

EXHIBIT B

This material is distributed by Quinn Emanuel Urquhart & Sullivan, LLP on behalf of Agility Public Warehousing Company KSCP. Additional information is available at the Department of Justice, Washington, DC.

**Lebanese Arbitration Center
of the Chamber of Commerce, Industry and Agriculture
of Beirut and Mount Lebanon
Case No. 175/2018**

Final Award

in the Arbitration between

Iraq Telecom Limited (United Arab Emirates)

Claimant

and

Intercontinental Bank of Lebanon (IBL) S.A.L. (Lebanon)
Korek Telecom Company L.L.C. (Iraq)
International Holdings Limited (United Arab Emirates)

Respondents

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I INTRODUCTION

1. On 27 July 2011, Iraq Telecom Limited and International Holdings Limited concluded a facility agreement for a USD 285,000,000.00 facility (hereinafter referred to as the "**IT-IH Loan**") (Exhibit N° C-3).
2. On the same date, Korek Telecom Company LLC and International Holdings Limited concluded a shareholder loan agreement pursuant to which International Holdings Limited lent the same amount of USD 285,000,000.00 to Korek Telecom Company LLC (hereinafter referred to as the "**Shareholder Loan Agreement**" or "**IH-Korek Loan**") (Exhibit N° C-4). Furthermore, Korek Telecom Company L.L.C. provided Iraq Telecom Limited with an irrevocable and unconditional guarantee of International Holdings Limited's obligations under the IT-IH Loan (hereinafter referred to as the "**Korek Guarantee**") (Exhibit N° C-5).
3. On 14 December 2011, Iraq Telecom Limited, Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and International Holdings Limited concluded a subordination agreement (hereinafter referred to as the "**Subordination Agreement**") (Exhibit N° C-1), by which Iraq Telecom Limited and International Holdings Limited agreed to subordinate the obligations and liabilities of Korek Telecom Company L.L.C. (as guarantor) and International Holdings Limited (as borrower) under the IT-IH Loan (as defined in the Subordination Agreement) (Exhibit N° C-3) to the obligations of Korek Telecom Company L.L.C. to Intercontinental Bank of Lebanon (IBL) S.A.L. under the IBL Loan Agreement. International Holdings Limited (as lender) also agreed to subordinate the obligations and liabilities of Korek Telecom Company L.L.C. (as borrower) under the Shareholder Loan Agreement (as defined in the Subordination Agreement) (Exhibit N° C-4).
4. On 21 December 2011, a term loan agreement (hereinafter referred to as the "**IBL Loan**" or "**IBL Loan Agreement**") was concluded between Intercontinental Bank of Lebanon (IBL) S.A.L. as lender, Korek Telecom Company L.L.C. as borrower, and Mr. Sirwan Saber Mustafa as guarantor, for the amount of USD 150,000,000.00 (Exhibit N° C-7).
5. A supplemental agreement to the IBL Loan Agreement was concluded on 21 July 2012 (hereinafter referred to as the "**First Loan Supplemental**") between Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and Mr. Sirwan Saber Mustafa by which the repayment date for the "Short Term Loan" (as defined in the IBL Loan Agreement, Exhibit N° C-7) was extended until 1 February 2013 (Exhibit N° C-9). On the same day, a supplemental agreement to the Subordination Agreement (hereinafter referred to as the "**First Subordination Supplemental**") was concluded between Iraq Telecom Limited, Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and International Holdings Limited, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as*

amended and supplemented pursuant to the IBL Loan Supplemental Agreement"
(Exhibit N° C-10).

6. A second supplemental agreement to the IBL Loan Agreement (hereinafter referred to as the "**Second Loan Supplemental**") was concluded on 1 February 2013 between Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and Mr. Sirwan Saber Mustafa by which the repayment date for the "Short Term Loan" (as defined in the IBL Loan Agreement, Exhibit N° C-7) was extended until 1 August 2014 (Exhibit N° C-11). On the same day, a second supplemental agreement to the Subordination Agreement (hereinafter referred to as the "**Second Subordination Supplemental**") was concluded between Iraq Telecom Limited and Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and International Holdings Limited, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the IBL Second Loan Supplemental Agreement*" (Exhibit N° C-12).
7. A third supplemental agreement to the IBL Loan Agreement (hereinafter referred to as the "**Third Loan Supplemental**") was concluded on 21 June 2014 between Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and Mr. Sirwan Saber Mustafa by which the repayment date for the "Short Term Loan" (as defined in the IBL Loan Agreement, Exhibit N° C-7) was extended until 31 January 2015 and the "Long Term Loan" extended until 21 June 2015 (Exhibit N° R1-2). On the same day, the third supplemental to the Subordination Agreement (hereinafter referred to as the "**Third Subordination Supplemental**") was concluded between Iraq Telecom Limited and Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and International Holdings Limited, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the IBL Second Loan Supplemental Agreement*" (Exhibit N° R1-3).
8. Iraq Telecom Limited, Intercontinental Bank of Lebanon (IBL) S.A.L., Korek Telecom Company L.L.C. and International Holdings Limited disagree on a number of issues relating to the existence, validity and effect of the Subordination Agreement.

II THE PARTIES AND THEIR REPRESENTATIVES

A The Claimant

9. The Claimant in this arbitration is Iraq Telecom Limited (hereinafter referred to as the "**Claimant**" or "**IT**" or "**IT Ltd.**"), a company incorporated under the laws of the Dubai International Financial Centre and having its registered office at:

Iraq Telecom Limited
Unit 11, Level 3
Gate Village Building 10
Dubai International Financial Centre
Dubai, 507043
United Arab Emirates

10. The Claimant is represented by:

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B The Respondents

11. The first Respondent in this arbitration is Intercontinental Bank of Lebanon (IBL) S.A.L. (hereinafter referred to as the "**Respondent N° 1**" or "**IBL**"), a joint-stock company registered with the Commercial Registry of Beirut and with its registered offices at:

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Al Itihadia Building
Achrafieh, Beirut
Lebanon

12. Respondent N° 1 is represented by:

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13. The second Respondent in this arbitration is Korek Telecom Company LLC (hereinafter referred to as the "**Respondent N° 2**" or "**Korek**"), incorporated with the Registration Directorate of Companies of the Kurdistan Regional Government of Iraq and having its registered offices at:

Korek Telecom Company LLC
45 Kurdistan Street
Pirmam
Erbil
Kurdistan
Republic of Iraq

14. The third Respondent in this arbitration is International Holdings Limited (hereinafter referred to as the "**Respondent N° 3**" or "**International Holdings**" or "**IH**") incorporated under the laws of the Dubai International Financial Centre and having its registered offices at:

International Holdings Limited
Unit 11, Level 3
Gate Village Building 10
Dubai International Financial Centre
Dubai 507043
United Arab Emirates

15. Respondents N° 2 and N° 3 are represented by:

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16. The Respondents N° 1, N° 2 and N° 3 are collectively referred to as the "**Respondents**".
17. The Claimant and the Respondents are collectively referred to as the "**Parties**".

III THE ARBITRAL TRIBUNAL

18. At its hearing of 8 January 2019, the Court of Arbitration of the Lebanese Arbitration and Mediation Center (hereinafter referred to as the "**Court**"), pursuant to Article 2 of the Rules of Arbitration of the Chamber of Commerce and Industry of Beirut (hereinafter referred to as the "**Rules**"), confirmed as co-arbitrator upon nomination of the Claimant:

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19. At its hearing of 8 January 2019, the Court, pursuant to Article 2 of the Rules, confirmed as co-arbitrator upon nomination of the Respondents:

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20. At its hearing of 15 May 2019, the Court, pursuant to Article 2 of the Rules, confirmed as President of the Arbitral Tribunal:

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IV DESCRIPTION OF THE PROJECT

21. The Respondent N° 2 is an Iraqi telecommunications company founded by Messrs. Sirwan Saber Mustafa (hereinafter referred to as "**Mr. Mustafa**"), Jawshin Hassan Jawshin Barazany and Jiqsy Hamo Mustafa (hereinafter collectively (all three) referred to as the "**Original Shareholders**") in August 2000 and incorporated in Kurdistan, Iraq (Exhibit N° C-30) (CWS-Aziz-1, para. 9).
22. In 2000, the Respondent N° 2 held a regional mobile telecommunications license for the Kurdistan region of Iraq (CWS-Aziz-1, para. 10; CWS-Froissart-1, para. 5).
23. In August 2007, the Respondent N° 2 was awarded a mobile telecommunications licence to operate nationwide (hereinafter referred to as the "**License**") by the Iraqi Communications and Media Commission (hereinafter referred to as the "**CMC**"), which is the regulatory authority responsible for the licensing, management and oversight of the telecommunications industry in Iraq (Exhibit N° C-2).
24. Under the License, the Respondent N° 2 had to pay a license fee of USD 1.25 billion which was to be paid over-time in a number of installments (Exhibit N° C-2, Clause 4(a)). The Respondent N° 2 paid the first instalment of USD 375 million. For the second license fee of USD 250 million due in September 2007, the Respondent N° 2 sought external funding.
25. In that context (in September 2007), Agility Public Warehousing Company K.S.C. (hereinafter referred to as "**Agility**") invested USD 240 million into the Respondent N° 2, an investment structured as a convertible senior loan note (hereinafter referred to as the "**Convertible Note**") (Exhibits N° C-31 and C-32) and extended to the Respondent N° 2 by Agility's wholly owned subsidiary, Alcazar Capital Partners. Further, Agility's investment was guaranteed by the Kurdistan Regional Government of Iraq (hereinafter referred to as the "**KRG**") (Exhibit N° C-33).
26. In late 2009, the Respondent N° 2 needed further financial and technical support in order to roll out its network outside of Kurdistan into the rest of Iraq as required by the License. Therefore, Agility identified Orange S.A. (hereinafter referred to as "**Orange**") in view of a joint venture.
27. As part of the transaction/joint venture (hereinafter referred to as the "**Investment Transaction**"), it was agreed that in return for an investment of approximately USD 810 million, Agility and Orange would acquire an indirect stake of 44% in the Respondent N° 2 from the Original Shareholders with the option subsequently to acquire majority control (Exhibits N° C-34, Preamble, C-35, Clause 23).

28. On 10 March 2011, the Claimant, the Respondents N° 2 and N° 3, Mr. Mustafa and Korek International (Management) Ltd. (Cayman Islands) (hereinafter referred to as "**CS Ltd.**") concluded a shareholders' agreement setting out the parties' respective rights and obligations (hereinafter referred to as the "**IH SHA**") (Exhibit N° C-35).
29. In May 2011, the Respondent N° 2 sought and obtained (on 29 May 2011) the CMC's consent to the Investment Transaction, namely the consent to the change of control of 10% or more of the Respondent N° 2's shareholding (Exhibits N° C-2, Clause 24(C), C-36 and C-37, R2-3).
30. On 27 July 2011, the Investment Transaction / joint venture was implemented pursuant to the terms of a subscription agreement between the Claimant, the Respondents N° 2 and N° 3, Mr. Mustafa, Messrs. Jawshin Hassan Jawshin Barazany and Jiqsy Hamo Mustafa, CS Ltd., Alcazar Capital Partners and Atlas Services Netherlands B.V. (hereinafter referred to as the "**Subscription Agreement**") (Exhibit N° C-34).
31. On the same day, as part of the Claimant's investment in the Respondent N° 2, the Claimant and the Respondent N° 3 concluded a Facility Agreement for a USD 285,000,000.00 facility, the IT-IH Shareholder Loan (Exhibit N° C-3). Further, the Respondents N° 2 and N° 3 concluded a Shareholder Loan Agreement pursuant to which the Respondent N° 3 lent the same amount of USD 285,000,000.00 to the Respondent N° 1 (Exhibit N° C-4).
32. Further on 27 July 2011, the Respondent N° 2 provided the Claimant with an irrevocable and unconditional guarantee of the Respondent N° 3's obligations under the IT-IH Loan, the Korek Guarantee (Exhibit N° C-5).
33. On 2 July 2014, the CMC issued a decision ordering the Respondent N° 2 to "*reinstate the status as it was on 13/3/2011*", i.e. to reinstate the shareholding as it was before the implementation of the Investment Transaction (hereinafter referred to as the "**CMC Decision**") (Exhibit N° C-39).
34. In March 2019, the Kurdistan Companies Registrar (hereinafter referred to as the "**KCR**") issued a decree giving effect to the CMC Decision, which decree de-registered the Respondent N° 3's shareholding in the Respondent N° 2 and re-registered the Respondent N° 2's shares in the name of the Original Shareholders (hereinafter referred to as the "**KCR Decree**") (Exhibit N° C-40).

V DESCRIPTION OF THE AGREEMENTS

35. In October 2011, the Respondent N° 2 needed further funds to pay the next installment of its License fee to the CMC (Exhibit N° R2-4).
36. On 7 December 2011, Mr. Mustafa informed the Claimant that he was able to secure a loan from a Lebanese bank, the Respondent N° 1, and submitted the proposed terms of the IBL Loan (Exhibit N° C-41).

37. On 14 December 2011, a shareholder resolution (hereinafter referred to as the "**Shareholders' Resolution**") was taken at the level of the Respondent N° 2, resolving (a) the entry into the loan agreement to be provided by the Respondent N° 1 to the Respondent N° 2 and (b) the subordination to the IBL Loan Agreement of all obligations and liabilities of (i) the Respondent N° 3 as borrower under the IT-IH Loan, (ii) the Respondent N° 2 as borrower under the Shareholder Loan Agreement and (iii) the Respondent N° 2 as guarantor under the Korek Guarantee (Exhibits N° R1-20 and R2-17).
38. On the same day, the Claimant and the three Respondents concluded the Subordination Agreement (Exhibit N° C-1), by which the Claimant and the Respondent N° 3 agreed to subordinate the obligations and liabilities of the Respondent N° 2 (as guarantor) and the Respondent N° 3 (as borrower) under the IT-IH Loan (as defined in the Subordination Agreement – Exhibit N° C-3) to the obligations of the Respondent N° 2 to the Respondent N° 1 under the IBL Loan Agreement. The Respondent N° 3 (as lender) also agreed to subordinate the obligations and liabilities of the Respondent N° 2 (as borrower) under the Shareholder Loan Agreement (as defined in the Subordination Agreement – Exhibit N° C-4).
39. On 20 December 2011, Mr. Mustafa transferred USD 155 million from his HSBC account in Dubai to an account in his name with the Respondent N° 1 in Beirut (Exhibit N° C-63).
40. On 21 December 2011, the IBL Loan Agreement was concluded between the Respondent N° 1 as lender, the Respondent N° 2 as borrower and Mr. Mustafa as independent guarantor to the borrower, for the amount of USD 150,000,000.00 (hereafter referred to as the "**IBL Loan**" or the "**IBL Loan Agreement**") and according which the IBL Loan was composed of (i) a "Short Term Loan" payable on 21 July 2012 and (ii) a "Long Term Loan" payable on 21 June 2014 (Exhibit N° C-7).
41. On 21 July 2012, the First Loan Supplemental was concluded between the Respondents N° 1 and N° 2 and Mr. Mustafa by which the repayment date for the "Short Term Loan" (as defined in the IBL Loan Agreement, Exhibit N° C-7) was extended until 1 February 2013 (Exhibit N° C-9).
42. On the same day, the First Subordination Supplemental was concluded between the Claimant and the three Respondents, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the IBL Loan Supplemental Agreement*" (Exhibit N° C-10).
43. On 1st February 2013, the Second Loan Supplemental was concluded between the Respondents N° 1 and N° 2 and Mr. Mustafa by which the repayment date for the "Short Term Loan" (as defined in the IBL Loan Agreement, Exhibit N° C-7) was extended until 1st August 2014 (Exhibit N° C-11).

44. On the same day, the Second Subordination Supplemental was concluded between the Claimant and the three Respondents, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the IBL Second Loan Supplemental Agreement*" (Exhibit N° C-12).
45. On 21 June 2014, the Third Loan Supplemental was concluded between the Respondents N° 1 and N° 2 and Mr. Mustafa by which the repayment date for the "Short Term Loan" was extended until 31 January 2015 and the "Long Term Loan" extended until 21 June 2015 (Exhibit N° R1-2).
46. On the same day, the Third Subordination Supplemental was concluded between the Claimant and the three Respondents, by which it was agreed that the Subordination Agreement "*shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the IBL Second Loan Supplemental Agreement*" (Exhibit N° R1-3).

VI THE ARBITRATION CLAUSE

47. Section 5.2 of the Subordination Agreement contains an arbitration clause, which reads as follows:

"Any dispute, claim, question or disagreement arising out of or relating to this Agreement or the transactions contemplated herein (a "Dispute"), shall be settled by binding arbitration in accordance with the Rules of Conciliation and Arbitration of the Beirut Chamber of Commerce and Industry by one or more arbitrators, and the procedures set forth below. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction over such dispute. The Arbitration is to take place in Beirut in the English language unless otherwise agreed by the parties. The award shall be final and binding and the parties waive their rights to lodge an appeal against the award. Nothing in this Agreement including this Section 5.2 shall prevent a party from seeking injunctive relief including but not limited to injunctive relief before the Fast Track Judge in the case of any breach or alleged breach by another party."

VII APPLICABLE SUBSTANTIVE LAW

48. Section 5.1 of the Subordination Agreement provides that:

"This Agreement shall be governed by the laws of the Republic of Lebanon."

VIII PLACE OF ARBITRATION

49. As indicated in Section 5.2 of the Subordination Agreement, the seat of this arbitration is Beirut, Lebanon. In accordance with paragraph 139 of the Terms of Reference, (i) hearings could be conducted at any location agreed upon between the Parties and the Arbitral Tribunal and (ii) the Arbitral Tribunal could deliberate at any location it considered appropriate.

IX LANGUAGE OF THE PROCEEDINGS

50. In accordance with Section 5.2 of the Subordination Agreement, this arbitration shall be conducted in the English language. Pursuant to paragraph 3.7 of the Specific Procedural Rules, the Parties were authorized, however, to file legal authorities (including case law) in French without a translation.

X PROCEDURAL HISTORY

51. On 26 June 2018, the Claimant filed its Request for Arbitration, together with Exhibits N° C-1 to C-29, and made the following prayers for relief:

"(D) RELIEF SOUGHT

51. *Whilst reserving the right to claim further and/or other relief in due course, the Claimant indicates at this stage that it seeks the following relief:*
- (a) an order declaring that the Subordination Agreement is null and void; or alternatively an order that the Subordination Agreement has lapsed and is no longer in force and effect;*
 - (b) an order that IBL pay damages to the Claimant in an amount to be determined during the course of this arbitration;*
 - (c) an order that the Respondents pay to the Claimant the amount of all documented costs and expenses (including legal fees) incurred by the Claimant in connection with these arbitral proceedings, including the costs of the Tribunal, the Court of Arbitration of the Beirut Chamber of Commerce and Industry, as well as any legal and other fees, costs and/or expenses incurred by the Claimant, including, but not limited to, legal fees, expert fees and costs in respect of the time spent by the Claimant's representatives on a full indemnity basis;*
 - (d) an order that the Respondents pay post-award interest on all sums awarded at the maximum permitted rate until payment in full; and*
 - (e) such other relief as the Tribunal may deem appropriate.*
52. *The Claimant reserves its right to plead its case further and to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of its claims or to respond to any arguments or allegations advanced by the Respondents. The Claimant also reserves its right to produce further documentary evidence and expert evidence, and to produce witness evidence in order to supplement and support the claims made in this Request for Arbitration."*
52. In its Request for Arbitration, the Claimant proposed that the arbitral tribunal be composed of three arbitrators, the number of arbitrators not being specified in the arbitration agreement.
53. On 20 July 2018, the Secretariat of the Court of Arbitration (hereinafter referred to as the "**Secretariat**") notified to the Respondents the Request for Arbitration and informed them that their Answers to the Request would be due within 30 days from the day following receipt of the notification (Article 4(1) of the Rules).

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54. On 17 August 2018, the Secretariat wrote to the Parties regarding the notification of the Request for Arbitration to the Respondent N° 2 explaining that the notice had been duly received on 30 July 2018 but returned the following day. The Secretariat informed the Parties that, during its session of 13 August 2018, the High Court of Arbitration had found that the notification of the Request for Arbitration to the Respondent N° 2 was valid pursuant to Article 6(2) of the Rules.
55. On the same day, the Respondent N° 1 submitted a request for an extension of time of 45 days (starting from the first business day after 22 August 2018) for the filing of its Answer, pursuant to Article 4 of the Rules. The Respondent N° 1 also indicated its agreement that a three-member arbitral tribunal be appointed for the arbitration and requested that it be allowed to individually and independently appoint one of the arbitrators in view of the fact that there were three Respondents and that the Rules do not provide a mechanism for the appointment of arbitrators in the case of multi-party arbitration. In the alternative, the Respondent N° 1 requested that it be allowed to appoint an arbitrator on behalf of all three Respondents, or in the further alternative, that the Claimant's request to appoint an arbitrator be rejected and that the Court appoint all three members of the arbitral tribunal.
56. On 24 August 2018, the Secretariat forwarded to the Parties the request for extension of time to file its Answer that had been received from the Respondent N° 1 and invited the Parties to take position thereon within three days.
57. On 27 August 2018, the Claimant provided its comments on the Respondent N° 1's requested extension stating that an extension of 45 days was not justified but that it would agree to a shorter extension of 15 days. The Claimant also noted the Respondent N° 1's agreement to the proposal to appoint a three-member arbitral tribunal and proposed that if the Respondents were unable to agree upon an arbitrator, the Court appoint all three members of the tribunal after having consulted with the Parties.
58. On 31 August 2018, the Secretariat granted the Respondent N° 1 an extension of time until 8 October 2018 at 12h00 Beirut time to submit its Answer. The Secretariat also informed the Parties that the Court had decided, on 28 August 2018, that the Arbitration would be heard by a three-member arbitral tribunal. The Secretariat invited the Claimant, on the one hand, and the Respondents, on the other hand, to each nominate an arbitrator by 8 October 2018 at 12h00 Beirut time.
59. On 8 October 2018, the Claimant submitted its nomination of Ms. Nadine Debbas Achkar as arbitrator.

60. On the same day, the Respondent N° 1 submitted its Answer and Counterclaim to the Request for Arbitration, along with Exhibits N° R-1 to R-14, and made the following prayers for relief:

"IV. RELIEF REQUESTED BY THE RESPONDENT

60. *The Respondent respectfully requests from the Arbitral Tribunal to:*
- *Dismiss the Claimant's request to declare the Subordination Agreement null and void;*
 - *Dismiss the Claimant's request to declare the Subordination Agreement no longer in full force and effect;*
 - *Dismiss the Claimant's request that the Respondent pays damages for the Claimant;*
 - *Dismiss the Claimant's request that the Respondent pays for all costs and expenses (including all legal fees) incurred by the Claimant in connection with these arbitral proceedings;*
 - *Dismiss the Claimant's request that the Respondent pays post-award interest on all sums awarded;*
 - *Order the Claimant to compensate the Respondent, and grant the Respondent's counterclaim, for the damages and losses suffered, in an amount to be determined during the course of these arbitral proceedings, in application to Article 122 of the Lebanese Code of Obligations and Contracts, and Articles 10, 11 and 551 of the Lebanese Code of Civil Procedure in conjunction with Article 20 of the Rules;*
 - *Order the Claimant to bear all the costs and expenses incurred by the Respondent in connection with these arbitral proceedings, including attorney's fees, the costs of the Arbitral Tribunal and the Court, as well as any legal or other fees, costs and/or expenses incurred by the Respondent;*
 - *Grant the Respondent until November 30, 2018, to determine whether the other respondents would reach an agreement regarding the joint nomination of an arbitrator and jointly nominate an arbitrator;*
 - *Should the above request be denied, the Court to appoint all three members of the Arbitral Tribunal and designate its president;*
 - *Such other relief as the Arbitral Tribunal may deem appropriate.*

This Answer is without prejudice to, and with reservation of, any right afforded to the Respondent, without exception, including inter alia, under law and/or contract, with respect to any right or action or claim or counterclaim or argument in connection with the subject matter thereof and these arbitral proceedings, including inter alia, before the Court, the Arbitral Tribunal, any appropriate court of law or arbitral tribunal."

61. In its Answer and Counterclaim to the Request for Arbitration, the Respondent N° 1 also requested an extension of time until 30 November 2018 to attempt to agree with the other Respondents on the nomination of an arbitrator, failing which the Respondent N° 1 agreed with the Claimant's proposal that the Court appoint all three members of the tribunal.

