IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

Case No. 485
CHAMBER ONE
AWARD NO. 600-485-1

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده
FILED ثبت شد
27 FEB 2003
تاریخ ۸ /۱۲/ ۱۳۸۱

FREDERICA LINCOLN RIAHI,
Claimant,
and
THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

Concurring and Dissenting Opinion of Judge Charles N. Brower

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I. INTRODUCTION AND SUMMARY

1. It is ironic that this Tribunal's very last Award to a national of one of the two States Parties to the Algiers Accords, concluding twenty-two years of hearing such cases, should be one that uniquely and patently fails to conform to the command of the Claims Settlement Declaration that the Tribunal "decide on the basis of respect for law"[1] with "impartiality [and] independence."[2] Its chief vices, described below, may be summarized as the Tribunal "stretching" to achieve an arbitrarily predetermined result, in good part through condoning the Respondent's "stonewalling" of Tribunal Orders and its "sandbagging" of the Claimant at the Hearing.

2. First, the Award disregards Article 20 of the Tribunal's own Rules and decades of precedent in rejecting simply as "late filed" seven amendments to the Statement of Claim, totaling $1,144,813, notwithstanding that (1) they were made as much as seven years before the Hearing, and in no case less than three years prior thereto; (2) with but one exception they were ancillary to claims for expropriation of companies specifically identified by name in the original Statement of Claim; and (3) the Respondent, which addressed each of them quite fully in its Reply and Rebuttal Memorials, as well as at the Hearing, never even professed to have suffered prejudice.[3] *See infra* paras. 10-17.

3. Second, the Award requires the Claimant to "prov[e] the facts relied on to support [her] claim," as required by Article 24(1) of the Tribunal Rules, not just by a "convincing"

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[1] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, art. V, *reprinted in* 1 Iran-U.S. C.T.R. 9, 11. I am compelled nevertheless to concur in the Award lest the Claimant be deprived still further of her due. (The Tribunal's Award totaling $1,673,151 (excluding interest and costs) constitutes not quite 5 percent of the revised principal amount claimed ($33,528,595).) *See infra* at para. 8.

[2] Tribunal Rules of Procedure, art. 10, *reprinted in* 2 Iran-U.S. C.T.R. 405, 415.

[3] The claims excluded by the Tribunal as inadmissible late filings are as follows:

Deposit in favor of Khoshkeh va Foulad Private Joint Stock Company ("Khoshkeh")	$ 483,994
Loans to Rahmat Abad Natanz Agro-Industrial Private Joint Stock Company ("Rahmat Abad")	$ 291,954
Loan to Tarvandan Private Joint Stock Company ("Tarvandan")	$ 127,479
Loan to Gav Daran Private Joint Stock Company ("Gav Daran")	$ 127,479
10% equity interest in Sarhad Abad Development Joint Stock Company ("Sarhad Abad")	$ 84,986
1% of land managed by Sarhad Abad	$ 28,000
Down payment for telephone lines at the Farahzad apartments	$ 921
	$1,144,813

preponderance of the evidence ("it is more likely than not"), which is the accepted norm,[4] but effectively "beyond a reasonable doubt," *i.e.*, the very high standard for securing criminal convictions in common law jurisdictions. This is glaringly evident from the fact that with the exception of one expropriated foal ($2,800 awarded) and one expropriated used Toyota automobile ($7,351 awarded) the Claimant has recovered here only to the extent of properties that the Respondent ultimately conceded in the face of overwhelming evidence that she indeed owned,[5] or, in one case (Khoshkeh), as to which the Respondent's own evidence included, as it turned out, conclusive documentary proof of her ownership (*e.g.*, authentic public records).[6] *See* Award, paras. 78, 82, 89, 118 and 179. As Bin Cheng notes, however:

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[4] BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 329 (1987) ("[A] party having the burden of proof must . . . *convince* the Tribunal of [the] truth [of its] allegations . . . .") (emphasis added).

[5] As demonstrated by the following chart:

Ownership Interest Claimed	Amount Sought by Claimant	Amount Awarded to Claimant	Ownership Interest Conceded by Respondent
Bank Tehran	$1,127,457 for 33,871.7 shares	$789,220 for 33,871.7 shares	33,871.7 shares
Iran Bohler*	$70,822 for 500 shares	$70,822 for 500 shares	500 shares
Khoshkeh	$4,228,000 for 2,010 shares $ 483,994 for deposit $4,711,994 total	$764,873 for 1500 shares $0 for deposit	0 shares; no deposit
Rahmat Abad	$23,865,000 for 158 shares $ 291,954 for loan $24,156,950 total	$28,258 for 2 shares $0 for loan	2 shares; no loan
Tarvandan	$1,504,000 for 34 shares $ 127,479 for loan $1,631,479 total	$9,827 for 1 share $0 for loan	1 share; no loan
Gav Daran	$161,195 for 20 shares $127,489 for loan $288,684 total	$0 for 0 shares $0 for loan	0 shares; no loan
ASP Apartment	$716,006	$0	Ownership conceded
Personal Property	$496,347	$0	Nothing conceded
2 Automobiles	$14,751	$7,351	Nothing conceded
4 Horses	$24,998 for 4 horses	$2,800 for 1 horse	Nothing conceded
Farahzad Apartments	$175,196 for value of contracts $ 921 for telephone deposit $176,117 total	$0	Ownership conceded
Sarhad Abad	$ 84,986 for 60 shares $ 28,000 for interest in land $112,986 total	$0 for shares $0 for loan	Nothing conceded
Total:	**$33,528,595**	**$1,673,151**	

* Iran Bohler Pneumatic Private Joint Stock Company ("Iran Bohler").

[6] The Award even denies "disputed" ownership claims supported by bearer shares found in the Claimant's safe deposit box. Thus, the Tribunal has rejected the Claimant's claim to ownership of 34 shares of Tarvandan, recognizing her ownership only of a single share, notwithstanding that when the contents of her safe deposit box were produced by the Respondent pursuant to a Partial Award on Agreed Terms, they included 77 bearer shares of that company. *See Frederica Lincoln Riahi* and *Government of the Islamic Republic of Iran*, Partial Award on Agreed Terms No. 596-485-1, at Attachment No. 2, para. 4 (24 Feb. 2000), *reprinted in* __ Iran-U.S.

> [W]hen the claimant has established a prima facie case and the respondent has afforded no evidence in rebuttal the latter may not insist that the former *pile up evidence to establish its allegations beyond a reasonable doubt* without pointing out some reason for doubting.[7]

Or, as Judge Azevedo stated in his Dissenting Opinion in the *Corfu Channel Case*:

> It would be going too far for an international court to insist on direct and visual evidence and to refuse to admit, after reflection, a reasonable amount of human presumptions with a view to reaching that state of moral, human certainty with which, despite the risk of occasional errors, a court of justice must be content.[8]

In my opinion the Tribunal in the instant Case has gone far beyond "too far."

4. Third, the Award arbitrarily denies the Claimant any ability to have satisfied this extraordinary burden of proof. Correctly, the Tribunal ordered the Respondent, not once, but twice, on 18 November 1994 and again on 18 May 1995 (five years and more prior to the Hearing), to produce, *inter alia*, the share registers (and some related documents) of each of the six corporate entities it had expropriated in which the Claimant alleged an interest, as well as financial statements and audit reports of five of those six entities.[9] Those Orders, and her requests therefor, were premised on the unavailability to her of those definitive records and their actual possession by the Respondent. The Respondent never denied possession of the requested records; indeed, such possession was confirmed by its selective inclusion in later written submissions of an outdated portion of the share register of one company (Tarvandan) and certain financial records of others (Khoshkeh and Iran Bohler). The twice-ordered production, however, was never made. When the Tribunal by Order of 10 July 1995 deferred until an unspecified "later stage of the proceedings" any decision on "the question whether the Respondent has complied with the Tribunal's [production] Orders" (which it clearly had not), the Claimant requested that the Tribunal draw the usual inferences against the Respondent and in her favor establishing her claimed ownership interests,[10] a request repeated thereafter with both frequency and force. Quite evidently, the Claimant, though able

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C.T.R. __. Indeed, the Tribunal denied altogether her claim to ownership of 20 shares of Gav Daran in the face of the presence of 51 such bearer shares in her safe deposit box. *See id.* at Attachment No. 2, para. 5. Similarly, the Tribunal recognized but two of the 158 shares in Rahmat Abad claimed by the Claimant, despite 12 such bearer shares being found in her safe deposit box. *See id.* at Attachment No. 2, para. 7.

[7] BIN CHENG, *supra* note 4, at 329 (quoting the *Parker Case* (U.S. v. Mex.) (1926), 4 REP. INT'L ARB. AWARDS 39 (1974)) (emphasis added).

[8] Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 1, 90-91 (dissenting opinion of Judge Azevedo).

[9] *See infra* at para. 22.

to make out a *prima facie* case, was in no position to prove her case "beyond a reasonable doubt" without such inferences, for the drawing of which she had satisfied all applicable criteria.[11] The instant Award, however, (1) utterly fails to make the promised ruling on "the question whether the Respondent has complied with the Tribunal's [production] Orders," (2) consequently neglects to deal at all with the Claimant's requests for the drawing of inferences, and instead (3) nonchalantly, irrelevantly and hence shockingly states that the Tribunal has "serious doubts as to how the requested material, even if available, could possibly have affected the Tribunal's opinion" (para. 162); that it "is not convinced that the share register or other requested corporate records . . . would show that the Claimant owned" the claimed shares "before [those] shares were expropriated" (para. 104); that it "doubts that any share register could confirm the Claimant's ownership . . . [and] [t]herefore . . . finds no further need to consider the issue of adverse inference" (para. 196); and, finally, that it "finds irrelevant the Claimant's request for the production of the company's share register" (para. 213). In other words, the Respondent's blatant "stonewalling" of the Tribunal's production Orders has been rewarded.[12]

5. Fourth, the Award justifies its refusal even to discuss adverse inferences, in part, by accepting and relying critically on testimonial evidence (1) offered for the very first time at the Hearing, (2) advancing points never previously raised during the eighteen-year pendency of the Case, (3) by two witnesses who plainly were under duress, whose testimony had been coerced, and who also were either biased or otherwise suspect in the extreme. The Claimant thus was "sandbagged" when the Tribunal allowed at the eleventh hour, and chose to believe, inherently unreliable testimony. The first such witness was Mr. Nabavi, a destitute peasant described by the Respondent itself as a "confused" and "illiterate person." Incredibly, the Tribunal found "no reason to doubt Mr. Nabavi's testimony" (para. 151) given at the Hearing, which it insisted on characterizing as "unrebutted" (para. 149), notwithstanding that

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[10] *See infra* at para. 29.

[11] According to precedent, the Tribunal may appropriately draw adverse inferences when: (1) the requested documents are relevant and material to the proceedings; (2) the Tribunal is convinced that the requested documents are at the disposal of the requested party; (3) the requesting party has made out a *prima facie* case; (4) the party failing to produce the requested documents has offered no satisfactory explanation for its failure; and (5) the requested party has been given sufficient time and opportunity to produce the requested documents, but has failed to do so. *See infra* at para. 30.

[12] Adding "insult to injury," the Tribunal awards (para. 530(n)) only $70,000 of Claimant's $2.2 million in costs and expenses in this Case, a major portion of which plainly was incurred in the (ultimately unsuccessful) effort to collect, assemble and present evidence sufficient to "convince" the Tribunal of her ownership of shares, notwithstanding the Respondent's failure to produce the corporate records it had been ordered to disgorge (and, as it has turned out, the Tribunal's refusal to draw inferences from such failure).

the transcript of a recorded telephone conversation, the authenticity of which the Respondent did not challenge, plainly evidenced that the Respondent's agents had hounded Mr. Nabavi repeatedly in 1993 to make an affidavit, that he in fact had told them he supported the Claimant's ownership claim and that he therefore had rejected the Respondent's proposed affidavit as "all lies and nothing true" and refused to sign it on the ground that "it says, 'We swear on the Koran to say the truth in the court' and this is not the truth and we cannot sign it." The same transcript recorded that it was "all over Natanz [the area where Mr. Nabavi lived] that these people will bother and damage Mr. Nabavi" and "have created alot [sic] of trouble for [him and his family]." The second coerced witness was Mr. Mahvi, a former business associate of the Claimant's husband, resident in Geneva, Switzerland since 1976, who himself admitted that "[t]he Revolutionary Committee . . . had . . . put me on the blacklist of the 'corrupt of the earth'" to be "punished for their crimes by firing squad." Indeed, he had been publicly described by a former Deputy Chief of the Political Section of the United States Embassy in Tehran as having "pimped, literally, for the Shah, and was his bagman." It was reported that Mr. Mahvi "had become such a notorious 'five-percenter' . . . who skimmed off government contracts . . . that the Shah felt compelled to blacklist him from arms dealing." Correspondence Mr. Mahvi initiated with the Claimant's husband rather clearly indicates that the Respondent's agents attempted (without success), using Mr. Mahvi as their stalking-horse, to "set him up," *i.e.*, to elicit from him statements that would damage the Claimant's Case. The record confirms as well both that Mr. Mahvi's daughter had fled Geneva for the United States in fear and that the Claimant's husband had had a falling out with Mr. Mahvi over the former's public accusations that the latter was in fact hugely corrupt. It was based principally on accepting as credible Mr. Nabavi's and Mr. Mahvi's Hearing testimony regarding the Claimant's ownership interest in Rahmat Abad, for example, that the Tribunal stated (para. 162) that it had "serious doubts" as to whether the much-requested but never-produced share register of that company, if produced by the Respondent as it twice had been ordered to do, "could possibly have affected the Tribunal's" decision that the Claimant owned only two such shares rather than the 158 she claimed, thus depriving her of $2,204,124 (156 shares as valued by the Tribunal's Award). In effect, through relying on such obviously coerced testimony, the Tribunal allowed its own processes to be corrupted.

6. Fifth, the Award further justifies its refusal even to discuss adverse inferences by accepting the legal argument under Iranian law – which, like the Hearing testimony of Messrs. Nabavi and Mahvi, was presented for the very first time at the Hearing, had never

been raised previously during the eighteen-year pendency of the Case and hence had not been addressed by any of the expert opinions on Iranian law submitted with the various Memorials – that powers of attorney given the Claimant's husband by two of his three sons, and pursuant to which he had conveyed to the Claimant certain of their shares in various companies which form part of the basis of her claims here, were invalid in that they did not and could not authorize the making of gifts. Apart from the fact that the Tribunal should not have permitted the Claimant thus to be "sandbagged" by such a "late invention," the point is plainly devoid of merit. It is common ground that Article 660 of the Iranian Civil Code, in conformity with other states' codes, contemplates two types of powers of attorney, *i.e.*, general or limited to a specific purpose. Accordingly, the two powers at issue, one authorizing "all sort of transactions" and the other "any transaction," plainly fall into the former (general) category. To get around this, the Respondent argued to the Tribunal that the holder of such a power of attorney may not make gifts of his principal's property, inasmuch as Article 667 of the Iranian Civil Code requires an agent to "observe the principal's interest," regardless, apparently, how minimal such gifts may be in relation to the principal's total property and irrespective of the underlying purpose. Leaving aside the evident illogic of this argument, no substantive showing was made as to why the Respondent, a complete stranger to the transfers of shares accomplished under the powers it attacks, should have any standing to raise the issue (which, under Iranian law, as it was evidenced to the Tribunal, normally would be one between principal and attorney, and in any event could not be raised against a bona fide transferee). As this entire issue, as previously noted, was raised for the very first time at the Hearing itself, eighteen years after filing of the Statement of Claim, no written expert opinions were available on the issues of Iranian law raised, and the Tribunal thus decided on the basis of the very imperfect record that was cobbled together at the last minute at the Hearing. Like the Respondent's earlier "stonewalling" (*see* para. 4, *supra*), its "sandbagging" of the Claimant has been rewarded.

7. Sixth, the Award rejects $891,202 of the Claimant's claims for interests in residential real estate (ASP and Farahzad apartments), her ownership of which the Respondent conceded, and the expropriation of which could not seriously have been contested, by applying the "A18 *caveat*," contrary to the universal, integrated and unbroken precedents of the Tribunal,[13] to deny her any right to compensation whatsoever even though as an

[13] *See Aram Sabet, et al.* and *The Islamic Republic of Iran, et al.*, Partial Award No. 593-815/816/817-2 (30 June 1999), *reprinted in* __ Iran-U.S. C.T.R. __ ("*Sabet*"); *Moussa Aryeh* and *The Islamic Republic of Iran*, Award

"involuntary" Iranian national (through her marriage as an alien to an Iranian man) she in no way had "abused" any right in acquiring her interests. *See* Award at paras. 278, 293. Here, too, the Tribunal unabashedly "stretched" to reach what can only have been an arbitrarily predetermined result.

8. The foregoing paragraphs summarize the grosser aspects of the injustice to the Claimant effected by the instant Award. As the record-length Award fashioned in this Case tends, in my view, to obscure to a goodly extent just what has actually happened, I have felt it necessary to spell out in the correspondingly all too many paragraphs that follow in this Concurring and Dissenting Opinion exactly what has happened, and what I feel should have been the Tribunal's Award. It will be seen that while I largely take issue also with the Award's approaches to damages, I by no means have credited the Claimant's damage calculations, which in particular as regards Rahmat Abad were, in my view, seriously inflated, if not indeed extravagant. I have preferred to rely on such evidence as actual production, cost and revenue figures derived from her husband's meticulously kept diary and other contemporaneous records. The result nonetheless, as I see it, should have been an Award totaling $10,559,633, or 31.5 percent of the Claimant's revised overall demand (but more than six times the pittance granted by the instant Award).[14]

II. PRELIMINARY ISSUES

9. It is useful first to deal with certain interrelated procedural issues that arise as to two or more parts of the Claimant's Claim: (1) amendments to the Statement of Claim; (2) the burden of proof; and (3) the drawing of adverse inferences from the Respondent's refusal to comply with Tribunal Orders to produce documents. These three issues are indeed quite clearly related to each other, as the Respondent refused to produce relevant documents in its possession, making amendments to her Statement of Claim inevitable and affecting the burden of proof to be satisfied, particularly given the circumstances in which the Claimant was operating when attempting to gather evidence.

No. 583-266-3 (25 Sept. 1997), *reprinted in* 33 Iran-U.S. C.T.R. 368 ("*Moussa Aryeh*"); *Rouhollah Karubian* and *The Government of the Islamic Republic of Iran*, Award No. 569-419-2 (6 Mar. 1996), *reprinted in* 32 Iran-U.S. C.T.R. 3 ("*Karubian*"); *James M. Saghi* and *The Islamic Republic of Iran*, Award No. 544-298-2 (22 Jan. 1993), *reprinted in* 29 Iran-U.S. C.T.R. 20, 31.

[14] To summarize:

Total Amount Sought by Claimant	Total Amount Awarded to Claimant	Total Award Recommended Herein
$33,528,595	$1,672,929	$10,559,633

A. Preliminary Procedural Issues

1. Amending the Statement of Claim

10. The Tribunal correctly recognizes the Claimant's right under Article 20 of the Tribunal Rules of Procedure to amend, in her subsequent pleadings, the value of the compensation initially sought for her expropriated Claims in her Statement of Claim. Award at para. 61. The Tribunal, however, has misconstrued the Tribunal Rules and misapplied Tribunal precedent in denying the Claimant the right to amend her Statement of Claim to seek compensation for her interests in other properties expropriated by the Respondent. Award at paras. 63-73. Specifically, the Claimant seeks to amend her Statement of Claim to include items of damages relating to her Claim insofar as it is based on asserted ownership interests in Sarhad Abad, loans made to four additional companies, and a down payment for the future utilization of two telephone lines. It should be noted at the outset that when the Claimant filed her Statement of Claim on 18 January 1982, she was prevented from obtaining certain crucial business and financial documents on account of revolutionary events in Iran. In response to these difficulties, the Claimant fashioned her Statement of Claim not only in compliance with each and every requirement of the Tribunal Rules of Procedure, but also in a sufficiently broad manner as to provide the Respondent with notice of possible future amendments. Part C of the Statement of Claim, for example, outlines the relevant "expropriations or other measures affecting property rights," identifying, in particular, a key expropriation decree issued in early 1980 by the Revolutionary Court of Isfahan. That decree, as explained below,[15] established the Respondent's general scheme to expropriate all of the Claimant's property located in Iran.[16] Its identification in the Statement of Claim, therefore, clearly put the Respondent on notice that *all* the Claimant's property interests, expropriated by and pursuant to the Court of Isfahan decree (even if every individual property interest could not be identified with specificity in her Statement of Claim) would form the basis of the Claim. Having implemented the expropriation decree, the Respondent was clearly in a position (and in a better position than the Claimant was) to know exactly which of the Claimant's property interests were in dispute. Similarly, Part D of the Statement of Claim, describing the "general nature and amount of the claim," provides:

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[15] *See infra* Part III.

[16] Only the Claimant's interest in Bank Tehran was the target of an earlier decree of expropriation. *See infra* para. 156.

> The Claim is in respect of real and personal property lost by the Claimant as a result of seizure pursuant to indiscriminate execution of a court order of the Revolutionary Court of the City of Is[f]ahan, nationalization pursuant to Iranian Government Decrees, circumstances which forced Claimant to leave Iran and legal prohibitions of the Government of the Islamic Republic of Iran against the removal of certain items of property from Iran existing at the time of Claimant's departure from Iran and continuing to the present.

11. Here, the Claimant framed her allegations even more broadly, identifying not only the Court of Isfahan decree, but also any other Iranian Government measure or action resulting in a taking of her property interests. Finally, the Claimant's initial request for damages, which listed companies and items known to her as of that time, included the proviso: "plus any other amounts not yet determined in respect of *additional lost property*." (Emphasis added.) This proviso, along with the breadth of Parts C and D of the Claimant's Statement of Claim, served to notify the Respondent that the inclusion in the Statement of Claim of additional items of damage arising out of the Respondent's expropriation of all of the Claimant's property in Iran was highly probable. Moreover, as set forth below, none of the Claimant's amendments to her Statement of Claim conceivably could have prejudiced the Respondent.

a) Loans and Down Payment

12. The Claimant seeks to amend her Statement of Claim to include loans that she allegedly made to four companies and a down payment of 65,000 Rials to the Tehran Telecommunications Company for the future utilization of two telephone lines in the Farahzad apartments. Loans in amounts of 34,170,000 Rials to Khoshkeh and 9,000,000 Rials to Tarvandan, as well as the down payment for the telephone lines, were first mentioned in the Claimant's Hearing Memorial, submitted seven years prior to the Hearing, in 1993, evidentiary material supporting such claims apparently having become available by that time. Later, in her Rebuttal Memorial, filed three years before the Hearing, in 1997, the Claimant asserted for the first time that she had loaned 20,611,693 Rials to Rahmat Abad and is entitled to compensation for the expropriation of that debt. She stated that she had not mentioned such loan earlier because she had lacked documentary proof to support such claim until she was able to obtain the company ledger from Iran, which had occurred only subsequent to her earlier submission. On the same basis, she included in that same Rebuttal Memorial a request for compensation for a 9,000,000-Rial loan to Gav Daran.

13. Article 20 of the Tribunal Rules provides that during the course of the proceedings "either party may amend or supplement his claim or defence unless the arbitral tribunal

considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances." This presumption favoring amendments has been consistently respected by the Tribunal, which regularly has allowed amendments increasing the amount of a claim on the basis of newly available evidence or the use of a different valuation or appraisal method.[17] Indeed, the Tribunal consistently has allowed amendments that incorporate new elements of the damage claimed, just as the Claimant proposes here. Thus, in *Rankin*,[18] Chamber Two accepted an amendment made in the claimant's final written submission to the extent it further particularized the claim for lost property, there being an absence of delay or prejudice. In *McCollough*,[19] Chamber Three found that an amendment made just over one year before the hearing which raised claims for certain post-termination contract expenses did not prejudice the respondent and hence was not "inappropriate." In *Litton Systems, Inc.*,[20] this Chamber accepted an amendment of the claim to include costs of warehousing certain items of equipment, the costs of repair of which were sought by the claimant, as the respondents would not be prejudiced by the amendment. In the relatively few cases in which the Tribunal has rejected amendments, it has done so because they were made for the first time either at the hearing or so close to it as to pose a clear danger of prejudice.[21] Here, of course, the Statement of Claim had placed the Respondent on notice of possible amendments, and the Claimant's amendments subsequently

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[17] In *Thomas Earl Payne* and *The Islamic Republic of Iran*, Award No. 245-335-2 (8 Aug. 1986), *reprinted in* 12 Iran-U.S. C.T.R. 3, 6, Chamber Two allowed an amendment increasing the amount of compensation sought and changing the method of valuation. The Chamber saw no possible prejudice, noting that the respondent had ample opportunity to respond. In *Cal-Maine Foods, Inc.* and *The Islamic Republic of Iran, et al.*, Award No. 133-340-3 (11 June 1984), *reprinted in* 6 Iran-U.S. C.T.R. 52, 60, Chamber Three ruled that a change by the claimant of its theory for recovery did not prejudice the respondents "so as to make such a change inappropriate." The Chamber also found acceptable a change in the claimant's request for interest made at the same time. In *Ford Aerospace & Communications Corporation* and *The Islamic Republic of Iran, et al.*, Partial Award No. 289-93-1 (29 Jan. 1987), *reprinted in* 14 Iran-U.S. C.T.R. 24, 26, this Chamber admitted an amendment of the claim concerning the amount claimed, holding that it would cause no prejudice and was not otherwise "inappropriate." In *Watkins-Johnson Company, et al.* and *The Islamic Republic of Iran, et al.*, Award No. 429-370-1 (28 July 1989), *reprinted in* 22 Iran-U.S. C.T.R. 218, 234, this Chamber held that various changes in the amounts claimed were admissible amendments. *See also Rockwell International Systems, Inc.* and *The Islamic Republic of Iran (Ministry of National Defence)*, Award No. 438-430-1 (5 Sept. 1989), *reprinted in* 23 Iran-U.S. C.T.R. 150, 166.

[18] *Jack Rankin* and *The Islamic Republic of Iran*, Award No. 326-10913-2 (3 Nov. 1987), *reprinted in* 17 Iran-U.S. C.T.R. 135, 138-39.

[19] *McCollough & Company, Inc.* and *The Ministry of Post, Telegraph and Telephone, et al.*, Award No. 225-89-3 (22 Apr. 1986), *reprinted in* 11 Iran-U.S. C.T.R. 3, 17.

[20] *Litton Systems, Inc. (The Guidance and Control Systems Division)* and *The Islamic Republic of Iran, et al.*, Award No. 249-769-1 (25 Aug. 1986), *reprinted in* 12 Iran-U.S. C.T.R. 126, 131.

[21] *See, e.g., Reliance Group, Incorporated* and *Oil Service Company of Iran, et al.*, Award No. 315-115-3 (10 Sept. 1987), *reprinted in* 16 Iran-U.S. C.T.R. 257, 259 (new claim raised at the hearing); *Cal-Maine Foods, Inc.* and *The Islamic Republic of Iran, et al.*, Award No. 133-340-3 (11 June 1984), *reprinted in* 6 Iran-U.S. C.T.R. 52, 59-60 (request for amendment made six months before the hearing).

filed were made from three to seven years prior to the Hearing. The Respondent in fact has dealt with these amendments fully in its ensuing submissions, both written (especially its Reply Memorial) and oral.

14. The Tribunal thus incorrectly holds that these "are new Claims filed after the jurisdictional cut-off date established by Article III, paragraph 4, of the Claims Settlement Declaration." Award at para. 68. Drawing a distinction apparently nowhere found in the jurisprudence of this Tribunal, it holds that "these new Claims are not for the expropriation of her equity interest in those companies, but either for debts or for other interests." *Id.* "By accepting these new Claims," the Tribunal concludes, "the essence of the initially presented Claim would clearly change, even if these new Claims for expropriation arise from the same Order of the Islamic Revolutionary Court." *Id.* This conclusion runs fundamentally counter to this Tribunal's two decades of amendment jurisprudence. The Claimant specifically sought compensation for her expropriated interests in Iranian companies pursuant to a specifically identified Government expropriation decree. For this Tribunal now to hold that the Claimant cannot amend her Statement of Claim to seek compensation for the expropriation of her property in Iran because she failed to particularize every detail of her Claim in her Statement of Claim is as unjust as it is unjustified by Tribunal precedent. Nowhere does the Tribunal conclude that the Claimant's amendments prejudice the Respondent, and nowhere does the Tribunal explain how these amendments would change the "essence of the initially presented Claim." Indeed, as discussed *infra*, paragraph 113, the Claimant's "loan" to Khoshkeh was in fact a deposit on account with Bank Melli to secure a line of credit for the company, which (as even the Respondent concedes) every shareholder was required to provide as part and parcel of share ownership. If the value of every share of Khoshkeh necessarily included a 17,000-Rial "loan" to the company, then the expropriation of the Claimant's shares in that company necessarily included the expropriation of both debt and equity interests. The Tribunal's conclusion that allowing the Claimant to amend her Statement of Claim specifically to seek her debt interest would change the "essence of the initially presented Claim" is thus demonstrably false.

15. The Tribunal criticizes the Claimant for raising her four debt claims after the Tribunal established that the Claimant had standing to bring her claims as a United States national. The Tribunal thus notes that it "did not know in 1992 when it decided the Claimant's dominant and effective nationality that she was apparently more involved in these four

companies than just as a shareholder." Award at para. 69. The clear implication of the Tribunal's reasoning is that the Claimant is not acting with clean hands, and may have concealed her debt interests until after the Tribunal adjudicated her dominant and effective nationality. That suggestion, however, is untenable, for three reasons. First, the Respondent, which expropriated, in their entirety, three of the four companies at issue here, had full access to those companies' books and records and thus knew how "involved" the Claimant was in those companies.[22] If the Respondent had thought it remotely advantageous, presumably it would have produced evidence of the Claimant's greater involvement in these companies during the earlier adjudication of the Claimant's dominant and effective nationality. If there are unclean hands here, they are the Respondent's, which failed to produce financial documents requested by the Claimant (and ordered by this Tribunal), thus denying the Claimant an opportunity to accurately amend her Claims earlier in the proceedings. Second, for the Tribunal even to intimate that it would have held that the Claimant's dominant and effective nationality was Iranian simply because she had debt interests (in addition to equity interests) in four Iranian companies demonstrates a profound misunderstanding of the Tribunal's nationality jurisprudence. An American bondholder in Iran is no more an Iranian than is an American shareholder there. Third, the Tribunal overlooks the fact that the Claimant's 1982 Statement of Claim put the Tribunal on clear notice that she sought compensation not just for the properties specifically enumerated, but also for "additional lost property" expropriated pursuant to the February 1980 Court of Isfahan decree. Having apprised the Tribunal of her intention to seek compensation for all of her property expropriated pursuant to the Respondent's February 1980 expropriation order, the Tribunal cannot attribute to the Claimant "unclean hands" for subsequently fleshing out those very claims.

b) Sarhad Abad

16. The Tribunal similarly erred in denying the Claimant the right to amend her Statement of Claim to recover her interests in Sarhad Abad. Again, the Respondent has failed to demonstrate that the Claimant's amendment of her Claim to include Sarhad Abad should be rejected on the basis of inexcusable delay, prejudice or any other significant circumstance.[23] As noted, the reason for the Claimant's late filing was the substantial difficulty she

[22] As to the fourth company, Khoshkeh, the Respondent expropriated the Claimant's shares in the company and, through the Foundation for the Oppressed, subsequently represented her interests at shareholders' meetings.

[23] *See* Tribunal Rules of Procedure, *supra* note 2, art. 20.

experienced in obtaining crucial evidence from inside Iran following the Islamic Revolution. Specifically, the Claimant asserts that it was not until July 1996 that she learned that a Sarhad Abad employee had removed relevant documents from the company's offices in early 1980 and had hidden them in his home. These documents ultimately found their way to a friend of the Claimant, who informed the Claimant of their existence in the summer of 1996. Thus, it was only after that date that the Claimant had the opportunity to review those documents and amend her Statement of Claim to specify Sarhad Abad. Because the tumultuous events of the Revolution presented the Claimant with unusually difficult obstacles to the gathering of evidence necessary to build her Case, her delay in amending her Statement of Claim to include Sarhad Abad is justifiable.

17. In addition, the Respondent failed to demonstrate that it would suffer prejudice were the Claimant's demand for Sarhad Abad damages to be admitted. As mentioned, the breadth of the Statement of Claim clearly informed the Respondent that supplemental items of damages could be included in the Claim once the Claimant obtained previously unavailable evidence. Moreover, the Claimant specifically raised this aspect of her claim in her Rebuttal Memorial filed in 1997, three years before the Hearing. Thus, the Respondent had ample opportunity to respond to the Sarhad Abad evidence; indeed, the Respondent addressed the issue in depth in its Rebuttal Memorial filed on 18 September 1998 and could have included an additional response in its Surrebuttal Memorial filed on 10 December 1999 (but apparently chose not to do so). As the Respondent has failed to cite any reason justifying rejection of the Claimant's amendment specifying Sarhad Abad, it should have been accepted.

2. Burden of Proof

18. It is axiomatic that the burden of proving a claim lies with the party presenting it.[24] This principle is enshrined in Article 24(1) of the Tribunal Rules, providing that each party shall have the burden of proving the facts relied upon to establish its claim or defense. Nevertheless, the Tribunal must take into consideration the difficulties faced by claimants presenting expropriation claims. This is particularly so for an individual claimant, such as the one presenting this Case, who was forced to leave Iran with only a few suitcases and, unlike multinational corporate claimants, was not in the practice of sending copies of relevant documents to an office outside of Iran. As stated in the Tribunal's award in *Sola Tiles*, "the

[24] *See* DURWARD V. SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS 124 (Rev. ed. 1975); *see also* MOJTABA KAZAZI, BURDEN OF PROOF AND RELATED ISSUES: A STUDY ON EVIDENCE BEFORE INTERNATIONAL TRIBUNALS 137-38 (1996).

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."[25]

19. Professor Virally addressed the predicament faced by claimants before the Tribunal in a memorandum excerpted in the *Buckamier* award:

> The Tribunal has often been presented with notarized affidavits or oral testimony of claimants or their employees. [Rare] are the cases where such an issue does not arise. The probative value of such written or oral declarations is usually hotly debated between the parties, each of them relying on the pecul[i]arities of its own judicial system. The U.S. parties insist that such evidence must be recognized with full probative value, as would be the case before U.S. courts. The Iranian parties contend that such declarations are not admissible as evidence under Iranian law, as in many other systems of law, because they emanate from persons whose interests are at stake in the proceedings, or who are, or were, dependent upon the claimants.
>
> The Tribunal has, in the past, adopted a pragmatic and moderate approach towards this problem by deciding, on a case by case basis, whether the burden of proof has been properly sustained by each contending party, taking into consideration those declarations together with all other evidence submitted in the case, the particulars of the case and the attitude of both parties in the proceedings. This pragmatic approach does not always seem to have been well understood, since the same debate continues to arise, often in the same terms, in case after case . . ..
>
> As an international Tribunal established by agreement between two sovereign States, the Tribunal cannot, in the field of evidence as in any other field, make the domestic rules or judicial practices of one party prevail over the rules and practices of the other, in so far as such rules or practices do not coincide with those generally accepted by international Tribunals. In this context, it can be observed that declarations by the parties, or employees of the parties, in the form of notarized affidavits or oral testimony, are often submitted as evidence before such Tribunals. They are usually accepted, but, apparently, their probative value is evaluated cautiously, in a manner generally comparable to the attitude of this Tribunal as just described.
>
> It is clear that the value attributed to this kind of evidence is directly related not only to the legal and moral traditions of each country, but also to a system of sanctions in case of perjury, which can easily and promptly be put into action and is rigorous enough to deter witnesses from making false statements. Such a system does not exist within international Tribunals and recourse to the domestic courts of the witness or affiant by the other party would be difficult, lengthy, costly and uncertain. In the absence of any practical sanction (other than the rejection by the international Tribunal of the discredited evidence), oral or written evidence of this kind cannot be accorded

[25] *Sola Tiles, Inc.* and *The Government of the Islamic Republic of Iran*, Award No. 298-317-1 (22 Apr. 1987), *reprinted in* 14 Iran-U.S. C.T.R. 223, 238.

the value given to them in some domestic systems. Also it cannot be discounted that the ethical barriers which prevent the making of statements not in conformity with the truth before national courts will not have the same strength in international proceedings, notably when the other party is a foreign government, the conduct of which was severely condemned by public opinion in the country of the other party.

On the other hand, it must be recognized that in many claims filed with the Tribunal, claimants face specific difficulties in the matter of evidence, for which they are not responsible. Such is particularly the case when U.S. claimants were forced by revolutionary events and the chaotic situation prevailing in Iran at the time, to rush out of Iran without having the opportunity or the time to take with them their files, including documents which normally should be submitted as evidence in support of their claims. In many instances, the situation in Iran between the establishment of the Revolutionary Islamic Government on 11 February 1979 and the taking of the American Embassy on 4 November 1979 was not sufficiently settled to permit a return in Iran or, in case of return, . . . to recover the files left behind. After 4 November 1979, and up to the critical dates of 19 January 1981 and 19 January 1982, collection of documents in Iran by U.S. nationals was almost impossible. Obviously, these facts made it very difficult for the claimants who did not keep copies of their files outside Iran to sustain their burden of proof in the ways which would be expected in normal circumstances. In view of these facts, the Tribunal could not apply a rigorous standard of evidence to the claimants without injustice. In adopting a flexible approach to this issue, however, it must not lose sight of its duty to protect the respondents against claims not properly evidenced. At any rate, it must be satisfied that the facts on which its awards rely are well established and fully comply with the provisions of . . . its Rules of procedure.

Of particular relevance here is Professor Virally's concluding paragraph:

In order to keep an equitable and reasonable balance between those contradictory requisites, *the Tribunal must take into consideration the specific circumstances of each case, as well as all the elements which can confirm or contradict the declarations submitted by the Claimants. The list of such elements is practically unlimited and varies from case to case.* The absence or existence of internal contradictions within these declarations, or between them and events or facts which are known by other means, is obviously one of them. Explicit or implied admission by the other party is another, as well as the lack of contest or *the failure to adduce contrary evidence, when such evidence is apparently available or easily accessible.* In relation to this last element, however, the Tribunal must not disregard the fact that destruction due to revolutionary events or to the war, the departure from Iran of persons responsible for the conduct of the business at the time of the facts referred to in the claim, changes in the direction or the management of the undertakings concerned, can also impair the Respondents' ability to produce evidence. It is

often a delicate task to determine if and to what extent respondents would be responsible for such a difficulty.[26]

20. The Claimant in this Case has made a valiant effort to produce documents, and, applying the standard just recited, has been to a large extent successful in that effort. The Tribunal failed to bear this in mind properly when it considered the sufficiency of the Claimant's evidence.[27] Moreover, as noted just below, her Case is definitively established by inferences that the Tribunal not only was permitted to make, but was required to make, given the Respondent's repeated refusal to produce key documents in the face of successive Tribunal Orders to do so, whose existence in the Respondent's possession, custody and control could not be, and was not, denied and indeed was confirmed.

3. Drawing Adverse Inferences

a) The Respondent's repeated and express refusal to comply with document production orders

21. Pursuant to the Claimant's multiple requests, the Tribunal repeatedly has ordered the Respondent to produce various documents relevant to the Claimant's ownership interests in the companies at issue in this Case, or to explain its failure to do so. These documents include, *inter alia*, minutes of shareholders' and Board of Directors' meetings, share registers, registration files and financial documents. The Respondent has clearly and egregiously failed to produce the vast majority of these documents – which the Claimant believes would substantiate her Claim – despite its obligation to do so. The Tribunal itself acknowledged the Respondent's failure in this regard. In its final Order requiring production, dated 18 May 1995, the Tribunal determined that it was not satisfied that the Respondent had complied with its previous document production Orders. Upon receiving the Respondent's cursory response, the Tribunal concluded that the determination of whether the Respondent had complied with its document production Orders would be made at a later date. In its present Award, the Tribunal should have made that determination and generally confirmed as a fact its earlier intimation that the Respondent has failed to comply with its Orders. As a result of this failure, the Tribunal should have drawn inferences adverse to the Respondent and assumed that the requested documents, if submitted, would have substantiated the

[26] *W. Jack Buckamier* and *The Islamic Republic of Iran, et al.*, Award No. 528-941-3 (6 Mar. 1992), *reprinted in* 28 Iran-U.S. C.T.R. 53, 74-76 (emphasis added).

[27] The fact that the Claimant, as a private claimant, was not in the habit of sending copies of documents abroad should also be kept in mind when examining the value of other contemporaneous evidence, such as Mr. Riahi's diary and ledger.

Claimant's assertions. Specifically, the Claimant should not have been faulted when the evidence offered in support of certain aspects of her Claim was sparse, and instead the Tribunal should have inferred that the documents withheld by the Respondent would have established further the Claimant's position.

22. On 14 November 1994, the Claimant requested that the Tribunal order the Respondent to produce the following documents: (i) the share registers of Tarvandan, Khoshkeh, Rahmat Abad, Iran Bohler and Gav Daran, as well as the share register of Bank Tehran, which had been referred to in Respondent's Exhibit 57; (ii) the registration file of Rahmat Abad, kept at the Registration Office of Companies and Industrial Ownership, Natanz (which she had previously requested); (iii) a list of the shareholders of Rahmat Abad, which had been referred to in Respondent's Exhibit 48; (iv) minutes of shareholders' meetings of Rahmat Abad, which were at the disposal, or under the control, of the Foundation for the Oppressed of Natanz; (v) documents evidencing prohibition of conversion of registered shares into bearer shares referred to in paragraph 8 of the Respondent's Hearing Memorial; (vi) any document evidencing that Gav Daran had lost title to its land in Gorgan Province, as referred to in paragraph 62 of the Respondent's Hearing Memorial; (vii) letter number 723/23 dated 17 July 1984, referred to in Bank Melli Iran's letter dated 30 September 1993, and any other documents concerning Khoshkeh's credit deposit which constituted the basis of that letter from Bank Melli Iran; (viii) the "Appended List" referred to in the minutes of Khoshkeh's 24 February 1980 Board of Directors' meeting, if that list differs from the list submitted as Claimant's Exhibit 83; (ix) financial documents and vouchers (including accounting books, papers, financial statements, tax declarations, etc.), as well as audit reports and documents regarding valuation of real estate of Khoshkeh, Rahmat Abad, Iran Bohler, Gav Daran and Tarvandan, referred to in pages 5-6 of Respondent's Exhibit 75; (x) the title deed to a Toyota Corona car, which, according to Respondent's Exhibit 48, was under the control of the Foundation for the Oppressed of Isfahan; (xi) the title deeds of two apartments located in Yousafabad, Nowbonyad buildings, which, according to Respondent's Exhibit 48, were under the control of the Foundation for the Oppressed of Isfahan; and (xii) the Articles of Association and other documents relating to the organization of Bank Tehran.

23. On 17 November 1994, the Respondent responded to this request for a Tribunal order stating that: (1) the documents in items (i)-(iv) were generally available at the Registration Office of Companies and Industrial Ownership and, thus, accessible to the public; (2) item (ix)

related to companies that are not parties to this Case; (3) item (xi) was irrelevant to the remedies sought; and (4) item (v) was meant to "guide the Claimant on a fishing expedition in search of proof," failing to specify an "evidentiary objective of the requested documents." The Respondent failed altogether to address items (vi)-(viii) and (x) of the Claimant's 14 November 1994 request.

24. Thereupon the Tribunal issued an Order on 18 November 1994 requesting the Respondent to submit the documents requested by the Claimant, or to explain why this was not possible.

25. On 10 April 1995, the Respondent produced a very limited number of documents on a highly selective basis, withholding most of what had been ordered to be produced. It submitted only: (1) the share register of Tarvandan; (2) the Articles of Association of Bank Tehran; and (3) letter No. 723/23 of Khoshkeh. At the same time, it stated that it was not producing any of the other documents the Tribunal had ordered it to produce because: (1) the Bank Tehran documents requested under (i) and (xii), apart from the one specifically named document that had been provided, "comprise[d] a huge unidentified mass" and the request was "too general, or otherwise too voluminous," to comply with and, further, the Claimant herself could acquire whatever documents she required; (2) she also could acquire herself the documents requested under (ii)-(iv) and (viii); (3) as to (vi), the ownership of Gav Daran's land, the relevant provisions are contained in the Iranian Civil Law and the mortgage contract, which could be obtained by the Claimant from the Notary Public where the transaction was registered; (4) the documents referred to under (ix) were "too general and too voluminous to be produced"; (5) the Respondent was not in possession of the title deed of the car sought under (x); and (6) as to the title deed requested under (xi), separate title deeds for the apartments in question did not exist.

26. The Claimant protested to the Tribunal the Respondent's failure thus to comply with the Tribunal's Order. She noted that the Respondent's explanation for not producing (i)-(iv) and (viii), *i.e.*, that the Claimant herself could obtain the documents, was inaccurate. Her repeated efforts to obtain the documents had been unsuccessful. The Respondent's excuse as to items (i), (v), (ix) and (xii) – that the requested documents were too general – also was invalid, considering that the documents ordered to be produced were those expressly referred to or relied upon by the Respondent itself in its Hearing Memorial and Evidence. The Claimant requested that the Tribunal therefore draw adverse inferences from the Respondent's failure to comply

with the Tribunal's Order and that any reference to, or reliance on, the withheld documents by the Respondent be stricken.

