IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 967
CHAMBER TWO
AWARD NO. 549-967-2

HAROLD BIRNBAUM,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

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

FILED ثبت شد

DATE 6 JUL 1993

تاریخ ۱۵ /۴/ ۱۳۷۲

AWARD

Appearances :

For the Claimant :
Mr. Mark Clodfelter,
Mr. Marc Palay,
Attorneys,
Mr. Harold Birnbaum,
Claimant,
Mr. Fereydoon Ghaffari,
Party Witness,
Mr. Robert Reilly,
Mr. Vram Gorjian,
Expert Witnesses.

For the Respondent :
Dr. Nasser Mansourian,
On behalf of the Agent of the Government of the Islamic Republic of Iran,
Mr. Seifollah Mohammadi,
Legal Adviser to the Agent,
Mr. Esmail Bakhshi Dezfuli,
Attorney,
Mr. Hamid Mashari,
Representative of the Respondent,
Mr. Anthony G.P. Tracey,
Mr. Ardavan Moshiri,
Mr. Abolghassem Fakharian,
Mr. Behrooz Vaghti,
Expert Witnesses,
Mr. Behrouz Salehpour,
Legal Assistant to the Agent.

Also present : Ms. Lucy F. Reed,
Agent of the Government of the United States of America,
Mr. D. Stephen Mathias,
Deputy Agent of the Government of the United States of America.

I. INTRODUCTION

1. The Claimant, HAROLD BIRNBAUM, is a professional engineer. He claims against THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") for the value of his 8.6 percent ownership interest in Abdolaziz Farmanfarmaian & Associates ("AFFA"), an Iranian architectural and engineering partnership, which he alleges was expropriated by the Government of the Islamic Republic of Iran on 28 July 1979, when a temporary manager appointed by the Plan and Budget Organization of the Government of Iran took over the management of AFFA. According to his final pleadings, the Claimant seeks U.S.$3,054,576 as compensation for this alleged deprivation. He further seeks interest and legal costs.

2. The Respondent[1] denies that AFFA was expropriated and alleges that by July 1979 the value of the Claimant's share had become negative.

3. A Hearing in this Case was held on 19 and 20 November 1991.

II. FACTS AND CONTENTIONS[2]

4. AFFA was established in Tehran on 12 October 1967 as an architectural and engineering consulting partnership, pursuant to Articles 584 and 585 of the Commercial Code of Iran. It was the successor to the architectural firm founded in 1954 by Abdolaziz Farmanfarmaian. According to the Commercial Code and

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[1] Virtually all of the Respondent's pleadings have been submitted by "Abdolaziz Farmanfarmaian & Associates (In the Process of Liquidation)."

[2] More detailed consideration of certain facts is given, as appropriate, in connection with the merits of the claim, infra.

AFFA's Articles of Association, the firm was a partnership with a separate juridical personality that distributed profits and losses in proportion to each partner's ownership interest.

5. The Claimant joined AFFA in 1971 and formally became a registered partner in 1972. He served as AFFA's Director of Engineering. Initially, the Claimant held a 10 percent proprietary interest in the firm; as a result of the addition of two new partners in 1977, his share was reduced to 8.6 percent.

6. AFFA's Articles of Association set forth the firm's organizational structure and, in particular, the rules governing the partners' management of the firm. The management of AFFA was subject to the overall control of the General Assembly of partners which met annually. The partners elected a three-member Executive Board, which administered the firm's general affairs, and a Chairman of the Executive Board, who was responsible for day-to-day direction and served as the fully-authorized representative of the firm. In July 1979, AFFA consisted of the following members holding the following ownership interests:

1.	Abdolaziz Farmanfarmaian	4	percent;
2.	Mohammad Reza Majd	44.16	percent;
3.	Joseph Zucker	10.32	percent;
4.	Khosrow Moaveni	10.32	percent;
5.	Harold Birnbaum	8.6	percent;
6.	Fereydoon Ghaffari	8.6	percent;
7.	Fereydoon Tabibzadeh	7	percent;
8.	Mehdi Tassooji	7	percent.

7. AFFA performed engineering and architectural services on several major projects in Iran; in many cases, Iranian government agencies were its clients. AFFA obtained many of these projects through the efforts of Abdolaziz Farmanfarmaian, who enjoyed a close relationship with the former government of Iran. The most significant project on which AFFA worked was the design and construction supervision for the new Tehran International Airport

project. This project was performed by AFFA in a joint venture with the United States engineering and architectural consulting partnership of Tippetts, Abbett, McCarthy, Stratton ("TAMS"). In August 1975, TAMS and AFFA set up TAMS-AFFA, an Iranian 50/50 partnership, for the sole purpose of performing engineering and architectural services on that project. This performance was based on a contract entered into on 19 March 1975 by TAMS and AFFA on the one hand and the Civil Aviation Organization on the other. See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. at 219 (hereinafter "Tippetts"). AFFA opened a branch office in Athens, apparently in 1977, the major activity of which was the preparation of working drawings and specifications for the Tehran International Airport project.

8. Beginning in late spring of 1978, as the turmoil in Iran increased, AFFA experienced a downfall in its business activities. The Claimant alleges that AFFA also began to have increasing difficulties receiving payment on its invoices from its government clients and that by winter the flow of new government projects ceased. According to the Claimant, AFFA also experienced increasing pressure on its cash flow caused by lack of immediate prospects for new business. As a result, AFFA laid off a number of its employees.

9. AFFA partners Farmanfarmaian and Majd left Iran in November and December 1978, respectively, allegedly to promote AFFA services abroad. Partner Ghaffari was at the time temporarily stationed in AFFA's Athens office. Partner Zucker had been on leave in the United States since mid-1978 due to the death of his son. The Claimant left Iran in late December 1978; he states that he "intend[ed] to return as soon as the situation normalized." Three AFFA partners remained in Iran after December 1978: Mr. Tabibzadeh, a member of AFFA's Executive Board and the partner in charge of joint ventures and special projects; Mr. Tassooji, the director of AFFA's Contracts and Construction

Department; and Mr. Moaveni, who directed AFFA's Project Management.

10. When the Shah's government fell in February 1979, AFFA had numerous outstanding contracts. The economic turmoil that paralyzed Iran at this time resulted in the suspension of work on most of these contracts. One of the contracts that remained active during the first half of 1979 was the Tehran International Airport project. The Claimant alleges that despite the slowdown in the level of AFFA's activity, revolutionary workers forced AFFA to rehire its laid-off employees in early 1979. On or about 7 April 1979, the Claimant contends, the employees held a meeting at which AFFA's remaining management agreed to allow the formation of a Council of Employees to determine the hiring policies of the firm. The Claimant maintains that the local Revolutionary Committee controlled the Council of Employees. The Respondent denies this contention.

11. On 24 July 1979, the Plan and Budget Organization appointed a provisional manager for AFFA. On the same date, Mr. Tabib-zadeh, one of the three AFFA partners who were still in Iran, announced that he was leaving the country for the medical treatment of his son. On 28 July 1979, the government-appointed manager assumed his position at AFFA. On the date of his arrival, AFFA had approximately 130 employees. In addition, the firm had many outstanding contracts.

12. Soon thereafter, the Plan and Budget Organization also appointed a financial supervisor for the firm. The financial supervisor conducted an audit of AFFA's accounts and in November 1979 issued a report stating AFFA's financial position as of 28 July 1979. This "1979 Financial Report" purported to assess the "real values" of AFFA's assets and liabilities "to determine partners' assets." It concluded that AFFA's net worth on "the date of the hand-over and take-over of the firm" was 263,592,207 rials. The Claimant submitted a copy of this report.

13. Mr. Moaveni, one of the two remaining AFFA partners in Iran, left the country sometime in the summer of 1979. The last AFFA partner in Iran, Mr. Tassooji, continued to work in AFFA until mid-1980. On 12 August 1981, the Plan and Budget Organization ordered the liquidation of AFFA pursuant to the "Act Concerning the Management and Ownership of the Shares of Contracting and Consulting Companies and Firms" of 3 March 1980. This fact was published in the Official Gazette on 6 October 1981.

III. PROCEDURAL ISSUES

14. In the course of these proceedings, the Claimant amended his claim twice. In the original Statement of Claim, filed by the Government of the United States on 19 January 1982 on behalf and for the benefit of Harold Birnbaum, the Claimant sought compensation in the amount of U.S.$218,032. The claim, classified as a "claim of less than U.S.$250,000," was assigned No. 10832. On 10 October 1986, the Claimant amended his claim to increase the relief sought to U.S.$2,169,528 and to change the date of the expropriation from May 1980 to 28 July 1979 (the "First Amendment").[3] By its Order of 18 February 1987, the Tribunal accepted this amendment; the claim was then reclassified as a "large claim" and assigned No. 967. At paragraphs 9 and 10 of that Order, the Tribunal stated the following:

> 9. The Tribunal notes that the essence of the claim in this Case would not be changed by the proposed amendment. The claim remains a claim for compensation for the alleged expropriation of Mr. Birnbaum's ownership interest in an Iranian company. Whether there was an expropriation, the effective date of such expropriation, and the value of the expropriated interest are matters of proof to be resolved by the Tribunal in the course of the proceedings, and the Parties are free to make such arguments in respect of those issues as they may choose.

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[3] The Claimant amended his original claim, among other things, on the basis of the 1979 Financial Report, which he allegedly obtained after the filing of the Statement of Claim.

10. Since the amendment follows directly from the activation of the claim for less than U.S.$250,000 in May 1986 and precedes any scheduling of a Statement of Defense, the Claimant cannot be said to have delayed in presenting the amendment in such a way that it would be prejudicial to the Respondent or otherwise inappropriate for the Tribunal to accept the amendment.

15. In his Supplemental Statement of Claim of 2 July 1987, the Claimant increased the relief sought from U.S.$2,169,528 to U.S.$3,091,997[4] (the "Second Amendment").

