – 7 December 2016, available at: <https://www.bbc.com/azeri/azerbaijan-38213794>.

and Pasha Holding, and identify NFF's and Pasha Holding's UBOs. The production request will include demands for financial documents relevant to quantum issues.

**6. Caspian Fish's illegal transfer to the Caspian Fish MMC entity was undertaken with the assistance of various Government organs.**

284. The above evidence further confirms that Messrs. Aliyev, Heydarov, and Pashayev captured Caspian Fish's assets, illegally placed them into the Caspian Fish MMC entity, and then shared ownership and/or control of the MMC entity amongst themselves via Gilan Holding, AZ Group, Pasha Holding, and various affiliated entities.
285. This apparent sharing in the ownership of Caspian Fish MMC transpired parallel to a similar carving up of Caspian Fish (BVI), as described in the previous section. Together, the coordinated schemes in both Azerbaijan and the BVI paint a consistent picture of the seizure of Mr. Bahari's largest investment by the Aliyev, Pashayev, and Heydarov families.
286. Beyond the direct involvement of the Aliyev, Pashayev, and Heydarov families in these actions, various organs of the Azeri State aided in the illegal corporate transfers which took place.
287. At its inception in 2001, Caspian Fish was incorporated in the BVI, and operated via a locally registered Representative Office.<sup>376</sup> It was widely acknowledged that Caspian Fish was a foreign investment backed by a foreign investor, as acknowledged by (1) the Ministry of Justice, which approved the Representative Office; (2) Messrs. Aliyev and Heydarov as senior Government officials and direct local partners to Mr. Bahari; and (3) even by the then-President himself, Heydar Aliyev, who conspicuously installed a plaque at Caspian Fish's entrance stating that "[REDACTED]"<sup>377</sup>
288. The starting point is that the Government of Azerbaijan had knowledge of, and indeed directly carried out, *inter alia*, (1) Mr. Bahari's forced removal from Caspian Fish; (2) his unlawful house arrest; (3) the failed plot to assassinate him; (4) his forced expulsion from Azerbaijan; (5) the physical takeover of Coolak Baku by Mr. Heydarov's agents; (6) the repeated detention, beating, and jailing of Mr. Moghaddam. Messrs.; and (7) the numerous threats leveled against Mr. Bahari to dissuade him from recovering his investments.

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<sup>376</sup> C-002, C-003, C-004.

<sup>377</sup> Klaus WS ¶ 35; C-062, Dieter Klaus Photograph – Heydar Aliyev Plaque.

Messrs. Aliyev, Heydarov, and Pashayev were directly involved in various parts of these illegal actions, and further ordered and relied on Government security forces to carry out the same.

289. Having approved Mr. Bahari's investments, then directly participated in their initial seizure, the Government of Azerbaijan subsequently further facilitated the transfer of Caspian Fish (BVI)'s physical assets into Caspian Fish MMC, then authorized Caspian Fish MMC's subsequent business operations, while fully aware of the illegality of these actions and that Caspian Fish MMC was a fraudulent corporate vehicle. The Government's actions include, but are not limited to, the following:

- i. The Ministry of Justice, then the Ministry of Taxes, and today the State Tax Service under the Ministry of Economy, were/are responsible for approval and registration of legal entities on the State Register of Legal Entities, including any changes in the corporate organization (i.e., change in directors), ownership (i.e., transfer of shares), or winding down. In each instance, the legal entity had an obligation to report these changes and provide relevant documentation, and in turn, the relevant ministry at the time had an obligation to convey the information related to these transactions to other ministries. These mandatory reporting and registration actions applied to changes in all of Mr. Bahari's companies, including Caspian Fish and the recipient of its assets and business, Caspian Fish MMC.
- ii. The Ministry of Justice, Ministry of Economic Development, and the Antitrust Authority, amongst others, approved or otherwise authorized the transfer of Caspian Fish BVI's physical assets to Caspian Fish MMC;
- iii. Various ministries granted or renewed various licenses, approvals, and/or permits to Caspian Fish MMC, such as exclusive permits to fish sturgeon in the Caspian Sea, health/sanitary and food production permits, and so on;<sup>378</sup>
- iv. The State Tax Service under the Ministry of Economy and the Ministry of Economy will have had to approve and register the incorporation of an Azeri holding company (as detailed by Mr. Pow in his 2021 correspondence<sup>379</sup>) that now holds

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<sup>378</sup> See, e.g., **C-175** Certificate of Conformity by the State Committee for Standardization, Metrology and Patent of Azerbaijan, at 4-5 of PDF *available at*: <https://genderi.org/azerbaycan-respublikas-iqtisadiyyat-ve-senaye-nazirliyi-the-mn.html?page=17>.

<sup>379</sup> **C-102** at p. 11.

the shares in Caspian Fish MMC, with knowledge that this holding company is also a fraudulent corporate vehicle;

- v. The Ministry of Justice or the Ministry of Taxes permitted the various transfers/sales of Caspian Fish MMC or parts of its business to Gilan Holding, AZ Group, and Pasha Holding, again with knowledge that these transfers were illegal; and
- vi. The Ministry of Taxes approved Caspian Fish MMC's tax returns, which would have suddenly shown financial results based on the same physical assets which had heretofore belonged to Caspian Fish (BVI) and been filed by its Representative Office.<sup>380</sup>

290. Further, Azerbaijan's various ministries – in particular its Ministry of Justice – continuously failed in their obligation to remedy the illegal seizure of the investments and provide redress to Mr. Bahari. (The role of various Azeri legislation, ministries, and agencies is discussed in more detail below.)

291. In conclusion, the corporate undertakings that transferred Mr. Bahari's investments out of his reach and into a local Azeri vehicle were flagrant, manifestly illegal, and could not have been completed without the further action of the Government apparatus.

## **H. COOLAK BAKU'S ASSETS WERE ILLEGALLY TRANSFERRED TO ASFAN.**

### **1. ASFAN's operations utilize Coolak Baku's facility in Baku.**

292. As with Caspian Fish, Mr. Bahari eventually no longer had any control, or visibility, into Coolak Baku, including Shuvalan Sugar, following his expulsion from Azerbaijan.

293. It is now apparent, however, that ASFAN took over Coolak Baku's business. "ASFAN LTD" MMC produced a Bavarian-style beer in Azerbaijan called "Attila Premium" as late as 2008.<sup>381</sup> Available information lists the producer as "ASFAN LTD' LLC," with an address at 25 Safar Aliyev Street in Baku. This is the same address as Coolak Baku, where the processing facility was located.<sup>382</sup>

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<sup>380</sup> **C-003** at Art. 3.

<sup>381</sup> **C-176** Attila Beer Logo ASFAN TLD MMC.

<sup>382</sup> **C-001** Coolak Baku Joint Venture Agreement dated 23 January 1998 at Clause 1.3.

294. While corporate information is very limited, Azeri corporate registers show an “ASFAN LTD LLC (Tax Identification (TIN) Number 1400395441), which appears to have been incorporated on 5 May 2003.<sup>383</sup> It is unclear whether this is the same ASFAN entity which originally entered into the Coolak Baku JVA with Mr. Bahari in the late 1990’s, or whether it was a new related entity created after Mr. Bahari’s expulsion. A number of websites, such as the Azerbaijan Yellow Pages website, confirm the same entity with the same address.<sup>384</sup>
295. Remarkably, ASFAN’s corporate register information shows a Mr. Rasim Zeynalov as its Director.<sup>385</sup> Mr. Zeynalov was formerly Mr. Bahari’s “driver,” which, in that region of the world, refers to an employee who performs low-level tasks and errands as needed (including driving the employer from place to place). Prior to Mr. Bahari’s expulsion, Mr. Zeynalov principally worked for Mr. Bahari at Coolak Baku taking care of various menial office tasks. This is confirmed by surviving records, including a 5 October 2000 record of payment of 28,000 DEM to German beer consultants at Coolak Baku which was signed by Mr. Zeynalov (indicating he handled the payroll matter on behalf of Mr. Bahari).<sup>386</sup> Another document, an air waybill dated on or about 1 February 2000, also shows Mr. Zeynalov’s name as the addressee/consignee for fan coils sent to 25 Safar Aliyev Street, which is the Coolak Baku address.<sup>387</sup> Mr. Zeynalov took care of this routine office task on behalf of Mr. Bahari. It strains credulity that Mr. Zeynalov, a man with no formal education employed in a semi-skilled position for Mr. Bahari, would become, overnight, a Director of a company running a large beverage operation.<sup>388</sup> A more plausible explanation is that he was placed as a front man for ASFAN in a bid to conceal the true beneficial ownership of the Azeri company.
296. Mr. Bahari has further identified an Azeri joint stock company called Shuvalan Shirniyat JSC (“**Shuvalan Shirniyat**”). Shuvalan Shirniyat’s TIN is 1200132211, has a listed address at Baku City, Khazar District, Shuvalan Stg, Almaz Ildirim (Shuvalan Quarter), Ev

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<sup>383</sup> [C-177](#) Azerbaijan State Tax Service ASFAN LTD LLC State Registry of Commercial Enterprises. A search was also performed for ARHAD Ltd.

<sup>384</sup> [C-178](#) *ASFAN LLC Corporate Information*, Azerbaijan Yellow Pages; [C-179](#) *ASFAN listing*, LuxenHouse.az; [C-180](#) ASFAN MMC Record Search, RateBeer.com.

<sup>385</sup> [C-177](#) Azerbaijan State Tax Service ASFAN LTD LLC State Registry of Commercial Enterprises.

<sup>386</sup> [C-076](#) Equipment Fees Invoice to Mr. R. Zeynalov - 5 October 2000.

<sup>387</sup> [C-075](#) Al Habtoor, Receipt and shipping document to Mr. R. Zeynalov – 1 February 2000, at 3 of PDF.

<sup>388</sup> [Bahari WS](#) at ¶ 97.

Dalan 1, AZ1044, and a registration date of 26 April 2005. Its director is Mehdi Mammadov Alihuseyn Oglu.<sup>389</sup> It is unclear whether this entity has taken over Shuvalan Sugar's physical assets and business operations. However, Shuvalan Sugar possessed valuable sugar processing and refining machinery which would not have simply been discarded or left unused. Mr. Bahari will seek and request document production in this Arbitration on Shuvalan Shirniyat to, *inter alia*, confirm the nature of its operations, and identify its corporate and ownership structure. If it is confirmed to have taken over Shuvalan Sugar's operations, Mr. Bahari will request financial information for quantum purposes.

297. In 2020, Mr. Bahari asked an in-country colleague to visit the Coolak Baku site at 25 Safar Aliyev Street to verify the status of the facility. Mr. Bahari was informed that the facility appeared to have shut down; instead, a high-rise apartment building had been built on the land.<sup>390</sup> Mr. Bahari was further informed that Shuvalan Sugar was not operating, and that two expensive villas had been built on the property.<sup>391</sup> This, combined with the fact that ASFAN has continued to produce beer, suggests the various machinery may have been moved elsewhere.
298. Outside of Azerbaijan, Mr. Bahari has identified a company incorporated in the Isle of Man with the same name, *i.e.*, ASFAN LIMITED. The company was incorporated on 21 July 2006, and was dissolved on 9 July 2015. The beneficial ownership of the company is opaque and has not been revealed in the corporate filings, and its Directorships changed dozens of times during its existence.<sup>392</sup> Mr. Bahari will seek and request document disclosures on the various ASFAN entities described above, as well as any other entities affiliated with ASFAN.
299. The currently available facts establish that ASFAN seized Coolak Baku, and substituted itself into the beer production and sale business that Mr. Bahari had developed himself (this likely includes Shuvalan). As noted above, the 2002 Forced Sale Terms implicate Messrs. Aliyev, Heydarov, and Pashayev in the seizure of Coolak Baku.

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<sup>389</sup> **C-181** Azerbaijan State Tax Service Shuvelan Shirniyat JSC State Registry of Commercial Enterprises.

<sup>390</sup> Bahari WS ¶ 29.

<sup>391</sup> Bahari WS ¶ 32

<sup>392</sup> **C-182** ASFAN Limited Isle of Man Corporate Record Information.

**2. The illegal transfer of Coolak Baku's physical assets and operations to ASFAN was undertaken with the assistance of various Government organs.**

300. As with Caspian Fish, various organs of the Azeri State aided in the illegal transfer of Coolak Baku's physical assets and operations to ASFAN.
301. Coolak Baku operated as a JVA, received all appropriate business licenses, and was thus known to Azerbaijan. The Government of Azerbaijan had knowledge of, and directly carried out, *inter alia*, (1) Mr. Bahari's unlawful house arrest; (3) the failed plot to assassinate him; (4) his forced expulsion from Azerbaijan; (5) the physical takeover of Coolak Baku by Mr. Heydarov's agents; (6) the repeated detention, beating, and jailing of Mr. Moghaddam; and (7) the numerous threats leveled against Mr. Bahari to dissuade him from recovering his investments. Messrs. Aliyev, Heydarov, and Pashayev were directly involved in various parts of these illegal actions, and further ordered and relied on Government security forces to carry out the same.
302. Having approved Mr. Bahari's investment in Coolak Baku then directly participated in its initial seizure, the Government of Azerbaijan subsequently further facilitated the transfer of Coolak Baku's physical assets into ASFAN, while fully aware of the illegality of these actions. The Government's actions include, but are not limited to, the following:
- i. The Ministry of Justice or Ministry of Taxes (depending on when this occurred) facilitated the closure of the Coolak Baku JVA entity;<sup>393</sup>
  - ii. The Ministry of Justice, Ministry of Economic Development, and the Antitrust Authority, amongst others, had to have approved or otherwise authorized ASFAN's takeover of Coolak Baku's physical assets;
  - iii. The Ministry of Taxes approved ASFAN's tax returns, which would have suddenly shown financial results based on the same physical assets at 25 Safar Aliyev Street, which had heretofore belonged to Coolak Baku's and been filed by the JVA.<sup>394</sup>
303. Further, Azerbaijan's various ministries – in particular its Ministry of Justice – continuously failed in their obligation to remedy the illegal seizure of Coolak Baku and provide redress

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<sup>393</sup> Alternatively, the Ministry of Justice did nothing, allowing the JVA to co-exist alongside ASFAN, creating a clearly conflicting corporate irregularity.

<sup>394</sup> C-001 at Clause 1.3.

to Mr. Bahari. (The role of various Azeri legislation, ministries, and agencies is discussed in more detail below.)

304. In conclusion, the corporate undertakings that transferred Mr. Bahari's investments out of his reach and into a local Azeri vehicle were flagrant, manifestly illegal, and could not have been completed without the further action of the Government apparatus.

**I. IN 2009, AZERBAIJAN JAILED MR. MOGHADDAM ON FALSIFIED CRIMINAL CHARGES TO FURTHER DISSUADE MR. BAHARI FROM RECOVERING HIS INVESTMENTS.**

305. Around the end of 2008 and into early 2009, Mr. Bahari renewed his efforts to regain his investments in Azerbaijan. Around that time, Mr. Bahari once again asked Mr. Moghaddam to look into the status of his investments, and try to find out who, specifically, owned them.<sup>395</sup>

306. Mr. Moghaddam agreed, and spoke with a few people who still worked at Caspian Fish and whom he thought he could trust. These individuals told Mr. Moghaddam that Caspian Fish was busy and successful, but that he was not welcome there. Mr. Moghaddam did not speak to anyone about Coolak Baku or Shuvalan Sugar, and he avoided speaking with anyone from the Government.<sup>396</sup>

307. In February 2009, Mr. Moghaddam was suddenly arrested at his home on narcotics charges. Mr. Moghaddam, by then a 52 year-old father of two, was charged with possession of crack cocaine planted in his home by a professional acquaintance who had unexpectedly visited, then left mere minutes before police arrived.<sup>397</sup> Mr. Moghaddam, who had no criminal record and had never had anything to do with drugs, insisted on his innocence, but was convicted and sentenced to nine years in jail.<sup>398</sup> Mr. Moghaddam's conviction was issued on 25 February 2009: the entire ordeal, from the time of arrest to the time he was sent to jail, took less than a month.

308. Mr. Moghaddam has no doubt that he was jailed on falsified evidence by the Government because of his association with Mr. Bahari and his investments, and because of his recent

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<sup>395</sup> [Moghaddam WS ¶¶ 80-82](#); [Bahari WS ¶ 92](#).

<sup>396</sup> [Moghaddam WS ¶¶ 81-82](#).

<sup>397</sup> *Id.* ¶¶ 83-84.

<sup>398</sup> *Id.* ¶¶ 83-85.

inquiries about the ownership of Caspian Fish. As he states, [REDACTED]

[REDACTED]<sup>399</sup>

309. On 21 May 2009, shortly after Mr. Moghaddam's conviction, Mr. Bahari's 13-year old daughter, Gloria, was tragically killed in Dubai in a hit-and-run car accident. With this tragedy coming on the heels of Mr. Moghaddam's arrest on falsified charges, Mr. Bahari believes that his daughter's death was an act of the Azeri Government to dissuade him from further attempts to recover his investments in Azerbaijan.<sup>400</sup> Whether true or not, Mr. Bahari's reaction speaks to his immense fear of the Government of Azerbaijan, and ongoing trauma stemming from his experiences.
310. After the death of his daughter, Mr. Bahari no longer felt safe in Dubai, and moved to Ukraine soon after the accident. Since then, Mr. Bahari has continued to move around on a regular basis, due to his fear that Azerbaijan could reach and harm him and his family. Since 2009, Mr. Bahari has moved his family over 10 times and lived in around 8 different countries.<sup>401</sup>
311. Mr. Moghaddam was released early from jail on 27 May 2014 as part of a Presidential pardon by President Aliyev.<sup>402</sup> This was the result of Mr. Bahari's lobbying President Aliyev intensely via intermediaries, over a period of several years. Eventually, the intermediaries informed Mr. Bahari that President Aliyev had agreed, and within five months would release Mr. Moghaddam early as part of a group pardon. Upon release, Mr. Moghaddam was immediately taken to a holding facility for deportation. Within two days, he was put on a plane by the Azeri Government and deported to Tehran, Iran. As with Mr. Bahari's expulsion, Mr. Moghaddam had no time to retrieve any personal belongings. Unlike Mr. Bahari's experience, however, Mr. Moghaddam was not even able to see his wife or son and daughter before being deported.<sup>403</sup>

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<sup>399</sup> *Id.* ¶ 86; Bahari WS ¶ 92.

<sup>400</sup> Bahari WS ¶ 93-94.

<sup>401</sup> Bahari WS ¶ 94.

<sup>402</sup> **C-071** Penitentiary Service of the Ministry of Justice of Azerbaijan Release Document for Naser Tabesh Moghaddam, dated 26 May 2014.

<sup>403</sup> Moghaddam WS ¶ 88.

**J. THE OCTOBER 2013 SETTLEMENT MEETING WITH MR. HEYDAROV DIRECTLY IMPLICATED AZERBAIJAN AND LED TO A FURTHER THREAT AGAINST MR. BAHARI.**

312. In 2013, Mr. Bahari was suddenly able to contact Mr. Heydarov, who invited Mr. Bahari to Azerbaijan to discuss his investments. Mr. Heydarov guaranteed Mr. Bahari safe passage while in Azerbaijan. While Mr. Bahari was extremely nervous about his safety while in Azerbaijan, he felt this was a real chance to recover his investments. On 7 October 2013, Azerbaijan issued Mr. Bahari a 30-day visa<sup>404</sup> to enter Azerbaijan and meet with Mr. Heydarov. This visa temporarily suspended Mr. Bahari's *persona non grata* status.<sup>405</sup>
313. Mr. Bahari met with Mr. Heydarov at the Ministry of Emergency Situations over a three-day period. Each daily meeting lasted between half an hour to three hours. At the meetings, Mr. Heydarov took a cordial tone with Mr. Bahari, and said he was sorry for what had happened. On the third and last day of discussions, Mr. Heydarov told Mr. Bahari that the only option for Mr. Bahari was to sue President Aliyev, and that he (Mr. Heydarov) was willing to support him by financially backing such a claim. This proposition – the powerful Minister of Emergency Situations financially backing a legal action against the President of Azerbaijan – frightened Mr. Bahari, who understood that he was being set up as a pawn in a likely internecine political war between Mr. Heydarov and President Aliyev.<sup>406</sup> Mr. Bahari feigned that he would think about the proposal and remained non-committal. The meeting ended with no agreement, and Mr. Bahari left Azerbaijan empty-handed.<sup>407</sup>
314. This 2013 meeting is remarkable in a number of ways. First, it amounted to a direct negotiation with the Government of Azerbaijan: Mr. Bahari met Minister Heydarov in the latter's capacity as a senior Government official, and the meetings took place at the Ministry of Emergency Situations. Minister Heydarov was presumably able to lift or

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<sup>404</sup> [C-183](#) Azerbaijan visa for Mr. Bahari dated 7 October 2013.

<sup>405</sup> [Bahari WS ¶ 95](#).

<sup>406</sup> The political alliance between Messrs. Aliyev and Heydarov has been strained at various times throughout the years. For example, in 2021, President Aliyev delivered a public interview in which he openly criticized several senior officials who were reportedly looking to acquire land in Shusha, a city that had been seized from Armenia by Azerbaijan. An article on the interview noted President Aliyev's public rebuke of Minister Heydarov, and further noted that, as a result of President Aliyev's [REDACTED] Heydarov had been [REDACTED] [C-184](#) – Giyasbayli, *Aliyev delivers scathing address over 'Shusha land grab' by officials*, OC Media, 9 February 2021, at 3 of PDF.

<sup>407</sup> [Bahari WS ¶ 96](#).

suspend Mr. Bahari's *persona non grata* status and guarantee safe passage – all acts of State prerogative taken by an official with the authority to execute them.

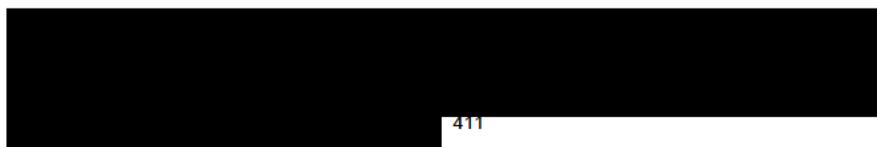
315. Second, Minister Heydarov's position amounted to an extraordinary admission of liability. By agreeing that Mr. Bahari had a claim, Minister Heydarov – as a senior Government official – effectively admitted that Mr. Bahari's investments had been illegally seized (albeit with Mr. Heydarov placing the blame on President Aliyev, and not himself), and that Mr. Bahari had a meritorious legal claim against the sitting President of Azerbaijan and the Government for the seizure and loss of his investments.
316. Mr. Bahari reserves the right to apply to the Tribunal to direct Mr. Heydarov to appear as a witness to allow Mr. Bahari's Counsel to question him about these and other details.
317. Before departing from Azerbaijan, Mr. Bahari took the risk to take a taxi to Coolak Baku to visit the facility and check out its status for himself. The facility was indeed up and running. There, Mr. Bahari was surprised to run into his former driver, Rasim Zeynalov, who was apparently working at Coolak Baku. Mr. Bahari felt extremely betrayed by Mr. Zeynalov, as his presence at Coolak Baku meant that he was working for the people who had illegally seized Mr. Bahari's investment. At that time, Mr. Bahari was not aware that Mr. Zeynalov had become director of ASFAN, nor that ASFAN had actually taken over the physical assets and operations of Coolak Baku.<sup>408</sup>
318. After his meetings in Azerbaijan, Mr. Bahari continued to text and call Mr. Heydarov to try and find a way to recover his investments. However, around 2014, one of Mr. Heydarov's associates suddenly contacted Mr. Bahari and threatened him to stop calling or else he would "[REDACTED]." Mr. Bahari took this as a threat to his life, and immediately stopped contacting Mr. Heydarov. He has not contacted Mr. Heydarov since; in any event, at some point following this final 2014 communication, Mr. Bahari lost Mr. Heydarov's telephone contact.

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<sup>408</sup> Bahari WS ¶ 97.

**K. THE STATE COMMITTEE FOR PROPERTY ISSUES BLOCKED MR. BAHARI'S ATTEMPTS TO DETERMINE THE DISPOSITION OF HIS INVESTMENTS AND THREATENED HIS ATTORNEY.**

319. Following his last conversation with Mr. Heydarov, Mr. Bahari understood that his only hope to recover his investments would be through a legal claim (albeit not one financed by Minister Heydarov). Mr. Bahari began to prepare for such an eventual claim.
320. In or around 2017, as part of the initial work on a claim, Mr. Bahari instructed a local lawyer in Azerbaijan, Mr. Yusif Allahyarov, to investigate and determine the status and value of the properties for Shuvalan Sugar (in the Shuvalan District of Baku) and Coolak Baku (in the Nasimi District of Baku). Mr. Bahari communicated his request through Mr. Moghaddam, who passed them on to Mr. Allahyarov.<sup>409</sup>
321. Around 2017 or 2018, Mr. Allahyarov looked into the issue by referring to publicly available sources, but did not have any success. In early 2019, Mr. Bahari (through Mr. Moghaddam) asked Mr. Allahyarov to make a formal inquiry to the relevant Azeri Government agencies to inquire about the properties. On 14 January 2019, Mr. Allahyarov wrote a letter for the Chairman of the State Committee for Property Issues inquiring into the status of Mr. Bahari's properties.<sup>410</sup>
322. Four days later, Mr. Allahyarov received a phone call and was summoned to the building of the State Committee for Property Issues. There, he met the Deputy Head of the Legal Department of the Committee. She informed Mr. Allahyarov that she had received the letter and, according to Mr. Allahyarov:



323. Based on his experience living in Azerbaijan, Mr. Allahyarov understood that any further attempt to obtain information would be futile, and that for his own personal safety and

<sup>409</sup> Bahari WS ¶ 99; Witness Statement of Yusuf Allahyarov (“Allahyarov WS”) ¶¶ 7-8.

<sup>410</sup> Bahari WS ¶ 99; Allahyarov WS ¶ 10; C-068 - Letter from Yusuf Allahyarov to Chairman of the State Committee for Property Issues, dated 14 January 2019.

<sup>411</sup> Allahyarov WS ¶¶ 11-12.

professional reputation he should discontinue any further inquiry and refrain from starting any legal proceedings on behalf of Mr. Bahari.<sup>412</sup>

324. Upon hearing about Mr. Allahyarov's experience and his refusal to further represent him, Mr. Bahari understood the incident as a personal threat to him and to his lawyer. Mr. Bahari made no further inquiries to Government agencies from that point forward.<sup>413</sup> The result of the Ministry's threat was to further impede Mr. Bahari's ability to recover his investments. It also demonstrated that Mr. Bahari would never be able to successfully file a claim in the Azeri courts and obtain a fair hearing.

#### **IV. THE SEIZURE OF MR. BAHARI'S INVESTMENTS IS SYMPTOMATIC OF AZERBAIJAN'S KLEPTOCRATIC SYSTEM**

325. The illegal seizures of Mr. Bahari's investments form part of a broader, decades-long pattern of the commingling of the public/political and private economic spheres by Azerbaijan's political elite, enabling the amassing of ill-gotten wealth concentrated in family-run, government-connected conglomerates, including Gilan Holding (whose ownership is shared between the Heydarov, Aliyev, and Pashayev families) and Pasha Holding (controlled by the Pashayev family).
326. While Mr. Bahari does not set out to prove the entire wider kleptocratic system in Azerbaijan (nor need he), evidence of this corrupt system corroborates his account of the illegal raid against his investments, and provides context and insight into the *modus operandi* of Azerbaijan's most powerful political figures, including the Aliyev, Heydarov, and Pashayev families.

##### **A. AZERBAIJAN HAS A TRACK RECORD OF KLEPTOCRATIC GOVERNANCE, MONEY LAUNDERING, AND HUMAN RIGHTS ABUSES.**

###### **1. Azerbaijan fails to maintain a favorable foreign investment climate.**

327. Despite nominal efforts to modernize and attract foreign investment, Azerbaijan falls far short of international standards in the areas of human rights, corruption, and maintaining a favorable investment climate. Transparency International's Corruption Perception Index

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<sup>412</sup> *Id.* ¶ 13.

<sup>413</sup> Bahari WS ¶ 99.

for 2013 ranks Azerbaijan 127 out of 177.<sup>414</sup> In 2021, Azerbaijan's score was still at an abysmal 128 out of 180.<sup>415</sup>

328. In its most recent 2021 Investment Climate Statement for Azerbaijan, the United States Department of State highlighted the control of the domestic Azeri economy by a small group of government-connected holding companies:



**2. Azerbaijan quashes investigations into the ruling families' misuse of the State apparatus for their own benefit.**

329. The Government of Azerbaijan has a history of trying to deter investigations into the ruling families' misuse of the apparatus of the State apparatus for their own benefit. Those who have spoken out or acted contrary to the political interests in Azerbaijan have been silenced.<sup>417</sup> This includes, for example, two ex-ministers of Azerbaijan, who tried to impose economic reforms that stood to hurt Minister Heydarov's personal business interests. Feeling threatened by their reform activities, both ministers were " [REDACTED]

[REDACTED]."<sup>418</sup>

<sup>414</sup> **C-185** 2013 *Corruption Perceptions Index – Azerbaijan*, Transparency International, available at <https://www.transparency.org/en/cpi/2013/index/aze> (last visited 8 July 2022).

<sup>415</sup> **C-186** 2021 *Corruption Perceptions Index – Azerbaijan*, Transparency International, available at <https://www.transparency.org/en/cpi/2021/index/aze> (last visited 8 July 2022).

<sup>416</sup> **C-187** 2021 *Investment Climate Statement – Azerbaijan*, U.S. Department of State, at 2, 9 of PDF, available at: <https://www.state.gov/reports/2021-investment-climate-statements/azerbaijan/> (last visited 8 July 2022) (emphasis added).

<sup>417</sup> **C-005** at ¶ 14.

<sup>418</sup> *Id.*

330. Nevertheless, over the years, investigative reporting has revealed a number of astounding examples of misuse of Government power. One of the most notorious and publicized reports was named the Azeri laundromat scandal (“**Azeri Laundromat Scandal**”). This scheme involved members of the country’s ruling families using a secret \$2.9 billion Government slush fund to launder money and pay off European politicians and other figures of influence to speak favorably about the country and its oppressive regime.<sup>419</sup>
331. Among others, the investigation focused on Mr. Heydarov. Leaked bank records revealed that some of the money in the Government slush fund came directly from the Azeri Government, with ministries including the Heydarov-led Ministry of Emergency Situations contributing \$9 million.<sup>420</sup>
332. Caspian Fish appears to have been used by the Government in its influence scheme. Caviar, an expensive and coveted item, is reported to have been gifted to multiple members of the Council of Europe:<sup>421</sup> the Azeri delegation was accused of paying off members of the Parliamentary Assembly of the Council of Europe, using so-called “caviar diplomacy,” in an effort to deter these Council members from conducting investigations into Azerbaijan’s corrupt business practices, undemocratic elections and human rights violations.<sup>422</sup> Notably, Caspian Fish is the primary producer of caviar. The scandal lasted for over a decade and led to a full-scale investigation and censure of several Council members;<sup>423</sup> regrettably, exposure of the scandal did not lead to more serious sanctions or repercussions. During this same period, the Azeri government jailed more than 90 human rights activists, opposition politicians, and journalists on politically motivated charges.<sup>424</sup>

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<sup>419</sup> **C-022** *Everything You Need to Know About Azerbaijani Laundromat*, The Guardian – 4 September 2017; **C-023** - Radu et al., *The Influence Machine*, OCCRP – 4 September 2017.

<sup>420</sup> **C-188** Ismayilova et al., *The Origin of the Money*, OCCRP – 4 September 2017, at 2 of PDF; available at <https://www.occrp.org/en/azerbaijanilaundromat/the-origin-of-the-money>

<sup>421</sup> **C-024** PACE, *Report on the Allegations of Corruption within the Parliamentary Assembly* – 15 April 2018, at 2 *et seq.*, 35-37, 58, 61, 66, 80, 120; **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy* - 15 June 2016, at 81 (describing “caviar diplomacy,” and noting that Caspian Fish is the main producer of caviar - and is controlled by the Heydarov family).

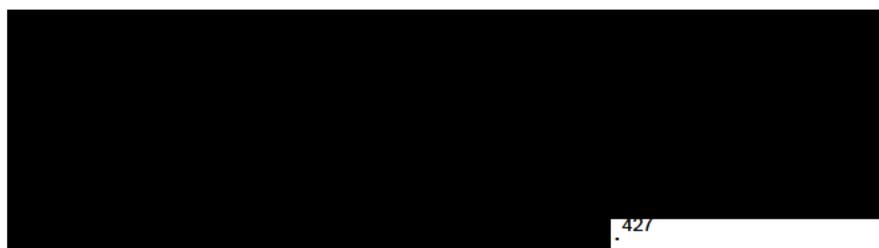
<sup>422</sup> **C-024** at xiii-xvi.

<sup>423</sup> *Id.* at 144 *et seq.*

<sup>424</sup> **C-025** Radu et al., *The Azerbaijani Laundromat*, OCCRP – 4 September 2017, at 2.

