

PCA CASE N° 2022-49

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

MOHAMMAD REZA KHALILPOUR BAHARI

Claimant

-and-

THE REPUBLIC OF AZERBAIJAN

Respondent

RESPONDENT'S POST-HEARING BRIEF (ADMISSIBILITY)

28 February 2025

The Arbitral Tribunal

Professor Gabrielle Kaufmann-Kohler
Sir Daniel Bethlehem KC
Mr Laurence Shore

Counsel to the Respondent
QUINN EMANUEL URQUHART & SULLIVAN UK LLP
90 High Holborn, London WC1V 6LJ, United Kingdom

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I. EXECUTIVE SUMMARY

1. This post-hearing brief is submitted on behalf of Azerbaijan further to paragraph 4.1 of Procedural Order No. 8 dated 3 February 2025. It is focussed solely on the Respondent's admissibility defence based on the fraud perpetrated on the Tribunal, and does not either repeat matters already addressed at length in Azerbaijan's previous written submissions (which are maintained and relied upon by Azerbaijan in full), or summarise the remainder of Azerbaijan's case in the light of the evidentiary hearing (the **Hearing**), which will be addressed in the Respondent's next post hearing brief. Unless otherwise stated, defined terms in this brief adopt the meanings given in the parties' previous submissions.
2. It has become clear during these proceedings and the Hearing that Mr Bahari is prone to digression, deflection, and outright lying. His own counsel have confirmed that he is "[REDACTED]".¹ That inattention to detail extends to Mr Bahari's approach to or conception of the truth, which is at best loose.
3. The Purported Chartabi Contracts submitted by Mr Bahari as evidence in these proceedings illustrate Mr Bahari's tendency to lie. They are fraudulent documents prepared by Mr Bahari, in collusion with his brother-in-law (the supposed owner of Chartabi Contracting Services, allegedly an Iranian construction company), two decades or more after the alleged construction took place, without reference to any contemporaneous documents.
4. Incredibly, the Purported Chartabi Contracts were adduced by Mr Bahari and his counsel as authentic original documents. The circumstances of their creation were concealed from the Tribunal, and would not have become apparent but for the persistence of the Respondent and its forensic document examiner, Ms Elizabeth Briggs. Neither the terms on their face, nor Mr Bahari's testimony, nor his supporting witnesses' testimony regarding the substance of those contracts, can be trusted. The sole purpose of their creation was to manufacture evidence supporting Mr Bahari's alleged investments in Azerbaijan and his claim in these proceedings.

¹ Transcript of Hearing on Jurisdiction and Merits, Day 1, 6:12.

5. As set out in detail below, though he has had the opportunity to do so, Mr Bahari has failed to provide any credible evidence to support: (i) the very existence of Chartabi Contracting Services (**Chartabi Contracting**), (ii) the presence of Chartabi Contracting in Azerbaijan, and specifically at any of Caspian Fish, Coolak Baku or Shuvalan Sugar, (iii) that there was any general contractor implementing any of the projects, let alone that Chartabi Contracting was that general contractor, or (iv) that Mr Bahari paid any sums to Chartabi Contracting, or funded any construction at all.
6. Similarly, even after his blatant deception in respect of the Purported Chartabi Contracts was revealed, Mr Bahari made no show of contrition, much less any attempt to reverse any consequences of such deception. For instance, the testimony of his expert witnesses at the Hearing, which took place days after Mr Bahari expressly admitted his manufacturing of the Purported Chartabi Contracts, remained tainted by several false assumptions connected to the Purported Chartabi Contracts, with the experts themselves expressing a combination of discomfort and bemusement when confronted in respect of those assumptions. More broadly, instead of seeking to remedy the damage his deceit caused, Mr Bahari defiantly pretended his false statements did not matter, and sought to deflect by pointing to the existence of various buildings supposedly built with his money. Even today, several weeks after the full revelation of Mr Bahari's fraud and deceit, it is not clear its legal consequences have fully dawned on him.
7. Given the fundamental and continuing nature of Mr Bahari's deception regarding Chartabi Contracting and the Purported Chartabi Contracts, Mr Bahari deserves the strongest possible condemnation. His evidence and the evidence of his witnesses should be entirely disregarded as unreliable and his claims should be dismissed as inadmissible because of his blatant attempt to perpetrate a fraud on the Tribunal.

II. MR BAHARI HAS PURPOSEFULLY ENGINEERED DOCUMENTS AND EVIDENCE TO MISLEAD THE TRIBUNAL IN THESE PROCEEDINGS

8. The Purported Chartabi Contracts are central to Mr Bahari's case in respect of his claimed investments in Caspian Fish, Coolak Baku and Shuvalan Sugar. They purport to show that, *inter alia*:

- (a) Mr Bahari was “[REDACTED]” in Caspian Fish, Coolak Baku and Shuvalan Sugar;²
 - (b) Shuvalan Sugar existed as a separate entity or business venture;
 - (c) Mr Bahari contracted with Chartabi Contracting for the purpose of construction;
 - (d) Construction work was undertaken at the projects by Chartabi Contracting;
 - (e) At least US\$ 36.605 million in construction costs was paid to Chartabi Contracting; and
 - (f) Construction had been completed on the scheduled date and Chartabi Contracting received all of the funds payable under the contracts at the designated times.³
9. The implication that Mr Bahari seeks to draw from the Purported Chartabi Contracts is that he was a rich and successful businessman who had the funds to pay the amounts under the Purported Chartabi Contracts, that he did so, and that he must have had funds to pay for other costs related to the establishment of the projects, such as equipment.
10. These purported facts are central to Mr Bahari’s claims. But, critically, the Purported Chartabi Contracts are a fraud. They are Mr Bahari’s post hoc fabrications made for the purpose of supporting his otherwise unsupported claim that he made significant investments in Azerbaijan.
11. Mr Bahari asks the Tribunal and the Respondent to accept that the existence of, and the terms included in, the Purported Chartabi Contracts are a faithful reproduction – from memory – of originals of contracts which existed at the time of the alleged construction, and that he could remember their terms. The Respondent’s objections do not only put the lie to the claim that Mr Bahari could reconstruct contracts more than 20 years after the event based on memory. They also highlight the fact that there is no credible

² Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

³ Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

evidence that the Purported Chartabi Contracts, or indeed Chartabi Contracting itself, ever existed.

12. Without the Purported Chartabi Contracts, Mr Bahari has extremely limited contemporaneous evidence to show that any meaningful funds were spent at Caspian Fish or Coolak Baku much less that he invested any funds, or that Shuvalan Sugar existed at all.

A. The Purported Chartabi Contracts are fraudulent documents created by Mr Bahari specifically for these proceedings

1. The Purported Chartabi Contracts were fabricated by Mr Bahari and his brother-in-law

13. The Purported Chartabi Contracts were created by Mr Bahari and his brother-in-law, Mr Ahad Chartabi, in 2019,⁴ apparently from scratch.⁵
14. It was only for the first time, at the Hearing, that Mr Bahari described the process of creating the contracts “[REDACTED]”,⁶ as follows:
- (a) Mr Bahari approached Mr Ahad Chartabi to create contracts for the purpose of the arbitration.⁷
 - (b) Mr Chartabi spent 21 days discussing the terms and other provisions with “[REDACTED]” to see what they remembered about the project, because Mr Chartabi himself “[REDACTED]”.⁸
 - (c) Mr Chartabi drafted and prepared the text of the Purported Chartabi Contracts on the basis of those discussions.⁹
 - (d) Mr Chartabi brought the text to Mr Bahari and asked “[REDACTED]”¹⁰

⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 65:18-21, 68:21-23.

⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 73:17-25; 74:1-22.

⁶ Transcript of Hearing on Jurisdiction and Merits, Day 3, 78:7.

⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 63:6-17.

⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 77:6-20.

⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 74:4-8; p. 77:17-22.

¹⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 74:13-15.

the Respondent¹⁹ and the Claimant's unsubstantiated and unparticularised allegation should carry no weight.