16. The Respondent objects to both the First and Second Amendments, arguing that they do not represent admissible amendments of claim pursuant to Article 20 of the Tribunal Rules but are, in fact, new claims filed after the deadline for filing of claims contained in Article III, paragraph 4, of the Claims Settlement Declaration.

17. The Tribunal's Order of 18 February 1987 accepting the Claimant's First Amendment forecloses the Respondent's present objection to that amendment.

18. The Respondent's objection to the Claimant's Second Amendment must be rejected for the reasons set forth in the above Order. In particular, the Second Amendment was presented only six months after the Tribunal's Order of 18 February 1987 and preceded by one year any filing by the Respondent. The Respondent therefore had ample opportunity to respond, and did respond, to the amended claim. Accordingly, it was not prejudiced by the amendment. Consequently, the Tribunal decides that the Claimant's Second Amendment is admissible in accordance with Article 20 of the Tribunal Rules. See Rockwell International Systems, Inc. and Islamic Republic of Iran, Award No. 438-430-1 , para.

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[4] The claimed amount was again modified in the Claimant's subsequent pleadings: it was adjusted downward to U.S.$3,022,147 in the Reply of 6 October 1988 and then increased to the final U.S.$3,054,576 in the Hearing Memorial of 5 February 1990.

73 (5 Sept. 1989), reprinted in 23 Iran-U.S. C.T.R. 150, 166; International School Services, Inc. and Islamic Republic of Iran, et al., Award No. ITL 57-123-1, at 10 (30 Jan. 1986), reprinted in 10 Iran-U.S. C.T.R. 6, 12; Thomas Earl Payne and Islamic Republic of Iran, Award No. 245-335-2, para. 9 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 6.

IV. JURISDICTION

19. There is no dispute that the Claimant is a national of the United States. The claim is for the alleged deprivation of the Claimant's property interest in AFFA and therefore falls within the Tribunal's subject matter jurisdiction of claims arising "out of ... expropriations or other measures affecting property rights." Article II, paragraph 1, of the Claims Settlement Declaration.

20. At the Hearing, the Respondent argued that the claim was not outstanding on 19 January 1981, as jurisdictionally required by Article II, paragraph 1, of the Claims Settlement Declaration, because before that date the claim neither had been submitted by the Claimant to the Respondent, nor had been brought before any court, nor had been the subject of any negotiations between the parties. The Tribunal rejects this jurisdictional objection. The Tribunal has repeatedly held that a claimant need not have submitted a claim or instituted proceedings before 19 January 1981 for a claim to be "outstanding." "It suffices that the claim is ripe, so that a cause of action existed prior to that date." Electronics Systems International, Inc. and Ministry of Defence of the Islamic Republic of Iran, et al., Award No. 430-814-1, para. 51 (28 July 1989), reprinted in 22 Iran-U.S. C.T.R. 339, 352, and cases cited therein. The cause of action in this Case accrued on 28 July 1979, when the alleged deprivation of the Claimant's property interest in AFFA occurred. Hence, the claim was clearly outstanding on 19 January 1981. The Tribunal is further satisfied that this claim was owned continuously, as

required by Article VII, paragraph 2, of the Claims Settlement Declaration.

21. Based on the foregoing, the Tribunal determines that it has jurisdiction over this Case.

V. THE MERITS

A. Liability

22. It is undisputed and the Tribunal already has found in Tippetts, that the Plan and Budget Organization by letter dated 24 July 1979 appointed Mr. Azad Zarrin-Nejad as provisional manager of AFFA pursuant to the "Law Concerning the Appointment of Provisional Manager(s) to Supervise Productive, Industrial, Commercial, Agricultural and Services Units in the Private and Public Sectors" of 16 June 1979[5] ("Law of 16 June 1979"). The letter of appointment, in relevant part, stated:

> Since the principal directors of the firm of Abdolaziz Farmanfarmaian and Associates have abandoned the firm, therefore, on the basis of the [Law of 16 June 1979] ... and in order to prevent the closure of the firm, and with prior approval of the Ministry of Labor and Social Affairs, you are hereby appointed as the provisional manager for the said firm to manage it in compliance with the above-mentioned Law... .

The Farmanfarmaian family was one of the fifty-one individuals or families whose enterprises were placed under Government management pursuant to Article 1 (B) of the Law for the Protection and Development of Iranian Industry. Tippetts, at 8, 6 Iran-U.S. C.T.R. at 224.

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[5] Legal Bill No. 6738 dated 26.3.1358 (16 June 1979), Official Gazette No. 10012 dated 17.4.1358 (8 July 1979).

23. The Claimant argues that the Respondent expropriated AFFA on 28 July 1979, the date Mr. Zarrin-Nejad assumed his position at AFFA. He alleges that pursuant to the Law of 16 June 1979, Mr. Zarrin-Nejad took over all of AFFA's managerial authority, including the power to sign documents and to withdraw funds from AFFA's bank accounts. He also maintains that Mr. Zarrin-Nejad denied the partners the benefits of ownership: from the date of Mr. Zarrin-Nejad's arrival at AFFA, the Claimant alleges, no meeting of the General Assembly of the partners has been convened nor notice of one has been given, as required annually by AFFA's Articles of Association, no elections of Executive Board members have been conducted, no reports or notices of changes or developments have been issued to the partners, and none of the firm's profits have been paid to them. According to the Claimant, these acts and omissions constituted a permanent elimination of the ownership rights of the AFFA partners attributable to the Respondent.

24. In its defense, the Respondent asserts that the Claimant and the other principal partners of AFFA intentionally abandoned the firm in late 1978 and early 1979 because of its unprofitableness and indebtedness, its unfavorable prospects, and the partnership's liabilities for uncompleted and defective work. The Respondent maintains that because the Claimant relinquished his property interest in AFFA, the Respondent's actions may not be regarded as expropriatory. The Respondent states that, in any event, by June 1979 AFFA had no positive net worth in light of the changed conditions in Iran.

25. The Respondent further asserts that the appointment of a provisional manager does not, by itself, constitute an act depriving the Claimant of his proprietary interest in AFFA. The Respondent argues that events subsequent to the appointment also must be taken into account in deciding whether a deprivation occurred. In this context, the Respondent states that the

Claimant has presented no evidence to prove that after the alleged appointment of a temporary manager he attempted in any way to exercise his rights as a partner in the firm and that the manager or the government prevented him from doing so.

26. As an initial matter, the Tribunal rejects the Respondent's apparent contention that by leaving Iran in late December 1978 the Claimant relinquished his ownership interest in AFFA. It is well established that the force majeure conditions in Iran in December 1978 justified a departure by United States nationals. See Motorola, Inc. and Iran National Airlines Corporation, et al., Award No. 373-481-3, para. 56 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85; Eastman Kodak Company, et al. and Islamic Republic of Iran, et al., Award No. 329-227/12384-3, para. 39 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, 163-64.

27. The issue before the Tribunal is whether, under the circumstances of this Case, the appointment of a provisional manager for AFFA by the Plan and Budget Organization of the Government of Iran allows the conclusion that the Respondent thereby asserted such control over AFFA that the Claimant has been deprived of his property interests, and, thus, that he has been subjected to "expropriation or other measures affecting property rights" for which the Respondent bears responsibility. Article II, paragraph 1, of the Claims Settlement Declaration.

28. It is well settled in this Tribunal's practice that property may be taken "under international law through interference by a State in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected." Tippetts, at 10-11, 6 Iran-U.S. C.T.R. at 225; see also Thomas Earl Payne, supra, para. 20, 12 Iran-U.S. C.T.R. at 9 (citing cases). While assumption of control over property by a government -- for example, through appointment of provisional

managers -- 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 was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral." Tippetts, id.; see also Sedco, Inc. and National Iranian Oil Company, et al., Award No. ITL 55-129-3, at 40-41 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 277-78. The Tribunal has previously regarded the appointment of a provisional manager as an "important factor" and a "highly significant indication" in finding a deprivation because of the attendant denial of the owner's right to manage the enterprise. Sedco, Inc., supra, id. (citing cases and legal authorities). The Tribunal has also held that the temporary nature of an appointment of managers has not precluded a finding of a taking. See Motorola Inc., supra, para. 58, 19 Iran-U.S. C.T.R. at 85. See also Tippetts, at 11, 6 Iran-U.S. C.T.R. at 226 ("[T]he form of the measures of control or interference is less important than the reality of their impact."). The Tribunal will examine the circumstances of this Case in light of the above principles.

29. The Respondent, acting through the Plan and Budget Organization and under the Law of 16 June 1979, appointed Mr. Zarrin-Nejad as provisional manager of AFFA with specific instructions "to manage it in compliance with the above-mentioned Law." The effects of the Law of 16 June 1979 were far-reaching. It provided that once a government-appointed manager was installed "the earlier directors and persons in charge will be stripped of their competence [of managing the company]," and that "as long as the ministry [or] government organization ... has not annulled the order [appointing the director or the board of directors], the director or the board of directors and supervising members shall remain in their positions [and s]hareholders are not allowed in any way to appoint directors in their stead." It

further provided that the provisional manager "shall in every respect be the legal representative [] of the original directors of the units" and that "[w]ithout being required to obtain special permission from the directors or owners of the relevant units, [he] shall be allowed to manage all the normal and current affairs of their respective units in the manner deemed fit, expedient and to the advantage of the relevant unit, in accordance with the principles and standards of the Islamic Republic ...." In light of these provisions, it is difficult to deny that once the government appointed a temporary manager under the Law of 16 June 1979 and that manager began to function, the owner was divested of the ability to participate in the management and control of his company.