27. On 18 May 1995, the Tribunal issued a further Order, determining that it was not satisfied that the Respondent had complied with its document production Order and that "the Respondent's submission of 10 April 1995 . . . only partially respond[ed] to the Tribunal's request." The Tribunal again requested the Respondent to submit those documents previously ordered to be produced which were available to it and which had not yet been produced. It also requested the Respondent to submit those documents which had been requested by the Claimant but had not been commented on by the Respondent in its submission of 10 April 1995, or to explain why the submission of any of those documents was not possible.

28. On 30 June 1995, the Respondent replied to this Order, noting that prior to its submission of 10 April 1995 it had engaged in a good-faith effort to secure those documents that may have been out of the Claimant's reach. After several months of correspondence with various departments and companies, the Respondent submitted its reply to the Tribunal, together with the documents to which it had gained access. The Respondent stated that although its submission of 10 April 1995 had been stated in a general way, it in fact addressed every item requested by the Claimant.[28]

29. In response, the Tribunal issued a further Order on 10 July 1995 in which it determined that "the question whether the Respondent has complied with the Tribunal's [document production] Orders . . . will be decided at a later stage of the proceedings." The Claimant continued to note the difficulty she was having in preparing her Case due to the Respondent's failure to produce documents as ordered, and repeatedly renewed her request that the Tribunal draw adverse inferences from the Respondent's failure to produce documents ordered to be produced. Her request was reiterated at the Hearing.

b) The Tribunal's authority to draw adverse inferences

30. The Tribunal is empowered to draw adverse inferences due to the non-production of documents, and repeatedly has done so.[29] Under the Tribunal's jurisprudence, several requirements must be met in order to draw an adverse inference. First, the requested documents

[28] In fact, the Respondent's submission had failed to address item (vii) insofar as it pertained to "any other documents concerning Khoshkeh's credit deposit which constituted the basis of Bank Melli Iran's letter."

[29] *See, e.g., INA Corporation* and *The Government of the Islamic Republic of Iran*, Award No. 184-161-1 (13 Aug. 1985), *reprinted in* 8 Iran-U.S. C.T.R. 373, 382.

must be relevant and material to the proceedings.[30] This has also been phrased as requiring them to be "essential" to the resolution of the case.[31] The documents requested in this Case clearly are relevant to the Claim, as the Tribunal's Orders of 18 November 1994 and 18 May 1995 necessarily found. Second, the Tribunal must be convinced that the requested documents are at the disposal of the requested party.[32] In this Case, the Respondent has never denied its possession, custody or control of the bulk of the requested documents. To the contrary, in asserting that they are publicly available documents accessible to the Claimant (which she has denied in detail), the Respondent necessarily admits their availability to it. The highly selective submission by the Respondent of some of the documents ordered to be produced, *e.g.*, the share register of Tarvandan, and its express reliance in its Hearing Memorial and Evidence on extensive financial documentation of various companies graphically confirm that it does have access to the types of documents ordered produced. Third, the claim must otherwise appear to be substantial, meaning that the claimant should have made out a *prima facie* case.[33] The Claimant clearly has established a *prima facie* case that she owned the property that is the subject of her Claim and that the property was expropriated by the Respondent. Fourth,[34] the party failing to produce must have offered no satisfactory explanation for such failure.[35] This is an essential requirement, as the justification for drawing an adverse inference is that a party possessing evidence that supports its position, or which disproves that of its opponent, will either submit that evidence upon being so ordered or provide a reasonable explanation for its failure to do so. As discussed, the Respondent has not justified its failure to produce the requested documents. Therefore, all of the requirements for drawing adverse inferences have been met in this Case and the Tribunal should have drawn appropriate inferences. Such adverse inferences must be taken into account when examining the amount and sort of evidence submitted by the

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[30] *See* C.F. Amerasinghe, *Problems of Evidence Before International Administrative Tribunals, in* FACT-FINDING BY INTERNATIONAL TRIBUNALS 205, 213 (R. Lillich ed., 1992); *see also* KAZAZI, *supra* note 24, at 320.

[31] MATTI PELLONPÄÄ & DAVID D. CARON, THE UNCITRAL ARBITRATION RULES AS INTERPRETED AND APPLIED: SELECTED PROBLEMS IN LIGHT OF THE PRACTICE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL 485 (1994).

[32] *See* KAZAZI, *supra* note 24, at 320; PELLONPÄÄ & CARON, *supra* note 31, at 485. *See also George Edwards* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 451-251-2 (5 Dec. 1989), *reprinted in* 23 Iran-U.S. C.T.R. 290, 293-94 (Tribunal refused to draw an adverse inference where there was no proof that the respondents were in actual possession of the documents).

[33] *See* KAZAZI, *supra* note 24, at 321.

[34] A fifth requirement, not at issue in this Case, is that the party be given sufficient time and opportunity to produce the requested document.

[35] *See* KAZAZI, *supra* note 24, at 321; PELLONPÄÄ & CARON, *supra* note 31, at 485. *See also INA Corporation, supra* note 14, at 382; Order of 4 January 1993 in *Brown & Root, Inc., et al.* and *The Islamic Republic of Iran, et al.*, Case No. 50, Chamber One.

Claimant and the value given to individual pieces of evidence, such as Mr. Riahi's diary and ledger and Mr. and Mrs. Riahi's affidavits.

31. As the below chart summarizes, the Respondent's flagrant non-compliance with Tribunal Orders to produce certain requested documents unquestionably has stymied the Claimant's ability to build her Case in the most complete manner. The Respondent's explanations for its non-compliance have been insufficient, unpersuasive and non-responsive. Moreover, the Respondent's selective submission of certain company records, including excerpts from a share register and various financial documents, confirms that the Respondent has the requested documents within its custody and control; hence, the only reason for its disobedience is the fear that the production of such documents will undermine the Respondent's defense.

Chart 1: The Respondent's Repeated Failure to Produce Documents

OH = The Claimant could obtain the document herself
TG = The request for documents was too general
OE = Other Explanation
NE = No Explanation

Requested Documents	OH	TG	OE	NE
(i) the share registers of Tarvandan,† Khoshkeh, Rahmat Abad, Iran Bohler and Gav Daran, as well as the share register of Bank Tehran, which had been referred to in Respondent's Exhibit 57	✖	✖		
(ii) the registration file of Rahmat Abad, kept at the Registration Office of Companies and Industrial Ownership, Natanz (which the Claimant had previously requested)	✖			
(iii) a list of the shareholders of Rahmat Abad, which had been referred to in Respondent's Exhibit 48	✖			
(iv) minutes of shareholders' meetings of Rahmat Abad, which were at the disposal, or under the control, of the Foundation for the Oppressed of Natanz	✖			
(v) documents evidencing prohibition of conversion of registered shares into bearer shares referred to in the Respondent's Hearing Memorial, p. 8, at para. 8		✖		
(vi) any document evidencing that Gav Daran had lost title to its land in Gorgan Province, as referred to in the Respondent's Hearing Memorial at para. 62	✖			

Requested Documents	OH	TG	OE	NE
(vii) letter number 723/23 dated 17 July 1984, referred to in Bank Melli Iran's letter dated 30 September 1993* and any other documents concerning Khoshkeh's credit deposit which constituted the basis of Bank Melli Iran's letter				✖
(viii) the "Appended List" referred to in the minutes of Khoshkeh's 24 February 1980 Board of Directors' meeting, if that list differs from the list submitted as Claimant's Exhibit 83	✖			
(ix) financial documents and vouchers (including accounting books, papers, financial statements, tax declarations, etc.), as well as audit reports and documents regarding valuation of real estate of Khoshkeh, Rahmat Abad, Iran Bohler, Gav Daran and Tarvandan, referred to in Respondent's Exhibit 75		✖		
(x) the title deed to a Toyota Corona car, which, according to Respondent's Exhibit 48, was under the control of the Foundation for the Oppressed of Isfahan			✖	
(xi) the title deeds to two apartments located in Yousafabad, Nowbonyad buildings, which, according to the Respondent's Exhibit 48, were under the control of the Foundation for the Oppressed of Isfahan			✖	
(xii) the Articles of Association* and other documents relating to the organization of Bank Tehran		✖		

* = Document produced
† = Partial production of document

B. Preliminary Substantive Issues

1. Powers of Attorney

32. Much of the property that forms the subject of the Claim was given to the Claimant by her husband as a gift. In dividing his property amongst his family members, Mr. Riahi at certain times transferred property to the Claimant that he had at one time given to one or another of his three sons. In transferring property from his sons to the Claimant, Mr. Riahi used powers of attorney granted to him by his sons. The Claimant produced copies of the powers of attorney from Malek Massoud Riahi ("Malek") (dated 27 July 1969), Amir Saeed Riahi ("Amir") (dated 20 September 1971), and Jahan Shahriar Riahi ("Jahan") (dated 24 December 1975). Only the powers of attorney of Jahan and Amir are at issue this Case.

33. Only at the Hearing did the Respondent for the very first time in the then more than 18-year history of this Case raise the argument that the transfer of certain of Jahan's and Amir's property to the Claimant based on the powers of attorney was invalid. According to the Respondent, neither a natural guardian nor an attorney acting under a power of attorney that does not expressly grant the power to make gifts may lawfully make gifts of the ward's or principal's property, because such gifts are argued to be necessarily against the interests of the ward or principal, which interests under Article 667 of the Iranian Civil Code must be respected as a limitation on the power granted. The Tribunal agrees with the Respondent, stating that "it appears . . . that Mr. Riahi did not have the right to donate" his son's property. Award at para. 172. The Tribunal's reasoning, however, cannot be deemed consistent with the evidence in the record.

34. The alleged invalidity of the two sons' powers of attorney first must be evaluated against the fact that never once in the more than 18 years that followed the filing of the Claimant's Statement of Claim on 18 January 1982 until the Hearing held 18-27 May 2000 did the Respondent even hint at any such argument in any of its numerous written submissions made during those years. The Tribunal should have weighed the argument with the knowledge that, as human experience bears out, normally a valid argument of such alleged importance would be made at the outset, and certainly long before 18 years had elapsed and the Hearing had commenced.

35. To the extent the argument nevertheless was deemed worthy of consideration, the appropriate point of departure is the text of the powers of attorney themselves. The powers of attorney authorize Mr. Riahi to engage in "all sort of transactions" (with respect to Amir) and "any transaction" (with respect to Jahan). Award at paras. 166-67. According to Article 660 of Iran's Civil Code, powers of attorney can be either of a general nature, concerning all of the principal's affairs, or limited to certain matters. The implication of the text of Article 660 is that any limitation of an otherwise general power must be expressed, and not that all powers must be precisely enumerated. Although the specific authority to make gifts is not stated *in haec verba* in the two powers of attorney at issue, as it is in Malek's power of attorney executed some years earlier, these clearly are general powers of attorney, empowering Mr. Riahi to engage in "any transaction," thus necessarily including gifts. No legal precedent or other legal authority whatsoever is cited by the Respondent or the Tribunal to support the proposition that a precisely written power of attorney authorizing an attorney to

strip the principal of assets through giving away all of his property is valid, whereas such power if expressed in broader terms usually encompassing such powers cannot support any gift whatsoever.

36. It is unlikely that as a matter of social or public policy the giver of a power of attorney can validly agree effectively to be stripped of his assets if an exaggerated degree of formality is employed in so consenting. It seems much more likely that the rule is that an attorney must in all events act in some sense for the benefit of his principal, but that the remedy for any transgression, as the Claimant has argued, is not invalidation of a transaction completed before the principal has complained and notice has been given to a third party, but rather an action by the principal against the attorney.

37. The issue thus arises as to Iran's standing to complain in the stead of either of the two Riahi sons or their heirs as regards any transfer. The sole authority for Iran's asserted standing is Dr. Safai's quite cursory and conclusory written testimony, unbolstered by citation of any legal authority whatsoever, that Iran is a "beneficiary" (the meaning of which also is not elucidated) of the transactions effected under the powers of attorney. From the date of the submission of that testimony in 1999 until now no support for that proposition has been cited. Furthermore, the testimony of Judge Mahloujian for the Claimant is, by contrast, detailed, precise, and supported by citation of statutory authority establishing the virtual immunity of a power of attorney from attack, particularly from one mounted by state authorities (who can be prosecuted for not honoring one), once it has been registered.

38. Even were Iran to have standing to assert the interests of the two sons, and even were the remedy for any disregard of those interests by their father to lie in treating as invalid the transfers to the Claimant (as opposed to holding the father liable), the question still arises as to how one judges what is in the interests of the principal. Even Dr. Safai admitted on cross-examination that small gifts, *i.e.*, something not constituting a substantial portion of the principal's property, are of course permissible. Indeed, it would be absurd to take the view that it is against the interests of a wealthy principal for the agent to make, as an example, charitable gifts, which can involve sums that are quite large in absolute terms. But how can proportionality, which is at the core of Dr. Safai's admission, be judged adversely to the Claimant when no evidence whatsoever has been introduced by the Respondent regarding the extent or value of the overall property of either son? Clearly, it is Iran that bears the burden of proving that the gifts were not in the interests of the principals (and hence of

demonstrating the amount of their overall property in order to establish that the gifts were disproportionate).[36] Moreover, the question arises as to whether monetary percentage is the only measure of what is in a principal's interests. Given (as is detailed below) that the property of all members of the Riahi family was expropriated in consequence of the same decree, the transfers here were exactly in the sons' interests because they provided the only means of preserving their property within the family, through this very claim by Mrs. Riahi,[37] and thus ensuring the potential ultimate availability to them of property otherwise irretrievably lost. If indeed the Tribunal were to judge what was in the interests of the sons (which, it is suggested above, it may not on the evidence in the record), the Tribunal would be required to take this into account.

39. A final related issue that was raised by Iran concerns the possibility of exercising a power of attorney after the principal's death. According to Article 678 of Iran's Civil Code, an agency relationship ends with the death of the principal, although Article 680 provides that everything the agent does until he learns of his dismissal is valid, which would seem to apply also to termination of an agency by death. Thus, it is not possible to exercise a power of attorney after the principal's death, or at the latest after the agent learns of the principal's death. This issue is of no relevance to this Case, however, because there is no reliable evidence that Mr. Riahi exercised either of the powers of attorney at issue after Amir's and Jahan's death, respectively.

40. Before leaving this subject, it is appropriate to refer once more to the fact that no arguments such as are now advanced in respect of powers of attorney were ever made in the more than 20 years of written submissions, and instead surfaced only during the Hearing. This fact alone is very strong evidence of their lack of merit. If the points raised for the first time after the Case had been pending 18 years were in fact valid and pertinent, surely they would have been raised much earlier. This, together with the scant authority cited, if any, suggests that the Tribunal confronts a "late invention" or "creative last-minute inspiration."

[36] It is not clear that Mr. Riahi's notation concerning the expropriated property of Jahan and Amir lists all of their property.

[37] The Claimant is the only family member eligible to claim against Iran before this Tribunal. Amir and Jahan, both Iranian nationals, would have had no recourse in Iran, as the basic decree of expropriation and its aftermath (recounted below) made clear.

2. Incapacity

41. To contest the validity of certain transfers of property made by Mr. Riahi to the Claimant by way of his sons' powers of attorney, the Respondent argues that Jahan and Amir suffered from mental disorders negating their capacity to grant valid powers of attorney. The Tribunal properly concludes that the Respondent failed to sustain its burden of proving the Claimant's stepsons' alleged incapacity to execute their powers of attorney, holding that because the Respondent's expert witness's account

> is not based on his own examinations of the patients during the relevant period, or even on direct consultations with the attending physicians, it is impossible for the Tribunal to draw any conclusions as to whether Jahan Shahriar or Amir Saeed suffered from any mental illness that would have prevented them from lawfully giving powers of attorney to their father.

Award at para. 137. In fact, the Tribunal has sufficient evidence in the record to definitively reject the Respondent's argument.

42. Before proceeding to the substance of the Respondent's claim that Jahan and Amir suffered from mental disorders precluding their capacity to grant valid powers of attorney, it is necessary to clarify the significance of the Respondent's argument. Article 1210 of the Iranian Civil Code provides that "[n]o one, when reaching the full age of 18 years, can be treated as under disability in respect of insanity or immaturity unless his immaturity or insanity *is proved.*" (Emphasis added.) The Respondent's own expert, Dr. Safai, echoed this provision when he stated, "no one c[an] be deemed insane or immature after eighteen [years of age] unless his or her insanity or immaturity *is proven before a competent court and a judgment is rendered to this effect.*"[38] (Emphasis added.) It is undisputed that no such judgment has been rendered by an Iranian court with respect to Jahan's and Amir's mental capacities. Thus, had the Tribunal accepted the Respondent's argument, it would have been required to assume the role of an Iranian court in order to assess Jahan's and Amir's mental state as a matter of Iranian law. The Tribunal's ability to perform that task appropriately in this Case is highly questionable, given the Respondent's complete failure to provide the appropriate standards by which to make such a decision. Although the Respondent cites various provisions of the Iranian Civil Code related to incapacity, it provides no indication of

[38] Jahan was born on 8 October 1957 and signed his power of attorney on 24 December 1975; Amir was born on 28 December 1952 and signed his power of attorney on 20 September 1971. Thus, both sons had reached the age of 18 before granting powers of attorney to their father.

how Iranian courts have interpreted those provisions, *e.g.*, relevant Iranian caselaw or procedural rules.

43. Turning to substance, the Respondent, relying primarily on Dr. Sanati's expert testimony, argues that Jahan and Amir suffered from schizophrenia at the time they signed their powers of attorney. Dr. Sanati's expert opinion is unpersuasive, however, as it was based solely on an interpretation of secondary evidence, *i.e.*, a review of excerpts from Mr. Riahi's diary and, in Jahan's case, a copy of a medical report from Mehmenat Hospital, dated December 1975, which Dr. Sanati received shortly before the Hearing. Although Dr. Sanati claimed at the Hearing to have come in contact with Jahan at St. Luke's Woodside Hospital in London, where Jahan received treatment in 1979, he also conceded that Jahan had never been his patient and that his interaction with Jahan in London in no way formed the basis of his expert opinion. Such flimsy evidence falls well short of satisfying the Respondent's burden of proof.

44. Moreover, the Claimant's medical expert, Dr. Ratner, offered testimony at the Hearing, on the basis of the same evidence, in which he reached the opposite conclusion: that neither son suffered from schizophrenia, or any other mental disorder, but that instead each had suffered from drug abuse which resulted in periodic hospitalization. Of particular interest with regard to Jahan is the fact that Dr. Ratner interpreted the medical record from Mehmenat Hospital as indicating that Jahan was treated not for any mental infirmity, but for drug addiction. Further, Jahan was released into his own care after his drug treatment had ended, shortly before granting his power of attorney. It should also be noted that, far from being incapacitated, Jahan finished high school in 1976 and acquired a driver's license in 1978, events which took place *after* he signed his power of attorney in 1975. As to Amir, the Respondent offers no evidence that addresses the crucial period of time when Amir signed his power of attorney, September 1971. To the contrary, the only relevant evidence of any temporal proximity is Mr. Riahi's diary entry for 24 February 1971, recording that Amir was in good health and not using drugs.

45. The Respondent's argument that Mr. Riahi in fact was required, but failed, to appoint a guardian for Jahan and Amir when they came of legal age, prior to which they are alleged already to have suffered from mental incapacitation, is likewise woefully deficient. Pursuant to Articles 1218 and 1219 of the Iranian Civil Code, a parent must appoint a guardian for an insane child "whose insanity . . . directly followed their attaining full age and who have no

'special guardian.'" Article 1194 of the Iranian Civil Code, however, defines a "special guardian" as "[t]he father, paternal grandfather, [or] the guardian appointed by one of them." The fact that Mr. Riahi was Jahan's and Amir's father is not in dispute. Thus, even assuming that the sons were insane prior to and hence when reaching 18 years of age,[39] Mr. Riahi automatically became their special guardian and had authority, even without a written power of attorney, to direct his sons' financial affairs, including all transfers of their property.

46. The late-raised argument that Jahan's and Amir's alleged insanity, even if it occurred after the granting of the powers of attorney, destroys the principal-attorney relationship is meritless.[40] Article 682 of the Iranian Civil Code provides: "The fact that the principal becomes incapacitated annuls the agency except in respect of things in which incapacity does not impede there being an agency." To begin, the Respondent has failed to provide sufficient support to prove that the transfer of property by Mr. Riahi to his wife on behalf of his sons was a transaction in respect of which incapacity "impede[s] there being an agency." Further, central to the Respondent's argument is a preliminary finding by an Iranian court of the sons' insanity, which has not occurred, and which should not be undertaken by this Tribunal. Finally, given that Mr. Riahi would become his sons' special guardian at any time they were deemed to be insane after their 18th birthday, he would in any event have authority to transfer his sons' property in their interest.[41] For these reasons, the Tribunal properly concludes that the Respondent has not proven that Jahan and Amir suffered from mental disorders that caused them to lack the capacity to grant valid powers of attorney to Mr. Riahi.

3. The Non-Registration of Gifts

47. A further argument advanced by Iran for the very first time at the Hearing (again, without even hinting at it in 18 years of written submissions) is that no gift is valid and effective unless it is registered pursuant to Article 47 of the Registration Act. This argument must be rejected, however, in the face of both Judge Mahloujian's clear position to the contrary and Dr. Safai's own statements for the Respondent. Indeed, the Tribunal holds that

[39] It should be noted again that the requirement of a special guardian only arises after a competent Iranian court determines a person's insanity. No such decision in respect of Jahan and Amir has been rendered.

[40] The Respondent raised the argument for the first time at the Hearing.

[41] *See* Articles 1218 and 1219 of the Iranian Civil Code. The Respondent argues additionally that, even if no Iranian court has found Jahan and Amir insane, the powers of attorney may be void because the sons lacked the necessary intent and capacity to grant the legal instruments under general contract principles. Again, for this argument to be persuasive, however, the Respondent would still have been required to prove that Jahan and Amir were incapacitated at the time of the signing of their respective powers of attorney. As mentioned, the Respondent has failed to proffer sufficient proof of this and hence its argument is without merit.

it "is not persuaded that non-registration, *per se*, may adversely affect the validity of a donation," but it concludes that such non-registration "becomes important when the existence of the donation is called into question." Award at para. 142.

48. Judge Mahloujian clearly stated, and the Tribunal accepts, that a gift is valid as between the donor and the donee. Registration is a protection against the assertion by a third party of an interest in the donated property. Here, however, no such third party is complaining, and Iran, which wishes to do so, lacks any standing to do so (as set forth earlier in paragraphs 37-38).

49. Dr. Safai himself admitted on cross-examination that a gift by him to his wife, for example, takes effect as between the two without regard to registration. It is only if and when the matter is "in dispute" that registration becomes important. Just as Dr. Safai's wife is not disputing the gift to her, here Mr. Riahi's two deceased sons are not doing so (nor is any executor or other legal representative of either). Again, Iran lacks standing to raise a dispute. Therefore, the gifts remain effective.

4. The Non-Delivery of Gifts

50. At the Hearing, Dr. Safai suggested, also for the first time in the 18-year history of this Case, that delivery is an essential condition for the legal completion of a gift. But even were delivery a requirement for legal validity of a gift as between donor and donee (as opposed to *vis-à-vis* third parties), which the Claimant disputes, the fact is that in all but one of the cases of bearer share transfers from Mr. Riahi to his wife in which delivery might have been an issue, the Claimant was present in Iran and provided sufficient proof that delivery had occurred.[42] The only transfer to which Dr. Safai's suggestion could be relevant is the gift of 510 bearer shares of Khoshkeh from Mr. Riahi to the Claimant after the Claimant had left Iran. Mr. Khajeh-Nouri was the custodian of Mr. and Mrs. Riahi's shares at that time, as is evidenced by Mr. Riahi's request to him to transfer the shares, and he made the transfer once the conversion from registered shares to bearer shares was complete. Indeed, Mr. Khajeh-Nouri's report confirmed that the transfer took place upon the conversion of the shares. At that point he accepted delivery of the shares on behalf of their new owner, the Claimant, and

[42] The Claimant remained in Iran until 13 September 1979. As the evidence confirms, the transfers of Rahmat Abad, Tarvandan, and Gav Daran bearer shares from Mr. Riahi to his wife were delivered before that time in June 1979, by August 1979, and in March 1979, respectively. *See infra* at paras. 89, 116 and 130.

all the conditions for the gift were completed. Therefore, the Respondent's argument in this regard is without merit.

5. Compliance with Formalities Regarding Shares Under Iranian Law

51. Iranian law provides for certain formalities in relation to the transfer or conversion of shares. For example, under Article 40 of the Iranian Commercial Code, the transfer of registered shares must be recorded in the share register. In establishing her claim of ownership in various companies, however, the Claimant has relied to a great extent on minutes of shareholders' and Board of Directors' meetings, and on their attached lists of shareholders, because she has not had access to the share registers of these companies. Here it is pertinent to note that those share registers were among the items twice ordered by the Tribunal to be produced by Iran, which adamantly refused to produce them while not denying, and indeed effectively admitting, that those registers were available to it.[43] Thus, the Claimant justifiably asked the Tribunal to infer that the registers not produced in fact would support her Claim, but the Tribunal refused even to consider her requests.

a) Evidentiary weight of company minutes and attached shareholders' lists

52. Because of the importance of the above-mentioned documents (and supporting inferences) to the Claimant's Case, it is worth noting the considerable value that the Tribunal has given to such documents in the past. In *Tavakoli*, for example, Chamber Three dealt with facts almost identical to those in the instant Case.[44] There, the claimant also sought to prove her share ownership based solely on company minutes because she was unable to obtain a copy of the company's share register. The respondent, citing Article 40 of the Iranian Commercial Code, challenged the claimant's ownership, alleging that her interest was not included in the share register, but failing to produce that document as proof.[45] Chamber Three noted that a person becomes the legal owner of shares in an Iranian company only

[43] This was demonstrated, *inter alia*, by Iran's production, selectively, of excerpts from the register of Tarvandan (without providing even parts of any of the other share registers the Tribunal repeatedly ordered it to produce).

[44] *See Vivian Mai Tavakoli, et al.* and *The Government of the Islamic Republic of Iran*, Award No. 580-832-3 (23 Apr. 1997), *reprinted in* 33 Iran-U.S. C.T.R. 206.

[45] *Id.* at 222.

when the transfer of shares to that person is entered in the share register and signed.[46] However, the Chamber found that a shareholders' list attached to general shareholders' meeting minutes submitted by the claimant was sufficient evidence to establish her interest in the company.[47] Thus, on the basis of this evidence alone, the Chamber found that the claimant owned the claimed shares.[48]

53. It should be noted that in *Tavakoli*, even without having ordered the respondent to produce the company share register, Chamber Three rejected the respondent's allegations of non-compliance with share register formalities on account of the fact that the respondent had failed to produce that register (which it appeared to have in its possession). *Tavakoli's* logic applies *a fortiori* to the instant Case, in which the Respondent has made similar claims of non-compliance without producing the documents on which these claims are based in the face of successive Orders to do so.

54. Similarly, in *Blount Brothers*, this Chamber held that minutes of a shareholders' meeting constitute, in the absence of contrary evidence, sufficient evidence that shares were transferred.[49] In addition to the above cases, the Tribunal's jurisprudence is replete with cases in which the Tribunal has: relied upon the minutes of shareholders' and Board of Directors' meetings, occasionally in combination with other documents, to establish the ownership and distribution of shares[50]; noted the particularly persuasive effect of shareholder lists attached to minutes of shareholders' meetings,[51] as well as the absence of information in

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[46] *See id.* at 223-24.

[47] *See id.* at 224.

[48] *See id.*

[49] *See Blount Brothers Corporation* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 215-52-1 (6 Mar. 1986), *reprinted in* 10 Iran-U.S. C.T.R. 56, 61.

[50] *See Sedco Inc.* and *Iran Marine Industrial Company, et al.*, Award No. 419-128/129-2 (30 Mar. 1989), *reprinted in* 21 Iran-U.S. C.T.R. 31, 33-34; *see also Hidetomo Shinto* and *The Islamic Republic of Iran*, Award No. 399-10273-3 (31 Oct. 1988), *reprinted in* 19 Iran-U.S. C.T.R. 321, 328-29; *Sola Tiles, Inc., supra* note 26, at 227.

[51] *See Saghi, supra* note 13, at 31; *see also Roy P.M. Carlson* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 509-248-1 (1 May 1991), *reprinted in* 26 Iran-U.S. C.T.R. 193, 214 (noting that the claimant failed to present minutes of shareholders' meetings which might have clarified the identity of the company's shareholders).

these minutes[52]; and used the minutes of shareholders' and Board of Directors' meetings, and attached lists of shareholders, to establish key facts.[53]

55. Further, the Respondent itself, in other cases, has noted the value of company minutes. For example, in *Khosrowshahi* it pointed to the fact that the claimants were not recorded as shareholders in the contemporaneous minutes of the company's shareholders' meetings.[54] Similarly, in *Carlson* it argued that the claimant's allegations varied with company records, such as minutes of shareholders' meetings.[55]

56. As the above discussion confirms, minutes of shareholders' and Board of Directors' meetings, and their attached shareholder lists, consistently have been accorded great evidentiary weight by the Tribunal in determining the distribution of shares, particularly in a situation where the claimant has not had access to other corporate records such as share registers. Moreover, as discussed by the Claimant, these minutes may be considered an admission.

b) Share transfers

57. As to the Respondent's claims of non-compliance with formalities for the transfer of shares, the Claimant maintains that under Iranian law a transfer of shares in a private joint stock company is treated as an internal act of the company and is not regulated by the Registration Office or the Registration Act. Thus, the Registration Office acknowledged in a letter to Bank Melli dated 2 November 1982: "Since Tarvandan is a private joint stock

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[52] *See Carlson, supra* note 51, at 211-12; *see also Sabet, supra* note 13 (where the absence of the children's names suggested that they were not owners).

[53] For example, Chamber Two relied on the claimant's signing the minutes of a company's shareholders' meeting to reject a claim that the company was expropriated before the meeting. *See Norman Gaby* and *The Islamic Republic of Iran*, Award No. 515-771-2 (10 July 1991), *reprinted in* 27 Iran-U.S. C.T.R. 40, 47; *see also Endo Laboratories, Inc.* and *The Islamic Republic of Iran*, Award No. 325-366-3 (3 Nov. 1987), *reprinted in* 17 Iran-U.S. C.T.R. 114, 118 (relying on minutes of shareholders' meetings in determining whether two companies had merged); *Amoco International Finance Corporation* and *The Government of the Islamic Republic of Iran, et al.*, Partial Award No. 310-56-3 (14 July 1987), *reprinted in* 15 Iran-U.S. C.T.R. 189, 207 (using minutes of shareholders' meetings to determine the amount of dividends declared payable); *Bechtel, Inc., et al.* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 294-181-1 (4 Mar. 1987), *reprinted in* 14 Iran-U.S. C.T.R. 149, 158 (relying on minutes of shareholders' meeting concerning liquidation proceedings).

[54] *See Faith Lita Khosrowshahi, et al.* and *The Government of the Islamic Republic of Iran, et al.*, Final Award No. 558-178-2 (30 June 1994), *reprinted in* 30 Iran-U.S. C.T.R. 76, 95. Iranian arbitrators have similarly relied on minutes of shareholders' meetings. *See* Dissenting Opinion of Judge Parviz Ansari in *Eastman Kodak Company* and *The Government of Iran*, Final Award No. 514-227-3 (8 July 1991), *reprinted in* 27 Iran-U.S. C.T.R. 32, 35-36.

[55] *See Carlson, supra* note 51, at 203-04; *see also Khosrowshahi, supra* note 54, at 85-86; *Shinto, supra* note 50, at 325; *Jack W. Mackay Jr., et al.* and *Iran Beverages Company, et al.*, Award No. 110-144-2 (3 Feb. 1984), *reprinted in* 5 Iran-U.S. C.T.R. 134, 135-36.

company, according to Articles 29 and 30 of the Commercial Law, transfer of shares in joint stock companies is an internal matter of these companies and this office does not have any supervision on such matters." The Claimant argues that the transfer of shares will be recognized without regard to whether the transfer is recorded in the share register of the company. As support, she refers to two *Official Gazette* excerpts containing notices of changes in Iranian private joint stock companies and evidencing transfers of shares pursuant to minutes of the general meeting of shareholders.

58. Based on the above, the Claimant argues that, even if the Respondent were able to establish that some formal reporting requirement had not been met, that would not affect the validity of the transfer of shares to her. Under Iranian law, the non-performance of a formality in connection with commercial transactions, such as the transfer of shares, is not a basis for treating the transaction as null and void. The Claimant also refers to a 1993 decision by the Civil Court of Ahvaz in which the purchase of an equity interest in a private joint stock company was upheld, notwithstanding the fact that the purchase was not recorded in the company's share register. Thus, under Iranian law, even if there were no record in the official share register of Mr. Riahi's gift of shares to the Claimant, the transfer would still be valid.

59. Moreover, a shareholder's statement and acknowledgement that he has transferred some of his shares in a company to another person constitutes an admission under Iranian law and such admission may provide the basis for judicial recognition and enforcement of the transfer. Here, Mr. Riahi has acknowledged the transfer of shares to the Claimant. These are strong arguments to support the contention that a failure to record the transfer of shares in the share register is not dispositive.

c) Conversion from registered shares to bearer shares

60. Concerning the conversion of registered shares into bearer shares, Article 47 of the Iranian Commercial Code provides for the publication of notice and a two-month grace period in which shareholders may apply for the conversion of registered shares into bearer shares. Concerning certain companies, the Respondent asserts that these steps were not taken and that therefore the Claimant does not own the shares she alleges. As the discussion regarding Khoshkeh, Tarvandan, and Gav Daran at paragraphs 106-107, 124-125 and 133 demonstrates, the Claimant complied with all provisions of the Iranian Commercial Code regarding the conversion of registered shares to bearer shares.

d) Rights of third parties

61. As discussed in relation to the registration of gifts, formalities are intended to protect the rights of third parties, and the absence of final proof of literal compliance with them does not affect the rights of the parties to the transaction *inter se*. This is even more so in a situation such as this one, where the goal of the formalities – allowing all shareholders to participate in the decision to convert shares – has been accomplished.

6. Contents of the Safe Deposit Box

62. The Parties entered into a Partial Award on Agreed Terms on 24 February 2000 whereby the Respondent agreed to return the contents of the Claimant's safe deposit box held at Bank Melli in Tehran in exchange for the settlement of all the Claimant's related claims or disputes. The Partial Award came after the Respondent failed to comply with a long string of Tribunal orders that required the production of the contents of the safe deposit box along with other evidentiary documents.[56] The Partial Award represents a compromised settlement of

[56] As long as seven years prior to the Hearing, the Claimant sought a Tribunal order requiring the Respondent to produce certain documents. In response, the Tribunal by Order dated 23 February 1993 invited the Respondent to submit its comments as to whether it would be possible to produce the following documents and, if so, to produce: (1) the documents contained in the Claimant's safe deposit box at Bank Tehran, including bearer shares of Rahmat Abad; and (2) the minutes of the last shareholders' general meeting of Rahmat Abad, held in the summer of 1979, which were kept at the Rahmat Abad office at Rahmat Abad farm. As to the Claimant's safe deposit box, the Respondent replied that it had received an answer from Bank Mellat, the successor to Bank Tehran, to the effect that the safe was in the Claimant's name and that she should supply the key so that it could be opened. It further stated that it had no knowledge of the safe's contents. One month later, the Respondent notified the Tribunal that it could not locate the requested minutes, submitting a certificate in support of this contention issued by the Managing Director of Rahmat Abad.

On 30 August 1993, the Tribunal issued an Order noting that, in response to the above, the Claimant was requesting the Tribunal to order the Respondent to: (1) issue a visa to her identified representative; (2) make her safe deposit box available to him; and (3) permit him to make photocopies of, and remove from Iran, the contents of the safe. At that time the Claimant further requested that the Tribunal order the Respondent to produce the following documents related to Khoshkeh: (1) the title deed of Khoshkeh's main office building and ground floor sales depot at 814 Khayyam Avenue; (2) the title deed of Khoshkeh's warehouse and sales depots at Darvazeh Ghazvin Avenue; (3) the lease agreements regarding three leased sales depots located at Amir Kabir Street, Makhsous Street and Tehran Now Street in Tehran; and (4) the title deed of Khoshkeh's commercial land at the beginning of Karaj Road. The Claimant also requested that the Respondent be required to provide a photocopy of the registration file of Rahmat Abad, allegedly retained at the Registration Office of Companies and Industrial Ownership, Natanz.

The Tribunal invited the Respondent to submit its comments on the above, and it replied as follows: (1) the Claimant's request to order Iran to permit her representative to remove the contents of the safe was either legally unjustified or superfluous; (2) the same applied to her request to order Iran to issue a visa to her representative, who should simply apply himself at an Iranian consulate; (3) her request that the safe deposit box be made available to her representative was moot, as it remained at the Claimant's disposal; (4) the request that the Respondent be required to provide a photocopy of certain documents available at the Registration Office was an unnecessary imposition on the Respondent; and (5) the Claimant's request to be given certain documents related to Khoshkeh was communicated to the corporation and its response would be submitted upon receipt. Later, on 21 October 1993, the Respondent submitted copies of four lease deeds and five title deeds received from Khoshkeh.

Regarding access to the safe, the Claimant submitted a letter dated 12 May 1996 from Bank Mellat stating that to open any safe deposit box that had not been opened since 1979 would require a permit from the

the safe deposit box issue, as the Claimant only agreed to it after the Respondent repeatedly rebuffed her production requests and her request to send a representative to Iran to obtain the contents of the safe deposit box on her behalf. Throughout the proceedings in this Case, the Respondent has attempted to discredit the Claimant's various claims on grounds that (1) either certain documents that had been turned over to the Claimant pursuant to the Partial Award, namely company share certificates, contradicted the evidence presented by the Claimant, or (2) that such documents, likewise company share certificates, were not among the items turned over to the Claimant. These attacks are made, however, without appreciation for the fact that in executing the Partial Award the Respondent failed to preserve the chain of custody over the safe deposit box, thereby negating the evidentiary value of the contents within. As a consequence, the contents of the safe deposit box are devoid of any probative effect against the interests of the Claimant.

III. OWNERSHIP ISSUES

A. Bank Tehran

63. The Claimant asserts ownership of 33,871.70 shares of Bank Tehran stock. To support her claims, the Claimant submits affidavits made by her and by Mrs. Fatemeh Eftekhari, the former private secretary to the Board of Directors of the Bank Tehran, who was familiar with the Claimant's equity holdings. In addition, the Claimant proffers photocopies of numerous Bank Tehran share certificates in her name in various denominations totaling 33,871.70 shares. Throughout its written submissions the Respondent has challenged the Claimant's ownership of these shares by asserting that Mr. Riahi was the real owner. At the Hearing, however, the Respondent finally conceded the Claimant's ownership of all Bank Tehran shares claimed. In light of the evidence adduced, the Tribunal correctly found that the Claimant owned 33,871.70 shares of Bank Tehran stock.[57]

Revolutionary Prosecutor's Office, an authorized representative of which office must be present at such opening. The Claimant also submitted a letter postmarked 4 July 1996 from her agent reporting that the Revolutionary Prosecutor's Office had denied the request to open her safe deposit box on the ground that she was the subject of an expropriation order.

[57] *See Gulf Associates, Inc.* and *The Islamic Republic of Iran, et al.*, Award No. 594-385-2, para. 27 (7 Oct. 1999), *reprinted in* __ Iran-U.S. C.T.R. __ (finding that share certificates constitute the strongest evidence of share ownership).

B. Rahmat Abad Natanz Agro-Industrial Private Joint Stock Company

1. Equity Interest

64. The Claimant alleges that she owns 158 shares of stock in Rahmat Abad. The Tribunal, however, has determined that the Claimant has produced sufficient evidence to prove that she owned only two shares of Rahmat Abad. Given the Respondent's persistent refusal to produce evidence requested by the Claimant and ordered by the Tribunal, I cannot but conclude that the Tribunal has impermissibly penalized the Claimant for the Respondent's own intransigence.

65. The evidence indicates that Rahmat Abad was formed on 6 July 1976 and registered on 22 October of that same year. As the certificate of registration states, the Claimant was one of the company's founders, initially owning one share of stock. The Claimant asserts that her ownership in Rahmat Abad increased to two shares thereafter. In support, she relies on the minutes of the Rahmat Abad Board of Directors' meeting of 16 December 1978, which indicate that the transfer of one further share to her had occurred. Although the Respondent previously challenged the Claimant's ownership of the additional share, it conceded this point at the Hearing.

66. The Claimant further alleges that she later received a gift of an additional 110 shares in Rahmat Abad. As proof, she offers the minutes of the Rahmat Abad Board of Directors' meeting of 20 December 1978. These minutes evidence the discussion and approval by the Board of Directors of the transfer of 110 shares from Jahan Riahi to the Claimant. This transfer, the Claimant argues, was executed by Mr. Riahi on the authority of the power of attorney that Jahan had granted in his father's favor. Additionally, the Claimant points to the list of shareholders attached to the minutes of the company's extraordinary general meeting of 5 June 1979. The attached list records that as of 5 June 1979 the Claimant owned a total of 112 shares in the company. The minutes of the 5 June 1979 meeting and the attached shareholder list contain the seal of the Registration Office of Companies, indicating that both were filed with that Office on 18 June 1979.[58]

67. The Respondent challenges the Claimant's ownership of the 110 shares, transferred by way of Jahan's power of attorney, on various grounds. First, the Respondent argues that

[58] The Respondent at first denied that there is any evidence that the minutes were registered and, in response, the Claimant submitted a translation of the *Official Gazette* dated 5 July 1979 discussing the changes made to the company's structure at the 5 June 1979 meeting.

Jahan's power of attorney was invalid and that Jahan lacked the competence to execute such an instrument. These arguments have been dealt with in detail above and need not be repeated.[59] Suffice it to say, the power of attorney was no obstacle to the transfer because the Respondent has failed to prove either that Jahan was mentally incompetent at the time the power of attorney was drafted, or that the power of attorney was otherwise invalid, or otherwise that Mr. Riahi lacked legal authority to effect such transfer.

68. Second, the Respondent attacks the validity of the minutes of the 20 December 1978 meeting. Specifically, the Respondent argues that these minutes were fraudulent because they were produced in the summer of 1979, after Jahan had died on 30 May 1979 and therefore after his power of attorney in favor of his father had expired.[60] In this regard, the Respondent relies solely on the hearing testimony of Mr. Nabavi, the former Managing Director of Rahmat Abad. In his testimony, Mr. Nabavi stated that he had not attended the meeting in question, that either Mr. Riahi or Mr. Vaghefi brought him company meeting minutes dated 20 December 1978 to be signed by him in the summer of 1979, and that when thus presented to him the minutes had already been signed by the Claimant and her husband.

69. The Tribunal found "no reason to doubt Mr. Nabavi's testimony regarding the date of signing of those minutes and his absence from the meeting." Award at para. 151. In fact, the record provides ample evidence justifying – indeed, compelling – the Tribunal's doubts. First, it should be noted that although Mr. Nabavi submitted three separate affidavits of testimony to the Tribunal in the five years preceding the Hearing, never once had he attacked the authenticity of the 20 December 1978 minutes. He did so for the first time at the Hearing. Second, although at the Hearing Mr. Nabavi claimed to remember the exact season and year – over twenty years previously – in which he signed the minutes and noticed the signatures of the Claimant and her husband, he could not remember, even remotely, when he had signed his first, second or third affidavits submitted in this Case before the Tribunal, none of which was filed more than five years before the Hearing took place. Third, Mr. Nabavi purported to remember certain aspects of his signing of the minutes so vividly, yet had trouble

[59] As discussed, the Tribunal stated that "it appears . . . that Mr. Riahi did not have the right to donate Jahan Shahriar's shares in Rahmat Abad to the Claimant. *See supra* at para. 33.

[60] In doubting the transfer of shares to the Claimant prior to Jahan's death in May 1979, the Tribunal states that, "unless there is a hidden motive, it is highly unlikely for a father to divest his son of all his rights to such valuable shares by donating them to a person who is not even a direct relative of the son." Award at para. 154. One need not strain, however, to make sense of a father's rescinding of a gift of valuable shares made to a financially irresponsible son who suffered from drug additions, in favor of his son's stepmother.

remembering whether it was Mr. Riahi or Mr. Vaghefi who brought the document to him for his signature. Fourth, Mr. Nabavi professed to frequently signing documents without questioning their contents, thus further diminishing the probative value of his testimony. Finally, the evidence reflects that three Rahmat Abad meetings occurred within eight days of one another in December 1978: an ordinary general meeting on 12 December 1978, a Board of Directors' meeting on 16 December 1978, and a Board of Directors' meeting on 20 December 1978. Mr. Nabavi's signature appears on the minutes of each of these meetings. It simply defies belief that Mr. Nabavi would have the mental faculties to recall at the Hearing that it was the 20 December 1978 meeting that he did not attend and that it was the minutes of the 20 December 1978 meeting that he did not sign until the summer of 1979 – as opposed to any of the other December meetings in which he had been involved twenty years previously. In sum, the Tribunal's reliance on the testimony of Mr. Nabavi, whom the Respondent itself described as "easily confused" and an "illiterate person," recognizes in Mr. Nabavi a superhuman ability to accurately remember events occurring a generation ago and evidences a credulity unwarranted by the record in this Case.