2. The Purported Chartabi Contracts are not fulsome construction contracts

16. Each Purported Chartabi Contract is "[REDACTED]".²⁰ As acknowledged by Mr Gaines, the Claimant's construction expert, none of the Purported Chartabi Contracts include the provisions one might expect in a standard construction contract.²¹ It also includes provisions that Mr Gaines is "[REDACTED]" and described as "[REDACTED]".²² In sum, the Purported Chartabi Contracts are not fulsome construction contracts and do not reflect sophisticated commercial terms or legal drafting, that would ordinary be expected in contracts of such quantum.
17. As to their content, even if the contracts ever existed in their original form (which is denied), it is preposterous to suggest that Mr Bahari could remember the specific financial and legal terms of a construction contract two decades or more after the fact, without any reference to a written record.
18. Mr Bahari's testimony that the only difference between the terms of the Purported Chartabi Contracts and any original contracts is just "[REDACTED]"²³ is inherently unbelievable. For the sake of argument only, any derogation from the precise terms of the original contract could have a significant impact on its content and interpretation. For example, Mr Gaines confirmed that if the penalty clause referred to one 100th as opposed to one 1000th of the construction cost, that would be a significant difference, and his comments on risk contingency may have been affected.²⁴ If there had been original contracts, it is impossible that they could have been replicated faithfully in the manner Mr Bahari described. These purported contracts should be given no evidential weight whatsoever, other than as proof of Mr Bahari's fraud on the Tribunal.

¹⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 82:7-10.

²⁰ Transcript of Hearing on Jurisdiction and Merits, Day 8, 30:23.

²¹ Transcript of Hearing on Jurisdiction and Merits, Day 8, 30-31:1-4.

²² Transcript of Hearing on Jurisdiction and Merits, Day 8, 9:3-7.

²³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 75:2.

²⁴ Transcript of Hearing on Jurisdiction and Merits, Day 8, 55:14-24.

3. Specific provisions of the Purported Chartabi Contracts regarding scope, contract price and dates are contradicted by evidence

19. With respect to the most relevant terms of the Purported Chartabi Contracts, namely the contract price and scope, Mr Bahari claims that he can specifically recall that the content of the Purported Chartabi Contracts is the same as the contemporaneous contracts because he constructed the buildings:

[REDACTED]

20. This attempt at explanation is nonsensical. First, to the extent he was referring to himself in his testimony, Mr Bahari is not an engineer. His own expert opined that Mr Bahari's involvement was "[REDACTED] [REDACTED]", as Mr Bahari's "[REDACTED] [REDACTED]".²⁶

21. Secondly, Mr Bahari claims that he recalled the measurements of all of the construction projects exactly: "[REDACTED] [REDACTED]".²⁷ But, his memory for detail is in fact misplaced. Mr Bahari's own expert, Mr Gaines, confirms that the measurements and dimensions included in the Caspian Fish Purported Chartabi Contract are not identical to the dimensions of the buildings eventually built at Caspian Fish.²⁸ He specifically notes that:

[REDACTED]

²⁵ Transcript of Hearing on Jurisdiction and Merits, Day 3, 75:9-12.

²⁶ Gaines Report, para. 4.1.2.

²⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 75:4-7.

²⁸ Gaines Report, para. 3.45.

²⁹ Gaines report, para. 3.41 (emphasis added).

22. The dates of the Purported Chartabi Contracts cannot be correct either, on Mr Bahari's own evidence. While the Caspian Fish Chartabi Contract is dated May 1999, Mr Bahari's claim is that work on the plant had already begun in early 1998, thus would have been well advanced by the time of the purported construction contract in May 1999.³⁰

4. There is no evidence that Chartabi Contracting ever existed

23. Despite concerns raised by the Respondent as early as December 2023,³¹ Mr Bahari has failed to put forward any supporting evidence that a construction business called Chartabi Contracting exists or existed in Iran, or anywhere in the world. Nonetheless Mr Bahari insisted at the Hearing that it "[REDACTED] [REDACTED]",³² but no trace of it, nor any document from its archives, has been produced in these proceedings. Mr Bahari's own construction expert, Mr Gaines, also confirmed that he could not verify the very existence of Chartabi Contracting:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. If it were the case that Chartabi Contract was such a large entity, the Respondent (and Mr Gaines) would have been able to identify an online or registered presence in Iran or globally. In addition, Mr Bahari should have had no trouble obtaining and providing evidence of its existence, its track-record, and its activities in Azerbaijan. Yet the best Mr Bahari could offer was the otiose statement "[REDACTED] [REDACTED]"³⁴ His assertion in the light of the Respondent's very grave concerns is clearly inadequate.

³⁰ Second Bahari Statement, para. 28; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, C-92.

³¹ Defence, paras. 90-92.

³² Transcript of Hearing on Jurisdiction and Merits, Day 3, 72:12-14.

³³ Transcript of Hearing on Jurisdiction and Merits, Day 8, 45:15-18.

³⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 72:14-15.

5. The purpose of the creation of the Purported Chartabi Contracts was to support Mr Bahari's claim

25. The Purported Chartabi Contracts are the fraudulent and deceitful creation of Mr Bahari. No contemporaneous agreements were ever entered into between Mr Bahari and Chartabi Contracting, or any other general contractor, for the construction of Caspian Fish, Coolak Baku or Shuvalan Sugar.
26. The truth appears to be that Mr Bahari approached his own brother-in-law, Mr Ahad Chartabi who had worked as a welder at the Caspian Fish construction,³⁵ to help him prepare fraudulent construction agreements. Mr Bahari created the Purported Chartabi Contracts for the sole purpose of supporting his claims in these proceedings. They make up an essential element of Mr Bahari's claims both on the merits of his claim and in respect of quantum.
27. As to the merits, the Purported Chartabi Contracts purport to support Mr Bahari's assertion that he was the financial investor in these projects when other evidence points to Mr Heydarov. As to quantum, on Secretariat's own calculations, the Purported Chartabi Contracts make up 97% of the amounts confirmed by them to have been invested in Caspian Fish, Coolak Baku and Shuvalan Sugar by Mr Bahari. The remainder of the amounts identified by Secretariat as investments by Mr Bahari are based on inference, relying on Mr Bahari's bare assertions. In circular fashion, those inferences are based only on Mr Bahari's claimed status as a "[REDACTED]",³⁶ which is in turn said to be supported by the Purported Chartabi Contracts as well as Mr Bahari's own, unreliable testimony. If the Purported Chartabi Contracts are a fraud, no such inference can be made.

B. Mr Bahari's factual witnesses participated in the fraud on the Tribunal in their written evidence

28. During the Hearing, not only Mr Bahari himself, but Mr Bahari's other witnesses were shown to be unreliable. This will be expanded upon in the Respondent's full post-hearing brief. However, for the purpose of this submission, it suffices to note that Mr

³⁵ First Zeynalov Statement, para. 28.

³⁶ Claimant's Reply, paras. 101-102.

Bahari's fact witnesses participated in the fraud on the Tribunal regarding the Purported Chartabi Contracts.

29. In particular, several of Mr Bahari's witnesses attempted, in their written witness evidence, to support his claim that the construction work at Caspian Fish, Coolak Baku and Shuvalan Sugar was undertaken by Chartabi Contracting.³⁷ However, not one witness provided any additional documentary evidence to support that claim. Instead, each simply parrots Mr Bahari's claims without additional detail.
30. In contrast, the oral evidence of his witnesses was not as helpful to Mr Bahari. For example, Mr Suleymanov did not confirm during the course of his oral testimony that Mr Ahad Chartabi actually managed construction, stating simply that he "[REDACTED]"³⁸ and that he "[REDACTED]"³⁹ because he "[REDACTED]".⁴⁰ When asked directly by the President whether Mr Ahad Chartabi was in charge of the construction, he responded:

[REDACTED]

31. Similarly, Ms Ramazanova was unable to confirm that Mr Ahad Chartabi had worked as the general contractor at Caspian Fish, only that he "[REDACTED]":

[REDACTED]

³⁷ First Moghaddam Statement, paras. 30, 37, 45; Second Moghaddam Statement, paras. 13, 14; Suleymanov Statement, paras. 10, 30; Khalilov Statement, paras. 11, 17, 28.

³⁸ Transcript of Hearing on Jurisdiction and Merits, Day 4, 42:21-22.