30. This conclusion is also supported by the statements made by the government-appointed manager in a sworn deposition filed by the Claimant with the Tribunal. Mr. Zarrin-Nejad testified that, at the time, he "assumed control over all of AFFA's affairs on the basis that the law ... gave complete authority to conduct the firm's business" and that he "also felt obligated to exclude the owners of the firm from all management responsibilities." Mr. Zarrin-Nejad stated that he accepted only the "professional and technical help and responsibilities" of Mr. Tassooji. He went on to say that he did not try to contact AFFA's partners who were outside of Iran because he was "not in a position" to do so. Mr. Zarrin-Nejad also said that he knew from "Day 1" that AFFA would never be returned to the partners "because Mr. Farmanfarmaian's name was on the firm ...."

31. Based on the evidence presented, the conclusion is unavoidable that the Respondent effectively took control of AFFA in July 1979 through the appointment of a provisional manager pursuant to the Law of 16 June 1979, thereby depriving the Claimant of his ownership interests in the firm. It is not disputed that the firm since then remained under control of government appointees.

Equally, it is not disputed that no information on the status or operation of AFFA ever has been sent to the Claimant or to the original partners. It is difficult to assert that, after more than two years of government management and after the government's decision in October 1981 to put AFFA into liquidation, the deprivation could be considered to have been temporary.

32. In Sedco, Inc., supra, at 42, 9 Iran-U.S. C.T.R. at 278-79, the Tribunal found that if at "the date of the government appointment of 'temporary' managers there is no reasonable prospect of return of control, a taking should conclusively be found to have occurred as of that date." Mr. Zarrin-Nejad was officially appointed to manage AFFA on 24 July 1979, and he assumed his duties on 28 July 1979. Consequently, the Tribunal holds that the Respondent deprived the Claimant of his ownership interest in AFFA on 28 July 1979. The Respondent is therefore liable to compensate the Claimant for his loss as of that date.

33. In reaching this conclusion, the Tribunal rejects a number of the Respondent's arguments. First, the Respondent argues that the Claimant's expropriation claim must fail because he did not attempt to exercise his ownership rights in AFFA after 28 July 1979. However, the attempted exercise of ownership rights is not a prerequisite to a successful claim for compensation for the loss of those rights. Once the government manager assumed control over AFFA pursuant to the Law of 16 June 1979, AFFA's partners' rights of ownership were eliminated. Under the circumstances as they appeared to the Claimant on and after 28 July 1979, in particular after 4 November 1979, the Claimant had no reason to try to exercise his ownership rights or to believe that he would have a realistic chance of success if he had attempted to do so.

34. The Respondent next argues that the abandonment of AFFA by some of its partners justified the appointment of a provisional

manager under the Law of 16 June 1979[6] to protect AFFA workers and the government's interests in AFFA projects. The Claimant denies that the partners abandoned AFFA.

35. The Tribunal rejects the Respondent's argument. The Respondent's reasons and concerns for taking control of AFFA cannot relieve it from responsibility to compensate the Claimant for the taking. In its Award in Phelps Dodge Corp., et al. and Islamic Republic of Iran, Award No. 217-99-2, para. 22 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 130, under circumstances similar to those of this Case, the Tribunal observed the following:

> The Tribunal fully understands the reasons why the Respondent felt compelled to protect its interests through this transfer of management, and the Tribunal understands the financial, economic and social concerns that inspired the law pursuant to which it acted, but those reasons and concerns cannot relieve the Respondent of the obligation to compensate Phelps Dodge for its loss.

See also Tippetts, at 11, 6 Iran-U.S. C.T.R. at 225-26 ("The intent of the government is less important than the effects of the measures on the owner ....") Moreover, a government cannot avoid liability for compensation by showing that its actions were taken legitimately pursuant to its own laws. See American International Group, Inc. and Islamic Republic of Iran, et al., Award No. 93-2-3, at 14-15 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 105 ("[I]t is a general principle of public international law that even in a case of lawful nationalization the former owner of the nationalized property is normally

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[6] Article 1 of the Law of 16 June 1979 provides, inter alia, for the appointment of persons as managers, members of board of directors, or supervisors in order to prevent the closure of certain types of companies or organizations whose managers or owners "have deserted the said units or workshops, or stopped the work, or are not accessible for any reason whatsoever."

entitled to compensation for the value of the property taken."); INA Corp. and Islamic Republic of Iran, Award No. 184-161-1, at 7-8 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 378. The Tribunal concludes that for the purpose of establishing the Respondent's liability for the deprivation of the Claimant's ownership rights, it is immaterial whether or not the Plan and Budget Organization may have been justified under the Law of 16 June 1979 in appointing a provisional manager for AFFA.

36. Although the departure of some AFFA partners prior to 28 July 1979 has no bearing on the Respondent's obligation to compensate the Claimant for the deprivation of his property, their departure may affect the firm's value and, thus, the amount of compensation owed the Claimant.

B. Valuation

1. Standard of Compensation and Method of Valuation

37. Under the Treaty of Amity between Iran and the United States,[7] the Claimant must be compensated for the "full equivalent"[8] of the property taken. See Phelps Dodge Corp., et al.,

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[7] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900.

[8] The relevant provision of the Treaty of Amity is found in Article IV, paragraph 2, which provides:

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such

(continued...)

para. 28, 10 Iran-U.S. C.T.R. at 132; Petrolane, Inc., et al. and Islamic Republic of Iran, et al., Award No. 518-131-2, para. 105 (14 Aug. 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 99. The Tribunal therefore must determine what is the "full equivalent" of the Claimant's 8.6 percent ownership interest in AFFA.

38. Although the Claimant asserts that AFFA was a going-concern on the date of the deprivation, in his pleadings he made clear that he does not seek to recover the going-concern value of his ownership interest in the firm. Rather, the Claimant seeks to recover only his share of the "adjusted net asset value" of AFFA. This value includes neither AFFA's future earnings nor any goodwill or other intangible value, but only "the value of AFFA's hard assets and actual liabilities, i.e. upon its static financial condition" on 28 July 1979. Because the value of such tangible assets "do[es] not depend on going-concern analysis," Sola Tiles, Inc. and Islamic Republic of Iran, Award No. 298-317-1, para. 52 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 238, in this Case it is immaterial whether AFFA was a going-concern on the date of the taking. The Tribunal therefore need not address this issue.

39. The Claimant proposes to determine his share of AFFA's "adjusted net asset value" as follows. He calculates the value of AFFA's tangible assets, including fixed assets, securities, and accounts receivable, on the date of the deprivation and subtracts AFFA's liabilities on that date; this operation yields AFFA's net worth. The Claimant then calculates the value of his 8.6 percent gross share on the basis of AFFA's net worth. Finally, he arrives at his net share value by subtracting from

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[8](...continued)
compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

his gross share value the amount by which his liabilities to AFFA exceeded AFFA's liabilities to him.

40. The Tribunal agrees that this approach is appropriate to determine the value of the Claimant's 8.6 percent ownership interest in AFFA. The "adjusted net asset value" the Claimant used as the basis for his valuation is identical to what the Tribunal in earlier awards has called dissolution or liquidation value.[9] In Tippetts, at 12, 6 Iran-U.S. C.T.R. at 226, the Tribunal defined dissolution value as follows:

> Claimant in the instant case seeks only the dissolution value of its interest in TAMS-AFFA, i.e. the value of TAMS-AFFA after the collection of all assets and the discharge of all obligations. Thus, the task of the Tribunal is to make its best estimate of the assets and liabilities of TAMS-AFFA as of 1 March 1980 [i.e., the date of the deprivation]. This involves not merely the valuation of bank accounts and fixed assets, but also the valuation of TAMS-AFFA's accounts receivable, including those under the TIA contract and TAMS-AFFA's debts, including those to the tax and social security authorities, and potential liabilities such as those represented by the counterclaims under the TIA contract asserted in this case and those that could possibly arise under the bank guarantees.

41. The claimant in Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, like the Claimant in this Case was neither seeking lost profits, nor its share of the expropriated company's going-concern value, but rather its one-half share of what it called the "liquidation value" of that company. The Tribunal agreed that this was the appropriate valuation method, stating:

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[9] As the discussion below indicates, the Tribunal has used the terms "dissolution value" and "liquidation value" as synonyms.

> Claimant does not use "liquidation value" in the strict accountancy sense, as it does not request that we attempt to reconstruct what it might have recovered had SEDIRAN actually undergone liquidation proceedings in November 1979. Rather it requests that we assume "the winding up of Sediran's affairs and the disposition of its assets ... on the open market," presumably with no discount from the fair market value of the assets as might occur in actual distress liquidation circumstances .... We agree that this is a fair measure of value in this Case. See Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers .... Thus, in compensation for the expropriation of its shares in SEDIRAN, Claimant is entitled to one-half of the full value of all of SEDIRAN's assets, including property, cash, securities, and accounts receivable, reduced by the liabilities of the company outstanding at the date of the taking.

Sedco, Inc., supra, para. 267, 15 Iran-U.S. C.T.R. at 101-102. See also Sedco, Inc., et al. and Iran Marine Industrial Company, et al., Award No. 419-128/129-2, para. 58 (30 Mar. 1989), reprinted in 21 Iran-U.S. C.T.R. 31, 57 (agreeing that dissolution value, determined by calculating value of company's fixed assets, accounts receivable, and liquid assets on the date of expropriation and subtracting company's outstanding liabilities on that date, is appropriate approach to valuation).

42. The Tribunal will determine the value of the Claimant's ownership interest in AFFA in light of the general valuation principles set forth in the awards just quoted. Moreover, in making such a determination, the Tribunal "must not consider as an element of value the taking itself, nor events preceding the taking calculated to diminish the value of the property." Sedco, Inc. (Award No. 309-129-3), supra, para. 31, 15 Iran-U.S. C.T.R. at 35. See also American International Group, supra, at 16-18, 4 Iran-U.S. C.T.R., 96, 106-107. On the other hand, while any diminution of value caused by the deprivation of property itself should be disregarded, the Tribunal recognizes that changes in the general political, social, and economic conditions should be

considered to the extent they could reasonably have been expected to affect the value of the enterprise's assets.

