342

IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASES NOS. 815, 816, AND 817
CHAMBER TWO
AWARD NO. 598-815,816,817-2



ARAM SABET,
KARIM SABET,
REJA SABET,
Claimants

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.



FINAL AWARD

Appearances:

For the Claimants:
Mr. Arthur W. Rovine,
Mr. Hamid Sabi,
Ms. Farkhondeh Sabi,
Mr. Paul Storm,
Mr. Charles Davidson,
Ms. Jayne Ressler,
Mr. David Schwartz,
Attorneys,
Mr. Reja Sabet,
Mr. Aram Sabet,
Mr. Karim Sabet,
Claimants,
Mr. Hormoz Sabet,
Mr. Iradj Sabet,
Ms. Valerie Sabet,
Persons Appearing for the Claimants,
Mr. Victor Barnett,
Mr. Roger Barnett,
Mr. Brian Rees,
Mr. Peter Warren,
Witnesses,

Mr. Robert Reilly,
Mr. M. Vahman,
Mr. Richard Friedberg,
Mr. Robert Radley,
Expert Witnesses.

For the Respondents:

Mr. Mohammad Hossein Zahedin-Labbaf,
Agent of the Islamic Republic of Iran,
Mr. Seyfollah Mohammadi,
Legal Adviser to the Agent,
Prof. Joe Verhoeven,
Counsel to the Agent,
Mr. Rodman R. Bundy,
Mr. Walter D. Sohier,
Mr. Hossein Ali Farzad,
Mr. Hossein Tabaie,
Mr. Hassan Parham,
Mr. Khayyam Dadash-Zadeh,
Dr. Rahim Davar-Niya,
Mr. Sayyed Majid Rouhani,
Mr. Abol-Fazl Kousheshi,
Attorneys,
Mr. Ahmad Hejazi,
Financial Adviser,
Mr. Abbas Khaje-Piri,
Mr. Mohsen Javaheri Mohammadi,
Representatives of the Mostazafan Foundation,
Mr. Gholamreza Mahdavi,
Mr. Dariush Ashrafi,
Legal Advisers to the Respondents,
Mr. Mehdi Iranpour,
Legal Assistant to the Respondents,
Dr. Audrey Giles,
Mr. Peter A. Kalat,
Mr. Eric Jackson,
Dr. Manouchehr Pooya,
Dr. Manouchehr Farhang,
Mr. Anthony Tracey,
Mr. Mohammad Safari,
Mr. Mohammad Ghorbani Farid,
Expert Witnesses,
Mr. Philip McCreanor,
Assistant to Mr. Tracey.

TABLE OF CONTENTS

## I. INTRODUCTION

1. The Claimants, ARAM SABET, KARIM SABET, and REJA SABET, all United States-Iranian dual nationals, presented a statement of claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, BONYAD-E-MOSTAZAFAN, and BANK MARKAZI for the alleged expropriation, in April 1979, of their ownership interests in several Iranian companies.

2. On 30 June 1999, the Tribunal rendered in the present Cases Partial Award No. 593-815/816/817-2, in which it determined that, during the relevant period, the three Claimants were dominant and effective United States nationals and that the Tribunal had jurisdiction over their claims. The Tribunal further determined that Aram and Reja Sabet owned registered shares in the following Iranian companies: Nownahallan Company ("Nownahallan"), Iran Cylinder Company, Ltd. ("ICC"), Mina Glass Company ("Mina Glass"), General Tire and Rubber Company ("GTR"), Towlid va Tasfieh Rowghan Refining Co. ("TRR"), and Zamzam Bottling Company Tehran ("Zamzam Tehran")[1]; while Karim Sabet owned registered shares in three of those companies: Nownahallan, ICC, and TRR. See id. para. 60. In its Partial Award, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in Nownahallan on 11 April 1979 and their ownership interests in ICC, Mina Glass, GTR, TRR, and Zamzam Tehran on 7 May 1979. See id. para. 104.[2]

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[1] Zamzam Tehran was one of the eleven separate Iranian corporations that comprised the Zamzam Bottling Companies. These were as follows: Zamzam Bottling Company Azarbaijan (Tabriz), Zamzam Bottling Company East Tehran (Narmak), Zamzam Bottling Company Esfahan, Zamzam Bottling Company Gorgan, Zamzam Bottling Company Kerman, Zamzam Bottling Company Kermanshah, Zamzam Bottling Company Khuzestan (Abadan and Ahwaz), Zamzam Bottling Company Mashad, Zamzam Bottling Company Rasht, Zamzam Bottling Company Shiraz, and, as noted, Zamzam Tehran. See Partial Award in these Cases, note 1.

[2] The Claimants' claims against Bank Markazi and Bonyad-e-Mostazafan were dismissed by implication by the Tribunal's Partial Award. See Partial Award, paras. 104 and 130(B).

3. Accordingly, in this Final Award, the Tribunal shall determine the value of the Claimants' ownership interests in Nownahallan as of 11 April 1979 and the value of their ownership interests in ICC, Mina Glass, GTR, TRR, and Zamzam Tehran as of 7 May 1979 and the amount of compensation to be awarded to the Claimants as a consequence.

## II. VALUATION

### A. STANDARD OF COMPENSATION AND GENERAL VALUATION PRINCIPLES

4. In these Cases, the Tribunal, as it has in past awards, uses the Treaty of Amity[3] standard of compensation without deciding whether it is applicable to claims of dual nationals whose dominant and effective nationality during the relevant period pursuant to the Tribunal's Decision in Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 ("Case A18"),[4] has been that of the United States or Iran, as the case may be. See James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2, para. 79 (22 Jan. 1993); Faith Lita Khosrowshahi, et al. and Islamic Republic of Iran, et al., Award No. 558-178-2, para. 34 (30 Jun. 1994) ("Khosrowshahi"); and Ed-

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[3] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900. The Tribunal has already held that the Treaty was in force at the time the claim in this case arose. See, e.g., Phelps Dodge, et al. and Islamic Republic of Iran, Award No. 217-99-2, para. 27 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 131-32. See also INA Corporation and Islamic Republic of Iran, Award No. 184-161-1 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 378-79. In the Case Concerning Oil Platforms (Iran v. United States of America), Judgment, para. 15, 1996 I.C.J. 801, at 809 (12 Dec.), the International Court of Justice also found that the Treaty remains in force between the two states.

[4] In Case A18, the Full Tribunal held, subject to an important caveat, that the Tribunal has jurisdiction over claims brought against Iran by Iranian-United States dual nationals only when the "dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." Case A18, at 25, 5 Iran-U.S. C.T.R. at 265.

gar Protiva, et al. and Islamic Republic of Iran, Award No. 566-316-2, para. 92 (14 Jul. 1995) ("Protiva"). In none of these cases, including the present ones, was that question raised or argued by the parties.

5. In determining the value of the Claimants' ownership interests that the Respondent expropriated, the Tribunal must disregard "any diminution of value due to the [expropriation] itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares." INA Corporation, supra, note 3, at 10, 8 Iran-U.S. C.T.R. at 380. See also Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 31 (7 Jul. 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 35; American International Group, Inc., et al. and Islamic Republic of Iran, et al., Award No. 93-2-3, at 16-18 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 106-107; Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, para. 42 (6 Jul. 1993) ("Birnbaum"). "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." Birnbaum, supra, id.

6. As it has done in past awards, the Tribunal will make its best approximation of the value of the Claimants' ownership interests that were expropriated by the Respondent based on the best possible use of the evidence in the record and taking into account all the circumstances of these Cases. See Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2, at 12 (29 Jun. 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 226; Thomas Earl Payne and Islamic Republic of Iran, Award No. 245-335-2, para. 37 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 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; Birnbaum, supra, para. 49. 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. 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. At the same time, in adopting such an approach, the Tribunal "must not lose sight of its duty to protect the respondents against claims not properly evidenced." W. Jack Buckamier and Islamic Republic of Iran, et al., Award No. 528-941-3 (6 Mar. 1992), para. 67, reprinted in 28 Iran-U.S. C.T.R. 53, 76; Kamran Hakim and the Government of the Islamic Republic of Iran, Award No. 587-953-2, para. 89 (2 Jul. 1998) ("Hakim"). In this connection, the Tribunal will take note of the difficulties facing the Respondent due to the destruction or loss of documentation in the course of the Revolution.

## B. VALUATION REPORTS SUBMITTED BY THE PARTIES

7. In support of their valuations of their ownership interests in Nownahallan, ICC, Mina Glass, GTR, TRR, and Zamzam Tehran, the Claimants submitted two valuation reports by Willamette Management Associates ("Willamette") on 29 May 1992 ("First Willamette Report") and 30 November 1994 ("Second Willamette Report"), respectively. The principal author of the two Willamette reports, Mr. Robert Reilly, was present at the Hearing as an expert witness for the Claimants.

8. In support of its valuations of the Claimants' ownership interests in those companies, the Respondent submitted (1) two valuation reports by Deloitte & Touche ("Deloitte") on 4 November 1993 ("First Deloitte Report") and 30 September 1996 ("Second Deloitte Report"), respectively; (2) a valuation report by Ernst & Young on 4 November 1993; (3) a valuation report by A.M. Mahallati & Co. ("Mahallati") on 4 November 1993; and (4) two valuation reports by Mr. Ghorbani-Farid, an Iranian chartered accountant, on 4 November 1993 ("First Ghorbani-Farid Report") and 30 September 1996 ("Second Ghorbani-Farid Report"), respectively. One of the authors of the two Deloitte Reports, Mr. Anthony Tracey, and Mr. Ghorbani-Farid were present at the Hearing as expert witnesses for the Respondent.

9. The Tribunal will give detailed consideration to the conclusions reached by the parties' valuation experts, to the extent required, in connection with the Tribunal's discussion of each company. The Tribunal now discusses each company in turn.

## C. THE TRIBUNAL'S FINDINGS

### 1. Nownahallan

10. Nownahallan was established in 1917 in Tehran and was incorporated in 1934 as Nownahallan Private Joint Stock Company. Nownahallan provided financial services and acted as the principal financial institution of the Baha'i community in Iran.

11. In its Partial Award in these Cases, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in Nownahallan on 11 April 1979. See supra, para. 2.

12. At the valuation date, Nownahallan had a total of 4 million registered shares, each with a nominal value of 100 ri-

als. Nownahallan had a net book value of the rial equivalent of U.S.$8.5 million as of 20 March 1979 - that is, approximately one month before the valuation date - and it earned profits of the rial equivalents of U.S.$1.1 million, U.S.$1.8 million, and U.S.$14,000 during the financial years ending 20 March 1977, 1978, and 1979 respectively. In a May 1978 "internal appraisal," the Sabets valued Nownahallan at U.S.$7.7 million.

13. In its First Report, Willamette used the capitalization of earnings approach to value Nownahallan and concluded that its fair market value as an independent investment was U.S.$32.9 million as of 11 April 1979. At that time Willamette stated that it had no financial statements for Nownahallan at its disposal, so it based its valuation on a July 1978 report by the Board of Directors of Nownahallan to its shareholders. This report summarized Nownahallan's operation results for the year ending 20 March 1978.

14. To the above amount Willamette added a 10-percent portfolio-effect premium. Willamette included this premium in the valuation of each Sabet company at issue in these Cases. Willamette maintained that, as a general matter, investments held within a diversified portfolio of companies are worth more than the same investments are worth individually. With respect to the Sabet companies in particular, Willamette argued that the inclusion of a portfolio-effect premium was justified because of the many "synergies" that the Sabet businesses enjoyed. In particular, Willamette pointed out that many of the Sabet businesses were "fully vertically integrated;" that is, they owned both a principal supplier and a principal distributor. Willamette further contended that, because the Sabet Group owned interests in numerous banks, it was able to raise capital easily.

