



DUPLICATE  
ORIGINAL  
تسخیر برابر اصل

101

CASE NO. 221

CHAMBER ONE

AWARD NO. 559-221-1

MOHSEN ASGARI NAZARI,  
Claimant,  
and  
THE GOVERNMENT OF THE  
ISLAMIC REPUBLIC OF IRAN,  
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE 24 AUG 1994	تاریخ ۲ / ۶ / ۱۳۷۳

AWARD

Appearances:

For the Claimant:

Mr. Mohsen Asgari Nazari,  
Claimant,  
Mr. Donald Buckner,  
Col. Thomas Irwin,  
Mr. Javid Siminou,  
Witnesses  
Mr. Jonathan M. Weisgall,  
Counsel.

For the Respondent:

Mr. Ali H. Nobari,  
Agent of the Government  
of the Islamic Republic of Iran,  
Dr. M.H. Bordbar,  
Dr. Ali Azmayesh,  
Prof. B. Stern,  
Legal Advisers to the Agent,  
Mr. Jahanbakhsh Mirzakhani,  
Mr. Abass Valizadeh,  
Mr. Ghassem Farshchian,  
Assistants to the Legal  
Advisers.

Also Present:

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

## I. PROCEEDINGS

### 1. 1 Procedural History

1. On 11 January 1982, the Claimant MOHSEN ASGARI NAZARI ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("Iran" or the "Respondent"). The Claimant submitted five different claims which amounted, in total, to U. S. \$3,793,000.<sup>1</sup> First, the Claimant sought to recover \$1,150,000 as compensation for money that he had allegedly advanced to Sherkat Khadamat Beinolmelali Mahat ("SKBM")<sup>2</sup> on behalf of the Information Systems of Iran ("ISIRAN"), a corporation allegedly owned, controlled and operated by Iran. The Claimant asserts that when ISIRAN failed to make contractually-required payments to SKBM, he together with Mr. Hassan Asgari Pour provided SKBM with the operating funds it needed to continue to supply ISIRAN pursuant to their contract. Second, the Claimant sought \$1,513,000 as compensation for the expropriation of his 33.75% interest in SKBM, allegedly taken over by Iran.<sup>3</sup> The Claimant also sought \$2,193,750 as an indirect claim for 33.75% of \$6,500,000 which he contended ISIRAN owed SKBM for services rendered under the contract. Third, the Claimant sought compensation in the amount of \$858,000 arising from the alleged nationalization of his interest in Sherkat Pasandaz Va Vam Maskan Passargad ("Passargad"), a savings and home loan corporation, and of the proceeds of his purchase of shares in the said company, which were deposited in Bank Rahni

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<sup>1</sup> All references to dollars in this Award are to United States dollars.

<sup>2</sup> SKBM is sometimes referred to as Mahat International Services.

<sup>3</sup> Initially, the Claimant alleged that he owned a 34% interest in SKBM; during the proceedings he corrected this to 33.75%. Moreover, the Claimant requested that the value of his shareholding interest in SKBM be determined finally at a later stage of the proceedings following an initial determination by the Tribunal of whether the Claimant's shares of SKBM had in fact been expropriated.

Iran. Alternatively, the Claimant sought for the return of funds, amounting to \$660,000, that had allegedly been deposited in Bank Rahni Iran for the purchase of his shares in the corporation. Fourth, the Claimant sought compensation in the amount of \$260,000 for the alleged taking of his apartment in Iran, including the contents thereof. However, the Claimant withdrew this Claim in his Hearing Memorial of 14 October 1991, due to lack of evidence. Finally, the Claimant sought \$12,000 in salary and relocation benefits allegedly due to him under a contract he had with SKBM.

2. Iran filed its Statement of Defence on 3 February 1983.

3. On 15 January 1991, the Tribunal issued an interlocutory award on the question of its jurisdiction, specifically addressing the issue of the dual nationality of the Claimant. See Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 79-221-1 (15 Jan. 1991), reprinted in 26 Iran-U.S. C.T.R. 7 (the "Interlocutory Award"). The Tribunal found that the Claimant's dominant and effective nationality during the relevant period was that of the United States and decided that the Claimant thus has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration. The Tribunal also joined the remaining jurisdictional issues to the merits of the case. (Ibid., paras. 18-20, at 14.)

4. The procedural history prior to 15 January 1991 is reflected in the Interlocutory Award.

5. By its Order of 17 January 1991, the Tribunal scheduled further proceedings in this Case. Accordingly, after having been granted two extensions, on 14 October 1991 the Claimant filed a submission entitled "Claimant's Hearing Memorial, Request for Interlocutory Award or for an Extension of Time to Submit Further Evidence and for Production of Documents". In that submission the Claimant requested permission to amend his Claim

by adding ISIRAN, SKBM, the Ministry of Defense, the Iranian Ground Forces, the Islamic Revolutionary Committee, Bank Rahni Iran and Passargad as new respondents. The Claimant also requested the Tribunal to order the Respondent to produce certain documents. In addition, the Claimant requested in the same submission that the issue of the alleged expropriation of SKBM be dealt with, as a preliminary question, prior to the question of its valuation. In its Order of 23 October 1991, the Tribunal invited the Respondent to comment on these requests by 23 December 1991.

6. On 6 December 1991, the Respondent submitted its comments on the Claimant's request for an interlocutory award. In that submission the Respondent concurred with the Claimant's request, arguing that certain other issues should also be decided as preliminary questions. These preliminary questions included the issues whether SKBM had been expropriated; whether the Claimant could pursue an alternative indirect contractual claim as a shareholder despite lacking a controlling ownership interest in SKBM; whether the Claimant as a U.S. national could have purchased the shares of Passargad; whether the possession of these shares was limited solely to Iranian nationals; and, in connection with the same issue, whether the Caveat in Case A18 prevents the Claimant from pursuing this Claim. See Case No. A/18, Decision No. DEC 32-A18-FT, at 25-26 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265-266 (the "Caveat").

7. On 19 December 1991, the Tribunal issued an Order in which it decided to bifurcate the proceedings in this Case in such a manner that it would at this stage consider all issues other than the question of the valuation of the Claimant's property rights in SKBM. The Tribunal decided to address that question at a later stage, if necessary. The Tribunal also scheduled a Hearing for 23 September 1992 and invited the Respondent to submit its comments on the Claimant's request for production of certain documents together with its Hearing Memorial and Evidence.

8. On 28 January 1992, the Claimant filed a letter in which he renewed his request to add seven additional respondents in this Case. On 5 March 1992, the Respondent filed its "Response to Claimant's Request to Add New Respondents". In that submission, Iran requested the Tribunal to reject the Claimant's request.

9. On 26 May 1992, the Respondent filed a submission entitled "Respondent's Hearing Memorial and Written Evidence". In that submission the Respondent reiterated its objection to the Claimant's request for inclusion of new respondents and argued that the Claimant's request for production of certain documents should also be rejected.

10. On 15 June 1992, the Claimant requested the Tribunal to invite the proposed additional respondents to submit their responses to the Claimant's Hearing Memorial and to reschedule the further proceedings in the Case or, as an alternative, to grant an extension of time for the Claimant's rebuttal filings.

11. On 16 June 1992, the Tribunal rendered a Decision, Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Decision No. DEC 105-221-1 (16 June 1992), reprinted in Iran-U.S. C.T.R., regarding the Claimant's application to amend his Claim. Referring to Article 20 of the Tribunal Rules and the significant lapse of time involved, and emphasizing that the Tribunal had already issued Interlocutory Award No. ITL 79-22-1 in this Case and that the proposed new respondents had not had an opportunity to submit evidence during the preliminary stage of the proceedings or otherwise to participate therein, and the fact that the Claimant had not offered any justification for his delay in making this application, the Tribunal considered it inappropriate to allow the proposed amendment adding seven new respondents to the Case.

12. With regard to the Claimant's extension request the Tribunal set on 23 June 1992 a new schedule for the Parties to file their

further submissions. The Tribunal also rescheduled the Hearing in this Case for 20 April 1993.

13. On 9 November 1992, after having been granted one extension, the Claimant filed a submission entitled "Claimant's Rebuttal Memorial and Evidence". On 9 March 1993, after being granted one extension, the Respondent filed a submission entitled "Respondent's Rebuttal Memorial and Evidence".

14. On 23 March 1993, the Claimant filed his list of witnesses, wherein he mentioned himself and four other persons. The Respondent did not submit any list of witnesses.

15. On 29 March 1993, the Claimant requested the Tribunal to reschedule the Hearing because one of his key witnesses would be unable to testify on the date of the Hearing as scheduled, and further because the new documents submitted in the Respondent's last filing made it impossible for the Claimant to be prepared by that time. On 29 March 1993, the Tribunal invited the Respondent to comment on the Claimant's request by 2 April 1993. On 2 April 1993, the Agent of the Islamic Republic of Iran filed the Respondent's comments on the Claimant's request. The Respondent requested that the scheduled Hearing date remain intact, but agreed that, if the Claimant deemed the testimony of his witness decisive to his case, then Iran did not object to a postponement of the Hearing for a period of no more than two months.

16. On 5 April 1993, the Tribunal cancelled the scheduled Hearing and rescheduled it for 3 December 1993. On 8 April 1993, the Agent of the Islamic Republic of Iran filed a letter in which he requested the Tribunal to reschedule the Hearing for 11 June 1993, to take the place of the Hearing already scheduled to be held then in Case No. 118. On 20 April 1993, the Tribunal issued an Order in which it did not deem it appropriate to reschedule the Hearing in this Case.

17. On 29 November 1993, the Respondent filed a letter in which it stated that the testimony of the Claimant's witnesses was irrelevant to the Case and that they should not be heard, four of them because their testimony would relate to the Claimant's denied request to file a new Claim against seven agencies and companies and the contents of such testimony would relate to the contractual rights of these entities, which are not respondents and have not participated in the proceedings in this Case; and one of them because his testimony would concern the relations between the Claimant and Mr. Asgari Pour, which is not within the jurisdiction of the Tribunal and is not at issue in this Case. The Respondent requested the Tribunal either to issue an Order that those witnesses could not be heard or to remind the Claimant that the witnesses should not give any testimony with respect to any contractual claims. The Respondent also emphasized in the same submission that the Claimant could not be heard as a witness because of his direct interest in the outcome of this Case. On 24 November 1993, the Respondent requested the Tribunal to allocate two days for the Hearing. On 29 November 1993, the Claimant informed the Tribunal that he opposed the Respondent's request. On 30 November 1993, the Tribunal issued an Order in which the Tribunal deemed it inappropriate, in view of the proximity of the scheduled hearing date, to grant the Respondent's request or to reschedule the Hearing in this Case.

18. The Hearing was held on 3 December 1993. At the Hearing the Claimant was heard for purposes of giving information to the Tribunal. Also at the Hearing, the Respondent submitted a document entitled "Documents Submitted by the Respondent for the Ease of Reference at the Hearing".

19. On 27 December 1993, the Respondent filed its estimate of the amount of costs which Iran requests the Tribunal to award it pursuant to Articles 38-40 of the Tribunal Rules. The Respondent sought at least the amount of \$17,445.00.

20. On 3 January 1994, the Claimant submitted his statement of fees and costs. The claimed costs amounted to \$121,805.52.