³⁹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 42:25.

⁴⁰ Transcript of Hearing on Jurisdiction and Merits, Day 4, 43:1-2.

⁴¹ Transcript of Hearing on Jurisdiction and Merits, Day 4, 43:4-7.

⁴² Transcript of Hearing on Jurisdiction and Merits, Day 4, 127:20-25, 128:1-12.

32. And while Mr Klaus claims that he discussed Mr Bahari's projects in Azerbaijan regularly,⁴³ he did not remember the name Chartabi Contracting, stating [REDACTED]
[REDACTED]".⁴⁴

C. Mr Bahari's expert witnesses have turned a blind eye to the fabrication of the Purported Chartabi Contracts and indirectly participated in the fraud on the Tribunal

33. During the course of the Hearing, Mr Bahari's expert witnesses who relied on the Purported Chartabi Contracts as key documents entirely disregarded Mr Bahari's staggering admission of their fabrication. While it is of course not the role of an expert to make decisions or assertions on matters of fact, professional and independent experts must display some level of analysis, reflection and common sense regarding the factual matrix relevant to their reports. They must present a balanced approach considering all sides. That independence was absent from these proceedings, as the experts continued to display blind faith both in the Purported Chartabi Contracts themselves, as well as Mr Bahari's testimony and instructions more generally.
34. As he explained during the Hearing, Mr Gaines' report was predicated on the assumption that the Purported Chartabi Contract for Caspian Fish "[REDACTED]
[REDACTED]".⁴⁵ However, Mr Gaines was not informed by Mr Bahari about the fabrication of the Purported Chartabi Contracts and only learned about it by reading the transcripts of the Hearing.⁴⁶ Upon learning of this fabrication of the key document he considered in his report, Mr Gaines did nothing. He continued to rely on the Caspian Fish Purported Chartabi Contract, and assumed it was valid. In fact, he provided oral evidence that he thought that making an assumption the Purported Chartabi Contract was valid was "[REDACTED]
[REDACTED]
[REDACTED]".⁴⁸

⁴³ First Klaus Statement, para. 11.

⁴⁴ Transcript of Hearing on Jurisdiction and Merits, Day 4, 190:13.

⁴⁵ Transcript of Hearing on Jurisdiction and Merits, Day 8, 7:2-4.

⁴⁶ Transcript of Hearing on Jurisdiction and Merits, Day 8, 23:6-7.

⁴⁷ Transcript of Hearing on Jurisdiction and Merits, Day 8, 23:6-7.

⁴⁸ Transcript of Hearing on Jurisdiction and Merits, Day 8, 25:5-6.

35. Even when faced with a direct question regarding having been misled by Mr Bahari, Mr Gaines simply doubled down on his position.

[REDACTED]

36. However, Mr Gaines is wrong to do so. The lack of consideration by Mr Gaines of the facts that have been admitted by his own client with respect to the key contract which is considered by him in his report demonstrates a total lack of reflection and due diligence and undermines the evidential value of his report.

37. When challenged with a question as to how different his report would have been, should the Caspian Fish Purported Chartabi Contract fall away, he stated it would be a “[REDACTED]”:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. But even Mr Gaines’ counter factual does not stand. Should the Purported Chartabi Contracts fall away, the witness testimony which supported them must also be

⁴⁹ Transcript of Hearing on Jurisdiction and Merits, Day 8, 63:1-25, 64:1-10.

questioned and identified as unreliable. There would remain no evidence that Mr Gaines could rely on that was not tainted by the fraud. Therefore it is not fathomable that his report would be a “ [REDACTED] ” or that he would not “ [REDACTED] [REDACTED] ”.⁵⁰ In the circumstances, one can question whether he would be able to prepare a report at all, in a professional and independent manner.

39. Similarly, while it is not clear when Mr Sequeira and Mr Messmer became aware of Mr Bahari’s fabrication of the Purported Chartabi Contracts, it was certainly known to them by the time they were called for cross-examination. The Purported Chartabi Contracts make up a significant portion of the amounts they identify as being invested by Mr Bahari. Surprisingly, however, the knowledge of their client’s fabrication of documents core to their quantum analysis had no impact on their findings. Mr Messmer took the unenviable position that even though the Purported Chartabi Contracts were a fabrication it was not their job to consider the related facts:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

40. While it is not the task of an expert witness to make decisions on matters of fact, it is incomprehensible that a professional expert could learn of a client’s fabrication of documents on which that expert relies and not be concerned with respect to both the documents in question or the general reliability of the client. Given the lack of independence demonstrated, the evidential value of Secretariat’s report must be called into question.

D. Mr Bahari proffered additional alleged documents in support of the Purported Chartabi Contracts, but they take him no further

41. The evidence submitted by Mr Bahari purporting to evidence the existence and payment of the Purported Chartabi Contracts is entirely without value and was prepared by

⁵⁰ Transcript of Hearing on Jurisdiction and Merits, Day 8, 53:5-6.

⁵¹ Transcript of Hearing on Jurisdiction and Merits, Day 8:185:9-17.

individuals who are not subject to cross-examination, likely at the behest of Mr Bahari, and potentially even for economic gain. Or they are pure forgeries.

42. Mr Bahari now claims that the Purported Chartabi Contracts must be correct as the Caspian Fish, Coolak Baku and Shuvalan Sugar projects were eventually constructed (or renovated, as the case may be). However, the fact that the buildings are standing is not evidence that construction was either undertaken by Chartabi Contracting, that it was the general contractor, or that Mr Bahari funded the construction through payment to Chartabi Contracting.
43. In fact, the evidentiary record as a whole indicates that Chartabi Contracting never existed, it certainly was not the general contractor on site, and indeed there was no general contractor at Caspian Fish or Coolak Baku. As to Shuvalan Sugar, the same is true but it can also be noted that Mr Bahari has provided no additional evidence of any construction at Shuvalan Sugar.

1. Additional non-contemporaneous evidence submitted by Mr Bahari does not support his case and has likely been manufactured for these proceedings

44. In addition to unreliable witness testimony, Mr Bahari relies on three non-contemporaneous letters which purport to verify historic matters including (i) the involvement of Chartabi Contracting in Caspian Fish, Coolak Baku and Shuvalan Sugar, and (ii) Mr Bahari's payment of the construction costs from his own funds.
45. None of them have any evidential value and they do not support Mr Bahari's claim.
46. First, there is a letter from Mr Ahad Chartabi dated 7 January 2019.⁵² While Mr Bahari was unable to confirm the exact date, the Respondent understands that this letter was created at or around the same time as the fabrication of the Purported Chartabi Contracts.⁵³ It purports to confirm the construction value of the Purported Chartabi Contracts and that Mr Bahari paid Chartabi Contracting in full for all of those amounts. Given the letter was likely prepared alongside the Purported Chartabi Contracts, and by

⁵² Letter from Chartabi Contracting dated 7 January 2019, C-86.

⁵³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 144:7-10.

the same individuals who participated in their fabrication, the letter has no evidential value and should be entirely disregarded.

47. Second, Mr Bahari adduced a letter from Mr Gazai dated March 2024.⁵⁴ This letter purports only to confirm that Caspian Fish, Coolak Baku and Shuvalan Sugar were “[REDACTED]” of Mr Bahari. It does not comment directly on the amounts invested, the construction of the facilities or the existence of any construction contracts or general contractor. It does not name Chartabi Contracting. It also does not confirm the basis on which Mr Gazai had personal knowledge of Mr Bahari’s private, commercial dealings. In any event, Mr Gazai has not been proffered as a witness and his evidence cannot be tested. In the circumstances, the letter has no evidential value.
48. Third, Mr Bahari relies on a letter from Mr Samad Chartabi, the brother of Mr Ahad Chartabi and another brother-in-law of Mr Bahari, dated 9 April 2024.⁵⁵ In this letter, Mr S Chartabi states only that he is “[REDACTED]” that Mr Bahari “[REDACTED]” Caspian Fish “[REDACTED]”.⁵⁶ Mr S Chartabi has not detailed the alleged construction costs or provided any documents at all from Chartabi Contracting’s archives. Nor has he provided any evidence of the existence of either Chartabi Contracting or Chartabi Metalworking Industries. Furthermore, Mr Bahari confirmed at the Hearing that he was only able to obtain this letter because they were family: “[REDACTED] [REDACTED]”.⁵⁷ In the circumstances, this letter has no evidential value.
49. Given Mr Bahari’s admitted fraudulent conduct in respect of the Purported Chartabi Contracts, the only logical inference is that these three letters were prepared at the behest of Mr Bahari and are simply repeating what Mr Bahari wished them to say.

