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

FREDERICA LINCOLN RIAHI,

Claimant,

And

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

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

FILED ثبت شد

27 FEB 2003

تاریخ ۸ /۱۲/ ۱۳۸۱

FINAL AWARD

Appearances:

For the Claimant:	Mrs.	Frederica Lincoln Riahi, Claimant
	Mr.	Mark N. Bravin, Claimant's Legal Representative
	Mr.	Thomas J. O'Brien, Claimant's Legal Representative
	Mr.	Mahmoud Katirai, Assistant to Claimant's Legal Representatives
	Mr.	Mehdi Mahloujian, Expert Witness
	Prof.	Esmaeil Fallahi, Expert Witness
	Dr.	Richard Ratner, Expert Witness
	Mr.	Robert F. Reilly, Expert Witness
	Ms.	Azizeh "Homa" K. Zand, Witness
For the Respondent:	Mr.	M.H. Zahedin-Labbaf, Agent of the Government of the Islamic Republic of Iran
	Dr.	Ali Akbar Riyazi, Legal Adviser to the Agent
	Mr.	S. H. Tabaee, Respondent's Attorney
	Mr.	H. Parham, Respondent's Attorney
	Dr.	M. Mohebi, Respondent's Attorney
	Mr.	A. Hejazi, Respondent's Financial Adviser
	Mr.	M.M. Javaheri, Respondent's Representative
	Mr.	Mr. D. Ashrafi, Respondent's Representative
	Mr.	S. Kazemi, Respondent's Representative
	Mr.	Y. Hormozi, Respondent's Representative
	Mr.	G. Meshkinfam, Legal Adviser

	Mr.	M. Iranpour Brojeni, Legal Adviser
	Mr.	A. Latif, Legal Adviser
	Prof.	Seyed Hossein Safai, Expert Witness
	Dr.	Mohammad Sanati, Rebuttal Expert Witness
	Mr.	Christopher G. Glover, Expert Witness
	Mr.	Gholamreza Salami, Expert Witness
	Mr.	Ata-Ollah Nabavi, Witness
	Mr.	Abolfath Mahvi, Witness
	Mr.	Z. Marousi, Observer
Also Present:	Mr.	Allen S. Weiner, Agent of the Government of the United States of America
	Ms.	Jessica R. Holmes, Deputy Agent of the Government of the United States of America.

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 18 January 1982, FREDERICA LINCOLN RIAHI ("the Claimant") filed a Statement of Claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN ("the Respondent")[1] seeking U.S.$6,528,116.90 compensation for alleged expropriations of her property. In her Hearing Memorial, the Claimant raised the claim to U.S.$16,263,578.44, and in her Rebuttal Memorial, she sought compensation in the total amount of U.S.$40,930,443. At the Hearing, the Claimant reduced the amount sought to U.S.$33,508,923, plus interest and costs.

2. The Claimant alleges that, pursuant to an order issued by the Revolutionary Court of the City of Isfahan, her equity interests in a number of companies were expropriated on 27 February 1980. These proprietary interests allegedly included a 45.14% equity interest in Rahmat Abad Private Joint Stock Company ("Rahmat Abad"); a 20.1% equity interest in Khoshkeh va Foulad Private Joint Stock Company ("Khoshkeh"); a 45.33% equity interest in Tarvandan Private Joint Stock Company ("Tarvandan"); a 40% equity interest in Gav Daran Private Joint Stock Company ("Gav Daran"); and a 10% equity interest in Sarhad Abad Development Joint Stock Company ("Sarhad Abad"), plus a 1% ownership interest in the land managed by that company. In addition, the Claimant alleges that, pursuant to that same

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[1] In the Statement of Claim, the Claimant identified the Judicial Authority and the Executive Authority of the Government of the Islamic Republic of Iran as the Respondents in this Case. Without prejudice to the Parties, the Tribunal decided to use the name of the Government of the Islamic Republic of Iran as the Respondent in lieu of the Judiciary and Executive Authorities of the Government of the Islamic Republic of Iran. Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 80-485-1 (10 June 1992), reprinted in 28 Iran-U.S. C.T.R. 176 ("Riahi Interlocutory").

Order, the Respondent expropriated her debt interests in Rahmat Abad, Tarvandan and Gav Daran; her interest in a deposit made in favor of Khoshkeh; her ownership interests in an apartment located in the ASP Building, Yussefabad Avenue, Tehran ("ASP Apartment") and her personal property located therein; her four horses; her two automobiles (a Toyota and a Peykan); certain jewelry;[2] her contractual rights to two apartments in Farahzad ("Farahzad Apartments"); and down payments for two telephone lines for the Farahzad Apartments. Alternatively, the Claimant alleges that her claim for the expropriation of the Farahzad Apartments arose on or about 12 September 1979, when the Claimant allegedly was compelled to forfeit the entire purchase price paid for the still-unfinished apartments because of turmoil in Iran. The Claimant further contends that, in June 1979, the Respondent expropriated her 33,871.7 shares in Bank Tehran through a nationalization decree of the Islamic Revolutionary Council. Finally, the Claimant contends that the Respondent expropriated her 500 shares of Iran Bohler Pneumatic Private Joint Stock Company ("Iran Bohler"), either by the Revolutionary Court's Order of 27 February 1980 or by a series of actions by the Iranian authorities commencing in 1979 and culminating in the deprivation of her rights in that year or in March 1980.

3. The Respondent states that the Claimant has failed to establish her ownership of the claimed properties, or the Respondent's expropriation of those properties. The Respondent requests the Tribunal to dismiss the Case and to grant its reasonable expenses incurred as arbitration costs.

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[2] The claim related to the jewelry was settled by an award on agreed terms; Frederica Lincoln Riahi and The Government of the Islamic Republic of Iran, Award on Agreed Terms No. 596-485-1 (24 Feb. 2000), reprinted in __ Iran-U.S. C.T.R. __ ("Riahi Award on Agreed Terms").

4. In accordance with its practice, the Tribunal, citing the decision of the full Tribunal in Case No. A18[3], informed the Parties on 25 June 1985 that "it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States."

5. The dominant and effective nationality of the Claimant was decided in an interlocutory award, filed on 10 June 1992.[4] The Tribunal held that, during the relevant period, the Claimant's dominant and effective nationality was that of the United States. Accordingly, the Tribunal determined that the Claimant has standing before this Tribunal under Article II, paragraph 1, and Article VII, paragraph 1, of the 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 ("Claims Settlement Declaration").[5]

6. The Tribunal further determined that the remaining jurisdictional issues would be joined to the merits. The Tribunal also noted that the subsequent proceedings in this Case would remain subject to the caveat expressed by the Full Tribunal in Case No. A18, i.e., "where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the

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[3] Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 ("Case No. A18").

[4] See Riahi Interlocutory, supra note 1.

[5] Dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 9.

merits of the claim."[6] The present Award decides all remaining jurisdictional issues and the merits of the Case.

7. By its Order of 16 June 1992, the Tribunal scheduled further proceedings in this Case. Accordingly, after having been granted two extensions of time, on 12 February 1993 the Claimant filed her Hearing Memorial and evidence.[7]

8. In her Hearing Memorial, the Claimant requested the Tribunal to order the Respondent to produce the documents contained in the Claimant's safe deposit box at Bank Tehran, including, inter alia, the share certificates of Rahmat Abad. The Claimant also requested the Tribunal to order the Respondent to submit the minutes of the last shareholders' general meeting of Rahmat Abad, held in the summer of 1979, which document was allegedly kept at the Rahmat Abad farm.[8]

9. By its Order of 23 February 1993, the Tribunal invited the Respondent to submit its comments as to whether it was possible to produce the requested documents, and, if so, to submit them by 26 April 1993. On 26 May 1993, after having been granted one extension of time, the Respondent submitted its partial reply to the Claimant's request. The Respondent advised the Claimant as to the procedure for accessing her safe deposit box. On 24 June 1993, the Respondent filed a letter in which it was stated that the minutes of the regular annual meeting of 1979 of Rahmat Abad could not be located.

10. On 19 May 1993, the Agent of the Islamic Republic of Iran filed a letter requesting the Tribunal to order the Claimant to

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[6] See Case No. A18, supra note 3, at 265-66.

[7] On 8 March 1993, the Claimant filed a letter including a correction sheet for mistakes in her Hearing Memorial and evidence.

[8] The minutes of the shareholders' meeting of 5 June 1979 were filed later by the Claimant with her Rebuttal Memorial.

submit to the Tribunal her husband's entire diary, extracts from which were filed with the Claimant's Hearing Memorial and evidence. On 24 May 1993, the Tribunal invited the Claimant to submit her response as to whether it would be possible for her to produce the relevant diary, and, if so, to make it available at the Tribunal by 14 June 1993 for the purpose of copying and inspection by the Respondent. On 3 June 1993, the Claimant submitted her response, together with photocopies of those parts of Mr. Riahi's diary that she considered relevant to the Case.

11. On 13 July 1993, the Agent of the Islamic Republic of Iran filed a letter requesting the Tribunal to order the Claimant to submit the remaining pages of Mr. Riahi's diary. On 23 July 1993, the Tribunal invited the Claimant to comment on the Respondent's request. On 18 August 1993, the Claimant submitted to the Tribunal the remaining pages of the diary.

12. On 18 August 1993, the Claimant requested the Tribunal to order the Respondent to issue a visa to her representative, Mr. Paul Mitchell, to make her safe deposit box at Bank Mellat (the successor to Bank Tehran) available to him, and to permit him to make photocopies and remove from Iran the contents of that safe deposit box. The Claimant also requested the Tribunal to order the Respondent to produce certain documents related to Khoshkeh, and to provide a photocopy of the registration file of Rahmat Abad, which document was claimed to be at the Office for the Registration of Companies and Industrial Ownership, in Natanz.

13. On 30 August 1993, the Tribunal invited the Respondent to submit its comments on the Claimant's request to permit her representative to enter Iran and to have access to the safe deposit box in order to carry out the above-defined assignment. The Respondent was also invited to submit its comments as to whether it was possible to produce the requested documents and

the photocopy of the registration file and, if so, to submit those documents by 14 October 1993.

14. On 8 September 1993, the Respondent submitted its comments on the Claimant's requests. The Respondent argued that certain parts of the Claimant's request could not be considered as the "production of documents," and that the Claimant's request was not covered by the rules applicable to document discovery. As regards the issuance of a visa to Mr. Mitchell, the Respondent directed him to apply for a visa at the nearest Iranian consulate. If Mr. Mitchell were deemed ineligible for a visa, the Respondent suggested that the Claimant designate another person in his place. The Respondent also stated that the Claimant's representative had free access to her safe deposit box and that he could export the contents of the safe deposit box in conformity with Iranian customs regulations. Therefore, in the Respondent's view, there was no need to issue a permit for those purposes. With regard to the registration file of Rahmat Abad, the Respondent directed the Claimant or her representative to contact the Office for the Registration of Companies and Industrial Ownership ("Office for Registration").

15. On 21 October 1993, the Respondent filed the documents requested by the Claimant regarding Khoshkeh.

16. On 10 August 1994, the Respondent filed "Respondent's Hearing Memorial and Written Evidence."

17. On 14 November 1994, the Claimant filed a letter requesting the Tribunal to order the Respondent to produce several documents. On 17 November 1994, prior to any order by the Tribunal, the Respondent complained that the Claimant's request was duplicative of her previous request. By its Order of 18 November 1994, however, the Tribunal requested the Respondent to submit the documents sought by the Claimant, or to explain why it was not possible to do so.

18. On 10 April 1995, the Respondent filed its "Submission of Documents and Provision of Explanations With Respect to Claimant's Production Request." The Respondent submitted a copy of the share register of Tarvandan, Articles of Association of Bank Tehran and Khoshkeh's letter No. 723/23, dated 17 July 1984, as requested by the Claimant. The Respondent further explained the reason for non-production of the remaining documents requested by the Claimant. On 27 April 1995, the Claimant filed a submission entitled "Claimant's Protest to Respondent's Failure to Comply With the Tribunal's Order to Produce Documents." She argued that the Respondent's explanation for its non-production was inaccurate, and that the documents were not too general and voluminous; indeed, they had been relied upon by the Respondent in its brief. The Claimant further contended that she could not acquire the documents herself, as proved by her alleged repeated, unsuccessful efforts to do so. She asked that an adverse inference be drawn from the Respondent's failure to comply with the Tribunal's Order. On 9 May 1995, the Respondent filed its comments on the Claimant's protest.

19. By its Order of 18 May 1995, the Tribunal reminded the Respondent that the Tribunal's Order of 18 November 1994 had requested the Respondent "to submit the Documents referred to in the Claimant's request, or to explain why the submission of any of th[o]se documents was not possible." The Tribunal was not satisfied that the Respondent had acted properly, and considered the Respondent's submission of 10 April 1995 as only a partial response to the Tribunal's Order. Therefore, the Tribunal requested the Respondent to submit by 30 June 1995 those documents that were available to the Respondent and that had not yet been submitted. The Respondent was also requested to submit those documents that had been requested by the Claimant but that had not been commented on in its submission of 10 April 1995, or

to explain why the submission of those documents was not possible.

20. On 30 June 1995, the Respondent filed its detailed reply to the Tribunal's Order of 18 May 1995, which document was later corrected on 5 July 1995. The reply stated, inter alia, that prior to its submission of 10 April 1995 it had engaged in a good-faith effort to secure the documents that may have been unavailable to the Claimant. By its Order of 10 July 1995, the Tribunal noted that the question whether the Respondent had complied with the Tribunal's Orders of 18 November 1994, 28 February 1995 and 18 May 1995 would be decided at a later stage of the proceedings.

21. Citing Mr. Riahi's diary,[9] the Respondent also argued in its filings that the company records sought by the Claimant have been available to her and her spouse, and that certain relatives and friends either have destroyed them, removed them from archives, or sent them to Mr. Riahi for preparing these claims. In this connection, the Respondent refers, inter alia, to the letters dated 3 March 1981 and 28 April 1993 sent to Mr. Riahi by Mr. Mohammad Hossein Vaghefi and Mr. Ali Sheibani, respectively, and to the Claimant's Rebuttal Memorial.

22. On 29 January 1996, the United States Government filed its "Memorial of the United States on the Application of the Treaty of Amity to Dual United States-Iranian Nationals."

23. On 11 April 1996, the Claimant filed a letter requesting that the Tribunal bifurcate the proceedings, pursuant to Article 15(1) of the Tribunal Rules,[10] so that all issues other than

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[9] The Respondent refers, inter alia, to entries covering 7 April 1979 (page 832), 12-15 April 1979 (page 834) and 10-14 July 1979 (page 877) of Mr. Riahi's diary.

[10] Article 15(1) of the Tribunal Rules reads as follows:

valuation could be decided preliminarily. The Claimant also suggested that it may be necessary and appropriate for the Tribunal to appoint a neutral expert pursuant to Article 27(1) of the Tribunal Rules,[11] and that this should be done promptly following the issuance of an interlocutory award establishing Iran's liability for any or all of the nine claims at issue. On 26 April 1996, the Respondent filed its comments on the Claimant's request. By its Order of 2 May 1996, the Tribunal decided that it was not appropriate to accept the Claimant's late-filed request to bifurcate the proceedings. Furthermore, the Tribunal did not deem it necessary to appoint an expert at that stage of the proceedings.

24. On 30 December 1996, after having been granted seven extensions of time, the Claimant filed her Rebuttal Memorial and evidence. A corrected version of the Claimant's Memorial was filed on 31 March 1997.

25. On 18 September 1998, after having been granted seven extensions of time, the Respondent filed its Rebuttal Memorial and evidence. Following that filing, the Tribunal scheduled, by its Order of 26 October 1998, a Hearing to be held on 24-28 May 1999.

26. On 25 March 1999, the Claimant filed a Surrebuttal containing several exhibits. On 13 April 1999, the Respondent

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> Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

[11] Article 27(1) of the Tribunal Rules reads as follows:

> The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

objected to the filing of the Claimant's Surrebuttal and requested its dismissal or an opportunity to reply to it if the Tribunal accepted its filing.

27. By its Order of 21 April 1999, the Tribunal admitted the Claimant's Surrebuttal exhibits into evidence, and invited the Respondent to submit its comments and possible evidence in response thereto. In that Order, the Tribunal also postponed the scheduled Hearing until further notice.

28. On 14 May 1999, the Claimant filed two other documents, see infra, para. 42. By its Order of 21 May 1999, the Tribunal asked the Respondent to answer those two documents in its reply to the Claimant's Surrebuttal and postponed the decision on their admissibility.

29. On 10 December 1999, the Respondent filed its response to the Claimant's Surrebuttal exhibits.

30. By its Order of 6 January 2000, the Tribunal scheduled a Hearing to be held on 22-26 May 2000. On 27 January 2000, the Respondent requested the Tribunal to extend the scheduled Hearing to cover at least 15 days. On 16 February 2000, the Claimant joined the Respondent's request, but considered a total of ten hearing days sufficient. A Hearing was scheduled and held on 18-27 May 2000 at the Tribunal's premises in The Hague.

31. On 16 February 2000, the Claimant asked the Tribunal to refuse some of the documents in the Respondent's response to the Claimant's Surrebuttal exhibits. By its Order of 9 March 2000, the Tribunal decided not to admit certain documents produced by the Respondent, which dealt mainly with issues related to the dual nationality of the Claimant and which did not fall within the scope of the Claimant's filings of March and May 1999.

32. Pursuant to a joint request by the Parties, the Claimant's claim relating to the jewelry and the contents of the safe

deposit box at Bank Tehran was settled by an award on agreed terms issued by the Tribunal on 24 February 2000.[12]

33. On 20 April 2000, the Respondent filed corrections and missing translations and texts of its previously filed response, supra, para. 29. The Claimant, in her letter received by the Tribunal on 2 May 2000, objected to this late filing of documents by the Respondent. The Respondent filed its response to the Claimant's objection on 5 May 2000.

34. By its Order of 4 May 2000, the Tribunal decided not to admit into evidence portions of the material produced by the Respondent on 20 April 2000, because it would cause undue prejudice to the Claimant.

35. On 12 May 2000, the Agent of the United States informed the Tribunal of the temporary illness of Mr. Charles T. Duncan (the United States-appointed arbitrator designated to Chamber One) and introduced Mr. Charles N. Brower to replace him as arbitrator in this Case. By Presidential Order No. 92 of 16 May 2000, Mr. Brower was designated as a Member of the Chamber to hear the Case.[13]

36. At the Hearing, the Respondent read parts of an unfiled telex that the Claimant's attorney had sent in 1981 to the Respondent as part of a settlement offer. The Claimant objected to the document being read into the record and asked the Tribunal not to give any weight to it.

37. After the Hearing, on 24 November 2000, the Respondent filed a letter to which was annexed a copy of part of the 1981 telex.

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[12] See Riahi Award on Agreed Terms, supra note 2.

[13] Mr. Brower was later appointed and assigned as the Member of the Tribunal serving on the panel in Chamber One.

38. On 11 December 2000, the Claimant then filed a letter in which she stated that she did not object to the Tribunal's acceptance of the Respondent's 24 November 2000 filing. The Claimant's letter also addressed certain testimonial evidence presented by the Respondent for the first time at the Hearing.

39. On 4 September 2001, the Respondent filed its reply to the Claimant's 11 December 2000 filing, requesting the Tribunal not to admit the Claimant's untimely filing. The Respondent's letter also responded to the issues raised by the Claimant in her 11 December 2000 letter.

40. On 18 September 2001, the Claimant filed a letter in which she stated that it would be fair for the Tribunal to accept and consider the Parties' post-Hearing submissions.

II. JURISDICTION AND REMAINING PROCEDURAL ISSUES

A. Jurisdiction

41. The Tribunal finds that the Claim is for the alleged deprivation of the Claimant's property rights by the Islamic Republic of Iran and that it therefore falls within the Tribunal's subject matter jurisdiction of claims arising out of "expropriations or other measures affecting property rights," as provided in Article II, paragraph 1, of the Claims Settlement Declaration. Accordingly, the Tribunal determines that it has jurisdiction over the Claim, subject to the following findings.

B. Admissibility of Late-Filed Documents

1. Documents Submitted Before the Hearing

42. With respect to the admissibility of the two documents filed on 14 May 1999, see supra, para. 28, the Claimant argues that these documents confirm that Mr. Reza Nasrolahi had been

the Head of the Islamic Revolutionary Guards Corps of Natanz during the years 1979-80.[14] The Claimant notes that the Respondent in its Rebuttal Memorial had asserted that Mr. Nasrolahi's identity "remains unclear to the Respondent." In addition, the Claimant states that allowing these additional surrebuttal documents into evidence would not add appreciably to the Respondent's burden at that stage of the proceedings.

43. The Respondent objects to the Claimant's late filing in its letter of 20 May 1999. However, in its Surrebuttal Memorial, filed on 10 December 1999, the Respondent agrees that Mr. Nasrolahi had been a member of the Natanz Islamic Revolutionary Guards Corps. The Respondent explains that it had earlier relied on the letter of the Commandership of the Natanz Islamic Revolutionary Guards Corps and that the reason for the mistake in this letter appears to be the fact that Mr. Nasrolahi's real name is Abdol Reza Nasrollahi, not Reza Nasrollahi, as mentioned by the Claimant. The Respondent also explains that at the beginning of the Revolution no regular administration or exact record-keeping system existed.

44. The Tribunal has considered the issue of late-filed documents in several previous Cases. In Harris International Telecommunications,[15] the Tribunal stated that "[t]he starting point of the analysis must be the Tribunal Rules themselves. There are four rules relevant to this determination." The Tribunal referred to Articles 22 and 23 of the Tribunal Rules, which provide authority for the Tribunal to establish deadlines

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[14] The Claimant contends that at the time Mr. Reza Nasrolahi was the Head of the Islamic Revolutionary Guards Corps of Natanz he had signed a procès-verbal and two receipts which prove that the Revolutionary Guards had confiscated property of Rahmat Abad on 1 February 1980.

[15] Harris International Telecommunications, Inc. and The Islamic Republic of Iran, et al., Partial Award No. 323-409-1 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31 ("Harris International Telecommunications")

for written submissions. In addition, the Tribunal referred to Article 15, which requires that the parties be treated with equality. Moreover, Article 28 gives the Tribunal the authority to make an award based on the evidence before it, if a party that has had the opportunity to file documentary evidence fails to file that evidence within the established period of time, and fails to show sufficient reason for its nonconformity. As the Tribunal stated in Harris International Telecommunications, "these rules provide authority for the Tribunal to make and to enforce deadlines for the filing of written submissions, provided that the Parties are treated with equality."[16]

45. Chamber One has taken a clear position when deciding the admissibility of late filings. When scheduling hearings, the Chamber routinely informs the parties that it does not permit new evidence prior to a hearing, unless it determines that admission of the documents is justified by exceptional circumstances, and unless those documents are filed not later than two months before the hearing.[17]

46. In determining whether to admit the Claimant's pre-Hearing documents, the Tribunal notes: (1) the Claimant requested the filing of the documents on 14 May 1999, i.e., after the Tribunal already had decided to postpone the Hearing scheduled for 24-28 May 1999; (2) the request was made over seven months before 6 January 2000, the date when the Tribunal rescheduled the Hearing; and (3) when admitting the Claimant's Surrebuttal exhibits into evidence on 21 April 1999, the Tribunal invited the Respondent to submit its comments and possible evidence in response to the Claimant's Surrebuttal, which actually afforded

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[16] Id., paras. 57-75, at 45-52.

[17] See Vera-Jo Miller Aryeh, et al. and The Islamic Republic of Iran, Award No. 581-842/843/844-1, para. 50 (22 May 1997), reprinted in 33 Iran-U.S. C.T.R. 272, 287 ("Vera-Jo Miller Aryeh").

the Respondent nearly seven months to respond and provide rebuttal evidence to those two documents.

47. Under these circumstances, the Tribunal deems it appropriate to admit into evidence the two documents submitted by the Claimant on 14 May 1999. In taking this decision, the Tribunal also takes into account the nature and substance of the documents, the reasons for the delay in submitting them, and the content of the Respondent's response of 10 December 1999.

2. Documents Submitted After the Hearing

48. The post-Hearing submissions, however, are a different matter. After rescheduling the Hearing for May 2000, the Tribunal stated in its 6 January 2000 Order that "[t]he Tribunal will not permit the introduction of new documents in evidence prior to the Hearing unless it finds that this is justified by exceptional circumstances and unless such documents are filed not later than two months before the Hearing."[18] The 6 January 2000 Order also stated that "[a]t the Hearing, any party is free to make any arguments it wishes, but new documents may not be introduced in evidence unless the Tribunal so permits, which permission will not normally be granted except for evidence in rebuttal of evidence introduced in the Hearing."

49. In Vera-Jo Miller Aryeh, supra note 17, para. 52, at 288, the Tribunal stated:

> Typically, the practice not to allow new evidence in the record encompasses not only the two-month period directly preceding the hearing but also the post-hearing period preceding the filing of an award. The practice of Chamber One has been strict, even though the Chamber has taken into consideration the nature of these documents, the elapsed period of time, and

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[18] In addition, in its Order of 9 March 2000 the Tribunal emphasized that "it will not permit the introduction of any new evidence prior to the forthcoming Hearing."

> the reasons for the delay, when deciding on the admissibility of late-filed, unauthorized documents. Usually, the Tribunal has rejected the late-filed unauthorized documents in order to prevent any party from using "tactical" filings at the hearing or thereafter.

50. In its first post-Hearing submission, the Respondent stated that, during the Hearing, it had promised to submit to the Tribunal a complete copy of a partial telex from which it had read aloud during the Hearing.

51. The Tribunal notes that the Respondent had neither presented nor referred to the above-mentioned telex in its pre-Hearing submissions, including in its reply to the Claimant's Surrebuttal exhibits, although it appears that at least the part that was read by the Respondent at the Hearing has been in its possession since 1981 and, therefore, available for filing during earlier stages of the proceedings. Furthermore, the Tribunal did not authorize, during or after the Hearing, the Respondent to submit any further evidence on this or any other matter related to the Case.

52. In addition, the Tribunal finds the content of the telex questionable since it relates to the position taken by one party when seeking a settlement with the other party. The Tribunal has in several instances found that positions taken by the parties during settlement negotiations are without prejudice to their respective rights.[19] Also, in the Chorzów Factory Case[20] the Permanent Court of International Justice held that it

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[19] See, e.g., International Schools Services, Inc. and The Islamic Republic of Iran, et al., Award No. 290-123-1, para. 37 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 65, 77; and PepsiCo, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 260-18-1 (13 Oct. 1986), reprinted in 13 Iran-U.S. C.T.R. 3, 28, ("PepsiCo, Inc.").

[20] Chorzów Factory Case (Merits)(Ger. V. Pol.), 1928 P.C.I.J. Ser. A, No. 17 (Judgement of 13 September).

> cannot take into account declarations, admissions or proposals which the Parties may have made during direct negotiations between themselves, when such negotiations have not led to a complete agreement.[21]

53. The Tribunal, therefore, finds the first post-Hearing filing by the Respondent inadmissible. For the same reasons, the Tribunal deems it inappropriate to take into consideration the content of the telex read to it by the Respondent during the Hearing.

54. Insofar as the other three post-Hearing submissions are concerned, supra, paras. 38-40, the Tribunal refers to paras. 49-51, supra, where applicable, and also finds these filings inadmissible.[22]

C. Admissibility of Late Claims and Amendment of Claims

1. Alterations in the Amount Claimed

55. In her Rebuttal Memorial, the Claimant, relying on Article 20 of the Tribunal Rules, see infra note 31, requested that she be permitted to amend and supplement her Claim to conform to the evidence submitted with her Hearing Memorial and with her Rebuttal Memorial. The Claimant alleged that the new amount claimed reflects information from documents recently obtained from Iran, which information was not available when she filed her Claim or made her initial submission of evidence. According to the Claimant, the revised amount also reflects new expert

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[21] Id. at 51.

[22] See, e.g., Dames and Moore and The Islamic Republic of Iran, et al., Decision No. DEC 36-54-3 (23 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 107, 115, where the Tribunal stated that "during the interval between the close of the Hearing and the Award...no submission may be accepted unless the Tribunal itself determines this is necessary owing to exceptional circumstances" (internal citation omitted).

appraisals, which are based in part on information not previously available.

56. Therefore, the amount of compensation sought in the Rebuttal Memorial has been increased to U.S.$40,930,443, plus interest and costs, compared to the Statement of Claim, where the Claimant sought U.S.$6,528,116.90, and the Hearing Memorial, where the compensation sought was U.S.$16,263,578.44. Although the amount of each of the Claimant's individual claims are not itemized in the Statement of Claim, the amounts are itemized in the Hearing Memorial and in the Rebuttal Memorial. At the Hearing the Claimant sought U.S.$33,508,923, explaining that there had been an error in her valuation calculations.

57. The Respondent is opposed to the increased amounts and to their having been increased over five-fold from the amount originally sought in the Statement of Claim. The Respondent holds that before the filing of the Statement of Claim, the Claimant enjoyed ample time, and was in the best possible position, to appraise her claimed property and shares. Any changes in the value of the alleged property subsequent to the filing of the Statement of Claim cannot affect the amount of compensation, which must be determined as of the date of expropriation. The Respondent argues that the Claimant has produced no acceptable reason for her revised valuation. Hence, it argues that the Tribunal may not accept such an increase in the relief sought.

58. The Tribunal notes that its practice has been to allow claimants to increase the amounts sought in stated claims, whether as a result of new evidence or the application of a different valuation or appraisal method.

59. In Birnbaum,[23] the Tribunal did not consider multiple amendments resulting in more than a ten-fold increase in the amount of the original claim prejudicial or otherwise inadmissible. In that Case, the Claimant had alleged that he had not received certain documents until after he filed his statement of claim. The Tribunal held that

> [w]hether there was an expropriation, the effective date of such expropriation, and the value of the expropriation interest are matters of proof to be resolved by the Tribunal in the course of the proceedings, and the Parties are free to make such arguments in respect of those issues as they may choose.[24]

60. In Thomas Earl Payne, the Tribunal stated that "no prejudice could be considered to have been caused to the Respondent by a change in the Claimant's valuation of the property at issue even if this change is caused by using a different method of valuation."[25]

61. For these reasons, the Tribunal holds that the Respondent will not be prejudiced by the amended Claim, as the Tribunal has afforded it ample opportunity to respond to the amended Claim,

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[23] 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 ("Birnbaum Order").

[24] Id., para. 9, at 148.

[25] Thomas Earl Payne and The Government of the Islamic Republic of Iran, Award No. 245-335-2, para. 9 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 6 ("Thomas Earl Payne"). See also General Electric Company and The Government of the Islamic Republic of Iran, et al., Award No. 507-386-1 (15 Mar. 1991), reprinted in 26 Iran-U.S. C.T.R. 148, 150; 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; Ford Aerospace and Communications Corp. and The Government of the Islamic Republic of Iran, Partial Award No. 289-93-1 (29 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 24, 26; PepsiCo, Inc., supra note 19, at 17; and International Schools Services, Inc. and The Islamic Republic of Iran, Interlocutory Award No. ITL 57-123-1 (30 Jan. 1986), reprinted in 10 Iran-U.S. C.T.R. 6, 12.

both in subsequent filings and at the Hearing. Accordingly, the Tribunal rejects the Respondent's objection and decides that the amendments are admissible in accordance with Article 20 of the Tribunal Rules.

2. Other Alterations to the Claim

62. The Claimant added a number of individual claims with her Hearing and Rebuttal Memorials:

i. a claim for the alleged payment of 34,170,000 Iranian Rials ("Rls.") (U.S.$483,994) for the benefit of Khoshkeh in a deposit account with Bank Melli Iran, Central Branch (introduced in the Claimant's Hearing Memorial);

ii. a claim for the alleged down payment of Rls. 65,000 (U.S.$920.68) to Tehran Telecommunications Company for the future utilization of two telephone lines in the Farahzad Apartments, which were under construction (introduced in the Claimant's Hearing Memorial);

iii. a claim for Rls. 6,000,000 (U.S.$84,986) for the alleged value of ten percent equity interest in Sarhad Abad (introduced in the Claimant's Rebuttal Memorial);

iv. a claim for Rls. 1,976,905 (U.S.$28,000) for the alleged value of one percent ownership of the lands managed by Sarhad Abad (introduced in the Claimant's Rebuttal Memorial);

v. a claim for Rls. 20,611,693 (U.S.$291,950) for an alleged loan to Rahmat Abad (introduced in the Claimant's Rebuttal Memorial);

vi. a claim for Rls. 9,000,000 (U.S.$127,479) for an alleged loan to Tarvandan (introduced in the Claimant's Rebuttal Memorial); and

vii. a claim for Rls. 9,000,000 (U.S.$127,479) for an alleged loan to Gav Daran (introduced in the Claimant's Rebuttal Memorial).

63. The Respondent objected to the foregoing claims on the ground that they were untimely filed after the Tribunal's jurisdictional cut-off date, and requested the Tribunal to declare them inadmissible.

64. The Respondent states that these claims cannot be considered as amendments of, or supplements to, the original claims, but they must be considered as new Claims, independent of and separate from those raised in the Statement of Claim. Moreover, the Respondent asserts that it has not been able to properly defend itself against these new Claims because they were raised so late. The Respondent contends that the introduction of these new Claims is inconsistent with the requirements of Article III, paragraph 4, of the Claims Settlement Declaration. In support of its arguments, the Respondent cites the Tribunal's reasoning in Vera-Jo Miller Aryeh.[26]

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[26] Vera-Jo Miller Aryeh, supra note 17. In that Case the Tribunal found:

> Furthermore, the Tribunal does not consider this portion of the Claimants' Claim to be a mere amendment intended to raise the possible value of the allegedly expropriated company.... Instead, the

65. The Respondent, moreover, refers to Article 20 of the Tribunal Rules, see infra note 31, contending that even if the new Claims were considered as amendments or supplements to the Statement of Claim, they should be rejected before dealing with the merits of the Case, since they cause prejudice to the Respondent. The Respondent also emphasized at the Hearing that the Claimant raised these Claims about a decade and a half after the filing deadline.

a) Admissibility of Claims Related to the Deposit Made in Favor of Khoshkeh and the Loans to Rahmat Abad, Tarvandan and Gav Daran (points i, v-vii)

66. The Tribunal notes that the Claimant has listed in the Statement of Claim the details of the items of property then known by the Claimant to have been seized by the Respondent. With respect to Khoshkeh, Rahmat Abad, Tarvandan and Gav Daran, the Claimant only refers to her shares in those companies. Later, in her Hearing and Rebuttal Memorials she claimed other interests in these companies, including debts owed to her by Rahmat Abad, Tarvandan and Gav Daran, as well as Rls. 34,170,000

> Tribunal holds that this portion of the Claim is a separate claim concerning a time period and acts different from the present, timely filed Claim on the expropriation of [the company]....
>
> ...
>
> [T]he Tribunal considers that the Claimants' Claim for the bank accounts..., which was for the first time raised in the Claimants' Rebuttal Memorial, is a new claim. Therefore, the Tribunal finds the Claim inadmissible.

Id., paras. 63, 68, at 291, 292.

on deposit at Bank Melli, which was used to secure a line of credit in favor of Khoshkeh.[27]

67. The Claimant has given no clear explanation why she failed to mention these claims in the Statement of Claim. However, in her Hearing Memorial the Claimant requested permission to clarify, detail, supplement and amend her Claim. Furthermore, in her Rebuttal Memorial the Claimant made a general request pursuant to Article 20 of the Tribunal Rules that she be permitted to amend and supplement her Claim to conform to the evidence submitted in her Hearing Memorial and the Rebuttal Memorial. The Claimant also stated that the amount therein reflects, among other things, information from documents recently obtained from Iran that were not available to her when she filed her Claim or when she made her initial submission of evidence.

68. The Tribunal does not share the Claimant's view that these claims, introduced for the first time in the Hearing Memorial and the Rebuttal Memorial, are mere amendments or supplements to the previously presented claims allowed by Article 20 of the Tribunal Rules. On the contrary, the Tribunal finds that they are new Claims filed after the jurisdictional cut-off date established by Article III, paragraph 4, of the Claims Settlement Declaration.[28] Although the Claimant mentioned all four companies in her Statement of Claim, these new Claims are

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[27] Initially, the Claimant had argued that she had paid the Rls. 34,170,000 into a fixed account at Bank Melli, but subsequently argued that "[a]s [she] acquired Khoshkeh shares, [she] also became the owner of deposits...in a fixed deposit account."

[28] That paragraph provides in relevant part:

> No Claim may be filed with the Tribunal more than one year after the entry into force of [the Claims Settlement Declaration] or six months after the date the [first] President [of the Tribunal] is appointed, whichever is later.

not for the expropriation of her equity interest in those companies, but either for debts or for other interests. By accepting these new Claims or "amendments," as the Claimant regards them, 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.[29] Furthermore, these new Claims obviously are not mere amendments intended to raise the possible value of the allegedly expropriated companies or increase the Claimant's equity ownership interest in them. Finally, the Claimant's general reference to "additional lost property" in the Statement of Claim does not give her any right to include new claims after the jurisdictional cut-off date expressed in the Claims Settlement Declaration.[30]

69. According to Article 20 of the Tribunal Rules, the Tribunal will permit amendments to claims unless delay, prejudice or other circumstances make it inappropriate to do

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[29] See Order of 15 September 1987 in Fereydoon Ghaffari and The Islamic Republic of Iran, Case No. 10792, Chamber Two, para. 4, reprinted in 18 Iran-U.S. C.T.R. 64; and Birnbaum Order, supra note 23, para. 9, at 148. In these two Cases, the Tribunal noted that "the essence of the claim in this Case would not be changed by the proposed amendment. The claim remains a claim for compensation for the alleged expropriation of [the Claimant's] ownership interest in an Iranian company."

[30] See Vera-Jo Miller Aryeh, supra note 17, paras. 59-70, at 289-92; Tchacosh Company, Inc., et al. and The Government of the Islamic Republic of Iran, Award No. 540-192-1, paras. 18-19 (9 Dec. 1992), reprinted in 28 Iran-U.S. C.T.R. 371, 378-79; W. Jack Buckamier and The Islamic Republic of Iran, et al., Award No. 528-941-3, paras. 19-29 (6 Mar. 1992), reprinted in 28 Iran-U.S. C.T.R. 53, 58-60 ("Buckamier"); International Telephone and Telegraph Corporation and The Islamic Republic of Iran, Decision No. DEC 87-11045-1, paras. 9-10 (7 July 1989), reprinted in 22 Iran-U.S. C.T.R. 213, 214-15; and Arthur Young & Company and The Islamic Republic of Iran, et al., Award No. 338-484-1, para. 37 (1 Dec. 1987), reprinted in 17 Iran-U.S. C.T.R. 245, 253-54 ("Arthur Young").

so.[31] In this respect, the Tribunal notes that the Claimant raised these additional Claims only after the Tribunal had decided that the Claimant has standing as a United States national before this Tribunal under Article II, paragraph 1 and Article VII, paragraph 1 of the Claims Settlement Declaration. Therefore, the Tribunal 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. Furthermore, the Claimant has not given any acceptable reason why she failed to include these Claims in the Statement of Claim, even though she must have known about her other interests in these companies and, therefore, about their alleged expropriation when she filed the original Claim. The possibility that she lacked specific evidence to support the Claims or the exact amount involved would not have prevented her from referring at that time to her other interests in the companies. Accordingly, in addition to the Claims Settlement Declaration, the Tribunal regards these four Claims as inadmissible under Article 20 of the Tribunal Rules due to the Claimant's delay in presenting them.[32]

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[31] Article 20 of the Tribunal Rules reads as follows:

> During the course of the arbitral 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. However, a claim may not be amended in such a manner that it falls outside the jurisdiction of the arbitral tribunal.

[32] See, e.g., Kambiz Hakim and The Government of the Islamic Republic of Iran, Award No. 478-952-2, para. 9 (16 May 1990), reprinted in 24 Iran-U.S. C.T.R. 269, 271; Cal-Maine Foods, Inc. and The Government of 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; and Anaconda-Iran, Inc. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 65-167-3, para 118 (10 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 229.

b) Admissibility of Claims Related to Sarhad Abad (points iii-iv)

70. With respect to the expropriation of her equity interest in Sarhad Abad and her one percent ownership interest in the lands managed by that company, the Claimant argues that she lacked specific evidence of these claims until shortly before the filing of her Rebuttal Memorial. The Claimant maintains that she obtained most of the evidence concerning these portions of the Claim in July 1996, when she obtained several packages of her own and her spouse's financial records.

71. Recalling Article III, paragraph 4, of the Claims Settlement Declaration, the Tribunal determines that these claims are not mere amendments of the previously presented Claim. The facts of the new Claims are different from the timely filed Claim and pertain to ownership interests in a company that the Claimant had not even mentioned in her Statement of Claim. Even if the Claimant had not possessed any specific evidence to prove her claims before 1996, that does not explain the omission of the Sarhad Abad ownership interest in the Statement of Claim. Accordingly, the Tribunal finds 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.[33]

c) Admissibility of Claim Related to the Down Payment of the Two Telephone Lines (point ii)

72. In her Hearing Memorial, the Claimant alleges that she paid Rls. 65,000 as down payment for two telephone lines for the

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[33] See, e.g., Vera-Jo Miller Aryeh, supra note 17, paras. 63, 68 and 70, at 291-92. See also the other Cases mentioned in note 30.

Farahzad Apartments. The Claimant claims that these payments were expropriated pursuant to the Order of the Islamic Revolutionary Court of 27 February 1980. The Respondent has argued that this is a new claim against an independent entity, Tehran Telecommunication Company, which is not a party to the Claim, and that it should be dismissed as untimely filed.

73. The Tribunal finds that it was only in her Hearing Memorial that the Claimant alleged that she had made down payments for the telephone lines. In accordance with what was held previously, supra, para. 71, the Tribunal considers that the Claimant's Claim for the down payment for the telephone lines is a new claim filed after the jurisdictional cut-off date. Therefore, the Tribunal finds the Claim inadmissible.

