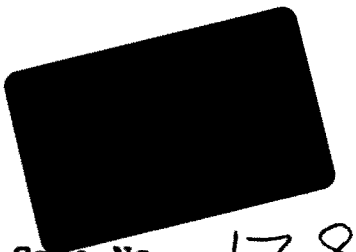
IRAN-UNITED STATES CLAIMS TRIBUNAL 156 دیوان داوری دعاوی ایران - ایالات متحده



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دیوان داوری دعاوی ایران - ایالات متحده

Case No. 178
Chamber Two
Award No.558-178-2

FAITH LITA KHOSROWSHAHI,
SUSANNE P. KHOSROWSHAHI,
MARCENE P. KHOSROWSHAHI,
KEVIN KAYVAN KHOSROWSHAHI, and
CAMERON KAMRAN KHOSROWSHAHI,
Claimants,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
THE MINISTRY OF INDUSTRIES AND MINES,
THE ALBORZ INVESTMENT CORPORATION,
THE KBC COMPANY, and
THE DEVELOPMENT AND INVESTMENT BANK OF IRAN,
Respondents.

FINAL AWARD

Appearances :

For the Claimants :
- Mr. Francis X. Markey, Attorney for Claimants,
- Ms. Agnes Tabah, Attorney for Claimants,
- Ms. Faith Lita Khosrowshahi, Claimant,
- Ms. Susanne Khosrowshahi, Claimant,
- Mr. Camran Khosrowshahi, Claimant,
- Mr. Nasrollah Khosrowshahi, Representative,
- Mr. Robert Reilly, Expert Witness,

Mr. William Liffers,
Witness.

For the Respondents :

Mr. Ali H. Nobari,
Agent of the Government of the Islamic Republic of Iran,
Dr. Bijan Izadi,
Deputy Agent of the Government of the Islamic Republic of Iran,
Mr. S. Mohammadi,
Legal Adviser to the Agent of the Government of the Islamic Republic of Iran,
Dr. Seyed Hossein Safaei,
Attorney for Alborz Investment Corporation and KBC,
Dr. Mohammad Ashtari,
Attorney for Alborz Investment Corporation and KBC,
Mr. Farhad Toupshekan,
Representative of the Respondent,
Mr. Masood Amouzadeh,
Representative of the Respondent,
Mr. M.S. Garrosi,
Representative of the Respondent,
Mr. Abdolhossein Razavi,
Representative of the Respondent,
Mr. Seyed Nasser Shajareh,
Representative of the Respondent,
Mr. Antony G.P. Tracy,
Expert Witness,
Mr. Grant Hyde,
Expert Witness,
Mr. Abolghasem Merati,
Expert Witness,
Mrs. Minoo Afshari Rad,
Representative of the Bank of Industry and Mine.

Also present :

Mr. D. Stephen Mathias,
Agent of the United States of America,
Ms. Mary Catherine Malin,
Deputy Agent of the United States of America.

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I. INTRODUCTION

1.
The Claimants, FAITH LITA KHOSROWSHAHI and her four children SUSANNE P., MARCENE P., KEVIN KAYVAN ("Kevin") and CAMERON KAMRAN ("Cameron") KHOSROWSHAHI, filed a Statement of Claim on 18 December 1981 against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran"), THE MINISTRY OF INDUSTRIES AND MINES, THE ALBORZ INVESTMENT CORPORATION ("Alborz"), KHOSROWSHAHI BROTHERS COMPANY ("KBC"), and THE DEVELOPMENT AND INVESTMENT BANK OF IRAN ("DIBI") (collectively "the Respondents"). As finally pleaded at the Hearing the Claimants seek US$5,510,059, plus interest and costs, for the alleged expropriation of their ownership interests in Alborz, KBC, and DIBI as well as for certain allegedly unpaid dividends on their Alborz and DIBI shares.

2. The Claimants contended that they were all nationals of the United States. The Respondents argued that each of the Claimants was a national of Iran and thus ineligible to present claims against Iran before this Tribunal. Pursuant to the Full Tribunal's decision in The Islamic Republic of Iran and The United States of America, Decision No. 32-A18-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, the Tribunal addressed the issue of the Claimants' nationality in an Interlocutory Award. It held that each of the Claimants was a national of both Iran and the United States with dominant and effective United States nationality during the relevant jurisdictional period. Accordingly, the Tribunal concluded that the Claimants were nationals of the United States within the meaning of Article VII, paragraph 1 of the Claims Settlement Declaration ("CSD"). Interlocutory Award No, ITL 76-178-2 (22 Jan. 1990), reprinted in 24 Iran-U.S. C.T.R. 40.

3. The Claimants allege that Iran expropriated their ownership interests in Alborz, KBC and DIBI in the Summer or Fall of 1979. The Respondents, on the other hand, argue that the Claimants' interests in Alborz were not affected by the Government measures

taken prior to 19 January 1981. Denying that the Claimants ever had any ownership interest in KBC, the Respondents also argue that prior to 19 January 1981, KBC was run by managers appointed by its shareholders. Furthermore, they contend that shares in those two companies had a low or negative value at the time of the alleged expropriation. The Respondents further deny that the Claimants' DIBI shares were actually expropriated without compensation because the Government established a compensation scheme in 1980 but the Claimants chose not to make use of it. Thus, the Respondents appear to argue that the Claimants should be deemed to have waived their right to compensation by failing to take advantage of the Government's compensation offer.

4. A Hearing was held in this Case on 22 and 23 October 1992.

II. JURISDICTIONAL AND PROCEDURAL ISSUES

5. As a preliminary matter, the Respondents argue that Mrs. Khosrowshahi lacked the capacity to file a claim on behalf of her son, Cameron, who was a minor at the time the claim was filed. They contend that under the laws of both Iran and the United States a mother cannot bring a claim on behalf of her minor child unless the father of the child is deceased or has delegated his guardianship rights to the mother. Since Mr. Khosrowshahi is alive, and there is no proof that he had earlier delegated his guardianship rights to his wife, Mrs. Khosrowshahi, Iran insists that Cameron's claim was improperly filed and should therefore be dismissed.

6. The Claimants, on the other hand, contended at the Hearing that neither the Claims Settlement Declaration nor the law of the place of their residence, i.e. New York, prevented the claim of a minor from being brought to arbitration before this Tribunal.

7. The Tribunal finds no bar to Cameron's claim. Neither the Claims Settlement Declaration nor the Tribunal Rules exclude

minors as claimants. Moreover, the Tribunal notes that Cameron Khosrowshahi, now having reached the age of legal majority, and his father were present at the Hearing. By their presence and statements, both gave their approval to the mother's act of filing the claim in 1981 on behalf of her then minor son.

8. The Tribunal is satisfied that all of the Claims arise "out of debts, contracts ... expropriations and other measures affecting property rights" within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration.