## 1.2 Remaining Procedural Issues

### 1.2.1 A Late Submission

21. At the Hearing, the Respondent submitted a document entitled "Documents Submitted by the Respondent for the Ease of Reference at the Hearing". The Claimant objected to the admission of this late submission. At the Hearing, the Tribunal ruled that one of the documents included in that submission was inadmissible, and reserved until after the Hearing its decision on the admissibility of the remainder of the submission. The Tribunal now turns to the examination of this issue.

22. The Tribunal considers that this submission constitutes documentary evidence which must be submitted in accordance with the time limits set forth in the Tribunal's orders, so that the other Party is able to respond. Evidence that could have been submitted during the established time periods but which was presented late without adequate justification will not be accepted at the hearing, because late submissions containing facts and evidence are most likely to cause prejudice to the other Party and to disturb the arbitral process. The Tribunal notes that the Respondent has not provided any sufficient reason for the late submission of this document. Furthermore, the documents included in that submission do not have a direct impact on the Case and do not rebut testimony given by the Claimant's witnesses at the Hearing. Therefore, the Tribunal considers the Respondent's submission inadmissible.

1.2.2 The Claimant's Request for Production of Certain Documents

23. In his Hearing Memorial filed on 14 October 1991, the Claimant requested that the Tribunal order the Respondent to produce certain documents relating to SKBM. The Tribunal invited the Respondent to submit its comments on this request together with its Hearing filings. On 26 May 1992, the Respondent submitted a memorial entitled "Respondent's Hearing Memorial and Written Evidence" wherein the Respondent asked, in commenting on the Claimant's request for production of documents, that the Tribunal reject the Claimant's request because, although the burden of proof fell on him, he had not shown that before filing his request he had tried unsuccessfully to acquire these documents directly from Iran. Furthermore, the Respondent emphasized that all the documents requested pertained to corporations which are independent of the Government and which are not respondents in this case.

24. The Tribunal notes that the requested documents mainly relate to the issues of the possible valuation of SKBM and the Claimant's equity interest in that company. Therefore, in view of the Tribunal's findings in paras. 99-140 *infra*, there is no need for the Tribunal to address the question of the possible impact of the Claimant's request upon his Claims, and the Respondent's response thereto.

## II. FACTS AND CONTENTIONS

### 2.1 The Claimant's Claims Relating to SKBM

#### 2.1.1 Introduction

25. In 1975, together with three other persons, the Claimant formed an Iranian private joint stock company, SKBM, to perform

computer services and other related activities mentioned in Article 2 of the Articles of Association of that company.

26. On 8 May 1975, SKBM was registered with the Office for Registration of Companies and Industrial Ownership, in Tehran. The Claimant states that a realignment of SKBM occurred at the shareholders' meeting on 16 June 1977, with the result that all the shares of SKBM were held by three individuals, who also became directors of the company, in the following amounts: Amir Hossein Amir Faiz, 57.5% (46 shares); Hassan Asgari Pour, 8.75% (7 shares); and the Claimant, Mohsen Asgari Nazari, 33.75% (27 shares). While serving with the other co-owners as a director of SKBM, the Claimant also held the position of the chief executive officer, i.e. managing director, from January 1976 onwards.

27. According to the Claimant, in 1976 SKBM purchased a commercial office building at No. 17 Ahar Street, Ghassr Cross Road, Koroush Kabir Avenue, Tehran. The first and second floors of the building were used for commercial functions of SKBM and the third floor was converted to a residence, where the Claimant temporarily resided.

28. In 1976, SKBM entered into a contract with ISIRAN to provide manpower and services required by the "CALs"-project. This was a government project under the direction of ISIRAN, to computerize various agencies of the Iranian Government, including certain military agencies. ISIRAN obtained operating funds from the Iranian Armed Forces, from which it made payments to subcontractors such as SKBM. SKBM was not allowed to have any other contracts with other entities at the same time that it was performing its contract with ISIRAN. In order to fulfill the contract, SKBM recruited foreign and Iranian specialists and provided them to ISIRAN, which also controlled the daily workings of SKBM. The Claimant further states that the contract between ISIRAN and SKBM was to run until late 1980 or early 1981. Because there was an expectation that the contract would be

continued, SKBM renewed its employment contracts with the expatriates it had hired for the "CALIS"-project.

29. The Claimant returned to the United States in July 1978, prior to the beginning of the Islamic Revolution. The Claimant states that, due to financial difficulties, SKBM failed to make payment of \$12,000 due to him in July 1978 for salary and relocation benefits to which he was entitled on the basis of his contract with the company. The Respondent contests the Claimant's alleged right to these benefits.

30. The Claimant states that in early 1978 ISIRAN began to encounter difficulties in paying its subcontractors, including SKBM, due to a shortage of funds caused by late payments from the Iranian Ground Forces. Furthermore, during the period of martial law in 1978 the Iranian banking system also began to have difficulties in functioning, and when Bank Melli, through which these payments were made, also began to experience difficulties in operating, this allegedly had a severe impact on the ability of ISIRAN to pay its subcontractors. However, SKBM as a subcontractor was instructed to continue to provide its services to ISIRAN and to ISIRAN's customers. The Claimant asserts that when no further payments were received, he and his partner, Mr. Hassan Asgari Pour, were compelled to advance their private funds to SKBM to cover its operating expenses. The Claimant alleges that by January 1979 his share of the private funds advanced to the company amounted to approximately \$1,150,000. The Respondent disputes this allegation, stating that the Claimant has not provided sufficient evidence in support of his statement, and asserting at the Hearing that these funds were provided from other sources.

31. The Claimant also asserts that by January 1979 SKBM's total amount of receivables due under contract from the Iranian Ground Forces through ISIRAN was approximately \$6,500,000. The Claimant states that in December 1978, due to a lack of funds allegedly caused by these late payments from ISIRAN, SKBM did not have

sufficient funds to pay its employees' salaries. The Claimant also states that the company's financial situation further deteriorated to the degree that in late January 1979, SKBM was unable to continue to provide its services to ISIRAN. Therefore, on 24 January 1979, the administration of SKBM had to issue a letter to all of its employees declaring force majeure and terminating their employment contracts as from that date due to the "current civil unrest in Iran and the inability of the company to meet its financial obligations" at that time. Attached to each letter of termination was a detailed statement of entitlements and benefits for each employee and the letter included the promise that SKBM would pay all benefits and relocation allowances upon completion of the employee's contract.

32. On or about 12 April 1979, the property of the majority shareholder of SKBM, Mr. Amir Hossein Amir Faiz, including his 57.5% share of SKBM's stock, was expropriated by the Respondent. The Claimant states in his written pleadings that the Respondent acquired control of SKBM through the said expropriation of the property of Amir Hossein Amir Faiz. The Claimant also asserts that the takeover of a majority shareholder's interest in a company results in the expropriation of the company itself. The Claimant argues that when the Respondent had full control over both SKBM and ISIRAN as a result of the expropriation the Respondent exercised this control to prevent SKBM from collecting money due to it from ISIRAN, and kept ISIRAN from paying its debts to SKBM. These acts or omissions allegedly resulted directly in a situation where the main office of SKBM was sold by a revolutionary committee to pay the local employees of SKBM. The Claimant asserts that the balance of the proceeds was given to the Foundation for the Oppressed and that as a result SKBM ceased to exist as an entity independent of the Respondent.

33. The Claimant further argues that the Respondent made it impossible for him to exercise his rights as a shareholder of SKBM. The Claimant asserts that, after he was forced to leave Iran in July 1978, he, as a U.S. citizen, was unable to return to Iran

or to exercise his rights as a shareholder to protect his interest in SKBM because U.S. nationals were not at that time being granted visas to travel to Iran. The Claimant further argues that he could not designate a person in Iran to act as his agent in SKBM pursuant to a power of attorney, because the list of documents necessary for authentication of a power of attorney required that a photocopy of the so-called green card (resident permit or I-94), which he did not have as a U.S. citizen, be attached to the application in order for the power of attorney to be recognized in Iran. Moreover, on 4 March 1980, the Revolutionary Public Prosecutor of Iran issued an order stating that power of attorney signed in foreign countries could no longer be recognized in Iran. The Claimant also emphasizes that in any event, based on Article 121 of the Commercial Code of Iran, as amended in 1969, the Respondent as a majority shareholder could have managed the company and appointed the majority of its directors. The Claimant also states that since April or June 1979 he has not received dividends, notices of meetings or any other communications required to be sent to the shareholders of the company. Therefore, the Claimant argues, he has been deprived of his equity and creditor interests in SKBM and of all of his rights as a shareholder of the company.

34. The Claimant states that all these acts are attributable to the Respondent, because Iran is responsible for the acts which resulted in his departure from Iran, and because the Respondent did not protect his interests in Iran. The Respondent, he asserts, is liable for the takeover and sale of SKBM's building because it benefitted from and accepted the acts of the Revolutionary Committee. In particular, the Respondent's liability arises from the Respondent's acquiescence in the acts of the Revolutionary Committee and the Labor Court. Iran's failure to pay SKBM for services rendered to ISIRAN under SKBM's contract with ISIRAN, together with its acquisition of control over the company, the takeover and sale of the office building, and the confiscation of the remaining proceeds thereof, amounted in the aggregate to expropriation of SKBM and the Claimant's

interest therein. The Claimant implies that the Respondent had a duty to act and prevent acts of interference with these properties or to protect the Claimant's interests in SKBM. When Iran did not act, such acts of interference became acts of State, which entailed the Respondent's liability for these acts.

35. The Claimant also states that Iran's actions were aimed at the assets of SKBM and deprived the directors and shareholders of SKBM of their control over the company, thereby interfering with the rights of the shareholders in such a manner that they effectively amounted to an expropriation of SKBM. The Claimant further argues, in the alternative, that the acts resulting in the Government's assumption of control over SKBM and its failure to assert SKBM's claim against ISIRAN, which in turn resulted in the takeover and sale of the company's office building, constitute such an unreasonable interference in SKBM by the Respondent that it amounts to an expropriation of the company and of the Claimant's interests therein.

36. The Claimant also argues that SKBM ceased to exist as a joint stock company when the assets of Mr. Amir Hossein Amir Faiz were expropriated in April 1979, because after the Respondent took control of the company, it did not fulfill the corporate formalities required to maintain SKBM as a valid corporation under Iranian law. The Claimant asserts that these violations of Iranian law, together with the loss of SKBM's office premises in Tehran, led to the dissolution of SKBM and the nullification of its legal personality. The Claimant states that, while he has the right to bring a direct claim for his share of the company's assets and properties, he is also entitled, in the alternative, to assert an indirect claim for 33.75% of the unpaid accounts due to SKBM from ISIRAN. As a second alternative, the Claimant asserts that he is entitled, on the basis of unjust enrichment, to 33.75% of the funds due to SKBM from ISIRAN because the Respondent has been enriched, to the detriment of the Claimant, to the extent that the Respondent caused SKBM not to collect

contractual debts due to SKBM from ISIRAN, and also caused ISIRAN not to pay these debts.