**3. In 2017, a Maltese investigative journalist reported on links between Pilatus Bank, Gilan Holding, and the Aliyev family.**

333. The Azeri Laundromat Scandal further exposed ties between Azerbaijan and other corruption scandals; this includes serious incidents in Malta. A Maltese investigative journalist, Ms. Daphne Caruana Galizia, reported on Malta's political events and allegations of corruption through her blog Running Commentary.<sup>425</sup> In the Spring of 2017, she published a series of stories revealing that Pilatus Bank, a Maltese private bank, was serving high-ranking customers in Azerbaijan, and alleged that the bank was processing corrupt payments. These customers included the Aliyev family, including the President and Vice-President's daughters, Leyla and Arzu Aliyeva.<sup>426</sup>



334. Six months after publication of the story, Ms. Caruana Galizia was killed by a car bomb near her home in October 2017.<sup>428</sup> Following Ms. Caruana Galizia's murder, The Daphne Project was initiated to continue her legacy and investigative work. The project is a collaborative, cross-border investigative journalism project by major news organizations from around the world, coordinated by Paris-based investigative non-profit newsroom, Forbidden Stories.<sup>429</sup> In April 2018, The Daphne Project published a follow-up on Ms. Galizia's original reporting on Pilatus Bank. The 2018 report revealed that the Aliyev and Pashayev family held a controlling stake in Gilan Holding, through the daughters of President Ilham Aliyev and his wife, Vice-President Mehriban Aliyeva.<sup>430</sup>

<sup>425</sup> **C-189** Daphne Caruana Galizia Foundation – *Biography of Daphe Caruana Galizia, 1964 – 2017*, available at: <https://www.daphne.foundation/en/about/daphne/biography>

<sup>426</sup> **C-190** Guarascio, Francesco, and Stephen Grey. "Malta Had Concerns about Bank with Azeri Clients, Kept It Open." Reuters, Thomson Reuters, 26 April 2018, at 3 of PDF, <https://www.reuters.com/article/us-malta-daphne-pilatus-insight/malta-had-concerns-about-bank-with-azeri-clients-kept-it-open-idUSKBN1HX1JE>.

<sup>427</sup> *Id.* See also **C-159** Patrucic et al., *Pilatus: A Private Bank for Azerbaijan's Ruling Elite*, OCCRP, 23 April 2018, at 1-2 of PDF, available at: <https://www.occrp.org/en/thedaphneproject/pilatus-a-private-bank-for-azerbajians-ruling-elite>.

<sup>428</sup> **C-191** *Malta Businessman Held on Yacht in Journalist Murder Probe*, BBC News, BBC, 20 November 2019, available at: <https://www.bbc.com/news/world-europe-50485721>

<sup>429</sup> **C-192** "Independent Journalism Initiatives." *The Daphne Caruana Galizia Foundation*, available at: <https://www.daphne.foundation/en/journalism/>.

<sup>430</sup> **C-159** at 1-2, 4-6 of PDF.

#### 4. Investigative reporting further revealed links between the Azerbaijan Laundromat, a Maltese energy contract, and SOCAR.

335. Ms. Galizia's reporting revealed other ties to Azerbaijan, via its state oil company, SOCAR. As described below, the Aliyev family's control over SOCAR puts it at the head of an illicit patronage system where a large proportion of the rent from oil extraction finds its way into the accounts of members of the ruling families.<sup>431</sup>
336. Mr. Yorgen Fenech, a Maltese businessman and owner of a Dubai-based company called 17 Black Limited, was arrested in November 2019 as a suspect in the murder of Ms. Caruana Galizia.<sup>432</sup> Eight months before her murder, she had written in her blog about 17 Black Limited, alleging it was connected to payments to Maltese politicians.<sup>433</sup> Mr. Fenech was also a director and investor in Electrogas Malta, a company that operates a power station in Delimara, Malta.<sup>434</sup> Notably, SOCAR is also an investor in Electrogas Malta.<sup>435</sup> Ms. Caruana Galizia was investigating the awarding of the Delimara power station contract to ElectroGas when she died in a car bombing in 2017. Maltese police have said they believe she was killed over her reporting on the power station, though this link is yet to be proven.<sup>436</sup>
337. In 2021, the Daphne Caruana Galizia Foundation called for investigation into whether 17 Black, the secret company owned by Mr. Fenech, served as a bridge between the Azeri

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<sup>431</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, Politické vedy - 15 June 2016, at 76; **C-033**.

<sup>432</sup> **C-194** Leroux, Marcus, and Jennifer Rankin. *EU Could Fund Gas Project Linked to Man Charged over Maltese Journalist's Murder*, *The Guardian*, Guardian News and Media, 21 November 2021, <https://www.theguardian.com/world/2021/nov/21/eu-could-fund-gas-project-linked-to-man-charged-in-maltese-journalist-murder-daphne-caruana-galizia>.

<sup>433</sup> **C-193** Grey, Stephen, and Tom Arnold. *Exclusive: Mystery Company Named by Murdered Maltese Journalist Is Linked to Power Station Developer*, *Reuters*, Thomson Reuters, 9 November 2018, <https://www.reuters.com/article/us-malta-daphne-offshore-exclusive-idUSKCN1NE18M>

<sup>434</sup> **C-194** Leroux, Marcus, and Jennifer Rankin. *EU Could Fund Gas Project Linked to Man Charged over Maltese Journalist's Murder*, at 2 of PDF, *The Guardian*, Guardian News and Media, 21 November 2021, <https://www.theguardian.com/world/2021/nov/21/eu-could-fund-gas-project-linked-to-man-charged-in-maltese-journalist-murder-daphne-caruana-galizia>.

<sup>435</sup> **C-193** Grey, Stephen, and Tom Arnold. *Exclusive: Mystery Company Named by Murdered Maltese Journalist Is Linked to Power Station Developer*, *Reuters*, Thomson Reuters, 9 November 2018, at 8 of PDF, <https://www.reuters.com/article/us-malta-daphne-offshore-exclusive-idUSKCN1NE18M>

<sup>436</sup> *Id.*; see also **C-195** Garside, *Maltese Journalist Was Killed over Reporting on Power Plant, Say Police*, *The Guardian* - 31 August 2020, <https://www.theguardian.com/world/2020/aug/31/police-maltese-journalist-killed-power-station-reporting-daphne-caruana-galizia>.

Laundromat described above.<sup>437</sup> In 2022, an investigation by Times of Malta traced back funds in 17 Black to Azerbaijan;<sup>438</sup> the European Commission is currently looking into the matter and is “[REDACTED]” reports on a secret agreement between the Maltese government and Azerbaijan’s SOCAR Trading that could involve unlawful state aid.<sup>439</sup>

**5. Azerbaijan has a track record of human rights violations, utilizing the same means and methods that were used against Messrs. Bahari and Moghaddam.**

338. Azerbaijan has a long track record of human rights abuses including repression, censorship, and restrictions of freedom of expression, assembly, and association.<sup>440</sup> In 2021, the U.S. Department of State reported instances of torture, disappearances by or on behalf of governmental authorities, and violations of due process in politically motivated arrests.<sup>441</sup>

339. Human rights violations such as the ones Mr. Bahari and his associates were subjected to are reported with regularity in Azerbaijan. Often, the tool of repression is the use of State law enforcement and judicial apparatus to charge and convict dissidents on falsified charges, such as drug charges. For example, Amnesty International reported that [REDACTED]  
[REDACTED]  
[REDACTED].<sup>442</sup> This is the very same method by which Mr. Moghaddam was charged, convicted, and jailed in 2009, following his renewed efforts to investigate the disposition of Mr. Bahari’s investments.

340. Further, per the 2021 Human Rights Watch World Report:

[REDACTED]

<sup>437</sup> **C-196** *17 Black - Azerbaijan Links Sought as New Information Emerges*, Times of Malta, 6 July 2021, <https://timesofmalta.com/articles/view/more-investigation-into-17-black-azerbaijan-links-sought-after-new.884608>.

<sup>438</sup> **C-197** Borg, *Company in 17 Black Cash Trail Received 'Suspicious' Pilatus Funds*, Times of Malta, 29 January 2022, <https://timesofmalta.com/articles/view/company-in-17-black-cash-trail-received-suspicious-pilatus-funds.931174>.

<sup>439</sup> **C-198** Muscat, *European Commission 'Taking Very Seriously' Reports on Malta's Secret Agreement with Azerbaijan's SOCAR*, The Shift News, 16 October 2022, <https://theshiftnews.com/2022/10/16/european-commission-taking-very-seriously-reports-on-maltas-secret-agreement-with-azerbaijans-socar/>.

<sup>440</sup> **C-199** at pp 24, 28.

<sup>441</sup> **C-199** *2021 Country Reports on Human Rights Practices - United States Department of State - 10 May 2022*, at 2-5, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/>.

<sup>442</sup> **C-200** *Amnesty International Report 2022-23, Human Rights in Azerbaijan*, at 82-83, available at: <https://www.amnesty.org/en/location/europe-and-central-asia/azerbaijan/report-azerbaijan/>.

341. Ms. Khadija Ismayilova is a well-known Azeri investigative reporter who has been repeatedly targeted by the Azeri government. Ms. Ismayilova began reporting on corruption allegations implicating President Aliyev and his family members in 2010.<sup>444</sup> Her reporting garnered international attention when The Washington Post published a piece in 2010 on the multi-million-dollar Dubai-based real estate registered under the names of President Aliyev's children.<sup>445</sup> Repeatedly threatened and intimidated, she was imprisoned in 2015, in what is widely believed to have been retaliation for her exposés.<sup>446</sup>

**6. As a result of investigative reporting into Azerbaijan's ruling families, its Government has enacted legislation making it harder to report on these families' misuse of Governmental powers to enrich themselves.**

342. In 2012, the National Assembly (the Milli Majlis) passed amendments to the laws "On Commercial Secrets," and "On the State Registration of Legal Entities and the State Registry," which resulted in a prohibition on disclosure of information on the ownership of private companies unless consent is given by all the owners.<sup>447</sup> At the same time, the National Assembly passed a law giving the President and the First Lady lifelong immunity for acts committed during their time in office.<sup>448</sup>

<sup>443</sup> **C-201** Roth, *World Report 2022: Rights Trends in Azerbaijan*, Human Rights Watch, - 13 January 2022, <https://www.hrw.org/world-report/2022/country-chapters/azerbaijan>.

<sup>444</sup> **C-202** Recknagel, *The Reporting That Jailed Khadija*, RadioFreeEurope/RadioLiberty, - 1 September 2015, at 2 of PDF, available at: <https://www.rferl.org/a/azerbaijan-corruption-investigator-khadija-ismayilova/27138496.html>.

<sup>445</sup> **C-142**, Higgins, "Pricey real estate deals in Dubai raise questions about Azerbaijan's president", Washington Post, - 5 March 2010, available at: <https://www.washingtonpost.com/wp-dyn/content/article/2010/03/04/AR2010030405390.html>; see also **C-143**, Weiss, *How Azerbaijan Is Like 'The Godfather'*, The Atlantic, - 11 July 2013, available at: <https://www.theatlantic.com/international/archive/2013/07/how-azerbaijan-is-like-em-the-godfather-em/277717/>.

<sup>446</sup> **C-203** *Azerbaijan Arrests One More Critical Voice, Khadija Ismayilova*, Human Rights House Foundation - 4 December 2014, <https://humanrightshouse.org/articles/azerbaijan-arrests-one-more-critical-voice-khadija-ismayilova/>; **C-202**; **C-144** at 6 of PDF.

<sup>447</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy* - 15 June 2016, at 78. This is the law that Respondent asserted in opposition to a transparency order. See Respondent's Submission on Confidentiality at ¶ 19.

<sup>448</sup> **C-020** at 78.

343. At the time the amendments were introduced in Parliament, international organizations such as the OSCE remarked they “ [REDACTED]

[REDACTED] ”<sup>449</sup>.

344. These amendments were universally criticized by civil society and media-rights watchdogs, who remarked that the legislation was “ [REDACTED]

[REDACTED] ”<sup>450</sup> In particular, Ms. Ismayilova’s reporting on the Aliyev and Pashayev families was seen as the direct catalyst for the change in the law.<sup>451</sup>

345. These amendments have effectively turned Azeri enterprises into a black box, making it difficult to trace ultimate beneficial ownership of any given private company or group of companies, and to uncover illegal activity undertaken by Azerbaijan’s ruling families:

[REDACTED]

<sup>452</sup>

346. Azerbaijan’s restrictive legislation has complicated Mr. Bahari’s efforts to uncover the disposition of his seized assets.

347. The practice of passing legislation to perpetuate the ruling family’s chokehold on political opposition has been carried into the present day. In 2022, Amnesty International reported

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<sup>449</sup> **C-204** Adams, *OSCE Media Freedom Representative Concerned about Negative Developments in Azerbaijan*, OSCE, - 14 June 2012, available at: <https://www.osce.org/fom/91281>.

<sup>450</sup> **C-205** Abbasov, *Azerbaijan: Parliament Throws Veil of Secrecy over Business Sector*, Eurasianet, - 13 June 2012, at 3-4 of PDF, available at: <https://eurasianet.org/azerbaijan-parliament-throws-veil-of-secrecy-over-business-sector>.

<sup>451</sup> *Id.* at 2-3 of PDF.

<sup>452</sup> **C-206** United Nations High Commissioner for Refugees. “Freedom of the Press 2014 - Azerbaijan.” *Refworld*, - 24 August 2014, at 3 of PDF, available at: <https://www.refworld.org/docid/53fc79b19.html>. (Emphasis added.)

that new legislation placing restrictions on owners of media outlets had been enacted, further increasing state control over Azeri media.<sup>453</sup>

**B. THE ALIYEV, HEYDAROV, AND PASHAYEV FAMILIES HAVE A TRACK RECORD OF ILLICIT ENRICHMENT THROUGH THE MISUSE OF THEIR POLITICAL POWER.**

**1. Azerbaijan's system of governance is a form of neopatrimonialism, where power is concentrated on a few ruling families who blur the lines between the public and private sectors.**

348. Official U.S. Department of State cables, publicly released by Wikileaks, provide a vital understanding of the way the senior officials and ruling families in Azerbaijan co-opt government and private industry to their financial advantage. These cables represent the U.S. Department of State's most sophisticated, unvarnished intelligence on Azerbaijan, and provide an objective and reliable understanding of the regime.

349. The U.S. diplomatic cables document the Azeri ruling elite's control of both economic sectors and government:



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<sup>453</sup> **C-200** *Human Rights in Azerbaijan*, Amnesty International, at 82, available at : <https://www.amnesty.org/en/location/europe-and-central-asia/azerbaijan/report-azerbaijan/>.

On 8 February, the president enacted a new media law requiring the owners of media outlets serving Azerbaijani audiences to reside permanently in the country, making them vulnerable to censorship and persecution. The new law further increased state control over Azerbaijani media by, among other things, requiring all journalists to obtain official registration and report information "objectively", while failing to provide a clear explanation for this requirement in the law. See **C-207** Azeri Law About Media, Arts. 14, 26.

<sup>454</sup> **C-031** – Wikileaks U.S. Cable, "Azerbaijan Who Owns What, Vol. 1 - The First Lady's Family,"– 27 January 2010, at para 2.

350. These conclusions are consistent with leading scholars and open society NGO's who have characterized Azerbaijan's regime as a form of neopatrimonialism, where private, kinship-based power structures overlap with public bureaucratic-rational power structures:

[REDACTED]

<sup>455</sup>

351. Transparency International's 2015 report on the state of corruption in Azerbaijan notes that

[REDACTED]

<sup>456</sup>

352. Power is concentrated in the President and his select elite, where "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] <sup>457</sup> Such a system is supported by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] <sup>458</sup>

353. The President's select circle is "[REDACTED]

[REDACTED]

[REDACTED] <sup>459</sup> Chief among these elite kinship-based

clans are the Aliyev, Pashayev, and Heydarov families.

<sup>455</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy*, - 15 June 2016, at 65-66.

<sup>456</sup> **C-032** McDevitt, *The State of Corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine*, *Transparency International*, 2015, at 15, available at: <https://www.transparency.org/en/publications/the-state-of-corruption-armenia-azerbaijan-georgia-moldova-and-ukraine>.

<sup>457</sup> **C-208** Safiyev, Rafi, *State Capture in Azerbaijan between clan politics and 'bureaucratic oligarchy'* in *State Capture, Political Risks and International Business: Cases from Black Sea Region Countries*, (2016), at 5-6 of PDF.

<sup>458</sup> **C-208** Safiyev, Rafi, *State Capture in Azerbaijan between clan politics and 'bureaucratic oligarchy'* in *State Capture, Political Risks and International Business: Cases from Black Sea Region Countries*, (2016), at 6 of PDF.

<sup>459</sup> **C-208** Safiyev, Rafi, *State Capture in Azerbaijan between clan politics and 'bureaucratic oligarchy'* in *State Capture, Political Risks and International Business: Cases from Black Sea Region Countries*, (2016), at 6 of PDF.

## 2. The Aliyevs have enriched themselves through their hold over Azerbaijan's oil wealth.

354. The Aliyev family has dominated Azerbaijan's political sphere since 1969, when Heydar Aliyev held powerful posts within Soviet-era Azerbaijan, then later becoming President in the post-Soviet era, in 1993.<sup>460</sup> Ilham Aliyev was groomed by his father Heydar, and ultimately succeeded him as President in 2003.<sup>461</sup>
355. The Aliyev family's power derives largely from its control over the Azeri oil industry.<sup>462</sup> In 1994, Heydar Aliyev appointed Ilham Aliyev to the influential post of Vice President (and later First Vice President) of the SOCAR, which allowed the family to secure control over state oil policy.<sup>463</sup> A considerable volume of funds generated by SOCAR go to the State Oil Fund of Azerbaijan (SOFAZ), which is also directly controlled by Ilham Aliyev in his post as President. President Aliyev determines how much of the fund is transferred into the state budget and how much is spent on financing infrastructure projects.<sup>464</sup> This puts the Aliyev family at the head of an illicit patronage system: a large proportion of the rent from oil extraction finds its way into the accounts of members of the ruling families, especially via public tenders involving companies linked to these families.<sup>465</sup>
356. A similar Aliyev-linked enrichment scheme unfolded in the government's acquisition of AIMROC. AIMROC was a consortium of companies, formed by presidential decree, which was granted mining licenses to the country's West. Under the licensing agreement, AIMROC would keep 70% of profits, while the Azeri Government would keep 30%.<sup>466</sup> A 2012 investigation by the OCCRP and Radio Free Europe/Radio Liberty's Azerbaijani Services (co-authored by investigative reporter Khadija Ismayilova) established that President's Aliyev's daughters, Leyla and Arzu Aliyeva, ultimately control the consortium with a 56% stake via different offshore companies.<sup>467</sup> The Mossack Fonseca leak (the so-

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<sup>460</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy*, - 15 June 2016, at 70.

<sup>461</sup> *Id.* at 71.

<sup>462</sup> **C-033** – Hannes Meissner, "Informal Politics in Azerbaijan: Corruption and Rent-Seeking Patterns," *Caucasus Analytical Digest No. 24*, - 11 February 2011, at 6-7.

<sup>463</sup> *Id.*

<sup>464</sup> **C-020** Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy*, - 15 June 2016, at 76.

<sup>465</sup> *Id.* at 76; **C-033**.

<sup>466</sup> **C-209** *Offshore Leak: Aliyevs Control Azerbaijani Gold Mines*, RadioFreeEurope/RadioLiberty, - 4 April 2016, available at: <https://www.rferl.org/a/azerbaijan-aliyevs-control-lucrative-gold-mine/27654189.html>.

<sup>467</sup> *Id.*

called Panama Papers) revealed that Globex International LLP held 11% of Londex Resources, SA, the leading member of the AIMROC consortium (Londex held 45% of AIMROC). The AHL Companies, Arblos Management Corp., Hising Management SA, and Lynden Management Group Inc. (all incorporated in Panama) were designated Directors and/or Members (shareholders) of Globex. Further, Ms. Arzu Aliyeva and Ms. Leyla Aliyeva are both Directors for each of the AHL companies; with Ms. Arzu Aliyeva also serving as President, and Ms. Leyla Aliyeva as the Treasurer, of each of the AHL Companies.<sup>468</sup>

357. As of 2007, Caspian Fish (BVI) shared the same AHL Companies shareholders as Globex, placing Mr. Bahari's investment squarely within a complex corporate web involved in one of the most significant international corruption scandals that directly implicates the Aliyev and Pashayev families.

**3. The Pashayevs use their political influence to amass wealth in a vast commercial conglomerate.**

358. The Pashayev family also wields immense power: "[REDACTED]  
[REDACTED]"<sup>469</sup> As a ruling family, [REDACTED]  
[REDACTED]  
[REDACTED]"<sup>470</sup>

359. In addition to Vice President and First Lady Mehriban Aliyeva, a U.S. Department of State cable describes the vast influence and reach of the Pashayev family:

[REDACTED]

<sup>468</sup> C-146.

<sup>469</sup> C-031 - Wikileaks U.S. Cable, "Azerbaijan Who Owns What, Vol. 1 - The First Lady's Family,"— 27 January 2010, at ¶ 13.

<sup>470</sup> C-020 Kopecek, *How to Capture a State? The Case of Azerbaijan*, *Politické vedy*, - 15 June 2016, at 72.





alleged to control the Ministries of Taxes, Ecology and Natural Resources, Economic Development, and the State Social Protection Fund.<sup>483</sup>

366. Through his Azeri State Customs position, Minister Heydarov was able [REDACTED]  
[REDACTED]  
[REDACTED]” At the Ministry of Emergency Situations, Minister Heydarov has exploited the Ministry’s role in supervising safety on construction projects, and is reported to extort money from construction projects: building inspectors can [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]”<sup>484</sup>

367. Minister Heydarov also has been reported as using the Ministry of Emergency Services, which oversees urban planning, among other things, to expropriate property in a similar manner as was done with Mr. Bahari’s investments. The same diplomatic cable from the U.S. Embassy in Baku provides examples of Minister Heydarov’s acts in this regard. For example, the cable reported that in late 2006, the Ministry of Emergency Services shut down the construction of a large new office building for several months on the grounds of building code and safety violations costing millions of dollars. The building’s developer later said that representatives, reportedly speaking on behalf of senior officials, including Minister Heydarov, demanded a controlling stake of more than 50% ownership in the new building. There were also reports that cousins of the First Lady from the increasingly powerful Pashayev clan may have also been involved with Minister Heydarov in the efforts to obtain ownership in the company. The developer is reported to have transferred ownership to a company in the Dominican Republic, and the Ministry of Emergency Services lifted the moratorium on construction.<sup>485</sup>

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<sup>483</sup> C-020 at 74.

<sup>484</sup> C-005 at ¶ 5.

<sup>485</sup> C-018 at ¶ 6. In construction projects, for example, Minister Heydarov would obligate construction companies to buy “Ministry of Emergency Services-certified” equipment and materials, such as fire extinguishers, which came from companies he owned. Such equipment and materials were of low quality, and sold at highly inflated prices. *Id.* at ¶ 8.

368. Gilan Holding, which is reported to be owned by the Heydarov family (and now known to be controlled by the Aliyev and Pashayev families), is one of the most powerful government-connected holding companies mentioned in the U.S. State Department document. Investigative reporting has released a "[REDACTED]"<sup>486</sup>  
[REDACTED]  
(In addition to Gilan Holding, the Heydarov also controls Akkord Holding, ATA Holding, and United Enterprises International.)<sup>487</sup> Per non-profit media organization reports, several of Gilan Holding's factories were established with "[REDACTED]"

[REDACTED]"<sup>488</sup>

369. According to U.S. State Department cables,

[REDACTED]

[REDACTED]

[REDACTED]

<sup>489</sup>

370. Per the same U.S. State Department cables, Heydarov's two sons, Nijat and Tale Heydarov, expressed a desire to purchase two Gulfstream jets in 2010, valued at \$20 million each. Interestingly, planned ownership appeared to have been split between a

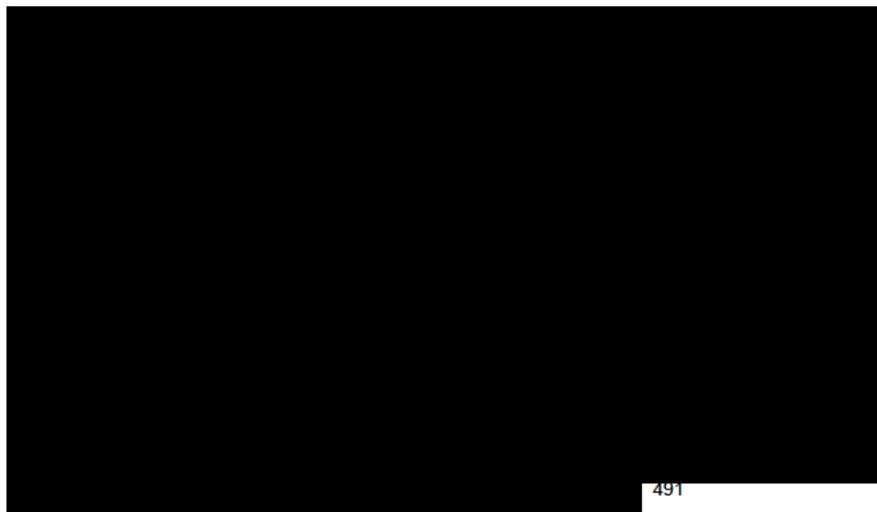
<sup>486</sup> C-036 – Meydan TV, Hafiz Babali, "The extraordinary businessman Kamaladdin Heydarov," *Meydan TV*, - 4 March 2018, at 2 *et seq.*, available at: <https://www.meydan.tv/en/article/the-extraordinary-businessman-kamaladdin-heydarov/>.

<sup>487</sup> C-020 Kopecek, *How to Capture a State? The Case of Azerbaijan*, at 74, *Politické vedy*, - 15 June 2016, at 74.

<sup>488</sup> C-036 – Meydan TV, Hafiz Babali, "The extraordinary businessman Kamaladdin Heydarov," *Meydan TV*, - 4 March 2018, at 2, available at: <https://www.meydan.tv/en/article/the-extraordinary-businessman-kamaladdin-heydarov/>.

<sup>489</sup> C-005 at ¶ 10.

Dubai-based entity registered under Nijat and Tale Heydarov's names, and Mr. Manouchehr Ahadpour Khangah:<sup>490</sup>



371. As noted above, The Guardian reported that President Aliyev's daughters reportedly hold an interest in Gilan Holding. Further, the same report names the children of both President Aliyev and Minister Heydarov as the ultimate beneficial owners of companies linked to the Maltese Pilatus Bank.<sup>492</sup> As mentioned, Ms. Caruana Galizia had reported on Pilatus Bank mere months before her assassination.
372. Numerous companies linked to Gilan Holding, Pasha Holding, and President Aliyev, do not appear on the Tax Ministry's mandatory public registry.<sup>493</sup>
373. In conclusion, the Aliyev, Pashayev, and Heydarov families hold positions of power throughout various institutional segments of Azerbaijan, such that the agendas of the State and the families are indistinguishable. Controlling these levers of government, these families eliminate the separation between the political and economic spheres, enabling vast corruption and illicit amassing of wealth funneled through family-owned, government-

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<sup>490</sup> C-005 at ¶ 8.

<sup>491</sup> C-005 at ¶¶ 8-10.

<sup>492</sup> C-160 Garsied, Juliette, and Stephanie Kirchgassner. "Azeri Ruling Families Linked to Secret Investments via Maltese Bank." *The Guardian*, Guardian News and Media, - 23 April 2018, available at: <https://www.theguardian.com/world/2018/apr/23/azerbaijan-ruling-families-linked-to-secret-investments-via-maltese-bank>.

<sup>493</sup> C-037 Babali, et al. *Nowhere To Be Found: Firms With Official Ties Absent From Key Azerbaijani Registry*, Radio Free Europe, 24 March 2017, available at: <https://www.rferl.org/a/azerbaijan-ilham-aliyev-firms-with-official-ties-absent-tax-registry/28388581.html>.

connected holding companies. These are precisely the same means and methods that were used by these same families to seize Mr. Bahari's investments.

**V. AZERBAIJAN'S LEGAL FRAMEWORK OFFICIALLY PROTECTS FOREIGN INVESTMENTS, BUT IN PRACTICE ITS STATE ORGANS HAVE FACILITATED THE UNLAWFUL TREATMENT OF MR. BAHARI'S INVESTMENTS.**

374. At the time of Mr. Bahari's investments and to today, Azeri legislation and Government administration ostensibly provided for a business and legal environment based on the rule of law. On paper, Azerbaijan has enacted robust legislation that expressly protects foreign investors and their investments and provides remedies at law. There also exists a panoply of legislation and regulations, as well as Government ministries and agencies, with broad oversight over commercial activity in Azerbaijan. This legal framework should have provided a stable and reliable business and legal environment for investors. The reality in Azerbaijan does not however match its promised legal framework. The rule of law is entirely malleable when applied to the interests of Azerbaijan's ruling elite, creating a kleptocratic system of governance that facilitates State organs and private individuals engaging in unlawful activity with impunity.
375. The following sections set out the Azeri legislation and administration applicable to foreign investments and commercial activity in Azerbaijan. As will be demonstrated, Azeri State organs with oversight for administering these laws and regulations actively facilitated and engaged in the unlawful treatment of Mr. Bahari and investments in clear breach of Azerbaijan's obligations under the Treaty.

**1. Azerbaijan adopted attractive foreign investment legislation.**

376. Starting shortly after its independence in 1991, Azerbaijan promulgated a number of laws specifically aimed at attracting foreign investment through specific guarantees and protection. These laws include, but are not limited to, the following:
- i. Law of the Azerbaijan Republic on Investment Activity, Law No. 952 of 1995 ("**Investment Activity Law**");<sup>494</sup>

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<sup>494</sup> **C-210** Investment Activity Law (1995); replaced by the Law of the Republic of Azerbaijan on "Investment Law" dated 22 June 2022 (#551-VIQ) (**C-211 "Current Investment Activity Law "**), which entered into force on 28 July 2022.

- ii. Law on the Protection of Foreign Investments, Law No. 57 of 1992 (“**Foreign Investment Law**”).<sup>495</sup>

377. These laws were ostensibly meant to provide significant protections to Mr. Bahari and his investments, as well as clear remedies grounded in compensation, including lost profits, should the State fail to treat Mr. Bahari and his investments lawfully.<sup>496</sup>
378. Azerbaijan actively denied Mr. Bahari and his investments any of these protections or the compensation due.

**a. The Investment Activity Law protects foreign investment from State interference.**

379. The Investment Activity Law is intended to attract investment in the Azerbaijan economy and, *inter alia*, ensure the protection of rights of all investors, independent of their property form.<sup>497</sup> Citizens and legal entities of foreign States are allowed to engage in investment activities,<sup>498</sup> and they enjoy equal rights independent of the form of investment property or kind of economic activity.<sup>499</sup>
380. The Investment Activity Law provides certain specific protections:
- i. Article 17 provides that the general regulatory framework that exists at the time of investment will not be significantly altered,<sup>500</sup> and that State bodies and their executive officers will not interfere with an investment except as permitted by legislation.<sup>501</sup> Any such interference requires payment of compensation.<sup>502</sup>
  - ii. Article 18 provides specific protection to foreign investments, including that investments are ensured by the relevant legislation of Azerbaijan, as well as by international agreements with other States (e.g., BITs). Foreign investors are also

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<sup>495</sup> **C-212** Foreign Investment Law (1992); replaced by the above mentioned **C-211** Current Investment Activity Law.

<sup>496</sup> **C-211** Current Investment Activity Law provides many of the same stated goals relating to “protection of investors’ rights and legal interests, as well as investments” (Art. 5.2.2), including: “prohibits unreasonable and discriminatory treatment, intimidation, harassment and violence against investors and their investments” (Art. 12.1); a most favorable regime where “a foreign investor and his investment in similar situations, which is not less favorable than the regime applied to other foreign investors and their investments” (Art. 12.3); Guarantee against nationalization and acquisition of investment by the state (Art. 13); and compensation for damages to investors by State organs (Art. 16).

<sup>497</sup> **C-210** Investment Activity Law, Preamble.

<sup>498</sup> **C-210** Investment Activity Law, Art. 4(3).

<sup>499</sup> **C-210** Investment Activity Law, Art. 6(1).

<sup>500</sup> **C-210** Investment Activity Law, Art. 17; *see also* Art. 18(2).

<sup>501</sup> **C-210** Investment Activity Law, Art. 17.

<sup>502</sup> **C-210** Investment Activity Law, Art. 17.

guaranteed equal legal treatment, and shall be protected from measures of discriminatory nature which may hinder management, use, or termination of their investment.<sup>503</sup> Further, investments in Azerbaijan are protected from confiscation, nationalization, or other similar measures that are not carried out on the basis of legislative acts of Azerbaijan. Any such taking must be compensated by full payment of the damage caused to the investor, including lost profit.<sup>504</sup>

- iii. Article 20 provides that the suspension or termination of investment activity is permitted only by the investor themselves or by a competent State body, but only for specific enumerated reasons.<sup>505</sup>

381. The Investment Activity Law also provides that international treaties to which Azerbaijan is a party have priority over domestic legislation, where such international treaties establish norms different from the ones established under relevant domestic legislation.<sup>506</sup>

**b. The Foreign Investment Law provides full legal protection for foreign investors.**

382. The Foreign Investment Law is also aimed at the attraction of and efficient use of foreign investment, and defines the legal and economic principles of foreign investment, and guarantees protection of rights of foreign investors in Azerbaijan.<sup>507</sup> Foreign persons and entities that are permitted to invest in Azerbaijan is broadly defined.<sup>508</sup>

383. The Foreign Investment Law provides certain specific protections:

- i. Article 3 provides that foreign investment may be made in any kind of property and proprietary rights, including participation in enterprises with Azeri legal entities and citizens, local enterprises owned by foreign investors, ownership in tangible and intangible property, and rights for the use of land or natural resources or other proprietary rights.<sup>509</sup>

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<sup>503</sup> C-210 Investment Activity Law, Art. 18(1).