III. OWNERSHIP

A. Summary of Claims

74. The Claim arises from the alleged expropriation and nationalization of the Claimant's property in Iran. Portions of the Claimant's Claim allegedly arose on different dates. The allegedly expropriated property consists of the following:

i. 33,871.70 shares of Bank Tehran;

ii. 500 shares (2.5%) of the capital stock of 20,000 shares of Iran Bohler;

iii. 2,010 shares (20.1%) of the capital stock of 10,000 shares of Khoshkeh;

iv. 158 shares (45.14%) of the capital stock of 350 shares of Rahmat Abad;

v. 34 shares (45.33%) of the capital stock of 75 shares of Tarvandan;

vi. 20 shares (40%) of the capital stock of 50 shares of Gav Daran;

vii. a 337-square-meter apartment located in the ASP Building, Block C, 19th floor, Apartment 1, 60 Fourth Street, Nowbonyad Street, Youssefabad Avenue (at present Jamaledin Assadabadi Avenue, Tehran)(ASP Apartment); and

viii. contractual rights to purchase two apartments in Farahzad, in the west of Tehran (Farahzad Apartments).

75. The Claimant also claims compensation for the expropriation of the following personal property:

i. various art works, antiques, furniture and carpets in the ASP Apartment;

ii. two cars, a 1978 Toyota and a 1976 Peykan; and

iii. four horses at the Rahmat Abad farm.

B. Bank Tehran's Shares

76. The Claimant alleges that she owned 33,871.70 shares of stock in Bank Tehran, which shares she acquired at different times through a series of transactions in 1977 and 1978. The Claimant seeks to establish her ownership of the shares by providing share certificates issued by the bank. She also refers to her own affidavit and the affidavit of Mrs. Fatemeh Eftekhari, a former private secretary to the board of directors

of Bank Tehran. Mrs. Eftekhari states in her affidavit that the Claimant owned 33,870.70 shares in Bank Tehran.

77. The Claimant states that the Respondent has submitted no evidence to cast doubt on her ownership. On the contrary, the Claimant's ownership of the shares is confirmed by the Respondent's own evidence, an affidavit of Mr. Ali Abedini, an official of Bank Mellat, the successor to Bank Tehran. In his affidavit, Mr. Abedini confirms that the Claimant bought at different times a total of 33,871.70 shares (with a nominal value of one thousand Rials per share) of Bank Tehran and that these shares were registered in the share transfer register under her name. The Claimant points out that the Respondent's own evidence shows that her husband, Mr. Riahi, was not listed in the corporate register as a shareholder. Only the Claimant was the registered owner of the 33,871.70 shares at issue. The Claimant also emphasizes that, according to Article 7 of its Articles of Association, Bank Tehran always considered the person whose name appeared in the share register as the owner of the shares.

78. The Respondent does not contest the number of shares in question or the fact that shares were issued in the Claimant's name. Rather, the Respondent argues that the Claimant cannot be a claimant for these shares since her locus standi has not been established, as she is not the genuine beneficiary of the shares. According to the Respondent, the shares were only formally registered in her name, as confirmed by Mr. Riahi's diary. The Respondent further argues that no foreign investor would have acquired shares in January-February 1978, because of the political situation in Iran. In any case, if the acquisition of the shares is regarded as a gift, that gift was, according to the Respondent, not registered in accordance with Iranian law and thus was not valid. The Respondent also

contends that the caveat expressed in Case No. A18 prevents the Claimant from receiving compensation for Bank Tehran shares.

79. The Tribunal notes that the Claimant has produced in evidence the share certificates that were in her name and that those share certificates constitute strong prima facie evidence that the shares at issue have been legally conferred to the person whose name appears on the share certificates as the owner. Moreover, the shares were registered in the share register in the Claimant's name. The Claimant's ownership is further supported by the affidavits of Mrs. Eftekhari and Mr. Abedini. Mr. Riahi's diary does not contradict the Claimant's ownership of these shares. Therefore, since the Respondent has not been able to rebut successfully the Claimant's evidence that she was the real owner of the shares in question, the Tribunal rejects the Respondent's contentions and concludes that the Claimant was at the time of the alleged expropriation the owner of 33,871.70 shares in Bank Tehran. The Tribunal will address the issue of the applicability of the caveat expressed in Case No. A18 in Section IV, infra.

C. Iran Bohler's Shares

80. The Claimant states that Iran Bohler was established in 1973 as a joint venture between a group of Iranian investors and an Austrian firm, Böhler Pneumatic International GmbH. The purpose of the company was to manufacture pneumatic jackhammers in Iran. Initially, the share capital of the company was Rls. 70,000,000, divided into 7,000 registered shares with a par value of Rls. 10,000 each. In 1975, the share capital was increased to Rls. 200,000,000, divided into 20,000 shares. This is shown by the minutes of the shareholders' meeting of 12 May 1975. The company had a factory in the industrial park of Alborz. The Claimant has provided a photograph of the inauguration of the factory, held on 11 June 1976.

81. The Claimant contends that she had an equity interest of 500 shares in the company. To prove her ownership of the shares, the Claimant provided the original share certificates Nos. 124-137. According to their text, these share certificates were issued in the Claimant's name. In the Claimant's view, her continued possession of these certificates proves that she was the owner of the shares at the time of expropriation. To further corroborate her claim, the Claimant also submits the minutes of the shareholders' meetings of 5 November 1977 and 11 July 1978, and the attached lists of shareholders. In the annex to the minutes of the shareholders' meeting of 11 July 1978, the Claimant is named as the owner of 500 Class A shares of the company. The Claimant contends that she acquired these shares at least one year earlier. This is evidenced by a list of shareholders attached to the minutes of the shareholders' meeting of 5 November 1977. In these minutes, the Claimant is also named as the owner of 500 Class A shares. In support of her claim, the Claimant also submits her own and Mr. Riahi's affidavits, both of which attest to her ownership of 500 shares of the company. Finally, the Claimant points out that the Respondent has failed to produce the company's shareholder records, in contravention of the Tribunal's Orders of 18 November 1994 and 18 May 1995. The Claimant maintains that the share register of Iran Bohler would have confirmed that she never relinquished the shares before they were expropriated.

82. At the Hearing, the Respondent submitted that it does not contest the Claimant's ownership of 500 registered shares of the company. Nevertheless, referring to the Law Concerning Attraction and Protection of Foreign Investments ("LAPFI") in Iran, the Respondent contends that the Claimant's claim must be barred by the caveat expressed in Case No. A18.

83. Noting that the Respondent has acknowledged the Claimant's ownership of 500 shares of Iran Bohler, the Tribunal concludes

that the Claimant was, therefore, the owner of these shares at the expropriation date. The Tribunal will address the issue of the applicability of the caveat expressed in Case No. A18 in Section IV, infra.

D. Khoshkeh's Shares

1. The Claimant's Contentions

84. The Claimant asserts that she is the owner of 2,010 of 10,000 shares of Khoshkeh, a company that was established in 1952 to engage in the importation and distribution of specialty steel. The company had a share capital of Rls. 100,000,000.

85. The Claimant contends that she acquired her interests in Khoshkeh through a series of transactions. As of 22 May 1979, she owned 250 registered shares. In support of this contention, she offers a letter dated 17 May 1987 to Mr. Riahi from Khoshkeh's general manager, Mr. Hassan Khajeh-Nouri, to which were enclosed excerpts of a report he allegedly provided to the "responsible authorities" concerning the Claimant's shares. In the report, Mr. Khajeh-Nouri states that, according to the attached minutes of the annual shareholders' meeting of 22 May 1979, the Claimant owned 250 shares. The report further states that, according to the minutes of the board of directors' meeting, an additional 1,250 registered shares were transferred by Mr. Riahi to the Claimant on 26 May 1979, bringing her total ownership to 1,500 shares. The Claimant maintains that her claim regarding the 1,500 shares is further supported by a copy of the minutes of the board of directors' meeting of 24 February 1980 and the attached list of shareholders, in which the Claimant is listed as owning 1,500 registered shares.

86. According to the Claimant, the 24 February 1980 meeting was also important because 80 percent of the registered shares of the company were converted to bearer shares. The Claimant

alleges that, upon the completion of this conversion, Mr. Khajeh-Nouri, the custodian of the Riahis' shares, transferred 510 of Mr. Riahi's 1,465 bearer shares to the Claimant and another 510 of those shares to Mr. Riahi's son, Malek Massoud, at Mr. Riahi's request.[34] Although Mr. Khajeh-Nouri was allegedly asked to send the share certificates through the Austrian Embassy, the Claimant did not receive them from Mr. Khajeh-Nouri.[35] Accordingly, the Claimant has not been able to produce these share certificates.

87. In support of the alleged acquisition of the additional 510 shares, the Claimant relies on the report attached to Mr. Khajeh-Nouri's 17 May 1987 letter, as well as a letter dated 22 July 1980 from Mr. Khajeh-Nouri to the Claimant. According to the latter letter, the Claimant's 2,010 shares in Khoshkeh were expropriated for the benefit of the Foundation for the Oppressed, along with Mr. Riahi's shares, pursuant to decree No. 361-58 of the Islamic Revolutionary Court, dated 27 February 1980. Mr. Riahi also asserts in his affidavit that he had transferred 510 bearer shares to the Claimant. These 510 shares were a gift from Mr. Riahi to the Claimant.

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[34] In support of this transfer, the Claimant explains that on 28 August 1979, before the conversion of the shares to bearer shares, Mr. Riahi sent a letter to Mr. Khajeh-Nouri requesting him to transfer 1,610 shares to Mrs. Riahi upon the conversion of the shares to bearer shares. The Claimant has submitted a copy of this letter. The Claimant also explains that Mr. Riahi allegedly later amended his instructions in a telephone call to Mr. Khajeh-Nouri. Because the conversion was in progress, however, the actual transfer was not made until the shares were converted from registered shares to bearer shares on 24 February 1980.

[35] In a letter sent to the Respondent in November 1999, Khoshkeh states that Mr. Khajeh-Nouri had not been the trustee of the Riahi family shares. In the letter, the company, however, states that at the time of the conversion of the shares, the Riahi family's representative had come to take delivery of all such shares. The letter does not mention the name of this representative.

88. Referring to the Iranian Act Amending Certain Articles of the Commercial Law, the Claimant asserts that the conversion of shares to bearer shares was legally effective as of the date of the shareholders' action. The Claimant further contends that by virtue of Article 39 of the Iranian Commercial Code, physical delivery of the shares was sufficient for a valid transfer of the bearer shares to the Claimant.

89. The Claimant provides evidence to show that the minutes of the 24 February 1980 meeting, together with the attached list of shareholders, were filed with the Office for Registration. The Claimant points out that the Respondent itself has submitted the same minutes of the meeting of 24 February 1980, although without the appended list of shareholders. The Claimant also contends that the Respondent's own evidence, a letter from Khoshkeh to the Foundation for the Oppressed dated 19 May 1999, provides that, according to the company's records, the Claimant owned 1,500 registered shares as of 24 February 1980. Finally, the Claimant points out that the Respondent failed to submit the shareholder list despite the Tribunal's Orders of 18 November 1994 and 18 May 1995.

90. The Claimant also points out that the Respondent failed to produce the share register of Khoshkeh, although the Foundation for the Oppressed claims ownership of all 4,465 shares previously owned by the Riahi family. The Claimant points out that the minutes of Khoshkeh's shareholders' meetings of 5 July 1980 and of 1 September 1981 show that the Foundation controls all 4,465 shares belonging to the Claimant, her spouse and her stepson. The Claimant, therefore, concludes that the Respondent has failed to submit any corporate records to contradict the Claimant's ownership of 2,010 shares. The Claimant asserts that an adverse inference should be drawn from the Respondent's failure to produce those records. According to the Claimant, the Tribunal should conclude that the records, if produced,

would correspond to the list of shareholders and the accompanying minutes filed by the Claimant.

91. Finally, as to the value of her evidence, which consists of minutes of meetings and correspondence, as well as entries in Mr. Riahi's diary, the Claimant points out that the practice of international tribunals is to excuse a claimant's failure to produce the best, primary evidence where circumstances, such as those present in this Case, have deprived the Claimant of the opportunity to do so.[36] The Claimant argues at length that her affidavits as well as those of her spouse are entitled to weight, despite the personal interest of the affiants.[37]

2. The Respondent's Contentions

92. In its Rebuttal Memorial, the Respondent argues that the Claimant submitted only the attachment to the 17 May 1987 letter of Mr. Khajeh-Nouri to prove her ownership of 250 shares on 22 May 1979 and the additional 1,250 shares as of 26 May 1979. The Respondent argues that this attachment, allegedly sent by Khoshkeh to the Foundation for the Oppressed, was not in the files and records of the Foundation. The Respondent points out that the letter was brought to the Tribunal's attention almost seven years after the submission of the Statement of Claim and contends that it was written by Mr. Khajeh-Nouri in order to provide litigation assistance to an old friend and partner, Mr.

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[36] The Claimant cites Riahi Interlocutory, supra note 1, paras. 12 and 24, at 180 and 183; Rockwell International Systems, Inc. and The Government of the Islamic Republic of Iran (The Ministry of National Defence), Award No. 438-430-1, para. 120 (5 Sept. 1989), reprinted in 23 Iran-U.S. C.T.R. 150, 181; and Uiterwyk Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Partial Award No. 375-381-1, paras. 120 and 142 (6 July 1988), reprinted in 19 Iran-U.S. C.T.R. 107, 140-41, 147.

[37] The Claimant cites Buckamier. See supra note 30, para 67, at 74-76 (citing the "Virally standard").

Riahi. For these reasons, the Respondent denies the validity of the contents of the letter and argues that the Claimant has not been able to prove her ownership of the 1,500 registered shares. As to the undated list of shareholders allegedly attached to the minutes of the 24 February 1980 shareholders' meeting, the Respondent points out that it is signed exclusively by Mr. Khajeh-Nouri and Mr. Ale-Ahmad, and that it could not be found in the company's file with the Office for Registration. The Respondent further refers to several lists of shareholders appended to minutes of general meetings of the company in the years 1976-78 in which the Claimant was not mentioned. In addition, the Respondent contends that no weight should be accorded to the affidavits of the Claimant and Mr. Riahi, unless supported by other documentary evidence.

93. As to the alleged transfer of Mr. Riahi's 510 bearer shares to the Claimant, the Respondent argues that inconsistencies exist in the Claimant's documents. For instance, according to the Respondent, Mr. Riahi's letter of 28 August 1979 makes clear that prior to the meeting of the board of directors on 24 February 1980, Mr. Riahi did not instruct Mr. Khajeh-Nouri to transfer to the Claimant a mere 510 shares, but 1,610. In the Respondent's view, accepting the instruction contained in this letter the Claimant could not have owned 1,500 shares on 24 February 1980, as reflected in the minutes of meeting, because the transfer of 1,610 new shares would have increased her shares to a total of 3,110 shares. This has never been claimed. Furthermore, the 28 August 1979 letter purports to transfer 810 shares to the Claimant's stepson, and not 510 shares, as alleged by the Claimant. The Respondent emphasizes that the transfer of 510 bearer shares could not have taken place before the 24 February 1980 meeting, the date when the shares were allegedly converted from registered shares to bearer shares. Further, the Respondent points out that the minutes

were sent to the Office for Registration on 12 March 1980[38] in order to legalize the company's actions and decisions. On 18 March 1980, through the issuance of a notice, the Office for Registration declared that 80% of the registered shares of the company would be converted to bearer shares. The notice of conversion of shares was published in the Official Gazette on 6 April 1980, which, according to the Respondent, is the effective date of the conversion of the shares.

94. Moreover, the Respondent argues that the actual date of the expropriation of Mr. Riahi's properties is the date of issuance of the Order of the Islamic Revolutionary Court, 24 February 1980. The date referred to by the Claimant, 27 February 1980, is the date on which the Order was entered in the special Registers of the Court, not the date of expropriation. Therefore, even assuming that the shareholders of the company could have proceeded with the conversion of their shares as of 24 February 1980, Mr. Riahi could not have donated his shares to the Claimant because his properties were expropriated the very same day. The Respondent concludes that no document proves that the Claimant held 1,500 shares of the company in 1979 or 2,010 shares in 1980.

95. As to Mr. Khajeh-Nouri's letter of 22 July 1980, the Respondent asserts that it is not authentic, since it explicitly states that the shares of Mr. Riahi and his first-class relatives were expropriated pursuant to the Revolutionary Court's Order. According to the Respondent, such an Order does not exist, since decree No. 361-58 explicitly relates only to Mr. Riahi's property and not to that of his family. The Respondent further notes that the Claimant and her husband admit

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[38] In some cases, Iranian dates in original Persian documents were incorrectly converted to Gregorian dates by the Parties in their submissions. Most such errors appear to be related to the fact that 1980 was a leap year. In this Award, the Tribunal has done its best to correct such errors.

that this and similar letters were issued in the format prepared and requested by Mr. Riahi in 1980.

96. With respect to all 2,010 shares, the Respondent maintains that the requirements of Iranian law for the transfer and proof of ownership of registered or bearer shares were not met. To the extent related to registered shares, the Respondent argues that the Claimant has not been able to prove that the shares were registered in the books of the company, as is required by Article 40 of the Iranian Commercial Code. Because of this, the Respondent argues that the Claimant's ownership claim for registered shares must fail. As to bearer shares, the Respondent contends that under Article 39 of the Iranian Commercial Act, the holder of share certificates must be taken to be the owner of the shares thereby certified. The Claimant has not been able to produce the originals, or even copies, of the share certificates. The Respondent also refers to Articles 47 and 48 of the Act of Registration of Deeds and Properties ("Registration Act"), and Article 798 of the Iranian Civil Code, and points out that the contract of donation must be officially registered and the gifted property must be delivered to and taken into possession by the donee. Both of these essential requirements are lacking here, the Respondent maintains.

3. The Tribunal's Decision

97. Starting with the ownership of 1,500 shares, the Tribunal notes that the minutes of the board of directors' meeting of 24 February 1980 clearly indicate that a list naming the shareholders of Khoshkeh and the amount of their shares had been appended to the minutes. The list produced by the Claimant as the attachment to those minutes, as well as certain other documents produced by the Respondent, speak in favor of the Claimant's ownership of 1,500 shares. For instance, a letter issued by Khoshkeh to the Foundation for the Oppressed on 19 May

1999 states that, "based on the existing documents, the quantity of shares held by Ms. Frederika [sic] Lincoln Riahi as of 24 February 1980, constituting the subject of the Company's Board of Directors proces verbal of the same date, was 1,500 bearer shares." Furthermore, the Tribunal notes that attached to the valuation reports of Mr. Christopher Glover and Mr. Gholamreza Salami, the Respondent's valuation experts, are company records, including a list of the company's shareholders. According to that list, the Claimant owned 1,500 shares in the company in 1980. Consequently, the Tribunal holds that, as indicated in the list of shareholders produced by the Claimant, the Claimant's equity interest in Khoshkeh before the board of directors' meeting of 24 February 1980 was 1,500 registered shares. After that meeting, the registered shares were converted to bearer shares.

98. Turning to the ownership of the additional 510 bearer shares, the Tribunal notes the Claimant's contention that she received these shares as a gift from her spouse immediately after the conversion of registered shares to bearer shares on 24 February 1980. In support of this claim, the Claimant relies on her own affidavits and those of her spouse. The Claimant also submitted two letters of the then managing director of Khoshkeh, Mr. Khajeh-Nouri, to support the contention that her 2,010 shares of the company were now controlled by the Foundation for the Oppressed. Further evidence is to be found in Mr. Riahi's diary, at pages 1001-3.

99. The Tribunal also notes the Respondent's contention that even if the shares were put at the Claimant's disposal, Mr. Riahi could not have transferred the ownership of the shares to the Claimant, because the legal procedures for the conversion of shares to bearer shares were completed after the date of expropriation of Mr. Riahi's property, i.e., after 24 February 1980. To rebut this assertion, the Claimant contends that the

Court Order expropriating her spouse's properties was issued on 27 February 1980. The Respondent, in turn, argues that the date referred to by the Claimant is the date on which the Order was entered in the special registers of the court, and not the date when it was actually issued. The Respondent also disputes the evidentiary value of the letters of Mr. Khajeh-Nouri.

100. The Tribunal finds that the Revolutionary Court's Order is dated 27 February 1980, which falls after the 24 February date when Mr. Riahi had allegedly transferred the shares to the Claimant. However, the Tribunal notes that, irrespective of whether additional steps were required to give effect to the conversion of the shares under Iranian law, the question to be answered here is whether there is sufficient evidence in the record to show that the transfer of 510 bearer shares actually took place after the company's decision on 24 February 1980 but before the date on which the property of the Claimant's spouse was expropriated. In this regard, the Tribunal first notes that the evidence in support of this transfer consists mainly of the affidavits of the Claimant and her spouse, Mr. Riahi, as well as his diary and the two letters issued by Mr. Khajeh-Nouri. Although some of these documents can be regarded as contemporaneous, the Tribunal takes notice of the fact that they were all prepared after Mr. Riahi's property was expropriated in February 1980.

101. The Claimant also submitted a letter dated 28 August 1979, addressed to Khoshkeh, wherein Mr. Riahi, inter alia, states that he wishes to transfer 1,610 shares to his wife. The company has confirmed that it received this letter. Regarding the incorrect figures presented in the letter, Mr. Riahi states, in his affidavit, that when he wrote the letter he was leaving Iran and therefore unable to confirm the number of shares in Khoshkeh that he, his wife and his son owned. According to Mr. Riahi, he later revised the instruction during a telephone

conversation with Mr. Khajeh-Nouri, asking him to transfer only 510 shares to the Claimant. In this regard, the Tribunal notes that neither in Mr. Riahi's affidavit, nor in the attachment to Mr. Khajeh-Nouri's letter, nor anywhere else is any mention made as to when this alleged telephone conversation took place, and whether or not Mr. Riahi gave this new instruction prior to the date when his property was expropriated. In addition, and most significantly, the only evidence in the record to directly support that this telephone conversation actually took place, and that the request to transfer 510 shares to the Claimant was made, is Mr. Riahi's affidavit.

102. The Tribunal is aware of the possible difficulties that an owner of bearer shares can face in proving ownership of shares in the absence of actual share certificates, presentation of which is the usual means of proving ownership.[39] However, the Tribunal finds that the evidence produced by the Claimant to support her ownership of the bearer shares in question is not convincing.

103. Accordingly, the Tribunal holds that the Claimant has not proved that she became the owner of the additional 510 bearer shares of Khoshkeh, as she claims. She 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. Therefore, the Tribunal holds that the Claimant

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[39] As to the importance of the possession of bearer shares in a situation where the ownership of a person who has the shares in his actual possession is contested, the Tribunal notes Article 39 of the Commercial Code of Iran, which partly reads as follows: "Bearer shares shall be drafted in the form of an instrument payable to the bearer and shall be considered the property of their holder unless otherwise proven." Article 320 of the same Code further provides that "[t]he holder of any instrument payable to the bearer shall be considered as its owner...unless otherwise proven." (Translation by the Tribunal's Language Services Division.)

owned 1,500 shares in Khoshkeh at the time of the alleged expropriation of the Claimant's equity interest in the company.

104. With respect to the Claimant's request that the Tribunal draw an adverse inference from the Respondent's failure to produce Khoshkeh's share register, the Tribunal notes that the matter in respect of 510 shares concerns bearer shares and that Iranian law does not require that transfers of bearer shares be entered into share registers of the companies. In addition, Article 10 of the Articles of Association of Khoshkeh provides that only the transfer of registered shares requires the approval of the board of directors and recording in the share register. The Tribunal therefore 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. Accordingly, the Tribunal finds no need to consider the issue of whether the Respondent has complied with the relevant Tribunal Orders as far as Khoshkeh is concerned.

E. Rahmat Abad's Shares

1. The Claimant's Contentions

105. The Claimant alleges that she owned 158 shares of the capital stock of 350 shares of Rahmat Abad.

106. Rahmat Abad was established in July 1976. The Claimant contends that the company was a legal entity, not a fictitious company, as alleged by the Respondent. Indeed, the Claimant observes that the Respondent itself introduced evidence showing the application to register the company, which was filed on 6 July 1976 and confirmed in October 1976. The Claimant asserts that after some bureaucratic delays, 400 hectares of the Rahmat Abad lands were transferred to the company, as title deeds dated

29 August and 2 September 1978 show, with the approval of the Agricultural Bank that had held the land as security for a mortgage. In response to the Respondent's contention that Mr. Riahi was attached to the land and wanted to keep it within the family, the Claimant explains that Mr. Riahi had planned to transfer the ownership of the farm to Rahmat Abad, shares of which would be transferred to the Claimant and Mr. Riahi's eldest son, Malek Massoud, since the other two sons were drug addicts and financially irresponsible. The Claimant further states that Mr. Riahi wanted to transfer the property inter vivos for tax purposes, and he acted accordingly.

107. The Claimant rejects the Respondent's contention and Mr. Abolfath Mahvi's testimony, infra, para. 120, that Mr. Riahi's property transfers to his wife were designed to circumvent expropriation. In his affidavits, Mr. Riahi also denies this. Mr. Riahi asserts that, after his marriage, he started transferring shares to his wife, but that all the transfers were made in good faith and in accordance with Iranian law. He denies ever even thinking of transferring shares to his wife with the expectation that she might be able to bring a claim to recover his expropriated property in United States courts. He explains that under the Iranian Commercial Code, any member of a board of directors in a private stock company must possess at least one share. It was understood that after the termination of the period of service, the person in question would return the share previously transferred to him or her. This arrangement was referred to in Mr. Riahi's diary in Farsi as "soori," meaning "nominal." The word "soori" was not used in conjunction with the name of his spouse.

108. The Claimant asserts that the Respondent has the relevant records and is aware of her ownership of 158 shares, but that the Respondent intentionally refuses to produce the records or to acknowledge the contents of those records.

109. The Claimant argues that the Respondent has failed to comply with the Tribunal's Orders of 18 November 1994 and 18 May 1995 directing the Respondent to produce the requested documents, or to explain why it was impossible to do so. The Claimant notes that the requested documents included the share register, registration file, list of shareholders of the company referred to in the 1983 letter of the Foundation for the Oppressed to the Revolutionary Court of Isfahan, and minutes of the shareholders' meetings that are at the disposal of the Foundation. The Claimant contends that the company's share register was kept at the Rahmat Abad farm among the corporate records, which were seized by the Revolutionary Guards. A receipt for the seizure of the files was given on 1 February 1980. As to the registration file of the company, the Claimant asserts that the Respondent produced only one document from the file, showing the initial distribution of shares among the founders of the company in 1976. According to the Claimant, the Respondent easily could have produced a later filing that shows the Claimant's ownership of 158 shares.

110. The Claimant further points out that the Respondent failed to submit the minutes of at least four shareholders' meetings, which were among the company's records seized by the Revolutionary Guards, and the list of shareholders attached to the letter submitted by the Foundation for the Oppressed to the Revolutionary Court of Isfahan, although the letter is filed as an exhibit to the Respondent's Hearing Memorial and evidence and the letter mentions that the list of shareholders is appended.

111. The Claimant alleges that through a series of transactions, her equity interest in the company was increased to 158 shares, which she claims to have owned as of the date of expropriation, 27 February 1980. According to the Claimant, she was one of the founders of the company and she initially owned one share. For a number of years, she also served on the

company's three-person board of directors. In 1978, the Claimant increased her shareholding in Rahmat Abad from one to two shares, as recorded in the minutes of the board of directors meeting of 16 December 1978. The Claimant further contends that her equity interest in Rahmat Abad was increased to 112 shares when, on 20 December 1978, an additional 110 shares were transferred to her from her stepson Jahan Shahriar, as recorded in the minutes of the meeting of the board of directors:

> Discussion was made by the board of directors concerning transfer of 110 shares of Mr. Amir Saeed Riahi to Mr. Malek Massoud Riahi as well as transfer of 110 shares of Mr. Jahan Shahriar Riahi to Ms. Frederica Riahi and the board approved such transfer. Therefore, the shares of Mr. Malek Massoud Riahi were increased to 220 shares and the shares of Ms. Frederica Riahi were increased to 112 shares.

112. The 110 shares belonging to Mr. Jahan Shahriar Riahi were allegedly donated to the Claimant by Mr. Riahi. This transfer was made under a power of attorney dated 24 December 1975 given by Jahan Shahriar to his father, Mr. Riahi. According to the Claimant, the list of shareholders attached to the minutes of the company's shareholders' meeting of 5 June 1979 shows that at the time of that meeting she still owned 112 shares. The minutes and the list of shareholders were filed with the Office for Registration on 18 June 1979.

113. The Claimant asserts that on or about 18 June 1979, her interest increased from 112 to 158 shares as a result of the transfer of 46 shares formerly owned by her stepson Malek Massoud Riahi. This transfer of shares was made by Mr. Riahi under a power of attorney from Malek Massoud. The Claimant points out that the company's shares were converted from registered to bearer shares at the shareholders' meeting of 5 June 1979 and that this conversion does not affect the fact that her ownership of 158 shares has been established. The Claimant further contends that her ownership is reflected in Mr. Riahi's

letter of 2 July 1980 to Ata-Ollah Nabavi, the managing director of Rahmat Abad. The Claimant further maintains that the 158 share certificates were among the items that she kept in her safe deposit box at Bank Tehran.

114. Mr. Riahi states in his affidavit that both Jahan Shahriar and Amir Saeed were drug abusers, but that they were not suffering from any mental disorders affecting their legal capacity, as alleged by the Respondent. He further states that Dr. Sanati, the Respondent's medical expert, had never examined Amir Saeed to find out his state of health.

115. The Claimant also produced a legal opinion of Mr. Mehdi Mahloujian, a retired Iranian judge living in the United States. He was also heard as an expert witness in this Case. Mr. Mahloujian stated that the powers of attorney granted by Jahan Shahriar and Amir Saeed to their father and the subsequent transfer of the Rahmat Abad land to the Rahmat Abad Company were all valid transactions based on official documents. He explained that, under Iranian law, the sons are presumed competent to conclude legal transactions and that the presumed competence cannot be overcome by the evidence submitted by the Respondent. He also argued that only an Iranian Court may find Mr. Riahi's two sons incompetent. Even accepting the Respondent's argument that their incompetence could be traced to the time when they were still minors, the father would nonetheless have remained their legal guardian after they had reached the age of 18. As regards the discussion of the date the power of attorney was executed, Mr. Mahloujian states that due to the workload of the Offices for Registration of Official Documents in large cities, a discrepancy between the date it was signed by the principal and the time it was issued by the Office for Registration of Official Documents was not unusual and would not affect the validity of the power of attorney.

116. Ms. Zand, the former wife of Mr. Riahi and mother of Jahan Shahriar and Amir Saeed, submitted an affidavit and testified as a witness in connection with the mental condition of the sons. She explained that Jahan Shahriar had consulted her before he had given a power of attorney to his father. In her view, although Jahan Shahriar had been abusing drugs, he had been clear-headed, rational and thinking of his best interest when discussing the matter with her. Ms. Zand is of the opinion that Jahan Shahriar understood fully the implications of giving a power of attorney and that they both had agreed that doing so would be in his best interest.

117. Dr. Ratner, a psychiatrist who appeared as an expert witness for the Claimant at the Hearing, doubted the conclusions of the Respondent's medical expert, Dr. Sanati, noting that Dr. Sanati had not made any contemporaneous observations himself and had relied selectively on data. Dr. Ratner testified that he did not find any evidence of mental illness when examining the records, but instead found evidence that pointed towards a drug problem.

2. The Respondent's Contentions

118. The Respondent agrees that the Claimant is the owner of two shares in Rahmat Abad, but argues that she has failed to prove her ownership of the additional 156 shares that she claims.

119. The Respondent argues that the creation of the company itself was fictitious. The Respondent brings to the Tribunal's attention that Mr. Riahi had transferred two parcels of real estate, the Rahmat Abad farmland and Badi'abad, to his son Jahan Shahriar. According to the Respondent, Mr. Riahi later mortgaged these properties in order to obtain a loan from the Agricultural Bank. Later, Mr. Riahi established a fictitious

company, Rahmat Abad. In 1978, the Rahmat Abad farmland was transferred to Rahmat Abad for Rls. 22,500,000, an amount almost equal to the balance of the mortgage that Mr. Riahi had acquired from the Agricultural Bank. According to the Respondent, Mr. Riahi's intention was to transfer his personal debts to a fictitious company and that the transfer was formal in nature only, as Mr. Riahi retained sole decision-making authority. The Respondent, moreover, alleges that the Rahmat Abad farmland was transferred from Jahan Shahriar to the company on the basis of an invalid power of attorney.

120. The Respondent maintains that the Claimant's share ownership in Rahmat Abad is also fictitious. The Respondent points out that Mr. Riahi carefully followed political events in Iran and that he transferred shares to the Claimant in order to safeguard his properties against expropriation. The Respondent contends that the transfer of shares to the Claimant was made to protect Mr. Riahi's own interests and benefits. To prove this allegation, the Respondent relies on the relevant parts of Mr. Riahi's diary and on Mr. Mahvi's testimony and affidavits.[40] The Respondent also submits a telefax message sent by Mr. Mahvi to Mr. Riahi, dated 5 January 1998. Mr. Mahvi stated in his affidavits that, before and after the marriage, Mr. Riahi gave a small number of shares in various companies to the Claimant, to the extent necessary for her to attend the meetings of the boards of directors of the companies. After 1978, however, Mr. Riahi transferred his shares to the Claimant in order to be able to bring claims in United States courts for his properties. Mr. Mahvi adds that Mr. Riahi has always referred to the Claimant's claim as his own. Mr. Mahvi confirmed his affidavits in his testimony at the Hearing.

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[40] Mr. Mahvi was connected in business to Mr. Riahi through Khoshkeh, Sarhad Abad and Iran Bohler.

121. The Respondent's legal expert, Professor Safai, testified as to the legal consequences of a fictitious transfer. He noted that under the Iranian Civil Code, intention is a necessary element of a contract, and if a person transfers property without real intention, the transaction is invalid.

122. The Respondent points out that this claim is composed of two so-called director shares, 110 registered shares and 46 bearer shares. The Respondent further states that the Claimant's documents relating to the alleged transfers of additional shares are inconsistent as regards the number of shares that were allegedly transferred. In order to prove that the Claimant could not have owned more than two shares of the company, the Respondent first invokes Mr. Riahi's diary. In the Respondent's view, Mr. Riahi was very attached to the lands and stated several times in his diary that the Rahmat Abad farm was a gift from his father and was to be kept for his children. The Respondent asserts that in cases where Mr. Riahi took action in favor of his wife and children, he expressed it explicitly. Within the context of the Rahmat Abad farm, Mr. Riahi only spoke of his sons. The Respondent contends that Mr. Riahi could not have transferred the shares of his son Malek Massoud to the Claimant, since Mr. Riahi's concern for preserving the farm in the family would not be compatible with such an assumption.

123. The Respondent also disputes the possible posthumous transfer of the shares of Mr. Riahi's late sons, Amir Saeed and Jahan Shahriar Riahi. The Respondent further contends that the transfer of the shares could only have taken place in compliance with certain legal procedures, which in this case had not taken place. Article 40 of the Iranian Commercial Code states that a valid transfer of registered shares requires registration in the books of the company.[41] Bearer shares, which are negotiable

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[41] In this connection, the Respondent referred to the precedent established by Roy P.M. Carlson and The Government

instruments, must be physically delivered and taken into possession in order for a transfer to take place, according to Article 39 of the Iranian Commercial Code.[42] Also, according to Iranian law, the deed of donation must be officially executed and registered pursuant to Articles 47 and 48 of the Registration Act, and any gift must be delivered so that the gift can be fulfilled according to Article 798 of the Iranian Civil Code.

124. As regards the 110 registered shares, the Respondent contends that the evidence in the form of minutes of Rahmat Abad's board of directors' and shareholders' meetings does not prove the passage of title to the Claimant, because the minutes only indicate the board's approval for the transfer of shares to the Claimant and cannot, however, replace the other requirements of a valid transfer under the law. The Respondent, moreover, alleges that the minutes of the board of directors meeting of 20 December 1978, relied upon by the Claimant, is not authentic. The Respondent bases its arguments, inter alia, on the testimony of Mr. Nabavi, who stated at the Hearing that Mr. Riahi asked him to sign these minutes in the summer of 1979 after the death of Jahan Shahriar but before Mr. Riahi had left Iran. Based on this, the Respondent alleges that the minutes of 20 December 1978 could have in fact been antedated, so as to avoid, among other things, dealing with inheritance formalities after the death of Jahan Shahriar Riahi.

125. The Respondent observes that the entry for 20 December 1978 in Mr. Riahi's diary fails to make any reference to the

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of the Islamic Republic of Iran, et al., Award No. 509-248-1, para. 40 (1 May 1991), reprinted in 26 Iran-U.S. C.T.R. 193, 210-11 ("Carlson").

[42] For this, the Respondent relied on the precedent established by Aram Sabet, et al. and The Islamic Republic of Iran, et al., Partial Award No. 593-815/816/817-2, para. 69

meeting of the board of directors or to the transfer of shares to the Claimant. The Respondent further argues that nowhere in his diary did Mr. Riahi confirm the transfer of his sons' shares as his sons' attorney.

126. In addition to challenging the authenticity of the minutes of the 20 December 1978 meeting and the validity of the powers of attorney, the Respondent challenges the transfer of 110 shares to the Claimant by questioning the authenticity of the 5 June 1979 meeting minutes. Referring to the fact, as stated in Mr. Riahi's diary and the Claimant's affidavit, that Jahan Shahriar had passed away on 30 May 1979, the Respondent argues that Mr. Riahi could not have been in a mental condition so as to participate in the extraordinary general meeting of the company in order to have the ownership of the shares of his wife and son recorded on 5 June 1979.

127. The Respondent argues that even if the minutes of the meetings of 20 December 1978 and 5 June 1979 were valid, they cannot satisfy the requirements for a valid transfer of title, the proof of which is lacking. Moreover, the problem of Mr. Riahi's power of attorney would still remain.

128. The Respondent notes that the Claimant alleges that the 110 registered shares belonging to Jahan Shahriar Riahi were donated to her by Mr. Riahi on the basis of a power of attorney given by Jahan Shahriar. The Respondent challenges Mr. Riahi's authority on the basis of the rules and principles of Iranian law, which, based on choice of law rules, it finds to be the applicable law. The Respondent also doubts the authenticity of Jahan Shahriar's signature on the power of attorney and claims that Jahan Shahriar's power of attorney is invalid due to non-observance of legal requirements. The Respondent refers to the

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(30 June 1999), reprinted in __ Iran-U.S. C.T.R. __ ("Sabet Partial Award").

alleged power of attorney and the relevant entries of Mr. Riahi's diary and points out that Jahan Shahriar allegedly signed the power of attorney in a notary public's office in Tehran at a time when he was not in town; in fact, he was trapped in a tunnel on his way to the north of Iran, and was later kidnapped on his arrival there. In the Respondent's view, the notary public had falsely confirmed and registered the power of attorney. Consequently, none of the transactions performed relying on this power of attorney should be given effect. The Respondent states that an action was brought in "public" and appellate courts in Iran against the notary public, but that the appellate court refrained from examining the merits of the case because the notary public's action fell within the scope of a general amnesty.

129. The Respondent further alleges that the powers of attorney given by two of Mr. Riahi's sons, Amir Saeed and Jahan Shahriar, are invalid due to the sons' mental condition.[43] To prove this, the Respondent refers to several sections of Mr. Riahi's diary, where references have been made to mental disorders of the sons, who suffered from drug addiction.

130. The Respondent submits affidavits from Dr. Sanati, a psychiatrist and a former assistant to deceased Jahan Shahriar's attending physician, Dr. Beard, and Dr. Safai, professor of law of Tehran University. Dr. Sanati stated in his affidavit and at the Hearing that he knew Jahan Shahriar at the time he was under the care of Dr. Beard, at St. Luke's Woodside Hospital in London. He performed a psychiatric assessment of Jahan Shahriar

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[43] The Respondent refers to the provisions of Iranian law, inter alia, Articles 1207 and 1219 of the Civil Code of Iran and Article 83 of the Probate Affairs Code and maintains that due to the condition of the sons, they were prohibited from managing their properties. Under Iranian law, in such instances, in order to manage the properties, the parents and any beneficiary must obtain an interdiction decree and an order appointing a guardian.

based on information gathered from Mr. Riahi's diary, the Maymanat Hospital file, and the records of treatment by other hospitals. Dr. Sanati concluded that, due to Jahan Shahriar's psychiatric condition, he could not have been of "sound mind," particularly in 1975 and around the date when the power of attorney was allegedly signed. According to Dr. Sanati, Jahan Shahriar was incapable of sound judgment or making reasonable decisions. In support of their conclusions, the Respondent and Dr. Sanati also pointed to the fact that both Amir Saeed and Jahan Shahriar committed suicide in March and May 1979, respectively.

131. The Respondent and Professor Safai also pointed out that a guardian or attorney cannot donate property of his ward or principal, since the former have the duty of safeguarding the best interest of the latter. Consequently, any such action is void and of no effect. Moreover, they contend that the authority to donate must be expressly stated in the power of attorney. Such authority was lacking in the powers of attorney granted to Mr. Riahi by Amir Saeed and Jahan Shahriar. Professor Safai explained in his written opinion and at the Hearing that under Iranian law, there are four elements for a valid contract: (1) both parties must express mutual consent; (2) both parties must be legally competent; (3) the subject matter of the contract must be explicit; and (4) the cause of the transaction must be lawful. He also added that, according to Iranian law, insane persons lack legal competence. Professor Safai opined that, in the present Case, the contracts entered into by Mr. Riahi's sons through a power of attorney should be considered void due to the sons' lack of intention and lack of competence. Professor Safai also argued that the Tribunal is competent to decide these issues.

132. As to the transfer of the remaining 46 shares on or about 18 June 1979, the Respondent notes that there is no evidence on

file to prove the Claimant's ownership with respect to these shares and that the Claimant's assertion is based on Mr. Riahi's alleged letter to Mr. Ata-Ollah Nabavi. The Respondent submits Mr. Nabavi's affidavit, in which Mr. Nabavi stated that he neither received the letter nor wrote the letters requested by Mr. Riahi. The Respondent points out that Mr. Riahi's letter is undated and that the Claimant has not proved that the letter was ever sent to Mr. Nabavi. However, the Respondent notes that the request of Mr. Riahi to confirm the Claimant's ownership of the 158 shares has never been met, and no such confirmation was ever given by Mr. Nabavi.

3. The Tribunal's Decision

133. As to the Respondent's contention that the creation of the company was fictitious, the Tribunal first notes that the registration documents and other company records submitted by the Parties show that the Rahmat Abad farm was, at the time of the alleged expropriation, incorporated and managed in the form of a company, the capital of which was divided into 350 bearer shares. The Tribunal finds that the Respondent has been unable to support its view that the company was fictitious. The Tribunal, therefore, rejects the Respondent's contention.