37. For its part, the Respondent states that the office building of SKBM was not taken; rather, Iran asserts that SKBM's local employees filed suit before a labor tribunal to recover their salaries and wages, annual bonus and severance pay. The Respondent states that on 3 February 1979, based on the appropriate provisions of the Labor Act of Iran, the Workshop Council issued a decision in favor of these employees, which decision was served on SKBM on 3 March 1979. The decision was also confirmed by the Board for Settlement of Disputes established pursuant to the requirements of Articles 39 and 40 of the Labor Act of Iran. The decision ordered SKBM to pay Rials 13,212,348 as compensation to its 106 local employees. The Respondent further states that the employees of SKBM subsequently requested the Public Court of Tehran to enforce the decision by selling SKBM's office building, allegedly because SKBM did not voluntarily pay its debt to them. As a result of these proceedings the office building was sold for Rials 14,260,000, out of which amount debts to the local employees were satisfied. The Respondent states that the remainder of the proceeds from the sale of the building is being kept in a deposit account.

38. The Respondent further states that it has not interfered in the affairs of SKBM or altered the legal status of the company. SKBM still exists and no changes in the company's management have been announced to the Corporate and Industrial Ownership Registration Department since 16 June 1977, when Amir Hossein Amir Faiz, Hassan Asgari Pour and the Claimant were elected to the Board of Directors. The Respondent concludes that SKBM became defunct after the departure of the Claimant and the dismissal of foreign and local experts in January 1979. The Respondent argues that if SKBM was expropriated or placed under governmental control, its shares and property should be in the possession of the Foundation for the Oppressed (Bonyad-Mostazafan). However, there are no records in the office of the

Directorate of the Affairs of Shares and Companies of the Foundation for the Oppressed showing that any or all of SKBM's shares have been registered on behalf of or in the name of the Foundation, or that the company is being operated by the Foundation. Therefore, the Respondent concludes that SKBM has not been expropriated or taken under its control.

39. The Respondent also states that even if the property of Amir Hossein Amir Faiz was expropriated, SKBM did not engage in any further activities which the Respondent could have taken under its control. If one or more government-appointed managers had been designated to the company, they would have taken proper measures to pay the debts to the employees of SKBM from the company's assets and property, which was not done. Moreover, according to the Respondent, at the time of the expropriation of the property of SKBM's majority shareholder, the company did not have any other assets or property left, except its office building. The enforcement of the decision of the Labor Court did not involve any action by the Government.

40. The Respondent emphasizes that the Claimant has not submitted any evidence of an attempt on his part to travel to Iran or of acts whereby the Respondent has prevented him from returning there. In any case, the Respondent adds, the Claimant could have returned to Iran by using his Iranian passport. The Respondent also alleges that it would have been possible for the Claimant to send a legal notice and file a Statement of Claim against ISIRAN with the courts of Iran, which would not have required him to provide a power of attorney to any representative. However, the Respondent underscores that the Claimant has failed to show that an attempt to give the power of attorney to a certain person would have been frustrated or denied by the Iran Interest Section in the Embassy of Algeria in Washington or that his representative would have been barred from entering Iran or engaging in activities there.

41. The Respondent states that because SKBM still exists as an independent entity according to the registers of the Corporate and Industrial Ownership Registration Department, no dissolution or liquidation has taken place. Moreover, even if SKBM had been dissolved and been construed to be in liquidation, it could not have lost its juridical identity, because according to Article 208 of the Commercial Code of Iran, as amended in 1969, a company fully retains its legal personality until the liquidation process is completed. However, the Respondent emphasizes that the registration file of SKBM does not contain any information indicating that it has been placed in liquidation. Furthermore, the Respondent states that according to Article 199 of the Commercial Code of Iran, which regulates the situations in which a corporation may be dissolved, the decision on dissolution must be adopted either by an extraordinary general meeting of the shareholders (cf. Article 83) or by a final judgment of the Court (cf. Article 201). The Respondent further emphasizes that any dissolution and liquidation of SKBM had to be carried out in one of these two ways. Because neither has been done, the Respondent concludes that the Claimant is not entitled to claim for his share of the funds allegedly due to SKBM.

2.1.2        The Claim for the Funds Advanced to SKBM on  
                  Behalf of ISIRAN

42. The Claimant states that due to financial difficulties which prevented ISIRAN from paying its subcontractors, allegedly caused by late payments to ISIRAN from the Iranian Ground Forces, he and Mr. Hassan Asgari Pour had to advance their private funds to SKBM to keep it in operation and able to fulfill its contractual obligations to the Iranian Ground Forces.

43. The Claimant states that he and his partner, Mr. Asgari Pour, opened a joint account in order to record these transfers of private funds advanced to SKBM. The Claimant has submitted a document which he states is a copy of bank records of this

account. Some of the pages of that document, compiled in Persian, include the following information at the top of the page:

"Bank Shahriyar. A Public Joint Stock Corporation with capital of 5,000,000,000 Rials. Account no. 120/01/00275. Name(s) of the account holder(s): Messers. [Mohsen] Asgari [Nazari] & [Hassan] Asgari-Pour. Address: Abbasabad, the Intersection of QASR, Building No. 35, 1st floor".

The Claimant states that he advanced private funds "in the amount of one-half of each of the credits shown" in that document, and asserts that by January 1979 his share of the funds advanced amounted to approximately \$1,150,000.00. The Claimant asserts that he continued to transfer funds to SKBM through this account until March 1979, because the final report required to be prepared by SKBM was delivered to ISIRAN in May 1979.

44. Three of the affidavits submitted by the Claimant make reference to the required funding of SKBM during the period when the payments through ISIRAN were not received. The affidavits of Mr. Glen Nutgrass, Mr. Donald Buckner and Col. Thomas G. Irwin include similar statements asserting that the funds required for the salary payments and the operating expenses of SKBM were provided regularly by the Claimant and Mr. Asgari Pour. The affidavit of Mr. Nutgrass also includes a statement that by January 1979, the Claimant and Mr. Asgari Pour had each advanced SKBM approximately \$1,150,000. Two of these affiants, Col. Irwin and Mr. Buckner, also attended the Hearing as the Claimant's witnesses. When they were questioned on this issue, however, they were unable to confirm the specific source of the funds provided to SKBM. Furthermore, they could not confirm whether the funds were acquired as loans from local banks or were provided from the private funds of the Claimant and Mr. Asgari Pour; nor could they affirm that the alleged funds were not repaid later. Moreover, since neither of the witnesses recognized the bank records submitted in evidence, they were unable to provide further information on this document.

45. The Claimant argues that when the Respondent expropriated the shares of the majority shareholder of SKBM and acquired control of SKBM, the company's liabilities and debts, including the alleged debt to the Claimant, were also transferred to the Respondent. As further support for this argument the Claimant refers to Hidetomo Shinto (a claim of less than \$250,000) and The Islamic Republic of Iran, Award No. 399-10273-3 (31 Oct. 1988), reprinted in 19 Iran-U.S. C.T.R. 321; and he asserts that the Tribunal has already found in that Case that SKBM is a government-controlled entity, and has recognized that Iran is responsible for the debts of those companies which are under its control. Therefore, the Claimant concludes that Iran must be considered to be responsible for SKBM's debt to him.

46. The Respondent begins by disputing the Claimant's statement that the funds were transferred to SKBM. The Respondent states that Mr. Amir Faiz as the majority shareholder of the company should have approved the alleged arrangement or provided some share of the funds. Emphasizing that the only evidence provided by the Claimant was a copy of the bank records described in paragraph 43 above, the Respondent contests the evidentiary value of this document. The Respondent especially argues that the dates in the document raise suspicions because the last date in the bank records is 10 March 1979, which is eight months after the Claimant's departure from Iran; which is also more than a month after the issuance of the Labor Court award against SKBM and about one month after the alleged expropriation of SKBM by Iran. However, the Respondent emphasizes, SKBM became defunct after the Claimant's departure in 1978 or, in any case, at the latest after the dismissal of SKBM's foreign and local experts in January 1979. Furthermore, the document does not show that the transfers from this account were made for or to SKBM. The Respondent implies that this document constitutes a fraudulent attempt to recover the monies due to SKBM from ISIRAN. Therefore, the Respondent concludes, there exists no proof in the record to substantiate the Claimant's allegation that he advanced funds to SKBM.

47. In its rebuttal filings, the Respondent also submitted a document entitled the "specimen of signatures", done in connection with the opening of joint account No. 275 in Bank Shahriyar. This document lists the Claimant and Mr. Asgari Pour as the holders of this account and includes a reference to Mahat Company (SKBM), but does not include any further information on the latter.

48. As for the Claimant's alleged loan arrangement, the Respondent also argued at the Hearing that pursuant to Articles 121, 129 and 132 of the Commercial Code of Iran, as amended in 1969, any loan to SKBM would have had to be accepted by the Board of Directors of that company. Furthermore, according to Article 129 of the Commercial Code, even if the Board accepts the loan, it has to inform the meeting of the shareholders of the arrangement. The Respondent emphasizes that the Claimant should have followed these formal requirements if he lent the money to the company. However, the Respondent asserts, there is no proof in the record to show that this transaction ever took place. Moreover, the Respondent states that the Claimant has not provided any information or document to show whether or how ISIRAN accepted this arrangement.

2.1.3 The Claim for the Relocation Allowance and Salary

49. The Claimant states that he is entitled to recovery of his salary and relocation benefits amounting to \$12,000, which were due to him on the basis of his service contract with SKBM and its promise to pay these monies to him. He asserts that SKBM has not paid him these entitlements, even though they were due to him when he returned to the United States in July 1978. The Claimant argues that when Iran expropriated SKBM, it also became liable for the debts of the company; therefore, the Respondent should be liable for this debt of SKBM to the Claimant. The Claimant asserts that this Claim arose on or about April 1979, when the

Respondent allegedly took over the assets and liabilities of SKBM upon expropriating the property of SKBM's majority shareholder. In support of this Claim, the Claimant has only submitted an affidavit of his own asserting the entitlement and referred to Hidetomo Shinto and The Islamic Republic of Iran, supra, stating that in that case Iran was found to be responsible to a former employee of SKBM for unpaid salary and relocation payments. At the Hearing, the Claimant's witnesses were also questioned on this matter, but they were not able to confirm the Claimant's statement or to give any further information or evidence on the issue.

50. The Respondent contests this Claim, stating that the Claimant has not demonstrated the existence of any contract or other evidence of a commitment to pay him the claimed salary and relocation allowance. The Respondent also disputes the relevance of the Claimant's reference to Hidetomo Shinto and The Islamic Republic of Iran, supra, since in that case there existed an employment contract between the employer and the employee. The Respondent emphasizes that in the present Case, by contrast, the Claimant has been a shareholder and director of the company, but has not shown that he had an employment contract with SKBM. Therefore, the Respondent asserts, the Claimant cannot claim for the benefits due to the employees of the company. The Respondent concludes that the Claimant has not submitted any evidence in support of this Claim, and requests that the Claim be dismissed.

2.1.4 The Claim for Expropriation of an Equity Interest in SKBM

51. The Claimant first claims, as a part of his equity interest in SKBM, his share of the receivables due to SKBM. The information provided by the Claimant on the debt and on the resulting deterioration of SKBM's financial situation during 1978 and early 1979 largely appears in his written declarations concerning the contractual and financial relations between ISIRAN, the Iranian

Ground Forces and SKBM. Several of his affiants have also made reference to these issues. On these grounds the Claimant states that he is entitled to claim his portion of this debt of ISIRAN to SKBM, either directly or indirectly, or, in the alternative, on the basis of unjust enrichment.