15. Willamette valued Nownahallan at U.S.$32.9 million, added U.S.$3.29 million representing the portfolio-effect premium, and thus concluded that Nownahallan's value, as part of the Sabet Group of companies, was U.S.$36.2 million.

16. In his First Report, Mr. Ghorbani-Farid maintained that Nownahallan traded its shares at par value prior to the valuation date but that the circumstances prevailing at the valuation date would not have permitted it to continue doing so. He maintained that even if Nownahallan were liquidated, its assets were not sufficient to pay for the shareholders' equity at par value. In light of these circumstances, Mr. Ghorbani-Farid concluded that Nownahallan had no value as of 11 April 1979.

17. The First Deloitte Report criticized Willamette's assumptions and its valuation method and instead valued Nownahallan based on the company's "net realizable value" using an "orderly realization of assets" hypothesis. This method, which Deloitte also called the "net realizable value approach," requires the appraiser to adjust the book value of a company's tangible assets and liabilities to fair market value and to subtract the latter from the former. As noted supra, at para. 12, Nownahallan had a net book value of the rial equivalent of U.S.$8.5 million as of 20 March 1979. Deloitte adjusted various categories of Nownahallan's tangible assets to reflect their alleged market value and concluded that Nownahallan's shares had no economic value at the valuation date.

18. On the basis of both theoretical and practical considerations, Deloitte contested Willamette's addition of the portfolio-effect premium. Deloitte maintained, inter alia, that the application of a portfolio-effect premium would amount to double-counting because, to the extent that the individual companies benefited from the synergies that Willamette described, those benefits would already be reflected in the companies' fi-

nancial data; it is in the first place these data, Deloitte urged, that should be considered in valuing the companies.

19. In its Second Report, Willamette changed its valuation method to the capitalization of excess earnings method ("excess earnings method") to value Nownahallan. This method calculates a company's net tangible assets and its intangible assets (including goodwill, if any)[5] and combines the two to determine the company's total value. In determining the value of goodwill, the excess earnings method assumes that business profits that exceed a "normal" rate of return on tangible assets are produced by intangible assets. Thus, the method determines the value of the company's goodwill by capitalizing the company's excess return on the value of its tangible assets. In performing the excess earnings method, the appraiser must determine, among other things, a required rate of return for the tangible assets, the company's normalized earnings, and an appropriate capitalization rate to apply to the excess return. Relying on Nownahallan's pre-tax earnings for the year ended 20 March 1978, Willamette calculated Nownahallan's value at U.S.$11.77 million as of 11 April 1979, which includes U.S.$1.07 million representing a 10-percent portfolio-effect premium. See supra, para. 14.

20. With its Rebuttal, the Respondent submitted the Second Deloitte Report and the Second Ghorbani-Farid Report. Deloitte confirmed its previous valuation and concluded that Nownahallan had no economic value at the valuation date. Mr. Ghorbani-Farid again referred to Nownahallan's practice of purchasing its own shares at their par value, but as before noted that although it did so during ordinary times, it was not, on the valuation date, in a position to purchase its shares at the same par value. In light of the circumstances prevailing at the valuation date, Mr. Ghorbani-Farid applied a 20-percent discount

[5] The Tribunal hereinafter refers to intangible assets as "goodwill."

to the shares' par value, resulting in a value of 80 rials per share as of 11 April 1979.

21. At the Hearing, Willamette introduced what it called the "asset accumulation method" as an alternative approach for valuing Nownahallan. Specifically, Willamette adjusted the book value of various categories of Nownahallan's tangible assets to reflect their alleged market value and subtracted therefrom the company's liabilities that were outstanding at the valuation date to reach a valuation, including the portfolio-effect premium, of U.S.$17.9 million as of 11 April 1979.

22. At the Hearing, the Claimants offered and sought admission of a number of documents. The Respondent objected to their admission, and the Tribunal reserved a final ruling on the issue.

23. In its Order of 16 September 1997, the Tribunal stated that it "[did] not anticipate admitting any further documents at this late stage of the proceedings." In determining the admissibility of the documents submitted at the Hearing, the Tribunal "considers the character and contents of [the] late-filed documents and the length and cause of the delay." See Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Partial Award No. 323-409-1, para. 62 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 47. Although the evidence in the record for the determination of Nownahallan's value is very limited, the Tribunal finds that the information contained in the Claimants' late-filed documents adds little that is useful. Considering, further, that the Claimants did not give an adequate explanation for their delay in submitting the documents, and that if the Tribunal were to admit these documents, it would have to give the Respondent an opportunity to comment on them, thus delaying resolution of these claims, the Tribunal concludes that the character and contents of the

documents do not justify disrupting the orderly conduct of the proceedings in these Cases. See id. para. 61. The documents in question are therefore not admitted into evidence.

24. Turning to Nownahallan's valuation, the Tribunal finds that none of the reports submitted by the parties provides an adequate basis for its decision. Whatever the theoretical merits of the excess earnings approach, the Claimants have not provided the Tribunal with sufficient evidence to permit it to apply the approach in a way that generates even minimal confidence in the value reached. Experts applying the excess earnings method typically utilize the fair market value of the company's tangible assets whereas Willamette utilized Nownahallan's net book value. Further, to determine a company's normalized earnings, experts would generally examine income statements for several years prior to the date of valuation, whereas Willamette made its calculations on the basis of only Nownahallan's earnings for the year ending 20 March 1978; that is, for a year ending almost thirteen months before the valuation date. This failure to take into account Nownahallan's earning for the year ending 20 March 1979 would, contrary to Tribunal practice, exclude the adverse impact of the Revolution on Nownahallan, something which a prudent purchaser of the company's shares would take into account. Finally, experts take account of a variety of factors and information, both with respect to the company's assets and its earnings, which are not in the record before the Tribunal. See S. Chris Summers, The Excess Earnings Method in: Handbook of Business Valuation, 167-75 (Thomas L. West & Jeffrey R. Jones eds. (1992)); and Shannon P. Pratt, Robert F. Reilly, and Robert P. Schweihs, Valuing a Business: The Analysis and Appraisal of Closely Held Companies, 290-1 (1996). Finally, the evidence presented is too meager for the Tribunal to determine with any degree of confidence an appropriate required rate of return and capitalization rate.

25. The Tribunal now turns to the valuation method proposed in the Second Ghorbani-Farid Report. The Tribunal cannot accept that the par value of a company's shares is necessarily an indication of its fair market value even if, throughout the existence of the company, its shares were bought and sold at par value. Further, Mr. Ghorbani-Farid has not provided any evidence that this was Nownahallan's practice. Finally, valuing a company by reference to its share prices suggests that the company is a going concern, and the Tribunal is not convinced that Nownahallan was a going concern at the time of the expropriation. Although it was profit-making before the valuation date, Nownahallan served the Baha'i community, and Mr. Ghorbani-Farid asserted that many of its customers and debtors left the country during the Islamic Revolution.

26. Both Willamette in its alternative approach (see supra, para. 21) and Deloitte calculated Nownahallan's net worth as of 11 April 1979 by subtracting the value of the company's liabilities as of that date from the alleged fair market value of its tangible assets, including fixed assets, securities, and accounts receivable, on the same date. Willamette called this valuation method the "asset accumulation approach," while Deloitte termed it "net realizable value" - or "orderly realization of assets" approach. Whatever the terms employed by the parties' experts, this method is identical to what in earlier awards the Tribunal has called the dissolution or liquidation value basis of valuation. See Tippetts, Abbett, McCarthy, Stratton, supra, at 12, 6 Iran-U.S. C.T.R. at 226; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 267 (7 Jul. 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101-102; 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; Birnbaum, supra, paras. 40-42. As the cases just cited indicate, the Tribunal, in its

practice, has used the terms "dissolution value" and "liquidation value" as synonyms.

27. In theory, the Tribunal finds the dissolution basis of valuation to be an appropriate method for valuing Nownahallan, since, as a result of the changes brought on by the Islamic Revolution, the Tribunal is not convinced that the company was a going concern at the valuation date. However, the evidence in the record is not sufficient for the Tribunal to perform a precise analysis. For instance, Nownahallan's assets had considerable book value at the time of valuation, but the Tribunal is not in any position to appraise their fair market value or to determine their recoverability. The Tribunal likewise has certain doubts about Nownahallan's willingness subsequent to its expropriation to pay its liabilities to some of its Baha'i depositors who had left the country.

28. Concerning Willamette's portfolio-effect premium argument (see supra, para. 14), the Tribunal need not decide whether the portfolio-effect premium is theoretically justifiable in certain circumstances, since its application in the present case cannot be justified on the evidence that has been presented. Moreover, it would seem logical, as Deloitte suggested, that the value of the benefits that the Sabet companies enjoyed as a result of their network is already reflected in the companies' books. In light of the above, the Tribunal declines to apply a portfolio-effect premium in valuing Nownahallan or any of the other Sabet companies at issue in these Cases.

29. In light of the deficiencies in the parties' valuations, the Tribunal will have to make an approximation of Nownahallan's value which is reasonable and equitable taking into account all the circumstances in these Cases. See Hakim, supra, para. 135; Seismograph Service Corporation, et al. and National Iranian Oil Co., et al., Award No. 420-443-3, para.

306 (31 Mar. 1989), reprinted in 22 Iran-U.S. C.T.R. 3, 80; Starrett Housing Corporation, supra, para. 339, 16 Iran-U.S. C.T.R. at 221. See also supra, para. 6. In so doing, the Tribunal first notes that Nownahallan's book value as of 20 March 1979 was the rial equivalent of approximately U.S.$8.5 million. Normally, the Tribunal finds it inappropriate to equate a company's market value with its book value, since the book value is usually less than its market value. Here, however, the Tribunal has little additional evidence on which to base its valuation of Nownahallan and the evidence which is available indicates that at the time of valuation, the company could no longer be considered as a going concern. The Tribunal notes in addition only that the Claimants submitted a May 1978 "internal appraisal" prepared by the Sabets, which values Nownahallan at approximately U.S.$7.7 million.

30. Accordingly, based on the very limited evidence before it and taking into account all the relevant circumstances, the Tribunal estimates that U.S.$8 million is a fair and reasonable assessment of Nownahallan's value as of 11 April 1979. Reja and Karim Sabet each owned 27,946 shares out of a total of 4 million shares in Nownahallan; therefore, they are each entitled to U.S.$55,892. Aram Sabet owned 28,076 shares in Nownahallan; therefore, he is entitled to U.S.$56,152.

2. ICC

31. ICC was founded in 1963 by Habib and Hormoz Sabet, the Claimants' grandfather and father, respectively, in joint venture with Kosangas and Kampsax of Denmark. ICC manufactured and imported natural gas cylinders containing liquid propane gas. A substantial part of ICC's production was bought by or sold through Irangas, a company with the same major shareholders as ICC. As of April 1979, ICC employed approximately 400 people.

32. In its Partial Award in these Cases, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in ICC on 7 May 1979. See supra, para. 2.

33. In its First Report, Willamette valued ICC using the asset accumulation approach see supra, para. 21. Willamette included the value of goodwill among ICC's assets, which value it calculated by the capitalized excess earnings approach, using ICC's operational results for the years ending 20 March 1977 and 20 March 1978. See supra, para. 19. In particular, Willamette calculated the value of ICC's goodwill at U.S.$ 4.65 million and added to it the company's shareholders' equity of U.S.$1.16 million to reach the "fair market value of the owners' equity." To this value, Willamette added a 10-percent portfolio-effect premium to reach a total valuation for ICC of U.S.$6.4 million as of 11 April 1979. See supra, para. 14.