70. In addition, the Claimant submitted much graphic evidence, originating with Mr. Nabavi and his wife, that the Nabavis were subjected to harassment and intimidation in Iran. On 1 February 1980, Revolutionary Guards stormed the Nabavis' house at Rahmat Abad farm and sealed off their possessions. The Guards returned the following day to confiscate property belonging to the Nabavis, as well as property belonging to the Riahis. The Nabavis were subsequently fired from their jobs at Rahmat Abad and evicted from their home, leaving them with no furniture and only a single suitcase of possessions. The Government even prevented Mr. Nabavi from sending his children to school, and they apparently became destitute.

71. Mr. Nabavi's wife, Faezeh, reported that representatives of Iran's "Legal Assist[a]nce Department" repeatedly interrogated the Nabavis with the express purpose of securing affidavits to decrease the value of Mrs. Riahi's claim. The Claimant produced the transcript of an 8 August 1993 telephone conversation (the authenticity of which the Respondent does not question) between Mr. Riahi and Mrs. Nabavi, in which she related to Mr. Riahi in detail the pressures exerted on the Nabavis by the Respondent's agents. These agents began their initial interrogation of Mr. Nabavi by producing copies of letters the Nabavis had written to Mr. Riahi in the United States concerning his business affairs in Iran. When asked why the

Nabavis had written the letters, Mr. Nabavi replied that they had wished to inform Mr. Riahi that the Foundation for the Oppressed had "confiscated" Rahmat Abad and had taken "everything away." The agent then reportedly said, "[Y]ou know that he [Mr. Riahi] is going to condemn Iran on the basis of your letters and, in effect, take money from Iran."

72. According to Mrs. Nabavi, when the agents later returned, "they showed us a sheet of paper at the top of which was written 'affidavit.' When we read it, we found out that it was all lies and [had] nothing true in it." She stated that "we did not confirm any of the paragraphs of that statement and we did not sign it." Indeed, Mr. Nabavi stated to the "Legal Assistance Department" agents: "We cannot sign this statement because at the top of this statement, it says, 'We swear on the Koran to say the truth in the court' and this is not the truth and we cannot sign it." Notably, the Nabavis told the same agents on this same occasion that Rahmat Abad "was a company in which Mr. Riahi did not have more than five shares and the rest belong[ed] to Mrs. Frederica Riahi and his son [Malek Massoud]. *The main shareholder was Mrs. Riahi.*" (Emphasis added.)

73. The Government agents' pressure allegedly continued. Indeed, the Nabavis learned of rumors circulating "all over Natanz that these people [from the Government] will bother and damage Mr. Nabavi." She noted that "they have created alot of trouble for us" and "this may cost us alot" [sic]. The Nabavis apparently relented to the pressure, and provided three affidavits for the Respondent. Mr. Nabavi also testified for the Respondent at the Hearing.

74. Whether or not the Tribunal concludes that the Respondent's agents impermissibly intimidated the Nabavis into providing false testimony in this Case, the very fact that Mrs. Nabavi made the allegation (combined with the other written evidence of the Nabavis' mistreatment at the hands of the Iranian Government, and the Nabavis' manifest fear of further degradation) should have been sufficient for the Tribunal to reject the Nabavis' affidavits and Mr. Nabavi's Hearing testimony. Inexplicably, the Tribunal instead found "no reason to doubt Mr. Nabavi's testimony regarding the date of signing of [the 20 December 1978] minutes and his absence from the meeting." Award at para. 151. The Tribunal's failure even to deal with the serious issue of coercion can only be interpreted as willful blindness. Against this background, the Tribunal's elevation of Mr. Nabavi's last-minute allegation in his Hearing testimony over his contemporaneous statements can only be deemed a mistake. The Tribunal's decision to deny Mrs. Riahi's claim for the additional 110

registered shares of Rahmat Abad (valued by the Tribunal at over $1.5 million[61]) can only be seen as an injustice.

75. The Tribunal similarly fails to deal with the serious defects in the testimony of Mr. Abolfath Mahvi, who testified for the Respondent that the Claimant's equity ownership in Rahmat Abad was "fictitious." Award at para. 120. Specifically, Mr. Mahvi testified that in 1978 Mr. Riahi "had fictitiously transferred . . . shares to his American wife in order to be able to bring her claim before the domestic courts of [the] United States in any possible manner for taking back the properties." Although the Tribunal declined to hold that the relevant "transactions were fictitious or bogus," the Tribunal bore "the evidence in mind" when deciding that Mr. Riahi did not actually transfer 110 registered shares of Rahmat Abad to the Claimant on 20 December 1978. Award at para. 136. The Tribunal's reliance on Mr. Mahvi's testimony is misplaced, for his testimony was demonstrably biased and there is substantial evidence that it also was coerced.

76. Mr. Mahvi is a prince of the Qajar family, from which the Shah's father seized power. Mr. Mahvi was reputed to be notoriously corrupt, as evidenced by numerous press reports the Claimant submitted documenting Mr. Mahvi's history of bribe-taking in Iran. One newspaper article described him as "such a notorious 'five-percenter,' as those who skimmed bribes off government contracts were known, that the Shah felt compelled to blacklist him from arms dealing." In 1976, in fact, Mr. Mahvi left Iran and took up residence in Geneva, Switzerland.

77. Indeed, Mr. Riahi learned from Mr. Mahvi's son, Ali Pascal, that Mr. Mahvi "had been condemned to death by the Islamic Republic of Iran in 1979." Mr. Mahvi confirmed that testimony:

> The Islamic Republic of Iran has placed my name in a list of names that I should be tried . . . – they should execute me or send me to prison or do something to me. My name is in such a list. And that list – the names of the people that are in that list have either died or have been killed or disappeared. Only me, probably it is only me, that is alive.

78. Mr. Riahi similarly learned from Ali Pascal that Iranian Government agents had threatened Mr. Mahvi's family. Mr. Mahvi in fact confirmed that the Government of Iran

[61] The Tribunal awarded the Claimant $28,258 for two shares of Rahmat Abad, or $14,129 per share. In relying on Mr. Nabavi's testimony to deny her ownership of an additional 110 shares of the company, the Tribunal denied her a further $1,554,190, to which she clearly is entitled.

had threatened his grandson in Geneva, forcing his daughter to move her family to the United States:

> [T]he son of my daughter who lives in Geneva, a person caused some problems for him and . . . my daughter thought [] that they wanted to abduct, kidnap, her son and when she told me, my daughter said that, "I would not stay in Geneva and I am a citizen of the United States, I will go to the United States" and she did go to the United States.

79. Ali Pascal also told Mr. Riahi's son that Mr. Mahvi "had received a death threat from Iranian authorities attempting to force him to testify against [Mr. Riahi] in this case." Mr. Mahvi, however, denied that testimony, although he acknowledged that the Respondent's agents tracked him down in Geneva to secure his testimony against the Claimant. (He also acknowledged that the Respondent's agents informed him that, in his published memoirs, Mr. Riahi had roundly criticized Mr. Mahvi's corruption and bribe-taking.) In order to impeach Mr. Mahvi's testimony, the Claimant sought to introduce a letter from his son, Ali Pascal, but the Tribunal – wrongly – rejected the document as a late filing. Mr. Mahvi also denied that he had ever told his son that he blamed Mr. Riahi for the Islamic Government's expropriation of Mr. Mahvi's property in Iran, contrary to what Ali Pascal apparently stated in that letter. Finally, when Mr. Mahvi was asked whether he blamed Mr. Riahi for Mr. Mahvi's failed lawsuit against a German company in the early 1980s, Mr. Mahvi replied: "Your question is irrelevant and I will not respond."

80. The evidence clearly suggests that Mr. Mahvi bore a grudge against Mr. Riahi. Mr. Mahvi's obvious bias against the Claimant and her husband should have compelled the Tribunal to dismiss his testimony outright. Moreover, the fact that Mr. Mahvi, a witness for the Respondent, testified to the Tribunal that the Respondent had sentenced him to death and had so intimidated his daughter and grandson that they fled Geneva for their safety is more than ample justification to reject his testimony. For the Tribunal to rely on Mr. Mahvi's testimony in rejecting Mrs. Riahi's claim to the additional 110 registered shares of Rahmat Abad is at best highly suspect. For the Tribunal to ground its holding on the testimony of Mr. Nabavi *and* Mr. Mahvi is simply incomprehensible.

81. The Tribunal should have held that the Respondent failed to sustain its heightened burden of proving its last-minute allegation of fraud by clear and convincing evidence and,

hence, that the 20 December 1978 minutes were valid.[62] Instead, "the Tribunal concludes that the Claimant has not proved that she became the owner of the additional 110 registered shares of Rahmat Abad in December 1978," because "Mr. Nabavi denied that he attended the alleged 20 December 1978 meeting." Award at para. 158. Moreover, the Tribunal notes that "the meeting of 5 June 1979 [recording the Claimant's 112 shares of Rahmat Abad] took place after the death of Jahan Shahriar." *Id.* According to the Tribunal,

> under these particular circumstances, . . . [in which] the previous owner of the allegedly transferred shares passed away during the crucial period when the claimed transfer occurred and the transfer was made by somebody other than the owner, the Claimant must produce strong evidence to support the fact that the ownership of the shares was transferred to her while the previous owner was still alive.

Award at para. 153. In so ruling, the Tribunal fundamentally misallocates the parties' burden of proof. The Claimant carried her burden of proving her equity ownership in Rahmat Abad as of 5 June 1979 by presenting an unrebutted list of shareholders appended to the minutes of the company's shareholders' meeting, which recorded her 112 shares in the company as of that date. The Respondent, however, has failed to carry *its* burden of proving (and certainly not by the required clear and convincing evidence) that Mr. Riahi, using his power of attorney, transferred shares after his son's death in May 1979 and backdated company records to document the share transfer in December 1978. For the Tribunal to place a heightened burden on the Claimant to "produce strong evidence" to rebut the Respondent's unsubstantiated allegations of fraud is a textbook misallocation of the burden of proof.

82. Here it is highly pertinent to remember that the Respondent itself has refused to produce to the Tribunal, despite its successive Orders to do so, the documents most relevant to confirming or refuting the Claimant's asserted shareholding, namely the Rahmat Abad share register and the public registration file, which the Respondent plainly has. One cannot but infer from the Respondent's failure and refusal to produce the best evidence available that it would, in fact, support the Claimant.

83. The Tribunal twice ordered production of the following relevant Rahmat Abad documents: (i) the share register of the company; (ii) the documents on file at the Registration

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[62] *See Vera-Jo Miller Aryeh, et al.* and *The Islamic Republic of Iran*, Award No. 581-842/843/844-1 (22 May 1997), *reprinted in* 33 Iran-U.S. C.T.R. 272, 317; *see also Dadras International, et al.* and *The Islamic Republic of Iran, et al.*, Award No. 567-213/215-3 (7 Nov. 1995), *reprinted in* 31 Iran-U.S. C.T.R. 127, 162 (detailing the need for clear and convincing evidence to establish such allegations).

Office of Companies in Natanz, which should show, *inter alia*, the names of the company's shareholders and their shareholdings; (iii) the list of names of shareholders of the company referred to in Respondent's Exhibit 48, a letter from the Foundation for the Oppressed identifying various items of property (identified as Mr. Riahi's) that had been expropriated, and apparently attached to the original document; and (iv) minutes of shareholders' meetings of the company that are at the disposal or under the control of the Foundation for the Oppressed of Natanz.

84. With respect to (i), the share register, the Respondent stated that the document was probably within the control of the Claimant's husband, and thus she could have obtained it more easily than the Respondent could have. This is an inadequate response inasmuch as the document was located in Iran and was among the corporate records kept on file in an office at the Rahmat Abad farm. The Revolutionary Guards apparently seized those records along with other files kept at the farm. Claimant's Exhibit 191 is a copy of a receipt, dated 1 February 1980, given to Mr. Nabavi to confirm the seizure of the files and their delivery to Mr. Nasrolahi, Head of the Revolutionary Guards of Natanz.

85. With respect to (ii), the original registration file of the company, the Respondent stated that, because this file is a public record, the Claimant could obtain it herself. The Claimant engaged attorneys and others in Iran in an effort to obtain a copy of the official files, but that effort was without success. That the Respondent indeed had access to these "public" files and could have submitted them but chose not to is confirmed by its submission of the registration application of the company, dated 22 October 1976, from the company's registration file.

86. Regarding (iii), the list of names of shareholders referred to in Respondent's Exhibit 48, the Respondent claimed that the "ambiguous" wording of the document to which the list was attached prevented its production. That document, however, an official report by the Foundation for the Oppressed to the Revolutionary Court of Isfahan, dated 14 May 1983, clearly stated: "In conclusion, we append herewith a list of the said company's shareholders . . . ."

87. With respect to (iv), the minutes of the company's shareholders' meetings, the Respondent stated that the Claimant's production request is too general and that these minutes can be obtained from the Registration Office of Companies. Apart from the points

made above, however, the minutes of the last four shareholders' meetings were among the company records removed from the Rahmat Abad farm on 1 February 1980 by the Head of the Revolutionary Guards.

88. The Respondent's failure to comply with the Tribunal's Order to produce relevant Rahmat Abad documents without providing sufficient explanation is inexcusable. Moreover, the Respondent's intransigence has directly impeded the Claimant's ability to make her case. Quite clearly, had the Respondent produced the requested documents, the issue of the Claimant's ownership of shares in Rahmat Abad would at this point be resolved. These circumstances compel the Tribunal to draw an inference in favor of the Claimant in respect of her ownership of the additional 110 shares of stock in Rahmat Abad. The Tribunal, however, refuses to draw the appropriate inference, expressing "serious doubts as to how the requested material, even if available, could possibly have affected the Tribunal's opinion." Award at para. 162. The Tribunal's doubts are misplaced. Because the Respondent failed to prove, by clear and convincing evidence, any fraudulent backdating of company records, the Respondent's own evidence was essential in confirming or refuting the Claimant's *prima facie* evidence establishing her ownership of 112 shares as of 5 June 1979. The Respondent's unjustified non-production of that evidence cannot be, and should not have been, held against the Claimant.

89. The Claimant further asserts that on or about 18 June 1979 she acquired (in bearer form) an additional 46 shares in Rahmat Abad, formerly owned by her stepson Malek, by means of a power of attorney granted to Mr. Riahi.[63] The transfer was allegedly made pursuant to Mr. Riahi's plan of distributing his assets before his death by equal gifts to his wife and his then-remaining son.[64] In support of her claim, the Claimant relies principally on Mr. Riahi's letter to Mr. Nabavi of 2 July 1980.[65] In this letter, Mr. Riahi noted the division of bearer shares amongst the company's shareholders and listed the Claimant as owning 158

[63] In her rebuttal affidavit, the Claimant states that the 46 shares were transferred after 5 June 1979 and before her husband left Iran in August 1979. The Claimant gives 18 June 1979 as the operative date because this was the date on which the 5 June 1979 minutes, which indicate the conversion of registered shares to bearer shares, were filed with the Registration Office of Companies.

[64] The Respondent contests the fact that both the Claimant and Malek could have owned 158 shares. However, Mr. Riahi's formula for equal distribution among his remaining family members was simple: Malek transferred 46 of his 220 shares to the Claimant and 16 to his father, leaving him with 158 shares; the Claimant received the 46 shares in addition to her 112 shares, giving her 158 shares. Mr. Riahi received 16 shares from Malek, and 4 shares from the remaining shareholders in the company, bringing his total share ownership to 34.

[65] She also submits three affidavits, one made by herself and two by her husband, indicating that she owned 158 shares in Rahmat Abad.

shares. Mr. Riahi also indicated the difficulties in obtaining the share certificates, as they were among the property that the Claimant placed in her safe deposit box in Bank Melli just before leaving Iran.

90. The Claimant's claim to ownership of the additional 46 shares is credible when viewed in light of Mr. Riahi's oft-expressed desire to provide equally for his wife and children upon his death. Moreover, the Tribunal should note the difficulties the Claimant has faced in obtaining the necessary evidence to prove her case. The Tribunal should bear in mind not only that the Claimant was forced to flee Iran without the ability to gather and transport crucial business records, but also that her efforts to collect evidence were further stymied by the Respondent's repeated non-compliance with Tribunal document production orders. The 2 July 1980 letter, in conjunction with the justifiable inference drawn in favor of the Claimant, is sufficient to establish the Claimant's ownership of the additional 46 shares, amounting to total ownership of 158 shares.

91. The Respondent finally urges that since the Claimant claims ownership of 158 shares, all of which were converted to bearer shares as of 18 June 1979, and since she has not produced all of the shares themselves, she cannot be regarded as owning them. Article 39 of the Iranian Commercial Code provides that bearer shares "shall be considered the property of their holder unless proved otherwise." Article 39, however, does not provide, as the Respondent claims, that possession of bearer shares is the *only* means of proving ownership. That provision merely creates a legal presumption of ownership upon possession. Thus, while copies of the bearer shares themselves might be the best evidence of ownership, even without such evidence the Claimant has established a *prima facie* case for ownership of 158 shares of Rahmat Abad. Additionally, as Rahmat Abad was a closely held family company, any transfer of shares would have remained in the family and would have been recorded in the company records. The Tribunal dubiously holds "that the requested company records are less likely to include relevant information about the transfer and ownership of these bearer shares than they would for the registered shares." Award at para. 162. Even were that true, however, the Tribunal ought not to have given the Respondent the benefit of the doubt, given its clear breach of the Tribunal's document production orders. Because the Respondent has willfully refused to produce such records, the piece of relevant evidence latest in time is Mr. Riahi's letter dated 2 July 1980, thus following the expropriation but preceding the signing of the Algiers Declarations, noting the Claimant's ownership of all 158 shares.

92. Moreover, the Respondent for years refused to provide the Claimant access to her safe deposit box at Bank Melli, where her share certificates were allegedly kept. Bank Melli wrote that it could not open the box without special permission from the Revolutionary Prosecutor's Office. That Office refused to issue the permit on grounds that the Claimant was subject to an expropriation decree. The impasse was partially overcome in February 2000, by which time the Respondent had filed a *procès verbal* of the contents of the Claimant's safe deposit box and had delivered the items listed to the Claimant pursuant to the Partial Award on Agreed Terms. However, as the chain of custody of the deposit box was not preserved, it has not been established that the Respondent accounted for and turned over the entire contents of the safe.

2. Debt Interest

93. The Claimant alleges that the Rahmat Abad company owed her 20,611,693 Rials because of her unrepaid loans to the company. (She had loaned the company 23,745,700 Rials and received a payment in the amount of 3,133,737 Rials, thus the net amount of her claimed debt interest is 20,611,963 Rials.) The Tribunal dismissed the loans as an inadmissible late filing. As discussed above in paragraphs 12-15, that decision is inconsistent with the Tribunal's jurisprudence. The loans were admissible, and the Claimant produced sufficient evidence to establish her claim to the loans.

94. In support of the existence of the outstanding loans, the Claimant offers her affidavit and Mr. Riahi's affidavit. In her affidavit the Claimant asserts that as cash needs arose, she made interest-free loans to the company. She states that although she made additional loans, she only claims compensation for loans that she can document by means of Mr. Riahi's ledger. The ledger supports the fact that the Claimant made the following loans between 21 March and 20 August 1979: 5 May, 500,000 Rials (ledger, pp. 26, 56, entry 109, 108); 27 May, 700,000 Rials (ledger, pp. 26, 56, entry 174, 173); 13 June, 1,000,000 Rials (ledger, pp. 27, 56, entry 213, 212); 28 July, 20,000,000 Rials (ledger, pp. 36, 56, entry 358, 357); 30 July, 31,200 Rials (ledger, pp. 36, 56, entry 360, 359); 14 August, 1,500,000 Rials (ledger, pp. 28, 56, entry 406, 405); and 20 August, 14,500 Rials (ledger, pp. 28, 56, entry 412, 411). It also supports the assertion that she received one payment during this period in the amount of 3,133,737 Rials (ledger, p. 27, entry 316). Therefore, Mr. Riahi's ledger, a contemporaneous business document reflecting the entire family's transactions, supports the fact that these loans were made and are still outstanding in the claimed amount.

C. Khoshkeh va Foulad Private Joint Stock Company

1. Equity Interest

95. The Claimant alleges ownership of 2,010 shares of Khoshkeh, amounting to a 20.1 percent equity interest, on or before 24 February 1980. The Claimant maintains that she acquired her ownership interests in Khoshkeh through a series of transactions, obtaining first 250 shares, then an additional 1,250 shares and finally 510 shares more. In the course of these transactions, Khoshkeh's Board of Directors voted to convert the company's registered shares to bearer shares. According to the Claimant, the last transfer of 510 shares occurred after this conversion. Pursuant to Article 39 of the Iranian Commercial Code, as amended, the bearer shares were thus transferable only upon the delivery of the share certificates. The Claimant further asserts that Mr. Khajeh-Nouri, Khoshkeh's General Manager, was authorized to transfer shares on behalf of Mr. Riahi and the Claimant, and that his possession of the shares intended to be transferred at the moment of share conversion constitutes adequate delivery. The Respondent has conceded ownership only of the initial 250 shares. The Tribunal concludes that the Claimant proved ownership of her 1,500 shares, but not her 510 additional shares. The evidence, however, indicates that the Claimant proved her ownership of all of her claimed 2,010 shares. Indeed, the Claimant's claim to these additional shares is all the more compelling in light of the Respondent's unjustified refusal to produce, as repeatedly ordered by the Tribunal, critical company records – an omission too readily dismissed by the Tribunal.

96. As evidence of her ownership, the Claimant first provides a letter from Mr. Khajeh-Nouri to Mr. Riahi dated 17 May 1987. Attached to this letter is a report outlining certain Khoshkeh transactions which Mr. Khajeh-Nouri indicated he has "put at the disposal of the responsible authorities." The report indicates that, according to the minutes of the 22 May 1979 annual shareholders' meeting, the Claimant owned 250 shares, and, according to the minutes of the 26 May 1979 Board of Directors' meeting, the Claimant owned 1,500 shares.

97. The Claimant also has submitted the minutes of the 24 February 1980 Board of Directors' meeting to bolster her claim. These minutes memorialize the conversion of 80 percent of Khoshkeh's shares from registered shares to bearer shares; a list appended thereto indicates the Claimant's ownership of 1,500 bearer shares as of 24 February 1980. In assessing the probative value of the minutes, one must bear in mind that the minutes, as

business records registered with the Registration Office of Companies, are valid as they appear on their face.[66]

98. Further, the Respondent's own evidence supports the Claimant's assertions of ownership. Attached to the valuation reports of two of the Respondent's own experts, Mr. Christopher Glover and Mr. Gholamreza Salami, are copies of company records indicating the Claimant's ownership of 1,500 shares in 1980. Of further relevance is Respondent's Exhibit 120, a two-page letter dated 19 May 1999 from Khoshkeh to the Foundation for the Oppressed. In its submission, the Respondent provided only a translation of the first page of the letter. At the Hearing, however, the Claimant's counsel provided a translation of the second page, which, he claimed, stated: "According to existing records . . . the shares owned by Mrs. Riahi up to February 24th referred to in the minutes were 1,500 registered shares." The Tribunal's Language Services Division has confirmed the translation, with the one exception that the phrase "1,500 registered shares" should have been translated as "1,500 bearer shares."

99. Also noteworthy is that on 14 November 1994 the Claimant requested that the Tribunal order the Respondent to produce the "Appended List" referred to in the minutes of Khoshkeh's 24 February 1980 Board of Directors' meeting, if that list differs from the list submitted by the Claimant. This request occurred after the Respondent had submitted the 24 February 1980 minutes without the Appended List on 10 August 1994, as Respondent's Exhibit 22. The Tribunal affirmed the document production request in its Orders of 18 November 1994, 18 May 1995 and 10 July 1995. The Respondent failed to comply with any of these Orders. The Respondent also failed to produce Khoshkeh's share register, as the Claimant has requested and the Tribunal has ordered, which could have definitively resolved all ownership issues. (Indeed, the Foundation for the Oppressed has acknowledged its ownership of the 4,465 Khoshkeh shares previously owned by the Riahi family.) As such, the Tribunal properly concludes that the Claimant proved her ownership of her initial 1,500 shares of Khoshkeh.

100. The Claimant also alleges ownership of an additional 510 shares. She claims that she received these shares as a gift from her husband in the following manner: On 28 August 1979, Mr. Riahi requested that Khoshkeh transfer 510 of his own shares each to his wife and

[66] *See Gulf Associates*, *supra* note 57, at para. 49.

to Malek. The company did not act upon his request until 24 February 1980 because it was in the process of converting 80 percent of all company shares from registered shares to bearer shares. On the day the conversion was effective, 24 February 1980, Mr. Khajeh-Nouri, completed the transfer of the 510 shares. Although the Riahis had already fled Iran, the Claimant maintains that Mr. Khajeh-Nouri, as the family's custodian, possessed the authority to execute the transfer. As delivery is the only requirement for the transfer of bearer shares, according to Article 39 of the Iranian Commercial Code, his possession of the 510 shares was all that was necessary to execute Mr. Riahi's gift to his wife and son.

101. In support of these assertions, the Claimant offers Mr. Khajeh-Nouri's 17 May 1987 letter and attached report. The report indicates Mr. Riahi's 28 August 1979 request for the transfer of 510 shares each to the Claimant and Malek and its implementation after the conversion of registered shares to bearer shares. The report also notes that after this transfer was executed Mr. Riahi held 445 shares for himself and the Claimant and Malek each held 2,010 shares. The Claimant also submits the 28 August 1979 letter in which Mr. Riahi made his transfer request. In this letter, Mr. Riahi states that because he was being "repeatedly threatened" and "shot at" he had decided to leave Iran without knowing whether he would ever return. The letter indicates that Mr. Riahi owns 2,865 shares in Khoshkeh and instructs Mr. Khajeh-Nouri to transfer 1,610 shares to the Claimant and 810 shares to his son.

102. The Respondent points out the mathematical inconsistencies in Mr. Riahi's request. If, according to Mr. Khajeh-Nouri's 17 May 1987 report, the Claimant owned 1,500 shares as of the 26 May 1979 Board of Directors' meeting, then Mr. Riahi's requested transfer of 1,610 shares would give the Claimant a total of 3,110 shares, instead of the 2,010 shares that she claims to own. The Claimant does not deny this mistake. Instead, she explains that the circumstances of her husband's departure from Iran left him without the time and ability to verify the exact number of shares involved in his requested transfer. She adds that later, after Mr. Khajeh-Nouri had provided Mr. Riahi with an accurate account of share ownership in Khoshkeh, Mr. Riahi realized his error and through a phone call to Mr. Khajeh-Nouri amended his request to transfer only 510 shares each to his wife and son. The great emphasis that the Respondent places on this mistake is misplaced. Far from being any indication of misconduct on the part of the Claimant, Mr. Riahi's calculation error was a simple mistake induced by the tumultuous and stressful conditions under which he took flight from Iran. To hold it against him now would be unjustified.

103. The Claimant provides the following additional evidence of her ownership of a total of 2,010 shares: Mr. Riahi's diary for 25-26 May 1980, recording his transfer of 2,010 shares to the Claimant; Mr. Riahi's sworn affidavits indicating the same; the Claimant's affidavits indicating the same; and a letter from the Claimant to Mr. Khajeh-Nouri dated 22 July 1980 confirming that 2,010 shares, which belonged to the Claimant, had been put under the control of the Foundation for the Oppressed.

104. The Respondent challenges the transfer of 510 shares on two additional grounds. First, the Respondent argues that the Claimant has not produced evidence that Mr. Khajeh-Nouri was acting as custodian on behalf of the Riahi family. Mr. Riahi's letter of 28 August 1979, however, clearly evidences his intent to empower Mr. Khajeh-Nouri with the authority to execute the final transfer of shares to the Claimant. Mr. Riahi writes plainly: "I now wish to transfer to my wife and son [the following shares]." The Respondent's curiously places great weight on the portion of the letter in which Mr. Riahi states:

> Since a substantial number of the shares of the company are going to be converted from registered to bearer shares, you are hereby requested . . . not to endorse the share certificates. All shares shall be sent to the company in due course in order to be converted.

The Respondent points to this sentence as proof that Mr. Riahi, not Mr. Khajeh-Nouri, held the shares. However, Mr. Riahi's request predated the conversion and thus it is irrelevant if in fact Mr. Riahi did possess the registered shares at that time. In the letter Mr. Riahi was simply indicating to Mr. Khajeh-Nouri that he would deliver his registered shares to the company to facilitate the share conversion and that, thereafter, Mr. Khajeh-Nouri was to ensure that his last transfer of shares, now in the form of bearer shares, would occur.[67]

105. The Respondent also argues that the transfer of 510 shares was invalid because the official conversion of shares did not occur until after the date on which the Claimant's property was expropriated, 27 February 1980.[68] The Respondent proposes two dates of

[67] The 20 November 1999 letter from Khoshkeh to the Foundation for the Oppressed asserting that Mr. Khajeh-Nouri was not the Riahi family trustee has little evidentiary value at this late stage in the Case. If anything, it proves that the company had records that reflect that the shares at issues were in fact transferred to the Claimant. Also, the fact that 250 shares were apparently found in the safe deposit box does not imply that Mr. Khajeh-Nouri was not the custodian of the Claimant's shares to the extent they were not in her own possession.

[68] The Respondent has changed its position on the date of expropriation of Khoshkeh. In its Hearing Memorial, the Respondent asserts that expropriation occurred on 27 February 1980. However, in its Rebuttal Memorial, the Respondent has changed that date to 24 February 1980. For purposes of addressing the Claimant's ownership issues, the date of expropriation is assumed to be 27 February 1980. The Respondent's arguments related to the date of expropriation are addressed *infra* at paragraph 164.

conversion: (1) 18 March 1980, the date on which the appropriate registration fees were paid; and (2) 6 April 1980, the date on which notice of conversion was published in the *Official Gazette*. Because both of these dates are subsequent to the date of expropriation, the Respondent contends that Mr. Riahi was no longer the rightful owner of the 510 shares and thus had no authority to transfer them to his wife and son.

106. A careful review of the provisions of the Iranian Commercial Code that regulate a company's conversion from registered shares to bearer shares, Articles 47 and 48, undermines the Respondent's position. Article 47 provides that to convert registered shares to bearer shares a company must publish notice in a mass circulation newspaper, allowing shareholders at least two months to have their shares converted. Here, the company reached the decision to convert the shares at its 17 November 1979 shareholders' meeting. Notice of the decision appeared in the *Keyhan* newspaper on 3 December 1979 and invited the shareholders to contact the company's office to have their shares converted. The conversion of shares occurred at the Board of Directors' meeting on 24 February 1980, more than two months after publication of notice. Consequently, the requirements of Article 47 were fulfilled.

107. Article 48 of the Iranian Commercial Code provides that "[a]fter conversion" of registered shares to bearer shares, the converting company must inform the "authority registering the company" so that the matter "may be recorded and announced to the public." Claimant's Exhibit 246, a translation of the notice of conversion that appeared in *Official Gazette* No. 10225 on 6 April 1980, clearly demonstrates the fulfillment of all requirements under Article 48. Moreover, there is nothing in Article 48 that establishes the date of publication in the *Official Gazette* as the official date of conversion. To the contrary, Article 48, by its own terms, indicates that a company's obligation to publish notice in the *Official Gazette* arises "[*a*]*fter* conversion" has taken place and "*after* expiry of the time limits" mentioned in Article 47. (Emphasis added.) Thus, Article 48 clearly envisages publication in the *Official Gazette after* conversion of registered shares to bearer shares.

108. As to the Respondent's claim that 18 March 1980, the date on which the Claimant paid registration fees, is the official date of conversion, there is no indication whatsoever in Iranian law that such a date carries any legal significance. Instead, a fair reading of the Iranian Commercial Code leads to the conclusion that, so long as two months' notice is given, the authority to determine the date of conversion from registered shares to bearer

shares lies with the company, not with the regulating authority. In the absence of any proof related to the payment of registration fees, the Tribunal correctly, if implicitly, dismissed the Respondent's contention. In light of the above analysis, the Respondent's attempts to push back the date of conversion beyond the date of expropriation, for the purpose of invalidating Mr. Riahi's transfer of 510 shares, fails.

109. Further, the Respondent's claim that Mr. Riahi failed to place a phone call to Mr. Khajeh-Nouri to correct his inaccurate transfer request until after 27 February 1980, the date of expropriation, and thus the transfer was invalid, is based on nothing more than hopeful speculation. Indeed, the Respondent offers no evidence whatsoever to support its argument and thus fails to carry its burden of proof.

110. The Tribunal, however, denies the Claimant's claim for the additional 510 shares because "[s]he has neither produced the share certificates nor demonstrated that the shares were transferred to her prior to the date Mr. Riahi's property was expropriated." Award at para. 103. Although it is true that the Claimant has not produced the share certificates, she has produced ample evidence to prove her claim to the entire 2,010 claimed shares.

111. Here, too, it must be reiterated that the Respondent has failed and refused, repeatedly, to comply with Orders to produce the documents that would prove, one way or the other, the facts in regard to the Claimant's shareholdings, namely the share register and the public registration records. The Respondent has never disclaimed possession, custody and control of these records. Indeed, its contention that these records are publicly available to the Claimant confirms its own access to them. The determined failure to produce them therefore compels the Tribunal to infer that they do support the Claimant's claimed ownership of 2,010 shares. Instead, the Tribunal refuses to draw adverse inferences against the Respondent because it "is not convinced that the share register or other requested corporate records of Khoshkeh would show that the Claimant owned these 510 bearer shares and that the transfer of those shares from her spouse took place before his shares were expropriated." Award at para. 104. As a close corporation, however, Khoshkeh may well have recorded bearer share transfers. Regardless, the Tribunal cites no authority for its holding that a party requesting an adverse inference must "convince" the Tribunal that the requested documents would in fact support that party's position. To reward the Respondent for its calculated flouting of two separate Tribunal Orders to produce the corporate books and records of Khoshkeh is thus unjust and inequitable. Indeed, the Tribunal's putative concern for "the possible difficulties

that an owner of bearer shares can face in proving ownership of shares in the absence of actual share certificates" here rings especially hollow. Award at para. 102.

2. Debt Interest

112. The Claimant seeks compensation for the expropriation of her interest in 34,170,000 Rials loaned to the company, which deposited same at Bank Melli. As discussed above in paragraphs 12-15, the Tribunal incorrectly held that the Claimant's loan to Khoshkeh was an inadmissible late filing.

113. The Claimant argues that as the owner of 2,010 shares, she loaned 34,170,000 Rials (17,000 Rials per share) to the company, which it in turn placed on deposit at Bank Melli, Central Branch, to secure a line of credit for the company. The Respondent does not deny the loan or that the funds were on deposit with Bank Melli; in fact, the Respondent admits that every shareholder was required to provide 17,000 Rials per share to fund a fixed deposit at Bank Melli. Rather, the Respondent points out that Mr. Riahi is mentioned in relevant documents while the Claimant is not.

114. The Claimant's assertion of having provided approximately 34 million Rials to Khoshkeh, which it then placed on deposit at Bank Melli for Khoshkeh's line of credit, is supported by Mr. Riahi's affidavit, the Claimant's rebuttal affidavit and a letter to the Claimant from Mr. Khajeh-Nouri dated 22 July 1980. Mr. Khajeh-Nouri's letter confirmed that 17,000 Rials per share (of which the Claimant owned 2,010 as of 24 February 1980) deposited by the company with Bank Melli as a fixed deposit, as well as dividends which belonged to the Claimant, had been put under the control of the Foundation for the Oppressed. A second letter by Mr. Khajeh-Nouri, dated 17 May 1987, and an attached report, confirm that the Claimant was entitled to a portion of the fixed deposit correlative to her 2,010 shares and that the amounts loaned by Mr. Riahi and his family were kept in a provisional account at the Central Office of Bank Melli.[69] Added to this is the fact, admitted by the Respondent, that every shareholder must provide 17,000 Rials per share for Khoshkeh to then use as a fixed deposit at Bank Melli, and the fact that the Claimant has established her ownership of 2,010 shares. This is more than sufficient to conclude that she had loaned 34,170,000 Rials to Khoshkeh, which it then placed on deposit at Bank Melli to secure credit for the company.

[69] The report also explains that the Claimant's portion of the dividends for the years March 1978-March 1987 were paid to the Foundation.

The Respondent's evidence to the contrary, such as a letter from Bank Melli Iran, Central Branch, that no deposit was issued in the Claimant's name, is not persuasive.[70]

D. Tarvandan Private Joint Stock Company

1. Equity Interest

115. The Claimant asserts ownership of 34 shares of the capital stock of Tarvandan. On 27 August 1968, Tarvandan came into existence as an Iranian corporation with a share capital of three million Rials, divided into 300 registered shares of 10,000 Rials each. The minutes of the shareholders' meeting of 16 October 1976, filed with the Registration Office of Companies, indicate that the Claimant became a member of the company's Board of Directors and owned two shares of stock in the company. According to the minutes of the shareholders' meeting dated 26 February 1977, Tarvandan's share capital increased to 7.5 million Rials divided into 75 shares with a par value of 100,000 Rials each.[71] The list of shareholders attached to the minutes reflects share ownership based on the old par value, showing that the Claimant owned two shares in the amount of 20,000 Rials. The minutes of the shareholders' meeting of 21 June 1978, filed with the Registration Office of Companies, establish that the Claimant's share ownership decreased to one share with a par value of 100,000 Rials, thus indicating that the change in par value had taken effect. These minutes also demonstrate that Mr. Riahi owned twelve shares in his own name and acted on behalf of his three sons with respect to their ownership of a total of 60 shares, and that two other individuals, Dr. Khabir and Mr. Jazani, each owned one share in the company.

116. The Claimant further asserts that her share ownership increased from one share to 28 shares on 5 March 1979. In support of this claim, she offers the minutes of Tarvandan shareholders' meeting dated 5 March 1979, receipt of which was twice acknowledged in the record of this Case by the Registration Office of Companies.[72] The minutes indicate that the

[70] The Respondent also refers to a letter dated 17 July 1984 from Khoshkeh, mentioned in Respondent's Exhibit 26, referring to nine sheets related to the first deposit, none of which refers to the Claimant. Apparently the nine sheets were also attached to Bank Melli's letter, but they were not filed as an exhibit.

[71] In addition, the Claimant resigned as a principal member of the Board of Directors and was elected as an alternate member of it.

[72] *See* Claimant's Exhibits 263 and 264. The Respondent asserts that these documents lack probative value because Claimant's Exhibit 263 does not bear a legal seal and Claimant's Exhibit 264 is alleged to be illegible. Nevertheless, both documents are on the letterhead of the National Organization for the Registration of Documents and Real Estate and Claimant's Exhibit 264, which apparently is legible enough to have been translated (with but one exception), clearly confirms that that Organization, of which the Registration Office of Companies is a division, received a copy of the 5 March 1979 minutes (including the shareholders' list) and subsequently furnished it to Bank Melli.

shareholders unanimously agreed to convert all shares from registered shares to bearer shares and, because all shareholders were legally represented, to waive the formality of publishing two-months' notice of conversion in a mass circulation newspaper. The list of shareholders attached to the minutes indicates that the Claimant owned 28 shares at the conclusion of the meeting. The Respondent maintains that there is no indication as to how or when the Claimant acquired the additional 27 shares. It is clear, however, that the increase in the Claimant's shares was a direct result of a transfer of shares from her husband and his sons. Mr. Riahi owned or controlled a total of 72 shares per the 21 June 1978 shareholders' meeting, but only 45 as of the 5 March 1979 shareholders' meeting, a reduction of 27 shares. Thus, quite clearly, Mr. Riahi transferred the shares to his wife.

117. The Respondent challenges the 5 March 1979 transfer of 27 shares, asserting that no record of it appears in the share register. As Respondent's Exhibit 2, the Respondent submits portions (but only portions) of a share register that allegedly show that the Claimant owned only one share in Tarvandan as of 5 March 1979. Respondent's Exhibit 2 is comprised of two parts. The first part indicates that the Claimant owned two shares as of October 1976. Although no date appears on this part of the ledger, the top left corner of each page lists the par value of the recorded shares as 10,000 Rials each. Thus, the first part of the register excerpts produced predates the 26 February 1977 increase in par value. The second part of the register excerpts produced indicates that the Claimant owned one share with a par value of 100,000 Rials as of 22 February 1977. The register contains no entries later than 22 February 1977. The Respondent's reliance on these partial excerpts from the share register as proof that the Claimant owned no more than one share is decidedly unpersuasive inasmuch as they (1) are fundamentally consistent with the Claimant's assertions as to the period they cover[73] and (2) curiously furnish no evidence whatsoever as to the period during which the Claimant indicates she acquired a further 27 shares. Here, too, the failure of the Respondent to produce the entire share register, which its production of excerpts thus confirms is in its possession, and despite successive Tribunal Orders requiring its production, mandates an inference that the unproduced portions would confirm the Claimant as the holder of 28 shares as of 5 March 1979.

[73] The partial excerpt shows the Claimant reduced her ownership from two shares to one as of 22 February 1977, and the Claimant's evidence (dated 21 June 1978) is not contradictory to that date.

118. The Respondent's continuing manipulation of the Tarvandan share register, despite the Tribunal's many Orders to produce it in its entirety, further confirms that adverse inferences must be drawn against the Respondent. The Respondent eventually did produce additional portions of the share register in 1995. Like those in Respondent's Exhibit 2, however, they, too, conveniently fail to cover the crucial periods following 22 February 1977, in which the Claimant's share ownership increased significantly.[74]

119. The Tribunal, however, professes "no reason to believe that the share registers submitted by the Respondent are inauthentic" or "not valid on 5 March 1979." Award at para. 190. Its reasoning, however, is flawed. First, the issue is not whether the partial share register produced by the Respondent is "inauthentic," but whether it is outdated. Because the partial share register submitted by the Respondent failed to record the names of Tarvandan's two newest members of the Board, and because Board members (as conceded by the Respondent) must be shareholders as a matter of law, the Tribunal has every reason to conclude that the partial share register produced by the Respondent was "not valid on 5 March 1979." Furthermore, the Tribunal "doubts that any [subsequent] share register could confirm the Claimant's ownership of 34 shares in Tarvandan." Award at para. 196. Here, the Tribunal, without any evidence, has concluded that Tarvandan did not update its share register after the 3 March 1979 Board of Directors meeting, during which the two incoming members of the Board acquired one share each and the two outgoing members of the Board lost one share each. It is not implausible, however, that a close corporation such as Tarvandan would have recorded the owners of each of its 75 registered shares and their conversion to bearer shares on 5 March 1979. The Tribunal resolves too many doubts in favor of the Respondent, thus (once again) rewarding the Respondent for its unjustified refusal to submit evidence twice ordered by this Tribunal.

120. As with Khoshkeh, the Tribunal has confused which party bears the burden of proving certain facts. The Tribunal expresses "no doubt that the minutes of the shareholders' meeting dated 5 March 1979 [which recorded the Claimant's ownership of 28 shares of Tarvandan] were at some point filed with the Office for Registration." Award at para. 193. (Indeed, the record reflects the Office of Registration's receipt of those minutes, first in a letter of 4 July

[74] Additionally, a shareholder's statement that he transferred his shares in a company to another person constitutes an admission under Iranian law which may provide the basis for judicial recognition and enforcement of the transfer. In this case, Mr. Riahi and the Managing Director of Tarvandan have acknowledged the transfer of 34 shares to the Claimant.

1979, then in a letter of 2 November 1982.) "The Tribunal notes, however, that the 4 July 1979 letter from the Office for Registration is from the time after the deaths of Mr. Riahi's two sons . . .." *Id.* The Tribunal thus holds that the Claimant may have proven that the shares were transferred to her, but she failed to "produce strong evidence to support the fact that the ownership of the shares was transferred to her while the previous owner was still alive." Award at para. 194. As discussed with respect to Rahmat Abad (*supra* at paragraph 69), the Tribunal's reasoning is fundamentally inconsistent with the jurisprudence of the Tribunal. The Claimant bears the burden of proving her ownership of the shares prior to their expropriation by the Respondent (*i.e.*, 27 February 1980). If the Tribunal is to adopt the Respondent's theory that the Claimant fraudulently concocted shareholder minutes, or backdated existing shareholder minutes to a time prior to the death of her stepsons, then clearly it should require the Respondent to produce clear and compelling evidence of that theory. To put the onus on the Claimant to prove the validity of official company records (and with "strong evidence," no less) is to reverse the burden of proof. The Tribunal should have held that the Claimant proved her ownership of the 28 initial shares claimed; its repeated mistake is regrettable.

121. After Tarvandan's 5 March 1979 conversion from registered shares to bearer shares, the Claimant claims that she acquired six more bearer shares from Mr. Riahi sometime between 5 March and 28 August 1979, pursuant to her husband's plan for providing equal gifts to his wife and remaining son, Malek.[75] The following evidence supports the Claimant's assertion: Mr. Riahi's rebuttal affidavit indicating the he made such gift of six shares to his wife; and a letter to the Claimant dated 16 July 1980 from Mr. Mohammad Hossein Vaghefi, the Managing Director of Tarvandan, attesting to the Claimant's pre-expropriation ownership of 34 shares. As to the latter, the Respondent objects only that Mr. Riahi must have dictated the letter to Mr. Vaghefi, because a letter of a similar nature was written on the same date by the Managing Director of Gav Daran. The Claimant's response – that she wrote both companies asking for information and that they likely conferred since they were in the same building – reasonably explains any similarities in the letters. The Tribunal rejects the Claimant's claim to the additional six bearer shares, holding that Mr. Vaghefi's letter (which was written after the expropriation of Tarvandan) "does not carry enough weight to support the Claimant's contention." Award at para. 195.