52. The Respondent disputes the Claimant's Claim concerning the SKBM receivables by stating that this question, dealt with in the Claimant's direct claim but raised in essence on behalf of SKBM, is based on the contractual relations between the aforementioned entities and, therefore, cannot be addressed in this Case because the Claimant has not included the relevant corporations among the respondents and the record does not contain the contract between these entities. The Respondent also contests the Claimant's right to raise an alternative indirect claim based on the same issue, because the Claimant's interest in SKBM was not sufficient to control the company at the time the Claim arose and therefore the Claim does not meet the requirements of the Claims Settlement Declaration for admissibility of indirect claims of shareholders.

53. The Claimant further claims his equity interest in SKBM on the basis of the effects of the expropriation of the majority interest in SKBM or, in the alternative, on the basis of unreasonable interference in SKBM, amounting to expropriation, through acts attributable to the Respondent.

54. The Claimant argues that the Respondent acquired control of SKBM upon expropriating the property of Mr. Amir Hossein Amir Faiz. Since the Iranian Ground Forces were part of the Respondent's official structure and the Respondent owned and controlled ISIRAN and because it had acquired through expropriation a majority interest in SKBM and therefore also control of SKBM, it was not in the Respondent's interest to effect the payment of the amounts due to SKBM from ISIRAN. The Claimant further argues that the Respondent made it impossible for him to exercise any influence over SKBM. These acts or omissions allegedly resulted directly in a situation where the

main office of SKBM was sold by a revolutionary committee to pay the local employees of SKBM. The Claimant asserts that the balance of the proceeds was given to the Foundation for the Oppressed and that as the result SKBM ceased to exist as an entity independent of the Respondent.

55. To establish the expropriation of the property of the majority shareholder, Mr. Amir Faiz, the Claimant has submitted a copy of a decree of the Islamic Revolutionary Court, dated 12 April 1979, issued by the Office of the General Public Prosecutor of the Islamic Republic of Iran which lists the names of those individuals whose properties were expropriated "for the benefit of the oppressed". The name of Mr. Amir Hossein Amir Faiz is listed in that document as number 181. Furthermore, on 12 April 1979, the Presiding Judge of the Religious Court added in the margin of the document a handwritten confirmation that movable and immovable properties of the persons mentioned and of their close relatives had been confiscated. As further support for his claim of expropriation, the Claimant also refers to the Case of Hidetomo Shinto and The Islamic Republic of Iran, supra. In that Case, he states, the Tribunal found, while deciding the question of jurisdiction, that SKBM became a government-controlled entity when the shares of Mr. Amir Hossein Amir Faiz were expropriated.

56. Some of the affidavits submitted by the Claimant include references to the sale of SKBM's building and the fate of the proceeds therefrom. Mr. Glen Nutgrass, a witness for the Claimant, states in his affidavit that he heard from his Iranian colleagues at SKBM that the local revolutionary committee had sold SKBM's office building, paid the salaries of the Iranian employees and confiscated the balance. The Claimant's other witness, Mr. Donald Buckner, gives a similar statement in his affidavit and states further, without giving any date, that when he visited SKBM's office he noticed that the office building had been taken over by the revolutionary forces and that former members of SKBM's local personnel had joined them.

57. The Claimant's witness, Mr. Donald Buckner, stated at the Hearing that SKBM also had, besides its office building in Tehran, a project office in ISIRAN's corporate building in Shabnam [Avenue], Shahabbas [Street], Tehran. The premises at ISIRAN's corporate building were forcibly entered and ransacked in January 1979 by members of the local revolutionary committee. The witness states that the committee took over the entire premises of ISIRAN's corporate building in February 1979. On 21 April 1979, the furniture and files of SKBM were removed from ISIRAN's building to SKBM's office building. Furthermore, SKBM's office building was also intruded into in March or April 1979 by a number of SKBM's Iranian personnel who had joined the revolutionary forces and were accompanied by members of those forces. Mr. Buckner also stated that in April 1979 SKBM's office building was locked and Mr. Asgari Pour refused to allow him access to the premises. Therefore, he prepared the final project report for ISIRAN without having access to all necessary documents. The witness also explained that, still in March 1979, nine of SKBM's expatriate experts had to stay in Iran because at that time there were no funds left in the company to cover their travel costs.

58. As further support for the Claimant's arguments that SKBM had been expropriated together with his equity interest therein, the Claimant refers to the case law of the Tribunal and to the principles found therein.

59. The Respondent states that the office building of SKBM was not taken by the revolutionary forces as asserted by the Claimant. Rather, it was sold as the result of a legal proceeding which commenced when the local employees of the company filed a suit before "a labor tribunal" to recover their salaries and wages, annual bonus and the severance pay. The Respondent has submitted a part of the Labor Act of Iran, Article 38, paragraph 1 of which states that if a dispute between the employee and employer is not settled by reconciliation, the matter shall be referred to the local labor department, which

shall refer it to the appropriate Workshop [Factory] Council within three days of the receipt of complaint.<sup>4</sup> The Respondent has submitted a copy of the decision of the Workshop Council, issued on 3 February 1979 in favor of these employees, together with letter No. 25133 from the Tehran Department General of Labor and Social Affairs transmitting the decision to SKBM. The Respondent states that this award was served upon SKBM on 3 March 1979.

60. Furthermore, the Respondent also states that according to Article 38, paragraph 4, of the Labor Act of Iran, the decision of the Workshop [Factory] Council may be referred to the Board for Settlement of Disputes within 10 days from the communication of the decision when it concerns, inter alia, wages or dismissal of a worker. The Respondent has submitted a decision of the Board for Settlement of Disputes which confirms the decision of the Workshop Council, which accordingly became final and binding. The decision of the Workshop Council ordered SKBM to pay Rials 13,212,348 as compensation to 106 locally recruited employees of SKBM.

61. The Respondent has also submitted a copy of a letter from the [Department of] Tehran Judicial Police for the Enforcement of Civil Judgments, dated 20 November 1988 and addressed to the Director of the Investigation and Restitution Bureau of the Foundation for the Oppressed, which states that according to the employees, 30% of the sums due to each employee pursuant to the decision of the Workshop Council had been received by them from the debtor company.<sup>5</sup>

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<sup>4</sup> According to Article 38, paragraph 2, the Council shall consist of the representative of the Ministry of Labor, the representative of the employer and the representative of the workers of the factory involved.

<sup>5</sup> Also, all of the employees' payment requests submitted to the Enforcement Office of the Public Court of Tehran, Chamber One, state that 30% of the amounts awarded in favor of the employees should be paid to Mr. Hassan Asgari Pour.

62. The Respondent asserts that these employees requested the Public Court of Tehran to enforce the award by selling the office building of SKBM and using the funds realized to pay the amounts awarded, allegedly because the company's representatives did not voluntarily fully satisfy them. According to evidence submitted by the Respondent, those employees sought an enforcement order from Chamber One of Tehran Public Court<sup>6</sup>, which was issued in the enforcement case No. 152/58.

63. The Respondent has submitted several documents to show that during the enforcement proceedings, the office building was delimited and described in oral proceedings on 3 July 1979 and 10 November 1979. Moreover, according to the Notice of Auction of 3 October 1980, SKBM's office building was sold for Rials 14,260,000, from which amount the local employees were satisfied. The Respondent has also submitted a letter from the [Department of] Tehran Judicial Police for the Enforcement of Civil Judgments, dated 20 November 1988 and addressed to the Head of the Investigation and Restitution Bureau of the Foundation for the Oppressed, which states that a sum of Rials 9,579,340 has been paid to 97 former employees of SKBM and that the remainder is being kept in a deposit fund. However, the letter also mentions that the Ministry of Finance and Economic Affairs has requested that the aforementioned balance be attached. The Respondent has also submitted a letter issued by the Head of the [Former Department of] Tehran Judicial Police for the Enforcement of Civil Judgments, issued on 19 October 1992, stating that certain amounts due the plaintiffs (the employees) have been paid and that the balance remaining, Rials 4,280,660, is being kept in deposit "to be returned to the parties winning against the company".

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<sup>6</sup> According to the record, the enforcement process has been supervised by Chamber One of Tehran Public Court. However, in one occasion, Chamber Two of the same Court has overseen the process.

64. The Respondent asserts that it has not interfered in the affairs of SKBM or altered its legal status. To support this assertion, the Respondent has submitted a letter of 29 December 1991 from the Corporate and Industrial Ownership Registration Department which states that SKBM still exists and that there has not been any change in the management of the company since 16 June 1977, when Amir Hossein Amir Faiz, Hassan Asgari Pour and the Claimant were elected to the Board of Directors for a two-year term. The Respondent asserts that if SKBM had been expropriated or placed under governmental control, its shares and property would have been in the possession of the Foundation for the Oppressed. However, the letter of 26 January 1992 from the Directorate of the Affairs of Shares and Companies of the Foundation for the Oppressed, submitted by the Respondent, states that there are no records in that office showing that the company's shares, or a portion of its shares, are registered in the Foundation's name or indicating that the company is being operated by the Foundation. Therefore, the Respondent concludes that SKBM has not been expropriated or taken under its control.

65. Furthermore, on several grounds, the Respondent contests the Claimant's reference to the Tribunal's finding in Hidetomo Shinto and The Islamic Republic of Iran, supra, that "SKBM was a controlled entity of Iran within the provisions of Article VII, paragraph 3 of the Claims Settlement Declaration". In support of its arguments the Respondent refers to the letter from the Foundation for the Oppressed which denies, on the basis of its records, that any control has been exercised over SKBM. The Respondent also asserts that the present Case fundamentally differs from the above-referenced case. Furthermore, the Respondent maintains that the finding of control by the Government over an entity does not mean as such that the Government is to be held to be responsible vis-à-vis third parties as shareholders, or that the entity should be deemed to have been taken.

66. The Respondent states that the Claimant's shares have not been expropriated, and that the expropriation of the property of Amir Hossein Amir Faiz has had no effect on the status of the shares of other shareholders. Furthermore, the Respondent states that the expropriation has not had any effect on the shares previously owned by Amir Faiz. The Respondent argues that although Amir Hossein Amir Faiz was convicted by the Islamic Revolutionary Court in Tehran, and a verdict was issued to confiscate his property, SKBM's registration file at the Bureau for Registration of Companies in Tehran does not include any reference to expropriation of these shares. The Respondent asserts that at least the names of the controlling entity and the managers appointed by the Government should have been included in the file, if an expropriation had occurred. The Respondent argues that because the company did not have any assets or property other than its office building at the time of the sale of the building, there was nothing left to be expropriated in SKBM. Moreover, the Respondent emphasizes that Iran has neither interfered in the affairs of SKBM nor expropriated the Claimant's alleged shares in the company.

67. The Respondent further states that the Claimant has not produced any evidence showing that the minority shareholders of SKBM were deprived of the possibilities to exercise their rights in SKBM or that they were in any way prevented from taking lawful measures with regard to the company's affairs.

## 2.2 The Claim for the Nationalization of an Interest in the Passargad Savings and Home Loan Company

68. The Claimant states that he owned 4,660 shares in the "Sherkat Pasandaz Va Vam Maskan Passargad" ("Passargad" or the "Company"), an Iranian savings and home loan corporation, and that these shares were expropriated when the Company was nationalized and merged with Bank Maskan.

69. The Claimant states that he was initially informed by his business partner, Mr. Amir Faiz, of a profitable investment possibility in a newly chartered savings and home loan company, Passargad, whose purpose was to provide loans to persons intending to purchase apartments. The Claimant also stated that when he discussed the matter with Mr. Asgari Pour, the latter asked if he could also invest in the Company, to which the Claimant agreed.