62. On 9 October 2018, the Secretariat notified to the Claimant and the Respondents N° 2 and N° 3 the Respondent N° 1's Answer and Counterclaim to the Request for Arbitration and granted them a time limit of 30 days to submit a Reply to Counterclaim. The Secretariat also invited them to take position, within 15 days, on the Respondent N° 1's request for an extension of time to appoint the Respondents' arbitrator.
63. On 24 October 2018, the Claimant objected to the Respondent N° 1's requested extension stating that the requested extension of nearly two months was excessive and requested that no extension beyond 31 October 2018 be granted. The Claimant also objected to the Respondent N° 1's proposal that should the Respondents fail to agree upon an arbitrator, the Court appoint all three members of the tribunal. The Claimant stated that the Court had already clearly decided that the Claimant and the Respondents would each nominate one arbitrator, which the Claimant had done, and therefore under Articles 2(4) and (5) of the Rules, the Court should appoint an arbitrator for the Respondents only, if they failed to do so.
64. On 26 October 2018, the Secretariat forwarded to the Respondents the Claimant's letter dated 8 October 2018 concerning the nomination of its arbitrator.
65. On the same day, the Secretariat informed the Parties that the Court had decided, on 25 October 2018, to grant the Respondents an extension until 15 November 2018 to nominate an arbitrator, following which the Court would take any decision on the formation of the arbitral tribunal.
66. On 8 November 2018, the Claimant filed its Reply to Counterclaim and submitted the following prayers for relief:

"(B) RELIEF SOUGHT

12. *For the reasons set out above, the Claimant respectfully submits that IBL's counterclaim must fail and the Claimant seeks the following relief in respect thereof:*
 - (a) *an order dismissing IBL's counterclaim;*
 - (b) *an order that IBL pay all costs in connection with this counterclaim on a full indemnity basis;*
 - (c) *an order that IBL pay post-award interest on all sums awarded at the maximum permitted rate until payment in full; and*
 - (d) *such other relief as the Tribunal may deem appropriate.*
13. *This Reply to IBL's counterclaim is not intended to serve as a statement of the Claimant's full factual and legal arguments. The Claimant reserves the right to plead its case further in due course and to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement its response to any arguments or allegations advanced by IBL or any of the other Respondents. The Claimant also reserves the right to produce further documentary evidence and expert evidence, and to produce witness evidence to supplement and support its position set out in this Reply."*

67. On 14 November 2018, Counsel from Boies Schiller Flexner (UK) LLP informed the Secretariat that they had been instructed to represent the Respondents N° 2 and N° 3 in the Arbitration and indicated that the Respondents N° 2 and N° 3 did not accept that they had been validly served with the Request for Arbitration and that they were prepared to accept that service had been validly made on the condition that they be granted an extension of 45 days from the date of their letter to submit an Answer and to confer with the Respondent N° 1 as to the nomination of an arbitrator. They further indicated that should the Respondents fail to agree upon an arbitrator, they agreed that the Court should appoint all three arbitrators. Counsel for the Respondents N° 2 and N° 3 also requested that the Secretariat provide them with the full electronic case file to date.
68. On 15 November 2018, the Respondent N° 1 wrote to the Secretariat concerning the appointment of an arbitrator by the Respondents stating that it was "*compelled to wait for the Court's decision* [in respect of the Respondents N° 2 and N° 3's requested extension] *to determine its position as to the joint nomination of the arbitrator*".
69. On 16 November 2018, the Secretariat forwarded to the Claimant and the Respondents N° 2 and N° 3 the Respondent N° 1's letter.
70. On 18 November 2018, the Claimant submitted its comments on the Respondents N° 2 and N° 3's letter of 14 November 2018 stating that it rejected their position that they had not been validly served with the Request for Arbitration and objected to their request for a 45-day extension to the deadline for filing their Answer and to the Respondents' comments regarding the constitution of the tribunal. The Claimant indicated that it was willing to accept that the Respondents N° 2 and N° 3 be given 30 days as from the date of their letter to file their Answer and that the Respondents be granted 14 days as from the date of the present letter to nominate an arbitrator. The Claimant further reiterated its position regarding the nomination of arbitrators by the Court as set out in its letter of 24 October 2018.
71. On 19 November 2018, the Secretariat informed the Parties that the Court had already found that both the Respondents N° 2 and N° 3 had been validly served with the Request for Arbitration and that the Court had decided to grant the Respondents N° 2 and N° 3 an extension of 30 days until 19 December 2018 to file their Answer to the Request for Arbitration and to provide the Secretariat with the name of the jointly nominated arbitrator for the Respondents.
72. On 21 November 2018, the Secretariat sent the full electronic copy of the case file to the Respondents N° 2 and N° 3, save for the Request for Arbitration which had not been received electronically from the Claimant and requested the Claimant to provide an electronic copy of the Request for Arbitration along with its attached exhibits.
73. On the same day, the Claimant submitted to the Secretariat an electronic copy of the Request for Arbitration and attached exhibits.

74. On 30 November 2018 (received electronically on 4 December 2018), the Respondent N° 1 wrote to the Secretariat in regard to the Court's decision dated 31 August 2018 concerning the appointment of the arbitral tribunal. The Respondent N° 1 took the position that Article 24(4) of the Rules did not cater to the situation of a multi-party arbitration and stated that it had agreed to jointly nominate an arbitrator with the other Respondents on the condition that if the Respondents were unable to agree, the Court would appoint all three members of the tribunal. The Respondent N° 1 argued that the Claimant should be estopped from changing its previously adopted position and requested that, in the event the Respondents were unable to agree upon a joint nomination, the Court appoint all three members of the tribunal as originally suggested by the Claimant.
75. On 6 December 2018, the Respondents N° 2 and N° 3 indicated their agreement with the Respondent N° 1's position as set out in its letter of 4 December 2018.
76. On 7 December 2018, the Claimant objected to the Respondents' request concerning the appointment of the arbitral tribunal by the Court and reiterated its request that the Court nominate only one arbitrator on behalf of the Respondents and confirm the appointment of the arbitrator nominated by it.
77. On 10 December 2018, the Secretariat informed the Parties that the Court had decided to reserve its decision on the Parties' requests regarding the appointment of the tribunal for a later date, namely in the event that the Respondents failed to jointly nominate an arbitrator by 19 December 2018.
78. On 12 December 2018, the Respondent N° 1 submitted further comments regarding the Court's appointment of the arbitral tribunal and reiterated its request that the Court appoint all three members of the tribunal if the Respondents failed to agree upon an arbitrator.
79. On 18 December 2018, the Claimant submitted further comments in response to Respondent N° 1's letter of 12 December 2018 and again reiterated its request that the Court confirm the Claimant's nominated arbitrator and appoint an arbitrator on behalf of the Respondents, if they failed to do so.
80. On 19 December 2018, the Respondents N° 2 and N° 3 submitted their Answer to the Request for Arbitration, along with Exhibits N° R-15 to R-19, and submitted the following prayers for relief:

"6. RESERVATION OF RIGHTS

6.1 *The Second and Third Respondents hereby reserve all rights to amend their defences and to raise any new or further defences (whether as to jurisdiction, merits, damages or otherwise), to challenge the validity of the parties' agreements, and/or to raise any claims or counterclaims, in this Arbitration or otherwise, as they deem appropriate.*

6.2 *Nothing in this Answer should be taken to limit the scope of the Second and Third Respondents' defences to the Claimant's claims, nor to waive any defence, claim or counterclaim available to the Respondents, unless otherwise expressly stated.*

7. RELIEF REQUESTED

7.1 *Accordingly, the Second and Third Respondents ask the Tribunal to:*

- (a) dismiss all of the Claimant's claims;*
- (b) order that all fees and costs arising out of this Arbitration shall be borne by the Claimant, including the Second and Third Respondents' legal fees and expenses; and*
- (c) grant any other orders the Tribunal deems appropriate."*

81. On the same day, the Respondent N° 1 informed the Secretariat that the Respondents had chosen to jointly nominate Mr. Choucri Sader as arbitrator, and proposed that the two party-appointed arbitrators proceed to the designation of a chairperson of the tribunal within 15 days from the notification of the confirmation of their appointment by the Court. In an email later that same day, the Respondents N° 2 and N° 3 indicated their agreement to the Respondent N° 1's proposal.
82. On 24 December 2018, the Secretariat invited the Claimant to take position on the Respondents' proposal regarding the appointment of the chairperson by 3 January 2019.
83. On the same day, the Claimant informed the Secretariat that it agreed with the Respondents' proposal, subject to the following terms: (i) that the presiding arbitrator be jointly nominated by the two co-arbitrators within 15 days from their notification of confirmation, in accordance with Article 2(7) of the Rules, (ii) that in selecting the presiding arbitrator, the co-arbitrators consult with the Party/Parties that nominated them, (iii) that in the event that the co-arbitrators fail to agree of the identity of the presiding arbitrator within the time granted, the presiding arbitrator be appointed by the Court, and (iv) that the Parties acknowledge and agree that the presiding arbitrator would be chosen from a country other than those of which the Parties were nationals.
84. On 2 January 2019, the Secretariat informed Ms. Achkar and Mr. Sader of their nomination as co-arbitrators in the present case and requested them to submit a statement of acceptance, availability and independence prior to the Court deciding upon their confirmation at its hearing of 7 January 2019.
85. On 6 January 2019, Ms. Achkar provided the Secretariat with her statement of acceptance, availability and independence, along with a disclosure statement.
86. On 7 January 2019, Mr. Sader provided the Secretariat with his statement of acceptance, availability and independence.

87. On the same day, the Respondent N° 1 submitted a proposal that the chairperson be designated by the two co-arbitrators within 15 days as from the notification of their confirmation and without any further conditions, failing which the Court would appoint the chairperson, in accordance with Articles 2(4) and 2(6) of the Rules.
88. Further on the same day, the Claimant clarified that its position regarding the nomination of the chairperson in consultation with the Parties was in accordance with Article 2(4) of the Rules and was standard practice to ensure that the potential nominee had no conflicts of interest and was a suitable candidate.
89. On 8 January 2019, the Respondent N° 1 indicated that it maintained its position that the chairperson should be designated by the co-arbitrators without any further conditions and stated that if the Claimant insisted on further conditions that it should therefore be considered that the Parties were unable to agree on the procedure for appointing the presiding arbitrator and that the Court would apply the Rules and appoint the presiding arbitrator. By email later that same day, the Respondents N° 2 and N° 3 indicated their agreement with the Respondent N° 1's position.
90. On 9 January 2019, the Secretariat informed the Parties that the nominations of Ms. Achkar and Mr. Sader had been confirmed by the Court and invited the Parties to provide any comments on the co-arbitrators' statements of acceptance, availability and independence by 14 January 2019.
91. On the same day, the Claimant confirmed its agreement that the co-arbitrators designate a presiding arbitrator within 15 days of their notification of confirmation and noted that, due to the Respondents' disagreement, the Parties would not be permitted to consult with the co-arbitrators in this respect. The Claimant indicated that it nevertheless expected that, in accordance with Article 2(6) of the Rules, the presiding arbitrator would be chosen from a country other than those of which the Parties were nationals.
92. On 11 January 2019, the Respondents N° 2 and N° 3 confirmed that (i) they did not agree to the Parties consulting with the co-arbitrators on the designation of a presiding arbitrator and (ii) they did agree to the presiding arbitrator being chosen from a country other than those of which the Parties were nationals. Subject to confirmation by the Respondent N° 1, the Respondents N° 2 and N° 3 requested that the Secretariat inform the co-arbitrators of the Parties' agreement.
93. On 14 January 2019, the Respondents N° 2 and N° 3 informed the Secretariat that in light of the disclosures submitted by Ms. Achkar, they were considering whether it would be necessary to challenge her appointment as arbitrator and requested that the Secretariat confirm that any such challenge would have to be filed within 30 days from the notification of the arbitrator's confirmation by the Court, i.e. on 8 February 2019. The Respondents N° 2 and N° 3's letter was forwarded to the co-arbitrators by the Secretariat on the same day.

94. On the same day, the Respondent N° 1 indicated its agreement with the position set out by the Respondents N° 2 and N° 3 in their letter of the same date and (by separate email) indicated that it had no objection to the presiding arbitrator being chosen from a country other than those of which the Parties were nationals. The Respondent N° 1's letter was forwarded to the co-arbitrators by the Secretariat on the same day.
95. Still on 14 January 2019, the Secretariat confirmed that the deadline for filing any challenges to the appointment of Ms. Achkar on the basis of the disclosures made in her statement of acceptance, availability and independence was 8 February 2019.
96. On 8 February 2019, the Respondent N° 1 informed the Secretariat that while it considered the disclosures made by Ms. Achkar to be a "*clear basis to challenge her nomination as arbitrator in the present case*", it was waiving its right to submit such a challenge "*in light of her reputation and high standards of professional ethics*".
97. On 18 February 2019, the Secretariat informed the Parties that, in light of the fact that no challenge had been made to the appointment of Ms. Achkar, the Court had decided that the co-arbitrators should appoint a presiding arbitrator within 15 days from the date of the Secretariat's letter, in accordance with the Parties' agreed terms, failing which the presiding arbitrator would be appointed by the Court.
98. On 19 February 2019, Mr. Sader and Ms. Achkar (hereinafter referred to as the "**Co-Arbitrators**") requested to be provided with the correspondence referenced in the Secretariat's letter of 18 February 2019 and with the nationality of each of the Parties.
99. On the same day, the Secretariat provided the Co-Arbitrators with the requested correspondence and the details regarding the Parties' nationalities.
100. On 26 February 2019, the Co-Arbitrators informed the Secretariat that they had chosen to nominate Prof. Pierre Tercier as presiding arbitrator and requested, in the event that Prof. Tercier did not accept his appointment, an extension of time until 22 March 2019 to designate a presiding arbitrator.
101. On 28 February 2019, the Secretariat notified Prof. Tercier of his nomination for appointment as presiding arbitrator and requested him to provide, in case of acceptance of nomination, a statement of acceptance, availability and independence.
102. On 1 March 2019, Prof. Tercier informed the Secretariat that, due to his heavy agenda, he would not be in the position to accept his nomination in the present case.
103. On 4 March 2019, the Secretariat informed the Parties of Prof. Tercier's position and granted the Co-Arbitrators until 22 March 2019 to agree on another nomination for the presiding arbitrator.

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104. On 15 March 2019, the Co-Arbitrators provided the Secretariat with a list of four potential presiding arbitrators, in order to facilitate the identification of a suitable candidate in light of the number of Parties and Counsel involved and the potential for conflicts. The Co-Arbitrators also provided a draft Case Information sheet that they proposed be provided to the potential nominees.
105. On 19 March 2019, the Secretariat informed the four candidates identified by the Co-Arbitrators of their potential nomination as presiding arbitrator for the present case and requested each of them to indicate whether they would be available to act as chairperson and to confirm that they had no conflict of interest that would prevent their appointment.
106. On 20 March 2019, potential arbitrator Mr. Laurent Jaeger indicated that he would not be available to accept the appointment.
107. On 26 March 2019, the Secretariat informed the Co-Arbitrators and the Parties that in order to allow the nominees for presiding arbitrator to respond concerning their potential appointment, the Court had decided to extend until 12 April 2019 the deadline for the nomination of a presiding arbitrator by the Co-Arbitrators.
108. On the same day, potential arbitrator Prof. Philippe Pinsolle informed the Secretariat that he would not be able to accept the appointment due to a conflict of interest.
109. Further on the same day, potential arbitrator Prof. Dr. Mohamed Abdel Wahab informed the Secretariat that he would be available to accept the nomination as presiding arbitrator and had no conflicts of interest with the Parties to the dispute, but indicated that he had some connections in other matters with or against members of the Parties' Counsel teams or other members of their law firms.
110. On 1 April 2019, potential arbitrator Mr. Pierre-Yves Gunter indicated that he was available to accept the appointment as presiding arbitrator and had no conflicts that would prevent his appointment.
111. On 7 and 11 April 2019, the Co-Arbitrators contacted two further potential nominees for appointment as presiding arbitrator, Messrs. Juan Fernández-Armesto and Mr. Pierre Pic. Mr. Fernández-Armesto responded indicating that he could not accept the appointment and Mr. Pic responded confirming that he would be available to accept and had no conflicts.
112. On 12 April 2019, the Co-Arbitrators requested a short extension of the deadline for nominating a presiding arbitrator.
113. On 15 April 2019, the Secretariat informed the Co-Arbitrators that the Court had decided to extend until 29 April 2019 the deadline for their nomination of a presiding arbitrator.

114. On 20 April 2019, the Co-Arbitrators provided the Secretariat and the Parties with the correspondence received from Mr. Pic concerning his potential appointment as presiding arbitrator.
115. On 23 April 2019, the Secretariat contacted Mr. Pic concerning his nomination to act as presiding arbitrator and requested that he return a signed copy of the statement of availability, independence and impartiality attached to their letter as soon as possible.
116. On 24 April 2019, Mr. Pic informed the Co-Arbitrators that he had become aware of a conflict of interest that would prevent him from acting as chairperson in the arbitration.
117. On 25 April 2019, the Co-Arbitrators contacted Dr. Klaus Sachs to inquire as to his availability to act as presiding arbitrator.
118. On 26 April 2019, Dr. Sachs informed the Co-Arbitrators that he would not be available to act as presiding arbitrator.
119. On the same day, the Co-Arbitrators informed the Secretariat of the situation and indicated their understanding that the Court should therefore proceed with the appointment of a chairperson and noted that Prof. Dr. Abdel Wahab and Mr. Gunter had both confirmed their availability. In the alternative, the Co-Arbitrators indicated that they would be happy to continue their efforts to nominate a presiding chair provided that the Parties would not object to consulting with them in the process, in accordance with the guidelines issued by the Chartered Institute of Arbitrators in this regard.
120. On 27 April 2019, the Claimant indicated its agreement that the Co-Arbitrators continue their efforts to nominate a presiding chair and that they should consult with the Party/Parties who nominated them in accordance with the Chartered Institute of Arbitrators' guidelines. The Claimant also requested that the Case Information Sheet be updated to reflect additional interested parties for the purposes of conflict checks.
121. On 30 April 2019, the Secretariat requested the Respondents to provide their comments, by COB on 2 May 2019, on the two letters received from the Co-Arbitrators and the Claimant on 26 and 27 April 2019 respectively.
122. On 2 May 2019, the Respondents N° 2 and N° 3 indicated that they did not agree that the Co-Arbitrators should continue their efforts to appoint a chairperson in light of the time that had elapsed and that the Court should instead proceed to such appointment. They also indicated their agreement that the updated list of interested parties be provided to any potential nominees.
123. On the same day, the Respondent N° 1 indicated that it did not agree to the proposal to have the Co-Arbitrators continue with the process of nominating a chairperson and requested the Court to proceed with the nomination of a chairperson in accordance with Article 2(4) of the Rules.

124. On 3 May 2019, the Secretariat contacted Mr. Gunter concerning his potential appointment as presiding chair, provided him with the updated list of interested parties for conflicts purposes, and requested him to confirm that he had no conflict with such entities and would be available to accept the appointment.
125. On the same day, Mr. Gunter informed the Secretariat of certain disclosures concerning the list of interested parties to the Arbitration and requested the Secretariat to confirm that the expenses of the tribunal and the tribunal secretary, as well as the administrative expenses of the LAMC would be compensated separately from the chairperson's fees. He also inquired as to the applicable law on the merits.
126. On 6 May 2019, the Secretariat informed the Parties of the Court's decision to proceed with the appointment of a chairperson by the Court pursuant to Article 2(4) of the Rules and that Mr. Gunter had been contacted and provided with the list of additional interested parties that had been submitted by the Claimant. The Secretariat further informed the Parties of Mr. Gunter's disclosures in this regard and requested them to provide any comments thereon by 9 May 2019.
127. On 9 May 2019, the Respondent N° 1 informed the Secretariat that it had no comments on Mr. Gunter's disclosures.
128. On the same day, the Respondents N° 2 and N° 3 also confirmed that they had no comments on Mr. Gunter's disclosures.
129. Still on 9 May 2019, the Claimant confirmed that it also had no comments on Mr. Gunter's disclosures.
130. On 10 May 2019, the Secretariat informed Mr. Gunter that the Parties had no comment on his disclosures and confirmed that all expenses of the arbitral tribunal and (subject to the Parties' agreement) of the tribunal secretary, as well as all administrative expenses of the LAMC, would be compensated separately from the arbitrators' fees. The Secretariat further confirmed that the applicable law on the merits was Lebanese law. The Secretariat requested Mr. Gunter to confirm his willingness to chair the arbitral tribunal.
131. On 14 May 2019, Mr. Gunter confirmed his acceptance to chair the arbitral tribunal.
132. On 15 May 2019, the Secretariat informed Mr. Gunter that he had been appointed to chair the arbitral tribunal and requested him to return a signed copy of the statement of acceptance, independence and impartiality.
133. On the same day, the Secretariat informed the Parties of Mr. Gunter's appointment by the Court to chair the arbitral tribunal. The Secretariat requested that the Parties pay an advance on costs (calculated on the basis of the temporary assessment of the amount in dispute of USD 285,000,000.00) in the amount of USD 286,400.00 (VAT included), to be paid in equal shares by the Claimant and the Respondents, within 30 days.

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134. On 16 May 2019, Mr. Gunter provided the Secretariat with his statement of acceptance, independence and impartiality and disclosure sheet.
135. On 20 May 2019, the Secretariat forwarded to the Parties Mr. Gunter's statement of acceptance, independence and impartiality and disclosure sheet.
136. On 21 May 2019, Mr. Gunter inquired as to whether the Parties had been given a deadline to comment upon his disclosures and when the Arbitral Tribunal could expect to receive the case file.
137. On the same day, the Secretariat informed Mr. Gunter that the Parties had been informed of his disclosures prior to his appointment by the Court and had no comment thereon, and that the practice of the LAMC was to grant the Parties 30 days to pay the advance on costs (i.e. by 14 June 2019) before sending the case file to the tribunal.
138. On 12 June 2019, the Secretariat reminded the Parties of the deadline to pay the advance on costs and provided the Parties again with the necessary bank details.
139. On 17 June 2019, the Secretariat requested the Respondents N° 2 and N° 3 to confirm whether they had made a wire transfer of their share of the advance on costs, by the following day.
140. On 21 June 2019, the Secretariat confirmed that the Parties had paid, in equal shares, the requested advance on costs and informed the members of the Arbitral Tribunal that, pursuant to Article 13(2) of the Rules, the Tribunal was required to submit a signed copy of the Terms of Reference within two months from the date of transmission of the file.
141. By 25 June 2018, the case file was received by the three members of the Arbitral Tribunal.
142. On 2 July 2019, the Arbitral Tribunal wrote to the Parties concerning the organization of a Case Management Conference (hereinafter referred to as the "**CMC**") and requested them to indicate, by 8 July 2019, their preference for either a CMC in person or by telephone, whether any Party representatives would attend, their availability during the period 20-23 and 26-27 August 2019, and whether they had any comments or amendments to the CMC agenda.
143. On 3 July 2019, the Claimant informed the Arbitral Tribunal of a change in its Counsel team and requested that the distribution list be updated accordingly.
144. On 5 July 2019, the Claimant confirmed that it had no comments on the proposed agenda for the CMC and that it had no objection to the CMC being held by telephone. The Claimant stated that it would be available for a CMC by telephone on 20, 21, or 23 August 2019, but inquired whether earlier dates could be agreed.

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145. On 8 July 2019, the Respondent N° 1 informed the Arbitral Tribunal that it had no comment on the proposed agenda for the CMC and that it preferred to have the CMC in person and would be available on 26-28 August 2019. The Respondent N° 1 further added that it did not plan to have a representative attending the CMC.
146. On the same day, the Respondents N° 2 and N° 3 confirmed that they would be available for a CMC by telephone on all of the dates proposed by the Arbitral Tribunal in its letter of 2 July 2019, with a preference for a CMC by telephone on 27 August 2019. They further indicated that they had no comments on the proposed agenda and informed the Arbitral Tribunal of an addition to their Counsel team.
147. On 12 July 2019, the Arbitral Tribunal informed the Parties that in view of their positions, the CMC would be held by telephone and the arbitrators would be available also on 8, 9, 12, 13, and 14 August 2019. The Arbitral Tribunal requested the Parties to indicate by 17 July 2019 whether they would be available on such dates.
148. On 16 July 2019, the Claimant confirmed its availability for a CMC by telephone on 9, 12, 13 or 14 August 2019.
149. On 17 July 2019, the Respondent N° 1 informed the Arbitral Tribunal that it would not be available on 8, 9, 12, 13, and 14 August 2019 and requested to hold the CMC on the dates initially proposed in the Arbitral Tribunal's letter dated 2 July 2019. The Respondent N° 1 added that it accommodated to have the CMC on 22 August or preferably 23, the dates which were previously approved by all Parties.
150. On the same day, the Arbitral Tribunal informed the Parties that the CMC would be held by telephone on Friday 23 August 2019 at 2.30 p.m. Swiss Time. The Arbitral Tribunal also provided the Parties with a draft of the Terms of Reference, Specific Procedural Rules (hereinafter referred to as the "**SPR**") and template of the Procedural Timetable, inviting them to provide it with their comments by 31 July 2019. It further requested the Parties to indicate by 31 July 2019 whether they agree with the proposal of appointing a secretary to the Arbitral Tribunal.
151. Still on 17 July 2019, the Respondent N° 1 requested that the deadline for submission of its comments on the drafts Terms of Reference, SPR and Procedural Timetable along with all other matters mentioned in the Arbitral Tribunal's emails be extended until 9 August 2019. The Respondents N° 2 and N° 3 indicated in a separate email that they do not have any objections to the extension sought by the Respondent N° 1.
152. Thereafter on 17 July 2019, the Arbitral Tribunal confirmed that the 31 July 2019 deadline was extended until 9 August 2019.
153. On 9 August 2019, the Parties submitted their comments on the draft Terms of Reference and draft SPR as well as individual suggestions for the draft Procedural Timetable.