[75] With this transfer, the Claimant and Malek each had 34 shares, Mr. Riahi had five and two other individuals had one share each.

122. Here, however, the Claimant's *prima facie* evidence necessarily is confirmed by the inference adverse to the Respondent that must be drawn from its conscious, indeed willful, repeated refusal to produce Tarvandan's complete share register as well as its public register records, in disobedience of successive Tribunal Orders to produce those records. This confirmation is strengthened by the Respondent's production of portions of the share registry dating up to 22 February 1977, which portions are fundamentally consistent with the Claimant's allegations of ownership, while withholding all entries subsequent to that date and all other corporate records.

123. The Respondent's attack on the validity of Tarvandan's conversion from registered shares to bearer shares on the basis of alleged failure to fulfill certain corporate formalities is irrelevant to the Claimant's recovery. Although the Claimant's arguments appear in full *supra* at pararaphs 106-107, it is useful to reiterate some basic points. Even assuming *arguendo* that conversion were defective, the evidence still demonstrates that the Claimant owned 34 shares and she is entitled to compensation for that amount. As stated in Claimant's Exhibit 266, page 244 of Dr. Langourdi's book entitled *Effect of Intent in Civil Law*, the non-performance of a formality in connection with a commercial transaction, such as the transfer of shares, does not render the transaction null and void.

124. The Respondent argues further that the procedures in Article 47 of the Iranian Commercial Code – which requires publication of notice of share conversion and a two-month grace period – were not taken because two of the shareholders listed in the company's share register that the Respondent selectively did produce, Mr. Parviz Khabir and Mr. Ali-Asghar Jazani, are not listed as being present at the 5 March 1979 shareholders' meeting where the conversion took place. This assertion is erroneous. The minutes show that Ms. Azam Maleji and Mr. Vaghefi, who were at the meeting, replaced Mr. Khabir and Mr. Jazani as the two additional shareholders. Additionally, the Registration Office of Companies has recognized Mr. Vaghefi's membership on Tarvandan's Board of Directors, and under Article 107 of the Iranian Commercial Code, every member of a company's Board of Directors must be a shareholder. This, in fact, confirms the Claimant's assertion that the share register produced by the Respondent is outdated, as these transfers are not listed. The minutes of the 5 March 1979 shareholders' meeting show that all the shareholders were there or represented, for a total of 75 shares, and that they expressly waived the "formalities for publication . . .

and the two month period provided in the Commercial Code." The question thus remains whether these formalities can be waived.

125. The procedure referred to in Article 47 is intended to protect the rights of shareholders who are not able to attend or to be represented at a shareholders' meeting where a vote is taken to convert registered shares into bearer shares. In this Case, all of the shareholders of this closely held company attended the shareholders' meeting and voted unanimously to convert their shares, and thus the purpose of the law was fulfilled. Further, even if the conversion had not taken place, the Claimant would be the legal owner of all the shares because, as discussed above in paragraphs 57-58, under Iranian law, a transfer of shares in a private joint stock company is treated as an internal act of the company, and mention in the share register is not dispositive.

126. Finally, per the Partial Award on Agreed Terms relating to the Claimant's safe deposit box, the Respondent turned over to the Claimant 77 Tarvandan share certificates with a par value of 100,000 Rials each (of which she claims 34). At the Hearing, the Respondent argued that of these 77 shares the Claimant could not have been the rightful owner of more than twelve. The Respondent's argument assumes, however, that Mr. Riahi was capable of transferring only the twelve shares held in his own name because he did not have authority to transfer any of the 60 shares owned by his sons under the powers of attorney given to him by them. The Respondent's argument fails, as demonstrated above, since Mr. Riahi's use of the powers of attorney on behalf of his sons was valid. *See supra* at paras. 32-40. As the Respondent repeatedly has argued in this Case, proof of possession of shares is strong evidence of entitlement to them. The Claimant thus has proven that she owned 34 shares of Tarvandan stock.

2. Debt Interest

127. The Claimant seeks compensation for a 9 million Rial loan to the company. The Respondent denies the Claimant's allegation. As discussed above in paragraphs 12-15, the Tribunal incorrectly held that the Claimant's claim for the recovery of her loan to Tarvandan is an inadmissible late filing. The Claimant's debt claim is admissible and she has proven her ownership interest.

128. The Claimant asserts that she made the loan to Tarvandan on 1 July 1979 by check number 135443, drawn on her current account number 25034 at Bank Tehran, Central

Branch. She asserts that the proceeds of the loan were used by the company to invest in nine certificates of deposit worth 1 million Rials each. As documentary support for the loan, the Claimant refers to Mr. Riahi's ledger. (Item 259, p. 57, item 258.) Item 259, denoted under the account of Bank Tehran, Central Branch, shows check number 135443 and notes Tarvandan's account. Similarly, item 258, under the heading of Tarvandan's account, reflects the fact that company was lent 9 million Rials on 1 July 1979. There is evidence that the company purchased nine certificates of deposit for 1 million Rials each on 15 July 1979. These listings support the conclusion that the company was lent 9 million Rials on 1 July. The only remaining question posed by the Respondent is whether the lender was the Claimant, Mr. Riahi or Malek, the latter of whom the Claimant admits also lent the company 9 million Rials. The question arises because the lender's account number is not specified. Nevertheless, there is evidence that the Claimant was the lender because check number 135443 comes from the same account as check number 135448 to the ASP Owners Association, which it is established that the Claimant paid. Furthermore, the Claimant's account number 25034 is mentioned on this page of the ledger. The fact that there is no mention of her loan (or, for that matter, Malek's) in Mr. Vaghefi's letter, though it contains a handwritten reference at the end to Mr. Riahi's claim against the company, is insufficient to outweigh the accumulated proof of the Claimant's loan.

E. Gav Daran Private Joint Stock Company

1. Equity Interest

129. The Claimant alleges ownership of 20 shares in Gav Daran. The company's registration form and the minutes of the first shareholders' meeting, dated 17 August 1975, evidence that the Claimant was a founding member and director of Gav Daran, and that she initially owned 33 shares with a par value of 10,000 Rials each, thus contributing to the company's initial share capital of one million Rials. Thereafter, the company increased its share capital on three occasions. As evidence, the Claimant submits minutes of three Extraordinary General Meetings of Shareholders, all of which were filed with the Registration Office of Companies: According to the minutes of the 1 September 1975 Extraordinary Meeting of Shareholders, the share capital increased from one million to three million Rials, divided into 300 shares with a par value of 10,000 Rials;[76] according to the minutes of the 14 June 1976 Extraordinary General Meeting of Shareholders, the share

capital increased to five million Rials, divided into 500 shares with a par value of 10,000 Rials each; and, according to the minutes of the 13 August 1977 Extraordinary General Meeting of Shareholders, the share capital increased to 7.5 million Rials, divided into 75 shares with a par value of 100,000 Rials each. Thereafter and until 5 March 1979 the record contains no direct evidence of further alterations in either the capital of the company or the par value of its shares. The minutes of two successive Extraordinary General Meetings of Shareholders held at 10:00 a.m. and 11:00 a.m. on 5 March 1979, however, reflect that by that time the company's capital structure had been reduced back to 5,000,000 Rials, comprised, however, of 50 shares with a par value of 100,000 Rials each.

130. The Claimant asserts that as of 5 March 1979 she owned 20 out of 50 shares of stock in Gav Daran. A 16 July 1980 letter to the Claimant from Mrs. Moalej, Managing Director of the company, confirms the Claimant's ownership of 20 shares. The minutes of the two Extraordinary General Meetings of Shareholders on that date further support this contention. The minutes of the 10:00 a.m. meeting indicate that Mr. Riahi acquired two shares from Mr. Khabir and Mr. Sheibani, in addition to twelve he originally held, and that Amir's 15 shares were split among Malek and Jahan. Thus, Mr. Riahi in his own right and as his sons' proxy owned or controlled a total of 29 shares. In addition, one share of stock owned by Mr. Vaghefi was transferred to Mrs. Moalej, the Managing Director of the company. The implication that the Claimant, who signed those minutes, owned the remaining 20 shares in the company is immediately confirmed by the shareholders' list attached to the 11:00 a.m. meeting minutes, which expressly records the Claimant as owning of 20 shares, Mr. Vaghefi as owning of one share, Mr. Riahi as owning or controlling 28 shares, and Mrs. Moalej as owning one share.[77]

131. The Respondent calls into question the validity of the Claimant's evidence, emphasizing that no documentation has been submitted by the Claimant to explain the reduction in total company shares from 75 to 50 subsequent to 13 August 1977 and prior to the 5 March 1979 meetings. The Tribunal likewise

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[76] *See also* Claimant's Exhibit 283, a notice of increase of share capital issued by the Registration Office of Companies.

[77] The small anomaly existing as a result of one share being shown as transferred at the 10:00 a.m. meeting to Mrs. Moalej from Mr. Vaghefi, who then was left with none while Mr. Riahi owned or controlled 29 shares, while the shareholders' list appended to the minutes of the 11:00 a.m. meeting restores Mr. Vaghefi to ownership of one share while reducing Mr. Riahi's role by one share to 28, suggests that Mr. Vaghefi, who was elected at 10:00 a.m. as an alternate director, was on later reflection given one share by Mr. Riahi.

> holds that it cannot accept, in a situation so fraught with uncertainties, the Claimant's assertion that she owned 20 shares in Gav Daran at the time of the alleged expropriation. The other evidence that the Claimant has produced to support her contention does not provide sufficient proof in this respect. Accordingly, the Tribunal must reject the Claimant's Claim with respect to Gav Daran shares in its entirety.

Award at para. 212. The Tribunal must note, however, that the Claimant's inability to produce such proof is a direct result of the Respondent's persistent non-compliance with Tribunal document production Orders. In particular, the Respondent has been ordered on multiple occasions to produce the Gav Daran share register and related public registry documents, but has failed to do without sufficient explanation.

132. Here, again, the Tribunal must infer from the Respondent's studied disobedience of its Orders to produce documents that the Gav Daran records demanded, and purposefully withheld, would substantiate the Claimant's claim of ownership. As a result, the Tribunal cannot help but conclude that the Claimant owned, as she claims, 20 of Gav Daran's 50 shares.

133. The Respondent unpersuasively claims that the company's non-compliance with Article 47 of Iran's Commercial Code, which requires publication of notice of share conversion and a two-month grace period, undermines the Claimant's ownership claim. As mentioned, the procedures referred to in Article 47 are intended to protect the rights of shareholders who are not able to attend or to be represented at a shareholders' meeting where a vote is taken to convert registered shares into bearer shares. In this case, all of the shareholders of this closely held company attended the shareholders' meeting and voted unanimously to convert their shares. For example, the minutes of the company's 5 March 1979, 11:00 a.m. Extraordinary General Meeting, in which registered shares were transferred to bearer shares, state that, because all the shareholders were present or represented, the formality of publishing a notice and the two-month grace period mentioned in the Commercial Code should be suspended. Thus, the purpose of Article 47 was fulfilled. Further, even if the conversion had not taken place the Claimant would be the legal owner of all the shares because, as discussed above, under Iranian law a transfer of shares in a private joint stock company is treated as an internal act of the company and absence of proof that it was recorded in a share register is not determinative. *See supra* at para. 57.

134. Finally, it should be noted that although the Respondent disputes the Claimant's ownership of any shares in the company, it has produced 51 of the company's shares with a par value of 100,000 Rials each from the Claimant's safe deposit box. The Tribunal's denial of the Claimant's ownership claim to her 20 shares of Gav Daran is unjustified.

2. Debt Interest

135. The Claimant asserts that she made a 9 million Rial loan to Gav Daran. The Tribunal, however, holds that the Claimant's claim for the loan is an inadmissible late filing. As discussed *supra* at paragraphs 12-15, the Tribunal's holding is not consistent with its jurisprudence.

136. The Respondent asserts that it was Mr. Riahi who made the loan in order to protect his money during the revolutionary uncertainties. In support of the fact that it was she who made the loan, however, the Claimant relies on her rebuttal affidavit, the rebuttal affidavit of Mr. Riahi, and Mr. Riahi's ledger. The ledger shows that the loan was made by check no. 135444 drawn on her account at Bank Tehran, Central Branch, and that it was payable to Bank Melli Iran, Shahyad Branch, for the account of Gav Daran. The same comments that were made with regard to the loan to Tarvandan, *supra* paragraph 128, are applicable here, and the ledger supports the Claimant's assertion. The fact that the company then deposited 9 million Rials in a fixed savings account also supports the fact that the company received the loan. The fact that check no. 135444 is between the check numbers used by Claimant to pay Tarvandan and the ASP Owners Association from her own personal account establishes that the loan was made from the Claimant's account. This cumulative proof outweighs the letter of Mrs. Moalej of 16 July 1980, which ascribes to Mr. Riahi a 9,060,000 Rial credit interest in the company, while making no mention of the Claimant.

F. Iran Bohler Pneumatic Private Joint Stock Company

137. The Claimant alleges ownership of 500 Class A registered shares in Iran Bohler. In support of her claim, she offers the minutes of the 11 July 1978 shareholders' meeting and attached shareholders' list, as well shareholders' lists dated 31 May 1977 and 5 November 1977. In addition, the Claimant submitted copies of her original share certificates, establishing that she owned 500 shares with a total par value of 5 million Rials. At the Hearing the Respondent conceded the Claimant's ownership, as noted by the Tribunal. Award at para. 83.

G. Sarhad Abad Development Joint Stock Company

138. The Claimant claims that she owns a ten percent equity interest in Sarhad Abad and a one percent equity interest in a portion of the land managed by the company. The Claimant asserts that she owned 60 shares out a total of 600 company shares. To support the fact that she owned 60 shares she submits the following evidence: affidavits from herself and Mr. Riahi indicating that Mr. Riahi gave her the shares as a gift; the minutes of shareholders' meetings of 14 May 1977 and 17 June 1978 confirming her claimed share ownership; and a notice in the *Official Gazette*, dated 6 March 1977, also confirming her claimed share ownership. As to the Claimant's claim to one percent of the land owned by Sarhad Abad, she submits her affidavit and a copy of the title deeds representing her one-percent interest. By this evidence the Claimant's ownership is established. The Tribunal, however, held that "the Claimant is precluded from submitting this portion of the Claim because it constitutes 'the filing of a new claim' after the filing deadline of 19 January 1982." Award at para. 71. As discussed above in paragraphs 16-17, the Tribunal erred in denying the Claimant her right under Article 20 of the Tribunal Rules of Procedure to amend her Statement of Claim to seek recovery of her expropriated debt and equity interest in Sarhad Abad.

H. ASP Apartment

139. The Claimant asserts ownership of her apartment in the ASP apartment building in Tehran. The Claimant asserts that she bought the apartment located at ASP Building, Block C, 19th Floor, Apartment 1, 60 Fourth Street, Nowbonyad Street, Youssabad Avenue (now known as Jamaledin Assadabadi Avenue) as an investment.[78] In support, she submitted a contract dated 27 October 1976, which lists her as the buyer and ASP Company as the seller of the apartment. The purchase agreement, which also lists the Claimant as the buyer, was submitted by the Respondent as part of the contents of the Claimant's safe deposit box. The Tribunal recognizes that, at the Hearing, the Respondent conceded that the Claimant owned the apartment. Award at para. 216.

I. Personal Property in the ASP Apartment

140. The Claimant asserts that immediately before her departure from Iran in September 1979 she owned various pieces of personal property that she kept at the ASP apartment. The Claimant has provided various evidence supporting her claim. First, the Claimant submitted

[78] The Claimant asserts that she made substantial improvements in the apartment, as documented by a 6 February 1980 letter from the contractor.

a list of all her personal property in the apartment (with accompanying photographs, in some cases), including carpets, appliances, salon and dining room furnishings, library furnishings, bedroom furnishings, hallway furnishings, china, crystal and other miscellaneous items. Second, the Claimant produced an affidavit attesting that Mr. Riahi gave her many of the furnishings on the list intending that the Claimant own them; others she purchased with her own money. The affidavit of the Claimant's mother corroborates the existence of the Claimant's china and some of the silver. The Claimant's mother attests that she had shipped her daughter's family china and Iranian wedding silver to her in Tehran in 1975. In addition, Ms. Stubbs, a friend of the Claimant in Iran, submitted an affidavit in which she confirmed the existence of certain items in the ASP apartment on the basis of her own recollection and the photographs. Ms. Stubbs states that she remained in Iran after the Claimant departed and thus was familiar with the circumstances surrounding the confiscation of the apartment and its contents. The Claimant asserts that she did not sell or otherwise transfer ownership of any of these items before the Respondent seized the apartment and its contents.

141. The Respondent alleges that the furniture in the ASP apartment came from the Farmaniyeh residence owned by Mr. Riahi and that the furniture thus was his property. The Claimant notes, however, that Iranian law, custom and tradition provide that the owner of a residence owns all the property located in it, especially when the owner is the "lady of the house." Indeed, Dr. Seyed Hassan Emami's treatise provides: "A property which is found on premises is naturally owned by the owner of the premises, because the owner of the premises has possession and has access to [the] premises. Thus, the property owned therein on the face of it, belongs to the owner of the premises." In short, the Respondent has not presented sufficient evidence to overcome the presumption that the Claimant owned the personal property in the ASP apartment.

142. Concluding that the Claimant failed to prove the Respondent's expropriation of the personal property in the ASP property, however, the Tribunal reaches no conclusion as to whether the Claimant owned that property. The weight of the evidence, as discussed, indicates that she did.

J. Contractual Rights to Purchase the Farahzad Apartments

143. The Claimant asserts that she owned the contractual right to purchase two apartments in the Farahzad apartment complex. Specifically, she alleges that on 7 March 1977 she signed two contracts for the purchase of two apartments in Farahzad, West Tehran, making a

down payment of 12,368,840 Rials. The Claimant attests that these two apartments, which she planned to combine into one apartment, were still under construction in September 1979 when she left Iran. The Claimant has submitted copies of the purchase applications and the contracts, all of which list the Claimant as the buyer. The Claimant's ownership is also clear from the purchase agreements delivered to her pursuant to the terms of the Partial Award that resolved the safe deposit box issue. At the Hearing the Respondent, as noted by the Tribunal, conceded the Claimant's ownership of the contractual rights. Award at para. 219

K. Automobiles

144. The Claimant argues that immediately before her departure from Iran in 1979 she owned two cars, a 1976 Peykan and a 1978 Toyota. According to the Claimant, she used the Peykan as her personal car until she bought the Toyota, after which (1978 and 1979) the Riahis' driver used it as a household car. The Claimant's ownership of these cars is recorded in Mr. Riahi's ledger, a contemporaneous business document. Her ownership of the Toyota is also mentioned in Mr. Riahi's diary entries. The affidavits of Mr. Riahi and the Claimant further evidence her ownership of the two cars, and the affidavit of Stubbs, a family friend, corroborates her ownership of the Toyota. The Claimant attests that she left the registration documents in the glove compartments of the cars in Iran when she left, not anticipating that she would need them. Because her ownership of both cars is corroborated by Mr. Riahi's ledger, the Tribunal is not forced to rely solely on affidavit evidence, and there is sufficient evidence to support her claim.

145. The Tribunal concludes that the Claimant proved her ownership only of the Toyota. Award at para. 232. It notes that a 14 May 1983 letter from the Foundation for the Oppressed to the Islamic Revolutionary Court of Isfahan listed a Toyota among the properties belonging to the Riahis, thus confirming the Claimant's evidence of ownership of that car. It further noted the absence of rebuttal evidence by the Respondent. The Tribunal, however, held that "the Claimant has not produced even *prima facie* evidence to support the ownership of the Peykan," and hence, "the Respondent is not required to have produced rebuttal evidence." Award at para. 233. In fact, the Tribunal acknowledges that the Claimant introduced not only affidavit evidence, but two contemporaneous documents evidencing her purchase: Mr. Riahi's business ledger and his diary. Curiously, the Tribunal faults the Respondent for its failure to introduce "a copy of the vehicle registration record concerning the Toyota . . ., which the Respondent must possess," but it takes no cognizance of the Respondent's failure

to introduce the Peykan's registration papers, which it obviously must also possess. Award at para. 232. The Claimant's contemporaneous evidence, the Respondent's failure to produce rebuttal evidence, and the adverse inference that must be drawn from the Respondent's failure to produce the car's registration papers are more than sufficient to prove the Claimant's ownership of the Peykan. Accordingly, the Tribunal should have held that the Claimant proved her ownership of both cars.

L. Horses

146. The Claimant asserts that she owned four horses (Festival, Sharareh, Pishdad, and Tarlon), all stabled at Rahmat Abad farm not later than September 1979. As to Festival, the Claimant submits sufficient evidence of ownership. In his affidavits, Mr. Elghanian, a horse breeder, certifies that he sold Festival to the Claimant in 1978 and that the Royal Horse Society of Iran listed the Claimant as the horse's owner. Colonel Khalvati, the former Director of the Imperial Sports Club Stables, confirms this sale. In her affidavit, Ms. Bergl, who served as Head Riding Instructor for the Royal Horse Society until 1979, confirms that the Claimant purchased Festival in 1978 and rode and trained that horse under her direction. (*See also* affidavit of Ms. Schmitt, former Assistant Riding Instructor.) Mr. Vaghefi's letter of 1 October 1979 reports the delivery of Festival to "Natanz" (the location of Rahmat Abad farm) on 30 September 1979.

147. As to Sharareh and her foal, Pishdad, Mr. Atabai, the former General Director of the Royal Horse Society and the Royal Stables at Farahabad, attests in his affidavit that he sold Sharareh to the Claimant in early Summer 1978 and that at the time of the sale Sharareh was in foal. According to Mr. Riahi's diary, Sharareh gave birth to a foal named Pishdad on 24 March 1979 at Rahmat Abad farm. The Claimant also provided pictures of herself with Sharareh and Pishdad in Natanz in the summer of 1979. With this evidence the Claimant has amply satisfied her burden of proof of ownership.

148. As to Tarlon, Colonel Khalvati certifies in his affidavit that the Claimant owned Tarlon, a stallion which he helped her buy in 1976, and that he believed that the horse was registered with the Royal Horse Society in the Claimant's name. His affidavit and that of the Claimant indicate that in 1977 the Claimant moved Tarlon to the family farm in Natanz (Rahmat Abad) to become a trail horse. Pictures of the Claimant and her husband with Tarlon and Mr. Riahi's diary entry referencing Tarlon provide further evidence of ownership.

149. The three affidavits by former employees at Rahmat Abad farm submitted by the Respondent fail to persuade. The affidavits submitted by Mr. Abadi and Mr. Ramazani baldly claim that Mr. Riahi transferred all his valuable "equipment" and "property" from the farm before his departure from Iran, but say nothing specifically regarding the fate of the four horses. The affidavit of Ms. Hatefi, a relative of Mr. Riahi, has no probative value because she attests that she did not work at Rahmat Abad farm after 1975, and thus could have had no direct knowledge regarding the alleged sale of the horses.

150. The Respondent's final two arguments are easily dismissed. First, the Respondent proffers a letter from the General Office of Horsemanship and Horse Breeding, dated 19 October 1993, which allegedly shows that Mr. Elghanian's son owned Festival in 1975. The relevance of this letter to the ownership of Festival horse at the time of expropriation in 1980, five years later, is dubious at best; the ownership of Festival in 1975 is not in dispute. Second, the Respondent asserts that the Royal Stables must have owned Sharareh on the date of expropriation since there are no transfer records confirming the sale to the Claimant. This claim is not only unsubstantiated, but also directly controverted by the evidence set forth in paragraph 147 above. Thus, there is clear evidence that the Claimant owned the four horses.

151. The Tribunal, however, has fixated on the Respondent's production of copies of certain identity cards (or "passports") issued by Royal Horse Society for horses stabled there in pre-Revolutionary Iran. Specifically, the Respondent produced the passports for Festival and Sharareh, which fail to record Mr. Atabai's and Mr. Elghanian's respective sales to the Claimant. The Tribunal notes that the record offers no evidence "to suggest that the identity cards of Festival and Sharareh are inauthentic," and specifically cites the Claimant's "acknowledgement of the accuracy of the records of the Royal Horse Society before the Revolution." Award at para. 245. The Tribunal's reliance on these passports is badly misplaced. First, the issue is not the *authenticity* of the two horses' passports, but whether the copies produced were dated after the Claimant's purchase of the horses. Second, the Tribunal notes the "accuracy of the records of the Royal Horse Society," but acknowledges that the Respondent failed to produce the identity card of Tarlon, which was also stabled there. Thus, either the Society's records were not so accurate after all, or the Respondent has chosen to make selective presentations of the evidence. Either way, the Tribunal's decision to elevate the importance of two of the horses' undated identity cards above the sworn affidavit testimony of the sellers of the those two horses is inexplicable and unwarranted.

Accordingly, the Tribunal should have held that the Claimant owned each of the four horses claimed.

IV. EXPROPRIATION ISSUES

152. The Claimant argues principally that the property interests that form the subject of her Claim were expropriated *de jure* by the Respondent or its agents. As to her share ownership in Bank Tehran, she identifies as the date of *de jure* expropriation 11 June 1979, the date on which the Respondent enacted the Law for the Nationalization of Banks ("LNB").

153. As to her property interests in Rahmat Abad, Khoshkeh, Tarvandan, Gav Daran, Iran Bohler, Sarhad Abad, the ASP apartment and its contents, the contractual rights to purchase the two Farahzad apartments, the automobiles and the horses, the Claimant identifies 27 February 1980 as the date of *de jure* expropriation. On that date the Revolutionary Court of Isfahan issued Decree No. 361, ordering that all of Mr. Riahi's property "be expropriated and placed under the supervision of the Foundation for the Oppressed and with the cooperation of the Revolutionary Guards . . .."[79] Although the decree identifies only Mr. Riahi as the target of expropriation, the evidence confirms that in fact the decree was applied also to the interests of Mr. Riahi's "first-degree relatives," including the Claimant.[80] A letter from the Foundation for the Oppressed, Real Properties Bureau, dated 20 April 1986, evidences that, pursuant to the 27 February 1980 decree, "the real property of Manuchehr Riahi and the properties *that he has transferred to his first degree relatives* have been expropriated for the benefit of the Foundation for the Oppressed." (Emphasis added.) Specifically, the letter reports that "in the course of enforcement" of said expropriation decree, the property of Ms. Azizeh Riahi Khan Zand, Mr. Riahi's former wife, had been confiscated. Similarly, a 20 November 1991 Circular of the Registration Department of the Northwest Zone of Tehran expressly confirmed that "according to judgment No. 361 dated February 27, 1980 . . . all property of Manuchehr Riahi *and his first degree relatives* . . . has been expropriated . . .." (Emphasis added.) A 7 February 1985 Judgment of the Revolutionary Court of Isfahan likewise considered all Riahi family property to be subject to the 27 February 1980 expropriation decree. Further, it should be noted that the Act for Protection and Development of Iranian Industries of 16 July 1979 ("APDII"), as amended, expropriated the interests of

[79] The High Islamic Revolutionary Court confirmed the decree on 7 July 1984.

[80] Pursuant to Article 177 of the Direct Taxation Act of Iran, a wife is considered to be a first-degree relative of her husband.

certain key industrialists in Iran, such as Mr. Riahi, as well as the interests of their "relatives," "spouses," and "children." Moreover, the fact that Revolutionary Guards, starting contemporaneously with the issuance of Decree No. 361, physically took over various properties owned either solely or in significant part by the Claimant inferentially confirms that Decree No. 361 was in fact applied to her. Thus, the evidence confirms unequivocally that the Respondent executed a general scheme of expropriating not only the property interests of certain targeted individuals, but also those of their "first-degree" relatives. Accordingly, the Claimant's property interests were expropriated *de jure*, along with her husband's, on 27 February 1980.

154. With respect to Iran Bohler, the Claimant cites as further proof of *de jure* expropriation the Act Concerning the Appointment of a Temporary Director or Directors for the Supervision of Production, Industrial, Commercial, Agricultural and Services Units Whether in the Public or the Private Sectors of 16 June 1979, also known as "Law No. 6738." As the Claimant states, the Respondent applied the APDII and Law No. 6738 in tandem to establish a policy of expropriation of Iran's major industrial companies, including Iran Bohler, and to implement that policy by appointing managers to run such companies in place of the original managers. The Tribunal, however, concludes "that although the Court's Order of 27 February 1980 expropriated the properties of the Claimant's spouse in Iran, its wording does not support the view that it also expropriated the Claimant's property." Award at para. 307. The Respondent's subsequent reliance on that Order, however, as the lawful authority for the expropriation of the Claimant's own property, exposes the Tribunal's error in relying solely on the "wording" of that Order.

155. Nevertheless, in addition to alleging a *de jure* taking, the Claimant contends that various actions of the Respondent amounted in any event to a *de facto* expropriation of her property rights. The evidence supporting those claims is set forth below and is organized by company or the relevant property interest. In assessing the facts of this Claim, two points must be minded. First, the Respondent implemented a policy of wholesale expropriation of all "Riahi family property" without discrimination between the interests of Mr. Riahi and those of his immediate family. Thus, evidence of expropriation of Mr. Riahi's property interests is probative as to the Claimant's allegations. Second, in pursuing its policy of expropriation against the Riahi family, the Respondent raided a building located at 781 Eisenhower (now Azadi) Avenue in Tehran which contained the offices of Rahmat Abad,

Khoshkeh, Tarvandan, Gav Daran and Sarhad Abad. Thus, this Chamber should consider that strong evidence of expropriation of any one company at 781 Eisenhower Avenue bolsters the claim of expropriation of every other company at that same location.

A. Bank Tehran

156. The Claimant alleges that her equity interest in Bank Tehran was expropriated *de jure* on 11 June 1979, the date on which the Respondent enacted the LNB. Pursuant to Article 1 of the LNB, the Respondent nationalized all Iranian banks, including Bank Tehran. Thereafter, as a consequence, the Claimant lost her equity interest in Bank Tehran and ceased receiving bank dividends. According to Tribunal precedent established in *Khosrowshahi*, the consequence of the LNB's promulgation was to effect a complete taking of the shares in all Iranian banks.[81] Accordingly, the Claimant has established the *de jure* expropriation of her equity interest in Bank Tehran. The Respondent's claim that a Tribunal claimant is barred from bringing a claim without first resorting to the compensation mechanism established in Iran for private owners of bank shares has previously been rejected by this Tribunal.[82] Accordingly, the Tribunal correctly held that "the claim was outstanding and that the expropriation took place on 11 June 1979, in accordance with the Banks Nationalization Law of the same date." Award at para. 295.

B. Rahmat Abad Natanz Agro-Industrial Private Joint Stock Company

1. Equity Interest

157. The Claimant argues primarily that her property interests in Rahmat Abad were expropriated *de jure* on 27 February 1980 by the expropriation decree (Decree No. 361) of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in Rahmat Abad by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing (and to an extent anticipating) such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of her Rahmat Abad interest.

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[81] *See Khosrowshahi, supra* note 54, at 97-98.

[82] *Id.*

158. To begin, Mr. Nabavi's letter of 20 March 1980 reports that the Revolutionary Guards, acting pursuant to a decree of the Revolutionary Prosecutor of Isfahan,[83] had stormed Rahmat Abad farm at 6:00 a.m. on 1 February 1980 and taken control of it by force. (A 10 February 1980 entry in Mr. Riahi's diary confirms the occupation.) The letter continues that after the raid the Revolutionary Guards catalogued the contents of the farmhouse and the guesthouse and removed various items of property from the premises. Mr. Nabavi's assertions are buttressed by a document issued by Mr. Nasrollahi, Head of the Revolutionary Guards in Natanz, on 1 February 1980, recording that Mr. Nabavi was constituted caretaker of "all moveable and immovable properties" comprising Rahmat Abad. (A letter from Mr. Nabavi referenced receipt of that document.) A *procès verbal* signed by Mr. Nasrollahi on 2 February 1980 specifically evidences the removal of a number of rifles and ammunition from the farm, and the document executed by him the previous day attached "19 sheets" of inventory. Further, an inventory list of items seized at the farm, dated 4 February 1980, under the heading "Investigation Unit: Execution Unit," makes reference to a number of carpets, a painting and Mr. Riahi's Chevrolet Blazer, the receipt of which by the Foundation for the Oppressed was further acknowledged in writing.

159. Mr. Nabavi's letter of 20 March 1980 also evidences that on 1 February 1980 two Revolutionary Guards assumed control of the day-to-day affairs of the Rahmat Abad company and farm. Additionally, a letter from the Foundation for the Oppressed to the Islamic Revolutionary Court, dated 14 May 1983, states that various Rahmat Abad properties had been "put under the Foundation's supervision" for purposes of "protection." Even assuming that the Respondent's control of Rahmat Abad, which began on 1 February 1980 with the arrival (to stay) of the Revolutionary Guards, were indeed "supervision" for "protection," it is closely analogous to the appointment of provisional managers, conservators or inspectors which the Tribunal ruled in *Sedco* to be a "highly significant indication of expropriation because of the attendant denial of the owner's right to manage the enterprise."[84]

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[83] These actions appear to have occurred pursuant to Verdict No. 6709, issued on 31 January 1980 by the Revolutionary Prosecutor of Isfahan.

[84] *Sedco, Inc.* and *National Iranian Oil Company, et al.*, Interlocutory Award No. ITL 55-129-3 (28 Oct. 1985), *reprinted in* 9 Iran-U.S. C.T.R. 248, 277-78 (citing Sohn & Baxter, *Responsibility of States for Injuries to Aliens*, 55 AM. J. INT'L L. 545, 558-59 (1961)). *See also Tippetts, Abbett, McCarthy, Stratton* and *TAMS-AFFA Consulting Engineers of Iran, et al.*, Award No. 141-7-2 (29 June 1984), *reprinted in* 6 Iran-U.S. C.T.R. 219, 225; *Saghi, supra* note 13, at 44-45. It is the degree to which the appointment affects the right of ownership, and not the length of time of the appointment, that is determinative of expropriation. *See id.* at para. 76; *Starrett Housing Corporation, et al.* and *The Islamic Republic of Iran, et al.*, Interlocutory Award No. ITL 32-24-1 (19 Dec. 1983) ("*Starrett I*"), *reprinted in* 4 Iran-U.S. C.T.R. 122. *But see Motorola, Inc.* and *Iranian National Airlines*

160. In addition to the physical presence and activities of the Revolutionary Guards at the farm, as Mr. Nabavi's 20 March 1980 letter also records, subsequent to their occupation salary payments to Rahmat Abad employees ceased and all company bank accounts were blocked. In addition, the records issued by Bank Melli on 15 March 1980 specify the closing of a Rahmat Abad company account holding more than 3.5 million Rials, pursuant to an order of the Revolutionary Prosecutor General, and the transfer of those funds to an account in the name of the Foundation for the Oppressed.[85] A letter of 25 February 1980 from Mr. Riahi to a friend, Mr. Mossaedi, also reflects that certificates of deposit of the company in the amount of 20 million Rials were confiscated by the Foundation for the Oppressed. According to a *procès verbal* documenting a 23 November 1980 meeting between Messrs. Rafian, Nabavi, Tabatabai and Vaghefi, seventeen company certificates of deposit in the amount of one million Rials each (numbered 916571 through 916587) were delivered to the Foundation. Other evidence, such as a 23 November 1980 *procès verbal* stating that "all of the accounts and books of the company *prior to expropriation* were reviewed" (emphasis added), compels the conclusion that the Respondent not only confiscated physical property at Rahmat Abad farm, but also exerted undiluted control over company affairs, resulting in a complete denial of the management rights of the original owners. Finally, it is relevant to note, too, that within a week or so of Decree No. 361 Revolutionary Guards raided the office building in Tehran that housed most of the companies in which the Claimant owned shares, including an office of Rahmat Abad. *See infra* paras. 168, 175 and 181. Although the Tribunal wrongly rejects the Claimant's argument that the Respondent expropriated her equity interest in Rahmat Abad *de jure* on 27 February 1980, it correctly recognizes the *de facto* expropriation of her shares as of that date. *See* Award at para. 351.

2. Debt Interest

161. The Claimant's claim that her debt interest in the Rahmat Abad company in the amount of 20,611,693 Rials ($291,950) was subjected to a compensable expropriation is valid. In *Starrett*, the claimants made various loans to a third-party bank to finance the

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Corporation, et al., Award No. 373-481-3 (28 June 1988), *reprinted in* 19 Iran-U.S. C.T.R. 73, 85 and *Otis Elevator Company* and *The Islamic Republic of Iran, et al.*, Award No. 304-284-2 (29 Apr. 1987), *reprinted in* 14 Iran-U.S. C.T.R. 283, 299-300.

[85] Although the account was in Mr. Nabavi's name, and not the company's name, the Claimant has explained that certain funds were placed in the account of Mr. Nabavi's son (over which Mr. Nabavi had control) because it was one of the remaining accounts that had not been blocked.

construction and management of an apartment complex, called the "Project." With respect to the taking of the claimants' loans, this Chamber found:

> that these rights include the Claimants' right to be repaid the loans made for the purposes of the Project. The Claimants' property rights in the Project were intimately linked to their rights to be repaid such loans. This conclusion is inescapable in light of the facts that the loans recognized by the Tribunal were made by the Claimants for the purposes of the Project and that they were used for that purpose. At least by the date of the taking it became apparent that the Claimants would not be repaid such loans and that their rights to repayment had been taken by the Government.[86]

Similarly, the Claimant here has established that she made loans to Rahmat Abad for purposes of maintaining and expanding the operations of the company and farm. As her debt interest is "intimately linked" with the purposes of the company, a taking of those interests should have been deemed to have occurred on a date simultaneous with the expropriation of the company. As discussed above in paragraphs 12-15, the Tribunal was wrong to bar this claim as late-filed.

C. Khoshkeh va Foulad Private Joint Stock Company

1. Equity Interest

162. The Claimant cites the 27 February 1980 expropriation decree of the Revolutionary Court of Isfahan as evidence of *de jure* expropriation. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in Khoshkeh by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree, and the Tribunal should have ruled accordingly. These actions, however, even absent the expropriation decree, give rise to a valid claim of *de facto* expropriation of her Khoshkeh interest.

163. First, it should be noted that the office building in which Khoshkeh was housed – together with Tarvandan, Gav Daran, Rahmat Abad and Sarhad Abad – was raided by Revolutionary Guards barely a week following issuance of that decree. *See supra* at para. 160; *see infra* at paras. 168, 175 and 181. Numerous documents adduced by the Claimant further confirm that all 4,465 shares in the company – the Claimant's (2,010 shares), Malek's

[86] *Starrett Housing Corporation, et al.* and *The Islamic Republic of Iran, et al.*, Final Award No. 314-24-1 (14 Aug. 1987) ("*Starrett II*"), *reprinted in* 16 Iran-U.S. C.T.R. 112, 230-31.

(2,010 shares), and Mr. Riahi's (445 shares) – were expropriated and put in the hands of the Foundation for the Oppressed in 1980: (i) a letter dated 16 June 1980 from the Foundation for the Oppressed to Khoshkeh informing the company that, pursuant to the 27 February 1980 decree, Mr. Riahi's shares had been "put under the control of the Foundation," and that no transfer of shares or payment of dividends should be made;[87] (ii) the shareholders' list attached to the minutes of the 5 July 1980 shareholders' meeting, indicating that the Foundation owned 4,465 company shares; (iii) minutes of company meetings held 28 January 1981, 11 July 1981, 1 September 1981, 27 June 1982, 13 September 1982 and 18 June 1989, demonstrating the continued ownership of 4,465 shares by the Foundation and its successor entity, Janbazan Foundation; (iv) and a 22 July 1980 letter from Mr. Khajeh-Nouri to the Claimant, confirming that Mr. Riahi's shares and those of his first-degree relatives (including the Claimant's 2,010 shares and her debt interest) had been expropriated pursuant to the 27 February 1980 decree.

164. The Respondent argues that if, *arguendo*, a *de jure* expropriation did occur, it should be given effect as of 24 February 1980, not 27 February 1980. The clear purpose of this argument, since 24 February 1980 coincidentally is the date of the company's conversion of registered shares to bearer shares, is to attempt to remove from consideration the 510 shares the Claimant avers she acquired on that date (in addition to the 1,500 she already held) in conjunction with the conversion. The date of 27 February 1980, however, clearly appears in the top right corner of the expropriation decree. Although the decree indicates the Islamic Revolutionary Court held a hearing on 24 February 1980 to assess Mr. Riahi's case, it states also that the Court reached a final decision "upon consultation," which inherently must be subsequent to the hearing. Had consultation occurred and a final decision been rendered on 24 February 1980, then that date, reflecting an earlier resolution, would have appeared in the decree. It is noteworthy that the Foundation itself refers to in advising another authority of the expropriation, the date of 27 February 1980 in its letter of 20 April 1986. In light of the evidence, the *de jure* expropriation of the Claimant's equity interests in Khoshkeh should have been deemed to have occurred on 27 February 1980, and hence without adverse effect on the 24 February 1980 conversion and transfer of shares.

[87] A more general notice was posted in the *Official Gazette* on 13 July 1980, instructing all companies to refrain from transferring shares or issuing dividends until the ownership interests of the Foundation for the Oppressed could be determined.

165. The Tribunal wrongly rejected the Claimant's argument that the Respondent *de jure* expropriated Mrs. Riahi's shares in Khoshkeh on 27 February 1980. Nevertheless, the Tribunal correctly recognized the Respondent's *de facto* expropriation of those shares no later than 5 July 1980, concluding that the Foundation for the Oppressed continually used "the rights associated with the Claimant's shares since the meeting of 5 July 1980." Award at para. 323.

2. Debt Interest

166. The Claimant's argument that her debt interest in Khoshkeh in the amount of 34,170,000 Rials was expropriated along with the Respondent's confiscation of her equity interest in the company is valid under principles established long ago by this Chamber in *Starrett*.[88] The rationale for this conclusion has been explained in detail above in paragraph 161. The explanation as to why the Tribunal was wrong to exclude this part of the Claimant's Claim is set forth above in paragraphs 12-15.

D. Tarvandan Private Joint Stock Company

1. Equity Interest

167. The Claimant argues primarily that her property interests in Tarvandan were expropriated *de jure* on 27 February 1980 by the expropriation decree of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in Tarvandan by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing that decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's Tarvandan interest.

168. The Claimant contends that the Respondent learned of the location of Tarvandan's company offices through its occupation of Rahmat Abad farm and its seizure of various Tarvandan company records kept there on 1 February 1980. Thereafter, in early spring 1980, the Revolutionary Guards occupied Tarvandan's company office at 781 Eisenhower Avenue in Tehran.[89] The record is replete with evidence of the occupation. Mr. Riahi's rebuttal

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[88] *See Starrett II, supra* note 86, at 230-31, and accompanying text.

[89] The Claimant contends that the Respondent simultaneously took over the offices of Gav Daran, Rahmat Abad and Sarhad Abad, which were located in the same building, thus implementing also as to them the 27 February 1980 decree.

affidavit attests that the takeover of Tarvandan occurred in spring 1980. In a letter dated 25 October 1980, Mr. Vaghefi noted that Tarvandan was closed by the Foundation for the Oppressed as of the beginning of the Islamic Year 1359, which begins on 21 March 1980 in the Gregorian calendar. Other evidence confirms more generally the fact of expropriation: Mr. Vaghefi's letter of 16 July 1980 reported that the company was taken over by the Foundation pursuant to an expropriation decree (Order No. 307 of the Islamic Revolutionary Court, dated 19 March 1980); and, according to Mr. Riahi's affidavit, the Revolutionary Guards stormed the office building at 781 Eisenhower Avenue and completed the takeover of various companies, including Tarvandan.

169. Additional evidence proves that the Respondent not only had occupied Tarvandan's offices, but also controlled the company's affairs. As to the company's bank accounts, four letters from Mr. Riahi to Mr. Vaghefi dated 13 April 1980, 17 April 1980, 27 April 1980 and 5 June 1980, respectively, show that following the seizure the Respondent controlled Tarvandan's bank accounts. Mr. Vaghefi's letter dated 25 October 1980 indicates that the Foundation had assumed the responsibility of paying employees of the company. Additionally, the Claimant persuasively maintains that because she has not received notice of annual shareholders' meetings, as is required by Iranian law, she has been prevented from exercising her ownership rights in the company.

170. The Claimant claims that the General Order of 9 August 1980, issued by the Islamic Revolutionary Prosecutor, further confirms the loss of her ownership rights. The General Order prohibited, barring express permission by the Prosecutor, any transfer of company shares to individuals who had fled Iran and, of more relevance, nullified any transfer of bearer shares that had occurred since 23 August 1978. Because the Claimant obtained Tarvandan bearer shares after the critical date established in that General Order, those equity interests, had they not already been expropriated, would have been extinguished pursuant it.