2. The Contentions of the Parties

43. The Claimant has calculated the net worth of AFFA as of 28 July 1979 at 2,504,832,630 rials and the net value of his 8.6 percent ownership interest in the firm at 215,271,229 rials. The Claimant asserts that at the date of the deprivation, the "adjusted net book value" of AFFA's tangible assets totalled 3,001,359,175 rials, and AFFA's liabilities totalled 496,526,545 rials.

44. The report stating AFFA's financial position as of 28 July 1979, issued in November 1979 by Mr. Ahmad Rad, the government-appointed financial supervisor for the firm (the "1979 Financial Report," supra, para. 21), concluded that AFFA's net worth on 28 July 1979 was 263,592,207 rials. Mr. Rad valued AFFA's assets at 906,949,798 rials and calculated AFFA's liabilities to be 643,357,591 rials.

45. In support of his valuation of AFFA, the Claimant submitted a valuation report by Ernst & Young, an international accounting firm. In addition, the Claimant presented two expert witnesses at the Hearing, Mr. Robert Reilly and Mr. Vram Gorjian. Mr. Reilly is the manager and co-owner of Williamette Management Associates, a valuation consulting, economic analysis, and financial advisory firm in the United States. Mr. Gorjian is a professional tax accountant, expert on Iranian taxation, and one of the authors of the Ernst & Young report.

46. The Respondent has also submitted several valuation reports. Noavaran Auditors and Management Consultants ("Noavaran"), an Iranian accounting firm, in the first report it prepared concluded that as of 28 July 1979 AFFA had a positive net worth of 88,770,207 rials and the Claimant's 8.6 percent share had a

negative net worth of 12,041,657 rials. Noavaran valued AFFA's assets at 1,024,702,876 rials and calculated AFFA's liabilities to be 935,932,669 rials. Noavaran prepared a supplemental report in response to the Ernst & Young report.

47. The Respondent also submitted a report by Touche Ross & Co. Chartered Accountants ("Touche Ross"), an international accounting firm. The two authors of the Touche Ross report, Mr. Anthony G.P. Tracey and Mr. Ardavan Moshiri, were present at the Hearing as expert witnesses for the Respondent. Mr. Tracey is the principal responsible for valuation within the corporate finance department of the Touche Ross offices in London. Mr. Moshiri is a senior manager in the firm's audit division.

48. Finally, the Respondent produced a report on AFFA's income tax liabilities carried out by Mr. Behrooz Vaghti, a chartered accountant in Iran and expert in Iranian taxation. Mr. Vaghti concluded that at the date of the deprivation, AFFA had a negative net worth of 126,075,361 rials and the Claimant's 8.6 percent share in the firm had a negative net worth of 25,314,196 rials. Mr. Vaghti was present at the Hearing as an expert witness for the Respondent.

3. The Tribunal's Findings

a. Introduction

49. As it has done in past awards, the Tribunal will make its best approximation of the value of AFFA and of the Claimant's proprietary interest therein based on the best possible use of the evidence in the record and taking into account all the circumstances of the Case. See Tippetts, at 12, 6 Iran-U.S. C.T.R. at 226; Thomas Earl Payne, supra, para. 37, 12 Iran-U.S. C.T.R. at 15. See also Starrett Housing Corporation, et al. and Islamic Republic of Iran, et al., Final Award No. 314-24-1, para. 339 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 221.

In a similar situation, the Tribunal has held that "[w]hile the Claimant must shoulder the burden of proving the value of the expropriated concern by the best available evidence, the Tribunal must be prepared to take some account of the disadvantages suffered by the Claimant, namely its lack of access to detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place." Sola Tiles, Inc., supra, para. 52, 14 Iran-U.S. C.T.R. 223, 238.

50. The Tribunal finds particularly relevant the report issued in late 1979 by the government-appointed financial supervisor for AFFA. As noted earlier in this Award, this 1979 Financial Report purported to assess the "real values" of AFFA's assets and liabilities on 28 July 1979, the date of the deprivation. Although issued by an appointee of the expropriating agency, the document is contemporaneous evidence of the value of AFFA on the date of the taking, prepared independently of these proceedings. It thus offers a meaningful starting point for the Tribunal's own assessment of AFFA's value on 28 July 1979.

51. However, the 1979 Financial Report cannot form the sole basis for the Tribunal's determination. The Parties agree that the 1979 Financial Report does not present a complete picture of the firm's financial situation on that date. The report, in particular, fails to consider certain assets that properly should have been included in AFFA's value, such as AFFA's office building and AFFA's interest in TAMS-AFFA.

b. AFFA'S ASSETS

52. The Tribunal will discuss in detail only the major assets under dispute between the Parties.

(1) Office Building at 28 Takhte Jamshid

53. The Claimant asserts that AFFA owned a major office building in downtown Tehran, located at 28 Takhte Jamshid, now West Taleghani Avenue. He contends that this building was purchased in 1974 with partnership funds in the names of a number of AFFA partners and members of their families. The Claimant maintains that the value of the building, allegedly 249,900,000 rials, should be included among AFFA's assets. The 1979 Financial Report does not make any reference to this building.

54. The Respondent denies that AFFA owned the office building at issue and, based on the deed to the building, maintains instead that certain "natural persons" did. The Respondent concludes that because the building at 28 Takhte Jamshid is not a company asset, its value cannot be considered in determining AFFA's worth.

55. The November 1974 deed effecting the original purchase of the building at 28 Takhte Jamshid, proffered by the Respondent, names as "buyers" AFFA partners Abdolaziz Farmanfarmaian, Mohammad Reza Majd, and Khosrow Moaveni, together with other individuals, apparently members of their families.

56. The Claimant submitted in evidence copies of letters exchanged in late 1984 among AFFA's liquidator (who had been appointed by the Plan and Budget Organization), the Plan and Budget Organization, and the Islamic Propaganda Agency. A letter dated 10 September 1984 from AFFA's liquidator to the Plan and Budget Organization states that in the year 1353 (21 March 1974 - 20 March 1975) the "nine storey building erected on a 690 sq. meter lot and located at 28 West Taleghani Ave.,[10] was purchased from the financial resources of [AFFA] for the amount of Rls. 107,188,829, although the deed was issued and registered under

[10] The Parties agree that Takhte Jamshid and West Taleghani Avenue are one and the same.

the names of some of the shareholders and their families by the Registry Office." The letter further states that because "the building had been purchased from the association's [AFFA's] funds, ... the building is, therefore, a property of the Association's assets." The letter goes on to say that in October 1982, an Iranian certified expert valued the building at 249,900,000 rials and that subsequently the building was sold to the Islamic Propaganda Agency for that sum. The letter also says that at that point the Islamic Propaganda Agency had paid AFFA only 50,000,000 rials towards the total purchase price and complains of that agency's failure to make full payment.

57. The Claimant's evidence further shows that on 8 October 1984, the Plan and Budget Organization wrote to the Islamic Propaganda Agency urging it to pay the outstanding purchase price to AFFA. By letter of 30 October 1984, the Islamic Propaganda Agency responded that it would pay the "amount due in connection with the building" as soon as the necessary funds were allocated to its budget. On 29 November 1984, the Plan and Budget Organization, referring to "the payment on the balance of the amount due on your Association's building located in Taleghani Ave.," sent to AFFA's liquidator a copy of the Islamic Propaganda Agency's 30 October letter.

58. In his sworn deposition, Mr. Zarrin-Nejad, the government-appointed manager for AFFA, stated that the office building at 28 Takhte Jamshid was owned by AFFA and was one of the firm's major assets.

59. The Respondent challenges the probative value of the Claimant's evidence. In particular, the Respondent denies that AFFA's office building ever has been sold to the Islamic Propaganda Agency, as stated in the letter of 10 September 1984 from AFFA's liquidator. Instead, the Respondent contends, the building "was overtaken by The Office of The Revolutionary Prosecutor and placed by them at the disposal" of the Islamic Propaganda Agency. In apparent support of this assertion,

with its submission of 30 September 1991 the Respondent produced a letter dated 13 August 1979 from the Foundation for the Oppressed, Organization for Expropriated Property, informing AFFA that "[o]n the basis of judgment of the Islamic Revolutionary Public Prosecutor, your rented property which belonged to Abdol-Aziz Farmanfarmaian has been placed under guardianship" of the Foundation for the Oppressed.

60. In the Tribunal's view, this 13 August 1979 letter fails to prove the Respondent's assertion. The letter does not even mention the building at 28 Takhte Jamshid and therefore cannot undermine the probative value of the other letters in evidence, supra, paras. 56-57, which do refer to that building and show that it was sold to the Islamic Propaganda Agency in 1982. The Tribunal is convinced that the "rented property" owned by Mr. Farmanfarmaian alluded to in the 13 August 1979 letter from the Foundation for the Oppressed is not the building at issue here, but a building at 118 Kakh Square in Tehran, which housed AFFA's executive offices. In his sworn deposition, which was filed on 6 October 1988, Mr. Zarrin-Nejad testified that the building at 118 Kakh Square was Farmanfarmaian property and AFFA rented those premises.

61. Based on the evidence presented, the Tribunal holds that AFFA owned the office building at 28 Takhte Jamshid. This evidence shows that the Plan and Budget Organization, who had brought AFFA under government management, AFFA's government manager, and AFFA's liquidator all considered AFFA as the owner of the building, irrespective of whom the 1974 deed named as the original buyers. The Tribunal finds that it would be unjustified now to regard the 1974 deed as relevant to the question of ownership when the Plan and Budget Organization, AFFA's government manager, and AFFA's government-appointed liquidator never so regarded it. In this context, the Tribunal considers it particularly telling that the Islamic Propaganda Agency's 50,000,000 rial payment towards the purchase price of the building was in fact made to AFFA, supra, para. 50.