154. On 23 August 2019, the CMC was held by telephone during which the Parties and the Arbitral Tribunal discussed the Parties' comments on the drafts Terms of Reference, SPR and suggestions for the Procedural Timetable.
155. On 26 August 2019, the Arbitral Tribunal decided that the Respondent N° 1 (in coordination with the Respondents N° 2 and N° 3) would have to provide the Claimant by 28 August 2019 with its suggested amendments to the Claimant's amendments on Chapter V of the draft Terms of Reference. It also decided that, by 29 August 2019, the Claimant would have to take position and the Parties would have to advise the Arbitral Tribunal accordingly by 30 August 2019. The Arbitral Tribunal requested the Claimant to provide it, by 30 August 2019, with its additional request for relief (relating to Respondent's N° 1 counterclaim) for inclusion in Chapter VI, A of the draft Terms of Reference. Furthermore, the Arbitral Tribunal requested the Parties to attempt to agree on a joint draft Procedural Timetable by 30 August 2019. It further decided that if the Respondent N° 1 maintained its strong objection of principle regarding a document production phase, the Respondent N° 1 would then have to file by 30 August 2019 a written submission supporting its position and the Claimant would have to file its answer submission by 6 September 2019.
156. On 28 August 2019, the Court informed that it decided on its own initiative to extend the time-limit for transmitting the signed Terms of Reference until 30 September 2019.
157. On the same day, the Arbitral Tribunal informed the Court that it would use its best efforts to have the documents agreed within the extended time-limit.
158. On 30 August 2019, the Respondent N° 1 filed its submission supporting its position regarding the removal of the documentary evidence procedure and sent the proposed alternative timetables agreed upon amongst the Respondents. Given it was not yet known when the Terms of Reference would be finalized, the Respondents did not specify dates but set out the time period between each procedural step. In addition, while the Respondents insisted on their position in this respect, the Respondent N° 1 sent the Respondents' comments on the Claimant's suggested timetables.
159. On the same day, the Respondents N° 2 and N° 3 objected to the inclusion of a document production phase in the proceedings. The Claimant submitted its comments on the draft Terms of Reference and Procedural Timetable and informed the Arbitral Tribunal that it would submit its comments with respect to the inclusion of a document production phase by 6 September 2019.
160. Further on the same day, the Arbitral Tribunal acknowledged receipt of the Parties' communications and attachments.

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161. On 6 September 2019, the Claimant submitted its comments with respect to the inclusion of a document production phase in the proceedings and requested that the Arbitral Tribunal incorporate a process for document production into the Procedural Timetable.
162. On 7 September 2019, the Arbitral Tribunal acknowledged receipt of the Claimant's communication dated 6 September 2019.
163. On 13 September 2019, the Arbitral Tribunal decided that the Procedural Timetable should contain steps for a document production phase and for a reply of the requested party. It further provided the Parties with the Procedural Timetable N° 1. As to the hearing, the Arbitral Tribunal suggested to hold it between 30 November and 4 December 2020 and invited the Parties to confirm their availability by 17 September 2020. In case an additional day would be requested, the Arbitral Tribunal would also be available to sit on 7 December 2020.
164. On 17 September 2019, the Respondent N° 1 acknowledged the Arbitral Tribunal's decision regarding the Procedural Timetable and the reservations afforded to the Parties in relation thereto. Moreover, it confirmed that it had no objection as to the proposed dates of the hearing.
165. On the same day, the Claimant confirmed its availability for a hearing between 30 November and 4 December 2020.
166. Still on the same day, the Respondents N° 2 and N° 3 confirmed their availability for a hearing between 30 November and 4 December 2020.
167. On 18 September 2019, the Arbitral Tribunal provided the Parties with an updated version of the Procedural Timetable containing the dates of the hearing.
168. On 18 September 2019, the Arbitral Tribunal provided the Parties with the SPR.
169. On 23 September 2019, the Arbitral Tribunal provided the Parties with a revised version of the Terms of Reference and invited the Parties to review it and provide their final comments by 27 September 2019.
170. On 27 September 2019, the Claimant confirmed that it had no further comments on the revised Terms of Reference.
171. On the same day, the Respondent N° 1 submitted its additional comments on the revised Terms of Reference.
172. Still on the same day, the Respondents N° 1 and N° 2 confirmed that they had no further comments on the revised Terms of Reference or on the additional comments provided by Respondent N° 1.
173. On 30 September 2019, the Arbitral Tribunal invited the Claimant to provide, by 2 October 2019, its comments on the Respondent's N° 1's additional comments on the revised Terms of Reference.

174. On the same day, the Arbitral Tribunal acknowledged receipt of the Parties' communications.
175. On 1 October 2019, the Claimant provided the Arbitral Tribunal with its comments on the Respondent N° 1's additional comments on the revised Terms of Reference.
176. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's comments and invited the Parties to abstain from making further submissions.
177. Further on the same day, the Court granted the Arbitral Tribunal a second extension of time for transmitting the signed Terms of Reference until 30 October 2019.
178. On 7 October 2019, the Arbitral Tribunal provided the Parties with a revised version of the draft Terms of Reference (after the review of the Parties' comments) which the members of the Tribunal considered as a fair and reasonable compromise. The Parties were invited to confirm their agreement by 10 October 2019. The Arbitral Tribunal further provided the Parties with the reasoning it followed in order for them to have a better understanding:
- "1) *As it is well-known (equally in ICC proceedings) in case the parties do not agree on a confidentiality provision the Arbitral Tribunal cannot impose a Confidentiality clause in the Terms of Reference. Therefore, the overarching confidentiality provision suggested by Respondents in paragraph 155 cannot be included due to the disagreement of Claimant.*
 - 2) *Moreover, the Tribunal has already expressed its position on the issue of confidentiality in the context of disclosure of document (an issue which will be dealt with in due course in the context of requests for document)*
 - 3) *Further, mandatory provisions applicable at the place of arbitration (procedural rules) shall be distinguished from mandatory provisions of Lebanese substantive law. In that sense, the Tribunal considers that Respondents' suggested amendment for paragraph 140 creates an unnecessary confusion and cannot be accepted.*
 - 4) *However, the Tribunal has drafted a new paragraph 140 which shall reassure the Respondents and hopefully be agreeable to Claimant. Moreover, it brings clarity. The Respondents will have ample opportunity in the course of the proceedings to explain the alleged relevance/application of confidentiality rules under Lebanese substantive law (in addition to mandatory procedural confidential provisions allegedly applicable to an arbitration seated in Lebanon).*
 - 5) *As to Paragraphs 128-130, the Tribunal suggests to delete this three paragraphs and to replace them by a short and neutral sentence.*
 - 6) *Regarding the issues to be decided the Tribunal would like the Parties to agree with paragraph 135. The suggested wording is neutral.*
 - 7) *Important: if any party considers that it needs to add anything to develop / make clearer its position it can do so by requesting one or two paragraphs to be added to its Summary of Position and Relief Sought since by essence the other party has no say on such position."*
179. On 10 October 2019, the Claimant confirmed that it had no further comments on the draft Terms of Reference.

180. On the same day, the Respondents filed their combined comments on the draft Terms of Reference.
181. On 11 October 2019, the Claimant confirmed that it had no objection to the Respondents' combined comments on the draft Terms of Reference.
182. On the same day, the Arbitral Tribunal provided the Parties and the Court with the final version of the Terms of Reference.
183. On 5 November 2019, the Arbitral Tribunal invited the Parties to clarify by 7 November 2019 the status of the execution process of the Terms of Reference.
184. On the same day, the Respondent N° 1 informed the Arbitral Tribunal that due to the difficult situation in Lebanon at that time, there had been a delay in the initiation of the execution process of the Terms of Reference and that it would sign the Terms of Reference on the same day.
185. On 22 November 2019, the Claimant filed its Statement of Claim, together with Exhibits N° C-30 to C-62, the Witness Statements of Messrs. Ihab Fekri Aziz Bassilios (hereinafter referred to as "**CWS-Aziz-1**"), Nicholas Jonah Bortman (hereinafter referred to as "**CWS-Bortman-1**") and Olivier Froissart (hereinafter referred to as "**CWS-Froissart-1**"), as well as the Expert Report of Professor Ibrahim Fadlallah (hereinafter referred to as "**CER-Fadlallah-1**"), and submitted the following prayers for relief:

"(D) RELIEF SOUGHT

91. *Whilst reserving the right to claim further and/or other relief in due course, the Claimant indicates at this stage that it seeks the following relief:*
 - (a) *an order declaring that the Subordination Agreement is null, void and/or no longer in force and effect;*
 - (b) *an order that the Respondents pay damages to the Claimant in the amount specified in Section C.6 above;*
 - (c) *an order that the Respondents pay to the Claimant the amount of all costs and expenses (including legal fees) incurred by the Claimant in connection with these arbitral proceedings, including the costs of the Tribunal, the Lebanese Arbitration and Mediation Center, as well as any legal and other fees, costs and/or expenses incurred by the Claimant, including, but not limited to, legal fees, expert fees and costs in respect of the time spent by the Claimant's representatives on a full indemnity basis;*
 - (d) *an order that the Respondents pay post-award interest on all sums awarded at the maximum permitted rate until payment in full;*
 - (e) *an order dismissing IBL's counterclaim; and*
 - (f) *such other relief as the Tribunal may deem appropriate.*

92. *The Claimant reserves its right to plead its case further in due course and to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of its claims or to respond to any arguments or allegations advanced by the Respondents. The Claimant also reserves its right to produce further documentary evidence and expert evidence, and to produce witness evidence in order to supplement and support the claims made in this Statement of Claim."*

186. On 7 December 2019, the Arbitral Tribunal acknowledged receipt of the 8 originals of the Terms of Reference duly signed and sent them to the Court and Secretariat the following day.

187. On 12 December 2019, the Court acknowledged receipt of the original copy of the Terms of Reference. Accordingly, the Court informed that the time limit for issuing the final award was six months as of 11 October 2019 (ending on 11 April 2020).

188. On 23 December 2019, the Respondent N° 1 informed the Arbitral Tribunal that it received directly and *ex-parte* from the Claimant a letter dated 17 December 2019. The Respondent N°1 informed that it was surprised to have received such letter based, among others, on the following reasons:

- "- *Any communication relating to the IBL Loan Agreement extended by IBL to Respondent 2 should be made in accordance with the terms of said agreement. In this respect, we reiterate the position of IBL to only correspond with the duly authorized representative of Respondent 2 in accordance with the terms of the IBL Loan Agreement, as there are no direct relation between IBL and the Claimant.*
- *The Claimant initiated the arbitration proceedings against the Respondents including IBL, and the matter addressed in the letter is already raised by the Claimant in its Statement of Claim submitted to your court dated 22 November 2019 (in its item 65 page 22). IBL accordingly reserves its right to address this matter in its Statement of Defence and Counterclaim due on 21 February 2020."*

189. On 30 December 2019, the Claimant took position on the Respondent N° 1's letter dated 23 December 2019 as follows:

"IT Ltd. recently became aware that IBL's 2018 Annual Report (published around 31 October 2019) omitted the references to the IBL Loan which had been included in each annual report from when the loan was made. Justifiably concerned at the implications of this omission for the Subordination Agreement (which would necessarily fall away if the IBL Loan was no longer outstanding), IT Ltd. took the reasonable step of writing to IBL to seek clarification of the status of the IBL Loan. This letter related to the subject matter of the Subordination Agreement and was appropriately sent directly from IT Ltd. to IBL pursuant to the notice provisions of that agreement. There was no reason to trouble the Tribunal with what should have been a simple request for information from one party to the Subordination Agreement to another.

The status of the IBL Loan is obviously relevant to the current arbitral proceedings. IBL's inexplicable refusal to confirm the status of the loan is entirely unreasonable and obviously detrimental to the efficient and speedy resolution of these proceedings. Whilst very disappointing, it appears that the Tribunal's intervention is now necessary. We therefore respectfully request that the Tribunal direct IBL to provide a full and proper explanation of the current status of the IBL Loan without further delay."

190. On 1 January 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's letter.
191. On 11 January 2020, the Arbitral Tribunal invited the Respondents, if they so wished, to provide by 15 January 2020 its/their comments on the Claimant's letter and request dated 30 December 2019.
192. On 15 January 2020, the Respondent N° 1 reiterated its position that the IBL Loan had been extended to the Respondent N° 2 and that therefore, any communication relating to the IBL Loan, its status or the Loan Agreement should be made in compliance with the terms of said agreement. The Respondent N° 1 was then in no position to engage in any correspondence regarding the IBL Loan with any party other than the duly authorized representatives of the Respondent N° 2. Moreover, the Respondent N° 1 confirmed that it would address this matter in its Statement of Defence and Counterclaim due on 21 February 2020.
193. On the same day, the Respondents N° 2 and N° 3 took position on the Claimant's letter dated 30 December 2019 and noted that it was unfortunate that the said Claimant's letter had failed to refer to the Respondents N° 2 and N° 3's letter dated 26 December 2019 which confirmed that the event of default under the IBL Loan agreement remained outstanding. In the Respondents N° 2 and N° 3's view, this letter had provided sufficient clarification to the Claimant without requiring further recourse to the Arbitral Tribunal. Furthermore, the Respondents N° 2 and N° 3 noted that the Claimant appeared to be pursuing an unsatisfactory approach of engaging in correspondence directly with the Respondents on matters which related to and affected the matters in issue in these proceedings. The Respondents N° 2 and N° 3 suggested that Counsel for the Claimant ensure all relevant correspondence was sent to the Respondents' Counsel.
194. On 16 January 2020, the Arbitral Tribunal acknowledged receipt of the Respondents' respective positions.
195. On 3 February 2020, the Arbitral Tribunal informed the Parties that it would revert with its position and guidance in the course of the week.
196. On 6 February 2020, the Arbitral Tribunal informed the Parties that it was of the view that the incident would have to be put in abeyance until the filing of the next written submission, namely the Respondents' Statement of Defence. The Arbitral Tribunal further offered the Claimant the opportunity to take position, by 28 February 2020, on the Respondents' positions relating to the incident.
197. On 21 February 2020, the Respondent N° 1 filed its Statement of Defence and Counterclaim, along with Exhibits N° R1-15 to R1-31, R1-LA-1 to R1-LA-43 and the First Expert Report of Mr. Antoine Merheb, Esq. (hereinafter referred to as "**R1-ER-Merheb-1**"), and submitted the following prayers for relief:

"V. RELIEF REQUESTED BY THE RESPONDENT

244. Respondent 1 respectfully requests from the Arbitral Tribunal to:

- Dismiss the Claimant's request to declare the Subordination Agreement null and void;
- Dismiss the Claimant's request to declare the Subordination Agreement no longer in full force and effect;
- Dismiss the Claimant's request that Respondent 1 pays damages to the Claimant;
- Dismiss the Claimant's request that Respondent 1 pays for all costs and expenses (including all legal fees) incurred by the Claimant in connection with these arbitral proceedings;
- Dismiss the Claimant's request that Respondent 1 pays post-award interest on all sums awarded;
- Order the Claimant to compensate Respondent 1, and grant Respondent 1's counterclaim, for the damages and losses suffered, in an amount to be determined by the Arbitral Tribunal, in application to Article 122 COC, and Articles 10, 11 and 551 LCCP in conjunction with Article 20 of the Rules;
- Order the Claimant to bear all the costs and expenses incurred by Respondent 1 in connection with these arbitral proceedings, including attorney's fees, the costs of the Arbitral Tribunal and the Court, as well as any legal or other fees, costs and/or expenses incurred by Respondent 1;
- Such other relief as the Arbitral Tribunal may deem appropriate.

This Statement of Defence and Counterclaim is without prejudice to, and with reservation of, any right afforded to Respondent 1, without exception, including inter alia, under law and/or contract, with respect to any right or action or claim or counterclaim or argument in connection with the subject matter thereof and these proceedings, including inter alia, before the Court, the Arbitral Tribunal, any appropriate court of law or arbitral tribunal."

198. On the same day, the Respondents N° 2 and N° 3 filed their Statement of Defence, together with the Expert Reports of Dr. Ronnie Barnes (hereinafter referred to as "**R2/3-ER-Barnes-1**") and Dr. Fadi Moghaizel (hereinafter referred to as "**R2/3-ER-Moghaizel-1**"), and submitted the following prayers for relief:

"7. RELIEF SOUGHT

7.1 The Second and Third Respondents request that the Tribunal:

- (a) dismiss the Claimant's claims;
- (b) declare that the Subordination Agreement remains in full force and effect;
- (c) order that the Claimant must pay the Tribunal and the Second and Third Respondents' costs in connection with these arbitral proceedings, including (but not limited to) the costs of the ICC, as well as any legal and other fees, costs and/or expenses incurred by the Second and Third Respondents; and
- (d) grant any other relief that the Tribunal deems appropriate."

199. On 6 March 2020, the Respondent N° 1 reiterated its objections to the documentary evidence procedure. It stressed that the documents attached to the Parties' written submissions were sufficient and did not require the production of any further document. Furthermore, it informed the Arbitral Tribunal that the Parties agreed to file their requests for document production to the Arbitral Tribunal and requested the Arbitral Tribunal to circulate them once all of the requests had been received.
200. On the same day, the Respondents N° 2 and N° 3 explained to the Arbitral Tribunal that they did not consider that document production was appropriate in these proceedings and that, for this reason, they would not be making any document production requests. Moreover, they informed the Arbitral Tribunal that they understood that the Claimant was not yet ready to file its documents production request and, pursuant to the Parties' agreement, they provided the Arbitral Tribunal with their submissions on document production. The Respondents N° 2 and N° 3 requested the Arbitral Tribunal to pass these on to the Claimant and to the Respondent N° 1 once they had both filed their submissions.
201. Further on the same day, the Claimant filed its requests for document production and requested the Arbitral Tribunal to circulate all document requests once it had received each Party's requests.
202. On 7 March 2020, the Arbitral Tribunal provided the Parties with the requests for document production filed the previous day by the Parties.
203. On the same day, the Arbitral Tribunal noted that the Respondents decided not to file requests for document production for the reasons mentioned in their previous letters, reasons on which the Arbitral Tribunal did not express any view. The Arbitral Tribunal invited the Parties to take position on the other Parties' submissions by 20 March 2020, stressing that this also applied to the Claimant with respect to the Respondents' letters.
204. On 14 March 2020, the Claimant informed that it had instructed Gibson Dunn & Crutcher LLP as its Counsel in this matter, alongside Jones Day and Nabil Abdel-Malek Law Offices, and that Kirkland & Ellis International LLP would no longer be representing the Claimant in these proceedings and would have to be removed from the record. The Claimant also provided the details of its new Counsel.
205. On 15 March 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's communication dated 14 March 2020.
206. On 20 March 2020, the Claimant provided the Arbitral Tribunal with its position on the Respondents' letters.
207. On the same day, the Respondents N° 2 and N° 3 filed their objections to the Claimant's document production requests and indicated that they would provide their response to the Claimant's position on their letters by 25 March 2020.

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208. Further on the same day, the Respondent N° 1 filed its objections to the Claimant's requests for document production.

209. Still on 20 March 2020, the Arbitral Tribunal acknowledged receipt of the Parties' submissions. It also noted that the Respondents N° 2 and N° 3 undertook to reply to the Claimant's letter of 20 March 2020 by 25 March 2020 at the latest. The Arbitral Tribunal indicated that if the Respondent N°1 also intended to reply, it was invited to do so by 25 March 2020.

210. On 25 March 2020, the Respondent N° 1 filed its response to the Claimant's letter dated 20 March 2020, together with legal authorities, and concluded as follows:

"23. In conclusion, the allegations in the Claimant's Letter, which are made without any legal grounds, once again demonstrate the Claimant's bad faith towards Respondent 1 and must be fully dismissed by the Arbitral Tribunal for the reasons mentioned in this letter, Respondent 1's Letter and Respondent 1's Objections. All of the Claimants' illegal attempts to have access to documentation protected by the Law are therefore fully rejected.

24. Respondent 1 reserves all of its rights to further develop all of the above."

211. On the same day, the Respondents N° 2 and N° 3 submitted their response to the Claimant's letter dated 20 March 2020.

212. Further on the same day, the Arbitral Tribunal acknowledged receipt of the Respondents' positions on the Claimant's letter dated 20 March 2020.

213. On 7 April 2020, the Arbitral Tribunal noted that the Procedural Timetable provided for the filing by the Parties on 3 April 2020 of Replies to Objections to Requests for Document Production and that since the Respondents did not file requests for document production this step only concerned the Claimant's requests for document production. The Arbitral Tribunal noted that the Claimant failed to submit by 3 April 2020 its Reply to the Respondents' objections. The Arbitral Tribunal therefore invited the Claimant to clarify the situation by 8 April 2020.

214. On the same day, with respect to the Claimant's failure to file any responses to objections to requests for document production, the Respondents N° 2 and N° 3 indicated that they made a similar request to the Claimant earlier but to no avail and concluded as follows:

"The Claimant has failed to meet a deadline set by the Tribunal and failed to seek any extension to that deadline. Indeed, it has not even deigned to offer any explanation for its delay. In these circumstances, any belated submissions made by the Claimant should be rejected and disregarded."

215. Further on the same day, the Claimant clarified the situation and requested an extension of time until April 2020 to submit its Reply to the Respondents' Objections to its requests for document production:

"The Parties have used the format of the Redfern Schedule attached to the Special Procedural Rules dated 19 September 2019 and Claimant has unfortunately overlooked the deadline of April 3 mentioned in the Procedural Timetable of 18 September 2019. Indeed, the fact that the column on the parties' objections to the document production requests is directly followed by a column on the Arbitral Tribunal's decisions on the document production requests mistakenly led the Claimant to believe that there was no right of response. We understand that Kirkland & Ellis were of the same (albeit mistaken) view.

In light of the above, we kindly ask the Tribunal to provide Claimant with one additional week (i.e., until Friday, April 10 2020) to submit its responses to Respondents' objections to its document production requests in order to assist the Tribunal in its decision making process. We do not believe this causes any prejudice to the Respondents.

Should our request be granted, we understand that this would extend any associated deadlines by one week, namely to Friday, 1 May 2020 for the Arbitral Tribunal's decisions on the document production requests and to Monday, 18 May 2020 for the effective production of documents. The remaining dates in the Procedural Timetable would remain unchanged."

216. On 8 April 2020, the Respondent N° 1 noted that the Claimant's failure to submit its response in due time was the result of its own mistake, which was not beyond its control or responsibility and concluded as follows:

"Therefore, and due to the Claimant's failure to submit its response to Respondent 1's objections on the Claimant's Request for Production of Documents, Respondent 1's position is that the Claimant elected not to respond to its objections on the Request for Document Production. Respondent 1 then objects to any extension that may be granted to the Claimant in this respect and respectfully requests that the Tribunal rejects or disregards the Claimant's request for an extension, for the purpose of ensuring fairness amongst the parties to this Arbitration."

217. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's request and the Respondents' objections.
218. On 9 April 2020, in order to ensure the equal treatment of the Parties and their right to be heard, the Arbitral Tribunal stated that it needed to be fully briefed and granted the Claimant the requested extension of time until 10 April 2020 to file its Reply to the Respondents' Objections to its requests for document production and further granted the Respondents the opportunity to file rebuttals to the Claimant's Reply by 24 April 2020. The Arbitral Tribunal provided the Parties with the amended Procedural Timetable.
219. On 10 April 2020, the Court decided, on its own initiative, to grant the Arbitral Tribunal an extension of time of an additional six months, i.e. up to 11 October 2020, to render the final award
220. On the same day, the Claimant filed its Replies to Respondents' Objections to Claimant's Document Production Requests.

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221. On 12 April 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's submission.
222. On 24 April 2020, the Respondent N° 1 submitted its Rebuttal to the Claimant's Replies to the Objections to Document Production Requests, along with a scanned copy of the legal authorities referred to in this submission.
223. On the same day, the Respondents N° 2 and N° 3 also filed their Rebuttals to the Claimant's Replies to the Objections to Document Production Requests.
224. On 19 May 2020, the Court provided the Parties with a Financial Table, Payment Requests and information concerning the second instalment of the advance on costs required.
225. On 20 May 2020, the Arbitral Tribunal provided the Parties with its Decisions on Claimant's Requests for Document Production.
226. On 21 May 2020, the Respondent N° 1 requested the Arbitral Tribunal to confirm that the deadline for the submission of the response on the Arbitral Tribunal's Decision regarding the Claimant's requests for document production No. 18 and 22 was 29 May 2020 and that the deadline for the production of the documents by the Respondents was 3 June 2020.
227. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's communication and accepted its proposals. Moreover, the Arbitral Tribunal informed the Parties that once the documents were produced, the Claimant would inform the Arbitral Tribunal by Monday 8 June 2020 whether the production of the documents a few days later than originally contemplated in the Timetable would affect its ability to file the Statement of Reply and Defence to Counterclaim by 8 July 2020.
228. On 29 May 2020, the Respondent N° 1 responded to the Arbitral Tribunal's decision dated 20 May 2020 and provided the Arbitral Tribunal with its explanations.
229. On 30 May 2020, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's submission.
230. On 2 June 2020, the Claimant submitted its comments on Respondent N° 1's letter dated 29 May 2020.
231. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's comments on Respondent N° 1 letter dated 29 May 2020.
232. Further on the same day, the Arbitral Tribunal detailed its position regarding documents requested under Request 18(iii) and (iv) and under Request 22(i) to (iv) and invited the Respondent N° 1 to provide detailed explanations on the extent of the searches undertaken with respect to the documents requested under these requests.