134. Concerning the Claimant's equity ownership, the Tribunal notes that the Parties agree that the Claimant owned at least two shares in the company. With regard to the other 156 claimed shares, the Tribunal will first address the Respondent's allegations regarding the character of the ownership transactions, the alleged incompetence of Mr. Riahi's sons to give the powers of attorney, the alleged invalidity of the power of attorney given by Jahan Shahriar due to the non-observance of legal requirements, and the alleged legal invalidity of the share transactions because certain legal procedures were not followed.

135. As observed above, the Respondent has relied heavily on the evidence given by Mr. Mahvi to prove its allegation that the Claimant's equity ownership of Rahmat Abad was based on fictitious or bogus transactions. According to Mr. Mahvi, Mr. Riahi had told the former that he had fictitiously transferred shares of Rahmat Abad and other companies to the Claimant in order to be able to bring a claim in U.S. courts to reclaim his properties. Furthermore, Mr. Riahi had told Mr. Mahvi that he had converted all registered shares of the companies to bearer shares and had given a large part of those shares to the Claimant, so that if anything should happen to him, the Claimant could make a claim as the owner of those properties.

136. The Tribunal notes Mr. Mahvi's written and oral testimony concerning the nature of the transactions. In addition, the Tribunal notes the quotations from Mr. Riahi's diary, to which the Respondent has also referred when trying to establish that the transactions were fictitious or bogus. The Tribunal, however, finds that additional evidence is required to make such a drastic conclusion concerning the nature of the transactions. In the absence of such evidence, the Tribunal rejects the Respondent's contention. Nevertheless, the Tribunal will bear in mind the evidence offered to it in this context when it later examines the other evidence regarding the question of whether or not the transactions resulting in the transfer of shares actually occurred.

137. Regarding the allegation that the Claimant's two stepsons were incompetent to lawfully execute their powers of attorney, the Tribunal notes that the Respondent's expert witness, Dr. Sanati, had been an assistant to a physician who treated Jahan Shahriar for some time before Jahan Shahriar committed suicide and that his opinion is based on the examination of the entries of Mr. Riahi's diary, records of Maymanat Hospital and his own recollections. His opinion regarding Amir Saeed is based on

entries in Mr. Riahi's diary. The Tribunal finds that because Dr. Sanati'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. In addition, Dr. Ratner, the Claimant's expert witness, testified at the Hearing that the material used by Dr. Sanati in his written reports does not support the position that either son was incompetent or incapacitated at the time they signed the powers of attorney, despite their alleged drug use. With respect to Jahan Shahriar, he states that there is no evidence in the records of Maymanat Hospital, which were presented at the Hearing, to suggest that Jahan Shahriar was schizophrenic, psychotic, or that he demonstrated psychotic behavior or acted psychotically.

138. Based on the material presented by the Parties, the Tribunal finds insufficient evidence to support the Respondent's contention that Mr. Riahi's sons were incompetent to enter into binding transactions, within the meaning of Articles 211 or 1213 of the Civil Code of Iran,[44] at the time they granted the powers of attorney to their father or, for that matter, subsequent to

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[44] Article 211 of the Iranian Civil Code (as translated by the Tribunal's Language Services Division) reads as follows:

> In order for transacting parties to be considered competent, they must have reached the age of puberty, be sane, and have attained the age of majority.

And Article 1213:

> The permanently insane, absolutely, and the periodically insane, while in a state of insanity, may not in any way deal with his property or property rights, even with the permission of his natural or legal guardian. However, the legal acts of the periodically insane while in a recovered state are effective, provided that his recovery is certain.

that date.[45] The Tribunal therefore rejects the Respondent's contentions concerning Mr. Riahi's sons' mental condition and the invalidity of the powers of attorney.

139. The Tribunal now turns to the Respondent's claim that Jahan Shahriar's power of attorney is invalid because certain legal requirements with respect to its execution were not observed. To support its claim, the Respondent refers to a report prepared in 1995 by an inspector of the State Organization for Registration of Deeds and Properties ("Organization for Registration") and a Judgment of the Appellate Court of Tehran Province rendered in 1996. The Respondent also emphasizes that Jahan Shahriar could not have signed the power of attorney on 24 December 1975 since he was not then in Tehran. To support this contention, the Respondent relies on certain parts of Mr. Riahi's diary. The Claimant's expert witness, Mr. Mahloujian, stated, on the other hand, in his affidavit that "a power of attorney which is signed in Iran by the principal and issued by an Office for Registration of Official Documents, is valid even if the principal was not physically present when the power of attorney was issued by that Notary Office" and that "a discrepancy between the date of signing of a power of attorney and its subsequent issuance by an Office for Registration of Official Documents would not have been exceptional nor would it be indicative of any impropriety." He also stated that "it is not required or customary in Iran for the attorney to sign or attend to any of the formalities of registration of a power of attorney."

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[45] The relevant part of Article 678 of the Iranian Civil Code (as translated by the Tribunal's Language Services Division) reads as follows:

> Agency is dissolved in the following ways:
>
> ...
>
> 3) by the death or insanity of the agent or principal.

140. Consulting the relevant Articles of the Law Governing Notary Public Offices and the By-laws Governing Notary Public Offices, the Tribunal finds that apparently not all legal requirements set forth in those regulations were followed when the power of attorney of Jahan Shahriar was issued. The Tribunal, however, finds that the Respondent has not been able to show that Mr. Riahi or the Claimant had acted in bad faith with respect to those irregularities or that the irregularities would have entailed the invalidity of the power of attorney. The Tribunal notes that the case brought against the notary public, which could have shed light on the issue, was dismissed pursuant to a general amnesty.

141. In addition, the Tribunal rejects the Respondent's contention that the signature in the power of attorney was not Jahan Shahriar's signature. There is no persuasive evidence in the record to the contrary. Accordingly, the Tribunal cannot accept the Respondent's contention that Jahan Shahriar's power of attorney was invalid due to non-observation of certain legal requirements with respect to the execution of the said document.

142. The Tribunal now turns to the Respondent's argument that the share transactions performed by Mr. Riahi were invalid since certain legal procedures required by Iranian law were not followed. At the Hearing, the Respondent argued that, according to Article 47 of the Registration Act, for gifts to be valid they must be registered. The Parties' expert witnesses, Mr. Mahloujian and Professor Safai, presented views during the oral proceedings concerning the meaning of the registration procedure. The Tribunal notes that the Claimant's witness, Mr. Mahloujian, testified that registration of a gift is only a protection against the assertion by a third party of an interest in the donated property. He also stated that according to Iranian law, the validity of a transaction is not contingent upon its registration. The Respondent's witness, Professor

Safai, was of the opinion that the purpose of registration is to prevent future disputes and to establish the occurrence of the transaction involved, if disputed. He argued that lawyers in Iran usually recommend that official documents be drafted when substantial property is gifted. Based on the evidence given by the two expert witnesses and the relevant articles of the Registration Act, the Tribunal is not persuaded that non-registration, per se, may adversely affect the validity of a donation, although it becomes important when the existence of the donation is called into question.

143. Considering the requirements set forth in Article 40 of the Commercial Code of Iran, as amended in 1969, the Tribunal notes that this Article provides, inter alia, that "[t]he transfer of registered shares must be entered in the share register of the company" and that "[a]ny transfer which takes place contradictory to the provisions mentioned above shall be considered as null and void as far as the company and third parties are concerned."[46] Based on the statements made at Hearing by Mr. Mahloujian and Professor Safai, a transfer is valid inter partes if the requirements set forth in the Iranian Civil Code are met.

144. The Tribunal agrees with the Respondent that Article 40 of the Commercial Code clearly requires the registration of transfers of registered shares, and notes that the Tribunal has in its previous Awards attached great importance to the fact in whose name the shares are registered in the company's share register.[47] In this Case, however, the share register of Rahmat

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[46] See Carlson, supra note 41, para. 40, at 211.

[47] Id. See also Vivian Mai Tavakoli, et al. and The Government of the Islamic Republic of Iran, Award No. 580-832-3, para. 65 (23 Apr. 1997), reprinted in 33 Iran-U.S. C.T.R. 206, 223-24 ("Tavakoli") ; and Ian L. McHarg, et al. and The Islamic Republic of Iran, Award No 282-

Abad has not been made available to the Tribunal. Therefore, in the absence of such evidence, the Tribunal must look to other available evidence to determine whether the shares involved were validly transferred to the Claimant in accordance with the Iranian Civil Code.

145. The Tribunal now addresses the Claimant's contentions as to how she increased her equity interest in Rahmat Abad from two shares to 158 shares. The Claimant first alleges that an additional 110 shares were transferred to her from Jahan Shahriar in December 1978, less than six months before his May 1979 suicide. The Claimant alleges that Mr. Riahi made the transfer, in the form of a donation, by virtue of the power of attorney granted to him by Jahan Shahriar, or, alternatively, by acting as a guardian, should the power of attorney be considered invalid.

146. To prove her ownership of these 110 shares, the Claimant has relied principally on the minutes of the meeting of the board of directors of 20 December 1978 and on a list of shareholders attached to the minutes of the shareholders' meeting of 5 June 1979. The Respondent, on the other hand, has asserted, inter alia, that the minutes of 20 December 1978 were signed in the summer of 1979 and antedated.

147. The Tribunal notes that, in the absence of the company's share register or any other contradictory evidence, it has relied in previous Cases on the minutes of shareholders' and board of directors' meetings to establish share ownership,[48] although additional evidence may be required to meet the burden

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10853/10854/10855/10856-1, para. 58 (17 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 286, 302 ("McHarg").

[48] See, e.g., Tavakoli, supra note 47, para. 66, at 224; and 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.

of proof. The evidentiary value to be accorded to such minutes must be decided on a case-by-case basis, taking into account all relevant facts and circumstances.

148. In this respect the Tribunal finds that, at a minimum, the following factors should be considered in light of the circumstances of this particular Case: when the meeting was held, who took part in the meeting, who signed the minutes, when they were signed, and, especially, whether the minutes were registered, if registration was required, and when the possible registration occurred.

149. The Tribunal first addresses the minutes of the 20 December 1978 meeting. Those minutes were signed by the then principal members of the board, i.e., the Claimant, Mr. Riahi and Mr. Nabavi. The Tribunal notes that Mr. Nabavi stated at the Hearing that he did not attend the meeting and that he signed the minutes at Mr. Riahi's request in the summer of 1979, only after Jahan Shahriar had passed away. The Claimant did not deny this statement of Mr. Nabavi, although her lawyer at the Hearing did mention that "when the record is reviewed it will be clear that there is no evidence of any backdating of documents." According to the Claimant, Mr. Riahi, due to his advanced age and ill health, did not appear before the Chamber, though he was named as a witness. Thus, Mr. Nabavi's testimony remains unrebutted.

150. The minutes of the meeting of 5 June 1979 were, in turn, signed by the Claimant, Mr. Riahi, Mr. Nabavi, Mr. Mohammed Hossein Vagefi and Ms. Faezah Nabavi. In addition, the minutes and the list of shareholders attached to the minutes were registered at the Office for Registration in the same month.

151. In determining whether the shares were validly transferred to the Claimant in December 1978, the Tribunal accords more weight to the minutes of the 20 December 1978 meeting than to

those of the 5 June 1979 meeting, because of contemporaneity. Nevertheless, the Tribunal cannot give strong evidentiary value to the 20 December 1978 minutes, since it has no reason to doubt Mr. Nabavi's testimony regarding the date of signing of those minutes and his absence from the meeting. Were the Tribunal to accept that a meeting was held on 20 December 1978, it would have to conclude that only the Claimant and her spouse, Mr. Riahi, attended that meeting.

152. With respect to the 5 June 1979 meeting, the Tribunal has no reason to doubt that the meeting took place on that date. In addition, the Tribunal accepts that the minutes and list of shareholders attached to the minutes showing the Claimant's ownership of 112 shares were also filed with the Office for Registration.

153. The Tribunal, however, is of the opinion that under these particular circumstances, including where 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.[49] The evidence needs to be even stronger when the transfer concerns valuable property and it is made without consideration, as a gift. Apart from the minutes of the 20 December 1978 meeting, discussed earlier, there is no document to prove how the ownership of the 110 shares was transferred to the Claimant except for the 5 June 1979 minutes, which recorded her ownership. The minutes, however, cannot carry the expected strong weight to support the Claimant's contention because Jahan

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[49] See Article 678 of the Iranian Civil Code, supra note 45.

Shahriar had already passed away at the end of May 1979, i.e., before the meeting date.

154. Furthermore, the Tribunal deems other circumstances significant in its evaluation of the evidence supporting the transfer of shares. One of these is the interest of the transferor. The Tribunal concludes 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. After all, as it is stated in Article 667 of the Civil Code of Iran, "[i]n his dealings and actions, the agent must observe the principal's interest."[50] In addition, the Tribunal doubts the reasons given by the Claimant's spouse regarding the motive for making the transfer.

155. The Tribunal also doubts that the three meetings of Rahmat Abad, which allegedly took place over 9 days in December 1978, can form an integrated whole. The first shareholders' meeting, held on 12 December, appears normal. Ms. Giti Afshar was elected to serve as a principal member of the board of directors until 22 October 1980. She also signed the minutes, which were registered on 31 December 1978 and published in the Official Gazette on 28 March 1979.

156. As regards the board of directors' meeting allegedly held on 16 December 1978, the minutes report that Ms. Afshar, who had been appointed four days earlier to serve the board until 22 October 1980, had resigned from the board[51] and Mr. Nabavi was invited to serve as a principal member of the board.

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[50] Translated by the Tribunal's Language Services Division.

[51] The Tribunal notes that, according to Mr. Riahi's diary, Ms. Afshar continued to work with the Riahi family as the head of the administrative department of Iran Bohler, apparently until late February 1979.

Presumably, these minutes were also registered at some point, since the information concerning the replacement of Ms. Afshar was published in the Official Gazette. The Tribunal notes, however, that this publication did not take place until 5 July 1979, together with the information concerning the decisions made at the meeting of 5 June 1979.

157. Moreover, while the minutes of the 16 December 1978 meeting purport to show that the meeting was held in Tehran, at 9:00 a.m., with the presence of the Claimant and Mr. Riahi, the evidence shows that they were apparently at the Rahmat Abad farm at the time of the alleged meeting. According to Mr. Riahi's diary, they left the farm at 2:00 p.m. on 16 December 1978 and arrived in Tehran at 7:30 p.m. the same day. Nothing is stated about the meeting in the diary. Although the minutes of 16 December do not directly concern the transfer of 110 shares, the Tribunal believes that its observations concerning these minutes gain some importance when evaluating the evidentiary value of the minutes of 20 December 1978 due to the temporal proximity of the three meetings and their contents.

158. In view of the above and weighing the available evidence, 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. As stated above, Mr. Nabavi denied that he attended the alleged 20 December 1978 meeting. He testified that it was only in June 1979 that he signed the minutes of the meeting, at the request of Mr. Riahi. Furthermore, the meeting of 5 June 1979 took place after the death of Jahan Shahriar.

159. The Tribunal now turns to the Claimant's allegation that she became the owner of 46 bearer shares after the 5 June 1979 meeting, when Mr. Riahi transferred the shares from his son Malek Massoud to the Claimant by virtue of the authority he had

obtained from his son through a power of attorney. This part of the claim is mainly supported by the affidavits of the Claimant and her spouse.

160. The Tribunal has already taken notice of the difficulties that a claimant may face when trying to prove his ownership of bearer shares without having the shares in possession, see supra, para. 102. Mindful of these difficulties and requirements, the Tribunal finds insufficient evidence in the record to support the transfer of 46 bearer shares of Rahmat Abad to the Claimant. The affidavits and the additional evidence available do not meet the Claimant's burden of proof. In addition, the Tribunal notes the absence of supporting evidence -- in the form of an affidavit, oral testimony, or otherwise -- from the previous owner of the shares, Malek Massoud. Furthermore, Mr. Riahi did not testify at the Hearing.

161. The Claimant requested the Tribunal to draw an adverse inference from the Respondent's failure to produce relevant documents ordered by the Tribunal, including the company's share register, registration file and minutes of shareholders' meetings. The Claimant argues that the requested documents, if produced, would have shown her as being the owner of 158 shares of Rahmat Abad.

162. Insofar as the 110 registered shares is concerned, the Tribunal has based its denial of the ownership claim on its finding of insufficient evidence in the record to support the Claimant's claim that the transfer of the shares actually occurred in December 1978. The Tribunal reached this conclusion notwithstanding its observation that the Claimant was listed as the owner of 112 shares in the list of shareholders attached to the minutes of the 5 June 1979 meeting. Considering the state of affairs and how the ownership and the actual control of the company were arranged, the Tribunal has serious doubts as to how

the requested material, even if available, could possibly have affected the Tribunal's opinion. With regard to the 46 bearer shares, the Tribunal notes, in addition to what it has just stated about the ownership and control of the company, 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, see supra, para. 104. The Tribunal, therefore, finds no need to address the Claimant's arguments and the Respondent's answers in this respect and that there is no ground for the Claimant's request to draw any adverse inference.

163. At the Hearing, the Respondent also contended that the right to donate must be expressly mentioned in a power of attorney and that Mr. Riahi's sons did not give such authorization in their powers of attorney. The Respondent claimed that, since an attorney cannot donate the property of his principal without express authorization, any such action is void and of no effect. The Claimant contested these contentions. Regarding the first contention, the Claimant stated that the Respondent's argument is not correct. The sons' powers of attorney authorized Mr. Riahi to enter into any transaction whatsoever. As regards the second contention, the Claimant maintained that an attorney has to keep the interest of his principal in mind, but that the attorney's negligence in this respect does not render the transaction null and void. The attorney, however, shall remain responsible toward his principal for damages sustained by the principal.

164. The Tribunal first notes that, according to Article 660 of the Iranian Civil Code, "[a]gency may be general, and for all the principal's affairs, or special, and for a specific matter or matters." The Tribunal also notes that, under Article 661 of

the Civil Code, "[i]f the agency is general, it shall only concern the administration of the principal's property."[52]

165. The clear meaning of Articles 660 and 661 of the Civil Code of Iran is that there are basically two types of powers of attorney in the Iranian legal system, i.e., general and specific. A general power of attorney does not give the attorney the right, e.g., to sell or donate the principal's property. To enter this kind of transaction, the attorney requires specific authorization.

166. In this respect, the Tribunal notes the language of the powers of attorney given by two of Mr. Riahi's sons. Jahan Shahriar authorized Mr. Riahi, inter alia,

> [t]o carry out any transaction, being final, conditional, mortgage concerning moveable and immovable [property], lease, assignment, exchange, division, subdivision, admission, and implementation of any contract and transaction which might be conceivable, making offer and accepting offers, whether the principal is the transferor or the transferee, with any legal entity or natural person, including the attorney himself, for any amount and under any terms and conditions which the attorney may find desirable....

167. The power of attorney given by Amir Saeed authorized Mr. Riahi, inter alia,

> [t]o manage and handle all financial and non financial affairs of the principal and to enter into all sort of transactions being final, conditional and mortgage, concerning moveable and immovable properties, lease, assignment, exchange, division, admission, to enter into any contract and any transaction which is conceivable, as an offeror or an offeree, and against the principal, with the attorney as the contracting party, or with any other person, being natural person or legal entity, for any amount, for any period and under any terms and conditions which the attorney may find necessary; to receive and pay funds resulting

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[52] Translated by the Tribunal's Language Services Division.

> from the transaction of contract, to make any commitment in documents and to deliver or take delivery of the subject of transactions....

168. The Tribunal further notes in this context the power of attorney given by Malek Massoud to his father. The relevant part of the power of attorney authorized Mr. Riahi

> [t]o enter into all transactions, including final or conditional sale and purchase, lease, gift, placing or accepting property in trust, with any person, being a legal entity or natural person, even with the attorney, at any rice [sic] and under any terms and conditions; and to receive and pay funds resulting from transactions, concerning all properties of the principal, being moveable or immovable property.[53]

169. The Tribunal finds that the powers of attorney mentioned above were very detailed, and they apparently gave Mr. Riahi the right to enter into many kinds of transactions under any terms and conditions. There is, however, a significant factual difference between the power of attorney of Malek Massoud and those of Amir Saeed and Jahan Shahriar. In the first one the right to donate ("gift") is expressly mentioned, while there is no such mention in the other two powers of attorney.

170. In this respect, the Tribunal notes the testimony of the Respondent's expert witness, Professor Safai, who opined that, if the principal has given an explicit right to donate in the power of attorney, the attorney may give away the principal's property. However, if there is no such authorization, the act of giving away of any property without consideration is not, according to customary law, in the interest of the principal, and such an action is not valid. He has also noted that there was no explicit reference to the giving of gifts in the two powers of attorney given by Amir Saeed and Jahan Shahriar.

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[53] All the above citations are quoted from the translations provided by the Claimant.

171. He also opined that, even where no explicit authorization to donate is given in a power of attorney, customarily, donating some small gifts may be acceptable if they are in the interest of the principal. This, however, would not apply to substantial gifts because they are not in the interest of the principal.

172. The Tribunal finds that although the specific authority to make gifts is not stated, in haec verba, in the two powers at issue, they apparently empowered Mr. Riahi to engage in many kinds of transactions, arguably even donations. On the other hand, the two powers of attorney in question lacked the word "gift," which Professor Safai regarded essential when substantial property is given away without consideration. In this respect, the Tribunal, furthermore, finds relevant the provisions of Articles 667 and 674 of the Civil Code of Iran, which deal with the duties of the attorney and the principal.[54] Based on the available evidence, it appears to the Tribunal that Mr. Riahi did not have the right to donate Jahan Shahriar's shares in Rahmat Abad to the Claimant.

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[54] Article 667 of the Civil Code of Iran (as translated by the Tribunal's Language Services Division) reads as follows:

> In his dealings and actions, the agent must observe the principal's interest and not exceed that which the principal has explicitly authorized him to do, or that is within the limits of his authority based on context, common practice, and custom.

The first part of Article 674 of the Civil Code of Iran reads as follows:

> The principal must honor all obligations that the agent undertakes within the limits of his authority.

The Tribunal observes that in guardianship, another form of representation, the Civil Code of Iran also emphasizes a guardian's responsibility to take into account the interest of his child or ward. See, e.g., Articles 1186 and 1238 of the Civil Code.

F. Tarvandan's Shares

1. The Claimant's Contentions

173. The Claimant claims to own 34 shares of the capital stock of 75 shares of Tarvandan. According to the Claimant, the nominal share capital of the company was Rls. 7,500,000, which had been divided into 75 shares with the par value of Rls. 100,000 each.[55]

174. The Claimant contends that, as of 21 June 1978, the Riahis owned 73 shares of Tarvandan; the Claimant owned one share, Mr. Riahi owned 12 shares, and Mr. Riahi's sons, on whose behalf Mr. Riahi acted, owned 60 shares. The Riahis' share ownership is evidenced by the minutes of the shareholders' meeting of 21 June 1978, which, according to the Claimant, had been registered with the Office for Registration. After 23 August 1978, and prior to 5 March 1979, the Claimant allegedly acquired another 27 shares. The Claimant asserts that her ownership of 28 shares is evidenced by the minutes of the extraordinary general meeting of the company, dated 5 March 1979, and the attendance list attached thereto. The list shows the Claimant as owning 28 shares, thus a gain of 27 shares, while Mr. Riahi signed for and on behalf of 45 shares, thus a decrease of 27 shares. The Claimant points out that at this meeting, the shares of the company were converted from registered to bearer shares, and that the minutes were also filed with the Office for Registration, as evidenced by a letter from that Office.

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[55] The capital of the company was initially divided into 300 shares with the par value of Rls. 10,000 each.

175. The Claimant asserts that the remaining six shares owned by her at the time of expropriation were bearer shares that had been given to her by Mr. Riahi sometime between 5 March and 28 August 1979, pursuant to his plan to give equal gifts to his eldest son, Malek Massoud, and to the Claimant. The Claimant argues that the share register supplied by the Respondent is outdated and incomplete and that it does not include the names of the shareholders as of the date of expropriation in February 1980. The Claimant contends that the shareholder list submitted by the Respondent says nothing about her ownership as of 5 March 1979 or at any later date.[56] In support of her ownership of 34 shares, the Claimant relies on a 16 July 1980 letter from Mr. Vaghefi, the former managing director of the company, in which he confirms that the Claimant owned 34 shares on the date of expropriation. In this connection, the Claimant relies also on her own and Mr. Riahi's affidavits.

176. Regarding Mr. Riahi's authorization to act as representative of the shares owned by his children, the Claimant refers to general powers of attorney given by Mr. Riahi's children and contends accordingly that the decision of 5 March 1979 to convert the company's shares to bearer shares was lawful and valid.

177. In response to the Respondent's assertion that the conversion of the company's shares to bearer shares was not valid because of the failure to fulfill certain legal formalities, the Claimant argues that all shareholders were

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[56] The Claimant points out that in the copy of Tarvandan's share register provided by the Respondent, Mr. Vaghefi is not mentioned as a shareholder. However, the Office for Registration has recognized Mr. Vaghefi's membership on the Tarvandan board of directors. Under the Commercial Code of Iran, board members must be shareholders. In addition, in a letter dated 22 July 1985 from the Office for Registration to the Foundation for the Oppressed, Mr. Vaghefi was introduced as a shareholder.

represented in the shareholders' meeting of 5 March 1979 and voted unanimously to convert their shares to bearer shares. The Claimant contends that all necessary formalities -- including the requirements of Article 47 of the Iranian Commercial Code, referenced by the Respondent, requiring the publication of notice and a two-month grace period allowing the shareholders to apply for the conversion of their registered shares to bearer shares -- were met, because the minutes of the meeting of 5 March 1979 show that the shareholders expressly waived "the formalities for publication...and the two-month period." According to the Claimant, the procedure referred to in Article 47 of the Commercial Code is intended to protect the rights of shareholders who are not able to attend or be represented at a shareholders' meeting where a vote is taken to convert shares. In this case, all the shareholders attended the shareholders' meeting and voted unanimously to convert their shares. The Claimant further argues that even if the Respondent were able to prove that some formal recording requirement was not met, that would have no effect on the validity of the transfer of shares to her. Under Iranian law, 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.

178. Finally, the Claimant argues that even if the shares had not been converted to bearer shares on 5 March 1979, she nevertheless would be the owner of 34 shares. She asserts that she owned 28 shares at the start of the meeting of 5 March 1979 and that the transfer of six additional shares by Mr. Riahi to her was effective, as a matter of law, regardless of whether the shares were registered or bearer shares. The Claimant contends that, under Iranian law, a transfer of shares is treated as an internal matter of the company and is not regulated by the Office for Registration or the Registration Act, as the Office

for Registration has itself acknowledged in response to an inquiry of Bank Melli, dated 2 November 1982.[57] The Claimant also refers to the Official Gazette excerpts covering notices of changes in Iranian private joint stock companies and argues that the transfer of shares will be recognized without regard to whether the transfer is recorded in the register of the company. Further, under Iranian law, a shareholder's acknowledgement of the transfer of shares to another person constitutes an admission that can provide the basis for judicial recognition and enforcement of the transfer. The Claimant asserts that Mr. Riahi clearly has acknowledged the transfer of 34 shares to her, and that fact is also confirmed by a letter of the managing director of the company.

2. The Respondent's Contentions

179. The Respondent argues that the Claimant has failed to prove her ownership of more than one share in the company. The Respondent points out that according to Tarvandan's share register, the Claimant held only one share of the company at the time of the meeting on 5 March 1979. The Respondent contends that the only way the Claimant could have owned more shares was to own them as bearer shares, which need not be recorded in the share register. Available documents show, however, that until the meeting on 5 March 1979, the company's shares were registered shares. The decision to convert the shares into bearer shares was taken during that session.

180. The Respondent asserts also that under the Commercial Code of Iran, conversion of registered shares into bearer shares requires certain formalities, which had not taken place at the 5 March 1979 meeting. Article 47 of the Commercial Code of Iran

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[57] The original Persian text of this letter, which appears to be at least partly related to Gav Daran, is virtually illegible.

requires the publication of notice and a two-month waiting period in which shareholders may apply for the conversion of registered shares to bearer shares, and these formalities were not complied with. The Respondent further contends that none of the decisions of the meeting were lawful, since 60 out of 75 shares of the company (i.e., those belonging to Mr. Riahi's children) were not represented. Mr. Riahi's children were not present in person at the meeting and no reference is made to Mr. Riahi's representation of them by proxy. No power of attorney to authorize Mr. Riahi to represent his children at the meeting could be traced in the company's file with the Office for Registration. The Respondent also argues that according to the letter of the Office for Registration, dated 20 April 1994, Tarvandan's shares have never been converted into bearer shares.

181. As to Mr. Vaghefi's letter, the Respondent contends that the letter was prepared on a format requested by the Claimant and her spouse to provide evidence before a court or the Tribunal. The Respondent seeks support for this in the Claimant's own affidavit and other documents, as well as in the fact that a letter concerning Gav Daran was written on the same date, and with similar contents. The Respondent also contends that the handwriting in these letters is identical. The Respondent further points out that both letters were issued after the alleged expropriation date and explicitly describe the expropriation of Mr. Riahi's property and not that of the Claimant.

182. Furthermore, the Respondent argues that the minutes of the shareholders' meeting of 5 March 1979 are not genuine and may actually have been antedated so as to precede the death of Mr. Riahi's sons. The Respondent points out that the Claimant has claimed that she acquired 27 bearer shares after 23 August 1978 and before 5 March 1979, while, according to the minutes provided by the Claimant, the conversion of the registered

shares to bearer shares was made at the meeting of 5 March 1979. The Respondent points out that, according to the Articles of Association of the company and Article 40 of the Commercial Code of Iran, the alleged transfer of 27 registered shares prior to that meeting would have been possible only upon approval of the board of directors and a registration of the transfer in the company's share register. The Respondent emphasizes that the Claimant was listed as an owner of one share in the share register, whereas in the minutes provided by the Claimant, she was listed as the owner of 28 shares.[58] It is the view of the Respondent that no document exists to indicate that 27 shares were transferred to the Claimant at any time before or after 5 March 1979.

183. The Respondent also argues that the decision adopted at the meeting of 5 March 1979 could not be valid. This argument is based on the observation that Mr. Riahi's children were incompetent to grant a power of attorney to their father. According to the Respondent, Mr. Riahi has not provided a valid power of attorney and such a document has not been attached to the minutes. The Respondent further argues that Mr. Riahi had no right to donate the property of his sons to their stepmother and the powers of attorney produced on behalf of Jahan Shahriar and Amir Saeed lacked any reference to a right to donate on their behalf.[59] As has been the case with respect to other claims, the Respondent also contends that the conditions for a valid contract of donation, i.e., an officially registered deed

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[58] In the share registers produced in evidence by the Respondent, the Claimant appeared as the owner of two shares of the initial 300 shares of the company and, subsequently as the owner of one share when the capital stock of the company was changed to Rls. 7,500,000, divided into 75 shares.

[59] It is also the Respondent's view that Mr. Riahi's transactions made on behalf of his children were invalid because they were carried out based on invalid general powers of attorney allegedly provided by them.

and actual delivery, are wanting here. Moreover, in connection with the claim that Mr. Riahi's acknowledgement of the transfer of shares constituted an admission, the Respondent points out that under Iranian law "admission means acknowledgement of a right for another to the detriment of one's own interests." (Article 1259 of the Iranian Civil Code.) Therefore, acknowledgement of Mr. Riahi or any other shareholder must not be construed as an admission on the part of Jahan Shahriar or Amir Saeed.

3. The Tribunal's Decision

184. To sum up, the Claimant claims that she owns 34 shares of Tarvandan, of which she has owned one since June 1978. She allegedly became the owner of an additional 27 registered shares, by donation, sometime between 23 August 1978 and 5 March 1979 and of six bearer shares between 5 March and 28 August 1979. The Respondent is of the opinion that the Claimant owned only one share of the company.

185. The Tribunal notes that the Respondent has raised arguments similar to those raised in connection with Rahmat Abad regarding the invalidity of the two powers of attorney given by Mr. Riahi's sons and failure to register share transfers, as required by Iranian law. Having dealt already with these arguments in connection with Rahmat Abad, the Tribunal finds it unnecessary to reconsider them and therefore refers to its holdings in paragraphs 137-144.

186. The Claimant relies on the minutes of the extraordinary general meeting of the company dated 5 March 1979 to prove her ownership of 28 registered shares, but does not indicate anywhere the identity of the previous owner(s) of the 27 shares, which she claims were transferred to her on the very same day. In her rebuttal affidavit, she states only that "[m]y husband

transferred 27 more shares to me on March 5, 1979." Regarding the previous owner(s), the Tribunal first notes that, according to the minutes of the annual ordinary general meeting of the company dated 21 June 1978, the company's 75 shares were divided so that Mr. Riahi owned 12 shares, his three sons each owned 20 shares and the Claimant, as well as Dr. Parviz Khabir and Mr. Ali-Asghar Jazani, each owned only one share. According to the minutes of the ordinary general meeting of the company dated 3 March 1979, all the shareholders at the meeting were apparently the same, except for Dr. Parviz Khabir, whose single share was then transferred to Mr. Vaghefi. Mr. Riahi's three sons were mentioned as shareholders in the minutes, but the exact number of shares they owned is not clear since no list of shareholders regarding this meeting is available. However, according to the Claimant's own affidavit, quoted above, she owned only one share at this time.

187. Turning again to the minutes of the extraordinary general meeting dated 5 March 1979 and to the list of shareholders attached thereto, the Tribunal notes that the list does not indicate how the ownership of shares between Mr. Riahi and the person or persons whom he represented at the meeting were divided. The total number of shares he represented at the meeting was 45. According to that list, the Claimant had 28 shares. However, in his rebuttal affidavit, Mr. Riahi stated:

> On March 5, 1979, my wife owned 28 shares out of the total of 75.... I was also a shareholder. I transferred six more shares to her before I left Iran in August 1979. Through gifts to my wife and my son, Malek Massoud, I made sure that my wife and son held equal numbers of shares in Tarvandan.

188. In view of what is stated above, and of Mr. Vaghefi's letter dated 16 July 1980 (according to which, after the company converted its registered shares to bearer shares, the Claimant and Malek Massoud each owned 34 shares and Mr. Riahi owned 5 shares), and further considering the fact that the last share

register of Tarvandan clearly indicates that Amir Saeed and Jahan Shahriar had 20 shares each, as did Malek Massoud, the registered shares that were allegedly donated to the Claimant on 5 March 1979 must, as matter of logic, have belonged to Amir Saeed and Jahan Shahriar.

189. Article 8 of the Articles of Association of Tarvandan, before its alleged amendment on 5 March 1979, stated, inter alia, that the "[t]ransfer of registered shares shall be subject to the approval of the board of directors and due recording in the Company's share register." The Respondent contends that neither of these steps was taken in connection with the Claimant's shares. To prove its contention, the Respondent relied on two share registers of the company that it produced in evidence; one reflecting the owners of the company's 300 initial shares and the other the owners of its 75 shares. As stated earlier, the Claimant challenged the evidentiary value of the share register concerning the division of 75 shares, noting that nothing is stated therein about her ownership as of 5 March 1979 or on any later date, or about the share owned by Mr. Vaghefi, though he must be presumed to have owned a share because of his appointment as a member to the board of directors. The Claimant also stated that "the actual register, if produced, would correspond to the documentary and affidavit evidence submitted by Claimant."

190. The Tribunal has no reason to believe that the share registers submitted by the Respondent are inauthentic. In addition, the Tribunal has no reason to believe that the register concerning the ownership of Tarvandan's 75 shares was not valid on 5 March 1979 when the alleged meeting took place and the decision concerning the conversion of shares was allegedly made. This share register includes, e.g., the signature of the Claimant, the authenticity of which she has not denied. As regards the absence of Mr. Vaghefi's one share from

the register, the Tribunal notes that, according to the minutes of the meeting of the company, this transfer occurred pursuant to the minutes of the company on 3 March 1979, i.e., two days before the decision concerning the conversion of shares was allegedly taken. Finally, the Tribunal recalls what it has stated earlier, see, para. 144, about the importance of notations in a company's share register.

191. As mentioned in the claim concerning Rahmat Abad, minutes of meetings of a company can be used as evidence, in certain circumstances, to prove certain facts. See supra, paras. 147-148.

192. The Claimant emphasized that the minutes of the 5 March 1979 meeting were filed with the Office for Registration and argued that two letters from that Office prove this fact. The first letter is dated 4 July 1979 and refers to the meeting of the board of directors concerning the conversion of shares. The second one is dated 2 November 1982 and is addressed to Bank Melli. The translation of this letter produced by the Claimant refers to the minutes of 5 March 1979 and to a list of purported shareholders attached thereto.

193. Based on the available evidence, the Tribunal has no doubt that the minutes of the shareholders' meeting dated 5 March 1979 were at some point filed with the Office for Registration. 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 (20 March 1979, and 30 or 31 May 1979). There is thus a gap of over three months between the date when the first son died and the date of the letter. The second letter is dated 2 November 1982, which falls even further after the death of the sons. The Tribunal further notes that although the registration fee for the minutes of the 3 March 1979 meeting of the company was paid on 22 April 1979, the evidence is lacking

to show that any action was taken to register the 5 March 1979 minutes before that date or before the death of the sons.

194. As regards Rahmat Abad, the Tribunal held, inter alia, that under the particular circumstances existing in that claim, including where the previous owner of 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, see supra, para. 153. Here, the situation is the same.[60] Bearing in mind the fact that the claimed transfer of the shares was not recorded in the company's share register and that the available evidence does not indicate that the filing of the 5 March minutes with the Office for Registration took place before the death of the sons, the Tribunal holds that the Claimant has not been able to produce sufficient evidence to support the contention that she was the owner of the additional 27 registered shares of Tarvandan on 5 March 1979.

195. Insofar as the transfer of six bearer shares to the Claimant is concerned, the Tribunal notes that the only evidence produced by the Claimant in support of this transfer (other than the Claimant's and Mr. Riahi's affidavits) is Mr. Vaghefi's letter of 16 July 1980. The Tribunal finds that this letter, issued after the claimed expropriation date, does not carry enough weight to support the Claimant's contention. Therefore, the Tribunal holds that the Claimant was the owner of only one share in the company at the time of the alleged expropriation.

196. The Claimant has also asked the Tribunal to draw an adverse inference from the Respondent's failure to produce the

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[60] See also the Tribunal's finding, infra, concerning Gav Daran.

share register of the company. The Respondent has replied that, in fact, it has filed the company's share registers with the Tribunal. The Tribunal has already established that it has no reason to believe that the share register produced by the Respondent with respect to the 75 shares was not valid on 5 March 1979 when the alleged decision concerning the conversion of the company's shares to bearer shares was made. In addition, transfer of bearer shares, according to Iranian law, requires no registration in a share register. Furthermore, according to Article 10 of the Articles of Association of Tarvandan, as allegedly amended at the 5 March 1979 meeting, transfer of shares of the company became effective by actual delivery of the shares. Thus, and also bearing in mind the state of affairs and how the ownership and the actual control of the company were arranged, the Tribunal doubts that any share register could confirm the Claimant's ownership of 34 shares in Tarvandan. Therefore, the Tribunal finds no further need to consider the issue of adverse inference.

197. Finally, with respect to the Respondent's contention that Mr. Riahi had no right to donate the 27 registered shares to the Claimant on behalf of his sons because the powers of attorney in question lacked such authorization, the Tribunal refers to what it stated in connection with Rahmat Abad, see supra, paras. 163-172. Accordingly, it appears that Mr. Riahi did not have the right to donate Amir Saeed's and Jahan Shahriar's shares in Tarvandan to the Claimant.

G. Gav Daran's Shares

1. The Claimant's Contentions

198. The Claimant states that Gav Daran was established in 1975 and owned 2,000 hectares of pasture located in Gorgan Province in northern Iran. The Claimant contends that she had an equity

ownership of 20 shares of the capital stock of 50 shares in the company.

199. The Claimant asserts that, as evidenced by the application for registration of 20 August 1975 and the minutes of the founders' meeting of 17 August 1975, she initially owned 33 of 100 shares. The Claimant contends that the capital stock of the company was changed four times during the years 1975-79.[61] To verify the changes of the capital stock, the Claimant submits to the Tribunal minutes of four meetings of the extraordinary general assembly of the company and two letters from the Office for Registration. The final change to the company's share capital allegedly was made at the shareholders' meeting of 5 March 1979, which changed the share capital to Rls. 5,000,000, divided into 50 bearer shares of Rls. 100,000 each. The Claimant thus relies on the minutes of the 5 March 1979 meeting and the attached list of shareholders, which record her as the owner of 20 shares. According to the Claimant, the minutes of that meeting and the list of shareholders were filed with the Office for Registration. The Claimant provides a letter from that Office, dated 4 July 1979, wherein a specific reference is made to the minutes of the meeting of 5 March 1979. Finally, the Claimant also points out that the Respondent has failed to comply with the Tribunal's Orders to submit the share register of the company or to offer any reason for its failure to comply.

200. As evidence supporting her claim, the Claimant refers to her affidavit, the affidavit of her spouse and a letter from Mrs. Moalej, managing director of the company, to the Claimant, dated 16 July 1980. In her letter, Mrs. Moalej informed the Claimant that, based on a decree of the Islamic Revolutionary Court, the properties and bank accounts of the company had been

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[61] The dates of the extraordinary general meetings of the company referred to by the Claimant are 1 September 1975, 14 June 1976, 13 August 1977, and 5 March 1979.

seized by the Foundation for the Oppressed. Mrs. Moalej stated in her letter that the Claimant's equity interest in the company amounted to 20 shares and that the company owed Rls. 9,060,000 to Mr. Riahi.

2. The Respondent's Contentions

201. The Respondent disputes the value of the Claimant's evidence and contends that the Claimant had no equity interest in the company. With regard to the minutes of the meeting of 5 March 1979 and Mrs. Moalej's letter, the Respondent notes that they were prepared on the same dates and in the same form as the minutes and the letter pertaining to Tarvandan.

202. The Respondent also asserts that the minutes of 5 March 1979 may have been antedated, which would have enabled the transfer of shares from Amir Saeed and Jahan Shahriar to the Claimant, even though they were already deceased. The Respondent moreover bases its arguments on the ambiguities in the minutes provided by the Claimant. The Respondent points out, inter alia, that the minutes do not indicate what happened to several shareowners and to their shares during the period of 13 August 1977 to 5 March 1979. The Respondent also observes that the relevant parts of Mr. Riahi's diary remain silent with respect to the meetings referred to by the Claimant.[62] The Respondent points out that Mrs. Moalej's letter is dated several months after the alleged expropriation. It also argues that Mr. Riahi's diary confirms that the Claimant did not own any shares in the company. This leads the Respondent to conclude that the minutes of the 5 March 1979 meetings are not authentic.