70. At the Hearing, the Claimant explained that in agreeing with Mr. Amir Faiz to invest in the shares of Passargad, he and Mr. Asgari Pour originally committed themselves to purchase 50 million Rials worth of shares. However, Mr. Amir Faiz later informed them that it was only possible to purchase approximately 46 million Rials worth of shares. The Claimant states that to finance this purchase he exchanged a check worth about \$100,000 and thereafter obtained two cashier's checks. The Claimant asserts in his written pleadings that the cashier's checks were used because Bank Rahni Iran required that form of payment for the shares. Therefore, he paid the alleged Rials 46,600,000 to Bank Iranian, Central Branch, and to Bank Omran, Karim-Khan Zand Branch, in order to induce these banks to issue two checks, totally in the amount of Rials 46,600,000, payable to Bank Rahni Iran. At the Hearing, the Claimant explained that after having obtained these checks he delivered them to Mr. Amir Faiz, who in turn was to deliver them to Bank Rahni Iran in order to be deposited in the account established for these payments. The Claimant states that he thereby purchased 2,330 shares of the Company's stock, worth Rials 23,300,000, on or about 8 April 1978 for himself, and that at the same time he also financed another purchase of 2,330 shares of the same Company in the name of his business partner, Hassan Asgari Pour, also worth Rials 23,300,000.

71. To prove his own purchase the Claimant has presented as evidence a copy of a document alleged to be a copy of a "Shares Purchase Receipt" (No. 1-101, 18.2.2537) which has been signed

by Bank Rahni Iran. The Claimant argues that this document constitutes an acknowledgement of the receipt of the purchase price of the shares, in the form of two cashier's checks. The document acknowledges the receipt of part of one cashier's check, No. 336070, and another check, No. 201664, both dated 18.2.2537, for Rials 23,300,000. The document further states that the

"[a]bove check(s), after clearance will be the purchase price of... ..(2,330), Ten Thousand (10,000) Rials ALEF Series Shares of PAS[S]ARGAD SAVING AND HOME LOAN CORPORATION...."

The document also states that "[a]ny fund as of the date of receipt is the property of Pas[s]argad Saving and Home Loan Corporation,.. ..and is only reimburs[a]ble according to the provision of the rules and regulations of Saving and Home Loan Corporations set forth by Money and Credit" Council. To prove the purchase of an additional 2,330 shares on behalf of Mr. Asgari Pour, the Claimant has provided another document, similarly entitled "Shares Purchase Receipt" (No. 1-100, dated 18.2.2537) signed by Bank Rahni Iran, which also acknowledges the receipt of part of cashier's check No. 336070, dated 18.2.2537, for Rials 23,300,000.

72. The Claimant asserts that these documents show that Bank Rahni Iran was entitled to receive, and did receive, the amount of the checks from these banks upon presentation of the documents, and that the cashier's checks were issued after he had paid the aforementioned amount to the banks. The Claimant also argues that the receipts show that the alleged purchases were made. The Claimant asserts that he did not demand a return of the checks nor did Bank Rahni Iran notify him that it did not intend to cash the checks. The Claimant further asserts that he had no means to recover these checks unless they were returned to him by Bank Rahni Iran, which never occurred.

73. The Claimant also emphasizes the fact that he and Mr. Asgari Pour had signed Passargad's Articles of Association, and states that under Iranian law only persons who have subscribed to and

paid for shares of a joint stock company may approve and sign its Articles of Association. In support of this argument, the Claimant refers to Articles 16 and 17 of the Commercial Code of Iran, as amended in 1969, and asserts that these articles are to be considered as indirect evidence that payment for the shares was made.

74. The Claimant further states that later, on or about 6 July 1978, Mr. Asgari Pour, owing to his failure to reimburse the Claimant for the amount due to him for his purchase of the shares, transferred his ownership rights to the 2,330 shares purchased in his name to the Claimant by endorsing the purchase voucher in the Claimant's name. On giving the document to the Claimant, Mr. Asgari Pour explained that because he could not be sure that he would be able to pay his debt to the Claimant for the purchase of the shares, he had decided to transfer them to the Claimant in lieu of repayment.

75. At the Hearing, the Claimant asserted that he was not aware of the possible restrictions on foreign ownership of these shares. He also stated that he did not intend to enjoy the benefits of receiving home loans available to shareholders of Passargad but had bought shares only because he thought the investment would be profitable.

76. On the expropriation issue, the Claimant states that by nationalizing Passargad Iran also divested him of his rights as a shareholder in the Company. He states and produces evidence showing that Iran issued the Law for Nationalization of Banks, which was published on 8 July 1979 in issue No. 10012 of the Official Gazette. In accordance with Article 2 of that law, new directors were appointed to manage the nationalized banks. The scope of that law was later retroactively enlarged to apply as well to all savings and home loan companies, when the Revolutionary Council of the Islamic Republic of Iran adopted the Legal Bill for Nationalization of Insurance and Credit Entities, addressed to the Ministry of Finance and Economic Affairs and

published on 22 May 1980 in issue No. 10264 of the Official Gazette. Article 8 of that Bill states that

"[e]ffective from the date of enactment of the Law of Nationalization of Banks, all savings and home loan companies are covered by the said law".

The Claimant states that through this Bill the coverage of the law was expanded to include Passargad as well, and that the Company was therefore nationalized through operation of law on or about 11 June 1979.

77. The Claimant presumes in his written pleadings that after 11 June 1979, when the Government of Iran appointed directors to manage the nationalized credit enterprises, it also took such measures with respect to Passargad. Furthermore, the Claimant has produced evidence showing that by virtue of the Law for Management of Banks, issued on 25 September 1979, and also pursuant to order No. 5/3058, by the High Council of Banks, dated 27 January 1980, Passargad was consolidated with a number of other entities to form Bank Maskan.

78. The Claimant concludes that the Company has been expropriated. The Claimant asserts that by enacting and implementing the Law for Nationalization of Banks, Iran also directly expropriated his interest in the Company. He emphasizes that no compensation has been given to him, and adds that as a result of the expropriation he has been unable to exercise any of his rights as a shareholder in Passargad, and has not received any of the dividends or communications which are required by Iranian law to be paid or sent to the shareholders.

79. In his written pleadings, the Claimant has also asserted that even if Passargad had not been established as a legal entity at the time the nationalization law went into effect, Bank Rahni Iran would still have been liable for restitution of the amount paid for the purchase of the shares of stock of the company, together with interest from 8 April 1978 to the date of the payment of the Award.

80. The Respondent disputes the Claimant's arguments on the purchase of the shares, stating that these documents do not clearly establish the alleged purchases of these shares nor that any payment had been made for them. The Respondent emphasizes that the sole document in evidence in support of the Claimant's alleged ownership of his 2,330 shares is an "A" class share purchase form which refers to checks nos. 336070 and 201664, but does not prove the actual "receipt of the amount of those checks". The Respondent also emphasizes that this form and the checks refer to the fact that once those monies are collected they will be allocated to the purchase of 2,330 Class "A" shares, and that the deposited amounts will belong to Passargad only as of the date of collection. The Respondent asserts that those documents should therefore be deemed to constitute an offer whose finality is conditional on collection of the amount of the checks, and therefore these documents per se do not establish that Bank Rahni Iran ever received or collected the money represented by the cashier's checks. Furthermore, the Respondent asserts that Bank Maskan, the successor to Bank Rahni Iran, "did not come across" any record evidencing that it had collected the cashier's checks allegedly received from the Claimant.<sup>7</sup> On this basis the Respondent concludes that the Claimant has not met his burden of proving that the alleged checks were transferred to Bank Rahni Iran or that their amounts were paid thereto.

81. On the same grounds, the Respondent also contests the Claimant's assertion that he financed the purchase of the shares of Mr. Asgari Pour. The Respondent maintains that the evidence submitted does not support the Claimant's allegation that he also paid for Mr. Asgari Pour's shares. During the oral and written pleadings, the Respondent contested the Claimant's statement that he financed both purchases of shares, and suggested instead that

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<sup>7</sup> The Respondent also argues in its Rebuttal Memorial that even assuming, arguendo, that the Claimant might have issued the checks, he has submitted no evidence to show that the checks cleared, and the Respondent concludes therefore that the Claimant's alleged ownership right to the shares has not been established.

the documents submitted to the Tribunal as proof of the purchases are more probably to be interpreted as establishing that Mr. Asgari Pour himself financed these transactions. The Respondent also refers in this connection to the arguments made against the Claimant's alleged purchase of his own shares, and denies that any actual payment for the purchase of Mr. Asgari Pour's shares has been made by the Claimant. The Respondent concludes that on that basis, this part of the Claimant's Claim should be rejected.

82. Furthermore, the Respondent states in its written pleadings that no actual purchases of shares took place because neither Bank Rahni Iran nor its successor, Bank Maskan, has found any record evidencing that this collection took place at some later date. At the Hearing, the representatives of the Respondent stated that the mere delivery of a check was not enough to make someone a shareholder of Passargad; rather, to become a shareholder of the Company required at least both the collection and clearance of the checks and the approval of Bank Rahni Iran. However, there is no evidence in the record that these requirements were ever met.<sup>8</sup>

83. The Respondent contests the Claimant's allegation that the signatures on Passargad's Articles of Association should, pursuant to Articles 16 and 17 of the 1969 Amendment to the Commercial Code of Iran, be considered as evidence of payment for Passargad shares. The Respondent asserts that these legal provisions are related to subscription of the total capital of the company and to the payment of at least 35% thereof, and are not to be construed as evidence of payment of the amount of these

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<sup>8</sup> The Respondent also states that because the monies for the shares were to be deposited into a certain account established for this purpose in Bank Rahni Iran, a working group of Bank Maskan officers was formed to clarify the issue, but in the course of their investigation they did not find any information that the monies for these purchases had been paid through or to the account designated for the collection of these payments. Therefore the Respondent maintains that it is unclear whether the shares were ever issued to the Claimant, and concludes that the Claimant has not become a shareholder of the Company.

shares or of share ownership. The Respondent further argues that the documents produced by the Claimant do not specify the total amount of the shares or the amount required to meet the obligation to pay 35% of their value in cash.

84. The Respondent also disputes the alleged transfer of the shares and states that no factual or legal transfer has been effected and that this part of the Claimant's Claim should therefore be dismissed on jurisdictional grounds. The Respondent further states and presents evidence that while these shares are transferable, their transfer is subject to certain legal requirements which have not been fulfilled.

85. The Respondent also states that the ownership of the shares of, and membership in, Passargad were specially limited to nationals of Iran. In support of these arguments, the Respondent has submitted in its rebuttal filings the Regulations of Savings and Home Loan Companies and the Articles of Association of Passargad. The Respondent cites several Articles of these Regulations and Articles of Association which contain the requirement of Iranian nationality, and concludes that according to the referred rules only Iranian nationals were entitled to purchase an equity interest in the Company and to be a member thereof. The Respondent asserts that since the acquisition of entitlements in Passargad was conditional on the possession of Iranian nationality and the Claimant must have used his Iranian nationality to obtain those benefits in the Company, he therefore should not be permitted to rely upon his other nationality in order to present a claim for recovery of those entitlements. Therefore, the Respondent concludes that the Claimant's Claim should be dismissed on the basis of the Caveat as well.