III. THE ALBORZ INVESTMENT CORPORATION

A. Facts and Contentions

1. Claimants' Alborz shares

9. Khosrowshahi Brothers Company was formed in 1954 as a private stock company by Mr. Haji Hassan Khosrowshahi and his six sons, including Nasrollah, Kazem, Majid and Javad Khosrowshahi. Nasrollah Khosrowshahi is Faith Lita Khosrowshahi's husband, and the father of the other Claimants. KBC initially engaged in the import, general trading and distribution of pharmaceutical products in Iran. As the company grew more successful, it diversified into a range of health, food and chemical products and began to manufacture some of its own products. In the 1960's, KBC restructured its activities and formed a number of independent but related companies to handle each different type of product. This resulted in the entire group of businesses being organized under the banner of KBC Industrial Group ("KBC Group"). While the original KBC continued to perform the import and distribution activities, its manufacturing and other activities were relinquished to other companies owned by the KBC Group.

10. In 1975, the Iranian Government enacted the "Law for

Expansion of Public Ownership of Productive Units" ("Law for Expansion") which required certain industries to sell 49% of their stock to the public. To comply with this Law, the Khosrowshahi family restructured Alborz Investment Corporation one of the KBC Group companies, turning it into the holding company of the Alborz Industrial Group. Alborz purchased the shares of eight of the KBC Group companies and then offered 49% of its own shares to the public. The Claimants contend that by 1979, the KBC Group was composed, on the one hand, of a number of non-public companies, including the original KBC and, on the other, of Alborz, a holding company which owned eight operating companies and whose stock was publicly traded at the Tehran Stock Exchange. The Claimants contend that at that time, the Khosrowshahi brothers and their families owned 51% of the Alborz shares.

11. The Claimants first purchased Alborz shares in November 1975, the date of Alborz's initial public offering under the Law for Expansion. In February 1977 they acquired additional shares. Although there was some initial disagreement over the total number of shares owned by the Claimants, at the Hearing the Claimants acknowledged that at the time of the alleged expropriation they collectively held 99,777.4 shares as contended by the Respondents.[1]

12. On 7 July 1979, the Government of Iran passed the "Law for Protection and Development of Industries of Iran" ("Law for Protection"), which stated that, in accordance with Bill No. 6738, (see, infra, para. 24) "the property of [51 named individuals] shall become the ownership of the government." The Law for Protection applied to, among others, Dr. Kazem Khosrowshahi, the Claimants' brother-in-law/uncle and a 1.8% owner of Alborz stock. One month later, Iran expanded the scope

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[1]According to the Alborz records at the time of the alleged expropriation, Faith Lita owned 7,287.2 shares, Susanne P. and Marcene P. each owned 13,464 shares and Kevin and Cameron each owned 32,781.1 shares, collectively totalling 99,777.4 shares.

of this law to include the spouses, children and, subject to the decision of a special commission, to brothers and sisters of the 51 persons originally named. Although the Law for Protection did not explicitly apply to the Claimants, they contend that in practice Iran "made no attempt to distinguish between the individual ownership interests of Dr. Kazem Khosrowshahi and other family members".

13. The Claimants further allege that Iran expropriated their interests in Alborz by its appointment of a government supervisor. On the very same day that the above Law for Protection was enacted, the Ministry of Industry and Mines issued a Decree appointing Mr. Massoud Saidi as "Official Observer for the Alborz Investment Company ... and all of its affiliates." The Decree issued pursuant to Bill No. 6738, explicitly empowered Mr. Saidi to "supervise all the operations of the company [and to] cosign all the documents and legal papers of the company with the officers of the company". The Decree at the same time notified "all officers and managers of Alborz Investment Company to continue their duties until new managers are appointed." Bill No. 6738 is the Act Concerning the Appointment of Provisional Directors ... of June 16, 1979. According to the Claimants, Article 1 of the Act authorized the appropriate government ministries to "appoint" one or more persons as a director or board of directors or supervising member for the management and/or supervision over the management of the affairs of industrial or other units. Article 2 specified that the appointment of directors and "supervising members" was to be carried out by an administrative order from the related ministry. It also suspended the rights of shareholders to elect new directors pending the installment of government-appointed directors. Article 3 authorized the supervisory members to "exercise complete supervision over all the affairs of the unit concerned and especially supervision over the operation and action of the directors."

14. The Claimants assert that almost immediately upon his

appointment, Mr. Saidi began to exercise his supervisorial powers. Within a week, he announced a limitation on managerial salaries. The Claimants further maintain that Mr. Saidi unilaterally altered personnel rules and required his signature on all company checks and all intercompany fund transfers. The Claimants allege that as a result, "Mr. J[avad] Khosrowshahi, as well as the rest of the Alborz Board, gradually realized that they no longer had any influence or control over Alborz's management."

15. On 9 July 1979, Mr. Javad Khosrowshahi wrote a letter to the then Prime Minister Bazargan on behalf of the Board of Directors of Alborz. In the letter he challenged the legitimacy of Mr. Saidi's appointment and his exercise of managerial authority under the terms of the Law for Protection. He also noted that Mr. Kazem Khosrowshahi owned only 1.8% of the company's shares while he exercised no managerial authority in Alborz. The letter further stated that both the Board of Directors and the managers of Alborz had been present in Iran during the Revolution and were still running the company and that Alborz remained in healthy condition and thus did not require supervision by government-appointed managers. In sum, Mr. Javad Khosrowshahi appeared to have believed at the time that the Law for Protection should not have been applied to Alborz.

16. The Claimants contend that by late July 1979, the political crisis in the country and alleged personal threats, forced Mr. Javad Khosrowshahi to leave the country. Before his departure, he convened a meeting of the Alborz Board of Directors in which the Board "delegated all their rights and authorities in the management of company affairs" to four trusted company managers namely, Ahmad Arasteh, Ali Nouri, Ali Asghar Nikafshan and Mir Majid Hejazi. In addition, Mr. Javad Khosrowshahi issued a directive creating a "Managing Committee" for Alborz's day-to-day operations.

17. The Claimants maintain that Mr. Saidi's "constant

interference ... made it impossible for these individuals to exercise their authority and functions." They assert that Mr. Saidi continued to make unilateral decisions without the knowledge or consent of management, thereby ignoring the Khosrowshahi family's attempts to maintain managerial control of Alborz and its subsidiaries. Thus, the Claimants argue that Mr. Saidi's appointment and subsequent acts constituted a de facto taking of their ownership interests in Alborz.

18. The Claimants alternatively contend that if Mr. Saidi's appointment did not constitute an expropriation of their property interests in Alborz, then in any event the Government's subsequent nomination of a new Chairman and Board of Directors for Alborz should be deemed to have amounted to the expropriation of their shares. On 23 September 1979, the Ministry of Industries and Mines nominated a new Board of Directors for Alborz, with Mr. Javad Gharavi as Chairman. Four days later, at a special meeting of Alborz shareholders, the new Board was ratified by a unanimous vote. It is reflected in the minutes of that meeting that 92% of the then outstanding shares voted, either in person or by proxy. The Claimants insist that the Government's appointment of a new Board merely confirmed the de facto change in management that they allege, had occurred by the appointment of Mr. Saidi. Furthermore, at the Hearing they rejected as unauthorized the subsequent ratification by the Claimants' alleged proxies of the Government-appointed Board.