<sup>504</sup> C-210 Investment Activity Law, Art. 18(3).

<sup>505</sup> C-210 Investment Activity Law, Art. 20.

<sup>506</sup> C-210 Investment Activity Law, Art. 21.

<sup>507</sup> C-212 Foreign Investment Law, Preamble.

<sup>508</sup> C-212 Foreign Investment Law, Art. 2.

<sup>509</sup> C-212 Foreign Investment Law, Art. 3.

- ii. Article 9 provides that foreign investment in Azerbaijan enjoys full legal protection under Azerbaijan's laws, legislation, and international agreements by the State.<sup>510</sup>
- iii. Article 11 protects against nationalization of foreign investments except in exclusive cases of damage to State interests or the citizens of Azerbaijan, and must be approved by the Supreme Council of Azerbaijan. It also protects against confiscation except for *inter alia* natural disasters, epidemics, or other force-majeure situation, and must be approved by the Cabinet of Ministers of Azerbaijan. In either circumstance, a foreign investor is entitled to immediate, adequate, and efficient compensation which corresponds to the real value of the investment at the time of the decision on nationalization or confiscation.<sup>511</sup>
- iv. Article 12 provides that foreign investors are entitled to compensation for damage caused by the actions of State bodies or their officials contrary to Azerbaijan legislation, including payment of lost profits. Disputes about the sum of such compensation are to be resolved in domestic court or pursuant to international arbitration, including if available by an international treaty to which Azerbaijan is a party.<sup>512</sup>
- v. Articles 13 and 14 provide that upon termination of investment activity a foreign investor has the right to get access to its investments and incomes connected with investments in monetary forms at real cost at the moment of termination.<sup>513</sup> After payment of appropriate taxes and fees, foreign investors are guaranteed the transfer abroad of income and other amounts legally received in foreign currency in connection with the investment, including compensation and amounts to reimburse losses.<sup>514</sup>

384. The Foreign Investment Law also provides that international treaties to which Azerbaijan is a party have priority over domestic legislative where such international treaties establish norms different from the ones established under relevant domestic legislation.<sup>515</sup>

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<sup>510</sup> **C-212** Foreign Investment Law, Art. 9.

<sup>511</sup> **C-212** Foreign Investment Law, Arts. 11 and 12.

<sup>512</sup> **C-212** Foreign Investment Law, Art. 12.

<sup>513</sup> **C-212** Foreign Investment Law, Art. 13.

<sup>514</sup> **C-212** Foreign Investment Law, Art. 14.

<sup>515</sup> **C-212** Foreign Investment Law, Art. 43.

## 2. The Ministry of Justice failed to perform its broad oversight responsibilities over Mr. Bahari as an investor, and his investments, including Caspian Fish.

385. The Ministry of Justice was one of the principal State organs responsible for oversight and administration of foreign investment and investors at the time of Mr. Bahari's investments in Azerbaijan. In particular, from 1996 to 2007, under the Foreign Investment Law the Ministry of Justice was the registration authority responsible for the registration of foreign legal entities – including representative offices of foreign legal entities like Caspian Fish – on the State Registry of Legal Entities.<sup>516</sup>
386. Within 10 days of registering a company on the State Registry of Legal Entities, the registration authority (i.e., the Ministry of Justice) was required to provide the registration information to the Ministry of Finance; the State Statistical Committee; and to the state tax authority where the enterprise is located.<sup>517</sup>
387. The Ministry of Justice was also responsible for updating the State Registry of Legal Entities if there was a change in registration data of a legal entity (e.g., shareholder change, change in legal name or legal address, etc.) or its organizational form (e.g., directors), and informing the aforementioned ministry, committee, and tax authority. A registered enterprise was responsible for providing this updated information within 10 days of the change.<sup>518</sup>
388. If a legal entity was removed from the Registry, the registration authority (i.e., Ministry of Justice) was to provide relevant State bodies with a notification.<sup>519</sup>
389. The Ministry of Justice registered Caspian Fish's representative office on 27 April 1999 under Certificate No. 496.<sup>520</sup> The Ministry of Finance, the State Statistical Committee, and the state tax authority where Caspian Fish was located should all have been notified of Caspian Fish's registration and associated details. From that point forward, Caspian Fish

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<sup>516</sup> **C-212** Foreign Investment Law, Art. 18; see **C-213** Decree on Application of the Former State Registration Law dated 17 December 1996, No. 521: provides that the power of the “relevant executive authority” referred to in Art. 18 of **C-212** Foreign Investment Law shall be exercised by the Ministry of Justice.

<sup>517</sup> Law of the Republic of Azerbaijan on “Enterprises” dated 1 July 1994, #847 (**C-214 “Law on Enterprises”**), Art. 18; Law of the Republic of Azerbaijan on “State Registration of Legal Entities” dated 6 February 1996, #17-IQ (**C-215 “Former State Registration Law”**), Art. 18.

<sup>518</sup> **C-214** Law on Enterprises, Art. 18; **C-215** Former State Registration Law, Art. 18.

<sup>519</sup> **C-215** Former State Registration Law, Art. 19.

<sup>520</sup> **C-003** Charter of the Representative Office of Caspian Fish Co. Inc (BVI), at pp. 1 and 6 of PDF (“Registered by Board of Ministry of Justice of Azerbaijan Republic”).

had to inform the Ministry of Justice within 10 days of any change to Caspian Fish's registration data, including its charter (e.g., directors), shareholding, legal name and location. Any such change was transmitted to the aforementioned State organs. These reportable events included, but were not limited to, the following:

390. the purported transfer of Mr. Bahari's shares to Mr. Khanghah;<sup>521</sup>
391. the numerous share issuances and transfers to the various companies ultimately owned or effectively controlled by Messrs. Heydarov and/or Aliyev and/or Pashayev and others, e.g., Southmead, Carnivore, Lacey, Lanisten, and the AHL Companies;
392. the purported removal of Mr. Bahari as Director, and any similar organizational changes, e.g., Mr. Khanghah's resignation as Director and Mr. David Pow appointment as the same.
393. It is not known if Caspian Fish satisfied these mandatory reporting requirements. If it did not, any renewal of Caspian Fish's registration should have been rejected, and potentially any transactions it engaged in should be reversed. In fact, the Law on Enterprises expressly provides that an enterprise that is not properly registered, including mandatory reporting information, may be forced to disgorge its profits.<sup>522</sup>
394. Despite his best efforts, Mr. Bahari has been unable to access this the information held within the State Ledger for Caspian Fish (BVI). Mr. Bahari will seek and request document disclosure in this Arbitration on all historical and current entries for Caspian Fish (BVI) on the State Ledger of Legal Entities. Mr. Bahari will do the same for Caspian Fish MMC, ASFAN, and Shuvalan Shirniyat JSC, for the reasons explained above.<sup>523</sup>
395. The Ministry of Justice's responsibility extended to oversight of registered legal entities in Azerbaijan. Along with the Ministry of Economic Development (discussed below), the Ministry of Justice should have investigated any discrepancies or other failures to report information. This oversight responsibility also extended to the other State organs specifically identified as having to be updated of any changes to the State Ledger, the Ministry of Finance; the State Statistical Committee; and to the state tax authority where an enterprise is located.

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<sup>521</sup> See [Section III.F.3 Stage 1](#) involved the falsified transfer of Mr. Bahari's 400,000 shares, and the further falsified resignation of Mr. Bahari as Director, *supra*.

<sup>522</sup> [C-214](#) Law on Enterprises, Art. 18.

<sup>523</sup> From 2008 to 2019, the Ministry of Taxes had responsibility and authority over the on the State Registry of Legal Entities, including representative offices of foreign commercial entities and entities with foreign investments in Azerbaijan, as well as the associated responsibility to update the State Registry accordingly.

396. More broadly, the Ministry of Justice was also responsible for, *inter alia*, oversight of the development of the judiciary; carrying out and supervising law-enforcement; drafting and reviewing legal regulations and laws; and ensuring the activities of the notary public (discussed below).<sup>524</sup>
397. In these capacities, and in light of its specifically designated role as the registration authority for foreign investors under Article 18 of the Foreign Investment Law, the Ministry of Justice was responsible for ensuring that the protections afforded by Azeri law to foreign investors were enforced. As described above, this included numerous protections under the Investment Activity Law and the Foreign Investment Law, and in particular, the protection against State bodies and their executive officers interfering with an investment,<sup>525</sup> and protection against damage caused by the actions of State bodies or their officials contrary to Azerbaijan legislation.<sup>526</sup>
398. Caspian Fish's registration on the State Register of Legal Entities put the Ministry of Justice, and numerous other ministries, on notice of his foreign investment. His investment was also broadly known within the Government (including through Messrs. Aliyev and Heydarov's direct involvement), business community, and the press. Accordingly, the Ministry of Justice had a positive obligation to ensure Mr. Bahari was treated lawfully under Azeri legislation, not to mention that Caspian Fish adhere to its registration and reporting requirements under the Law on Enterprises and the Foreign Investment Law. In this role, the Ministry of Justice not only failed to protect Mr. Bahari and his investments under Azeri law, and under the Treaty, but took affirmative steps in facilitating the corporate transfer of Caspian Fish's assets to the Caspian Fish MMC entity, which was also subject to the same registration requirements discussed above. This is in addition to the Ministry of Justice's active involvement, or decision not to intervene and stop, the numerous instances of unlawful treatment of Mr. Bahari and his associates spanning more than 20 years.
399. Each and every one of the above responsibilities, requirements, and considerations equally applies to Coolak Baku (and Shuvalan Sugar), as a foreign-owned company that

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<sup>524</sup> **C-216** Resolution #243 of Council of Ministers of the Azerbaijan SSR on approval of the Regulation on the Ministry of Justice of the Azerbaijan SSR dated 28 July 1972 . Please note that this Regulation was renewed in 2006 by **C-217** Presidential Decree #391 on approval of the Regulation on the Ministry of Justice of the Republic of Azerbaijan dated 18 April 2006.

<sup>525</sup> **C-210** Investment Activity Law, Art. 17.

<sup>526</sup> **C-212** Foreign Investment Law, Art. 12.

was subject to the Ministry of Justice's oversight and administration, and registration on the State Ledger.<sup>527</sup>

**3. Azerbaijan's Antitrust and Notary Public Laws Should Have Prevented the Transfer of the Investment's Shares and Assets.**

400. The transfer of shares in or assets owned by Mr. Bahari's investments in Azerbaijan were subject to Azeri laws on antitrust and certification by a notary public. If properly applied by Azerbaijan, these laws should have prevented the transfer of Mr. Bahari's shares and assets in his investments to Caspian Fish MMC and ASFAN, and/or any other transfers, as well as alerted authorities of the corporate and other improprieties surrounding Mr. Bahari's investments in Azerbaijan that were widely publicized and worth tens of millions of U.S. dollars.

**a. Azerbaijani Antitrust Law regulates transfers of shares in a legal entity.**

401. In addition to the reporting requirements to the Ministry of Justice discussed above, transfers of shares in a legal entity or in immovable assets are subject to antitrust review and approval by the Antitrust Authority of Azerbaijan<sup>528</sup> in specific circumstances.

402. Under Azerbaijani Antitrust Law,<sup>529</sup> the following transactions fall under the merger control regime (primary conditions):

403. acquisition of more than 20% of voting shares (participation interests) of a target by a transferee (including a group of transferees or a group of entities controlling each other's assets);

404. transfer to a transferee of the right of ownership of or the right to use the target's assets, if the book value of such assets accounts for more than 10 percent of the target's total fixed and intangible assets before the transfer; or

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<sup>527</sup> **C-001** Coolak Baku Joint Venture Agreement, at pp. 1 and 12 of PDF ("1.4 Activity duration of the joint venture is unlimited since its date of registration in the Ministry of Justice of Azerbaijan Republic") and p. 17 of PDF, Registration by Ministry of Justice.

<sup>528</sup> State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy (and its predecessors).

<sup>529</sup> Art. 13-1, Law of the Republic of Azerbaijan on "Antitrust Activity" dated 4 March 1993, #526 (**C-218 "Antitrust Law"**).

405. acquisition of the right to determine the target's business activities or the right to manage the target by a transferee (including a group of transferees or a group of entities controlling each other's assets).<sup>530</sup>
406. The filing and approval requirement under the Azerbaijani Antitrust Law for any of the above transactions is triggered if (secondary conditions):
- i. the combined book value of assets of both the transferee and the target exceeds 75 thousand times the Azeri minimum wage;<sup>531</sup>
  - ii. the transferee's or the target's share of a relevant commodity market in Azerbaijan exceeds 35%; or
  - iii. the transferee controls the activity of an economic entity (transferor) alienating the shares.<sup>532</sup>
407. If the transaction falls within one of the primary conditions *and* the secondary conditions, the Antitrust Authority must approve the transaction before the envisaged completion date.<sup>533</sup> To obtain Antitrust Authority consent, parties must apply with a motion and submit supporting documents, such as the sale agreement and/or decision on the transaction, and documents confirming the volume of generated income from sale of goods/services in the relevant market. The Antitrust Agency can reject the application if all the necessary information and supporting documents are not submitted. The Antitrust Agency shall inform the applicant(s) about its decision in writing within 15 days of receipt of the necessary documents.
408. As established above, Caspian Fish was subject to multiple share issuances, transfers, and dilutions that required mandatory notice to the Ministry of Justice. For example, the purported transfer of Mr. Bahari's shares to Mr. Khanghah met a *primary condition* ("acquisition of more than 20% of voting shares" - Mr. Bahari had 40%) and a *secondary condition* ("share of a relevant commodity market in Azerbaijan exceeds 35%" - Caspian Fish was the dominant company in its market), and were thus subject to review and approval by the Antitrust Authority.<sup>534</sup>

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<sup>530</sup> **C-218** Antitrust Law, Art. 13-1(1).

<sup>531</sup> **C-219** Azerbaijani Minimum Wages 2001 – 2023.

<sup>532</sup> **C-218** Antitrust Law, Art. 13-1(2).

<sup>533</sup> **C-218** Antitrust Law, Art. 13-1(3).

<sup>534</sup> See e.g., **C-220** Antimonopoly Certificate for Caspian Fish Co Azerbaijan LLC – 4 October 2007.

409. The Antitrust Authority had an affirmative obligation to investigate the transfer of Caspian Fish’s shares, taking into consideration all Azeri law, including protections of foreign investors and investments.
410. Additionally, the Antitrust Authority was responsible for reviewing and approving the transfer of assets from Caspian Fish to the Caspian Fish MMC entity. That transfer would have met a *primary* condition (“transfer to a transferee of the right of ownership of or the right to use the target’s assets”) and a *secondary* condition (“share of a relevant commodity market in Azerbaijan exceeds 35%”).
411. In fact, the Antitrust Authority did review and monitor Caspian Fish MMC. Posted on the Caspian Fish MMC website is a 4 October 2007 document from the “State Service for Antimonopoly Policy and Protection of Consumers” certifying that “Caspian Fish Co Azerbaijan LLC” is “[REDACTED]”.<sup>535</sup>
412. As with numerous other State organs, the Antitrust Authority must have approved transactions related to Mr. Bahari’s shares and assets in his various investments that should have been stopped or raised administrative or judicial investigations.

**b. Transfers of share must be certified by a Notary Public and registered.**

413. The transfer of shares in a company registered in Azerbaijan must be certified by a notary public.<sup>536</sup> Transfer of the ownership right over the shares becomes effective on the date of the registration of the transfer of the shares with the competent state registration body<sup>537</sup> of the Republic of Azerbaijan.<sup>538</sup> As discussed above, the Ministry of Justice (and from 2008 the Ministry of Taxes).
414. In particular, the transacting parties (i.e., buyer of the shares or company) are required to submit a certified copy of the share sale-purchase agreement (along with other necessary documents) to the State Register of Legal Entities to effect the shareholder change.<sup>539</sup>

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<sup>535</sup> **C-220** State Service for Antimonopoly Policy and Protection of Consumers Certificate for Caspian Fish Co Azerbaijan LLC - 4 October 2007.

<sup>536</sup> **C-214** Law on Enterprises, Art. 10; **C-221** Current State Registration Law, Art. 9; **C-222** Civil Code, § 6.

<sup>537</sup> The Ministry of Justice until December 2007; then, from January 2008, the State Tax Service (formerly known as the Ministry of Taxes).

<sup>538</sup> **C-222** Civil Code, Art. 47.3; **C-221** Current State Registration Law, Art. 9.

<sup>539</sup> **C-215** Former State Registration Law, Art. 7; **C-214** Law on Enterprises, Art. 18; **C-221** Current State Registration Law, Art. 9.

415. If these requirements were not completed, the Ministry of Justice, and other State organs, should have denied the transfer of shares and performed an investigation as part of their oversight responsibilities.

**4. Other Ministries and Agencies had Oversight over Mr. Bahari and His Investments.**

416. In addition to the Ministry of Justice and other agencies discussed above, a significant number of other Azeri ministries and agencies had oversight over Mr. Bahari and his investments, including after his expulsion from Azerbaijan and until today. These ministries and agencies are summarily reviewed below.

**a. The Ministry of Trade oversees conditions for foreign investors.**

417. From 1997 to 2001 the Ministry of Trade was responsible for *inter alia* creating equal conditions for all residents and foreign investors in the domestic market of Azerbaijan; participating in the implementation of investment projects and the attraction of investments in Azerbaijan; and making proposals for creating favorable conditions for foreign investors.<sup>540</sup>

418. Each of these Ministry of Trade functions, amongst others, applied to Mr. Bahari and his investments in Azerbaijan. Mr. Bahari's deportation from Azerbaijan, the cessation of his investment activities in Azerbaijan, and the eventual physical and legal taking of his investment, should have engaged the Ministry of Trade's responsibility.

**b. The Ministry of Economic Development has oversight on investments and entrepreneurship.**

419. From 2001 to 2014 the Ministry of Economic Development was the central executive body of Azerbaijan that formed and implemented State policy in, *inter alia*, the fields of trade, investment making, entrepreneurship development, monopoly restriction, and competition development.<sup>541</sup> The Ministry of Economic Development had oversight over the Antitrust Authority.

420. As part of its many duties, the Ministry was responsible for:

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<sup>540</sup> Regulation on the Ministry of Trade approved by the Decree of the President #626 dated 26 July 1997 (C-225 "Regulation on the Ministry of Trade"), Art. 4.1,

<sup>541</sup> Regulation on the Ministry of Economic Development approved by the Decree of the President #495 dated 11 June 2001 (C-227 "Regulation on the Ministry of Economic Development").

- i. supervising and suspending legal entities and individuals who violated the existing legislation in the field of investment activity, and informing the relevant State bodies to take appropriate measures;<sup>542</sup>
  - ii. representing Azerbaijan in direct negotiations with foreign investors and protected economic interests of the country;<sup>543</sup>
  - iii. taking appropriate measures to resolve investment disputes in accordance with the procedure established by legislation;<sup>544</sup> and
  - iv. maintaining records of enterprises with foreign investments in Azerbaijan, conducted analysis, researches and other necessary activities in order to ensure identification and elimination of problems in this field.<sup>545</sup>
421. The Ministry of Economic Development was therefore expressly responsible for addressing and rectifying the unlawful treatment of Mr. Bahari and his investment, including in accordance with the Foreign Investment Law and the Investment Activity Law. As with all other State organs, there is every indication that the Ministry of Economic Development instead permitted the unlawful treatment of Mr. Bahari and his investments.

**c. The Ministry of Taxes registers representative offices of foreign entities.**

422. From 2008 to 2019, the Ministry of Taxes took over from the Ministry of Justice the responsibility of registration of entities, including representative offices of foreign commercial entities and entities with foreign investments in Azerbaijan, on the State Registry of Legal Entities, including the associated responsibilities to update State Registry of changes to legal entities. It should therefore have received information on, amongst other things, any transfer of shares in Caspian Fish during this period.
423. The State Tax Service (formerly known as the Ministry of Taxes) was also the main tax administration authority, which provides tax identification numbers, collects taxes,

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<sup>542</sup> **C-227** Regulation on the Ministry of Economic Development, Art. 10.56.

<sup>543</sup> **C-227** Regulation on the Ministry of Economic Development, Art. 10.62.

<sup>544</sup> **C-227** Regulation on the Ministry of Economic Development, Art. 10.65.

<sup>545</sup> **C-227** Regulation on the Ministry of Economic Development, Art. 10.67.

receives tax returns from taxpayers.<sup>546</sup> Each of these Ministry of Taxes functions, amongst others, applied to Mr. Bahari and his investments in Azerbaijan.

**d. The State Tax Service registers representative offices of foreign entities.**

424. From 2019 to present day the State Tax Service under the Ministry of Economy (formally known as the Ministry of Taxes) is the Azeri Government body responsible for registration of entities, including representative offices of foreign commercial entities and entities with foreign investments in Azerbaijan. This includes maintaining a public record of registered representative offices of foreign commercial legal entities and related supervision.<sup>547</sup> Depending on the particular type of activity performed by the representative office, other Governmental authorities may also exercise supervision. Each of these State Tax Service functions, amongst others, applies to Mr. Bahari and his investments in Azerbaijan.

**e. The Ministry of Economy has oversight into the approval and registration process of foreign commercial entities.**

425. The Ministry of Economy has been a “one stop shop” providing the vast majority of business licenses since 2016.<sup>548</sup> Additionally, as the supervising body of the State Tax Service, the Ministry of Economy is aware of the approval and registration process of the registration of the representative office of a foreign commercial entities and domestic entities according to the rule of subordination. Each of these Ministry of Economy functions, amongst others, applies to Mr. Bahari and his investments in Azerbaijan.

**f. Other Ministries and Agencies have relevant oversight and supervision.**

426. In addition to the above, a number of additional Azeri ministries and agencies had oversight and supervision of Mr. Bahari and his investments in Azerbaijan, including in the years subsequent to the seizure by Azerbaijan of those investments. This includes, but is not limited to, the following: Ministry of Agriculture;<sup>549</sup> Ministry of Ecology and Natural Resources; Ministry of Internal Affairs; State Migration Service; Ministry of Foreign Affairs;

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<sup>546</sup> **C-228** Presidential Decree #1017 - 12 May 2020 and **C-229** Presidential Decree #454 - 29 March 2001

<sup>547</sup> **C-230** Presidential Decree #845, Art. 1.

<sup>548</sup> **C-231** Decree on Application of the Licenses and Permits Law, Art. 2.3.1.

<sup>549</sup> See **C-083** Coolak Baku License, Ministry of Agriculture of Azerbaijan – 26 April 1999.

State Service for Property Issues; The State Statistics Committee; and the Cabinet of Ministers.

427. Mr. Bahari will seek and request document disclosure in this Arbitration from all of the above and additional Azeri ministries relevant to his claim.

**5. Azerbaijan and its State organs continue to facilitate and support the seizure of Mr. Bahari's investments.**

428. In view of the foregoing, it is clear that Azerbaijan and its various State organs were not only complicit in the reprehensible treatment of Mr. Bahari and the seizure and taking of his investment, but the State organs were necessarily involved in facilitating and approving the ensuing corporate and asset transfers to Caspian Fish MMC, ASFAN, Shuvalan Shirniyat JSC, Gilan Holdings, and many others.

429. These transactions, and the necessary Government authorizations, would not have occurred but for the exercise of State authority and a willful blind eye to the injustice and harm these actions perpetuate and support.

430. Indeed, these wrongful acts continue today in relation to at least Caspian Fish, as confirmed by the former Caspian Fish Director, David Pow, in his 2001 response to a request by the BVI Registrar FMCS to provide KYC on Caspian Fish:

[REDACTED]

[REDACTED]

[REDACTED] 550

[REDACTED] 551

431. Clearly, Azerbaijan and its State organs continue to facilitate and support the harm inflicted on Mr. Bahari and his investments.

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550 C-102 at p. 11.

551 C-102 at p. 11.

## **VI. THE TRIBUNAL HAS JURISDICTION TO DECIDE MR. BAHARI'S CLAIMS**

432. Mr. Bahari sets forth below the Tribunal's jurisdiction under the Treaty over the Parties, the subject matter of its claims, and the dispute. Azerbaijan has indicated that it will assert certain jurisdictional objections.<sup>552</sup> Mr. Bahari reserves his right to address any objections Azerbaijan maintains and fully particularizes in this Arbitration.

### **A. MR. BAHARI IS A PROTECTED INVESTOR UNDER THE TREATY (*RATIONE PERSONAE*)**

433. As an Iranian national,<sup>553</sup> Mr. Bahari is a protected "investor" under Article 1(2)(a) of the Treaty. As a protected investor, Mr. Bahari was entitled to submit his dispute with Azerbaijan to international arbitration under Article 10(5) of the Treaty.

### **B. MR. BAHARI'S INVESTMENTS ARE PROTECTED UNDER THE TREATY (*RATIONE MATERIAE*)**

#### **1. Mr. Bahari's investments fall within the scope of the Treaty's broad definition of "Investment" at Article 1.**

434. This dispute arises out of investments Mr. Bahari made in Azerbaijan that the Treaty protects. Article 1(1) contains a broad, non-exhaustive list of assets which fall within the definition of "investment" for the purpose of the Treaty:

1. The term "investment" in conformity with the hosting Party's laws and regulations, shall include every kind of assets in particular:

(i) shares, stocks or any other form of participation in companies,

(ii) returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment,

(iii) movable and immovable property, as well as any other rights related thereto such as mortgages, liens, pledges and usufructs,

(iv) industrial and intellectual property rights such as copyrights, patents, licenses, industrial designs, technical processes, as well as trade marks and names, goodwill and know-how, [and]

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<sup>552</sup> Respondent's Response to the Notice of Arbitration, ¶ § 4 et seq.

<sup>553</sup> **C-072** Iranian Passport of Moghaddam Reza Khalilpour Bahari - 26 May 2014.

(v) business rights conferred by law or by contract, including rights to search for, cultivate, extract or exploit natural resources in the territory of each Party.

435. Mr. Bahari's assets in Azerbaijan qualify as investments for the purposes of Article 1(1) of the Treaty ("**Qualifying Investments**").
436. Mr. Bahari owned and controlled a 40% shareholding in Caspian Fish (BVI), which established a representative office in Azerbaijan on 27 April 1999 and registered by the Ministry of Justice on the State Registry of Legal Entities.<sup>554</sup> On that same day, Mr. Bahari entered into a Shareholder Agreement pertaining to Caspian Fish and its representative office in Azerbaijan. This Shareholder Agreement conferred Mr. Bahari rights by contract and recognized his interests in the financial performance of the Caspian Fish; his power and authority to manage and represent Caspian Fish; and that Caspian Fish had been issued all necessary State permits and concessions.<sup>555</sup> Mr. Bahari also constructed and financed Caspian Fish for more than two and a half years. He purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how. Caspian Fish was also issued a license by the Government to exploit natural resources in Azerbaijan. Accordingly, Mr. Bahari's participation, rights, and interests in Caspian Fish constitute Qualifying Investments.
437. Mr. Bahari also owned and participated in Coolak Baku, a joint venture formed and licensed under the laws of Azerbaijan and registered by the Ministry of Justice on the State Registry of Legal Entities.<sup>556</sup> Under the Coolak Baku JVA, Mr. Bahari was entitled to business rights, including claims to money and rights to legitimate performance having financial value. Mr. Bahari also personally financially contributed to the Coolak Baku JV for many years. For example, he purchased land and equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how. Accordingly, Mr. Bahari's participation and interests in the Coolak Baku joint venture constitute Qualifying Investments.
438. Mr. Bahari participated in the Shuvalan Sugar as part of the Coolak Baku JV, which entitled him to business rights, including claims to money and rights to legitimate performance having financial value. Mr. Bahari also personally contributed to the Shuvalan Sugar

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<sup>554</sup> **C-003** Charter of Representative Office of Caspian Fish Co., Inc. dated 27 April 1999.

<sup>555</sup> **C-004** Shareholders Agreement for Caspian Fish Co. Inc. dated 27 April 1999.

<sup>556</sup> **C-001** Coolak Baku Joint Venture Agreement dated 23 January 1998.

Refinery for many years. He purchased equipment, constructed immovable property, and provided industrial and technical process design, as well as goodwill and know-how. Accordingly, Mr. Bahari's participation and interests in the Shuvalan Sugar Refinery constitute Qualifying Investments.

439. Mr. Bahari's ownership and contribution to the Ayna Sultan Real Estate and the Persian Carpets, as movable and immovable property, respectively, constitute Qualifying Investments.

440. Accordingly, Mr. Bahari's substantial investments in Azerbaijan are protected under the Treaty at Qualifying Investments and this Tribunal has jurisdiction *ratione materiae*.

## **2. Mr. Bahari obtained all necessary approvals for his investments.**

441. All of Mr. Bahari's investments received express or de facto Government approvals that reflected his status as a foreign national making investments in Azerbaijan:

- i. The Ministry of Justice reviewed and registered the charter of Caspian Fish's representative office in Azerbaijan on the State Register of Legal Entities.<sup>557</sup>
- ii. The Shareholders Agreement for Caspian Fish and its representative office expressly states that [REDACTED]  
[REDACTED]<sup>558</sup>
- iii. The Ministry of Justice reviewed the Coolak Baku JV, which expressly contemplates an investment by Mr. Bahari, an Iranian national, in compliance with the legislation of Azerbaijan,<sup>559</sup> and registered the company on the State Register of Legal Entities.
- iv. As part of the Coolak Baku JV, Shuvalan Sugar is covered by the same Ministry of Justice approvals and registration.
- v. The Azeri Government issued a Technical Passport to Mr. Bahari that authorized his ownership of Ayna Sultan, real property in Azerbaijan.<sup>560</sup>

<sup>557</sup> **C-003** Charter of Representative Office of Caspian Fish Co., Inc. dated 27 April 1999.

<sup>558</sup> **C-004** Shareholders Agreement for Caspian Fish Co. Inc. dated 27 April 1999.

<sup>559</sup> **C-001** Coolak Baku Joint Venture Agreement dated 23 January 1998.

<sup>560</sup> **C-016** Ayna Sultan Registration Voucher and Technical Passport – 29 May 1996, PDF pp. 3-6

- vi. The Azeri Government knew about the Persian Carpets and Mr. Bahari's intent and preparations to use them for a new future museum in Baku.
442. To the extent required under Article 9 of the Treaty, Mr. Bahari has established a prima facie case that his investments are Qualifying Investments that the Azeri Government approved and that Treaty protects. As discussed below, the Respondent cannot establish that Mr. Bahari did not make Qualifying Investments or that those should not be afforded protection by the Treaty.<sup>561</sup>

**3. Mr. Bahari's investment did not require specific approvals to receive Treaty protection under Article 9.**

443. Article 9 of the Treaty provides that:

This Agreement shall only apply to the investments approved by the competent authorities of the host Party.

[...]

The competent authority in the Republic of Azerbaijan is:

Ministry of Foreign Economic Relations  
S. Gurbanov Str. 4  
Baku  
the Republic of Azerbaijan<sup>562</sup>

444. Notwithstanding this provision, Mr. Bahari's investments did not require specific or written approval from the Ministry of Foreign Economic Relations to be afforded protection under the Treaty.
445. First, the Ministry of Foreign Economic Relations did not exist at the time Mr. Bahari's investments were made or registered. The Ministry was established by Decree of the President of the Republic of Azerbaijan by "Establishment of the Ministry of Foreign Economic Relations of the Republic of Azerbaijan" (Act No. 819 of 2 June 1992).<sup>563</sup> Thus,

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<sup>561</sup> A number of tribunals have held that a respondent bears the burden of proof with respect to the facts alleged in its jurisdictional objections. See, e.g., *Desert Line Projects LLC v. The Republic of Yemen*, ICSID Case No. ARB05/17, Award, 6 February 2008 ("**Desert Line v. Yemen**") (CLA-031), ¶ 105 ("the Respondent has not come close to satisfying the Arbitral Tribunal that the Claimant made an investment which was either inconsistent with Yemeni laws or regulations or failed to achieve acceptance by the Respondent."); *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010 ("**Hamester v. Ghana**") (CLA-032), at ¶ 132 ("Having carefully considered all the evidence, the Tribunal considers that the Respondent has not fully discharged its burden of proof" with respect to respondent's allegation of illegality in the inception of the investment).

<sup>562</sup> CLA-001 Treaty, Art. 9.

<sup>563</sup> C-232 Decree of the President of the Republic of Azerbaijan by "Establishment of the Ministry of Foreign Economic Relations of the Republic of Azerbaijan" (Act No. 819 of 2 June 1992).

the Ministry of Foreign Economic Relations existed at the time the Treaty was signed by the Contracting Parties on 28 October 1996.