86. The Respondent also denies that Bank Rahni Iran was nationalized. Rather, the Respondent asserts, Bank Rahni Iran continued to operate independently as it had done prior to the issued legislation relevant to this Case. After the Law for Nationalization of Banks was promulgated Bank Rahni Iran

continued to operate independently, and savings and home loan companies were merged into it. As the company was to be organized on the initiative of Bank Rahni Iran, it was the said Bank that was to receive the monies from the purchasers and to deliver the shares. The Respondent states that neither the Law for Nationalization of Banks nor the merger of Savings and Home Loan Companies, which included Passargad, into Bank Rahni Iran, had any effect on the shares of the Company. Therefore, the Respondent concludes that the status of the Claimant's shares, if he had any, was not altered.

87. The Respondent states that Article 31 of the Regulations Concerning Savings and Home Loan Companies laid down an order of preference between the different groups of creditors and holders of saving and time deposits, and shareholders, to be applied at the time of liquidation of the Company. The Claimant's alleged shares belong to the fourth and final group, whose holders are paid up to the nominal value of the shares. Pursuant to Article 32, if there is any money left after the obligatory payments are made in accordance with Article 31, the remaining amount shall be divided among the shareholders, taking into consideration the type of their shares and the amount of their savings, in the proportion they share the surplus profit of the company as mentioned in Articles 23 of the Regulations. The Respondent emphasizes that the Claimant has never addressed a request to Passargad for reimbursement for the value of his alleged shares in the Company. Furthermore, Articles 74 and 75 of Passargad's Articles of Association contain provisions similar to the above mentioned Regulations, and the Respondent maintains that according to these rules, too, the Claimant was required to make a request to Passargad or to Bank Rahni Iran, as a legal successor of the Company, for the payment of his shares. In addition, the Respondent states that because the Claimant was aware of the recommendation that the former equity owners of nationalized entities contact the various newly-established banks to inquire about their nationalized interests, the Claimant should have contacted the relevant entity. The Respondent

emphasizes that because the Claimant has not produced any documents to show that he did so, his Claim should not be regarded as an outstanding one. In this connection, the Respondent alleges that those shareholders who have called for their shares have been paid in accordance with the Company's existing regulations and asserts that there will be no reason to refuse payment if the Claimant contacts the entity into which Passargad was merged.

88. For his part, in response to the questions set forth at the Hearing, the Claimant explained for the first time that Passargad was merely in formation at the time of its alleged nationalization and that it did not come fully into existence as a going concern. The Claimant further explained that after having given his cashier's checks to Mr. Amir Faiz he and Mr. Asgari Pour attended a meeting organized at the premises of the Chamber of Commerce of Iran. The Claimant stated that there were approximately 25 persons present, seven of whom, including the Claimant and Mr. Asgari Pour, signed a certain document. The Claimant stated that he did not go through the document and therefore he did not have a clear impression that by signing that document he may also have become a founder of the Company. He explained that he did not go through those documents, including the rules of Passargad because he and Mr. Asgari Pour always trusted what Mr. Amir Faiz, who was an eminent businessman at that time in Iran and also a lawyer, told them. The Claimant did not know if the other persons signing the document also had made their purchases by delivering checks to Mr. Amir Faiz.

89. The Claimant also stated at the Hearing that Mr. Amir Faiz mentioned to him that while the Company was still in the process of formation, the shareholders' monies would be deposited in Bank Rahni Iran at 10% interest until the Company was finally established. The Claimant further stated that the checks were made out in the name of Bank Rahni Iran and that it is therefore unlikely that they were not delivered to it. However, he further stated that he never received a certificate for these shares, and

that to the best of his knowledge no shares were ever issued to anyone. He confirmed that he neither received the shares nor sought to receive them after they were not submitted to him. The Claimant further stated that Passargad was not an existing operative entity before the Revolution and was only in the process of formation. The Claimant stated that he presumes that the Company was never finally established and that the shares were thus probably not issued to the investors.

90. At the Hearing, the representatives of the Respondent stated, as to the establishment of Passargad, that there probably was an intention to establish a company but this intention never materialized. He further explained that the meeting of the founders was only one phase of the establishment of the Company. It remained unclear whether the process of formation was completed or Passargad ever became functional, and in any event the Claimant did not provide any proof that Passargad was finally established. Furthermore, the representatives of the Respondent stated that an investigation carried out in the offices of Bank Maskan disclosed no trace of the existence or of any activity of such a Company. Therefore, the Respondent concludes that Passargad never came into existence.

### III. JURISDICTION

91. The Tribunal has found in Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 79-221-1, supra, paras. 18-20, at 14 that during the relevant period Mohsen Asgari Nazari's dominant and effective nationality was that of the United States and that he has standing before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration. In that Interlocutory Award the Tribunal also joined all the remaining issues to the merits of this Case.

92. Both Parties have also submitted arguments on certain jurisdictional issues.

93. The Claimant argues that he is entitled to file an alternative indirect claim for his alleged portion of the funds owed by ISIRAN to SKBM. In support of his alleged right to file this alternative indirect Claim, the Claimant refers to several Awards in the Tribunal's case law.

94. The Respondent states that according to Article VII, paragraph 2 of the Claims Settlement Declaration and the case law of the Tribunal the Claimant is not in a position to be able to bring an indirect Claim before the Tribunal, because his equity interest in the stock of SKBM was not sufficient at the time the Claim allegedly arose to control the Corporation. The Respondent also states that the same rule should apply to the Claimant's Claim for the private funds allegedly advanced to SKBM.

95. According to Article II, paragraph 1 of the Claims Settlement Declaration, the Tribunal is established, inter alia, "...for the purpose of deciding claims of nationals of the United States against Iran...". Furthermore, Article VII, paragraph 2 of the Claims Settlement Declaration states that for the purposes of that agreement:

"'Claims of nationals' of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement. . . ."

Therefore, an indirect claim can be brought before the Tribunal in this Case only if the ownership interests in the company held by shareholders possessing United States nationality were

sufficient collectively<sup>9</sup> to control the company at the time the Claim arose; and further provided that the entity in question is not itself entitled to bring the claim. SKBM is an Iranian joint stock company and, thus, not itself entitled to bring a claim under the terms of the Claims Settlement Declaration. However, the record does not establish that there were any other shareholders in the company who were U.S. nationals at the time the Claim arose. The Tribunal notes that the Claimant asserts that he held 33.75% of the stock of SKBM, but that this amount was not sufficient to control the company and thus, the requirements of Article VII, paragraph 2 of the Claims Settlement Declaration have not been satisfied. The Tribunal concludes, therefore, that the Claimant's alternative indirect claim for his share of the funds owed by ISIRAN to SKBM must be dismissed for lack of jurisdiction.

96. The Respondent has also raised several jurisdictional arguments against the Claimant's direct Claim for his share of the private funds allegedly advanced to SKBM. The Tribunal notes that many of these jurisdictional arguments also involve issues which cannot be separated from the merits. Therefore, the Tribunal decides to address these arguments together with the merits of the Claim, rather than considering them at this stage.

97. As to the Respondent's purely jurisdictional arguments concerning the Claimant's Claim for his equity interest in Passargad, the Respondent refers, inter alia, to Iranian municipal law on the savings and home loan companies and to Passargad's internal regulations, and states that the owners of the Company's shares have been invited to contact the related banks for their claims. On this basis, the Respondent argues

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<sup>9</sup> E.g., in Richard Harza et al., and The Islamic Republic of Iran et al., Award No. 232-97-2 (2 May 1986), para. 29, reprinted in 11 Iran-U.S. C.T.R. 76, 88, it was stated that "[w]hile Article VII, paragraph 2 requires that the ownership interests of U.S. national owners must be sufficient collectively to control the corporation at the time the claim arose, it does not require them to bring a collective claim."

that the Claimant had a duty to refer to Bank Rahni Iran or to its successor, Bank Maskan, for compensation, and since he failed to do so prior to 19 January 1981 his Claim is not outstanding. The Tribunal rejects the Respondent's argument. In the Tribunal's practice, in cases of the alleged expropriation of property rights involving equity interests in corporate stock, claimants have not been required to establish that they made a demand for compensation of their property rights before that time, in order for a claim to be "outstanding". It has been sufficient that the claim was ripe, so that a cause of action would have existed prior to that date.<sup>10</sup> The Tribunal notes that the cause of action in connection with this Claim finally accrued on 17 September 1980, when Passargad was merged with Bank Maskan and the alleged deprivation of the Claimant's alleged property interest occurred. Thus, the Tribunal decides that for jurisdictional purposes, the Claimant's Claim was outstanding on 19 January 1981.

98. The Respondent also argues that the Caveat applies to this Claim and does not allow the Claimant to pursue his Claim for the shares allegedly owned in Passargad before this Tribunal. Since the Respondent's arguments on this point cannot be separated from the merits, the Tribunal will not consider them at this stage. Therefore, these arguments will be addressed together with the merits, along with the remaining jurisdictional issues.

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<sup>10</sup> E.g., in Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 558-178-2 (30 June 1994), at para. 67, reprinted in Iran-U.S. C.T.R., and in Reza Said Malek and The Government of the Islamic Republic of Iran, Award No. 534-193-3 (11 August 1992), at para. 44, reprinted in Iran-U.S. C.T.R., the Tribunal rejected the same argument made by the Respondent in this Case, holding that claims for expropriated shares of stock in a bank, unlike claims for bank deposits, constitute outstanding claims even though no demand for payment preceded the date of the Algiers Declarations.

## IV. MERITS

4.1 The Claim for the Funds Advanced to SKBM on Behalf of ISIRAN

99. The Tribunal notes that to succeed in this Claim, the Claimant must first establish that he advanced the alleged funds to SKBM in such a manner that a debt relationship arose between the Claimant and SKBM. He must then show that the liability for this alleged debt of SKBM to the Claimant has been transferred to Iran through acts of, or attributable to, the Respondent.

100. Thus, the Tribunal turns first to an examination of the issue whether the Claimant has shown that he advanced the alleged funds to SKBM.

101. The Tribunal notes that the document offered by the Claimant to show the alleged transfer of the funds to SKBM is a copy of the bank records of account no. 120/01/00275, jointly held by the Claimant and Mr. Asgari Pour in Bank Shahriyar. In this document most of the credit entries are cash deposits and both the credit and debit transfers bear references to certain identification numbers. However, the Claimant has not provided any further information or evidence as to what these debit transfers were and for what purposes they, or at least some of them, were made. Therefore, without any further information or evidence in the record as to the nature of the entries in that document, it is not possible to conclude whether the account was used for the purpose of the alleged advance to SKBM, or for other economic activities of its holders.

102. There is no clear evidence in the record to connect this document to SKBM, for the only reference to SKBM in this document is the address of the holders of the account. The Tribunal does note that the document containing the specimen of the holders' signatures, submitted by the Respondent, includes the note, "[r]eference: Mahat Company", but there is no further evidence -

or information available in the record as to possible purpose of this reference.

103. Nor do the affidavits submitted by the Claimant give further clarification on this question. Two of the affiants, who attended the Hearing as the Claimant's witnesses, stated that SKBM's directors somehow managed to arrange further funding for the company, but they acknowledged that they did not know the actual source of these funds. Therefore, in these circumstances the Tribunal can only conclude, on the basis of the record, that some funding was presumably provided to SKBM to enable it to continue its operations, but there is insufficient information or evidence to indicate the source of these funds. Moreover, there is no further evidence on SKBM's internal arrangements regarding the funding of its functions during the period when its debtors failed to effect their payments to the company.