34. The Mahallati Report, which the Respondent submitted, analyzed ICC's value on the basis of its net book value, its tax returns, and future sales prices and costs as projected by Mahallati. Mahallati concluded that ICC was worth at most the rial equivalent of U.S.$930,000 as of 11 April 1979. This amount is equal to the par value of ICC's 6,500 shares.

35. In its Second Report, Willamette used the same valuation method it had used in its First Report but concluded that ICC was worth U.S.$4.3 million, including the portfolio-effect premium, as of 11 April 1979.

36. In its Second Report, Deloitte valued ICC by considering the net realizable value of the assets and liabilities. See supra, para. 17. Deloitte made downward adjustments to some categories of tangible assets and concluded that ICC had no value as of the valuation date. In particular, Deloitte reduced the book value of ICC's current assets as of 20 March 1979 from

the rial equivalent of U.S.$28.4 million to the rial equivalent of U.S.$16.2 million.

37. The Tribunal again finds that the reports submitted by the parties do not provide an adequate basis for its decision as to the value of ICC. With respect to the excess earnings approach, the Tribunal first acknowledges that the parties submitted more financial data relating to ICC than they had for Nownahallan. In particular, the record contains ICC's yearly results from 20 March 1972 to 20 March 1979, thus providing the Tribunal more information than it had for Nownahallan by which it might calculate ICC's normalized earnings. However, the Tribunal finds the other considerations mentioned supra, in para. 24, also pertinent to the valuation of ICC and concludes that there is not sufficient evidence to use the excess earnings method to determine ICC's goodwill.

38. Turning to the Mahallati Report, it did not present the evidence upon which it relied, and it projected arbitrary future increases in costs in excess of its equally arbitrary projected future increases in sales prices for the company's products. Such projections, of course, ensure a conclusion of an eroding financial position.

39. Finally, the Tribunal must reject Deloitte's net realizable value approach and its application of that approach. Deloitte called its method a going-concern approach, but the approach is inconsistent with a going-concern premise in that it ascribes no value for goodwill and rather values each of the company's tangible assets separately and subtracts from them the company's liabilities. Tribunal precedent indicates that the net realizable value approach is not appropriate for the valuation of a going concern. See Khosrowshahi, supra, paras. 42 and 47. Here, based on the evidence before it, the Tribunal finds that ICC was a going concern at the valuation date. The com-

pany's net book value had, with one possible exception, increased between 1972 and 1978. Its profits likewise increased between 1972 and 1977, then decreased somewhat in 1978, resulting in a loss for the year ending 20 March 1979. However, the Tribunal notes that ICC's sales for 1979 were approximately the same as those for 1977 and assumes that its costs must have risen disproportionately in 1979. In particular, the Tribunal believes that ICC was affected by the increased labor costs prevalent during the Revolution. Finally, Iran Cylinder's majority shareholders - members of the Danish Kosan Group - were experienced in managing several gas-related enterprises in Denmark, Iran, and elsewhere, and these shareholders/managers expressed confidence in the company's prospects as late as November 1978. Thus, the Tribunal finds no justification for valuing ICC on a liquidation premise.

40. Consequently, the Tribunal is compelled to make its best estimate of the market value of the Claimants' shares as of 7 May 1979 on the basis of the limited evidence in the record taking into account all the relevant circumstances. See supra, para. 29.

41. On the positive side, the Tribunal notes that the company had been profitable prior to the Iranian Revolution and, in fact, had declared dividends amounting to the rial equivalent of U.S.$214,286 and U.S.$185,714 in 1977 and 1978, respectively. Incorporated in 1963, by 1978 ICC employed nearly four hundred employees and produced hundreds of thousands of gas cylinders, as well as thousands of hotplates and ranges annually. Mahallati acknowledged that the company had net book values on 20 March 1977, 1978, and 1979, respectively, of the rial equivalents of U.S.$1.54 million, U.S.$1.51 million, and U.S.$930,000. As these values included depreciated assets, the Tribunal believes that they likely understate the market value of those assets. See also supra, para. 29. In particular, the Tribunal

supposes that the book value of the depreciated land, buildings, and equipment are understated, considering the aforementioned number of employees and annual production.[6] The Tribunal also considers it significant that ICC's products were of a nature to continue to be in demand after the Revolution and that there was evidence that ICC was selling 80 percent of its production to Iran Gas, which had the same major shareholders.

42. On the negative side, strikes during 1978 and early 1979, particularly in banks and the petroleum industry, obviously increased ICC's costs considerably and greatly reduced its profitability, if not its sales. As noted supra, at para. 39, ICC suffered a loss in 1979, and there is evidence that the company suffered cash-flow difficulties during 1978 and 1979. Decisions by the Iranian Government in support of the rights of the workers also increased ICC's immediate and contingent costs, and the conditions facing expatriate owners and managers in Iran resulting from the Revolution must have created some uncertainty as to the future role of the majority Danish owners and managers who had already left the country. Finally, the Tribunal notes evidence that not all taxes for prior years had been agreed upon with the authorities; thus, some additional tax liability may have been imposed.

43. Weighing these positive and negative factors, and taking account of the Tribunal's conclusion that ICC was a going concern, the Tribunal concludes that the market value of ICC as of 7 May 1979 would have been in excess of its 20 March 1979 book value of the rial equivalent of U.S.$930,000, to which must be added its additional value as a going concern. The Tribunal

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[6] The Tribunal notes an audit report by Coopers & Lybrand dated 13 June 1978 in which Coopers & Lybrand states that it was unable to verify the net book amount of ICC's fixed assets and the related depreciation charge stated in the balance sheet of 20 March 1978. The Tribunal is untroubled by this statement since there is no evidence to suggest that these amounts were inaccurately stated in ICC's balance sheet.

determines that the value of ICC on 7 May 1979 was U.S.$1.6 million.

44. Reja, Aram, and Karim Sabet each owned 100 out of a total of 6,500 shares in ICC; thus, they are each entitled to U.S.$24,615.

3. Mina Glass

45. Mina Glass was established in 1969. At the time the Claimants' interests in the company were expropriated, Mina Glass was the largest manufacturer of glass bottles in Iran. Mina Glass also produced various types of molded glass bottles and glass containers and manufactured plastic injected cases for the soft drink industry. The Zamzam Bottling Companies[7] were Mina Glass's largest customer, typically purchasing between 70 and 80 percent of Mina Glass's annual production. Sabet family members or Sabet Group companies together held almost 90 percent of Mina Glass's shares.

46. In its Partial Award in these Cases, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in Mina Glass on 7 May 1979. See supra, para. 2.

47. In its First Report, Willamette valued Mina Glass at U.S.$6.5 million, including portfolio-effect premium, as of 11 April 1979. Willamette pointed out that "no meaningful financial information [was] available" concerning Mina Glass's operations; thus, it said it would revise its conclusions as information became available.

48. Ernst & Young and Mahallati, two of the Respondent's experts, valued Mina Glass as of 19 September 1979 and concluded that the Claimants' shareholdings in the company were worthless.

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[7] See supra, note 1.

With its valuation report, Ernst & Young submitted, inter alia, financial statements for Mina Glass for the periods ending 21 November 1978 and 21 November 1979.

49. In its Second Report, Willamette used the "asset accumulation approach" (see supra, para. 21) to value Mina Glass as of 11 April 1979. It based its valuation on the financial statement for Mina Glass as of 21 November 1978 that Ernst & Young submitted. Willamette made two adjustments to the information contained in that document. First, it increased the stated book value of Mina Glass's land and buildings to reflect their fair market value as of 11 April 1979. In so doing, Willamette relied on an appraisal prepared by Mr. Manoochehr Vahman, an appraiser accredited by the Iranian Ministry of Justice from 1968 to 1981. Second, Willamette eliminated from Mina Glass's liabilities accounts payable to shareholders worth the rial equivalent of almost U.S.$2.136 million. Willamette valued 100 percent of Mina Glass's equity at U.S.$6,700,000 (rounded). To this value, it added a 10-percent portfolio-effect premium. Accordingly, Willamette concluded that Mina Glass's fair market value as of 11 April 1979 was U.S.$7,466,369.

50. Deloitte valued Mina Glass based on the company's "net realizable value" using the orderly realization of assets hypothesis. See supra, para. 17. Unlike Willamette, which used the company's 21 November 1978 financial statement, Deloitte valued Mina Glass based on the company's 21 November 1979 financial statement, which was also included in the Ernst & Young report. See supra, para. 48. Like Willamette, Deloitte adjusted the value of Mina Glass's land and buildings to reflect their fair market value, and it relied on an appraisal prepared by Dr. Manouchehr Pooya, who has been an Official Expert of the Iranian Ministry of Justice since 1970. Deloitte concluded that Mina Glass was worthless as of 11 April 1979.

51. Thus, both Willamette and Deloitte calculated Mina Glass's net worth on the date of the expropriation by subtracting the alleged value of the company's liabilities as of that date from the alleged fair market value of its tangible assets, including fixed assets, securities, and accounts receivable, on the same date. The Tribunal agrees that this method is appropriate to determine the value of the Claimants' ownership interests in Mina Glass, since Mina Glass had been losing money for several years prior to the expropriation date and thus does not appear to have been a going concern at that time. See also supra, para. 26.

52. As noted supra, at para. 6, the Tribunal must make its best approximation of the value of Mina Glass and the Claimants' ownership interests therein based on the best possible use of the evidence in the record and taking into account all of the relevant circumstances of these Cases. The best possible evidence of Mina Glass's value as of 7 May 1979 is the company's balance sheet as of 21 November 1978, see supra, para. 48. Although it was prepared some five and one-half months before the expropriation, it constitutes a well-founded starting point for the Tribunal's own assessment of Mina Glass's financial position as of 7 May 1979. The Tribunal notes, however, the paucity of reliable evidence available to make that determination. Mina Glass's balance sheet as of 21 November 1978 shows the rial equivalent of approximately U.S.$13.56 million in assets and the rial equivalent of approximately U.S.$13.99 million in liabilities, but many of these have not been explained, either by the parties or their valuation experts. For example, the Tribunal has received no information as to Mina Glass's accounts receivable - from whom they are owed and for how long they have been owing. Further, Mina Glass's fixed assets of the rial equivalent of U.S.$10.71 million include equipment that had an original cost of the rial equivalent of U.S.$9.03 million, but the

Tribunal has not been provided with any expert report on the market value of such equipment as of the valuation date and indeed has no information as to its age, condition, or prospects for sale, other than the balance sheet indication of the rial equivalent of U.S.$4.64 million depreciation. Furthermore, the Ernst & Young report states that Mina Glass's current liabilities as of 21 November 1978 and 1979 include the rial equivalent of U.S.$2.136 million as accounts payable to shareholders, but the Tribunal has received no information as to who those shareholders are.

53. Consequently, the Tribunal will address the major categories of assets and liabilities which the parties have addressed, but the Tribunal will not attempt to assign specific market values thereto; rather, it will reach only a final judgment as to the value of Mina Glass's assets minus its liabilities on a dissolution value basis[8] as of 7 May 1979.

a. Land and Buildings

54. Both the Claimants and the Respondent submitted appraisals of Mina Glass's land and buildings. Mr. Vahman, the Claimants' expert, reported that he had based his appraisal on information and documents provided by the Claimants, while Dr. Pooya, the Respondent's appraiser, related that he had actually inspected Mina Glass's property.