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[62] The Respondent refers to entries in Mr. Riahi's diary covering 13 August 1977 (page 572) and 5 March 1979 (page 806).

203. As to the Claimant's request that the company's share register be submitted, the Respondent maintains that documents relating to Gav Daran are not available to it. The Respondent argues that since the company had not been active, it produced few records, and those that were produced were cleared away by Mr. Riahi and his friends prior to the company's expropriation.

3. The Tribunal's Decision

204. The Tribunal first notes that the Claimant was listed as the owner of 33 out of 100 shares of the company in a list attached to the minutes of 1 September 1975. In addition, based on the available evidence, Amir Saeed and Jahan Shahriar had become shareholders in the company apparently from sometime between 14 June 1976 and 13 August 1977. How many shares they owned then is not clear. However, the minutes of the ordinary general meeting of the company held extraordinarily on 5 March 1979 at 10:00 a.m. show that Amir Saeed had owned 15 shares, which were transferred to Malek Massoud and Jahan Shahriar at the meeting in equal numbers. Considering the similarities between Tarvandan and Gav Daran and in view of Mr. Riahi's practice, there is a good reason to believe that Jahan Shahriar and Malek Massoud each owned 15 shares before the meeting of 5 March 1979. These minutes, produced by the Claimant, bear a seal indicating that the registration fee had been paid on 23 April 1979. No list of shareholders is attached thereto. Therefore, there is no information as to the exact quantity and division of the share ownership at that time. The latest information available is from the summer of 1977. According to the minutes of 13 August 1977, there were 75 shares in the company as of that date. No shareholder list is attached to those minutes either.

205. According to the Claimant, there was another shareholders' meeting on 5 March 1979. Following the ordinary general

meeting, there was allegedly an extraordinary general meeting held an hour later, at 11:00 a.m. The Claimant has stated that the list of shareholders attached to the minutes of this meeting proves her ownership of 20 out of the 50 shares outstanding. The Tribunal notes that, according to the list, Mr. Riahi represented 28 shares "for himself and with proxy" in the meeting, and that the Claimant was listed as the owner of 20 shares. Mrs. Moalej and Mr. Vaghefi each owned one share. The Claimant argues that the minutes and the shareholder list attached thereto were filed with the Office for Registration, as evidenced by a letter of that Office dated 4 July 1979. Furthermore, the Tribunal notes that in a letter from the then managing director of the company, Mrs. Moalej, dated 16 July 1980, Mr. Riahi was listed as the owner of three shares, Malek Massoud 25 shares and the Claimant 20 shares.

206. The Tribunal concludes that the minutes of the general meeting that allegedly took place at 11:00 a.m. on 5 March 1979 do not prove the Claimant's ownership of 20 shares in the company, and in fact raise more questions than they answer. As regards the number of shares in the company prior to its decision to convert the shares, the Tribunal notes the agenda of the 11:00 a.m. meeting:

> Change of registered shares of the company to bearer shares and change of nominal amount of each share from ten thousand rials to one hundred thousand rials, amending the relative paragraph of the Articles of Association.

207. Therefore, it does not appear, as contended by the Claimant, that "[a]t a shareholders' meeting on March 5, 1979, the share capital of Gav Daran was changed to Rials 5,000,000 divided into 50 bearer shares of Rials 100,000 each." To accept the Claimant's contention, it must be presumed that the capital of the company was reduced to Rls. 500,000, divided into 50 shares, at some time prior to that meeting. This is neither

contended by the Claimant nor proved by any evidence. Rather, the evidence shows that the company's capital prior to that meeting was not less than Rls. 5,000,000. The capital of the company was, as a matter of fact, increased from Rls. 5,000,000 to Rls. 7,500,000 in August 1977.

208. Two inferences might be drawn from the above observations. First, there were 500 shares (with a par value of Rls. 10,000 each) in the company when the first general meeting took place one hour earlier. Second, the share capital of the company, before the meeting, was Rls. 5,000,000, not, e.g., Rls. 7,500,000, as it was after 13 August 1977, when the share capital was increased from Rls. 5,000,000 to Rls. 7,500,000.

209. As regards the first inference, the Tribunal notes that the two minutes from 5 March 1979 are inconsistent. Although the list of shareholders that attended the first meeting is not available, the actual amount of shares owned by Mr. Riahi, Amir Saeed, Dr. Khabir, Eng. Sheibani, and Mr. Vaghefi can be deduced from the text of the minutes. The total number of shares they owned before the meeting was approximately 30. Bearing in mind Mr. Riahi's penchant for treating his sons equally, the Tribunal finds it difficult to believe that the Claimant, together with Malek Massoud and Jahan Shahriar, would have owned an aggregate of 470 shares of Gav Daran at the start of the first meeting.[63]

210. The second inference, that the share capital was already Rls. 5,000,000 before the meetings, is similarly inconsistent

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[63] Were the Tribunal to presume that Mr. Vaghefi had two shares prior to this meeting because of his being mentioned as a shareholder in the second meeting held at 11:00 a.m. notwithstanding the transfer of "the one share" he owned to Mrs. Moalej, the aggregate amount of the shares purportedly divided among the Claimant and the two sons of Mr. Riahi would be reduced to 469 shares. However, for the purpose of the above problem, it does not matter whether we assume that the remaining shares totaled 470, 469 or any figure in that neighborhood.

with the available evidence. As mentioned earlier, the share capital of the company had already been increased from Rls. 5,000,000 to Rls. 7,500,000 in 1977. In addition, according to the documents made available and the Claimant's statements, the share capital had only been increased, and never decreased, before the 1977 increase.

211. Insofar as the minutes of the first meeting of 5 March 1979 are concerned, the Tribunal finds the minutes to be consistent with those of 13 August 1977. The Tribunal, nevertheless, notes that at the 5 March meeting the 15 shares of Amir Saeed were allegedly transferred to his brothers, Jahan Shahriar and Malek Massoud, in equal number, i.e., 7.5 shares each, and that the transfer took place only about three weeks before Amir Saeed's death. Moreover, the registration fee of the minutes of the meeting was not paid, as noted above, until 23 April 1979, i.e., a month after Amir Saeed's death. In addition, the Tribunal notes that it is not clear whether Jahan Shahriar continued to own shares during the second meeting of 5 March 1979 or whether his shares already had been transferred to others, and, if so, how and to whom.

212. Bearing in mind its observations on the two minutes of the 5 March 1979 meetings and its findings earlier about the evidence required to prove the transfer of shares in somewhat similar situations, see supra, paras. 153 and 194, the Tribunal 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.

213. In light of the above, and bearing in mind the Riahi family's control over this company and its records, like Rahmat Abad and Tarvandan, the Tribunal finds irrelevant the Claimant's request for the production of the company's share register.

H. ASP Apartment

214. The Claimant asserts that in October 1976 she purchased for Rls. 36,297,520 a 337-square-meter apartment in the ASP Building, located at block C, 19th floor, Apartment 1, 60 Fourth Street, Nowbonyad Street, Youssefabad Avenue in Tehran. To prove her claim of ownership, the Claimant produced the contract and purchase agreement. The Claimant also claims to have made improvements in the apartment worth more than Rls. 1,160,000, as evidenced by a letter from the contractor in charge of the improvements, Engineer Eric Mosaedi, dated 6 February 1980.

215. In her Rebuttal Memorial, the Claimant cites evidence in support of her claim that the money used to purchase the apartment and to pay the monthly condominium and Owners' Association fees came from her personal checking account. The Claimant submitted documents to verify the transfers. The Claimant emphasizes that, according to Iranian law, the party who enters into a transaction makes that transaction for himself.[64] To further corroborate her claim, the Claimant provides a lease agreement showing that she, as lessor, rented the apartment to a Canadian couple in 1977. The Claimant contends that even if Mr. Riahi paid the purchase price to the seller as a gift to his wife, she nevertheless was the owner of the apartment. As a final argument, the Claimant states (and the Respondent's evidence confirms) that no title deeds were issued for apartments in the ASP Building until 1995, including

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[64] The Claimant refers to Article 196 of the Civil Code of Iran.

for the Claimant's apartment, and thus her claim is based on a contract right.

216. At the Hearing, the Respondent conceded the Claimant's ownership of the apartment, but relies on the important caveat of the Full Tribunal in Case No. A18.

217. Noting the fact that the Claimant's ownership of the ASP Apartment has not been contested by the Respondent, the Tribunal considers her to be the owner of the claimed property. The issue of the applicability of the caveat expressed in Case No. A18 is discussed in Section IV, infra.

I. Contractual Rights to Farahzad Apartments

218. The Claimant asserts that on 7 March 1977 she signed two contracts for the purchase of two apartments in Farahzad, in the west of Tehran, for Rls. 12,368,840. The Claimant alleges that she had paid the purchase price of the apartments prior to her departure from Iran. She contends, however, that the documents supporting the payment of three installments under three promissory notes are not available to her. To substantiate her claim, the Claimant submits purchase applications, purchase contracts and documents of payment. The Claimant emphasizes that she signed the purchase applications and the contracts as the buyer.

219. At the Hearing, the Respondent conceded the Claimant's ownership of the contractual rights. The Respondent, however, points out that the contracts for the purchase of apartments were with Shah Goli, an independent company that is not named as a Respondent in this Case. The Respondent further contends that the Claimant failed to pay the purchase installments under three promissory notes, amounting to Rls. 562,220. Because of those defaults, and based on the provisions of the sale and purchase contracts (Article 11), Shah Goli served a notice of default

upon the Claimant and subsequently terminated the contract. With the notice of termination, Shah Goli invited the Claimant to seek a refund of her payments, but she failed to act accordingly. The Respondent argues that the claim is inadmissible because it was not outstanding on 19 January 1981 and that the caveat expressed in Case No. A18 would bar this claim.

220. The Tribunal finds that the ownership of the contractual rights to the Farahzad Apartments has not been contested and that she is therefore the owner of these contractual rights. The issue of the applicability of the caveat expressed in Case No. A18 is discussed in Section IV, infra.

J. Personal Property in ASP Apartment

1. The Parties' Contentions

221. The Claimant asserts that prior to her departure from Iran on 11 September 1979, the ASP Apartment contained various art works, antiques, furniture, household goods and carpets owned by her. The Claimant submitted a list of the claimed property and photographs of some items of the claimed property. In support of her contention that she was the owner of the property, the Claimant relies on her own and her spouse's affidavits.

222. The Claimant refers to the Tribunal's practice, which in her view recognizes that contemporaneous photographs, and narratives of family and friends who lived in Iran continuously throughout the Revolution, are often the only, and the most reliable, source of evidence, considering the havoc created by the Revolution and the difficulty of obtaining evidence in such circumstances.[65] In addition, the Claimant contends that the

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[65] The Claimant refers to Reza Said Malek and The Government of the Islamic Republic of Iran, Final Award No.

items in the ASP Apartment that had been owned by Mr. Riahi were given to her when those items were taken to the apartment. The Claimant, moreover, contends that, according to Iranian law, property that is found on the premises prima facie belongs to the owner of the premises.[66]

223. In its Rebuttal Memorial, the Respondent contended that the Claimant failed to establish: (1) that there was ever any personal property in the apartment; (2) that any property that may have been there belonged to her; (3) that any such property remained in the apartment until her departure from Iran; (4) that the property was expropriated; and (5) that any such expropriation could be attributed to the Respondent.

224. The Respondent contends further that the lists and photographs provided by the Claimant and the statements by the Claimant and her spouse do not suffice to prove the Claimant's ownership of the alleged property. The Respondent also claims that the affidavits of the Claimant and Mr. Riahi are not reliable.

225. Finally, the Respondent argues that, to the extent that there had been personal property in the ASP Apartment, it belonged to Mr. Riahi and had been brought from his former residence in Farmaniyeh. In this connection, the Respondent cites certain entries in Mr. Riahi's diary. The Respondent also maintains that the citation from Dr. Emami's book (expressing the Iranian legal principle that the owner of premises is presumed to be the owner of the personal property therein) must be applied in accordance with the circumstances of each case.

534-193-3, para. 121 (11 Aug. 1992), reprinted in 28 Iran-U.S. C.T.R. 246, 290-91 ("Malek").

[66] The Claimant cites from a book of Dr. Seyed Hassan Emami, former professor of Civil Law at Tehran University Law School.

2. The Tribunal's Decision

226. The Tribunal has previously held that for a successful claim of expropriation the Claimant "has to establish two distinct elements: first, that she had ownership interests in or other property rights to the properties and rights at issue and, second, that an expropriation or other measure affecting her ownership interests or other property rights, attributable to Iran, took place."[67]

227. The Tribunal first notes that the Claimant supports her ownership of the claimed items mainly by relying on her and her spouse's affidavits and on the presumption that all the furniture and items in the premises must be taken to have been owned by the owner of the premises. Furthermore, regarding the photographs produced by the Claimant, the Tribunal notes that nothing in the pictures connects the items with the ASP Apartment or their ownership to the Claimant.

228. However, in view of its finding that the Claimant has not been able to prove the expropriation of the claimed property, see infra, paras. 368-376, the Tribunal holds that it does not need to decide whether the Claimant owned the claimed items.

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[67] Catherine Etezadi and The Government of the Islamic Republic of Iran, Award No. 554-319-1, para. 53 (23 Mar. 1994), reprinted in 30 Iran-U.S. C.T.R. 22, 37 ("Catherine Etezadi"). See also Vernie Rodney Pointon, et al. and The Government of the Islamic Republic of Iran, Award No. 516-322-1, para. 30 (23 July 1991), reprinted in 27 Iran-U.S. C.T.R. 49, 59; and Leonard and Mavis Daley and The Islamic Republic of Iran, Award No. 360-10514-1, paras. 17 and 27 (20 Apr. 1988), reprinted in 18 Iran-U.S. C.T.R. 232, 237, 241 ("Daley").

K. Two Automobiles

1. The Parties' Contentions

229. The Claimant contends that, prior to her departure from Iran, she owned two automobiles, a blue 1978 Toyota and a green 1976 Peykan. The Claimant alleges that, at the time of her departure, the Toyota was in the ASP Building's parking lot, and the Peykan car was in a parking place belonging to Tarvandan. To prove her ownership, she relies on her own two affidavits and those of her spouse. Ms. Stubbs, a friend of the Claimant, also testified in her affidavit that the Claimant had a blue 1978 Toyota. The Claimant also cites extracts from Mr. Riahi's diary, which, in her opinion, records the Claimant's ownership of the two automobiles. The Claimant points out that at the time of her departure from Iran, she saw no need to take the registration documents of the cars with her, and therefore left the documents in the glove compartments of the cars.

230. The Respondent asserts that the Claimant failed to produce documentary evidence to support her claim. In fact, by referring to entries in Mr. Riahi's diary, it argues that the Toyota car was owned by Mr. Nabavi, the managing director of Rahmat Abad. According to the Respondent, the evidence and affidavits provided by the Claimant lack probative value. The Respondent emphasizes that in Iran every automobile has an ownership card, which the Claimant has not been able to produce.

2. The Tribunal's Decision

231. The Tribunal notes, on the one hand, that the Claimant's evidence is consistent, and that this consistency strengthens its probative value. On the other hand, however, the Tribunal observes that the Claimant relies, in the main, on her own affidavits and those of her spouse and Ms. Stubbs, and entries in Mr. Riahi's personal diary and ledger book. The Claimant has

not produced any other documents to support her claim. However, as regards the Toyota automobile, the Tribunal takes notice of the fact that the Respondent has provided a letter, dated 14 May 1983, from the Foundation for the Oppressed to the Islamic Revolutionary Court of Isfahan concerning the properties belonging to Mr. Riahi. In this letter, reference has been made to a Toyota passenger car bearing the police registration number 58855 Tehran-22, apparently belonging to Mr. Riahi or his relatives. The Respondent has maintained that this car belonged to Mr. Nabavi, former managing director of Rahmat Abad.

232. The Tribunal notes that the evidence provided points to two Toyota cars, of which the Claimant owned one and Mr. Nabavi owned the other. In these circumstances, and in view of the Respondent's failure to provide specific rebuttal evidence, i.e., a copy of the vehicle registration record concerning the Toyota (referred to in 14 May 1983 letter), which the Respondent must possess, the Tribunal finds that the Claimant has proved her ownership of the Toyota.[68] Furthermore, the fact that in 1983 the Toyota was still in the possession of the Foundation for the Oppressed speaks in favor of the Claimant's contention that this car belonged to her rather than to Mr. Nabavi. Had the car belonged to Mr. Nabavi, the Foundation should have been able to establish its ownership and return the car to him by then.

233. The situation, however, is different insofar as the Peykan is concerned. The Tribunal finds that the Claimant has not produced even prima facie evidence to support the ownership of the Peykan. In view of this failure, the Respondent is not

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[68] See Malek, supra note 65, para. 111, at 288, wherein the Tribunal stated that "[t]here is a point, however, at which the Claimant may be considered to have made a sufficient showing to shift the burden of proof to the Respondent." See also id., paras. 121-23, at 290-92.

required to have produced rebuttal evidence.[69] Accordingly, the Claimant's claim regarding the Peykan car is dismissed.

L. Four Horses

1. The Parties' Contentions

234. The Claimant claims that prior to her departure from Iran she owned four horses: Tarlon, Sharareh, Festival and Pishdad. The Claimant contends that she purchased Tarlon, an Anglo-Kurdish Stallion, in 1975 for Rls. 120,000 plus a trade of another horse. In 1978, she purchased Sharareh, a dark brown 16-hand Turkoman-thoroughbred mare, from Mr. Kambiz Atabai, former general director of the Royal Horse Society and the Royal Stables at Farahabad, for Rls. 600,000. At the time of purchase, this mare was in foal to a 17-hand French stallion. Sharareh gave birth to the foal, Pishdad, on or about 22 March 1979. Finally, the Claimant states that she purchased the fourth horse, Festival, from Mr. Fereydoun Elganian, a horse breeder, in 1978 for £6,000.

235. To prove her ownership of the horses, the Claimant submitted six affidavits of five persons, who she claims had firsthand knowledge of the Claimant's ownership: Colonel Sohrab Khalvati, Mr. Kambiz Atabai, Mr. Fereydoun Elganian, Mrs. Anne Bergl, and Mrs. Ellen Stewart Schmitt. The Claimant also submits photographs of the claimed horses. The Claimant's ownership of the horses is allegedly referred to in a letter

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[69] See Abrahim Rahman Golshani and The Government of the Islamic Republic of Iran, Final Award No. 546-812-3, para. 49 (2 Mar. 1993), reprinted in 29 Iran-U.S. C.T.R. 78, 93, requiring the Claimant "first to demonstrate prima facie that the Deed is authentic" before expecting the Respondent to prove that the deed was forged.

from Mr. Ata-Ollah Nabavi, dated 8 March 1981. The Claimant also cites Mr. Riahi's diary in support of her claim.[70]

236. As to the ownership of Tarlon and Festival, the Claimant relies on the affidavit of Colonel Sohrab Khalvati, who testified to the Claimant's ownership of those two horses. Mr. Khalvati also stated that he helped the Claimant buy Tarlon in the spring of 1976 and that he believed that the horse was registered with the Royal Horse Society in the Claimant's name. Mr. Khalvati and Mr. Kambiz Atabai testified in their affidavits that Festival was bought from Mr. Fereydoun Elganian in 1978 and that the horse was registered with the Royal Horse Society in the Claimant's name. The Claimant also submits her letter to the Manager of the Enghelab Sports Complex, dated 10 September 1979, in which the Claimant applied for transportation of Festival to Natanz.

237. Mr. Fereydoun Elganian stated in his two affidavits that he had imported the horse Festival from Ireland to Tehran in 1977. Mr. Elganian added in his second affidavit that he had imported the horse for his then twelve-year-old son, but that the horse was not suitable for him. Therefore, he allegedly sold it to the Claimant in 1978 for £6,000. He, too, testified that the horse was registered with the Royal Horse Society in the Claimant's name. The purchase of Festival is also confirmed by the affidavits of Ms. Anne Bergl (who claims to have assisted the Claimant in purchasing the horse) and Ms. Ellen Stewart Schmitt.

238. With respect to Sharareh, Mr. Kambiz Atabai stated in his affidavit that he sold the horse to the Claimant in the early

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[70] The Claimant explicitly cites entries in the diary wherein Mr. Riahi refers to Ajeen and Apollo as his wife's horses (pages 550-51); Sharareh, Tarlon, and Apollo being at the Rahmat Abad farm (page 767); and the birth to a foal by Sharareh at the same place (page 825).

summer of 1978 for Rls. 600,000. Mr. Atabai added that at the time of purchase, this horse was in foal to a Selle Français stallion of the Royal Stables. According to Mr. Atabai, Sharareh was registered with the Royal Horse Society in the Claimant's name. Ms. Bergl, the other affiant, confirmed that the Claimant purchased Sharareh from Mr. Atabai.

239. According to the Respondent, the Claimant's ownership of the four horses is not supported by the documents. The Respondent argues that affidavits submitted by the Claimant do not suffice to prove her ownership of Festival and Sharareh. The Respondent submits an affidavit by Mr. Nabavi in which he states that he never wrote the letter referred to by the Claimant. The Respondent also provided a letter from the General Office for Horsemanship and Horse Breeding of the Physical Education Organization of Iran (formerly the Royal Horse Society), dated 19 October 1993, together with photocopies of identity cards of Festival and Sharareh, issued on 11 October 1976 and 23 September 1975, respectively. According to these identity cards, Festival was owned by Mr. Daryoush Elganian, and Sharareh by the Royal Stable, and no change of ownership hitherto has been recorded.

240. To rebut the Claimant's evidence, the Respondent also submitted affidavits of three persons who were working for the Riahi family at the Rahmat Abad farm. Mr. Ali-Akbar Ramazani, Mrs. Massomeh Vakil-Zadeh Hatefi, and Mr. Valiollah Behjat-Abadi testified that Mr. Riahi owned and maintained four horses at the Rahmat Abad farm.

241. In her Rebuttal Memorial, the Claimant argues that the three affidavits submitted by the Respondent lack probative value because the affiants have, inter alia, no personal knowledge of the facts. The claimed horses were purchased and

stabled at the Rahmat Abad farm in 1976 and thereafter, whereas the affiants had been fired by Mr. Riahi in March 1975.

242. In its Rebuttal Memorial, the Respondent reiterates its position that the evidence submitted by the Claimant does not suffice to establish her ownership. The Respondent also challenges the probative value of the affidavits of the Claimant's witnesses because it considers them hostile towards the Respondent.

2. The Tribunal's Decision

243. The Tribunal first notes that the Claimant's affiants appear to have knowledge of the horses partly due to their previous duties in Iran, and that their affidavits are consistent. On the other hand, the Tribunal notes that the Respondent's affiants do not have detailed information concerning the horses and that apparently only one of them was working at the Rahmat Abad farm when the horses were allegedly brought there.

244. With respect to Festival and Sharareh, the Tribunal observes, on the one hand, the Claimant's comment in her affidavit concerning the identity cards filed by the Respondent, according to which she finds the absence of a record regarding the transfer of ownership of those horses to her name as not credible. The Tribunal notes, on the other hand, that the Claimant maintains that during the days before the Revolution, the Royal Horse Society maintained accurate records on ownership and breeding of horses and that the society issued "passports" for horses that were registered there. In addition, the Claimant states that she had the passports of these horses in her files at the ASP Apartment.

245. The Tribunal notes that the Parties have produced strong, though different, evidence to support their contentions. There

is no evidence in the record, however, to suggest that the identity cards of Festival and Sharareh are inauthentic. Moreover, bearing in mind the Claimant's own acknowledgement of the accuracy of the records of the Royal Horse Society before the Revolution, and noting the time when the alleged transfers of ownership occurred, the absence of transfer notations in the horses' identity cards acquires particular importance. This is strengthened further by the presumed experience of some of the Claimant's affiants in the field of horse raising and trading, affiants who must be taken to have had sufficient knowledge of the importance of keeping records of transfers. The Tribunal thus finds that the Claimant has not been able to prove her ownership of these two horses. Accordingly, the claims regarding Festival and Sharareh are dismissed.

246. As regards the stallion named Tarlon, the Tribunal notes that the Claimant's contentions are partly supported by Mr. Khalvati's affidavit. Since the Respondent has not produced any convincing rebuttal evidence (such as the horse's identity card, as it did in respect of Festival and Sharareh, which should have been easy to obtain), the Tribunal concludes that the Claimant became the owner of Tarlon in 1976, as testified by Mr. Khalvati, see supra, paras. 234 and 236, although she has not been able to produce the passport of the horse.

247. As regards the foal, Pishdad, while the Tribunal is aware of the presumption that the owner of a mare also owns her foal, it notes that its denial of the Claimant's ownership of the mare, Sharareh, was based solely on the observation that the mare's identity card lacked any record of her purchase of the horse. The Tribunal further notes that Pishdad was born at a time when Sharareh was apparently kept at the Rahmat Abad farm. Thus, under these circumstances, the foal could have had a different owner than the mare. Accordingly, because the Respondent has produced no evidence to rebut the Claimant's

prima facie evidence of ownership, the Tribunal must conclude that the Claimant owned Pishdad.

IV. A18 CAVEAT

A. The Parties' Contentions

248. The Respondent argues that the documents produced by the Claimant clearly indicate that she acquired property and contractual interests in certain real property using her Iranian nationality. The Respondent specifically recalls paragraph 41 of the Interlocutory Award, in which the Tribunal noted that the issue of whether the Claimant concealed her American nationality in order to acquire benefits available only to Iranian nationals in obtaining these property rights may be relevant to the merits of her claim. Moreover, the Respondent asserts that principles and doctrines of international law, including abuse of rights, fraud, estoppel and state responsibility, are relevant to the issue of whether the caveat bars the claims on the merits. The Respondent argues that the abuse of rights doctrine precludes claims arising from rights acquired or retained through a violation of Iranian law. The Respondent further notes that fraud comprises all acts, omissions and concealments involving a breach of a legal or equitable duty, and that the fraudulent use of nationality is a ground to deny compensation. Similarly, the Respondent argues that the Claimant is estopped from pursuing certain claims as a United States national because she acquired or retained ownership of the property at issue in those claims solely by invoking her Iranian nationality. Finally, in the Respondent's view, the international law of state responsibility protects Iran from liability for claims for expropriated property brought by persons who used their Iranian nationality to acquire that property, leading it to believe that the person involved was, in such circumstances, a sole Iranian national.

249. The Respondent contends that the caveat bars the Claimant from recovering compensation for her expropriated shares of Bank Tehran as a United States national because Iranian banking and exchange laws limit foreign ownership of Iranian bank shares. The Respondent further argues, based on the affidavit of Mr. Ali Abedini, the Head of the Shares Section of Bank Mellat, and attachments thereto, that the Claimant always had introduced herself as an Iranian in her dealings with Bank Tehran. She purchased Bank Tehran's shares as an Iranian national, never registered her name in the foreign shareholder list, and never reported her American nationality. From the time of its establishment, Bank Tehran had a total of eight foreign shareholders. Mr. Ali Abedini stated that the bank had different procedures for selling shares to foreigners to enable the bank to keep the ownership of foreign shareholders at or below the legally authorized level. The Respondent therefore concludes that the Claimant is now estopped from relying on her United States nationality because, if allowed, the Claimant's conduct would constitute an abuse of right, and would be contrary to the principles of good faith and clean hands.

250. Likewise, the Respondent argues that the caveat bars the Claimant from recovering her expropriated shares of Iran Bohler. The Respondent claims that the by-laws of LAPFI, see supra, para. 82, limit foreign ownership to 49 percent of the shares of companies established by partnerships between Iranian and foreign shareholders. Because Iran Bohler allegedly was already 49 percent foreign owned, the Respondent argues that the Claimant must have bought her shares as an Iranian national.

251. As regards the claim for the ASP Apartment, the Respondent argues that Iranian law prohibits ownership of immovable property by foreigners, except under special conditions. The Respondent argues that the Claimant benefited from the privileges provided under Iranian laws to Iranian nationals when

she concluded a contract to buy the ASP Apartment. In this respect, the Respondent submitted an affidavit by Mr. Seyed Javad Mirzadeh Tabatabaie, the managing director of the ASP Company. On the same grounds, the Respondent argues that the Claimant could not legally have executed a contract to buy the Farahzad Apartments, and is, in any case, estopped from pursuing these claims in this Tribunal as a United States national.

252. With respect to Bank Tehran, the Claimant responds that the mere purchase or holding of shares by a dual national does not bar the owner from recovery in this Tribunal, and that there is no merit to the allegation that she abused her nationality. As regards the equity ownership in Iran Bohler, the Claimant asserts that nothing in the laws or regulations cited by the Respondent, or in the company's Articles of Association, restricts the transfer of shares to non-Iranians after the company is established and becomes operational. The Claimant acknowledges that there may have been such a restriction on founding shareholders, but that she was not a founding shareholder, and thus is not affected by the regulations.

253. With respect to the ownership of the ASP Apartment, the Claimant asserts that she was not disqualified from owning the apartment as a dual national, and that she never concealed her United States nationality to obtain any property or benefits solely available to Iranian nationals. Further, although Iran required her to use her Iranian passport, Iran was well aware that she, like other American women who had married Iranian men, continued to retain her American citizenship. Moreover, the Iranian Consulate in the United States routinely issued Iranian passports to American women who had married Iranian men, without requiring them to renounce their United States nationality. The Claimant also refers to Article 986 of the Civil Code of Iran and contends that it allows foreign women married to Iranian men to acquire ownership of real estate in Iran within the limits

provided for foreign nationals. The Claimant asserts that she never exceeded these limits.

254. Alternatively, the Claimant argues that the right to own the ASP Apartment at the time of its expropriation was based solely on a contractual right, since the title deeds were not issued until 1995. Thus, no restrictions on the ownership applied. Finally, with respect to the contractual rights to purchase the Farahzad Apartments, the Claimant alleges that these rights were not considered real estate, because the contractual rights, at the time of the alleged expropriation, did not grant title to real estate. Therefore, she argues that the discussion related to foreign nationals' ownership of real estate is not applicable to these apartments.

B. The Tribunal's Decision

255. The Tribunal noted in its Interlocutory Award of 10 June 1992 that the proceedings on the merits in this Case remain subject to the caveat expressed by the Full Tribunal in Case No. A18.[71] The Tribunal also noted that "the issue of whether the Claimant concealed her American nationality in order to get benefits available only to Iranians in obtaining [the] property rights may be relevant" when deciding the merits of the Case.[72]

256. In its discussion of the caveat in Saghi, the Tribunal concluded that it

> is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran. However...the equitable principle expressed by this rule can, in principle, have a broader application. Even when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the

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[71] See supra, para. 6.

[72] Riahi Interlocutory, supra note 1, para. 41, at 188.

> caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover on his claim.[73]

257. The task of the Tribunal is to consider whether the Claimant used her Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, her conduct was such as to justify refusal of an award in her favor.[74] The Respondent has the burden of proving that a meritorious claim should nonetheless be dismissed due to the caveat.

1. ASP Apartment

258. The Tribunal now turns to the applicability of the caveat as regards the ASP Apartment. The Tribunal will first examine whether the right to acquire real property in Iran by contract is a benefit limited by Iranian law to those whose nationality is Iranian. In Karubian[75] and Moussa Aryeh[76] the Tribunal extensively reviewed the relevant legislation.

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[73] James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 54 (22 Jan. 1993), reprinted in 29 Iran-U.S. C.T.R. 20, 38 ("Saghi").

[74] See, inter alia, Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 76-178-2, para. 16 (22 Jan. 1990), reprinted in 24 Iran-U.S. C.T.R. 40, 45 ("Khosrowshahi Interlocutory"); and Edgar Protiva, et al. and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2, para. 18 (12 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 259, 263 ("Protiva Interlocutory").

[75] 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").

[76] Moussa Aryeh and The Islamic Republic of Iran, Award No. 583-266-3 (25 Sept. 1997), reprinted in 33 Iran-U.S. C.T.R. 368 ("Moussa Aryeh").

259. First, the Law of Nationality of Iran, decreed in 1896 by Naser-e-din Shah, the fourth Shah of the Qajar Dynasty, is relevant to the Tribunal's examination of whether the right of ownership of real property is exclusively reserved for Iranian nationals. The relevant Section of this Decree reads:

> Section 14: Persons who have come to Iran from foreign countries and concealed their nationality during their residence in Iran and been treated as Iranian nationals in all their affairs or who have purchased real property in Iran, which privilege is reserved to domestic nationals, shall be considered as nationals of Iran, and their claim to foreign nationality shall not be accepted.[77]

260. However, as the Award in Moussa Aryeh stated, it is unclear whether this Decree remained in force at the time the claim arose.[78] Aside from the Civil Code and the Law of Nationality of Iran, various other laws and regulations exist, or have existed, which specifically address the issue of foreign ownership of real estate in Iran. The Foreign Nationals Immovable Properties Act, enacted on 6 June 1931 and reaffirmed by the 1955 LAPFI, provides for the forced sale of any farmlands in Iran which a foreign national may have owned. The By-law Concerning Landed Property Ownership by Foreign Nationals, approved by the Council of Ministers on 26 November 1948, sets out detailed disclosure requirements that a foreign national must comply with to obtain permission to own real estate in Iran. Such permission is granted only if the real estate is for the place of residence or business of the foreigner. The foreigner must pledge that if Iran ceases to be his or her permanent place of residence, any real property owned in Iran must be transferred within six months from the date of his or her departure from Iran. Furthermore, such transfer may only be made to an Iranian national or to a foreign national who has

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[77] English translation by the Tribunal's Language Services Division.

[78] Moussa Aryeh, supra note 76, para. 70, at 389.

obtained permission to own real property. The Decree Concerning Landed Property Ownership by Foreign Nationals, approved on 25 September 1963, enabled those without Iranian permanent residence permits, but who regularly made seasonal trips to Iran to tour and use resort areas, to buy immovable properties for their personal residence.

261. In Moussa Aryeh, the Tribunal found that "ownership of real property in Iran by foreign nationals was subject to a complex legal regime of limitations and conditions" and that the Iranian legislation suggests that "ownership of land by foreign nationals was possible only for limited purposes and only upon the granting of the requisite permission by the relevant authorities."[79] Furthermore, the Tribunal concluded in that Case that "[w]hile the Claimant's actions do not rise to the level of an abuse of nationality,...the complex legal regime of limitations and conditions on dual national ownership of land leads the Tribunal to conclude that this is a case in which the caveat in Case No. A18 should be applied."[80]

262. In Karubian, rendered prior to the Award in Moussa Aryeh, the Tribunal concluded that the relevant Iranian legislation "indicates that, except for certain circumstances...the right to acquire real property in Iran by contract is reserved by relevant Iranian law to Iranian nationals."[81] The Tribunal further found that it

> must therefore assume that the Claimant purchased all the properties that are the subjects of these Claims in his capacity as an Iranian national after he had acquired United States nationality. He now claims in respect of those properties as a national of the United States. If the Tribunal were to allow him to recover against the Respondent in these circumstances,

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[79] Id., para. 76, at 392.

[80] Id., para. 79, at 393.

[81] Karubian, supra note 75, para. 159, at 39-40.

> it would be permitting an abuse of right. Consequently, the A18 caveat must bar the Claimant's recovery.[82]

263. Moreover, it concluded that

> the A18 caveat bars the Claimant, who brings these Claims as a United States national, from recovering against the Respondent for interference with property rights that, under Iranian law, he could have acquired only as an Iranian national.[83]

264. The Tribunal notes that Article 986 of the Civil Code of Iran is also relevant to this Case because it confirms the existence of limits on foreign ownership of real property under Iranian law. The Article states that

> [a] non-Iranian woman who becomes Iranian by marriage may, after divorce or the death of the Iranian husband, revert to her original nationality...and in any case, a woman who becomes a foreign national in accordance with this Article shall not enjoy the right to own real property except to the extent that this right is granted to foreign nationals, and whenever she possesses real property in excess of that which foreign nationals are permitted to own, or inherits real property in excess of that limit, she must within one year of renouncing her Iranian nationality or, in case of inheritance, of coming into possession of the property, by some means transfer the excess amount to Iranian nationals; otherwise, the said property shall be offered for sale by the local prosecutor, and after deduction of sales expenses, the proceeds will be paid to her[84] [emphasis added].

265. Coming to the facts of this Case, the Tribunal notes that the Claimant was not an Iranian national obtaining another nationality, but that she obtained her Iranian nationality because of her marriage to an Iranian man. Article 976(6) of the Iranian Civil Code provides that every woman of non-Iranian

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[82] Id., para. 161, at 40.

[83] Id., para. 162, at 40.

[84] English translation by the Tribunal's Language Services Division.

nationality who marries an Iranian man is considered as an Iranian national.

266. The Claimant produced in evidence extracts from a book written by Dr. Behshid Arfa-Nia, who explains, in her study of Iranian nationality law, the operation of Article 986, cited above. After noting that, under Iranian law, a "woman of foreign nationality who marries an Iranian husband is considered as an Iranian citizen," and that after the death of her husband or divorce she can choose to revert to her former nationality, she confirms 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.[85]

267. The Tribunal concludes that, under Iranian law, the Claimant was recognized solely as an Iranian national, even if she also possessed United States nationality. She could not even have applied for permission to hold real property as a foreigner, since the Respondent could not recognize her as such. The Claimant was therefore allowed without any hindrance to acquire real property in Iran as long as she remained an Iranian national. Only if she had wanted to denounce her Iranian nationality after the dissolution of her marriage would restrictions have been placed on her ownership of real estate in Iran.

268. This Case differs, therefore, from Karubian and Moussa Aryeh, where the claimants did not become Iranian nationals automatically due to marriage. However, in all of these Cases the main facts remain the same. The claimants were dual nationals at the time they acquired the property in question, and Iranian legislation limited the right to acquire that

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[85] Dr. Behshid Arfa-Nia, Private International Law, Vol. I (Nationality, Residence, Status of Foreigners) (1995-96) at 94-95.

particular property solely to Iranian nationals.[86] In other words, the Claimant in this Case, as well as the claimants in Karubian and Moussa Aryeh, could not have used their United States nationality to acquire the claimed property.

269. As stated earlier, the Tribunal drew a conclusion in Saghi, see supra, para. 256, that the caveat "is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran." However, in that Case the Tribunal did not need to decide the issue. The Tribunal held that

> in these exceptional circumstances, fundamental considerations of equity require that Allan Saghi -- a dual national with dominant and effective U.S. nationality -- should not be permitted to recover against Iran, even if the related benefits, i.e., the shares in [the company] he acquired with the use of his Iranian nationality, were not limited to Iranians by Iranian law. To rule otherwise would be to permit an abuse of right. Consequently, the Tribunal need not decide whether some or all of the shares he owned beneficially were, by Iranian law, not lawfully so owned by a non-Iranian.[87]

270. It appears that without the clear abusive element present in Saghi the Tribunal would have needed to decide whether the Claimant could have owned beneficially some or all of the shares

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[86] These Cases, therefore, differ clearly from, e.g., George E. Davidson (Homayounjah) and The Government of the Islamic Republic of Iran, Award No. 585-457-1 (5 Mar. 1998), reprinted in __ Iran-U.S. C.T.R. __ ("Davidson"), where the Claimant had acquired the property in question before he became a national of the United States and possessed this property as a dual national until the alleged expropriation. In that Case the Tribunal concluded that "the ownership of the property remained legal at the time of the alleged expropriation, since Iranian law permitted those Iranians who obtained foreign nationality to hold their Iranian real property up to a year before being obliged to sell it." Id., para. 77.

[87] Saghi, supra note 73, para. 59, at 40.

pursuant to Iranian law. Had the Tribunal in that Case followed its conclusion mentioned in the previous paragraph, the Tribunal apparently would have applied the caveat anyway if a non-Iranian person would not have been allowed to own the shares according to Iranian law.

271. This duality of purpose of the caveat is also supported by other Awards of the Tribunal. In Protiva the Tribunal held that "the Claimants neither obtained any benefits reserved exclusively to Iranian nationals, nor did they abuse their Iranian nationality in such a way that they should not be allowed to recover."[88] In Moussa Aryeh the Tribunal referred to Saghi and noted that there are two separate situations where the caveat may come into play. "The first situation is where the Claimant has enjoyed a benefit reserved to sole Iranian nationals. The second situation is where there has been some other abuse of nationality that might invoke the caveat."[89] The Tribunal, in Moussa Aryeh, appears to indicate that the use of a benefit reserved to a sole Iranian national might, as such, be an abuse of nationality.

272. Similarly, in Sabet, the Tribunal made a clear distinction between the two situations. Only after concluding that the first situation does not apply did the Tribunal begin to examine the second situation. There, the Tribunal found that "[it] must determine whether ownership of the Claimants' shares was reserved by Iranian law for Iranian nationals, and, if not, whether the Claimants have abused their dual nationality in such a way that they should not be allowed to recover on their claims."[90] After reviewing the relevant legislation, the

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[88] Edgar Protiva, et al. and The Government of the Islamic Republic of Iran, Award No. 566-316-2, para 90 (14 July 1995), reprinted in 31 Iran-U.S. C.T.R. 89, 119 ("Protiva").

[89] Moussa Aryeh, supra note 76, para. 62, at 386.

[90] Sabet Partial Award, supra note 42, para. 110.

Tribunal concluded that there were no such restrictions in Iranian law. Furthermore, after its conclusion as regards the legislation, the Tribunal held that

> the equitable considerations referred to in Saghi which could give rise to the application of the A18 caveat are simply not present in these Cases.[91]

273. As mentioned earlier, see supra, paras. 261-263, the Tribunal applied the caveat in Karubian and Moussa Aryeh, though the impact of their application was different. In Karubian the application of the caveat precluded recovery. The Tribunal concluded that "[i]f the Tribunal were to allow him to recover against the Respondent in these circumstances, it would be permitting an abuse of right."[92]

274. In Moussa Aryeh, however, the Tribunal found that "[s]ince Iranian law itself -- that is, both Article 989 of the Civil Code and Article 15 of the 1907 Supplementary Constitution -- guarantees recompense for the taking of property, applying the caveat in such a way as to deny compensation completely cannot be justified."[93]

275. In this respect, the Tribunal also notes its findings in Khosrowshahi and in Protiva. In the first Case, the Tribunal stated that it would "consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in

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[91] Id., para. 127.