446. However, by Decree of the President of the Republic of Azerbaijan “on the abolition of the Ministry of Trade and the Ministry of Foreign Economic Relations and the establishment of a new Ministry” (Act No. 607 of 24 June 1997),<sup>564</sup> the Ministry of Foreign Economic Relations was eliminated.
447. Thus, at the time of Mr. Bahari’s investments in Azerbaijan and when the Treaty came into force on 20 June 2002, the Ministry of Foreign Economic Relations did not exist to provide the approval anticipated by Article 9 of the Treaty, rendering that clause, if not the entire Article, inoperative.
448. Second, while Article 9 of the Treaty provides that investments in Azerbaijan receive a general approval from the Ministry of Foreign Economic Relations, Article 9 does not require that approval be made in writing or obtained through any particular process. Tribunals that consider approval clauses in applicable BITs may deny jurisdiction where the investor fails to establish compliance with specific investment registration or admission requirements.<sup>565</sup> Such specific requirements are distinguishable from general approval requirements, and a respondent State cannot unilaterally and retroactively demand more from an investor than the treaty requires.
449. Tribunals have also rejected jurisdictional defenses based on admission requirements after taking the overall circumstances of the investment, the purpose of the admission/approval requirements, and the investor’s good faith attempt to comply with those requirements. For example, in the leading case of *Desert Line v. Yemen*, the tribunal refused to allow purely formal legal requirements to strip jurisdiction.<sup>566</sup>
450. Likewise, in *Fraport v. Philippines*, the tribunal construed admission and approval requirements liberally and found jurisdiction to hear the investor’s claims where the host

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<sup>564</sup> **C-233** Decree of the President of the Republic of Azerbaijan “on the abolition of the Ministry of Trade and the Ministry of Foreign Economic Relations and the establishment of a new Ministry” (Act No. 607 of 24 June 1997).

<sup>565</sup> See e.g., *Yaung Chi Oo Trading Pte Ltd v Government of the Union of Myanmar*, ASEAN Case No ARB/01/1 31 March 2003, 42 ILM 540 (2003) (**CLA-033**), ¶ 58 (finding that under Article II of the 1987 ASEAN Agreement an investor must satisfy an “express requirement of approval in writing and registration of a foreign investment if it is to be covered by the Agreement. Such a requirement is not universal in investment protection agreements”); *Rafat Ali Rizvi v. Republic of Indonesia*, ICSID Case No. ARB/11/13, Award on Jurisdiction, 16 July 2013 (**CLA-034**), ¶ 197 (denying Claimant’s contention that it received a de facto approval because the relevant approval provision required specific compliance with a particular law).

<sup>566</sup> *Desert Line v. Yemen* (**CLA-031**), ¶¶ 117-118 (rejecting effort to require strict compliance with requirements that were “purely formal” or deprived investors of investment protection).

State's requirements were not entirely clear and where the investor had made good faith efforts to comply with them.<sup>567</sup>

451. Here, there is no doubt Mr. Bahari acted in good faith or that the Azeri Government approved his investments. Azerbaijan cannot argue that Article 9 can be read as requiring a specific type of approval for foreign investments, or that under the circumstances of this case would Mr. Bahari failed to obtain approval. Article 9 should be liberally construed in broad terms, and the Tribunal should reject any new post hoc requirements that Azerbaijan attempts to now impose in this Arbitration.
452. Any contrary result would require the Tribunal to adopt a restrictive reading of Article 9 at odds with the overall liberal intention of the Contracting Parties to the Treaty. Pursuant to Article 31(1) of the Vienna Convention on the Law of Treaties (“VCLT”), the plain and ordinary meaning of “approval” must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”<sup>568</sup> Here, the Treaty expresses a clear intention in favor of admission of foreign investments, as evidenced by its preamble, the broad definitions of investors and investments, as well as the generous substantive protections granted to foreign investors.

**C. MR. BAHARI'S CLAIMS ARISE OUT OF AZERBAIJAN'S ACTIONS AND OMISSIONS THAT EXISTED AND OCCURRED AFTER THE TREATY ENTERED INTO FORCE (*RATIONE TEMPORIS*)**

453. Article 12(1) provides that the Treaty “shall apply to investments existing at the time of entry into force” of the Treaty.<sup>569</sup> Thus, the Treaty provides protection to pre-existing investments. Mr. Bahari's investments, which were established in Azerbaijan prior to, and at the time of, the Treaty coming into force are protected.
454. Article 12(1) of the Treaty also provides that the Treaty “shall enter into force on the date on which the exchange of instruments of ratification has been completed.”<sup>570</sup> According to public sources, the Treaty entered into force on 20 June 2002.

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<sup>567</sup> *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, Award, 16 August 2007 (CLA-035), ¶ 396 (concluding that jurisdictional requirements may be construed liberally when “the law in question of the host state may not be entirely clear and mistakes may be made in good faith”).

<sup>568</sup> Vienna Convention on the Law of Treaties (1969) (CLA-036), Art. 31.

<sup>569</sup> Treaty (CLA-001), Art. 12.

<sup>570</sup> *Id.*

455. Pursuant to the general rule of non-retroactivity of treaties in Article 28 of the VCLT, Azerbaijan is not bound by the Treaty for “any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty [...]”.<sup>571</sup>
456. The Tribunal will, however, have “jurisdiction in respect of any act or fact that took place or any situation that continued to exist after the Treaty entered into force [...]”.<sup>572</sup> This is consistent with Article 14 of the International Law Commission (“**ILC**”) Articles on the Responsibility of States for Internationally Wrongful Acts (“**ARSIWA**”):
- (2) The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
- (3) The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.<sup>573</sup>
457. It is also reflected in the ILC Commentary to Article 24 of the Draft Convention on the Law of Treaties submitted to the General Assembly, which provides:
- [if] an act or fact or situation which took place or arose prior to the entry into force of a treaty continues to occur or exist after the treaty has come into force, it will be caught by the provisions of the treaty. The non-retroactivity principle cannot be infringed by applying a treaty to matters that occur or exist when the treaty is in force, even if they first began at an earlier date.<sup>574</sup>
458. Numerous tribunals have affirmed the principle of continuing State conduct and its responsibility for such acts after a treaty has come into force.<sup>575</sup>

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<sup>571</sup> VCLT (**CLA-036**), Art. 28.

<sup>572</sup> *Railroad Development Corporation (RDC) v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Second Decision on Objections to Jurisdiction, 18 May 2010 (**CLA-184**), ¶ 116.

<sup>573</sup> ILC (International Law Commission) Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, adopted on 9 June 2001 (**ARSIWA**) (**CLA-037**), Art. 14.

<sup>574</sup> Draft Articles on the Law of Treaties with commentaries, adopted by the ILC at its eighteenth session, Yearbook of the International Law Commission, 1966, Vol. II, p. 212, ¶ 3 of the commentary to Art. 24 which became Art. 28 of the VCLT(**CLA-038**).

<sup>575</sup> See e.g., *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002 (“*Mondev v. United States*”) (**CLA-039**), ¶ 57 (“in certain circumstances conduct committed prior to the entry into force of a treaty might continue in effect after that date, with the result that the treaty could provide a basis for determining the wrongfulness of the continuing conduct.”); *Técnicas Medioambientales Tecmed S.A. v. The United*

459. Azerbaijan submitted Mr. Bahari to wrongful treatment, including his expulsion from Azerbaijan, before the conclusion of the Treaty. However, Azerbaijan’s taking of his investments and other unlawful actions and omissions in breach of the Treaty continued to occur for many years after it entered into force on 20 June 2002.
460. *First*, the situation created by the wrongful acts of Azerbaijan against Mr. Bahari and his investments “continued to exist after the Treaty entered into force.”<sup>576</sup> Thus, when the Treaty entered into force on 20 June 2002, Azerbaijan was already in breach vis-à-vis Mr. Bahari.
461. *Second*, Azeri State security detained and assaulted Mr. Moghaddam in late June 2002 as a clear means of intimidation against him and Mr. Bahari, and a deterrent against recovery of the investments.<sup>577</sup> Indeed, this was third instance of Mr. Moghaddam being assaulted subsequent to Mr. Bahari being expelled from Azerbaijan; and it cannot have been a coincidence that this took place after Mr. Bahari’s rejection of the Forced Settlement Agreement in Dubai shortly before that on 15 June 2002.
462. *Third*, in light of Mr. Bahari’s rejection of the Forced Settlement Agreement and his refusal to relinquish his interest in Caspian Fish, the facts discussed above clearly establish that Azerbaijan engaged in affirmative acts and omissions to permanently deprive Mr. Bahari of his investments. Indeed, these wrongful acts continue today.
463. In light of Azerbaijan’s wrongful conduct before and after the Treaty entered into force, it is reasonable to conclude that Azerbaijan was in breach as soon as the Treaty entered into force on 20 June 2002, or shortly thereafter, and for many years subsequent. As

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*Mexican States* (ICSID Case No. ARB(AF)/00/2), Award, May 29, 2003 (“**Tecmed v. United States**”) (CLA-040), ¶68 (“acts or omissions of the Respondent which, though they happened before the entry into force, may be considered a constituting part, concurrent factor or aggravating or mitigating element of conduct or acts or omissions of the Respondent which took place after such date do fall within the scope of this Arbitral Tribunal’s jurisdiction”); *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (“**Société Générale v. Dominican Republic**”) (CLA-041), ¶ 94 (“to the extent that on the consideration of the merits an act is proved to have originated before the critical date but continues as such to be in existence after that date, amounting to a breach of a Treaty obligation in force at the time it occurs, it will come within the Tribunal’s jurisdiction. This will also be the case if a series of acts results in the aggregate in such breach of an obligation in force at the time the accumulation culminates after the critical date.”).

<sup>576</sup> *RDC v. Guatemala*, Second Decision on Objections to Jurisdiction, 18 May 2010 (CLA-184), ¶ 116; ARSIWA (CLA-037), Art. 14.

<sup>577</sup> Even if Azerbaijan argues that there is no documentary evidence of the State security forces taking part in this assault, Azerbaijan failed its obligations under the “fair and equitable treatment” and “full protection and security” standards in Art. 2 of the Treaty by creating an environment where this could happen.

discussed below, based on the current known facts, it is reasonable to select 1 January 2003 as the appropriate valuation date for restitution to re-establish the status quo ante.

464. Accordingly, Mr. Bahari's claim alleges material acts that fall within the scope of the Treaty protections that Azerbaijan was and remains obligated to adhere to. This Tribunal has jurisdiction *ratione temporis*.

## **VII. THE SEIZURE OF MR. BAHARI'S INVESTMENTS IS ATTRIBUTABLE TO AZERBAIJAN**

### **A. AZERBAIJAN'S ATTRIBUTION AND STATE RESPONSIBILITY FOR THE SEIZURE OF MR. BAHARI'S INVESTMENTS IS SELF-EVIDENT**

465. Azerbaijan's attribution and responsibility for its unlawful acts and omissions is straightforward. Mr. Bahari invested millions of U.S. dollars and established various rights in a number of investments in Azerbaijan; his local partners, who were senior Azeri Government officials and politically powerful individuals, seized these investments for themselves, using their official powers to direct various State organs to carry out and maintain this seizure and establish permanent control. Today, Mr. Bahari no longer owns, controls, or enjoys the economic benefits of any of his investments. Instead, they are in the hands of the same kleptocratic senior Government officials and politically powerful individuals, all of whom have greatly profited from Mr. Bahari's investments over the years, and continue to rely on the impunity that their Government office provides.
466. Under these circumstances, the acts and omissions of the State in this claim are clearly attributable to Azerbaijan. Mr. Bahari's travails featured Azerbaijan's active manipulation of Mr. Bahari's investments and its disregard for his rights. At each step of the process, from Mr. Bahari's expulsion from the businesses he paid for and built, to the theft of his carpets, and the subsequent transfer of the associated rights and assets of his investments to other Azeri corporate vehicles – all acknowledged, approved, or tacitly or expressly authorized by Azerbaijan's various ministries – the fingerprints of the Azeri State are unmistakably present.

**B. MESSRS. ALIYEV AND HEYDAROV AND THE VARIOUS MINISTRIES ARE STATE ORGANS AND THEIR ACTIONS ARE ATTRIBUTABLE TO AZERBAIJAN**

467. Messrs. Aliyev and Heydarov are organs of the State; ergo, their conduct is attributable to Azerbaijan. Pursuant to ARSIWA Article 4,<sup>578</sup> a State organ includes any person or entity which has that status in accordance with the internal law of the State.<sup>579</sup>
468. The ILC's Commentary to ARSIWA Article 4 explains that "reference to a 'State organ' covers all the individual or collective entities which make up the organization of the State and act on its behalf"<sup>580</sup> and that "reference to a State organ in article 4 is intended in the most general sense."<sup>581</sup> Additionally, the unity of the State concept in international law is why all conduct of any State organ is attributable to the State under ARSIWA Article 4.<sup>582</sup>
469. As previously admitted by Azerbaijan, Mr. Aliyev was a member of Parliament from 24 November 1995 to 28 October 2003; Mr. Aliyev was also the Vice-President, and then the First Vice-President, of the state-owned oil company, SOCAR, between April 1994 and December 1996 and December 1996 and August 2003 respectively; he was Prime Minister of Azerbaijan from 4 August 2003 to 31 October 2003; and became President of Azerbaijan on 31 October 2003, a position he holds to this day.<sup>583</sup>

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<sup>578</sup> ARSIWA (CLA-037), Art. 4; The ILC ARSIWA codifies customary international law, see e.g. *Tulip Real Estate and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Award, 10 March 2014 ("**Tulip v. Turkey**") (CLA-042), ¶ 281 ("The Tribunal agrees with the Parties and accepts that the ILC Articles constitute a codification of customary international law with respect to the issue of attribution of conduct to the State and apply to the present dispute.").

<sup>579</sup> ARSIWA (CLA-037), Art. 4: "Conduct of organs of a State: (1) 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. (2) An organ includes any person or entity which has that status in accordance with the internal law of the State."

However, the fact that an entity is not specifically classified as a State organ under domestic law is not outcome-determinative for the attribution inquiry under ILC Art. 4, which is carried out pursuant to international law. See ILC Commentary, Chapter II, ¶¶ 6 and 7 (p. 39).

<sup>580</sup> ARSIWA (CLA-037), Commentary, Art. 4, ¶ 1; see also ¶ 5, "The principle of the unity of the State entails that the acts or omissions of all its organs should be regarded as acts or omissions of the State for the purposes of international responsibility."

<sup>581</sup> ARSIWA (CLA-037), Commentary, Art. 4, ¶ 6.

<sup>582</sup> ARSIWA (CLA-037), Commentary, Art. 2, ¶ 6, "The State is treated as a unity, consistent with its recognition as a single legal person in international law. In this as in other respects the attribution of conduct to the State is necessarily a normative operation."

<sup>583</sup> Respondent's Response ("**Response**") dated 4 January 2023 at ¶ 9(b). Respondent's assertion that Mr. Heydarov "had no role in the Azerbaijani government" prior to becoming Prime Minister in 2003 is neither understood, nor correct as a matter of international law. First, Respondent's argument adopts a narrow construction of the term "government" that is vague and undefined, and that does not cite to any internal Azeri laws. Second, and more importantly, a State cannot avoid responsibility for conduct of a body (or person) which does, in truth, act as one of its organs merely by denying it that status under its own laws. ARSIWA, Commentary, Art. 4, ¶ 11.

470. As further admitted by Azerbaijan, Mr. Heydarov was the Chairman of the State Customs Committee from 17 January 1995 to 6 February 2006; on 6 February 2006, Mr. Heydarov became the Minister of Emergency Situations.<sup>584</sup>
471. Thus, during the relevant time period, Messrs. Aliyev and Heydarov were senior Azeri Government officials and are State organs, and their conduct is attributable to Azerbaijan.<sup>585</sup> This includes all conduct undertaken by Messrs. Aliyev and Heydarov to seize and control Mr. Bahari's investments in Azerbaijan, and to deny Mr. Bahari the ability to exercise control over or recover his investments.
472. As described in the Statement of Facts, Messrs. Aliyev and Heydarov repeatedly utilized their prerogatives of power over the State apparatus in a manner not available to normal private citizens to achieve their scheme against Mr. Bahari and his investments.<sup>586</sup> As such, they acted in an actual or apparent official capacity, and/or under color of authority. ILC Commentary to ARSIWA Article 4 provides:

It is irrelevant for this purpose that the person concerned may have had ulterior or improper motives or may be abusing public power. Where such a person acts in an apparently official capacity, or under colour of authority, the actions in question will be attributable to the State.<sup>587</sup>

473. Because Messrs. Aliyev and Heydarov abused their official powers and utilized the State apparatus to carry out the seizure of Mr. Bahari's investments, their actions were not purely private conduct. These State actions included, but were not limited to, the following:
- i. Directing State security forces or other State organs to forcibly remove Mr. Bahari from the Caspian Fish grand opening ceremony;

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<sup>584</sup> Response, at ¶ 9(c).

<sup>585</sup> See *Hamester v. Ghana* (CLA-032), ¶ 172 ("In order for an act to be attributed to a State, it must have a close link to the State. This close link can result from the fact that the person performing the act is part of the State's organic structure (Art. 4)."); *Stabil, Crimea-Petrol LLC, Elefteria LLC, Novel-Estate LLC and others v. The Russian Federation*, PCA Case No. 2015-35, Final Award, 12 April 2019 ("*Stabil v. Russia*") (CLA-043), ¶ 167 ("[I]nternational tribunals have consistently attributed to the State actions by a wide variety of State organs, including actions by government ministers, the state treasury, the legislature, the courts, and the armed forces.").

<sup>586</sup> Tribunals have held that acts of State organs before the entry into force of a treaty still create attribution to the State even if not responsibility. See *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007 ("*Kardassopoulos v. Georgia*") (CLA-044), ¶¶ 189-190 ("Respondent maintains that these representations cannot be attributed to it because it had not yet entered into the ECT nor the BIT [...] The Tribunal finds Respondent's position untenable. The principle of attribution, in principle, applies to Georgia by virtue of its status as a sovereign State and is not contingent on the timing of its adherence to a treaty.").

<sup>587</sup> ARSIWA (CLA-037), Commentary, Art. 4, ¶ 13.

- ii. Directing State security forces or other State organs to detain Mr. Bahari and place him under house arrest after his release from the hospital, without officially charging him, for several weeks;
- iii. Directing Government security forces or other State organs to carry out the forced expulsion of Mr. Bahari and his family from Azerbaijan, and to not allow Mr. Bahari to return to Azerbaijan without Government authorization, rendering Mr. Bahari *persona non grata* in Azerbaijan, and preventing him from being able to recover his investments;
- iv. Directing Mr. Khanghah to unlawfully pressure Mr. Bahari to accept the terms of a forced sale agreement by threatening false tax audits and the continued takeover of Coolak Baku by Government security forces or other agents under Mr. Heydarov's control;
- v. Directing Government security forces or other State organs to detain repeatedly and unlawfully, physically assault, and eventually jail Mr. Naser Tabesh Moghaddam, as a means to intimidate Mr. Bahari and thwart his efforts to recover his investments;
- vi. Directing the Chief of Police of Baku to seize Mr. Bahari's Persian carpets;
- vii. Undertaking and facilitating the transfer of Caspian Fish's assets and operations in Azerbaijan into a local LLC vehicle, Caspian Fish MMC, then subsequently putting Caspian Fish MMC into the portfolio of Gilan Holding;
- viii. Directing or relying upon numerous State organs to affirm and facilitate the transfer of Mr. Bahari's shares and assets to other Azeri or international companies or persons, including, but not limited to, the Ministry of Justice;
- ix. Creating a local Azeri holding company in or around 2021 to hold the shares in Caspian Fish;
- x. Undertaking and facilitating the transfer of Coolak Baku and Shuvalan Sugar and the associated assets into other companies, ASFAN and, upon information and belief, Shuvalan Shirniyat;
- xi. Seizing and transferring the ownership of the Ayna Sultan property; and
- xii. Issuing various threats of legal and physical harm against Mr. Bahari over the years to inhibit his ability to recover his investments in Azerbaijan.

474. Because Messrs. Aliyev and Heydarov are State organs who undertook and directed the unlawful measures in question, including utilizing other State organs, they ipso facto engaged Azerbaijan's responsibility.
475. It is irrelevant for purposes of State attribution that Messrs. Aliyev and Heydarov had ulterior or improper personal motives, or may have abused their public power to enrich themselves, when they undertook these actions. The conduct of a State organ is attributable to the State even if it is unlawful, and the State is responsible for acts of its organs that exceeds authority or are ultra vires.<sup>588</sup>
476. In addition to Messrs. Aliyev and Heydarov, the conduct of other State organs involved in the treatment of Mr. Bahari and his investments are attributable to Azerbaijan under Article 4 of ARSIWA.
477. The State organs include, but are not limited to, the Ministry of Justice; Ministry of Economic Development; Ministry of Trade; Ministry of Economy; State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy; Ministry of Taxes; and State Tax Service under the Ministry of Economy.
478. The activities of each of these State organs vis-à-vis Mr. Bahari and his investments is addressed in Section V, above.

### **C. MR. KHANGHAH ACTED AS AN AGENT TO MESSRS. ALIYEV AND HEYDAROV**

479. Mr. Khanghah's actions are attributable to Azerbaijan under Article 8 of ARSIWA, because, in fact at all relevant times, he acted on behalf of and under the direction of Minister Heydarov,<sup>589</sup> who, in turn, qualifies as a State organ.<sup>590</sup> Attribution arises notwithstanding the fact that Mr. Khanghah was a private individual or that his conduct did not always per se involve State activity.<sup>591</sup>

<sup>588</sup> ARSIWA (CLA-037), Art. 7 ("The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.").

<sup>589</sup> See *Tulip v. Turkey* (CLA-042), ¶ 303 ("Plainly, the words 'instructions', 'direction' and 'control' in Art 8 are to be read disjunctively. Therefore, the Tribunal need only be satisfied that one of those elements is present in order for there to be attribution under Art 8.").

<sup>590</sup> ARSIWA (CLA-037), Art. 8 ("The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.").

<sup>591</sup> ARSIWA (CLA-037), Commentary, Art. 8, ¶ 2, "it does not matter that the person or persons involved are private individuals nor whether their conduct involves 'governmental activity'. Most commonly, cases of this kind will arise

480. As the “front man” of a substantial portion of the Heydarov family conglomerate<sup>592</sup> Mr. Khanghah was an agent of Mr. Heydarov’s efforts to take Mr. Bahari’s investments, from the initial actions to seize the investments, to present day. Mr. Khanghah also acted on behalf of and under the direction of Mr. Aliyev, who is a State organ.
481. The most conspicuous example of Mr. Khanghah’s agency for Messrs. Aliyev and Heydarov was his negotiation of the Forced Sale Agreement with Mr. Bahari in June 2002, which confirms that Mr. Khanghah had authority to act on behalf of Messrs. Aliyev and Heydarov. The proposed terms of that Agreement involved Caspian Fish and Coolak Baku, demonstrating that Mr. Khanghah was acting at the instruction of and on behalf of Messrs. Aliyev and Heydarov (and Mr. Pashayev), who all held various ownership stakes in these two investments.
482. Mr. Khanghah appears to have been rewarded and remunerated for his actions, as evidenced by his position as [President] of Caspian Fish, and his numerous Directorships in Gilan Holding-controlled companies.

**D. AZERBAIJAN ACKNOWLEDGED AND ADOPTED MESSRS. ALIYEV, HEYDAROV, PASHAYEV, AND KHANGHAH’S CONDUCT AS ITS OWN, AND IS THUS RESPONSIBLE FOR THE SAME**

483. Even if Messrs. Aliyev, Heydarov, Pashayev, and Khanghah are considered private persons not acting on behalf of Azerbaijan (which is denied), their conduct is nonetheless attributable to Azerbaijan under Article 11 of ARISIWA because that conduct was subsequently acknowledged and adopted by the State as its own.<sup>593</sup>
484. Following Mr. Bahari’s expulsion from Azerbaijan, Messrs. Aliyev, Heydarov, Pashayev, and Khanghah undertook a series of illegal corporate actions to (1) transfer Coolak Baku’s physical assets and operations to ASFAN;<sup>594</sup> and (2) similarly transfer Caspian Fish’s physical assets and operations to Caspian Fish MMC.<sup>595</sup> These actions were known to Azerbaijan, acknowledged and adopted by it, as demonstrated by the subsequent

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where State organs supplement their own action by recruiting or instigating private persons or groups who act as ‘auxiliaries’ while remaining outside the official structure of the State.”

<sup>592</sup> C-005 - Wikileaks U.S. Cable, Azerbaijan Who Owns What, Vol. 2, at ¶ 9 (C).

<sup>593</sup> ARSIWA (CLA-037), Art. 11 (“Conduct acknowledged and adopted by a State as its own: Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.”).

<sup>594</sup> Including the likely transfer of Shuvalan Sugar’s assets and operations into Shuvalan Shirniyat.

<sup>595</sup> See Section III, G, above: This includes the creation of an Azeri holding company to hold the shares of Caspian Fish MMC.

approval and authorization of these illicit corporate transfers by various State ministries, including the Ministry of Justice and Ministry of Taxes.<sup>596</sup> These official actions went beyond mere support or endorsement: the imprimatur of State approval of these Azeri corporate entities administratively transformed unlawful conduct into a legal status quo, where the State adopts the conduct in question and makes it its own.<sup>597</sup>

485. Indeed, the Azeri bureaucracy's servility to its political elite, and its compliant adoption and ratification of blatantly illegal acts by this elite, is both routine and a core component of Azerbaijan's kleptocratic system of governance and economy. Azerbaijan's regular acknowledgment and adoption of illegal conduct by powerful individuals ostensibly acting in a purported private, commercial capacity is an essential feature which permits these powerful individuals to perpetuate the country's kleptocratic system, and to continue illegally seizing foreign and domestic investments alike.
486. Azerbaijan's attempt to evade State attribution and responsibility for the illegal acts by these powerful individuals, including officials sitting at the very top of the State, by claiming that they are merely private persons acting in a personal capacity, cannot – and should not – be accepted as a matter of the international law of attribution.

#### **E. ACTS AND OMISSIONS OF STATE ORGANS ARE ATTRIBUTABLE TO AZERBAIJAN AND ATTRACT INTERNATIONAL RESPONSIBILITY**

487. The acts and omissions of Azerbaijan's State organs, including its executive branch, ministries, and administrative authorities, are attributable to the State and attract responsibility for the breach of an international obligation by Azerbaijan.<sup>598</sup> This is a central tenet of the international attribution and responsibility of States, as reflected in ASRIWA Article 2:

There is an internationally wrongful act of a State when conduct consisting of an *action or omission*:

(a) is attributable to the State under international law; and

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<sup>596</sup> See [Section V](#), above.

<sup>597</sup> ARSIWA ([CLA-037](#)), Commentary, Art. 11, ¶ 6 (“The phrase “acknowledges and adopts the conduct in question as its own” is intended to distinguish cases of acknowledgement and adoption from cases of mere support or endorsement.”)

<sup>598</sup> *AES Corporation and Tau Power B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/10/16, Award, 1 November 2013 (“*AES v. Kazakhstan*”) ([CLA-045](#)), ¶ 196 (“It is well-established that acts and omissions of State organs such as administrative authorities and judicial bodies are attributable to the State, and this is not disputed by Respondent.”).

(b) constitutes a breach of an international obligation of the State.<sup>599</sup>

488. Attribution and responsibility of States for both the action and inaction of its organs, including where third parties have harmed an investment, has been affirmed by numerous tribunals.<sup>600</sup> Azerbaijan, by its State organs or agents, repeatedly took actions, and chose to refrain from acting, in support of a broad scheme to seize and denude Mr. Bahari of his investments and ensure that he had no access to a domestic administrative or judicial remedies to pursue and recover what was rightfully his.

### **VIII. AZERBAIJAN VIOLATED THE TREATY'S STANDARDS OF PROTECTION**

489. Azerbaijan deprived Mr. Bahari of his rights in his investments and personal property in circumstances where there were no factual or legal grounds for doing so, and in a way which involved a repeated and open misuse of State power to achieve that end.

#### **A. AZERBAIJAN FAILED TO TREAT MR. BAHARI'S INVESTMENTS FAIRLY AND EQUITABLY**

490. Azerbaijan's actions and omissions were a brazen exploitation of Mr. Bahari and his investments. Government officials and Azerbaijan's ruling elite engaged in years of illicit acts under a veil of impunity, with the systematic participation, tacit consent, and inaction of the Government at every step. In doing so, Azerbaijan manifestly breached its obligations under Article 2 of the Treaty to afford Mr. Bahari and his investments "fair and equitable treatment" ("FET").

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<sup>599</sup> ARSIWA (CLA-037), Art. 2 (emphasis added); see ARSIWA, Commentary, Art. 2, ¶ 4, "Conduct attributable to the State can consist of actions or omissions. Cases in which the international responsibility of a State has been invoked on the basis of an omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two." And ¶ 12 "In subparagraph [2](a), the term 'attribution' is used to denote the operation of attaching a given action or omission to a State."

<sup>600</sup> See e.g., *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Award, 7 June 2012 (CLA-046), ¶ 150 ("a substantive failure to take reasonable precautionary and preventive action is sufficient to engage the international responsibility of a state for damage to public and private property [...]") (internal citations omitted); *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015 (CLA-047), ¶ 445 ("indirect liability for the acts of others can also occur under Art. 4 - for example, the failure to stop someone doing something that violated an obligation. It does not matter that a third party actually undertook the action, if a State organ (such as the police) was aware of it and did nothing to prevent it."); *J.P. Busta and I.P. Busta v. The Czech Republic*, SCC Case No. 2015/014, Final Award, 10 March 2017 (CLA-048), ¶ 399 ("this Tribunal notes that a State's international responsibility can be engaged by both action and inaction of its organs.").

## 1. The Fair and Equitable Treatment Standard in Article 2 of the Treaty is an autonomous and flexible standard of protection.

491. Article 2(3) of the Treaty provides, in part, that:

Each Party shall ensure fair and equitable treatment within its territory to the investments of the investors of the other Party.<sup>601</sup>

492. Article 2(3) of the Treaty is an autonomous FET standard, which is broader than the customary international law minimum standard of treatment.<sup>602</sup> When interpreting an autonomous FET standard, tribunals apply the customary international law rule of treaty interpretation in VCLT, Article 31(1), which requires that a treaty be “interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”<sup>603</sup> FET does not depend on domestic law,<sup>604</sup> although the willful failure of a host State to apply its own law may amount to a violation of the FET standard.<sup>605</sup>

493. The FET standard is inherently flexible,<sup>606</sup> and applicable to both acts and omissions of a State.<sup>607</sup> In this respect, and applying VCLT, Article 31, tribunals have frequently interpreted the ordinary meaning of an autonomous FET standard as “just”, “even-handed”, “unbiased”, “legitimate”, and “reasonable.”<sup>608</sup> Although tribunals have questioned the usefulness of these terms, they “are susceptible of specification through

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<sup>601</sup> [CLA-001](#) Treaty, Art. 2.

<sup>602</sup> Tribunals have emphasized that the autonomous FET standard encompasses conduct which goes beyond the minimum standard of treatment. *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007 (“*Vivendi v. Argentina I*”) ([CLA-049](#)), ¶ 7.4.8 (“the terms ‘fair and equitable treatment’ envisage conduct which goes far beyond the minimum standard and afford protection to a greater extent and according to a much more objective standard than any previously employed form of words.”) (internal citation omitted).

<sup>603</sup> VCLT([CLA-036](#)), Art. 31(1).

<sup>604</sup> Rudolf Dolzer, Ursula Kriebaum, and Christoph Schreuer: *Principles of International Investment Law*, Third ed. Oxford, United Kingdom (2022 OUP) ([CLA-050](#)), p. 188.

<sup>605</sup> *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013 ([CLA-051](#)), ¶ 177 (“deliberate and sustained illegality in the treatment of a protected investment could, in appropriate circumstances, be suggestive of a failure to meet the applicable standards of fair and equitable treatment [...]”).

<sup>606</sup> *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (“*Rumeli v. Kazakhstan*”) ([CLA-052](#)), ¶ 583 (“The standard is intentionally vague in order to give arbitrators the possibility to articulate the range of principles to achieve the treaty’s purpose in particular disputes.”).

<sup>607</sup> *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017 ([CLA-053](#)), ¶ 521 (“The FET is inherently flexible and applicable to both acts and omissions.”).

<sup>608</sup> *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 (“*MTD v. Chile*”) ([CLA-054](#)), ¶ 113; *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007 (“*Siemens v. Argentina*”) ([CLA-055](#)), ¶ 290; *Tulip v. Turkey*, Award, 10 March 2014 ([CLA-042](#)), ¶ 401.

judicial practice and do in fact have sufficient legal content to allow the case to be decided on the basis of law.”<sup>609</sup>

494. The *Bosh v. Ukraine* tribunal specified that, “in order to establish a breach of the [FET] obligation [...], “[i]t requires an action or omission by the State which violates a certain threshold of propriety, causing harm to the investor, and with a causal link between action or omission and harm.”<sup>610</sup> With this, *Bosh* articulated certain relevant factors that are frequently taken into consideration when assessing a breach of FET:

‘whether the State made specific representations to the investor’; ‘whether due process has been denied to the investor’; ‘whether there is an absence of transparency in the legal procedure or in the actions of the State’; ‘whether there has been harassment, coercion, abuse of power or other bad faith conduct by the host State’; and ‘whether any of the actions of the State can be labelled as arbitrary, discriminatory or inconsistent.’<sup>611</sup>

495. Tribunals have also emphasized that the FET standard contains “rule of law-elements” that are characterized as protecting:

covered investors and their investments against the arbitrary exercise of public powers, as well as against harassment by public authorities, to require public authorities to administer the law in good faith, to entitle foreign investors and their investments to due process, and to protect investor’s legitimate expectations.<sup>612</sup>

496. As summed up by the tribunal in *Infinito Gold v. Costa Rica*:

While formulations may vary across awards, a consensus emerges as to the core components of FET, which encompass the protection of legitimate expectations, the protection against conduct that is arbitrary, unreasonable, disproportionate and lacking in good faith, and the principles of due process and transparency. FET also includes a protection against denial of justice.<sup>613</sup>

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<sup>609</sup> *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006 (“*Saluka v. Czech Republic*”) (CLA-056), ¶ 284; see also *MTD v. Chile*, Award, 25 May 2004 (CLA-054), ¶ 113; *Azurix Corp. v. The Argentine Republic (I)*, ICSID Case No. ARB/01/12, Award, 14 July 2006 (“*Azurix v. Argentina*”) (CLA-057), ¶ 360; *Siemens v. Argentina*, Award, 6 February 2007 (CLA-055), ¶ 290.