171. In response, the Respondent argues only that it was unaware until 1984 that the office building at 781 Eisenhower Avenue, which housed Tarvandan's office, belonged to Mr. Riahi, and thus could not have expropriated it in 1980. In support, the Respondent relies on a letter which it claims shows that the existence of the office building was first discovered in 1984 in the course of executing an assignment order dated 23 May 1984. Leaving aside the fact that Decree No. 361 renders the Respondent's argument irrelevant, however, the Respondent's evidence is directly contradicted by Respondent's own Exhibit 48, dated one

year earlier (14 May 1983), which identifies the 781 Eisenhower Avenue office of Rahmat Abad as one of Mr. Riahi's properties that had been placed under the Foundation's control. That the offices of Rahmat Abad, Khoshkeh, Gav Daran and Sarhad Abad were in the same building as Tarvandan's makes it highly unlikely that the Respondent could have known about and taken action against one company without being aware of, and acting equally in regard to, the others.

172. The Tribunal finds no *de jure* expropriation of Tarvandan on 27 February 1980, but finds *de facto* expropriation no later than 16 July 1980, the date on which Mr. Vaghefi wrote Mr. Riahi to inform him of the 19 March 1980 expropriation order of the Islamic Revolutionary Court. Award at para. 361. Given that Tarvandan was "closed down by the Foundation for the Oppressed as of the beginning of the Iranian Year 1359 (21 March 1980)," and given that the Foundation paid Tarvandan's employees' salaries after that date, there is ample evidence to conclude that the Respondent had expropriated Tarvandan *de facto* by 21 March 1980. Curiously, the Tribunal concludes that "at least until 16 July 1980 Mr. Vaghefi was still the managing director of the company," despite its recognition that "the Foundation had not paid any salary to him after" 21 March 1980. Award at para. 358.

2. Debt Interest

173. The Claimant's argument that her debt interest in Tarvandan, a 9 million Rial loan to the company, was taken in conjunction with the Respondent's confiscation of her equity interest in the company is valid under principles established in *Starrett*.[90] The rationale for this conclusion has been explained in detail above in paragraph 161.

E. Gav Daran Private Joint Stock Company

1. Equity Interest

174. As evidence of *de jure* expropriation, the Claimant relies upon the 27 February 1980 expropriation decree of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in Gav Daran by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's Gav Daran interest.

175. The Claimant cites a letter from Mrs. Moalej dated 16 July 1980 in which she reports that for some time Gav Daran's property and bank accounts had been seized by the Foundation for the Oppressed in accordance with an expropriation decree. Mr. Vaghefi's letter of 25 October 1980 also reports that Gav Daran had been taken over physically around 21 March 1980. As additional proof, the Claimant contends that she has not received notice of the annual shareholders' meetings of Gav Daran, as is required by Iranian law. The fact that Gav Daran's office was located in the same building as those of other expropriated companies, such as Rahmat Abad, Khoshkeh, Tarvandan and Sarhad Abad, which were raided by Revolutionary Guards in March 1980 (*see supra* at paragraphs 160 and 168; *see infra* at paragraph 181), increases the weight of the evidence proffered in respect of Gav Daran. Because the Tribunal concluded that the Claimant had not proved ownership of her claimed shares in Gav Daran, the Tribunal failed to discuss the expropriation of those shares. The evidence, however, supports a finding of *de jure* and *de facto* expropriation.

2. Debt Interest

176. The Tribunal should have held that the Claimant's debt interest in Gav Daran, a 9 million Rial loan to the company, was expropriated along with the Respondent's confiscation of her equity interest in the company. This finding is compelled by the Respondent's own admission that the loan had been confiscated by the Foundation based on the 27 February 1980 expropriation decree. The rationale for this conclusion has been explained in detail above in paragraph 161. The explanation as to why the Tribunal was wrong to exclude this part of the Claimant's Claim is set forth in paragraphs 12-15.

F. Iran Bohler Pneumatic Private Joint Stock Company

177. To prove her interests in Iran Bohler were taken *de jure*, the Claimant cites the APDII. The APDII, effective 16 July 1979, called for the expropriation of all stocks in Iran's major industries and mines, accusing their owners of "accumulat[ing] colossal wealth through their illegal ties with the former [Pahlavi] regime." An amendment to the APDII, adopted 13 August 1979, clarified the scope of legislation as affecting not only the said owners, but also their siblings, spouses, and children. That the owners of Iran Bohler and their families were subject to the APDII is established by the Respondent's policy of applying the APDII, as amended, in conjunction with Law No. 6738. *See supra* at para. 154. Whereas the former established a policy of expropriation of Iran's major industries and mines, the latter facilitated

[90] *See Starrett II, supra* note 86, at 230-31.

the decreed expropriations by granting the Iranian Government authority to appoint supervisors to manage the nationalized companies. *Id.* Regarding the instant Claim, the Iranian Minister of Industries and Mines, pursuant to Law No. 6738, appointed a managing director on 16 June 1979 and a supervisor to manage Iran Bohler's business affairs as of 22 September 1979. Thus, it is clear that the APDII (in conjunction with Law No. 6738) applied either directly to the Claimant as an owner of stock in Iran Bohler, a major Iranian industry, or by means of the 13 August 1979 Amendment to the APDII, as the spouse of such an owner. In either case, proof of a *de jure* expropriation exists.[91]

178. The Claimant's loss of her property interests in Iran Bohler by virtue of the APDII is reinforced by the 27 February 1980 decree (and the application of those laws to Mr. Riahi's "first-degree" relatives) and the contemporaneous actions of Iranian state authorities in implementing such measures. These actions, even absent the APDII, would give rise to valid further claims of both *de jure* and *de facto* expropriation of the Claimant's Iran Bohler interest.

179. To begin, portions of Mr. Riahi's diary detail a physical raid on the office of Dr. Parviz Khabir, Managing Director of Iran Bohler, at Iran Bohler headquarters and the seizure of company records on 6 March 1979.[92] Thereafter, the Ministry exercised its authority under Law No. 6738 by appointing a temporary supervisor on 22 September 1979 to oversee "all the affairs" of Iran Bohler and by requiring that "all papers and obligatory documents" be co-signed by the supervisor. According to Law No. 6738, this takeover by the supervisor was immediate and complete: Article 2 provides that the appointment of a supervisor results in the disqualification of the former director from managing the company's affairs; Article 3 empowers an appointed supervisor to "exercise complete supervision over all the affairs of the unit concerned and especially supervision over the operation and action of the director." (*See also* the Act for Determination of the Scope of the Tasks and Authority of Temporary Director or Directors of 18 July 1980.) Additional documentation demonstrates that by 2

[91] The Tribunal has examined Law No. 6738 in various contexts and has found that its effect is "to strip the original managers of affected companies of all authority and to deny shareholders significant rights attached to their ownership interests." *Thomas Earl Payne* and *The Islamic Republic of Iran*, Award No. 245-335-2 (8 Aug. 1986), *reprinted in* 12 Iran-U.S. C.T.R. 3, 10. *See also Starrett I, supra* note 84, at 154; *Kamran Hakim* and *The Islamic Republic of Iran*, Award No. 587-953-2, paras. 94-95 (2 July 1998), *reprinted in* __ Iran-U.S. C.T.R. __.

[92] The Tribunal has found that these actions, taken by the Imam Khomeini Komiteh, are attributable to the Iranian Government. *See Kenneth P. Yeager* and *The Islamic Republic of Iran*, Partial Award No. 324-10199-1 (2 Nov. 1987), *reprinted in* 17 Iran-U.S. C.T.R. 92, 101-02; *Bechtel, supra* note 53, at 157.

March 1980 the Ministry had appointed a permanent managing director, who exercised controlling authority, to supervise the company.[93]

180. Given the breadth of the authority granted to the Ministry to control Iran Bohler's day-to-day affairs, the Respondent's claim that the appointed supervisor and later managing director served merely in an advisory capacity are unconvincing. Further, the Respondent's own evidence stands in contradiction to such a claim. For example, a letter from one of Iran Bohler's minority shareholders, relied upon by the Respondent, states that after the Revolution the Ministry appointed a supervisor to "manage" the company and thereafter "some representatives were introduced by the Bonyad Mastazafan [the Foundation for the Oppressed] in the capacity of representation for the expropriated shares, performing their duties in the position of members of the Board of Directors." Far from demonstrating control of an advisory nature, this letter confirms the pervasive state control over Iran Bohler. The Tribunal concludes that the Respondent *de facto* expropriatied the Claimant's equity interest in Iran Bohler no later that 2 March 1980, "when the Government appointed a managing director for the company." The above-cited evidence, however, suggests *de jure* and *de facto* expropriation well before that date.

G. Sarhad Abad Development Joint Stock Company

181. The Claimant asserts that her equity interest in Sarhad Abad was expropriated *de jure* pursuant to the 27 February 1980 expropriation decree. As evidence of its implementation, thus confirming the decreed expropriation (as well as independently supporting an alternative finding of *de facto* expropriation), the Claimant proffers the following evidence: a letter from Mr. Vaghefi dated 25 October 1980 notifying Mr. Riahi that the Foundation for the Oppressed seized the Sarhad Abad premises around 21 March 1980; a letter by Mr. Riahi dated 27 April 1980 indicating that the Iranian Government had been cultivating crops on the company's land in pursuit of its expropriation policies; and a letter by Mr. Ali Sheybani, the former Managing Director of the company, dated 28 April 1993, indicating the continued ownership of Sarhad Abad by the Foundation and the pending liquidation of that company. Finally, Sarhad Abad's office was located at 781 Eisenhower Avenue, along with the offices of several other expropriated companies. *See supra* at paragraphs 168 and 175 regarding the takeover of the company offices of Tarvandan and Gav Daran.

[93] The permanent effect of these actions is demonstrated by the minutes of the company's 20 March 1986 shareholders' meeting, which lists the Foundation for the Oppressed as the owner of 7,841 shares of stock, all

182. The Tribunal's erroneous determination that the Claimant's claim to her equity interest in Sarhad Abad was inadmissible obviated its discussion of the expropriation. The evidence in the record, as noted above, indicates that the Respondent *de jure* expropriated her shares on 27 February 1980 and *de facto* no later than 21 March 1980.

H. ASP Apartment

183. The Claimant argues that her property interests in the ASP apartment were expropriated *de jure* on 27 February 1980 by the expropriation decree of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in the ASP apartment by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's interest in the ASP apartment.

184. In early March 1980, Revolutionary Guards from Isfahan (where Decree No. 361 was issued) and Tehran occupied the apartment and removed valuable personal property. This fact is corroborated by the affidavit testimony of Ms. Stubbs and Ms. Vahabzadeh, friends of the Claimant, both of whom also fix the appearance of the Revolutionary Guards in early March 1980. Ms. Stubbs explains that she received a telephone call from Mrs. Nasr, who was residing in the apartment in March 1980, describing the raid by the Revolutionary Guards on the premises as it occurred. Ms. Stubbs' affidavit also explains that the Foundation granted Mrs. Nasr permission to remain in the apartment through the following summer. Thereafter, Ms. Vahabzadeh contacted the Foundation and ASP's administrative offices to request permission to live in the apartment temporarily as a custodian for the Foundation in exchange for the payment of monthly apartment charges and the salary of one of the Claimant's former employees. Ms. Vahabzadeh moved into the apartment at the end of February 1981 and, upon vacating the apartment, returned it to the Foundation. Later she learned that the Foundation had leased the apartment and intended to sell it. Further buttressing the Claimant's evidence as to the facts is a letter from the Foundation for the Oppressed, dated 14 May 1983, which confirms (while erroneously identifying Mr. Riahi as the apartment's owner) that the apartment had been placed under the Foundation's control pursuant to the 27 February 1980 expropriation decree. Thus, had the Tribunal not

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previously owned by the Riahi family, including the Claimant.

erroneously concluded that the *caveat* expressed in *Case No. A18* (*see infra* at paragraphs 211-214) barred the Claimant's claim to the ASP apartment, it should have concluded that the Respondent expropriated the property *de jure* on 27 February 1980 and *de facto* no later than early March 1980.

I. Personal Property in the ASP Apartment

185. As proof of *de jure* expropriation of her personal property in the ASP apartment, the Claimant cites the 27 February 1980 expropriation decree of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, is detailed above at paragraph 153. The Claimant's loss of her property interests in her personal property in the ASP apartment by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's personal property in the ASP apartment.

186. The Claimant relies again on the affidavits of Ms. Stubbs and Ms. Vahabzadeh, which indicate that the Revolutionary Guards catalogued various items of personal property in the ASP apartment, including furniture and carpets, some of which was carried away during the course of occupying the apartment. To prove that no items of the apartment were removed before or after expropriation, the Claimant points to Mr. Nabavi's 8 March 1981 letter to Mr. Riahi in which he reports that the only personal property taken from the Riahis' various residences was that for which the Foundation tendered a receipt.

187. The Tribunal, however, concludes that "the Claimant has failed to meet her burden of proving that the claimed property was in the ASP Apartment at the time of the alleged expropriation and that it was expropriated by persons whose acts are attributable to the Government of Iran." Award at para. 376. This reasoning cannot withstand scrutiny. The Tribunal cites Mr. Mahvi's testimony that "Mr. Riahi managed to remove from Iran all belongings, such as carpets and the like, apparently belonging to the Riahi family, with the help of certain foreign embassies." Award at para. 367. The Tribunal subsequently concludes that "it is very unlikely that the Claimant would have moved such valuable belongings to the apartment and kept them there after departing from Iran." Award at para. 371. It remains a mystery exactly how this Claimant could have removed an apartment full of valuable property from Iran when she was unable even to remove the contents of her safe

deposit box. Thus, even if Mr. Mahvi's testimony were not tainted by his personal animus toward Mr. Riahi, and the fact that it likely was coerced, its credibility is undermined by established facts in the record. The Claimant's witnesses' credible, consistent affidavits provide ample evidence to establish the Respondent's expropriation of the Claimant's personal property in the ASP apartment. The Tribunal's elevation of Mr. Mahvi's testimony over that of the Claimant's affiants simply defies explanation.

J. Contractual Rights to Purchase the Farahzad Apartments

188. The Claimant argues primarily that her contractual rights to purchase the Farahzad apartments were expropriated *de jure* on 27 February 1980 by the expropriation decree of the Revolutionary Court of Isfahan.[94] That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her contractual rights by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities which, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's contractual rights.

189. The Claimant contends that the Respondent's actual occupation of the apartment complex and its official policy of hostility toward U.S. nationals located in Iran prevented the Claimant, or an agent designated by her, from returning to Iran to exercise her contractual rights. As additional support, she relies on the Interlocutory Award in *Starrett*, in which this Chamber found that the Respondent's appointment of a temporary manager in late January 1980 to supervise construction of the Farahzad apartments resulted in the expropriation of the property rights of the claimants, the construction corporations which had been developing the Farahzad apartment complex.[95] The Claimant asserts that her rights as an apartment purchaser, like those of the claimants in *Starrett*, were nullified by the Respondent's substantial interference with the Farahzad project.

190. The Respondent asserts unconvincingly that no taking of the Claimant's contractual rights occurred, because the Claimant had the opportunity to assign those rights to a third party even after she fled Iran. The Respondent cites the Final Award in *Starrett*, in which the

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[94] She relies on *Phillips Petroleum Company Iran* and *The Islamic Republic of Iran, et al.*, Award No. 425-39-2 (29 June 1989), *reprinted in* 21 Iran-U.S. C.T.R. 79, 101, as proof that contract rights are property rights capable of expropriation.

[95] *See Starrett I, supra* note 84, at 155.

Tribunal valued the future revenues of the Farahzad project, based, in part, on its considered estimation of the number of apartments in the complex available for resale after the date of expropriation.[96] Based on this Chamber's determination that "a reasonable businessman purchasing the [Farahzad] Project . . . would consider that there would be a substantial number of apartments available for resale," the Respondent concludes that the Claimant's contractual rights were assignable.[97]

191. What the Respondent fails to grasp, however, is that this Chamber, in making the above determination, was not ruling on the specific rights of any particular claimant; rather, it was merely attempting to establish standards of valuation in the absence of specific information on the number of apartment purchasers who were in fact in a position to assign their interests. Indeed, according to the Tribunal, there were difficulties in assessing the number of apartments available for resale "because . . . the persons who had bought them were among those who had left Iran permanently following the Islamic Revolution."[98] The Tribunal further found that the assignability of contractual rights depended on the "political circumstances" of each apartment purchaser.[99] According to the evidence, it is clear the Claimant was an apartment purchaser who, because of her presumed connection with the Pahlavi family, had virtually no chance of assigning her contractual rights. Article 13 of both of her apartment purchase agreements provides that the Claimant "is not permitted to transfer or give this Contract or [her] rights connected with it to any other person without prior written consent of the company." According to *Starrett*, the Respondent controlled the management of the Farahzad apartments as of the end of January 1980.[100] As the Claimant was a person against whom the Respondent was applying the 27 February 1980 expropriation decree and other measures, it would be incredible to surmise that the Respondent would have permitted the Claimant to exercise her rights of assignment under the contracts. Thus, there was in fact no reasonable means by which the Claimant could have recouped her financial losses arising out of the Respondent's interference with her contractual rights. Although the Tribunal's erroneous conclusion that the *caveat* expressed in *Case No. A18* barred her Claim to the contractual rights to the Farahzad apartments (*see infra* at paragraphs 211-214), the

[96] *Starrett II, supra* note 86, at 209.

[97] *Id.* at 210.

[98] *Id.* at 209.

[99] *Id.*

[100] *Starrett I, supra* note 84, at 154.

Claimant has proven both her ownership and the Respondent's expropriation of those contractual rights.

K. Automobiles

192. The Claimant argues primarily that her property interests in her two automobiles were expropriated *de jure* on 27 February 1980 by the expropriation decree of the Revolutionary Court of Isfahan. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in her automobiles by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's automobiles.

193. As to the Toyota, a letter dated 14 May 1983 from the Foundation for the Oppressed to the Islamic Revolutionary Court of Isfahan explains that the Toyota was being held by the Foundation at its headquarters.[101] Mr. Riahi's diary and the affidavit of Ms. Stubbs provide further evidence that the Revolutionary Guards seized the Claimant's Toyota during the raid on the ASP apartment in early March 1980. As to the Peykan, the Claimant asserts that it was kept outside Tarvandan's company offices at 781 Eisenhower Avenue and was taken by the Revolutionary Guards when they raided Tarvandan and other Riahi-owned companies at the same location in March 1980.[102]

194. The Tribunal's mistaken finding that the Claimant failed to prove her ownership of her Peykan automobile obviated its discussion of that car's expropriation. As to the Toyota, the Tribunal appropriately recognizes the Respondent's *de facto* expropriation of that car "not later than 15 March 1980," around the time when the Respondent's agents invaded the Claimant's ASP apartment. Award at para. 382.

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[101] That the Foundation, in that letter, considered the Toyota to be Mr. Riahi's property merely reflects the Respondent's policy of considering all the property of the entire Riahi family to be owned by Mr. Riahi. Mr. Riahi's first-degree relatives were included within the scope of the original expropriation decree. *See supra* at para. 153.

[102] The Respondent maintains that the Toyota belonged to Mr. Nabavi, not the Claimant or her husband. This assertion, however, is refuted by the Claimant's affidavit, in which she indicates that although Mr. Nabavi owned a similar Toyota, his car, which he kept at his residence at Rahmat Abad farm, was not expropriated by the Foundation, whereas the Claimant's, which she used in Tehran, was indeed seized. The Tribunal thus properly rejects the Respondent's theory. *See* Award at para. 382.

L. Horses

195. The Claimant asserts that, pursuant to the 27 February 1980 expropriation decree, the Respondent expropriated her four horses (Festival, Sharareh, Pishdad and Tarlon), which were stabled at Rahmat Abad farm. That decree and the inclusion in its application of "first-degree" relatives, specifically the Claimant, are detailed above at paragraph 153. The Claimant's loss of her property interests in her horses by virtue of the 27 February 1980 decree is reinforced by contemporaneous actions of Iranian state authorities in implementing such decree. These actions, even absent the expropriation decree, would give rise to a valid claim of *de facto* expropriation of the Claimant's horses.

196. The Claimant asserts that after the expropriation decree was issued, the Revolutionary Guards removed the four horses from Rahmat Abad farm. To prove this, she cites the 8 March 1981 letter of Mr. Nabavi, in which he recounts that after he learned that "they [the Foundation] had taken away the horses" (all four of which were proven to be at the farm at the time of the 27 February 1980 decree), he protested the seizure in an Iranian court.

197. The Tribunal concluded that the Claimant proved the Respondent's expropriation only of one of the two horses it concluded that she owned, the colt Pishdad. Award at para. 378. In so doing, the Tribunal credits Mr. Nabavi's subsequent testimony over his 8 March 1981 letter. For the reasons discussed, above in paragraph 69, the Tribunal again is wrong to give credence to this belated, contradictory and coerced testimony.

V. *CAVEAT* ISSUES

198. In *Case No. A18*, the Full Tribunal held that "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim." As noted by the Tribunal, in the present award, "[t]he Respondent has the burden of proving that a meritorious claim should nonetheless be dismissed due to the caveat." Award at para. 257. Here, the Tribunal correctly holds that the A18 *caveat* poses no obstacle to the Claimant's recovery of her expropriated shares of Bank Tehran and Iran Bohler, but it incorrectly concludes that the *caveat* bars her claim to the ASP and Farahzad apartments. In so ruling, the Tribunal has expanded its *caveat* jurisprudence without justification. Because the Tribunal concluded that the Claimant's claim for her expropriated interests in Sarhad Abad constituted an inadmissible "late filing," the Tribunal did not discuss the possible applicability of the *caveat*. The following section, however,

discusses the application of the *caveat* to all five companies to which the Respondent argued that it applied.

A. Bank Tehran

199. The Respondent argues that Iranian banking and exchange laws place restrictions on the ownership of bank shares by foreign nationals and, because the Claimant exclusively used her Iranian nationality to purchase her shares in Bank Tehran, the *caveat* applies.[103] The Tribunal notes that the Respondent failed to indicate in its submissions the particular law that it alleges reserves the right of bank share ownership to Iranians. Award at para. 284. For this reason alone the argument should fail. The only possibly relevant law would seem to be Article 31(d) of the Monetary and Banking Law of Iran which states: "Iranian banks may not transfer more than 40 per cent of their shares to foreign nationals or to legal entities not having 100 per cent of their capitals owned by Iranian nationals."

200. As Article 31(d) implies, there is no substance to the Respondent's argument that the *caveat* applies to the Claimant's Bank Tehran shares. There is no evidence that the ownership of bank shares was reserved solely for Iranian nationals. The Claimant's share certificates make no indication of her nationality or her Iranian identification number. Additionally, Bank Tehran's Articles of Association include no restrictions on foreign share ownership. In fact, according to the Articles of Association, Bank Tehran issued only one class of stock, which was freely traded on the Tehran Stock Exchange. Moreover, the Claimant in no way violated Article 31(d) of the Monetary and Banking Law. The Claimant alleges ownership of 33,871.70 shares of Bank Tehran. According to its Articles of Association, Bank Tehran issued six million shares of stock. As such, the Claimant's share ownership constituted only 0.56 percent of the total amount of Bank Tehran shares, far less than the 40 percent cap. Indeed, the Bank's records indicate that total foreign ownership of its shares (even including those of the Claimant) could not have exceeded .63 percent, because the number of shares owned by foreigners (exluding the Claimant's shares) totaled only 3,453. The Respondent has provided no proof that the Claimant's small percentage of stock in any way violated Iranian law. Thus, the *caveat* could in no event bar the Claimant's

[103] *Iran* and *United States*, *Case No. A/18*, Decision No. DEC 32-A18-FT (6 Apr. 1984), *reprinted in* 5 Iran-U.S. C.T.R. 251, 265-66 ("In cases where the Tribunal finds jurisdiction based upon the dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim.")

recovery of her expropriated shares in Bank Tehran, as recognized by the Tribunal. Award at para. 287.

B. Iran Bohler Pneumatic Private Joint Stock Company

201. The Respondent argues that the ownership of stock in Iran Bohler by foreigners was subject to a 49 percent cap pursuant to "executive by-laws" to the Law for the Attraction and Protection of Foreign Investments ("LAPFI"). The Respondent asserts that from 11 July 1978 until the Claimant's departure from Iran, the company had issued 20,000 shares, of which 11,000 Class A shares were designated for the company's Iranian partners and 9,000 Class B shares for the Austrian partners. Thus, the Respondent claims that the Claimant could only have acquired her Class A shares by using her Iranian nationality.[104]

202. The Tribunal has consistently rejected the Respondent's claim that LAPFI imposes restrictions on foreign investments in Iran that would require application of the *caveat*. In *Kimberly-Clark*, for example, the Tribunal found that:

> the purpose of [LAPFI] is to grant special protection in favor of investments approved by Iranian Public Authorities, but none of its provisions precludes foreign investors from making investments in Iran without seeking such a privileged position. Such investments would not be unlawful, they would only not enjoy the privileges provided for in the law. . .. [105]

Similarly in *Sabet*, the Tribunal found that although LAPFI may set limits on the percentage of foreign shareholdings that would be granted special protections, the law did not bar the ownership of non-protected shares.[106] Thus, even though the Claimant owned Class A shares, subscribed to by Iranians, she did not enjoy a benefit reserved solely to Iranian nationals.

203. Additionally, there is nothing in Iran Bohler's Articles of Association that restricts the ownership of shares by foreign nationals. Article 4 provides that the shares of the company

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[104] It should be noted that the Respondent has proffered no evidence that the Claimant's shareholdings in Iran Bohler would have caused total foreign ownership to exceed the alleged 49 percent cap on such ownership. In the relevant period foreign ownership in Iran Bohler totaled 9,000 of 20,000 shares, or 45 percent of the company's total shares (not 49 percent, as claimed by the Respondent). The Claimant owned 500 shares of Class A stock, or 2.5 percent of the total company shares. Thus, even if a 49 percent cap existed, the Claimant could not have violated it, given that her percentage of ownership combined with that of the foreign shareholders equaled 47.5 percent of total share ownership.

[105] *Kimberly-Clark Corporation* and *Bank Markazi Iran, et al.*, Award No. 46-57-2 (25 May 1983), *reprinted in* 2 Iran-U.S. C.T.R. 334, 339.

[106] *Sabet, supra* note 13, at para. 124.

are divided into two groups: Group A shares, subscribed to by Iranian nationals, and Group B shares subscribed to by foreign nationals. The statement of share allocation in Article 4 is merely descriptive and contains no further prohibitions against the transfer or ownership of shares by non-Iranians. Article 15 of the Articles of Association states that the shares of the company "shall be transferred only with the approval of the Board of Directors." This is a provision of general application that simply sets forth the requirement of a formality without imposing a restriction on transfer or ownership directed specifically at foreign shareholders. Thus, the Tribunal correctly recognizes that the *caveat* does not bar the Claimant's claim to her shares of Iran Bohler. Award at para. 289.

C. Ownership of Real Property in Iran: ASP Apartment, Contractual Rights to Farahzad Apartments, and Sarhad Abad Land

204. The Respondent's contention that the *caveat* bars the Claimant from bringing claims in connection with her ownership of the ASP apartment, her contractual rights to purchase the Farahzad apartments and land owned by Sarhad Abad is unfounded. It should be emphasized at the outset that the issue of whether the *caveat* bars claims arising out of ownership by dual nationals of real property in Iran is a matter of first impression for Chamber One. Further, the approaches of the only two Tribunal cases to address the issue squarely, *Karubian*,[107] decided by Chamber Two, and *Moussa Aryeh*,[108] decided by Chamber Three, have varied in certain respects. In *Karubian*, Chamber Two, after reviewing the relevant Iranian laws and regulations, found that the right to acquire real property in Iran was a benefit reserved solely for Iranians, and it applied the *caveat* as a complete bar to all of the claimant's allegations based on ownership of real property.[109]

205. In *Moussa Aryeh*, on the other hand, Chamber Three, while acknowledging that a "complex legal regime" regulated real estate ownership in Iran, found no "comprehensive provision in Iranian law that contains an express prohibition on the ownership of real estate by foreign or dual nationals."[110] The Chamber also recognized that, under Article 989 of the Iranian Civil Code, the claimant's property, even if deemed to be unlawfully owned by an "alien," would be subject to a forced sale by the public prosecutor, the proceeds of which

[107] *See Karubian, supra* note 13.

[108] *See Moussa Aryeh, supra* note 13.

[109] *See id.*

[110] *Moussa Aryeh, supra* note 13, at 391-92.

would accrue to the claimant.[111] As a result, Chamber Three applied the *caveat* as a rule of equity, permitting the claimant to recover compensation in an amount equal to what he would have received from a forced sale net of expenses.[112]

206. The seemingly inconsistent positions in *Karubian* and *Moussa Aryeh* make more sense when viewed in light of the Tribunal's treatment of perceived abuses of Iranian nationality. The leading Tribunal case in this regard is *James M. Saghi.*[113] In *Saghi*, one of the claimants had renounced his Iranian nationality when he was eighteen years old, and later re-acquired such nationality for the sole purpose of purchasing shares in a company that he believed could be owned only by Iranian nationals. This patently egregious conduct on the part of the claimant prompted Chamber Two to apply the *caveat* to deny any recovery whatsoever for the expropriated shares on the grounds that to do otherwise "would permit an abuse of right."[114]

207. In *Karubian*, Chamber Two, citing *Saghi*, applied the *caveat* to bar any recovery whatsoever by the claimant because, based on the circumstances of the case, the Chamber perceived that awarding the claimant compensation likewise "would be permitting an abuse of right."[115] The circumstances in *Karubian* were as follows: Karubian had been born in Tehran in 1918, began residing permanently in the United States in 1948 and became a naturalized U.S. citizen in 1954.[116] Between 1957 and 1973, however, he relied on his retained Iranian nationality to speculate on the Iranian real estate market, purchasing several parcels of undeveloped land.[117]

208. Chamber Three reached a different result in *Moussa Aryeh* because, assessing the specific facts before it, and also relying on *Saghi*, it found that the claimant's conduct did not "rise to the level of an abuse of rights."[118] Although the claimant, like Karubian, had purchased real estate in Iran after acquiring U.S. nationality:

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[111] *Id.* at 393.

[112] *See id.* at 394-95.

[113] *See Saghi, supra* note 13.

[114] *Id.* at 40.

[115] *Karubian, supra* note 13 (citing *Saghi, supra* note 13).

[116] *See id.* at 8.

[117] *See id.* at 16-24.

[118] *Moussa Aryeh, supra* note 13, at 386, 393 (citing *Saghi, supra* note 13).

> Unlike Allan Saghi, who deliberately manipulated his citizenship in an attempt to obtain certain advantages that he believed were reserved for Iranian nationals, the Claimant in the present Case [Aryeh] has in no way abused his nationality. "Use" is not the same as "abuse." The Claimant's mere use of an Iranian identity card, even if he had not disclosed his second nationality, simply does not rise to the level of an "abuse of nationality" within the meaning of *Saghi*.[119]

In the absence of a perceived abuse of nationality, but mindful of the "complex legal regime" regulating foreign investment in Iran, Chamber Three nominally invoked the *caveat*, but limited its effect to awarding the claimant compensation equal only to the amount that he would have received upon a forced sale of his property net of expenses.[120]

209. *Karubian's* and *Moussa Aryeh's* approach to the *caveat* thus are logically consistent. Despite some disagreement as to the interpretation of Iranian law related to real property ownership by foreigners, each chamber applied the *caveat*. However, the determination of the appropriate remedy each Chamber applied depended on the degree to which the respective dual national claimant was seen to have abused his Iranian nationality in obtaining the real property in question. In *Karubian*, an abuse of right existed that reinforced Chamber Two's decision to apply the *caveat* as a wholesale bar. In *Moussa Aryeh*, to the contrary, an abuse of right was absent, and thus Chamber Three applied the *caveat*, but still allowed the claimant to recover a substantial portion of his losses. Thus, the crucial determination in Tribunal cases related to dual national ownership of real property in Iran is whether or not ownership resulted from an abuse of Iranian nationality.

210. Turning to the instant Case, it is clear that the Claimant did not in any way abuse her Iranian nationality. She simply identified herself as an Iranian national in purchasing the ASP Apartment and her equity interest in Sarhad Abad, and to enter into contracts to purchase the Farahzad apartments. As in *Moussa Aryeh*, this is a legitimate "use" of nationality, not an "abuse." Moreover, the evidence adduced in this Case demonstrates that the Claimant's motives for purchasing the real property were more benign than those of Saghi, Karubian, and even Aryeh. The Claimant was not simply speculating on the Iranian real estate market. She resided in the ASP apartment for several months, in addition to renting it out. Because construction on the Farahzad apartments was not completed before the Claimant left Iran, it is impossible to infer what her use of those apartments would have

[119] *Karubian, supra* note 13, at 386.

[120] *See Moussa Aryeh, supra* note 13, at 395.

been. Given these facts, one can only conclude that the Claimant did not abuse her Iranian nationality. Thus, at bottom, the Claimant is entitled to compensation according to the forced sale formula set forth in *Moussa Aryeh.*

211. If anything, the Claimant's case is even further distinguishable from *Saghi*, *Karubian* and even *Moussa Aryeh.* Unlike the claimants in those cases – Iranian by birth who chose their second nationality by applying to become naturalized as U.S. citizens – the Claimant's second nationality (Iranian) was imposed upon her. Article 976 of the Iranian Civil Code considers as an Iranian national "[e]very woman of foreign nationality who marries an Iranian husband."[121] Thus, because the Claimant married an Iranian citizen, she automatically became an Iranian national by operation of Iranian law. Moreover, under Article 986 of the Iranian Civil Code, it was impossible for the Claimant to renounce her Iranian nationality, barring divorce or the death of her husband.[122] In short, the Claimant had no choice but to become and remain an Iranian upon marrying her husband.

212. This fact is significant, as the Tribunal, in assessing the applicability of the *caveat*, has always been sensitive to the cause of a claimant's nationality. For example, in his concurring opinion in *Case No. A18*,[123] Judge Mosk stated that the specific factors giving rise to Iranian nationality, such as marriage, and the claimant's ability to renounce his Iranian nationality "should be taken into consideration if and when the use, or alleged misuse, by 'dual nationals' of their Iranian nationality is at issue."[124]

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[121] Iranian Civil Code, art. 976.

[122] Iranian Civil Code, art. 986. The Tribunal cites Article 986 to "confirm[] the existence of limits on foreign ownership of real property under Iranian law." Award at para. 264. The Tribunal notes that a foreign woman married to an Iranian man is, by Iranian law, considered an Iranian citizen, although she may revert to her former nationality after the death of her husband or her divorce from him. The Tribunal, however, then states that "*such a woman* who becomes a foreigner will not be allowed to keep the ownership of real properties in excess of what is allowed for foreigners." Award at para. 266. This Case, however, has nothing whatsoever to do with "such a woman." Indeed, Article 986 itself expressly limits its application to "a woman who becomes a foreign national in accordance with this Article," *i.e.*, by divorce from or the death of her husband. Article 986 may, as the Tribunal claims, "confirm[] the existence of limits on foreign ownership of real property under Iranian law," but it is irrelevant to this Case.

[123] *Case No. A18*, *supra* note 103.

[124] Concurring Opinion of Richard M. Mosk in *Iran* and *United States, Case No. A/18*, Decision No. DEC 32-A18-FT (10 Apr. 1984), *reprinted in* 5 Iran-U.S. C.T.R. 269, 272-73. *See* Concurring Opinion of Willem Riphagen in *Iran* and *United States, Case No. A/18*, Decision No. DEC 32-A18-FT (11 Apr. 1984), *reprinted in* 5 Iran-U.S. C.T.R. 273, 274-75 (noting the significance of nationality obtained through marriage).

213. The recent *Sabet* case, decided by Chamber Two, provides a more in-depth treatment of the issue.[125] In *Sabet*, the three claimants, children of a father of Iranian nationality, were born in the United States and thus were U.S. nationals.[126] They alleged ownership of shares of stock in several companies that their father had established in Iran. One of the Respondent's principal arguments in that Case was that the *caveat* barred the claim because the claimants abused their Iranian nationality.[127] Specifically, it was alleged that certain Iranian laws, including the Law for the Expansion of Public Ownership of Productive Units ("Law of Expansion"), restricted foreign ownership of company shares to Iranian nationals, and that the claimants abused their Iranian nationality by not disclosing to Iranian authorities that the shares at issue were held by or on behalf of U.S. nationals.[128] The claimants responded that because, under Article 988 of the Iranian Civil Code, they were not permitted to renounce their Iranian nationality until they were 25 years old, and because Iranian law does not recognize dual nationality, they had no choice but to hold their shares as Iranian nationals.[129] Chamber Two found in favor of the claimants:

> Here, the Claimants did not actively seek Iranian nationality to minimize the adverse effects of the Law of Expansion. Quite to the contrary, the Claimants' Iranian nationality was conferred on them by reason of their father's nationality, and under Article 988 of the Civil Code of Iran, under ordinary circumstances, they had no ability to renounce that nationality until they reached 25 years of age. And because only their Iranian nationality would be recognized in Iran, the Claimants had no choice but to hold their shares as Iranians.[130]

In light of these findings, Chamber Two wholly rejected Iran's *caveat* argument.[131] *Sabet's* relevance to the Claimant's case is clear, because it demonstrates the Tribunal's practice of not penalizing a dual national claimant for enjoying the benefits of Iranian nationality when such rights are imposed upon him or her.

214. Thus, in entering into arrangements to own real property in Iran, the Claimant was not only acting in a permissible manner, but also was using rights that the Respondent's civil law

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[125] *See Sabet, supra* note 13.

[126] *See id.* at para. 32.

[127] *See id.* at para. 111-13.

[128] *See id.* at para. 111-12.

[129] *See id.* at para. 113.

[130] *Id.* at para. 128.

[131] *See id.*

had imposed upon her without providing her with a reasonable opportunity to renounce those rights. Thus, the Tribunal correctly notes that the Claimant acquired real property in Iran "by using the only possible nationality that she could invoke for purchasing" that property. Award at para. 278. But it is wrong to hold that "[a]llowing the Claimant to recover against the Respondent in this situation would be to permit an abuse of right." *Id.* Indeed, under these unique circumstances, applying the *caveat* to deny this Claimant any compensation whatsoever insofar as her Claim arises out of her ownership of real property interests in Iran contravenes the Tribunal's duty to render fair and just awards. The Respondent's *caveat* argument thus should have been dismissed insofar as it denies the Claimant any compensation for her expropriated real property interests.

VI. VALUATION AND COMPENSATION

215. Before discussing the Tribunal's individual findings concerning the valuation of the Claimant's expropriated property, it is first useful to discuss the applicable compensation standard. After setting out that standard, I then examine the evidence establishing the value of the Claimant's ownership interest in Bank Tehran as of 7 June 1979, and the value of her ownership interests, as of 27 February 1980, in Rahmat Abad, Khoshkeh, Tarvandan, Gav Daran, Iran Bohler, the ASP apartment, the personal property that was in that apartment, her automobiles, her four horses, Sarhad Abad and the Farahzad contracts.

A. Standard of Compensation and General Valuation Principles

216. Under the Treaty of Amity,[132] "a deprivation requires compensation equal to the full equivalent of the value of the interests of the property taken."[133] The Respondent deprived the Claimant of her ownership interests in the claimed properties and, accordingly, must fully

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[132] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of American 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.

[133] *Saghi, supra* note 13, at 46 (applying Treaty of Amity in dual-national case); *see also INA Corp., supra* note 18, at 380 (applying Treaty of Amity); *Phelps Dodge Corp.* and *The Islamic Republic of Iran*, Award No. 217-99-2 (19 Mar. 1986), *reprinted in* 10 Iran-U.S. C.T.R. 121, 132 (finding Article IV, paragraph 2 of the Treaty of Amity "clearly applicable" at time claim arose, *i.e.*, November 1980). Article IV, paragraph 2 provides:

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

Quoted in id. at 131.

compensate the Claimant for the value of those interests. For going concerns like Khoshkeh and Rahmat Abad, "full compensation" is the equivalent of the "fair market value,"[134] *i.e.*, the amount that "'a willing buyer would have paid a willing seller for the shares . . . disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares.'"[135] The Tribunal may consider, however, "'prior changes in the general political, social, and economic conditions which might have affected the enterprise's business prospects as of the date the enterprise was taken. . . .'"[136]

217. As it has done in past Awards, the Tribunal should value all of the Claimant's expropriated ownership interests based on the evidence in the record, taking all circumstances into account.[137] The Tribunal has held that although "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 [her] lack of access to detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place."[138]

B. Valuation Reports Submitted by the Parties

218. On 2 February 1993, the Claimant submitted a valuation report of Rahmat Abad and Khoshkeh prepared by Mr. W. Thomas Curtis. On 20 December 1996, the Claimant submitted a second valuation of Rahmat Abad and Khoshkeh prepared by Robert F. Reilly, of Willamette Management Associates. Mr. Reilly's report also contained valuations of Bank Tehran, Tarvandan and Gav Daran. To appraise Rahmat Abad, Mr. Reilly relied on data provided by Dr. Hossein Damavandy, a pomologist, projecting the orchard's fruit production, revenues and operating costs. Dr. Damavandy's data had been evaluated and confirmed by a second pomologist, Dr. Essmaeil Fallahi. To appraise Khoshkeh, Tarvandan and Gav Daran, Mr. Reilly relied on the expert testimony of Mr. Manoochehr Vahman, an official surveyor of the Iranian Ministry of Justice from 1968 - 1982.[139] In addition, Nikki Jersin & Associates,

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[134] *See id.*; *see also American International Group, Inc., et al.* and *The Islamic Republic of Iran*, Award No. 93-2-3 (19 Dec. 1983), *reprinted in* 4 Iran-U.S. C.T.R. 96, 109; *Starrett II, supra* note 86, at 201.

[135] *Saghi, supra* note 13, at 46 (*quoting INA Corp., supra* note 35, at 380).

[136] *Id.* (*quoting American International Group, supra* note 134, at 107).

[137] *See Starrett II, supra* note 86, at 221.

[138] *Sabet, supra* note 13, at para. 5; *see also Sola Tiles, supra* note 25, at 238.

[139] Mr. Vahman also appraised the ASP apartment.

E.C. Hersey Appraisal, Shahin Khalili and Jeffrey Fuller Fine Art, Ltd. appraised the Claimant's personal property seized from the ASP apartment. The Claimant herself presented sworn testimony and other evidence as to the value of the above-listed properties, as well as of Iran Bohler, her two automobiles, her four horses and her contract rights to the Farahzad apartments. Mr. Reilly and Dr. Fallahi testified also at the Hearing.

219. The Respondent relied principally on valuation reports of:

(i) Mr. Mohm'mad Ebrahim Ghorbani Farid, who appraised Rahmat Abad, Khoshkeh, Tarvandan and Gav Daran;
(ii) Mr. Gholamreza Salami, who appraised Rahmat Abad and Khoshkeh;
(iii) Mr. Christopher G. Glover, who appraised Rahmat Abad, Khoshkeh, Tarvandan, Gav Daran, Iran Bohler and Sarhad Abad; and
(iv) Dr. Manouchehr Pooya, who appraised the Claimant's ASP apartment, as well as the land and buildings of Khoshkeh and Tarvandan.

220. In appraising Rahmat Abad, the Respondent's experts relied on testimony from Mr. Ata-ollah Nabavi and on agricultural reports prepared by Engineer Ahmad Darbani, Mr. Morteza Mortazavi, Dr. Vazgin Grigorian and Dr. Kazem Arzani. Messrs. Glover, Salami and Nabavi also testified at the Hearing.

221. The following section reviews the evidence relating to the valuation of each property interest at issue.

C. The Evidence Presented

1. Bank Tehran

222. Bank Tehran's stock was publicly traded on the Tehran Stock Exchange until late 1978, when the Revolution brought trading to a halt. Uncontroverted evidence establishes the Claimant's ownership of 33,871.7 shares of Bank Tehran.[140] The Respondent expropriated the Claimant's shares on 7 June 1979, pursuant to the LNB of the same date. The Claimant values her shares of Bank Tehran at their last (25 October 1978) publicly

[140] *See supra* at para. 63.

documented price on the Tehran Stock Exchange prior to their expropriation, or at 2,350 Rials ($33.29) per share. The Claimant thus seeks $1,127,457 for her 33,871.7 shares.[141]

223. The Respondent argues that the last traded share price improperly fails to account for the negative effects of the Revolution on bank share prices during the period between cessation of trading (October/November 1978)[142] and expropriation (7 June 1979). Specifically, the Respondent argues that repeated violence against banks during that period necessarily depressed Bank Tehran's share prices. To that end, the Respondent cited newspaper articles documenting arson and vandalism against banks by Iranian revolutionaries. The Respondent's expert noted the "intense crisis" propelling banks to "the brink of bankruptcy" by 20 September 1978.

224. The Respondent values the Claimant's shares of Bank Tehran at 717.096 Rials per share, based on a Government-appointed auditor's report, as adjusted by Iran's High Council of Banks, prepared for purposes of compensating shareholders pursuant to the LNB.[143] It is argued that because certain Iranian and foreign shareholders in fact accepted the resulting compensation, the Claimant must follow suit. This argument, however, fails on two counts. First, this Tribunal is charged with ascertaining the *full* value of the Claimant's expropriated shares of Bank Tehran as of the date of expropriation, or as close to that date as possible.[144] An audit that purports to calculate the *liquidation* value of shares based on the balance sheet's

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[141] The Claimant's demand is consistent with Mr. Reilly's valuation, although Mr. Reilly erroneously used an exchange rate of 70.5 Rials to the dollar, thus valuing the Claimant's shares at $1,129,000. Because the Tribunal consistently uses an exchange rate of 70.6 Rials to the dollar, the Claimant properly stated her demand as $1,127,457.

