

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Gavrilović and Gavrilović d.o.o.

v.

Republic of Croatia

(ICSID Case No. ARB/12/39)

PROCEDURAL ORDER NO. 5

Michael C. Pryles, President of the Tribunal
Stanimir A. Alexandrov, Arbitrator
J. Christopher Thomas QC, Arbitrator

Secretary of the Tribunal
Jara Mínguez Almeida

Assistant to the Tribunal
Albert Dinelli

20 April 2016

Introduction

1. Between 7 and 16 March 2016, a hearing in respect of preliminary objections and the merits was held in this arbitration (**the Hearing**).
2. At the Hearing, various drafts of a proposed set of orders dealing with the remaining procedural steps in the arbitration were circulated to the Parties, as were various drafts of a list of issues. The Parties were heard on the content of these documents and, in respect of the orders dealing with the remaining procedural steps in the arbitration, the Parties were invited to, and did, comment in writing on those orders. In regard to the latter, submissions were received from both Parties on 30 March 2016 and reply submissions in respect of the opposing Party's submissions were received on 13 April 2016.
3. Having regard to these submissions, the Tribunal has deliberated and this Procedural Order No. 5 provides further orders for the conduct of the proceeding. Further, it attaches, as Annexure A, a list of issues in the proceeding which are to guide the Parties' post-hearing submissions.
4. Having regard to the various submissions made by the Parties, and the opposing positions taken by the Parties, it is necessary to say something more about the content of this Procedural Order, so as to explain the rationale for the Tribunal's resolution of these issues, and how, having taken in to account the submissions of each Party, the Tribunal has decided to resolve them.

Procedural steps

5. There are a number of issues that were raised by the Parties orally at the Hearing, and in writing, which demonstrated a divergence of view as to the procedural steps going forward in this arbitration. Those matters, and the manner which they have been resolved, culminating in Procedural Order No. 5, are as follows.
6. First, a question arose as to the power of the Tribunal to order the provision of lists of the properties and apartments in issue, a proposal raised with the Parties at the Hearing, and, if the Tribunal were so empowered the appropriateness of doing so. By letter dated 21 March 2016, the Tribunal invited the Parties, as part of the submissions that had already been ordered, to specifically address these issues. Its letter stated:

[I]n relation to the lists proposed by the Tribunal, the Parties are invited to make submissions as to:

- (a) whether the Tribunal has the power to provide the proposed lists; and
- (b) if so, whether it is appropriate to do so.

- 7. The Tribunal was assisted by the Parties' submissions on these issues.
- 8. The Respondent opposed the provision of such lists, on the basis that, it said, "the Tribunal appears to be inviting the Claimants to plead their case in a way that is not in line with the Claimants' submissions to date". That is, the Respondent contended that the provision of the lists would have the effect of allowing the Claimants to plead their case on a plot-by-plot basis, an approach which it said had been eschewed by them in their pleadings. We will return to that issue below. But, in making the submissions it did, the Respondent did not assert – nor could it reasonably do so – that the Tribunal did not have power to obtain such assistance from the Parties. Accordingly, the Tribunal has no hesitation in ordering the provision of the lists. They are a means by which the Parties can further assist the Tribunal by arranging the data already on the record
- 9. Second, as to the issue of whether the Claimants can pursue a "new" case, the Tribunal does not permit any such case to be pursued. Nor are the lists a means by which that can be pursued via an alternative means. Indeed, it is for this reason that the procedural orders set out below contain orders to the following effect:

(2) No Party is permitted, in:

- (a) the lists the subject of paragraphs (4)-(6) below;
 - (b) the post-hearing submissions the subject of paragraph (7); and
 - (c) the reply submissions the subject of paragraph (8),
- to:
- (d) put forward any new claims or defences; nor
 - (e) produce any new evidence.

(3) To the extent that the Parties wish to refer to evidence, laws and legal authorities in:

- (a) the lists the subject of paragraphs (4)-(6) below;
- (b) the post-hearing submissions the subject of paragraph (7); and
- (c) the reply submissions the subject of paragraph (8),

only evidence on the record (witness statements, documents and transcript of the hearing) may be referred to and only laws and legal authorities previously produced may be cited.