55. Mr. Vahman stated that Mina Glass's land was 150,000 square meters in size. According to Dr. Pooya, it measured only 37,500 square meters. Dr. Pooya's assertion is supported by a deed submitted by Mr. Ghorbani-Farid, showing that Iramoz Corporation sold a 37,500-square-meter portion of a 150,000-square-meter plot of land to Mina Glass on 11 February 1967. On the basis of this deed, the Tribunal is satisfied that Mina Glass

[8] See supra, para. 26.

owned 37,500 square meters of land. It is further satisfied by Dr. Pooya's representations, based on his inspection and measurement of the site, and accepted by Mr. Vahman at the Hearing, that Mina Glass's buildings measured 18,450 square meters.

56. The parties' experts have offered widely divergent estimates of the value of Mina Glass's land and buildings. The Tribunal must place more weight on Dr. Pooya's valuation since he actually visited the property. See Protiva, supra, para. 102. However, neither Dr. Pooya nor Mr. Vahman provided any significant detail about Mina Glass's buildings, nor did they submit any evidence to support their appraisals. In particular, neither expert submitted any price comparisons for similarly situated real estate,[9] nor did they give much indication as to why they chose the values that they did. While both experts agree that Mina Glass's buildings were approximately 20 years old, they strongly disagree about their condition. Mr. Vahman rated the "quality of construction" and "condition of structure" of the buildings as "excellent" and estimated their remaining life to be 50 years. Dr. Pooya, in contrast, described the quality of the buildings as "old." Neither party submitted any contemporaneous photographs of Mina Glass's facilities.

57. Given the paucity of evidence relating to Mina Glass's land and buildings, the Tribunal is unable to ascertain their precise value. A reasonable approximation of their fair market value will be reflected in the Tribunal's valuation of Mina Glass as a whole. See Hakim, supra, para. 127.

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[9] Mr. Ghorbani-Farid submitted a transfer document dated 17 January 1977, showing a sale by Iramoz Corporation of another parcel of land adjacent to Mina Glass's property. The Tribunal cannot be certain of the document's contents, however, because the English translation that Mr. Ghorbani-Farid provided is difficult to understand, and the Persian copy was not sufficiently legible for the Tribunal's Language Services Division to make a satisfactory translation. More importantly, the economic changes that occurred between January 1977 and May 1979 render this deed of little probative value.

b. Accounts Receivable

58. Willamette included among Mina Glass's assets the entire face value of the accounts receivable recorded in the company's balance sheet as of 21 November 1978.

59. Deloitte, in contrast, proposed to discount Mina Glass's accounts receivable by 20 percent, the discount rate that Willamette used in its discounted cash flow ("DCF") valuations of other Sabet companies at issue in these Cases. According to Deloitte, this discount rate appropriately takes into account (1) the expected rate of inflation; (2) the rate of real interest; (3) risk; and (4) the time which payment might be actually collected.

60. The Tribunal does not believe that the discount rate applied to a company's cash flow in the context of a DCF valuation can properly be applied to the value of accounts receivable in the context of a dissolution valuation. The risk factors that are relevant in determining the appropriate discount rate to be applied to future earnings in a DCF calculation (e.g., the risk of forecasted cash flows being wrong; the risk related to social and economic conditions in the country where the company is located; the risks inherent to the company) are largely irrelevant in determining the risks inherent to making sales on credit.

61. In Birnbaum, supra, at para. 90, the Tribunal identified the company's "history of settling disputed accounts" as the critical factor in determining the appropriate discount rate to be applied to accounts receivables in the context of a dissolution valuation like the present one. Deloitte, however, submitted no evidence concerning the history of Mina Glass's debt collection. As noted, supra, at para. 45, the Zamzam Bottling Companies, which were almost entirely owned by Sabet family members, were Mina Glass's largest customer, typically purchasing

between 70 and 80 percent of Mina Glass's annual production. Hence, the Tribunal presumes that most of Mina Glass's accounts receivable were owed by the Zamzam Bottling Companies and that they were thus likely to be collectable.

62. Consequently, the Tribunal deems it reasonable to reduce the total value of Mina Glass's accounts receivable by 5 percent.

c. Inventories

63. Willamette included among Mina Glass's assets the entire face value of the inventories recorded in the company's balance sheet as of 21 November 1978, while Deloitte suggested discounting the company's inventories by 30 percent because "[p]ractice indicates that raw materials, finished goods and consumables would probably only realize about 70 per cent of their net book value." Deloitte provided no evidence that a discount would be justifiable in Mina Glass's case. Again, given that the Zamzam Bottling Companies were the purchaser of the bulk of Mina Glass's products, it seems to the Tribunal that Mina Glass was better placed to sell its inventory than other companies. Consequently, the Tribunal deems it reasonable to discount the value of Mina Glass's inventories by merely 5 percent.

d. Creditors' Accounts

64. According to the Ernst & Young report, Mina Glass's current liabilities as of 21 November 1978 and 1979 include 149.5 million rials (or approximately U.S.$2.136 million) in accounts payable to shareholders. Willamette eliminated those debts from Mina Glass's liabilities.

65. Deloitte disagreed with Willamette's treatment of the shareholders' current accounts, stating that they "represent real liabilities to (current) shareholders whose identities are

not known []or specified in Willamette's report - which would still be payable to the (former) shareholders if they were to sell the shares."

66. Mr. Ghorbani-Farid submitted an audit report prepared by the Agahan Auditing Firm ("Agahan Report"), stating Mina Glass's financial position as of 21 November 1979. In one of its notes, the Agahan Report states that

> [t]he creditors and noncommercial payable notes include 211.9 million rials matured payable notes which the former management of Mina Glasswork Company has assigned to various persons and institutes against the receipt of short term loans. Taking into account the nature of the performed transactions, the Company does not intend to pay these noncommercial payable notes.

Although the Agahan Report refers to the 211.9 million rials in debts as appearing on Mina Glass's November 1979 balance sheet, the Tribunal can be certain that the debts were incurred before the valuation date since, according to the Agahan Report, they had been assigned by "the former management" of Mina Glass.

67. The Tribunal need not ascertain whether the 211.9 million rials in accounts payable referred to in the Agahan Report includes the 149.5 million rials in accounts payable to shareholders referred to in the Ernst & Young Report. See supra, para. 64. This is because, for purposes of valuing Mina Glass, what is relevant is the amount of pre-expropriation debts that Mina Glass did not intend to pay, regardless of to whom those debts were owed. The Agahan Report - a document that was not prepared for the purposes of this litigation and was relied upon by the Respondent's valuation expert in preparing his report - satisfies the Tribunal that Mina Glass did not intend to pay 211.9 million rials of its accounts payable.

e. Effects of the Revolution

68. While Mina Glass's balance sheet as of 21 November 1978 represents the starting point for the Tribunal's valuation of Mina Glass as of 7 May 1979, it cannot form the sole basis for valuing the company as of that date. There is no doubt that, as a result of the unstable economic and social conditions prevailing in Iran, Mina Glass's value decreased between 21 November 1978 and 7 May 1979. The Tribunal has recognized 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." See supra, para. 5. (Quoting from Birnbaum, supra, at para. 42.) See Khosrowshahi, para. 49 (Iran's economy was disrupted and transformed by the Revolution); Phelps Dodge Corp., et al. and Islamic Republic of Iran, Award No. 217-99-2, para. 30 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 133 (Tribunal must consider the obvious and significant negative effects of the Iranian Revolution). In particular, the financial data that the parties submitted indicate a substantial decline in Mina Glass's value after November 1978.

69. Consequently, the Tribunal will apply a significant reduction in value to reflect the adverse conditions that Mina Glass suffered during the nearly six months between its November 1978 balance sheet and the 7 May 1979 valuation date.

f. Conclusion on Valuation

70. The Claimants and the Respondent have put forward widely divergent assessments of Mina Glass's value. The Tribunal cannot adopt Willamette's U.S.$7,466,369 assessment for a variety of reasons, including that it is based on Mr. Vahman's real property appraisal which, among other things, assumes that Mina Glass's land size was four times the size that

it was, and because it includes a 10-percent portfolio-effect premium, which the Tribunal declines to apply. See supra, para. 28. Likewise, the Tribunal cannot accept the conclusions of the Respondent's valuation reports that Mina Glass was worthless, since they, like Willamette's, are based on incomplete information, and they apply large and unwarranted discounts to Mina Glass's assets.

71. In light of these deficiencies in the parties' valuations, the Tribunal will have to make an approximation of Mina Glass's value which is reasonable and equitable taking into account all the circumstances in these Cases. See Hakim, supra, para. 135. See also supra, para. 6. In so doing, the Tribunal notes that Mina Glass owned valuable assets, including a large piece of land with buildings and equipment sufficient to employ 300 workers and capable of producing 180 tons of glass per day, as well as expensive equipment and inventory.

72. Accordingly, based on the evidence in the record and taking into account all the relevant circumstances, the Tribunal determines that a fair and reasonable assessment of Mina Glass's value as of 7 May 1979 is U.S.$1.9 million. Reja and Aram Sabet each owned 3120 of Mina Glass's 400,000 shares, or .78 percent of Mina Glass's shares; therefore, they are each entitled to U.S.$14,820.

4. GTR

73. GTR was established in May 1964 as a joint venture among Habib, Hormoz, and Iradj Sabet (the Claimants' uncle), General Tire International Company of Akron, Ohio ("General Tire International"), and the Industrial and Mining Development Bank of Iran.

74. GTR produced rubber tubes, tires, and other rubber products for sale on the Iranian market. As of early 1977, GTR

controlled a 22-percent share of the domestic tire market. Approximately 20 percent of GTR's revenues were generated from sales to Iranian government agencies. As of April 1978, GTR had about 1,200 employees.

75. In its Partial Award in these Cases, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in GTR on 7 May 1979. See supra, para. 2.

76. In its First Report, Willamette valued GTR by averaging values determined pursuant to (1) the capital market approach and (2) the capitalization of earnings approach. With respect to the capitalization of earnings approach, Willamette averaged GTR's 1972-1976 earnings and then capitalized that figure to reach a value of U.S.$31 million. As for the capital market approach, Willamette multiplied the number of GTR's shares by the company's last-traded price per share at the Tehran Stock Exchange in 1977 to reach U.S.$24.3 million. To the average of those values, U.S.$28 million (rounded), Willamette added a 10-percent portfolio-effect premium to reach a final valuation of U.S.$30.8 million for GTR as of 11 April 1979.

77. In its Second Report, Willamette abandoned the capital market and the capitalization of earnings approaches and used the asset accumulation approach to value GTR as of 11 April 1979. It explained that the capital market approach was not relevant to the valuation of GTR because GTR's shares were not actively traded at the valuation date; thus, a willing investor in April 1979 would likely not have determined the value of the company by using its share prices.

78. Willamette based its asset accumulation valuation of GTR on a balance sheet for GTR as of 21 November 1978 prepared by Mahallati, the Respondent's expert. See infra, note 10. According to the 21 November 1978 balance sheet, as of that date,

GTR had a net book value the rial equivalent of over U.S.$12.5 million.

79. Based on an analysis performed by one Mussa Siamak, Willamette made several, very significant upward adjustments to the information contained in the 21 November 1978 balance sheet to reflect the fair market value of GTR's assets as of that date. Willamette's adjustments resulted in an increase in the total value of the company's assets from the rial equivalent of U.S.$36,916,871 to U.S.$79,351,400. Among other things, Willamette included U.S.$13,793,286 in goodwill among GTR's assets. Willamette valued 100 percent of GTR's equity as of 11 April 1979 at U.S.$55 million (rounded). To this value, it added a 10-percent portfolio-effect premium for a total value for GTR of U.S.$60.5 million.