[142] Respondent claims that Bank Tehran was last traded on the Tehran Stock Exchange on 10 September 1978. To that end, Respondent introduced a letter signed by an anonymous representative of the "Tehran Stock Exchange Organization." Respondent is wrong. The Claimant produced a copy of the 28 October 1978 *Tehran Economist*, a weekly business magazine, which recorded Bank Tehran's share price at 2,350 Rials per share as of 25 October 1978. Furthermore, Mrs. Fatemeh Eftekhari, a former official of Bank Tehran, testified by sworn affidavit that Bank Tehran's shares were last traded at 2,400 - 2,500 Rials per share. Although Mrs. Eftekhari did not specify the date of such trades, her specific knowledge that 2,400 - 2,500 Rials reflected the shares' "last quotations" establishes, *a fortiori*, that the trades were made after 25 October 1978. The Respondent's argument that Bank Tehran's shares were last publicly traded in September 1978 collapses under the weight of the evidence before the Tribunal. Indeed, even if Respondent's letter were not contradicted by public documents, its credibility is nonetheless diminished by the fact that it was prepared only recently, in 1997, and only for the purposes of this Case.

[143] On 25 June 1980, the Revolutionary Council adopted the following order:

> Subject to application of the Bill for Nationalization of Banks and Credit Institutions, adopted on [7 June 1979], payment of price of shares to previous owners of the banks will be equal to the amount of capital plus reserves stated in the audit report of the banks, on [7 June 1979], after imposition of annual losses.

[144] *See Saghi, supra* note 13, at 46.

assets and liabilities, as did the report on which the Respondent relies, is irrelevant to the task at hand. Second, the suggestion that certain Iranian and foreign shareholders accepted below-market compensation for their shares is immaterial to the value of the Claimant's shares.[145] Iran presented those shareholders with a *fait accompli*, and those investors lacked recourse to an independent international tribunal to award them fair compensation for their expropriated shares. Moreover, the compromise struck by the Government with foreign investors by which the latter accepted the dissolution value of their shares may have reflected, as is common in such circumstances, their desire to cut their losses or to procure future business in Iran. These considerations are wholly irrelevant to the Claimant.[146]

a) The Claimant's shares should be valued at their last traded price

225. The Tribunal states that it "cannot accept the Claimant's contentions that the value of the shares would have increased after the fall of 1978 and that the events that took place in Iran before the nationalization of the banking industry would not have negatively impacted their value." Award at para. 400. The uncontroverted evidence, however, establishes that Bank Tehran's shares actually *increased* in value throughout 1978, and possibly even into 1979. Bank Tehran's share value, which at the beginning of 1978 had jumped to 2,300 Rials per share from 2,200 Rials, had further increased in value to 2,350 Rials per share by 25 October 1978 (about which date trading on the Exchange stopped). According to the sworn, unchallenged affidavit of a former Bank Tehran official, the Bank's shares later were sold at prices as high as 2,500 Rials per share. This further increase is perhaps unsurprising for two reasons. First, the Respondent conceded that the critical period during which no "reasonable investor or businessman was willing to buy [bank] shares" had been the "*two [to] three months prior* to . . . October 1978[,] when the banks throughout the country were set on fire and their employees went on strike." (Emphasis added.) It is an established fact that the market, whether reasonably or not, valued Bank Tehran's stock at 2,350 Rials per share both prior to and after the fall of 1978. Having survived that tumultuous time, Bank Tehran was well positioned for further increases in its share price. Second, according to the Respondent's own evidence, in December 1978 the Government released $214 billion worth of reserve

[145] *See Khosrowshahi, supra* note 54, at 100 (holding that the Government's payment of 89% of the nominal value of shares to other shareholders of an expropriated bank is "not dispostitive" as to the fair market value to which the claimants are entitled).

[146] Contrary to Respondent's contention, the audit of Bank Tehran was not conducted by Coopers & Lybrand, but by its successor in Iran, Agahan Auditing.

funds into Iran's banks to compensate for large cash withdrawals and the other consequences of the revolutionary violence against banks. Thus, the evidence presented by both Parties suggests that Bank Tehran had successfully weathered the revolutionary storm during the fall of 1978 and was well poised for further growth into 1979.

226. Indeed, Mr. Reilly focussed the Tribunal's attention on the fact that no prior Tribunal case presented valuation evidence comparable to that adduced here: (1) steady prices on the stock exchange before the expropriation; (2) further increases just prior to expropriation; (3) a strong company in a rapidly growing industry; and (4) an impressive history of strong prices over many years for the stock in question. Accordingly, Mr. Reilly "conservatively" valued the Claimant's shares of Bank Tehran at their last publicly documented price of 2,350 Rials per share.

b) The Claimant's 1981 settlement offer is neither admissible nor relevant

227. The Respondent seeks to limit the Claimant's recovery of her expropriated Bank Tehran shares to $532,270, based on the Claimant's telexed settlement offer of 17 September 1981. The Respondent produced only a partial copy of that telex, and only at the eleventh hour, at the Hearing in May 2000. The telex, assuming its authenticity, was sent to Iran by the Claimant's then-attorney before the commencement of this arbitration. It was clearly titled "Possible Negotiations For Direct Settlement of Claims. . . ." The Claimant objected at the Hearing to the introduction into evidence of the document as untimely, incomplete and irrelevant. The Tribunal properly followed its precedents and excluded the document from consideration.[147]

c) The *Khosrowshahi* discount is inapposite

228. The Tribunal must value the Claimant's shares of Bank Tehran at their market value.[148] Market valuation is a simple concept when an open market exists. But "when an open market does not exist for the expropriated asset or for goods identical or comparable to

[147] *See Ford Aerospace & Communications Corporation* and *Air Force of the Islamic Republic of Iran*, Award No. 236-159-3 (17 June 1986), *reprinted in* 11 Iran-U.S. C.T.R. 182, 188 (holding that fairness to, and equality between, the Parties obligated Tribunal to reject unscheduled filings submitted immediately prior to the hearing); *Logos Development Corp.* and *Information Systems of the Islamic Republic of Iran*, Award No. 228-487-3 (30 April 1986), *reprinted in* 11 Iran-U.S. C.T.R. 53, 54; *McCollough & Company, supra* note 19, at 5; *Middle East Management and Construction Corporation* and *Islamic Republic of Iran*, Award No. 202-292-2 (25 Nov. 1985), *reprinted in* 9 Iran-U.S. C.T.R. 340, 345 (rejecting as untimely late submissions due to prejudice to the opposing party and in the interest of "orderly conduct of the proceedings").

it," the Tribunal must determine "what value to conjecture as to the price on which a hypothetical willing buyer and a hypothetical willing seller negotiating at arms length would eventually agree."[149]

229. In valuing Bank Tehran's shares, the Claimant relies on their last publicly documented price on the Tehran Stock Exchange of 2,350 Rials per share in October 1978. Expropriation of those shares, however, did not occur until eight months later. As noted, the Respondent claims that the last traded price fails to account for the Revolution's negative effects on Bank Tehran's share prices. The Tribunal faced the same issue in *Khosrowshahi*.[150] There, as here, the company at issue, Alborz, was expropriated in June 1979 and last had been publicly traded in or around October 1978. In *Khosrowshahi*, the Tribunal used the last traded stock price as a base value and then discounted it by 25 percent to account for the negative effects of the Revolution on the value of those shares.[151] The Tribunal cited Alborz's annual report, which demonstrated that revolutionary "upheaval affected [the company] adversely."[152] The Tribunal concluded that Alborz probably would have survived the Revolution because it sold staple products such as pharmaceuticals and household supplies, rather than luxury items.[153] Here, too, the company at issue (a bank) is in a stable industry that supplies a basic social service. The Tribunal in *Khosrowshahi* similarly discounted a bank's shares by 30%, noting its sharp decline in share price from May to October 1978.

230. Although the Tribunal in the instant Case adopted *Khosrowshahi's* 30 percent discount, the facts do not justify any discounting of Bank Tehran's last traded share price. The Tribunal noted in *Khosrowshahi* that

> the impact of the Revolution should not be exaggerated or reduced to broad generalizations. It can be assumed that a potential investor would be able to distinguish between investments likely to be undermined by the Revolution

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[148] *See Amoco, supra* note 53, at 189.

[149] *Id.*

[150] *See Khosrowshahi, supra* note 54, at 94.

[151] *See id.*

[152] *Id.* at 93.

[153] *See id.*

> and those which might reasonably be expected to recover once the turmoil subsided.[154]

Evidence that Bank Tehran's stock continued to increase in value throughout 1978 (in contrast to the bank at issue in *Khosrowshahi*), and traded at 2,500 Rials per share *after* 25 October 1978, attests to Bank Tehran's resilience and financial health. Indeed, the Tribunal would be justified in valuing Bank Tehran's shares as high as 2,500 Rials per share, for three reasons: (1) evidence presented by both Parties indicates that Bank Tehran had weathered the brunt of the revolutionary storm during the fall of 1978[155] and was well positioned for further growth in 1979; (2) uncontroverted evidence makes clear that Bank Tehran traded as high as 2,350 - 2,500 Rials per share even during the period when banks were being vandalized by Islamic revolutionaries; and (3) an affidavit by a former Bank Tehran official established that Bank Tehran's share price actually increased after the date of the last publicly documented trades on the Tehran Stock Exchange.

231. To be both fair and conservative, however, the Tribunal should have awarded the Claimant compensation for her shares in Bank Tehran based on their last publicly documented price of 2,350 Rials per share. It is unfair and arbitrary, however, to reduce the value of the Claimant's shares to account for alleged effects of the Revolution. The Tribunal's natural inclination to hypothesize that Bank Tehran's share price could not have held steady during Iran's revolutionary tumult must yield to the weight of the evidence presented.

2. Rahmat Abad Natanz Agro-Industrial Private Joint Stock Company

232. Rahmat Abad Natanz Agro-Industrial Company was formed on 6 July 1976 and registered as a private joint stock company on 22 October 1976. The Claimant seeks $23,865,000 as compensation for her 158 shares of Rahmat Abad's 350 outstanding shares, which the Respondent expropriated *de jure* on 27 February 1980.

233. Rahmat Abad owned and operated a large farm, which encompassed the largest quince orchard in Iran. The Parties agree that, at the valuation date, Rahmat Abad consisted of 400 hectares (1,000 acres) of farmland, of which 400 acres had been cultivated with

[154] *Id.*

[155] *See supra* at para. 225.

110,000 quince trees, 17,000 pomegranate trees, 3,000 apple trees, 14,000 grapevines and assorted other kinds of trees. Over 80 percent of Rahmat Abad's farmland was arable, and Mr. Riahi had formulated plans to cultivate much of the orchard's remaining 600 acres through yearly plantings.[156]

234. The farm at Rahmat Abad had been in the Riahi family for four hundred years. Mr. Riahi had inherited the land from his father in 1956, and had transferred it to the Rahmat Abad Natanz Agro-Industrial Co. twenty years later for 44,510,000 Rials ($630,453). Mr. Riahi had invested over $2,125,000 developing Rahmat Abad's orchard. The company had been fully operational long before its expropriation. Apart from its land and orchards, Rahmat Abad's assets included:

- 2 deep wells and a subterranean water supply;
- 19 three-bedroom houses for its workers;
- a maid's house;
- a facility for manufacturing Persian rugs;
- a four-bedroom manager's house with a climate-controlled storage room for Persian rugs, a tea pantry and a mosaic tile dome built in the style of a famous Isfahan mosque;
- a large three-bedroom, three-bathroom owner's residence with a living room, library, two kitchens and servants' quarters;
- a two-bedroom guest house;
- a pigeon tower with 3,500 pigeon niches and a collection facility for the resulting guano fertilizer;
- a public bathhouse;
- an elementary school with a teacher's residence;
- 2 large fruit storage warehouses;
- a horse stable;
- a garage and repair shop;
- assorted farm vehicles and trucks; and
- a generator that supplied all of the farm's electricity.

[156] Indeed, Mr. Riahi noted that the orchard could have expanded even further by acquiring, at no cost, the vacant Government-owned land abutting Rahmat Abad.

235. Prior to its expropriation, Rahmat Abad was famed as Iran's most promising quince orchard. Its principal crop was first-grade "Isfahan" quince. According to *Encyclopædia Iranica*, Isfahan quince is not small and bitter like its "local" counterpart, but is "big and juicy and can be eaten raw." The Respondent's expert reported that quince is an important commodity in Iran, not only for its use in jam and in traditional Iranian cuisine, but also for its "pharmaceutical, industrial . . . and even decorative uses."

236. Evidence submitted by the Parties established that the area around Rahmat Abad provides the "best climate" for growing quince and other pome trees.[157] Dr. Damavandy testified that Rahmat Abad had all the necessary conditions for the successful commercial production of quince, including a sunny, relatively mild climate and good soil with adequate drainage.[158] Indeed, Iran's Ministry of Agriculture recognized Rahmat Abad's achievements by awarding Mr. Riahi, on three separate occasions in the 1970s, one of three "silver medals" presented each year throughout the country for outstanding productivity.

237. The Respondent's experts cited six factors that "could have affected the productivity of crops" at Rahmat Abad: flooding; water shortages; soil deficiencies; pests and disease; frost; and wind. The weight of the evidence, however, makes clear that the Respondent overstates each of these risks.

"Flooding"

238. Engineer Darbani claimed that Rahmat Abad is located in an area of high flood risk, between a "mountainous slope" and a river. In fact, topographical maps of Rahmat Abad submitted by the Respondent demonstrate that, apart from a small group of gardens located on a gentle slope, most of the farm is flat and is bisected by a dry riverbed that provides natural drainage.

239. Dr. Grigorian further claimed that Rahmat Abad had excessive soil throughout the farm, suggesting evidence of prior flooding. Mr. Riahi's detailed records, however, report no flooding at Rahmat Abad. Indeed, the contemporaneous evidence indicates that only once during Mr. Riahi's twenty-four years operating the farm, in 1974, did Rahmat Abad suffer

[157] Mr. Riahi's diary entries from April 1975 to June 1979 confirm that the temperature at Rahmat Abad is consistent with that of Natanz and is conducive to cultivating grapevines and pome trees. Moreover, the Claimant cited evidence that quince is adaptable to more regions than any other fruit tree.

[158] Rahmat Abad is located 100 kilometers from Isfahan, providing it with an accessible market in one of Iran's most populous cities.

sufficiently heavy rains that sediment had to be removed from the farm's aqueduct.[159] Thus, there is no evidence before the Tribunal of abnormally high flood risk at Rahmat Abad to overcome the Claimant's records.

"Water Shortages"

240. The Respondent contends that Rahmat Abad lacked sufficient water resources, thus requiring heavy investment in a modern irrigation system. Engineer Darbani estimated Rahmat Abad's water resources as 21.6 million liters per day, concluding that "[s]uch an amount of water could never have sufficed for irrigation of a garden with aged trees." Dr. Grigorian similarly reckoned that Rahmat Abad's sandy soil would require 22.5 million liters per day to sustain the orchard, or nearly a million liters per day in excess of its estimated existing water capacity. The Respondent's concerns, however, are misplaced.

241. Dr. Damavandy testified that Rahmat Abad's aqueduct and two deep wells produced over 25 million liters of water per day, well in excess of its 5.6 million liter-per-day requirement. Even disregarding Dr. Damavandy's expert assessment of Rahmat Abad's water needs and resources, however, Mr. Riahi's contemporaneous evidence undermines the Respondent's calculations. Engineer Darbani, for instance, opined that Rahmat Abad's quince trees would require watering every three days in summer, whereas Mr. Riahi's diary recorded that the quince trees were on a nine- to twelve-day irrigation cycle, with watering required every six days during summer.[160] It is thus unsurprising that the Respondent's experts exaggerated Rahmat Abad's water requirements. In any case, the record reflects that the municipality of Natanz currently receives half of its water eight months a year from a well at Rahmat Abad, via an 18-kilometer pipeline. Obviously, Rahmat Abad's water supply was sufficient so as to enable the Foundation for the Oppressed both to continue operating the farm *and* to divert its surplus water to Natanz.[161]

[159] Rahmat Abad's aqueduct (or "*qanat*") consisted of more than 45 wells.

[160] Indeed, the Respondent's own expert report on Rahmat Abad corroborates Mr. Riahi's irrigation method, noting that "[t]he interval between irrigation of [quince] tree[s] ought to be 20-25 days, initially, and then 10 days." Parsab Engineer's Report, *Pedological and Agricultural Studies on Rahmatabad Farmland*, at 63.

[161] The farm was fully operating as recently as 20 July 1999, when Dr. Grigorian visited.

"Soil Deficiencies"

242. The Respondent's experts claimed that Rahmat Abad's alkaline soil caused chlorosis and lacked the "elements highly required by trees." Dr. Fallahi, however, who authored the seminal article on the subject, testified that Rahmat Abad used Hawthorne rootstock, which reduced the risk of chlorosis to its trees. Furthermore, soil analyses performed at Rahmat Abad refute claims of excessive soil alkalinity. Indeed, of the 43 soil samples taken at the orchard, 91 percent of them had an acceptable pH level. The small fraction of excessively alkaline soil at Rahmat Abad was easily improved through additional fertilizing.[162] The use of cheap and abundant fertilizer (particularly manure) improved the texture and structure of the soil and provided essential nutrients for the trees.

243. The Respondent's argument that Rahmat Abad's soil restricted proper root growth is similarly misplaced. The independent report by the Parsab Consulting Engineers[163] concluded that Rahmat Abad's deep, sandy soil proved excellent for growing fruit trees because it provided natural drainage and permitted proper root growth.[164] Moreover, Mr. Riahi testified that Rahmat Abad replaced "soil in the tree holes with high-quality soil that promoted strong and healthy rooting of the trees." As a result, Rahmat Abad's 800 acres of Class-Three land were eminently suitable for cultivation of fruit trees.[165]

"Pests and Disease"

244. Dr. Arzani stated that quince trees' susceptibility to pests and disease necessitates costly annual spraying. Additionally, Engineer Darbani claimed that some of Rahmat Abad's

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[162] Rahmat Abad fertilized its orchards intensively every year.

[163] The Parsab Consulting Engineers are a private firm commissioned by the Respondent in 1992 to prepare a comprehensive study "for the purpose of exploiting in the best way possible [the] . . . resources of Rahmat Abad farm."

[164] *See* WESTWOOD, TEMPERATE ZONE POMOLOGY 64 (3d ed. 1991) ("Trees and shrubs do best on deep, well drained sandy or silty loam soils."); MIR-EMADI, FRUIT TREES IN COLD TEMPERATE ZONES 47 (1974) ("[T]he best soil for growing the quince tree is humid deep soil with sufficient shade."); SMITH, THE QUINCE, CALIFORNIA RARE FRUIT GROWERS YEARBOOK 55 (1977) (noting that "quince . . . is best planted in deep well-drained soils"); MEECH, QUINCE CULTURE 33-34 (2d ed. 1896) ("[Q]uince adapts itself to different soils and circumstances.").

[165] According to the Parsab Report, Rahmat Abad's land consisted of four types: (1) 51.5 percent relatively cultivable Grade-Three lands, with a high level of limitation; (2) 29.06 percent relatively cultivable Grade-Three land, with a relatively high level of limitation; (3) 12.04 percent agriculturally unsuitable Grade-Four land; and (4) 7.4 percent uncultivable land. According to the Report, the first category is Class Three SA with "average salinity and alkalization limitations," while the second category has "average topical limitations." Regardless of the technical differences, the report noted 80.6 percent of Rahmat Abad land was Class Three, defined as "relatively capable of being cultivated."

pomegranate trees had been removed due to pests. These claims, however, are refuted by the scientific literature in evidence and are inconsistent with contemporaneous evidence of the farm's operation. Dr. Damavandy established that quince trees are *more* resistant to insects and diseases than are other fruit trees.[166] Moreover, according to Mr. Riahi's detailed, contemporaneous records, Rahmat Abad had never uprooted trees on account of pests. Only once, in July 1979, did Mr. Riahi record observing a few worms in the quince trees; otherwise, Rahmat Abad's quince and pomegranate trees did not even require spraying. In any case, even if pests had ever become a problem at Rahmat Abad, Mr. Riahi noted that pesticides were both inexpensive and widely available in Iran.

"Frost"

245. Dr. Grigorian claimed that Rahmat Abad had extremely cold winters (reaching -11 to -15°C), with delayed frost in early spring. Engineer Darbani further claimed that "frost biting of trees can offset and [cause] damage to the crops of the Farmland in a year." Although that proposition is as unassailable as it is obvious, the uncontroverted contemporaneous evidence establishes that only once in 24 years of farm operations, in 1979, did frost damage the fruit crop. Indeed, Mr. Riahi made clear that the principal reason why he chose quince as Rahmat Abad's main crop was precisely because its buds bloom late in the spring, thus minimizing the danger of frost.[167] Dr. Kazem Arzani, expert for the Respondent, even conceded that "quince is more resistant to winter cold weather" than are other fruits.

"Wind"

246. Finally, Engineer Darbani claimed that wind is a "gardening risk[] in the region concerned." But whatever the risks of wind generally to crops in the region, the record reflects that Rahmat Abad used pine and plane trees as windbreaks and pruned its fruit trees to three meters in height. These precautions mitigated potential wind damage.

247. In conclusion, it is hard to ascribe too much weight to the Respondent's experts' laundry list of problems supposedly afflicting Rahmat Abad, especially given the independent Parsab Consultant Engineers' favorable prognosis of Rahmat Abad's orchards. Indeed, it is difficult to imagine that the Parsab report, which, it should be remembered, was prepared for

[166] *See also* SMITH, *supra* note 164, at 59 (App. J).

[167] Quince blooms around 15-30 April, whereas Respondent's own evidence establishes that frost normally occurs in January, February and March.

the Respondent, would have recommended more than doubling Rahmat Abad's orchards, which it did, had any of these problems been acute. In any event, actual production of the farm, reviewed below, is the best measure of any risks.

a) Experts' Accounting Methodologies

(1) The Claimant's Accounting Methodologies

248. The Claimant's first accounting expert, Mr. Curtis, valued Rahmat Abad using the average of the values produced by five different methods: capitalization of earnings, capitalization of excess earnings, discount earnings flow, discounted earnings flow plus net assets, and opportunity cost-alternative return on investment. The five resulting values ranged from $1,303,142 to $24,415,917, with a weighted median value of $15,802,238.[168]

249. The Claimant's second accounting expert, Mr. Reilly, valued Rahmat Abad initially at nearly $68 million, using the discounted cash flow (DCF) method. According to the DCF method, the value of an income-producing asset is dependent upon:

> (1) the amount and timing of the revenue that is expected over the remaining life of the asset, less the costs required to operate and to maintain the asset; and
>
> (2) the rate at which the projected net cash flow should be discounted to produce the present value of the cash flow.[169]

250. Mr. Reilly estimated Rahmat Abad's fair market value by calculating the revenues and costs over a ten-year period and then discounting the cash flow. The applicable discount rate reflected the return on capital that a reasonable businessman would have expected as of 27 February 1980, as well as the expected rates of inflation, interest and risk.[170] Mr. Reilly later revised his valuation downward, to $52,869,773, due to an erroneous calculation of the discount rate. Mr. Reilly based his calculations on Dr. Damavandy's revenue and cost projections.

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[168] Mr. Curtis added an important proviso to his valuation:

> Because the financial statements of most closely-held companies are designed to reduce taxes rather than report a true economic picture of the company's performance, adjustments to the financial statements are generally made. In the case of Rahmatabad, I have not made any such adjustments . . . [but] have chosen, instead, to accept the financial statements presented to me, realizing that the values may be greatly understated.

[169] *See Amoco, supra* note 53, at 253.

The Claimant's Revenue Projections

251. Dr. Damavandy derived the data supporting Rahmat Abad's fruit production from: (1) his firsthand observations of the farm; (2) research conducted by one of his students for a doctoral dissertation on Rahmat Abad; (3) the expert evaluation of an Iranian colleague Dr. Damavandy dispatched to examine the farm; (4) reports of the average fruit production in the area surrounding Rahmat Abad; and (5) Mr. Riahi's contemporaneous records.[171]

252. According to Dr. Damavandy's research, a quince tree first produces fruit in its fourth year and increases its production by approximately 20 percent in subsequent years. Rahmat Abad planted additional quince trees each year, and thus the trees' maturation dates differed. Dr. Damavandy reported that Rahmat Abad's quince trees would have produced approximately 30 kg of fruit per tree after eight to ten years and 35 kg per tree after fifteen years.[172] Thus, Dr. Damavandy projected that Rahmat Abad's 110,000 quince trees would have produced approximately 1,800,000 kg of fruit in 1980. Regarding the other fruit grown at Rahmat Abad, Dr. Damavandy projected the following yields:

(1) 17,000 pomegranate trees would have produced 30 kg per tree of first-grade pomegranates, yielding 510,000 kg;

(2) 3,000 "*golab paezi*" apple trees would have produced 40 kg per tree of sweet apples, yielding 120,000 kg; and

(3) 14,000 "*rish baba*" grapevines would have produced 15 kg per vine of green grapes, yielding 210,000 kg.

253. Dr. Damavandy calculated the average wholesale price of first-quality Isfahan quince in 1980 at 80 Rials/kg.[173] Dr. Damavandy acknowledged that the Government set the wholesale price of Isfahan quince in 1980 at 70 to 100 Rials/kg, but argued that these price controls led fruit wholesalers to sell low-quality quince at "official" prices and high-quality quince at market prices.

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[170] *See also Starrett II, supra* note 86, at 126.

[171] Dr. Damavandy was born in Iran, educated in Iran and France, and, prior to emigrating to the United States, had been employed as a professor of agriculture in Iran.

[172] Rahmat Abad employed the modern method of planting trees 3 meters apart (rather than the conventional method of 6 meters apart), thus increasing the land's productivity.

[173] Dr. Damavandy noted that first-grade Isfahan quince sold for 100-120 Rials/kg at wholesale fruit distribution centers in Iran in 1980. But this higher price, he noted, included transportation fees and the wholesaler's profit, which did not accrue to Rahmat Abad.

254. Regarding the other fruit, Dr. Damavandy calculated average wholesale prices in 1980 for pomegranates and apples at 60 Rials/kg and for grapes at 70 Rials/kg. The Government-imposed wholesale prices for these fruits were 70 Rials/kg for first-grade pomegranates, 65 Rials/kg for apples and 60 Rials/kg for grapes.

255. Based on Dr. Damavandy's data, Mr. Reilly projected the following 1980 revenues for Rahmat Abad:

(1) 143,985,000 Rials from 1,799,812.5 kg of quince, at 80 Rials/kg;[174]
(2) 30,600,000 Rials from 510,000 kg of pomegranates, at 60 Rials/kg; and
(3) 7,200,000 Rials from 120,000 kg of apples, at 60 Rials/kg.[175]

256. According to Dr. Damavandy's projections, the grapevines would not have begun producing revenue until 1983. In total, based on Dr. Damavandy's estimates, Mr. Reilly projected revenue in 1980 of 181,785,000 Rials ($2,574,858) from Rahmat Abad's fruit.

257. Mr. Reilly also projected Rahmat Abad's income from the additional plantings that Mr. Riahi intended to make in the decade following 1980. In his contemporaneous records, Mr. Riahi projected that, by 1990, Rahmat Abad would have had 285,000 quince trees, an increase of 175,000 trees over the decade. To be conservative, Mr. Reilly assumed expansion of 12,500 quince trees per year, yielding revenue of 135,249,000 Rials between 1984 (the first year of maturity of the new trees) and 1990.

The Claimant's Cost Projections

258. Dr. Damavandy estimated Rahmat Abad's annual maintenance costs at 35 - 40 Rials per quince and pomegranate tree, 36 - 41 Rials per apple tree, and 26 - 31 Rials per grapevine, broken down as follows: (1) 5 Rials per tree/vine for watering; (2) 15 - 20 Rials per tree/vine for fertilizing; (3) 15 Rials per tree for trimming the quince, pomegranate and apple trees, and 5 Rials per vine for trimming the grapevines; and (4) 1 Rial per tree for spraying the apple trees and 1 Rial per vine for spraying the grapevines. Dr. Damavandy

[174] Dr. Damavandy reported that quince trees mature 8 - 10 years after planting, and produce their optimal yields during the 15 years following full maturity. Rahmat Abad planted its quince trees from 1968 to 1977. Accordingly, Mr. Reilly, in Exhibits IV-4 and IV-5 of his valuation report, calculated the average quince yield for each year's crops.

[175] Mr. Reilly relied on Mr. Riahi's belief that Rahmat Abad's 3,000 apple trees were "fully mature" by 1980. In fact, Mr. Riahi's diary records that the 3,000 apple trees were not planted until December 1977, and thus they would not have matured until 1985.

noted that Rahmat Abad had easy access to inexpensive chemical fertilizer from a Government-owned factory in nearby Shiraz. Rahmat Abad used these chemical fertilizers to supplement the manure collected from its own sizable sheepcote and from the manure bought under its long-term contracts with neighboring shepherds. Dr. Damavandy also confirmed Mr. Riahi's testimony that the environment at Rahmat Abad obviated the need to spray quince or pomegranate trees for pests. On the basis of Dr. Damavandy's cost figures, Rahmat Abad's 1980 maintenance costs for trees and grapevines would have totaled 4,917,000 - 5,637,000 Rials ($69,646 - $79,844).[176]

259. Dr. Damavandy testified that total annual costs – including harvesting of the fruit in addition to maintenance of the trees – would not have exceeded 15 percent of Rahmat Abad's gross revenues. (A 15 percent "cost factor," he noted, "was the norm in Iran.") Applying Dr. Damavandy's 15 percent cost factor to Rahmat Abad's forecasted 1980 revenues (181,785,000 Rials, or $2,574,858) establishes 27,267,750 Rials ($386,229) per year in total costs.[177]

(2) The Respondent's Accounting Methodologies[178]

260. For the Respondent, Mr. Farid used an asset-based valuation method to value Rahmat Abad. He posited three alternative valuations. First, assuming that Rahmat Abad did not the farm's real estate or buildings, he valued the company at *negative* 1.1 million Rials. Second,

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[176] Maintaining the 110,000 quince trees (at 35 - 40 Rials per tree) costs 3,850,000 - 4,400,000 Rials, the 17,000 pomegranate trees (at 35 - 40 Rials per tree) costs 595,000 - 680,000 Rials, the 3,000 apple trees (at 36 - 41 Rials per tree) costs 108,000 - 123,000 Rials, and the 14,000 grapevines (at 26 - 31 Rials per vine) costs 364,000 - 434,000 Rials.

[177] With total estimated costs of 27,267,750 Rials, including estimated maintenance costs of 4,917,000 - 5,637,000 Rials, Rahmat Abad's costs for harvesting the fruit (and the farm's other non-maintenance, operational costs) would be 21,630,750 - 22,350,750 Rials ($306,385 - $316,583).

[178] It has been pointed out that on 4 September 1971 Mr. Riahi had conveyed title to Rahmat Abad's land to his son Jahan, but retained for himself the benefits of the farm during his lifetime. It is thus alleged from this single piece of evidence that the Rahmat Abad Natanz Agro-Industrial Co. acquired a usufruct, but not a fee simple, in Rahmat Abad's real property when it was later conveyed to it. In other words, it is argued, when the Rahmat Abad Natanz Agro-Industrial Co. was formed in 1978, the company purchased, for 44,510,000 Rials, a "hollow" piece of property. This theory cannot withstand even minimal scrutiny, for two reasons. First, it flies in the face of the evidence before the Tribunal. The Claimant produced the title deed to Rahmat Abad, in which Mr. Riahi assigned the farm ("consisting of orchards, buildings, properties and sheepcotes" and "all ancillaries, belongings, [and] facilities . . .") to Rahmat Abad Natanz Agro-Industrial Co. on behalf of Mr. Riahi personally *and* Jahan Shariar Riahi, "as per [his] Power of Attorney." Mr. Riahi's diary confirms this transfer: "After one year of going through tremendous red tape and administrative bureaucracy, I was finally able to transfer the *entire* farm of Rahmat Abad . . . to Rahmat Abad Natanz Agro-Industrial Private Joint Stock Company. . . ." (Emphasis supplied.) Second, in 1978, Rahmat Abad secured a 22,010,000 Rial mortgage from the Agricultural Development Bank of Iran. Banks notoriously are not in the business of mortgaging "hollow" properties whose profits belong to persons other than the deed holders. The Tribunal thus properly rejected the Respondent's argument. Award at para. 496.

assuming that Rahmat Abad owned the farmland, but not the buildings, he valued the company at 48.8 million Rials. Third, assuming that Rahmat Abad owned both the farmland and the buildings, he valued the company at 206.7 million Rials, although he argued that the actual transaction price would be at least 20 percent lower.[179]

261. Like Mr. Farid, Mr. Glover valued Rahmat Abad based on its net assets,[180] which he valued at 205,000,000 Rials, or $2,903,683.[181] Mr. Glover sought to justify application of the asset-based valuation methodology because, he argued, "agricultural land frequently changes hands," "market values can be assessed with confidence" and any "above-average profitability stems from [the farmer's] personal input and does not pass with the farm." Accordingly, Mr. Glover first estimated Rahmat Abad's net assets, and then, for confirmation, compared that figure to the alleged price of a specific parcel of farmland in the region and, more generally, to the price of agricultural land in the United Kingdom.[182]

262. Mr. Salami, by contrast, valued Rahmat Abad at 325,721,800 Rials ($4,613,623), using the average of values resulting from five different methods:

(1) asset-based (218,070,000 Rials, or $3,088,810);

(2) investment made plus compund interest, based on Dr. Pooya's and Engineer Darbani's valuations of Rahmat Abad's land and superstructure (425,145,000 Rials, or $6,021,884);

(3) investment made plus compound interest, based on Mr. Riahi's contemporaneous record of Rahmat Abad's investments (393,723,000 Rials, or $5,576,813);

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[179] Mr. Farid's "assumption" that the Rahmat Abad "company was not the real owner of the Rahmat Abad Farm and installations therein" is erroneous. He argued that "the title deeds were only superficially transferred to the company." Mr. Farid, however, offered no evidence for his "assumption," which, as recognized by the Tribunal, is contradicted by the title deed in evidence. Award at para. 496. Any valuation failing to account for Rahmat Abad's buildings and "installations" can only be understated.

[180] Mr. Glover relied on Engineer Darbani's valuation report, which appraised Rahmat Abad's land, trees and agricultural installations at 234,820,000 Rials, or $3,326,062.

[181] This figure ignores the 25 percent minority discount that Mr. Glover applied to the Claimant's 45.14 percent stake in Rahmat Abad. Minority discounts, as Mr. Glover conceded, are "inevitably a matter of highly subjective judgement." They are also, as a matter of Tribunal practice, not applied to minority holdings. *See Harold Birnbaum* and *The Islamic Republic of Iran*, Award No. 549-967-2 (6 July 1993), *reprinted in* 29 Iran-U.S. C.T.R. 260, 292 (rejecting minority discounts as unprecedented in Tribunal jurisprudence).

[182] Mr. Glover noted that Mr. Riahi had transferred Rahmat Abad's farming property to Rahmat Abad Agro-Industrial Co. for 44,510,000 Rials ($630,453) in September 1978. As Mr. Glover properly observed, however, Rahmat Abad's "fiscal value" does not represent its "market value," even though the fiscal value may have been stated as the market value for tax purposes.

(4) discounted cash flow, based on 70 percent of Dr. Damavandy's production, price and cost estimates and a 32 percent present value discount rate (354,035,000 Rials, or $5,014,660); and

(5) discounted cash flow, based on Engineer Darbani's production, price and cost estimates and a 32 percent present value discount rate (237,636,000 Rials, or $3,365,949).

The Respondent's Revenue Projections

263. Engineer Darbani estimated 1980 fruit production and revenue as follows:

(1) 15 kg per quince tree, yielding 1,650,000 kg at 50 Rials/kg, for a total revenue of 82.5 million Rials;

(2) 20 kg per pomegranate tree, yielding 340,000 kg at 55 Rials/kg, for a total revenue of 18.7 million Rials;

(3) 30 kg per apple tree, yielding 90,000 kg at 50 Rials/kg, for a total revenue of 4.5 million Rials; and

(4) 10 kg per grapevine, yielding 140,000 kg at 50 Rials/kg, for a total revenue of 7.0 million Rials.

Thus, the total revenue projected is 112,700,000 Rials ($1,596,317).

The Respondent's Cost Projections

264. Engineer Darbani also projected Rahmat Abad's costs of production, including costs for plowing, planting, fertilizing, spraying, picking and other maintenance. Although he failed to itemize specific costs, Engineer Darbani estimated Rahmat Abad's costs at "close to 35% of the value of produced crops." Engineer Darbani did not, however, provide evidence supporting his opinion. The Tribunal can safely conclude from his report, however, that he overstated Rahmat Abad's costs. For instance, Rahmat Abad lacked a chill room, and it did not transport its own crops from the farm to market. Engineer Darbani therefore was incorrect in ascribing these costs to Rahmat Abad, since, as Dr. Damavandy pointed out, they would have been borne by wholesale purchasers. It is on this basis that Engineer Darbani estimated Rahmat Abad's 1980 net revenue at 73,255,000 Rials ($1,037,606), *i.e.*, 112,700,000 Rials in gross revenues minus 39,445,000 Rials in costs, representing 35 percent of gross revenues.

265. Dr. Grigorian, unlike Engineer Darbani, itemized Rahmat Abad's costs, projecting 100 Rials per grapevine and 110 - 120 Rials per tree, as follows: (1) 6 Rials per tree/vine for irrigation; (2) 30 Rials/tree for pruning pomegranate and quince trees, 40 Rials/tree for pruning apple trees, and 20 Rials/vine for pruning grapes; (3) 59 Rials per tree/vine for fertilizing; and (4) 15 Rials/tree for spraying the trees and grapevines for pests. He made some key errors, however, in doing so. First, Dr. Grigorian's total cost of irrigation and pruning (36 Rials per pomegranate and quince tree, 46 Rials per apple tree, and 26 Rials per grapevine) is four times too high, based on an inflated labor rate. Mr. Nabavi testified for the Respondent that the Rahmat Abad farm paid its skilled workers, at the most, only 350 - 400 Rials per day, not 1,500 Rials per day, as estimated by Dr. Grigorian. Second, Dr. Grigorian miscalculated Rahmat Abad's fertilizer costs based on an arithmetic error. Having estimated the cost of animal manure at 1,000 Rials per tonne, and having projected Rahmat Abad's needs at 670 tonnes per year, Dr. Grigorian incorrectly calculated such cost at 6,700,000 Rials, or ten times the real cost of 670,000 Rials.[183] Correcting for his mistakes, Dr. Grigorian would have estimated Rahmat Abad's total fertilizer costs (chemical and manure) at 13 Rials per tree,[184] which is comparable to Dr. Damavandy's 15 - 20 Rial-per-tree or -vine estimate. As corrected for these errors, Dr. Grigorian's total maintenance cost per tree or vine of 35 - 40 Rials falls in a range quite in accord with to Dr. Damavandy's estimate of 36 - 41 Rials per tree or vine.[185]

266. Thus, the total adjusted cost estimated by Dr. Grigorian for maintaining 144,000 trees and grapevines in 1980 would have been, at the maximum, 5,760,000 Rials (40 x 144,000). Dr. Grigorian added 17,550,000 Rials for fuel, machine repair, cleaning the aqueduct and paying guards and managers. The total of all costs, then, is 23,310,000 Rials. Interestingly, such costs represent 20.7 percent of the 112,700,000 Rials gross revenues calculated by the Respondent's other expert, Engineer Darbani. This is more than the 15 percent projected by

[183] It has been argued for the Respondent that Dr. Grigorian did not miscalculate Rahmat Abad's fertilizer costs, but simply misstated Rahmat Abad's annual manure requirements, at 670 tonnes, instead of 6,700 tonnes. Dr. Grigorian, however, explicitly stated that Rahmat Abad's 160 hectares under cultivation required each year approximately 5 tonnes of manure per hectare, or 800 tonnes of manure per year. At a cost of 1,000 Rials per tonne, Dr. Grigorian would have projected Rahmat Abad's annual manure costs, at a maximum, at 800,000 Rials, not the 6,700,000 Rials that Respondent would have the Tribunal believe.

[184] 670,000 Rials for manure and 1,200,000 Rials for chemical fertilizer totals 1,870,000 Rials, which when divided by the orchard's 144,000 trees and grapevines equals 13 Rials per tree/vine.

[185] Specifically, reducing his original total cost (26 - 46 Rials) for irrigation (6 Rials) and pruning tree (20 - 40 Rials) to one-fourth, or 6.5 - 11.5 Rials, adjusting his original fertilizer cost to 13 Rials and retaining his original spraying cost of 15 Rials, produces a total of 35 - 40 Rials.

Dr. Damavandy, but significantly less than the 35 percent Dr. Grigorian had cited and the 30 percent suggested by Engineer Darbani. It suggests itself as being realistic.

b) Valuation of Rahmat Abad

267. The Claimant's expert testified that Rahmat Abad should be valued according to the DCF method. The Tribunal has held that "[p]roper 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."[186] The Claimant's evidence satisfies both criteria.

268. As a threshold matter, the DCF method requires a "going concern" as of the date of expropriation.[187] To constitute a going concern, the company must have (1) become an ongoing business entity before the revolutionary unrest and (2) shown prospective profitability after the Revolution.[188] Although the Tribunal concludes that Rahmat Abad was neither a going concern nor profitable prior to its expropriation, the evidence indicates otherwise.

269. Rahmat Abad easily satisfies the second criterion. As an agricultural company, Rahmat Abad produced a staple product with stable demand that remained relatively secure from the economic unrest caused by the Revolution.[189] Indeed, even after expropriation, Mr. Riahi noted that "despite disorder in the farm, [the 1980 crop] was sold for Rials 22,120,000 which, in any event, is an indication of my proper prediction in the past regarding the profitability of the farm." Recent photographs in evidence confirm that Rahmat Abad continues to be operated today as a successful quince farm. Accordingly, there can be no doubt that Rahmat Abad showed prospective profitability after the Revolution.

270. Rahmat Abad also satisfies the first criterion. Although the company had not shown a profit by the expropriation date, all signs pointed to profitability. Most importantly, Rahmat Abad's extensive infrastructure was already in place and operational: 144,000 trees and

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[186] *Sabet, supra* note 13, at para. 135.

[187] *See Khosrowshahi, supra* note 54, at 91.

[188] *Id.*

[189] Indeed, Mr. Riahi noted that, at the time of expropriation, Iran did not produce enough quince to satisfy demand. This undermines Mr. Farid's assertion that "not too many people demand quince," and "[t]hus, under no circumstances is it economical to produce quince, in large quantity." *See Khosrowshahi, supra* note 54, at 91 (valuing company as a going concern based on its production of staple products, including foodstuffs); *Sola Tiles, supra* note 25, at 227. *But see Motorola, supra* note 84, at 90-92 (company not valued as a going concern because its production of luxury products limited future prospects).

grapevines had been planted, all of the necessary buildings had been erected, the workforce had been hired and trained, and two deep wells and an extensive aqueduct had been dug to provide water perpetually.

271. In contrast to a new company with no history of earnings and no reliable way to project future revenue, Rahmat Abad's earnings were easily forecast, based on its existing assets.[190] Accordingly, Mr. Reilly argued that discounted cash flow analysis is particularly suited to these circumstances, and noted that even Mr. Glover's textbook conceded that fact.

272. Rahmat Abad's prospects contrasted sharply from those of the manufacturing company at issue in *Phelps Dodge*, in which the Tribunal rejected DCF analysis because operations had never even commenced.[191] There, the Tribunal could not, with any degree of certainty, value the nascent company's goodwill and future profits.[192] Indeed, the Tribunal concluded that the company's short- and medium-term business prospects were bleak, given that the company lacked the necessary equipment to become operational and would have depended for survival upon government purchases of its specialized wire and cable products.[193] To compound the company's problems, it suffered heavy debts and would have required continued access to technological expertise to survive after the Revolution.[194] In the end, the Tribunal concluded that "[t]here was no market for Phelps Dodge's shares" at the time of expropriation, and thus it could not be considered a going concern.[195]

273. In marked contrast, Rahmat Abad had operated for a number of years with increased viability. As Mr. Reilly testified:

> [W]e have a farm with all the plantings in place. The quince trees are there, the apple orchard is there, the pomegranate trees are there. . . . [W]e now have put into the ground all of the infrastructure. We have built the wells, we have built the warehouses, we have bought the farm equipment, we have hired the employees, we have built houses for the employees, we have built schoolhouses for the employees' children, now we have assembled all of the

[190] The Claimant's valuation of Rahmat Abad has been carefully pieced together from Mr. Riahi's diary and trial balance sheets. Obviously, the Claimant's task would have been easier (and more accurate) had the Respondent not flouted this Tribunal's Orders and withheld from the Claimant requested financial documents relating to Rahmat Abad.

[191] *See Phelps Dodge, supra* note 133.

[192] *See id.* at 132-33.

[193] *See id.*

[194] *See id.*

[195] *Id.* at 133.

> infrastructure and [have] all of the assets in place, and I don't mean to say that the owner can sit back and relax, but as long as the owner of the farm successfully commercializes the business that has already been established, you will get literally and economically the fruits of your rewards [] going forward.