62. The Tribunal turns next to the determination of the value of the building on the date of the deprivation, 28 July 1979. Because the evidence submitted in this Case is not such as to enable the Tribunal to establish with precision the building's value on that date, the Tribunal must make its best approximation of that value based on the best possible use of the evidence in the record, supra, para. 49. According to the letter of 10 September 1984 from AFFA's liquidator, AFFA purchased the office building in the year 1353 (1974/75) for 107,188,829 rials and sold it in 1982 for 249,900,000 rials, the value determined by an Iranian certified expert. In light of this relative paucity of evidence concerning the value of the building on the date of the taking, the Tribunal considers it reasonable to begin with the building's purchase price, 107,188,829 rials.

63. In addition, because "strict use of historical book value ignores the effects of inflation," the purchase price should be adjusted upward to account for inflation from the date of the purchase until the date of the taking. See Sedco, Inc. (Award No. 309-129-3), supra, para. 313, 15 Iran-U.S. C.T.R. at 115. Between 1974 and 1979, the consumer price index for Iran increased by 40.9 points. See 1988 International Financial Statistics (published by the International Monetary Fund) 421. However, the Tribunal cannot ignore the negative effects of the Islamic Revolution on the value of AFFA's office building. It is well-known that during 1979 the effects of the Islamic Revolution and the diminished investor confidence resulting therefrom temporarily depressed the commercial real estate market in Tehran.

64. In sum, while it is reasonable to assume that inflation would have increased the value of AFFA's office building in 1979 compared to 1974, the negative effects of the Islamic Revolution would have offset, in part, that increase in value. The Tribunal finds that the increase attributable to inflation over approximately five years was more than the decrease attributable to the effects of the Revolution in 1979. Accordingly, based on the

evidence before it and taking into account all the circumstances of this Case, the Tribunal considers it fair and reasonable to increase the 1974 purchase price of AFFA's office building, 107,188,829 rials, by 25 percent to 133,986,036 rials. This value must be included in AFFA's valuation.

(2) Investment in TAMS-AFFA

65. It is undisputed that AFFA held a 50 percent proprietary interest in TAMS-AFFA, the Iranian partnership AFFA set up with the United States firm of Tippetts, Abbett, McCarthy, Stratton ("TAMS") for the purpose of performing engineering and architectural services on the Tehran International Airport Project, supra, para. 7. However, the 1979 Financial Report does not record this asset.

66. In Tippetts, at 16, 6 Iran-U.S. C.T.R. at 228, the Tribunal determined TAMS-AFFA's net worth on 1 March 1980 to be 800,000,000 rials. In addition, the Tribunal found that "TAMS-AFFA owed AFFA approximately IR 47,000,000 more than it owed TAMS for reimbursement of costs." Id.

67. The Respondent recognizes AFFA's 50 percent interest in TAMS-AFFA and, based on the Tribunal's finding in Tippetts, values that interest at 447,000,000 rials. This figure is the sum of 400,000,000 rials, representing 50 percent of the value the Tribunal assigned TAMS-AFFA, plus the 47 million rials the Tribunal found was the difference between the total of the debts TAMS-AFFA owed to AFFA and the debts it owed to TAMS.

68. The Claimant contends that AFFA's interest in TAMS-AFFA on 28 July 1979 can be no less than the Tribunal determined in Tippetts. However, the Claimant asserts, the Tribunal is not bound by its decision in that case, but it is free to value AFFA's 50 percent interest on the basis of a fuller record. The Claimant alleges that the evidence he proffered in this Case

shows that the worth of TAMS-AFFA in March 1980 was substantially higher than that indicated by the evidence in Tippetts.

69. In support, the Claimant relies in particular on a report stating TAMS-AFFA's financial position as of 20 March 1980, prepared, seemingly in 1980, under the supervision of TAMS-AFFA's government manager ("TAMS-AFFA financial report"). Based on this report, the Claimant asserts that AFFA's interest in TAMS-AFFA was worth roughly 893,559,753 rials. The Claimant arrives at this figure as follows. The TAMS-AFFA financial report states that TAMS-AFFA's net worth was 571,135,863 rials. Further, the report records an account receivable from the Civil Aviation Organization[11] totalling 1,280,688,397 rials both as an asset under the item "Debtors" and as a liability under the item "Creditors." The Claimant argues that the off-setting effect of these two equal entries, one on the asset side of TAMS-AFFA's balance sheet and the other on the liability side, is an accounting device called "contra-account" that represents the fact that fees have not yet been paid. The Claimant goes on to say that this accounting device does not diminish the value of the firm's accounts receivable, including the outstanding fees owed by the Civil Aviation Organization to TAMS-AFFA.

70. The Claimant concludes that the true worth of TAMS-AFFA in March 1980 was at least the sum of the net worth of the firm as stated in the TAMS-AFFA financial report, 571,135,863 rials, plus the value of the account receivable from the Civil Aviation Organization, 1,280,688,397 rials, or 1,851,824,260 rials. The Claimant maintains that the value of TAMS-AFFA on 20 March 1980 is the most reliable indicator of the firm's worth on 28 July 1979. After making certain adjustments, the Claimant concludes that the value of AFFA's 50 percent interest in TAMS-AFFA was approximately 893,559,753 rials.

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[11] The government agency party to the contract for the construction of the Tehran International Airport.

71. A party requesting modification of a valuation in a previous Tribunal award bears a strong burden of persuasion. The Claimant's "contra-account" argument fails to meet this burden. Nothing in the TAMS-AFFA financial report indicates that the double entry of the account receivable was in fact a "contra-account." Nor is there any indication that the report used this accounting device for any of the other accounts receivable. In view of the foregoing reasons, the Tribunal is not persuaded by the evidence in the present Case that the valuation it made in its earlier Award should be changed for the purposes of the present Award.

72. Based on its finding in Tippetts, the Tribunal concludes that AFFA's 50 percent interest in TAMS-AFFA was worth 447,000,000 rials. This value must be considered in determining AFFA's worth.

(3) Accounts Receivable

73. The Claimant asserts that AFFA's receivables were worth 1,125,357,388 rials at the date of the deprivation. According to the Claimant, this total was due from twenty-two AFFA clients.

74. The 1979 Financial Report records a total of 424,196,155 rials as due from ten clients. The report eliminates an additional 373,125,862 rials worth of receivables by transferring this amount to a reserve "related to debts of those clients whose debts are thought to be doubtful to collect."

75. The Respondent values AFFA's accounts receivable on the date of the deprivation at 469,546,649 rials, the total amount allegedly owed by eleven AFFA clients. The Respondent eliminates additional receivables totalling 289,804,728 rials because, it asserts, those amounts had been "disapproved" by the clients and thus were uncollectible.

76. The Tribunal will discuss in detail only three substantial accounts receivable about which the Parties disagree.

National Copper Industries Organization (Sarcheshmeh Project)

77. The Claimant agrees with the 1979 Financial Report that the National Copper Industries Organization ("NCIO") owed AFFA 93,684,676 rials for this project.

78. The Respondent contends that the NCIO did not approve 70,667,311 rials of that amount and thus owed only 23,017,635 rials for the Sarcheshmeh Project. The Respondent goes on to say that of this latter amount, the NCIO paid all but 3,567,692 rials by the date of the deprivation. In support of this assertion, the Respondent relies on the Noavaran report.

79. Noavaran arrives at the above figures as follows. It asserts that of an amount of 747,875,162 rials invoiced by AFFA on 1 October 1978, the NCIO approved 663,726,851 rials and paid 640,709,486 rials, which left 23,017,365 rials outstanding. Noavaran maintains that this latter amount "has also been settled." But Noavaran did not produce either AFFA's invoice or the NCIO's letter of disapproval or any evidence of payment. Instead, it submitted three 1977 NCIO internal letters instructing the NCIO's financial department to pay certain amounts to AFFA. The Tribunal finds that these letters are inadequate to prove any of Noavaran's contentions.

80. The government-appointed financial supervisor concluded in the 1979 Financial Report that the NCIO owed AFFA 93,684,676 rials. In addition, it appears from this report that on 30 September 1979, AFFA's government management invoiced the NCIO for that amount. In the Tribunal's view, this evidence at the very least creates a strong presumption that this account was due and collectible. No evidence has been presented to rebut this

presumption, although the Respondent presumably would have had access to such evidence if it existed in the files of either the NCIO or AFFA. Accordingly, the Tribunal concludes that the value of the receivable from the NCIO, 93,684,676 rials, must be considered in AFFA's valuation.

Housing Organization (Damaneh Project)

81. The Claimant maintains that 49,047,750 rials were due from the Housing Organization at the date of the taking.

82. The 1979 Financial Report recognizes that in January 1979, AFFA invoiced the client for 49,047,750 rials. The report, however, transfers the full amount of this receivable to the reserve for doubtful debts, thereby eliminating it from AFFA's assets.

83. The Noavaran report submitted by the Respondent likewise recognizes that in January 1979 AFFA billed the client for 49,047,750 rials. It concludes, however, that on the date of the deprivation, only 13,000,000 rials were outstanding on this account. Noavaran arrives at this conclusion as follows. Of the 49,047,750 rials AFFA invoiced in January 1979, Noavaran alleges, the client approved only 37,400,000 rials, and by 28 July had paid all but 13,000,000 rials. Noavaran points to payments made by the client during the years ending March 1977 (10,000,000 rials), March 1978 (8,000,000 rials), and March 1979 (6,400,000 rials). In support, Noavaran produced a letter from the Housing Organization to AFFA, dated 3 July 1980, stating that in early March 1978, the realization of the "plan was shelved due to total changes in the State policy and the Government's refusal to incur any expenses in the urban infrastructural installation of that Town." The letter goes on to say that up to then, AFFA had been paid 37,400,000 rials for work performed.