19. The Respondents deny that Iran expropriated the Claimants' ownership interest in Alborz. First, they argue that the Claimants did not fall within the original scope of the Law for Protection (which applied in relevant part only to Kazem Khosrowshahi) or within its modified scope (which applied to Kazem's spouse and children). Moreover, although the modified scope of the Law could have extended to other Khosrowshahi brothers and sisters by decision of a commission established under the same law, it actually never was so extended and the law in any event could not have extended to the sister in law,

nieces, and nephews of Kazem, as the Claimants are. Second, they maintain that under Tribunal precedent the appointment of a government supervisor and/or governmental managers is not sufficient, standing alone, to constitute an expropriation. They further insist that governmental control over Alborz became necessary to protect both employee interests and national economic interests after Alborz management had abandoned the company. Fourth, the Respondents argue that because the Claimants owned only a tiny fraction of Alborz and possessed no managerial functions, the change in management affected neither their ownership rights nor their interests in the company. Finally, the Respondents allege that a 1985 judgment of the Islamic Revolutionary Court in Tehran ordering the expropriation of Claimants' shares in Alborz indicates that their property interests in Alborz had not been expropriated prior to that year.

20. Concerning Alborz's new Board of Directors, the Respondents maintain that it was duly elected. They have produced documents allegedly showing that the Claimants' shares were voted by proxy at the 27 September 1979 meeting. Subsequent to the Hearing, they also presented certain evidence, including statements by Messrs Ahmad Arasteh and Ali Nouri, who stated that they were present at the 27 September 1979 meeting and voted by proxy for members of the Khosrowshahi family. The Respondents, therefore, argue that the September change of control complied with the requisite corporate procedures and did thus not constitute an expropriation of the Claimants' shares in Alborz. The Claimants deny that they gave proxies to the person who allegedly voted their shares. They contend that the only individuals who held proxies to vote for them were Majid and Javad Khosrowshahi who were not in Iran on the date of the meeting. Neither party placed in evidence the proxies to which it has referred.

2. Alborz Dividends

21. In connection with their claim for a taking of their Alborz

shares, the Claimants also allege that Alborz declared a dividend of 350 Rials per share for the fiscal year ending March 20, 1978. Although this dividend was originally to be paid as of October 23, 1978, the Claimants, among others, agreed to defer payment of those dividends until an unspecified later time because Alborz was undergoing a difficult financial period. The Claimants maintain that subsequent to the appointment of Government managers, they have repeatedly requested payment of the 1978 dividends, but to no avail.

22. The Respondents do not dispute that a dividend was declared in 1978. However, they argue that the Claimants have failed to prove that they ever demanded payment of their dividends subsequent to their agreement to defer payment and further note that the undistributed dividends were used to offset the operating losses in subsequent years. In the Respondents' view, the Claimants are thus no longer entitled to any dividends, even assuming that they ever were.

B. The Tribunal's Findings

1. Claimants' Alborz shares

23. With respect to the alleged taking of the Claimants' interests in Alborz, the Tribunal must first decide whether the Claimants' 99,777.4 shares were expropriated with Iran's appointment of a supervisor in July 1979. The Tribunal has previously held that "a deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected." Tippetts, Abbett, McCarthy and Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2, at 10-11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225. The Tribunal then stated:

> [w]hile assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.

Id. at 11, 6 Iran-U.S. C.T.R. at 225. See also Starrett Housing Corp., et al. and The Islamic Republic of Iran, Interlocutory Award No. ITL 32-24-1 at 51 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154 where the Tribunal noted:

> it is recognized in international law that measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner.

24. Mr. Saidi was appointed as an "observer for Alborz ... and all of its affiliates" pursuant to Bill number 6738. (See supra, para. 12). Article 2 of the Bill states that once the government appoints new managers or directors under the Bill, "previous directors and managers will be stripped of their competence in managing" the affairs of the company and that "[t]he directive appointing a manager or board of directors, until cancellation thereof by the relevant ministry, ..., will remain in force; the manager ... so appointed will remain in [his] position[s]; and the shareholders have no right whatsoever to choose managers in their place." Article 3 also authorizes appointees "to exercise complete supervision over all the affairs of the unit concerned and especially supervision over the operation and action of the directors." The same article provides that even observers may be granted signature authority over financial obligations of the company, as Mr. Saidi was in the present case.

25. The Tribunal has further found that the "effect [of Bill 6738] is to strip the original managers of effected [sic] companies of all authority and to deny shareholders significant

rights attached to their ownership interest." Thomas Payne and The Islamic Republic of Iran, Award No. 245-335-2, at 11 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 10; See also Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, para. 29 (6 July 1993). The evidence presented has satisfied the Tribunal that the authority exercised by Mr. Saidi was such as to justify a finding that the Claimants were deprived of the power to exercise their rights. Upon his appointment and assumption of duties, he immediately excluded the existing Khosrowshahi management. There is no evidence that Mr. Saidi's appointment was intended to be or in fact was temporary. The subsequent appointment of directors and chairman of the board also shows that the intention of the Government was permanent exclusion of the existing management. By effectively forcing out the existing management, Mr. Saidi deprived the Claimants, as shareholders, of their right to select by vote managers of their choice. Thus, the conclusion for the Tribunal is that the Government of Iran effectively expropriated the Claimants' shareholding interests in Alborz on 7 July 1979, the date Mr. Saidi was appointed and assumed his duties as supervisor for Alborz.

26. This finding makes it unnecessary for the Tribunal to address the Respondents' arguments that the election of a new Board of Directors subsequent to Mr. Saidi's appointment ratified the government's assumption of control. Similarly, there is no further need for the Tribunal to consider the Respondents' other assertion that a 1985 judgment by the Islamic Revolutionary Court expropriating the Claimants' shares in Alborz proves that they were not taken before that year.

27. The Respondents have also argued that the Claimants' rights as shareholders were not abrogated by the taking because they owned only a tiny fraction of Alborz shares. The Tribunal is satisfied, however, that the Claimants' rights were effectively abrogated by the terms of the Legal Bill pursuant to which Mr. Saidi was appointed, as well as by his actions.

28. Likewise, the Tribunal must reject the Respondents' denial of liability because it appointed Mr. Saidi only in accordance with Iranian law for the protection of workers and national interests jeopardized by an abandonment of Alborz by its managers. The Tribunal has previously held that "a government cannot avoid liability for compensation by showing that its actions were taken legitimately pursuant to its own laws." See Birnbaum, supra, para. 35; see also American International Group, Inc. and Islamic Republic of Iran, et al., Award No. 93-2-3, pp. 14-15 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 105. The Tribunal also has stated that, "[t]he intent of the government is less important than the effects of the measures on the owner." Tippets, supra at 11, 6 Iran-U.S. C.T.R. at 225-26.

2. Alborz Dividends

29. From what has been submitted in the record, the Tribunal must conclude that there is no evidence that the Claimants have ever demanded payment of the undistributed dividends. Absent evidence explaining the terms and conditions of the alleged voluntary deferment, the Claimants' allegation in this respect cannot suffice to help the Tribunal determine whether the Claimants in fact hold a compensable property interest in those dividends, much less whether it was taken. In light of this lack of evidence, the Tribunal dismisses the Claimants' claim for unpaid Alborz dividends for failure of proof.