104. Because the Tribunal cannot conclude, based on the foregoing, that the necessary funding for SKBM was provided by the Claimant and Mr. Asgari Pour and that those funds did not consist of bank loans and were not repaid later, the Claimant's claim is dismissed for insufficient evidence. Therefore, the Tribunal need not address the issue of whether the liability for this alleged debt has been transferred to the Respondent.

#### 4.2 The Claim for the Relocation Allowance and Salary

105. To succeed in his Claim for the alleged relocation allowance and salary based on his employment contract with SKBM, the Claimant must first establish that he is contractually entitled to these benefits. The Tribunal notes that the Claimant's Claim is supported merely by his own declaration, where he states that those entitlements were both due and promised to him. There is no other information or any further evidence (e.g., the Claimant's employment contract, a copy of a letter of termination of his employment including statements as to the salary and relo-

cation benefits due to him, or a copy of a payment schedule of salaries, benefits and allowances paid to the Claimant prior to his departure from Iran) in the record to establish that he is entitled to those benefits, and if so, that those benefits have not been paid to him. Moreover, there is no evidence showing the amount of any benefits allegedly due to the Claimant.

106. The Tribunal thus concludes that because the Claimant has not provided any evidence in support of his alleged rights to the relocation benefits and salary, he has not met his burden of proof and his Claim for these benefits is therefore dismissed for lack of evidence.

107. The Tribunal also finds that because the Claimant has not succeeded in showing that he is entitled to these benefits, there is no need to decide the issue whether the non-payment of those benefits is due to actions attributable to the Respondent, or whether SKBM's alleged debt to the Claimant in respect of these benefits to the Claimant has been transferred to Iran as a result of acts of or attributable to the Respondent.

#### 4.3 The Claim for the Expropriation of an Equity Interest in SKBM

108. The Tribunal notes that in support of this Claim, the Claimant has presented arguments and evidence aimed at buttressing two different theories under which the Respondent is liable for the alleged expropriation of the Claimant's equity interest in SKBM. The Claimant has argued that his equity interest was expropriated through a series of acts, allegedly attributable to the Respondent, which together or separately amounted to a taking of SKBM and the Claimant's equity interest therein. In the alternative, the Claimant has also argued that the Respondent interfered in SKBM's administration and function in such a manner that it amounted to a takeover, and that as a result the Claimant's equity interest was rendered useless and effectively (de facto)

taken. The Claimant has also maintained, as a supplementary argument, that the Respondent is responsible for the loss of the Claimant's equity interest in SKBM on the basis of liability arising from the omission of an act, because when the Respondent acquired control of SKBM, the Respondent also assumed the duty to collect any funds owed to SKBM by ISIRAN besides the obligation to pay SKBM the same on behalf of ISIRAN. As an additional argument the Claimant has also implied that the concept of lifting the corporate veil might be applied to SKBM in such a manner that the company should be treated as liquidated, even if SKBM has not formally ceased to exist through the operation of law as asserted by the Claimant.

109. However, before addressing these questions relating to the alleged expropriation and unreasonable interference or other measures tantamount to expropriation, the Tribunal recalls that in order to meet his burden of proof the Claimant must establish two distinct elements: first, that he had ownership interests or other property rights in the properties and rights at issue and, second, that an expropriation or other measures amounting to an expropriation affecting his ownership interests or other property rights, attributable to Iran, took place.

110. As to the first element, the Tribunal notes that the evidence in the record shows that the Claimant has been a shareholder of SKBM, even if it does not clearly establish that there was no change in the shareholding interests in the company between 16 June 1977 and the date on which the Claim allegedly arose.

111. However, the threshold issue in this Claim is the second element, whether the Claimant has proven that he has been deprived of his interest in SKBM as a result of acts which, individually or collectively, would constitute de facto expropriation or other interference amounting to expropriation. Therefore, the Tribunal will now turn to the question of the alleged expropriation.

112. Here, the Tribunal must examine the acts of interference the Claimant complains of and determine whether any or all of these acts are attributable to the Government of Iran and whether any or all, by themselves or collectively, constitute a sufficient degree of interference to warrant a finding that a deprivation of property has occurred. The Tribunal will first consider the different issues separately and then decide if any of these acts alone or collectively could be considered to constitute expropriation of the Claimant's property interest in SKBM.

113. The Tribunal notes that the Claimant has presented different arguments to prove expropriation referring to several acts and elements, some of which are not presented in their chronological order. Wherever possible the Tribunal chooses to address these issues in their chronological order.

114. The Tribunal first notes that there is conflicting evidence in the record on the reasons why the Claimant left Iran in July 1978. The Tribunal also observes that this was well before business activities were affected by the revolutionary developments in Iran. However, the Tribunal need not decide whether the Claimant was forced to leave Iran as implied in some of his statements and affidavits submitted during the early stages of the written proceedings, because the Claimant himself stated at the Hearing that he left Iran in July 1978 for a holiday and intended to return to Iran, and that during the holiday he also planned to recruit new foreign computer experts for SKBM. The Claimant also stated at the Hearing that he decided not to return to Iran when he was contacted by SKBM and told that there was no reason for him to return at that time, due to the company's financial situation.

115. The Claimant has also stated that the local revolutionary committee, allegedly an agency of the Government of Iran, took over the offices of SKBM in February 1979. The Claimant's witness, Mr. Donald Buckner, who stayed in Iran to finalize SKBM's final report to ISIRAN, stated that the premises of the

office building were intruded upon in March or April of 1979 and that from January 1979 on, there was no access to ISIRAN's building, where SKBM's project office functioned. Later, however, on 21 April 1979, Mr. Asgari Pour refused to let the witness enter SKBM's office building in Tehran. On 3 July 1979, Mr. Asgari Pour did allow the persons sent to assess SKBM's office building to inspect the premises of the company, but stated to them that the company was closed. Without additional evidence, these facts appear to indicate that even if the premises of SKBM's office building were intruded upon, these premises remained under or were returned to the control of Mr. Asgari Pour. Therefore, the evidence in the record does not establish sufficiently that SKBM's office building in Tehran remained under the control of the intruders after their intrusion.

116. The Tribunal now turns to the issue of the sale of the office building of SKBM. The Tribunal notes that the local employees of SKBM successfully applied to the local Workshop Council to be paid the amounts of the salaries and severance benefits due to them. According to the decision of the Workshop Council rendered on 3 February 1979, the representative of SKBM was also heard during the proceedings. The decision was confirmed by the Board for Settlement of Disputes of the Ministry of Labor and Social Affairs, and was then served on 3 March 1979 upon SKBM. The Tribunal notes that the record shows that after the decision against SKBM was confirmed, Mr. Asgari Pour paid 30% of the amounts confirmed in the decision to most of the employees on behalf of the company. This indicates that SKBM tried to meet its obligations and to satisfy, at least partially, the locally recruited employees before the execution proceedings were begun, and that Mr. Asgari Pour had control over the affairs of the company at that time.

117. When SKBM was not able to pay the full amount owed to these employees, they commenced an execution proceeding in Chamber One of Tehran Public Court. During the enforcement proceedings the

office building of SKBM was valuated and finally sold on 10 March 1980. According to the record, confirmation of the transfer to the highest bidder was sought on 20 April 1980 and the transfer of the deed was effected on 1 June 1985. Therefore, the Tribunal notes that even if the enforcement proceedings were completed after the expropriation of the shares of the majority shareholder of SKBM on 12 April 1979, the cause of action for the local employees arose before the expropriation. Moreover, the evidence on the enforcement proceedings does not show any improper involvement in these proceedings by or on behalf of the Respondent, or that there was a denial of justice through lack of due process of law. The Tribunal concludes that the evidence in the present Case does not support the Claimant's allegation that the office building of SKBM was taken and sold by the local revolutionary committee. Therefore, the Tribunal finds that in the present circumstances, where the administrative and legal proceedings were conducted in order to satisfy SKBM's local employees, and because the Claimant has not shown that they were paid more than what was confirmed to be due to them and no other improper interference in the proceedings has been established, these acts cannot be considered acts of the State or acts giving rise to the liability of the Respondent.

118. However, the Tribunal notes that the remainder of these proceeds from the sale of the building, amounting to Rials 4,280,660, is still being kept in a deposit account more than ten years after the implementation of the Workshop Council's decision and the enforcement order of the Court, especially, because the last payment from these funds to the employees of the company was made on 10 February 1982. The Tribunal notes that various municipal legal systems include a widely accepted principle that claims against entities to satisfy possible creditors are limited to a certain period of time, which quite often is a period of ten years. However, the representatives of the Respondent asserted at the Hearing that the Iranian Statute of Limitations does not include any temporal limitations upon enforcement proceedings and the record includes a letter from the Head of the [Former

Department of] Tehran Judicial Police for the Enforcement of Civil Judgments, dated 19 October 1992, indicating that certain proceedings against SKBM are still pending. Therefore, the Tribunal is not prepared to conclude from that fact alone that these proceeds have been confiscated and that the Claimant has lost his possible share of these funds.

119. The evidence also indicates that at least for some time after having left Iran the Claimant was not excluded from participation in the affairs of SKBM. The Claimant himself has stated that he remained in contact with Mr. Asgari Pour on matters relating to SKBM, especially for consulting recruitment and for SKBM's financial affairs and it is therefore clear that he continued to take part in its affairs. Thus, prior to the expropriation of the shares of Mr. Amir Faiz, no such government involvement in SKBM or change in its administration occurred which could have affected the Claimant's property interests or other rights in the company.

120. The Tribunal now turns to the question of the possible impact of the expropriation of Mr. Amir Faiz's property. The record shows that the property of Mr. Amir Faiz, SKBM's majority shareholder, was taken on 12 April 1979. According to the record, the shares of the other shareholders have not been taken; they have remained intact.

121. In the Tribunal's case law it has been established 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 the legal title to the property is not affected. While a government's assumption of control over property does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner has been deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.

The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact. Tippets, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-226. Moreover, in Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 December 1983), 51-54, reprinted in 4 Iran-U.S. C.T.R. 122, 154, the Tribunal stated that 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 remains with the original owner.

122. Therefore, the Tribunal must address the question of the actual impact of the change in ownership of the majority share of the stock and whether the Respondent exercised the rights based on these shares in the company and, if so, how these rights were exercised. The Tribunal notes that a finding of State control over an entity for jurisdictional purposes, according to Article VII, paragraph 3 of the Claims Settlement Declaration, is different from a finding that the entity has been expropriated. To constitute expropriation, elements other than mere possibility of exercising control over the company on the basis of the change in the ownership of the majority shares must be present. According to the record in this Case, no governmental managers have been designated to SKBM. Moreover, there is no evidence that the Respondent ever used these acquired rights in SKBM or that the Respondent interfered or took part in the administration of SKBM after 12 April 1979.

123. Furthermore, the Claimant has not provided any further information showing that he or Mr. Hassan Asgari Pour was prevented from exercising their administrative functions or

shareholding rights in SKBM after 12 April 1979. The minority shareholder, Mr. Asgari Pour, also appears to have represented the company after 12 April 1979. The Claimant stated at the Hearing, for example, that he communicated by phone with Mr. Asgari Pour on the affairs of SKBM until the Fall of 1979. Therefore, the record does not establish that the two minority shareholders were deprived of their right to attend to SKBM's administration.