80. Mahallati valued GTR as of 21 November 1979. For the purposes of its report, Mahallati prepared a balance sheet for GTR as of that date based, it stated, on the company's "annual tax returns."[10] Mahallati made several adjustments to this balance sheet. Among other things, it included among GTR's liabilities 510 million rials - over U.S.$7.2 million - in "additional corporation taxes for 1971 to 1979" and 272 million rials - over U.S.$3.8 million - "for termination and severance pay up to 1979." Mahallati thereby increased the company's total liabilities as of 21 November 1979 by 782 million rials - over U.S.$11.17 million. Using a "dividend basis of valuation," Mahallati concluded that GTR was worthless at the valuation date.

81. Mr. Ghorbani-Farid also valued GTR. Referring to what he considered the company's unsatisfactory performance

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[10] Mahallati's 21 November 1979 balance sheet is not corroborated by any contemporaneous evidence, such as the company records. As noted, Mahallati also prepared a 21 November 1978 balance sheet for GTR based, it stated, on the company's "annual tax returns." Mahallati's 21 November 1978 balance sheet, unlike that of 1979, is corroborated by the balance sheet included in a contemporaneous audit report prepared by Coopers & Lybrand in March 1979.

during financial years 1976-79 due, he claimed, inter alia, to deteriorating quality, market competition, declining sales, rising costs, significant tax liability, and, by the valuation date, the possibility of severance of the technical assistance agreement with General Tire International, Mr. Ghorbani-Farid opined that there was at the time little, if any, chance of GTR becoming profitable again in the foreseeable future and that therefore, from a profit point of view, no economic value could be attributed to GTR shares.

82. Mr. Ghorbani-Farid also proposed an alternative method for valuing GTR. He noted that General Tire International, together with other claimants (collectively, "General Tire Group"), asserted several claims against Iran Tire Manufacturing (Public Joint Stock) Company ("Iran Tire")(formerly GTR) before this Tribunal, including a claim for the expropriation of their ownership interests in GTR, and that they settled those claims in August 1983 for U.S.$2.42 million. See The General Tire & Rubber Company, et al. and Iran Tire Manufacturing (Public Joint Stock) Company, Award No. 80-136-1 (13 Sep. 1983), reprinted in 3 Iran-U.S. C.T.R. 351. Mr. Ghorbani-Farid assumed that U.S.$2.3 million out of the settlement amount was in settlement of the claims asserted before the Tribunal. Mr. Ghorbani-Farid also assumed that U.S.$603,886 out of the U.S.$2.3 million represented the compensation for the value of the claimants' 184,320 shares in GTR. Citing the fact that the Tribunal's Award on Agreed Terms was issued on 13 September 1983 and the statement of claim in Case No. 136 was filed on 19 November 1981, Mr. Ghorbani-Farid reduced the U.S.$603,886 to U.S.$510,326 to account for 10-percent simple interest for 22 months, which he assumed was included in the settlement amount. Accordingly, Mr. Ghorbani-Farid valued GTR at U.S.$2.5 million and concluded that the Claimants' shares in GTR were each worth U.S.$2.77.

83. Deloitte valued GTR using the net realizable value approach. See supra, para. 17. Deloitte based its valuation on the 21 November 1979 balance sheet prepared by Mahallati, see supra, para. 80, and on "adjustments noted by" Mr. Ghorbani-Farid in his report. Deloitte made several adjustments to the 21 November 1979 balance sheet. For example, it discounted the values of GTR's inventory and accounts receivable; it also included among GTR's liabilities 510 million rials for corporate taxes allegedly owed by GTR for the period 1971-1979, as proposed by Mahallati. In its Second Report, Deloitte concluded that GTR had a negative net-realizable value of 138.9 million rials, or U.S.$1.98 million, as of 21 November 1979.

84. The Tribunal again finds itself required to value a company when it has before it less-than-adequate evidence. As noted above, the Claimants' expert, Willamette, ultimately advocated valuing GTR by means of the so-called asset accumulation approach. Specifically, Willamette adjusted GTR's net book value on the basis of an analysis by one Mr. Mussa Siamak, and it calculated goodwill by means of the capitalization of excess earnings method. Willamette failed to include the crucial analysis made by Mr. Siamak or even the most cursory explanation of the adjustments, some of them quite drastic, that Mr. Siamak made. Consequently, the Tribunal is unable to rely on Willamette's valuation.

85. Concerning Mr. Ghorbani-Farid's valuation of GTR (see supra, para. 81), although the Tribunal acknowledges that some of the circumstances that he mentioned in his report - such as the quality concerns, customer complaints, and market competition - adversely affected GTR's operations at the time, those factors do not lead to the conclusion that GTR's shares would have become worthless. Indeed, a 1978 audit report by Coopers & Lybrand rendered on 1 March 1979 showed that the company was profit-making, and the report gave no indication

that the company was no longer a going concern. Moreover, Mr. Ghorbani-Farid's alternative method of valuation, which is based on the settlement between the General Tire Group and Iran Tire in another case before the Tribunal (see supra, para. 82), as explained below, undermines his conclusion that GTR's shares had no economic value.

86. Mr. Ghorbani-Farid, in his alternative approach, valued GTR by reference to the settlement between the General Tire Group and Iran Tire. This method proves unsatisfactory for a number of reasons. First, the General Tire Group brought several claims against Iran Tire, including the claim for expropriation of shares, and there is no evidence available by which the Tribunal might allocate the settlement sum amongst the claims. Moreover, even if the Tribunal knew how much of the settlement constituted compensation for the General Tire Group's shares, that sum would not be indicative of the value of the Claimants' shares here. A settlement value of shares is likely to be considerably less than what the claimant believes to be the fair market value of those shares because claimants are often willing to accept less in settlement than the fair market value of their property to account for, among other things, the risk that they will not prevail on the merits and the legal and other costs of continuing the litigation that they are not apt to recover. Settlements may be motivated by many factors that do not indicate share value, such as the risks and costs of litigation and the financial positions of the parties. In light of the above, the Tribunal is not prepared to accept the alleged settlement value of the General Tire Group's shares as a basis for valuing the Claimants' shares.

87. The Tribunal also cannot place substantial weight on Deloitte's valuation. Deloitte uses the so-called net realizable value approach; like Willamette, Deloitte simply adjusts

GTR's net book value to fair market value, but, unlike Willamette, it fails to include any sum for goodwill because, according to Deloitte, a proper application of Willamette's earnings-based approach results in no positive goodwill. Although Deloitte's adjustments are not completely unsupported by evidence, as are Willamette's, Deloitte fails to convince the Tribunal of the legitimacy of most of the drastic reductions that it makes to GTR's book value.

88. Further, as the Tribunal noted in the context of its valuation of ICC, although Deloitte calls its method a going-concern approach, the approach is inconsistent with a going-concern premise in that it ascribes no value for goodwill and rather values each of the company's tangible assets separately and subtracts from them the company's liabilities. The Tribunal rejected this method in Khosrowshahi once it determined that the company in question was a going concern. Here, GTR was also a going concern. The Tribunal does not mean to deny or minimize the uncertainties that GTR faced at the valuation date and their impact on the company's goodwill. Its foreign management had left the country, and its relationship with General Tire International was in some question. Further, its continued viability depended at least partially on the policies that the new government would adopt with respect to imports, taxation, and price control. However, despite these uncertainties, the evidence indicates that GTR had a future. The company had been operating for fifteen years, had been profitable for most of those years, and, at the valuation date, employed a substantial work-force. The company produced a product for which a stable market existed, and it had maintained a stable and very positive book value over several years preceding the valuation date. Indeed, the company's net book value at the time stood at the rial equivalent of approximately U.S.$12.5 million, and its nominal share value was

the rial equivalent of approximately U.S.$13 million. Therefore, the effective liquidation approach that Deloitte proposes for valuing GTR is not in the circumstances appropriate.

89. The Tribunal consequently must examine the evidence and make its own approximation of GTR's value. The Tribunal begins with GTR's balance sheet as of 21 November 1978, which shows GTR with a book value of the rial equivalent of approximately U.S.$12.5 million.

a. Land and Buildings

90. The Claimants and the Respondent have each submitted an expert opinion by a real estate appraiser who valued GTR's land and buildings at fair market value.

91. The Respondent's expert, Dr. Pooya (see supra, para. 50), visited the site. He submitted three deeds showing that GTR owned 190,160 square meters of land, and he stated that GTR had 41,200 square meters in buildings on that land. The Tribunal is satisfied that these figures represent GTR's holdings in land and buildings.

92. Dr. Pooya and the Claimants' expert, Mr. Vahman (see supra, para. 49), have offered widely divergent estimates of the value of GTR's land and buildings. Indeed, GTR's property was situated adjacent to that of Mina Glass, and the experts' divergent appraisals of GTR's land and buildings correspond to their divergent appraisals of Mina Glass's land and buildings. See supra, para. 56. As the Tribunal noted in the context of Mina Glass, see id., it must place more weight on Dr. Pooya's valuation since he actually visited the property. See Protiva, supra, para. 102; however, the Tribunal again notes that neither Dr. Pooya nor Mr. Vahman provided any significant detail about the value of GTR's land and buildings. Neither expert submitted any price comparisons for similarly situated

real estate, nor did they give much other indication as to why they chose the values that they did. Both experts agreed that GTR's buildings were approximately twenty years old, but Dr. Pooya described the buildings as "old," while Mr. Vahman described their condition as "excellent;" yet, neither party submitted contemporaneous pictures of GTR's facilities.

93. Given the paucity of evidence relating to GTR's land and buildings, the Tribunal is unable to ascertain their precise value. A reasonable approximation of their fair market value will be reflected in the valuation of GTR as a whole. See Hakim, supra, para. 127.

b. Equipment and Machinery

94. GTR's balance sheet shows that its equipment and machinery carried a book value of the rial equivalent of approximately U.S.$5.1 million. Neither the Claimants, who carry the burden of proof, nor the Respondent submitted expert opinions regarding the market value of that equipment and machinery, and the Tribunal has no information as to the age and condition of the equipment or its marketability at the valuation date. However, GTR's audit reports do show that GTR depreciated its equipment and machinery over a period of seven to twelve years; consequently, the market value of any equipment and machinery that GTR purchased at its inception or for some years thereafter that it was still using at the valuation date would not be reflected in its book value. The Tribunal, therefore, considers it likely that the book value of GTR's equipment and machinery is somewhat less than their fair market value.

c. Accounts Receivable

95. GTR's financial statement shows the rial equivalent of approximately U.S.$10.8 million in accounts receivable from

trade debtors. Deloitte discounted these accounts receivable by 20 percent based on a series of factors used in calculating a discount rate for cash-flow projections for purposes of a discounted cash flow method of valuation. In the portion of its Award pertaining to Mina Glass, the Tribunal concluded that the factors relevant in determining an appropriate discount rate for expected earnings are either irrelevant or not applicable in the appropriate way for determining a discount for accounts receivable. See supra, para. 60. The Tribunal makes the same conclusion here.

96. With respect to Mina Glass, the Tribunal also noted that Mina Glass sold the bulk of its products to Zamzam, another Sabet family company; the Tribunal consequently presumed that most of Mina Glass's accounts receivable were owed by Zamzam and were thus likely to be collected. For that reason, the Tribunal discounted Mina Glass's accounts receivable by 5 percent. See supra, para. 61. See also Birnbaum, supra, para. 90. The Tribunal does not have before it similar evidence with respect to GTR's sales. Further, Coopers & Lybrand's audit report for GTR for the year ending 21 November 1978 notes that, due to the economic difficulties caused by recent strikes, some of GTR's debtors had not paid their debts on their due dates. Consequently, Coopers & Lybrand suggested creating a reserve for the claims in excess of that reflected on GTR's financial statements, although Coopers & Lybrand could not determine the precise figure for the reserve. The Tribunal finds the Coopers & Lybrand audit report persuasive evidence that a greater-than-5-percent discount must be made to GTR's accounts receivable.

d. Taxes

97. Coopers & Lybrand's audit report for the year ending 21 November 1978 states that GTR had been assessed the rial

equivalent of U.S.$4.91 million in taxes for the year ending 21 November 1976. Coopers & Lybrand went on to report that GTR "seriously protested" this assessment as well as an unspecified 1971 assessment, and it stated that GTR's Board of Directors had opined that the amounts that had been paid or reserved in the 1978 financial statements were sufficient "for the security of the tax debts of the unsettled years." The minutes of a September 1978 Board of Directors' Meeting reports that GTR had sent a letter to the Deputy Minister of Finance. Further, at the Board meeting, GTR's Board members decided to contact all government authorities concerned with industry, and they resolved to contact experienced Iranian tax attorneys to represent the company.