In addition, after two decades of trial and error, Mr. Riahi had abandoned unproductive crops like figs and almonds for more productive (and locally suited) crops like pomegranate and quince.[196] Even Mr. Glover had to concede that this reallocation of crops dramatically increased Rahmat Abad's prospects. Finally, the Claimant noted that Iran's "agricultural sector as a whole grew steadily through the years preceding the Revolution and held steady during even the periods of greatest turmoil."

274. Thus, because Rahmat Abad showed prospective post-Revolution profitability and clearly had become a viable business before the revolutionary unrest, the Tribunal should have valued the company as a going concern. The fair market value of a going concern includes "not only the net book value of its assets but also such elements as good will and likely future profitability, had the company been allowed to continue its business under its former management."[197]

275. Although Mr. Glover sought to diminish DCF's practical utility as related specifically to Rahmat Abad, he testified that discounted cash flow analysis is the "desirable basis in all cases . . . for it is based on the fundamental principle . . . that the value of something is based on what you can get out of it." Other financial authorities agree with the Parties' experts that the DCF method best values a going concern.[198] Indeed, according to the American Institute of Real Estate Appraisers' handbook *The Appraisal of Rural Property*, as cited by Mr. Glover, once an orchard has reached a breakeven point and is expected to become profitable, an income capitalization method of valuation is appropriate.

276. Mr. Farid, however, recommended against DCF valuation, claiming that it is a "Western" valuation technique that has no application in Iran. Tribunal precedent dictates,

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[196] It has been suggested that the frost in 1979 (which damaged 90 percent of the quince crop) had led Mr. Riahi to contemplate returning to sheep farming. Mr. Riahi's diary, however, does not suggest that Mr. Riahi intended to reduce quince production. Rather, Mr. Riahi only planned to diversify Rahmat Abad's production, presumably to lessen the economic impact of a bad crop.

[197] *American International, supra* note 134, at 109; *see also Amoco, supra* note 53, at 265-70; *Khosrowshahi, supra* note 54, at 89; *Saghi, supra* note 13, at para. 79.

[198] *See generally* A. Monroe, *The New Masters of the Universe*, CFO, THE MAGAZINE FOR SENIOR FINANCIAL EXECUTIVES (Nov. 1995).

however, that, even in Iran, "a prospective buyer of [an] asset would almost certainly undertake such DCF analysis to help it determine the price it would be willing to pay."[199] Based on these authorities, the Tribunal should have used DCF analysis to value Rahmat Abad. That is, the Tribunal should have calculated Rahmat Abad's prospective net earnings and then discounted them to account for the perceived risks.[200]

277. The Tribunal cannot ignore, however, that the Parties have proposed vastly different values for Rahmat Abad, ranging from less than $3 million to over $52 million. As it has done in the past, the Tribunal must determine and identify the extent to which it accepts the Parties' valuation analyses.[201] The Tribunal may adjust the Parties' assumptions concerning revenues, costs and the applicable discount rate, taking "into account all relevant circumstances, including equitable considerations."[202]

278. In evaluating the Parties' assumptions, the Tribunal must recognize the limited contemporaneous information presented. Most of the Parties' calculations are based on average statistical information that may be reliable generally, but that does not reflect the actual production conditions at Rahmat Abad. Dr. Fallahi himself conceded that expert estimates "are always wrong" and that actual data is preferable to estimation. The Tribunal finds sufficient

> evidence in the record to estimate the sales prices of fruit per kilogram and production costs per tree existing at the time of expropriation. However, the Tribunal finds it impossible to estimate, based on the available evidence, the total yield of the fruit trees with accuracy sufficient to justify the use of the DCF method.

Award at para. 501. Mr. Riahi's diary, however, provides *actual* data concerning crop production, condition and prices. Accordingly, as the following valuation indicates, the Tribunal could easily and accurately apply the DCF method based on the evidence in the record, relying on Mr. Riahi's contemporaneous records (absent conclusive evidence to the contrary) when the Parties' assumptions conflict.[203]

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[199] *Phillips Petroleum, supra* note 94, at 128.

[200] *See id.*

[201] *See id.*

[202] *Id.*

[203] *See* Separate Opinion of Judge Parviz Ansari in *Reza Nemazee, et al.* and *The Islamic Republic of Iran*, Partial Award No. 487-4-3 (31 Aug. 1990), *reprinted in* 25 Iran-U.S. C.T.R. 162.

Projected Revenues

279. Dr. Damavandy and Engineer Darbani reached widely different conclusions concerning Rahmat Abad's fruit production capacity for the years following expropriation. Dr. Fallahi ascribed the experts' divergent assessments primarily to "their disagreement about the impact of local growing conditions, including climate, soil, water, and natural pests." Dr. Fallahi concluded that Dr. Damavandy had "accurately described and accounted for these factors, while Eng. Darbani ha[d] not." Moreover, Dr. Fallahi testified that Dr. Damavandy had correctly projected Rahmat Abad's quince production, and perhaps had even underestimated the yield estimates for apple, pomegranate and grape. By contrast, Dr. Fallahi noted that Engineer Darbani had vastly understated Rahmat Abad's quince production, largely because he underreported the average weight of Natanz quince by 300 percent and because he failed to note the inverse relationship between the amount of fruit on a tree and each fruit's average weight (*i.e.*, even if Engineer Darbani had correctly concluded that Rahmat Abad's quince trees would produce small quince, each tree's production necessarily would have been greater than he reported).

280. Engineer Darbani concluded that Rahmat Abad's climate is not well suited for quince cultivation. This assessment, Dr. Fallahi noted, is not only "unduly pessimistic," but "is simply wrong." Indeed, Dr. Fallahi noted that Engineer Darbani "is contradicted by his own resource material." Engineer Darbani based his 1980 crop projections on "statistics research performed and acquired through information provided by the local producers and farmers." Unfortunately, he failed to identify and describe any such "research."

281. Despite their different assessments of Rahmat Abad's climate, the Parties' experts projected similar returns for Rahmat Abad's 1980 quince crop: 1.8 million kg (Dr. Damavandy), and 1.65 million (Engineer Darbani). Neither of these figures, however, bears much resemblance to the farm's contemporaneous production. In his diary, Mr. Riahi had noted that Rahmat Abad expected 350,000 kg of quince for the 1979 crop. He noted, however, that "unusual[ly] cold weather . . . destroyed approximately 90 per cent of Rahmatabad's [1979] quince production." As a result of that unseasonable frost, Rahmat Abad sold only 26,112 kg of quince in 1979 (somewhat less than 10 percent of 350,000).[204]

[204] Mr. Reilly argued that the 26,112 kg of quince sold did not include the entire year's sales. The figure, however, is reported in a letter from Mr. Nabavi to Mr. Riahi under the heading "tonnage [quantity] of the current crop year." Mr. Nabavi also testified that that 26,112 kg of quince was the total 1979 production at

282. Assuming that, absent the 1979 frost, Rahmat Abad would have produced the anticipated 350,000 kg of quince, the experts' projections of 1.65 million to 1.8 million kg of quince a mere one year later appear overstated. Accordingly, the attached Exhibit 1, "Analysis of Quince Tree Production From Existing Trees," projects Rahmat Abad's quince production based on an average of 3.2 kg for a young tree (350,000 kg ÷ 110,000 trees). Exhibit 1 then projects Rahmat Abad's quince crop over a ten-year period based on Dr. Damavandy's expert testimony that the orchard's quince crop would have increased by 20 percent each succeeding year.[205]

283. The contemporaneous evidence also establishes that Rahmat Abad expected to earn gross revenues of 14,000,000 Rials for the sale in 1979 of its 350,000 kilograms of quince, or 40 Rials/kg. This price is one-half of Dr. Damavandy's estimate of 80 Rials/kg, and 20 percent less than Engineer Darbani's estimate of 50 Rials/kg. The attached Exhibit 2, "Summary of Quince Tree Revenue From Existing Trees," projects Rahmat Abad's quince sales based on these conservative, contemporaneous sales figures originating with the Claimant's husband.

284. The Tribunal also should adjust the Parties' pomegranate production and price estimates to reflect the actual sales records of the 1979 crop.[206] Mr. Riahi recorded that, in 1979, Rahmat Abad's 17,000 pomegranate trees produced 165,000 kg of fruit (9.7 kg per tree), which generated 4,455,520 Rials (27 Rials/kg).[207] Again, the contemporaneous figures are far below both Parties' estimates: Dr. Damavandy had projected production of 30 kg per pomegranate tree at 60 Rials per kg, and Engineer Darbani had projected 20 kg per tree at 55 Rials per kg.

Rahmat Abad. This record is the most probative evidence available to Tribunal of the quince production of Rahmat Abad in 1979, and the Tribunal therefore should have accepted this figure as the basis for its valuation, as is done here.

[205] Mr. Reilly highlighted the fact that, according to accepted accounting principles, valuation of Rahmat Abad must account for the best use of the farm, which includes its expansion potential. This valuation declines, however, to value Rahmat Abad based on expected revenues from the additional fruit trees expected to be planted.

[206] Mr. Nabavi testified that Rahmat Abad's pomegranate crop was unaffected by the 1979 frost.

[207] A trial balance sheet of Rahmat Abad for the period 21 March through 21 September 1979 indicated total revenues of 5,500,000 Rials from the sale of its 26,112 kg of quince and 165,000 kg of quince. Given the price of quince (40 Rials/kg), the Tribunal can calculate that the sale of 26,112 kg of quince produced 1,044,480 Rials of the 5,500,000 Rials total, and that the remaining 4,455,520 Rials were generated from the sale of pomegranates.

285. Because Rahmat Abad's 3,000 apple trees and 14,000 grapevines were not planted until 1977, the orchard would not have produced apples until 1985 and grapes until 1983.[208] There being no contemporaneous sales and production data for apples (or for grapes), the estimates proffered by Dr. Damavandy and Engineer Darbani have been averaged: 35 kg per apple tree at 55 Rials/kg; and 12.5 kg per grapevine at 60 Rials/kg. Accordingly, the attached Exhibit 3, "Summary of Revenues for the Period 1980-1990," states Rahmat Abad's total inflation-adjusted revenues from all existing trees based on these figures.

Projected Costs

286. The attached Exhibit 4, "Summary of Maintenance Costs for All Trees," projects Rahmat Abad's maintenance costs based on its contemporaneous financial records. Rahmat Abad's trial balance sheet reported actual operating costs for 1979 at 13,750,000 Rials.[209] This figure is consistent with, and hence confirmed by, the notation in Mr. Riahi's diary indicating expected costs that year of approximately 14,000,000 Rials. Total costs of maintaining and harvesting Rahmat Abad's 144,000 trees and grapevines thus equal 95.49 Rials per tree/vine. Again, the actual costs adopted are far greater than either of the Parties projected.[210] For the Claimant, Dr. Damavandy estimated Rahmat Abad's total annual costs at 15 percent of total annual revenues. For the Respondent, Dr. Grigorian and Engineer Darbani applied 30 percent and 35 percent cost factors, respectively, although, as noted previously, when properly adjusted Dr. Grigorian's cost estimate would have been 20.7 percent of revenues. Given Rahmat Abad's projected 1980 revenue of 28,007,000 Rials, Dr. Damavandy would have predicted costs of 4,201,050 Rials; Dr. Grigorian, 8,402,100 Rials; and Engineer Darbani, 9,802,450 Rials. The total operating expenses adopted for the proposed valuation (13,750,000 Rials) is approximately 70 percent higher than the Claimant would have projected and approximately 30-40 percent higher than the Respondent would have projected.

[208] Mr. Reilly asserted that Rahmat Abad's 3,000 apple trees would have been fully mature in 1980 and would have produced revenue of 7,200,000 Rials in 1980. Mr. Riahi's diary, however, indicates that the 3,000 apple trees were not planted until December 1977. Accepting the contemporaneous evidence, and noting that apples produce fruit after eight years, the figures set forth in Exhibit 3 do not project revenues from apples until 1985.

[209] The figure was rounded up from 13,749,600 Rials.

[210] The projected costs have been adjusted for inflation.

Discount Rate Applied to Net Revenues

287. Mr. Reilly's 17 percent discount rate incorporated a 25 percent cost of equity capital component, which itself incorporated a 15 percent spot inflation rate. Mr. Reilly asserted that the cost of equity capital calculation is conservative because, as a farm, Rahmat Abad was a low-risk investment; even during times of unrest, people still need basic agricultural products. Both Mr. Reilly and Mr. Glover calculated a risk-free rate of 10 percent. They differed in that Mr. Reilly used a 15 percent risk premium while Mr. Glover originally used a 20 percent risk premium. As Mr. Glover explained, however, he felt that a 20 percent risk premium undervalued the land, and therefore used a 13 percent risk premium—*i.e.*, a lower risk premium than used by Mr. Reilly. The original 5 percent difference and the final 2 percent difference are within the range in which experts could disagree.

288. Mr. Reilly calculated the applicable discount rate at 17 percent. He argued that the discount rate, by means of the weighted average cost of capital, accounts for Rahmat Abad's mix of debt and equity and reflects a reasonable businessman's expected rate of return on the date of the taking, as well as expected inflation and all relevant risks.[211] The proposed valuation applies a 17 percent present value discount rate, which reflects Rahmat Abad's mix of equity and debt, as reflected in the record.

289. The attached Exhibit 5, "Discounted Cash Flow Method," values Rahmat Abad according to the DCF method, using figures derived from contemporaneous evidence, as calculated in the attached exhibits:

- Total Revenues are stated according to Exhibit 3, which relies on production, price and cost data supported by the contemporaneous evidence in the record;
- Operating Expenses are stated according to Exhibit 4;
- Net Operating Income equals Total Revenues minus Operating Expenses;
- The "Other Expenses" category corresponds to Mr. Reilly's calculated 10 percent cost of revenues;
- Pretax Income equals Net Operating Income less Other Expenses;
- The "Capital Expenditures" category accounts for the 17,890,000 Rials (amortized over 10 years) that Rahmat Abad planned to spend to install a drip-drain irrigation system;

[211] *See Starrett II*, *supra* note 86, at 126.

- Net Cash Flow equals Pretax Income less Capital Expenditures;
- Net Cash Flow is then adjusted to its present value, using a 17 percent discount rate
- Discrete Net Cash Flow is the sum of the Present Value of Net Cash Flow from 1980-90;
- The Terminal Value is calculated using the Summary of Revenues for the Period 1980-1990, as set forth in Exhibit 3; and
- The Indicated Value of Equity is the sum of Rahmat Abad's Discrete Projection Value, Terminal Value and passive ownership in Bank Tehran[212] and Pars Paper Company, minus Rahmat Abad's long-term debt of 40,500,000 Rials ($573,654).

Applying Mr. Reilly's DCF methodology with variables adjusted to reflect contemporaneous data concerning the farm's fruit production, price and costs, the Tribunal should have valued Rahmat Abad at 818,920,000 Rials ($11,599,433), not at 350,000,000 Rials ($4,957,507), as it did.

290. The Respondent contends that any discount rate applied by the Tribunal should incorporate a minority discount reflecting the Claimant's 45.14 percent stake in Rahmat Abad's equity. The Tribunal, however, has rejected minority discounts in prior cases.[213] In *Birnbaum*, the Tribunal recognized that a minority discount might be relevant for an actual sale of shares on the open market, but refused to apply a minority discount where the entire company, and not just the minority share, was expropriated.[214] Chamber Two stated, "[j]ust as the Tribunal has never awarded surplus value for a controlling interest, it has never

[212] The Respondent argued that Rahmat Abad owned 500.1 (and not 5,000.1) shares of Bank Tehran, based on an inference from the company's trial balance sheet, which records a difference of 500,100 Rials between the "Creditor" and "Debtor" columns as regards Bank Tehran. Because Bank Tehran's shares had a par value of 1,000 Rials, the conclusion has been drawn for Respondent that Rahmat Abad must have owned only 500.1 shares (500,100 Rials ÷ 1,000 Rials/share). The Claimant, however, produced copies of Rahmat Abad's actual share certificates in Bank Tehran in the amount of 5,000.1 shares, and Respondent failed to challenge the authenticity of those share certificates. The Tribunal correctly opts not to afford greater weight to an *inference* from an unaudited, uncertified trial balance sheet than to uncontested copies of actual share certificates. Award at para. 495. Creative accounting must yield to an uncontested fact. Moreover, if Respondent had reason to believe that Rahmat Abad owned only 500.1 shares of Bank Tehran, presumably it would have produced the company's books and records (as ordered by this Tribunal).

[213] *See Shahin Shaine Ebrahimi, et al.* and *The Government of the Islamic Republic of Iran*, Award No. 560-44/46/47-3 (12 Oct. 1994), *reprinted in* 30 Iran-U.S. C.T.R. 170, 231, 234.

[214] *Birnbaum, supra* note 181, at 260 (*citing* Order of 18 February 1987, in *Harold Birnbaum* and *The Islamic Republic of Iran*, Case No. 10832, Chamber Two, *reprinted in* 14 Iran-U.S. C.T.R. 147).

discounted the value of a minority interest."[215] Accordingly, the Tribunal here correctly refused to apply a minority interest discount.

291. It was further argued that the Tribunal must decrease Rahmat Abad's value to account for taxes that a prospective purchaser of the company's shares would owe to the Iranian Government. This proposition finds no support, however, in the evidence presented before the Tribunal. Although the Tribunal did apply a 10 percent corporate income tax and a 15 percent withholding tax to the profits of the company at issue in the *Starrett* case, the expropriated company at issue there clearly was subject to Iranian taxes.[216] Here, by contrast, the Respondent's own valuation expert stated that "agricultural activities [in Iran] have always been and are tax-exempted."

292. Given the manifestly conservative production, price and cost calculations appended hereto, the Tribunal should have valued Rahmat Abad at $11,599,433. Mrs. Riahi's 45.14 percent interest is therefore worth $5,235,984. After adding the Claimant's loan to Rahmat Abad of 20,611,963 Rials ($291,954), the total value of her expropriated interest in Rahmat Abad is $5,527,938.

3. Khoshkeh va Foulad Private Joint Stock Company

293. The Claimant seeks compensation of $4,228,000 for 2,010 shares of Khoshkeh expropriated by the Respondent on 27 February 1980. The Claimant also seeks 34,170,000 Rials ($483,994) which she loaned to the company and has not been re-paid. In sum, the Claimant seeks $4,711,994 for her expropriated interests in Khoshkeh.

294. Khoshkeh's principal business was, and remains, importing and distributing specialty steel. As of the date of the expropriation of the Claimant's equity interest in Khoshkeh, which constituted 20.1 percent of its shares, the company was the largest distributor of specialty steel in Iran. Khoshkeh controlled 100 percent of the specialty steel market from its inception in 1953 through 1972, and a minimum of 70 percent of the market thereafter. Khoshkeh was the exclusive distributor and sales agent in Iran of the Austrian firm Bohler Brothers & Co. The company employed approximately 85 people in Tehran and had numerous representatives in all major cities of Iran. Khoshkeh's assets included a five-story,

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[215] *See id.* at 292.

[216] *See Starrett II, supra* note 86, at 224.

2,700 square-meter office building in Tehran, a 2,600 square-meter warehouse, three leased sales depots and an unused 22,018 square-meter parcel of commercial land.

295. Mr. Reilly valued Khoshkeh using the DCF method. To enable Mr. Reilly to perform an accurate valuation, the Claimant had sought from the Respondent Khoshkeh's financial records. The Respondent possessed those records and, in fact, supplied them to its own valuation expert.[217] The Respondent, however, improperly refused to produce those records to the Claimant. The Tribunal then ordered the Respondent to produce the records, but the Respondent flouted the Tribunal's successive Orders. The Respondent's unjustified refusal to produce the ordered documents forced Mr. Reilly to base his valuation of Khoshkeh on the company's financial records from 1966 to 1970 and on Mr. Riahi's diary – the only such financial records to which the Claimant had access.

296. Mr. Reilly used these historical figures, and whatever other contemporaneous information he could assemble, to project Khoshkeh's revenues and operating expenses (and hence the pretax income) between 1971 and 1979 and the decade following the expropriation.[218] Mr. Reilly then converted the projected pretax income to a present value, using a pretax weighted average cost of capital. Mr. Reilly calculated that Khoshkeh's pretax income would have declined from 56.6 percent of revenue in 1966 to 25 percent in 1979. Mr. Reilly further calculated a present value discount rate of 16 percent, incorporating a 25 percent cost of equity capital component. He determined that a 16 percent discount rate was conservative because Khoshkeh imported a basic industrial product and was an established, consistently profitable business. Mr. Reilly then calculated the present value of the debt-free net cash flow (the discretionary level of cash flows available to capital holders) at $13,929,000. In determining the cash flow levels, Mr. Reilly decreased the company's projected profit margin from its historic level (over 50 percent) to 25 percent to account for the effects of the Revolution. Mr. Reilly calculated the present value of the terminal value (a proxy for the residual earnings and cash flow capacity of the company beyond the ten-year projection period) at $9,047,000. Mr. Reilly then added these figures to calculate the total

[217] Respondent's expert, Mr. Farid, stated:

> To perform the auditing required, there existed no restriction upon me to have access to information and documents required. All information and documents in existence at the companies['] premises as well as in governmental and non-governmental organizations were totally made available to us.

[218] For example, Mr. Reilly researched Austrian exports of specialty steel to Iran for the years 1971-79, of which Khoshkeh purchased at least 70 percent.

present cash flow value at $22,976,000. Subtracting the company's $2,375,000 debt provided an estimated market value of equity of $20,601,000.

297. Mr. Reilly then added $436,632 as the value of Khoshkeh's unused land (an excess, non-operating asset),[219] which Mr. Vahman had earlier appraised.[220] Based on these calculations, Mr. Reilly valued Khoshkeh at the time of expropriation at $21,037,632.[221]

298. The Respondent objected to Mr. Reilly's "shocking" use of Khoshkeh's financial records from 1966 to 1970 to "hypothesize the results for the period 1971 to 1979" and a decade thereafter. The Respondent denounced this "manipulative technique" and rejected Mr. Reilly's Khoshkeh valuation as "simply a figment of [his] imagination," bearing "no resemblance to the actual results of the Company." It is a triumph of cynicism, however, for the Respondent to suppress Khoshkeh's relevant financial records (in contravention of this Tribunal's Orders) and then to censure the Claimant for failing to rely on those suppressed financial records. Indeed, it was not until two years *after* Mr. Reilly completed his valuation that the Respondent belatedly produced some of what it alleges are Khoshkeh's "actual" financial records, not by submitting audited (or even unaudited) financial records with the customary formalities accompanying such financial documents, but by appending putative *tax returns* to Mr. Salami's valuation report.[222] As a result, the Claimant objected to the validity of the tax returns, which, according to Mr. Reilly, "raise more questions than they answer."

299. Accordingly, the Tribunal justifiably could have doubted the financial data derived from Khoshkeh's purported tax returns and appended to Mr. Salami's report. Certainly, the Tribunal should not reward the Respondent for its deliberate and improper suppression of the

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[219] Although Mr. Reilly initially reported Mr. Vahman's valuation at $3,120,000, he later corrected this with the actual figure, $436,632.

[220] Mr. Vahman noted that the land has excellent access to highways and is located in a commercial industrial area.

[221] The Claimant's first valuation expert, Mr. Curtis, had earlier appraised Khoshkeh based on a capitalization of the company's earnings. Mr. Curtis had even less data available to him, however, than Mr. Reilly possessed on which to base a valuation, especially concerning Khoshkeh's cash flow, and no information whatsoever concerning the company's unused land. Despite this shortcoming, Mr. Curtis's valuation of 20,202,150 Rials is comparable to Mr. Reilly's 21,037,000 Rial valuation. Indeed, excluding the value of the unused land, Mr. Reilly's valuation of 20,600,368 Rials is virtually identical to Mr. Curtis's valuation.

[222] Mr. Reilly properly observed that "[b]usinesses often use different bases of accounting for tax returns than they do for financial statements. . . ." In fact, Mr. Reilly noted that even Mr. Glover's textbook concedes that closely held corporations often employ different accounting for tax returns than for their financial statements, underreporting income to minimize their tax liability.

company's key financial records, its flagrant and unjustified refusal to comply with the Tribunal's Orders,[223] and its attempt to shift the blame for shortcomings in the Claimant's good-faith effort to value Khoshkeh through historical earnings figures. Nevertheless, in making its valuation, the Tribunal properly could have replaced Mr. Reilly's projected figures in the proposed DCF valuation with the alleged "actual" figures in the tax returns appended to Mr. Salami's report, as the data seems broadly consistent with the company's known earnings from 1966-70.

300. Inexplicably, however, Mr. Salami rejected application of the DCF method to the valuation of Khoshkeh, notwithstanding the company's consistent history of high profits, rapidly increasing sales and near-monopoly of the Iranian specialty steel market.[224] Mr. Salami went so far as to argue that Khoshkeh's economic prospects were "doubtful." He noted that Khoshkeh's revenues had declined over the two years prior to expropriation, and because the company's only business was importing specialty steel he contended that the Revolution could have reduced or even halted Khoshkeh's importation and sales. He further argued that, even if the DCF method were applicable, Mr. Reilly should have used a discount rate of 30 percent, and not 16 percent.

301. In lieu of a DCF analysis, Mr. Salami valued Khoshkeh at $4,097,139 using the net-asset method, relying on Dr. Pooya's liquidation value of Khoshkeh's land, buildings and goodwill.[225] Mr. Salami alternatively valued Khoshkeh at $2,340,453, by averaging the net profits for the years 1977 to 1980,[226] applying a 20 percent rate of return and adding the value of the non-operating assets.

302. The Respondent's other valuation expert, Mr. Glover, proposed 160,385,000 Rials ($2,271,742) as Khoshkeh's going-concern value, based on a 20 percent rate of return on its 32,077,000 Rials ($454,348) of 1980 pre-tax profits. Mr. Glover, however, compared this figure to Khoshkeh's balance sheet, which indicated net assets of 320,460,000 Rials ($4,539,093). Mr. Glover recognized the "general rule" that "a profitable, well-managed

[223] Respondent did not claim that these documents did not exist, nor that it had no access to them. Rather, Respondent claimed that the documents were publicly available, too voluminous or were the documents of entities not party to the Case. *See supra* at para. 25.

[224] Indeed, Mr. Salami himself concedes that Khoshkeh remained profitable before and after the Revolution, recording profits of 6.8 percent of sales in 1979 and 13 percent in 1980.

[225] Mr. Farid also valued Khoshkeh at $2,209,632 as of 21 March 1980, using the net book value of assets (liquidation) method.

[226] Mr. Salami excluded 1979 from his valuation "due to its exceptional nature."

company ought to have a value in excess of its net assets." Nevertheless, he concluded that "it was altogether possible that businesses in Iran [in 1980] were worth less than their theoretical asset values." Mr. Glover concluded, however, that a 50 percent reduction discount seemed "severe" and "higher than . . . expected." Accordingly, he "suggest[ed] a valuation of Rls 240 million for the business, *i.e.*, midway between the going concern value of Rls 160 million and the revalued net assets of Rls 320 million." Mr. Glover then added 15,236,000 Rials for the value of Khoshkeh's vacant land, which "was not used in the business and represented free surplus funds." To a total indicated value of equity of 255,236,000 Rials ($3,615,241), Mr. Glover again applied a 25 percent minority discount, reducing the Claimant's 20.1 percent equity interest from 51,302,436 Rials ($726,663) to 38,500,000 Rials (as rounded by Mr. Glover), or $545,326.

303. In deciding the appropriate method for valuing Khoshkeh, the Tribunal must determine whether the company was a going concern when expropriated.[227] As noted above, to constitute a going concern, the company must have become an ongoing business entity before the expropriation and have shown prospective profits after the Revolution. Here, there can be no doubt that Khoshkeh was a going concern. Khoshkeh was a long-established and consistently profitable company. In fact, the company increased its revenue each year over its 25-year history and maintained an extraordinary market share, between 70 percent and 100 percent. Moreover, Khoshkeh imported a basic industrial product (specialty steel) and showed excellent prospects for future growth. Indeed, even Mr. Glover had to concede that Khoshkeh should be valued as a going concern because of its extremely high profits.

304. Despite Mr. Reilly's attempt to value Khoshkeh properly according to the DCF method, his efforts were severely hamstrung by the Respondent's unjustified failure to produce financial documents requested by the Claimant (and subsequently ordered by the Tribunal to be produced). As a result, Mr. Reilly had to project revenues between 1971 and 1979 based on (1) historical operating activity between 1966 and 1970; (2) data pertaining to the Iranian economy and steel industry from 1971 to 1979; and (3) Mr. Riahi's limited accounts of the company's operations from 1971 to the valuation date.

305. Although any valuation of Khoshkeh properly could ignore the tax returns appended to Mr. Salami's report, the following valuation uses the company's "actual" figures appearing

[227] *See Khosrowshahi, supra* note 54, at 91.

therein in place of Mr. Reilly's projected figures, since they appear to be broadly consistent with the earlier years' financials produced by the Claimant. The Tribunal, by contrast, "rejects the Claimant's DCF calculations because they are not based on Khoshkeh's actual financial figures." Award at para. 454. In so doing, however, the Tribunal has rewarded the Respondent for suppressing Khoshkeh's "actual financial figures," in clear violation of this Tribunal's successive Orders. Dubiously, the Tribunal adds that "even if Khoshkeh's actual financial figures were used, existing uncertainties preclude application of the DCF method as an aid in valuing the company." *Id.* To that end, the Tribunal cites "risks that cannot be quantified with any certainty, including the company's anticipated sales or costs," and, most importantly, the uncertainty of "the company's most important intangible property: its exclusive sales and distribution contract with the Austrian firm Gerbrüder Böhler AG." *Id.* The Tribunal concludes that "it is not clear that the cooperation between the two companies would have continued in the absence of Mr. Riahi, who had personal contacts with the Austrian firm." *Id.* These arguments, however, are exceptionally weak, for two reasons. First, risks can never be quantified with certainty. The record is replete with sufficient evidence, however, to enable the Tribunal to perform, as I do below, a DCF valuation with financial data provided by the Respondent itself. Second, businesses are not charities. Although Mr. Riahi's personal contacts with Gerbrüder Böhler AG may have proven important in Khoshkeh's acquisition of its sales and distribution contract with the Austrian firm, the Respondent has offered no evidence that (or reason why) Gerbrüder Böhler AG would have terminated its contract with Khoshkeh, a near-monopoly in Iran.

306. Accordingly, the Tribunal should have valued Khoshkeh based on the DCF method, possibly substituting Mr. Reilly's projected figures with the putative "actual" figures from Khoshkeh's tax returns that Mr. Salami appended to his valuation report. Two additional adjustments also should have been made to Mr. Reilly's calculations. First, in accordance with Tribunal precedent, such valuation should account for a 10 percent corporate tax and a 15 percent withholding tax to pretax income.[228] Second, the Tribunal should increase the discount rate used by Mr. Reilly from 16 percent to 22 percent to reflect Khoshkeh's mix of long-term debt and equity. From Mr. Riahi's admittedly incomplete financial records, Mr. Reilly had calculated Khoshkeh's long-term debt at $2,375,000, or 63 percent of Khoshkeh's capital. When the Respondent belatedly produced Khoshkeh's tax returns, it appeared that Khoshkeh had only $732,000 in long-term debt. Given that a higher percentage of long-term

[228] *See Starrett II, supra* note 86, at 224.

debt produces a lower present value discount rate, the decrease in Khoshkeh's long-term debt raised the discount rate from 16 percent to 22 percent.

307. In sum, after "correcting" Mr. Reilly's estimated pretax profits, accounting for the 10 percent corporate tax rate and the 15 percent withholding tax rate (as applied in *Starrett*) and applying a 22 percent discount rate to account for Khoshkeh's alleged long-term debt, the Tribunal should have valued Khoshkeh at $5,223,000.[229] The Claimant's 20.1 percent interest then is worth $1,049,823.

308. In addition to her equity interest, the Claimant is entitled to compensation for the 34,170,000 Rials in loans to the company that it in turn kept on deposit at the Central Branch of Bank Melli to secure a line of credit. The Respondent contends that the Claimant's loan is already included in Khoshkeh's valuation, and thus separate compensation for the loan would constitute double payment. As Mr. Reilly correctly observed, however, the Claimant can recover both as a stockholder and as a creditor. Accordingly, had the Tribunal not erroneously deemed this claim "late filed," the Claimant would be entitled to recover the $483,994 loan lost as a result of the Respondent's expropriation.

309. Accordingly, the Tribunal should have awarded the Claimant $483,994 for her loan to Khoshkeh, in addition to the value of her 20.1 percent interest in the company ($1,049,823). The Claimant is thus entitled to $1,533,817 for her expropriated interest in Khoshkeh, not $764,873, as held by the Tribunal.

4. Tarvandan Private Joint Stock Company

310. The Claimant seeks $1,504,000 as compensation for her equity (34 shares) and debt interests ($127,479) in Tarvandan Private Joint Stock Company, which Iran expropriated on 27 February 1980. The Tribunal concludes that the Claimant has failed to prove her ownership interests. As discussed above, the weight of the evidence does not support that conclusion. Accordingly, as discussed below, the Claimant is entitled to $556,721 for her expropriated interests in the company.

311. Mr. Riahi and two business partners founded Tarvandan in 1968 to erect a high-rise office building in Tehran. That same year, the company purchased a 4,710.3 square-meter parcel of property. In 1972, Tarvandan was required to sell 450 square meters of that

[229] The calculations are appended hereto as Exhibit 6.

property to the municipality of Tehran in order to widen the avenue where the property was located. The Parties agree that, at the time of expropriation, Tarvandan owned 4,260.3 square meters of land.

312. Tarvandan, in fact, had erected two office buildings and constructed a garden on the land. One of the buildings had been leased to Iran Bohler, and the other contained Mr. Riahi's private office, as well as offices for several other companies in which the Riahis had ownership interests. Tarvandan also owned marketable securities with a principal amount of 9,000,000 Rials, which yielded 8.5 percent interest. The company had debts of 39,421,602 Rials, of which 9,000,000 Rials were owed to the Claimant.

313. The Parties agree that, as a real estate holding company, Tarvandan should be valued based on its net assets. For the Claimant, Mr. Vahman valued Tarvandan's land, two office buildings and goodwill at 242,744,276 ($3,438,304).[230] Mr. Reilly valued Tarvandan's securities at 9,451,000 Rials, bringing Tarvandan's total assets to 251,195,276 Rials. Subtracting the company's debt of 18,000,000 Rials,[231] Mr. Reilly valued Tarvandan's net assets at 234,1195,276, or $3,317,214. The Claimant's 45.33 percent interest in Tarvandan was thus valued at $1,503,693 (or $1,504,000, as rounded by the Claimant).

314. For the Respondent, Dr. Pooya valued Tarvandan's land and buildings at 75,500,000 Rials, or $1,069,405. Dr. Pooya noted that Tarvandan had erected the smaller office building without a construction permit. He argued that Tarvandan would have incurred a penalty for its supposed illegal construction, and reduced his valuation of the company accordingly. The Respondent, of course, bears the burden of proving the negative effect on valuation of constructing a building without a permit. Dr. Pooya, however, did not even attempt to quantify the effect of the supposed lack of permit; he simply surmised that the building must be valued less by some unstated, arbitrary amount.

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[230] Mr. Vahman initially valued the land and buildings at 244,567,000 Rials ($3,464,122), but reduced his valuation after learning that the smaller building was 120 square meters, and not 200 square meters. The real estate appraiser first engaged by the Claimant, Mr. Mansour Anvari, valued Tarvandan's land and buildings at 255,618,000 Rials. Unfortunately, Mr. Anvari died, and the Claimant selected Mr. Vahman to reappraise the property in order to have a witness available to testify at the Hearing.

[231] Mr. Reilly failed to account for loans of 21,421,602 Rials owed to Mr. Riahi. The English translation of the letter of 16 July 1980 from Tarvandan's Managing Director to the Claimant ambiguously notes that Mr. Riahi had a "claim" against Tarvandan for 21,421,602 Rials. The Tribunal's Language Services Division confirmed the Respondent's contention that the original Persian text reports the company's "debt" to Mr. Riahi in that amount. Correcting for that error, Mr. Reilly presumably would have valued Tarvandan at 212,773,674 Rials ($3,013,791).

315. Mr. Glover, also testifying for the Respondent, valued Tarvandan's non-real-estate assets at 18,386,000 Rials, or $260,425. Because the Respondent had failed to produce Tarvandan's balance sheet, despite successive Tribunal Orders to do so, he noted that "an authoritative net asset calculation is not possible." Working from the evidence furnished by Dr. Pooya, however, Mr. Glover estimated Tarvandan's net assets at 54,079,000 Rials ($765,992) and the Claimant's 45.33 percent share, as rounded up, at 24,514,000 Rials ($347,224). Mr. Glover, however, further discounted Tarvandan's attributable net asset value by 25 percent. He noted that the company would have incurred expenses if it were liquidated and, even if it had survived the Revolution as a property holding and investment company, it would have had few prospects for short- and medium-term returns. Accordingly, he valued the Claimant's shares at 18,386,000 Rials, or at $260,425 (again, as rounded up).

316. Mr. Farid offered two valuation reports for the Respondent, the second of which was prepared with Mr. Mohammad Safari Koupaie. In his first report, Mr. Farid noted that Tarvandan had minimal income and a history of losses. Accordingly, he reported a book value of the company of negative 7,900,000 Rials and a liquidation value of 3,000,000 Rials. In the experts' second report, Messrs. Farid and Koupaie purportedly adopted the valuation method used by the Tribunal in *Harold Birnbaum* and *The Islamic Republic of Iran*[232] (discussed below), calculating 15,300,000 Rials for Tarvandan's land and 3,600,000 Rials for its buildings.

317. In performing his valuation of Tarvandan, Mr. Farid presents "[t]he company's results of operation from its establishment up through the end of the 1356 (20 March 1978)" from the "company's accounting books and financial documents." The Claimant had requested the Respondent to produce those very documents, and the Tribunal had twice ordered the Respondent to do so. The Respondent never did. Accordingly, the Tribunal correctly rejected Mr. Farid's two valuations of Tarvandan, noting:

> The Tribunal cannot give credence to a party's valuation report premised on evidence that that party refused to produce. This is especially true where, as here, the Tribunal specifically ordered the production of that very evidence.

Award at para. 517. The Tribunal's conclusion is the only one consistent with equality and fairness. Nevertheless, the Tribunal's clear recognition of the Respondent's flagrant abuse of

[232] *Harold Birnbaum, supra* note 181, at 277-78; *see also Edgar Protiva et al.* and *The Government of the Islamic Republic of Iran*, Award No. 566-316-2, *reprinted in* 31 Iran-U.S. C.T.R. 89, 121-22 (valuing real estate acquired in October 1976 and expropriated in June 1980).

the judicial process makes it all the more difficult to understand the Tribunal's persistent refusal to draw adverse inferences from the Respondent's similar flouting of Tribunal Orders when the Tribunal is called upon to evaluate the Parties' other evidence.

318. Despite Mr. Farid's flawed valuation reports, he and Mr. Koupaie were correct to recommend application of the Birnbaum methodology (especially given the Parties' sharply different valuations). In *Birnbaum*, the Tribunal had to value an office building in downtown Tehran as of 28 July 1979 amid conflicting evidence from the parties. The Tribunal first noted that the building's "purchase price should be adjusted upward to account for inflation from the date of purchase until the date of taking."[233] It noted further, however, that the Tribunal could not "ignore the negative effects of the Islamic Revolution on the value of the . . . office building," which "diminished investor confidence and temporarily depressed the commercial real estate market in Tehran."[234] The Tribunal held:

> In sum, while it is reasonable to assume that inflation would have increased the value of the . . . office building in 1979 compared to 1974, the negative effects of the Islamic Revolution would have offset, in part, that increase in value. The Tribunal finds that the increase attributable to inflation over approximately five years was more than the decrease attributable to the effects of the Revolution in 1979. Accordingly, based on the evidence before it and taking into account all the circumstances in this Case, the Tribunal considers it fair and reasonable to increase the 1974 purchase price of [the] office building . . . by 25% . . . .[235]

319. The same approach is warranted here to value Tarvandan's land.[236] The base price of Tarvandan's land as of October 1976 can be established from Mr. Riahi's contemporaneous records. Mr. Riahi recorded that he purchased Tarvandan shares from his business partners based on a valuation of the land at 15,000 Rials per square meter. Thus, the value then of Tarvandan's 4,260.3 square meters of land was 63,904,500 Rials (15,000 x 4,260.3).

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[233] *Birnbaum*, *supra* note 181, at 277 (citing *Sedco, Inc.* and *National Iranian Oil Company, et al.*, Award No. 309-129-3 (7 July 1987), *reprinted in* 15 Iran-U.S. C.T.R. 23, 115).

[234] *Id.*

[235] *Id.*

[236] The fact, as has been argued, that the property at issue in *Birnbaum* was located in a prime location in Tehran, whereas the property here is located in west Tehran, 10 kilometers from downtown, is irrelevant. Application of the *Birnbaum* methodology requires adjustment of the established price of the property proportionate to the rate of inflation and the decrease in property values attributable to the effects of the Revolution. Tarvandan's "undesirable" location is reflected in the *established* price, not in the *Birnbaum*-adjusted price.

320. Following the *Birnbaum* methodology, the Tribunal should have adjusted the 1976 value of Tarvandan's land in an amount proportionate to the *Birnbaum* adjustment, to account both for inflation and for the negative effects of the Revolution on Iran's real estate market. Between November 1976 and March 1980, Iran's economy experienced 67.5 percent inflation.[237] This increase should be offset by an amount proportionate to the *Birnbaum* offset (25.5 percent) to account for the decrease in property values attributable to the effects of the Revolution,[238] for a net increase of 42 percent. Accordingly, Tarvandan's land was worth 90,744,390 Rials total ($1,285,332) when expropriated.

321. To value the two office buildings, the Tribunal should have averaged Mr. Vahman and Dr. Pooya's divergent appraisals, for neither expert provided sufficient rationale to recommend one appraisal over the other. Mr. Vahman valued Tarvandan's 120-square-meter office building at 20,000 Rials per square meter, while Dr. Pooya valued it at 9,459 Rials per square meter. The average value is thus 14,730 Rials per square meter (1,771,800 Rials total, or $25,096). Mr. Vahman valued Tarvandan's 250-square-meter office building at 25,000 Rials per square meter, while Dr. Pooya valued it also at 9,459 Rials per square meter. The average value is thus 17,230 Rials per square meter (4,307,500 Rials total, or $61,013).

322. Tarvandan also had interest-bearing securities with a principal of 9,000,000 Rials ($127,479). Mr. Reilly correctly valued the securities at 9,451,000 Rials.[239] (Mr. Glover apparently double-counted the securities, adding two sets of documents evidencing the same securities, each bearing the same individual and branch serial numbers.)

323. Tarvandan also owed debts to: (1) the Claimant, in the amount of 9,000,000 Rials ($127,479); (2) Malek Massoud Riahi, in the amount of 9,000,000 Rials ($127,479); and (3) Manuchehr Riahi, in the amount of 21,421,602 Rials ($303,423).

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[237] INTERNATIONAL MONETARY FUND, 1994 INTERNATIONAL FINANCIAL STATISTIC YEARBOOK 426-27. In *Starrett*, the Tribunal-appointed expert explained that the Consumer Price Index is the best way to measure the erosion of purchasing power in an inflated economy, and the Tribunal accepted the use of this measure. *See Starrett II, supra* note 86, at 214.

[238] In *Starrett*, however, this Chamber found that the decline in prices evident in the fall of 1979 was not expected to continue after 31 January 1980, and that prices would rebound by March 1980. *See Starrett II, supra* note 86, at 154-55, 213-14.

[239] This valuation uses the unrounded figure of 9,450,616 Rials.

324. Netting the company's assets and liabilities,[240] the Tribunal should have valued Tarvandan at 66,853,088 Rials ($946,928) – a figure much closer to the Respondent's valuation of 54,078,398[241] Rials than to the Claimant's valuation of 236,018,000 Rials. The Claimant's 45.33 percent share of Tarvandan is worth $429,242. The Claimant also is entitled to compensation for the 9,000,000 Rials ($127,479) that she personally loaned to Tarvandan (which the Tribunal mistakenly deemed inadmissible). Totaling the value of the Claimant's equity and personal loan, the Tribunal should have awarded her $556,721 for her expropriated interests in Tarvandan.

5. Gav Daran Private Joint Stock Company

325. The Claimant seeks 11,380,400 Rials ($161,195) for her 40 percent equity interest in Gav Daran Private Joint Stock Company, and 9,000,000 Rials ($127,479) for a loan that she made to the company, for a total of 20,380,400 ($288,674). Gav Daran was formed in July 1975 and incorporated in August 1975, with an issued share capital of 1,000,000 Rials.[242] The company planned to breed livestock on its 2,000 hectares of pastureland in Gorgan province in northeast Iran, which it had purchased from the Shah in May 1976 for 6,600,000 Rials.[243] The company's only other asset was an 8.5 percent interest-bearing certificate of deposit with a principal of 9,000,000 Rials.