124. The Claimant has also stated that after the Respondent expropriated the shares of Mr. Amir Faiz, the Respondent had a duty, as majority shareholder, to protect the rights of the minority shareholders and to collect the monies owed to SKBM by ISIRAN. The Claimant states that the failure to do so should be considered an omission which gives rise to liability of the Respondent towards the Claimant.

125. The Tribunal notes that in international law of State responsibility and in the case law of international tribunals, the principle that the liability of a State can arise through an act or an omission, especially when the State has had a duty to act but has failed to do so, has long since been recognized. However, before this principle can be applied there has to be sufficient evidence to establish the presence of a duty to act. This duty to act arises from the circumstances of each case. In the present Case the existence of the alleged duty to act requires more elements than the mere change of the ownership of the majority portion of the company's shares. Moreover, possession of the shares by the government as such does not create a duty to interfere in the administration of a company. The Tribunal considers that the circumstances in this Case and the lack of sufficient evidence of the Respondent's impact on the affairs of SKBM after the shares were expropriated, do not create a sufficient basis to find that there was an omission of an act attributable to the Respondent.

126. The Claimant has also argued that his other rights as a shareholder were violated by the Respondent. Although corporate formalities required under Iranian law may not have been complied with as to SKBM since 1979, as the Claimant states, he has not proffered evidence to show that these alleged failures were caused by acts or omissions attributable to the Respondent. Rather, it appears that SKBM became essentially inactive when it terminated all the contracts of its employees in January 1979, and as a result of this situation some of the formal requirements incumbent upon private joint stock companies were not fulfilled prior to 12 April 1979. The change in the ownership of the majority shares did not, therefore, alter the situation in the company.

127. There is no evidence in the record to substantiate the Claimant's allegation that the failure to provide information required by Iranian law to be sent to the shareholders of joint stock companies was, in light of the circumstances of this Case, the result of any interference in the administration of SKBM, or other acts attributable to the Respondent; the circumstances rather indicate that this was a result of the inactive state of the company. Therefore, there are no further elements present which would constitute an active violation of the rights of the minority shareholders.

128. The Tribunal also notes that according to the register of the Corporate and Industrial Ownership Registration Department, and in view of the appropriate rules of the Iranian Commercial Code, SKBM still exists. Therefore, the possible prerequisites for lifting the corporate veil for the benefit of the minority shareholder presuppose the presence of control exercised by the Respondent or by an entity whose acts are attributable to it. This element has not been found because there is no evidence of Iran having exercised control by virtue of its expropriation of Mr. Amir Faiz's shares in SKBM. There is no evidence either of any intention of the Respondent to utilize these shares in contravention of its legal rights, or of any failure on its part

to comply with any statutory or other duty, arising from an unjust act aimed against the rights of the two minority shareholders of SKBM. Nor is there any evidence that the Respondent is culpable for proximate causation of the Claimant's loss by virtue of Iran's possession of the majority of SKBM's shares, or as a result of any breach of duty.

129. The Tribunal recalls that any financial losses suffered by the Claimant as a shareholder of SKBM belong inherently to the risks which the promoters establishing a corporation must take into account and bear. The mere fact that both the company and the Claimant as a shareholder have sustained financial losses does not as such imply that the Claimant is entitled, as an individual shareholder, to bring a direct claim for and receive compensation for such losses. The non-payment of debts to SKBM affects the financial interests of the Claimant, but this does not mean that his rights as a shareholder have been affected. Therefore, so long as the company enjoys an independent existence the shareowner is barred from presenting a claim as an individual for debts due to the company (except in the situation where he is entitled to bring an indirect claim according to Article VII, paragraph 2 of the Claims Settlement Declaration). These questions might have had an impact upon the next stage of the proceedings, concerning valuation, had the Tribunal's findings established the need to ascertain the value of the Claimant's equity interest in SKBM. However, because it has not been found that SKBM was expropriated or subjected to other measures tantamount to expropriation, and that the Claimant's interests in SKBM would have been affected thereby, there is no need for the Tribunal to address this question any further.

130. Therefore, the Tribunal considers that the record in the present Case does not establish that any interference occurred in the affairs of SKBM other than the expropriation of the shares of Mr. Amir Faiz. The loss of the ownership of these shares did not change the actual control over the company, because there is no evidence that the Respondent ever actively utilized these

shares in such a manner as to exercise or try to exercise, the rights in the company based on these shares. No measures affecting the property rights of the Claimant as a shareholder of SKBM have been found. Nor does the Tribunal determine that these alleged acts of the Respondent do, when considered together, justify a finding of "creeping expropriation".

131. The Tribunal concludes that because the Claimant has not been able to show that there was such a degree of interference in SKBM that he was deprived of his rights as a shareholder and the company was effectively expropriated, he has failed to carry his burden of proof and this Claim must be dismissed.

#### 4.4 The Claim for the Nationalization of an Interest in the Passargad Savings and Home Loan Company

132. The Claimant's Claim concerning his alleged interest in Passargad is based primarily on the merits on the alleged nationalization of Passargad and on its merging by the Respondent into Bank Maskan. The Claimant claims that through the nationalization of the Company he lost his rights as a shareholder including his equity interest in the Company, and that, therefore, his shares were de facto expropriated. In the alternative, the Claimant also states in his Hearing Memorial that if it is determined that Passargad was never established, then Bank Rahni Iran, or its successor Bank Maskan, should be found to be liable for restitution of the amount advanced to Bank Rahni Iran for the purchase of the shares of the Company at issue.

133. To successfully pursue his Claim based on nationalization of Passargad, the Claimant has first to establish that he owned an interest as a shareholder of the Company and then, to show that Passargad was expropriated in such a manner that he lost his rights as a shareholder and his equity interest therein.

134. The Tribunal will first examine whether the Claimant has shown that he owned an interest in the Company as he has alleged. The Tribunal notes that the Claimant has stated that he owned 4,660 shares in the Company, half of which were originally purchased by him and the other half of which were originally purchased for Mr. Asgari Pour through financing arranged by the Claimant, to whom Mr. Asgari Pour allegedly later transferred his ownership rights in payment of his debt to the Claimant arising from the purchase.

135. The Tribunal notes that the Claimant has not submitted a copy of a share certificate, or any provisional or other certificate, issued by Passargad or Bank Rahni Iran confirming that he owned or had rights to the stock of the Company. Therefore, the Tribunal first turns to consider the question whether the Claimant has succeeded in showing that there has been a valid purchase of these shares and that the purchaser's ownership rights to these shares have been established. The Tribunal notes that the Claimant's evidence in this regard is insufficient. The only evidence relating to the purchase of these shares consists of two substantially identical documents, both entitled "Shares Purchase Receipt", and the Parties disagree on the interpretation of these documents. The Tribunal considers that these share purchase receipts may be interpreted to show that certain amounts of money were transferred or at least intended to be transferred from the purchasers to acquire an equity interest in Passargad. However, the Tribunal notes that these receipts themselves make the actual purchase of the shares contingent upon "clearance" of the cashier's checks referred to therein. There is no evidence in the record of this Case to show that this requirement was met. Therefore, these documents as such do not sufficiently confirm the alleged purchases.<sup>11</sup>

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<sup>11</sup> Furthermore, at the Hearing the Claimant himself stated that he did not deliver these checks to Bank Rahni Iran but instead gave them to Mr. Amir Faiz, who also gave him the share purchase receipts in return for the cashier's checks and who was later to deliver them to Bank Rahni Iran in order to be deposited in the account established for these payments. However, the

136. Furthermore, the Claimant has not been able to provide any other document showing that his ownership rights to the shares became established and that any shares in the Company were issued to him.<sup>12</sup> Moreover, the Claimant also confirmed at the Hearing that no shares were provided to him, and he stated that to the best of his knowledge, Passargad was never actually established as an operative Company and, therefore, probably no shares were issued to any of the investors. Therefore, the Tribunal need not consider the issue whether the transfer of Mr. Asgari Pour's shares to the Claimant was done properly so as to establish the Claimant's ownership rights to these shares.

137. The Tribunal reaches the conclusion that the Claimant has not submitted sufficient proof that he owned an interest in Passargad Savings and Home Loan Company because the Claimant has not been able to show that he ever possessed the shares which he claims to have been expropriated. Therefore, the Claimant's Claim is dismissed for lack of evidence.

138. In view of the Tribunal's conclusion that the Claimant has not succeeded in establishing that he owned shares in Passargad Savings and Home Loan Company, there is no need to decide the issues whether the Company was ever actually established, and if so, whether it was nationalized. Moreover, in view of these findings there is no need for the Tribunal to address the question of the Caveat in this Claim.

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Claimant has not provided any evidence that Mr. Amir Faiz or any other person delivered the checks on his behalf to Bank Rahni Iran or that they were deposited to the account established for collection of payments for Passargad shares. Therefore, due to the lack of other supporting evidence or information it remains unclear what actually happened in the course of the aforementioned transactions.

<sup>12</sup> For instance, according to the requirements of Article 27 of the Iranian Commercial Code, as amended in 1969, the company shall give the shareholders provisional share certificates until such time as the actual shares are printed and issued.

V. COSTS

139. Both Parties have requested the Tribunal to award them compensation for their costs incurred in respect of the proceedings in this Case. In view of the outcome of this Case, the Tribunal finds it reasonable to award the Respondent costs of arbitration in the amount of U.S.\$5000.00.

VI. AWARD

140. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claimant's alternative Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN based on an indirect interest in the funds due to SKBM is dismissed for lack of jurisdiction.

(b) The Claimant's Claims against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN for the funds advanced to SKBM on behalf of ISIRAN, for the expropriation of an equity interest in SKBM, for the salary and relocation benefits and for the nationalization of an equity interest in Passargad Savings and Home Loan Company are dismissed for lack of evidence.

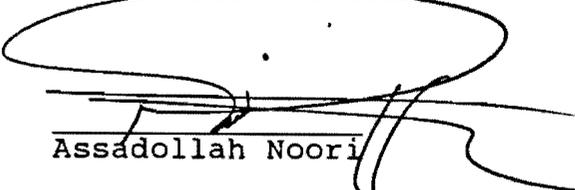
(c) MOHSEN ASGARI NAZARI is obligated to pay to the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN the sum of U.S.\$5000.00.

Dated, The Hague  
24 August 1994



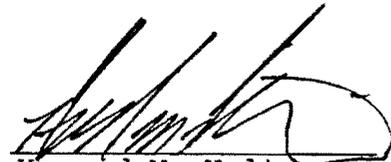
Bengt Broms  
Chairman  
Chamber One

~~In the Name of God~~



Assadollah Noori

I concur in the present Award. However, I would like to point out that the Tribunal could and should have rejected the Claimant's claims at the earlier stages of the proceedings for lack of jurisdiction. I am still of the opinion that the Tribunal does not have jurisdiction over the claims of Iranians with dual United States nationality. See my note appended to Interlocutory Award No. ITL 79-221-1 (15 January 1991), in Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, reprinted in 26 Iran-U.S. C.T.R. 7.



Howard M. Holtzmann

Dissenting in part, concurring in part. See Separate Opinion. (Signed pursuant to Article 13, para. 5 of the Tribunal Rules).