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233. On 3 June 2020, the Respondent N° 1 submitted a letter in relation to the documents that it was ordered to produce.
234. On the same day, the Respondents N° 2 and N° 3 uploaded the responsive document identified and noted that due to the COVID-19 crisis, the normal process for document production was not possible. They indicated that searches remained ongoing and to the extent that any additional documents were identified and were responsive, they would be produced them as earlier as possible.
235. On 5 June 2020, the Arbitral Tribunal provided the Parties with an updated version of the Procedural Timetable.
236. On 8 June 2020, the Claimant submitted to the Arbitral Tribunal its position on the Respondents' disclosures by two separate letters and requested an extension of time until 22 July 2020 to file its Statement of Reply and Defence to Counterclaim.
237. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's letters and request for extension of time and invited the Respondents to take position on Claimant's letters and request for extension of time by 10 June 2020.
238. Further on the same day, the Respondent N° 1 provided the Arbitral Tribunal with its explanations on the extent of the searches undertaken with respect to the documents requested under Claimant's Request 18(iii) and (iv), as well as with a letter issued by its external auditor dated 2 June 2020.
239. Still on 8 June 2020, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's submissions.
240. On 9 June 2020, the Court requested the Parties to indicate whether payment for the advance on costs had been processed.
241. On the same day, the Respondents N° 2 and N° 3 informed the Court that they were still in the process of arranging the payment of their share of the requested advance.
242. Further on the same day, the Claimant confirmed to the Court that it had processed the payment to the Court's bank account on 2 June 2020.
243. Still on 9 June 2020, the Respondent N° 1 informed that a check would be deposited next in the name of the Chamber of Commerce for the purpose of settling the share of the Respondent N° 1 of the requested payment.
244. On 10 June 2020, the Respondents took position on the Claimant's letters dated 8 June 2020.
245. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondents' submissions.

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246. On 14 June 2020, the Arbitral Tribunal requested the Parties to provide it with the email of the Respondents N° 2 and N° 3 to the Claimant referred to in the Claimant's letter dated 8 June 2020.
247. On 15 June 2020, the Respondents N° 2 and N° 3 provided the Arbitral Tribunal with the email dated 3 June 2020 to the Claimant.
248. On the same day, the Claimant provided the Arbitral Tribunal with two letters: (i) one regarding the Respondent N° 1's document production and (ii) the other regarding the Respondents N° 2 and N° 3's document production.
249. On 16 June 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's unsolicited two letters dated 15 June 2020 and stressed that these were received at the time when the members of the Tribunal were discussing/deliberating on the pending issues and had planned to issue their guidance shortly. The Arbitral Tribunal however invited the Respondents to take position by 18 June 2020 on the Claimant's unsolicited letters of 15 June 2020. Furthermore, the Arbitral Tribunal indicated that it would not admit further communications/requests from the Parties on the pending incidents and would provide its guidance on the basis of the Parties' positions filed until 18 June 2020. In that respect, the Arbitral Tribunal stated that once it had issued its guidance, if there remained any pending issue, any Party would have to formally seek leave from the Arbitral Tribunal to file a request and no unsolicited letters would be accepted. The Arbitral Tribunal confirmed that the Claimant was granted an extension of time until 22 July 2020 to file its Statement of Reply and Defence to Counterclaim and that the Claimant's suggested adaptations of the other procedural steps contained in the Procedural Timetable were agreed.
250. On the same day, the Arbitral tribunal provided the Parties with an updated version of the Procedural Timetable.
251. On 18 June 2020, the Respondents took position on the Claimant's letters dated 15 June 2020.
252. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondents' submissions.
253. On 22 June 2020, the Arbitral Tribunal took position on the Claimant's letters and requests dated 8 June 2020. It also invited the Respondents N° 2 and 3 to confirm, by 24 June 2020, whether they had informed certain individuals (i.e. Messrs. Raymond Rahmeh, Nawzad Junde, Jawshin Hassan, Louis Abou-Charaf, Ghada Gebara and Anwer Domemeri) of the Arbitral Tribunal's production order and asked them to confirm whether they had responsive documents.

254. On 24 June 2020, the Respondents N° 2 and N° 3 confirmed that Mr. Abou-Charaf had been informed of the production order and was searching for any responsive documents. The other individuals were either not employees of the Respondents N° 2 and N° 3 or had no involvement in the IBL Loan negotiation; therefore, they had not been contacted to date. However, the Respondents N° 2 and N° 3 informed that in consideration of the Arbitral Tribunal's message dated 22 June 2020 and in the spirit of cooperation, they would contact these in that respect. The Respondents N° 2 and N° 3 noted that they did not control these individuals and could not compel any production from them.
255. On the same day, the Respondent N° 1 took position on the Arbitral Tribunal's decision dated 22 June 2020. It also provided redacted documents that related to its approval to extend the Loan to the Respondent N° 2 in accordance with the conditions of the IBL Loan Agreement, which included for that purpose the interest rate. The production of these documents was without prejudice to the Respondent N° 1's obligation to abide by the Lebanese Banking Secrecy Law.
256. On 11 July 2020, the Claimant informed the Arbitral Tribunal that it had recently obtained evidence relevant to these proceedings as a result of Section 1782 discovery proceedings in the Southern District of New York. The Claimant further noted that it would be referring to the Evidence in its Reply and Defence to Counterclaim. The Claimant drew the Arbitral Tribunal's attention to a Stipulation and Protective Order dated 7 February 2020, issued by the District Court in respect of the Evidence (hereinafter referred to as the "**Protective Order**").
257. On 13 July 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's communication and attachments and offered the Respondents the opportunity to make comments if they wished to by 16 July 2020.
258. On 16 July 2020, the Respondent N° 1 informed the Arbitral Tribunal that, in line with its obligations to abide by the Lebanese Banking Secrecy Law, it was prohibited from commenting on the attached document labelled "Evidence" enclosed with the Claimant's letter dated 11 July 2020.
259. On the same day, the Respondents N° 2 and N° 3 took position on the Claimant's letter dated 11 July 2020.
260. Sill on the same day, the Arbitral Tribunal acknowledged receipt of the Respondents' submissions.
261. On 22 July 2020, the Claimant filed its Statement of Reply and Defense to Counterclaim, together with Exhibits N° C-63 to C-96 and CL-1 to CL-23, the Second Witness Statements of Messrs. Nicholas Jonah Bortman (hereinafter referred to as "**CWS-Bortman-2**") and Olivier Froissart (hereinafter referred to as "**CWS-Froissart-2**"), as well as the Second Expert Report of Professor Ibrahim Fadlallah (hereinafter referred to as "**CER-Fadlallah-2**"), the Expert Reports of Professor Youmna Zein (hereinafter referred to as "**CER-Zein-1**") and Mr. David

Griffiths (hereinafter referred to as "**CER-Griffiths-1**"), and submitted the following prayers for relief:

"H. REQUEST FOR RELIEF

340. *Whilst reserving the right to claim further and/or other relief in due course, IT Ltd seeks the following relief at this stage:*
- a. *An order declaring that IT Ltd's entry into the Subordination Agreement was procured by dol, and that the Subordination Agreement is therefore null and void;*
 - b. *On the basis of the finding that IT Ltd's entry into the Subordination Agreement was procured by dol, and on the basis of the finding of liability for each of the Respondents, an order declaring that IT Ltd is entitled to full compensation for damages, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement, from the Respondents on a joint and several basis;*
 - c. *In the alternative, an order declaring that the Subordination Agreement: (i) has expired on 21 June 2015; or (ii) is terminated as of the date of starting these proceedings (26 June 2018), and is no longer in force and effect;*
 - d. *In the further alternative, an order declaring that IBL has abused its rights under the Subordination Agreement and that IBL is hereby prevented from invoking the Subordination Agreement against IT Ltd, and that none of IT Ltd, IH or Korek shall be bound by the restrictions in Clause 1.2 of the Subordination Agreement;¹*
 - e. *On the basis of a finding that IBL has abused its rights under the Subordination Agreement, an order declaring that IT Ltd is entitled to full compensation for damages from IBL, including pecuniary and non-pecuniary damages that were directly or indirectly caused by IBL's abuse of rights;*
 - f. *In the further alternative, an order declaring that the Subordination Agreement lapsed on 19 March 2019 and is no longer in force and effect;*
 - g. *An order that the Respondents pay IT Ltd forthwith the amount of all costs and expenses (including legal fees) incurred by IT Ltd in connection with these arbitral proceedings, including the costs of the Tribunal, the Lebanese Arbitration and Mediation Center, as well as any legal and other fees, costs and/or expenses incurred by IT Ltd, including, but not limited to, legal fees, expert fees and costs in respect of the time spent by IT Ltd's representatives on a full indemnity basis;*
 - h. *An order that the Respondents are jointly and severally liable to IT Ltd for the costs referred to in paragraph 340g above;*
 - i. *An order that the Respondents, jointly and severally, pay post-award interest on all sums awarded under paragraph 340g above at the maximum permitted rate until payment in full;*
 - j. *An order dismissing IBL's counterclaim; and*
 - k. *Such other relief as the Tribunal deems appropriate.*

¹ "A finding that IBL has abused its rights under the Subordination Agreement is not mutually inconsistent with a finding that the Subordination Agreement was terminated on 26 June 2018 and/or lapsed on 19 March 2019 (as IT Ltd alleges IBL abused its right prior to these dates). Therefore IT Ltd seeks a finding of abuse of rights and attendant damages in addition to findings of termination and/or lapse (in the event that either of these grounds are upheld by the Arbitral Tribunal)."

341. *IT Ltd reserves its right to plead its case further in due course and to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of its claims or to respond to any arguments or allegations advanced by the Respondents. IT Ltd also reserves its right to produce further documentary evidence and expert evidence, and to produce witness evidence in order to supplement and support the claims made in this Reply."*

262. On the 23 July 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's submission.
263. On 29 July 2020, the Claimant responded to the Respondents N° 2 and N°3's letter dated 16 July 2020.
264. On 10 August 2020, following the explosion in Beirut, the Respondent N° 1 informed the Arbitral Tribunal that most of the offices and residential units in the Asharafieh area, including the offices of Abousleiman and Partners and Badri and Salim Meouchi Law firm, were severely damaged and partially destroyed. This also included notably the offices of the experts appointed or to be appointed by Respondent N° 1 as well as its headquarters. The Respondent N° 1 informed the Arbitral Tribunal that it would not be in a position to meet the deadline for the submission of the Statement of Rejoinder and Reply to the Counterclaim and therefore requested the Arbitral Tribunal a one-month extension, until 22 October 2020, to submit its Statement of Rejoinder and Reply to the Counterclaim.
265. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's communication and invited the Claimant and the Respondents N° 2 and N° 3 to take position by 12 August 2020. The Arbitral Tribunal invited the Parties to liaise and attempt to agree on a rescheduled timetable and make a proposal to the Arbitral Tribunal.
266. On the 11 August 2020, the Claimant informed the Arbitral Tribunal that it would work with the Respondent N° 1's Counsel to try and arrive at a mutually acceptable timetable for the next submissions. The Claimant noted that it thought that resolving things by 12 August might be difficult.
267. On 12 August 2020, the Arbitral Tribunal invited the Parties to revert at their earliest convenience.
268. On 17 August 2020, the Claimant informed the Arbitral Tribunal that it had been liaising with the Respondent N° 1 in order to agree on an alternative timetable. The Claimant requested the Arbitral Tribunal to advise the Parties of their availability for a hearing from 20 January 2021 onwards and stated that, although its preference was not to incur undue delay and lose the planned hearing date, it would be appreciated if the Arbitral Tribunal could accommodate a hearing early in 2021.

269. On the same day, the President of the Arbitral Tribunal informed the Parties about his professional engagements in January and February 2021. He indicated that he would be available the first two weeks of February namely the week of 1 February or the week of 8 February and that he would be available the week of 22 February but that it was not ideal for him due to the hearing the week of 15 to 19 February. He also noted that he would be available the week of 25 January but that it was not his preferred option. The President of the Arbitral Tribunal invited his Co-Arbitrators to indicate their availability and the Parties to examine whether in their view it was feasible to hold the hearing in Beirut or whether another location should be considered in view of the circumstances. Each of the Co-Arbitrators indicated their availability during the early part of 2021.
270. Further on the same day, the Claimant indicated that it would consult the Respondents' Counsel with respect to the location of the hearing.
271. On 3 September 2020, the Claimant informed the Arbitral Tribunal that the Parties had conferred regarding the agreement of an amended timetable for these proceedings and requested the Arbitral Tribunal to confirm its agreement to the proposed revised Procedural Timetable. The Claimant also proposed that the hearing be moved to any of Paris, Geneva or the Dubai International Financial Centre but that the Respondents had indicated that they objected to the hearing being moved from Beirut. Furthermore, the Claimant informed that it was of the view that the Arbitral Tribunal should request the Parties to re-confirm their position regarding the hearing venue approximately six weeks in advance of the revised hearing date.
272. On 3 September 2020, the Arbitral Tribunal confirmed its agreement to the proposed revised Procedural Timetable and informed that it agreed with the Claimant's practical approach regarding the hearing venue.
273. On 1 October 2020, the Court informed the Arbitral Tribunal that it had decided, on its own initiative, to grant an extension of time until 11 April 2021 to render the final award.
274. On 14 October 2020, the Arbitral Tribunal provided the Parties with a clean version of the revised Procedural Timetable and invited the Parties to provide their position regarding the hearing venue by 18 December 2020. The Arbitral Tribunal also invited the Parties' Counsel to examine whether an in-person hearing should not be replaced if need be by a virtual hearing.
275. On 23 October 2020, the Respondent N° 1 filed its Statement of Rejoinder and Reply to Counterclaim, together with Exhibits N° R1-32 to R1-35, R1-LA-44 to R1-LA-109 and the Expert Reports of Professor Fadi Nammour (hereinafter referred to as "**R1-ER-Nammour-1**") and Mr. Samir Hammoud (hereinafter referred to as "**R1-ER-Hammoud-1**"), and submitted the following prayers for relief:

"VI. RELIEF REQUESTED BY RESPONDENT 1

457. While reserving the right to claim any further or other relief in due course, Respondent 1 respectfully requests from the Arbitral Tribunal to:
- Dismiss the Claimant's request to amend its relief sought and all that is related thereto, including the request for the Declaration;
 - Order that the Transfer Evidence is inadmissible evidence in these proceedings and set it aside;
 - Dismiss the Claimant's request for an order declaring that the Claimant's entry into the Subordination Agreement was procured by dol, and that the Subordination Agreement is therefore null and void;
 - Dismiss the Claimant's request for an order declaring that the Claimant is entitled to full compensation for damages, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement, from the Respondents on a joint and several basis;
 - Dismiss the Claimant's request for an order declaring that the Subordination Agreement: (i) has expired on 21 June 2015; or (ii) is terminated as of the date of starting these proceedings (26 June 2018), and is no longer in force and effect;;
 - Dismiss the Claimant's request for an order declaring that Respondent 1 has abused its rights under the Subordination Agreement and that Respondent 1 is hereby prevented from invoking the Subordination Agreement against the Claimant, and that none of the Claimant, Respondent 3 or Respondent 2 shall be bound by the restrictions in Clause 1.2 of the Subordination Agreement;
 - Dismiss the Claimant's request for an order declaring that the Claimant is entitled to full compensation for damages from Respondent 1, including pecuniary and non-pecuniary damages that were directly or indirectly caused by Respondent 1's abuse of rights;
 - Dismiss the Claimant's request for an order declaring that the Subordination Agreement lapsed on 19 March 2019 and is no longer in force and effect;
 - Dismiss the Claimant's request for an order that the Respondents pay the Claimant forthwith the amount of all costs and expenses (including legal fees) incurred by the Claimant in connection with these arbitral proceedings, including the costs of the Tribunal, the Lebanese Arbitration and Mediation Center, as well as any legal and other fees, costs and/or expenses incurred by the Claimant, including, but not limited to, legal fees, expert fees and costs in respect of the time spent by the Claimant's representatives on a full indemnity basis;
 - Dismiss the Claimant's request for order that the Respondents are jointly and severally liable to the Claimant for the costs referred to in paragraph 340g of the Statement of Reply;
 - Dismiss the Claimant's request for an order that the Respondents, jointly and severally, pay post-award interest on all sums awarded under paragraph 340g of the Statement of Reply at the maximum permitted rate until payment in full;
 - Order the Claimant to compensate Respondent 1, and grant Respondent 1's counterclaim, for the damages and losses suffered, in an amount to be determined during the course of this Arbitration, in application of Article 124 COC, Articles 10, 11 and 551 LCCP, and Article 122 COC in conjunction with Article 20 of the Rules;

- *Order the Claimant to bear all the costs and expenses incurred by Respondent 1 in connection with these arbitral proceedings, including attorney's fees, the costs of the Arbitral Tribunal and the Court, as well as any legal or other fees, costs and/or expenses incurred by Respondent 1;*
- *Such other relief as the Arbitral Tribunal may deem appropriate.*

This Statement of Rejoinder and Reply to Counterclaim is without prejudice to, and with reservation of, any right afforded to Respondent 1, without exception, including inter alia, under law and/or contract, with respect to any right or action or claim or counterclaim or argument in connection with the subject matter thereof and these proceedings, including inter alia, before the Court, the Arbitral Tribunal, any appropriate court of law or arbitral tribunal."

276. On the same day, the Respondents N° 2 and N° 3 filed their Rejoinder, together with Exhibits N° R2-33 to R2-34 and R2L-1 to R2L-2, as well as with the Second Expert Report of Dr. Fadi Moghaizel (hereinafter referred to as "**R2/3-ER-Moghaizel-2**"), and submitted the following prayers for relief:

"10. RELIEF SOUGHT

10.1 *The Second and Third Respondents request that the Tribunal:*

- (a) *dismiss the Claimant's claims;*
- (b) *declare that the Subordination Agreement remains in full force and effect;*
- (c) *order that the Claimant must pay the Tribunal and the Second and Third Respondents' costs in connection with these arbitral proceedings, including (but not limited to) the costs of the LAMC, as well as any legal and other fees, costs and/or expenses incurred by the Second and Third Respondents; and*
- (d) *grant any other relief that the Tribunal deems appropriate."*

277. On 25 October 2020, the Arbitral Tribunal acknowledged receipt of the Respondents' submissions.

278. On 26 October 2020, the Respondents N° 2 and N° 3 requested the Arbitral Tribunal to confirm whether the members of the Arbitral Tribunal still wished to receive hard copy of the bundles and whether the addresses set out in the Terms of Reference remained the most convenient for delivery of those bundles.

279. On the same day, the President of the Arbitral Tribunal informed the Respondents N° 2 and N° 3 that he would like to receive hard copies except if it is too cumbersome for the Respondents N° 2 and N° 3's Firm due to the pandemic, partial lock-out etc. He confirmed that the addresses set forth in the Terms of Reference remained the most convenient for delivery of his bundle.

280. Further on the same day, Ms. Debbas Achkar echoed the President of the Arbitral Tribunal and confirmed that the addresses set forth in the Terms of Reference remained the most convenient for delivery of the bundles.

281. On 4 December 2020, the Claimant filed its Statement of Rejoinder to Reply to Defence to Counterclaim, together with Exhibits N° CL-24 to CL-31, and submitted the following prayers for relief:

"III. CONCLUSION

48. *IBL's counterclaim is fundamentally deficient and should be dismissed with costs. There are two key deficiencies:*

- a. *At its core, the counterclaim is that IT Ltd has brought these proceedings in bad faith and without legal and factual grounds. For the reasons set out above, and as expanded on in the Statement of Claim and Reply and Defence to Counterclaim, IT Ltd's claim is strong (alternatively, the claim is certainly an arguable one), supported by contemporaneous evidence, expert reports and cogent witness testimony (whereas the Respondents have failed to produce a single witness of fact), and was commenced in good faith and not for any collateral purpose.*
- b. *There is no particularisation or evidentiary support for the counterclaim, particularly regarding IBL's alleged loss or harm. The Tribunal cannot make a quantified damages award in the circumstances. IBL has failed to discharge its burden of proving that it has suffered any loss."*

282. On 5 December 2020, the Arbitral Tribunal acknowledged receipt of the Claimant's submissions dated 4 December 2020.

283. On 15 December 2020, the Arbitral Tribunal reminded the Parties about the update concerning the hearing venue to be provided by 18 December 2020.

284. On 18 December 2020, the Parties indicated to the Arbitral Tribunal their agreement that the Evidentiary Hearing would take place virtually on the scheduled dates, i.e. from 1 to 5 February 2021. Moreover, the Claimant informed that it would liaise with the Respondents to agree on a draft hearing protocol for the Arbitral Tribunal's approval in due course.

285. On the same day, the Arbitral Tribunal acknowledged receipt of the Parties' communication.

286. On 7 January 2021, the Arbitral Tribunal reminded the Parties that they were required to indicate by 8 January 2021 their list of witnesses/experts called for the Hearing and that the Pre-Hearing Conference Call was scheduled on 15 January 2021. The Arbitral Tribunal invited the Parties to attempt to agree on a draft daily agenda for the Hearing and to submit it to the Tribunal by 13 January 2021. Within the same time-limit, the Parties were invited to provide the Arbitral Tribunal with the list of attendees of the Pre-Hearing Conference Call and functions of the attendees as well as an indication of who on the Claimant and on the Respondents' side would be addressing the Arbitral Tribunal. Still within the same time-limit, the Arbitral Tribunal requested the Parties to submit the agreed draft Hearing Protocol as well as all relevant information (name of court reporter, name of company who would manage the IT aspects of the virtual hearing etc.).

287. On the same day, the Claimant confirmed its availability for the Pre-Hearing Conference Call on 15 January 2020 at 10:30 am Swiss time. The Claimant indicated that it had prepared a draft Hearing Schedule and had circulated it to the Respondents for comments, which it expected to receive soon. The Claimant further informed that the appointment of a Virtual Services Hearing Provider (including transcription) was similarly advanced and that it was awaiting final confirmation from the Respondent N° 1. The Claimant stated that the provider would conduct testing in the weeks leading to the Hearing and informed that a draft Virtual Hearing Protocol had also been prepared and would be circulated to the Respondents for comment upon appointment of the provider.
288. Further on the same day, the Respondent N° 1 confirmed its availability for the Pre-Hearing Conference Call on 15 January 2021 at 10:30 am Swiss Time. It provided the list of the attendees to the Pre-Hearing Conference Call. The Respondent N° 1 further indicated that it had received the Claimant's proposal with respect to the Hearing Schedule and that it would provide them with its comments. It stated that it would submit its list of witnesses by 8 January 2021.
289. Still on 7 January 2021, the Respondents N° 2 and N° 3 confirmed that they were available for the Pre-Hearing Conference on 15 January at 10:30 am Swiss Time and provided the list of the attendees to the Pre-Hearing Conference Call. The Respondents N° 2 and N° 3 also informed that as indicated by the Claimant and the Respondent N° 1, the Parties were in correspondence regarding the Hearing Schedule and that they would revert to the Arbitral Tribunal with their list of witnesses by 8 January 2021.
290. On the same day, the Arbitral Tribunal acknowledged receipt of the Parties' communications dated 7 January 2021.
291. On 8 January 2021, the Respondent N° 1 provided the Arbitral Tribunal with its list of witnesses and indicated that its legal expert, Professor Antoine Merheb, would not be able to appear during the Hearing due to personal reasons. It further reserved its right to request, during the Hearing, the ability to direct questions to Claimant's factual witnesses, Messrs. Olivier Froissart, Mr. Ehab Aziz and Mr. Nicholas Bortman, and the Respondents N° 2 and N° 3's experts, Dr. Fadi Moghaizel and Dr. Ronnie Barnes, if necessary and subject to prior coordination with the other Parties to this arbitration and the Arbitral Tribunal.
292. On the same day, the Claimant provided the Arbitral Tribunal with the list of experts for cross-examination and reserved its right to briefly comment on the Respondent N° 1's earlier email of the same day in due time.
293. Further on the same day, the Respondents N° 2 and N° 3 provided the Arbitral Tribunal with the list of witnesses they intended to cross-examine.
294. Still on 8 January 2021, the Arbitral Tribunal acknowledged receipt of the Parties' communications dated 8 January 2021.

295. On 11 January 2021, the Claimant took position on the Respondent N° 1's letter dated 8 January 2021 addressing the Arbitral Tribunal's directions in Procedural Order No. 5. The Claimant objected to the Respondent N° 1's position on the two following matters, as this was neither permitted under the procedural rules of this arbitration nor standard practice in international arbitration:
- the Respondent N° 1's failure to secure the presence of Prof. Antoine Merheb at the Evidentiary Hearing: the Respondent N° 1 explained that Prof. Antoine Merheb "*will not be able to appear during the hearing due to personal reasons*";
 - the Respondent N° 1's reservation of rights to call witnesses and experts during the Evidentiary Hearing.
296. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's position on the Respondent N° 1's letter of 8 January 2021. The Arbitral Tribunal invited the Respondent N° 1 to take position by 13 January 2021 and, in particular, to provide detailed explanations as well as supporting documentation regarding the "personal reasons" to which it referred when asserting that Prof. Antoine Merheb would be unable to attend the virtual hearing.
297. On 12 January 2021, the Respondent N° 1 submitted its position on the Claimant's email dated 11 January 2021. The Respondent N° 1 stated that Prof. Merheb's inability to attend the Hearing due to personal reasons was a valid reason under Rule 5.6 of the SPR, the reasons of the expert being private and valid. Moreover, the Respondent N° 1 provided the Arbitral Tribunal with a letter from Prof. Merheb justifying his inability to attend the Hearing. The Respondent N° 1 considered that there was no prejudice to the Claimant from the written statement being included because the Arbitral Tribunal was not bound to agree with Prof. Merheb's expertise and could weigh its opinion with the rest of the evidence when making its decision. The Respondent N° 1 therefore requested the dismissal of the Claimant's objection. Regarding the second matter raised by the Claimant, the Respondent N° 1 indicated that it failed to understand the basis for this objection. The Respondent N° 1 added that it made it very clear in its letter of 8 January 2021 that it had no intention to disrupt the Hearing but that it was simply reserving its right to request the Arbitral Tribunal's permission to direct a question if necessary, while coordinating with the rest of Parties. According to the Respondent N° 1, this objection would have to be dismissed as it would be absurd to suggest that it could not make a request to the Arbitral Tribunal to ask questions during the Evidentiary Hearing.
298. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's position and suggested to discuss these issues during the Pre-Hearing Conference Call.
299. On 13 January 2021, the Respondent N° 1 provided the Arbitral Tribunal with an updated list of the names of the persons who would attend the Pre-Hearing Conference Call on Friday 15 January 2021.