3. Application of the Caveat to Claimants' Alborz Claim

30. Before turning to the valuation of Alborz, the Tribunal will address the "Caveat argument" advanced by the Respondents. The Respondents' position is that the Claimants are barred from seeking recovery before this Tribunal for their expropriated shares in Alborz because they purchased those shares as Iranian nationals, rather than as U.S. nationals. This argument relies

on the "caveat" to the Tribunal's decision in Case A18. In that Case, the Tribunal held that "where the Tribunal finds jurisdiction based upon the dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim." Case No. A18, Decision No. DEC 32-A18-FT, at 26 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 266. In its Interlocutory Award in the present Case, the Tribunal held:

> This jurisdictional determination of the Claimants' dominant and effective U.S. nationality remains subject to the caveat added by the Full Tribunal in its decision in Case No. A18, [ ] that 'the other nationality may remain relevant to the merits of the Claim.' The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claims filed before the Tribunal.

Interlocutory Award No. ITL 76-178-2, supra, para. 16, 24 Iran-U.S. C.T.R. at 45.

31. The Respondents contend that by not using their U.S. nationality the Claimants received a favorable tax rate on their past Alborz dividends, pursuant to Article 80, Part D (1) of the Iranian Income Tax Act. This, allegedly, was legally available only to Iranians. In support of their allegation, Respondents have submitted the affidavit of Mr. Razavi, the managing director of Alborz, which states that prior to 1978 Alborz calculated and paid the shareholders' dividend tax at the lower rate applicable to Iranian nationals residing in Iran. Attached to his affidavit are tax assessments for the years 1976 through 1978, showing that taxes were assessed at the rate applicable to Iranian nationals residing in Iran.

32. The Claimants deny that they concealed their U.S.

nationality when they purchased Alborz shares and note that their stockholder cards indicate their birth in the United States and thus their U.S. nationality. The Claimants further argue that Alborz shares were freely traded, with no applicable restrictions on foreign ownership at the time they purchased their shares. The Claimants also disclaim any knowledge of a preferential tax treatment, arguing that the tax was a corporate tax withheld and paid by Alborz. Finally, the Claimants argue that Iran has failed to prove that the Claimants concealed their identity or that they received any benefit by so doing.

33. The Tribunal finds that the evidence in the record is not sufficient to support the conclusion that the Claimants concealed or otherwise abused their dual nationality when they purchased their Alborz shares. The Respondents' proffered affidavit and supporting evidence only assert that Alborz records did not reflect the American nationality of the Claimants. In a similar situation, the Tribunal found that "the mere fact that [the Claimant's] Iranian ID card number appears on his share certificate does not mean that he concealed his American nationality in order to obtain benefits available only to Iranians." Attaollah Golpira and The Islamic Republic of Iran, Award No. 32-211-2, at 6 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 174. Given the lack of evidence to the contrary, the Tribunal finds no reason to deviate from its conclusion in Golpira. Thus, the Tribunal concludes that there is no evidence that the Claimants concealed or otherwise abused their Iranian nationality when they purchased Alborz shares or that they obtained any benefit available by law only to Iranian nationals. Moreover, as the Claimants were residing in the United States, as also indicated in their Iranian passports, their nationality was not relevant for purposes of the tax in question. Accordingly, their Alborz claim should not be barred by the caveat.

4. Valuation

Standard of Compensation

34. The Tribunal now turns to the valuation of the Claimants' expropriated shareholding interests in Alborz. The Tribunal has previously held that under the Treaty of Amity[2] a deprivation requires compensation equal to the full equivalent of the value of the interests in the property taken.[3] The Tribunal has found that the Respondents deprived the Claimants of their ownership interests in Alborz, and consequently they are entitled to full compensation.[4] If the taken enterprise was a going concern, then the full equivalent of its value equals its fair market value.[5] Fair Market value may be defined as

> the amount which a willing buyer would have paid a willing seller for the shares of a going concern,

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[2]Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900. The Tribunal has already found that the Treaty was in force at the time the claim in this case arose. See, e.g., Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, para. 27 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 131-32.

[3]Id., para. 28, 10 Iran-U.S. C.T.R. 132.

[4]In this Case, as in the Saghi Case, the Tribunal has used the Treaty of Amity standard of compensation without deciding whether it is applicable to claims of dual nationals whose dominant and effective nationality in the relevant period under A18 has been that of the United States or Iran, as the case may be. See James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2 (22 Jan. 1993), reprinted in __ Iran-U.S. C.T.R. ___. In neither case was that question raised or argued by the Parties.

[5]See American Int'l Group Inc. and The Islamic Republic of Iran, Award No. 93-2-3, at 21-22 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 109; INA Corp. and The Islamic Republic of Iran, Award No. 184-161-1, at 10 (12 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 379; Starrett Housing Corp. et al. and The Islamic Republic of Iran, et al., Award No. 314-24-1, paras 261, 277 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 195, 201.

> disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares.[6]

On the other hand, while any diminution of value caused by the expropriation of the property itself should be disregarded, "prior changes in the general political, social and economic conditions which might have affected the enterprise's business prospects as of the date the enterprise was taken should be considered". American Int'l Group, supra, at 18, 4 Iran-U.S. C.T.R. at 107. In the same Award the Tribunal has also stated that the value of a going concern involves "not only the net book value of its assets but also such elements as good will and likely future profitability, had the company been allowed to continue its business under its former management." Id., at 21, 4 Iran-U.S. C.T.R. at 109.

Contentions of the Parties

35. In view of the valuation method ultimately used by the Tribunal (see infra, paras. 46-51), the Tribunal will only briefly summarize the Parties' main assumptions and arguments and not discuss in detail the different valuation formulae used by the Claimants and Respondents respectively.

36. The Claimants originally sought Rials 2,100 per share as compensation for their expropriated interest in Alborz. In subsequent submissions they relied on valuation analysis of several experts which gave different values of Alborz. At the Hearing, the Claimants presented and exclusively relied on the expert testimony of Mr. Robert Reilly, who arrived at a value of Rials 2,840 per share.

37. Mr. Reilly arrived at this figure by using a weighted

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[6] INA, supra, at 10, 8 Iran-U.S. C.T.R. at 380.

average of three different valuation techniques: an asset accumulation approach, an income capitalization approach, and a market approach. In all three techniques Mr. Reilly assumed that Alborz was a going concern at the time of the taking. The values given by Mr. Reilly therefore include the value of Alborz's goodwill in addition to the value of its tangible assets.

38. In his asset accumulation approach Mr. Reilly first makes an upward adjustment of Alborz's book value to reflect the effects of inflation. This results in Alborz's net tangible assets being Rials 2.51 billion. Mr. Reilly then calculates that Alborz had an "intangible asset value" of Rials 2.99 billion. Adding the two figures, subtracting Alborz's long-term debt and then dividing the figure by the number of shares outstanding, yields a per share value of Rials 2,803.

39. The "income capitalization approach" is only relevant when one is doing a going-concern premise appraisal. This is because the method assigns a present value to the future stream of earnings available to the shareholders, which is not applicable in case of a liquidation. In calculating the equity value of Rials 4.3 billion, Mr. Reilly assumes that (1) Alborz's average yearly earnings will continue to be Rials 391 million, (2) inflation will remain 10% and (3) Alborz's cost of capital will remain 19.95%. The income capitalization approach results in a per share value of Rials 2,914.