[92] Karubian, supra note 75, para. 161, at 40.

[93] Moussa Aryeh, supra note 76, para. 84, at 394.

their favor."[94] Similarly, in Protiva the Tribunal spoke about refusal of an award.[95]

276. In the Davidson Award, too, the Tribunal found that

> [t]he caveat has been applied by the Tribunal as an instrument of equity intended to prevent abuses of right. Therefore, claims by dual nationals for benefits generally limited by relevant Iranian laws to persons who are nationals solely of Iran have been considered barred. Consequently, these persons have been refused an award in their favor.[96]

277. Considering the above-mentioned precedents it seems very clear that when the caveat applies, whether it is the first situation (i.e., legislation restricts foreigners' right to acquire certain property), or the second situation (i.e., a claimant's conduct justifies refusal of an award), the caveat should bar a claim in its entirety.

278. Applying the rules extablished by the precedents of the Tribunal as discussed in the preceding paragraphs, the Tribunal holds, somewhat similar to its holding in Karubian, that the right to acquire real property in Iran by contract, apart from certain limited exceptions not relevant here, is a benefit reserved for Iranian nationals. The Claimant acquired the ASP Apartment by using the only possible nationality that she could invoke for purchasing that apartment, i.e., her Iranian nationality. Now she claims the same ownership right against the Government of Iran as a United States national. Allowing the Claimant to recover against the Respondent in this situation would be to permit an abuse of right. Therefore, the Tribunal finds that the caveat expressed in Case No. A18 applies in this

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[94] Khosrowshahi Interlocutory, supra note 74, para. 16, at 45.

[95] Protiva Interlocutory, supra note 74, para. 18, at 263.

[96] Davidson, supra note 86, para. 76.

situation and dismisses the Claimant's claim for the ASP Apartment.[97]

279. At the Hearing, the Claimant raised a new argument regarding the ASP Apartment, suggesting that since during the relevant period no title deed was issued, her claim must be taken to have been based on the purchase contract. Accordingly, even if there had been a restriction on the ownership of real property, there is no restriction on the assertion of a contract right. The Tribunal rejects this new argument. The fact that the actual title deed was not available when the alleged expropriation took place is irrelevant, since the Claimant clearly had invoked her rights as an owner when the alleged expropriation took place. For example, already in 1977 she had rented out the apartment.

2. Contractual Rights to Farahzad Apartments

280. The situation with respect to the Farahzad Apartments is similar to that of the ASP Apartment. As the Claimant argued in the alternative in connection with the ASP Apartment, she argues that the contractual rights she acquired under the sale and purchase contracts to the Farahzad Apartments did not amount to the ownership of real estate. The Respondent rejects this contention and argues, inter alia, that the Claimant signed the contract for acquisition of real property, the ownership of which was reserved for Iranian nationals only.

281. As mentioned earlier in connection with the ASP Apartment, see supra, para. 278, the right to acquire real property in Iran by contract, apart from certain limited exceptions, is a benefit reserved for Iranian nationals. In this respect, the Tribunal notes that, although the apartments were not complete at the time when the Claimant's right to them was allegedly

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[97] See Karubian, supra note 75, para. 161, at 40.

expropriated, the contracts nonetheless concerned property that non-Iranians normally had no right to own. Furthermore, the Tribunal notes that this case does not fall within certain limited exceptions to the legislation precluding foreign ownership of real property. Were the Tribunal to presume that the Claimant could apply for permission to acquire real property as a foreigner, see supra, para. 267, the Claimant has not even claimed that she acquired the apartments for her or her family's residence.

282. In addition, according to the sale contracts and the Claimant's statements, the apartments were anticipated to be completed in July 1979, but their completion was delayed. Therefore, had the apartments been ready on time, the ownership of the apartments apparently would have been transferred to the Claimant before the alleged expropriation.

283. Based on the available evidence, the Tribunal finds that the Claimant's clear intention actually was to acquire the apartments and not just the right to purchase them. Therefore, the mere fact that the actual transfer of title to the apartments had not taken place, apparently due to the fact that the apartments were not ready before the alleged expropriation date, should not be a decisive factor when deciding the application of the caveat. Accordingly, the Tribunal finds, as it did earlier regarding the ASP Apartment, that the caveat expressed in Case No. A18 applies to the Farahzad Apartments, and thus also dismisses the Claimant's Claim in this respect.

3. Bank Tehran's Shares

284. Insofar as the Claimant's shareholding in Bank Tehran is concerned, the Tribunal notes that the Respondent has not referred to any legislation that would have prohibited foreigners in toto from owning shares in Iranian banks.

Therefore, the Tribunal finds that the first situation where the caveat expressed in Case No. A18 could apply, see, e.g., supra, para. 277, does not exist in connection with this particular claim.

285. As regards the second situation, the Tribunal first notes that, according to Article 31(d) of the Monetary and Banking Law of Iran, Iranian banks were not permitted to transfer more than 40 percent of their shares to foreign nationals or to legal entities not having 100 percent of their capital owned by Iranian nationals. However, the Respondent has not claimed that the Claimant's ownership alone or together with the listed foreign shareholders would have reached this limit. Second, there is no limitation of foreign share ownership in the Articles of Association of Bank Tehran. Third, the bank issued only one class of shares, although, according to Mr. Abedini, shares owned by non-Iranians were registered separately and a number of extra formalities had to be carried out to ensure that the number of the shares belonging to foreign shareholders did not exceed the statutory ceiling.

286. The Tribunal held in Sabet that "the mere fact that a claimant owned shares as a national of Iran in an Iranian company, without more, does not trigger the A18 caveat so as to bar recovery."[98] In addition, in Protiva, the Tribunal held that where "the property right in question, i.e., the right to inherit real property, is not restricted by Iranian law to Iranian nationals, the use of one's Iranian identity is not an abuse."[99] The Tribunal also held that the Case did not present

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[98] Sabet Partial Award, supra note 42, para. 109.

[99] Protiva, supra note 88, para. 89, at 119 (emphasis in original).

"exceptional circumstances" that would justify a refusal of an award in favor of the Claimants.[100]

287. Based on the available evidence, the Tribunal finds that the shares of the bank were available to foreigners, although there was a 40 percent limit for foreign ownership, and that foreigners needed to follow certain procedures to acquire them. In the Tribunal's view, the mere use of her Iranian nationality does not mean that the Claimant had misused that nationality. Since the Respondent has not been able to show that the Claimant had used her Iranian nationality in order to circumvent the limitation set forth in the Monetary and Banking Law of Iran or that she would have abused her Iranian nationality in any other way that would justify a refusal of an award in her favor, the Tribunal rejects the Respondent's contention that the caveat expressed in Case No. A18 bars her claim to the Bank Tehran shares.

4. Iran Bohler's Shares

288. With respect to the Claimant's shareholding interests in Iran Bohler, the Tribunal rejects the Respondent's assertion, based on LAPFI and its regulations, that foreigners could not own more than 49 percent of that company's stock. The Tribunal sees no mandatory levels of foreign ownership set by LAPFI or its Regulation.[101] In fact, in addressing a similar argument, the Tribunal in Sabet analyzed the LAPFI and its regulations, including a decision issued by the Board for Attraction and Protection of Foreign Investments disallowing the allocation of more than 49 percent of the capital increase of a company to

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[100] Id.

[101] Even if such a limitation of 49 percent could have been proved, the Respondent has not shown that the Claimant's shareholdings in the company would have caused the total foreign ownership to exceed this limit.

foreigners.[102] The Tribunal reached the conclusion, relying also on Kimberly-Clark Corp.,[103] that "although LAPFI may have set limits on the percentage of foreign shareholdings that would be granted its protections, a foreigner was not prohibited from owning Iranian shares outside the LAPFI regime."[104]

289. In the Tribunal's opinion, it is therefore clear that the first caveat situation is not applicable here. With respect to the second situation, the Tribunal refers to what it has stated in connection with Bank Tehran, see supra, paras. 285-287, and holds that since the Respondent has presented no evidence that would lead the Tribunal to believe that the Claimant had abused her Iranian nationality in any other way, the caveat expressed in Case No. A18 does not bar the present claim for the shares of Iran Bohler.

V. NATIONALIZATION AND EXPROPRIATION

A. Bank Tehran's Shares

290. The Claimant cites the 11 June 1979 decree of the Revolutionary Council of the Islamic Republic of Iran, known as the Law of Nationalization of Banks ("Banks Nationalization Law"), which nationalized Iran's entire banking industry, including Bank Tehran. The Claimant contends that on 27 June 1979, pursuant to Article 1 of the Banks Nationalization Law, the

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[102] Sabet Partial Award, supra note 42, at paras. 115-117.

[103] 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, wherein it is stated that "the purpose of this Law 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."

[104] Sabet Partial Award, supra note 42, para. 124.

Government of Iran appointed a director and deputy director to manage Bank Tehran. The Claimant argues further that the Government of Iran took over Bank Tehran and the other nationalized banks later that year.

291. The Claimant argues that the Banks Nationalization Law deprived her of her fundamental rights as a shareholder of Bank Tehran and that from June 1979 she was not permitted to exercise those rights. The Claimant cites American International Group, Inc., et al.,[105] and INA Corporation,[106] and the Cases referred to therein, to illustrate the Tribunal's recognition of the expropriatory effect of Iranian laws that have nationalized industries or particular entities.

292. In her Rebuttal Memorial, the Claimant points out that there is no dispute about the expropriation of her shares pursuant to the Banks Nationalization Law. The Claimant argues that Mr. Ali Abedini's affidavit constitutes an admission that she is due compensation. The Claimant contends that the Respondent neither offered nor paid the compensation allegedly owed to her. The Claimant notes that the Tribunal has consistently held that the Banks Nationalization Law effected a clear, compensable taking.[107]

293. As to the Respondent's objection to the outstandingness of the claim because of the Claimant's supposed lack of demand before the date of the Claims Settlement Declaration, the

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[105] American International Group, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 93-2-3 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96 ("AIG").

[106] 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 ("INA").

[107] The Claimant refers to 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 ("Khosrowshahi").

Claimant rejects the case law cited by the Respondent, given that it relates to bank accounts and not to the expropriation of equity interests in banks. The Claimant cites Malek to illustrate the Tribunal's distinction between ownership of bank accounts and equity interests in banks.[108] The Claimant further notes that, in Khosrowshahi, the Tribunal considered a claim of expropriation of bank shares, holding that "the Banks Nationalization Law clearly effected a compensable taking"[109] and that "[t]he Tribunal has repeatedly held that no demand for such a claim is a prerequisite to a finding that the claim was outstanding at the date of the Algiers Declarations."[110]

294. The Claimant concludes that her claim for the expropriation of her equity interest in Bank Tehran before 19 January 1981 was outstanding as of that date, even if compensation had not been demanded before then.

295. The Tribunal first notes that the expropriation of the Claimant's ownership interest in Bank Tehran is not disputed. As to the Respondent's contention that the claim was not outstanding at the date of the Claims Settlement Declaration, the Tribunal agrees with the Claimant that Tribunal practice does not support the Respondent's opinion. Accordingly, the Tribunal finds 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.

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[108] Malek, supra note 65.

[109] Khosrowshahi, supra note 107, para. 65, at 97.

[110] Id., para 67, at 98.

B. Iran Bohler's Shares

1. The Claimant's Contentions

296. The Claimant states that, although the Order of the Revolutionary Court of 27 February 1980 expropriated property belonging to Mr. Riahi, it was enforced in practice without differentiating between Mr. Riahi's own property and that of his "first degree" relatives, i.e., his wife and his sons.

297. The Claimant asserts that, according to the minutes of the annual ordinary general meeting of the company, she, Mr. Riahi, and Mr. Riahi's three sons owned 2,631 shares of Iran Bohler as of 11 July 1979. By 8 March 1981, the Foundation for the Oppressed had become the holder of those 2,631 shares, as indicated by the Foundation's signature on the shareholder list attached to the minutes of the company's shareholders' meeting of 8 March 1981.

298. The Claimant, moreover, contends that under customary international law a property may be taken through a State's interference with the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected. According to the Claimant, indirect or creeping expropriation requires only that the expropriating State deprive the alien of the use and benefit of his property. The Claimant also points out that this Tribunal has acknowledged that a taking of property may occur in the absence of a formal decree, and has held that appointment by the Government of directors for an enterprise may amount to compensable taking of an alien's property.[111]

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[111] The Claimant refers to Starrett Housing Corporation, et al. and The Governement of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154 ("Starrett Interlocutory"); and Sedco, Inc. and National Iranian Oil

299. The Claimant also argues that the Respondent's interference -- by taking over the company's management and control -- permanently deprived her of a fundamental right of ownership and thus amounted to an expropriation of her equity interests in the company. Relying on Mr. Riahi's diary,[112] the Claimant maintains that on 6 March 1979, the Imam Khomeini Komiteh invaded the office of the managing director of the company and seized and removed the company's records. Thereafter, first a supervisor and then a managing director were appointed to oversee Iran Bohler. To prove the Respondent's interference in the company's management, the Claimant refers to two documents: (1) letter No. 208251, dated 22 September 1979, of the Ministry of Industries and Mines of the Islamic Republic of Iran, according to which the Ministry appointed a supervisor for Iran Bohler; and (2) letter No. 213923, dated 1 March 1980, of the Ministry of Industries and Mines, based on which the Claimant asserts that the Ministry placed the company under the direction of a managing director appointed by the Ministry pursuant to Law No. 6738 of 16 June 1979. The Claimant also relies on Law No. 6729, the Act for the Protection and Development of Iranian Industries, dated 16 July 1979, expropriating stocks in industries owned by those who had acquired wealth through ties to the former regime, and the 13 August 1979 amendment to that Act extending the expropriation to stocks held by the spouse and children of individuals falling within the ambit of the Act. Accordingly, the Claimant maintains that as of 1 March 1980, the Respondent fully controlled and managed Iran Bohler and that the Government's

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Company, et al., Interlocutory Award No. ITL 55-129-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248.

[112] The Claimant refers to pages 806-7 of the diary.

control of Iran Bohler constituted an irreversible deprivation of her property rights.[113]

2. The Respondent's Contentions

300. The Respondent argues that the Islamic Revolutionary Court's Order of 27 February 1980 did not expropriate the Claimant's properties, only those of Mr. Riahi. The Respondent also argues that the Claimant has failed to prove the direct expropriation of her equity interest in the company. The Respondent points out that the Claimant relies on the minutes of 8 March 1981. Those minutes, however, reflect that the Foundation for the Oppressed's representative attended the meeting on behalf of the Riahi family pursuant to an 8 March 1981 order, after the signing of the Algiers Accords. Accordingly, the Respondent contends that the Claimant has not proven expropriation prior to the Tribunal's jurisdictional cut-off date.

301. As to the alleged Government control of the company, the Respondent argues that the Tribunal's practice has not been to regard in all such situations the appointment of government managers as a significant factor in support of findings of taking.[114] The Respondent argues that the actions referred to by the Claimant did not amount to Government control.

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[113] The Claimant refers to Phillips Petroleum Company Iran and The Government of the Islamic Republic of Iran, et al., Award No. 425-39-2, para. 101 (29 June 1989), reprinted in 21 Iran-U.S. C.T.R. 79, 116-17 ("Phillips"); International Technical Products Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 196-302-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 240-41 ("ITPC"); and Starrett Interlocutory, supra note 111, at 154.

[114] The Respondent refers to Catherine Etezadi, supra note 67, para. 62, at 39. The Respondent further refers to Motorola, Inc. and Iran National Airlines Corporation, et al., Award No. 373-481-3, para. 59 (28 June 1988), reprinted in 19

302. The Respondent maintains that the invasion of the office of Iran Bohler's managing director in March 1979 related to the director himself, not to the company. In support, the Respondent refers to Mr. Riahi's diary, according to which the managing director's house also was searched.[115] The Respondent further contends that the Ministry of Industries and Mines' representatives were appointed mainly to act on behalf of shareholders of foreign nationality in order to protect their interests in the company.

303. Regarding the Ministry of Industries and Mines' letter of 22 September 1979, the Respondent argues that, according to that letter, Mr. Reza Rostami Sani was appointed to supervise the company in accordance with the company's own objectives, not with those of the Government. Accordingly, the Respondent contends that the appointment of a supervisor did not amount to Government control of the company.[116] As to the letter of 1 March 1980 from the Ministry of Industries and Mines to the Office for Registration, the Respondent contends that the Claimant's translation is incorrect. The Respondent argues that the letter evidences that the State-appointed manager's task was to supervise the company, not to manage it. The Respondent asserts that the appointment of a supervisor is not tantamount to controlling a company.[117] The Respondent also argues that

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Iran-U.S. C.T.R. 73, 85-86; and Otis Elevator Company and The Islamic Republic of Iran, et al., Award No. 304-284-2, paras. 40-44 (29 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 283, 297-98 ("Otis Elevator") in which Cases the appointment of managers and supervisers has not been held to amount to intervention or dispossession.

[115] The Respondent refers to page 808 of the diary.

[116] In this context the Respondent refers to Otis Elevator, supra note 114.

[117] The Respondent refers to Saghi, supra note 73, para. 75, at 44, where it is stated that:

> The assumption of control over property by a government - for example, through the appointment of

supervision of the company's affairs did not deprive the shareholders of their ownership rights, and that, consequently, the shareholders still owned the company.

304. The Respondent also argues that the purpose of such laws providing for the appointment of State managers was to avoid the closure of factories and industrial centers. Referring to Mr. Riahi's diary, the Respondent contends that Iran Bohler's critical financial situation called for governmental involvement. The Respondent points out that government representation was only temporary and that upon the return of the foreign shareholders to Iran, the control of the equity ownership was returned to them to allow them to continue their control and management of the company. In support, the Respondent submits a letter by Mr. Reza Al-Ahmad, who was a minor shareholder in the company. Mr. Al-Ahmad stated that for a short period from the beginning of the Revolution, a supervisor from the Ministry of Industries and Mines was appointed to guide the company out of its financial difficulties. The Respondent points out that, according to the minutes of the 8 March 1981 meeting, many shareholders maintained their control as shareholders. The Respondent further maintains that, as proven by the minutes of the annual general meeting of 20 March 1986 (the Claimant's exhibit), the company at that time performed its activities independently, and that the representative of the Foundation for the Oppressed participated in the meeting merely as a minority shareholder.

305. As regards the minutes of the shareholders' meeting of 8 March 1981, the Respondent notes that the document relates to an event dating after the signing of the Algiers Accords and therefore cannot establish a claim of expropriation. The

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"temporary managers" - does not, ipso facto, mean that the property has been taken by the government, thus requiring compensation under international law.

Respondent points out that the presence of the representative of the Foundation for the Oppressed at the shareholders' meeting does not evidence Government control or expropriation, since the amount of shares represented by the Foundation was insufficient to exercise any control over the company. Alternatively, the Respondent argues that, were the Tribunal to accept the Claimant's allegation that the Foundation for the Oppressed took control of the shares in the company, that control must be presumed to have occurred after the signing of the Algiers Accords.

3. The Tribunal's Decision

306. The Tribunal first notes that, regarding Iran Bohler, as well as several other properties at issue in this Case, the Claimant and the Respondent disagree as to whether the Claimant's interests and property rights were expropriated by the Order of 27 February 1980 of the Islamic Revolutionary Court of Isfahan,[118] which expropriated Mr. Riahi's properties.

307. The Tribunal finds 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 properties. On the other hand, a letter dated 23 May 1984 from the Foundation for the Oppressed to Mr. Hosseinof and Mr. Khabbaz shows that they were assigned "to proceed with the expropriation of properties of Mr. Manuchehr Riahi and his first degree relatives" based on the 27 February 1980 Order. Therefore, there remains no doubt that, at least at a certain date after the above Court Order, the Claimant's properties were also considered to fall within the ambit of the Order. However, since the Order of the court did

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[118] The Tribunal decided earlier that this Order was dated 27 February 1980 and not 24 February 1980 as claimed by the Respondent. See supra, para. 100.

not in haec verba mention the Claimant or make any other reference to her, the Tribunal cannot hold that the Claimant's properties in Iran were expropriated on 27 February 1980, the same date as her husband's properties. It is therefore the Tribunal's task to determine whether the Claimant's properties were expropriated, based on that Order or otherwise, prior to 19 January 1981, the Tribunal's jurisdictional cut-off date, and if so, when.

308. The Tribunal will now deal with the Claimant's argument that the Respondent's interference, by taking over the company's management, deprived her of fundamental rights of ownership and amounted, therefore, to an expropriation of her equity interests in the company.

309. The Tribunal has previously ruled on a number of occasions that the "assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law."[119] However, as observed in Tippetts, Abbett, McCarthy, Stratton,

> such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral. The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact.[120]

310. Applying the above tests to the expropriation claim at hand, the Tribunal first notes that the question here is not

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[119] Starrett Interlocutory, supra note 111, at 155. See also Khosrowshahi, supra note 107, para 23, at 85; Saghi, supra note 73, para 75, at 44; and 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 ("TAMS").

[120] TAMS, supra note 119, at 225-26.

whether the appointment of a managing director to Iran Bohler on 1 March 1980 by the Ministry of Industries and Mines pursuant to Law No. 6738 could be deemed such control that could result in the taking of the company. This is so, even where the intent of such appointments under that law was to strip authority and competence from former directors of a company to manage its affairs on behalf on their original shareholders.[121] The question here is whether the interference by the Government of Iran with the equity interests of the Claimant can be found to result in her deprivation equal to a taking of those interests.

311. The Tribunal notes that many of Iran Bohler's other shareholders, including its foreign shareholder, Böhler Pneumatic International GmbH, apparently continued after a cessation to enjoy their shareholding rights through participation in the company's affairs and shareholders' meetings. The Claimant, by contrast, was stripped of such rights without the prospect of their return. The fact that the control over the Claimant's shares and the deprivation of her interests was not ephemeral is proven by the Foundation for the Oppressed's continued representation of the Claimant's shares, even in the shareholders' meeting of 8 March 1981. The minutes of this meeting indicate that Mr. Massoud Darvish of the Foundation for the Oppressed represented 7,841 shares on behalf

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[121] See, e.g., Vera-Jo Miller Aryeh, supra note 17, paras. 198-200, at 329-30; Jacqueline M. Kiaie, et al. and The Government of the Islamic Republic of Iran, Award No. 570-164-3, paras. 32-40 (15 May 1996), reprinted in 32 Iran-U.S. C.T.R. 42, 52-54 ("Kiaie"); Khosrowshahi, supra note 107, paras. 23-28, at 85-86; Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, paras. 29-32 (6 July 1993), reprinted in 29 Iran-U.S. C.T.R. 260, 268-69 ("Birnbaum"); and Thomas Earl Payne, supra note 25, paras. 20-24, at 10-11.

of the Riahi family, an amount which included the Claimant's shares.[122]

312. In view of the above and, in particular, the continued representation of the Claimant's shares by the Foundation for the Oppressed, the Tribunal finds that, at least as of the date of the appointment of the managing director by the Government of Iran on 1 March 1980, no reasonable prospect remained for the Claimant to assert any of her rights to her equity interests in Iran Bohler.[123] The Tribunal concludes, therefore, that the Claimant was totally deprived of her ownership of 500 shares in the company, amounting to an act of expropriation, on 1 March 1980.

313. The evidence in connection with this claim does not suggest that the Riahi family, including the Claimant, had abandoned their business activities in Iran, even if Mr. Riahi and the Claimant were absent from Iran from late 1979. On the contrary, there is evidence that Mr. Riahi, through whom the Claimant acted as a matter of practice, kept in touch with the company's former managing director, Mr. Khajeh-Nouri, as late as January 1980.[124] In any case, the mere physical absence of minority shareholders could not, as such, justify the Government's appointment of managers and persons to replace those shareholders, depriving them of their ownership rights. The Tribunal also notes that the Claimant received no official

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[122] Although Mr. Reza Al-Ahmad stated in his letter filed by the Respondent, see supra, para. 304, that the supervision of the company by the government-appointed manager was short, he, nonetheless, confirmed that representatives introduced by the Foundation for the Oppressed continued to represent the expropriated shares and to fulfill their duties as members of the board of directors.

[123] See, e.g., Birnbaum, supra note 121, paras. 29-32, at 268-69; and Thomas Earl Payne, supra note 25, paras. 23-24, at 11.

[124] See Thomas Earl Payne, supra note 25, para. 21, at 10.

communications from the company or the representatives of her shares at least since 1 March 1980, when the Government appointed a managing director for the company.

C. Khoshkeh's Shares

1. The Claimant's Contentions

314. According to the Claimant, her equity interests in Khoshkeh were expropriated for the benefit of the Foundation for the Oppressed. The Claimant asserts that, as of 27 February 1980, the date of the Order of the Revolutionary Court of Isfahan, her shares were expropriated together with those of the other members of the Riahi family.

315. Referring to the Foundation for the Oppressed's letter No. 1/2198, the Claimant argues that, on or about 8 June 1980, the Foundation appointed Mr. Parviz Nouri to investigate the company. Further, referring to the Foundation's letter of 16 June 1980 to Khoshkeh, the Claimant argues that the Foundation prohibited the company from paying dividends to the Riahi family and other former shareholders. Finally, all the shares of the Riahi family, including the Claimant's shares, were transferred to the Foundation at the company's extraordinary general meeting of 5 July 1980. The Claimant argues that after the transfer of her shares to the Foundation, the Foundation presented itself as the owner of her shares at Khoshkeh's shareholders' meetings, and that the Foundation has been exercising her rights as a shareholder. The Claimant emphasizes that the list attached to the minutes of the shareholders' meeting of 5 July 1980 designated the Foundation as the owner of all 4,465 shares of the Riahi family. Consequently, the Claimant contends that the Foundation began exercising full rights as the owner of all of the Riahi family shares, including the Claimant's 2,010 shares at issue, no later than 5 July 1980.

316. In support, the Claimant provides the minutes of five other shareholders' meetings, dated 28 January 1981, 11 July 1981, 1 September 1981, 27 June 1982, and 18 June 1989, which show the Foundation's continued ownership and control of the 4,465 shares previously owned by the Riahi family. The Claimant points out that the minutes of the shareholders' meeting of 13 September 1982 specifically acknowledge that all 4,465 shares owned by the Riahi family were expropriated. The minutes stated that at the meeting 4,465 bearer shares, which had been expropriated by the Foundation for the Oppressed, were converted to registered shares.

317. To further corroborate her claim, the Claimant submitted a letter dated 22 July 1980 from the then managing director of Khoshkeh, Mr. Khajeh-Nouri. By that letter, Mr. Khajeh-Nouri informed the Claimant that Order No. 361-58 of 27 February 1980 of the Islamic Revolutionary Court of Isfahan expropriated the Riahi family shares in Khoshkeh, including those of Mr. Riahi's spouse and children. According to a typed report attached to Mr. Khajeh-Nouri's personal letter to Mr. Riahi, dated 17 May 1987, the Riahi family had owned 4,465 shares in Khoshkeh. The report also states that the dividends accrued to the Claimant's shares for the years 1356-1365 (21 March 1978 to 20 March 1987) were paid to the Foundation.

2. The Respondent's Contentions

318. The Respondent emphasizes that the Revolutionary Court's Order did not expropriate the Claimant's properties and that the Claimant's additional evidence does not prove the alleged expropriation. As to the Foundation's letter of 16 June 1980 and the minutes of the shareholders' meeting of 5 July 1980, the Respondent contends that these documents do not refer to the expropriation of the Claimant's shares, though, admittedly, the representative of the Foundation for the Oppressed signed the

minutes as a representative of all 4,465 shares allegedly belonging to the Riahi family. This does not, however, according to the Respondent, prove the expropriation of the Claimant's shares. The Respondent maintains that the representative of the Foundation for the Oppressed only represented Mr. Riahi's shares, suggesting that the Claimant probably transferred her alleged 2,010 shares to Mr. Riahi before the meeting.

319. The Respondent also disputes the probative value of Mr. Khajeh-Nouri's 22 July 1980 letter, which stated that the Claimant's shares had been expropriated pursuant to the same Court Order that expropriated Mr. Riahi's properties. The Respondent points out that Mr. Khajeh-Nouri, in the report attached to his letter of 17 May 1987, noted that the Revolutionary Court's Order made no reference to the Claimant or to Mr. Riahi's other close relatives. The Respondent also points out that Mr. Khajeh-Nouri sent his letter of 22 July 1980 to the Claimant at a time suspiciously close to the sending of similar letters by the directors of Tarvandan and Gav Daran. According to the Respondent, all of these letters had been demanded and pre-drafted by the Claimant and her husband. The Respondent also adds that comparable letters had not been sent to Mr. Riahi and his son, Malek Massoud.

320. Regarding the minutes of shareholders' meetings dated after the signing of the Algiers Accords, the Respondent argues that they lack probative value in proving the alleged expropriation prior to the Tribunal's jurisdictional cut-off date.

3. The Tribunal's Decision

321. As to the letters of the Foundation for the Oppressed, dated 8 and 16 June 1980, and the minutes of the company's

shareholders' extraordinary meeting of 5 July 1980, the Tribunal notes that all these documents refer to the Islamic Revolutionary Court's Order expropriating Mr. Riahi's properties. The Tribunal observes, however, that the minutes of the shareholders' meeting of 5 July 1980 indicate that the Foundation for the Oppressed represented all 4,465 shares of the Riahi family, including those of the Claimant.

322. The Respondent does not dispute that the representative of the Foundation for the Oppressed represented all shares of the Riahi family at the meeting, but conjectures that the Foundation's representative may have failed to make a distinction between the shareholdings of the Claimant and those of Mr. Riahi, or, alternatively, the Claimant may have transferred her shares to her spouse prior to that meeting. However, the Respondent has not been able to corroborate any of its alternative theories; thus, the Tribunal finds those assertions to be unfounded.

323. The Tribunal further notes that the minutes of five other meetings of the company show that the Foundation had continuously represented all shares of the Riahi family at least until 1989. Although no specific reference has been made to the expropriation of the Claimant's shares in documents dated prior to the Tribunal's jurisdictional cut-off date, the evidence in the record shows, overall, that the Foundation for the Oppressed continually had been using the rights associated with the Claimant's shares since the meeting of 5 July 1980. Accordingly, the Tribunal holds that as of 5 July 1980 the Claimant was irrevocably deprived of her fundamental rights as a shareholder and deems that deprivation tantamount to an expropriation of her equity interests in Khoshkeh.

D. Rahmat Abad's Shares

1. The Claimant's Contentions

324. The Claimant asserts that her equity interests in Rahmat Abad were expropriated in February 1980. Since that time, she argues, the Respondent has denied her ability to exercise her rights as a shareholder in that company. According to the Claimant, she also has been deprived of her dividends and all communications from the company to which she is entitled as a shareholder under Iranian law.

325. To substantiate her claim, the Claimant submits several documents, including: (1) four letters signed by Mr. Nabavi, then managing director of the Rahmat Abad Company; (2) a letter written by Mr. Nabavi's wife; (3) two documents signed by a representative of the Revolutionary Guards of Isfahan; (4) three letters and one procès-verbal signed by the Foundation for the Oppressed; and (5) two notes issued by Bank Melli. According to the Claimant, this evidence confirms a series of events that took place in early 1980 proving the expropriation of her ownership interest in Rahmat Abad.

326. Relying on Mr. Nabavi's letter of 19 March 1980, the Claimant contends that on or about 1 February 1980, the Revolutionary Guards of Isfahan invaded and searched Mr. Nabavi's residence at the Rahmat Abad farm. The Guards made a list of the property and sealed off part of Mr. Nabavi's residence as well as the guesthouse. Some of the Guards stayed overnight at the farm. The following day, the Revolutionary Guards seized certain items from the guesthouse and the manager's house. Citing the same letter of 19 March 1980 the Claimant contends that the invasion was based on a decree of the Revolutionary Prosecutor of Isfahan. The Claimant also points out that in early 1980, the Revolutionary Guards invaded the offices of Tarvandan, Gav Daran, Rahmat Abad, and Sarhad Abad,

all of which were located at 781 Azadi Avenue, Tehran. The premises were occupied by the Revolutionary Guards and put under the control of the Foundation for the Oppressed.

327. Based on the above letter of Mr. Nabavi, the Claimant further contends that on or about 2 February 1980, Revolutionary Guards returned to the Rahmat Abad farm, removed numerous assets, including all rugs, a painting, three guns and a Chevrolet Blazer, and appointed a Government representative to manage and control the farm. The Claimant states that Mr. Nabavi informed Mr. Riahi of these events. Mr. Nabavi's letter also notes, and Mr. Riahi's diary confirms,[125] that the company's bank accounts were blocked. The head of the Islamic Revolutionary Guards in Natanz, Mr. Nasrollahi, signed a receipt for the confiscated property. In the receipt, reference was made to Verdict No. 6709, dated 31 January 1980. The Claimant maintains that she has been unable to obtain a copy of that Verdict. In addition, the Claimant provides a procès-verbal dated 2 February 1980, also signed by Mr. Nasrollahi, evidencing the return of the Guards to the Rahmat Abad farm on that date.

328. The Claimant further asserts that on or about 4 February 1980, the Foundation for the Oppressed issued a list of items comprising 17 rugs, a painting, and a motor vehicle that were seized from the Rahmat Abad farm and delivered to the Foundation for the Oppressed by the Revolutionary Guards. Referring to letter No. 1075/190 of the Foundation for the Oppressed, the Claimant argues that, on 5 February 1980, the Foundation acknowledged receipt of the items set forth in the list.

329. The Claimant contends that funds available to Rahmat Abad were expropriated in March and November 1980. All bank accounts of Rahmat Abad were closed, and company funds were transferred to the Foundation for the Oppressed. According to the Claimant,

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[125] The Claimant refers to pages 973-74 of the diary.

on or about 12 March 1980, under an order issued by the Revolutionary Prosecutor General of Isfahan, the funds available in current account No. 1414 of Rahmat Abad with Bank Melli Iran, totaling Rls. 3,591,155, were transferred to the Foundation for the Oppressed. On or about 17 March 1980, under an order of the Foundation for the Oppressed, all funds available in the company's checking account No. 21102, as well as the company's time deposit of Rls. 1,000,000 in Bank Melli Iran, were transferred to the Foundation. To support the assertion concerning the transfer of the funds of Rahmat Abad, the Claimant refers to two notes from Bank Melli, dated 12 and 17 March 1980. The Claimant also contends that 17 certificates of deposit bearing numbers 916571 through 916587, each in the amount of Rls. 1,000,000, were delivered to the Foundation, as evidenced by a procès-verbal dated 23 November 1980 and signed by a representative of the Foundation for the Oppressed. The procès-verbal further states that a meeting was held between Mr. Nabavi, Mr. Vaghefi, and a representative of the Foundation for the Oppressed, at which "all of the accounts and books of the company prior to expropriation were reviewed" and account statements for 21 March 1979 to 1 January 1980 were delivered. The Claimant also refers to Mr. Nabavi's third, undated letter, confirming the contents of the procès-verbal by noting that all of the farm's property, the company's bank account and his own bank account were listed and put under seal, and that the Foundation controlled all the books and took the 17 certificates of deposit.

330. The Claimant argues that, although references have been made to Verdict No. 6709 of 31 January 1980 and default Judgment No. 307 of 18 March 1980,[126] the justification for the taking of the Claimant's interests in the company was the Order of 27

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[126] Mr. Riahi made reference to this Judgment at page 1013 of his diary.

February 1980 of the Revolutionary Court. According to the Claimant, that Order was intended to apply not only to Mr. Riahi, but also to his first-degree relatives. In the Claimant's view, this has been confirmed by the Revolutionary Court's Order number 2/411-1767/64, dated 7 February 1986, in which the Court stated that "[the] expropriation of all properties are confirmed, they belong to [Mr. Riahi] and faked shares in the name of the others are null and void." The Claimant also submits a notice of changes in Rahmat Abad, published in the Keyhan newspaper on 10 March 1987. Moreover, the Claimant points out that the Respondent has used the Rahmat Abad farm as a recreational camp for the Foundation for the Oppressed, and that in 1996 the farm was run by the Far Isfahan Agricultural Company of the Organization of Agriculture.

331. The Claimant rejects the Respondent's argument that her interest was not expropriated until several years after 1980. She claims that the Respondent's expropriation of the Claimant's interest in Rahmat Abad is consistent with its practice and policy of ignoring separate ownership rights of family members.[127] She emphasizes that the Respondent's argument is inconsistent with the terms of the Court Order issued in February 1986 and of circular number 4/17814, dated 20 November 1991, of the Registration Department of the Northwest Zone. Both of these documents confirm that all of the Claimant's

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[127] To support this contention, the Claimant refers to the Law Adding One Note to Article 2 of the Act for Protection and Development of Iranian Industries, published in the Official Gazette, No. 10048, dated 22 August 1979, expropriating the shares of the spouses and children of individuals originally named in the primary legislation. Similarly, a judgment by an Islamic Revolutionary Court dated 12 April 1979 is referred to, which expropriated the property of 209 individuals and "close relatives." Likewise, on 8 October 1979, the Islamic Revolutionary Court of Tehran issued a judgment expropriating the properties "of individuals who were associated with or aides to the condemned regime of Pahlavi," as well as the properties of their spouses and children.

property, including Rahmat Abad, was expropriated by the Revolutionary Court Order of 27 February 1980.[128] The circular of 20 November 1991 reported the cancellation by the Respondent of the title deed to a property belonging to Mr. Riahi's ex-wife, which had been given to her as a gift in 1969. This was allegedly done based on the Court Order of 27 February 1980, which expropriated the property of his first-degree relatives and in this case also the property of Mr. Riahi's ex-wife, who ceased to be Mr. Riahi's first-degree relative well before 1980. The circular provided that:

> [A]ccording to judgment No. 361 dated February 27, 1980 and the amended judgment No. 2357 dated February 15, 1986 of chambers one and two of the Islamic Revolutionary [C]ourt, which has been confirmed by the high court, all property of Manuchehr Riahi and his first degree relatives...has been expropriated.

332. The Claimant also rejects the Respondent's contentions concerning the authenticity of Mr. Nabavi's letters. The Claimant alleges that Mr. Nabavi was subject to the control of Iranian authorities in 1993, when he made his statement about the inauthenticity of the letters. In addition, the Claimant asserts that on 8 August 1993, Mrs. Faezeh Nabavi, the wife of Mr. Nabavi, confirmed the authenticity of Mr. Nabavi's letters in a telephone conversation with Mr. Riahi. According to the transcript of this telephone conversation prepared by the Claimant's husband, she said that Mr. Nabavi had refused to sign a recantation of those letters which representatives of the Foundation for the Oppressed had urged him to sign.

333. The Claimant concludes that the evidence in the record proves the taking of the entire company and all its assets.

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[128] The Claimant alleges that the Respondent's argument is "hopelessly" inconsistent. Apparently, the Respondent argues that: (1) all of Rahmat Abad was expropriated by the 1980 Court Order; (2) the Claimant had no interest in the company; and (3) the Claimant's interest in the company was confiscated after the effective date of the Algiers Accords.

When the Revolutionary Guards took control of the farm in February 1980, they took control of the entire farm, not only Mr. Riahi's share of it. Then, in March 1980, the Foundation for the Oppressed took over all of the company's bank accounts and certificates of deposit.

2. The Respondent's Contentions

334. The Respondent argues that the Claimant has failed to prove expropriation de facto or de jure of her shares in Rahmat Abad. The Respondent emphasizes that the extension of the Order of the Revolutionary Court on 24 February 1980[129] to Mr. Riahi's family members is inconsistent with the wording of the Order, which exclusively concerned the expropriation of Mr. Riahi's properties. As to the later Order issued by the Court in 1986 and the notice in the Keyhan newspaper, the Respondent contends that these and certain other documents referred to by the Claimant relate to events occurring after 1984 and thus do not prove the expropriation of the Claimant's equity interest in the company prior to January 1981. To the contrary, these documents confirm that the Claimant's properties were not expropriated prior to the signing of the Algiers Accords. The Respondent argues that the status of the Rahmat Abad farm was unclear. Therefore, the Respondent in 1983 requested that the Islamic Revolutionary High Court examine the position of Mr. Riahi's first-degree relatives. The Court confirmed that the initial Order concerned the expropriation of Mr. Riahi's assets only, and declared the other members of his family immune from the applicability of that Order. According to the Court, the only exception was in cases where assets were found to have been transferred fictitiously by Mr. Riahi to his family members.

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[129] See supra, para. 100, where the Tribunal found that the date of the Order of the Revolutionary Court was 27 February 1980, not 24 February 1980, as claimed by the Respondent.

Indeed, the Court held that all the transfers of shares made by Mr. Riahi were fictitious and, consequently, that he had owned all 350 shares of Rahmat Abad. The Court thus issued an order expropriating the shares, at a later date. The Respondent emphasizes that the Claimant's alleged shares in Rahmat Abad were not expropriated prior to this later Order.

335. The Respondent also contends that the three letters written by Mr. Nabavi are fabrications and therefore lack reliability. This argument is based on the affidavit of Mr. Nabavi himself, signed on 30 May 1993, in which he stated that he did not write the letter dated 8 March 1981, and that the signature at the end of the letter is not his. As to the other two letters, Mr. Nabavi stated that they were actually prepared by Mr. Riahi, who sent the texts to him and requested him to send them back after transcribing them. He allegedly acted accordingly.

336. As regards the list of items removed from the Rahmat Abad farm dated 4 February 1980, which was signed by Mr. Nabavi and a representative of the Foundation for the Oppressed, the Respondent contends that Mr. Nabavi voluntarily took the items to the Foundation to prevent them from being stolen. In any case, the Respondent argues that the list proves nothing except that only the listed items were expropriated by that date, i.e., before the signing of the Algiers Accords. This leads the Respondent to conclude that the expropriation claim relating to Rahmat Abad does not fall within the Tribunal's jurisdiction. The Respondent maintains that the same conclusion also can be drawn from the fact that the Revolutionary Court's Order of 27 February 1980 covers only Mr. Riahi's property. Thus, any expropriation must have taken place after the signing of the Algiers Accords.