10. In relation to the content of the post-hearing submissions, the Tribunal had, at the Hearing, raised with the Parties the possibility of those submissions being a “complete repository” or a “principal repository” of the respective submissions of each Party. It was not, of course, intended by the Tribunal that this meant that “the Tribunal would be effectively relieved of its duty to take into account the parties’ submissions to date”.¹ But, in any case, for the avoidance of doubt, the Tribunal notes that no such order is herein made.
11. Thirdly, the Respondent has sought “an opportunity to properly answer the Claimants’ newly-framed case”² by being able to see, and thus reply to, the Claimants’ lists and submissions.
12. Insofar as the lists are concerned, consistently with the approach advised at the Hearing, the Tribunal considers that there is considerable merit in their being sequential provision, rather than simultaneous exchange, of those lists. This is so because the Tribunal envisages, and indeed hopes, that there will be a significant modicum of agreement. Accordingly, the orders provide that the lists sought will be provided by the Claimants, with provision for the Respondent to comment on the content of those lists, noting any agreement or disagreement with their content in the column set aside for this purpose. The Claimants will have an opportunity to reply to those comments.
13. Insofar as the post-hearing submissions are concerned, in light of the orders made herein by the Tribunal, and set out at paragraph 9 above, the basis for the Respondent’s application falls away. Indeed, the relevant evidential record being concluded (subject to any further application that may be made, and which will, of course, be determined on its merits), there is no reason why the Parties are unable to put forward their respective cases. The provision of sequential post-hearing submissions will delay the finalisation of this arbitration for no benefit to the Parties that is discernible to the Tribunal. Further, and critically, having regard to the orders set out at paragraph 9 above, nor is there any denial of procedural fairness, natural justice or due

¹ cf. See the letter from the Respondent to the Tribunal dated 30 March 2016, p 2.

² See the letter from the Respondent to the Tribunal dated 30 March 2016, p 2.

process, each Party being hereby granted an appropriate amount of time to provide its submissions.

14. Fourthly, and returning now to the lists, the Tribunal refers to the orders made herein, and particularly those set out at paragraph 9 above. As they make clear, the lists should not contain any information for which there is no evidential basis. If there is no evidence on the record capable of supporting a reference in the table, that information should not be included.
15. As to the specific matters raised by the Parties, a number are agreed and that agreement is reflected in the orders herein.
16. As to where there remains disagreement:
 - (a) even noting that it may be cumbersome to do so, the Tribunal considers it appropriate that each list be provided in its entirety, without any sub-lists;
 - (b) where necessary, and supported by evidence, the lists should contain information referable to each plot within a property. Accordingly, where, for example, a property contains more than one land plot, the determination of whether registration is in the name of the Respondent should be made for each land plot, not the property;
 - (c) sub-paragraph (e) of List 1 should be amended to read “whether each land registry plot is construction or agricultural land”,³ and there is no need for any further sub-paragraph to be inserted;
 - (d) sub-paragraph (f) of List 2 should be retained, noting again (for the avoidance of doubt) that any responses will be limited to what evidence is on the record (if any);
 - (e) there is no basis for the inclusion of a column in List 1 as to whether the Property is fit for use and/or whether the Claimants have been using it, as this issue does not arise on the pleadings; and
 - (f) the Tribunal does not consider it necessary to include in List 2 a further sub-paragraph in the form of the proposed sub-paragraph (g) contained in the Claimants’ letter dated 30 March

³ (Emphasis added.)

2016,⁴ nor any other reference to the dates upon which the Apartments were sold, donated or rented, or consent provided for occupation of the Apartment.

17. Fifthly, the Parties will recall that the Tribunal sought a combined list of abbreviations at the Hearing. On the final day of the Hearing, the Tribunal was informed that the Claimants had sent a draft to the Respondent, who had not yet responded.⁵ Without intending any criticism of the Parties, some time has now passed without its provision to the Tribunal. The Tribunal would be grateful to receive that combined list as soon as possible. For completeness, an order seeking the filing of that list by 29 April 2016 is made herein.
18. Finally, as to the necessity of a further hearing, the Respondent made an application on the final day of the Hearing for a further hearing to enable it to make oral closing submissions. It relied on the fact that it had not had sufficient time to put such submissions at the Hearing and that it would be necessary to respond to the Claimants' "new" case. As to the latter, the Tribunal has already said, and Procedural Order No. 5 makes clear, that the Claimants are not permitted to ventilate any "new" case. As for the former, the Tribunal notes that each party was given significant time at the Hearing to present its case, and its choice of how to spend that time (namely, in opening or cross-examination of witnesses or closing) was a choice for it. Nevertheless, and having regard to the opposition of the Claimants for any further hearing, the Tribunal has determined that it would be assisted by a further hearing. As the Tribunal noted at the Hearing, it will have to confer to deliberate about the matter in any case, and will, undoubtedly, have questions upon which the Parties may be able to assist it. Further, it is worth emphasising, as is patently obvious from the voluminous materials filed in this arbitration, that this case is extremely complex. In those circumstances, and having regard to the monetary value of the claims, a further hearing of two days is, in the Tribunal's view, entirely appropriate.
19. The Parties were invited, by letter from the Tribunal dated 21 March 2016, to advise of their availability for such further hearing on 21 and 22 September 2016.⁶ There being no submissions made to the effect that the Parties were unavailable on those dates, the further hearing will be held on 21 to 22 September 2016 in Washington D.C.