98. The Tribunal has not received any evidence or explanation as to the basis for the calculation of this significant tax, which appears unreasonable since the books of the company showed a before-tax profit of only the rial equivalent of U.S.$2.83 million. Indeed, were similar assessments to be imposed in subsequent years, they might have placed the company's continued operations in jeopardy. The tax issue is also a difficult one for the Tribunal because the Tribunal has before it little evidence as to the likelihood that GTR's tax protest would succeed in whole or in part. GTR's Board of Directors felt sufficiently confident in GTR's position to conclude that the 1978 reserves, which consisted of an income tax reserve of the rial equivalent of approximately U.S.$223,000 and a precautionary reserve for "unexpected expenses" of the rial equivalent of U.S.$393,000, were sufficient security for the 1976 tax assessment. Further, the assessment was so out of proportion to the company's profits that some adjustment would seem likely. At the same time, it cannot be denied that the Iranian tax authorities had assessed this sum, and the Tribunal has no evidence about the fate of similar, contempo-

raneous tax protests. Consequently, the Tribunal must add to GTR's liability a sum reflecting the substantial risk posed by the 1976 tax assessment.

e. Conclusion on Valuation

99. The Tribunal has highlighted above only some of the deficiencies in the valuation reports submitted by the parties and their experts. As a consequence thereof, the Tribunal must make an approximation of value which is reasonable and equitable taking into account all the circumstances in these Cases. See supra, para. 29. Accordingly, based on the best possible use of the evidence in the record and taking into account all the relevant circumstances, the Tribunal determines that a fair and reasonable assessment of GTR's value, including its goodwill, as of 7 May 1979, is U.S.$15 million.

100. The Tribunal finds additional support for this conclusion in the evidence regarding GTR's stock prices. In 1975, GTR became subject to the Law for the Expansion of Public Ownership of Productive Units ("Law for Expansion"), the Iranian law that sought to place some shares of large Iranian companies into the hands of the public (see Partial Award in these Cases, paras. 119-21). Pursuant to that law, GTR converted from a private joint stock company to a public joint stock company, and, in November 1976, its shares were accepted on the Tehran Stock Exchange at a price of 1,850 rials per share. Presumably, that price proved too high since only twelve of GTR's shares were traded on the Stock Exchange during the two-and-one-half years prior to the valuation date.

101. The organizations implementing the Law for Expansion valued GTR's shares during 1976 at 1,800 rials per share and purchased shares from existing shareholders at this price. These organizations reduced their valuation of GTR's shares in 1977, however, so that their share purchases at the end of

1977 were at 1,595 rials per share. The Tribunal can only assume that GTR's share value declined further by the valuation date as a result of the revolutionary turmoil and GTR's increasingly uncertain relationship with General Tire International. The par value of GTR's shares was 1,000 rials per share, and it seems reasonable to the Tribunal that the actual value of GTR's shares at the valuation date was only slightly above their par value.

102. Reja and Aram Sabet each owned 13,436 shares of GTR's total of 920,080 shares. That is, they each owned 1.46 percent of GTR's shares. Consequently, Reja and Aram Sabet are each entitled to U.S.$219,045.

5. TRR

103. TRR was established in 1966 as a joint venture between Esso Africa and four Iranian investors, including Habib Sabet. TRR manufactured and distributed finished lubricating oils, grease, antifreeze, and oil drums. It also operated as the exclusive agent and distributor of all Exxon products in Iran. TRR was a substantial enterprise with significant assets and with several hundred employees on its payroll. Its shares were traded on the Tehran Stock Exchange.

104. In its Partial Award in these Cases, the Tribunal held that the Respondent, the Islamic Republic of Iran, formally expropriated all of the Claimants' ownership interests in TRR on 7 May 1979. See supra, para. 2.

105. In its First Report, Willamette valued TRR by averaging values determined pursuant to three valuation methods: (1) the asset accumulation approach; (2) the capital market approach; and (3) the capitalization of dividends approach. To the average of those values, U.S.$ 32 million, Willamette added

a 10-percent portfolio-effect premium to reach a final valuation of U.S.$35.2 million for TRR as of 11 April 1979.

106. In its Second Report, Willamette abandoned the asset accumulation and capitalization of dividends approaches and valued TRR based on the capital market approach alone. The capital market approach, Willamette explained, determines a company's value based on the prices at which the company's shares are freely traded. In performing the capital market approach in its First Report, Willamette had averaged TRR's share prices during the period August-December 1978 to arrive at 3,115 rials per share. In its Second Report, Willamette contended that, by relying on share prices in late 1978, its First Report may have understated TRR's value, since investors would likely have valued TRR shares higher at the valuation date in April 1979 than they would have in late 1978. This is because, according to Willamette, by April 1979 the Iranian Revolution had succeeded and a new government was in place; in addition, as of April 1979 and throughout most of 1979, the oil sector in Iran remained strong. Consequently, in its Second Report, Willamette averaged only TRR's share prices for September 1978 to arrive at 3,180 rials per share.

107. In its First Report, Willamette valued TRR based on the assumption that the company had 750,000 outstanding shares at the valuation date. In its Second Report, Willamette alleged that, at that date, TRR had additional shares because "[b]oard of director minutes for [TRR] indicate that a dividend of 165 million rials was declared, 112.5 million of which was distributed as a stock dividend."[11] Because TRR's shares had a par value of 1,000 rials, Willamette assumed that TRR increased the

[11] No such board of directors' minutes appear in the record. What Willamette seems to be referring to are the minutes of a general meeting of the shareholders of TRR held on 18 September 1979.

total number of outstanding shares by 112,500 from 750,000 to 862,500 to account for the alleged stock dividend.

108. Accordingly, Willamette calculated TRR's value by multiplying 3,180 rials by 862,500 shares to reach the rial equivalent of U.S.$39.2 million (rounded). To this figure, Willamette added a 10-percent portfolio-effect premium for a total valuation of TRR of U.S.$43.1 million as of 11 April 1979.

109. Lastly, Willamette asserted that the Claimants are entitled collectively to 1.5 million rials for their share of the cash portion of the 165-million-rial dividend that Willamette alleged was declared in September 1979. See supra, at para. 107.

110. Although in its First Report, Deloitte termed the capital market approach a "wholly and demonstrably inappropriate" method for valuing TRR, in its Second Report, Deloitte agreed with Willamette that the capital market approach is the appropriate method for valuing TRR. Deloitte, however, disagreed with Willamette about the value of TRR's shares at the valuation date. Deloitte relied on the Tribunal's valuation in Khosrowshahi as a guide in its valuation of TRR's shares.

111. In Khosrowshahi, the Tribunal determined the value of certain expropriated companies by reference to their share prices. In making that determination, the Tribunal found "particularly relevant" the "known trading prices" of those companies' shares; it concluded that, because Tribunal valuation precedents supposed a willing buyer and a willing seller, the "best available evidence" of the value of the shares was their "contemporaneous market price." Id. at para. 47. Hence, the Tribunal took each company's last-traded share price as the starting point for its valuation. It then discounted that price by a certain factor to account for the effects of the Iranian Revolution on the value of the company between the last trade in

its shares and the expropriation date. See id. at paras. 52 and 78.

112. The last trade in TRR shares occurred in December 1978 at 2,312 rials per share. Deloitte proposed to discount that price by 35 percent to account for the effects of the Iranian Revolution on TRR's value between December 1978 and 11 April 1979. Accordingly, Deloitte concluded that TRR's shares were worth 1,503 rials as of 11 April 1979. Deloitte calculated the total value of TRR by multiplying its proposed share price of 1,503 rials by 750,000, the number of TRR shares outstanding at that date. Consequently, it concluded that TRR was worth U.S.$16.1 million as of 11 April 1979.

113. The Tribunal agrees that the last-traded price for TRR's shares is a reliable starting point for the Tribunal's determination of the value of those shares at the expropriation date, 7 May 1979. As noted supra, at para. 112, the last trade in TRR shares occurred in December 1978 at 2,312 rials per share. In keeping with Khosrowshahi, the Tribunal must consider the question of the appropriate discount, if any, to be applied to TRR's last-traded share price to reflect the effects of the Iranian Revolution on TRR's value between December 1978 and the valuation date, 7 May 1979. In determining that discount, the Tribunal will consider the developments affecting the oil industry in Iran and their impact on TRR.

114. As an oil refining company based in Iran, TRR relied heavily on the raw materials supplied by the Iranian oil industry. In this connection, a potential investor in TRR at the time of the expropriation would have known that in late 1978, the Iranian oil industry was virtually paralyzed due to the revolutionary turmoil in Iran - a fact that doubtlessly played a significant role in the 21-percent decline in TRR's average share price between October and December 1978. Beginning in No-

vember 1978, Imam Khomeini encouraged Iran's oil workers to strike in order to stop the export of oil and thus to undermine the Shah's regime. Strikes spread. Turmoil and violence escalated, leading to the departure of foreign oil workers. By December 1978, most of the oil production had ceased, and exports were blocked. The oil industry remained paralyzed (except for a very limited production to serve domestic needs) until after the success of the Islamic Revolution in February 1979. See Petrolane Inc., et al. and Islamic Republic of Iran, et al., Award No. 518-131-2, para. 50 (14 Aug. 1991) ("Petrolane"), reprinted in 27 Iran-U.S. C.T.R. 64, 81.

115. After the new Iranian government had seized power in February 1979, things began to improve for the Iranian oil industry: Oil production resumed and, on 5 March 1979, so did oil exports. See Petrolane, supra, id. The Tribunal is convinced that this favorable turn of events only enhanced TRR's prospects and, with them, the value of its shares. TRR's financial statement as of 20 March 1979 — approximately six weeks before the valuation date — indicates that the company was financially sound. As of that date, TRR's assets totaled the rial equivalent of over U.S.$28.2 million - an increase of U.S.$2.8 million over its March 1978 assets and of U.S.$8.95 million over its March 1977 assets. Further, TRR's financial position on 20 March 1979 reflected a relatively high degree of liquidity: Of its total assets, 53.5 percent, or U.S.$15.1 million, were current assets. TRR's total liabilities were just below the rial equivalent of U.S.$13.9 million, and therefore the current assets were more than enough to cover them. Moreover, the value of TRR's total liabilities represented 49.2 percent of the value of the company's total assets, which is better than the 54.2 percent in March 1978 and the 49.9 percent in March 1977. Finally, TRR's total shareholder's equity increased from the rial

equivalent of U.S.$11.6 million in March 1978 to the rial equivalent of U.S.$14.3 million in March 1979.