<sup>610</sup> *Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise v. Ukraine*, ICSID Case No. ARB/08/11, Award, 25 October 2012 (CLA-058), ¶ 212, quoting *Joseph Charles Lemire v Ukraine* (ICSID Case No ARB/06/18), Decision on Jurisdiction and Liability of 14 January 2010 (CLA-092), ¶ 284.

<sup>611</sup> *Bosh*, ¶ 212.

<sup>612</sup> *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018 (“*Casinos Austria v. Argentina*”) (CLA-059), ¶¶ 242-242.

<sup>613</sup> *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021 (CLA-060), ¶ 355; see also *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award, 1

497. Whether treatment was fair and equitable “is a matter of appreciation by the Tribunal in light of all relevant circumstances; ... [a] judgment of what is fair and equitable cannot be reached in the abstract: it must depend on the facts of the particular case.”<sup>614</sup>
498. Accordingly, whilst tribunals have articulated various interpretations of the broad and flexible nature of the FET standard, a list applicable to the current circumstances of Mr. Bahari’s claim includes Azerbaijan’s obligation: (1) to protect an investor’s legitimate expectations; (2) to refrain from harassment, coercion, and abusive treatment; (3) to provide due process and transparency; (4) to not take arbitrary or discriminatory measures; and (5) to act in good faith. As discussed below, Azerbaijan’s treatment of Mr. Bahari and his investments infringed upon all of these interpretations of the FET standard of protection.

## 2. Azerbaijan failed to protect Mr. Bahari’s legitimate expectations.

499. The protection of an investor’s legitimate expectations is considered the dominant element of the FET standard.<sup>615</sup> As articulated in *Saluka v. Czech Republic*:

an investor’s decision to make an investment is based on an assessment of the state of the law and the totality of the business environment at the time of the investment as well as on the investor’s expectation that the conduct of the host State subsequent to the investment will be fair and equitable. The standard of “fair and equitable treatment” is therefore closely tied to the notion of legitimate expectations which is the dominant element of that standard. By virtue of the “fair and equitable treatment” standard...the [State] must therefore be regarded as having assumed an obligation to treat foreign investors so as to avoid the frustration of the investors’ legitimate and reasonable expectations.<sup>616</sup>

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March 2012 (CLA-061), ¶ 265 (“Any government act that is unfair or inequitable with respect to a covered investment breaches that obligation. A government act could be unfair or inequitable if it is in breach of specific commitments, if it is undertaken for political reasons or other improper motives, if the investor is not treated in an objective, even-handed, unbiased, and transparent way, or for other reasons.”).

<sup>614</sup> *Saluka v. Czech Republic*, Partial Award, 17 March 2006 (CLA-056), ¶ 285 (citing *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award dated Oct. 11, 2002, ¶ 118).

<sup>615</sup> *Electrabel S.A. v. The Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 (“*Electrabel v. Hungary*”) (CLA-062), ¶ 7.75 (“It is widely accepted that the most important function of the fair and equitable treatment standard is the protection of the investor’s reasonable and legitimate expectations.”).

<sup>616</sup> *Saluka v. Czech Republic*, Partial Award, 17 March 2006 (CLA-056), ¶ 302; see also *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007 (“*Parkerings v. Lithuania*”) (CLA-063), ¶ 331 (internal citations omitted).

500. Equally, a State cannot induce an investor to make an investment, generating legitimate expectations, and then disregard the commitments that have generated these expectations.<sup>617</sup> For example, in *Crystallex v. Venezuela*, the tribunal concluded that Venezuela’s shift in position was a “complete volteface to the previous course [of support]” and was the result of “political pressure regarding the project from the highest Venezuelan officers.”<sup>618</sup>
501. An investor’s legitimate expectations can arise from representations or assurances, either explicit or implicit, made by the host State at the time of the investment,<sup>619</sup> which (i) encourage the making of the investment; (ii) are directed specifically to the investor; and (iii) are sufficiently specific in content.<sup>620</sup> In addition, an investor must rely upon the representations or assurances.<sup>621</sup> Those representations or assurances can be found in legislation and treaties, as well as licenses and other approvals by a host State.<sup>622</sup>
502. An investor’s legitimate expectations can also arise from the legal and business framework existing at the time of its investment.<sup>623</sup> This includes rules and legislation that are not specifically addressed to a particular investor, but which are put in place with a specific aim to induce foreign investments and on which the foreign investor relied in making his

<sup>617</sup> *Charanne B.V. and Construction Investments S.A.R.L. v. Spain*, SCC Case No. 062/2012, Final Award, 21 January 2016 (**CLA-064**), ¶ 486; *Eureko B.V. v. Republic of Poland*, Partial Award, 19 August 2005 (“**Eureko v. Poland**”) (**CLA-065**), ¶ 191 (“the wrongful conduct of the RoP which engages its responsibility under international law consists of its abrupt about face”).

<sup>618</sup> *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (“**Crystallex v. Venezuela**”) (**CLA-066**), ¶¶ 589-99.

<sup>619</sup> *Ioan Micula, Viorel Micula and others v. Romania (I)*, ICSID Case No. ARB/05/20, Final Award, 11 December 2013 (“**Micula v. Romania (I)**”) (**CLA-067**), ¶ 669 (noting that for a legitimate expectation to exist, “[t]here must be a promise, assurance or representation attributable to a competent organ or representative of the state, which may be explicit or implicit”); *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014 (**CLA-068**), ¶ 571 (“[t]he investor’s legitimate expectations are based on undertakings and representations made explicitly or implicitly by the host State”).

<sup>620</sup> *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award, 7 October 2020 (**CLA-069**), ¶ 462, citing *Antaris GmbH and Göde v. Czech Republic*, PCA Case No. 2014-01 (UNCITRAL), Award, 2 May 2018 (**CLA-070**), ¶ 360 (noting also expectations may arise from “specific guarantees in legislation”).

<sup>621</sup> *Id.*

<sup>622</sup> *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005 (**CLA-071**), ¶¶ 274-279; *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006 (“**LG&E v. Argentina**”) (**CLA-072**), ¶ 133.

<sup>623</sup> *Micula v. Romania (I)*, Award, 11 December 2013 (**CLA-067**), ¶ 674 (finding Romania had made a promise or assurance, through its legal framework and issued certificates, which gave rise to the investors’ legitimate expectation); *AWG Group Ltd. v. The Argentine Republic*, Decision on Liability, 30 July 2010 (**CLA-073**), ¶ 226 (reviewing earlier decisions of tribunals and finding “that investors, deriving their expectations from the laws and regulations adopted by the host country, acted in reliance upon those laws and regulations and changed their economic position as a result [...] the existence of such expectations created by host country laws, coupled with the act of investing their capital in reliance on them, and a subsequent, sudden change in those laws that led to a determination that the host country had not treated the investors fair and equitably” (emphasis in original)).

investment.<sup>624</sup> *Enron v. Argentina* and *LG&E v. Argentina* found that no particular undertakings were made to the claimants, but guarantees included in domestic legislation constituted a promise to foreign investors as a class and were deemed sufficient to create legitimate expectations.<sup>625</sup>

503. Azerbaijan's failure to observe Mr. Bahari's legitimate expectations – expectations that Azerbaijan itself induced specifically -- is a breach of the FET standard.<sup>626</sup>
504. *First*, Mr. Bahari's investments were reviewed, approved, and registered by the Azerbaijan Government, which acknowledged that his investments were foreign owned and controlled. Mr. Bahari relied on these specific formal assurances and approvals by Azerbaijan as an inducement to his investment.<sup>627</sup>
505. *Second*, Mr. Bahari's investments were known to and encouraged by senior Azeri Government authorities.<sup>628</sup> In this case, there could be no clearer expression of direct encouragement to invest, as Messrs. Ilham Aliyev and Heydarov were the direct local partners to Mr. Bahari's largest investments. This was further reinforced by then-President Heydar Aliyev, who himself welcomed, encouraged, and publicly touted Mr. Bahari's investment in Caspian Fish, going so far as to prominently place a plaque at the entrance of the facility with the inscription "[REDACTED]".<sup>629</sup> Mr. Bahari relied on these individuals and the Azeri Government's statements for the approval of his investments and their accordance with Azeri law.

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<sup>624</sup> *Glamis Gold, Ltd. v. United States*, UNCITRAL (NAFTA), Award, 8 June 2009 (CLA-074), ¶ 627; *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010 (CLA-075), ¶ 119; *SunReserve Luxco Holdings SRL v. Italy*, SCC Case No. 132/2016, Final Award, 25 March 2020 (CLA-076), ¶ 700.

<sup>625</sup> *Enron v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007 (CLA-077), ¶¶ 264–266; *LG&E v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006 (CLA-072), ¶¶ 130 - 133.

<sup>626</sup> *Rupert Joseph Binder v. Czech Republic*, Final Award, 15 July 2011 (CLA-079), ¶ 445 ("The state's failure to observe the legitimate expectations of the investor that it has itself induced will amount to a breach of the fair and equitable treatment standard.").

<sup>627</sup> *Mobil Cerro Negro Holding, Ltd., Mobil Cerro Negro, Ltd., Mobil Corporation and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Award of the Tribunal, 9 October 2014 (CLA-080), ¶ 256 ("[the FET] standard may be breached by frustrating the expectations that the investor may have legitimately taken into account when making the investment. Legitimate expectations may result from specific formal assurances given by the host state in order to induce investment.").

<sup>628</sup> *Kardassopoulos v. Georgia*, Decision on Jurisdiction, 6 July 2007 (CLA-044), ¶ 191 (noting approval of senior Government officials for investments); *Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (CLA-081), ¶ 957 ("numerous investor-State tribunals have found that State conduct at the time the investment was acquired can also give rise to legitimate expectations.").

<sup>629</sup> Klaus WS at ¶ 35; C-062.

506. *Third*, Mr. Bahari was entitled to rely upon and expect treatment in accordance with the domestic laws that Azerbaijan promulgated to both expressly promote and guarantee protection of foreign investors and their investment. These include the Investment Activity Law and Foreign Investment Law discussed in detail above in Section V.
507. In sum, the Investment Activity law guaranteed equal protection of all investors' rights regardless of the form of ownership. Investors, including foreign ones, are guaranteed equal legal treatment excluding measures of discriminatory nature which hinder management, use and termination of investments. It also established that investments in Azerbaijan were not subject to nationalization or confiscation, and that other similar measures were not applied on their results. Such measures could only be carried out on the basis of legislative acts of the Azerbaijan Republic, with compensation for damage caused to investors, including lost profit, in full at real value.
508. For its part, the Foreign Investment Law was expressly aimed at attracting foreign material and financial resources, and in doing so, guaranteed the protection of the rights of foreign investors. In particular, foreign investors had the right to compensation for damage caused by the actions of State bodies or their officials, contrary to the legislation of the Azerbaijan Republic, including lost profits. Disputes about sums of compensation and damage compensation, terms and order of its payment were to be resolved in court, as well as by jury, as provided by agreement of parties or international treaty of Azerbaijan.<sup>630</sup>
509. The Foreign Investment Law also established that upon termination of investment activity, a foreign investor had the right to access its investments and incomes connected with investments in monetary and commodity forms at real cost at the moment of termination of investment activity; and guaranteed transfer abroad of income and other amounts legally received in foreign currency in connection with the investment, including compensation and amounts of reimbursement of losses.<sup>631</sup>
510. Despite these legislative assurances that were expressly promulgated to entice foreign investors like Mr. Bahari to make substantial investments, Azerbaijan gave them no consideration whatsoever, committing a complete volte-face overnight and in the months and years to come to support senior Government officials and the ruling elite in an illicit plan to enrich themselves at Mr. Bahari's direct and personal expense.

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<sup>630</sup> **C-212** Foreign Investment Law, Art. 12.

<sup>631</sup> **C-212** Foreign Investment Law, Arts. 12, 13, 14.

511. *Fourth*, specifically relying on the associated Government approvals and representations, and the above-mentioned Azeri laws, Mr. Bahari constructed the Coolak Baku, Shuvalan Sugar, and Caspian Fish facilities, purchased and imported equipment and other supplies worth tens of millions of U.S. dollars, purchased and repaired his Persian Carpets for inclusion in a future Azeri museum, and purchased the Anya Sultan real estate for his future business headquarters.<sup>632</sup>
512. *Finally*, Mr. Bahari had the legitimate expectation that if his investments were expropriated, or otherwise treated in an unlawful manner, the Azeri Government would not only provide for and maintain a legal environment that would allow him to recover his investments or receive just compensation for them, but that the Azeri Government would not actively, through hostile and intimidating tactics, seek to ensure that Mr. Bahari had no legal or administrative recourse whatsoever.
513. Mr. Bahari's legitimate expectation that he would be treated fairly and equitably was objectively reasonable in light of Azerbaijan's conduct towards him and his investments, and the laws and the totality of the business environment at the time of his investments.
514. Mr. Bahari's expectations have been entirely frustrated by Azerbaijan's failure to treat his investments in a fair and equitable manner. Unlike other investment disputes, this is not a situation where Mr. Bahari's legitimate expectations have been frustrated through a change in Azeri law or regulation, or even the revocation of a license, detrimental to his investments. Rather, the Azeri Government intentionally pulled the carpets out from under Mr. Bahari's feet, performing a complete volte-face from the encouragement and protections it had repeatedly provided to induce Mr. Bahari to heavily invest in numerous industry sectors and to the benefit of the burgeoning Azeri economy. This 180 degree change in treatment was entirely arbitrary and an abuse of power, and ultimately a complete and purposeful failure of the State to adhere to its commitment to afford fair and equitable treatment under the Treaty.

**3. Azerbaijan has an obligation to refrain from harassment, coercion, or abusive treatment.**

515. A breach of the FET standard occurs when a State engages in harassment, coercion, or abusive treatment against an investor and its investment. This principle was well-

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<sup>632</sup> *Parkerings v. Lithuania*, ICSID Case No ARB/05/8, Award on 11 September 2007 ([CLA-063](#)), ¶ 331 ("The expectation is legitimate if the investor received an explicit promise or guaranty from the host-State, or if implicitly, the host-State made assurances or representation that the investor took into account in making the investment.").

articulated by the tribunal in *Desert Line v. Yemen*, which held that “coercion and fear” implemented by a host State have been characterized as “the ‘antitheses’ of the promotion and protection of foreign investment.”<sup>633</sup> In *Desert Line*, the personal intervention of the head of State and the police, along with physical attacks on the integrity of the investment and threats to staff, constituted a breach of the FET standard. Further, the host State’s acts were so malicious that they warranted an award of moral damages.<sup>634</sup>

516. *Tokios Tokelés v. Ukraine* is also instructive. There, the tribunal held that a deliberate State campaign against an investor “must surely be the clearest infringement one could find of the provisions and aims of the Treaty.”<sup>635</sup>
517. Although framed within the context of due process considerations, *Al-Bahloul v. Tajikistan* recognized that the obligation to provide fair and equitable treatment includes “[t]he obligation not to exercise unreasonable pressure on an investor to reach certain goals”.<sup>636</sup> Indeed, where an investor faces a hostile environment and fear of violence, these circumstances are capable of indicating that an investor made decisions under duress. This duress can influence what actions an investor takes to assert its rights against the State.<sup>637</sup>
518. *Waste Management v. Mexico* considered that investor harassment can derive from various host State organs acting in unison:

The tribunal has no doubt that a deliberate conspiracy — that is to say, a conscious combination of various agencies of government without justification to defeat the purposes of an investment agreement - would constitute a breach of article 1105(1). A basic obligation of the State under Article 1105(1) is to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means.<sup>638</sup>

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<sup>633</sup> *Desert Line v. Yemen*, Award, 6 February 2008 (CLA-031), ¶ 156.

<sup>634</sup> *Desert Line v. Yemen*, Award, 6 February 2008 (CLA-031), ¶¶ 289-291.

<sup>635</sup> *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, 26 July 2007 (CLA-082), ¶ 123.

<sup>636</sup> *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017 (CLA-083), ¶ 171, quoting and citing *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. 064/2008, Partial Award on Jurisdiction and Liability, 2 September 2009 (CLA-084), ¶ 221.

<sup>637</sup> *Desert Line v. Yemen*, Award on 6 February 2008 (CLA-031), ¶¶ 180-181; *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 163; *Pope & Talbot, Inc. v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001 (CLA-085), ¶ 181.

<sup>638</sup> *Waste Management v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 (“*Waste Management v. Mexico*”) (CLA-086), ¶ 138.

519. Abusive conduct of a State can take many forms, including coercion, duress and harassment that involve unwarranted and improper pressure; abuse of power; persecution; threats, intimidation and use of force. It can also include arresting or jailing of executives or personnel; threats, or initiation of criminal proceedings; deliberate imposition of unfounded tax assessments, criminal or other fines; arresting or seizing of physical assets, bank accounts and equity; interfering with, obstructing or preventing daily business operations; and deportation from the host State or refusal to extend documents that allow a foreigner to live and work in the host State.<sup>639</sup>
520. Abusive treatment in violation of the FET standard occurs where harassment and coercion are “repeated and sustained”,<sup>640</sup> or amounts to a “a deliberate conspiracy—that is to say, a conscious combination of various agencies of government without justification to defeat the purposes of an investment agreement,”<sup>641</sup> or a “conspiracy to take away legitimately acquired rights.”<sup>642</sup>
521. Azerbaijan’s treatment of Mr. Bahari and his investments, from the fateful day he was removed by the Government from the Caspian Fish grand opening, to the subsequent acts of intimidation, harassment and assault, and abuse of power, spanning almost two decades, is a textbook case of a State’s failure to afford fair and equitable treatment.

#### **4. Azerbaijan has an obligation to provide transparency and due process.**

522. A State’s treatment of an investment must be transparent, including the decision-making process of authorities and the rationale behind actions affecting the interests of an investor.<sup>643</sup> Transparency requires that the investor be informed about the laws and administrative or other binding decisions before they are imposed.<sup>644</sup>
523. Equally, due process forms an essential part of the obligation of fair and equitable treatment, which is intended “to ensure that the legal process governing the protected rights as a whole, including its judicial manifestations, is fair and reasonable, devoid of

<sup>639</sup> “Fair and Equitable Treatment: A Sequel - UNCTAD Series on Issues in International Investment Agreements II (2012) (CLA-087), p. 82 (available at [https://unctad.org/system/files/official-document/unctaddiaeia2011d5\\_en.pdf](https://unctad.org/system/files/official-document/unctaddiaeia2011d5_en.pdf))

<sup>640</sup> *Eureko v. Poland*, Partial Award, 19 August 2005 (CLA-065), ¶ 237.

<sup>641</sup> *Waste Management v. Mexico*, Final Award, 30 April 2004 (CLA-086), ¶ 138.

<sup>642</sup> *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007 (“*PSEG v. Turkey*”) (CLA-088), ¶ 245.

<sup>643</sup> *Saluka v. Czech Republic*, Partial Award on 17 March 2007 (CLA-056), ¶ 407.

<sup>644</sup> *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 585.

arbitrariness, discrimination or manipulation to the detriment of those rights.”<sup>645</sup> Access to courts or other adjudicative or administrative decision-making bodies is a basic tenet of due process.<sup>646</sup> This is enshrined in the European Convention on Human Rights and is a fundamental aspect of international law.

524. According to the tribunal in *Tecmed v. Mexico*, “[i]t is understood that the fair and equitable treatment principle included in international agreements for the protection of foreign investments expresses ‘... the international law requirements of due process, economic rights, obligations of good faith and natural justice.’”<sup>647</sup> The foreign investor “also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions or permits issued by the State that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities.”<sup>648</sup>
525. In *Lemire v. Ukraine*, the tribunal concluded that Ukraine’s National Council, an administrative body tasked with issuing broadcast licenses, failed to provide due process in breach of fair and equitable treatment when it rendered decisions “behind closed doors,” “absent[t] reasoning of the decision,” and under a procedural framework that was prone to political interference, including that all members of the body were political appointees selected by the executive or legislative branches.”<sup>649</sup>
526. The tribunal in *ADC v. Hungary* described the concept of due process of law as:

an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions already taken or about to be taken against it. Some basic legal mechanisms, such as reasonable advance notice, a fair hearing and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make such legal procedure meaningful. In general, the legal procedure must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims

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<sup>645</sup> *OAo Tatneft v. Ukraine*, PCA Case No. 2008-08, Award, 29 July 2014 (CLA-089), ¶ 395 (FET requires that the “legal process . . . including its judicial manifestations, is fair and reasonable, devoid of arbitrariness, discrimination or manipulation to the detriment of those rights”).

<sup>646</sup> *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018 (CLA-090), ¶ 451; *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021 (CLA-091), ¶¶ 221, 225.

<sup>647</sup> *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 153 n.189 (internal citation omitted).

<sup>648</sup> *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 154.

<sup>649</sup> *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 (CLA-092), ¶¶ 293-296, 299, 309, 316, 343.

heard. If no legal procedure of such nature exists at all, the argument that "the actions are taken under due process of law" rings hollow.<sup>650</sup>

527. The *Stabil v. Russia* tribunal held that, "[p]rocedural due process is violated when certain procedural safeguards are not provided: tribunals have required a fair hearing within a reasonable time by an impartial adjudicator, as well as a procedure under domestic law for the investor to raise claims against the expropriation measure and compliance with that procedure."<sup>651</sup>
528. It is not just the judicial branch of a host State that must provide due process: "[a]dministrative organs can also engage the State's international responsibility by denying justice."<sup>652</sup> Equally, "collusion among branches of government can result in a denial of justice."<sup>653</sup>
529. The unlawful treatment of Mr. Bahari and his investments lacked an iota of transparency or due process. In fact, it was the opposite. Azerbaijan ensured, through threats and intimidation of Mr. Bahari and anyone who sought to assist him, that there was no ability to investigate happened to Mr. Bahari's investments, or to seek recourse from administrative or judicial process that would provide due process. By expelling Mr. Bahari from Azerbaijan, and not allowing him to return without specific Government approval, Azerbaijan obstructed Mr. Bahari from pursuing any recourse whatsoever in Azerbaijan. When Mr. Bahari engaged his in-country manager or legal counsel to engage in investigations into the status of his investments so that he could seek legal or administrative proceedings to recover his investments, the Government issued stern warnings and veiled threats to his counsel not to look any closer. In the circumstances of Mr. Moghaddam, on at least three occasions he was detained, assaulted, threatened and, ultimately, he was jailed for five years on false charges. All of this was intended to, and in fact did, intimidate Mr. Bahari. Mr. Moghaddam was then pardoned (by President Aliyev<sup>654</sup>) and expelled from Azerbaijan to ensure he could not ever again assist Mr. Bahari

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<sup>650</sup> *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006 (CLA-093), ¶ 435; see also *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB/11/26, Award, 29 January 2016 (CLA-094), ¶ 496.

<sup>651</sup> *Stabil v. Russia*, Final Award, 12 April 2019 (CLA-043) ¶ 244.

<sup>652</sup> *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 623; citing *Amco I v. Indonesia*, Award of November 20, 1984 (CLA-095), ¶ 242 ("the mere lack of due process would have been an insuperable obstacle to the lawfulness of the revocation.").

<sup>653</sup> *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 626.

<sup>654</sup> Bahari WS ¶ 92.

in his efforts in Azerbaijan to recover his investments. By each of these acts, Azerbaijan breached its FET obligation under the Treaty.

#### **5. Azerbaijan's treatment of Mr. Bahari was arbitrary and discriminatory.**

530. Tribunals have repeatedly found breaches of the FET standard where a host State acts not for cause but for purely arbitrary reasons, including where it takes a “volte-face” from its prior conduct as a result of “political pressure [...] from the highest Venezuelan officers.”<sup>655</sup>
531. In *Lemire v Ukraine* the tribunal stated that “the underlying notion of arbitrariness is that prejudice, preference or bias is substituted for the rule of law”.<sup>656</sup> Another facet is conduct that constitutes a willful disregard of due process of law.<sup>657</sup> In its ordinary meaning, “arbitrary” means “derived from mere opinion,” “capricious,” “unrestrained,” “despotic.”<sup>658</sup>
532. The non-discrimination requirement of the FET standard prohibits discrimination in the sense of specific targeting of a foreign investor, or the types of conduct that amount to a “deliberate conspiracy [...] to destroy or frustrate the investment.”<sup>659</sup>
533. Azerbaijan's treatment of Mr. Bahari and his investments was a textbook definition of arbitrary and discriminatory treatment. The Government committed a “volte-face” from its prior guarantee and conduct with the singular goal of enriching high ranking Government officials and the Azeri ruling elite.

#### **6. Azerbaijan acted without any requisite good faith.**

534. The obligation to act in good faith is a foundational requirement of foreign investment law and a critical element of the FET standard of protection.<sup>660</sup>
535. The tribunal in *Siag v. Egypt* held that “[i]t is [] widely recognised that the principle of good faith underlies fair and equitable treatment” and that:

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<sup>655</sup> *Crystallex v. Venezuela*, Award, 4 April 2016 (CLA-066), ¶¶ 588-600, 614.

<sup>656</sup> *Lemire v Ukraine*, Decision on Jurisdiction and Liability, 14 January 2010 (CLA-092), ¶ 263.

<sup>657</sup> *Loewen v. United States*, ICSID Case No. ARB(AF)98/3, Award, 26 June 2003 (CLA-096), ¶ 131; *Genin v. Estonia*, ICSID Case No. ARB/99/2, Award, 25 June 2001 (“*Genin v. Estonia*”) (CLA-097), ¶ 371.

<sup>658</sup> UNCTAD, p. 78; citing Oxford English Dictionary, 1989, Second Edition, Clarendon Press, Oxford, vol. XVIII (CLA-087), p. 464.

<sup>659</sup> *Glamis v. United States*, Award, 8 June 2009 (CLA-074), FN 1087 to ¶ 542; *Waste Management v. Mexico*, Final Award, 30 April 2004 (CLA-086), ¶ 138.

<sup>660</sup> *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017 (CLA-053), ¶ 524.

in international investment arbitration, the host State's duty to respect the investor's legitimate expectations arises from its more general duty to act in good faith towards foreigners. The general, if not cardinal, principle of customary international law that States must act in good faith is thus a useful yardstick by which to measure the Fair and Equitable standard.<sup>661</sup>

536. *Waste Management v. Mexico* held that the FET standard comprises: a basic obligation of the State [...] to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means.<sup>662</sup>

537. The good faith requirement goes directly to a State's obligation to protect against the arbitrary exercise of public powers, harassment by public authorities, and an abuse of power.<sup>663</sup> This was explained in *UP and C.D Holding v. Hungary*:

Bad faith [...] violates the FET standard, in particular when a state uses its legislative or executive power to harm or destroy a foreign investment. State action that is intended to harm a foreign investment is not FET. As stated in *Vivendi* (citing *Frontier Petroleum Services Ltd. v. Czech Republic*), host States have an obligation not to purposefully inflict damage upon an investment. This is different from a "do no harm" standard [...].<sup>664</sup>

538. Tribunals have also recognized that bad faith is a sufficient – but not a necessary – requirement for a breach of the fair and equitable standard.<sup>665</sup> Rather, “a violation of the [FET] standard can be found even if there is a mere objective disregard of the rights

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<sup>661</sup> *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009 (“*Siag v. Egypt*”) (CLA-098), ¶ 450 (citation omitted); see also *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009 (CLA-099), ¶ 107; *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, Final Award, 23 April 2012 (“*Oostergetel v. Slovakia*”) (CLA-100), ¶ 227 (internal citations omitted).

<sup>662</sup> *Waste Management v. Mexico*, Award, 30 April 2004 (CLA-086), ¶ 138.

<sup>663</sup> *Casinos Austria v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018 (CLA-059), ¶¶ 242-43; *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, PCA Case No. 2017-08/AA629, Award, 7 October 2020 (CLA-069), ¶ 467.

<sup>664</sup> *UP and C.D Holding Internationale (formerly Le Cheque Dejeuner) v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018 (“*UP and C.D Holding v. Hungary*”) (CLA-101), ¶ 443 (internal citations omitted).

<sup>665</sup> *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India*, PCA Case No. 2013-09, Award on Jurisdiction and Merits, 25 July 2016 (“*Devas v. India*”) (CLA-102), ¶ 467; *Crystallex v. Venezuela*, Award, 4 April 2016 (CLA-066), ¶ 543 (“The Tribunal believes that the state's conduct need not be outrageous or amount to bad faith to breach the fair and equitable treatment standard.”).

enjoyed by the investor under the FET standard<sup>666</sup> or “a wilful neglect of duty...”<sup>667</sup> by the State.

539. Apt to Mr. Bahari’s circumstances, in *Bayindir v. Pakistan (I)* the tribunal held that “unfair motives of expulsion, if proven, are capable of founding a fair and equitable treatment claim under the BIT.”<sup>668</sup>
540. Azerbaijan treated Mr. Bahari and his investments in bad faith. Azerbaijan enticed Mr. Bahari to invest his money, good-will, and livelihood, with full encouragement and approval of the Government and under the protection of its allegedly foreign-investment-friendly legal and business environment. Instead of observing Mr. Bahari’s investments in good faith, the highest ranking Government officials and ruling families in Azerbaijan used the Government to expel Mr. Bahari. In his imposed absence, the State facilitated a physical and legal taking of all that Mr. Bahari had, and ensured that there was no way for him to recover what was rightfully his. These acts were, without any doubt, what tribunals have repeatedly held constitutes bad faith on the part of a host State.

## **B. AZERBAIJAN BREACHED ITS OBLIGATION TO ACCORD MR. BAHARI FULL PROTECTION AND SECURITY**

### **1. Mr. Bahari and his investment are entitled to Most-Favored-Nation Treatment under Article 2 of the Treaty.**

541. Mr. Bahari is entitled to benefit from the guarantee of full protection and security found in Azerbaijan’s IIAs with third party States by operation of the Most-Favored-Nation (“**MFN**”) treatment provision in Article 2(3) of the Treaty.
542. Article 2(3) of the Treaty provides:

Each Party shall ensure fair and equitable treatment within its territory to the investments of the investor of the other Party. This treatment shall not be less favourable than that accorded by each Party to investments made within its territory by its own investors or than that accorded by each Party to the investments made within its territory

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<sup>666</sup> *Mobil Exploration v. Argentina*, Decision on Jurisdiction and Liability, 10 April 2013 (“*Mobil v. Ecuador*”) ([CLA-103](#)), ¶ 934.

<sup>667</sup> *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018 ([CLA-059](#)), ¶¶ 242-43.

<sup>668</sup> *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005 ([CLA-104](#)), ¶ 250.

by investors of the most favoured nation, if this latter treatment is more favourable.<sup>669</sup>

543. The essence of MFN clauses is to afford investors the additional substantive protections accorded by a host State to investors of a third State.<sup>670</sup> MFN clauses are widely recognized as intended to level the playing field for investors.<sup>671</sup> Notably, MFN clauses, even if combined in the same provision as the FET standard of protection, continue to attract any more favorable treatment extended to third State investments, and do so unconditionally.<sup>672</sup> This includes, *inter alia*, the importation of a “full protection and security” clause in a treaty with a third State.<sup>673</sup>

## 2. Azerbaijan’s treaty practice demonstrates that Azerbaijan is obligated to accord full protection and security.

544. Numerous IIAs concluded by Azerbaijan with third party States contain an unqualified formulation of the full protection and security standard of protection (“FPS”) to investors and investments. For example, the Azerbaijan-Serbia BIT (2011) provides that: “Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the state territory of the other Contracting Party.”<sup>674</sup> Likewise, the Azerbaijan-Switzerland BIT (2006) provides that: “Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the

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<sup>669</sup> [CLA-001](#), Treaty, Art. 2.

<sup>670</sup> *Vladimir Berschader and Moïse Berschader v. Russian Federation*, SCC Case No 080/2004, Award, 21 April 2006 ([CLA-109](#)), ¶ 179 (“[i]t is universally accepted that the very essence of an MFN provision in a BIT is to afford to investors all material protection provided by subsequent treaties ‘...’”).

<sup>671</sup> *National Grid v. Argentina*, Decision on Jurisdiction, 20 June 2006 ([CLA-105](#)), ¶ 92 (“[t]he MFN clause is an important element to ensure that foreign investors are treated on a basis of parity with other foreign investors ... when they invest abroad.”); *LCD and C.D. Holding v. Hungary*, Decision on Preliminary Issues of Jurisdiction, 3 March 2016 ([CLA-106](#)), ¶ 159 (the “essential purpose” of an MFN clause is “to ensure that investors afforded the benefit of the Treaty are not discriminated against by comparison to investors afforded the benefit of some other BIT.”); *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award, 22 August 2012 ([CLA-107](#)), ¶ 242 (“the point of MFN clauses is to ensure overall equality of treatment in the sense of creating a level playing field between foreign investors from different countries [...]”).