84. In the Tribunal's view, the content of the 3 July 1980 letter from the Housing Organization to AFFA and the fact that the 1979 Financial Report transferred the full amount of this receivable, 49,047,750 rials, to the reserve for doubtful debts, taken together, make out a prima facie case that the amount of the account receivable in question was not collectible in full. The record contains no rebutting evidence. Accordingly, the Tribunal includes in AFFA's value 13,000,000 rials, the amount conceded by Noavaran.

TAMS-AFFA (Tehran International Airport)

85. The Claimant agrees with the 1979 Financial Report that TAMS-AFFA owed AFFA 130,637,802 rials for this project at the date of the taking.

86. The Respondent eliminates this account receivable because, it argues, the Tribunal's valuation of TAMS-AFFA in Tippetts already took into account TAMS-AFFA's debts to TAMS and AFFA.

87. The Tribunal agrees with the Respondent. As already noted, in Tippetts, at 16, 6 Iran-U.S. C.T.R. at 228, the Tribunal observed that "the evidence indicates that TAMS-AFFA owed AFFA approximately IR 47,000,000 more than it owed TAMS for reimbursement of costs, which amount must be deducted before a dissolution value is determined." By this finding, the Tribunal indicated that except for the 47,000,000 rials difference between the sum of the debts that TAMS-AFFA owed to AFFA and the debts it owed to TAMS, all other debts to the joint venture partners were included in the Tribunal's 800,000,000 rials valuation of TAMS-AFFA. Consequently, AFFA'S net worth cannot include the value of the receivables from TAMS-AFFA in addition to AFFA'S interest in that firm.

Total Value of AFFA's Accounts Receivable

88. In addition to the three accounts receivable discussed above, there were many others outstanding on the date of the deprivation. The Claimant and the Respondent agree about the value of accounts receivable relating to the Ministry of Agriculture, the Ministry of Housing and Urban Development, and Khaneh Daryoush for a total of 316,266,525 rials. The Parties disagree over several other accounts receivable that the Claimant values at 535,720,635 rials. Having considered these disputed accounts in accordance with the general valuation principles outlined supra, paras. 40-42 and applied supra, paras. 77-87, the Tribunal finds that the disputed receivables have a total value of 141,040,173 rials.

89. Thus, the Tribunal concludes that AFFA's remaining receivables were worth 457,306,698 rials at the date of the deprivation. The Tribunal adds this figure to the value of the receivables it found due and owing supra, at paras. 80, 84. This operation yields 563,991,374 rials, the gross value of AFFA's total accounts receivable on 28 July 1979.

90. There remains the issue of whether a discount should be applied to the value of accounts receivable disputed by the clients. At the Hearing, Mr. Reilly, the Claimant's expert, testified that disputes concerning accounts receivable are very common in the case of architectural and engineering firms like AFFA. He went on to say that in the context of a valuation of such firms, the face value of disputed accounts receivable could be reduced between 2 to 10 percent, depending on the firm's track record concerning dispute resolution. The Respondent's expert, Mr. Tracey, asserted that a discount of 35 to 45 percent would be more appropriate. There is absolutely no evidence in the record concerning AFFA's history of settling disputed accounts. However, in light of the evidence before it, including the fact that most of the debtors were Iranian government agencies, the Tribunal deems it reasonable to reduce the total value of AFFA's

accounts receivable by a factor of 5 percent to account for those receivables which would have been successfully contested by AFFA's clients or payment of which would have been substantially delayed. This yields a total of 535,791,805 rials.

91. From this latter amount, the Tribunal deducts 5.5 percent for contractor's tax, as it would have been deducted from each payment in accordance with practice and with Article 76 of the Iranian Direct Taxation Act. The Tribunal includes the amount of this deduction, 29,468,549 rials, in AFFA's tax prepayment account. Consequently, the net value of AFFA's accounts receivable at the date of the deprivation was 506,323,256 rials. This sum must be considered in determining AFFA's net worth.

(4) Partners' Loans

92. The 1979 Financial Report recognizes an adjusted amount of 106,099,844 rials for debts owed by AFFA partners to AFFA. The Claimant accepts this conclusion. He contends that these debts represent loans AFFA extended to the partners and that such loans offset promissory notes submitted by AFFA partners to banks to secure bank guarantees issued in AFFA's favor.

93. The Respondent eliminates this asset. Noavaran, the Respondent's consultant, explains that "because of the type of legal entity of AFFA, the partners[']account which shows a[n unadjusted] debit balance of Rls. 108,914,948 on 28.7.79, has been transferred from current assets group to the partners[']interest group in the Balance Sheet." It adds: "The reason for transfer of partners' balance dues from the section of company assets to the section of shareholders' rights, is the type of AFFA's legal personality and their joint and several liability."

94. Ernst & Young, the Claimant's consultant, criticizes Noavaran's treatment of the partners' loans. It explains that "Noavaran transferred this amount from accounts receivable

(assets) to the partners[']' current account (owners[']' equity, reducing the net worth of the firm)." Ernst & Young goes on to say that the 1979 Financial Report was correct in recording partners' loans among AFFA's assets because such treatment shows the "inter-relation between partners' debts and the promissory notes submitted by the partners on behalf of the firm to secure bank guarant[e]es for the firm." It concludes: "It is therefore reasonable and logical to report the partners' debts as accounts receivable, rather than including them in owners[']' equity to reduce the net worth."

95. The Tribunal finds that the debts owed by AFFA partners to AFFA cannot properly be included as valid AFFA assets. As noted earlier in this Award, most AFFA partners had left Iran by the date of the taking. Hence, on that date AFFA had no reasonable prospect of collecting these debts, which therefore should be written off as uncollectible with the exception, of course, of the Claimant's acknowledged debt to AFFA, 12,944,377 rials. Because this debt must be deducted from amounts due him under this Award, see infra, para. 144, it would be unfair not to include it as part of AFFA's assets.

96. Debts owed by AFFA partners to AFFA cannot be considered as partners' equity, either, as argued by Noavaran. The 1979 Financial Report established that these loans to partners were debts, not distributed equity, and there is no evidence to the contrary. See CBS, Inc. and Islamic Republic of Iran, et al., Award No. 486-197-2, para. 37 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, 143.

(6) Conclusion

97. The value of the assets discussed in the foregoing paras. 53-96 amounts to 1,084,175,345 rials. After reviewing the evidence as a whole, the Tribunal determines that the remaining assets of AFFA were worth 157,499,777 rials at the date of the

deprivation. The total value of AFFA's assets on 28 July 1979 is the sum of these two figures, 1,241,675,122 rials. This value must be considered in determining AFFA's net worth on that date.

c. AFFA'S LIABILITIES

98. The primary dispute between the Parties concerning AFFA's liabilities outstanding on 28 July 1979 involves the calculation of the firm's tax liability. The Tribunal will therefore discuss in detail only this liability.

AFFA'S TAX LIABILITY

99. The Claimant calculates AFFA's tax liability to be 148,163,754 rials. Noavaran, the Respondent's consultant, concludes that that liability totalled 765,165,488 rials. Mr. Vaghti, the Respondent's tax expert, goes even further and states that AFFA owed 919,831,218 rials in taxes at the date of the deprivation.

100. The 1979 Financial Report included 105,220,819 rials in AFFA's tax reserve.

101. It is a well-settled Tribunal principle that in the context of a dissolution or liquidation valuation, supra, paras. 40-42, the Tribunal considers in the valuation only those liabilities of the expropriated company that were "outstanding at the date of taking," Sedco, Inc. (Award No. 309-129-3), supra, para. 267, 15 Iran-U.S. C.T.R. at 101-102, "including those to the tax ... authorities," Tippetts, at 12, 6 Iran-U.S. C.T.R. at 226. See also Sedco, Inc., et al. (Award No. 419-128/129-2), para. 58, 21 Iran-U.S. C.T.R. at 57. In determining AFFA's tax liability, the Tribunal will apply this general principle.

(1) Taxes for Years 1350, 1354, and 1355

102. The Respondent alleges that AFFA owes 15,152,655 rials in income taxes for the years 1350 (March 1971 - March 1972), 1354 (March 1975 - March 1976), and 1355 (March 1976 - March 1977). The Respondent bases this assertion on a letter dated 2 December 1987 from the "General Department for Corporate Tax," stating AFFA's alleged tax liability as of 20 March 1980. The Respondent also relies on a number of AFFA "income tax assessment sheets" issued by the tax authorities for the years here relevant. Some of these tax assessments are dated as early as 1973 and 1976, others as late as 1987.

103. The 1979 Financial Report states that income taxes for years prior to 1356 "had been settled" by the date of the valuation.

104. The Claimant maintains that AFFA owed no taxes for years prior to 1356 for two reasons. First, he points out that the Respondent's contrary assertion is contradicted by the 1979 Financial Report. Second, he argues that, at any rate, tax assessments for those years are time barred under Articles 149 and 150 of the Iranian Direct Taxation Act.

105. In response to the Claimant's arguments, the Respondent contends that the 1979 Financial Report "was lacking a correct basis." The Respondent further argues that tax assessments for the years at issue are not time barred because a Decree of 9 April 1981 by the Director General of the Technical Bureau of Taxation extended the statutes of limitation provided for in Articles 149 and 150 of the Iranian Direct Taxation Act.

106. The Respondent has not produced evidence adequate to show that the government-appointed financial supervisor for AFFA was wrong in concluding in the 1979 Financial Report that no income taxes for years prior to 1356 were outstanding on 28 July 1979. The 2 December 1987 letter from the Director General of the Technical Bureau of Taxation cannot, by itself, be regarded as

sufficient evidence of AFFA's liability for any income taxes. It is not accompanied by any supporting material, and it does not explain in any way the basis for its calculations. See R.N. Pomeroy, et al. and Islamic Republic of Iran, Award No. 50-40-3, at 26 (8 June 1983), reprinted in 2 Iran-U.S. C.T.R. 372, 385; Dames & Moore and Islamic Republic of Iran, Award No. 97-54-3, at 28 (20 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 212, 226-27. The tax assessments for AFFA, also relied on by the Respondent, suffer from similar infirmities. In addition, they are silent as to what payments, if any, AFFA made to the tax authorities. The Respondent admittedly has access to all of AFFA's tax records and thus could have produced evidence adequate to clarify definitively AFFA's tax position for the years in question.