337. With respect to Mr. Nabavi's contemporaneous report that a representative of the Natanz Revolutionary Guards had been constantly present at the Rahmat Abad farm, the Respondent argues that, given the circumstances of the Revolution, the presence of a Revolutionary Guard would have guaranteed the security of the farmlands and Mr. Riahi's properties. The Respondent asserts that this letter is evidence of the fact that had hostilities taken place, they must have been initiated by some of the Rahmat Abad farm workers occupying the farmland. Further, the Respondent asserts that an undated letter from Mr. Nabavi to the Head of the Islamic Revolutionary Guards at Natanz establishes that Mr. Nabavi was engaged in the protection of the Claimant's properties. Finally, the Respondent asserts that Mrs. Nabavi's letter to the Claimant, in which she asserts that "the presence of the Revolutionary Guards is to the benefit of everybody," negates the alleged expropriation.

338. The Respondent rejects the claim that Mr. Nabavi acted under duress and, in support of its contention that the allegation is baseless, it submits the affidavit of Mr. Shahram Sepehri, an analyst who aided the Foundation for the Oppressed in the preparation of the documents in this Case. Mr. Sepehri explains how and according to what procedures the representatives of the Foundation obtained affidavits. The Respondent further maintains that the transcript of the telephone conversation between Mr. Riahi and Mrs. Nabavi indicates that the conversation had been preplanned by Mr. Riahi. However, according to the Respondent, Mrs. Nabavi's statements are not inconsistent with Mr. Nabavi's affidavit and the transcript merely verifies that Mr. Nabavi would only confirm what he considered to be the truth. The Respondent also contends that the alleged letters of Mr. Nabavi speak, in fact, against the Claimant. The Respondent maintains that the letter dated 8 March 1981 proves that the Rahmat Abad farm was in Mr.

Nabavi's possession even after the signing of the Algiers Accords and that nothing was taken from the farm or its buildings. The Respondent argues that the letters allegedly written by Mr. Nabavi, which in its view were prepared by Mr. Riahi, are also inconsistent concerning Mr. Riahi's share ownership. The equity ownership of Mr. Riahi in the letter dated 8 March 1981, 14 shares, does not match the equity ownership mentioned in the undated letter, i.e., 31 shares. For these reasons, the Tribunal should draw a negative inference against the Claimant due to her inconsistent and contradictory statements.[130] The Respondent reiterates that the affidavits of the Claimant and her spouse lack probative value. Similarly, the statements in Mr. Riahi's diary concerning the alleged expropriation of Rahmat Abad are based on hearsay, and thus are unreliable.

339. As regards the alleged expropriation of Rahmat Abad's bank accounts, the Respondent maintains that Bank Melli's confirmation of a money transfer by check on 12 March 1980 is connected to the freeze of an account related to Mr. Nabavi. This transfer had nothing to do with the Claimant. As to the procès-verbal of 23 November 1980, the Respondent argues that the interference by the Foundation for the Oppressed was not an extraordinary measure against the Claimant, because Mr. Riahi's shares in the company had been expropriated. In the Respondent's view, this document lacks probative value in supporting the claim.

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[130] The Respondent cites Reza Nemazee and The Government of the Islamic Republic of Iran, Final Award No. 575-4-3, para. 62 (10 Dec. 1996), reprinted in 32 Iran-U.S. C.T.R. 184, 202; Buckamier, supra note 30, para. 67, at 76; and Gould Marketing, Inc. and Ministry of National Defence of the Islamic Republic of Iran, Award No. 136-49/50-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 272, 289.

340. The Respondent contends that the remaining documents relied upon by the Claimant do not relate to the expropriation of the Claimant's shares. Accordingly, the Respondent concludes that the Claimant failed to prove her claim.

3. The Tribunal's Decision

341. The Tribunal notes that the Parties disagree as to whether the Respondent ever formally expropriated the Claimant's ownership interests in Rahmat Abad prior to the Tribunal's jurisdictional cut-off date. As observed above, the Claimant maintains that her equity ownership in the company was expropriated pursuant to the Islamic Revolutionary Court's Order of 27 February 1980. This was also confirmed by another Order of the Court, dated 7 February 1986. The Respondent, on the other hand, maintains that the Claimant's shares in the company were not taken until 7 February 1986, when the Islamic Revolutionary Court issued a ruling to this effect. Were the Tribunal to base its findings on that date only, it would have to dismiss the claim for want of jurisdiction, since that date is beyond the jurisdictional cut-off date of the Tribunal.

342. According to Article II, paragraph 1 of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims that were outstanding on 19 January 1981, regardless of whether they were filed with any court. Hence, for the Tribunal to have jurisdiction to entertain a claim, a claimant must establish that the claim had arisen before that date. Tribunal precedent has established that an expropriation claim is considered to arise on the date of the taking.

343. In this Case, the Tribunal has already found that the Claimant possessed an equity interest in Rahmat Abad. In addition, it has already found that the Claimant's properties in Iran were not formally expropriated on 27 February 1980, i.e.,

on the date of the Revolutionary Court's Order, see supra, para. 307. Nevertheless, the Tribunal notes that the Claimant based its claim not only on a formal taking, but also on a de facto expropriation of her property rights by alleging that governmental measures had interfered with those rights, resulting in their taking before the Tribunal's jurisdictional cut-off date. The Tribunal also notes that the Revolutionary Court's Order of 27 February 1980 may take on a certain importance in explaining the impact of the events which occurred during the month of February 1980, to be discussed hereunder.

344. Turning now to the issue of de facto expropriation, the Tribunal notes that measures taken by a State can interfere with property rights to such an extent that these rights must be deemed expropriated, even though no law or decree was issued in this respect. Such a conclusion is warranted, e.g., when the owner is deprived of the effective use, control, and benefits of his property. Thus, an expropriation may take place, although "the State does not purport to have expropriated [the property] and the legal title to the property formally remains with the original owner."[131]

345. In situations where the alleged expropriation is carried out through a series of measures interfering with the enjoyment of the claimant's property rights, the cause of action is deemed to have arisen on the date when the interference, attributable to the State, ripens into an irreversible deprivation of those rights, rather than on the date when those measures began. The point of time at which interference ripens into a taking depends on the circumstances of each case and does not require the

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[131] Starrett Interlocutory, supra note 111, at 154. See also Khosrowshahi, supra note 107, para. 23, at 85; and United Painting Company, Inc. and The Islamic Republic of Iran, Award No. 458-11286-3, para. 58 (20 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 351, 368 ("United Painting Company").

transfer of legal title.[132] As observed above in para. 309, the Tribunal has previously held that a finding of expropriation under international law is warranted whenever events demonstrate that the owner "was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral"; in such circumstances "[t]he intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact."[133] This, however, does not relieve a claimant asserting expropriation from the obligation of demonstrating the requisite government interference.[134]

346. Before applying the above rules to the facts of the present Claim, the Tribunal notes that it has previously held that the Government of the Islamic Republic of Iran must be deemed responsible for the actions of the Revolutionary Guards[135]

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[132] See ITPC, supra note 113, at 240-41; and also Foremost Tehran, Inc., et al. and The Government of the Islamic Republic of Iran, et al., Award No. 220-37/231-1 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 249 ("Foremost").

[133] TAMS, supra note 119, at 225-26. See also Mohsen Asgari Nazari and The Government of the Islamic Republic of Iran, Award No. 559-221-1, para. 121 (24 Aug. 1994), reprinted in 30 Iran-U.S. C.T.R. 123, 157; and Seaco, Inc. and The Islamic Republic of Iran, et al., Final Award No. 531-260-2, para. 38 (25 June 1992), reprinted in 28 Iran-U.S. C.T.R. 198, 210.

[134] United Painting Company, supra note 131, para. 58, at 368.

[135] See, e.g., Daley, supra note 67, para. 20, at 238; Kenneth P. Yeager and The Islamic Republic of Iran, Partial Award No. 324-10199-1, paras. 42-44 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 103-4; and 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, 226-27.

and of the Foundation for the Oppressed.[136]

347. The Tribunal now turns to the particular facts at hand, which concern a company whose principal asset is the Rahmat Abad farm. The Tribunal first takes notice of Mr. Nabavi's letter, signed on 19 March 1980, which describes the Revolutionary Guards' initial involvement in the Rahmat Abad farm on 1 February 1980. The letter makes clear that the Revolutionary Guards, or other persons acting on behalf of the Iranian Government, were at the farm from that date. It also appears that, from 2 February 1980, the authorities started to remove some items from the farm and gradually assumed control of the affairs of the farm. At the Hearing, Mr. Nabavi, who appeared as the Respondent's witness, confirmed that he had sent the letter and that as of February 1980 he was no longer running the farm.

348. A number of documents, in the form of receipts or otherwise, signed in February 1980 by persons representing the Revolutionary Guards or the Foundation for the Oppressed, show that the Revolutionary Guards and, later, the Foundation took possession of certain items of property located at the Rahmat Abad farm. One of these documents refers to Verdict No. 6709, dated 31 January 1980. The content of this Verdict is not known to the Tribunal. However, based on the content of the document, it may be argued that the early actions were temporary and were directed, at least at that point, at the property of Mr. Riahi; the Guards either did not know or did not care that the farm belonged to Rahmat Abad.

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[136] See, e.g., Protiva, supra note 88, para 70, at 114; Endo Laboratories, Inc. and The Islamic Republic of Iran, et al., Award No. 325-366-3, para. 8 (3 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 114, 116; and Hyatt International Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 54-134-1 (17 Sept. 1985), reprinted in 9 Iran-U.S. C.T.R. 72, 94.

349. What is certain, however, from the above-noted state of affairs is the fact that the extent of the Government control over the farm gradually increased during the month of February, and in exerting such authority and control, the Iranian authorities did not differentiate between Mr. Riahi and other shareholders of Rahmat Abad. Because of this, although the property belonging to the Claimant did not fall within the ambit of the 27 February 1980 Court Order, its effect, to the extent related to Rahmat Abad, was to reinforce the previous expropriatory measures, depriving irreversibly the Claimant of her ownership interests in the company.

350. Furthermore, the Tribunal observes from the evidence provided that interventions by the authorities in the affairs of Rahmat Abad expanded in March 1980 in such a manner that the company's accounts and deposits with the banks (including even those of its managing director, Mr. Nabavi) were blocked or transferred to the Foundation for the Oppressed.

351. In view of the findings discussed above, the Tribunal concludes that the Claimant must be taken to have irreversibly lost control over, and enjoyment of, her ownership interests in the company at a time around the date of the Court Order. The Tribunal, therefore, finds it reasonable to consider the date of the Order, 27 February 1980, to be the point in time when the Claimant's ownership interests in Rahmat Abad were actually expropriated.

E. Tarvandan's Share

1. The Claimant's Contentions

352. The Claimant contends that her equity interest in Tarvandan was expropriated for the benefit of the Foundation for the Oppressed pursuant to the Islamic Revolutionary Court's Order of 27 February 1980. The Claimant also asserts that in

early 1980, the Revolutionary Guards invaded the offices of Tarvandan, Gav Daran, Rahmat Abad, and Sarhad Abad, all of which were located at 781 Azadi Avenue, Tehran. The premises were allegedly occupied by the Revolutionary Guards and put under the control of the Foundation for the Oppressed. In the Claimant's view, expropriation is evidenced by a letter dated 16 July 1980 from Mr. Vaghefi, the former managing director of the company. Mr. Vaghefi's letter states that the expropriation took place pursuant to Order No. 307 of the Islamic Revolutionary Court, dated 18 March 1980. According to the Claimant, expropriation was also noted in a letter of the former managing director of Rahmat Abad, Mr. Nabavi, dated 8 March 1981. The Claimant also cites a second letter from Mr. Vaghefi, dated 25 October 1980, in which he noted that Tarvandan (as well as Gav Daran and Sarhad Abad) were closed by the Foundation for the Oppressed as of the Iranian year 1359 (beginning 21 March 1980).

353. In support of the contentions regarding the invasion of Tarvandan's office building, the Claimant also refers to Mr. Riahi's affidavits. The Claimant asserts that the Foundation was in control of the company and confiscated the company's bank account, which had a balance of Rls. 9,000,000.[137] The Claimant also relies on letters written by Mr. Riahi to Mr. Vaghefi, dated 13, 17, and 27 April 1980 and 5 June 1980. In these letters, Mr. Riahi referred to the closing of Tarvandan's bank account, instructed Mr. Vaghefi to request the Foundation for the Oppressed to release the account, and issued orders concerning how to pay the employees' salaries. A letter from Mr. Vaghefi dated 25 October 1980 confirms that after closing

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[137] By producing the minutes of the 9 April 1989 shareholders' meeting of Tarvandan, the Claimant points out that the Foundation for the Oppressed continued to own all shares of Tarvandan for many years after 1980.

the company, the Foundation paid some of those salaries.[138] The Claimant gives no weight to the Respondent's allegation that Mr. Vaghefi's letter of 16 July 1980 was invalid due to the fact that it was written on the same date as the letter written by Mrs. Moalej, former managing director of Gav Daran. The Claimant also rebuts the Respondent's attempt to discredit Mr. Nabavi's letter confirming the expropriation.

354. The Claimant alleges that in an act intended to give the expropriation double effect, the Islamic Revolutionary Prosecutor froze all of Tarvandan's shares whose owners had fled Iran. The Claimant provides a general circular from the Revolutionary Prosecutor General of the Islamic Republic of Iran, dated 9 August 1980, nullifying any transfer of bearer shares made after 23 August 1978. The Claimant argues that because she had acquired her bearer shares in Tarvandan after 23 August 1978, this decision nullified her equity interest in the company. The Claimant contends that, since July 1979, she has not received notice of annual shareholders' meetings, as required by Iranian law. The Foundation for the Oppressed has exercised her fundamental rights as a shareholder for and on behalf of the Respondent since 1980, as evidenced, for example, by the minutes of the shareholders' meeting dated 9 April 1989. The letterhead of these minutes indicates that the company is under the "charge" of the Foundation.

2. The Respondent's Contentions

355. The Respondent argues that Mr. Riahi's affidavits lack probative value. The sources of Mr. Riahi's information are not

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[138] In his letter of 13 April 1980, Mr Riahi tells Mr. Vaghefi that "we have, reportedly, 9,000,000 rials in the name of Tarvandan which, in case the said account is released, we can use." He continues to instruct Mr. Vaghefi not to "mention anything to the Foundation for the Oppressed in this regard."

clear and his statements are hearsay. Moreover, in its response to the Claimant's Surrebuttal, and at the Hearing, the Respondent argued that until 1984 the Foundation for the Oppressed had not yet located the Tarvandan building. The Respondent also argues that Mr. Vaghefi's letter of 16 July 1980 was written following Mr. Riahi's instructions in order to prepare evidence for the Claimant. This is based on the statements in the Claimant's affidavit and on the Respondent's observation that the managing director of Gav Daran, Mrs. Moalej, had written a similar letter on the same date. The Respondent also adds that such letters had not been sent to Mr. Riahi or his son, Malek Massoud. As to Mr. Riahi's letters to Mr. Vaghefi, the Respondent submits that these letters show that, at the time of their writing, Mr. Riahi still had control over the company. These letters do not prove that any action was taken against the Claimant, either in terms of a factual or legal taking of her equity interest in the company. As regards Mr. Nabavi's letter of 8 March 1981, the Respondent repeats its argument that the letter was fabricated, because Mr. Nabavi himself denies writing it. With respect to the minutes of the shareholders' general meeting, dated 9 April 1989, the Respondent argues that the minutes lack probative value in proving the taking of the Claimant's equity interest prior to the signing of the Algiers Accords.

356. Finally, the Respondent argues that the general circular of the Revolutionary Prosecutor General of 9 August 1980 does not have any legal status and cannot override any law. The intention of the general circular was to prohibit the fraudulent and abusive transfer of bearer shares.

3. The Tribunal's Decision

357. The Tribunal first notes that evidence in the record suggests that certain actions were taken by the Foundation for

the Oppressed which interfered with Tarvandan's affairs, starting from the Iranian year 1359 (21 March 1980). In this connection, the Tribunal first observes Mr. Vaghefi's letter of 16 July 1980, wherein he, as the managing director of the company, states that Tarvandan was expropriated based on Order No. 307 of the Revolutionary Court of Isfahan, dated 18 March 1980, expropriating Mr. Riahi's property. The Tribunal also takes notice of a letter signed by Mrs. Moalej, the managing director of Gav Daran, also dated 16 July 1980, wherein she states that the properties and bank accounts of Gav Daran (whose office was at the same address where Tarvandan's office was located) had been seized by the Foundation for the Oppressed some time before the issuance of the letter.

358. In another letter to Mr. Riahi, dated 25 October 1980, Mr. Vaghefi mentioned that Tarvandan, together with two other companies that shared offices with Tarvandan, were closed down by the Foundation for the Oppressed as of the beginning of the Iranian year 1359 (21 March 1980). Mr. Vaghefi added that, from that date, the Foundation had paid the salaries of Mr. Hossein Mirabadi and Mr. Hossein Robat Sangi, and that Mrs. Moalej had received from the Foundation her salary for the first four months of the year 1359. According to Mr. Vaghefi's letter, the Foundation had not paid any salary to him after the expropriation.

359. The Tribunal, therefore, finds that there is enough evidence in the record to show that the Foundation for the Oppressed started to interfere with Tarvandan's affairs from some time after 21 March 1980, first, through interference with the company's financial matters. The reason for the actions taken by the Foundation was, apparently, the expropriation of Mr. Riahi's property, based on either the Court Order of 27 February 1980 or the Order of 18 March 1980 that was referred to by Mr. Vaghefi in his letter.

360. The Tribunal finds, on the other hand, that Mr. Vaghefi's letter of 16 July 1980 does not specify when or how the alleged de facto expropriation of the company had taken place. In this respect, the Tribunal also observes that during this period Mr. Riahi was still instructing Mr. Vaghefi with respect to the affairs of Tarvandan, that Mr. Vaghefi's letter bears the official cachet of the company, and that he signed the letter as the managing director of the company. Therefore, the evidence indicates that at least until 16 July 1980 Mr. Vaghefi was still the managing director of the company, which militates against the argument that the company had been expropriated before that date.

361. Nevertheless, the measures taken by the Foundation for the Oppressed had apparently by 16 July 1980 reached such a level that the Claimant could no longer use, or benefit from, her ownership rights. Therefore, the Tribunal holds that the Respondent's actions and interferences ripened into the expropriation of the Claimant's ownership interest in Tarvandan at the latest on the date of Mr. Vaghefi's letter, i.e., 16 July 1980. See supra, para. 345.

F. Personal Property in ASP Apartment

1. The Parties' Contentions

362. The Claimant alleges that her personal property in the ASP Apartment was seized by the Respondent and expropriated without compensation. To prove the seizure and expropriation of the Claimant's artwork, antiques, furniture, household goods, and carpets from the ASP Apartment in early March 1980, the Claimant cites the affidavit of Ms. Anne E. Stubbs, who stated that the furniture, carpets, and interior decoration of the ASP Apartment were impressive and confirmed that the items on the list provided by the Claimant were in the apartment. Ms. Stubbs

stated also that, in early March 1980, the resident of the ASP Apartment, Mrs. Shirin Nasr, "fearfully" called her "when Revolutionary Guards from the Isfahan Court burst into the apartment." Ms. Stubbs adds that she was informed that the Revolutionary Guards invaded the apartment several times, listing some furniture and objects and taking two carpets.

363. The Respondent contends that the Claimant failed to produce any documents establishing that, at the time, the artwork, antiques, furniture, household goods, and carpets were in, and were expropriated from, the ASP Apartment. The Respondent points out that the Claimant's only witness, Ms. Stubbs, did not personally witness the events on which she reported. Her testimony is based on hearsay, which cannot establish the alleged expropriation. The Respondent, moreover, asserts that the Claimant failed to prove that actions of those who allegedly removed the properties from the apartment could be attributed to the Government of Iran.

364. The Respondent also argues that any lists or photographs provided by the Claimant lack probative value to prove their actual existence in the ASP Apartment. Given the Claimant's intention to leave Iran permanently, the Respondent doubts that she would have left such valuable personal property in the apartment and that she would not have transferred it into the custody of her friends and relatives. The Respondent maintains that entries in Mr. Riahi's diary prove that, regardless of the revolutionary events in Iran, the Claimant had sufficient opportunity to collect, pack, and remove or sell her personal property in Iran through Mr. Riahi's friends, relatives, and associates.[139]

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[139] In this connection, the Respondent refers to page 985 of Mr. Riahi's diary.

365. In her Rebuttal Memorial, the Claimant alleges that, in its letter of 14 May 1983, the Foundation for the Oppressed of Isfahan admitted that it took over the Claimant's apartment in the ASP Building and thus it obviously also took over its contents. The Claimant emphasizes that Ms. Stubbs produced a detailed account of the expropriation based on the contemporaneous report of an eyewitness. In the circumstances of the Case, it is the best available evidence. The Respondent failed to produce any rebuttal evidence to the contrary. Therefore, according to the Claimant, the evidence is credible.[140]

366. Given that title to movable property generally can be conveyed at any time, the Respondent argues that expropriation of movable properties can be proven only by documentary evidence. In its Rebuttal Memorial, the Respondent points out that because the letter of the Foundation for the Oppressed referred to by the Claimant was written in 1983, it does not prove that the apartment had been possessed by the Foundation before 19 January 1981. The letter also indicated that the building had been put under the Foundation's supervision pending determination of its final fate. The letter does not indicate that the apartments had been expropriated. The Respondent also notes that the exact addresses of the two apartments referred to in the letter have not been identified. The letter may refer to apartments other than the one identified by the Claimant. As to Ms. Stubbs's affidavit, the Respondent reiterates that she does not have firsthand knowledge of the alleged expropriation. The Respondent claims that Ms. Stubbs had a key to the apartment, and thus she could have removed its contents, if any.[141]

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[140] The Claimant refers to Malek, supra note 65.

[141] Ms. Stubbs, in her third affidavit, refutes the Respondent's contention, claiming that she never had such a key.

367. Furthermore, the Respondent asserts that it would be impossible to produce documents to prove the non-existence of a non-existent fact. The Respondent, however, did produce affidavits from Mr. Riahi's relatives, Mr. and Mrs. Nabavi, to disprove the existence of the property in the apartment. They testified that they had heard from other members of the family that the properties located in the ASP Apartment had been transferred to another place by Mrs. Shirin Nasr and Mrs. Nahid Vahabzadeh. In addition, Mr. Mahvi testified at the Hearing 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. Only some boxes containing antiques were left in Iran.

2. The Tribunal's Decision

368. The Tribunal has previously held that the Claimant bears the burden of proving that the property "or any of the other furniture [was] at the apartment on the date of the alleged taking," and "[e]ven assuming that the property remained at the apartment, the Claimant[] must still establish that these items were removed from the premises by individuals or groups for whose acts the Government of Iran is legally liable."[142]

369. The Tribunal first notes that the Claimant stated in her second affidavit that since early 1976 she and her spouse had planned to leave Iran. On 27 July 1976, they sold their house at 9 Farmanieh Avenue, Tehran, and had their household belongings packed up for overseas shipment. For some time, they stayed in a hotel in Tehran and in May 1977 they moved into a rented apartment on Elizabeth Boulevard. From June to September 1979, they resided in the ASP Apartment, allegedly in order to avoid the Iranian Government's seizure of the property. The

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[142] Daley, supra note 67, paras. 27-28, at 240-41.

Claimant also stated that she lost her Iranian passport in March 1979 and that she had applied for a new Iranian passport in June 1979 so she and her husband could leave the country. On 2 September 1979, the Claimant was issued a new Iranian passport. After obtaining a Swiss visa to this passport, she was able to leave Iran on 11 September 1979.[143]

370. On the other hand, in her rebuttal affidavit, the Claimant contended that after moving to the apartment in June or July 1979, they decided to furnish the apartment with some furniture and other items which had been packed in a storeroom in Farmanieh since 1976.

371. The Tribunal finds it clear that the Claimant and her spouse did not have any intention of staying in the apartment for a long time after they moved into it in June 1979 since they were about to move out of the country. Therefore, the Tribunal finds that, under these circumstances, it is very unlikely that the Claimant would have moved such valuable belongings to the apartment and kept them there after departing from Iran.

372. The Tribunal further notes the evidentiary problems arising from the affidavits provided by Ms. Stubbs and Mrs. Nahid Vahabzadeh, which are relevant to the alleged expropriation of the Claimant's personal property in the apartment.

373. In her affidavit, Ms. Stubbs explains what she heard from Mrs. Shirin Nasr about the actions of the Revolutionary Guards. According to Ms. Stubbs, the Revolutionary Guards entered the apartment for the first time in March 1980, listed some furniture and objects that were present, and took two carpets. There is also a list of items attached to Ms. Stubbs's affidavit

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[143] Riahi Interlocutory, supra note 1, paras. 13 and 15, at 180.

that, according to her, were in the apartment. As to the alleged taking of the property and other measures by the Revolutionary Guards, Ms. Stubbs's testimony is indirect and is not based on her own contemporaneous observations. She does not claim that she witnessed any of the alleged visits and takings herself.

374. In her affidavit, Mrs. Nahid Vahabzadeh states that in February 1981, when she sought permission from the Claimant to reside in her apartment, she was told by the Claimant that the apartment had been under the control of the Revolutionary Guards since March 1980 and that the Guards had listed most of the furniture and objects, leaving them in the custody of Mrs. Nasr. Mrs. Vahabzadeh's statements are not based on her personal knowledge of the events. It is also worth noting that there is no mention in her affidavit of the claimed furniture or other items, although she later moved into the ASP apartment and lived there temporarily in the spring of 1981 as a custodian.

375. The Tribunal is mindful that it has previously been reluctant to base its decisions on hearsay alone[144] and that neither of these two affiants had personally witnessed in the spring of 1980 any actions of the Iranian authorities regarding the property in the ASP Apartment.[145] Even assuming that certain property remained at the Apartment, and that persons entered the ASP Apartment in March 1980 and listed some items therein, there is insufficient evidence in the record to prove that the two

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[144] See, e.g., Jalal Moin and The Government of the Islamic Republic of Iran, Award No. 557-950-2, para. 19 (25 May 1994), reprinted in 30 Iran-U.S. C.T.R. 70, 74-75 ("Moin"); and Combustion Engineering, Inc., et al. and The Islamic Republic of Iran, et al., Partial Award No. 506-308-2, para. 76 (18 Feb. 1991), reprinted in 26 Iran-U.S. C.T.R. 60, 81.

[145] Similarly, the Tribunal notes that the statements of Mr. and Mrs. Nabavi, in this respect, are based on hearsay.

carpets or any other items were removed by anyone for whose action the Government of Iran is legally liable.

376. Accordingly, the Tribunal determines 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.

G. Toyota Automobile

1. The Parties' Contentions

377. The Claimant asserts that her blue Toyota was expropriated by the Order of 27 February 1980 of the Revolutionary Court of Isfahan and that her car was confiscated by the Respondent's agents in March 1980, when they invaded the Claimant's ASP Apartment. According to the Claimant, a letter dated 14 May 1983 from the Foundation for the Oppressed to the Islamic Revolutionary Court of Isfahan verifies that this car, bearing registration number 58855 Tehran-22, was under the control of the Foundation for the Oppressed. To further support her claim, the Claimant cites her own affidavit and those of Mr. Riahi and Ms. Anne Stubbs, as well as entries in Mr. Riahi's diary. Ms. Stubbs stated in her affidavit, inter alia, that Mrs. Nasr told her that in early March 1980 the Revolutionary Guards burst into the Claimant's apartment and took two carpets, as well as the Claimant's blue Toyota allegedly located in the building's parking lot. This is also confirmed by the entries in Mr. Riahi's diary.[146]

378. The Respondent points out that the Claimant never produced the car's ownership card. In addition, the Respondent argues that the Claimant's and Mr. Riahi's affidavits merely refer to

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[146] The Claimant refers to pages 978-79 of the diary.

the Claimant's ownership of the car, not to its expropriation. As to Ms. Stubbs's affidavit, the Respondent points out that she did not claim to have witnessed the alleged taking. Moreover, in the Respondent's view, even if the car were taken, Ms. Stubbs's affidavit does not prove that it was taken by the Revolutionary Guards. The Respondent also emphasizes that Mr. Riahi's statements, in this respect, are merely hearsay.

379. As for the letter by the Foundation for the Oppressed, the Respondent argues that since the Claimant has not provided the registration number of her car, the letter does not indicate that the automobile belonged to her. The Respondent implies that the car referred to in the letter belonged to Mr. Nabavi, not to the Claimant. This is based on the fact that the car was held in Isfahan, not in Tehran, where the Claimant's car was located at the time of the alleged taking. Finally, the Respondent points out that the letter of the Foundation for the Oppressed was written on 14 May 1983. Therefore, the letter does not have any probative value in showing that the expropriation took place prior to 19 January 1981.

2. The Tribunal's Decision

380. The Tribunal first notes that Ms. Stubbs did not have firsthand knowledge of the alleged expropriation of the Claimant's Toyota. The Claimant, however, not only bases her claim on Ms. Stubbs's affidavit but also on the letter from the Foundation for the Oppressed to the Islamic Revolutionary Court of Isfahan. The Respondent does not place much weight on this letter.

381. The Tribunal has already decided that the Toyota car mentioned in the letter was owned by the Claimant, see supra, para. 232. Insofar as the expropriation of this automobile is concerned, the Tribunal notes that the Foundation's letter is

from May 1983, i.e., after the Tribunal's jurisdictional cut-off date. On the other hand, the letter does not indicate whether the Foundation took the car before or after the jurisdictional cut-off date. In addition, the Foundation for the Oppressed has not made any attempt to clarify when and from where the car was taken.

382. As noted earlier, the Foundation for the Oppressed's letter of May 1983 was addressed to the Revolutionary Court of Isfahan and proves that the Claimant's Toyota car was in the Foundation's possession at some point prior to the date of the letter. In support of its allegation that the car belonged to Mr. Nabavi, the Respondent further contended that the car was held in Isfahan, not in Tehran, from where the Claimant alleged it was expropriated. Therefore, the Tribunal finds that, in expropriating the car, the Foundation and the Court appear to have acted under the presumption that it was owned by, or in some way related to, Rahmat Abad. Because of this state of affairs, the Tribunal is convinced that the car was taken soon after the expropriation of Rahmat Abad, which the Tribunal found to have occurred on 27 February 1980. The Tribunal, thus, concludes that the taking of the Toyota car occurred not later than 15 March 1980.[147]

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[147] Ms. Stubbs states in her affidavit that the car was taken from the ASP Building's parking lot in Tehran in March 1980 by Revolutionary Guards from Isfahan, although she did not witness the actual taking. As stated earlier, the Tribunal has been reluctant to base its decisions on such hearsay evidence, supra, para. 375, unless it could be substantiated by other evidence. See Moin, supra note 144, para. 19, at 74-75.

H. Horses

1. The Parties' Contentions

383. The Claimant asserts that her horses, which were kept at the Rahmat Abad farm, were expropriated by the Respondent along with her other property by the Court Order of 27 February 1980. Shortly thereafter, the Revolutionary Guards allegedly took the horses from the farm. In support, the Claimant refers to a letter dated 8 March 1981, allegedly written by Mr. Nabavi, then managing director of Rahmat Abad. The Claimant also cites the 1 October 1979 letter from Mr. Vaghefi to Mr. Riahi.

384. The Respondent points out that the Claimant relies on her affidavit and that of Mr. Riahi to prove the expropriation of the horses. The Respondent challenges the authenticity of Mr. Nabavi's letter of 8 March 1981 and points out in its Rebuttal Memorial that Mr. Nabavi's letter was dated after the signing of the Algiers Accords. The letter therefore cannot establish the taking of the horses prior to 19 January 1981. As to Mr. Vaghefi's letter of 1 October 1979, the Respondent argues that this letter only proves that a horse named Festival was taken to Rahmat Abad at that time, but says nothing about the fate of that horse thereafter. The Respondent concludes that the Claimant has failed to prove the alleged taking of the horses.

2. The Tribunal's Decision

385. The Tribunal has held that the Claimant proved her ownership of two of the four horses she claimed, i.e., Tarlon and Pishdad, see supra, paras. 246 and 247. As to the expropriation of these two horses, Mr. Nabavi denied at the Hearing that he ever wrote or signed the typed letter dated 8 March 1981. He testified, however, that there were two horses at the Rahmat Abad farm at the time the Revolutionary Guards

arrived there: one mare and one younger horse, a stallion. Mr. Nabavi, however, did not remember the names of these two horses.

386. It has not been alleged, and there is no evidence in the record, that the horses referred to by Mr. Nabavi were taken prior to the Revolutionary Court's Order of 27 February 1980. The Tribunal, therefore, must find that the taking of the horses occurred at the same time that the farm was expropriated, see supra, para. 351. The Tribunal, however, notes that, according to the available evidence, both Tarlon and Pishdad were stallions. In addition, on the expropriation date Tarlon was apparently over 5 years old, whereas Pishdad was a colt less than one year old. Accordingly, the Tribunal finds that the young stallion referred to by Mr. Nabavi was most likely Pishdad. The Tribunal further finds that the evidence in the record does not support the Claimant's contention that there was another stallion at the farm when the Revolutionary Guards arrived there and that this stallion was also expropriated. The Tribunal thus holds that only one of the Claimant's horses, Pishdad, was expropriated on 27 February 1980.

VI. VALUATION AND COMPENSATION

A. Bank Tehran

1. The Claimant's Contentions

387. The Claimant contends that, in June 1979, her Bank Tehran stock, consisting of 33,871.7 shares, had a value of Rls. 79,598,495, equivalent to U.S.$1,127,457.44.[148] This amount is calculated based on Rls. 2,350 per share, which was allegedly the last trading price for these shares on the Tehran Stock

[148] The Claimant uses the official selling rate of exchange on 31 December 1979 (USD 1 = Rls. 70.60) reported in the 1980 Annual Report of the International Monetary Fund, at 203.

Exchange during the week ending 25 October 1978, as reported in the 28 October 1978 edition of the Tehran Economist. The Claimant's expert in business valuation, Willamette Management Associates ("Willamette"), supports her valuation figure. The Willamette report states that Bank Tehran's shares were publicly traded on the Tehran Stock Exchange until 10 June 1979. On 11 June 1979, the bank was nationalized pursuant to the Banks Nationalization Law. Willamette stated that it obtained the price of Rls. 2,350 per share from the spring 1979 edition of the Bank Markazi Bulletin.[149] The report further states that the last published stock exchange price of Rls. 2,350 per share is conservative, considering the fact that banking was one of the fastest growing economic sectors in Iran at that time.[150]

388. The Claimant further asserts that Bank Tehran's shares must have traded later than October 1978. To support this proposition and the reasonableness of her expert's valuation, the Claimant produces an affidavit provided by Mrs. Fatemeh Eftekhari, the former private secretary to the board of directors of Bank Tehran, stating that the last quotations on the Tehran Stock Exchange for Bank Tehran shares were approximately Rls. 2,400-2,500.

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[149] Using an average exchange rate of Rls. 70.5 for 1979, the Willamette report arrives at U.S.$1,129,000 for the total value of the Claimant's shares in Bank Tehran. The Claimant, however, consistently has used an exchange rate of Rls. 70.6.

[150] The Willamette report states that

> [w]ith the success of the Revolution and the new government, the Iranian banking sector was expected to remain relatively strong and in good condition. In fact, public confidence in the banking system was reported to have improved in 1979/80 relative to 1978/79. According to the Central Bank of Iran, assets of the banking system increased by 24.3 percent in 1979/80 compared to only 14.3 percent growth in 1978/79.

389. The Claimant submits that the best indicators of the value of property are the sales of similar property in arms-length transactions.[151] The Claimant further argues that the Willamette valuation is consistent with this Tribunal's decisions in other Cases. In several Cases, the Tribunal first has fixed the value of company stock by taking the last published price on the stock exchange, and then has applied a discount to determine its value at the time of expropriation. In each Case, however, the Tribunal has acknowledged that its discount was arbitrary. The Claimant maintains that her suggested price of Rls. 2,350 should be awarded because no prior Case involved comparable evidence demonstrating (1) steady prices on the stock exchange before the expropriation; (2) a further price increase just prior to that date (here, to Rls. 2,400-2,500); (3) a strong entity in a rapidly growing industry; and (4) an impressive history of strong prices over many years for the stock in question.

2. The Respondent's Contentions

390. The Respondent argues that in valuing property, the Tribunal consistently has considered social, political and economic changes caused by the Revolution.[152] Relying, e.g., on contemporaneous newspaper accounts and books written about the Revolution in 1978-79, the Respondent and its experts contend, inter alia, that banks, especially private ones like Bank Tehran, were more exposed than other institutions and organizations to revolutionary tumult. There were also banking and general strikes. Indeed, the banking system was on the verge of collapse, dissolution and bankruptcy. The Respondent and its experts submit that bank shares suffered remarkable

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[151] The Claimant relies on Khosrowshahi, supra note 107; Phillips, supra note 113; and INA, supra note 106.

[152] In this respect the Respondent relies on Khosrowshahi, supra note 107; and AIG, supra note 105.

stagnation during the Revolution, exacerbated by "charges...against the banks" and "public distrust." Further, the Respondent argues that mass selling by wealthy Iranians and major shareholders fleeing the country depressed the value of shares.

391. Referring to the entries in the Tehran Economist, filed by the Claimant, the Respondent argues that there was stagnation in bank share transactions since July 1978. In addition, the Respondent introduced a 27 October 1997 letter from the Tehran Stock Exchange to Bank Mellat, stating that no Bank Tehran shares traded after 10 September 1978.

392. The Respondent points out that, after the nationalization, all banks were required to be audited so that the value of their shares could be estimated for the payment of compensation to the shareholders. At the Hearing, Mr. Gholamreza Salami, a member of the Iranian Association of Certified Accountants and a member of the Special Committee of the Tehran Stock Exchange, testified that Agahan Auditing had valued Bank Tehran at Rls. 750 per share, and that Iran's High Council of Banks had decided to pay shareholders Rls. 717 per share.[153] Mr. Salami testified that no Bank Tehran shares traded on the Tehran Stock Exchange during or after October 1978. He also testified that, although banks' assets in general increased in 1979/80 in comparison to that of 1978/79, the increase resulted from the rescheduling of debts and additional credit facilities provided by the Government.

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[153] The exact figure agreed upon by the High Council of Banks was apparently Rls. 717.096. The Hearing Transcript is not very clear on this point. Although Mr. Salami is quoted to have said that the auditors "came to 750 rials for each share," he is also quoted to have stated that what "the general meeting of the banks did in this valuation was the 33 rial price and they increased it to 717 rial[s]."

3. The Tribunal's Decision

393. The Tribunal has previously held that, both under the Treaty of Amity[154] and customary international law, a deprivation requires compensation equal to the full equivalent of the value of the interests in the property taken.[155] In addition, Tribunal jurisprudence establishes that a valuation of expropriated property should be made on the basis of a fair market value. In INA, the Tribunal defined the fair market value as

> the amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any diminution of value due to the nationalisation itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares.[156]

394. The Tribunal has stated, on the other hand, that "prior changes in the general political, social and economic conditions which might have affected the enterprise's business prospects as of the date the enterprise was taken should be considered."[157] To that end, the Tribunal held in Khosrowshahi that

> the effects of the Islamic Revolution on the value of [the company's] shares cannot be ignored. It is well known that Iran's economy was disrupted and

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

[155] See Vera-Jo Miller Aryeh, supra note 17, para. 214, at 332-33 and the Cases mentioned in note 48 thereto.

[156] INA, supra note 106, at 380. See also Saghi, supra note 73, para. 79, at 46; and Starrett Housing Corporation, et al. and The Government of the Islamic Republic of Iran, et al., Final Award No. 314-24-1, para. 277 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 201 ("Starrett Award").

[157] AIG, supra note 105, at 107. See also Thomas Earl Payne, supra note 25, para. 35, at 15; and Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, para. 30 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 133 ("Phelps Dodge").

> transformed by the Revolution. Although an October/November [1978] market price for [the company] would doubtless have reflected the effects of the turmoil to date, many of the most significant economic and political disruptions were yet to come in the first months of 1979. Just as those disruptions had their impact on Iran's economy as a whole, they would almost certainly have had an impact on [the company's] share prices if the stock had still been trading on the market.[158]

The Tribunal recognized, however, that the impact of the Revolution should not be exaggerated or reduced to broad generalizations.[159]

395. Here, the Claimant contends that, as of June 1979, her 33,871.70 shares of Bank Tehran were worth Rls. 79,598,495, or Rls. 2,350 per share. To support her claim, the Claimant has produced, inter alia, two excerpts from the 21 and 28 October 1978 editions of the Tehran Economist. These two documents record Bank Tehran's share price on the Tehran Stock Exchange as being Rls. 2,350. The Claimant has stated that Bank Tehran's shares must have traded even later than October 1978, but she produced no published documentation demonstrating subsequent trading. Rather, the Claimant introduced the affidavit of Mrs. Eftekhari, who testified that Bank Tehran's share value increased to Rls. 2,400-2,500 per share.

396. On the other hand, among the evidence that the Respondent has produced to rebut the Claimant's contention is a 27 October 1997 letter from the Tehran Stock Exchange Organization to Bank Mellat, according to which no Bank Tehran shares traded on the Tehran Stock Exchange after 10 September 1978.

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[158] Khosrowshahi, supra note 107, para. 49, at 93.

[159] Id., para. 51, at 93.

397. At first blush, the Claimant's two excerpts from the Tehran Economist and the Respondent's letter from Tehran Stock Exchange Organization might seem to contradict each other. However, when the two listings of share prices published by the Tehran Economist are more carefully examined, they indicate that the number of shares mentioned next to the last trading price reflects the amount of shares transacted when the last transaction occurred, irrespective of the date. With respect to all of the banks whose shares were traded on the Tehran Stock Exchange, apparently only shares of two banks were traded from 18 to 25 October 1978, neither of which was Bank Tehran. Although both lists record that 1,150.2 shares of Bank Tehran had been traded, neither list records precisely when those shares were traded. In its 27 October letter, the Tehran Stock Exchange states that when Bank Tehran shares were last traded on 10 September 1978, 1,150 shares were transacted. Accordingly, the Tribunal finds that the number of the shares recorded in the Tehran Economist, which traded for Rls. 2,350 each, is consistent with the letter of the Tehran Stock Exchange, which reported the same number of Bank Tehran shares last traded on the Tehran Stock Exchange on 10 September 1978.

398. The Tribunal cannot give much weight to Mrs. Eftekhari's testimony that Bank Tehran's shares last traded for Rls. 2,400-2,500 per share on the Tehran Stock Exchange, because she failed to mention when those transactions took place. In addition, the Tribunal notes that she reported that the banks in Iran were nationalized already in April 1979, although the Banks Nationalization Law was not passed until June 1979.