326. The Tribunal held that the Claimant failed to prove her ownership of her shares in Gav Daran, and that her debt claim is inadmissible. These findings, as discussed above, are incorrect. The Tribunal should have awarded the Claimant $183,133

327. Because Gav Daran had generated no income prior to its expropriation, the Parties agree that the company should be valued on the basis of its net assets. In valuing Gav Daran's assets, Mr. Reilly relied on Mr. Vahman's appraisal of the pastureland at 28,000,000 Rials. (Mr. Vahman had reported that the land had ample subterranean water and was eminently suited for grazing livestock.) To the value of the land, Mr. Reilly added the value of the company's securities (9,451,000 Rials), for a total of 37,451,000 Rials. Mr. Reilly then

[240] The receipts for the Bank Melli deposits are found at C. Ex. 104 and C. Ex. 271 (9 receipts total for 1,000,000 Rials each, bearing serial numbers 104350-104358 and branch serial numbers 1242 - 1250).

[241] This figure ignores Mr. Glover's impermissible 25 percent minority discount.

[242] By 13 August 1977, Gav Daran had raised its issued share capital to 7,500,000 Rials, divided into 75 registered shares of 100,000 Rials. Subsequently, the company appears to have reduced its share capital, reverting to 5,000,000 Rials, made up of 50 shares of 100,000 Rials each.

[243] The company discharged its 4,000,000-Rial mortgage in August 1976.

subtracted 9,000,000 Rials of debt, valuing Gav Daran's net assets at 28,451,000 Rials ($402,989). The Claimant's 40 percent equity interest thus was valued at 11,380,400 Rials, or $161,195.

328. Engineer Darbani valued Gav Daran's land at 7,000,000 Rials ($99,150). This valuation is just above the land's 1976 purchase price (6,600,000 Rials) and is 75 percent less than Mr. Vahman's valuation. Mr. Glover adopted Engineer Darbani's valuation, and then discounted the figure by an additional 25 percent, down to 5,250,000 Rials, well below the price paid for the land nearly four years before the Claimant's holdings were expropriated on 27 February 1980. Mr. Glover argued that, given that the company had generated no income and faced possible seizure of its land, "any suggestion that this land was to be transformed into a modern cattle ranch would have been seen as fanciful." "Paradoxically," he noted that a wind-up of Gav Daran's business "would have given the Claimant's 40 per cent shareholding a higher value than it would otherwise have had." Nevertheless, Mr. Glover somehow deemed a 25 percent discount warranted to account for the company's liquidation costs. Apparently overlooking the 451,000 Rial positive balance in other assets (a 9,000,000 Rial debt netted against 9,451,000 security holdings), he valued the Claimant's 40 percent equity interest in Gav Daran only at the resulting 2,100,000 Rials, or $29,745.

329. Again, given the Parties' widely divergent valuations, the *Birnbaum* formula provides the best method by which to value the company.[244] Gav Daran purchased the pastureland in May 1976 for 6,600,000 Rials. As with Tarvandan, accounting for inflation and the effects of the Revolution, this value should be increased by 42 percent, to 9,372,000 Rials. Adding the company's 9,451,000 securities and deducting the company's 9,000,000 Rial loan produces a total of 9,823,000 Rials ($139,136). The Claimant's 40 percent equity interest in Gav Daran should thus be valued at 3,929,200 Rials, or $55,654. Additionally, the Claimant is entitled to compensation for her personal loan to Gav Daran in the amount of 9,000,000 Rials ($127,479). Thus, the total compensation owed to the Claimant for her expropriated interests in Gav Daran is $183,133.

6. Iran Bohler Pneumatic Private Joint Stock Company

330. The Iran Bohler Pneumatic Private Joint Stock Company was formed in November 1973 as a joint venture between the Austrian firm Böhler Pneumatik International GmbH and

[244] *See Birnbaum, supra* note 181, at 277-78.

a group of Iranian investors, including Mr. Riahi. The purpose of the joint venture was to manufacture pneumatic jackhammers in Iran. The company had its headquarters and sales office in Tehran. The company also owned a 10 hectare (25 acre) site in an industrial park in Qazvin, about 200 kilometers northwest of Tehran, where it operated its jackhammer factory. The Claimant seeks $70,822, the par value of her 500 Class A registered shares of Iran Bohler (2.5 percent of its total shares), which the Respondent formally expropriated on 27 February 1980.

331. The Claimant sought to value Iran Bohler as a going concern. Accordingly, she requested that the Respondent produce the company's relevant financial records. The Respondent refused to produce those records, despite the fact that it controls Iran Bohler and thus has full access to the requested documents. On 18 November 1984 and again on 18 May 1995, the Tribunal ordered the Respondent to produce the requested documents. Again, the Respondent refused. The Claimant thus lacked sufficient financial data to value Iran Bohler as a going concern, in consequence of which the Claimant limits her demand to the par value of her shares. As the Claimant correctly observed, par value of her Iran Bohler shares "is quite clearly less than the going concern value to which she is entitled."[245]

332. Although the Respondent denied the Claimant's expert access to Iran Bohler's financial records, the Respondent's own expert, Mr. Farid, professed access to "financial statements of the company from the time of its incorporation until the valuation." Significantly, however, Mr. Farid did not produce these purported "financial statements," but merely summarized them in his report.[246] Mr. Farid used these figures to value the Claimant's shares using the "dividend method," which he claimed was "the only appropriate method" for valuing the Claimant's shares, given that the Claimant's 2.5 percent equity ownership was insufficient to "influence decisions of the Board of Directors." Mr. Farid noted that Iran Bohler's purported financial data (which he admitted had not been audited or footnoted with explanations) showed a loss every year from the incorporation date, and that it

[245] In the circumstances, had the Claimant produced an expert going-concern valuation of Iran Bohler (which possibly was deemed not worth the expense entailed, given her very small percentage in the company), she would have been entitled to an inference by the Tribunal that the Iran Bohler financial statements consciously withheld by the Respondent would support such valuation.

[246] This contrasts with the practice of Mr. Salami, who appended ostensibly accurate copies of Khoshkeh's tax returns to his valuation report.

suffered continually declining sales from 1977 forward.[247] Given Iran Bohler's alleged perennial losses and absence of prospective profits, Mr. Farid claimed that, under the dividend method, the Claimant's shares of Iran Bohler were worthless. Alternatively, applying the dissolution method, Mr. Farid actually ascribed to Iran Bohler a *negative* value of 166,000,000 Rials, or $2,351,275. He reasoned that Iran Bohler's land was largely worthless, and its factory, specialized products and machinery were obsolete.

333. Just as the Respondent withheld Iran Bohler's financial statements from the Claimant, and has withheld them from the Tribunal, so, too, did it withhold that information from its own non-Iranian valuation expert, Mr. Glover. (Clearly, they were available to provide to him, assuming Mr. Farid was truthful in saying he had used them as the basis of his testimony.) Mr. Glover noted that he had "no balance sheet" to examine, and thus confessed to venturing into "the realm of surmise." Given that Iran Bohler's board considered taking a loan in January 1980 for 50 million Rials to buy raw materials, Mr. Glover "suspect[ed] that the Claimant's holding of 500 shares in [Iran Bohler] was virtually unsaleable in February 1980, and accordingly had little or no market value."[248] He further hypothesized that "much if not all of [Iran Bohler's] paid-up capital had been lost," and that "[t]he attributable net asset value must accordingly have been considerably below the par value of the Claimant's shareholding." Mr. Glover did concede that despite the economic uncertainties caused by the Revolution, "[Iran Bohler's] chances of survival were better than average, thanks to the support of [Government] authorities." Conceding his "inevitably subjective judgement," Mr. Glover arbitrarily cut in half the par value of the Claimant's shares, proposing a value of 2,500,000 Rials ($35,411) for her 500 shares.

334. This valuation scenario presented the Tribunal with two problems. First, if the Tribunal accepted the "actual" financial records which Mr. Farid says he used but did not produce (and, if they existed, were withheld from Mr. Glover), the Tribunal would be, in effect, legitimating financial figures of such doubtful provenance that the Respondent refused even to circulate them among its expert appraisers.[249] Second, to embrace alleged financial

[247] Mr. Farid referred to a Resolution of Extraordinary Meeting of Shareholders of 13 July 1980 (after the expropriation date), in which the company decreased its capital, reducing the par value of shares from 10,000 Rials to 2,500 Rials.

[248] Clearly, the taking of such a loan by a manufacturer to purchase raw materials is a business strategy that says nothing about a company's financial health.

[249] It is possible, of course, that Mr. Glover received Iran Bohler's financial data, but, as an independent accountant, simply rejected the information as unreliable, inauthentic or otherwise unusable.

data that the Respondent improperly suppressed (in the face of explicit Tribunal Orders requiring production) would be to reward the Respondent for its contumacious behavior. The Respondent's failure to produce Iran Bohler's financial records previously disadvantaged the Claimant by denying her the opportunity to value Iran Bohler as a going concern. The Tribunal correctly recognized the inequity of further penalizing the Claimant by accepting Mr. Farid's valuation testimony, emphasizing "that there must be procedural equality between the Parties." Award at para. 413. In the circumstances, the Tribunal correctly inferred from the evidence that the Claimant's shares in Iran Bohler were, when expropriated, worth at least their par value. Fairness dictated that the Tribunal award the Claimant $70,822 for the par value her 500 shares of Iran Bohler.

7. ASP Apartment

335. The Claimant seeks compensation of $716,006[250] for her expropriated 337 square-meter apartment on the 19th floor of the high-rise ASP residential complex in western Tehran. The apartment had three bedrooms, two and a half baths, a dining room, salon, kitchen, pantry, maid's room, hall, cloakroom, two covered terraces, two entrances, two underground parking spaces and a basement storage room.

336. The Tribunal held that the *caveat* expressed by the Tribunal in *Case No. A18* barred the Claimant's claim to the ASP apartment. As discussed above, that holding is neither equitable nor consistent with the Tribunal's jurisprudence. As such, the Tribunal should not have dismissed the Claimant's claim to the ASP apartment, and should have awarded her 51,542,478 Rials, or $730,063.

337. At the time of its construction in the mid-1970s, ASP was one of the most luxurious apartment complexes in Tehran. The complex comprised three twenty-story towers, a bank, a supermarket, a large swimming pool, an art gallery and various gardens, villas and shops.

338. The Claimant purchased the ASP apartment on 27 October 1976 for 36,297,520 Rials ($514,129) and made further improvements costing 1,160,000 Rials ($16,431), for a total cost of 37,457,520 Rials, or $530,560.[251] Mr. Vahman testified that the complex rapidly

[250] The Claimant initially sought $739,873 for her expropriated ASP apartment, based on Mr. Anvari's appraisal. The Claimant later revised her demand to $716,006, based on Mr. Vahman's appraisal.

[251] The Claimant's valuation expert, Mr. Vahman, presented conflicting evidence regarding renovations to the ASP apartment. In his first affidavit, Mr. Vahman valued the property based on: (1) the contract price of 36,297,520 Rials (paid in October 1976) and (2) 1,160,000 Rials paid for renovations. In his second affidavit,

appreciated in value after 1976 due to the shortage in luxury condominiums in Tehran. Accordingly, he valued the apartment as of February 1980 at 50,550,000 Rials, or $716,006.

339. The Respondent's expert, Dr. Pooya, valued the ASP apartment in February 1980 at 30,000,000 Rials, or $424,929. In his valuation, Dr. Pooya relied on "numerous factors [that] seriously inflicted severe recession" on Iran's real estate market, especially during the first quarter of 1979 (the expropriation having occurred on 27 February 1980). These factors included economic, political and social unrest.

340. Dr. Pooya utilized two valuation methods. First, he calculated the market value, as adjusted for inflation and "other effective factors." Second, he sought to corroborate his analysis through comparisons of sales of similar property.

341. The Respondent argues that the Claimant acquired the ASP apartment at the height of the real estate market, in 1976. According to the Respondent, property values plummeted in 1978-79, and remained low beyond the valuation date (27 February 1980). The Respondent thus concluded that the apartment was no longer worth even its purchase price. In support of its argument, the Respondent noted that Mr. Riahi reported in this diary that he had purchased a 123 square-meter apartment in the same apartment complex for 10,667,500 Rials in May 1977, six months after the Claimant bought her apartment. The Respondent thus noted that the Claimant paid approximately 107,000 Rials per square meter in October 1976, while Mr. Riahi paid roughly 87,000 Rials per square meter in May 1977. The Respondent then concluded that Mr. Vahman had unrealistically valued the Claimant's apartment at 150,000 Rials per square meter, despite the Revolution's negative effect on property values. Dr. Pooya also noted that Mr. Riahi himself considered the Claimant's apartment to have been overpriced, noting problems relating to the title deed, sewage and low ceilings.

342. Although it is possible that the Claimant purchased her apartment at the height of the market, her apartment reflects improvements lacking in Mr. Riahi's apartment, and may have had additional amenities and features as well accounting for its higher value. For instance, the Claimant's apartment was on the 19th floor of a 20-story building, whereas the smaller apartment was on the 15th floor. The Claimant's apartment also came with two underground

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Mr. Vahman valued the property based on: (1) the contract price of 26,297,520 Rials; (2) 1,000,000 Rials paid for renovations in early 1977, and (3) 1,100,000 Rials paid for further renovations in October 1979. Contemporaneous evidence supports Mr. Vahman's finding of 1,160,000 Rials in renovations to the ASP apartment. Nevertheless, given the conflicting evidence, this valuation ignores the value of the renovations.

parking spaces, as opposed to one for the smaller apartment. The record does not indicate, however, what exposures and vistas each apartment had, or any of the other factors that classically influence prices of apartments in the same complex.

343. Given the Parties' sharply different valuations, it is useful in the circumstances to apply the Tribunal's *Birnbaum* methodology. As earlier noted, between November 1976 and March 1980, Iran's consumer price index increased 67.5 percent. This increase should be offset by an amount proportionate to the *Birnbaum* offset (25.5 percent) to account for the negative effects of the Revolution on Iran's real estate market. Accordingly, Claimant's purchase price of the ASP apartment of 36,297,520 Rials needs to be adjusted upward by 42 percent, to 51,542,478 Rials, or $730,063.[252]

8. The Claimant's Personal Property in the ASP Apartment

344. The Claimant seeks $496,347[253] for the fair value of her personal property in the ASP apartment. The evidence establishes that the Respondent seized and confiscated the Claimant's personal property in February 1980. The Claimant's valuation experts testified as to the replacement value of her personal property as of the date of expropriation.[254] The Tribunal has awarded replacement value in the past,[255] particularly where, as here, the respondent failed to rebut the claimant's valuation evidence.[256]

345. The Tribunal concluded that the Claimant failed to prove expropriation of her personal property in the ASP apartment. That holding, as discussed above, is not consistent with the evidence in the record. Accordingly, the Tribunal should have awarded the Claimant $496,347 as compensation for her expropriated personal property.

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[252] This figure is slightly more than the Claimant demanded ($716,000), but less than the Claimant's first expert's appraisal ($739,873).

[253] In her memorial, the Claimant demanded $476,691 for her expropriated personal property in the ASP apartment, having erroneously failed to account for an additional $19,656 for a set of silver flatware appraised by Elise C. Hersey. Thus, the Claimant properly seeks $496,347, not $476,691.

[254] The Tribunal's valuation of property may properly consider depreciation. *See, e.g., William L. Pereira Associates, Iran* and *The Islamic Republic of Iran*, Award No. 116-1-3 (19 Mar. 1984), *reprinted in* 5 Iran-U.S. C.T.R. 198. Here, however, depreciation is not justified: Art and antiques like those at issue typically appreciate over time, and Respondent failed to argue an exception to this general principle.

[255] *See Oil Field of Texas, Inc.* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 258-43-1 (8 Oct. 1986), *reprinted in* 12 Iran-U.S. C.T.R. 308, 319; *see also Petrolane, Inc. et al.* and *The Government of the Islamic Republic of Iran*, Award No, 518-131-2 (14 Aug. 1991), *reprinted in* 27 Iran-U.S. C.T.R. 64, 99-101.

346. The Claimant's expert appraiser Nikki Jersin and Associates calculated a total replacement value of $33,016 for the following items:

- $3,551 for 93 pieces of Limoges china;
- $2,190 for 63 pieces of Franciscan china;
- $252 for 12 Wedgewood plates;
- $552 for 12 antique French plates;
- $588 for 12 antique German plates;
- $1,200 for 12 Royal Doulton antique plates;
- $16,500 for 78 crystal glasses;
- $360 for 12 cocktail glasses;
- $7,415 for 75 pieces of silver; and
- $660 for four candlesticks.

347. The Claimant's expert Elise C. Hersey calculated a total replacement value of U.S. $48,481 for the following additional items:

- $19,656 for a 396-piece set of handmade Isfahan silver flatware;
- $465 for a silver serving set;
- $1,460 for four silver serving dishes;
- $3,150 for 14 silver serving plates;
- $1,050 for 14 silver salt and pepper sets;
- $420 for 14 silver ashtrays;
- $8,500 for a silver coffee service;
- $12,000 for two silver candelabras;
- $105 for three silver vegetable dishes; and
- $1,675 for a silver tea service.

348. The Claimant's expert Shahin Khalili calculated a total replacement value of $349,850 for the following art and antiques:

- $262,100 for the items in the salon and dining room;

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[256] *See General Dynamics Telephone Systems Center, Inc. et al.* and *The Government of the Islamic Republic of Iran, et al.*, Award No. 192-285-2 (4 Oct. 1985), *reprinted in* 9 Iran-U.S. C.T.R. 153, 166; *see also Petrolane, supra* note 250.

- $27,000 for items in the library;
- $29,000 for items in the master bedroom;
- $6,000 for items in the second bedroom;
- $6,000 for items in the entrance hall; and
- $19,750 for miscellaneous items.

349. The Claimant's expert Jeffrey Fuller Fine Art, Ltd. calculated a total replacement value of $50,000 for a 17th century painting by Bonaventura Peeters I and $15,000 for a 19th or early 20th century painting by Felix Possart, for a total of $65,000.

350. The Respondent failed to submit evidence concerning the valuation of the Claimant's personal property from the ASP apartment, relying instead on its generic argument that revolutionary Iran lacked buyers for luxury items. As the custodian of the property, the Respondent must produce evidence to rebut the evidence in the record.[257] Given the Respondent's failure, the Tribunal must accept the Claimant's valuation evidence.[258]

351. The Tribunal must be mindful that Iran's economic, political and social climate may impact valuation of so-called luxury goods.[259] Indeed, in the *Sola Tiles* case, this Chamber concluded that the company at issue should not be considered a going concern because it dealt in luxury goods deemed undesirable by the Revolutionary Government.[260] Clearly, however, this Chamber must draw a distinction between the prospective profitability of a dealer in luxury goods and the fair valuation of discrete "luxury" goods,[261] which may be sold worldwide. Indeed, this Chamber awarded the claimant in *Sola Tiles* the actual value of its physical assets, including its inventory of luxury goods.[262] Accordingly, the Tribunal should not discount the value of the Claimant's personal property simply because the goods at issue could be deemed "luxuries."

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[257] *See Sedco, supra* note 233.

[258] *See id.* (accepting claimant's evidence where respondent, as custodian of goods at issue, failed to produce contrary evidence).

[259] *See* Concurring Opinion of Judge Aldrich in *ITT Industries, Inc.* and *The Islamic Republic of Iran*, Award No. 47-156-2 (26 May 1983), *reprinted in* 2 Iran-U.S. C.T.R. 349; *see also American International Group, supra* note 134, at 18-20; *Phelps Dodge, supra* note 133, at 133.

[260] *Sola Tiles, supra* note 25, at 241.

[261] *See id.; see also Khosrowshahi, supra* note 54, at 91.

[262] *See* Separate Opinion of Richard C. Allison in *Shahin Shaine Ebrahimi, et al.* and *The Government of the Islamic Republic of Iran*, Final Award No. 560-44/46/47-3 (12 Oct. 1994), *reprinted in* 30 Iran-U.S. C.T.R. 236, 260-61.

352. Because the Claimant's valuations are uncontested, and because replacement value is an appropriate standard of compensation, the Tribunal should have awarded the Claimant $496,347 as compensation for her personal property.

9. Automobiles

353. The Claimant seeks $14,751 compensation for the expropriation of two automobiles, a 1978 Toyota Corona sedan (her personal car) and a 1976 Peykan (her household car used by her driver). Mr. Riahi's contemporaneous ledger recorded the purchase price of the two automobiles: $10,502 for the Toyota, and $4,249 for the Peykan. The Claimant asserted that because the price of cars rose rapidly in the 1970s, the market value of her cars at the time of expropriation in 1980 was equivalent to their purchase prices. To that end, the Claimant noted that she twice received at least the purchase price for a car sold in 1970 and for another one sold in 1976.

354. The Respondent failed to value the Claimant's automobiles and failed to rebut the Claimant's evidence supporting her own valuation.

355. The Tribunal held that the Claimant failed to prove the expropriation of her Peykan, although the weight of the evidence suggests otherwise. The Tribunal did hold that the Claimant had proved that the Respondent expropriated her Toyota. The Tribunal then states, but provides no evidence, that

> the value of the two-year old-car must have depreciated by at least 30 percent from the purchase price due to its age and the negative economic effects of the Revolution. Accordingly, the Tribunal finds that the value of the Toyota was 519,015 Rials, or U.S.$7,351.

This conclusion is not warranted by the evidence in the record. As stated above, the Tribunal's natural inclination to assume that the Revolution negatively impacted the price of property must yield to the weight of the evidence before it. Accordingly, the Tribunal should have accepted the Claimant's unchallenged valuation and awarded her $14,751 compensation for her expropriated automobiles, including $10,502 for her expropriated Toyota.

10. Horses

356. The Claimant seeks $24,998 compensation for the expropriation of her four horses. This valuation reflects the fair market value of the colt Pishdad ($2,800) and the purchase prices of the remaining three: $1,699 for Tarlon, $8,499 for Sharareh and $12,000 for

Festival. The Claimant's valuation figures are supported by the sworn affidavits of: (1) Colonel Sorab Khalvati, the longtime Director of the Imperial Sports Club Stables in Tehran; (2) Mr. Kambiz Atabai, Master of the King's Horse and vendor of Sharareh; (3) Mr. Fereydoud Elganian, vendor of Festival; (4) Ms. Anne Bergl, former Head Riding Instructor for the Royal Horse Society of Iran; and (5) Mrs. Ellen Stewart Schmitt, former Assistant Riding Instructor for the Royal Horse Society of Iran.

357. The Respondent failed to value the horses, arguing only that there was no market for such "recreational" items. The Claimant argued, however, that the market in Iran for quality horses remained strong, and their value high, throughout 1980. The Claimant further reported that the Islamic regime continued to support equestrian sports after the Revolution, and that horse shows frequently were held in Iran. Accordingly, a big show jumper like Festival not only maintained his value through 1980, but had become more valuable due to his former training at the Royal Horse Society.

358. The Tribunal held that the Claimant failed to prove her ownership of Sharareh and Festival, and failed to prove that the Respondent expropriated Tarlon. Again, as discussed above, that conclusion is not warranted by the evidence in the record. The Tribunal did accept the Claimant's unchallenged valuation of Pishdad, and should have done so with respect to the other three horses. Accordingly, the Tribunal should have awarded her $24,998 compensation for the fair market value of the colt and for the purchase prices of the remaining three horses. This figure is conservative, and hence equitable, particularly because it fails to account for the money the Claimant spent training the horses.

11. Sarhad Abad Development Joint Stock Company

359. Sarhad Abad Development Joint Stock Company was formed in 1975 to develop 100 hectares (1,000,000 square meters) of land purchased for 30,000,000 Rials in the early 1970s by those who later formed the company. The property was located 40 km west of Tehran in a suburb that, after completion of a proposed highway, was to become attractive for residential development. The company had leveled the property and subdivided it into parcels of 500 to 3,000 square-meters. The company also had constructed tree-lined access roads and developed water and electrical power systems. The development project included model houses, parks, schools, a mosque and a recreation center, at an estimated cost to Sarhad Abad's shareholders of 270,000,000 Rials ($3,824,363).

360. It is unlikely, however, that the nascent Sarhad Abad had made a profit by the date of expropriation. Accordingly, the Parties agree that Sarhad Abad should be valued at the shares' par value (100,000 Rials). As the Claimant held 10 percent of the company's 600 shares, the resulting value is 6,000,000 Rials, or $84,986.

361. The Claimant also requests $28,000 for her 1 percent equity interest in 131,793.7 square meters of land managed by the company (131,793.7 x .01 = 1,318 square meters). Mr. Glover failed to include Sarhad Abad's land in his valuation report of the Claimant's interest.

362. The Claimant's evidence established that, on 9 July 1979, Mr. Riahi offered to sell his own shares of Sarhad Abad's land for 1,500 Rials per square meter or to buy his partners' shares at 1,600 Rials per square meter. Although nothing came of this offer, it is the only indication in the record of the land's fair market value. Thus the Tribunal should have found that the value of her 1 percent interest as of July 1979 was $28,003 (1,500 x 1,318 = 1.977 million Rials ÷ 70.6 = $28,003).

363. The fair market value of the Claimant's equity interest in Sarhad Abad's land as of July 1979 should be adjusted according to the *Birnbaum* formula.[263] From the date of purchase until the date of expropriation (July 1979 through February 1980), Iran's economy suffered 24 percent inflation.[264] The 24 percent inflation rate, however, must be reduced by one-third (to 16 percent) to account for the effects of the Revolution. The Claimant's 1 percent equity interest in Sarhad Abad's land should thus be valued at $32,483 (28,003 x 1.16).

364. The Tribunal held that the Claimant's claim to Sarhad Abad was untimely filed and inadmissible. Award at para. 71. As discussed above, that holding is as inequitable as it is inconsistent with Tribunal jurisprudence. The Tribunal should have followed its liberal amendment practice, admitted the claim, and awarded the Claimant $84,986 for her 10 percent equity stake in Sarhad Abad and $32,483 for her 1 percent interest in the value of Sarhad Abad's land, for a total of $117,469.

[263] *See Birnbaum, supra* note 181.

[264] INTERNATIONAL MONETARY FUND, 1994 INTERNATIONAL FINANCIAL STATISTIC YEARBOOK 426-27.

12. Contractual Rights to Purchase the Farahzad Apartments

365. On 7 March 1977, the Claimant entered into two contracts with Shahgoli Apartment Private Company, Inc. to purchase two apartments then under construction in Farahzad, in west Tehran. The Claimant paid 12,368,840 Rials ($175,196) to Shahgoli for the contractual rights and paid an additional 65,000 Rials ($921) to the Telecommunications Company of Iran for a deposit on two telephone lines.

366. The Claimant seeks compensation for the expropriation of her contract rights equal to the amount that she paid to acquire those rights (including her deposit for the two telephone lines), or $176,117. The Respondent failed to value the Claimant's contract rights in the Farahzad apartments, contending only that the Claimant should appeal to the Shahgoli Company for return of the amount paid.

367. The Tribunal held that the *caveat* expressed in *Case No. A18* barred the Claimant's claim to the Farahzad contracts. As discussed above, that holding misapplies Tribunal precedent. *See supra* at para. 283. For the reasons discussed above, the Claimant is entitled to compensation of her expropriated contract rights to the Farahzad apartments. Accordingly, the Tribunal should have awarded her $176,117.

VII. COSTS

368. The Claimant seeks $2.2 million for the costs of prosecuting her claim over the past two decades. The Claimant's expenses include: (1) legal fees for research and preparation of the Case; (2) fees paid to expert witnesses who submitted reports and offered testimony; (3) fees paid to translators, who not only transcribed Claimant's documents, but also checked the Respondent's English translations, which, she claimed, often were inaccurate;[265] and (4) expenses incurred for photocopying, courier services, transportation and other such matters.

369. Article 38, paragraph 1 of the Tribunal Rules of Procedure provides that "[t]he arbitral tribunal shall fix the costs of arbitration in its award," including:

> (a) The costs of expert advice and of other special assistance required for a particular case by the arbitral tribunal;

[265] Indeed, the Respondent improperly submitted some documents only in Persian, forcing the Claimant to bear the expense of translating the documents into English.

(b) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(c) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

370. Article 40, paragraph 1 of the Tribunal Rules states that costs other than those for legal representation "shall in principle be borne by the unsuccessful party," subject to apportionment between the parties if the Tribunal "determines that apportionment is reasonable, taking into account the circumstances of the case." The Tribunal has thus held that "costs other than for legal representation and assistance shall *as a rule* be borne by the unsuccessful party. . . ."[266]

371. The Claimant reported that her translation fees alone cost her approximately $200,000, a figure that did not include experts' fees and travel expenses. Accordingly, the Tribunal should have awarded the Claimant, as the successful party, $200,000 for her costs other than those for legal representation.

372. With respect to costs for legal representation, Article 40 "does not create a presumption in favor of the exemption from the stated rule" that costs should be borne by the unsuccessful party.[267] Rather, the presumption is that the successful party will recover the "reasonable" costs of its legal representation.[268]

373. The Tribunal has held that "the circumstances of each case will have to be taken into account when determining to what extent the amount of costs for legal representation and assistance is reasonable."[269] To that end, the Claimant asks the Tribunal to give "special consideration" to the Respondent's conduct during the two decades that the Claimant spent prosecuting her claim.

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[266] *Sylvania Technical Systems Inc.* and *The Islamic Republic of Iran*, Award No. 180-64-1 (27 June 1985), *reprinted in* 8 Iran-U.S. C.T.R. 298, 323 (emphasis added).

[267] *Sylvania, supra* note 266, at 323.

[268] Article 40, paragraph 2 further provides that, "taking into account the circumstances of the case, [the Tribunal] shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable."

[269] *Sylvania, supra* note 266, at 324.

374. First, the Claimant cited the "Respondent's repeated denials of facts which its representatives knew to be true as indicated by documents eventually submitted by the Respondent." For example, the Tribunal's Award compensates the Claimant her 1,500 shares of Khoshkeh. The Respondent never accepted the Claimant's ownership of those shares, despite financial records in its possession clearly establishing that fact. Indeed, the Award recognizes the Claimant's ownership of those shares in large part by reference to the list of shareholders appended to valuation reports submitted by two of the Respondent's own experts, Messrs. Glover and Salami.

375. Second, the Claimant cited the "Respondent's repeated refusals to produce key documents, even after Tribunal Orders compelled production, despite evidence that the documents were in Respondent's possession as indicated by references to documents used by Respondent's experts, and other record evidence." The Respondent's repeated, unjustified and documented failure to produce key evidence, despite successive Orders of the Tribunal to make that evidence available, undoubtedly forced the Claimant to spend substantial additional sums. Not only did the Claimant have to bear the extra cost of applying for successive Orders (with which the Respondent, in large part, never complied), but she was compelled to take extraordinary efforts to seek out alternative evidence.[270] Indeed, Mr. Reilly specifically noted that the Respondent's failure to produce requested documents required him independently to research Austrian exports of specialty steel to Iran for the years 1971-79 in valuing Khoshkeh. In addition, the Respondent belatedly produced certain financial documents after the Claimant's valuation experts had already filed their reports, thus obligating the Claimant to expend additional sums to revise those reports. These are but two examples of the unnecessary financial costs incurred by the Claimant as a result of the Respondent's unjustified failure to comply with the Tribunal's repeated Orders.

376. Third, the Claimant cited the "Respondent's interference with Claimant's efforts to obtain evidence in Iran." Indeed, the Respondent unjustifiably blocked the Claimant's efforts to retrieve the contents of her safe deposit box in Tehran, forcing her unnecessarily to spend

[270] *See Behring International Inc.* and *Islamic Republic of Iran Air Force, et al.*, Final Award No. 523-382-3 (29 Oct. 1991), *reprinted in* 27 Iran-U.S. C.T.R. 218, 245-46 ("Because of the Claimant's inappropriate conduct, particularly its failure to respond to the Tribunal's Orders . . . , the Respondents were forced to incur higher attorney's fees and costs than otherwise would have been necessary," and thus the Tribunal awarded Respondent estimated costs covering those additional expenses); *Sedco, Inc.* and *National Iranian Oil Company, et al.*, Award No. 309-129-3 (7 July 1987), *reprinted in* 15 Iran-U.S. C.T.R. 23, 185 (awarding the Claimant additional costs occasioned by Respondent's improper failure to attend a scheduled hearing).

money to retrieve the property and evidence in Iran.[271] Moreover, the Respondent consistently thwarted the Claimant's efforts to obtain documentation from public and other sources in Iran.

377. Fourth, the Claimant cited the Respondent's pattern of "mounting unsupportable challenges to every element of Claimant's case," which she argued "prolonged the proceedings by many years, and . . . greatly magnified the burdens on Claimant, resulting in a high cost of presenting her claims to this Tribunal." Although the Tribunal must recognize the Respondent's legal right to challenge the Claimant's arguments and evidence, the Tribunal cannot countenance the Respondent's consistent pattern of suppressing critical evidence (*e.g.*, company share records) and then challenging the admittedly inferior evidence on which the Claimant is forced to rely (*e.g.*, minutes of meetings of Boards of Directors).

378. In fairness, the Respondent, as the unsuccessful party, should have been required to pay the Claimant's legal fees, in the amount of $2 million.

379. It has not been this Chamber's practice, however, to award successful claimants the full costs of prosecuting their claims. In *Aryeh*,[272] for example, this Chamber awarded the claimants $200,000 for the costs of arbitrating their successful claims, despite the fact that they had sought $2.15 million (including $252,770 and £200,166 for costs relating to the Respondent's unsubstantiated forgery allegations).

380. In *Davidson*,[273] moreover, this Chamber awarded the claimant costs equaling approximately 7.6 percent of the total value of her award, despite the fact that the Tribunal awarded her only approximately 6 percent of the compensation that she had sought. Following *Davidson*, the Tribunal should have awarded the Claimant her costs, at a minimum, of $150,000.

Dated, The Hague
27 February 2003

Charles N. Brower

[271] The contents of her safe deposit box (including share certificates of Rahmat Abad, Tarvandan and Gav Daran) provided the foundation for several of Mrs. Riahi's claims.

[272] *Vera-Jo Miller Aryeh* and *Islamic Republic of Iran*, Award No. 581-842/843/844-1 (22 May 1997), *reprinted in* 33 Iran-U.S. C.T.R. 272, 342-43.

[273] *George E. Davidson* and *The Government of the Islamic Republic of Iran*, Award No. 585-457-1, para. 121(d) (5 Mar. 1998), *reprinted in* __ Iran-U.S. C.T.R. __.

EXHIBIT 1 (Rahmat Abad)

Analysis of Quince Tree Production from Existing Trees

	Number of Quince Trees X Years After Planting											
Year	4	5	6	7	8	9	10	11	12	13	14	15 +
1980	10,000	10,000	10,000	20,000	15,000	8,000	5,000	6,000	6,000	-	-	-
1981	20,000	10,000	10,000	10,000	20,000	15,000	8,000	5,000	6,000	6,000	-	-
1982	-	20,000	10,000	10,000	10,000	20,000	15,000	8,000	5,000	6,000	6,000	-
1983	-	-	20,000	10,000	10,000	10,000	20,000	15,000	8,000	5,000	6,000	6,000
1984	-	-	-	20,000	10,000	10,000	10,000	20,000	15,000	8,000	5,000	12,000
1985	-	-	-	-	20,000	10,000	10,000	10,000	20,000	15,000	8,000	17,000
1986	-	-	-	-	-	20,000	10,000	10,000	10,000	20,000	15,000	25,000
1987	-	-	-	-	-	-	20,000	10,000	10,000	10,000	20,000	40,000
1988	-	-	-	-	-	-	-	20,000	10,000	10,000	10,000	60,000
1989	-	-	-	-	-	-	-	-	20,000	10,000	10,000	70,000
1990	-	-	-	-	-	-	-	-	-	20,000	10,000	80,000

	Average Crop X Years After Planting (kg)[1]											
	4	5	6	7	8	9	10	11	12	13	14	15
Quince	3.2	3.8	4.6	5.5	6.6	8.0	9.6	11.5	13.8	16.5	19.8	23.8

1980 Average Wholesale Price = 40 Rials per kg.

[1] Based on 20% annual increase in production.

EXHIBIT 2 (Rahmat Abad)

Summary of Quince Tree Revenue for Existing Trees

	Revenue from Quince Trees at X Years of Age (In 000's Rials)[1]												Total Revenues (In 000's Rials)
Year	4	5	6	7	8	9	10	11	12	13	14	15	
1980	1,280	1,520	1,840	4,400	3,960	2,560	1,920	2,760	3,312	-	-	-	23,552
1981	2,560	1,520	1,840	2,200	5,280	4,800	3,072	2,300	3,312	3,960	-	-	30,844
1982	-	3,040	1,840	2,200	2,640	6,400	5,760	3,680	2,760	3,960	4,752	-	37,032
1983	-	-	3,680	2,200	2,640	3,200	7,680	6,900	4,416	3,300	4,752	5,712	44,480
1984	-	-	-	4,400	2,640	3,200	3,840	9,200	8,280	5,280	3,960	11,424	52,224
1985	-	-	-	-	5,280	3,200	3,840	4,600	11,040	9,900	6,336	16,184	60,380
1986	-	-	-	-	-	6,400	3,840	4,600	5,520	13,200	11,880	23,800	69,240
1987	-	-	-	-	-	-	7,680	4,600	5,520	6,600	15,840	38,080	78,320
1988	-	-	-	-	-	-	-	9,200	5,520	6,600	7,920	57,120	86,360
1989	-	-	-	-	-	-	-	-	11,040	6,600	7,920	66,640	92,200
1990	-	-	-	-	-	-	-	-	-	13,200	7,920	76,160	97,280

[1] These figures are derived by multiplying the number of trees at each age (i) by the average crop for each age, and (ii) by the wholesale price of quince. *See* Exhibit 1.

EXHIBIT 3 (Rahmat Abad)

Summary of Revenues for the Period 1980-1990

Type of Crop	Number of Trees / Vines 000's	Average Crop at Maturity	Total Prod. Capacity at Maturity in 000's	Price (in Rials)	Total Revenue at Prod. Capacity	Capacity % at 1980	Capacity % at 1981	Capacity % at 1982	Capacity % at 1983	Capacity % at 1984	Capacity % at 1985	Capacity % at 1986	Capacity % at 1987
Quince[1]	110	23.8	2,618	40	104,720	N/A[1]	N/A[3]	N/A[3]	N/A[3]	N/A[3]	N/A[3]	N/A[3]	N/A[3]
Pomegranate	17	9.7	165	27	4,455	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Apple	3	35	105	55	5,775	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
Grape	14	12.5	175	60	10,500	0.0%	0.0%	0.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total Trees / Vines	144												

	Revenue by Year (000's Rials)[2]										
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Quince[1]	23,552	30,844	37,032	44,480	52,224	60,380	69,240	78,320	86,360	92,200	97,280
Pomegranate	4,455	4,455	4,455	4,455	4,455	4,455	4,455	4,455	4,455	4,455	4,455
Apple	-	-	-	-	-	5,775	5,775	5,775	5,775	5,775	5,775
Grape	-	-	-	10,500	10,500	10,500	10,500	10,500	10,500	10,500	10,500
	28,007	35,299	41,487	59,435	67,179	81,110	89,970	99,050	107,090	112,930	118,010
Cumulative Inflation Rate[3]		10%	21%	33%	46%	61%	77%	95%	114%	136%	145%
Total Revenues	28,007	38,829	50,199	79,049	98,081	130,587	159,247	193,148	229,173	266,515	289,125

[1] *See* Exhibits 1-2.

[2] *See* Exhibit 2 for quince data. Revenue for Pomegranate, Apple and Grape equals Total Revenue at Production Capacity multiplied by that year's Capacity %.

[3] Annual inflation rate equals 10% for years 1980 to 1989 and 4% in 1990.

EXHIBIT 4 (Rahmat Abad)

Summary of Operating Expenses for All Trees/Vines

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Total Operating Costs (000's Rials)	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750	13,750
Cumulative Inflation Rate[1]	0%	10%	21%	33%	46%	61%	77%	95%	114%	136%	145%
Inflation-Adjusted Operating Expenses (000's Rials)	13,750	15,125	16,638	18,288	20,075	22,138	24,338	26,813	29,425	32,450	33,688

[1] Applies annual inflation of 10% between 1980 and 1989 and 4% in 1990.

EXHIBIT 5 (Rahmat Abad)

Discounted Cash Flow Analysis

Calculation of Net Cash Flow:

	Historic Results	Projected Results (000's Rials)									
	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Total Revenues	NA	28,007	38,829	50,199	79,049	98,081	130,587	159,247	193,148	229,173	266,515
Year-to-Year Percent (%) Change			38.6%	29.3%	57.5%	24.1%	33.1%	21.9%	21.3%	18.7%	16.3%
Operating Expenses	NA	13,750	15,125	16,638	18,288	20,075	22,138	24,338	26,813	29,425	32,450
Net Operating Income	NA	14,257	23,704	33,561	60,761	78,006	108,449	134,909	166,335	199,748	234,065
Other Income / (Expenses)	NA	(2,801)	(3,883)	(5,020)	(7,905)	(9,808)	(13,059)	(15,925)	(19,315)	(22,917)	(26,652)
Total Other Income / (Expenses)	NA	(2,801)	(3,883)	(5,020)	(7,905)	(9,808)	(13,059)	(15,925)	(19,315)	(22,917)	(26,652)
Pretax Income	NA	11,456	19,821	28,541	52,856	68,198	95,390	118,984	147,020	176,831	207,413
Calculation of Cash Flow:	NA										
add: Depreciation Expense	NA	-	-	-	-	-	-	-	-	-	-
less: Capital Expenditures	NA	1,789	1,789	1,789	1,789	1,789	1,789	1,789	1,789	1,789	1,789
less: Increases in Working Capital	NA	-	-	-	-	-	-	-	-	-	-
Net Cash Flow	NA	9,667	18,032	26,752	51,067	66,409	93,601	117,195	145,231	175,042	205,624
Net Cash Flow, Adjusted[1]	NA	8,056	18,032	26,752	51,067	66,409	93,601	117,195	145,231	175,042	205,624
Periods Beyond Valuation Date		0.4	1.3	2.3	3.3	4.3	5.3	6.3	7.3	8.3	9.3
Present Value Factor @ 17%		0.9367	0.8111	0.6933	0.5925	0.5064	0.4329	0.3700	0.3162	0.2703	0.2310
Present Value of Net Cash Flow (NCF)		7,546	14,626	18,547	30,257	33,630	40,520	43,362	45,922	47,314	47,499
Total Present Value of Discrete NCF		**378,622[2]**									

Calculation of Terminal Value:

	in 000's Rials	Direct Capitalization Rate[3]	
Fiscal Year 1990 NCF	289,125	13.00%	2,224,038
Terminal Value			2,224,038
Present Value Factor @ 17%			0.21
Present Value of Terminal Value			467,048

Derivation of Indicated Value:

Discrete Projection Value	378,622
Terminal Value	467,048
Market Value of Invested Capital	845,670
plus: Passive Assets Ownership	13,750
less: Long Term Debt	(40,500)
Indicated Value of Equity	**818,920**

818,920,000 Rials = $11,599,433

NM – Not Meaningful
NA – Not Available

[1] The net cash flows and present value factor are calculated from the Valuation Date of 2/27/80 to the middle of the year in which a cash flow is received.

[2] This figure accounts for the projected 49,399,000 Rials for 1990.

[3] The direct capitalization rate is calculated as the present value discount rate (WACC) less an expected long-term growth rate of 4.0%.

EXHIBIT 6 (Khoshkeh)

Discounted Cash Flow Analysis

Calculation of Net Cash Flow (NCF):

($000's)

	Historical Results			Projected Results									
	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Total Revenues	2,328	2,590	2,298	2,462	2,462	2,585	2,843	3,128	3,362	3,615	3,886	4,177	4,490
Year-to-Year % Change		11.3%	-13.1%	7.1%	0%	5.0%	10.0%	10.0%	7.5%	7.5%	7.5%	7.5%	7.5%
Pretax Income	659	512	301	454	499	634	768	1,013	1,199	1,417	1,676	1,982	2,344
Taxes at 25%	165	128	75	114	125	159	192	253	300	354	419	495	586
Net Cash Flow[1]	494	384	226	340	374	475	576	760	899	1,063	1,257	1,486	1,758
Periods Beyond Valuation Date				0.4	1.3	2.3	3.3	4.3	5.3	6.3	7.3	8.3	9.3
Present Value Factor at 22.0%[1]				0.924	0.772	0.633	0.519	0.425	0.349	0.286	0.234	0.192	0.157
Present Value of Net Cash Flows				314	289	301	299	323	314	304	294	285	276

Total Present Value of Discrete Cash Flows 3,267[2]

Calculation of Terminal Value:

	In $000's	Direct Capitalization Rate[3]	
Fiscal Year 1990 NCF	2,079	12.00%	$17,325,000
Terminal Value ($000's)			17,325
Present Value Factor at 22.0%			0.15
Present Value of Terminal Value ($000's)			2,252

Derivation of Indicated Value:

Discrete Projection Value (in $000's)	3,267
Terminal Value (in $000's)	2,252
Market Value of Invested Capital (in $000's)	5,519
Plus: Passive Assets Ownership (in $000's)	436
Less: Long-Term Debt (in $000's)	(732)

Indicated Value of Equity: $5,223,000

[1] The net cash flows and present value factor are calculated from the Valuation Date of 27 February 1980 to the middle of the year in which a cash flow is received.

[2] This figure accounts for the projected $268,000 for 1990.

[3] The direct capitalization rate is calculated as the weighted average cost of capital less an expected long-term growth rate of 9.0%, which accounts for a long-term inflation rate of 4% and a growth rate above inflation.