⁴ See p 5.

⁵ See Transcript (16 March 2016), 2093.15-22.

⁶ See paragraph 4.

List of issues

20. At the conclusion of the Hearing, there were only three sub-issues the content of which had not been the subject of resolution, whether by agreement or in discussion with the Tribunal. They were Issues 5.2, 9.1 and 9.2.
21. After considering the submissions of the Parties in this regard, the Tribunal has determined to leave them as originally drafted.
22. More specifically:
 - (a) if and to the extent that the Claimants rely on a “legitimate expectation” to have certain property transferred to it beyond that which is described in Issue 5.1, Issue 5.2 permits it to develop that argument. The Respondent is free, of course, to also make submissions as to the non-existence of such a “legitimate expectation”; and
 - (b) Issues 9.1 and 9.2 merely set out the further articulation of the alleged direct and indirect damages suffered. It is accepted, of course, that the Parties should be able to make submissions on the extent of loss and damage, if any, suffered. The articulation of sub-issues does no more than guide the Parties to the issues that arise on the pleadings and which were the subject of expert evidence. Once again, each Party is free, within the limits the subject of the orders herein, to make submissions in answer to the issues identified therein as and how it considers appropriate.

Procedural Order No. 5

23. Against that background, pursuant to ICSID Arbitration Rule 19, this Procedural Order sets out the further procedural orders that shall govern this arbitration.

Combined List of Abbreviations

- (1) By **29 April 2016**, one Party, on behalf of both Parties, file a combined list of abbreviations.

Preliminary Matters

- (2) No Party is permitted, in:

- (a) the lists the subject of paragraphs (4)-(6) below;
 - (b) the post-hearing submissions the subject of paragraph (7); and
 - (c) the reply submissions the subject of paragraph (8),
- to:
- (d) put forward any new claims or defences; nor
 - (e) produce any new evidence.
- (3) To the extent that the Parties wish to refer to evidence, laws and legal authorities in:
- (a) the lists the subject of paragraphs (4)-(6) below;
 - (b) the post-hearing submissions the subject of paragraph (7); and
 - (c) the reply submissions the subject of paragraph (8),
- only evidence on the record (witness statements, documents and transcript of the hearing) may be referred to and only laws and legal authorities previously produced may be cited.

Lists

- (4) By **29 April 2016**, the Claimants provide the Respondent the following six lists in Excel form, each of which contain two further columns to enable later comment thereon in accordance with paragraphs (5) and (6) below:

List 1: A list of the “Properties” the subject of the Claimants’ claim, identifying, in respect of each Property:

- (a) the Property no;
- (b) the land registry sheets;
- (c) the constituent land registry plots;
- (d) the cadastral municipality;
- (e) whether the each land registry plot is construction or agricultural land;
- (f) land area;
- (g) the land registry court;

- (h) whether the Property was included in:
 - (i) the Record;
 - (ii) the Asset list –
if so, where;
- (i) whether the Property is or has been registered to Croatia (or one of its political sub-divisions or other organs) in whole or in part and, if so:
 - (i) the Act, if any, by which such registration occurred;
 - (ii) the date on which that Act came into force;
 - (iii) any court decision which effected such registration; and
 - (iv) the date of that decision;
- (j) if the Property is not registered to Croatia (or one of its political sub-divisions or other organs), the person in whose name the Property is registered and:
 - (i) the Act, if any, by which such registration occurred;
 - (ii) the date on which that Act came into force;
 - (iii) any court decision which effected such registration; and
 - (iv) the date of that decision.