399. In Khosrowshahi, the Tribunal confronted the valuation of an Iranian bank in circumstances similar to those here. There, the Tribunal found that the bank's last traded share price was from October 1978 and that the bank was nationalized in June 1979, when the Iranian Government passed the Banks

Nationalization Law. With respect to that bank, the Tribunal found that it is

> reasonable to assume that the final price...in October 1978 reflected the impact of revolutionary events to that date on [the bank]. That price then needs to be adjusted to reflect the events that occurred between that last-traded price and the date of the taking.[160]

The Tribunal also found, after considering all the relevant factors of the claim, that it was fair to discount the last-traded share price of the bank by 30 percent.[161]

400. Here, there is evidence that, at least until the fall of 1978, the performance of Bank Tehran shares on the Tehran Stock Exchange was apparently consistent. According to the available evidence, from 1977 until the fall of 1978, the share price of the bank was never lower than Rls. 2,200. However, the Tribunal 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. The Tribunal believes, as it did in Khosrowshahi, that the Revolution negatively affected the value of banks' shares after the cessation of their trading on the Tehran Stock Exchange.

401. The Parties in this Case have not produced any evidence that would require the Tribunal to adjust the discount rate applied in Khosrowshahi with respect to the nationalized bank in that Case. Accordingly, the Tribunal decides to discount the last-traded price of Bank Tehran's shares, Rls. 2,350, by 30 percent, or Rls. 705. The total value of the Claimant's

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[160] Id., para 78, at 100-101.

[161] Id.

33,871.70 shares, at Rls. 1,645 per share, at the time of the expropriation is thus Rls. 55,718,946, or U.S.$789,220.[162]

B. Iran Bohler

1. The Claimant's Contentions

402. The Claimant seeks Rls. 5,000,000 (or U.S.$70,822), the par value of her 500 shares of Iran Bohler. The Claimant also argued during the proceedings that she would have valued Iran Bohler as a going concern, but the Respondent refused to disclose the company's corporate records, despite the Tribunal's Orders to produce them.[163] According to the Claimant, the par value of her equity interest in Iran Bohler, i.e., the actual amount paid to acquire the interest, is clearly less than the going-concern value to which she is entitled. In the Claimant's view, Iran Bohler was a valuable going concern at the time it was expropriated. To support this contention she refers to her own and Mr. Riahi's affidavits, wherein they state that the company had a promising future, because the factory was Iran's sole manufacturer of pneumatic jackhammers.

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[162] In this Case, where the Tribunal has fixed the value of the Claimant's ownership interests in Rials, the Tribunal uses the same exchange rate as the Claimant, USD 1 = Rls. 70.60, when converting the amounts into United States dollars.

[163] During the proceedings in this Case, the Claimant requested the production of "financial documents and vouchers (such as accounting books, accounting documents and papers, financial statements, tax declarations, major financial contracts, etc.), as well as audit reports and documents regarding valuation of lands and real estate of...Iran-Bohler [and other companies] referred to in Exhibit 75 to Respondent's Memorial, pages 5 and 6 [the valuation report by Mr. Ghorbani-Farid]." Those documents were never produced by the Respondent, and, according to the Claimant, no satisfactory explanation was given for the absence of the production.

403. The Claimant objects to the valuation performed by one of the Respondent's experts, Mr. Mohammad Ebrahim Ghorbani-Farid, who based his conclusions on financial documents that the Respondent failed to produce. For this reason, the Claimant moves to strike from the record Mr. Ghorbani-Farid's valuation of Iran Bohler.

2. The Respondent's Contentions

404. The Respondent argues that the Claimant's valuation disregards the economic and political situation existing during and subsequent to the Revolution in Iran. Referring to Mr. Riahi's diary, the Respondent points out that some of the companies at issue in this Case, including Iran Bohler, suffered financial problems or were nearly bankrupt. Especially with respect to Iran Bohler, the Respondent and its experts argue that the company had to discharge employees due to its reduced income. In addition, the company was unable to repay its bank debts and to pay the rent for its office. Indeed, according to the Respondent, only the Government's labor policies saved these insolvent companies from being declared bankrupt.

405. The Respondent submits that Iran Bohler had been an unsuccessful business and that it had made no profits before 27 February 1980, the date on which the Claimant alleges the company had been expropriated.[164] The Respondent submitted valuation reports from Mr. Ghorbani-Farid and Mr. Christopher G. Glover, both of whom are members of the Institute of Chartered Accountants in England and Wales.

406. Mr. Ghorbani-Farid states that his valuation is based on the "going-concern" definition expressed by the Tribunal in

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[164] The Respondent refers to Mr. Riahi's diary, which contains, inter alia, an entry where he states that "the company

INA.[165] The valuation date used is the end of the Iranian year 1358 (20 March 1980).

407. According to Mr. Ghorbani-Farid's valuation report, the capital of Iran Bohler at the valuation date was Rls. 200,000,000, divided into 20,000 shares. Therefore, the Claimant's ownership interest in Iran Bohler, i.e., 500 shares, was insufficient to control the company. Mr. Ghorbani-Farid determined that the dividend method of valuation was appropriate in the circumstances, considering the number of the Claimant's shares and the fact that the company continued to operate at the date of valuation. According to Mr. Ghorbani-Farid, the dividend method is the appropriate method to value a going concern when the investment therein is made only to exploit profits from the operation.

408. Mr. Ghorbani-Farid's report further states that sales of the company had been declining since 1356 (1977-78) and that losses increased each year. This was principally the result of limited demand in the market for jackhammers, as well as market saturation soon after the inception of production. The company had no market abroad to sell its products. Indeed, following a 13 July 1980 extraordinary shareholders' meeting, the company's capital was reduced from Rls. 200,000,000 to Rls. 50,000,000.

409. Mr. Ghorbani-Farid states that only unaudited figures were available to determine the results of the company's operation, except for the figures for the year 1359 (ending 20 March 1981), which were allegedly audited by the Foundation for the Oppressed's auditing firm. Based on the unaudited figures, the company's accumulated loss at the valuation date was Rls. 151,900,000. The adjusted cumulative loss, assuming that the

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is on the brink of insolvency and bankruptcy." (Translation by the Tribunal's Language Services Division.)

[165] INA, supra note 106.

activities of the company would have continued, was approximately Rls. 206,000,000. The financial statements of the company for the year 1358 (ending 20 March 1980) incorporated into the report show that the balance adjusted for that year, based on the figures of the year 1359, was Rls. 244,400,000.

410. Applying his dividend method valuation, Mr. Ghorbani-Farid opines that the company's shares could not generate any profit and, therefore, the Claimant's shares are without any value. Alternatively, applying the dissolution method of valuation, he concludes that the assets' estimated net negative value is at least Rls. 166,000,000. Mr. Ghorbani-Farid's report concluded that, on the valuation date, the company was essentially bankrupt because of its serious cash-flow problem and because all its fixed assets had been used as security for a bank credit. Consequently, the Claimant's shares are regarded valueless.

411. The Respondent's second valuation expert, Mr. Glover, analyzed only the documents submitted to the Tribunal by the Claimant. Mr. Glover expresses concern over the lack of audited financial statements for the company. As evidence for the poor financial situation of the company, he relies on Mr. Riahi's affidavit, wherein he states that the company experienced "some loss" in its first year of operation. He relies also on the minutes of the annual general meeting held at the end of the year 1356 (March 1978), which confirm the company's loss-making history. Given Iran Bohler's history of losses, and given the civil unrest, rioting and economic disruption that occurred after March 1978, Mr. Glover seriously doubted whether Iran Bohler could have transformed itself into a profitable enterprise. Mr. Glover also notes that in September 1979 a Government supervisor was appointed and that, according to Mr. Khajeh-Nouri's letter of 16 January 1980, the company needed new

credit to continue operations. He concludes that

> [a]lthough no balance sheet is available for [Iran Bohler] one can safely deduce from the absence of any profit that the equity net assets cannot have exceeded the amount of the paid-up share capital of Rls. 200 million. Indeed, the losses to date can only have come out of that equity capital.

412. Therefore, Mr. Glover is of the opinion that Iran Bohler's survival must have left some residual value in the company's equity, but that the attributable net asset value must have been considerably below the par value of the Claimant's shareholding, due to the company's losses. Mr. Glover suggests a value of Rls. 2,500,000 for the Claimant's holding, representing half of par value of her shares.

3. The Tribunal's Decision

413. The Tribunal emphasizes at the outset that there must be procedural equality between the Parties. At the Claimant's request, the Tribunal, by its Orders of 18 November 1994 and 18 May 1995, requested the Respondent to produce various documents and financial records of Iran Bohler demanded by the Claimant, on which Mr. Ghorbani-Farid's report was constructed. The Respondent has not produced them, and thus the Respondent's expert had access to information that was not made available to the Claimant. The Tribunal cannot, therefore, accept the premises on which Mr. Ghorbani-Farid's report is built, because the Claimant has been deprived of the opportunity to rebut the findings of the report. Accordingly, the Tribunal takes no account of Mr. Ghorbani-Farid's report with respect to Iran Bohler.

414. Because of the lack of financial information about Iran Bohler in the record, the Tribunal's task in evaluating the Claimant's holding in the company is difficult. In addition, in the absence of regular transactions of the company's shares in a

free market, infra, para. 447, the Tribunal must find an indirect method of valuation. The Tribunal approximates the value of Iran Bohler and the Claimant's proprietary interest based on the best evidence in the record, taking into account all circumstances of the Case.[166]

415. In carrying out this task, the Tribunal recalls what it has stated previously in Sola Tiles, Inc.:

> While the Claimant must shoulder the burden of proving the value of the expropriated concern by the best available evidence, the Tribunal must be prepared to take some account of the disadvantages suffered by the Claimant, namely its lack of access to detailed documentation, as an inevitable consequence of the circumstances in which the expropriation took place.[167]

416. In this Case, the Tribunal notes that Iran Bohler was formed in 1973 and that it inaugurated its jackhammer factory in June 1976. The Tribunal recognizes that few manufacturing companies become profitable during their first years of operation and that the survival often depends on their capacity to cope with the initial losses. Here, Iran Bohler also faced revolutionary turmoil shortly after it became operational. Accordingly, the Tribunal cannot determine, with any decree of certainty, whether Iran Bohler could have become a going concern prior to its expropriation.[168]

417. On the other hand, there is no evidence in the record that Iran Bohler would have ceased operations prior to its

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[166] See Starrett Award, supra note 156, paras. 338-39, at 221; and also Jahangir Mohtadi, et al. and The Government of the Islamic Republic of Iran, Award No. 573-271-3, para. 101 (2 Dec. 1996), reprinted in 32 Iran-U.S. C.T.R. 124, 157.

[167] See Sola Tiles, Inc. and The Government of the Islamic Republic of Iran, Award No. 298-317-1, para. 52 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 238.

[168] See, e.g., Phelps Dodge, supra note 157, para. 30, at 132-33.

expropriation, despite its financial problems, which apparently culminated in a request for additional credit to enable it to continue operations in early 1980. In these circumstances, the mere fact that the company continued its operations is enough to convince the Tribunal that the company, and hence the Claimant's share in the company, had some value at the time of expropriation.

418. Indeed, even the Respondent's expert, Mr. Glover, testified that the company's chances of survival were "better than average," albeit with the support of the authorities. He argued, however, that much, if not all, of the company's paid-up capital had been lost and, therefore, the value of the Claimant's shareholding must have been considerably below the par value of the shares.

419. The Tribunal disagrees. Although Iran Bohler had faced serious financial difficulties before the expropriation, its future prospects were probably better than what Mr. Glover had anticipated in his valuation. Accordingly, the Tribunal rejects his conclusion that the Claimant is entitled to no more than half of the par value of her shareholding. Considering the evidence available and the circumstances of the Case, the Tribunal concludes that the Claimant's ownership interest in Iran Bohler, at the time of expropriation, was Rls. 5,000,000, or U.S.$70,822, which corresponds to the face value of her shares.

C. Khoshkeh

1. The Claimant's Contentions

420. The Claimant asserts that the fair market value of her claimed ownership interest, 20.1 percent of the company's stock,

was U.S.$4,228,000,[169] as valued by Willamette using the discounted cash flow ("DCF") method.

421. Khoshkeh is a company mainly engaged in the importation and sale of specialty steel. According to the Claimant, the company's assets included a five-story building with 2,700 square meters of office space constructed on 632.18 square meters of land, three buildings of 3,480 square meters on 3,600 square meters of land, and three leased sale depots. The company also owned two parcels of undeveloped land, totaling 22,018 square meters, in a commercial area on the Karaj highway, eight kilometers from Shahyad Square in Tehran.

422. The Claimant submits in her Rebuttal Memorial that she has not had access to Khoshkeh's books after 1970. She also points out that she has requested these documents from the Respondent, but the Respondent failed to produce them, despite successive Orders from the Tribunal, see supra, paras. 17-21. The Claimant further notes that the Respondent apparently had access to those documents since its valuation expert, Mr. Ghorbani-Farid, relied on them in valuing Khoshkeh.[170] The Claimant further states that Mr. Ghorbani-Farid's report contains a table purporting to show the company's operating results in the years 1354 through 1358 (21 March 1975 to 20 March 1980). Because neither the Claimant nor the Tribunal has been given an opportunity to test these figures, the Claimant requests the Tribunal to strike the table from the record or to disregard its figures.

423. The Claimant further comments in detail on the report submitted by Mr. Ghorbani-Farid and strongly rejects its

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[169] This is the Claimant's final figure, submitted at the Hearing.

[170] The Claimant states that the "Respondent's expert [Mr. Ghorbani-Farid] quotes from what purport to be the financial reports of the Company for years as late as the Iranian year 1358 (the year ending March 20, 1980)."

conclusions that Khoshkeh was doomed as a going concern and should have been liquidated by 21 March 1980.

424. The Claimant also criticizes Mr. Ghorbani-Farid's specific findings, on the following grounds: First, Mr. Ghorbani-Farid fails to explain why, when calculating the company's operating results, he decided to deduct Rls. 22.3 million as a reserve for receivable bills. Second, the Respondent's expert's own figures contradict his argument that Khoshkeh's sales had declined between 1356 and 1358 (21 March 1977 to 20 March 1980). Indeed, those figures show that the company's gross and pre-tax net profits were virtually steady over that period. Third, the Respondent's expert's figures showing declines in total costs between 1356 and 1358 undermines his statement that the company's costs had been increasing. Fourth, the expert's assertion that the application of foreign exchange controls following the Revolution would have hindered the business is unsubstantiated. Any restrictive controls adopted in subsequent years could not have influenced a knowledgeable investor in March 1980. Fifth, the expert opined that Khoshkeh faced increased competition, but failed to identify any such competitors. Pointing to certain affidavits filed in this Case, the Claimant maintains that the company's market share in Iran was never less than 70 percent. Sixth, the Claimant rejects the Respondent's expert's assertion that there were rumors about nationalization of foreign trade. In any case, the threat of governmental expropriation cannot be taken into account when valuing an expropriated business.

425. Finally, the Claimant challenges Mr. Ghorbani-Farid's opinion that in early 1980 a rational owner would have felt compelled to liquidate Khoshkeh. The Claimant maintains that Iran's economy in fact rebounded after the Revolution and that Khoshkeh continues to operate to this day. The Claimant states that she and her spouse would have had no inclination or reason

to liquidate the company. The Claimant, therefore, sees no point in examining the expert's liquidation-value analysis. Were the Tribunal to find that a shareholder in Khoshkeh could expect no profits after 1980, it would still be wrong, in light of the Tribunal's practice, to deduct liquidation costs from the company's value. The Claimant regards the Respondent's expert's valuation of the Claimant's 2,010 shares, U.S.$414,135, as less than one-tenth of the true value of her shares in Khoshkeh, which she considers a going concern.

426. In support of her claim, the Claimant has submitted valuation reports or affidavits from three experts. Mr. W. Thomas Curtis, a member of the United States National Association of Tax Practitioners and the Maryland Society of Accountants, and Willamette, see supra, para. 387, each produced a valuation report. Mr. Manoochehr Vahman, a former certified surveyor in Iran, produced two affidavits. Mr. Robert F. Reilly, from Willamette, testified for the Claimant at the Hearing.

427. The reports by Mr. Curtis and Willamette are based on financial data of operations and earnings from the founding of the company in 1952 through 1970. Regarding the above-mentioned reports, the Claimant acknowledges that Mr. Curtis had less information on the company's cash flow and no information on the value of the unused land belonging to the company. Mr. Curtis states that he had "accepted the financial information of Khoshkeh, without additional, independent, verification" and that he did not audit the financial information provided by Mr. Riahi in his affidavit and by the Claimant's list "of gross revenues and net income and other financial information."

428. In his second, corrected affidavit, Mr. Vahman values Khoshkeh's leases at Rls. 38,333,333.[171] He values Khoshkeh's commercial office building at the corner of Khayyam Avenue and Park-e-Shahr Avenue at Rls. 108,591,700, claiming that it was in a prime location in Tehran's best business district. Mr. Vahman states that the Respondent's evidence shows that a bank had valued the company's central building at Rls. 80 million as security for additional borrowing by the company of Rls. 50 million. Because a bank's property appraisal for lending purposes is never equal to the market value of the collateral, Mr. Vahman is of the opinion that the bank's valuation corroborates his own valuation of the office building. Mr. Vahman valued the company's land and buildings at Qazvin Avenue in Tehran at Rls. 54,720,000, including the goodwill value of the location. It is claimed that the property is situated in a commercial center near downtown Tehran and has three buildings, a showroom and two large brick warehouses, including a steel hardening workshop with two five-ton cranes. Finally, he values Khoshkeh's 22,018.75 square meters of unused land at Rls. 30,826,250. In total, Mr. Vahman valued Khoshkeh's buildings, lands and leases at Rls. 232,471,283.

429. Mr. Curtis has studied financial data provided by the Claimant from the year 1331 (starting 21 March 1952) through 1348 (ending 20 March 1970).[172] This information was also submitted to the Tribunal. Mr. Curtis has also relied on representations made by the Claimant about the background, history, and potential performance of the company. To arrive at a value on the date of the assumed expropriation, 5 July 1980, he establishes a capitalized, weighted mean value of the

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[171] The value of the leases is their goodwill value, which, according to Mr. Vahman, in this context is the price for which the lessee could sell his rights to the property.

[172] These figures mainly pertained to gross sales and net profits provided by Mr. Riahi.

historic and pro forma net profit flows. This figure shows, in Mr. Curtis's view, the intrinsic value of the company's assets, the value of its income flow and the anticipated income flow, and the fair market value of the equity in the market place. He concludes that the total value of Khoshkeh was, at the time of expropriation, U.S.$20,202,150. According to Mr. Curtis, this value is conservative because it is significantly below the high range of the entity's value determined through an analysis of the effect of future income flows.

430. The Claimant's third expert, Willamette, values Khoshkeh by means of the income approach. Willamette acknowledges in its report that it had only unaudited financial and operational data available for its analysis. According to the report, it attempts to value Khoshkeh and the other companies based on methods that would be considered by a reasonable investor to reflect free market values, taking into account valuation factors established by the Tribunal and the effect of the Islamic Revolution on the value of expropriated companies. The report deems the income approach[173] particularly relevant with respect to Khoshkeh, because (1) the company generated operating cash flows at the date of the expropriation; and (2) the value of the Claimant's ownership interest is based more on its income-generating capacity as a going concern and less on the value of its individual assets.

431. Willamette calculates the going-concern value of Khoshkeh on the basis of the income approach, and specifically the DCF

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[173] The report states that the approach "is based on the premise that the value of the business enterprise is the present value of the future economic income to be derived by the owners of the business." According to the report, the income approach has been accepted by the Tribunal in Phillips, supra note 113; Starrett Award, supra note 156; and Amoco International Finance Corporation and The Government of the Islamic Republic of Iran, et al., Award No. 310-56-3, (14 July 1987), reprinted in 15 Iran-U.S. C.T.R. 189 ("Amoco").

method, using financial data related to the operations and earnings through 1970.[174] According to the report, projections for financial data related to the period falling after 1971 up to the date of expropriation were therefore necessary. In order to establish the fair market value of the property, Willamette also calculates a ten-year projection subsequent to the date of expropriation. Willamette valued the unused land as an excess non-operating asset, and thus added its value to the figure derived from the income approach. In sum, Willamette values the Claimant's claimed 20.1 percent ownership interest in Khoshkeh, as of 27 February 1980, at U.S.$4,228,000.[175]

2. The Respondent's Contentions

432. The Respondent rejects the Claimant's experts' valuation methods and their conclusions and proffers its own valuation reports. Mr. Ghorbani-Farid, supra, para. 405, prepared two reports, one of which was prepared with Mr. Safari Koupaie. Mr. Salami and Mr. Glover, supra, paras. 392 and 405, each prepared one valuation report. Dr. Manouchehr Pooya and Mr. Khalil Yaasoubi, both certified surveyors, each provided two valuation reports with respect to Khoshkeh's lands and buildings, including the goodwill of its leased premises. Mr. Glover and Mr. Salami testified as expert witnesses at the Hearing.

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[174] As mentioned earlier, supra, para. 422, the Claimant requested the Tribunal to strike from the record or disregard the figures presented in Mr. Ghorbani-Farid's report, allegedly showing the company's operating results starting from the year 1975. At the Hearing, the Claimant also criticized the Respondent, claiming that it had waited until the Claimant's valuation experts had filed their reports before it filed material which the Tribunal had previously ordered it to produce.

[175] At the Hearing, Mr. Reilly from Willamette made some corrections to his calculations, reducing the amount claimed from U.S.$4,768,000 to U.S.$4,228,000.

433. In his first report, Mr. Ghorbani-Farid explains why his valuation report generally differed from that of Mr. Curtis, the Claimant's first valuation expert. He states that "[i]t appears to us that the Claimant's expert had no access to sufficient and proper information." By contrast, he notes that "[a]ll information and documents in existence at the companies [sic] premises as well as in governmental and non-governmental organizations were totally made available to us."

434. Mr. Ghorbani-Farid values Khoshkeh based on the net value of its total assets. He assumed that it would have been in the best interest of the shareholders to liquidate the company on the valuation date. In support of his assumption, he noted, inter alia, increased competition in the steel sector, including major production projects in Iran, such as the Mobarakeh and Kavian steel projects. Moreover, Mr. Ghorbani-Farid maintained that Khoshkeh's costs were increasing each year, due to inflation and "the rise in price of expenditures." Although Khoshkeh's sales and net profits increased from year 1354 (beginning 21 March 1975) to 1355 (ending 20 March 1977), its sales and net profits began decreasing in 1356 (the year beginning 21 March 1977). Because of the application of exchange control and exchange quota policies following the Revolution, Mr. Ghorbani-Farid also doubted that the company would have been able to provide enough exchange for import of goods.

435. Mr. Ghorbani-Farid concluded that Khoshkeh's fair market liquidation value at the end of the year 1358 (20 March 1980) was Rls. 156,000,000. Consequently, the fair value of each of its 10,000 shares (which have a nominal value of Rls. 10,000) was Rls. 15,600. The Claimant's alleged 2,010 shares are thus valued at Rls. 31,356,000.

436. The Respondent's second expert, Mr. Salami, states that his report is aimed at establishing the fair market value of Khoshkeh at the expropriation date. Bearing in mind the company's decreased production and possible discontinuation of its activities after the Revolution, and having studied financial statements, Mr. Salami values Khoshkeh based on the net book value of its assets. He values Khoshkeh's current assets based on the company's financial statements and its fixed assets based on Dr. Pooya's appraisal.

437. Mr. Salami considers the DCF method inappropriate for the valuation of Khoshkeh. Moreover, even if the DCF method were appropriate, he argues that the Claimant's valuation experts should have relied on the company's true sales figures and real ratio of profits to sale. Mr. Salami criticizes the Willamette report, contending, inter alia, that the discount rate used should have approximated the company's capital expense, i.e., 25 percent. Mr. Salami suggests in his report that if Willamette had adopted the Tribunal's reasoning in several Awards, including the Starrett Award, the applicable discount rate would have exceeded 30 percent. His report states that the company had diminishing sales from 1977 onwards. Mr. Salami has appended to his report Khoshkeh's tax and financial statements for the years 1977-80. According to Mr. Salami, in addition to a 30 percent discount rate on actual values and a 25 percent investment rate (P/E ratio 4), a 40 percent taxation rate should have been applied. Under these parameters, Willamette's DCF valuation would have produced a much lower value than Mr. Salami's valuation. He further testifies that the Claimant's minority position should have been weighed in a valuation of fair market value.

438. Mr. Salami also rejects the U.S.$3,120,000 valuation that Willamette accepts for Khoshkeh's real property, which the company purchased five years before the valuation date for

U.S.$240,000. He pointed out that Mr. Vahman, one of the Claimant's valuation experts, valued the property at U.S.$437,000. Mr. Salami's net book valuation of the company in February 1980 is Rls. 289,258,000. By contrast, applying a three-year net profit average, derived from the financial statements of the company, and a capital rate of 20 percent[176] (P/E ratio 5), and then adding the value of inactive assets (Rls. 15,236,000), Mr. Salami calculates Khoshkeh's fair market value in February 1980 at Rls. 165,236,000.

439. Basing his valuation on the information provided by the Claimant to the Tribunal and on the annual accounts as laid before the general meetings during the years 1354-58 (21 March 1975 to 20 March 1980), which were introduced in evidence by the Respondent, Mr. Glover testified that between 1977 and 1980 there had been a sharp contraction in the volume of Khoshkeh's turnover. He noted, however, that the company's gross profit margin increased appreciably, from 26 percent in 1354 (1975) to 37 percent in 1358 (ending 20 March 1980). Nevertheless, significant increases in operating expenses in the years 1355 and 1356 (starting 21 March 1976 and ending 20 March 1978) absorbed all the increase in gross profit, leaving the net profit slightly lower over the period. Mr. Glover also notes that no tax charge appears on the face of the company's profit and loss account. He testified that the company's tax liability for 1357 (21 March 1978 to 20 March 1979) and 1358 (ending 20 March 1980) had not yet been agreed with the tax authorities. Mr. Glover adds that the company's balance sheet at March 1980 showed adequate liquidity, but that its debt level was significant. He concluded that "Khoshkeh's prospects at the valuation date were shrouded in uncertainty."

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[176] Considering the company's sales and profitability during the years 1977-80, Mr. Salami believed that even the application of a 20 percent capital rate is optimistic.

440. According to Mr. Glover, a purchaser of the Riahis' 44.7 percent stake in the company had no prospect of becoming employed by the company or taking a seat on its board of directors. Therefore, a valuation of the Claimant's 20.1 percent shareholding should reflect a minority discount.

441. Mr. Glover concludes that Khoshkeh's value at the date of the expropriation was midway between its going-concern value of Rls. 160 million and its adjusted net-asset value of Rls. 320 million, i.e., Rls. 240 million. Adding the value of Khoshkeh's unused land, Rls. 15,236,000, he gives the total value of Rls. 255,236,000 for the company. Because the Claimant was a minority shareholder, however, he deducted the Claimant's share value by 25 percent.

442. Mr. Salami and Mr. Glover used, in their adjusted net-asset valuations of Khoshkeh, Dr. Pooya's on-site valuation of the company's fixed assets and his valuation of the goodwill of its leased retail stores. Dr. Pooya estimates the total value of Khoshkeh's assets at Rls. 140,396,000 at the valuation date, consisting of: (1) Rls. 61 million for the central office land and buildings; (2) Rls. 15,236,000 for the two parcels of land on Karaj Road; (3) Rls. 35,160,000 for the warehouse and workshop's land and buildings; (4) Rls. 11 million for the goodwill of the leased retail store on Amir Kabir Street; (5) Rls. 12 million for the goodwill of the leased retail store on Makhsous Street; and (6) Rls. 6 million for the goodwill of the leased retail store on Tehran-now Street. Dr. Pooya appended to his report the relevant title deeds and lease contracts.

443. Given that real estate prices plummeted immediately after the Revolution, Dr. Pooya believes that Mr. Vahman's valuation is too high. He further states that the Tribunal's Awards also confirm that the value of commercial estates decreased as a consequence of the Revolution. With respect to Mr. Vahman's

views on the bank's valuation of the office building, Dr. Pooya states that the practical method for such appraisals is that the bank's selected experts determine the real value of property based on the market value and the bank then declares to the loan applicant a value less than the market value.

444. Mr. Yaasoubi's first valuation report is dated 27 December 1982. He values Khoshkeh's immovable assets at Rls. 487,500,000. His report does not state an exact valuation date, but the values suggest a valuation date in the month of December 1982. Mr. Yaasoubi's second valuation report, dated 27 September 1999, offers a fair market value of Khoshkeh's fixed assets and the goodwill of its leased stores as of February 1980. The latter report values the central building (land and structures) at Rls. 60,420,000, and all other lands, immovable property, and goodwill at Rls. 78,320,000.

445. The Respondent contends that Willamette's valuation of Khoshkeh suffers from the same shortcomings as its valuation of Rahmat Abad, see infra, Section D.2. The Respondent first submits that the Willamette report is detached from the realities in Iran in February 1980 and fails to appreciate the new Government's determination to bring about fundamental economic and social changes. In fact, the Respondent argues that chaos existed in the country's political and economic life at the time of the valuation and that the Tribunal often takes such revolutionary tumult into account when valuing companies during that period. The Respondent deems most of the positive and optimistic pre-Revolutionary economic data referred to by the Claimant's expert irrelevant to the conditions prevailing in February 1980. Therefore, the Respondent contends that Iran was unattractive to investors at the date of valuation. Moreover, the Respondent contends that Willamette's analysis in this Case of Iran's economic situation during the relevant time differs

from the one it presented in Sabet.[177] The Respondent regards the company's prospects as less promising than what the Willamette report has envisaged.[178]

446. The Respondent particularly objects to the fact that the Willamette report applies hypothetical financial figures for Khoshkeh for the years 1971-79. For example, Willamette assumed pre-tax income of Rls. 88,603,000 for Khoshkeh for the year ending March 1980, whereas, according to the Respondent, the actual income was merely Rls. 32,077,000. With respect to the valuation of real property, the Respondent notes that Willamette adopted Mr. Riahi's appraisal and not that of Mr. Vahman, whose estimate is less than one-sixth of that of Mr. Riahi. For these reasons, the Respondent asks the Tribunal to disregard the Willamette report and instead to rely on the Respondent's experts' valuations.[179]

3. The Tribunal's Decision

447. Because Khoshkeh's shares were not freely traded on an active and free market, the Tribunal must determine by using various analytical methods the price that a reasonable buyer would have been willing to pay for the company's shares in a free-market transaction.[180] The Tribunal is in this respect

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[177] Supra note 42.

[178] The Respondent points to the letter from Mr. Khajeh-Nouri to Mr. Riahi dated 16 January 1980, wherein he states, inter alia, that Khoshkeh was confronted with a lack of supply and sale and that it would have to adjust itself to the new prices.

[179] At the Hearing, Mr. Reilly of Willamette stated that he revised the valuation of the company to correspond to the figures provided by Mr. Vahman in his affidavit.

[180] Phillips, supra note 113, para. 111, at 122, wherein the Tribunal held that:

> In the absence of an active and free market for comparable assets at the date of taking, a tribunal

assisted by various opinions of the Parties' experts. The Tribunal notes that the Respondent produced, inter alia, the profit and loss statements and balance sheets of the company for the years 1354-1358 (21 March 1975 to 20 March 1980), which have been relied upon by the Respondent's experts. The record also contains, in the form of Mr. Riahi's diary, financial data provided by the Claimant relating to the years 1331-1348 (21 March 1952 to 20 March 1970). Only the latter information was available to the Claimant's experts when they prepared their valuation reports.

448. The Tribunal holds that the company was a profitable, ongoing business at the time of expropriation and must therefore be valued as a going concern. Although there was a contraction in turnover during the years preceding the expropriation date, Khoshkeh's gross profit margin appears to have improved considerably by 1980. On the other hand, any prospective buyer would have had to take into account Khoshkeh's considerable debt.[181]

449. In Amoco, the Tribunal held that a

> [g]oing concern value encompasses not only the physical and financial assets of the undertaking, but also the intangible valuables which contribute to its earning power, such as contractual rights (supply and delivery contracts, patent licen[s]es and so on), as well as goodwill and commercial prospects.[182]

> must, of necessity, resort to various analytical methods to assist it in deciding the price a reasonable buyer could be expected to have been willing to pay for the asset in a free market transaction, had such a transaction been possible at the date the property was taken.

[181] The balance sheet for the year ending on 20 March 1980 shows net assets in the amount of Rls. 240,127,575, equivalent to U.S.$3,407,273.

[182] Amoco, supra note 173, para. 264, at 270.

450. The Claimant has argued that the Tribunal should value Khoshkeh as a going concern, by the DCF method. In Amoco, the Tribunal stated:

> As a projection into the future, any cash flow projection has an element of speculation associated with it.... For this very reason it is disputable whether a tribunal can use it at all for the valuation of compensation. One of the best settled rules of the law of international responsibility of States is that no reparation for speculative or uncertain damage can be awarded. This holds true for the existence of the damage and of its effect as well.... It does not permit the use of a method which yields uncertain figures for the valuation of damages, even if the existence of damages is certain.
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> [ ] The element of speculation in a short-term projection is rather limited, although unexpected events can make it turn out to be wrong. The speculative element rapidly increases with the number of years to which a projection relates.[183]

451. The Tribunal in Amoco, however, did not totally reject the DCF method, stating that "one element of valuation of a going concern...is its profitability. This element is not easy to translate into figures, and the DCF method could provide the Tribunal with useful information pertaining to profitability, if the method is correctly applied."[184]

452. In fact, the Tribunal-appointed expert used the DCF method in Starrett. Although the Tribunal based its Award on the expert's report, it made several adjustments to the conclusions and the resulting amounts.[185]

453. In Phillips, the Tribunal rejected the claimant's DCF valuation. Given the claimant's production and price estimates and a very low discount rate, the Tribunal held that it could not "agree that the method has resulted in a proper estimate of

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[183] Id., paras. 238-39, at 262.

[184] Id., para. 232, at 260.

[185] Starrett Award, supra note 156.

market value." The Tribunal also found that the method "is not an exclusive method of analysis and that all relevant considerations must be taken into account." The Tribunal did not perform its own DCF analysis with revised figures, but instead sought "to determine and identify the extent to which it agrees or disagrees with the estimates of both Parties and their experts concerning all of these elements of valuation."[186]

454. Therefore, although the DCF method can be relevant in aiding the valuation of a going concern, the Tribunal rejects the Claimant's DCF calculations because they are not based on Khoshkeh's actual financial figures. In addition, the Tribunal finds 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. There were risks that cannot be quantified with any certainty, including the company's anticipated sales or costs, as is required in calculating the discount rate. The greatest uncertainties involve the company's most important intangible property: its exclusive sales and distribution contract with the Austrian firm Gebrüder Böhler AG. Indeed, 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.

455. Considering these facts, a more reliable method in determining Khoshkeh's fair market value is to first calculate the value of its net assets, and then to add to that figure the value of its intangible assets. In calculating Khoshkeh's net assets, the Tribunal must determine the value of the company's fixed assets (including its lands, buildings, and machinery) as well as its current assets and liabilities.

456. With respect to the value of Khoshkeh's fixed assets, the Tribunal first finds that it cannot directly accept any of the

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[186] Phillips, supra note 113, paras. 113-14, at 124.

Parties' experts' contradictory valuation reports and oral testimony. Accordingly, the Tribunal values these properties by taking into account the available information in the record, including the effects of the Revolution on the value of such property, as well as the location of the property.

457. As to other assets and liabilities of the company, the Tribunal bases its findings on the financial statements attached to the valuation reports of Mr. Glover and Mr. Salami. Based on these statements, it appears that on 20 March 1980 Khoshkeh had current assets of Rls. 619,714,933 and current liabilities of Rls. 421,856,631.

458. Finally, the Tribunal must give a value to the other factors that affect the total value of a going concern, including its goodwill and commercial prospects, see supra, para. 449. In this respect, the Tribunal must consider, e.g., how the change in general political, social and economic conditions affected the commercial prospects of the company, see supra, para. 394. The Tribunal assumes that a potential investor could distinguish between investments likely to be undermined by such conditions and those that might reasonably be expected to recover once the turmoil subsided.[187]

459. The Tribunal has already noted that Mr. Riahi's absence from Iran clouded Khoshkeh's future at the time of expropriation. There was further uncertainty about the possible continuation of trade relations with foreign companies and suppliers, which under normal circumstances supplied the needed raw materials. Moreover, Khoshkeh could have faced difficulties because the Government needed to conserve its scant foreign currency. Finally, the company's sales had declined greatly over the preceding three years.

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[187] Khosrowshahi, supra note 107, para. 51, at 93.

460. On the other hand, the Tribunal cannot disregard the company's manifest goodwill, as conceded at the Hearing by the Respondent's expert, Mr. Glover. The company had been profitable from its founding in 1952. In addition, as Mr. Glover stated in his report, the increase in foreign orders in the second half of 1358 (1979) indicated some recovery of sales and profits. Furthermore, Mr. Glover believed that the increase in gross profits was due to the imposition of import restrictions and foreign exchange controls after the Revolution. Therefore, because imported specialty steel apparently was an important raw material for Iranian industry, the company's future prospects were not necessarily as dampened by the Revolution as if it had been importing, say, luxury consumer items.

461. Therefore, considering the factors relevant to the valuation of a going concern, and taking into account the circumstances of this Case and the available evidence, the Tribunal values Khoshkeh at Rls. 360,000,000. The Tribunal further notes that it has not been its practice to discount the value of claimants' shares for minority holdings,[188] as is suggested by the Respondent and its experts. Accordingly, the Tribunal holds that the Claimant is entitled to Rls. 54,000,000, or U.S.$764,873, for her 15 percent ownership interest in Khoshkeh.

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[188] See Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Final Award No. 560-44/46/47-3, para. 167 (12 Oct. 1994), reprinted in 30 Iran-U.S. C.T.R. 170, 231; Birnbaum, supra note 121, para. 146, at 292; and Saghi, supra note 73, para. 95, at 52.

D. Rahmat Abad

1. The Claimant's Contentions

462. The Claimant seeks U.S.$23,865,000 as the fair market value, at the time of expropriation, of her claimed 45.14 percent equity interest in Rahmat Abad, as calculated by Willamette. According to the Claimant, the valuation covers the principles of business valuation that are well settled in the jurisprudence of the Tribunal, including the use of the DCF method.

463. The Claimant contends that the company's main asset is a farm comprising 400 hectares (4 square kilometers) of land, of which 400 acres (approximately 1.6 square kilometers) had been transformed into an orchard and other facilities by September 1979. The farm had some 160,000 fruit and other trees. The Claimant states that for irrigation, the farm had a qanat[189] and two deep wells that produced 290 liters water per second, or 1.044 million liters per hour. The farm also had buildings, including an owner's residence, a managing director's house, a guesthouse, nineteen workers' houses, a pigeon tower, a primary school with residential quarters, two fruit warehouses and a garage and repair shop. According to the Claimant, the farm also had two trucks, two tractors, one trailer, one Chevrolet Blazer, and two pickup trucks. In addition, the company allegedly owned 5,000.1 shares in Bank Tehran, 200 shares in Pars Paper Company, and Rls. 20 million in a fixed deposit with Bank Melli. The value of the furniture and art works allegedly belonging to the company is claimed to be U.S.$306,905.50, based on two valuation reports by Mr. Shahin Khalili and Mr. Jeffrey

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[189] Dr. Damavandy, the Claimant's agricultural expert, explains that a qanat "consists of a number of wells drilled on the skirt of a mountain or hill and connected through a subterranean canal that carries the underground water from the heart of the mountain or hill."

P. Fuller. As an indication of the company's revenues, the Claimant refers to Mr. Riahi's diary, which indicates that Rahmat Abad generated Rls. 22,120,000 in 1359 (21 March 1980 to 20 March 1981) from the sale of fruit.

464. The Claimant states that she has had no access to the financial records of Rahmat Abad, claiming that they are in the Respondent's possession. She adds that although the Tribunal ordered the Respondent to produce those documents, including the company's registration documents, the Respondent produced only the annual accounts for the company's first trading year, 1357 (21 March 1978 to 20 March 1979).

465. The Claimant argues that the DCF method is widely used as a means of ascertaining the present value of a going concern. Because the Claimant deems Rahmat Abad a going concern, she argues that DCF is the applicable valuation method. The Claimant points out that Rahmat Abad's net future cash flows could be projected with an unusually high degree of certainty, as Mr. Riahi's records show what the company's income-generating assets were at the time of expropriation, i.e., the number of trees at the farm and the dates they were planted. The Claimant asserts that the discount rate applied to Rahmat Abad's anticipated future net cash flows took into account that the farm was a relatively low-risk business. The Claimant maintains that the discount rate also incorporated a very high 15 percent inflation rate, which was prevailing in February 1980, although a realistic investor could have expected the rate of inflation to fall in subsequent years.

466. The Claimant submits that Rahmat Abad was productive and profitable at the time of expropriation. In support of her claim, the Claimant relies on the valuation reports of Mr. Curtis and of Willamette, as well as two expert opinions of Dr. Hossein Damavandy and one opinion of Dr. Esmaeil Fallahi, both

of whom are specialists in fruit tree cultivation. Mr. Reilly, from Willamette, and Dr. Fallahi testified as expert witnesses at the Hearing.

467. The Claimant's first valuation expert, Mr. Curtis, valued Rahmat Abad at U.S.$15,802,238, using the blended value of 100 percent of the company's common equity on 1 February 1980. Mr. Curtis's figure is a weighted median value of various appraisal methods used by him in his report. The Claimant asserts, however, that Mr. Curtis had far less information to work with than its second valuation expert, Willamette, had. Mr. Curtis's material was limited to six months' operating results from 1979, from which cash flow projections were made. Therefore, the Claimant now holds that, in the light of later evidence, certain of Mr. Curtis's assumptions were incorrect and on the low side.[190] For example, he had assumed that Rahmat Abad's trees produced no fruit until eight or ten years after their planting, though the trees began producing fruit four years after planting.