300. On the same day, the Claimant provided the Arbitral Tribunal with the list of the active representatives who would attend the Pre-Hearing Conference Call as well as with a list of representatives who would attend the call in a listening capacity only.
301. Further on the same day, the Respondents N° 2 and N° 3 referred to the Arbitral Tribunal's email dated 7 January regarding the preparation for Pre-Hearing Conference Call. In accordance with the Arbitral Tribunal's directions, they informed that the Parties were still liaising on the draft Hearing Schedule. The Parties would revert the following day with a joint proposal (with any issues still in dispute clearly identified).
302. Still on 13 January 2021, the Claimant and the Respondent N° 1 confirmed their agreement with the Respondents N° 2 and N° 3's communication of the same day. Moreover, the Claimant provided the Arbitral Tribunal with a draft Hearing Protocol which had been agreed by all the Parties. The draft remained subject to further amendment based on confirmation of the Hearing Agenda and related issues. Regarding the Arbitral Tribunal's specific queries, the Claimant informed that Opus2 would be the company that would handle the Virtual Hearing Services and the English language transcription, and Catherine Le Madic of Hearing Report would provide the French transcription. It further indicated that the virtual platform would be Zoom and provided the Arbitral Tribunal with all the relevant details and information with respect to the interpreters and the scheduled tests.
303. Further on the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's email and draft Hearing Protocol as well as of the Respondents' communications.
304. On 14 January 2021, the Claimant informed the Arbitral Tribunal that the Parties had further discussions regarding the Hearing Agenda. While the issues in dispute were narrowed, the Parties remained in disagreement over various matters. The Claimant provided the Arbitral Tribunal with a summary of the points of disagreement, together with the Parties' relevant correspondence which set out the Parties' positions in more detail.
305. On the same day, the Respondents N° 2 and N° 3 took position on the Claimant's email and stressed that they were not consulted on the contents of the Claimant's email and provided the Arbitral Tribunal with the email sent to the Claimant's Counsel the night before which set out the Respondents' position.
306. Further on the same day, the Arbitral Tribunal informed the Parties that the draft Agenda and any other items would be discussed at the beginning of our Pre-Hearing Conference Call.
307. On 15 January 2021, the Arbitral Tribunal and the Parties held the Pre-Hearing Conference Call during which they discussed the issues at disagreement between the Parties and other aspects of the coming Evidentiary Hearing. By separate email, the Arbitral Tribunal confirmed and stated the following:

"The Arbitral Tribunal confirms that the Opening Statements shall be split as follows:

- Claimant: 2 hours and 30 min*
- First Respondent: 1 hour and 15 min*
- Second and Third Respondents: 1 hour and 15 min*

The Tribunal also confirms that no party shall make new allegations and/or submit new exhibits during the Opening Statements. The same applies to the Demonstrative Exhibits.

The Arbitral Tribunal also confirms that First Respondent shall explore with Prof. Antoine Merheb by Tuesday 19 January 2021 COB his availability to be cross-examined on 12, 16, 17 or 19 February 2021.

In case he is not available at any of those dates (which the Tribunal would regret) then Prof. Merheb shall provide a written statement clarifying:

- i) The precise dates of the other hearing in which he is acting as chairman;*
- ii) When such dates were determined;*
- iii) on the assumption (based on his 12 January 2021 letter) that he would have been aware of the dates of the other hearing already in June 2020, why he was not in a position to inform First Respondent (and therefore this Tribunal and the other parties) earlier.*

[...]

The Parties' Counsel shall then attempt to reach agreement on a final version of the Hearing Schedule failing which the Tribunal will decide.

During such Counsel' discussions, First Claimant shall decide whether it will examine the Claimant's witnesses for whom it so far simply reserved to do so.

*As to the time to be allocated to each Expert for a short introduction/summary of his findings before being cross-examined, **the Tribunal decides that each expert shall be allocated a maximum of 20 minutes for such introduction/summary including Prof. Fadlallah.***

[...]"

308. On 18 January 2021, the Respondents N° 2 and N° 3 provided the Arbitral Tribunal with their list of attendees to the Evidentiary Hearing.
309. On the same day, the Respondent N° 1 provided the Arbitral Tribunal with its list of attendees to the Evidentiary Hearing and indicated that it agreed to the appointment of Sarah Rossi as interpreter (for Prof. Fadi Nammour) who would attend the Evidentiary Hearing along with her colleague Gabrielle Baudry.
310. Further on the same day, the Arbitral Tribunal acknowledged receipt of the Respondents' communications.
311. On 19 January 2021, the Claimant provided the Arbitral Tribunal with their list of attendees to the Evidentiary Hearing.

312. On the same day, the Respondent N° 1 made reference to the Arbitral Tribunal's proposal that the cross-examination of Prof. Merheb could take place on 12, 16, 17 or 19 February 2021 and informed it that regretfully he would be unavailable to be cross-examined on the proposed dates due to personal reasons which he required to remain private. The Respondent N° 1 further indicated that it attempted to obtain from Prof. Merheb the information requested regarding the other arbitration that he was chairing, but he did not wish to make any further disclosures with respect to the parallel arbitration hearings to which he was committed. The Respondent N° 1 stressed that it had deployed every possible effort to ensure the appearance of Prof. Merheb during the Evidentiary Hearing and regretted that he would not be able to be heard for reasons outside the Respondent 1's control. The Respondent N° 1 reiterated its position with respect to the admissibility of Prof. Merheb's report and deferred this matter to the Arbitral Tribunal to make the appropriate decision in this respect. Finally, with respect to the cross-examination of the Claimant's factual witnesses, the Respondent 1 indicated that it could have questions to be asked to Mr. Nicholas Bortman during his cross-examination, which questions would be asked in coordination with the Respondents N° 2 and N° 3's Counsel.
313. Further on the same day, the Arbitral Tribunal invited the Claimant and the Respondents N° 2 and N° 3 to take position by 21 January 2021 on the Respondent N° 1's communication. Without prejudice to the decision of the Tribunal as to the procedural consequences of Prof. Merheb's unavailability, the Arbitral Tribunal indicated that it understood that the Parties' Counsel were now in a position to finalize their discussions of the Hearing Schedule since Prof. Merheb would not be available even on the alternative dates. As to the issue of Closing Oral Arguments vs Post-Hearing Briefs, even if the Arbitral Tribunal did express during the Pre-Hearing Call its preference in principle for Post-Hearing Briefs, the Tribunal would ultimately abide with the option preferred by the Parties.
314. On 21 January 2021, the Parties and the Arbitral Tribunal conducted the tests/technical preparation session for the Evidentiary Hearing.
315. On the same day, the Claimant submitted to the Arbitral Tribunal its position on the Respondent N° 1's email dated 19 January 2021 related to Prof. Merheb's unavailability to attend the Evidentiary Hearing. The Claimant first provided the Arbitral Tribunal with a brief background of that issue and then requested the Arbitral Tribunal to disregard and strike out of the record Prof. Merheb's expert report in application of the Rule 5.6 of the SPR (read in conjunction with Rule 7.1 of the SPR), as it was prevented from its basic right to test Prof. Merheb's professional opinions. The Claimant further reserved its rights to the fact that Prof. Fadlallah had no opportunity in his second report to address Prof. Nammour's report. Finally, Claimant noted the Respondent N° 1's position on the cross-examination of its factual witnesses, i.e. that it would ask Mr. Bortman some questions, but would not be cross-examining Messrs. Aziz or Froissart. On their side, the Respondents N° 2 and N° 3 indicated to the Arbitral Tribunal that they considered the question of Prof. Merheb's evidence as being a matter for the Respondent N° 1. For the sake of good order, they confirmed that they did not object to Prof. Merheb's written

reports being retained in the record, with the Tribunal to attach such weight as it deemed appropriate and in light of Prof. Merheb's failure to appear at the Evidentiary Hearing.

316. Further on the same day, the Arbitral Tribunal acknowledged receipt of the Claimant and the Respondents N° 2 and N° 3's positions and indicated that no further submissions should be filed by the Parties. The Arbitral Tribunal further informed the Parties that it would like to appoint a Secretary to the Tribunal and suggested to appoint Ms. Maylis Noth in that capacity, a member of the President's arbitration team. It provided the Parties with her *curriculum vitae* and invited them to indicate by 25 January 2021 whether they agreed with or objected to such appointment and/or whether they had any comments.
317. Still on 21 January 2021, the Parties confirmed their agreement to the appointment of Ms. Maylis Noth as Secretary to the Tribunal.
318. On 23 January 2021, the Arbitral Tribunal issued its decision on the Claimant's request to strike out from the record the expert report of Prof. Antoine Merheb. The decision reads as follows:

- "1. Rule 6.5 of the agreed SPR provides that each party is responsible for ensuring the presence of its witnesses at the hearing.
2. Rule 5.6 SPR provides that in case a prospective witness fails to appear at the hearing without a valid reason, the Arbitral Tribunal shall in principle not consider the witness' written statement, unless extraordinary circumstances so warrant.
3. No party disputes that the above rules apply *mutatis mutandis* to experts.
4. **The Arbitral Tribunal concludes that Prof. Mehreb failed to provide any valid reason for his inability to attend the hearing, although he was given twice the opportunity to provide the appropriate explanations.** In particular, whereas it is correct that due to the Beirut's blast on 4 August 2020 the hearing dates (originally scheduled for December 2020) had to be postponed until 1st to 5th February 2021, when the Procedural Timetable was revised and the dates discussed and agreed, the First Respondent never indicated that its legal expert Prof. Merheb would not be available on such dates although, according to Prof. Merheb's own admission in his letter of 12 January 2021, he was already aware in June 2020 that he would have during that week of 1st to 5th February 2021 "commitments relating to another arbitration case" which he is chairing (without further clarifying whether he was referring to an arbitration hearing or another commitment such as a deliberation). On 15 January 2021, the Arbitral Tribunal gave a second opportunity to First Respondent and its legal expert to provide further explanations and was very clear about the information it expected Prof. Merheb to provide in an additional statement. The First Respondent when reverting to the Arbitral Tribunal on 19 January 2021 explained to have contacted Prof. Merheb "and regretfully he is unavailable to be cross-examined on the proposed dates due to personal reasons which he requires to remain private". The First Respondent added: "We also attempted to obtain from Pr. Merheb the information you have requested regarding the other arbitration which he is chairing; unfortunately, Pr. Mehreb does not wish to make any further disclosures with respect to the parallel arbitration hearings to which he is committed". As it is well established in international arbitration and confirmed by the agreed SPR, a witness and/or expert who is providing evidence /expert evidence undertakes to comply with certain

rules including the obligation to make himself available for the hearing. The hearing is a very important moment as the Party relying upon such evidence has an opportunity to have its witness/expert witness heard by the arbitral tribunal. The other party(ies) has/have an opportunity to cross-examine such witness/legal expert and the arbitral tribunal has the opportunity to ask questions. Those objectives cannot obviously be achieved by simply having the written witness/expert witness evidence on record. Moreover, to accept that Prof. Merheb, contrary to the other witnesses and experts, could not be heard would breach due process in particular the key procedural principles of equal treatment and the right to be heard, thus potentially exposing the future arbitral award to an appeal. The only limited exceptions are the one set forth in Rule 5.6 SPR but the conditions are clearly not met. First of all, Prof. Merheb did not provide a valid reason for his inability to appear. Second, the First Respondent failed to evidence extraordinary circumstances which would have warranted to consider Prof. Merheb's expert report despite the absence of a valid reason for his inability to appear.

5. ***Consequently, pursuant to Rule 5.6 SPR, the Arbitral Tribunal decides to strike out Prof. Merheb's Expert Report from the record.***

319. On the same day, by separate email, the Arbitral Tribunal requested the Parties to provide it by 26 January 2021 with their suggested revised Hearing Schedule.
320. On 25 January 2021, the Claimant informed the Arbitral Tribunal that it intended to upload on the Opus2 platform a few supplementary translations to the existing exhibits: (i) for the legal exhibits N° R1-LA-69, R1-LA-77 and R1-LA-79, it would add its own courtesy translations to the excerpts already provided and, (ii) for the legal exhibit N° R1-LA-59, it would provide a mark-up translation reflecting the points on which it differed from the version put on record by the Respondent N° 1.
321. On the same day, the Arbitral Tribunal acknowledged receipt of the Claimant's email and indicated that it had no objection to the suggested way to proceed.
322. On 26 January 2021, the Respondent N° 1 objected to the Claimant's request to present supplementary translations to its exhibits a week before the commencement of the hearings especially given that the contested translations had been included in the Respondent N° 1's Statement of Rejoinder dated 23 October 2020 and that the Claimant had over four months to raise any disagreement with these translations. Referring to Rule 3.8 of the SPR, the Respondent N° 1 stressed that it had not been informed by the Claimant that they had any issue with the translations of the exhibits produced. Therefore, the Respondent N° 1 respectfully asked the Claimant to provide it with their suggested translation of the exhibits by no later than 27 January 2021 COB so that they could try to reach an agreement on these translation as per the provisions of Rule 3.8 of the SPR.
323. On the same day, the Arbitral Tribunal acknowledged receipt of the Respondent N° 1's email and invited the Claimant to provide Respondents with their proposed translation by 27 January 2021 COB.

324. Further on the same day, the Claimant indicated to the Arbitral Tribunal that the Parties were not yet in the position to submit the revised Hearing Schedule because of a difference of view on the form and length of closing submissions, which the Arbitral Tribunal was asked to decide. The Claimant summarized the Parties' respective positions on that issue in dispute and stated that there was no good reason why general written closings should not be permitted. The Arbitral Tribunal was invited to make a procedural direction along the lines set out.
325. Still on 26 January 2021, the Arbitral Tribunal invited the Respondents to clarify whether they wished to provide their position on the pending issues or whether they considered that the Claimant's email correctly summarized the areas of disagreement. In case they wished to state their position, the Respondent were invited to do so by 27 January 2021 10am CET. The Arbitral Tribunal further indicated that the date for submission of the revised Hearing Schedule was postponed until 27 January 2021 in view of the pending issues.
326. On 27 January 2021, the Respondent N° 1 indicated to the Arbitral Tribunal that it considered that the Claimant had correctly summarized the issue in dispute. It further expressed its position stressing that its position was that the case should be closed at the Hearing and that oral closing statements would be sufficient especially that this case was thoroughly discussed in writing (more than 6000 pages were submitted to the Arbitral Tribunal) and in length during a 4-day Hearing (which would include a closing statement of 2hr 30 min for the Claimant). The Respondent N° 1 added that the closing submissions should not be a ground for additional analysis and argumentation and that it considered that having both oral and written closing statements to be unnecessarily redundant.
327. On the same day, the Respondents N° 2 and N° 3 indicated that they were willing to agree to the exchange of post-hearing briefs if it would assist the Tribunal. However, they remained of the view that the case should be closed in oral closing submissions and that post-hearing briefs should be limited in length and scope. The Respondents N° 2 and N° 3 further detailed the proposal made to the Claimant, stressing that due to commitments amongst their team, they would not be able to exchange post-hearing briefs before 12 March 2021.
328. Further on the same day, the Claimant provided the Arbitral Tribunal and the Respondents with (i) the three supplementary English translations of Exhibits N° R1-LA-069, R1-LA-077 and R1-LA-079 and (ii) its mark-up on the translation of Exhibit N° R1-LA-059 reflecting the points on which it differed from the translation put on record by the Respondent N° 1. The Claimant further provided explanations in support of its request.

329. Still on 27 January 2021, the Arbitral Tribunal communicated to the Parties its position on the remaining points of disagreement between the Parties:

"1. Post Hearing Briefs

All issues connected to the Post Hearing Briefs will be discussed at the end of the Hearing after having heard the oral closings. At that time, the Tribunal will assess whether such submissions are necessary and if it is the case their scope and time-limit to file them. If such submissions are filed their length will in any case be limited considering the length of the written submissions already filed and the oral closings.

2. Oral Closings

Each party (Claimant / First Respondent / Second & Third Respondent) shall have 2 hours maximum for Oral Closings.

3. Revised and Final Hearing Schedule

*The Parties are invited to submit the revised and Final Hearing Schedule **by COB today.***"

330. Further on 27 January 2021, the Claimant provided the Arbitral Tribunal with the final Hearing Protocol, including the final Hearing Schedule, which had been agreed between the Parties.

331. On 28 January 2021, the Respondent N° 1 reverted to the Arbitral Tribunal with respect to the Claimant's request to present supplementary translations to its exhibits. It stated that it understood that the Claimant wanted to present the Tribunal with suggested amended wording to the Respondent N° 1's translations of the excerpts presented under Exhibits N° R1-LA-059, R1-LA-069, R1-LA-077 and R1-LA-079 as opposed to the Claimant presenting translations of additional sections of the aforementioned exhibits. The Respondent N° 1 submitted that these exhibits have been filed together with its Statement of Rejoinder and therefore the Claimant was at this stage precluded to raise new arguments. In accordance with Rule 10.1 of the SPR applicable to this arbitration, no new evidence should be filed and no new factual allegation should be made after the Cut-Off Date specifically provided for in the Procedural Timetable (i.e. after 18 December 2020) unless authorized (on the basis of a reasoned request) by the Arbitral Tribunal after hearing the other Parties. New evidence filed and new allegations made after the Cut-Off Date without prior authorization by the Arbitral Tribunal should be disregarded and struck off the record. In that respect, the Respondent N° 1 stated that it considered the supplementary English translations of Exhibits N° R1-LA-069, R1-LA-077 and R1-LA-079 to be new evidence which, as acknowledged by the Claimant, "*will be quoted during the hearing*", and were therefore clearly introduced at this stage by the Claimant as a means to make new argumentation during the Hearing which was neither allowed pursuant to Rule 10.1 of the SPR nor in line with the purpose of the Hearing itself. The Respondent N° 1 stressed that it found the Claimant's request, made over four months after its submission of the Statement of Rejoinder (dated 23 October 2020) and over a month after the Cut-Off Date for the introduction of new evidence to be unreasonable and therefore contested the Claimant's request to introduce the new translations and their use as arguments in the Hearing. With regard to the proposed amended translation of Exhibit N° R1-LA-59, the

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Respondent N° 1 indicated that it had no issue with the Claimant's proposed wording.

332. On the same day, the Arbitral Tribunal invited the Claimant to comment on the Respondent N° 1's communication by 5 p.m. CET that day.
333. Further on the same day, the Claimant submitted its comments on the Respondent N° 1's objection to the Claimant's submission of supplementary translations for the Exhibits N° R1-LA-069, R1-LA-077 and R1-LA-079 (hereinafter referred to as the "**Supplementary Translations**"). The Claimant submitted that Rule 10.1 of the SPR was neither applicable nor relevant, as no new evidence was adduced, the Respondent N° 1's application should therefore be dismissed. The Claimant further developed its position and concluded by requesting the Arbitral Tribunal to dismiss Respondent N° 1's application and to allow the use of the Supplementary Translations at the Hearing.
334. On 29 January 2021, the Arbitral Tribunal reverted to the Parties as to the issue of the Claimant's request to upload on the Opus2 platform Supplementary Translations of documents filed by the Respondent N° 1. It first relied on the clear text of Rule 3.7 of the SPR which provided that each Party producing a document in a language other than English should produce it with an English translation and, pursuant to Rule 3.8 of the SPR, the translations should be presumed to be accurate unless another Party disputed its accuracy. The Arbitral Tribunal stressed that those issues had nothing to do with other issues like the cut-off date, the production of new documents, new evidence etc. as the question was limited to: "*(i) the accuracy of the English translation of documents already produced and (ii) a party's request to provide an English translation of portion of documents produced by another party but not translated by that party*". It further stated that the SPR did not specifically address the situation contemplated under (ii), therefore, the issue fell under the overall competence of the Arbitral Tribunal to conduct the procedure and to decide upon procedural issues in case of disagreement between the Parties. Exercising such power, the Tribunal found that a Party is entitled to seek leave to provide a translation of portions of documents produced by another Party but not translated. In light of the above explanations and analysis, the Arbitral Tribunal ruled as follows:
- i) *Claimant is authorized to provide English translations of excerpts of documents in consideration produced by First Respondent but not translated;*
 - ii) *In case of disagreement on such supplementary translation, Section 3.8 SPR applies.*
 - iii) *The Parties are strongly encouraged to reach agreement on the various English translations failing which Claimant is invited to seek the assistance of a sworn translator (Section 3.8 SPR);*
 - iv) *If the Parties reach agreement on the translations and/or if Claimant obtains such sworn translations then the English translations of the documents in consideration can be filed by Claimant on the Opus2 Platform (in the latter case with a clear statement that it is a sworn translation obtained by Claimant);*

- v) *If due to time constraint, no agreement can be reached and/or no sworn translation can be obtained by Claimant before the start of the hearing, this issue will be further discussed at the beginning of the hearing but no additional English translation shall in the meantime be uploaded on the Opus2 platform."*

335. From 1 to 4 February 2021, the virtual Evidentiary Hearing was held. The Hearing was court reported and the Parties and the Arbitral Tribunal received the transcript of the Hearing at the end of each day of the Hearing. During the Evidentiary Hearing, the following witnesses and experts were heard: Mr. Froissart, Mr. Aziz, Mr. Bortman, Prof. Fadlallah, Prof. Zein, Mr. Griffith, Dr. Moghaizel, Mr. Hammoud and Prof. Nammour.
336. On 5 February 2021, the Respondents N° 2 and N° 3 informed the Arbitral Tribunal, the Parties and the Secretariat of certain changes to their representation.
337. On 7 February 2021, the Arbitral Tribunal referred to the discussion with the Counsel at the end of the Evidentiary Hearing and invited the Claimant to search for and produce, by 12 February 2021, the attachment to the email produced under R1-21. By 19 February 2021, the Parties were invited to provide the Arbitral Tribunal with their suggested list of amendments to the Transcript and the Parties' Counsel were invited to be in contact before such date to attempt to agree on the list of suggested amendments. In case some disagreements remained, the court reporters would be asked by the Arbitral Tribunal to verify the recording. The Arbitral Tribunal further invited the Parties to file, by 26 February 2021, their Cost Submissions, stressing that it was not another opportunity to plead a Party's position on the merits. The Parties were invited to raise, by 5 March 2021, questions/comments/objections relating to the Cost Submissions of the other Parties. Finally, the Arbitral Tribunal indicated that it would use its best efforts to inform the Parties by Friday 12 February 2021 whether it wished the Parties to address a few issues in Post Hearing Briefs (in which case the dates of 26 February 2021 and 5 March 2021 would need to be adapted) or whether it considered to have all the necessary information to deliberate and to decide.
338. On 10 February 2021, the Secretariat informed the Parties that the Court decided at its session of 8 February 2021 to increase the advance on costs by USD 250,000.00. Therefore, the readjusted advance on costs stood at USD 683,000.00 and the outstanding amount of the advance on costs to be paid by the Parties was USD 336,856.00. The Parties were requested to make the additional payments by 1 March 2021.
339. On 12 February 2021, the Arbitral Tribunal invited the Parties to provide it, by 19 February 2021, with a joint chronological index of exhibits also containing a correlation/conversion table between the C-/R1-/R2- numbers and the Hearing Bundle numbers, pursuant to Section 3.4. of the SPR.
340. On the same day, the Claimant provided the Arbitral Tribunal with the attachment to the email produced as Exhibit N° R1-21.

341. On 15 February 2021, to comply with the Arbitral Tribunal's request for a joint chronological index of exhibits also containing a correlation/conversion table between the C-/R1-/R2- numbers and the Hearing Bundle numbers, the Claimant suggested to the Arbitral Tribunal to obtain from Opus 2 a final "offline" copy of the complete hearing bundle, broken down into the bundle folders (A to I), each bundle folder containing PDFs of the relevant documents and a hyperlinked index and the indexes containing both hearing bundle references and original exhibit references (where exhibit references exist). It further added that Volume E of the bundle contained all factual exhibits in chronological order. The Claimant invited the Arbitral Tribunal and the Respondents to confirm their agreement to this approach.
342. On the same day, the Arbitral Tribunal confirmed to the Claimant that, subject to the Respondents' position, its agreement with the suggested approach with the understanding that Volume E would contain all factual exhibits in chronological order allowing to easily identify for each factual exhibit the hearing bundle reference and original exhibit reference.
343. On 16 February 2021, the Respondents confirmed their agreement with the Claimant's suggested approach.
344. On the same day, the Respondents N° 2 and N° 3 requested a short extension until 26 February 2021 to provide proposed amendments to the transcript. The requested extension was granted by the Arbitral Tribunal.
345. On 17 February 2021, the Arbitral Tribunal informed the Parties that it had no further requests for clarifications or additional questions.
346. On 26 February 2021, the Parties filed with the Arbitral Tribunal their respective Cost Submissions. Further, the Respondents N° 2 and N° 3 informed the Arbitral Tribunal that they were endeavoring to review the draft transcripts to allow a final agreed form of transcript to be prepared and requested the Arbitral Tribunal to grant the Parties an extension until 3 March 2021 to reach agreement on the transcripts. The other Parties were invited to confirm that they had no objection to this extension request. The Claimant and the Respondent N° 1 confirmed that they had no objection to the Respondents N° 2 and N° 3's extension request.
347. On 27 February 2021, the Arbitral Tribunal acknowledged receipt of the Parties' Cost Submissions and provided them with the other Parties' submissions.
348. On 3 March 2021, the Parties provided the Arbitral Tribunal with a consolidated list of amendments to the Hearing transcript.
349. On 5 March 2021, the Claimant filed its Reply to the Respondents N° 2 and N° 3's Costs Submissions. The Respondent N° 1 submitted its written objection to the Claimant's Submission on Costs. The Respondents N° 2 and N° 3 filed their Response Cost Submissions.
350. On 6 March 2021, the Arbitral Tribunal acknowledged receipt of the Parties' submissions.