⁵⁴ Letter from Ahad Gazai to Diamond McCarthy LLP dated 31 March 2024, C-279.

⁵⁵ Letter from Samad Chartabi dated 9 April 2024, C-280.

⁵⁶ Letter from Samad Chartabi dated 9 April 2024, C-280.

⁵⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 138:5-7.

2. A sole piece of contemporaneous evidence submitted by Mr Bahari does not support his case and has likely been forged

50. The only allegedly contemporaneous document claiming to evidence Mr Bahari's payment of the sums owed under the Purported Chartabi Contracts is the Purported Cheque. However, the Purported Cheque is also likely a forgery, similar to the Purported Chartabi Contracts. This can be inferred from the following:

- (a) Mr Bahari did not provide any explanation as to the provenance of the Purported Cheque submitted with his Reply, and merely asserted that it was found as part of his "[REDACTED]".⁵⁸ During the course of the Hearing, Mr Bahari provided a confusing explanation that he was provided the Purported Cheque by his deceased accountant's Azerbaijani son.⁵⁹ Mr Bahari did not explain why his Azerbaijani accountant would have a copy of an Iranian cheque, payable between two Iranian entities. Furthermore, Mr Bahari stated that he did not recall "[REDACTED]", it was "[REDACTED]".⁶⁰ No other detail or corroboration was provided. This is yet another example of Mr Bahari's stark inability to tell the truth, recall detail or refrain from engaging in hyperbole. The Purported Cheque was clearly in the possession of Mr Bahari's counsel by 24 May 2024,⁶¹ and was submitted as an exhibit with the Claimant's Reply in June 2024, eight or nine months prior to his oral evidence.
- (b) Mr Bahari admitted that he tried to get confirmation or records from Bank Melli, but that he failed to do so despite "[REDACTED]".⁶² No evidence of such efforts exists. The Respondent assumes that Mr Bahari could not obtain records from Bank Melli as such records do not exist.
- (c) The Purported Cheque is from the bank account of Coolak Shargh and not Mr Bahari. Mr Bahari provided no credible explanation for this save that

⁵⁸ Second Bahari Statement, para. 21(b).

⁵⁹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 91-92:1-8.

⁶⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 93:13-14.

⁶¹ Earnest Exhibit, **C-380**, para. 10.

⁶² Transcript of Hearing on Jurisdiction and Merits, Day 3, 93:24-25.

“[REDACTED]”⁶³ but he claimed that the Coolak Shargh account at Bank Melli was actually “[REDACTED]”.⁶⁴ This explanation defies logic. There is no logical way a company account could legally be used as a personal account.

- (d) Mr Bahari was no longer a shareholder in Coolak Shargh as at September 2000, the date of the Purported Cheque.⁶⁵ In his written submissions, Mr Bahari called evidence on this into question by stating that information from the Official Gazette of Iran was “[REDACTED]”.⁶⁶ During cross-examination, Mr Bahari pivoted and provided a garbled response on this point noting in the same breath that he “[REDACTED]”⁶⁷ and that his shares in Coolak Shargh were expropriated by the Iranian government in December 1999.⁶⁸ This story makes no sense.
- (e) Even had Mr Bahari still been involved in Coolak Shargh in September 2000, he was not the sole shareholder prior to his exit.⁶⁹ Mr Bahari provided no explanation as to how he would have been able to use the cheque of a separate, Iranian company to pay for his claimed construction projects in Azerbaijan.
- (f) The Purported Cheque was addressed to Mr Ahad Chartabi and not Chartabi Contracting. Mr Bahari attempted to explain this away by stating that Mr Ahad Chartabi would have had to pay taxes in Azerbaijan as well as in Iran and then would have had no profit.⁷⁰ While also seemingly an admission of aiding Mr Ahad Chartabi’s intentional tax evasion in the course of establishing his investment, Mr Bahari’s response was confused and illogical, not least as

⁶³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 95:7-8.

⁶⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 99:3-4.

⁶⁵ Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company’s Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

⁶⁶ Claimant’s Reply, para. 113.

⁶⁷ Transcript of Hearing on Jurisdiction and Merits, Day 3, 98:22.

⁶⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 98:1-17.

⁶⁹ Extract from Official Gazette of the Islamic Republic of Iran, Notice on Transfer of Portion in the Company’s Share Capital on 22 December 1999 dated 15 January 2000, **R-84**.

⁷⁰ Transcript of Hearing on Jurisdiction and Merits, Day 3, 94:10-24.

Chartabi Contracting was never registered as a company in Azerbaijan⁷¹ and would therefore not have had to pay taxes in Azerbaijan.

- (g) The Purported Cheque was for an amount which did not correlate to any of the Purported Chartabi Contracts. Mr Bahari has failed to provide any explanation as to what specifically the amount of the Purported Cheque was intended to pay.

51. The most likely explanation the Respondent has identified is that Mr Bahari somehow located a blank cheque in an old Coolak Shargh cheque book, and he chose to fill it in and present it as evidence in the misguided belief that it would persuade the Tribunal and support his claims in these proceedings. It should be accorded no evidential value.
52. Even were the Purported Cheque to be a genuine document, it does not even show what Mr Bahari purports it to show. A copy of a cheque is not evidence of payment, and there is no evidence that the Purported Cheque was ever deposited at the relevant time, or at all. Even if it was, it is also not evidence that any payments made based on such a cheque were payments by Mr Bahari using his own funds.

3. The evidence suggests that there was no general contractor at Caspian Fish, Coolak Baku or Shuvalan Sugar

53. Since the Respondent raised concerns about the Purported Chartabi Contracts, Mr Bahari has done his best to fabricate a story of a general contractor overseeing the works at Caspian Fish, Coolak Baku and Shuvalan Sugar.⁷² However, the evidence suggests that there was no general contractor overseeing any construction work at Caspian Fish, Coolak Baku or Shuvalan Sugar. Even Mr Bahari, in his Statement of Claim, expressly stated that in addition to the Purported Chartabi Contracts, “[REDACTED]”⁷³
54. As explained by Mr Gaines, under the Purported Chartabi Contract for Caspian Fish, Chartabi Contracting was obligated to “[REDACTED]”⁷⁴ Mr Gaines accepted during his testimony that he would

⁷¹ Letter from State Tax Service to Khirdalan city attorney’s office dated 18 December 2023, **R-86**.

⁷² Reply, paras. 140-144, 226-237.

⁷³ Statement of Claim, para. 82.

⁷⁴ Gaines Report, para. 3.11.

expect the scope of Chartabi Contracting to include e.g. constructing the doors and windows for the facility,⁷⁵ and it was put to him that it would also include the fabrication of metal trusses for the roof,⁷⁶ and the purchase of materials and payment of workers' salaries.⁷⁷

55. However, during the course of the Hearing and in the evidence submitted on behalf of Mr Bahari:

- (a) Mr Bahari testified that he personally paid the salaries of 600 workers⁷⁸ and he (together with Mr Zeynalov) had the authority to hire and fire workers at Caspian Fish.⁷⁹ As this was prior to the commencement of production at Caspian Fish,⁸⁰ such workers could only have been construction workers. Had Chartabi Contracting – or any other general contractor – been involved, it would be most unusual for Mr Bahari to have the power to hire and fire its workers. Construction workers would also typically be paid by that contractor, and not Mr Bahari.
- (b) Mr Moghaddam explained that he was responsible for constructing the doors and windows for Caspian Fish at a carpentry workshop⁸¹ at the old warehouse that Mr Bahari set up.⁸² Mr Moghaddam was not employed by Chartabi Contracting.
- (c) Mr Suleymanov explained that the metal trusses for Caspian Fish's roof were fabricated in April 1999, prior to the date of the Purported Chartabi Contract for Caspian Fish.⁸³ Mr Suleymanov was also not employed by Chartabi Contracting.