40. The third and, according to Mr. Reilly, supplemental approach is the market approach. He admits that "this market approach is based upon a lot of assumptions that are not real world assumptions; so I do not rate that very heavily." Assuming that Alborz's last-traded stock price was Rials 2,005 per share in 1978 and taking a recent 1990 stock price of Rials 7,012 per share, he makes a linear extrapolation to arrive at a stock price of Rials 2,754 per share in July 1979. Based on a weighted average of the three values calculated, Mr. Reilly then concludes that Alborz's shares were worth Rials 2,840 at the date of

taking.

41. The Respondents originally maintained that Alborz's shares had a book value of Rials 836 per share at the time of the taking. They later used the analysis prepared by Touche Ross to argue that the shares in fact had a negative value. At the Hearing the Respondents relied exclusively on the expert report and testimony by Mr. Anthony Tracy, a partner of Touche Ross.

42. The Touche Ross report differs fundamentally from the Reilly approach in its assumption that Alborz was no longer a viable firm at the date of taking. Although the report admits that Alborz was indeed a going-concern, the valuation proposed by Touche Ross was nevertheless based upon the prospective orderly realization of assets and not on a going concern premise. The reason given by Touche Ross was that, due to Alborz's poor liquidity, heavy debt burden and other problems, keeping Alborz as a going concern would have involved too high a measure of risk of a compulsory liquidation in the near future. Therefore, in order to avoid the drawbacks of such a forced liquidation, Touche Ross proposed an approach based on an orderly realization of assets.

43. To calculate the results of such an orderly realization, Mr. Tracy of Touche Ross discounts many of Alborz's assets to reflect the cautious view of a reasonable investor. On Alborz's liabilities side, the report does not make any adjustments noting that "the net book value appears to represent the actual amount payable in relation to the debts." The report then concludes that Alborz's liabilities exceeded the realizable value of its assets at the time of the taking. Touche Ross arrives at a net realizable value of negative Rials 620 million. Dividing this amount by the number of outstanding Alborz shares yields a negative value of Rials 417 per share.

The Tribunal's Findings

44. To resolve the conflict between the Claimants' and the Respondents' experts, the Tribunal must first determine whether Alborz was a going concern at the time of the taking. Alborz produced a wide variety of basic products including pharmaceutical, toiletries, household cleaning products, and foodstuffs. Even in the midst of the revolutionary turmoil, it can be expected that a market for these goods would have continued to exist. Cf. Sola Tiles, Inc. and The Islamic Republic of Iran, Award No. 298-317-1 (22 Apr. 1987) paras. 63-64, reprinted in 14 Iran-U.S. C.T.R. 223, 241-42 (finding that the Revolution had detrimentally affected the market for luxury tiles); CBS, Inc. and The Islamic Republic of Iran, Award No. 486-197-2 (28 Jun. 1990) para. 52, reprinted in 25 Iran-U.S. C.T.R. 131, 148-49, (finding that the Revolution had adversely affected the market for Western music in Iran).

45. An inspection of Alborz's financial statements confirms that Alborz did indeed continue to manufacture, distribute, and sell its products throughout the events of the Revolution. The financial statements in the record show that Alborz consistently increased its sales during the period beginning in 1974 and continuing through the financial year ending 20 March 1980. In fact, in the year of the taking, Alborz achieved a record sales level, exceeding the previous year's performance by more than 2 billion Rials. In that year, Alborz reported a net loss of 74 million Rials and proposed no dividend. This loss, however, appears to arise in part from adjustments for embezzlement and bad debts that can be characterized as singular events. Notwithstanding this loss it is not unreasonable to conclude that even during 1979-80 Alborz's core business remained viable.

46. The company reports issued shortly before the taking also confirm that Alborz was a going concern. The report dated May 16, 1979, clearly indicates that Alborz did continue to operate throughout the financial year ending 20 March 1979. Despite

important difficulties mentioned in this report, i.e. delayed delivery of raw materials, shortage of raw materials, transportation problems, and temporary closing of some production facilities, Alborz managed to meet its payroll and to continue limited production. The report states that:

> under the conditions when many companies and factories were virtually unable to pay monthly salaries to their personnel and their operations had been halted or ceased, we paid full salaries and allowances to our staff on time or with little delay and relied on ourselves without bringing any harm to [the] Corporation's repute and goodwill.

The record also shows other contemporaneous documents that indicate that Alborz remained a going concern in the months leading up to the taking. A letter written by Mr. Javad Khosrowshahi two days after Mr. Saidi's appointment, stated that the company remained financially healthy and had maintained production while preserving all employee benefits. Further, the report of the government auditors who examined the March 20, 1980 financial statements does not suggest that this situation had changed. In light of all the above, the Tribunal finds that Alborz was a going concern at the time of the taking.

47. Having concluded that Alborz was a going concern at the time of the taking, the Tribunal need not respond in detail to many of the arguments raised in the Touche Ross report. These arguments are based on the assumption that the valuation of Alborz should not be made on a going concern premise. However, although Mr. Reilly's Report is based on the going concern premise, the Tribunal also has difficulty agreeing with many of the arguments advanced by him. Instead, the Tribunal finds particularly relevant the evidence relating to known trading prices of Alborz shares. Since the Tribunal's valuation precedents suppose a willing buyer and seller in order to determine the full equivalent of the property taken, a contemporaneous market price is clearly the best available evidence of the value of Alborz shares.

48. The Claimants have submitted a copy of the Tehran Economist, a financial news magazine, indicating that Alborz stock traded at Rials 2005 per share during the week ending October 25, 1978. The Respondents have introduced a letter from the General Secretary of the Tehran Stock Exchange stating that Alborz's last traded price before the suspension of trading of its shares in November 1978 was Rials 1850 per share. The Tribunal has consulted the Annual Report of the Tehran Stock Exchange. This report, published in April 1979, indicates that the last trade of Alborz shares prior to their taking occurred in the month of Aban, 1357 (October or November of 1978) at a price of Rials 1850 per share. To resolve the contradiction in the evidence of the Claimants and Respondents, the Tribunal will use the Annual Report price as the basis of the valuation analysis.

49. Because the last trade in Alborz shares took place approximately eight months before the taking of the Claimants' shares in Alborz, the Tribunal finds it necessary to consider the events of the intervening period. The Tribunal is convinced that the effects of the Islamic Revolution on the value of Alborz shares cannot be ignored. It is well known that Iran's economy was disrupted and transformed by the Revolution. Although an October/November market price for Alborz would doubtless have reflected the effects of the turmoil to date, many of the most significant economic and political disruptions were yet to come in the first months of 1979. Just as those disruptions had their impact on Iran's economy as a whole, they would almost certainly have had an impact on Alborz share prices if the stock had still been trading on the market.