351. On 3 June 2021, the Arbitral Tribunal informed the Parties that, failing contrary positions of the Parties by 10 June 2021, it would declare the proceedings closed. The Arbitral Tribunal further indicated to the Parties that, in the event any Party needed to update its Cost Statement, it should do so by 10 June 2021.
352. On 28 June 2021, the Arbitral Tribunal declared the proceedings closed.
353. On 17 August 2021, the Court has scrutinized the draft award submitted by the Arbitral Tribunal and approved it in accordance with Article 21 of the Rules.

XI SUMMARY OF THE PARTIES' POSITIONS

A Jurisdiction of the Arbitral Tribunal

1 The Respondents N° 2 and N° 3's Position

354. The Respondents N° 2 and N° 3 submit that the Claimant's claim suffers from fundamental jurisdictional flaws. They stress that the Claimant's claim, even as reformulated, necessitates the Arbitral Tribunal to determine issues that fall outside its jurisdiction. In particular:²

- the Claimant's revised request for relief continues to contemplate the Arbitral Tribunal making a final determination of liabilities which (if they exist at all) arise under separate agreements outside the scope of this Tribunal's jurisdiction.
- the Claimant's claim also continues to require the Arbitral Tribunal to make findings in relation to the conduct of individuals who are not parties to the arbitration agreement and are not within the jurisdiction of the Tribunal.

355. The Respondents N° 2 and N° 3 assert that the Arbitral Tribunal's jurisdiction is delineated by the arbitration clause provided under Clause 5.2 of the Subordination Agreement and is therefore limited to a claim, question or disagreement arising out of or relating to the Subordination Agreement (Exhibit N° C-1). The Respondents N° 2 and N° 3 argue that, pursuant to Clause 5.2 of the Subordination Agreement, the Arbitral Tribunal is not empowered to consider (i) claims brought against individuals who are not party to the Subordination Agreement (and who have consequently not agreed to be bound by the arbitration agreement) or (ii) claims arising out of separate agreement (i.e. the IT-IH Shareholder Loan) and in relation to completely separate proceedings.³

² Respondents N° 2 and N° 3's Rejoinder, p. 6, para. 3.1.

³ Respondents N° 2 and N° 3's Statement of Defence, p. 8, paras. 2.1-2.2 and p. 46, para. 5.3.

356. The Respondents N° 2 and N° 3 rely upon the opinion of Dr. Moghaizel who explains that Lebanese law requires arbitrators to comply strictly with the scope of an arbitration clause, matters being outside the scope of an arbitration clause may not be determined by the Tribunal (R2/3-ER-Moghaizel-1, paras. 122-128).⁴ *In casu*, the Respondents N° 2 and N° 3 submit that the Claimant seeks to take the Tribunal outside the bounds of its jurisdiction.⁵
357. First, with respect to the Arbitral Tribunal's *ratione personae* jurisdiction, the Respondents N° 2 and N° 3 note that the Claimant relies primarily upon making allegations against Mr. Mustafa, who is neither a party to the Subordination Agreement nor a party to these proceedings. Therefore, they are of the opinion that making findings against Mr. Mustafa (or, for that matter, Mr. Raymond Rahmeh (hereinafter referred to as "**Mr. Rahmeh**"), whom the Claimant also mentions as part of its conspiracy theory) is clearly inappropriate and falls outside the jurisdiction of the Arbitral Tribunal as no determination binding upon Mr. Mustafa that he has committed a fraud can be issued in these proceedings.⁶
358. Second, regarding the Arbitral Tribunal's *ratione materiae* jurisdiction the Respondents N° 2 and N° 3 stress that the Claimant is further seeking from the Respondents damages exceeding USD 700 million, which the most part of this claim relates to sums allegedly due under an entirely separate agreement, the IT-IH Shareholder Loan, which contains a separate arbitration clause (Exhibit N° C-3). It is indisputable that the Arbitral Tribunal does not have jurisdiction to assess liability for sums due under a completely separate agreement or to award damages in respect of them as it is impossible for the Arbitral Tribunal to grant damages for non-payment of the IH-IT Shareholder Loan without first assessing whether sums are in fact due under that loan.⁷
359. The Respondents N° 2 and N° 3 note that the Claimant has amended its case on causation and quantum and has dropped its claim for damages in favour of an ill-formulated and impermissible declaration which still violates the Arbitral Tribunal's jurisdiction.⁸ Further, they stress that the Claimant's decision to drop its damages claim confirms the Claimant's tacit recognition that its former damages claim necessarily entailed overstepping the Tribunal's jurisdiction.⁹

⁴ Respondents N° 2 and N° 3's Statement of Defence, p. 8, para. 2.3.

⁵ Respondents N° 2 and N° 3's Statement of Defence, p. 8, para. 2.4.

⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 5, para. 1.5(a); Respondents N° 2 and N° 3's Rejoinder, pp. 9-10, paras. 3.13.-3.17.

⁷ Respondents N° 2 and N° 3's Statement of Defence, p. 5, para. 1.5(b); Respondents N° 2 and N° 3's Rejoinder, p. 6, para. 3.3 and p. 8 paras. 3.5-3.6.

⁸ Respondents N° 2 and N° 3's Rejoinder, p. 2, para. 1.6 and p. 7, para. 3.4.

⁹ Respondents N° 2 and N° 3's Rejoinder, p. 4, para. 2.2.

360. The Respondents N° 2 and N° 3 add that the proposed declaration represents an attempt to revive the same conceptual error as to the Arbitral Tribunal's jurisdiction since a final determination that the alleged fraud caused damages to the Claimant simply represents a repetition of the Claimant's previous formulation of its case. They contend that such a determination would necessitate the Arbitral Tribunal assuming that, but for the Subordination Agreement, the Claimant would have been entitled to (and would have in fact received) repayment of the IH-IT Shareholder Loan. Such an assumption once again strays into matters that fall within the exclusive jurisdiction of a tribunal constituted under the IH-IT Shareholder Loan and fall outside the jurisdiction of the Arbitral Tribunal in the present arbitration.¹⁰
361. In any event, the Respondents N° 2 and N° 3 contend that the Claimant's primary relief sufficiently compensates it, being reminded that it is a further essential premise of Lebanese law that any compensation should not exceed what is necessary to put a claimant back in the position it would have been in but for the respondent's wrongful acts. They explain that, in the context of claims for fraudulent misrepresentation, the primary relief awarded under Lebanese law is an order that the fraudulently induced contract is rendered null and void and, therefore, deciding the issue of whether the contract is null and void must be considered first (R2/3-ER-Moghaizel-1, paras. 43-45). It is only if nullification of the contract does not fully compensate the claimant that a further award of damages may be available (R2/3-ER-Moghaizel-1, para. 46).¹¹
362. The Respondents N° 2 and N° 3 conclude by stating that the Claimant's primary relief sought is an order that the Subordination Agreement be declared null and void. If the Arbitral Tribunal finds against the Respondents and makes such an order, then the Claimant would be fully compensated. Consequently, in the absence of the Subordination Agreement, the Claimant would be able to seek to enforce its rights under the IT-IH Shareholder Loan and have its entitlements determined by the appropriate tribunal.¹²

2 The Claimant's Position

363. The Claimant submits that the Respondents N° 2 and N° 3's jurisdictional objections are based on a distortion of its case and are a misguided attempt to confuse the Arbitral Tribunal about the subject-matter of this arbitration. The Claimant stresses that its claims are brought exclusively under the Subordination Agreement to which the Respondents N° 2 and N° 3 are parties. Furthermore, the Claimant states that the primary foundation for the Respondents N° 2 and N° 3's jurisdictional complaint has fallen away given that it no longer seeks a quantified award of damages in these proceedings.¹³

¹⁰ Respondents N° 2 and N° 3's Rejoinder, p. 9, para. 3.11.

¹¹ Respondents N° 2 and N° 3's Statement of Defence, p. 49, para. 5.14.

¹² Respondents N° 2 and N° 3's Statement of Defence, p. 49, para. 5.15.

¹³ Statement of Reply and Defense to Counterclaim, p. 68, para. 143.

364. The Claimant will demonstrate that its claims rest within the boundaries of the Subordination Agreement, namely that the Arbitral Tribunal's jurisdiction extends to its claims under Clause 5.2 of the Subordination Agreement (Exhibit N° C-1). Indeed, the claims advanced in these proceedings are against the Parties to the Subordination Agreement and plainly arise out of and/or relate to the entry into that agreement.¹⁴
365. First, the Claimant asserts that it cannot be disputed that Respondents N° 2 and N° 3 are parties to the Subordination Agreement (or to the arbitration agreement contained within it) (Exhibit N° C-1). It adds that in the absence of any agreement between the Parties to limit the arbitration clause to the Claimant and the Respondent N° 1, the Respondents N° 2 and N° 3 cannot cherry-pick the provisions of the Subordination Agreement that would bind them.¹⁵
366. Second, the Claimant contends that the Respondents N° 2 and N° 3 falsely argue that its claims relate to different agreements, such as the IT-IH Shareholder Loan. These allegations are meritless since the Claimant does not put forward such claims before this Arbitral Tribunal. Indeed, the Claimant reiterates that it has requested this Tribunal to order that "*the Subordination Agreement is null, void and/or no longer in force and effect*" and to declare that the Respondents are liable to it for the harmful consequences of their fraudulent maneuvers which led it to consent to the Subordination Agreement in the first place.¹⁶
367. Third, the Claimant is not "claiming" relief against Mr. Mustafa or Mr. Rahmeh in these proceedings. It has brought arbitration proceedings against the Respondents. As a necessary part of these proceedings, there are allegations involving the conduct of these two individuals, but this does not make either of them a Respondent. It simply makes them a relevant part of the factual background. The Claimant stresses that the Arbitral Tribunal is requested instead to make binding findings against the Respondents, being reminded that the Respondents are corporate entities that act through natural persons who represent them. Indeed, Mr. Mustafa was acting in his capacity as Statutory Manager of the Respondent N° 2 and/or as Chairman of the Respondent N° 3. Similarly, Mr. Rahmeh was acting in his capacity as a member of the Respondent N° 2's Supervisory Committee (hereinafter referred to as the "**KSC**"), Director of the Respondent N° 3 and/or as a representative of the Respondent N° 2 in negotiating the IBL Loan with the Respondent N° 1 (CWS-Aziz-1, paras. 18, 27 and 48; CWS-Froissart-1, paras. 13 and 15) (Transcript of the Hearing dated 1 February 2021, page 90, line 14 to p. 92, line 18 (hereinafter referred to as "**TR Day 1, 90:14-92:18**")).¹⁷

¹⁴ Statement of Reply and Defense to Counterclaim, p. 68, para. 144.

¹⁵ Statement of Reply and Defense to Counterclaim, p. 68, paras. 145-146.

¹⁶ Statement of Reply and Defense to Counterclaim, p. 69, paras. 147-149.

¹⁷ Statement of Reply and Defense to Counterclaim, p. 70, paras. 151-153.

368. Furthermore, the Claimant stresses that it has amended its claim for damages to a claim for declaratory relief and insists on the fact that its damages in case of *dol* or abuse of rights correspond, pursuant to Article 134 of the Lebanese Code of Obligations and Contracts (hereinafter referred to as the "**COC**") (Exhibit N° R1-LA-36), to all the damages incurred, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement. The Claimant explains that it has decided to revise its request for relief and is no longer seeking quantified damages against the Respondents in these proceedings in order to eliminate any argument regarding double-recovery issues with parallel and subsequent proceedings (TR Day 1, 90:14-92:2).¹⁸
369. The Claimant submits that the Arbitral Tribunal is competent to issue a declaration. First, the Claimant's claim for damages is grounded in the COC and the Subordination Agreement since the Claimant is asking the Arbitral Tribunal to acknowledge, in principle, that it is entitled to claim any damages that are found (in subsequent proceedings) to have been caused by the entry into the Subordination Agreement. This might include amounts that are found to be owing under the IT-IH Shareholder Loan (in proceedings to be instituted under the IT-IH Shareholder Loan in due course), if those amounts are now irrecoverable due to the alleged deterioration of the Respondent N° 2's financial position, but would have been recoverable had the Subordination Agreement not prevented the Claimant from bringing this claim five years ago. Therefore, the Claimant considers that it cannot be disputed that its request for a declaration falls within the scope of the Subordination Agreement's arbitration clause, which encompasses "[a]ny dispute, claim, question or disagreement arising out of or relating to this Agreement or the transactions contemplated therein (a "**Dispute**")" (emphasis added by the Claimant) (Exhibit N° C-1).¹⁹
370. Second, although the Arbitral Tribunal does not have jurisdiction over the IT-IH Shareholder Loan, the Claimant submits that the Tribunal is entitled (if it considers it necessary to do so) to take it into consideration as a mere fact for the purposes of issuing the declaration (Exhibits N° C-LA-2 and C-LA-3). The Claimant refers to other ICC cases where the arbitrators considered separate agreements over which the arbitral tribunal did not have jurisdiction to determine the scope of the parties' respective obligations and the amount of damages (Exhibits N° C-LA-2 to C-LA-6).²⁰

¹⁸ Statement of Reply and Defense to Counterclaim, p. 71, paras. 154-155.

¹⁹ Statement of Reply and Defense to Counterclaim, p. 72, para. 160.

²⁰ Statement of Reply and Defense to Counterclaim, pp. 73-75, paras. 161-165.

371. Therefore, the Claimant requests the Arbitral Tribunal to proceed in a similar manner and, to the extent that the Tribunal considers it necessary, it may consider the IT-IH Shareholder Loan as a matter of fact, while retaining jurisdiction over the Claimant's claims as bestowed to it by the Subordination Agreement. The Claimant concludes that the Arbitral Tribunal has jurisdiction to declare that it suffered damages as a result of (*inter alia*) *dol* perpetrated by the Respondents, which includes losses stemming from the entry into the Subordination Agreement.²¹

B Admissibility of declaratory reliefs

1 The Claimant's position

372. The Claimant reiterates that it has amended its claim for damages to a claim for declaratory relief, insisting on the fact that its damages in case of *dol* or abuse of rights correspond, pursuant to Article 134 COC (Exhibit N° R1-LA-36), to all the damages incurred, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement. The Claimant explains that it has decided to revise its request for relief and is no longer seeking quantified damages against the Respondents in these proceedings in order to eliminate any argument regarding double-recovery issues with parallel and subsequent proceedings, and also to narrow the focus of this arbitration to the critical issue: the invalidity of the Subordination Agreement and its entitlement to damages (in principle) flowing directly or indirectly from entry into the Subordination Agreement. The amendment causes no prejudice to the Respondents as it merely narrows the scope of issues to be determined and avoids the need for the Arbitral Tribunal to determine the quantum of any losses.²²

373. The Claimant requests that the Arbitral Tribunal issue a declaration in the following terms (or such other terms that the Tribunal sees fit):²³

"On the basis of the finding that entry into the Subordination Agreement was procured by dol, and on the basis of the finding of liability for each of the Respondents, it is declared that IT Ltd is entitled to full compensation for damages, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement, from the Respondents on a joint and several basis."

374. The Claimant specifies that subject to the invalidation of the Subordination Agreement in these proceedings, in due course, it intends to bring proceedings under the IT-IH Shareholder Loan and/or the Korek Guarantee and seek recovery of its shareholder loan of USD 285 million, plus interest and penalties. Should it fail to recover in full in subsequent proceedings under the IT-IH Shareholder Loan and/or the Korek Guarantee, then it reserves the right to bring further proceedings against the Respondents for damages in respect of the Subordination Agreement and pursuant to the declaration. Therefore, according to the Claimant, there is a

²¹ Statement of Reply and Defense to Counterclaim, p. 75, para. 166.

²² Statement of Reply and Defense to Counterclaim, p. 71, paras. 154-155.

²³ Statement of Reply and Defense to Counterclaim, p. 71, para. 154.

real risk that it would not be compensated in full unless the declaration is granted (TR Day 4, 118:15-119:4).²⁴

375. The Claimant concludes that declaratory relief is admissible under Lebanese law as, being in international arbitration, this admissibility issue is a procedural issue (Article 9 of the Lebanese Code of Civil Procedure (hereinafter referred to as the "**LCCP**")) which is governed by the procedural rules agreed upon by the Parties to this arbitration in accordance with Article 811 LCCP. Further, the Claimant recalls that the procedural rules agreed upon between the Parties are the Rules of Arbitration of the Lebanese Arbitration Centre, the Terms of Reference and the Specific Procedural Rules issued by the Arbitral Tribunal. There is not a single provision in these rules that prevents the Claimant from requesting a declaratory relief (TR Day 1, 111:4-21; TR Day 4, 119:6-23, 157:5-159:7).

2 The Respondent N° 1's position

376. The Respondent N° 1 notes that the Claimant has amended its claim for damages to a claim for declaratory relief. It submits that the Arbitral Tribunal should dismiss the Claimant's request to amend its relief sought to a declaration, as a matter of Lebanese law, for the following reasons (TR Day 4, 163:8-164:25):²⁵

- The Claimant is essentially making a request for an "*action déclaratoire*", which cannot succeed under Lebanese law. Indeed, a court would only be able to issue a declaration in relation to a pre-existing right. However, in this arbitration, the declaration can only be issued after the Arbitral Tribunal determines that the Respondents are liable for *dol*. The Claimant obviously has the burden to prove its allegations in this respect, and it has failed to do so. Therefore, as a matter of Lebanese law, it should be concluded that the Arbitral Tribunal cannot declare the Respondents liable without assessing and deciding any damages allegedly due, as the Claimant is requesting (R1-ER-Nammour-1, pp. 9-10).
- The Claimant's request to issue the declaration should be dismissed because the Respondent N° 1 did not agree to this amendment to the nature of the arbitration (R1-ER-Nammour-1, para. 33).
- The Claimant's decision to abandon its request for the Arbitral Tribunal to determine the damages flowing from the Respondents' alleged liability for *dol* renders the declaration obsolete under Lebanese law. Under Lebanese law, the principal effect of the declaration of the responsibility of a person is to repair the prejudice caused as a result of the mistake causing the prejudice. It is inappropriate under Lebanese law for the Claimant to seek to have the Arbitral Tribunal declare the Respondent N° 1 liable while another tribunal would decide on the damages to which the Claimant would be entitled as a result of such declaration of liability (R1-ER-Nammour-1, paras. 32 and 36).

²⁴ Statement of Reply and Defense to Counterclaim, p. 72, para. 157.

²⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 38, paras. 155-157.

In sum, under Lebanese Law, a person may not be declared liable for an act except on the basis of the damages that the act has caused (Exhibit N° R1-LA-48) (TR Day 1, 120:22-121:15).²⁶

- Assuming *arguendo* that the Claimant suffered damages and that a causality link has been established, these damages may only be calculated on the basis of presumed losses under the IT-IH Loan. The Arbitral Tribunal does not have jurisdiction to look into the IT-IH Loan or to determine whether any amounts are due to the Claimant under said loan.²⁷
- Pursuant to a decision of the French Court of Cassation, the Claimant is obliged to bring all its claims relating to its allegations regarding the existence of *dol* or abuse of right in respect of the execution or performance of the Subordination Agreement to this arbitration, including any claim relating to the compensation due as a result of the alleged suffered damages (Exhibits N° R1-LA-46 and R1-LA-47).
- The request for a declaration undeniably causes a prejudice to the Respondent N° 1. The Claimant should not be allowed to have the Respondent N° 1 held liable jointly and severally with the Respondents N° 2 and N° 3 in a case where the quantum of the damages (if any) would be determined based on other proceedings that the Respondent N° 1 is not a party to and that are simply unopposable *vis-à-vis* the Respondent N° 1 (R1-ER-Nammour-1, para. 34).

377. Therefore, in view of the above, the Respondent N° 1 argues that the request for a declaration is abusive and exceeds the limits of good faith and that there is a risk that the Claimant will seek to introduce the declaration as evidence in other proceedings that the Respondent N° 1 is not/would not be party to and would not even have had the opportunity to defend itself against the Claimant's groundless allegations in the other proceedings, which is a clear violation of the right of defense and the most fundamental principles of fairness (R1-ER-Nammour-1, para. 42).²⁸

378. In addition, the Respondent N° 1 asserts that under the COC there is no basis for finding it liable on a joint and several basis or in solidarity with the Respondents N° 2 and N° 3, because the conditions of solidarity under Lebanese law are not met (R1-ER-Nammour, paras. 125-130).²⁹

²⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 41, para. 160(i).

²⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 41, para. 160(ii).

²⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 40, para. 158.

²⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 40, para. 158.

379. In view of the foregoing, the Respondent N° 1 concludes:³⁰

"[...] it would be impossible for the Arbitral Tribunal to determine whether the Claimant suffered damages in order to potentially declare the liability of Respondent 1 in respect of the monetary compensation sought in these proceedings. It would also be impossible to quantify the alleged damages or to establish the existence of a causality link between Respondent 1's acts and the alleged damages.

[...] the Claimant's request to amend its relief sought should be dismissed. In addition, and given that all the reliefs sought by the Claimant under this Arbitration are subject to double recovery issues and are connected to other proceedings between the Claimant and the other Respondents that do not concern Respondent 1, all the other demands of the Claimant in these proceedings must be dismissed."

3 The Respondents N° 2 and N° 3's position

380. The Respondents N° 2 and N° 3 submit that the Claimant's claim for declaratory relief should be dismissed as it violates a fundamental rule of Lebanese law (TR Day 1, 182:5-183:21; TR Day 4, 253:2-263:18).

381. The Respondents N° 2 and N° 3 first note that the proposed declaration demands a determination that the Claimant in fact suffered damages as a result of the alleged actions of the Respondents. As such, the effect of the declaration would be to finally determine the issue of causation. The Respondents N° 2 and N° 3 assert that the proposed declaration therefore represents an attempt to introduce a determination of the issue of causation through the back door, being stressed that the Claimant has failed to demonstrate the requisite degree of causation necessary to substantiate any entitlement to damages and, indeed, has failed to challenge their expert evidence in relation to causation (TR Day 1, 183:22-185:1).³¹

382. The Respondents N° 2 and N° 3 submit that the Claimant's proposed declaration is intended to address an entirely hypothetical situation in which (i) the Claimant succeeds in its claims under the IT-IH Shareholder Loan and/or the Korek Guarantee, (ii) the Claimant cannot recover any sum from them because of impecuniosity and (iii) the Claimant can demonstrate that, had it been able to pursue its claims under the IT-IH Shareholder Loan and/or the Korek Guarantee at an earlier date, it would have been able to recover additional sums from them. It results that the only available basis for such a claim would be tortious liability under Article 122 COC and pursuant to Article 134 COC and the Claimant must prove that it has suffered an actual loss (Exhibit N° R2/3-ER-22) (R2/3-ER-Moghaizel-2, para. 75). The Respondents N° 2 and N° 3 further add that the future damage is compensated only if it is certain to occur and can be assessed in advance and with precision, damage that is eventual and uncertain is not taken into consideration (R2/3-ER-Moghaizel-2, para. 79).³²

³⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 41, paras. 161-162.

³¹ Respondents N° 2 and N° 3's Statement of Defence, pp. 45ss, paras. 5.1(b), 5.11-5.13; Respondents N° 2 and N° 3's Rejoinder, pp. 8-9, paras. 3.7-3.10.

³² Respondents N° 2 and N° 3's Rejoinder, pp. 47-48, paras. 7.6-7.8.

383. The Respondents N° 2 and N° 3 therefore argue that the Arbitral Tribunal may not issue a declaration of compensation, even in principle, as long as the claimed damage is uncertain and not determinable, which position is confirmed by Article 9 LCCP (Exhibit N° R2/3-ER-25) (R2/3-ER-Moghaizel-2, paras. 86-87). *In casu*, the declaration is concerned with an entirely hypothetical prospect of damages which has not arisen yet and which cannot be determined (if at all) until after the completion of separate proceedings under the IT-IH Shareholder Loan and/or the Korek Guarantee and after the eventual outcome of any enforcement proceedings in respect of any award rendered in such proceedings. The Respondents N° 2 and N° 3 submit that the requested declaration is therefore contrary to Lebanese law and should not be granted (R2/3-ER-Moghaizel-2, para. 84).³³
384. Further, the Respondents N° 2 and N° 3 argue that the proposed declaration should be rejected as it is based upon a hypothetical that they could have repaid their debts in 2015 in the absence of the Subordination Agreement, which the only evidence on the record demonstrates is incorrect.³⁴
385. Finally, the Respondents N° 2 and N° 3 do not understand the Claimant's position that there is a real risk it would not be compensated in full unless a declaration not granted. As the Claimant acknowledges, seeking such compensation (even in the event a declaration is given) would necessitate the bringing of further proceedings before another tribunal. It is unclear why such a tribunal would not be competent to assess compensation.³⁵

C Principal Claims

1 The Claimant's position

a Introduction

386. As a preliminary remark, the Claimant submits that the present dispute centres around an "*elaborate fraud orchestrated by certain stakeholders and representatives*"³⁶ of the Respondents N° 2 and N° 3 with the Respondent N° 1's knowledge and cooperation by which they induced the Claimant to enter into the Subordination Agreement, pursuant to which the Claimant agreed to subordinate certain obligations and liabilities owed to it by the Respondents N° 2 and N° 3 in favour of a USD 150 million loan extended by the Respondent N° 1 to the Respondent N° 2.³⁷ The Claimant adds that the Respondents' maneuvers have prevented it from enforcing its (wrongfully subordinated) rights under the IT-IH Shareholder Loan and the Korek Guarantee despite having called an Event of Default under the IT-IH Shareholder Loan on 18 June 2015. As a direct result of the

³³ Respondents N° 2 and N° 3's Rejoinder, p. 48, paras. 7.9-7.10.