⁷⁵ Transcript of Hearing on Jurisdiction and Merits, Day 8, 39:20-22.

⁷⁶ Transcript of Hearing on Jurisdiction and Merits, Day 8, 43:2-13.

⁷⁷ Transcript of Hearing on Jurisdiction and Merits, Day 8, 38:14-25, 39:1-19.

⁷⁸ Transcript of Hearing on Jurisdiction and Merits, Day 3, 92:18-25.

⁷⁹ Second Bahari Statement, para. 16.

⁸⁰ Transcript of Hearing on Jurisdiction and Merits, Day 8, 38:23-25.

⁸¹ Transcript of Hearing on Jurisdiction and Merits, Day 3, 158:17-20.

⁸² Bahari Statement, para. 43.

⁸³ Suleymanov Statement, para. 31.

(d) Mr Bahari confirmed that he made payments of US\$ 4.5 million for “[REDACTED]”.⁸⁴ This payment was also confirmed by Mr Klaus.⁸⁵

56. Had there been a general contractor involved with Caspian Fish under a lump sum EPC contract, the employer (Mr Bahari) would have paid the contractor and out of that money and the contractor would have paid salaries and purchased materials. Otherwise, the contract price would have been liable for deduction.
57. Furthermore, had a general contractor been involved, it beggars belief that they would not have maintained records of the construction. The Claimant's own construction expert, Mr Gaines, expressed surprise at the complete absence of relevant documentation, especially since Chartabi Contracting was claimed to be the largest construction company in Iran. Mr Gaines confirmed that if Chartabi Contracting had indeed been the general contractor, there would necessarily be documentary evidence – whether held by the company itself or by other key specialists involved in the project, such as the architect, the engineer, the quantity surveyor, subcontractors, or other construction firms.⁸⁶ The employer under a construction contract also would have maintained records.⁸⁷ However, Mr Rudman explains that when he requested from Mr Bahari contracts and other documents relevant to the construction of the Caspian Fish facilities, Mr Bahari failed to provide any.⁸⁸
58. Mr Rudman outlined a series of remedial actions that had to be implemented before the plant could be commissioned, following the completion of Caspian Fish's construction. The Work Plan specifically required that a turnkey contract be executed by 12 December 2000 and it was suggested that this be with Mirinda, with no reference to Chartabi Contracting. Had there been a general contractor already on site, someone would have mentioned this to Mr Rudman, and a construction agreement would have

84 First Bahari Statement, para. 46(ii).

⁸⁵ First Klaus Statement, para. 18.

⁸⁶ Transcript of Hearing on Jurisdiction and Merits, Day 8, 44:7-13.

⁸⁷ Transcript of Hearing on Jurisdiction and Merits, Day 8, 44:21-24.

88 Rudman Statement, para. 8.

61. Taken as a whole, the evidentiary record, including both witness testimonies from the Claimant and the Respondent, leads to a single conclusion – there was no general contractor onsite at Caspian Fish, and even if there had been, it was certainly not Chartabi Contracting. The construction was most likely performed by various local workers and contractors.

III. MR BAHARI OBSCURED THE EXTENT OF HIS FRAUD UNTIL THE HEARING

62. The full extent and depth of the Claimant’s misconduct was progressively uncovered throughout the written phase of these proceedings and the Hearing. It is obvious that Mr Bahari never wanted this fraud to come to the attention of either the Respondent, or the Tribunal.
63. While his counsel claimed that “[REDACTED]”,⁹⁶ that could not be further from the truth. First, Mr Bahari did not mention any evidential issues with the Purported Chartabi Contracts when they were first submitted with his Statement of Claim. The contracts were presented as authentic original documents.⁹⁷ No clarification was provided during the document inspection process either.⁹⁸ Had it not been for the pressure from the Respondent raising obvious issues with the contracts, the Claimant would never have admitted his attempt to deceive the Tribunal. Second, the Claimant refused to provide any additional explanation about the provenance and creation of the Purported Chartabi Contracts following the submission of his Reply. Finally, the staggering admission as to the process by which the Purported Chartabi Contracts were actually created was only made during the course of the Hearing.
64. The Respondent respectfully submits that the conduct that has come to light demonstrates a clear pattern by Mr Bahari of purposefully obscuring the extent of his fraud from both the Respondent and the Tribunal.

⁹⁶ Transcript of Hearing on Jurisdiction and Merits, Day 9, 67:3-5.

⁹⁷ Statement of Claim, paras. 52, 63 and 81.

⁹⁸ Respondent’s Rejoinder, paras. 24-25.

A. It was only following pressure from the Respondent that Mr Bahari admitted that the Purported Chartabi Contracts were “reissued”

65. It is not contested that the Claimant made no mention of the provenance or creation of the Purported Chartabi Contracts in his Statement of Claim. In contrast, the Respondent has consistently challenged the authenticity of the Purported Chartabi Contracts and raised concerns about their legitimacy from the outset:

- (a) In its Defence dated 22 December 2023, Azerbaijan identified multiple concerns in respect of the authenticity of the alleged contracts, even calling them the Purported Chartabi Contracts.⁹⁹
- (b) On the basis of these concerns, Azerbaijan sought physical inspection of the Purported Chartabi Contracts, and, on 22 May 2024, Mr Bahari agreed to provide inspection.¹⁰⁰
- (c) Inspection of the Purported Chartabi Contracts took place at the offices of Azerbaijan’s forensic expert, Mrs Elisabeth Briggs, on 17 June 2024. The pages of the Purported Chartabi Contracts were disordered and certain pages were missing. On the same day that inspection took place, counsel for Azerbaijan wrote to counsel for Mr Bahari, requesting an explanation for the discrepancies and copies of the missing pages.¹⁰¹
- (d) On 18 June 2024, counsel for Mr Bahari responded to say they were “ [REDACTED] ” where the missing pages were and would provide an update “ [REDACTED] ”.¹⁰²
- (e) Three days later, on 21 June 2024, Mr Bahari filed his Reply. In his witness statement submitted in support of the Reply, Mr Bahari made the astonishing admission that he was unable to locate the purported original signed contracts, and what he had in fact presented with the Statement of Claim were “[REDACTED]”.

⁹⁹ Defence, paras. 90-92, 106, 115(b), 207(e), 225, 240, 243(a).

100 Claimant's Objections to Respondent's Document Inspection Requests dated 22 May 2024, Request No. 2, pp. 2-3.

¹⁰¹ Email from Quinn Emanuel to Diamond McCarthy and others dated 17 June 2024, **R-339**, p. 7.

¹⁰² Email from Diamond McCarthy to Quinn Emanuel dated 18 June 2024, **R-339**, pp. 5-6.

copies signed at some unspecified date, [REDACTED]

”¹⁰³

66. With his Reply, Mr Bahari also exhibited the Earnest Exhibit. The Earnest Exhibit is an affidavit signed by a member of Mr Bahari’s counsel team, Mr David Earnest, on 24 May 2024, a month prior to the Reply and just two days after the Claimant agreed to provide inspection of the Chartabi Contracts. The Respondent does not know what prompted the swearing of the Earnest Exhibit, why the Earnest Exhibit was not provided to it promptly upon signing, or why it was withheld from the Respondent for nearly a calendar month until the submission of the Claimant’s Reply.

67. In his affidavit, Mr Earnest states that it was only [REDACTED]

”¹⁰⁴

Had that explanation been forthcoming, it would have been relevant to the document inspection process carried out in May and June 2024. But even then, it is not a fulsome explanation. Mr Bahari’s counsel have been deliberately opaque regarding their knowledge of the fraud undertaken by Mr Bahari.

68. Mr Earnest goes on to swear that the Purported Chartabi Contracts were “[REDACTED] That has now been demonstrated to be false and it is not clear whether Mr Earnest intends to make a correction to his notarised affidavit. Irrespective, that error calls into question Mr Earnest’s signed affidavit as a whole, the due diligence he purports to have done both for himself and his own client, and his entirely uncorroborated and self-serving confirmation that he was “[REDACTED]” as a whole.