107. Based on the foregoing, the Tribunal rejects for lack of proof the Respondent's contention that on 28 July 1979 AFFA still owed income taxes for years prior to 1356. Thus, the Tribunal need not concern itself with the issue of whether or not tax assessments for such years are time barred under Articles 149 and 150 of the Iranian Direct Taxation Act.

(2) Taxes On Allegedly Hidden Payments

i) Sarcheshmeh Copper Project

108. The Respondent alleges that AFFA received 125,045,668 rials from the Sarcheshmeh Copper Project that were directly credited to the partners' accounts rather than to the income account of the firm. The Respondent asserts that this sum represents hidden income that escaped taxation. In support, the Respondent relies on three internal AFFA "accounts department transfer sheets," two dated 20 March 1978 (29 Esfand 1356) and one dated 7 July 1978 (16 Tir 1357). These documents appear to show transfers totalling 125,045,668 rials from the Sarcheshmeh Copper Project Account to the individual accounts of a number of AFFA partners.

109. The Claimant denies that these transfers represent hidden payments for the following reasons. First, he contends that the documents relied on by the Respondent do not show any payments; the entries are merely accounting transfers on the books of the firm. Second, he denies that the transfers are hidden because they are recorded in AFFA's books, which were available to the tax authorities. Third, the Claimant alleges that AFFA had already been taxed for the years in which the three transfers relied on by the Respondent were made. Thus, he suggests, any possible income resulting from those transfers had already been included in AFFA's tax assessments for those years.

110. Finally, the Claimant maintains that regardless of how income received from the Sarcheshmeh Copper Project was recorded in AFFA's books, any such income could not have escaped taxation. In this context, Mr. Gorjian, the Claimant's tax expert, testified that pursuant to Article 76 of the Iranian Direct Taxation Act, AFFA's clients were obligated to report their contracts with AFFA to the tax authorities and withhold 5.5 percent of every payment made to AFFA and pay that amount to the tax authorities. Thus, the Claimant concludes, it is impossible that the tax authorities were unaware of any payment from the Sarcheshmeh Copper Project.

111. The Respondent rejects the Claimant's argument based on Article 76 of the Iranian Direct Taxation Act. The Respondent does not deny that this Article in principle applies to architectural and engineering contracts. It contends, however, that the mere existence of that provision does not prove that its requirements were observed in the matter in question.

112. The issue here is whether in the years 1356 and 1357 AFFA received income from the Sarcheshmeh Copper Project that was hidden from the tax authorities and thus has not been taxed.

113. Article 76 of the Iranian Direct Taxation Act, in pertinent part, reads:

> In respect of contracts ... for any type of construction work ..., designing and planning of buildings and installations, ... the employers shall be required, as a general rule, ... to submit a copy of the contract to the local Assessment Office in the respective taxation area, against receipt within 30 days from the date of the conclusion of the contract concerned, and to withhold, when effecting each payment, 5 1/2% of the amount thereof which they shall pay to the local Finance Office within 30 days at the latest. In case such copy of contract is not duly submitted to the Assessment Office ..., the Tax Assessor concerned shall assess the value of the work under the contract ... and shall demand from the employer the applicable tax prescribed under this Article. In case the employer fails to notify the contractor's names or is unable to produce documents to satisfy the Tax Assessor that the work has been carried out by the contractor nominated by him, the amount of tax due on the taxable income derived from such contract work ... shall be demanded and collected from the employer ... .

114. Article 76 thus establishes an elaborate system for reporting, deducting, and transferring a portion of fees paid under construction, architectural, and engineering contracts to the tax authorities. Under that Article, AFFA's clients were obliged to provide pertinent information to the tax authorities and were subject to detailed sanctions if they failed to do so. In view of this legal situation, the Tribunal finds that any fees paid to AFFA on the Sarcheshmeh Copper Project would likely have drawn the attention of the tax authorities to the existence of those payments and would ultimately have been subjected to tax assessments for the relevant years, regardless of how those fees were recorded in AFFA's books. There is no indication in the record that AFFA's client misled the tax authorities. The Tribunal would be particularly reluctant to assume such a fact, given that AFFA's client, the National Copper Industries Organization, was a government agency and thus had a heightened responsibility to comply with all legal obligations, in addition to the particular obligation it had to comply with all requirements of Article 76. In sum, the Tribunal has received no evidence to prove that payments were made to AFFA which escaped the attention of the tax authorities, nor evidence to show that

AFFA's client failed to comply with Article 76 of the Iranian Direct Taxation Act.

115. Moreover, tax assessments in the record indicate that AFFA already had been taxed for 1356 and 1357, the years during which the three accounting transfers relied on by the Respondent were effected. The Respondent failed to proffer any evidence suggesting that income resulting from these transfers had not been included in those tax assessments. As noted above, the Respondent admittedly has access to all of AFFA's tax records and thus could have proffered the documents underlying AFFA's tax assessments for those years.

116. Finally, the three transfers relied on by the Respondent were recorded on the "transfer sheets" generated by AFFA's "accounts department." In the Tribunal's view, this fact does not bolster the Respondent's hidden payments allegations, for it is unlikely that anyone attempting to evade taxes would record hidden income on accounting documents accessible to the tax authorities.

117. In conclusion, the Tribunal rejects for want of proof the Respondent's assertion that in the years 1356 and 1357, AFFA received income from the Sarcheshmeh Copper Project that was hidden from the tax authorities. Accordingly, no such amount can be considered in the calculation of AFFA's tax liability.

ii) TAMS-AFFA

118. The Respondent asserts that a total of 141,400,000 rials in unreported payments from TAMS-AFFA "has been paid to the personal account of the partners instead of being registered in AFFA's books." The Respondent maintains that this amount represents undisclosed income that escaped taxation.

119. In support of this assertion, the Respondent primarily relies on a TAMS-AFFA "accounts voucher" dated 20 March 1979, the last day of the Iranian year 1357. This document shows that a total of 141,400,000 rials was debited on the books to three TAMS-AFFA accounts (for technical salary, managers' salary, and employees' miscellaneous expenses) and that an identical amount was credited to AFFA's "current account." A handwritten note at the bottom of the voucher, in translation, reads:

> This relates for entering into account a sum of 2,000,000 dollars (lumpsum) of the agreed costs of AF[F]A's Final Design (Detailed Design) to the relevant expenditures (at the rate of 70.70), because this payment used to be effected from the bank account of Athens.

At the Hearing, Mr. Fakharian, the Respondent's expert, testified that the "accounts voucher" does not reflect a cash payment, but rather "shows a credit to AFFA account from the side of TAMS-AFFA, which is another company." There is no indication in the record that the 141,000,000 rials recorded in the 20 March 1979 "accounts voucher" was actually paid to AFFA.

120. The Respondent also produced several bank documents and TAMS-AFFA accounting documents indicating that on various dates between April 1978 and 20 March 1979 TAMS-AFFA transferred the equivalent of approximately 64 million rials to AFFA's current accounts with AFFA's bank in Athens.

121. The Claimant denies that any of the documents relied on by the Respondent reflect hidden payments to the AFFA partners. Concerning the 20 March 1979 accounts voucher, the Claimant maintains that not only does it not show any payments to the partners, but it does not show any payments at all. He contends, instead, that it only records on the books a credit owed AFFA by TAMS-AFFA for the expenses AFFA's Athens office incurred for its work on the Tehran International Airport project.

122. Concerning the cash transfers totalling 64 million rials, the Claimant points out that the Respondent's documents show that these monies were paid not into AFFA partners' bank accounts, but rather into AFFA's firm bank account. Moreover, he contends that those cash transfers represented payments from TAMS-AFFA to AFFA as reimbursement for the expenses AFFA incurred on the Tehran International Airport project. Thus, he concludes, these payments would not even represent a taxable event.

123. The Tribunal finds that the evidence presented fails to establish that the AFFA partners received unreported, untaxed payments from TAMS-AFFA. None of the transactions reflected in the Respondent's documents involve either credits or cash transfers to the partners, but only to AFFA's current accounts.

124. Equally, there is no proof that AFFA itself received undisclosed income from TAMS-AFFA that was not taxed. Evidence in the record shows that AFFA already had been taxed for 1357, the year during which all of the transactions relied on by the Respondent were effected. The Respondent has failed to submit any evidence suggesting that any of those transactions, to the extent they represented taxable income, had not already been included in AFFA's final tax assessment for the year 1357. The Respondent admittedly has in its possession all of AFFA's tax records and thus has access to the documents underlying that assessment. Therefore, it could have produced such documents.

125. In light of the foregoing, the Tribunal rejects for lack of proof the Respondent's allegation that in the year 1357 the AFFA partners received undisclosed and untaxed income from TAMS-AFFA.

(3) Taxation of the Unrealized Value of AFFA's Fixed Assets and Investments in Other Companies

126. In calculating AFFA's tax liability, the Respondent treats the unrealized value of AFFA's fixed assets and investments in

other companies as taxable income. The Claimant denies that any such capital gains taxes may be factored into AFFA's worth.

127. Certainly, AFFA's fixed assets and investments cannot be taxed on the ground that they were sold on the date of the taking or that they were expected to be sold in the foreseeable future. On 28 July 1979, AFFA did not voluntarily realize gains on its fixed assets and investments. Neither was it in liquidation. On the contrary, AFFA was operated under government management for more than two years following the taking until the government's decision in October 1981 to liquidate the firm.