50. A potential investor in Alborz shares at the time of the taking would certainly have noted the events of the Revolution and weighted the resulting political and economic risks. Alborz's Annual Report for the year ending March 20, 1979 makes clear that the upheaval affected Alborz's operations adversely. As noted supra, para. 45, the report documents a shortage of raw materials needed for production, transportation problems, work

stoppages, and temporary closures of some production facilities. Also, the 16 May 1979 report, covering the three preceding months, by Mr. Javad Khosrowshahi indicates that the above-noted problems had become more acute by mid-1979 and that the company was in an undesirable financial situation. Indeed the very fact that the Claimants, as well as some other members of the Khosrowshahi family, agreed in 1978 to defer the receipt of their declared dividends clearly indicated that Alborz was facing financial difficulties at the time.

51. However, the impact of the Revolution should not be exaggerated or reduced to broad generalizations. It can be assumed that a potential investor would be able to distinguish between investments likely to be undermined by the Revolution and those which might reasonably be expected to recover once the turmoil subsided. It is clear that Alborz, with its line of pharmaceutical, household, and personal care products, was in a better position to survive the Revolution than a concern distributing luxury tiles or western music. See, supra, para. 43. On the other hand, the Tribunal also notes that its task is to determine the value of Alborz shares in July 1979. At that time, it was also likely that a potential willing buyer would focus more on the short-term prospects of Alborz and the prevailing unforeseeability and instability of the market at the time. Therefore, the Tribunal finds that it must strike a fair balance, considering all the relevant factors in order to reach the fair market value which a potential willing buyer would have paid for the Alborz shares.

52. Although the evidence in this Case is not sufficient to allow the Tribunal to assign a precise value to Alborz shares at the date of the taking, the Tribunal is able to make a reasonable approximation. Based on a review of all the available evidence pertaining to valuation, the Tribunal determines that the last traded Alborz stock price of Rials 1850 per share is a reasonable starting point. In light of the above-described effects of the Revolution on Alborz, and having considered generally available

information about Revolutionary conditions between the Fall of 1978 and July 7, 1979, the Tribunal concludes that it is appropriate to discount the last-traded stock price by 25%, representing a further reduction of Alborz's fair market value during the eight months immediately preceding the taking. Thus, for the purposes of compensation, the Tribunal finds that the value of each Alborz share was Rials 1387.5 at the time of the taking.

53. The Tribunal therefore awards the Claimants compensation for deprivation of their ownership interests in Alborz by the Government of the Islamic Republic of Iran as follows:

Faith Lita Khosrowshahi	IR 10,110,990	for 7,287.2	shares
Susanne P. Khosrowshahi	IR 18,681,300	for 13,464	shares
Marcene P. Khosrowshahi	IR 18,681,300	for 13,464	shares
Kevin Khosrowshahi	IR 45,483,776.25	for 32,781.1	shares
Cameron Khosrowshahi	IR 45,483,776.25	for 32,781.1	shares

Based on the exchange rate of Rials 70.475/US$1 prevailing at the time of expropriation, therefore, Faith Lita is awarded $143,469.17, Susanne P. and Marcene P. are each awarded $265,076.98 and Kevin and Cameron are each awarded $645,388.80.

IV. THE KHOSROWSHAHI BROTHERS COMPANY

A. Facts and Contentions

54. As noted supra, KBC was organized in 1954 as a private joint stock company engaged in importing, exporting, and general trading. KBC remained a private company throughout the organization of the Alborz Group and continued to operate in conjunction with those companies, serving as the import-export arm of the Alborz Group.

55. KBC stock consisted of 1200 bearer shares. The Claimants

maintain that in late 1978, the Khosrowshahi brothers sent all 1200 KBC bearer shares to the Claimants and Nasrollah Khosrowshahi in the United States for safekeeping. They further maintain that as possessors of the shares, they held legal title to them all because under Article 39 of the Commercial Code of Iran, bearer shares are owned by whomever has possession of the shares "unless proven otherwise." Although initially the Claimants alleged that they owned 1,100 of the shares, they subsequently reduced that to 180 shares. Finally, at the Hearing they requested a further amendment to reduce their earlier claim to 100. They now claim for only 100 shares because the Khosrowshahi brothers allegedly agreed that each of their respective families would hold a 1/6 ownership interest in the shares. Thus, the Claimants explain, Nasrollah Khosrowshahi owns 100 shares and the Claimants own 100 shares, although the precise extent of the ownership of each individual Claimant has not been clarified. The Claimants contend that they have owned these shares continuously from early 1979 until the date of their expropriation.

56. The Claimants argue that the expropriation of their shares in Alborz constituted a de facto expropriation of their shares in KBC as well because KBC was "intricately tied to Alborz." Although the Claimants acknowledge that Alborz and KBC were legally distinct entities, they emphasize that the Khosrowshahi family controlled both companies and allege that there was substantial overlap in the companies' day-to-day management. In this context the Claimants further assert that the headquarters of Alborz, its operating subsidiaries and KBC, were located in the same offices at 247 Naderi Avenue, Tehran.

57. As a preliminary matter, the Respondents deny that the Claimants own the KBC shares at issue. They first argue that the Claimants have failed to submit any documentary evidence proving that they actually owned the shares prior to the date of the CSD. In support of this argument, the Respondents submit the affidavit of Mr. Hossein Fathollah, the Managing Director of KBC, which

states that the Claimants' names were never included among the company shareholders. In addition, they point out that the contemporaneous minutes of the KBC shareholders' meetings do not record the Claimants as shareholders.

58. In the event the Tribunal would find that the Claimants owned 100 KBC shares, the Respondents deny that Iran expropriated the Claimants' shares in KBC at the same time that it allegedly took their shares in Alborz. Noting that KBC is a separate legal entity from Alborz, they argue that the alleged expropriation of the Claimants' shares in Alborz should not necessarily result in the expropriation of their shares in KBC. Furthermore, the Respondents note that the evidence they submitted clearly demonstrates that KBC was run by managers duly appointed by its shareholders until March 1981 when the Bureau for Registration of Non-Commercial Corporations and Institutions announced the appointment of the new Directors for KBC.

B. The Tribunal's Findings

59. KBC was a legal entity separate from Alborz; the taking of the Claimants' shares in Alborz did, therefore, not necessarily constitute a taking of whatever shares they might have had in KBC. In the absence of well-founded evidence demonstrating that KBC and Alborz were tightly intertwined on a management and operational level, the Tribunal gives more weight to the evidence in the record showing that governmental directors were not appointed to run KBC at any time prior to 19 January 1981. The Tribunal is unconvinced that the Claimants' interest was expropriated prior to the date of the Claims Settlement Declaration. The Tribunal therefore dismisses the KBC claim for lack of jurisdiction without determining the precise nature of Claimants' interest in KBC.

V. THE DEVELOPMENT AND INVESTMENT BANK OF IRAN

A. Facts and Contentions

1. Claimants' DIBI shares

60. DIBI was a publicly traded, joint stock bank incorporated in 1973 to provide capital for the establishment of new enterprises in Iran. The Bank's shareholders included major Iranian concerns, financial institutions, foreign banks, and certain members of the Khosrowshahi family. The Parties agree that four of the Claimants owned a combined total of 33,262 class "A" shares in DIBI, i.e., Susanne P. and Marcene P. each owned 4,989 shares and Kevin and Cameron each owned 11,642 shares.