List 2: A list of the “Apartments” the subject of the Claimants’ claim, identifying, in respect of each Apartment:

- (a) the ID no;
- (b) the land registry sheets;
- (c) the constituent plots;
- (d) the former Gavrilović tenant;
- (e) the square meterage of the Apartment;
- (f) the person in whose name the Apartment is registered and:
 - (i) the Act, if any, by which such registration occurred;

- (ii) the date on which that Act came into force;
- (iii) any court decision which effected such registration; and
- (iv) the date of that decision.

List 3: A list of the Properties and Apartments registered at any time in the name of Croatia (or one of its political sub-divisions or other organs), arranged in order of the Act by which that registration was secured.

List 4: A list of the Properties and Apartments never registered in the name of Croatia (or one of its political sub-divisions or other organs).

List 5: A list of any properties registered in the name of the Claimants as a result of the Purchase Agreement.

List 6: A list of any properties formerly registered in the name of the Claimants as a result of the Purchase Agreement and now registered in the name of Croatia (or one of its political sub-divisions or other organs).

- (5) By **27 May 2016**, the Respondent comment on the lists provided to it by the Claimants in accordance with paragraph (4) above, noting any agreement or disagreement with their content in the column set aside for this purpose.
- (6) By **10 June 2016**, the Claimants reply to the responses provided to them by the Respondents in accordance with paragraph 2 above in the column set aside for this purpose, and file and serve that document with the Tribunal.

Post-Hearing Submissions

- (7) By **22 July 2016**, the Parties are to file and exchange post-hearing submissions that:
 - (a) are written in 12 point;
 - (b) are 1.5 spaced;
 - (c) are no longer than 250 pages;
 - (d) deal with the issues the subject of the List of Issues annexed as Annexure A;
 - (e) include an introduction and statement of facts, if the Party so wishes; and

- (f) contain hyperlinks to each and every portion of evidence and legal authority upon which the Party relies.

Replies

- (8) By **2 September 2016**, the Parties are to file and exchange reply submissions which are limited to matters in reply to the other side's post-hearing submissions, such submissions to be:

- (a) written in 12 point;
- (b) 1.5 spaced; and
- (c) no longer than 50 pages.

Further hearing

- (9) The proceeding be listed for further hearing in Washington D.C. on **21 and 22 September 2016**.

[signed]

Michael C. Pryles
President of the Tribunal
Date: 20 April 2016

ANNEXURE A: LIST OF ISSUES

1. Jurisdiction

1.1 Is each of the Claimants an “investor” who has made an “investment” under the ICSID Convention and the Agreement between the Republic of Austria and the Republic of Croatia for the Promotion and Protection of Investments (the **BIT**)? In particular:

- (a) Does the ICSID Convention and/or the BIT require that an investment include a contribution of money or assets to an economic venture in the host State?
- (b) Did the Claimants satisfy the contribution requirement?
- (c) Did the Claimants assume an investment risk?
- (d) Are there any other reasons why the Claimants are not properly characterised as “investors” who made an “investment”?

1.2 Was the alleged investment made in accordance with host State law, so that the Tribunal would have jurisdiction over the Claimants’ claims? In particular:

- (a) Who bears the burden of proof and what is the standard of proof?
- (b) Were there any illegalities in relation to the alleged investment (collectively, the **Alleged Illegalities**), because of:
 - (i) the decision to place the Gavrilović Meat Companies / Five New LLCs into bankruptcy;
 - (ii) the sale of the Gavrilović Meat Companies / Five New LLCs as legal entities;
 - (iii) the designation of the Swiss account of Inacomm as the destination of the purchase price;
 - (iv) the payment of sums into the account of Inacomm;

- (v) the transfer of monies from the bankruptcy estates to the Second Claimant and third parties during the pending bankruptcy;
 - (vi) the alleged transfer of monies from the Second Claimant to the bankruptcy trustee during the pending bankruptcy;
 - (vii) the source of funds used by the First Claimant to purchase the Gavrilović Meat Companies / Five New LLCs were obtained by:
 - (A) allegedly inducing the then-Minister of Finance of Croatia to direct Ivica Papes to transfer DEM 2 million to the First Claimant;
 - (B) the alleged appropriation by the First Claimant of funds from the Gavrilović Meat Companies / Five New LLCs before the bankruptcy;
 - (C) the alleged appropriation of the daily proceeds of the store of the Gavrilović Meat Companies / Five New LLCs;
 - (viii) the alleged investment was made in violation of Croatian criminal law and international law and public policy prohibiting corruption, including due to a misuse of public funds to obtain private material gain;
 - (ix) the alleged investment was made in the context of arms trafficking and in circumstances violating a UN embargo;
 - (x) the alleged investment was otherwise made in circumstances of corruption and illegality for another reason?
- (c) To the extent that there were any illegalities:
- (i) what is the meaning of the term “in accordance with” the law of Croatia under Article 11(1) of the BIT? Specifically:
 - (A) must an alleged illegality be a fundamental breach of Croatian law?
 - (B) must it have been committed by the Claimants?