468. In his affidavit, Dr. Damavandy states that during his visit to the farm in 1978, the farm was a showplace, producing very high quality fruit, primarily quince, and was close to becoming a great commercial success. In his opinion, the farm had all the necessary elements and conditions for the successful commercial development of quince. He recollects that the orchard contained first-rate, well-maintained trees. The orchards in that area, close to Isfahan, were famous for high quality "Isfahan quince," as distinguished from other quince in Iran, known as "local quince." Dr. Damavandy opined that quince trees begin to bear fruit in the fourth year after planting and

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[190] Mr. Curtis states that his approach is conservative, and that the indicated value "actually lies significantly below the range of entity values determined through an analysis of the effect of future income flows."

reach full production eight to ten years after planting. Relying on the information provided by Mr. Riahi as to the number of trees and their planting dates, Dr. Damavandy states that Rahmat Abad's then-existing 110,000 quince trees would have produced about 3,300,000 kilograms of fruit after eight to ten years and 3,850,000 kilograms after fifteen years. The production life of a quince tree is up to fifty years. Dr. Damavandy emphasizes that fruit prices in Iran were determined by the market, although the Government attempted to control prices through pricing commission notices. He does not appear to give a direct estimate of the total quince production in 1980. However, based on Dr. Damavandy's report, Willamette calculated that Rahmat Abad's 110,000 quince trees would have generated Rls. 143,985,000 in 1980, based on a wholesale price of Rls. 80 per kilogram. According to Dr. Damavandy, the maintenance costs of Rahmat Abad's orchard would not have exceeded 15 percent of its gross sales and the total sale price of the crops of other fruit trees, i.e., pomegranate, grape and apple, upon reaching full maturity in 1980 prices would have been Rls. 51,900,000.

469. Dr. Fallahi, Professor of Pomology at the University of Idaho, agrees with Dr. Damavandy's fruit tree yield estimates. He testified as to the favorable climate conditions at the farm for growing fruit trees. He argued that the abundance of the farm's cultivable "Class III" lands would have enabled the expansion of the orchard, as planned by Mr. Riahi. Dr. Fallahi testified that the farm had all the elements necessary to become a very successful orchard. Dr. Fallahi opined that, in particular, quince, which is native to Iran, seldom suffers spring frost damage. Moreover, he testified that quince in the Isfahan area is bigger and better than those in other regions of Iran. Under Mr. Riahi's direction, the farm also had employed a modern high-density cultivation system and it used special

rootstalks to make the trees more adaptable to the local environmental conditions.

470. According to Dr. Fallahi, the Respondent's expert, Engineer Ahmad Darbani, failed to take into account the impact of local growing conditions when calculating the fruit production capacity of the farm. For example, Dr. Fallahi refutes Mr. Darbani's assessment of the farm's soil conditions and contends that the Respondent's own evidence confirms that over 80 percent of the total arable land of the farm was Class III and hence, in his view, cultivable without limitations. Similarly, Dr. Fallahi points out that even under Mr. Darbani's lower estimates of the farm's water production, its total water capacity was more than enough for growing fruit trees.[191] Finally, Dr. Fallahi corrects Mr. Darbani's opinion that Rahmat Abad's high-intensity farming produced less fruit and thus, lower yields. Dr. Fallahi argued that Mr. Darbani failed to acknowledge the inverse relationship between the amount of fruit per tree and the average weight per fruit; that is, the fewer fruit per tree, the greater the size of each fruit. Hence, trees that produce fewer fruit can produce yields equal to or greater than those that produce a greater number of fruit.

471. As a basis for its valuation, Willamette uses the income approach, specifically the DCF method, to calculate the going-concern value of Rahmat Abad. The Willamette report includes a 10-year projection for the income of the farm after the taking, based on historical operating activity, future production capacity, and the expert projections of Dr. Damavandy. The report uses an 11 percent present value discount rate, which incorporates a 25 percent cost of equity capital component. At

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[191] With respect to the climate conditions, Dr. Fallahi stated at the Hearing that the Rahmat Abad farm is located approximately 1,600 meters above sea level, not 1,800 meters, as suggested by the Respondent's experts.

the Hearing, Mr. Reilly raised the applicable discount rate to 17 percent, based on Mr. Christopher G. Glover's report for the Respondent.

472. The Willamette report argues that, at the valuation date, "the economic and investment climate in Iran was relatively unstable, but not necessarily unfavorable." The report concedes that "[c]onditions were more stable in June 1979 than in February 1980," but noted that certain factors operated in Rahmat Abad's favor. First, the company owned its farmland, and during political and economic unrest, the value of land tends to appreciate. Second, political and economic unrest has little effect on the demand for agricultural products. Third, if the company needed financing for business operations, its land could be used as collateral for a low-interest mortgage. Accordingly, Willamette's valuation assumed a low cost of equity capital. Willamette concludes that, on 27 February 1980, the fair market value of the Claimant's claimed 158 shares in Rahmat Abad was U.S.$23,865,000.[192]

473. The Claimant criticizes the Respondent's expert, Mr. Ghorbani-Farid, on three grounds: (1) his statements are unsupported; (2) he is not an expert in property valuation, especially in the agricultural field; and (3) his valuation of Rahmat Abad reflects a fundamental lack of understanding of both the company and the industry. Among the Claimant's specific criticisms of Mr. Ghorbani-Farid's report, she rejects his opinion that the farm's soil is unsuitable for quince production, that its quince is "very cheap," and that agriculture in the region is unprofitable. These kinds of mistakes, she claims, led the Respondent's expert to apply a "net book value" appraisal, which the Tribunal earlier

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[192] This figure was given by Mr. Reilly at the Hearing. Before changing the discount rate from 11 to 17 percent, the Claimant's shareholding was valued to be U.S.$30,802,000.

criticized in Amoco.[193] In the Claimant's view, Mr. Ghorbani-Farid also grossly understated the "book value" of Rahmat Abad's land (Rls. 22.6 million), and failed to take into account, inter alia, different farm assets, investments and the escalation in real estate prices. In addition, the Respondent's expert wrongly assumes that the company did not own its farmland and installations. Finally, the Claimant contends that Mr. Ghorbani-Farid's valuation also understates the value of the company's shareholdings and assumes, unjustifiably, that much of the debt owed to the company was uncollectible.

2. The Respondent's Contentions

474. The Respondent and its valuation experts dispute the application of DCF method to the valuation of orchards like the Rahmat Abad farm. The Respondent cites the handbook of the American Institute of Real Estate Appraisers, The Appraisal of Rural Property, which recommends the cost approach for immature orchard property and the sales comparison method for properties which are mature or have reached breakeven.

475. The Respondent points out that Rahmat Abad never made a profit and, in fact, incurred heavy losses. In addition, the value assigned by Willamette to the company is 54 times the amount Mr. Riahi claims to have invested in the company, i.e., Rls 90 million.[194] The Respondent criticizes the Willamette valuation of Rahmat Abad for giving too optimistic values to the

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[193] Amoco, supra note 173, para. 255, at 267. The Claimant also cites Phillips, supra note 113, paras. 108-10, at 121-22.

[194] The Respondent's calculation was based on Willamette's initial valuation of the company, which apparently was close to U.S.$68 million. As noted in para. 471 and in note 192, the discount rate used by Willamette was later changed from 11 to 17 percent, reducing the value of the Claimant's claimed ownership interest from U.S.$30,802,000 to U.S.$23,865,000. Accordingly, Willamette's final value for the whole company was approximately U.S.$52.9 million.

equity of the company. It is submitted that Willamette relies on highly speculative crop forecasts, exaggerated sales prices, underestimated costs and grossly understated discount rates. The Respondent further argues that, as its practice before this Tribunal shows, Willamette uses methods that other experts would not accept, and that Willamette has manipulated the facts and figures in favor of the Claimant. The Respondent doubts Dr. Damavandy's estimates of the quantity, quality, and prices of Rahmat Abad's fruit, and also argues that he failed to calculate necessary costs for packaging and transporting fruit to the market. The Respondent also believes that even Mr. Curtis's lower valuation is grossly overstated and disputes the Claimant's contention that Mr. Curtis had less financial data available for his analysis than Willamette had.

476. The Respondent disputes Rahmat Abad's ownership of 5,000.1 shares in Bank Tehran, contending that the company had only 500.1 such shares at the expropriation date. In support, the Respondent refers to the company's trial balance sheet covering the period up to 21 December 1979.

477. In response to the Claimant's proffered valuations of Rahmat Abad, the Respondent submits valuation reports prepared by Mr. Ghorbani-Farid and Mr. Mohammad Safari Koupaie, Mr. Gholamreza Salami, Engineer Darbani, Engineer Morteza Mortazavi, Dr. Vazgin Grigorian, Dr. Kazem Arzani, Mr. Glover and Engineer Ahmad Khodaparast. In support of the contention that the Rahmat Abad orchard was located in an unfriendly environment and was economically non-viable, the Respondent cites Mr. Riahi's diary, in which he records, inter alia, that frost destroyed approximately 90 percent of the Rahmat Abad quince crop in 1979, and that due to frost Mr. Riahi decided to diversify the farm production to include sheep maintenance.[195] The Respondent also

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[195] The Respondent refers to pages 846-47 and 854 of Mr. Riahi's diary.

provides evidence of alleged comparable sales of farms, in the form of letters, affidavits, and newspaper extracts. Finally, it maintains that, if the Tribunal holds that Mr. Riahi retained for himself a life interest in the Rahmat Abad farm, as the title deed of the lands suggests, the valuations submitted by the Respondent's experts should be reduced accordingly.

478. Mr. Ghorbani-Farid states that Rahmat Abad had a history of losses every year prior to its valuation. He posited three different alternatives by which the Tribunal might value the company's net assets.[196] First, the company did not own the farm's real estate, including its buildings, because Mr. Riahi never intended to really transfer his legal title to the land to the company, see infra, para. 490. The net negative value of the company's assets under this approach is Rls. 1.1 million. Second, the company owned the farmland, but not the buildings, because they were not accounted for in the company's books and had not been built to maximize company profits. The net value of the assets under this approach is Rls. 48.8 million. Third, the company owned both the farmland and the buildings. This approach yields a value of Rls. 206.1 million, with the caveat that the real transaction price would be at least 20 percent lower.

479. The report prepared by Mr. Ghorbani-Farid and Mr. Safari Koupaie rejects the Willamette report, inter alia, on three grounds: (1) it is based on speculative information and thus produces an exorbitant value for the company; (2) it should have accounted for Mr. Riahi's alleged personal debt to Bank Keshavarzi in the amount of Rls. 25.3 million, because Rahmat Abad provided security for that loan; and (3) the furniture at

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[196] Mr. Ghorbani-Farid uses the net value method because he regards fruit production as a totally unprofitable business in that area and thus concludes that it would be difficult to find a willing buyer for such a company.

the farm was owned by Mr. Riahi's son, Malek Massoud Riahi, and thus cannot be included in the Claimant's share of the company.[197]

480. In his report, Mr. Salami states that, at the time of expropriation, the fair market value of Rahmat Abad was Rls. 325,721,800. This figure is based on an average of five valuation methods: (1) Adjusted net value of assets (Rls. 218,070,000); (2) investment made plus compound interest, based on Mr. Darbani's valuations of Rahmat Abad's land and superstructures (Rls. 425,145,000); (3) investment made plus compound interest, based on Mr. Riahi's record of Rahmat Abad's investments (Rls. 393,723,000); (4) DCF, based on 70 percent of Dr. Damavandy's production estimates for the existing trees, and applying price estimates of Rls. 50-55 per kilogram for fruits and a 32 percent present value discount rate (Rls. 354,035,000); and (5) DCF, based of Mr. Darbani's production, price and cost estimates and a 32 percent present value discount rate (Rls. 237,636,000).

481. Mr. Salami testified that the DCF method is unsuitable for agricultural properties, although he applied it to Rahmat Abad for comparison purposes. His maximum valuation of the company at the time of expropriation without using the DCF method and without considering the effects of the Revolution is around U.S.$6,000 per hectare. He also testified that the management of an agricultural property has an effect on the profitability of that property.

482. In performing his valuations, Mr. Salami relied on Mr. Riahi's statements concerning the number and age of Rahmat Abad's fruit trees. However, Mr. Salami, unlike Willamette, did

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[197] In addition, Mr. Ghorbani-Farid and Mr. Safari Koupaie believe that the construction work at the Rahmat Abad farm financed by Mr. Riahi cannot be taken into account when the Claimant's share in the company is valued.

not value Rahmat Abad based on the additional 125,000 trees that Mr. Riahi allegedly intended to plant after 1980, because reasonable investors would not have factored Mr. Riahi's plan to plant the additional trees into their valuations. Mr. Salami also points out that Mr. Riahi himself had not regarded the progress of the farm as satisfactory. In addition, the Respondent's expert finds it suspect that Dr. Damavandy has considered Rahmat Abad's entire crop first-grade.

483. The differences between the figures applied by Dr. Damavandy and Mr. Salami mainly relate to the profits of wholesale fruit production as well as harvest, packaging and conservation expenses. Based on the figures provided by Mr. Darbani, Mr. Salami's report calculates fruit production income based on 35 percent of the wholesale fruit price. Mr. Salami further criticizes the discount rate and P/E ratio of the capital applied by Willamette. Noting the discount rate adopted by the Tribunal in the Starrett Award, see supra note 156, and the notes of the Tribunal-appointed expert in the same Case, he applied a 32 percent discount rate, arguing also that Rahmat Abad, as an agricultural enterprise, is more susceptible to natural disasters than was the company at issue in the Starrett Award.

484. Engineer Darbani has submitted two reports, one jointly prepared with Mr. Mortazavi. Both experts are certified agricultural surveyors. In his solo report, Mr. Darbani criticizes Dr. Damavandy's opinion as regards the number of trees and crop projections, suggesting that Rahmat Abad's high-density planting would have produced lower yields. He further claims that Dr. Damavandy neglected several important risks, including the location of the farm in a flood-prone area between a river and highlands, frost, wind, pests and plant diseases. He adds that Dr. Damavandy failed to account for the fact that pesticides became increasingly expensive after 1979. He also

disputes that the climate conditions on site would be "good." Mr. Darbani states that it is widely known that winters in that region cause frost bitten trees and that warm summers require extensive irrigation. He also states that the Government fixed wholesale fruit prices. Mr. Darbani calculated that in 1979 Rahmat Abad's 144,000 fruit trees, had they been fully mature and optimally productive, would have produced 2,220,000 kilograms of fruit, for total net revenues of Rls. 73,255,000. Mr. Darbani also based his calculation of total net revenues on the assumption that costs would total 35 percent of the value of the produced crop. He values the entire company at Rls. 234,820,000, which includes Rls. 73 million for its land and water resources, Rls. 140 million for its trees, and Rls 21.82 million for its buildings.[198]

485. The second report, produced jointly by Mr. Darbani and Mr. Mortazavi, describes the farm's soil as poor, being formed of a sandy clay loam, little colloid, lime layers, and high alkalinity, which limits plant growth. Citing the independent report prepared by the Parsab Consulting Engineers in 1992, they argue that 80.66 percent of Rahmat Abad lands consist of relatively cultivable Class III lands with high or relatively high level of limitation, the rest being land not suitable for agriculture. The Respondent's experts also argue that Mr. Riahi failed to prepare the lands for agriculture, that Rahmat Abad never made a profit, and that Mr. Riahi's real intention was to use the Rahmat Abad farm for recreation.

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[198] As an appendix to Mr. Darbani's valuation report, there is a report entitled "Pedological and Agricultural Studies on Rahmatabad Farmland," prepared by Parsab Consulting Engineers, a private firm commissioned by the Respondent. According to this report, it was prepared in 1992 "for the purpose of exploiting in the best way possible water and soil resources of Rahmat Abad farm."

486. According to the experts' joint report, quince blooms are sensitive to frost. The report further states that the quince trees should be planted 4.5 meters apart, with the maximum of 150 trees per acre. In their opinion, quince from Isfahan and Natanz weigh on average 200 grams or less[199] and the production is about 10,000 kilograms per hectare. They further opined that quince is a negligible part of the Iranian economy.

487. Dr. Grigorian, Associate Professor in the field of fruit breeding at Tabriz University, states that, in describing the climatic conditions in the Rahmat Abad farm, Dr. Damavandy incorrectly relied on weather data from Isfahan instead of on local meteorological conditions.[200] Dr. Grigorian agrees with Mr. Darbani that any valuation of Rahmat Abad must consider that spring frost invariably destroys some portion of the orchard's crops. He disputes that the orchard's sandy soil is as well suited for agriculture as Dr. Damavandy claims. Dr. Grigorian further believes that the water supply for the Rahmat Abad orchard is sufficient to irrigate fruit trees on 160 hectares, but it would not have allowed future expansion up to 380 percent, as Dr. Fallahi argues.

488. Dr. Grigorian further states that the quince trees were planted too close together, and thus calculates annual production yields from 1979-89 of 15,555 tons. He further calculates, from 1979 onwards, the total production of (1) grapes 630 tons (over a 10-year period); (2) pomegranates 1,530 tons (over a 6-year period); and (3) apples 405 tons (over a 9-year period). He also believes that the costs for the orchard are considerably higher than those projected by Dr. Damavandy.

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[199] According to the report, quince as heavy as 700 grams are seen on rare occasions.

[200] Professor Grigorian states (and his statement conforms to those of Messrs. Darbani, Mortazavi, and Arzani) that the Rahmat Abad farm is located 1,800 meters above sea level.

489. Dr. Arzani, assistant professor at the Tarbiat Modarres University, shares the views of the Respondent's other experts concerning the conditions of the farm's land, climate, and its fruit production quality and quantity. He opines that quince and pomegranate are more sensitive to frost than what the Claimant's experts indicate. He also agrees that gardening at the Rahmat Abad farm will be disadvantaged by its poor soil and bad climate, which is ill-suited for the types of fruit grown at the farm. He further supports the Respondent's other experts' opinions that Rahmat Abad's quince trees were planted incorrectly. He concludes that "the most significant factors[,] namely water, land and climate[,] were not duly considered" when the farm was established. Therefore, Rahmat Abad's fruit production is not economically defensible.

490. Mr. Glover has performed his valuation for the Respondent assuming that Mr. Riahi's life interest in the farmland was removed when the property was transferred to Rahmat Abad. Had it not been removed, the value of the company would have been reduced, see supra, para. 477. He also points out that there were no accounts available of the farm's operation prior to its transfer to Rahmat Abad in September 1978. The evidence consists, therefore, mainly of Mr. Riahi's diary. Citing that diary, Mr. Glover notes that Rahmat Abad suffered losses every year from 1956 until 1978, although the income for the Iranian years 1355 and 1356 (21 March 1976 to 20 March 1978) was much greater than that of the earlier years, presumably due to the intensive planting of quince and pomegranate trees.

491. The Respondent had provided Mr. Glover with the accounts for the company's first trading year, 1357 (21 March 1978 to 20 March 1979), as submitted to the Government with the company's tax return. They show a total loss of Rls. 5,874,000. Similar accounts for 1358 (21 March 1979 to 20 March 1980) were not available to the expert.

492. Mr. Glover testified that a farming company is conventionally valued by reference to the market value of its land. He opines that a "more efficient farmer would not be able to sell his farm at the higher earnings-based value since the above-average profitability stems from his personal input and does not pass with the farm." He adds that the American Institute of Real Estate Appraisers supports his conclusion, especially for immature orchards (like Rahmat Abad) that had not yet become profitable at the valuation date.

493. Mr. Glover thus valued Rahmat Abad's net assets at the expropriation date at Rls. 205,000,000. In conducting his valuation, Mr. Glover adopts Mr. Darbani's valuation of the Rahmat Abad farm, including its buildings, (Rls. 234,820,000) and subtracts the company's net liabilities (Rls. 29,601,000). Since the Claimant was a minority shareholder, Mr. Glover recommends a 25 percent discount in calculating her share.

494. The Respondent also introduced evidence of land prices for the Rahmat Abad orchard in 1979. For example, a 7 October 1999 letter to the Respondent from the Director of Agriculture of the City of Natanz states that the price of one hectare of good quality garden lands in the area with a water supply was Rls. 900,000 and for inferior quality garden lands Rls. 700,000.[201] The Respondent also had Mr. Khodaparast inspect the Rahmat Abad farm, together with a representative of the Foundation of the Oppressed, to determine its value for the middle of Iranian year 1358 (September 1980). In his report dated 21/10/1367 (11 January 1989), Mr. Khodaparast valued the farm and its buildings at Rls. 206,701,750.

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[201] The letter also indicates that approximately 40 percent of Rahmat Abad's farmland is of bad quality, though the remainder is deemed good quality.

3. The Tribunal's Decision

495. The Tribunal notes that Rahmat Abad's main asset was its 400-hectare farm. The Tribunal finds that the company also owned 200 shares of Pars Paper Company. With respect to the company's alleged ownership of 5,000.1 shares of Bank Tehran, the Tribunal notes that Rahmat Abad's trial balance for the period ending 21 December 1979 supports the Respondent's contention that the company owned only 500.1 such shares. This contention is further supported by Mr. Vaghefi's 6 March 1980 letter to Mr. Riahi. However, the Claimant has filed a copy of a Bank Tehran share certificate, which states that "[t]his certificate No. 106 represents five thousand shares issued to Rahmatabad Natanz Agro-Industrial Company." Because the Respondent failed to produce any information as to any transfer with respect to this share certificate -- information that the Respondent should have had at its disposal after its nationalization of banks in Iran -- the Tribunal must find that Rahmat Abad owned 5,000.1 shares of Bank Tehran.

496. The Tribunal finds that the transfers of the farmlands to the company were valid transactions and that the value of the land and buildings, constructed on the land and belonging to Rahmat Abad, must be included in the valuation of the company. Furthermore, the Tribunal finds that the evidence in the record does not support the contention that Mr. Riahi retained a life estate in the property when the farm was conveyed to Rahmat Abad in 1978. The transfer deed does not mention that any life estate was retained by Mr. Riahi. On the contrary, he was the transferor with respect to "the benefits of registration plot numbers 155 [Rahmat Abad farm] and 156 [Badi Abad farm]."

497. With respect to Rahmat Abad's income, the Tribunal notes that practically all of the company's revenue came from the sale of its fruit. The company was very new and had not made a

profit in its first few years. On the other hand, many of its fruit trees were immature at the time of expropriation. As such, their future production, under normal circumstances, would have increased, thus increasing future sales proceeds.

498. As stated earlier, see supra, para. 447 and note 180, in the absence of an active and free market for comparable assets, the Tribunal must, necessarily, resort to various analytical methods to estimate the fair market value of the entity involved. The Tribunal, however, notes that when calculating the fair market value of Rahmat Abad, one of the most difficult tasks is reliably determining the fruit production of the orchard. In this respect, the Tribunal observes that the Parties seem to agree, more or less, on the number of fruit trees at the orchard in early 1980, though there are disagreements as to their plantation dates and, thus, their productivity.

499. The Parties' experts offered conflicting testimony as to other factors relevant to crop yields, including soil, water and climate conditions, pests, plant diseases, and planting methods. The Tribunal finds, however, that the 1 January 1980 letter from Rahmat Abad's managing director, Mr. Nabavi, to Mr. Riahi provides the best contemporaneous evidence from which to estimate the orchard's fruit production and revenues. The letter states that total production for the year 1979 was 191,112 kilograms, including 26,112 kilograms of quince. The Tribunal notes that the orchard produced no apples at that time. In his diary, Mr. Riahi had forecast 350,000 kilograms of quince for 1979 and Rls. 14 million in sales revenue. Mr. Riahi also recorded in his diary that he had been informed that the sale of fruit in the year 1359 (21 March 1980 to 20 March 1981) amounted to Rls. 22,120,000. Furthermore, in the letter dated 8 March 1981, allegedly sent by Mr. Nabavi, the crop, apparently for 1980, had sold for Rls. 30 million. All these figures are in

stark contrast to those relied on by Willamette, which, e.g., projected the revenues obtained from quince in 1980 at Rls. 143,985,000.

500. The Parties also disagree as to whether Rahmat Abad should be valued by the DCF method. According to the Claimant, the company was a "productive and profitable concern," and its farm "was a relatively low risk business" and "well on its way to becoming 'a great commercial success.'" Accordingly, the Claimant finds the DCF method very suitable. By contrast, the Respondent rejects this view, emphasizing, inter alia, that the company had never made a profit. Citing Mr. Glover's opinion, it further states that "farm companies are conventionally valued on the basis of their assets, and not their profits, even though they may be considered as going concern[s]."

501. The Tribunal finds enough 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. Much of the orchard was still immature at the time of expropriation. Moreover, the inherent risks facing this kind of a farming company are difficult to quantify in a discount rate. Indeed, frost destroyed at least 90 percent of Rahmat Abad's expected quince crop in 1979.

502. Setting aside the issue of whether, and under what circumstances, the DCF method might be appropriate as an aid in valuing an agricultural company, the Tribunal holds that DCF is inappropriate for valuing Rahmat Abad. The company may well have had a steady demand for its staple products, but it never made a profit. Furthermore, the company's farm had been in the possession of the Riahi family for years and it had been used

for recreational purposes as well. Although Mr. Riahi had planted many new trees and made other investments to promote the growing of fruit, the non-commercial aspect of the farm must be considered in its valuation. The company was not strictly a profit-maximizing commercial enterprise. It also appears that, for many years, the Rahmat Abad farm was managed by Mr. Riahi's relatives, who apparently lacked professional qualifications. In addition, Mr. Nabavi, who was the general manager of Rahmat Abad, was not an agricultural engineer.

503. The Tribunal further concludes that Rahmat Abad was not a going concern at the time of expropriation. As already mentioned, the company had never made profit. Although it was almost certain that the total yield of the farm would increase in the future, the Tribunal is unable to conclude, with any degree of certainty, that the company had a prospect of profitability at the valuation date that can be taken into account in valuation. Moreover, the company apparently had no goodwill. Accordingly, the best estimate of Rahmat Abad's fair market value is the sum of the values of the farm and the other net assets of the company.

504. In valuing the farm, the Tribunal considers its land, buildings, water supply, as well as the age and type of its fruit trees and the moveable property located there and actually belonging to the company. The Tribunal values the company's 200 shares of Pars Paper Company at their face value of Rls. 2,000,000 and its 5,000.1 shares in Bank Tehran at Rls. 8,225,164.5, see supra, para. 401. The Tribunal also determines that the company had long-term debts of Rls. 40,500,000.

505. Therefore, based on all the evidence before it, the Tribunal determines the total value of Rahmat Abad to be Rls. 350,000,000, or U.S.$4,957,507. Consequently, as compensation

for the expropriation of her 0.57 percent ownership interest in Rahmat Abad, the Claimant is entitled to U.S.$28,258.

E. Tarvandan

1. The Claimant's Contentions

506. The Claimant states that Tarvandan was a real estate holding company whose main purpose was to construct a high-rise office building in Tehran. The Claimant seeks U.S.$1,504,000[202] as compensation for the expropriation of her claimed equity interest. This amount has been calculated based on the value of the main assets of Tarvandan, which consisted of (1) 4,260.30 square meters of land[203] with two office buildings (with open and covered parking, a lawn and a garden) at what was then 781 Eisenhower Avenue, Tehran; and (2) time deposit certificates in the amount of Rls. 9,000,000, with a maturity date of 22 July 1980 and a maturity value of Rls. 9,540,616.

507. The Claimant provided expert testimony from Mr. Mansour Anvari, a real estate developer and contractor. He testified that the market value of the company's land and buildings in early 1980 was Rls. 255,618,000 (U.S.$3,620,651). Another expert for the Claimant, Mr. Vahman, stated that the property is located at one of the most important commercial avenues of Tehran, and his appraisal of the property is Rls. 242,744,276, equivalent to U.S.$3,438,304.[204]

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[202] This figure is based on a correction made by the Claimant at the Hearing.

[203] After the sale of 450 square meters to the municipality for widening of the avenue.

[204] In his first affidavit, Mr. Vahman had valued the property at Rls. 244,566,500 (U.S.$3,464,114.73). In his second affidavit, he reduced his figure, after adjusting the measurement of the smaller building.

508. The Claimant, moreover, refers to the appraisal of Willamette, which bases its valuation on the rebuttal affidavit of the Claimant and Mr. Vahman's first affidavit. Willamette uses the asset-based approach in its appraisal, since the company was not generating operating cash flows at the time of expropriation. Willamette calculates Tarvandan's value (as rounded) as follows:

Assets	Rls.
Land	244,567,000[205]
Securities	9,451,000
Total assets	254,018,000
Debt	(18,000,000)
Net Asset Value	236,018,000

509. The Claimant opposes Mr. Ghorbani-Farid's valuation of the Tarvandan shares on various grounds. First, it is claimed that the report is not based on an expert appraisal of the property as of early 1980. In the Claimant's view, the Respondent's expert has no qualifications as a real estate appraiser and he arrives at a valuation by crude estimation. Second, he makes numerous deductions in the course of his calculation that he alleges were drawn from the company's accounting books. Finally, the Respondent's expert wipes out nearly all the value that he had earlier conceded by deducting very large liquidation costs and taxes that would allegedly be payable upon liquidation. The Claimant argues that it is improper to presume that she or the other shareholders planned to liquidate the company.

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[205] Willamette's initial valuation precedes Mr. Vahman's second affidavit and thus does not take account of Mr. Vahman's adjustment explained, supra, in note 204.

510. The Claimant also argues that the Respondent willfully failed to produce the accounting books relied upon by Mr. Ghorbani-Farid, despite Tribunal Orders to do so. The Claimant, therefore, objects to the introduction of any evidence allegedly drawn from these documents and asks the Tribunal to disregard the conclusions of the expert in this respect.

2. The Respondent's Contentions

511. The Respondent contends that, prior to the alleged expropriation date, Tarvandan was "effectively inactive" as a property holding company. Given the post-Revolution real estate market, development of the site was no longer feasible, since financing could not be obtained from the banks, all of which were State-owned.

512. The Respondent states that Mr. Vahman's valuation lacks merit, since he did not personally visit the site. The Respondent contends that Mr. Vahman also overlooked the fact that one of the buildings lacked a construction permit, in the absence of which it had to be demolished if the company wanted to avoid a penalty. Based on Mr. Riahi's diary, in which he cites the price of Rls. 12,000 per square meter for Tarvandan's land two years before the Revolution, and considering that the value increase during that time could have been a maximum of 25 percent, the proper value of the land, in the Respondent's view, is closer to Rls. 15,000 per square meter.

513. The Respondent also refers to two valuation reports prepared by Mr. Ghorbani-Farid, the second of which was prepared together with Mr. Safari Koupaie. Mr. Ghorbani-Farid points out that Tarvandan had no income except for the rent it collected from Iran Bohler, and that until the date of valuation it produced only losses. The first report provides a book value of Tarvandan as of 20 March 1980 of negative Rls. 7.9 million. The

report concludes that the company's dissolution value is approximately Rls. 3,000,000.

514. In the second report, Mr. Ghorbani-Farid and Mr. Koupaie state that no action was taken, and no arrangements were made, to construct the planned high-rise building. They add that in the years 1979 and 1980 the property values plummeted due to the political situation in Iran. Allegedly applying the method used in Birnbaum, see supra note 121, they value the company's land, as of 1980, at Rls. 15.3 million and its buildings at Rls. 3.3 million, which is 25 percent above the book value. These experts consider the valuation performed by another of the Respondent's experts, Dr. Pooya, overstated.

515. Dr. Pooya has produced two valuation reports on Tarvandan. He generally believes that the value of real property in Iran was adversely affected by the political, economic, and social changes brought about by the Revolution. Dr. Pooya values Tarvandan's real estate (its land and buildings) at Rls. 75,500,000 at the time of expropriation, estimating the value of the land at Rls. 16,900 per square meter. He also notes that in 1976 Mr. Riahi had purchased shares in the company based on the valuation of the land at Rls. 15,000 per square meter, and thus rejects Mr. Vahman's valuation of the land for the Claimant, as of 1980, at Rls. 55,000 per square meter. He draws attention to the fact that the newer of the two office buildings lacked the necessary construction permits, thus decreasing its value.

516. The Respondent's third expert, Mr. Glover, states that there were no accounts available for Tarvandan. As a property holding and investment company, he opined, the company should be valued based on its net assets. Using Dr. Pooya's Rls. 75.5 million valuation of the land and buildings, adding the value of the company's bank deposits, and subtracting its liabilities, Mr. Glover calculated Tarvandan's net asset value at Rls.

54,079,000 at the valuation date. He states that the fair market value of the Claimant's ownership interests would be much lower because any prospective buyer would need to dissolve the company. On the other hand, if the company were not liquidated, the purchaser would earn very little return because, in the short or medium term, some losses would accrue. In addition, if the new purchaser opted to sell his holding to the controlling shareholders, the Riahi family, he would have had to discount the price by 25 percent.

3. The Tribunal's Decision

517. For the reasons stated supra, in para. 413, the Tribunal cannot accept the conclusions of Mr. Ghorbani-Farid. 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. The Tribunal notes that the Parties' other experts agree upon an asset-based valuation approach, although they disagree as to whether the company should be given a dissolution value, as the Respondent's experts all maintain. Under the proposed liquidation method, dissolution costs are deducted from the market value, thus providing a lower valuation than an asset-based valuation. It has not been the practice of the Tribunal to give a dissolution (liquidation) value such meaning. The Tribunal previously has held that "[v]aluations that merely calculate the net value of assets and liabilities may be appropriate for determining the dissolution or liquidation value of a company,"[206] and that there is "no discount from the fair market value of assets as might

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[206] Saghi, supra note 73, para. 90, at 49. See also TAMS, supra note 119, at 226.

occur in actual distress liquidation circumstances."[207] Therefore, the Claimant is entitled to compensation based on the full value of Tarvandan's fixed and current assets, less any liabilities outstanding at the date of taking.

518. The Tribunal first notes that Dr. Pooya values the land of the company at Rls. 72,000,000 (Rls. 16,900 per square meter) and the buildings at Rls. 3,500,000. Mr. Vahman gives a value of Rls. 55,000 per square meter for the land and Rls. 20,000 and 25,000 per square meter for the buildings (in total, 370 square meters). Even assuming a good location for the property, the Tribunal believes that Mr. Vahman's figures are too optimistic as to the property's fair market value in March 1980. The Tribunal previously has held that diminished investor confidence in the Tehran real estate market temporarily depressed real estate values in Tehran at the time of the Revolution and shortly after it.[208] The Claimant's experts have not taken this market disturbance into account. Were the Tribunal to assume, in this instance, that the negative effect of the Revolution was offset by inflation during the period prior to that event (1976-1978), Dr. Pooya's valuation of Rls. 16,900 per square meter for the land appears more realistic, considering the fact that Mr. Riahi had bought shares in Tarvandan in 1976 based on the value of the land, which was valued at Rls. 15,000 per square meter.

519. However, considering all the available evidence and the relevant circumstances of this particular claim, including inflation up to the valuation date and the negative impact of the Revolution, as well as its findings in Birnbaum,[209] the Tribunal values the land at Rls. 18,000 per square meter.

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[207] Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 267 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101-2.

[208] Birnbaum, supra note 121, paras. 63-64, at 277-78.

[209] Id.

Accordingly, Tarvandan's 4,260.3 square meters of land is valued at Rls. 76,685,400. As to the value of the two buildings, the Tribunal fixes their combined value, at the time of expropriation, at Rls. 5,450,000. Adding to these figures Rls. 9,450,616, for the value of the company's bank deposits brings the value of total assets of the company to Rls. 91,586,016.

520. The company, however, also had debts. According to the Claimant, the company owed her and Mr. Malek Massoud Riahi each Rls. 9,000,000.[210] The Tribunal also notes that in his letter to the Claimant dated 16 July 1980 Mr. Vaghefi states that at the time of expropriation the company owed Mr. Riahi Rls. 21,421,602.[211] Deducting the total liabilities of the company from the total value of its assets, the Tribunal reaches a net value of Tarvandan of Rls. 52,164,414. The value of the Claimant's 1.33 percent equity ownership interest is, therefore, Rls. 693,787, equivalent to U.S.$9,827.

F. Toyota Automobile and Horse

1. The Parties' Contentions

521. The Claimant states that she purchased her 1978 Toyota in November 1977 for Rls. 741,450. Because the price of new and secondhand cars rose rapidly in Iran in the 1970s, the Claimant alleges that the market value of her Toyota at the expropriation date in 1980 was about the same as its purchase price. Her claim for the Toyota is thus U.S.$10,517.

522. The Claimant contends that the fair market value of her horse (Pishdad) at the time of expropriation in 1980 was U.S.$2,800. The Claimant argues that, contrary to the

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[210] The Tribunal found the Claimant's claim concerning this loan inadmissible. See supra, paras. 66-69.

[211] It has not been claimed, and nothing is produced to show, that these debts were interest bearing liabilities.

Respondent's allegations, the market for such quality horses remained strong, and their values remained high, throughout 1980.

523. The Respondent claims that at the time of expropriation there was no real market in Iran for the luxuries like horses. The prices for such luxuries were low. Other than these comments, the Respondent provides no valuation evidence concerning the car and the horse.

2. The Tribunal's Decision

524. The Tribunal notes that the Claimant has provided information about the purchase price of the Toyota automobile. The Tribunal, however, finds 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 Rls. 519,015, or U.S.$7,351.

525. With respect to the value of the horse, Pishdad, the Claimant relies on her own expert knowledge. The Tribunal is not persuaded that the Revolution in Iran adversely affected the market and the value of horses in Iran. Moreover, the Respondent has not offered any evidence or opinion regarding the value of Pishdad. The Tribunal, therefore, accepts the Claimant's valuation, and finds that she is entitled to U.S.$2,800.

VII. INTEREST

526. The Tribunal notes that the Parties have presented no reason that would make it necessary to deviate from the principles outlined in Sylvania Technical Systems, Inc.[212] when deciding the issue of interest. Accordingly, the Tribunal considers it appropriate to award interest to the Claimant at the rates and from the dates indicated in Section IX, infra.

VIII. COSTS

527. The Claimant claims costs of legal representation for a total amount of U.S.$2.2 million. This amount includes (1) fees to lawyers and others for research and preparation of the Case; (2) the assistance of experts who have submitted reports, opinions and testimony; (3) the cost of Farsi translations and checking the Respondent's translations; and (4) other incidental costs, including copying, courier services, travel. The Claimant also emphasizes that the Respondent by its conduct has prolonged the proceedings and increased the cost for the Claimant.

528. The Respondent requests the Tribunal to dismiss the Claimant's claims and to award payment of the Respondent's costs in an amount which the Tribunal deems equitable.

529. In light of the facts and the outcome of this Case, the Tribunal determines that the Claimant shall be awarded costs of arbitration of U.S.$70,000.

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[212] Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 320-22.

IX. AWARD

530. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Claims for the expropriation of the Claimant's deposit made in favor of KHOSHKEH and her loans for RAHMAT ABAD, TARVANDAN and GAV DARAN are inadmissible.

(b) The Claims for the expropriation of the Claimant's shares in SARHAD ABAD and her one percent ownership interest in the lands managed by the company are inadmissible.

(c) The Claim for the expropriation of the Claimant's down payment for two telephone lines is inadmissible.

(d) The Claim for the expropriation of the Claimant's shares in KHOSHKEH is dismissed with respect to 510 shares, for failure to prove her ownership of the shares.

(e) The Claim for the expropriation of the Claimant's shares in RAHMAT ABAD is dismissed with respect to 156 shares, for failure to prove her ownership of the shares.

(f) The Claim for the expropriation of the Claimant's shares in TARVANDAN is dismissed with respect to 33 shares, for failure to prove her ownership of the shares.

(g) The Claim for the expropriation of the Claimant's shares in GAV DARAN is dismissed for failure to prove her ownership of the shares.

(h) The Claims for the expropriation of the Claimant's two horses, FESTIVAL and SHARAREH, and for the PEYKAN automobile are dismissed for failure to prove her ownership.

(i) The Claim for the expropriation of the Claimant's ASP APARTMENT is barred by the caveat expressed in the Decision in Case No. A18.

(j) The Claim for the expropriation of the Claimant's contractual rights to two apartments (FARAHZAD APARTMENTS) is barred by the caveat expressed in the Decision in Case No. A18.

(k) The Claim for the expropriation of the Claimant's property in the ASP Apartment is dismissed for the lack of proof of expropriation.

(l) The Claim for the expropriation of the Claimant's horse, TARLON, is dismissed for the lack of proof of expropriation.

(m) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay to the Claimant, FREDERICA LINCOLN RIAHI, as compensation for expropriation of her

- 33,871.70 shares in BANK TEHRAN, the amount of U.S.$789,220 (Seven Hundred Eighty-Nine Thousand Two Hundred Twenty United States Dollars and No Cents), plus simple interest at the rate of 7.305% per annum (365-day basis) from 11 June 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- 500 shares in IRAN BOHLER, the amount of U.S.$70,822 (Seventy Thousand Eight Hundred Twenty-Two United States Dollars and No Cents), plus simple interest at the rate of 7.136% per annum (365-day basis) from 1 March 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- 1,500 shares in KHOSHKEH, the amount of U.S.$764,873 (Seven Hundred Sixty-Four Thousand Eight Hundred Seventy-Three United States Dollars and No Cents), plus simple interest at the rate of 7.051% per annum (365-day basis) from 5 July 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- two shares in RAHMAT ABAD, the amount of U.S.$28,258 (Twenty-Eight Thousand Two Hundred Fifty-Eight United States Dollars and No Cents), plus simple interest at the rate of 7.136% per annum (365-day basis) from 27 February 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- one share in TARVANDAN, the amount of U.S.$9,827 (Nine Thousand Eight Hundred Twenty-Seven United States Dollars and No Cents), plus simple interest at the rate of 7.045% per annum (365-day basis) from 16 July 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account;

- TOYOTA automobile, the amount of U.S.$7,351 (Seven Thousand Three Hundred Fifty-One United States Dollars and No Cents), plus simple interest at the rate of 7.136% per annum (365-day basis) from 15 March 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account; and

- horse, PISHDAD, the amount of U.S.$2,800 (Two Thousand Eight Hundred United States Dollars and No Cents) plus simple interest at the rate of 7.136% per annum (365-day basis) from 27 February 1980 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment to the Claimant out of the Security Account.

(n) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay to the Claimant, FREDERICA LINCOLN RIAHI, the sum of U.S.$70,000 (Seventy Thousand United States Dollars and No Cents) in respect of her costs of arbitration.

(o) The above-stated obligations shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

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

Dated, The Hague

27 February 2003

Bengt Broms

Chairman

Chamber One

In the Name of God

Assadollah Noori

In addition to my dissenting from the finding of the Chamber with respect to the Claimant's dominant and effective nationality expressed under my signature to the Interlocutory Award in this Case (No. 485), I Concur in part with and Dissent in part from the findings of the present Final Award.

Charles N. Brower

Concurring and Dissenting Opinion