B. No explanation was provided on how the Purported Chartabi Contracts were “reissued”, even following multiple requests by the Respondent

69. Given the lack of detail in both Mr Bahari’s second witness statement and the Earnest Exhibit, the Respondent remained in the dark as to the provenance and creation of the Purported Chartabi Contracts. As such, the Respondent raised reasonable questions and

¹⁰³ Third Bahari Statement, para. 21; *see also* Reply, para. 141.

¹⁰⁴ Earnest Exhibit dated 24 May 2024, C-380, paras. 6-7.

concerns regarding the Purported Chartabi Contracts. Mr Bahari continued to be obstructive and declined to provide any further information:

- [illegible]

105 Letter from Quinn Emanuel to Diamond McCarthy and others dated 5 July 2024, **R-340**.

Letter from Chang Law to Quinn Emanuel dated 9 July 2024, **R-341**.

¹⁰⁷ Letter from Quinn Emanuel to Diamond McCarthy and others dated 29 August 2024, **R-347**.

108 Email from Diamond McCarthy to Quinn Emanuel dated 6 September 2024, **R-348**.

¹⁰⁹ Respondent's Rejoinder, paras. 8(a), 21-40.

110 Claimant's Rejoinder on Jurisdiction, para. 284.

did not inform Mr Gaines that the Caspian Fish Purported Chartabi Contract was not the original contract.¹¹¹

C. Only at the Hearing did Mr Bahari reveal the process for how the Purported Chartabi Contracts were created

70. On 20 January 2025, during the Claimant's opening statement, Mr Earnest described how Mr Bahari travelled to Iran and met with Mr Chartabi to prepare the reissued contracts.¹¹² This is the first time such detail was provided by the Claimant in the proceedings.
71. On 22 January 2025, during his cross-examination, Mr Bahari confirmed that he never possessed a copy of the Purported Chartabi Contracts and that the "[REDACTED]" of their copies essentially involved fabricating the contract provisions out of thin air, as described in detail above.¹¹³
72. For completeness, it was also at the Hearing that Mr Bahari and his counsel acknowledged for the first time and confirmed that Mr Ahad Chartabi was Mr Bahari's brother-in-law.¹¹⁴

IV. MR BAHARI'S RELIANCE ON THE PURPORTED CHARTABI CONTRACTS IS A FRAUD THAT RENDERS HIS ENTIRE CLAIM INADMISSIBLE

73. The fabrication of the Purported Chartabi Contracts, Mr Bahari's conduct to date and the support of his claims by his witnesses render Mr Bahari's entire evidential case unreliable.
74. In the light of the above, the Claimant's case must be deemed inadmissible in its entirety as the Purported Chartabi Contracts were fabricated solely for the purpose of this arbitration.
75. The Purported Chartabi Contracts are not merely incidental or insignificant documents; they constitute the most critical evidence supporting Mr Bahari's assertion that he

¹¹¹ Transcript of Hearing on Jurisdiction and Merits, Day 8, 23:1-7.

¹¹² Transcript of Hearing on Jurisdiction and Merits, Day 1, 41:17-19.

¹¹³ Transcript of Hearing on Jurisdiction and Merits, Day 3, 73:17-25, 74:1-22.

¹¹⁴ Transcript of Hearing on Jurisdiction and Merits, Day 3, 68:21-23.

invested his own funds and was the principal investor in Caspian Fish, Coolak Baku and Shuvalan Sugar.¹¹⁵ Furthermore, the Purported Chartabi Contracts for Caspian Fish, Coolak Baku and Shuvalan Sugar account for 97% of the Claimant's total claim for nominal damages.¹¹⁶ Consequently, the Claimant's conduct with respect to the Purported Chartabi Contracts is not a minor misrepresentation but a major fraud, one that, if left undiscovered and notwithstanding the Respondent's numerous defences to Mr Bahari's claim, could have led to a substantial, but unjustified award for damages.

76. The fabrication of contracts to falsely substantiate alleged investments violates the principle of good faith and constitutes a clear abuse of process. Such conduct undermines the integrity of arbitral proceedings and should be sanctioned accordingly by the Tribunal. Allowing an investor-State claim based on fraudulent evidence to proceed would also violate fundamental principles of international public policy. The fraudulent nature of the Purported Chartabi Contracts – and Mr Bahari's conduct and oral testimony in respect of the same – taints the entire case, regardless of whether certain alleged investments or portions thereof, e.g. the Carpets and Ayna Sultan, were purportedly unrelated to them. Accordingly, the Tribunal must reject the Claimant's case in its entirety as inadmissible.

A. Preliminary Legal Issues: The timeliness of Azerbaijan's Admissibility Objection, the Tribunal's power to consider it, and the burden/standard of proof and the required elements of the Admissibility Objection

1. The Respondent raised the issue of admissibility at the first available opportunity

77. At the Hearing, Mr Bahari's counsel claimed that the Respondent "[REDACTED]" its admissibility defence and only raised it during its Opening Presentation.¹¹⁷
78. As described in detail in Section III.C above, this assertion is misplaced. It was Mr Bahari who failed to provide full and frank disclosure as to the provenance and creation of the Purported Chartabi Contracts, even after multiple and continuing requests made by the Respondent. The Respondent only became fully aware of the extent of the fraud

¹¹⁵ Reply, para. 1194; Second Secretariat Report, para. 2.24.

¹¹⁶ Reply, para. 1198.

¹¹⁷ Transcript of Hearing on Jurisdiction and Merits, Day 9, 147:13-22.

at the Hearing when Mr Bahari for the first time revealed the process by which the Purported Chartabi Contracts were created.

79. Upon learning of the full extent of the fraud, the Respondent promptly and appropriately advanced its case on inadmissibility, first in its opening following Mr Earnest's explanation in the Claimant's opening, and then in closing submissions. The Respondent, therefore, raised the issue of admissibility at the earliest possible opportunity once sufficient evidence became available.

2. The Tribunal has broad discretion to make legal findings based on arbitral jurisprudence

80. In accordance with paragraph 4.4 of Procedural Order No. 8, this submission is not “[REDACTED]”¹¹⁸ Since the full extent of the Claimant’s fraud was revealed at the Hearing, the Respondent has not submitted additional legal authorities in support of its admissibility objection, as directed by the Tribunal.
81. However, the principle of *iura novit curia* or *iura novit arbiter* “allows the Tribunal to form its own opinion of the meaning of the law, provided that it does not surprise the Parties with a legal theory that was not subject to debate and that the Parties could not anticipate”.¹¹⁹ Consequently, the Tribunal is neither bound by previous case authorities, nor restricted to consider only those cases on the record.
82. To the extent that case authorities already on the record include discussion of other arbitral decisions relevant to the issues of admissibility being raised in this submission, the Respondent refers to those cases here and asks that the Tribunal consider those cases in full, though they are not on the record, or alternatively, at least the discussion of them contained in cases that are on the record. Such consideration is in line with the principle of *iura novit arbiter*, and the post-hearing procedure set out by Procedural Order No. 8.

118 Procedural Order No. 8 dated 3 February 2025, para. 4.4.

¹¹⁹ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 236.

3. Intent and motive need not be established to allow the Admissibility Objection

83. The questions of the burden and standard of proof are largely moot as the Claimant has admitted that the Purported Chartabi Contracts were prepared for the purposes of this arbitration.¹²⁰ Nonetheless, the Respondent accepts that it bears the burden to prove to the standard of a balance of probabilities that the Purported Chartabi Contracts are not authentic documents.¹²¹
84. Though motive and intent may form a part of the circumstantial evidence in assessing authenticity, the sole factual element the Tribunal must determine is “*whether the impugned documents are authentic for the purposes of an action seeking to engage the international responsibility of a State*”.¹²² In this regard, the authenticity of the Purported Chartabi Contracts is determined with regard to international law and arbitral practice.¹²³

B. Mr Bahari has not acted in good faith and his fraud amounts to an abuse of process

1. Good faith is a well-established principle in international investment arbitration

85. The obligation to act in good faith is a well-established principle of international law.¹²⁴ Investment arbitration tribunals have repeatedly emphasised that good faith is integral to both the investor’s conduct and the arbitral process itself.¹²⁵ Investors must not

¹²⁰ Transcript of Hearing on Jurisdiction and Merits, Day 1, 41:14-23.