61. On 7 June 1979, the Iranian Government passed the Banks Nationalization Law, which immediately nationalized all banks in Iran and authorized the Government to "take steps to appoint directors of all banks." Pursuant to this law, the Government nationalized DIBI and appointed a new Board of Directors. The Respondents allege that the Government created a mechanism by which former bank shareholders could be compensated for their loss. According to the Respondents, Article 1 of the Legal Bill approved on June 25, 1980 announced that:

> the payment of the value of the shares of the former shareholders of the nationalized banks ... shall be effected equivalent to the capital and reserves inserted in the banks'... auditing reports made on June 7, 1979, after deducting the annual losses.

62. Notwithstanding the compensation mechanism, the Claimants argue that their rights as DIBI shareholders were expropriated by the nationalization of DIBI. They allege that from the moment of the nationalization, they have not received any official communications from or about DIBI. The Claimants contend that they have not received any communication regarding compensation and allege that they have been excluded from any compensation

scheme. They have, however, submitted a copy of a letter from the Secretariat of the High Council of Banks dated 7 June 1981, which is in response to a DIBI shareholder's inquiry about the compensation scheme. The letter stated that (1) the Bank was nationalized on 7 June 1979; (2) the Islamic Revolutionary Council of Iran on 25 June 1980, had approved payment of compensation of some sort to "the previous shareholders" and (3) the "determination of the manner and date of the payment" was on the agenda of the general meeting of the High Council of Banks, but still unresolved on the date of the letter, 7 June 1981.

63. As ultimately pleaded at the Hearing, the Respondents argue that the nationalization of the Bank did not deprive the Claimants of their right to appropriate compensation because of the compensation mechanism provided for in the Legal Bill. They claim that "all the shareholders of [DIBI] including the Claimants can, in case of entitlement, directly or through their legal representatives collect the value of their shares." The Respondents have further asserted that the Claimants' DIBI claim was not outstanding on 19 January 1981 because they had not "demanded their ownership rights and interests [in DIBI] before filing the initial Statement of Claim."

2. DIBI Dividends

64. Finally, the Claimants maintain that DIBI declared a dividend of 90 rials per share for the fiscal year ending March 20, 1978, and that they never received this dividend. Claimants base their assertion of entitlement to the dividend upon a proposal for such payment in the auditors' report for DIBI, dated 26 May 1979. The Respondents argue that DIBI's Board of Directors never approved the dividend and that it was not paid. The Respondents therefore maintain that Claimants are not entitled to any such dividend.

B. The Tribunal's Findings

1. Claimants' DIBI shares

65. The Tribunal concludes from the above that the Banks Nationalization Law clearly effected a compensable taking of the Claimants' DIBI shares. The Parties appear to agree with this conclusion that the Claimants' shares in DIBI were nationalized on 7 June 1979 in accordance with the Banks Nationalization Law of the same date.

66. Respondents' argument that the Claimants cannot have a claim before the Tribunal due to the existence of a compensation mechanism in Iran cannot be accepted. The Tribunal's jurisdiction does not depend on the exhaustion of local remedies. See, e.g., Rexnord and The Islamic Republic of Iran, Award No. 21-132-3 at 9 (10 Jan. 1983) reprinted in 2 Iran-U.S. C.T.R. 6, 10. Moreover, the letter from the Secretariat of the High Council of Banks makes clear that as of 7 June 1981, no shareholders had been compensated for their DIBI shares.

67. The Tribunal must also reject Respondents' argument that this claim is not within the Tribunal's jurisdiction because the Claimants had failed to make a demand before the date of the Claims Settlement Declaration. The Tribunal has repeatedly held that no demand for such a claim is a prerequisite to a finding that the claim was outstanding at the date of the Algiers Declarations. In the present claim the Claimants do not seek to recover monies on deposit in DIBI, but, instead, seek to recover the value of their ownership interest in the Bank itself. The two cases are, therefore, markedly different. Accordingly, the Tribunal finds that the claim was outstanding and that the Banks Nationalization Law expropriated the Claimants' ownership interests in DIBI.

2. DIBI Dividends

68. After examining the record, the Tribunal finds no proof that the dividend payment was ever authorized by the Board of Directors. The 1979 auditors' report suggesting the payment of a dividend relied on by the Claimants is not sufficient because the payment of dividends requires the approval of the Board of Directors. Accordingly, the Claimants' claim for unpaid DIBI dividends is dismissed for lack of proof.

3. Application of the Caveat to Claimants' DIBI Claim

69. As with the Claimants' Alborz claim, the Tribunal first has to address the "Caveat argument" raised by the Respondents. The Respondents argue that the Claimants, by purchasing shares reserved for Iranian nationals, have abused their Iranian nationality and therefore the Tribunal should not allow the Claimants to recover the value of their DIBI shares.

70. DIBI shares were divided into categories "A" and "B". According to Article 6 of the Bank's Articles of Association:

> The stock belonging to Iranian subjects has been classified as "A category" while that owned by non-Iranian subjects as "B category." Each "B category" stock, which is transferred to Iranian subjects shall be converted by the Bank into "A category" stock, and reciprocally each "A category" stock, to be transferred to non-Iranian subjects, shall be changed by the Bank into "B category" stock.

The Notes to this Article provided that (1) the total amount of B stock could not exceed 25% of the Bank's outstanding capital and (2) except for the cases to be expressly mentioned in the Articles of Association there would be no distinction between the two categories of shares.

71. The Respondents assert that the Claimants must have concealed their U.S. nationality at the time of the purchase of

"A" category shares because had the Bank been aware of Claimants' nationality, "the purchase of the shares in dispute was practically impossible."

72. The Claimants insist that they did not conceal their U.S. nationality when they purchased "A category" shares in DIBI or any time thereafter. They state that they were never asked about their nationality prior to purchasing their shares. They further argue that, at least with respect to the limitation on foreign ownership, because the 25% ceiling on foreign ownership had not been reached at the time of purchase of their shares, non-Iranians could have purchased "B category" shares just as easily as they purchased "A category" shares. With their approximately .008% of DIBI stock added to the 18.9% outstanding B stock, the 25% limit would not have been reached. Consequently, the fact that the Claimants received "A category" shares does not mean that they obtained property rights not available by law to non-Iranians.

73. An examination of the record has not convinced the Tribunal that the Claimants concealed or otherwise abused their dual nationality when purchasing "A category" shares in DIBI. It is clear from the evidence that in general foreigners were not excluded from acquiring share ownership in DIBI. Indeed, ownership of DIBI shares was open to foreign nationals, albeit within the 25% prescribed limit. The mere fact that they were issued a class of shares available only to Iranian nationals does not prove that they concealed their U.S. nationality when buying the shares. See Golpira, supra at 6, 2 Iran-U.S. C.T.R. at 174. Moreover, the Respondents have not submitted any evidence demonstrating that the Claimants misrepresented or concealed their U.S. nationality. For example, the Respondents failed to submit any of the bank records concerning the way in which the shares were acquired by the Claimants as well as their representation of themselves to DIBI. Cf. Robert R. Schott and Islamic Republic of Iran, et al., Award No. 474-268-1 (14 March 1990) para. 43, reprinted in 24 Iran-U.S. C.T.R. 203, at 218

(where there was in evidence a statement signed by the Claimants' daughter, who held the shares in dispute in her name, that if she were to surrender her Iranian nationality, she would transfer the shares to another Iranian national). It seems clear that dual nationals could not have purchased "B category" shares, as Iran would not recognize their non-Iranian nationality. Furthermore, as the Bank acknowledged at the Hearing and as the auditor's report dated 26 May 1979 suggests, the 25% limit on foreign ownership was never reached. Accordingly, the Claimants' purchase of .008% of the total shares of DIBI could well have fallen within the permitted 25% level of foreign ownership. Furthermore, there is no evidence that the Claimants received any specific benefit by holding "A category" shares. Considering all the above circumstances, the Tribunal concludes that there is not sufficient evidence that the Claimants used their Iranian nationality at the time they acquired DIBI shares or subsequently, in order to secure benefits available under Iranian law exclusively to Iranian nationals or that in any other way their conduct was such as to justify refusal of an award in their favor with respect to this claim.