116. It is true that TRR made a lower profit during the financial year ending 20 March 1979 than it did in the two previous years: Its net profit, which had increased from the rial equivalent of U.S.$4.49 million to the rial equivalent of U.S.$5.20 million during the period March 1976-March 1978, decreased to the rial equivalent of U.S.$2.55 million during the financial year ending 20 March 1979. The fact remains, however, that, despite this decrease in profit, TRR - a company with a solid history of profitability - remained profitable even at the height of the Islamic Revolution.[12]

117. In sum, a potential investor in TRR at the valuation date would have known (1) that after the success of the Islamic Revolution in February 1979, prospects for the oil industry, Iran's main economic industry, were improving; (2) that there was a large and stable market for TRR's products; (3) that TRR had withstood well the revolutionary upheaval of the previous months; and (4) that at the valuation date, TRR was a sizable and financially sound company. All these factors persuade the Tribunal that a potential investor on 7 May 1979 would generally have viewed favorably an investment in TRR.

118. In light of all these circumstances, the Tribunal holds that any decrease in TRR's value after December 1978 due to the effects of the Islamic Revolution would have been offset by the appreciation of the company after February 1979 due to positive effects resulting from the recovery of the Iranian oil industry. Accordingly, no discount to TRR's last-traded share price is warranted.

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[12] The profitability of the company during the financial year ending 20 March 1979 is indicated by the balance sheet and shown in the minutes of an 18 September 1979 general meeting of shareholders at which the company was

119. Concerning the number of TRR shares outstanding at that date, Willamette contended that, as a result of a 112.5-million-rial stock dividend declared in September 1979, the total number of TRR shares was increased by 112,500, from 750,000 to 862,500 (see supra, para. 107). Willamette submitted no proof that in September 1979, TRR declared a stock dividend in that amount. While the minutes of the general meeting of TRR's shareholders held on 18 September 1979 do state that a 165-million-rial dividend was declared, they do not specify how much of it was to be used to "increas[e] the capital of the company," and how much was to be distributed "in cash to the shareholders." In any event, the alleged dividend was declared some months after the valuation date. Consequently, the Tribunal dismisses Willamette's stock-dividend argument and holds that there were 750,000 TRR shares outstanding on 7 May 1979.

120. For the same reasons, the Tribunal also dismisses Willamette's contention that the Claimants are entitled to a share of the cash portion of the 165-million-rial dividend declared on 18 September 1979 (see supra, para. 109).

121. Lastly, for the same reasons stated earlier in this Award (see supra, para. 28), the Tribunal declines to apply the 10-percent portfolio-effect premium proposed by Willamette, see supra, para. 108.

Conclusion on Valuation

122. The Tribunal concludes that each of the TRR shares outstanding on 7 May 1979 was worth 2,312 rials, their last-traded price. Reja and Aram Sabet each owned 10,509 TRR shares; therefore, they are each entitled to 24,296,808 rials, or U.S.$344,758 based on the exchange rate of U.S.$1/70.475 rials prevailing at the valuation date. See Khosrowshahi, su-

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able to declare a 165-million-rial dividend to be distributed out of the profits of the financial year ending on March 1979.

pra, para. 53. Karim Sabet owned 600 TRR shares; thus he is entitled to 1,387,200 rials, or U.S.$19,684.

6. Zamzam Tehran

123. Zamzam Tehran started its operations in 1954 with the name Zamzam Bottling Corporation and became a public joint stock company in 1976. Together with ten separate Iranian corporations Zamzam Tehran formed the Zamzam Bottling Companies, or, for the purposes of this Award, the Zamzam Group. See supra, note 1. The Zamzam Bottling Companies bottled, distributed, and sold soft drinks in Iran. The Zamzam Bottling Companies had the exclusive franchise rights for Pepsi Cola in Iran, which constituted their primary product, making up, according to Willamette, approximately 90 percent of their production. At the time of the expropriation of the Claimants' interests in Zamzam Tehran, the Zamzam Bottling Companies had a considerable share in the Iranian soft-drink market.

124. In its Partial Award in these Cases, the Tribunal held that the Claimants' ownership interests in Zamzam Tehran were formally expropriated by the Respondent, the Islamic Republic of Iran, on 7 May 1979. See supra, para. 2. In the same Award, the Tribunal dismissed the Claimants' claims relating to the other Zamzam Bottling Companies for lack of proof of ownership. See Partial Award in these Cases, para. 93.

125. In its First Report, Willamette concluded that the total value of the Zamzam Bottling Companies was U.S.$198 million including portfolio-effect premium as of 11 April 1979. Willamette reached its valuation by using the discounted cash flow method ("DCF"); it also used the industry guideline approach as a "reasonableness" check. For its DCF valuation, Willamette performed three separate discounted cash flow analyses,

two of which were based on projection scenarios developed by the management of PepsiCo, Inc. in 1978, and the third of which was based on a projection scenario developed by the management of the Zamzam Bottling Companies in 1976. According to Willamette, these projections are conservative because they take into account only Zamzam's Pepsi Cola production. To reach the present value of the Zamzam Bottling Companies, Willamette applied a number of projection variables to each of the projection scenarios, including a 20-percent present value discount rate. By means of its three analyses, Willamette reached values of U.S.$250 million, U.S.$188 million and U.S.$180 million.

126. In valuing the Zamzam Bottling Companies by means of the industry guideline approach, Willamette relied on "knowledgeable individuals in the field of international bottling franchises" to conclude that during the late 1970's international bottling and distribution franchises were generally valued at U.S.$2.50 to U.S.$4.00 per case of soft drink sold. Willamette advanced a number of reasons to justify using $4.00 per case, and it multiplied that figure by 40 million cases of soft drinks - that is, the number of cases that Willamette claimed the Zamzam Bottling Companies sold in 1978. The industry guideline approach thus produced a value of U.S.$160 million for the Zamzam companies as a whole.

127. In further support of its valuation, Willamette referred to a "bona-fide offer of $150 million" to purchase the Zamzam Bottling Companies allegedly made on 3 July 1978 by a group of Iranian investors represented by a Mr. F. Sobhani of Cyrus Petroleum. At the Hearing, Mr. Peter Warren, a former Chief Executive Officer of PepsiCo International, confirmed that Cyrus Petroleum was prepared to pay U.S.$150 million for the Zamzam Bottling Companies in July 1978. According to Willamette and Mr. Warren, however, Habib Sabet and his two sons, Iradj and

Hormoz, declined to sell at that price as they considered the offer to be inadequate.

128. Mr. Ghorbani-Farid valued the Zamzam Bottling Companies, both separately and as a group, using a valuation date of 21 May 1979. With respect to the Zamzam Group, Mr. Ghorbani-Farid concluded that the Group had been operating at a loss before the valuation date and that the value of the shareholders' equity of the Group was negative at that date. Pointing to a number of factors, including the destruction by fire of some of the assets of certain Zamzam Companies during the revolutionary turmoil of late 1978, Mr. Ghorbani-Farid opined that after the valuation date, the Zamzam Bottling Companies would continue to incur losses. For similar reasons, Mr. Ghorbani-Farid concluded that Zamzam Tehran's shares had no economic value at the valuation date.

129. Deloitte valued the Zamzam Bottling Companies as a group as of 11 April 1979. Deloitte pointed to the Group's recorded loss for the financial year prior to the valuation date and to the adverse effects of the Revolution - in particular, the deteriorating relationship between the United States, home to PepsiCo, Inc., and Iran - in support of its position that an earnings-based approach such as that used by Willamette is not appropriate for the valuation of the Zamzam Companies. Instead, Deloitte performed an analysis of the net realizable value of the Group's assets and liabilities and concluded that the Zamzam Group had no value at the valuation date.

130. In its Second Report, Willamette used the same three projection scenarios it had used in its First Report as a starting point for its discounted cash flow analysis, but because it changed some of the projection variables, Willamette reached a total value for the Zamzam Bottling Companies of U.S.$219.97 million, including portfolio-effect premium. As a reasonable-

ness check on this figure, Willamette again performed the industry guideline approach. Willamette assumed that the Zamzam Companies sold 40 to 45 million cases of soft drink in 1978, which figures Willamette again multiplied by U.S.$4.00 per case to reach values ranging from U.S.$160 to U.S.$180 million.

131. As noted supra, at para. 124, the Tribunal earlier dismissed the Claimants' claims for their alleged ownership in all of Zamzam Bottling Companies except Zamzam Tehran. Therefore, the Tribunal is concerned only with the determination of Zamzam Tehran's value as of 7 May 1979. Accordingly, the Tribunal must first decide whether to value Zamzam Tehran as a separate entity or whether to value all of the Zamzam Bottling Companies as a group and then allocate a certain portion of that value to Zamzam Tehran.

132. The Respondent advocated valuing Zamzam Tehran separately, and the Tribunal finds some support for that position, particularly in the fact that each of the Zamzam Bottling Companies appeared to keep separate books of account. Furthermore, each of the Zamzam Companies had formally entered into separate "Exclusive Bottling Appointments" with PepsiCo in 1977. See PepsiCo, Inc. and Islamic Republic of Iran, et al., Award No. 260-18-1, at 6 (13 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 3, 6-7. Despite these apparent separations, the remainder of the evidence shows that the Zamzam Bottling Companies operated as a unit and were treated as a unit. All of the purchasing was centralized, and both PepsiCo and the Zamzam management prepared sales projections on the basis of the sales, expenses, and capital expenditures for all of the Zamzam Bottling Companies taken together. Members of the Sabet family centrally managed the companies from Tehran, and all of the major financial, marketing, and technical decisions were made by members of the Sabet family for the Group as a whole. Indeed, Mr. Peter Warren, a former Chief Executive Officer of PepsiCo International, testi-

fied at the Hearing that PepsiCo International considered Zamzam to be one company with eleven "production and distribution points throughout Iran, all managed centrally from Tehran, from the Zamzam headquarters."

133. Most importantly, the evidence before the Tribunal makes clear that it would not have been possible to sell Zamzam Tehran with its own Pepsi franchise separately from the rest of the Zamzam Bottling Companies. Although, as noted supra, at para. 132, each Zamzam Company had a separate agreement with PepsiCo, Mr. Warren testified at the Hearing that PepsiCo considered the franchise to be held by the Sabet family - the members of which owned virtually all of the shares in all of the Zamzam companies - not by any individual Zamzam Company. Mr. Warren further testified that "it would have been impossible for the Sabets to sell any franchise or any part of that franchise to anybody else." According to Mr. Warren, if members of the Sabet family had wanted to sell all or part of the franchise, they would have had to obtain PepsiCo's approval to do so.

134. In light of these considerations, the Tribunal finds that the most realistic way to value Zamzam Tehran is to ascribe a value to the Zamzam Bottling Companies taken together and then allocate a portion of that value to Zamzam Tehran.

135. Ascribing a value to the Zamzam Bottling Companies taken together proves a difficult task. As noted supra, at para. 125, Willamette valued the Zamzam Companies primarily by means of the DCF approach. Although the Tribunal has made use of that method in appropriate circumstances, see Phillips Petroleum Company Iran and Islamic Republic of Iran, Award No. 425-39-2 (29 Jun. 1989), reprinted in 21 Iran-U.S. C.T.R. 79; and Starrett Housing Corp., supra; but see, Amoco International Finance Corp. and Islamic Republic of Iran et al, Award No. 310-56-3 (14 July 1987), paras. 221-248, reprinted in 15 Iran-U.S.

C.T.R. 189, 256-265; and the ICSID Tribunal in Southern Pacific Properties (Middle East Limited) v. Arab Republic of Egypt (20 May 1992), paras. 188-191, reprinted in 8 ICSID Review Foreign Investment Law Journal, 328 and 380-382(1993), the Tribunal finds itself unable to base its valuation of the Zamzam Bottling Companies on that approach. Proper application of the DCF method requires both confidence in the accuracy of the projected cash flows and the ability to quantify the relevant risks in a discount rate. The Tribunal finds both to be missing in these Cases.