³⁴ Respondents N° 2 and N° 3's Rejoinder, pp. 48-49, paras. 7.11-7.12.

³⁵ Respondents N° 2 and N° 3's Rejoinder, p. 49, para. 7.13.

³⁶ Request for Arbitration, p. 3, para. 3 and p. 7, para. 13.

³⁷ Request for Arbitration, p. 3, para. 3 and p. 7, para. 13; Statement of Claim, p. 3, paras. 4-5; Statement of Reply and Defense to Counterclaim, p. 3, para. 3.

Respondents' *dol*, the Claimant has thus been prevented from making valid claims for hundreds of millions of dollars that are owing to it and has suffered significant prejudice as a result. Consequently, the purpose of these proceedings is straightforward and entirely legitimate: to have the Subordination Agreement voided.³⁸

387. To better understand the framework and background of the Parties' contractual relationship and in particular the role played by Mr. Mustafa, the Claimant explains that the Respondent N° 2 is an Iraqi limited liability company founded in August 2000 by a number of high net worth Iraqi individuals including Mr. Mustafa (as main shareholder), Messrs. Jawshin Hassan Jawshin Barazany and Jiqsy Hamo Mustafa (the Original Shareholders) (CWS-Aziz-1, para. 9), and incorporated in Kurdistan, Iraq (Exhibit N° C-30).³⁹ The Claimant adds that Mr. Mustafa is a member of the prominent Barzani family (sometimes spelled Barazany or Barzany), a powerful and influential member of the Kurdistan community and a commander of Kurdistan's military group, the Peshmerga (CWS-Bortman-1, para. 10).⁴⁰
388. The Claimant further indicates that Mr. Mustafa is the Respondent N° 2's single largest indirect shareholder (holding 75% of CS Ltd. and thus indirectly 42% of the Respondent N° 2 (Exhibit N° C-38)) and acts as the Respondent N° 2's Managing Director, as well as a Director and Chairman of the Respondent N° 3's Board of Directors (hereinafter referred to as the "**IH Board**") and as a member of the KSC (Exhibit N° C-6) (CWS-Aziz-1, para. 18).⁴¹
389. The Claimant recalls that although it was surprised by the proposed commercial terms of the IBL Loan, it approved the Respondent N° 2's entry into the IBL Loan on the basis of representations made by Mr. Mustafa and Mr. Rahmeh (one of Mr. Mustafa's close associates)⁴² (CWS-Aziz-1, para. 18) that the IBL Loan was an unsecured third-party bank loan on market terms and that the Respondent N° 1 was the only bank willing to provide funding, being stressed that the unsecured nature of the IBL Loan was reflected in the legal documentation related to the IBL Loan Agreement (Exhibit N° C-7, Clause 7.1.6).⁴³
390. As a precondition to the IBL Loan being made available to the Respondent N° 2, the Claimant was required to enter into the Subordination Agreement by which it subordinated its rights under the IT-IH Loan and the Korek Guarantee to the Respondent N° 1's rights under the IBL Loan.⁴⁴

³⁸ Statement of Reply and Defense to Counterclaim, p. 3, para. 3.

³⁹ Request for Arbitration, p. 7, para. 14; Statement of Claim, pp. 5-6, paras. 12-13.

⁴⁰ Request for Arbitration, p. 7, para. 14; Statement of Claim, p. 6, para. 14.

⁴¹ Request for Arbitration, p. 10, para. 22; Statement of Claim, pp. 9-10, paras. 25-26.

⁴² Statement of Claim, p. 10, para. 26.

⁴³ Request for Arbitration, p. 10, para. 24; Statement of Claim, p. 3, para. 5.

⁴⁴ Request for Arbitration, p. 10, para. 25.

391. However, the Claimant submits that it became apparent that, since the issuance of the Notices of Event of Default, the IBL Loan is, and was at the relevant time, in fact fully cash collateralised, and that the Respondent N° 1's purported Notice of Event of Default was sent only to further a sham arrangement between Mr. Mustafa and the Respondent N° 1 to the detriment of the Claimant in order to prevent the Claimant from ever being able to recover its USD 285 million loan.⁴⁵ The Claimant insists on the fact that it entered into the Subordination Agreement on the understanding that the IBL Loan was a third-party bank loan on market terms provided against a personal guarantee from Mr. Mustafa without any collateral.⁴⁶
392. The Claimant is of the view that the *dol* committed by the Respondents/fraudulent scheme between the Respondents at the time of entry into the Subordination Agreement is evidenced by the following:⁴⁷
- Numerous express representations by the Respondents N° 2 and N° 3 during the pre-contractual negotiations between the Parties regarding the "unsecured" nature of the proposed IBL Loan.
 - The representations in the IBL Loan itself (including in the draft terms of the IBL Loan, which were shared with the Claimant prior to entry into the Subordination Agreement) that the Respondent N° 2's obligations were "unsecured".
 - The structuring of the IBL Loan by the Respondent N° 1, which had numerous hallmarks of an unsecured loan and which features were wholly inconsistent with the existence of full cash-collateral that rendered the IBL Loan risk free.
 - The surreptitious agreement between the Respondent N° 1 and Mr. Mustafa to split the interest paid by the Respondent N° 2 under the IBL Loan between themselves, with approximately 96% of that interest being secretly remitted to Mr. Mustafa without the knowledge of the Claimant.
 - The Respondent N° 1's failure to take any enforcement action in respect of the Respondent N° 2's default under the IBL Loan, despite the fact that it holds full cash collateral for the IBL Loan and that the Respondent N° 2 has been in default for over five years, the effect of this being to perpetually and abusively subordinate the Claimant's rights under the IT-IH Shareholder Loan and the Korek Guarantee. This Respondent N° 1's failure constitutes a breach of its regulatory obligations under Lebanese law and is contrary to general banking practice.
 - The false confirmation by Mr. Rahmeh (a Director of the Respondent N° 3) at the KSC meeting held in October 2015 that the Loan was not collateralised.

⁴⁵ Request for Arbitration, p. 12, para. 34 and p. 14, para. 39; Statement of Claim, p. 3, para. 5.

⁴⁶ Request for Arbitration, p. 13, para. 38.

⁴⁷ Statement of Reply and Defense to Counterclaim, pp. 3-5, paras. 5-6.

- The evasiveness of the Respondents N° 2 and N° 3 when faced with legitimate questions concerning the existence of cash collateral and their refusal to respond despite having full knowledge of these arrangements *via* Mr. Mustafa.

393. The Claimant submits that it no longer seeks a quantified award of damages in these proceedings but seeks (i) a declaration that the Subordination Agreement is null and void pursuant to Articles 202, 208 and 209 COC, (ii) a declaration that the Respondents are jointly and severally liable for damages as a result of their *dol*, (iii) alternatively, that the Subordination Agreement has lapsed and is no longer in force and effect and (iv) further alternatively, a declaration of its entitlement to damages against the Respondent N° 1 resulting from the Respondent N° 1's abuse of its rights under the Subordination Agreement.⁴⁸

b Nature of the IBL Loan

394. The Claimant reiterates its position that it entered into the Subordination Agreement on the understanding that the IBL Loan was a third-party bank loan on market terms provided against a personal guarantee from Mr. Mustafa without any collateral, namely an unsecured third-party bank loan provided on arms-length terms (confirmed, amongst other things, by Mr. Mustafa's letter dated 7 December 2011 (Exhibit N° C-41), the terms of the IBL Loan Agreement itself (Exhibit N° C-7, Clause 7.1.6) and Mr. Rahmeh's subsequent denial of any collateral, all of which representations were knowingly untrue at the time they were made (Exhibit N° C-43)).⁴⁹

395. However, contrary to the express terms of the IBL Loan Agreement (Clause 7.1.6 providing that the IBL Loan is to be an "*unsecured*" obligation) (Exhibit N° C-7), the loan appeared to be fully cash collateralised.⁵⁰

396. The Claimant submits that, in 2017, it repeatedly asked the Respondent N° 1 what, if any, collateral the latter held with respect to the IBL Loan (Exhibits N° C-23 to C-26). However, the Respondent N° 1 never clarified this issue and, similarly, Mr. Mustafa and the Respondents N° 2 and N° 3 provided no explanation (Exhibits N° C-44 to C-50).⁵¹

397. The Claimant notes that it is only (and finally) within the framework of this arbitration procedure that the Respondent N° 1 admitted, in its Answer and Counterclaim to the Request for Arbitration, that the IBL Loan is in fact collateralised (Answer and Counterclaim to the Request for Arbitration, paras. 21-22).⁵²

⁴⁸ Request for Arbitration, p. 3, para. 4 and p. 16, para. 48; Statement of Reply and Defense to Counterclaim, p. 5, para. 7.

⁴⁹ Request for Arbitration, p. 13, para. 38; Statement of Claim, p. 18, para. 53.

⁵⁰ Request for Arbitration, p. 13, para. 38 and p. 14, para. 39; Statement of Claim, p. 3 para. 5.

⁵¹ Statement of Claim, p. 17, para. 50.

⁵² Statement of Claim, p. 19, para. 54.

398. In fact, the Claimant states that, since the issuance of the Notices of Event of Default, it was no longer deniable that the IBL Loan is, and was at the relevant time, fully cash collateralised, and that the Respondent N° 1's purported Notice of Event of Default was sent only to further a sham arrangement between Mr. Mustafa and the Respondent N° 1 to the detriment of the Claimant in order to prevent the Claimant from ever being able to recover its USD 285 million loan.⁵³

(i) Factual background of the conclusion of the IBL Loan

399. The Claimant finds necessary to address the factual background of the conclusion of the IBL Loan. It explains that, in December 2011, the Respondent N° 2 needed further funds to pay the next instalment of its License fee to the CMC (Exhibits N° R2-4 and C-41) (CWS-Froissart-1, para. 12). According to the Claimant, the Respondent N° 2 and its shareholders looked at various financing options (CWS-Froissart-2, para. 8) and further shareholder loans were considered. The Claimant stresses that any additional commitment by way of shareholder loan would have had to be compatible with (i) the IH SHA provisions regarding shareholder loans and (ii) the existing shareholder loan regime (i.e. the IT-IH Shareholder Loan, the IH-Korek Loan and the Korek Guarantee). The Claimant submits that this meant that it would not have agreed to any additional shareholder loan unless it was reimbursed *pro-rata* with the IT-IH Shareholder Loan and on *pari passu* terms (Clauses 5.2 and 5.3 of the IH SHA) (Exhibits N° C-35 and C-85) (CWS-Froissart-2, para. 9).⁵⁴

400. Ultimately, the shareholder loan option was not pursued, and it was decided to look for external, third-party funding. The Claimant points out that it and its representatives on the KSC and the Financing Proposal Committee (hereinafter referred to as the "**FPC**") were never advised that Mr. Mustafa was intending to provide cash collateral in respect for an external third-party loan (CWS-Froissart-2, para. 9). The Claimant further stresses that its representatives never had the opportunity to search for actual sources of third-party funding that might have been available (for instance fully cash collateralised loans) or, to the extent such sources were unavailable, to discuss with Mr. Mustafa the provision of a shareholder's loan by him on *pari passu* terms. Similarly, while the Respondents N° 2 and N° 3 allege that the Respondent N° 2 approached a variety of financial institutions to obtain funding, they have provided no evidence of this. The Claimant therefore argues that the Respondents N° 2 and N° 3 did not approach any financial institutions other than the Respondent N° 1 to source a fully cash-collateralised loan.⁵⁵

⁵³ Request for Arbitration, p. 12, para. 34 and p. 14, para. 39; Statement of Claim, p. 3, para. 5.

⁵⁴ Statement of Claim, p. 11, paras. 31-32; Statement of Reply and Defense to Counterclaim, pp. 7-8, paras. 10-13.

⁵⁵ Statement of Reply and Defense to Counterclaim, p. 8, para. 14.

401. In that context, Mr. Mustafa informed the Claimant that he was able to secure a loan from a Lebanese bank, the Respondent N° 1, and he outlined the proposed terms of the IBL Loan (Exhibit N° C-41).⁵⁶ Most importantly, the Claimant stresses that Mr. Mustafa knowingly and falsely represented to it that "*IBL Bank has agreed, in principle, to make these loans on an unsecured basis provided that Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees*" (emphasis added by the Claimant) (Exhibit N° C-41). Further, Mr. Mustafa confirmed his willingness to provide such a guarantee to the Respondent N° 1 on the basis that the Claimant provided him with a corresponding guarantee for its *pro rata* share of the loan (Exhibit N° C-41).⁵⁷
402. The Claimant insists on the fact that the existence of cash collateral in excess of the principal loan fundamentally changes the risk profile and weighting of a loan, and makes the loan a highly attractive, essentially risk-free investment for the lender (CER-Griffiths-1, paras. 6.26, 6.67 and 7.15). The Claimant therefore contests that the allegation that the IBL Loan was the only option available to the Respondent N° 2 in circumstances where it was prevented from taking any meaningful steps to seek alternative sources of finance by reason of the Respondents' fraudulent scheme. The Claimant submits that had it known the true position then it is almost certain that an alternative source of funding would have been identified that did not require it to subordinate its interests under the IT-IH Shareholder Loan and Korek Guarantee.⁵⁸
403. The Claimant argues that the fraudulent scheme commenced on or around 17 November 2011, when details of the IBL Loan were first provided by Mr. Junde (Exhibit N° C-86). The Claimant lists below the critical representations that were made to it by the Respondents regarding the IBL Loan and the Subordination Agreement from this point:⁵⁹
- On 20 November 2011, Mr. Junde sent to Mr. Aziz (copying Mr. Rahmeh and Mr. Mustafa) a draft of the letter that would ultimately be sent on 7 December 2011 to the Claimant (and others) by Mr. Mustafa for and on behalf of the Respondent N° 2 (Exhibit N° R2-5). Mr. Junde then circulated this letter to the FPC on 21 November 2011 (Exhibit N° R2-8). The draft letter set out what would become the key terms of the IBL Loan, including that (i) the proposed IBL Loan would have seniority over existing shareholder loans, (ii) the IBL Loan would have an interest rate of 13.25% and (iii) "***IBL Bank has agreed to make these loans on an unsecured basis if Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees***" (emphasis added by the Claimant). The Claimant stresses that as the contents of the letter led it to believe from the outset (as confirmed repeatedly by subsequent communications) that the term "unsecured" in this context can only mean that the IBL Loan would not be

⁵⁶ Statement of Claim, p. 11, paras. 31-32; Statement of Reply and Defense to Counterclaim, p. 7, paras. 10-12.

⁵⁷ Statement of Claim, p. 12, para. 33.

⁵⁸ Statement of Reply and Defense to Counterclaim, p. 9, para. 16.

⁵⁹ Statement of Reply and Defense to Counterclaim, p. 9, para. 17.

secured by tangible security, it did not comment or seek to renegotiate certain terms. This understanding was and is consistent with the global banking practice (CER-Griffiths-1, paras. 6.8, 6.9, 6.24, 6.47 and 6.50).⁶⁰

- On 7 December 2001, Mr. Mustafa, for and on behalf of the Respondents N° 2 and N° 3, sent a finalised version of the above draft letter on 7 December 2011 to, *inter alia*, the Claimant (Exhibit N° C-41), which final version substantially replicated the draft circulated by Mr. Junde on 20 November 2011. However, the Claimant contends that the fact that the IBL Loan terms were described in this letter as being "*in principle*" terms does not undo that deception, the reference to the IBL Loan as "*unsecured*" being expressly repeated and set as a foundation stone of the transaction.
- On 9 December 2011, Mr. Junde sent an email to Mr. Jain of Agility and Mr. Musset of Orange (copying Mr. Rahmeh), which forwarded an email received by Mr. Rahmeh from Mr. Rayes of the Respondent N° 1 on 9 December 2011 (Exhibits N° C-89 and R2-13). The Claimant stresses that Mr. Rayes' email set out the "*principal conditions*" of the IBL Loan, which were said to be the "*Best Offer*" and "*not negotiable*", including that (i) the IBL Loan would have an interest rate of 13.25%, as well as a flat arrangement fee of 1% and an additional utilisation fee, (ii) the existing shareholder loans would need to be subordinated in a separate subordination agreement, (iii) Mr. Mustafa was required to provide a personal guarantee in respect of the IBL Loan and (iv) the Respondent N° 2's revenues were required to be deposited into an account with the Respondent N° 1. The Claimant emphasizes that there is no mention of cash collateral.
- On 13 December 2011, in an email chain between the FPC members, Mr. Junde circulated to the FPC the final draft versions of the IBL Loan and the Subordination Agreement for approval, stressing that the attached versions were "*approved by the IBL bank representative*" (Exhibits N° C-65 and C-65A). The Claimant asserts that it is indisputable that, at the time of entry into the Subordination Agreement on 14 December 2011, its representatives had reviewed a final draft of the IBL Loan provided by the Respondents the day beforehand which (i) contained a misrepresentation that all the Respondents (including the Respondent N° 1) knew was false, (ii) failed to refer whatsoever to the requirement that the IBL Loan be fully cash collateralised and (iii) contained various features consistent only with the IBL Loan being unsecured.
- On 14 December 2011, KSC and IH Board Resolutions relating to the IBL Loan were issued, being stressed that Mr. Junde had a primary role regarding the drafting and circulation of these resolutions (Exhibit N° C-6). Again, none of these resolutions made reference to any cash collateral or other tangible security provided in connection with the IBL Loan.

⁶⁰ Statement of Reply and Defense to Counterclaim, p. 21, paras. 40-41.

- On 21 December 2011, the IBL Loan Agreement was executed containing the representation in Clause 7.1.6 that the IBL Loan was unsecured.
404. The Claimant submits that at no point during the negotiations and discussions regarding the IBL Loan was it advised that the Respondent N° 1 required cash collateral in excess of the principal loan (or any cash collateral at all), or that Mr. Mustafa would be providing any cash collateral, or that the Respondent N° 1 would be "kicking back" 96% of the interest it received from the Respondent N° 2 to Mr. Mustafa. To the contrary, the Claimant argues that these facts were actively concealed/misrepresented by all of the Respondents, culminating in an unequivocal representation in the IBL Loan itself that it was unsecured.⁶¹
405. Regarding the Respondent N° 1 in particular, the Claimant contends that, in addition to drafting and agreeing the terms of the IBL Loan, it deliberately misled it by insisting on terms which were wholly inconsistent with a fully cash collateralised loan, i.e. an interest rate that was far in excess of the market rate for a cash collateralised loan, the request for security in the form of a guarantee from the shareholders (hereinafter referred to as the "**Barzani Guarantee**"), the requirement for the Respondent N° 2's operating revenues to be paid on an account held at the Respondent N° 1 (hereinafter referred to as the "**the Revenue Account Requirement**") and an insistence that the IT-IH Shareholder Loan and the Korek Guarantee be subordinated to the IBL Loan. In sum, the Claimant states that the Respondent N° 1 actively and knowingly created the framework of a loan that was unsecured.⁶²
406. The Claimant adds that, contrary to the Respondents' allegation, the fact that it had the power to veto the IBL Loan is irrelevant in circumstances where its agreement to the same was premised on a fraud perpetrated by the Respondents. Similarly, the fact that it appointed members to the IH Board and the KSC and was represented on the FPC is equally irrelevant in circumstances where those appointees were deliberately presented with false information. The Claimant further reiterates that the decision not to resort to alternative financing resulted from the Respondents' misrepresentation of the terms of the IBL Loan, in particular the absence of cash collateral. Therefore, the Claimant submits that it cannot be disputed that it was deprived of other options by reason of the fraud.⁶³
407. According to the Claimant, it appears from the above that the Respondents intended to set up a structure whereby external funding was used to disguise what was in truth a shareholder loan provided by Mr. Mustafa and this disguised shareholder loan would not be subject to the *pari passu* conditions that had been agreed for shareholder loans under the IH SHA and could therefore be prioritised over existing shareholder loans. This is confirmed by the email dated 2 November 2011 by which Mr. Junde announced to Mr. Rahmeh and Mr. Mustafa the "Good news" that "*it is stated that any [external] loan to repay CMC indebtedness **will***

⁶¹ Statement of Reply and Defense to Counterclaim, p. 12, para. 18.

⁶² Statement of Reply and Defense to Counterclaim, p. 13, para. 19.

⁶³ Statement of Reply and Defense to Counterclaim, p. 14, para. 22.

rank ahead the existing (shareholder) loans: Any part of a new loan i.e. \$ 145 million provided as shareholder loan cannot rank ahead of the \$285 million loan from IT, only *pari passu* with it. **All external third party loans used to repay the CMC can rank ahead**" (emphasis added by the Claimant) (Exhibit N° C-83).⁶⁴

(ii) **The conditions of the IBL Loan**

408. The Claimant first reminds what is provided under the IBL Loan Agreement (Exhibit N° C-7):⁶⁵

"(a) IBL would extend to Korek a loan of USD 150 million, with USD 40 million (the "**Short-Term Loan**") repayable by 21 July 2012, and the remaining USD 110 million (the "**Long-Term Loan**") repayable by 21 June 2014 [Clause 3.1];

(b) interest on the IBL Loan would accrue at 13.25% per annum [Clause 2.1];

(c) Korek's obligations in respect of the IBL Loan would be "unconditional, unsubordinated [and] unsecured obligations" [Clause 7.1.6]; and

(d) Mr. [Mustafa] would guarantee Korek's obligations under the IBL Loan Agreement [Clause 6]."

(Emphasis added by the Claimant.)

409. Keeping in mind the provisions of the IBL Loan Agreement, the Claimant recalls the following conditions of the IBL Loan: (i) the interest rate, (ii) the securities related to the IBL Loan, (iii) the Subordination Agreement, (iv) the hidden cash collateral, (v) the "kick-back" arrangement and (vi) the corporate approvals.

a The interest rate

410. The Claimant asserts that the explanations provided by the Respondent N° 1 on how it arrived at the high interest rate of 13.25% notwithstanding the existence of the cash collateral are problematic as being "*wholly incorrect*"⁶⁶ and having "*no basis in commercial reality*"⁶⁷ (Exhibits N° C-79 and C-81) (CER-Griffiths-1, paras. 6.56 to 6.65, 7.11 to 7.17). Being reminded that the Respondent N° 1 was handing back 96% of the interest that it received from the Respondent N° 2 to Mr. Mustafa, the Claimant argues that this high interest rate is a clear evidence that the IBL Loan was a sham, a fronting arrangement intended to disguise a shareholder loan as a *bona fide* unsecured corporate loan.⁶⁸

⁶⁴ Statement of Reply and Defense to Counterclaim, pp. 14-15, paras. 24-25.

⁶⁵ Statement of Claim, p. 12, para. 34.

⁶⁶ CER-Griffiths-1, para. 6.61.

⁶⁷ CER-Griffiths-1, para. 7.11.

⁶⁸ Statement of Reply and Defense to Counterclaim, pp. 15-18, paras. 26-32.

b The securities related to the IBL Loan

411. As to the securities related to the IBL Loan (i.e. the Barzani Guarantee and the Revenue Account Requirement) and its alleged knowledge of security, the Claimant firmly contests that it knew about the cash collateral which existence has been assiduously concealed by the Respondents who actively misrepresented that the IBL Loan was unsecured (CWS-Aziz-1, para. 28; CWS-Froissart-1, para. 14; CWS-Froissart-2, paras. 12, 14 and 17). The Claimant contends that the Respondents have failed to provide any evidence which demonstrates that its representatives had actual knowledge that the IBL Loan was secured by cash collateral nor is there any evidence to suggest that it should even have been on notice, being stressed that the evidence demonstrates the contrary, i.e. the onerous interest rate, the Barzani Guarantee, the Revenue Account Requirement, the Subordination Agreement (CER-Griffiths-1, para. 7.8), the minutes of the KSC Meeting on 13 October 2015 during which Mr. Froissart asked about collateral (Exhibit N° C-43) (CWS-Froissart-2, paras. 24-25)⁶⁹ and the four separate letters to the Respondent N° 1 in September, October, December 2017 and March 2018 asking the latter to confirm what, if any, collateral it held with respect to the IBL Loan. (Exhibits N° C-23 to C-26).⁷⁰
412. The Claimant objects to the Respondents' reliance on Mr. Abou Charaf's email dated 4 March 2016 to attempt to demonstrate the Claimant's alleged knowledge of the security (Exhibit N° R2-23). Contrary to the Respondents' allegation, the Claimant's representatives made inquiries and expressed concern following Mr. Abou Charaf's request for "additional collateral", but these inquiries were stonewalled by Mr. Abou Charaf and/or Mr. Rahmeh (Exhibit N° C-93) (CWS-Froissart-2, paras. 26-27).⁷¹
413. Further, the Claimant argues that, contrary to the Respondents' position, neither Clause 6.2 nor 6.4 of the IBL Loan Agreement state that the Respondent N° 1 was, as at the execution of the IBL Loan, holding tangible security (i.e. cash collateral) in respect of amounts advanced to the Respondent N° 2, these clauses being drafted in generic, forward-looking terms ("[...] *may now or hereafter have* [...]"). According to the Claimant, at best these clauses support the proposition that the Respondent N° 1 may at some point in the future acquire tangible security in respect of the Respondent N° 2's obligations. Therefore, the Claimant submits that these vague references do not in any way undermine the clear representations made by the Respondent N° 2 and agreed to by the Respondent N° 1 that the IBL Loan was, at the time of execution, unsecured (see Clause 7.1.6 for instance). In any event, the Claimant reminds that the contract terms must be read and interpreted harmoniously (Exhibit N° C-LA-1, p. 5), and there is no basis to read down or ignore Clause 7.1.6. of the IBL Loan Agreement (CER-Griffiths-1, para. 6.49).⁷²

⁶⁹ Statement of Reply and Defense to Counterclaim, pp. 25-27, paras. 51-54.