¹²¹ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 244.

¹²² *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 243.

¹²³ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 530.

¹²⁴ See e.g. Vienna Convention on the Law of Treaties, **CLA-36**, Article 26 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”); see also *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, paras. 490-491 and the arbitral decisions cited at footnote 776 of para. 491; see also *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**; para. 171; see also *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, **RLA-304**, para. 139.

¹²⁵ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, paras. 488-506 (Discussing, amongst other arbitral decisions, *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**; *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**;

engage in deceptive or dishonest conduct to secure treaty protections and thus fabricate their claims.¹²⁶ This notion of good faith extends to the manner in which investors establish and operate their investments, and litigate their investment claims.¹²⁷ Failure to act in good faith in arbitral proceedings can result in the dismissal of the claim on the grounds of abuse of process.¹²⁸

2. Mr Bahari's reliance on the Purported Chartabi Contracts is an abuse of process

86. Abuse of process occurs when an investor misuses legal proceedings for improper purposes.¹²⁹ Investment tribunals have identified several categories of abusive conduct, including:

- (a) *Fraudulent misrepresentation.* Providing false or misleading information to obtain the investment as found in *Inceysa Vallisoletana v. El Salvador*.¹³⁰
- (b) *Treaty shopping and artificial restructuring of investments.* Establishing or restructuring an investment solely to gain access to arbitration under a treaty, as found in *Phoenix Action v. Czech Republic*.¹³¹

Hamester v Ghana, ICSID Case No. ARB/07/24, Award, 18 June 2010, **CLA-32**, para. 123; *Plama Consortium Limited v Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, **RLA-304**).

¹²⁶ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**, para. 175.

¹²⁷ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, paras. 488-506.

¹²⁸ *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**, paras. 100, 106 and 111.

¹²⁹ *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**, paras. 113; *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**, paras. 173-174.

¹³⁰ See *Inceysa v El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, para. 242 discussed in *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 496 ("In *Inceysa v. El Salvador*, the tribunal held that access to international arbitration was barred where investments were secured through fraud. It also affirmed the existence of a 'meta-positive provision' prohibiting the attribution of effects to 'an act done illegally' and ultimately held that it lacked jurisdiction since the claimant had acted improperly in the bidding process leading to the investment.").

¹³¹ *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**.

- (c) *Filing claims based on fabricated or non-existent investments.* Attempting to litigate rights that do not exist, as found in *Europe Cement v. Turkey*¹³² and *Cementownia v. Turkey*.¹³³
87. Mr Bahari’s conduct falls squarely within the third category and may fall within the first also. In relying on the Purported Chartabi Contracts and representing them as genuine agreements contemporaneous to the alleged making of his investments, Mr Bahari has engaged in outright fraud for the purposes of advancing his claims in this arbitration.
88. The Purported Chartabi Contracts, which allegedly date back to the 1996, 1997 and 1999,¹³⁴ were prepared in 2019 and then fraudulently submitted as authentic evidence to support his claim. This was not a mere misrepresentation or an incidental question of fact. It was a deliberate and calculated scheme to deceive the Tribunal, fabricate evidence to support the existence of a qualifying investment and falsely inflate the amount allegedly spent on the investments.
89. Had this deception not been uncovered, the Tribunal could have been misled into awarding substantial damages based on fabricated evidence. This is therefore not just a procedural irregularity – it is a blatant abuse of process and serious violation of the integrity of the arbitral proceedings.
90. Investment tribunals have consistently dismissed claims where the claimant engaged in the manipulation of documents or procedural abuse.¹³⁵

¹³² *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**.

¹³³ See *Cementownia v Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September. 2009, discussed in *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 499 (“Finally, a number of tribunals have treated fraudulent conduct in the course of the assessment of the merits. In *Cementownia v. Turkey*, the tribunal dismissed all claims as amounting to an abuse of right compounded by an abuse of process through procedural misconduct”).

¹³⁴ Purported contract between Chartabi Contracting and Coolak Baku Company dated 16 May 1996, **C-84**; Purported contract between Chartabi Contracting and Coolak Baku Company dated 10 July 1997, **C-85**; Purported contract between Chartabi Contracting and Caspian Fish Company dated 10 May 1999, **C-92**.

¹³⁵ See, e.g., *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**; *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**; *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 499.

91. In *Phoenix Action v. Czech Republic*, the tribunal recognised its duty to prevent investments that do not comply with the principle of good faith from benefiting from treaty protection, ruling as follows:

The Tribunal has to prevent an abuse of the system of international investment protection under the ICSID Convention, in ensuring that only investments that are made in compliance with the international principle of good faith and do not attempt to misuse the system are protected.¹³⁶

92. In both *Europe Cement v. Turkey* and *Cementownia v. Turkey*, the claimants attempted to initiate arbitration despite not legitimately owning their alleged investments. The tribunals found that these claims were fraudulent and constituted an abuse of process, leading to their dismissal.¹³⁷
93. *Europe Cement v. Turkey* warrants particular attention due to its similarity to the present dispute. In that case, the investor alleged expropriation of its shares in Turkish electricity companies under the Energy Charter Treaty.¹³⁸ To support its claim, the claimant submitted copies of share certificates and share purchase agreements, purportedly evidencing transactions that took place in May 2003.¹³⁹ However, when Turkey requested the production of the original documents for scrutiny, and the arbitrators later ordered such production, the claimant failed to provide them.¹⁴⁰ The tribunal ultimately found that the claimant had not acted in good faith, as it had asserted an investment “on the basis of documents that according to the evidence presented were not authentic.”¹⁴¹ In the present circumstances, Mr Bahari cannot provide the “originals” of the Purported Chartabi Contracts and presents only the alleged “versions” fabricated in 2019.

¹³⁶ *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 113, **CLA-99**.

¹³⁷ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**; *Cementownia v Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009, discussed in *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 499.

¹³⁸ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 26, **RLA-144**.

¹³⁹ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 27, **RLA-144**.

¹⁴⁰ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, paras. 28, 33 and 57, **RLA-144**.

¹⁴¹ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, para. 175, **RLA-144**.

94. Drawing a parallel to *Phoenix Action v. Czech Republic*, the tribunal deemed the claimant's conduct to constitute an abuse of process:

If, as in *Phoenix*, a claim that is based on the purchase of an investment solely for the purpose of commencing litigation is an abuse of process, then surely a claim based on the false assertion of ownership of an investment is equally an abuse of process.¹⁴²

95. Consequently, in the strongest possible terms, the tribunal concluded that “conduct that involves fraud and an abuse of process deserves condemnation.”¹⁴³
96. In the present case, the falsification of contracts purporting to show alleged investment expenditures directly parallels these previous arbitral decisions and deserves condemnation. By (i) relying on the Purported Chartabi Contracts as contemporaneous to the alleged making of his investments, (ii) only belatedly confirming that they were “reissue[d]” documents, and (iii) even more belatedly admitting their true nature as fabricated documents, Mr Bahari has acted in bad faith, violating a fundamental principle of international investment law. His conduct clearly warrants the dismissal of his claims in their entirety.

C. Allowing a claim based on fraud to proceed is inadmissible under international public policy

97. International public policy is a fundamental principle in international law, related to the concepts of good faith and abuse of process described above, which prevents tribunals from upholding or enforcing claims that are tainted by fraud. In the words of the tribunal in *Inceysa v. El Salvador*:

It is not possible to recognize the existence of rights arising from illegal acts, because it would violate the respect for the law which (...) is a principle of international public policy.¹⁴⁴

98. International public policy in investment arbitration was addressed thoroughly by the tribunal in *Churchill Mining v. Indonesia*.¹⁴⁵ In this case, the investor alleged that

¹⁴² *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**, para. 175.

¹⁴³ *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, **RLA-144**, para. 180.

¹⁴⁴ *Inceysa Vallisoletana, S.L. v. El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, para. 249, as cited in *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CLA-99**, para. 111.

¹⁴⁵ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**.