136. As noted supra, at paras. 125 and 130, Willamette advanced three sets of cash-flow projections that were based on cash flows projected by Zamzam in November 1976 and by PepsiCo in March 1978.[13] During the period in which the projections were made, the Zamzam Bottling Companies were engaged in a substantial expansion program. The Companies were in the process of building at least two new bottling plants and were modernizing and expanding existing bottling plants to allow for significantly higher production. This expansion program not only rendered less certain any projections that were made before and during the expansion, its cost diminished the likelihood that the Zamzam Companies would earn short-term profits. For valuation purposes, the more distant the expected cash flows, the more unreliable the use of the DCF method: Specifically, distant cash flows are more difficult to predict accurately, and their present value is more dependent on the chosen discount rate, a necessarily subjective feature in any DCF analysis.

137. Further, during the years prior to the valuation date, it was not only the Zamzam Group that was undergoing rapid

[13] The Tribunal notes that Willamette's projections depart from those made by Zamzam and PepsiCo in numerous, unexplained ways. Indeed, Willamette's projections frequently appear to bear no relationship either to the Zamzam or PepsiCo projections or to Willamette's "explanation" of those projections. These discrepancies, as it were, do not enhance the Tribunal's confidence in the DCF approach as applied to the Zamzam Companies.

changes, but the Iranian soft-drink market as well. Soft-drink sales in Iran had quadrupled between the years 1973 and 1978. Although certain studies suggested that the market was going to continue to grow, such growth was by no means guaranteed, and its specifics were especially difficult to predict given the rapid growth that had preceded it. Moreover, even if the growth did continue, the PepsiCo study expressed concern about Zamzam's ability to take advantage of the growing soft drink market in contrast to Zamzam's rival Sassan.

138. Finally, the Tribunal notes that the cash-flow projections appeared to assume that the Zamzam Companies would continue to operate in favorable political and economic conditions. However, during the period between the preparation of the projections and the valuation date, the changing situation in Iran also affected the operations of the Zamzam Companies. Indeed, by the valuation date, some of the Zamzam Companies, including Zamzam Tehran, had suffered considerable damage as a result of mob attacks in the course of the Islamic Revolution, and continued assistance from PepsiCo would have been uncertain. As a result, then, of the general flux characterizing both Zamzam's operations and the Iranian soft-drink market, the Tribunal is not able to place the requisite confidence in the cash flow projections.

139. Turning to the discount rate, the Tribunal notes that the selection of an appropriate discount rate is a difficult task under the most stable of economic conditions and when all of the relevant information is available. The Tribunal does not labor under such ideal conditions, and the parties' experts have rendered it little assistance; rather, they have submitted only conclusory, unsupported allegations regarding the discount rate. This combination of factors renders the Tribunal unable to apply the DCF method to the Zamzam Bottling Companies.

140. As noted supra, at paras. 125 and 130, in addition to the DCF method, Willamette also relied on the industry guideline approach. The Tribunal takes care not to place undue weight on this valuation method because Willamette has introduced no documentary evidence to support its assertion that bottling franchises were valued in this way during the late 1970s. Further, the Tribunal finds questionable the figures Willamette used. Willamette advanced a variety of reasons for multiplying annual case sales by the high-end price of U.S.$4.00; without commenting on the persuasiveness of those reasons, the Tribunal considers that the revolutionary turmoil - particularly in light of its anti-American overtones and Pepsi Cola's strong American associations - provides sufficient reason for multiplying annual case sales by the low-end price of U.S.$2.50, which happened to be very close to the actual price-per-case at which Zamzam was selling its products at the time. As to the case sales, the same considerations that caused the Tribunal to decline to rely on Willamette's overall cash-flow projections for purposes of the DCF method leave it unconvinced of the accuracy of Zamzam's projected case sales for purposes of the industry-guideline approach. The Tribunal does note, however, that multiplying the low-end price of U.S.$2.50 by the Zamzam Companies' actual 1978 Pepsi Cola case sales of 31 million results in a valuation of U.S.$77.5 million.

141. The Tribunal turns next to the July 1978 purchase offer. Although the Tribunal finds Mr. Warren's testimony credible, it nonetheless cannot fail to note that the Claimants have not introduced any contemporaneous documentary evidence to support their claim that Cyrus Petroleum offered Zamzam U.S.$150 million for the Zamzam Bottling Companies or to indicate the details of that offer. That omission substantially diminishes any weight that the Tribunal might otherwise have placed on the purchase offer.

142. Zamzam's history and interactions with PepsiCo provide the Tribunal with some information useful in valuing the Zamzam Bottling Companies. In the years preceding the valuation date, PepsiCo manifested its confidence in the Iranian soft drink market and Zamzam's ability to realize that market's potential by providing financial, technical, and managerial assistance to the Zamzam Companies. For instance, in 1977 PepsiCo and Zamzam entered into an agreement whereby PepsiCo would pay U.S.$1.8 million toward two new bottling lines to be installed in Zamzam Tabriz and Zamzam Mashad and Zamzam would modify and expand the Mashad Plant. PepsiCo also made Zamzam a U.S.$6.5 million interest-free loan in June 1977. Zamzam was to use U.S.$4.7 million of that loan to repay Zamzam's debts to PepsiCo and other creditors. Thus, PepsiCo was aware of the cash-flow difficulties that Zamzam was experiencing and seemed willing to assist it. Finally, as part of the overall agreement that included the interest-free loan, PepsiCo and Zamzam also agreed that PepsiCo would place a supervisory management team in Zamzam Tehran and Zamzam East Tehran at PepsiCo's ultimate cost.

143. Mr. Peter Warren's testimony at the Hearing supplements and confirms what the documentary evidence implicitly makes clear: That PepsiCo considered the Iranian market and Zamzam to be very important. Mr. Warren described Zamzam as "one of the most important franchises that [PepsiCo] had." He further testified that PepsiCo typically had several franchisees in a country the size of Iran; in Iran, however, PepsiCo was comfortable giving Habib Sabet a franchise for the entire country because "he and he alone had the resources and the ability to develop the country for PepsiCo products in the way we would like to see it done." This single franchise was, of course, divided among various Zamzam companies in 1977, although it essentially remained in the hands of the Sabet family. Mr. Warren described Zamzam as a "company with enormous potential [which]

had a very good track record up to that point in time," and he testified that, even in April 1979, PepsiCo felt that Iran "had enormous potential."

144. Finally, the Tribunal notes the Sabets' May 1978 "internal appraisal" of the Sabet companies that the Claimants submitted. This document shows a combined value of the Zamzam Bottling Companies of U.S.$105,642,857.[14]

145. The evidence submitted by the parties does not permit the Tribunal to apply precise calculations in determining the value of the Zamzam Bottling Companies. Nonetheless, the Tribunal is satisfied that, taking into account all of the above considerations, the Zamzam Bottling Companies were worth a minimum of U.S.$70 million at the valuation date.

146. Reja and Aram Sabet each owned 5000 of the 120,000 shares in Zamzam Tehran but were not able to prove that they owned shares in the other Zamzam Companies. See Partial Award in these Cases, at paras. 60 and 93. The Tribunal must, therefore, make a judgment as to what the Claimants' shares in Zamzam Tehran represented vis-à-vis the entire Zamzam Group.

147. At the Hearing, Mr. Reilly of Willamette stated his assumption that Zamzam Tehran was the sole owner of the Pepsi franchise. Accordingly, he proposed valuing Zamzam Tehran at the total value of the Zamzam companies less the costs of replacing the other ten bottling plants, the latter of which he estimated at approximately U.S.$30 million. The Tribunal must reject this approach because the evidence does not support Mr. Reilly's assumption about the Pepsi franchise.

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[14] Hormoz Sabet's affidavit of 28 July 1991 points to the internal appraisal but lists this figure incorrectly. Hormoz Sabet stated that the internal appraisal shows "the fair market value of the companies as a group" to be U.S.$101,053,714.

148. The Tribunal notes that Zamzam Tehran employed 570 persons out of the Group's total 2480 employees; that is, Zamzam Tehran employed 23 percent of the Group's employees. Similarly, the "internal appraisal" referred to supra, at para. 144, lists Zamzam Tehran's value at U.S.$21,428,571 out of a total value for the Zamzam Bottling Companies of U.S.$105,642,857; that is, it values Zamzam Tehran at 20.3 percent of the Group. The Tribunal also finds relevant the proportional capitalization of the Zamzam Companies. Zamzam Tehran had 120,000 shares, each with a par value of 1000 Rials; the remaining ten private companies had 7300 shares in total, each with a par value of 100,000 Rials. Thus, Zamzam Tehran was capitalized at 120 million Rials while all the Zamzam Companies together had a capital of 850 million Rials. Zamzam Tehran's capitalization therefore constituted 14.1 percent of the Group's capitalization.

149. Other comparative statistics, including case sales, profit margin, asset value, and operating line efficiency, suggest that Zamzam Tehran was one of the most important companies of the Group and that, accordingly, its value constituted a considerable percentage of the value of the Zamzam Group. Similarly, the Tribunal finds relevant Zamzam Tehran's role, at the time of the expropriation, as the Group's corporate headquarters. According to Mr. Peter Warren, all of the decisions concerning budget, marketing, personnel, and quality control, that is, "every important decision, regardless of the area that was concerned was made from Tehran."

150. Taking into account all of the above considerations, the Tribunal concludes that the value of Zamzam Tehran represented 15 to 20 percent of the total value of the Zamzam Bottling Companies. Specifically, the Tribunal values Zamzam Tehran at U.S.$12 million. As noted supra, at para. 146, Reja and Aram Sabet each owned 5000 shares of Zamzam Tehran's shares, or

4.17 percent of Zamzam Tehran's shares; therefore, they are each entitled to U.S.$500,000.

III. INTEREST

151. In order to compensate the Claimants for the damages they have suffered due to delayed payment, the Tribunal considers it fair to award the Claimants simple interest at the rate of 7.75 percent per annum from the dates of the expropriation of their interests.

IV. COSTS

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

V. AWARD

153. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. The Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the following amounts to Reja and Aram Sabet for the expropriation of their shares in Nownahallan, ICC, Mina Glass, GTR, TRR, and Zamzam Tehran and to Karim Sabet for the expropriation of his shares in Nownahallan, ICC, and TRR:

a. to REJA SABET, the amount of U.S.$1,159,130 (One Million One Hundred Fifty Nine Thousand One Hundred Thirty United States Dollars), plus simple interest at the rate of 7.75 percent per annum (365-day basis), which interest shall run as follows:

- on U.S.$55,892 from 11 April 1979 up to and including the date on which the Escrow Agent in-

structs the Depositary Bank to effect payment out of the Security Account; and

- on U.S.$1,103,238 from 7 May 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. to ARAM SABET, the amount of U.S.$1,159,390 (One Million One Hundred Fifty Nine Thousand Three Hundred Ninety United States Dollars), plus simple interest at the rate of 7.75 percent per annum (365-day basis), which interest shall run as follows:

- on U.S.$56,152 from 11 April 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; and

- on U.S.$1,103,238 from 7 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

c. to KARIM SABET, the amount of U.S.$100,191 (One Hundred Thousand One Hundred Ninety One United States Dollars), plus simple interest at the rate of 7.75 percent per annum (365-day basis), which interest shall run as follows:

- on U.S.$55,892 from 11 April 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; and

- on U.S.$44,299 from 7 May 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 arbitration.

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

Dated, The Hague
28 November 2000

Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God

George H. Aldrich

Koorosh H. Ameli
Concurring concerning Nownahallan, GTR and, for the most part, TRR; dissenting as to Mina Glass and in part as to ICC and Zamzam Tehran. Separate Opinion.