4. Valuation

74. The Claimants originally sought compensation for their DIBI shares in the amount of Rials 1600 per share. They later increased this amount to Rials 1650 per share which is the median of the known traded prices in DIBI stock during the period March 21, 1978 - October 25, 1978. The Claimants have further submitted evidence showing that DIBI's last traded price was Rials 1575 per share.

75. At the Hearing, the Claimants' expert, Mr. Reilly, proposed a value of Rials 1830 per DIBI share. Mr. Reilly arrived at this amount by taking a weighted average of DIBI's last known trading price and its 1978 book value per share. According to the expert, this is a very conservative indication of the valuation,

as "banks typically are valued at premiums above book value."

76. The Respondents disagree with the Claimants' valuation. At the Hearing, they argued that the government paid DIBI's former shareholders 89% of the share nominal value or Rials 890 per share. The Respondents suggested that this would be an appropriate amount of compensation for the Claimants as well.

77. As noted supra, para. 33, under the Treaty of Amity the Claimants are entitled to the full equivalent of their taken DIBI shares. Thus, the amount that the Government allegedly paid to other DIBI shareholders is, although relevant, not dispositive. It is the Tribunal's task to make its own determination of the value of the Claimants' DIBI shares. As in the valuation of Alborz, the Tribunal finds the evidence of DIBI's actual market prices during the year 1978 particularly relevant. See supra, para. 46. In that connection, the Tribunal notes that DIBI stock traded at a high of Rials 1850 per share in April and May of 1978. Its last traded price of Rials 1575 per share was in October 1978.

78. To establish a value of the DIBI shares as of 7 June 1979 the Tribunal will take the same approach as it did with the valuation of Alborz's shares. Thus, the Tribunal finds it reasonable to assume that the final price of Rials 1575 per share in October 1978 reflected the impact of revolutionary events to that date on DIBI. That price then needs to be adjusted to reflect the events that occurred between that last-traded price and the date of the taking. As discussed above, the evidence indicates that Alborz was detrimentally affected by the events of the Revolution. See supra, para. 49. In the absence of evidence to the contrary, the Tribunal finds it reasonable to conclude that DIBI was also affected by these events. The decline in its share price between May and October 1978 was even sharper than the decline in the price of Alborz shares during that period. After considering all the relevant elements of this claim, the Tribunal concludes that it is fair to discount DIBI's

last-traded price of Rials 1575 by 30%. This yields a per share value of Rials 1102.5 per share.

79. The Parties agree that four of the Claimants, i.e., Susanne, Marcene, Kevin and Cameron owned collectively 33,262 shares of DIBI. The Tribunal therefore awards the four Claimants compensation for deprivation of their ownership interests in DIBI by the Government of the Islamic Republic of Iran as follows:

Susanne P. Khosrowshahi	IR	5,500,372.5	for 4,989 shares
Marcene P. Khosrowshahi	IR	5,500,372.5	for 4,989 shares
Kevin Khosrowshahi	IR	12,835,305	for 11,642 shares
Cameron Khosrowshahi	IR	12,835,305	for 11,642 shares

Converted at the rate of exchange of Rials 70.475/US$1, see supra, para. 52, Susanne P. and Marcene P. are each awarded $78,047.14 and Kevin and Cameron are each awarded $182,125.65.

VI. INTEREST

80. In order to compensate the Claimants for the damages they suffered as a result of the Respondents' failure to compensate them when their property was taken, the Tribunal considers it fair to award the Claimants simple interest at the rate of 8.6% from the dates of the deprivation of their interests.

VII. COSTS

81. Each Party shall bear its own costs of arbitration.

VIII. AWARD

82. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. The Claim for the expropriation of the Claimants shares in KHOSROWSHAHI BROTHERS COMPANY is dismissed for lack of jurisdiction.

B. The Claims for the non-payment of the allegedly due dividends from the ALBORZ INVESTMENT CORPORATION and THE DEVELOPMENT AND INVESTMENT BANK OF IRAN are dismissed for lack of proof.

C. The Respondent, the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the following amounts to each of the Claimants as compensation for expropriation of their shares in:

ALBORZ INVESTMENT COMPANY:

- to FAITH LITA KHOSROWSHAHI, the amount of US$143,469.17 (One Hundred Forty Three Thousand Four Hundred Sixty Nine United States Dollars and Seventeen Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to SUSANNE P. KHOSROWSHAHI, the amount of US$265,076.98 (Two Hundred Sixty Five Thousand Seventy Six United States Dollars and Ninety Eight Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to MARCENE P. KHOSROWSHAHI, the amount of US$265,076.98 (Two Hundred Sixty Five Thousand Seventy Six United States Dollars and Ninety Eight Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to KEVIN KAYVAN KHOSROWSHAHI, the amount of US$645,388.80 (Six Hundred Forty Five Thousand Three Hundred Eighty Eight United States Dollars and Eighty Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to CAMERON KAMRAN KHOSROWSHAHI, the amount of US$645,388.80 (Six Hundred Forty Five Thousand Three Hundred Eighty Eight United States Dollars and Eighty Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 July 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

and in THE DEVELOPMENT AND INVESTMENT BANK OF IRAN:

- to SUSANNE P. KHOSROWSHAHI, the amount of US$78,047.14 (Seventy Eight Thousand Forty Seven United States Dollars and Fourteen Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to MARCENE P. KHOSROWSHAHI, the amount of US$78,047.14 (Seventy Eight Thousand Forty Seven United States Dollars and Fourteen Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to KEVIN KAYVAN KHOSROWSHAHI, the amount of US$182,125.65 (One Hundred Eighty Two Thousand One Hundred Twenty Five United States Dollars and Sixty Five Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- to CAMERON KAMRAN KHOSROWSHAHI, the amount of US$182,125.65 (One Hundred Eighty Two Thousand One Hundred Twenty Five United States Dollars and Sixty Five Cents), plus simple interest at the rate of 8.6% per annum (365-day basis) from 7 June 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account.

D. The Claims against all other Respondents are dismissed.

E. Each Party shall bear its own costs of arbitration.

F. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
30 June 1994

José María Ruda
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring as to the dispositif, para. 82(A), (B), (D) and (E); dissenting as to para. 82(C) and (F).
See, Dissenting Opinion.