- (C) if the alleged illegality must have been committed by the Claimants, was it so committed?
 - (D) what is the relevant point in time at which conformity with host State law is to be assessed for the purpose of jurisdiction?
- (ii) accordingly, are one or more of the Alleged Illegalities such as to result in the Tribunal not having jurisdiction because:
- (A) the investment is not “in accordance with” the law of Croatia under Article 11(1) of the BIT; or
 - (B) there are other applicable legal requirements other than Article 11(1) of the BIT, the effect of which is to deprive the Tribunal of jurisdiction in the circumstances?
- (iii) Is the Respondent prevented from asserting the Alleged Illegalities on account of:
- (A) the passage of time; or
 - (B) its own participation in the illegalities, if any.

2. Admissibility

- 2.1** Does the ICSID Convention include the concept of “admissibility” as a type of preliminary objection? If not, are characterisations of admissibility otherwise relevant?
- 2.2** Which party has the burden of proof regarding of the Alleged Illegalities as they relate to the admissibility of the Claimants’ claims?
- 2.3** Do any of the Alleged Illegalities render the Claimants’ claims inadmissible?
- 2.4** Are any of the Claimants’ claims inadmissible due to the jurisdiction clause contained in the Purchase Agreement?

3. Applicable Law

- 3.1 Having regard to Article 42 of the ICSID Convention and the BIT, what is the law applicable to the issues in dispute?
- 3.2 In particular, what law determines the Claimants' alleged property rights?
- 3.3 Should the Tribunal apply one law to the whole of the dispute or does the applicable law vary on an issue by issue basis?

4. Merits: General Matters

- 4.1 Is the Purchase Agreement unenforceable by reason of one, or more, of the Alleged Illegalities?
- 4.2 Do the Claimants have a property interest in the claimed properties as a matter of Croatian law? In particular:
 - (a) What is the effect, if any, of Croatian legislation passed prior to the Purchase Agreement on whether ownership rights to the claimed properties are capable of being passed to the Second Claimant by the Purchase Agreement?
 - (b) What is the effect, if any, of Croatian legislation passed after the Purchase Agreement on the properties claimed?
 - (c) Were the Nine New LLCs the universal successors of Food Industry?
 - (d) Is the Second Claimant the successor to one, or more, of the Six Socialist Companies, Food Industry or Holding d.o.o.? If so, did this grant it ownership rights over the claimed properties?
- 4.3 Does anyone else have a property interest in the claimed properties?
- 4.4 If the Second Claimant does not have a property interest in the claimed properties as a matter of Croatian law and/or does not have a legitimate expectation that it will be able to register ownership over the claimed properties, what effect, if any, does this have on the Claimants' claims under the BIT?

- 4.5 What is the effect of Croatian legislation according to which for property still in social ownership and for which ownership is undetermined, the Respondent shall be registered as owner by way of a rebuttable presumption?
- 4.6 What is the effect of the Claimants' failure, if any, to make use of available domestic remedies, including the commencement of contentious proceedings, on the merits of their claims under the BIT?
- 4.7 Are the actions of the following persons or entities attributable to the Respondent:
- (a) the bankruptcy trustee (Mr Boras);
 - (b) the Bankruptcy Council;
 - (c) the Bankruptcy Court;
 - (d) the Bankruptcy Judge (Mr Tukša);
 - (e) the Croatian Development Fund (formerly the Croatian Agency for Restructuring and Development); or
 - (f) Holding d.o.o.
- 4.8 Is the Respondent a party to, or otherwise bound by, the Purchase Agreement?
- 4.9 Does an erroneous application of law, if any, by the Respondent give rise to a treaty violation?