<sup>672</sup> *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Decision on Annulment, 21 March 2007 ([CLA-108](#)), ¶ 64. Notably, the relevant MFN provision of the Chile-Malaysia BIT reads as follows: “Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.”

<sup>673</sup> *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Award, 30 November 2017 ([CLA-053](#)), ¶¶ 518-519.

<sup>674</sup> Azerbaijan-Serbia BIT (2011) ([CLA-110](#)), Art. 2(2).

territory of the other Contracting Party.”<sup>675</sup> Various other BITs concluded by Azerbaijan with third States contain a FPS standard of treatment.

### 3. Full protection and security is a distinct standard.

545. As detailed below, Azerbaijan’s treatment of Mr. Bahari’s investments violated Azerbaijan’s obligation to provide full protection and security to Mr. Bahari’s investments via the MFN provision in Article 2(3) of the Treaty.

546. Arbitral practice consistently concludes that FET and FPS are separate and distinct standards. In *Ulysseas v. Ecuador* the tribunal considered that “[f]ull protection and security is a standard of treatment other than fair and equitable treatment [...]”<sup>676</sup> Reinisch and Schreuer have also considered that, as a general principle, there is no reason to treat the two standards as the same, in particular because that interpretation would deprive a treaty provision any effect.<sup>677</sup>

### 4. Full protection and security extends to physical protection and security.

547. The FPS standard entails a core obligation of police protection over the physical integrity of an investor and its assets against interference by the use of force.<sup>678</sup> The “obligation has typically been applied in situations involving physical threats or destruction.”<sup>679</sup>

548. The tribunal in *Cengiz v. Libya* considered that, “[t]he perpetrator of such interference is irrelevant: it could be the State itself, (including agencies, groups, entities or other organs whose actions can be attributed to the State), or any other third-party.”<sup>680</sup>

549. *Cengiz* thus concluded that the FPS standard encompasses two distinct obligations on a host State:

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<sup>675</sup> Azerbaijan-Switzerland BIT (2006) (CLA-111), Art. 4(1).

<sup>676</sup> *Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Final Award, 12 June 2012 (CLA-112), ¶ 272.

<sup>677</sup> Reinisch, A., & Schreuer, C., *International Protection of Investments: The Substantive Standards*, Cambridge University Press (2020) (CLA-113), p. 557, ¶ 75 (citation omitted).

<sup>678</sup> *BG Group Plc v. The Republic of Argentina*, Final Award, 24 December 2007 (CLA-114), ¶ 324 (“The Tribunal observes that notions of “protection and constant security” or “full protection and security” in international law have traditionally been associated with situations where the physical security of the investor or its investment is compromised.”).

<sup>679</sup> *National Grid PLC v. The Argentine Republic*, Award, 3 November 2008 (CLA-115), ¶ 187.

<sup>680</sup> *Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, 7 November 2018 (CLA-116), ¶ 403.

- i. a *negative obligation* to refrain from directly harming the investment by acts of violence attributable to the State, *plus*
- ii. a *positive obligation* to prevent third parties from causing physical damage to such investment.<sup>681</sup>

550. *Cengiz* further explained that:

The FPS standard thus combines an obligation of result and an obligation of means:

(i) The obligation of result requires that the State and its organs abstain from directly causing physical harm. As Dolzer/Schreuer explain:

Whenever state organs themselves act in violation of the standard, or significantly contribute to such action, no such issues of attribution or due diligence will arise because the state will then be held directly responsible.

(ii) The second leg of the standard requires the State to exercise reasonable care to prevent damage caused by third parties. Reasonableness must be measured taking into consideration the State's means and resources and the general situation of the country[cite]. This obligation of vigilance [...] requires that the State apply reasonable means to protect foreign property.<sup>682</sup>

551. Numerous tribunals have applied this FPS requirement that a host State protect against damage and punish the perpetrators.<sup>683</sup> The tribunal in *Hydro Energy 1 and Hydroxana v. Spain* summarized the arbitral case law thus:

The case-law and commentators generally agree that this standard imposes an obligation of vigilance and due diligence upon the government.... The minimum standard of vigilance and care set by international law comprises a duty of prevention and a duty of repression. A well-established aspect of the international standard of treatment is that States must use "due diligence" to prevent wrongful

<sup>681</sup> *Id.*

<sup>682</sup> *Id.* at ¶¶ 404-406, citing *inter alia* R. Dolzer & C. Schreuer, *Principles of International Investment Law*, Oxford University Press, 2nd ed., 2008 (CLA-147), p. 150.

<sup>683</sup> *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015 (CLA-117), ¶ 597; *Mobil v. Ecuador*, Decision on Jurisdiction and Liability, 10 April 2013 (CLA-103), ¶ 999; *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997 ("AMT v. Zaire") (CLA-118), ¶¶ 6.05-6.06; *MNSS B.V. and Recupero Credito Acciaio N.V. v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016 (CLA-119), ¶ 356.

injuries to the person or property of aliens caused by third parties within their territory, and, if they did not succeed, exercise at least "due diligence" to punish such injuries. If a State fails to exercise due diligence to prevent or punish such injuries, it is responsible for this omission and is liable for the ensuing damage. It should be emphasised that the obligation to show "due diligence" does not mean that the State has to prevent each and every injury.<sup>684</sup>

552. *Wena Hotels v. Egypt* established that the forcible seizure of an investment by private parties, where police and other State authorities had failed to take effective measures to prevent or redress the seizure, unequivocally breached the FPS obligation.<sup>685</sup>
553. *Wena* also emphasized that the FPS standard extends the obligation to State actions and inactions, a position which has been consistently affirmed.<sup>686</sup> For example, in *AMT v. Zaire*, the tribunal held "that Zaire has breached its obligation by taking no measure whatever that would serve to ensure the protection and security of the investment" and "[t]he responsibility of the State of Zaire is incontestably engaged by the very fact of an omission by Zaire to take every measure necessary to protect and ensure the security of the investment made by AMT in its territory."<sup>687</sup>
554. The *Electrabel v. Hungary* tribunal went further in stating that under the FPS standard a host State "assumed an obligation actively to create and maintain measures that promote security. The necessary measures must be capable of protecting the covered investment against adverse action by private persons."<sup>688</sup> In *Tatneft v. Ukraine*, the tribunal held that

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<sup>684</sup> *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Decision on Jurisdiction, Liability and Directions on Quantum, 9 March 2020 (CLA-120), ¶ 561, quoting *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011 (CLA-121), ¶¶ 522-523; *Parkerings v. Lithuania*, Award, 11 September 2007 (CLA-063), ¶ 355.

<sup>685</sup> *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000 ("*Wena Hotels v. Egypt*") (CLA-122), ¶ 84.

<sup>686</sup> *Parkerings v. Lithuania*, Award, 11 September 2007 (CLA-063), ¶ 355; *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, Final Award, 12 November 2010 (CLA-123), ¶ 261.

<sup>687</sup> *AMT v. Zaire*, Award, 21 February 1997 (CLA-118), ¶¶ 6.08, 6.11.

<sup>688</sup> *Electrabel v. Hungary*, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 (CLA-062), ¶ 7.145; *MNSS B.V. and Recupero Credito Acciaio N.V. v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016 (CLA-119), ¶ 356 (noting that "the standard of 'most constant protection and security' requires the Government to have a more pro-active attitude to ensure the protection of persons and property [...]"); *Jurgen Wirtgen and others v. Czech Republic*, PCA Case No. 2014-03, Final Award, 11 October 2017 (CLA-125), ¶ 451 ("The full protection and security standard requires a state to provide a framework that protects an investment from adverse interference."); *Oxus Gold plc v. Republic of Uzbekistan*, UNCITRAL, Final Award, 17 December 2015 (CLA-126), ¶ 353 ("the investor has the right to expect that the State takes reasonable measures within its power to prevent wrongful injuries by third parties, and where such injuries have already happened, to punish them [...].")

Ukraine “failed to provide the appropriate police protection” and the “participation of the Ministry of the Interior’s troops” in the seizure itself was particularly telling.<sup>689</sup>

555. Similarly, the FPS standard also protects the investor’s person and property from both action or inaction by organs and representatives of the host State. This is confirmed by *Biwater v. Tanzania*, in which the tribunal stated:

the “full security” standard is limited to a State’s failure to prevent actions by third parties, but also extends to actions by organs and representatives of the State itself.<sup>690</sup>

556. The tribunal in *AES v. Hungary* noted the State’s obligation vis-à-vis both private third parties and State actors:

In the Tribunal’s view, the duty to provide most constant protection and security to investments is a state’s obligation to take reasonable steps to protect its investors (or to enable its investors to protect themselves) against harassment by third parties and/or state actors.

557. As discussed above, this reflects the unitary principle under international law that State responsibility extends to actions by *any* of its organs.<sup>691</sup>

## 5. Full protection and security extends to legal protection and security.

558. The FPS standard extends beyond safeguards from physical harm and equally requires legal protection to the investor and its investments.<sup>692</sup> The tribunal in *Vivendi v. Argentina* confirmed this legal protection:

Thus protection and full security (sometimes full protection and security) can apply to more than physical security of an investor or its property, because either could be subject to harassment without being physically harmed or seized.<sup>693</sup>

559. The tribunal in *A.M.F. Aircraftleasing v. Czech Republic* similarly affirmed:

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<sup>689</sup> OAO “Tatneft” v. Ukraine, PCA Case No. 2008-8, Award on the Merits, 29 July 2014 (CLA-089), ¶ 428.

<sup>690</sup> *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (“*Biwater v. Tanzania*”) (CLA-127), ¶ 730; see also *AES Summit Generation Limited and AES-Tisza Erőmű Kft. v. Republic of Hungary (II)*, ICSID Case No. ARB/07/22, Award, 23 September 2010 (CLA-128), ¶ 13.3.2; (DS)2, S.A., *Peter de Sutter and Kristof De Sutter v. Republic of Madagascar (II)*, ICSID Case No. ARB/17/18, Award, 17 April 2020 (“*De Sutter v. Madagascar (II)*”) (CLA-129), ¶ 303.

<sup>691</sup> ARSIWA (CLA-037), Art. 4.

<sup>692</sup> *Azurix v. Argentina*, Award, 14 July 2006 (CLA-057), ¶ 408; *National Grid PLC v. The Argentine Republic*, Award, 3 November 2008 (CLA-115), ¶ 187; *Renée Rose Levy de Levi v. Republic of Peru*, ICSID Case No. ARB/10/17, Award, 26 February 2014 (CLA-130), ¶ 406.

<sup>693</sup> *Vivendi v. Argentina I*, ICSID Case No. ARB/97/3, Award II, 20 August 2007 (CLA-049), ¶ 7.4.17.

The FPS standard extends beyond physical protection to include (at least) the provision of legal security, in the sense of a duty of due diligence in maintaining a functioning judicial system that is available to foreign investors seeking redress.<sup>694</sup>

560. In particular, the FPS standard guarantees that the host State will have a functioning legal system and effective means of redress should an investment be harmed:

In this Tribunal's view, where the acts of the host state's judiciary are at stake, "full protection and security" means that the state is under an obligation to make a functioning system of courts and legal remedies available to the investor.<sup>695</sup>

561. In *Siemens v. Argentina*, the tribunal derived additional authority from the applicable BIT's definition of "investment", which includes tangible and intangible assets, to find that "full protection and security" is wider than "physical" protection and security.<sup>696</sup>

562. Professor Schreuer has characterized the legal protections inherent in the FPS standard as a factual and legal framework that provides security and recourse against wrongs of private persons and State organs:

[B]y assuming the obligation of full protection and security the host State promises to provide a factual and legal framework that grants security and to take the measures necessary to protect the investment against adverse action by private persons as well as State organs. In particular, this requires the creation of legal remedies against adverse action affecting the investment and the creation of mechanisms for the effective vindication of investors' rights.<sup>697</sup>

563. Accordingly, a State is in breach of its FPS obligation if an investor cannot access legal remedies to address harm it has experienced by private persons or State organs.

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<sup>694</sup> *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020 ([CLA-131](#)), ¶ 661.

<sup>695</sup> *Frontier Petroleum Services Ltd. v. The Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010 ([CLA-123](#)), ¶¶ 263, 273.

<sup>696</sup> *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007 ([CLA-055](#)), ¶ 303; *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award, 27 March 2020 ([CLA-132](#)), ¶ 665.

<sup>697</sup> Christoph Schreuer, "Full Protection and Security," *Journal of International Dispute Settlement* (2010) ([CLA-133](#)), p. 12 of PDF.

## 6. Azerbaijan had an obligation of due diligence and vigilance to protect and remediate.

564. The obligation of a host State to provide protection and security is one of “due diligence” and a reasonable degree of vigilance.<sup>698</sup> This was explained in *AMT v. Zaire* more than 25 years ago:

The obligation incumbent on Zaire is an obligation of vigilance, in the sense that Zaire as the receiving state of investments made by AMT, an American company, shall take all measures necessary to ensure the full enjoyment of protection and security of its investment and should not be permitted to invoke its own legislation to detract from any such obligation. Zaire must show that it has taken all measure of precaution to protect the investments of AMT on its territory.<sup>699</sup>

565. The *Paushok v. Mongolia* tribunal described the duty of due diligence as one that requires a prevention of injury to the person or property of aliens, and if that does not succeed, “to exercise ‘due diligence’ to punish such injuries” and “[if] a State fails to use due diligence to prevent or punish such injuries, it is responsible for this omission and is liable for the ensuing damage.”<sup>700</sup> The tribunal also emphasized the broadly accepted position that a host State’s “due diligence” is to be “reasonable actions within its power to avoid injury when it is, or should be, aware that there is a risk of injury.”<sup>701</sup>

566. The application of the FPS standard and a host State’s diligence is not a question of the actions that gave rise to the harm to an investor’s investment: “[r]ather the focus is on the acts or omissions of the State in addressing the unrest that gives rise to the damage.”<sup>702</sup>

## 7. Azerbaijan failed to accord full protection and security to Mr. Bahari and his investments.

567. Azerbaijan, through its acts and omissions, failed to meet its obligation to provide both physical and legal protections to Mr. Bahari and his investments under the FPS standard.

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<sup>698</sup> *Mobil v. Ecuador*, Decision on Jurisdiction and Liability, 10 April 2013 (CLA-103), ¶ 999 (“The commentators and case-law generally agrees that this standard imposes an obligation of vigilance and due diligence upon the government.”); *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Decision on Jurisdiction, Liability and Directions on Quantum, 9 March 2020 (CLA-120), ¶ 561.

<sup>699</sup> *AMT v. Zaire*, Award, 27 February 1997 (CLA-118), ¶ 6.05.

<sup>700</sup> *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011 (“*Paushok v. Mongolia*”) (CLA-134), ¶¶ 324-25; *Asian Agricultural Products LTD (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990 (CLA-135), ¶ 85 (“the Respondent through said inaction and omission violated its due diligence obligation which requires undertaking all possible measures that could be reasonably expected [...]”).

<sup>701</sup> *Ibid. Paushok* at ¶ 325.

<sup>702</sup> *Ampal-American v. Egypt*, Decision on Liability and Heads of Loss, 21 February 2017 (CLA-136), ¶ 245.

568. First, Azerbaijan failed its negative obligation to refrain from directly harming Mr. Bahari and his investments. Indeed, Azerbaijan was fully aware of, and in fact participated in these harmful acts. Azerbaijan, through its security apparatus, forcibly detained and then expelled Mr. Bahari from Azerbaijan with the sole purpose of denying Mr. Bahari access to and control of his investments. Mr. Bahari's expulsion, and inability to re-enter Azerbaijan, allowed Government agents and private parties to ultimately seize physical and legal control of Mr. Bahari's investments.<sup>703</sup> Azerbaijan further threatened and physically assaulted Mr. Bahari's manager, Mr. Moghaddam, unlawfully detained him for over a week, then, in 2009, imprisoned him on falsified criminal charges.<sup>704</sup> Various State organs further threatened and intimidated Mr. Bahari, or his legal counsel, hindering Mr. Bahari from investigating the disposition of his investments and building a possible legal claim against Azerbaijan.<sup>705</sup>
569. Secondly, Azerbaijan also failed its positive obligation to prevent State organs and third parties from causing harm to Mr. Bahari and his investments. Instead of taking measures to address the physical and legal seizure of Mr. Bahari's investments, various ministries and agencies stood by (or even took affirmative administrative actions), while the harmful conduct endured.
570. Moreover, Azerbaijan was under an obligation to keep its administrative and judicial systems available to Mr. Bahari so that his claims would be properly examined impartially and fairly.<sup>706</sup> Not only did Azerbaijan actively prevent Mr. Bahari from accessing these systems, but Azerbaijan blatantly ignored and chose not to apply its own laws that would have offered Mr. Bahari protection or at least mitigated against the unlawful taking of Mr. Bahari's investments. Notably, the Ministry of Justice (among other Government agencies) failed in its oversight role of registered legal entities in Azerbaijan, and never investigated the glaring discrepancy of Mr. Bahari's ouster, and the replacement of Caspian Fish (BVI) and its representative office with the fraudulent Caspian Fish MMC entity.<sup>707</sup>

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<sup>703</sup> *Supra*, Section III.B.

<sup>704</sup> *Supra*, Sections III.B.6; III.D; III.I.

<sup>705</sup> *Supra*, Sections III.B.2 (Ilham Aliyev's threats on a phone call); III.B.3 (assassination plot); III.C.1-2 (threats of tax penalties); III.E (threats against legal counsel, Mr. Kilic); III.K (threats against legal counsel, Mr. Allahyarov).

<sup>706</sup> *Parkerings v. Lithuania*, Award, 11 September 2007 (CLA-063), ¶ 360.

<sup>707</sup> *Supra*, Section V.2.

571. As discussed above Azerbaijan’s Antitrust Authority equally failed in its oversight role over merger controls. Under Azerbaijan’s Antitrust Law,<sup>708</sup> acquisition of more than 20% of voting shares (participation interests) of a target by a transferee (including a group of transferees or a group of entities controlling each other’s assets), where such target (or the transferee) controls more than a 35% share of a relevant commodity market in Azerbaijan,<sup>709</sup> triggers the merger control regime and a filing requirement.<sup>710</sup> The Azeri antitrust authority exercises supervision over, and then must approve, the transfer of the shares.
572. Here, Mr. Bahari’s 40% shareholding, and Caspian Fish Co’s +35% share of the fishing market in Azerbaijan,<sup>711</sup> would have triggered antitrust reporting and approval by the Antitrust Authority. Mr. Bahari’s absence from the transaction, whether by written consent or receipt of the proceeds of the sale, should have raised a red flag for the Azeri antitrust authority, including denying approval to the transaction.
573. Notwithstanding Mr. Bahari’s efforts to recover his investments, he was never under an obligation to expressly request State intervention. It was enough for Azerbaijan to be aware of the unlawful seizure and taking of Mr. Bahari’s investments to trigger the obligation of due diligence and vigilance under the Treaty’s FPS obligation.<sup>712</sup>

### **C. AZERBAIJAN UNLAWFULLY EXPROPRIATED MR. BAHARI’S INVESTMENTS**

574. The Treaty prohibits Azerbaijan from unlawfully expropriating Mr. Bahari’s investments. Azerbaijan, through its acts and omissions, facilitated and maintained the taking of Mr. Bahari’s tangible and intangible investments. That expropriation was unlawful and a breach of the Treaty.

#### **1. Article 4 of the Treaty prohibits unlawful expropriation.**

575. Article 4 of the Treaty provides that:

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<sup>708</sup> *Supra*, Section V; **C-218** Law of the Republic of Azerbaijan on “Antitrust Activity” dated 4 March 1993, #526 (“**Azeri Antitrust Law**”).

<sup>709</sup> The antitrust compliance is also triggered where the combined book value of assets of both the transferee and the target exceeds 75 thousand times the minimum wage.

<sup>710</sup> Azeri Antitrust Law (**C-218**), Art. 13-1.

<sup>711</sup> Caspian Fish Co’s minimum value of US\$ 56 million would also have “exceeded 75 thousand times the minimum wage in Azerbaijan.

<sup>712</sup> *De Sutter v. Madagascar (II)*, Award, 17 April 2020 (**CLA-129**), ¶ 304.

1. Investments shall not be expropriated, nationalized or subjected, directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article 2 of this Agreement.

2. Compensation should be equivalent to the market value of the expropriated investment immediately before the expropriatory action was taken or became known. Compensation should be paid without delay and be freely transferable as described in Article 5.

[...]

576. An expropriation that does not satisfy all of these conditions breaches Article 4 of the Treaty.<sup>713</sup>

**2. Expropriation of investments includes both tangible and intangible assets.**

577. Article 1 of the Treaty defines “investment” to include “movable and immovable property” and various intangible property rights, including “shares, stocks or any other form of participation in companies,” “industrial and intellectual property,” “good will and know-how,” and “business rights conferred by law or by Contract.”<sup>714</sup>

578. It follows that an expropriation of any of these tangible and intangible property rights must comply with the Treaty’s expropriation provision to be deemed lawful.<sup>715</sup>

579. Expropriation can also specifically affect rights, including rights arising from contract.<sup>716</sup> The *Vivendi II* tribunal observed that:

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<sup>713</sup> *Crystallex v. Venezuela*, Award, dated 4 April 2016 (CLA-066), ¶ 716 (“When a treaty cumulatively requires several conditions for a lawful expropriation, arbitral tribunals seem uniformly to hold that failure of any one of those conditions entails a breach of the expropriation provisions.”); *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009 (CLA-137), ¶ 98 (“The Tribunal observes that the conditions enumerated in Art. 6 are cumulative. In other terms, if any of those conditions is violated, there is a breach of Art. 6.”).

<sup>714</sup> CLA-001 Treaty, Art. 1(1).

<sup>715</sup> *Siemens v. Argentina*, Award, 6 February 2007 (CLA-055), ¶ 267 (“There is a long judicial practice that recognizes that expropriation is not limited to tangible property.”); *Wena Hotels v. Egypt*, Award, 8 December 2000 (CLA-122), ¶ 98 (“It is also well established that an expropriation is not limited to tangible property rights.”); *Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Award, 13 March 2015 (“*Tidewater v. Venezuela*”) (CLA-138), ¶ 118 (“The terms of the BIT confirm that an investment is capable of including goodwill and know-how as well as other tangible and intangible assets, including contractual rights.”).

<sup>716</sup> *Azurix v. Argentina*, Award, 14 July 2006 (CLA-057), ¶ 314 (“Whether contract rights may be expropriated is widely accepted by the case law and the doctrine.”); *Consortium R.F.C.C. v. Kingdom of Morocco*, ICSID Case No.

it has been clear since at least 1903, in the Rudolff case, that the taking away or destruction of rights acquired, transmitted and defined by contract is as much a wrong entitling the sufferer to redress as the taking away or destruction of a tangible property.<sup>717</sup>

580. In *Biloune v. Ghana*, the tribunal held that contract rights could be expropriated by acts and omissions of the host State's authorities. The relevant acts and omissions cited by the tribunal were *inter alia* "the arrest, the detention, the requirement of filing assets declaration forms, and the deportation of Mr Biloune without possibility of re-entry" which "had the effect of causing the irreparable cessation of work on the project." The *Biloune* tribunal went on to say that:

such prevention of [the investor] from pursuing its approved project would constitute constructive expropriation of [the investor's] contractual rights in the project [...].<sup>718</sup>

581. Other intangible rights, such as goodwill, know-how, trademarks, or those intangible rights enumerated by an IIA as being protected investments, are capable of being expropriated.<sup>719</sup>

### 3. Azerbaijan unlawfully expropriated Mr. Bahari's investments.

582. Taking a wide aperture to Mr. Bahari's claim, the evidence set out in this Statement of Claim points to a self-evident case of expropriation: Mr. Bahari invested millions of U.S. Dollars in Azerbaijan; Government officials stole these investments for themselves; and (a) Mr. Bahari no longer owns or controls his investments. However, (b) the expropriatory acts do not manifest as a single direct breach in time; rather, (c) there were composite and continuous acts which ripened into an indirect expropriation over a certain length of time.

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ARB/00/6, Award, 22 December 2003 (CLA-139), ¶ 62 ("droits issus d'un contrat peuvent être l'objet de mesure d'expropriation, à partir du moment où ledit contrat a été qualifié d'investissement par le Traité lui-même."); *Crystallex v. Venezuela*, Award, 4 April 2016 (CLA-066), ¶ 663 ("the Treaty makes "investments" (together with 'returns') the object of a possible expropriation, it ensures that contractual rights are generally capable of being expropriated. In the Tribunal's eyes, to conclude otherwise would mean to disregard the natural and plain meaning of these terms.").

<sup>717</sup> *Vivendi v. Argentina I*, Award II, 20 August 2007 (CLA-049), ¶ 7.5.18; *Eureko v. Poland*, Partial Award, 19 August 2005, 19 August 2005 (CLA-065), ¶ 241.

<sup>718</sup> *Antoine Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre and the Government of Ghana*, Award on Jurisdiction and Liability, 27 October 1989 (CLA-140), ¶ 81.

<sup>719</sup> *Tidewater v. Venezuela*, Award, 13 March 2015 (CLA-138), ¶ 118; *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016 (CLA-141), ¶ 274.

**a. The facts of the expropriation speak for themselves.**

583. In the broadest sense, Mr. Bahari’s claim for expropriation is one of *res ipsa loquitur* – what has happened is self-explanatory and incontrovertible.<sup>720</sup>
584. The evidence plainly establishes (1) the making of the investments; (2) the taking of the same; (3) and the resulting loss to Mr. Bahari. First, there can be no doubt that Mr. Bahari invested significant capital and know-how to develop and establish multiple investments in Azerbaijan, with the direct involvement and endorsement of the Azeri Government. Second, these investments were openly seized: at the very moment Mr. Bahari was to celebrate the grand opening of his largest and most prominent investment, Caspian Fish, the Government took the first known step in a scheme that would ultimately deprive Mr. Bahari of not just Caspian Fish, but all his investments in Azerbaijan. Third, the evidence reveals that Mr. Bahari’s investments have been and are currently in the hands of (*inter alia*) the very Government officials who orchestrated the taking, including the President of Azerbaijan and the Minister of Emergency Situations.<sup>721</sup> Thus, Mr. Bahari has proven “the substantial, radical, severe, devastating or fundamental deprivation of [his] rights [and] the [...] factual destruction of [his] investment, its value or enjoyment.”<sup>722</sup>
585. The effect and consequence of government conduct drive an expropriation analysis. Dolzer, Kriebaum, and Schreuer explain this outcome-based inquiry:

What matters is the effect of government conduct – whether malfeasance, misfeasance, or nonfeasance, or some combination of the three – on foreign property rights or control over an investment, not whether the state promulgates a formal decree or otherwise expressly proclaims its intent to expropriate. For the purposes of state responsibility and the obligation to make adequate reparation, international law does not distinguish indirect from direct expropriation.<sup>723</sup>

586. Here, the effect of Azerbaijan’s actions are clear and conclusive. The facts incontrovertibly establish, as a matter of law, that Azerbaijan unlawfully expropriated Mr. Bahari’s

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<sup>720</sup> See e.g. *AMT v. Zaire*, Award, 21 February 1997 (CLA-118), ¶ 6.09; *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines* (I), ICSID Case No. ARB/03/25, Award, 16 August 2007 (CLA-035), ¶ 399 (“this is a case in which *res ipsa loquitur*. The relevant facts, all of which are found in Fraport’s own documents, are incontrovertible.”).

<sup>721</sup> *Supra*, Sections III.F-H.

<sup>722</sup> *Electrabel v. Hungary*, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 (CLA-062), ¶ 6.62.

<sup>723</sup> Rudolf Dolzer, Ursula Kriebaum, and Christoph Schreuer: *Principles of International Investment Law*, Third ed. Oxford, United Kingdom (2022 OUP) (CLA-050), pp. 156-157; citing WM Reisman and RD Sloane, “Indirect Expropriation and its Valuation in the BIT Generation”, (2003) 74 BYLL 115, 121 (CLA-150).

investments in breach of its obligations under Article 4 of the Treaty. Mr. Bahari is entitled to full compensation, whether Azerbaijan's expropriation constituted a direct or indirect expropriation.

**b. The taking of Mr. Bahari's investments did not immediately crystallize into a direct expropriation.**

587. The expropriation of Mr. Bahari's investments did not manifest in a single act, but rather, occurred in a series of continuous acts and omissions that took place over a number of years. As described below, while the initial ouster of Mr. Bahari initiated this sequence of events, it did not crystallize into a single breach amounting to a direct expropriation.

588. Direct expropriations are open, deliberate, and are conducted with unequivocal intent, reflected in a formal law, decree, or physical act, to deprive the owner of his or her property through the transfer of title or outright seizure.<sup>724</sup> An expropriation can benefit the State or a third party,<sup>725</sup> and frequently involves a "forcible taking" of property rights.<sup>726</sup>

589. The tribunal in *Burlington v. Ecuador* established a now frequently cited standard to assess whether a direct expropriation has occurred:

a State measure constitutes expropriation under the Treaty if (i) the measure deprives the investor of its investment; (ii) the deprivation is permanent; and (iii) the deprivation finds no justification under the police powers doctrine.<sup>727</sup>

590. It is self-evident that Azerbaijan's detention and expulsion of Mr. Bahari between February and March 2001 were not only unlawful and had no justification under the police powers

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<sup>724</sup> UNCTAD Series on Issues in International Investment Agreements II, Expropriation, 2012 (CLA-142), p. 7; *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 113 ("expropriation means a forcible taking by the Government of tangible or intangible property owned by private persons by means of administrative or legislative action to that effect.").

<sup>725</sup> *Amco v. Indonesia*, Award, 20 November 1984 (CLA-095) ("it is generally accepted in international law, that a case of expropriation exists not only when a state takes over private property but also when the expropriating state transfers ownership to another legal or national person."); *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 701 ("expropriation can exist despite there being no obvious benefit to the State concerned"); *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010 (CLA-143), ¶ 410.

<sup>726</sup> *LG&E v. Argentina*, Decision on Liability, 3 October 2006 (CLA-072), ¶ 187 (Direct expropriation is "understood as the forcible appropriation by the State of the tangible or intangible property of individuals by means of administrative or legislative action.").

<sup>727</sup> *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012 (CLA-144), ¶ 506; see also *Quiborax S.A., Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015 (CLA-145), ¶ 200; *Ivan Peter Busta and James Peter Busta v. Czech Republic*, SCC Case No. V2015/014, Final Award, 10 March 2017 (CLA-048), ¶ 398.

doctrine, but amounted to an open, deliberate, and unequivocal physical act intended to ultimately deprive Mr. Bahari of his investments.

591. As a singular act, however, Mr. Bahari's expulsion from Azerbaijan did in itself rise to the level of a direct expropriation. At that point in time, Azerbaijan's detention and expulsion of Mr. Bahari did not, in itself, deprive him permanently or irreversibly of his investments.<sup>728</sup>
592. Indeed, the evidence reveals an initial period where the state of Mr. Bahari's investments was very much in flux, with ongoing negotiations between Mr. Bahari and Mr. Heydarov. Subsequent to his expulsion from Azerbaijan, Mr. Bahari undertook a sustained campaign to protect his investments. Among other steps, Mr. Bahari was in regular contact with Minister Heydarov to discuss the status of his investments and to determine what the underlying reason for his expulsion and when he may return to Azerbaijan.<sup>729</sup>
593. In June 2002, Mr. Heydarov proposed to purchase Mr. Bahari's shareholding interest in Caspian Fish, and sent Mr. Khanghah to Dubai to negotiate on his and Mr. Aliyev's behalf, as well as Mr. Pashayev (since Coolak Baku and Shuvalan Sugar were part of the negotiated terms).<sup>730</sup>
594. The meeting with Mr. Khanghah took place in Dubai on 15 June 2002. The proposal turned out to be a forced sale, in which Mr. Bahari was pressured via, *inter alia*, with improper threats of tax liabilities on Coolak Baku. Under the Forced Sale Terms, Mr. Bahari was to give up his 40% shareholding in Caspian Fish, in return for a few million U.S. Dollars (nowhere close to the value of his shares), plus the return of Coolak Baku and Shuvalan Sugar. Mr. Bahari refused the Forced Sale Terms, and thus walked away with his shareholding interest in Caspian Fish intact.
595. Thus, as 15 June 2002, a direct expropriation had not yet occurred because the legal and economic use of Mr. Bahari's investments had not been definitively lost,<sup>731</sup> and there was

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<sup>728</sup> *LG&E v. Argentina*, Decision on Liability of 3 October 2006 ([CLA-072](#)), ¶ 193 ("Generally, the expropriation must be permanent, that is to say, it cannot have a temporary nature, unless the investment's successful development depends on the realization of certain activities at specific moments that may not endure variations"); *Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award of 17 July 2006 ([CLA-146](#)), ¶ 176(d) (holding that one of the elements of an expropriation is that "[t]he taking must be permanent, and not ephemeral or temporary").

<sup>729</sup> [Bahari WS](#) ¶¶ 71, 77, 78, 79-84.

<sup>730</sup> *Supra*, [Section III.C](#).