Indonesia's cancellation of its mining licences violated its legitimate expectations and constituted a breach of the state's obligations under the UK-Indonesia BIT. However, during the proceedings, Indonesia presented evidence demonstrating that the mining licences had been forged and were not issued by the authority purported to have issued them.

99. The *Churchill* tribunal noted that fraudulent conduct fundamentally violates international public policy and that claims based on forged documents cannot be adjudicated in investment arbitration:

The Tribunal agrees with the Respondent that claims arising from rights based on fraud or forgery which a claimant deliberately or unreasonably ignored are inadmissible as a matter of international public policy.¹⁴⁶

100. The tribunal ultimately dismissed Churchill Mining's claims, holding that international public policy demands that tribunals do not grant protection to investments obtained through fraudulent means:

In conclusion, the Tribunal cannot but hold that all the claims before it are inadmissible. This conclusion derives from the facts analyzed above, which demonstrate that the claims are based on documents forged to implement a fraud aimed at obtaining mining rights.¹⁴⁷

101. While the falsified documents in the cases described above differ in nature and purpose from the Purported Chartabi Contracts, the principle for the purposes of this Admissibility Objection remains the same. The Purported Chartabi Contracts are central to the Claimant's case concerning his alleged financing of alleged investments constituting 97% of the Claimant's total claim for nominal damages in respect of those investments. This constitutes an abuse of process, which, in the words of the *Churchill Mining* tribunal, "*is another manifestation of the general principle that one does not benefit from treaty protection when the underlying conduct is deemed improper.*"¹⁴⁸ To allow these claims to proceed, in whole or in part, would violate international public policy.

¹⁴⁶ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 508.

¹⁴⁷ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 528.

¹⁴⁸ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 492.

D. Mr Bahari's fraud taints the entirety of his claim, including Ayna Sultan and the carpets

1. Fraud renders Mr Bahari's claim inadmissible, even if the Tribunal finds it has jurisdiction otherwise

102. The Claimant's fraudulent conduct renders his entire claim inadmissible. Whilst questions of jurisdiction determine whether a tribunal has the authority to hear a dispute under the applicable treaty, admissibility addresses whether a claim that falls within jurisdiction can and should be heard. In other words, a tribunal may have jurisdiction over a dispute, but if the claim itself is tainted by procedural or substantive violations – including as a result of fraud – it must be deemed inadmissible.
103. A clear example of fraud affecting admissibility rather than jurisdiction arose in *Churchill Mining v. Indonesia*.¹⁴⁹ In that case, the tribunal did not deny jurisdiction but dismissed the claim as inadmissible after determining that the mining licenses obtained by Churchill Mining during the performance of the investment, but not the making, were forged. Fraudulent conduct, whether committed during the operation of an investment or in the course of the arbitration – such as through falsified contracts or forged licenses – renders the claim inadmissible despite the potential that a tribunal otherwise has jurisdiction over a claim.
104. As will be set out in full in the Respondent's post-hearing brief, the Respondent maintains that the Tribunal must dismiss Mr Bahari's claim in their entirety for lack of jurisdiction.¹⁵⁰ However, the Respondent submits that if it has jurisdiction, the Tribunal must also declare the claims inadmissible due to the Claimant's fraudulent conduct. This would serve as appropriate condemnation of the Claimant's bad faith and abuse of process.

2. Fraud taints the entire claim, beyond the alleged investments relating to the Purported Chartabi Contracts

105. The Purported Chartabi Contracts, by the Claimant's own admission, were fabricated for the purposes of advancing this claim in this arbitration. No gloss or verbiage (i.e. "reissued") takes away from this fact. The Claimant's fraud is not a procedural

¹⁴⁹ *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 557.

¹⁵⁰ Defence, paras. 47-176; Respondent's Rejoinder, paras. 153-266.

irregularity that can be compartmentalised. It is a substantive violation of fundamental legal norms that affects the legitimacy of the entire arbitration.

106. Furthermore, the dishonesty surrounding the Purported Chartabi Contracts is endemic to the Claimant's entire claim, and his oral testimony, which is replete with lies, deceit and bad faith.

(a) The Claimant has admitted to fabricating documents. This must directly affect his own credibility, the evidentiary value of other documentary evidence he submitted as true in these proceedings, as well as his oral testimony. His other witnesses have advanced the same untruths.

(b) The Claimant has demonstrated an astonishing indifference for the truth and penchant for hyperbole. For instance, Mr Bahari's written submissions contain the very serious allegation that "*his daughter's death was an act of the Azeri Government*",¹⁵¹ yet it emerged during the Hearing that he does not actually believe this claim.¹⁵² Similarly, he refused to acknowledge that the Carpets ledger recorded the price he paid for the Carpets, in defiance of expert evidence and basic common sense.¹⁵³ These are just two examples of Mr Bahari's deceit, which will be addressed in detail in the Respondent's Post-Hearing Brief.

(c) Many of the Claimant's key witnesses also gave evidence in support of Mr Bahari's fraud with respect to the Purported Chartabi Contracts (amongst others). As described above in Section II.B, the veracity of their testimony is highly questionable.

107. In sum, the Respondent respectfully submits that the evidentiary basis of the entire claim has been rendered unreliable and worthless, and the Claimant's conduct is deserving of condemnation. Therefore, it is irrelevant that the Claimant's other alleged

¹⁵¹ Claimant's Statement of Claim, para. 309.

¹⁵² Transcript of Hearing on Jurisdiction and Merits, Day 2, 157:8-12 ("█
█
█.")

¹⁵³ See discussion in Transcript of Hearing on Jurisdiction and Merits, Day 3, 116-128.

investments, Ayna Sultan and the Carpets, are not directly affected by the admitted fraud regarding the Purported Chartabi Contracts.

108. In the present case, the Tribunal is thus not obligated to engage in a forensic exercise to separate fraudulent elements from legitimate ones; rather, it must conclude that the investor acted in bad faith and dismiss the case outright.

3. The clean hands doctrine also requires that Mr Bahari's claim must be dismissed

109. The clean hands doctrine further reinforces why the entire claim must be dismissed as inadmissible. This equitable principle, which has been applied in investment treaty arbitration, states that a party which engages in unlawful or deceitful conduct cannot seek relief before an international tribunal.¹⁵⁴ The clean hands doctrine does not allow a claimant to argue that only part of its conduct was improper while still pursuing compensation for other aspects of its investment. Instead, it dictates that once fraud is established, the tribunal must reject the claim in full.
110. Allowing a partially fraudulent claim to proceed would set a dangerous precedent, and encourage investors to engage in dishonest practices with the expectation that they could still recover some form of compensation. It would lead to the endemic inflation of claims, with investors relying on a legitimate “*anchor claim*” whilst making additional, exorbitant, and illegitimate claims to extract payment from States, whether by way of following through with investor-State arbitration or, as Mr Bahari may have hoped would happen in this case, by way of reaching a settlement amounting to extortion.
111. Finally, admitting even a portion of a fraudulent claim to proceed contradicts international public policy and undermines the legitimacy of investment arbitration. This Tribunal is not tasked with protecting claims that rely on falsified evidence or fraudulent misrepresentations. If Mr Bahari is found to have engaged in fraud in any aspect of his case, permitting any part of his claim to move forward will call into question the credibility of the entire arbitral process. Thus, dismissing the claim in its entirety is necessary to ensure that fraudulent conduct does not receive any legal or

¹⁵⁴ See *Churchill Mining and Planet Mining v. Indonesia*, ICSID Case No. ARB/12/40 and 12/14, Award, 6 December 2016, **RLA-300**, para. 493 (See also the cases cited in footnote 780).

financial benefit and to uphold the integrity of this Tribunal's mandate. Only in the alternative, Azerbaijan will explain in its final post-hearing brief that the quantum of Mr Bahari's claim should be significantly reduced given the fraud perpetrated by the Claimant.

V. PRAYER FOR RELIEF

112. For the foregoing reasons, the Respondent respectfully requests that the Tribunal:

- (a) Declare that the Claimant's claims are inadmissible in full.
- (b) Order the Claimant to bear all arbitration costs and attorneys costs and expenses incurred by the Respondent in connection with these proceedings on a full indemnity basis, together with interest thereon at a rate to be determined.

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN UK LLP