128. Neither can the Tribunal embrace the argument that the taking of AFFA's fixed assets and investments created a tax liability related to them. The Tribunal has never reduced the value of assets or the compensation due a Claimant for an expropriation of such assets on the ground that it caused the Claimant to realize taxable income. See, e.g., Tippetts, supra; Sola Tiles, Inc., supra; Phelps Dodge Corp., supra.

129. The reasons for this longstanding practice are twofold. First, the Treaty of Amity requires that a Claimant receive as compensation the "full equivalent of the property taken." See supra, para. 37. In the context of a dissolution or liquidation valuation, the Tribunal has determined the "full equivalent" by subtracting from the gross value of the taken enterprise only those liabilities, including taxes, that were outstanding on the date of the taking. See supra, para. 40. Second, established precedents require that the Tribunal "must not consider as an element of value the taking itself." Sedco Inc. (Award No. 309-129-3), supra, para. 31, 15 Iran-U.S. C.T.R. at 35; see also INA Corp., supra, at 10, 8 Iran-U.S. C.T.R. at 380. This consistent practice precludes any plausible argument that the taking itself somehow triggers a tax liability. See supra, para. 42. For purposes of determining the gross value of a taken enterprise the Tribunal has frequently assumed a hypothetical sale to the government at estimated market price. Such an analogy, while

illustrative of valuation theory, should not be overextended to create a tax liability arising from a taking. In a sale, an owner voluntarily disposes of his property. By definition, however, a taking removes from the owner any willful participation in the transfer. For this reason the Tribunal has consistently held that the taking itself may not influence the value of the taken property.

130. It is clear then that taxes related to AFFA's fixed assets and investments were outstanding on the date of the taking only if they had arisen by that date from independent operation of Iranian law. On this point, no persuasive evidence has been presented to the Tribunal. Hence, to the extent that Respondent has suggested such a theory, it must fail for lack of proof.

131. Of course, taxes that may be anticipated with a reasonable certainty may affect a firm's future profitability. Thus they may be relevant when valuing a going concern. See, e.g., Starrett Housing Corp., supra, paras. 345, 351-52, 16 Iran-U.S. C.T.R. at 223-24 and 226. In the present case, however, the Claimant sought only the adjusted net asset value of his ownership interest, and the Tribunal agreed that such a valuation method was appropriate. See supra, paras. 40-41.

132. For all these reasons, the Tribunal concludes that on 28 July 1979, AFFA owed no taxes on the unrealized value of its fixed assets and investments in other companies. Consequently, the Respondent's argument to the contrary is dismissed.

(4) Taxable Income

133. The Claimant agrees with the Respondent that the value of AFFA's earned advance payments and the gross value of its accounts receivable from clients are subject to income tax for valuation purposes. However, the Parties disagree as to the extent of the taxable income.

134. The Claimant argues that pursuant to Articles 76 and 79 of the Iranian Direct Taxation Act, AFFA's income tax must be calculated on a "deemed income basis"; this means that only 8 percent of the firm's gross receipts[12] from architectural and engineering contracts is taxable.

135. The Respondent argues, instead, that AFFA's income tax must be calculated on an "actual profits basis." Pursuant to this method, the totality of the firm's net income would be taxable. The Respondent calculates AFFA's taxable, net income to be more than seventy-five percent of the firm's alleged receipts.

136. At the Hearing, Mr. Vaghti, the Respondent's tax expert, testified that AFFA was taxed on an actual profits basis in the years 1350 (21 March 1971 - 20 March 1972) and 1351 (21 March 1972 - 20 March 1973) and was taxed on an 8 percent deemed income basis from 1352 (21 March 1973) through 1357 (20 March 1979). He stated that in 1358, AFFA was taxed on an actual profits basis.

137. Article 79 of the Iranian Direct Taxation Act, in pertinent part, reads as follows:

> Taxable income in respect of operations referred to in Article 76 [construction work, technical and capital installations or transport, designing and planning of buildings and installations, or drawing and topographical surveying or supervision and technical calculations of various kinds] in the cases mentioned under Article 61, in general, and in respect of contracts for all kinds of construction work (with the exception of the drilling of deep wells) and technical and industrial installations, shall, as long as the Ministry of Finance has not announced that they are ready to exercise the function of auditing mentioned in Article 78, consist of 8% of the annual receipts.

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[12] As a matter of convenience, for the purposes of this Award, references to "gross receipts" should be understood as referring to earned advance payments, gross accounts receivable, and gross income in general.

138. Article 79 thus provides that under certain conditions income derived from architectural and engineering contracts may be taxed on an 8 percent deemed income basis. At the Hearing, the Claimant's tax expert testified that the deemed income rule embodied in that provision is the general rule for taxation of such income. The Respondent's tax expert, for his part, testified to the contrary. He said that taxation based on actual profits is the rule and that Article 79 only establishes an exception to that rule.

139. Under the circumstances, the Tribunal need not decide which basis of taxation represents the general rule. The Respondent has submitted no contemporaneous documentary evidence to prove its assertion that in 1358 (21 March 1979 - 20 March 1980) AFFA was taxed on an actual profits basis although AFFA's tax assessment for that year, together with all the underlying documentation, was in the Respondent's possession and could have been produced by it. Given the Respondent's failure to substantiate its assertion and in light of the Parties' agreement that AFFA was taxed on an 8 percent deemed income basis from 1352 through 1357, the Tribunal finds that it would be unjustified to tax AFFA on an actual profits basis on the date of the deprivation. In any event, the Respondent has not submitted evidence adequate to enable the Tribunal to calculate AFFA's income tax on an actual profits basis.

140. Based on the foregoing, the Tribunal holds that AFFA's income tax at the date of the taking must be calculated on the basis of 8 percent of AFFA's gross receipts, in accordance with Article 79 of the Iranian Direct Taxation Act.

(5) Conclusion

141. After reviewing the evidence as a whole, the Tribunal determines that AFFA's tax liability outstanding at the date of the deprivation amounts to 96,513,786 rials.

TOTAL VALUE OF AFFA'S LIABILITIES

142. There were a number of remaining liabilities outstanding on the date of the taking. Based on the evidence presented and in application of the general valuation principles outlined supra, at paras. 40-42, the Tribunal concludes that the value of those liabilities was 184,378,616 rials. The Tribunal adds this figure to the value of AFFA's tax liability, see supra, para. 141. This calculation yields 280,892,402 rials, the total value of AFFA's liabilities on 28 July 1979.

d. THE VALUE OF THE CLAIMANT'S OWNERSHIP INTEREST

143. AFFA's dissolution value as of 28 July 1979 is the difference between the value of its assets and the value of its liabilities, 960,782,720 rials. The gross value of the Claimant's 8.6 percent ownership interest is thus 82,627,314 rials. See supra, paras. 39-40.

144. In his pleadings, the Claimant conceded that his liabilities to AFFA, consisting of loans extended to him by the firm, "must be considered in the valuation of his share." The 1979 Financial Report concludes that such loans amounted to 12,944,377 rials. The record contains no evidence contradicting this conclusion. Consequently, the Tribunal deducts this amount from the Claimant's gross interest. The result, 69,682,937 rials, is the net value of the Claimant's interest in AFFA.

145. The Respondent argues that for purposes of valuation, the value of the Claimant's 8.6 percent interest should be discounted by a factor of at least 25 percent to account for the Claimant's minority interest in AFFA, the alleged lack of marketability of the Claimant's share, and the share transfer restrictions contained in AFFA's Articles of Association. According to the Respondent, the discount is also justified because in the process

of AFFA's liquidation, the firm's assets cannot be expected to be fully realized; in addition, the proceeds of the sale might not cover AFFA's liabilities. The Claimant denies that any discount is applicable to the value of his share.

146. In the Tribunal's view, the arguments raised by the Respondent to justify the discount of the Claimant's share might be relevant in the context of a valuation in view of an actual sale of shares on the open market, but are not applicable in the context of a deprivation valuation, especially in a case like this one, where the expropriating entity not only expropriated the minority share, but the whole company. Significantly, on the date of the taking, the Claimant did not have any intention to sell his share in AFFA on the open market, and AFFA was not in liquidation. In these circumstances, it would not be appropriate to discount the value of the Claimant's ownership interest therein.

147. In addition, Tribunal precedent does not support the Respondent's position. Just as the Tribunal has never awarded surplus value for a controlling interest, it has never discounted the value of a minority interest.

148. In light of the foregoing considerations, the Tribunal rejects the Respondent's discount argument.

149. Based on the foregoing, the Tribunal determines that the Claimant is entitled to 69,682,937 rials as compensation for the deprivation by the Respondent of his 8.6 percent ownership interest in AFFA. This amount is equivalent to U.S.$988,761 when converted at the rate of exchange of 70.475 rials/U.S. $1. This was the rate of exchange prevailing during all of 1979. See Petrolane, Inc., et al., supra, para. 147, 27 Iran-U.S. C.T.R. at 115. The Tribunal therefore awards the Claimant U.S. $988,761.

VI. INTEREST

150. In order to compensate the Claimant for the damages he has suffered due to delayed payment, the Tribunal considers it fair to award interest at the rate of 9.75 percent from the date of the deprivation, 28 July 1979.

VII. COSTS

151. Each Party shall bear its own costs of arbitrating this claim.

VIII. AWARD

152. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, HAROLD BIRNBAUM, Nine Hundred Eighty Eight Thousand Seven Hundred Sixty One United States Dollars and No Cents (U.S.$988,761.00), plus simple interest at the rate of 9.75 percent per annum (365-day basis) from 28 July 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

(b) This obligation shall be satisfied by payment out of the Security Account established by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

(c) Each Party shall bear its own costs of arbitrating this claim.

(d) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
06 July 1993

José María Ruda
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli
Dissenting Opinion