<sup>731</sup> *Quiborax S.A., Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015 ("*Quiborax v. Bolivia*") ([CLA-145](#)), ¶ 234 ("In the Tribunal's view, this is the date of the expropriation, as this was the date on which due to the governmental interference the legal and economic use of the concessions was definitively lost.").

a possibility that the deprivation could be reversed – as demonstrated by the handwritten counter-offer Mr. Bahari and Mr. Khanghah attempted to negotiate. Stated differently, at that point in time, Mr. Bahari had not yet been deprived permanently or irreversibly of his investments.<sup>732</sup>

**c. The loss of Mr. Bahari’s investments occurred as a continuous series of actions and omissions that amounted in the aggregate to indirect expropriation.**

596. The principal consideration with an indirect expropriation is whether the host State’s actions and omissions substantially deprived the investor of the economic value of its investment.<sup>733</sup> Reisman and Sloane explain:

[F]oreign investments may be expropriated ‘indirectly through measures tantamount to expropriation or nationalization.’ This phrase ... also captures the multiplicity of inappropriate regulatory acts, omissions, and other deleterious conduct that undermines the vital normative framework created and maintained by BITs – and by which governments can, in effect but not name, now be deemed to have expropriated a foreign national’s investment. The major innovation of the ‘tantamount’ clause, found in substance in almost all BITs, therefore consists in extending the concept of indirect expropriation to an egregious failure to create or maintain the normative ‘favourable conditions’ in the host state.<sup>734</sup>

597. A “substantial deprivation” of an investment has been affirmed by numerous tribunals, and is often seen as a deciding factor in finding when an indirect expropriation has occurred. For example, in *AES Summit v. Hungary*, the tribunal held that:

[f]or an expropriation to occur, it is necessary for the investor to be deprived, in whole or significant part, of the property in or effective control of its investment: or for its investment to be deprived, in whole or significant part, of its value.<sup>735</sup>

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<sup>732</sup> *LG&E v. Argentina*, Decision on Liability of 3 October 2006 (CLA-072), ¶ 193 (“Generally, the expropriation must be permanent, that is to say, it cannot have a temporary nature, unless the investment’s successful development depends on the realization of certain activities at specific moments that may not endure variations”); *Fireman’s Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award of 17 July 2006 (CLA-146), ¶ 176(d) (holding that one of the elements of an expropriation is that “[t]he taking must be permanent, and not ephemeral or temporary”); *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012 (CLA-144), ¶ 535.

<sup>733</sup> *Quiborax v. Bolivia*, Award, 16 September 2015 (CLA-145), ¶ 238; *Occidental Exploration and Production Company v. Republic of Ecuador (I)*, LCIA Case No. UN3467, Award, 1 July 2004 (CLA-149), ¶ 89.

<sup>734</sup> Reisman and Sloane, *Indirect Expropriation and its Valuation in the BIT Generation*, in 74 BRIT. Y.B. INT’L L. 115 (2003) (CLA-150) at 118-119.

<sup>735</sup> *AES Summit Generation v. Hungary*, Award, 23 September 2010 (CLA-128), ¶ 14.3.1;

598. The *Burlington v. Ecuador* tribunal further highlighted that the lack of “the capacity to earn a commercial return” is a key indicator. When the investor loses this capacity as a result of State measure, they have lost the economic use of their investment and an expropriation has occurred.<sup>736</sup>
599. A number of tribunals assessing a substantial deprivation have also considered the loss of control over an investment.<sup>737</sup> Additionally, Reinisch and Schreuer consider that “where an arrest or expulsion was made in order to gain control over an investment, it is likely to be qualified as an indirect expropriation.”<sup>738</sup> They cite to the case of *Biloune v. Ghana*, where the tribunal found that a series of governmental acts and omissions which “effectively prevented” an investor from pursuing his investment project constituted a “constructive expropriation.”<sup>739</sup> This included the physical arrest and deportation of the investor by Ghana.<sup>740</sup>
600. However, loss of control (or loss of ownership) must not be merely temporary. Thus, in *Wena Hotels v. Egypt*, the tribunal considered that there was expropriation of a hotel after an extended period of seizure lasting nearly a year.<sup>741</sup>
601. Loss of control was also considered in an early ICSID case, *Benevenuti & Bonfant v. Congo*, where the tribunal concluded that the cumulative effect of a series of government acts and omissions depriving the investor of control over its investment, including criminal proceedings which required the investor to leave the country (upon the advice of the Italian embassy), constituted a de facto expropriation.<sup>742</sup>

<sup>736</sup> *Burlington v. Ecuador*, Decision on Liability, 14 December 2012 (CLA-144), ¶ 397.

<sup>737</sup> *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011 (CLA-121), ¶ 245 (“It is generally accepted that the decisive element in an indirect expropriation is the ‘loss of control’ of a foreign investment, in the absence of any physical taking.”); *Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, 30 March 2015 (CLA-151), ¶ 566 (“the decisive criterion for most tribunals that find expropriation is not the fact of having incurred a damage and/or the loss of value as such, but the finding -as stated in *Santa Elena v. Costa Rica* – ‘that the owner has truly lost all the attributes of ownership’”).

<sup>738</sup> Reinisch, A., & Schreuer, C., *International Protection of Investments: The Substantive Standards*, Cambridge University Press (2020) (CLA-113), pp. 114-115.

<sup>739</sup> *Biloune v. Ghana*, Award on Jurisdiction and Liability, 27 October 1989 (CLA-140), ¶ 81.

<sup>740</sup> *See Biwater v. Tanzania*, Award, 24 July 2008 (CLA-127), ¶ 416.

<sup>741</sup> *Wena Hotels v. Egypt*, Award, 8 December 2000 (CLA-122), ¶ 99.

<sup>742</sup> *S.A.R.L. Benvenuti & Bonfant v. People’s Republic of the Congo*, ICSID Case No. ARB/77/2, Award, 8 August 1980 (CLA-152), ¶¶ 4.56-4.62.

602. An indirect expropriation can occur through State actions as well as omissions.<sup>743</sup> As set out in *CME v. Czech Republic*, “it makes no difference whether the deprivation was caused by actions or by inactions.”<sup>744</sup> The tribunal in *Eureko v. Poland* equally held that the “rights of an investor can be violated as much by the failure of a Contracting State to act as by its actions.”<sup>745</sup>

603. Those actions and omissions may occur as a series over a period of time that are defined in the aggregate as wrongful.<sup>746</sup> The unlawful process of a taking through incremental acts is a “creeping expropriation,” which is a sub-category of indirect expropriation.<sup>747</sup> Tribunals have held that “measures of similar effects” language in a BIT’s expropriation provision can be construed to encompass creeping expropriations.<sup>748</sup> *Siemens v. Argentina* explained how a creeping expropriation may ultimately come to fruition:

The last step in a creeping expropriation that tilts the balance is similar to the straw that breaks the camel’s back. The preceding straws may not have had a perceptible effect but are part of the process that led to the break.<sup>749</sup>

604. Additionally, tribunals have regularly found it appropriate to consider facts that occurred prior to the entry into force of the applicable IIA in the wider context of a creeping expropriation and other potential breaches by a host State.<sup>750</sup> As stated in *Hydro and others v. Albania*:

A tribunal therefore ‘has jurisdiction *ratione temporis* in respect of Treaty breaches concerning acts and events having taken place after [the claimant acquired the relevant investment],’ and also ‘may take

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<sup>743</sup> Rudolf Dolzer, Ursula Kriebaum, and Christoph Schreuer: Principles of International Investment Law, Third ed. Oxford, United Kingdom (2022 OUP) (CLA-050), pp. 180-181.

<sup>744</sup> *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (CLA-153), ¶ 605.

<sup>745</sup> *Eureko v. Poland*, Partial Award, 19 August 2005 (CLA-065), ¶ 186.

<sup>746</sup> Rudolf Dolzer, Ursula Kriebaum, and Christoph Schreuer: Principles of International Investment Law, Third ed. Oxford, United Kingdom (2022 OUP) (CLA-050), pp. 180-181.

<sup>747</sup> *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003 (CLA-157), ¶ 20.22. (“Creeping expropriation is a form of indirect expropriation with a distinctive temporal quality in the sense that it encapsulates the situation whereby a series of acts attributable to the State over a period of time culminate in the expropriatory taking of such property.”).

<sup>748</sup> *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6, Award, 7 October 2003 (CLA-158), ¶ 10.3.1.

<sup>749</sup> *Siemens v. Argentina*, Award, 6 February 2007 (CLA-055), ¶ 263; See also *Vivendi v. Argentina I*, Award, 20 August 2007 (CLA-049), ¶ 7.5.31 (“It is well-established under international law that even if a single act or omission by a government may not constitute a violation of an international obligation, several acts taken together can warrant finding that such obligation has been breached”).

<sup>750</sup> *Mondev v. United States*, Award, 11 October 2002 (CLA-039), ¶ 70; *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 66; *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (CLA-041), ¶ 87.

into account prior acts and events resulting in such [t]reaty breaches.<sup>751</sup>

605. As explained by the tribunal in *Metaclad v. Mexico*, the acts and omissions of the host State are not necessarily out in the open, nor do they necessarily benefit the host State:

covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the benefit of the host State.<sup>752</sup>

606. *Tecmed v. Mexico* also explained that “actions or laws transfer assets to third parties different from the expropriating State or where such laws or actions deprive persons of their ownership over such assets, without allocating such assets to third parties or to the Government.”<sup>753</sup> It is broadly accepted that “expropriation can exist despite there being no obvious benefit to the State concerned.”<sup>754</sup> So long as “the Claimant has been deprived of its property rights by an act of the State, it is irrelevant whether the State itself took possession of those rights or otherwise benefited from the taking.”<sup>755</sup>

607. Unlike a direct expropriation that is the result of an intentional and deliberate act of the State, the dispositive issue for an indirect expropriation is the effect of the host State’s actions, not the underlying intent: the treaty in question “refers to measures that have the effect of an expropriation; it does not refer to the intent of the State to expropriate.”<sup>756</sup> In *Santa Elena v. Costa Rica*, the tribunal noted that “[t]he intent of the government is less important than the effects of the measures on the owner, and the form of the measures of

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<sup>751</sup> *Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, 24 April 2019 (CLA-159), ¶ 558; quoting *Société Générale v. Dominican Republic*, Award on Preliminary Objections to Jurisdiction, 19 September 2008 (CLA-041), ¶ 91.

<sup>752</sup> *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000 (CLA-148), ¶ 103.

<sup>753</sup> *Tecmed v. United States*, Award, 29 May 2003 (CLA-040), ¶ 113.

<sup>754</sup> *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 707.

<sup>755</sup> *Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award, 9 September 2009 (CLA-154), ¶ 118; *Amco v. Indonesia*, Award, 20 November 1984 (CLA-095), ¶ 158; see *Metalclad v. Mexico*, Award, 30 August 2000 (CLA-148), ¶ 103; *Tecmed v. United States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (CLA-040), ¶ 113.

<sup>756</sup> *Siemens v. Argentina*, Award, 6 February 2007 (CLA-055), ¶ 270.

control or interference is less important than the reality of their impact.”<sup>757</sup> Intent is, however, not to be disregarded.<sup>758</sup>

608. Based on the foregoing, Mr. Bahari’s investments were indirectly expropriated through an organized State campaign. Moreover, Azerbaijan consummated this indirect expropriation through acts and omissions that accrued over time, until Mr. Bahari could no longer control or receive any economic benefit from his investments, and thus was substantially deprived of the same.

609. *First*, Azerbaijan expelled Mr. Bahari from Azerbaijan and prevented him from returning. Refusing an investor the ability to travel to or enter a host State to manage or otherwise oversee his investments is a significant impediment to making use of or deriving any economic benefit from an investment, and initiates a situation of loss of control. Further, because there is little practical transparency in Azerbaijan or an ability to pursue rights there from abroad, Mr. Bahari was shut off from his investments and any administrative or judicial means to recover them. Azerbaijan has maintained Mr. Bahari’s *persona non grata* status to this day.<sup>759</sup>

610. *Second*, Azerbaijan repeatedly threatened and intimidated Mr. Bahari, including through his in-country employee and legal counsel:

- i. Minister Heydarov personally threatened Mr. Bahari not to seek to recover his investments.<sup>760</sup>
- ii. Also in February 2009, Mr. Bahari’s in-country manager, Mr. Moghaddam, was arrested on false drug charges and sentenced to five years in jail.<sup>761</sup> This also coincided with Mr. Bahari’s renewed efforts to recover his investments. Mr.

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<sup>757</sup> *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000 (CLA-155), ¶ 77 (citations omitted); *Fireman’s Fund v. Mexico*, Award, 17 July 2006 (CLA-146), ¶ 176(f).

<sup>758</sup> *Vivendi v. Argentina I*, Award II, 20 August 2007 (CLA-049), ¶ 7.5.20 (“While intent will weigh in favour of showing a measure to be expropriatory, it is not a requirement, because the effect of the measure on the investor, not the state’s intent, is the critical factor.”); *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 700 (“intent of the State is relevant to, but is not decisive of the question whether there has been an expropriation [...]”) *Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010 (CLA-156), ¶ 8.23 (“an indirect expropriation occurs if the state deliberately deprives the investor of the ability to use its investment in any meaningful way and a direct expropriation occurs if the state deliberately takes that investment away from the investor.”).

<sup>759</sup> *Kousedghi WS* ¶ 27.

<sup>760</sup> *Supra* Section III.J.

<sup>761</sup> *Supra* Section III.I; *Moghaddam WS* ¶¶ 80-99.

Moghaddam had been previously detained, assaulted, and on one occasion kidnapped and arbitrarily detained by Azeri security services after his efforts to find out the status of Mr. Bahari's investments.<sup>762</sup>

- iii. Different legal counsel engaged to investigate the status of Mr. Bahari's investments and develop related claims and seek legal recourse in the Azeri courts were threatened not to make any further enquiries or take an additional steps in both 2004 and in 2019.<sup>763</sup>

611. To the extent there was any administrative or judicial protection available to Mr. Bahari (which there was not), Azerbaijan ensured that Mr. Bahari did not have access to those protections and that those in control of his investments remained in possession and accrued the associated financial benefits.

612. Each of these affirmative acts by the Azeri Government or its agents was intended to deprive Mr. Bahari of his investments. These acts reflect many of those articulated by the tribunal in *Sempra v. Argentina* as being tantamount to expropriation:

Substantial deprivation results [...] from depriving the investor of control over the investment, managing the day-to-day operations of the company, arresting and detaining company officials or employees, supervising the work of officials, interfering in administration, impeding the distribution of dividends, interfering in the appointment of officials or managers, or depriving the company of its property or control in whole or in part.<sup>764</sup>

613. *Third*, Azerbaijan facilitated and allowed Mr. Bahari's investments to be transferred to the highest-ranking members of the Government and the country's ruling elite. Not only were Mr. Bahari's investments permanently confiscated,<sup>765</sup> but they were transferred to third parties using the State apparatus.<sup>766</sup> This included:

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<sup>762</sup> *Supra* Sections III.B.6; III.D.

<sup>763</sup> *Supra* Sections III.E, III.K; Allahyarov WS ¶¶ 10-13.

<sup>764</sup> *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007 (CLA-160), ¶ 284 (citations omitted).

<sup>765</sup> Confiscation is a sub-category of direct expropriation, which is an outright taking without compensation or a legitimate purpose, with the aim of enriching the ruling elite. See CLA-113 Reinisch, A., & Schreuer, C., *International Protection of Investments: The Substantive Standards*, Cambridge University Press (2020), p. 45 (citation omitted).

<sup>766</sup> *Lone Pine Resources Inc. v. Canada*, ICSID Case No. UNCT/15/2, Final Award, 21 November 2022 (CLA-124), ¶ 496 ("The formal transfer of title from the investor to the host State or to a third party at the behest of the host State is an identifying criterion of direct expropriation.").

- i. The transfer of Caspian Fish (BVI)'s shareholding to the daughters of President Aliyev and Vice President Aliyeva, Leyla and Arzu Aliyeva;<sup>767</sup>
  - ii. The transfer of Caspian Fish (BVI)'s assets (including the physical facility) to a fraudulent local LLC, Caspian Fish MMC, which then later became part of Gilan Holding;<sup>768</sup>
  - iii. The transfer of Coolak Baku's assets (including its physical facility) to ASFAN;<sup>769</sup>
  - iv. Upon information and belief, the transfer of Shuvalan Sugar's assets to an Azeri company called Shuvalan Shirniyat JSC;<sup>770</sup>
  - v. Upon information and belief, the transfer of Mr. Bahari's ownership of the Ayna Sultan property to unknown third parties;<sup>771</sup> and
  - vi. The transfer of Mr. Bahari's Persian Carpets to unknown third parties.<sup>772</sup>
614. Each of these affirmative acts or omissions by the Azeri Government substantially deprived Mr. Bahari of his investments. If each singular act does not rise to the level of an indirect expropriation, the combined and cumulative result is clear: Azerbaijan has both taken Mr. Bahari's investments and wholly deprived him of their use and economic benefit.

#### **4. Azerbaijan's expropriation was unlawful.**

615. Under Article 4(1) of the Treaty, an expropriation is only lawful if it is made:

for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article 2 of this Agreement.

616. Azerbaijan's expropriation was unlawful as it failed to meet any of these requirements.

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<sup>767</sup> *Supra*, Section III.F.4.e.

<sup>768</sup> *Supra*, Sections III.F.5, III.G

<sup>769</sup> *Supra*, Section III.H

<sup>770</sup> *Id.*

<sup>771</sup> *Supra*, Section III.A.5.

<sup>772</sup> *Supra*, Sections III.A.6, III.B.7.

**IX. MR. BAHARI IS ENTITLED TO FULL COMPENSATION DUE TO AZERBAIJAN'S BREACHES OF THE TREATY**

617. Azerbaijan's breaches of the Treaty deprived Mr. Bahari of the entire value of his investments in Azerbaijan, causing him substantial financial and personal damage. Well-settled principles of international law entitle Mr. Bahari to full compensation for the loss of the entire value of his investments in Azerbaijan. Mr. Bahari's entitlement to full compensation arises whether Azerbaijan is found to have committed a single or a combination of the Treaty breaches described above.
618. The quantification of Mr. Bahari's claim for damages is explained and quantified in the accompanying report submitted by Kiran Sequeira and Alexander Messmer of Secretariat International ("**Secretariat**") dated 21 April 2023 (the "**Secretariat Report**"). The Secretariat Report assesses the economic losses suffered by Mr. Bahari, plus pre- and post-award interest.
619. Mr. Bahari also retained Will Iselin of Iselin Art Advisory Ltd ("**Iselin Art**") to prepare a "Persian Carpet Expert Report" (the "**Iselin Report**") that quantifies the value of Mr. Bahari's Persian carpets. Secretariat relies on the Iselin Report for certain aspects of its Report.
620. The Secretariat Report currently quantifies the damages caused to Mr. Bahari by Azerbaijan's Treaty breaches as of 1 March 2023, depending on the applicable valuation methodology and interest. Secretariat's quantification of Mr. Bahari's ex-ante and ex-post damages are summarized in the below tables:



2. Injury includes any damage, *whether material or moral*, caused by the internationally wrongful act of a State.<sup>775</sup>
622. As reflected by the Permanent Court of International Justice (“**PCIJ**”) decision in the *Chorzów Factory* case, this principle extends to obligations set forth in treaties and conventions.<sup>776</sup>
623. The PCIJ also formulated the relevant customary international law standard to make reparation in the following frequently cited passage in the *Chorzów Factory* case:
- The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.<sup>777</sup>
624. The *Chorzów Factory* principle of “full reparation” has been adopted and confirmed by numerous investment tribunals as the authoritative standard when awarding damages.<sup>778</sup>
625. ARSIWA Article 34 provides that reparation may take many forms, including restitution, compensation or satisfaction, either individually or in combination.<sup>779</sup> It also makes clear that insofar as restitution is either not meaningfully available or not sufficient to fully repair the loss, the responsible State is under an obligation to compensate for the damage caused. Specifically, ARSIWA Article 36 provides:

<sup>775</sup> ARSIWA, Art. 31 “Reparation” (emphasis added) (**CLA-037**).

<sup>776</sup> *Chorzów Factory* (Ger. v. Pol.), Judgment No. 8 (Jurisdiction), July 26, 1927, P.C.I.J. Series A, No. 9 (1927) (**CLA-161**) at 21 (“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”).

<sup>777</sup> *The Factory at Chorzów* (Ger. v. Pol.), Judgment No. 13, 13 September 1928, 1928 P.C.I.J. (Ser. A) No. 17 (**CLA-162**), p. 47 (emphasis added).

<sup>778</sup> *Crystallex v. Venezuela*, Award, 4 April 2016 (**CLA-066**), ¶¶ 847-848 (describing Chorzów as “[a]n authoritative description of the principle of full reparation”); *ADC v. Hungary*, Award, 2 October 2006 (**CLA-093**), ¶¶ 484-494 (“there can be no doubt about the present vitality of the Chorzów Factory principle” is the governing standard).

<sup>779</sup> ARSIWA, Art. 34 (**CLA-037**).

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.<sup>780</sup>

626. In this case, Azerbaijan destroyed the entire value of Mr. Bahari's investments. Accordingly, the only appropriate remedy is monetary compensation that will restore the *status quo ante* and put Mr. Bahari in the economic position that he would have been in had the internationally wrongful act not occurred at all.

## **B. FAIR MARKET VALUE IS THE ACCEPTED MEASURE OF FULL REPARATION**

627. The entire value of Mr. Bahari's investments was taken or destroyed as a result of Azerbaijan's Treaty breaches. As a result, Mr. Bahari is entitled to compensation for the fair market value of his investment. The ILC commentary to ARSIWA Article 36 provides:

Compensation reflecting the capital value of property taken or destroyed as the result of an internationally wrongful act is generally assessed on the basis of the "fair market value" of the property lost.<sup>781</sup>

628. *Crystallex v. Venezuela* considered that using fair market value to assess the investment that has been destroyed "ensures that the consequences of the breach are wiped out and that the situation which would, in all probability, have existed if the wrongful acts had not been committed is reestablished."<sup>782</sup>

629. Fair market value has been applied as the accepted measure of full reparation to unlawful expropriation and other treaty breaches to "wipe out the consequences" of the State's

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<sup>780</sup> ARSIWA, Art. 36 ([CLA-037](#)).

<sup>781</sup> ILC Commentary, ARSIWA Art. 36 ([CLA-037](#)), at ¶ 22.

<sup>782</sup> *Crystallex v. Venezuela*, Award, 4 April 2016 ([CLA-066](#)), ¶ 850; *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, 24 April 2019 ([CLA-159](#)), ¶ 828 ("It is well-accepted that reparation should reflect the market value of the investment as doing so will have the effect of wiping out the consequences of the breaches."); *Stabil v. Russia*, Final Award, 12 April 2019 ([CLA-043](#)), ¶ 266 ("the Tribunal considers that the principle of full reparation just referred to will be adequately implemented by granting the Claimants a monetary award equal to the fair market value of their investment immediately prior to expropriation.").

unlawful act, including a breach of fair and equitable treatment and full protection and security.<sup>783</sup>

### C. THE DATE OF VALUATION OF TREATY BREACH MUST RE-ESTABLISH THE STATUS QUO ANTE

630. Where the date of a specific State wrongful act can be identified as a breach, that date may be an appropriate valuation date for restitution to re-establish the status quo ante before the wrongful act. The valuation date for a composite breach, however, is not dependent on the final act constituting the wrongful act.
631. A composite breach arises from a series of acts or omissions or course of conduct. As discussed above, this is affirmed in ARSIWA Article 15.<sup>784</sup> This composite breach can result from a “creeping” expropriation, or where a course of conduct or a series of acts or omissions results in a denial of fair and equitable treatment or full protection and security.
632. The Commentary to ARSIWA Article 15(1) provides that “a composite act ‘occurs’ as the time at which the last action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act, without it necessarily having to be the last in the series.”<sup>785</sup> Whereas, the Commentary to Article 15(2) provides that, “once a sufficient number of actions or omissions has occurred, producing the result of the composite act as such, the breach is dated to the first of the acts in the series.”<sup>786</sup>
633. Thus, where there is a composite breach, restitution requires re-establishing the status quo ante to the situation as it was before the wrongful act, or compensation in the amount of the value of the investment immediately prior to the first act in the series.
634. In considering the interplay between when a breach culminates and the effect a wrongful act may have had on the value of the investment, the tribunal in *Azurix v. Argentina* stated

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<sup>783</sup> *Bewater v. Tanzania*, Award, 24 July 2008 (CLA-127), ¶ 775; see also *Enron Corporation and Ponderosa Assets LP v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007 (CLA-077), ¶ 359; *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, 24 April 2019 (CLA-159), ¶¶ 824-828; *Rumeli v. Kazakhstan*, Award, 29 July 2008 (CLA-052), ¶ 792 (“In assessing compensation for internationally wrongful acts other than expropriation, the Tribunal considers that it should apply the principle of the Factory at Chorzow case, according to which any award should “as far as possible wipe out all the consequences of the illegal act and reestablish the situation which would in all probability have existed if that act had not been committed.”); *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007 (CLA-160), ¶403 (“In such cases it might be very difficult to distinguish the breach of fair and equitable treatment from indirect expropriation or other forms of taking and it is thus reasonable that the standard of reparation might be the same.”), ¶ 404.

<sup>784</sup> ARSIWA, Art. 15 (CLA-037).

<sup>785</sup> Commentary to ARSIWA (CLA-037), Art. 15, para (8).

<sup>786</sup> Commentary to ARSIWA (CLA-037), Art. 15, para (10) (emphasis added).

that, “in assessing fair market value, a tribunal would establish that value in a hypothetical context where the State would not have resorted to such maneuvers but would have fully respected the provisions of the treaty [...]”<sup>787</sup> In *Gemplus v. Mexico*, the tribunal found that a series of acts in the aggregate constituted both a breach of the fair and equitable treatment standard and an unlawful expropriation, and, referring ARSIWA Article 15, identified the first act in the series as the date for assessing compensation.<sup>788</sup>

635. As discussed above in Section VI.B.4, above, for the purposes of valuing the date on which Azerbaijan breached the Treaty via a specific act, or when it can be said that the State first started to disregard its obligations under the Treaty, Mr. Bahari has identified 1 January 2003 as the relevant date.

#### **D. COMPENSATION MUST INCLUDE INTEREST ON THE PRINCIPAL SUM DUE**

636. Mr. Bahari is entitled to interest at an appropriate commercial rate on the principal sum due running from the approximate date of injury to the date of full payment of the award.
637. As set out in ARSIWA Article 38, interest is necessary to ensure full reparation for wrongful conduct:
1. Interest on any principal sum payable [...] shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
  2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.<sup>789</sup>
638. International tribunals have repeatedly affirmed the view that an award of interest is an integral element of full reparation.<sup>790</sup>

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<sup>787</sup> *Azurix v. Argentina*, Award, 14 July 2006 (CLA-057), ¶¶ 417-418.

<sup>788</sup> *Gemplus v. Mexico*, Award, 16 June 2010 (CLA-156), ¶ 12-43; see also *SAUR International v. Argentine Republic*, ICSID Case No. ARB/04/4, Award, 22 May 2014 (CLA-163), ¶¶ 168-169; *Crystallex v. Venezuela*, Award, 4 April 2016 (CLA-066), ¶¶ 673, 855; *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award, 27 September 2019 (CLA-164), ¶¶ 75, 125.

<sup>789</sup> ARSIWA (CLA-037), Art. 38.

<sup>790</sup> ARSIWA (CLA-037), Art. 38, cmt. (2) (“[S]upport for a general rule favouring the award of interest as an aspect of full reparation is found in international jurisprudence”). See also *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010 (CLA-165), ¶ 659; *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015 (CLA-166), ¶¶ 539-540; *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Award, 05 August 2020 (CLA-167).

639. The commentary to ARSIWA Article 38 explains that, where the principal sum due is quantified earlier than the date of the award, interest must run from that earlier date:

[a]s a general principle, an injured State is entitled to interest on the principal sum representing its loss, if that sum is quantified as at an earlier date than the date of the settlement of, or judgment or award concerning, the claim and to the extent that it is necessary to ensure full reparation.<sup>791</sup>

640. Tribunals also frequently award both pre- and post-award interest on this basis.<sup>792</sup>

641. Mr. Bahari quantifies damages he has incurred as a result of Azerbaijan's Treaty breaches as of 1 January 2003 — the date on which Azerbaijan is deemed to have unlawfully expropriated Mr. Bahari's investments and breached the FET and FPS standards of protection, or to have engage in a series of composite acts, omission, or conduct that resulted in such a breach. Mr. Bahari is accordingly entitled to pre-award interest from 1 January 2003, the historical valuation date (or date of loss). Mr. Bahari is also entitled to post-award interest on the amounts awarded to him, which is appropriate and necessary to ensure Azerbaijan's prompt compliance with the award and to preserve the economic integrity of the amount awarded.

642. Finally, Mr. Bahari should be awarded compound, not simple, interest. ARSIWA Article 38(1) recognizes that tribunals have discretion to determine the necessary rate to achieve full reparation.<sup>793</sup> Tribunals routinely hold that achieving full reparation requires awarding compound interest.<sup>794</sup>

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<sup>791</sup> ARSIWA (CLA-037), Art. 38, cmt. (2).

<sup>792</sup> *Micula v. Romania (I)*, Award, 11 December 2013 (CLA-067), ¶ 1269 (“As a preliminary matter, the Tribunal does not see why the cost of the deprivation of money (which interest compensates) should be different before and after the Award, and neither Party has convinced it otherwise. Both are awarded to compensate a party for the deprivation of the use of its funds. The Tribunal will thus award pre - and post-award interest at the same rate”).

<sup>793</sup> ARSIWA(CLA-037), Art. 38(1).

<sup>794</sup> See e.g., *Com Santa Elena v. Costa Rica*, Award dated 17 February 2000 (CLA-155), ¶ 106 (concluding that “Claimant is entitled to an award of compound interest adjusted to take account of all the relevant factors”); *Micula v. Romania (I)*, Award, 11 December 2013 (CLA-067), ¶ 1266 (“The overwhelming trend among investment tribunals is to award compound rather than simple interest. The reason is that an award of damages (including interest) must place the claimant in the position it would have been had it never been injured.”); *Quiborax v. Bolivia*, Award dated 16 September 2015 (CLA-145), ¶ 524 “[A] review of arbitral decisions shows that compound interest has been deemed to ‘better reflect[] contemporary financial practice’ and to constitute ‘the standard of international law in [] xpropriation cases.’ The view that compound interest better achieves full reparation has been adopted in a large number of decisions and is shared by this Tribunal.”).

## E. THE BURDEN OR STANDARD OF PROOF DOES NOT REQUIRE CERTAINTY TO ESTABLISH EITHER FACT OF LOSS OR PROOF OF LOSS

643. As a result of Mr. Bahari's sudden expulsion, and his inability to access information in Azerbaijan about his investments (despite years of attempting to do so),<sup>795</sup> Mr. Bahari can produce relatively limited documents to establish his damages. In particular, Mr. Bahari has been able to provide documents establishing \$44.417 million of his \$56 million investment in Caspian Fish.<sup>796</sup> As explained below, this establishes with sufficient certainty that Mr. Bahari has met his evidential burden in relation to establishing damages.

644. The test of reasonable or sufficient certainty is commonly cited as the standard of proof in relation to establishing damages in arbitral case law.<sup>797</sup> This is reflected in the *Chorzów Factory* case, which makes it clear that reparation is designed to "reestablish the situation which would, in all probability, have existed if that act had not been committed."<sup>798</sup>

645. This has been interpreted as similar to the "general balance of probabilities" standard prevalent in international law,<sup>799</sup> which means that the tribunal will decide in favor of the party whose claims are more probable than not. *Kardassopoulos v. Georgia* explained that:

the principle articulated by the vast majority of arbitral tribunals in respect of the burden of proof in international arbitration proceedings applies in these concurrent proceedings and does not impose on the Parties any burden of proof beyond a balance of probabilities.<sup>800</sup>

646. In applying the burden of proof, investment treaty doctrine further draws a distinction between proving the fact of loss and the amount of loss, setting a standard of proof for the latter that is somewhat lower for the latter than for the former.<sup>801</sup> Thus, once the fact of

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<sup>795</sup> Bahari WS ¶¶ 38.

<sup>796</sup> As discussed above, numerous press reports, and a subsequent Caspian Fish website, affirm that \$56 million of foreign investment (i.e. Mr. Bahari) was spend on creating Caspian Fish.

<sup>797</sup> *Khan Resources v Mongolia* (UNCITRAL), Award on Merits, 2 March 2015 (CLA-168), ¶¶ 375; *Crystallex v. Venezuela*, Award of 4 April 2016 (CLA-066), ¶¶ 865-868.

<sup>798</sup> *Chorzów Factory Judgment No. 13* (CLA-162), at 47 (emphasis added).

<sup>799</sup> Ripinsky, Sergey, "Assessing Damages in Investment Disputes: Practice in Search of Perfect" (January 16, 2009), *Journal of World Investment & Trade*, Vol. 10, No. 1, 2009 (CLA-169), p. 12 (noting that this corresponds to the more general rule, elucidated in the *Chorzów* case, that "reparation must ... re-establish the situation which would, in all probability, have existed if that act had not been committed.").

<sup>800</sup> *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010 (CLA-169), ¶ 229.