5. Merits: Fair and Equitable Treatment

- 5.1 Is breach of a legitimate expectation a failure to accord "fair and equitable treatment"?
- 5.2 Can there be a legitimate expectation in respect of property to which the Claimants have no property right or contractual right?
- 5.2 Has the Respondent breached the obligation to afford the Claimants' investments fair and equitable treatment under Article 2(1) of the BIT? In particular:

- (a) Did the Claimants have a legitimate expectation that the Second Claimant would be able to register ownership over the claimed properties?
- (b) Did the Respondent violate any legitimate expectation by:
 - (i) filing the Annulment Action in 1996;
 - (ii) commencing a criminal investigation of the First Claimant in 1996;
 - (iii) allegedly publicising the Annulment Action and the criminal investigation of the First Claimant?
- (c) Did the Respondent fail to facilitate the registration of the claimed properties and, if so, did the Respondent violate thereby a legitimate expectation in breach of Article 2(1) of the BIT?
- (d) Did the Respondent interfere with attempts of the Claimants to register ownership and registration over the claimed properties and, if so, did the Respondent thereby violate a legitimate expectation in breach of Article 2(1) of the BIT?
- (e) Did the Respondent fail to negotiate in good faith with the Claimants regarding the ownership and registration of the claimed properties and, if so, did the Respondent thereby violate a legitimate expectation in breach of Article 2(1) of the BIT?
- (f) Did the Respondent by its registration of title of claimed properties in persons other than the Second Claimant violate any legitimate expectations of the Claimants and, if so, thereby breach of Article 2(1) of the BIT?
- (g) Was there any other legitimate expectation of the Claimants breached by the Respondent and, if so, did this give rise to a violation of Article 2(1) of the BIT?

5.3 If the Second Claimant does not have a property interest in the claimed properties under Croatian law, did the Claimants have a legitimate expectation that the

companies purchased by Mr. Gavrilović would have such property interests, and would be able to register ownership over the claimed properties?

6. Merits: Expropriation

6.1 Has Respondent expropriated any or all of the Properties and Apartments claimed by Claimants? In particular:

(a) Has the Respondent directly expropriated the Claimants' property rights over the claimed properties through registration of its ownership of them?

(b) Has the Respondent indirectly expropriated the Claimants property rights by:

(i) failing to facilitate the registration of the properties;

(ii) interfering with the Claimants' attempts to register ownership over the properties;

(iii) by failing to negotiate in good faith with the Claimants regarding the ownership and registration of the properties; and

(iv) by a combination of the above actions or omissions of the Respondent?

6.2 Has the Respondent directly or indirectly expropriated the Claimants' contractual rights, if any, under the Purchase Agreement?

6.3 If there has been an expropriation, is it in breach of Article 4(1) of the BIT?

7. Merits: Article 8(2)

7.1 Has the Respondent breached Article 8(2) of the BIT by failing to observe its obligations, if any, under the Purchase Agreement?

8. Merits: Equal Treatment

8.1 Has the Respondent breached Article 3(1) of the BIT? In particular, were the Claimants and Mr Impric in like circumstances? Did the Respondent treat Mr Davor Impric – a Croatian national – more favourably than Claimants?

9. Quantum

9.1 Are the Claimants entitled to damages and, if so, in what amount? In particular:

- (a) What are the direct damages?
 - (i) Are they entitled to the value of the Properties and Apartments over which Claimants would have registered ownership but for the Respondent's breaches of the BIT?
 - (ii) Are they entitled to the present value of the rental income that the Claimants would have collected from the Properties and the Apartments but for the Respondent's breaches of the BIT?
- (b) What are the indirect damages?
 - (i) Are they entitled to damages for the alleged inability to obtain financing resulting from the Respondent's failure to register the claimed properties?
 - (ii) If so, what is the difference between the current value of the Second Claimant and the likely value of the Second Claimant if it had been able to register its ownership of the claimed properties by 2002?
- (c) Is there a causal link between the alleged BIT breaches and any loss or damage suffered by the Claimants?
- (d) Were the Claimants unable to obtain equity financing, loans involving a share pledge or loans backed by other intangible or movable assets?
- (e) How are any damages to be apportioned between the two Claimants?
- (f) Are the Claimants entitled to pre- and post-Award interest and, if so, at what rate(s)?
- (g) What is the effect of any award of damages for expropriation on potential domestic claims to the respective property?

10. Costs

10.1 Should either Party bear some, or all, of the opposing Party's costs?