<sup>801</sup> Ripinsky and Williams, *Damages in International Investment Law*, BIICL (2008) (CLA-170) §5.5.2(b).

loss is proven with reasonable certainty, a claimant need only provide a basis upon which a tribunal can reasonably estimate the amount of the loss.<sup>802</sup>

647. In circumstances where limited evidence makes it impossible to establish the exact extent of a claimant's loss, arbitrators have been prepared to award compensation on the basis of a "reasonable approximation," where they felt certain about the fact of the loss itself, and in particular where the claimant has faced objective problems in collecting evidence due to the disadvantages suffered by the claimant, namely, its lack of access due to the acts of the host State.<sup>803</sup> This was the case in *Vivendi v. Argentina*, where, in order to determine the "amount invested," the *Vivendi* tribunal relied, in the absence of documentary evidence, on the testimony of two witnesses (accepting, inter alia, that the claimant had made an initial capital investment of \$ 30 million, on the sole basis of a single witness affidavit).<sup>804</sup>
648. Other tribunals, such as that in *Gemplus v. Mexico*, have acknowledged that the respondent State should not be rewarded for its misdeeds to the further detriment of the claimant:

The Tribunal considers that, as a general legal principle, when a respondent has committed a legal wrong causing loss to a claimant (as found by a tribunal), the respondent is not entitled to invoke the burden of proof as to the amount of compensation for such loss to the extent that it would compound the respondent's wrongs and unfairly defeat the claimant's claim for compensation [...].<sup>805</sup>

649. Finally, where a claimant has adduced "evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption."<sup>806</sup>

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<sup>802</sup> *Id.*, citing to Gotanda, John, "Recovering Lost Profits in International Disputes" (2004), 36 *Georgetown Journal of International Law* 61, 100.

<sup>803</sup> *Mohammad Ammar Al-Bahloul v Republic of Tajikistan*, SCC Case No V (064/2008), Final Award, 8 June 2010 ([CLA-171](#)), ¶ 39; *Vivian Mai Tavakoli v Iran*, Award of 23 April 1997, 33 *Iran-US CTR* 206 ([CLA-172](#)), ¶ 145 (holding that the tribunal would "take some account of the disadvantages suffered by the claimant, namely its lack of access to the detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place.").

<sup>804</sup> *Vivendi v. Argentina I*, Award of 20 August 2007 ([CLA-049](#)), ¶¶ 8.3.16 - 8.3.19 ("it is well settled that the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred. In such cases, approximations are inevitable; the settling of damages is not an exact science") (internal citation omitted).

<sup>805</sup> *Gemplus v. Mexico*, Award, 16 June 2010 ([CLA-156](#)), ¶ 13.92.

<sup>806</sup> *Marvin Feldman v United Mexican States*, ICSID Case No ARB(AF)/99/1, Award, 16 December 2002 ([CLA-173](#)), ¶ 177.

650. The currently available evidence establishes proof of the fact of a loss by Mr. Bahari. Seen in their totality, the documents relied upon in the Secretariat Report support a conclusion that Mr. Bahari invested significant sums in the Caspian Fish, Coolak Baku, and Shuvalan Sugar projects. The documents, taken together with the chronology of events leading to Mr. Bahari's expulsion from Azerbaijan and beyond, establish far more than "reasonable certainty" about the amounts investment and that Mr. Bahari suffered a loss. Further, Mr. Bahari's lack of access to a full set of documents is manifestly a result of Azerbaijan's wrongful acts, including its expulsion of Mr. Bahari, which has prevented him from accessing his business records and other relevant documents from his various investments.

**F. THE SECRETARIAT REPORT ESTABLISHES THE QUANTUM OF MR. BAHARI'S CLAIM FOR COMPENSATION**

651. Presented below is Mr. Bahari's claim for compensation. The measure of Mr. Bahari's damages, and his claim for compensation, is supported by the Secretariat Report, its supporting documents, and evidence submitted with this Statement of Claim.

**1. The scope of the Secretariat Report.**

652. Secretariat was asked to: (i) comment on the appropriate framework for assessing Mr. Bahari's losses related to his investments in Azerbaijan; (ii) quantify Mr. Bahari's losses as a result of the Azerbaijan's wrongful acts, if possible; and (iii) calculate interest on Mr. Bahari's losses.<sup>807</sup>

653. The Secretariat Report is based upon the restitution principles discussed above, namely that the "[REDACTED]  
[REDACTED]  
[REDACTED]"<sup>808</sup> Secretariat therefore quantifies Mr. Bahari's losses in a counter-factual "but-for" scenario, to re-establish the status quo ante. As Azerbaijan's actions resulted in the complete seizure or destruction of Mr. Bahari's investments, the actual value of his investments is zero.<sup>809</sup>

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<sup>807</sup> Secretariat Report, p. 1.

<sup>808</sup> Secretariat Report, pp. 4, 22.

<sup>809</sup> Secretariat Report, pp. 4, 22.

654. The Secretariat Report provides both an ex-ante (i.e., at the date of the breach, currently assessed as 1 January 2003) and ex-post (i.e., current valuation date, which Secretariat has applied as 1 March 2023 for the purposes of its current Report). However, based on the information that is currently available, Secretariat concludes that the ex-ante framework can be used to value all but one of Claimant's investments; whereas the ex-post framework can partially be used to value only two of Claimant's investments.<sup>810</sup> Thus, Secretariat is currently unable to implement the ex-ante framework for more of Claimant's investments, but reserves the right to update its analysis for both frameworks should additional information on Claimant's investments become available. It is also well-accepted that under international law Mr. Bahari is entitled to the higher of the damages calculated under either of these two frameworks,<sup>811</sup> which is currently the ex-ante framework (as Secretariat is able to implement the framework for more of Claimant's investments).
655. Secretariat was asked to value each of Mr. Bahari's investments in Azerbaijan on an ex-ante and ex-post basis, where possible. The investments considered by Secretariat included: (i) Caspian Fish; (ii) Coolak Baku; (iii) Shuvalan Sugar; (iv) the Ayna Sultan land; and (v) the Persian Carpets.

## 2. Explanation of the Valuation Approaches.

656. The following three approaches are commonly adopted by valuation practitioners when assessing the value of assets: (i) the Income Approach; (ii) Market Approach; and (iii) the Cost Approach.
657. Secretariat notes that given Mr. Bahari was unable to retain much of the historical financial or operating information pertaining to his investments, Secretariat is unable to implement all of these valuation approaches. In these circumstances, Secretariat summarizes in the table below the methods that it has been able to apply in its Report.<sup>812</sup>

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<sup>810</sup> Secretariat Report, p. 25 (emphasis added).

<sup>811</sup> *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. 2005-04/AA227, Final Award, 18 July 2014 (CLA-174), ¶ 1763 ("Claimants are entitled to select either the date of expropriation or the date of the award as the date of valuation."); see also *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award, 22 August 2017 (CLA-175), ¶ 670 ("The Tribunal is of the view that it does not need to enter into a theoretical debate as to the appropriateness of an ex ante or ex post valuation. Each approach may be acceptable provided it leads to full compensation of the damaged party.").

<sup>812</sup> Secretariat Report, p. 6, Table 1 "Methods That Currently Can Be Applied to Assess Claimant's Losses."



available. Secretariat's view on the value of Mr. Bahari's Persian carpets is based on the Iselin Report, which primarily uses auction prices for similar Persian rugs and carpets (i.e., the Market Approach).<sup>815</sup>

660. Amounts Invested Approach: This is a variation of the Cost Approach, which is based on the concept that the value of a company or asset can be determined by reference to how much has been invested in the company or asset historically. Secretariat has been able to implement the Amounts Invested Approach to assess Caspian Fish, Coolak Baku, and Shuvalan Sugar on an ex-ante basis. As Mr. Bahari does not currently have records which show amounts he paid for Ayna Sultan or the Persian carpets, Secretariat has not been able to apply this approach to those investments.<sup>816</sup>
661. To the extent Azerbaijan produces relevant information about Mr. Bahari's investments during the document production phase of this Arbitration, Secretariat has reserved its right to "[REDACTED]"<sup>817</sup>

### **3. Ex-Ante quantification of Mr. Bahari's damages.**

#### **a. Market Approach.**

662. Secretariat applied an ex-ante Market Approach to estimate Mr. Bahari's 40% shareholding in Caspian Fish and the Persian carpets.<sup>818</sup>
663. To estimate a value for Caspian Fish (and Mr. Bahari's 40% interest therein), Secretariat identified publicly traded companies that are comparable/similar to Caspian Fish and computed enterprise value (or "EV") to processing capacity multiples (i.e., EV/capacity) to determine a range of multiples for Caspian Fish. Applying a reasonable multiple range to Caspian Fish's processing capacity (and accounting for Mr. Bahari's shareholding), Secretariat calculated an indicative value for Mr. Bahari's interest in Caspian Fish as of 1 January 2003 that ranges between \$99 million and \$138.6 million (a midpoint of \$118.8 million). None of the identified publicly traded companies produced caviar, and therefore the capacity multiples based on those companies to value Caspian Fish primarily reflects

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<sup>815</sup> Secretariat Report, pp. 6-7.

<sup>816</sup> Secretariat Report, p. 7.

<sup>817</sup> Secretariat Report, pp. 34-35.

<sup>818</sup> See Secretariat Report, Section 5.A.

the value of only the non-caviar segment of the business, as the caviar production process is largely manual – and thus, the multiples may understate the value of Caspian Fish.

664. Based on the Iselin Report, the value of Mr. Bahari's Persian carpets as of 1 January 2003 is between \$4.887 million and \$27.711 million.

**b. Amounts Invested Approach.**

665. Secretariat applied an ex-ante Amounts Invested Approach for Caspian Fish (as an alternative to the Market Approach), Coolak Baku, and Shuvalan Sugar.<sup>819</sup>

666. To perform its valuation, Secretariat relied on information provided by Counsel and Mr. Bahari that primarily included: (i) invoices; (ii) agreements and contracts with third-party providers; (iii) confirmations of payment; (iv) bank receipts; and (v) various shipping documents (e.g., airway bills, bills of lading, certificates of origin, international consignment notes, packing lists, etc.).

667. The table below summarizes Secretariat's bottom-up review,<sup>820</sup> showing that Mr. Bahari invested at least \$63.062 million in Caspian Fish (as an alternative to the Market Approach), Coolak Baku, and Shuvalan Sugar.

The table is mostly obscured by black redaction boxes. It has a red header row and a red row below it. The main body of the table consists of several rows of blacked-out text, likely representing investment data. The table is enclosed in a black border.

668. Various reports, including Caspian Fish's own website, state that \$ 56 million was invested in Caspian Fish and that Mr. Bahari was the sole investor in the company. Additionally, based on documents available (\$ 44.418 million), Mr. Bahari has been able to put into evidence almost 80 percent of the \$ 56 million. Secretariat has been instructed to provide an amounts invested valuation on the basis of the \$56 million amount, and is also of the opinion that it is appropriate to use this figure when valuing amounts invested.

<sup>819</sup> See Secretariat Report, Section 5.B.

<sup>820</sup> Secretariat Report, p. 9, Table 2, "Summary of Supported Amounts That Claimant Invested in Caspian Fish, Coolak Baku, and Shuvalan Sugar."

**c. Interest.**

669. Secretariat has applied interest to Mr. Bahari's ex ante losses from the historical valuation date (1 January 2003) until the date of payment of any award (1 March 2023) to compensate Mr. Bahari for the time value and opportunity cost of money, compounded annually. Secretariat has applied interest at two rates – US Prime + 2% and Azerbaijan's sovereign rate of borrowing.

Mr. Bahari's Ex-Ante Damages

670. The table below summarizes Secretariat's current calculations of Mr. Bahari's nominal ex-ante damages from 1 January 2003 to 1 March 2023,<sup>821</sup> plus interest.<sup>822</sup>

671. The above table shows that Secretariat has not been able to value all of Claimant's investments using the same valuation approach. Therefore, to the extent the Market Approach is considered for the determination of damages, the amounts Claimant invested in Coolak Baku and Shuvalan Sugar would need to be added to the nominal losses calculated under the Market Approach. Conversely, to the extent the Amounts Invested Approach is considered for the determination of damages, the nominal loss suffered for the Persian carpets under the Market Approach would need to be added to the nominal losses calculated under the Amounts Invested Approach.

<sup>821</sup> The value of Mr. Bahari's interest in Caspian Fish based on the Market Approach in the Table reflects the midpoint of the range discussed above (i.e. US\$ 118.800 is between US\$ 99 million and US\$ 138.6 million); see Secretariat Report, pp. 8, 42, 47, 60, and 79.

<sup>822</sup> Secretariat Report, p. 10, Table 3, "Summary of Claimant's Ex-Ante Damages Calculation."

#### 4. Ex-Post Quantification of Mr. Bahari's Damages.

672. Secretariat has been instructed to implement, as best as possible based on available data, the ex-post framework. Secretariat is able to use the Market Approach to calculate a value for Caspian Fish (and Mr. Bahari's 40% interest) and relies on the Iselin Report for the value of Mr. Bahari's Persian carpets. At the outset, it is noted that Secretariat was unable to perform a complete valuation on this basis, due to the unavailability of historical operating, financial, and cash flow data for Caspian Fish. Therefore, this valuation is currently incomplete, and, it is not an appropriate basis upon which to grant Mr. Bahari full compensation at this time.
673. Secretariat again identified publicly traded companies that it considered comparable/similar to Caspian Fish and computed EV/capacity multiples to determine an indicative range of multiples for Caspian Fish (this is the same analysis we described above, but as of 1 March 2023, as opposed to the ex-ante valuation date of 1 January 2003). Applying a reasonable multiple range to Caspian Fish's processing capacity (and accounting for Mr. Bahari's shareholding), Secretariate estimate a value for Mr. Bahari's interest in Caspian Fish as of 1 March 2023 of between \$ 152.163 million and \$ 195.507 million. None of the publicly traded companies Secretariat identified as provisionally comparable produced caviar. Therefore, it is possible that the application of the capacity multiples based on those companies to value Caspian Fish primarily reflects the value of only the non-caviar segment of the business (and, thus, the multiples may understate the value of Caspian Fish).
674. The current value of Mr. Bahari's interest is just one component of his ex-post losses. The other is a historical component that captures the additional cash flows (i.e., dividends) that Mr. Bahari would have expected to receive from Caspian Fish from the date of breach until the current date. However, Secretariat is not able to assess these cash flows as historical information on Caspian Fish's financial performance. Therefore the ex-post valuation of Caspian Fish is only partially complete.
675. Based on the Iselin Report, the current value of Mr. Bahari's Persian carpets is between US\$ 4.887 million and US\$ 27.711 million.<sup>823</sup> This is the same range discussed above for

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<sup>823</sup> Iselin Report, pp. 14-15.

the ex-ante valuation as of 1 January 2003; however, Mr. Iselin explains that the value of Mr. Bahari's carpets would likely have been higher as of 1 January 2003 (by 15-20%).<sup>824</sup>

676. The table below summarizes Mr. Bahari's ex-post losses related to his 40% shareholding in Caspian Fish and the Persian carpets.<sup>825</sup> The current value component to Caspian Fish reflects the midpoint of the range discussed above. Although Mr. Bahari would be entitled to interest on the historical component of losses, because Secretariat is not able to calculate the historical cash flows that Mr. Bahari has potentially lost, the interest on these cash flows is also not known.

The table is mostly obscured by black redaction boxes. It appears to have a header row with red background and several data rows below. The content is illegible due to the redaction.

677. Based on current information available today, an ex-post valuation of Claimant's investments is incomplete and not an inappropriate basis upon which to grant Mr. Bahari the full compensation he is due. Nevertheless, this valuation exercise is useful, for the following reasons: (1) it is an exercise in transparency for Mr. Bahari and Secretariat, and demonstrates a good faith attempt to achieve an appropriate ex-post Market Approach valuation, and further indicating the current limitations in this approach; and (2) it highlights the documentary *lacunae* and may assist the Tribunal in evaluating what document production would be helpful to complete an ex-post Market Approach valuation.

**5. Mr. Bahari should be awarded pre- and post-Award interest at a commercially reasonable rate.**

678. To return Mr. Bahari to the economic position he would have been in but for Azerbaijan's wrongful acts, damages must include pre- and post-award interest.

<sup>824</sup> Iselin Report, p. 9, ¶ 58.

<sup>825</sup> Secretariat Report, p. 12, Table 4, "Summary of Claimant's Ex-Post Damages Calculation."

679. The Secretariat Report states that, “[REDACTED]”<sup>826</sup>

680. Secretariat notes:

[REDACTED]

681. This is consistent with the accepted legal principle that, absent treaty terms to the contrary, tribunals may include an award of interest in a claimant’s favor, which is consistently held to be part of the “full reparation” to which a claimant is entitled to ensure they are made whole under the *Chorzów Factory* standard.<sup>828</sup>

682. Secretariat provides two different interest rate options for consideration: (i) US Prime + 2% and (ii) Azerbaijan’s sovereign rate of borrowing.<sup>829</sup>

683. US Prime + 2%: Secretariat explains that “[REDACTED]”<sup>830</sup>

684. Tying the interest rate to a benchmark rate—such as US Prime—is a frequent and accepted practice in investment arbitration.<sup>831</sup>

685. Azerbaijan Sovereign Rate: Secretariat explains that such a rate:

<sup>826</sup> Secretariat Report, p.79.

<sup>827</sup> Secretariat Report, p. 80.

<sup>828</sup> *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Award, 25 July 2007 (CLA-078), ¶ 55; *Vivendi v. Argentina I*, Award, 20 August 2007 (CLA-049), ¶ 8.3.20; *Hrvatska Elektroprivreda d.d. v. Republic of Slovenia*, ICSID Case No. ARB/05/24, Award, 17 December 2015 (CLA-166), ¶ 539.

<sup>829</sup> Secretariat has advised that, given that LIBOR will be phased out over the course of this arbitration, Secretariat has adopted the US Prime rate in lieu of LIBOR as the benchmark rate for the pre-award interest calculations.

<sup>830</sup> Secretariat Report, p. 80.

<sup>831</sup> *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award, 12 July 2019 (CLA-176), ¶ 1809 (“the Tribunal concludes that Claimant is entitled to interest at a rate corresponding to the US Prime Rate plus 1 percentage point, compounded annually [...]”).

- i. [REDACTED]
- ii. [REDACTED]

686. Tying the interest rate to a sovereign rate is also a frequent and accepted practice in investment arbitrations.<sup>834</sup>
687. For completeness, post-award interest is also a component of full compensation under customary international law for breaches of treaty obligations. As directed by ARSIWA Article 38(2), interest should run “from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.”<sup>835</sup>
688. It is also a common international practice to award compounded, rather than simple interest.<sup>836</sup> As explained by the tribunal in *Hydro v. Albania*, “[t]he Tribunal is aware that awarding compound interest is a recent trend to accord with the fact that modern financial

<sup>832</sup> Secretariat Report, p. 80.

<sup>833</sup> Secretariat Report, pp. 80-81.

<sup>834</sup> *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4, Award, 14 November 2022 (CLA-177), ¶ 137 (“The Arbitral Tribunal notes that the Parties’ experts agree that the rate of interest should be that of Spanish sovereign bonds but disagree on the term of the bond that should be used for that purpose.”).

<sup>835</sup> ARSIWA (CLA-037), Art. 38(2).

<sup>836</sup> *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Award, 27 November 2013 (CLA-178), ¶ 261; *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015 (CLA-179), ¶¶ 948-949.

activity normally involves compound interest and therefore ought to be paid as compensation to an investor.”<sup>837</sup>

689. The *Chorzów Factory* standard of full reparation equally makes it appropriate for a tribunal to award compound rather than simple interest.<sup>838</sup> Compound interest reflects the additional sum that an investor would have earned if the money had been reinvested each year at the prevailing rate of interest.<sup>839</sup> Annual compounding is appropriate and reasonable.<sup>840</sup> It is the type of interest that Mr. Bahari receives and expects as an entrepreneur from his commercial banking and other interest-bearing activities.

#### 6. Full compensation requires a market valuation when available.

690. Where an investor has been deprived entirely of the value of its investments by wrongful acts, full reparation, in the form of compensation, must cover the restitution value of those investments, and shall be assessed on the basis of its fair market value.

691. The Market Approach valuation is based on a fair market value methodology. It is a commonly used valuation method in investment arbitration (either as a standalone valuation method or as a method to validate the reasonableness of the discounted cash flow method).<sup>841</sup>

692. As noted by Secretariat, in the context of investment tribunal arbitrations, in [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>837</sup> *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, 24 April 2019 (CLA-159), ¶ 885.

<sup>838</sup> *El Paso Energy International Company v. The Argentine Republic* (ICSID Case No. ARB/03/15) Award, 31 October 2011 (CLA-121), ¶ 746 (“The Tribunal shares the view expressed by these awards that compound interest reflects economic reality and will therefore better ensure full reparation of the Claimant’s damage.”); *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017 (CLA-083), ¶ 540 (“a significant number of arbitral tribunals have adopted the view that compound interest achieves full reparation better than simple interest. This Tribunal is of the same view, and will thus award compound interest.”).

<sup>839</sup> *Wena Hotels v. Egypt*, Award, 8 December 2000 (CLA-122), ¶ 129; *Santa Elena v. Costa Rica* Final Award, 17 February 2000 (CLA-155), ¶ 104.

<sup>840</sup> *Gemplus v. Mexico*, Award, 16 June 2010 (CLA-156), ¶ 16-26 (“there is now a form of ‘jurisprudence constante’ where the presumption has shifted from the position a decade or so ago with the result it would now be more appropriate to order compound interest [...]”); *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Award, 10 March 2015 (CLA-179), ¶ 949.

<sup>841</sup> *See Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (CLA-180), ¶ 759.

██████████<sup>842</sup> The Market Approach is therefore a more appropriate valuation method than amounts in vested in circumstances where sufficient information is available.<sup>843</sup>

693. Here, Secretariat has provided a well-established Market Approach valuation of Caspian Fish based on the company’s processing capacity. Based on the availability of that information, it is therefore more appropriate to apply the Market Approach to Caspian fish in awarding Mr. Bahari damages. This also applies to Mr. Bahari’s Persian Carpets, which have been assessed on a Market Approach valuation in the Iselin Report. By comparison, the Market Approach currently cannot be implemented for Coolak Baku or Shuvalan Sugar, because financial or production/capacity information is not currently available; therefore the only option is to apply the Amounts Invested Approach. However, Mr. Bahari reserves the right to provide a Market Approach valuation for Coolak Baku/Shuvalan Sugar to the extent relevant information becomes available pursuant to the document production phase of this Arbitration. Mr. Bahari will request, and expects Azerbaijan to produce, various financial and production information and tax records, amongst other information, including about ownership, that is in the possession, custody, or control of State organs.

694. In accordance with these foregoing principles, and the valuation established by the Secretariat Report, Mr. Bahari is entitled to ex-ante damages based on a Market Valuation for Caspian Fish and the Persian Carpets, and an Amounts Invested Approach for Coolak Baku and Shuvalan Sugar, plus applicable interest at US Prime +2% or Azerbaijan’s Sovereign Rate. This is summarized in the table below:

Investment	Market Approach Nominal Loss	Amounts Invested Approach Nominal Loss	Nominal Loss plus Interest at U.S. Prime + 2%	Nominal Loss plus Interest at the Sovereign Rate
Caspian Fish	118,800,000		419,900,038	662,776,894
Persian Carpets	6,228,103		20,156,968	31,392,433
Coolak Baku		14,994,505	52,998,260	83,653,295
Shuvalan Sugar		3,650,000	12,900,969	20,323,095
<b>Total (US\$)</b>			<b>505,956,235</b>	<b>798,145,717</b>

<sup>842</sup> Secretariat Report, p. 30.

<sup>843</sup> See *Crystallex v. Venezuela*, Award, 4 April 2016 (CLA-066), ¶ 911 (“The Tribunal has already explained that in this case it does not consider it appropriate to resort to [a cost approach], as the fair market value of an object is not related to its historical cost but to its future performance.”).

## G. AZERBAIJAN'S CONDUCT ENTITLES MR. BAHARI TO MORAL DAMAGES

695. Moral damages are awarded as a remedy for non-material harm. Customary international law provides for moral damages, in addition to material damages, as reparation for State injuries that are non-pecuniary in nature. Specifically, ARSIWA Article 31(2) includes moral damages as part of the full reparation that is due for injury caused by a State's internationally wrongful act.<sup>844</sup>

696. The ILC Commentary to ARSIWA Article 31 explains that:

The notion of "injury", defined in paragraph 2, is to be understood as including any damage caused by that act. In particular, in accordance with paragraph 2, "injury" includes any material or moral damage caused thereby. This formulation is intended both as inclusive, covering both material and moral damage broadly understood, and as limitative, excluding merely abstract concerns or general interests of a State which is individually unaffected by the breach.<sup>845</sup>

697. International tribunals have also recognized that moral damages are "considered admissible under international law and it is recognized that legal persons may be awarded moral damages [...]".<sup>846</sup>

698. Moral damages have been deemed permissible in "extreme cases of egregious behavior"<sup>847</sup> or "exceptional circumstances." While the precise requirements to meet this "egregious" or "exceptional" threshold have varied, tribunals frequently rely on considerations set by *Desert Line v. Yemen*<sup>848</sup> and *Lemire v. Ukraine*<sup>849</sup> as guidelines for their analysis.

699. The *Desert Line* tribunal introduced the concept of "exceptional circumstances" and awarded moral damages where claimant's executives had been subjected to physical duress.<sup>850</sup> Following an altercation between claimant's employees and the Yemeni army, three of claimant's executives were arrested for four days.<sup>851</sup> Based on the severity of the

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<sup>844</sup> ARSIWA (CLA-037), Art. 31(2) ("Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.').

<sup>845</sup> Commentary to ARSIWA (CLA-037), Art. 31, ¶ 5.

<sup>846</sup> *Oxus Gold plc v. Republic of Uzbekistan*, UNCITRAL, Final Award, 17 December 2015 (CLA-126), ¶ 895.

<sup>847</sup> *Siag v. Egypt*, Award, 1 June 2009 (CLA-098), ¶ 545.

<sup>848</sup> *Desert Line v. Yemen*, Award, 6 February 2008 (CLA-031).

<sup>849</sup> *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Award, 28 March 2011 (CLA-181).

<sup>850</sup> *Desert Line Projects LLC v. Republic of Yemen* (CLA-031), ¶ 290.

<sup>851</sup> *Joseph Charles Lemire v. Ukraine (II)* (CLA-181), ¶ 327.

behavior and the fact that it affected the executives' physical health and the claimant's credit and reputation, the tribunal found that respondent should "be liable to reparation for the injury suffered by the Claimant, whether it be bodily, moral or material in nature."<sup>852</sup>

700. The tribunal in *Lemire* expanded on this notion and concluded that:

as a general rule, moral damages are not available to a party injured by the wrongful acts of a State, but that moral damages can be awarded in exceptional cases, provided that: [i] the State's actions imply physical threat, illegal detention or other analogous situations in which the ill-treatment contravenes the norms according to which civilized nations are expected to act; [ii] the State's actions cause a deterioration of health, stress, anxiety, other mental suffering such as humiliation, shame and degradation, or loss of reputation, credit and social position; and [iii] both cause and effect are grave or substantial.<sup>853</sup>

701. The *Lemire* tribunal ultimately determined that the injury suffered by claimant in that case (e.g., disrespect and humiliation due to constant rejection in applying for radio licenses, loss of image as a first mover advantage and leadership position in the radio business sector<sup>854</sup>) could not be compared to that caused by physical threat, illegal detentions, deterioration of health, stress, anxiety, other mental suffering, and denied Claimant's petition for moral damages.<sup>855</sup>

702. Despite its negative finding, the standard set forth by *Lemire* has subsequently been relied upon by arbitral tribunals in awarding moral damages. In *von Pezold v. Zimbabwe*, the tribunal cited to the aforementioned elements in the *Lemire* decision,<sup>856</sup> and ultimately granted moral damages after an individual claimant received threats of, and actual, physical violence and detainment by private actors, and some of his employees were also physically harmed. In reaching this determination, the *von Pezold* tribunal likewise referred to *Desert Line*, on the notion that "although it is difficult to substantiate an appropriate sum for moral damages, [...] this should not be a deterrent."<sup>857</sup> Further, the tribunal referenced that in the *Desert Line* analysis, "the harm to the company's executives as central to its

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<sup>852</sup> *Desert Line Projects LLC v. Republic of Yemen* (CLA-031) ¶ 290.

<sup>853</sup> *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Award, 28 March 2011 (CLA-181) ¶ 333.

<sup>854</sup> *Id.* at ¶¶ 335-39.

<sup>855</sup> *Id.* at ¶ 339.

<sup>856</sup> *Bernhard v. Zimbabwe*, Award, 28 July 2015 (CLA-117), ¶¶ 909, 920.

<sup>857</sup> *Id.*, ¶ 910, citing *Desert Line*, Award, 6 February 2008 (CLA-031) ¶ 289.

finding in favour of moral damages. The Tribunal, therefore, affirmed the principle that a corporation can receive damages based on actions that affected members of its staff.”<sup>858</sup>

703. More recently, the arbitral tribunal in *Zhongshan Fucheng v. Nigeria*<sup>859</sup> awarded a claimant moral damages based on the way investor was treated, namely through its CFO’s detention using violent means by the police. The tribunal referred to the incident as “an indefensible and serious infringement of his human rights and a humiliating and frightening experience.” The tribunal likewise determined that additional threats and intimidation to other of Claimant’s employees “reinforce[d] the claim for moral damages.”<sup>860</sup>
704. Azerbaijan’s treatment of Mr. Bahari and his investments squarely represent the type of egregious and exceptional circumstances warranting the award of moral damages. The facts surrounding the harassment, assault, and detentions of Mr. Bahari and his long-time manager, Mr. Moghaddam, are fully examined in the preceding sections. Those details demonstrate the pain and suffering, and other severe, crippling affronts to personality, that Azerbaijan has imposed on Mr. Bahari, his family, and Mr. Moghaddam.
705. Today, Mr. Bahari lives in a perpetual state of fear for himself and his remaining family because of the events that have transpired over the past 20 years at the direction of powerful members of the Azeri Government and the country’s ruling elite. He hopes that this Arbitration will provide him protection since people are now aware of his situation.
706. If the events described in this Statement of Claim do not constitute the requisite egregious and exceptional circumstances warranting full reparation, then moral damages are effectively unattainable, meaning State actors can engage in dangerous and morally reprehensible actions without repercussions.
707. Investment tribunals have held that they have discretion to determine the amount of moral damages,<sup>861</sup> as reflected in the *Desert Line* case where the tribunal reached an amount it deemed to be “more than symbolic yet modest in proportion to the vastness of the

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<sup>858</sup> *Id.*, ¶ 913.

<sup>859</sup> *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria*, Final Award, 26 March 2021 (CLA-182), ¶¶ 39 and 177.

<sup>860</sup> *Id.*, ¶ 177.

<sup>861</sup> See *Bernhard v. Zimbabwe*, Award, 28 July 2015 (CLA-117), ¶ 921 (acknowledging the ability to award moral damages, but that quantification is difficult).

project”.<sup>862</sup> In another case, an international tribunal awarded \$ 30 million to a claimant in moral damages.<sup>863</sup>

708. It is of course difficult, and in some ways impossible, to quantify the harm and suffering experienced by Mr. Bahari, his family, and Mr. Moghaddam. However, the quantum of moral damages awarded must be of some significance if they are to achieve not only full reparation, but also to embody a deterrent affect for a State and its organs that will otherwise engage in egregious and morally reprehensible behavior with impunity.<sup>864</sup>
709. Mr. Bahari therefore respectfully requests the Tribunal award him moral damages equal to \$10 million, or 5% (five percent) of the total material damages awarded for Azerbaijan’s Treaty breaches, whichever is greater, and subject to post-award interest until paid in full.

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<sup>862</sup> *Desert Line Projects LLC v. Republic of Yemen* (CLA-031), ¶ 290.

<sup>863</sup> *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. State of Libya and others*, Final Arbitral Award, 22 March 2013 (CLA-183), p. 369 (awarding claimant US\$ 30 million in compensation for the moral damages).

<sup>864</sup> *Border Timbers Limited, Timber Products International (Private) Limited, and Hangan Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015 (CLA-047), ¶ 913 (mentioning the role of moral damages in condemning the actions of the offending State).

**X. REQUEST FOR RELIEF**

710. On the basis of the foregoing, and without limitation to Mr. Bahari's right to amend these submissions and prayers for relief, Mr. Bahari respectfully request that the Tribunal enter an Award in his favor and against Azerbaijan as follows:"
- i. a declaration that the dispute is within the jurisdiction and competence of the Tribunal;
  - ii. a declaration that Azerbaijan has breached its obligations under the Treaty with respect to Mr. Bahari's investments in Azerbaijan;
  - iii. an order directing Azerbaijan to compensate Mr. Bahari for his losses resulting from Azerbaijan's breaches of the Treaty for an amount of at least \$505,956,235 or \$798,145,717 (as determined by applicable pre-Award interest), which may be supplemented in a subsequent report, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;
  - iv. an order directing Azerbaijan to compensate Mr. Bahari for moral damages of \$10 million, or five (5) percent of the total material damages awarded, whichever is greater, plus post-Award interest until the date of full and effective payment, at a commercially reasonable rate, compounded annually;
  - v. an order directing Azerbaijan to pay all of Mr. Bahari's costs and fees incurred in these arbitration proceedings, including all of its attorneys' fees and expenses; and

- vi. an order for such other and further relief as the Tribunal deems just and proper in the circumstances.

Dated: 21 April 2023

*Respectfully submitted on behalf of Claimant  
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