⁷⁰ Statement of Reply and Defense to Counterclaim, pp. 18-20, paras. 33-39 and p. 24, para. 48.

⁷¹ Statement of Reply and Defense to Counterclaim, pp. 27-29, paras. 55-58.

⁷² Statement of Reply and Defense to Counterclaim, pp. 22-23, paras. 42-44.

414. The Claimant adds that the right to hold security or to require security at some point in the future is very different from actually holding security, being stressed that having the right to hold security does not make a loan secured (CER-Griffiths-1, paras. 6.51-6.52).⁷³
415. The Claimant objects to the Respondent N° 1's argument that it is prevented from relying on the terms of the IBL Loan due to the doctrine of privity of contracts. The Claimant argues that the doctrine of privity of contracts relates to the person bound by or deriving rights from the contract, but it does not affect the right to interpret the contract, especially by those who have an interest in it (CER-Fadlallah-2, para. 39). Indeed, according to the Claimant, privity of contract does not prevent a non-party to a contract from relying upon a representation made in a contract if that representation is specifically brought to the non-party's attention. *In casu*, it is reminded that the day before the execution of the Subordination Agreement, a final draft of the IBL Loan Agreement (which included Clause 7.1.6) was circulated to the members of the FPC and approved by its representatives (Exhibit N° R2-14). Therefore, it cannot be disputed that the Claimant's entry into the Subordination Agreement was predicated on the terms of the draft IBL Loan reviewed by it the day prior to executing the Subordination Agreement. The Claimant submits that there was an active misrepresentation by the Respondents in this final draft and an active misrepresentation in the executed IBL Loan Agreement, therefore privity of contract is irrelevant.⁷⁴
416. The Claimant finally refers to the Deed of Indemnity which according to the Respondents N° 2 and N° 3 does not contain a representation that the IBL Loan is unsecured (Exhibit N° C-8). The Claimant considers this allegation as misconceived since, as already stated, it legitimately relied upon the repeated, express representations that the IBL Loan was unsecured, which representations were made by representatives of the Respondents N° 2 and N° 3 and on their behalf, and were made to it for the purpose of procuring its consent to the IBL Loan and Subordination Agreement. Further, the Claimant asserts that the very fact that it was required to enter into the Deed of Indemnity is entirely consistent with the repeated representations that were made to it that the IBL Loan was unsecured since had it known that the IBL Loan was fully secured by cash collateral then the Barzani Guarantee and the Deed of Indemnity would have been unnecessary, these arrangements only serving to underscore the misrepresentations made by the Respondents.⁷⁵

⁷³ Statement of Reply and Defense to Counterclaim, p. 23, para. 45.

⁷⁴ Statement of Reply and Defense to Counterclaim, p. 25, paras. 49-50.

⁷⁵ Statement of Reply and Defense to Counterclaim, pp. 29-30, paras. 59-63.

c The Subordination Agreement

417. Regarding the requirement for the conclusion of the Subordination Agreement, the Claimant reiterates that, even though it considered the proposed terms of the loan to be onerous, including the 13.25% interest rate demanded by the Respondent N° 1, it accepted the proposed terms of the loan (and therefore the Respondent N° 2's entry into the IBL Loan) under the pressure put by Messrs. Mustafa and Rahmeh and on the basis of their false representations, including the representation in the IBL Loan Agreement itself that the IBL Loan would be "unsecured" (CWS-1, paras. 27-28; CWS-3, paras. 15-16). It further recalls that the Respondent N° 1 required the IBL Loan to "have seniority on existing Korek Loans" (including the IT-IH Loan) as a condition for providing the IBL Loan (Exhibit N° C-41). Consequently, the Claimant agreed to subordinate its rights under the IT-IH Loan and the Korek Guarantee pursuant to the Subordination Agreement.⁷⁶
418. The Claimant argues, contrary to the Respondents' position, that the Subordination Agreement was abnormal and there was no commercial basis for the entry into such agreement since the IBL Loan was fully cash collateralised and therefore the lending transaction was and is risk free for the lender (Exhibit N° C-79) (CER-Griffiths-1, paras. 6.20-6.29). Therefore, the Claimant submits that the Respondent N° 1's insistence on the Subordination Agreement, whilst simultaneously concealing the existence of the cash collateral provided by Mr. Mustafa, is an active fraud/deceptive manoeuvre, as it was designed to give the impression that the IBL Loan was unsecured, the Respondent N° 1 having had no need to rank senior to, or be protected from the Claimant as an indirect shareholder of the Respondent N° 2.⁷⁷
419. The Claimant contends that the Respondents are using the Subordination Agreement not to ensure that the Respondent N° 1 is able to properly enforce its loan against the Respondent N° 2, rather they are using it to ensure that they are able to continue the "sham" loan arrangement without the risk of the Claimant enforcing the IT-IH Shareholder Loan and/or the Korek Guarantee. This fraud/sham loan arrangement is clearly evidenced by the following facts that despite declaring an Event of Default over five years ago:⁷⁸
- the Respondent N° 1 has declined to take any enforcement action against the Respondent N° 2 at all;
 - the Respondent N° 1 has not designated the IBL Loan as non-performing;
 - the Respondent N° 1 has not taken any provisions as required by IFRS-9;
 - the Respondent N° 1 has refused to enforce against the cash collateral it has on hand.

⁷⁶ Statement of Claim, p. 13, paras. 35-36; Statement of Reply and Defense to Counterclaim, p. 30, para. 64.

⁷⁷ Statement of Reply and Defense to Counterclaim, pp. 30-32, paras. 65-68.

⁷⁸ Statement of Reply and Defense to Counterclaim, p. 32, para. 69.

420. The Claimant insists and reiterates its position that it did not agree to (and never would have agreed to) subordinate the IT-IH Shareholder Loan and Korek Guarantee in circumstances where the IBL Loan was fully cash collateralised. Further, it would never have agreed to subordinate their interests to what was a *de facto* shareholder loan from Mr. Mustafa fronted by the Respondent N° 1, whereby the latter "kicked back" 96% of the interest paid on the IBL Loan to Mr. Mustafa (CWS-Aziz-1, paras. 28, 48-49; CWS-Froissart-1, paras. 14, 16, 23; CWS-Froissart-2, para. 14). The Claimant adds that the fact that the Respondents N° 2 and N° 3 could grant security to third parties or subordinate the IT-IH Shareholder Loan in favour of those third parties does not excuse the fraud.⁷⁹

d The hidden cash collateral

421. The Claimant submits that the cash collateral was deliberately concealed. Indeed, there is no reference whatsoever to cash collateral in any contemporaneous evidence in the lead up to the execution of the Subordination Agreement and the IBL Loan Agreement (CER-Griffiths-1, para. 7.8). However, the Claimant raised the issue with the Respondent N° 1 directly, repeatedly asking the latter to confirm what, if any, collateral it held with respect to the IBL Loan (Exhibits N° C-23 to C-26), but the Respondent N° 1 refused to engage with the Claimant and did not provide any substantive response. The Claimant raised the matter repeatedly with Mr. Mustafa (on 31 October 2017 and 1, 19 November 2017) who failed to provide any credible explanation (Exhibits N° C-48 to C-50).⁸⁰

422. The Claimant further argues that the Respondents cannot rely on banking secrecy to justify non-disclosure. In particular, with respect to the Respondent N° 1, the Claimant stresses that even if the Respondent N° 1 was prevented from disclosing the identity of the cash collateral provider, it was never prevented from disclosing the existence of the cash collateral. This is confirmed by the fact that the Respondent N° 1 itself was able to (belatedly) disclose the existence of the cash collateral in its Answer to the Request for Arbitration, as well as in its annual accounts since 2012 (CER-Zein-1, paras. 48-53 and 79).⁸¹

423. The Claimant adds that, in any event, banking secrecy of course does not apply to the Respondents N° 2 and N° 3 and in no way justifies their non-disclosure of the cash collateral, nor of the documents that related to it, nor of the identity of the provider of such collateral. The Claimant further asserts that the Respondents N° 2 and N° 3's failure to file evidence to clarify the position speaks volumes and is amplified by their contumelious breach of the Arbitral Tribunal's disclosure orders. The Arbitral Tribunal is therefore invited to draw adverse inferences in this regard.⁸²

⁷⁹ Statement of Reply and Defense to Counterclaim, pp. 32-33, paras. 70-73.

⁸⁰ Statement of Reply and Defense to Counterclaim, p. 34, para. 74.

⁸¹ Statement of Reply and Defense to Counterclaim, pp. 34-35, paras. 75-79.

⁸² Statement of Reply and Defense to Counterclaim, p. 35, para. 77 and p. 36, para. 79.

424. Moreover, the Claimant contends that the non-disclosure by the Respondent N° 1 of the existence of the cash collateral was highly unusual as a matter of international banking practice (Anti Money Laundering (hereinafter referred to as "**AML**")) (Exhibits N° C-51, p. 29, C-67 and R2-13) (CER-Griffiths-1, paras. 6.33-6.44, 7.4-7.8). According to the Claimant, had the Respondents been acting transparently, in good faith and in conformity with customary banking practice, the existence of the cash collateral would have been fully disclosed to it (and indeed specified as a condition precedent) and the IBL Loan would have been structured on the basis of a 3.33% p.a. interest rate and it would not have subordinated any of its creditor rights.⁸³
425. Contrary to the Respondents' allegation, the Claimant states that it had no obligation to conduct due diligence and to identify itself that the cash collateral was required. Indeed, the Claimant submits that there is no reason why it, a non-banker which had no commercial duty or means to assess the Respondent N° 1's compliance with its regulatory obligations, should have been aware of, or have been expected to make enquiry about any regulatory capital constraint on the part of the Respondent N° 1 which would have prevented the latter from making an unsecured loan of USD 150 million (CER-Griffiths-1, paras. 6.17-3.19, 6.37, 6.103-6.104 and 7.7). Therefore, it cannot be disputed that the Respondent N° 1's regulatory obligations were a matter solely for the Respondent N° 1.⁸⁴
426. According to the Claimant, the Respondents' failure to disclose the existence of the cash collateral is further evidenced by Mr. Rayes' use of his Hotmail account who is the senior banker at the Respondent N° 1 responsible for negotiating the IBL Loan. (Exhibit N° C-65) (CER-Griffiths-1, paras. 6.85-6.89, 7.20).⁸⁵
427. Finally, the Claimant draws the Arbitral Tribunal's attention to the fact that in the present case the Respondents (and their representatives) have a history of being evasive regarding the existence and source of the cash collateral. Indeed, misrepresentations/concealment continued to occur after the execution of the IBL Loan and the Subordination Agreement:⁸⁶
- At a KSC meeting in October 2015, Mr. Rahmeh falsely and expressly denied that the IBL Loan was collateralised (Exhibit N° C-43).
 - After the Respondent N° 1's request for "additional collateral" in August 2017, the Claimant subsequently sent four letters to the Respondent N° 1 requesting that they confirm what, if any, collateral the latter held with respect to the IBL Loan (Exhibits N° C-23 to C-26). However, the Respondent N° 1 refused to engage with the Claimant and did not provide a substantive response (Exhibits N° C-44 to C-47). Further, the Claimant repeatedly raised

⁸³ Statement of Reply and Defense to Counterclaim, pp. 36-37, paras. 80-81.

⁸⁴ Statement of Reply and Defense to Counterclaim, pp. 38-39, paras. 82-86.

⁸⁵ Statement of Reply and Defense to Counterclaim, p. 40, paras. 87-88.

⁸⁶ Statement of Reply and Defense to Counterclaim, p. 41, para. 89.

the collateral issue with Mr. Mustafa and the Respondents N° 2 and N° 3 but received no explanation (Exhibits N° C-48 to C-50).⁸⁷

428. The Claimant adds that the Respondents adopted the same evasive conduct in related court and arbitration proceedings.⁸⁸

e The "kick-back" arrangement

429. The Claimant first reminds that the Transfer Evidence has unequivocally proven that Mr. Mustafa provided the cash collateral and shows that, on 20 December 2011, Mr. Mustafa transferred USD 155 million from his HSBC account in Dubai to an account in his name with the Respondent N° 1 in Beirut (Exhibit N° C-63) (CWS-Bortman-2, Section B). The following is particularly importance to note:⁸⁹

- The transfer occurred the day before the Respondent N° 2 entered into the IBL Loan.
- The beneficiary bank was the Respondent N° 1.
- The transferred amount corresponds almost exactly with the quantum of the cash collateral that has been repeatedly disclosed by the Respondent N° 1 as part of its financial statements (apart from the English version of its 2018 accounts, which omitted reference to the IBL Loan).

430. The Claimant submits that it cannot be disputed that the "kick-back" arrangement between the Respondent N° 1 and Mr. Mustafa was certainly not an ordinary banking operation but a fraud carefully orchestrated to (i) enrich the two of them, (ii) mask the fact that Mr. Mustafa was in reality providing a shareholder loan and (iii) prioritise Mr. Mustafa's creditor-rights over the Claimant's, notwithstanding Mr. Mustafa agreeing to the contrary in the IH-SHA. This orchestrated scheme is evidenced by the following:⁹⁰

- The fact that Mr. Mustafa earned a 12.75% p.a. deposit rate, which equates to around LIBOR plus 12% p.a. and exceeds by far both the international money market deposit rates for USD in 2011 as well as the higher Lebanese money market rates for USD in 2011.
- Given that more than 96% of the total interest expense paid by the Respondent N° 2 to the Respondent N° 1 was simply routed to Mr. Mustafa, it is difficult to escape the conclusion that Mr. Mustafa, and not the Respondent N° 1, was the actual lender, assuming the Respondent N° 2's credit risk and being compensated for incurring such credit risk.

⁸⁷ Statement of Reply and Defense to Counterclaim, pp. 59-60, paras. 121-124.

⁸⁸ Statement of Reply and Defense to Counterclaim, pp. 42-44, paras. 90-93.

⁸⁹ Statement of Reply and Defense to Counterclaim, p. 45, paras. 94-95.

⁹⁰ Statement of Reply and Defense to Counterclaim, pp. 46-47, paras. 96-98.

- The effect of the cash collateral arrangements was that Mr. Mustafa was a shareholder/creditor, but one whose interests ranked before those of the Claimant when also considering the existence of the Subordination Agreement.
- A reputable bank would have disclosed the arrangement with Mr. Mustafa before asking the Claimant for subordination on what it knew was being represented as an unsecured loan.
- It seems very possible that the unjustifiably high interest rate of 13.25% p.a. was designed to make the IBL Loan appear to be unsecured.
- By subordinating the IT-IH Loan Facility, the IH-Korek Loan and the Korek Guarantee, the Respondent N° 1 allowed Mr. Mustafa to extract significant distributions from the Respondent N° 2 to the detriment of the Claimant. Mr. Mustafa has seemingly received more than USD 160 million in interest payments from the Respondent N° 2 since 2011, more than the entire principal value of the IBL Loan.

431. The Claimant further objects and responds in detail to the Respondents' criticisms of evidence given by Mr. Nicholas Jonah Bortman (hereinafter referred to as "**Mr. Bortman**"), such criticisms being baseless.⁹¹

f The corporate approvals

432. The Claimant submits that the fact that it agreed to enter into the IBL Loan and the Subordination Agreement is irrelevant and uncontested. What is contested is whether this agreement was procured by/predicated on the *dol* of the Respondents, which vitiated any consent given. The Claimant stresses that the answer is clearly yes for the reasons set out above.⁹²

433. Moreover, the Claimant recalls that the Corporate Approvals (save for the letter dated 7 December 2011) are all dated 14 December 2011 (Exhibits N° R1-17 to R1-20). As mentioned above, the final drafts of the IBL Loan Agreement and Subordination Agreement were provided by the Respondent N° 1 to Mr. Junde and circulated to the Claimant's representatives on the FPC and the KSC on 13 December 2011. The Claimant stresses that it was on the terms of these drafts (as well as the preceding negotiations, which at no point involved discussion of the cash collateral to be provided by Mr. Mustafa) that the Corporate Approvals were given. The Corporate Approvals were therefore predicated on a misrepresentation as to the unsecured nature of the IBL Loan.⁹³

⁹¹ Statement of Reply and Defense to Counterclaim, pp. 47-48, para. 99.

⁹² Statement of Reply and Defense to Counterclaim, p. 50, paras. 100-101.

⁹³ Statement of Reply and Defense to Counterclaim, p. 51, para. 103(b).

434. The Claimant adds that it was incumbent on the Respondent N° 1, as a purportedly reputable bank, to disclose to it the existence of the cash collateral and the "kick back arrangement", this being true both as a matter of ordinary commercial practice and the Respondent N° 1's AML obligations (CER-Griffithsd-1, paras. 6.37, 6.77 and 6.82). In any event, the Claimant notes that the Respondent N° 1 fails to explain why it was incumbent on the Claimant to obtain an express representation of what was an obvious and fundamental feature of the entire loan arrangement.⁹⁴
435. The Claimant concludes that the cash collateral was not included in the Corporate Approvals because its existence was deliberately kept secret from it.⁹⁵

(iii) The collateralised characterization of the IBL Loan

436. The Claimant states that the cash collateral appears first in the Respondent N° 1's own annual reports since 2012 which refer to the IBL Loan as being cash collateralised. The Respondent N° 1's Annual Report for 2016 states for example that (as the Annual Reports from 2012 until 2017 do (Exhibits N° C-51 to C-55)) (Exhibit N° C-22, p. 59):⁹⁶

"Performing corporate loans to large enterprises, outstanding at year end 2016 and 2015, include an amount of LBP226billion related to a non-resident customer which is covered by LBP234billion cash collateral. Related interest income and expense amounted to LBP30.7billion and LBP28.83billion respectively during 2016 and 2015."

437. In that respect, the Claimant explains that the IBL Loan of USD 150 million equates to approximately LBP 226 billion (1 USD = 1,506.60 LBP), which accords with the amount of the performing corporate loan to a "*non-resident customer*" referenced in IBL's accounts. Furthermore, the interest due on this loan for 2015 is said to be LBP 30.7 billion which is just over 13% of the principal amount said to be owing. This also accords with the interest rate of the IBL Loan of 13.25%.⁹⁷
438. Second, the Claimant asserts that its belief that the IBL Loan was already cash collateralised is confirmed by the Respondent N° 1's demand in August 2017 for "*additional collateral*" (Exhibit N° C-21),⁹⁸ stressing that there can be no commercial justification for a bank to require "*additional collateral*" when, in fact, such bank already maintains as collateral a cash deposit that equates to 103.5% of the total size of the loan.⁹⁹ Moreover, this demand was striking, given that it had been represented to the Claimant that the IBL Loan was unsecured, both in 2011 when it approved the Respondent N° 2's entry into the IBL Loan (and as documented in the loan agreement itself) (Exhibits N° C-7 and C-41) and when

⁹⁴ Statement of Reply and Defense to Counterclaim, p. 52, para. 103(d)-(e).

⁹⁵ Statement of Reply and Defense to Counterclaim, p. 52, para. 104.

⁹⁶ Request for Arbitration, p. 14, para. 40; Statement of Claim, p. 19, para. 55 and p. 22, para. 64.

⁹⁷ Request for Arbitration, p. 14, para. 41; Statement of Claim, p. 19, para. 56.

⁹⁸ Request for Arbitration, p. 14, para. 42; Statement of Claim, p. 17, para. 47.

⁹⁹ Request for Arbitration, p. 15, para. 47.

Mr. Rahmeh, in October 2015 falsely and expressly denied that the IBL Loan was collateralised (Exhibit N° C-43) (CWS-Froissart-1, para. 18).¹⁰⁰

439. Third, the Claimant has learnt that the Respondent N° 1 entered into a secret arrangement with Mr. Mustafa pursuant to which the Respondent N° 1 undertook to pay to Mr. Mustafa an amount equal to 12.75% of the 13.25% total interest received by the Respondent N° 1 under IBL Loan Agreement, namely the Respondent N° 1 agreed to "kick-back" to Mr. Mustafa more than 96% of the interest expense paid to it by the Respondent N° 2 and to collect payments from the Respondent N° 1 amounting to approximately USD 140 million, whilst the Respondent N° 1 has effectively collected a commission of approximately USD 5 million for providing a risk free loan (CWS-Bortman-1, paras. 14 and 17) (Exhibit N° C-51).¹⁰¹ Mr. Bortman, the Claimant's witness, explains that the kick-backs are structured as biannual dividend payments on an undisclosed preferred shareholding position in the Respondent N° 1, made by one of the Respondent N° 1's subsidiaries, IBL Investment Bank SAL, and paid into Mr. Mustafa's personal account at the Respondent N° 1 (Exhibit N° C-59).¹⁰²
440. According to the Claimant, given the relative size of the IBL Loan, amounting to 18% of the Respondent N° 1's total loan book (Exhibit N° C-51), it is extremely unlikely that there is another loan of similar size, and on similar terms, on the Respondent N° 1's books. Therefore, the Claimant submits that the Respondent N° 1's accounts clearly evidence that the IBL Loan "*is covered by [approximately 104%] cash collateral*".¹⁰³
441. The Claimant argues that this secret and fraudulent arrangement allowed Mr. Mustafa to (a) prioritise his creditor rights over those of the Claimant (in particular because, as noted above, one of the conditions of the Respondent N° 1 granting the loan was that it should take priority over the IT-IH Loan) and to (b) enable him to extract funds from the Respondent N° 2 by having the Respondent N° 2 mask these as interest payments to the Respondent N° 1.¹⁰⁴
442. Consequently, the Claimant submits that the effect of the arrangement is that the IBL Loan is, in reality, nothing more than a shareholder loan provided by Mr. Mustafa to the Respondent N° 2 with the benefit of a subordination agreement *vis-à-vis* the IT-IH Loan, which was not disclosed by Mr. Mustafa and Mr. Rahmeh to the Claimant nor to the Claimant's representatives on the IH Board or the KSC.¹⁰⁵ The Claimant adds that the purpose of this arrangement (i.e. this Respondents' fraud) structured *via* the Respondent N° 1 was to disguise the source of the loan and to circumvent a provision in the Respondent N° 3's shareholders

¹⁰⁰ Statement of Claim, p. 17, para. 48; Statement of Reply and Defense to Counterclaim, pp. 59-60, paras. 121-124.

¹⁰¹ Request for Arbitration, p. 14, para. 43; Statement of Claim, pp.3- 4, paras. 5-6, p. 18, para. 52 and p. 22, paras. 61-64.

¹⁰² Statement of Claim, p. 22, para. 62.

¹⁰³ Statememnt of Claim, p. 19, para. 56.

¹⁰⁴ Request for Arbitration, p. 14, paras. 44.

¹⁰⁵ Request for Arbitration, p. 15, para. 45.

agreement which requires all shareholder loans to be on a *pari passu* basis and to trick the Claimant into subordinating its own shareholder loan. At the same time, this fraudulent arrangement has allowed Mr. Mustafa to collect secret kick-back payments from the Respondent N° 1 amounting to approximately USD 140 million, whilst the Respondent N° 1 has effectively collected a commission of approximately USD 5 million for providing a risk-free loan.¹⁰⁶

443. The Claimant states that it is indisputable that after it notified the Respondent N° 1 its findings about the kick-back arrangement (Exhibit N° C-26), the Respondent N° 1 amended the disclosure in its next set of accounts for 2017 (which had been consistent for the last five years) by deleting the expense figure (Exhibit N° C-55, p. 132). Further, the Claimant notes that in the Respondent N° 1's most recent set of accounts for 2018, published after the commencement of these proceedings, any reference to the IBL Loan has been removed altogether (Exhibit N° C-60).¹⁰⁷

444. Finally, the Claimant stresses that the existence of the cash collateral has never been denied by the Respondent N° 1, Mr. Mustafa, CS Ltd. or any of their respective representatives. To the contrary, its existence has since been all but admitted by a representative of CS Ltd. in separate proceedings before the DIFC courts.¹⁰⁸ Moreover, the Respondents' conduct has been qualified as dishonest (Exhibits N° C-57 to C-59).¹⁰⁹

(iv) Conclusion

445. The Claimant reiterates and concludes that it entered into the Subordination Agreement on the understanding that the IBL Loan was a third-party bank loan on market terms provided against a personal guarantee from Mr. Mustafa without any collateral.¹¹⁰ Had it known the truth of the cash collateral and Mr. Mustafa's interest-splitting arrangement with the Respondent N° 1, it would never have agreed to the IBL Loan on such terms, and it would never have agreed to enter into the Subordination Agreement nor approved the Respondent N° 2's entry into the IBL Loan under any circumstances (CWS-Aziz-1, paras. 24, 48-49; CWS-Froissart-1, paras. 14, 16 and 23; CWS-Froissart-2, para. 14), particularly in circumstances where:¹¹¹

- "(a) *Korek is required to pay IBL interest of 13.25% for a fully cash collateralised loan (for which the appropriate rate of interest would be significantly lower);*
- (b) *96% of Korek's interest payments are being kicked-back to Mr. Barzani;*

¹⁰⁶ Statement of Claim, p. 4, para. 6.

¹⁰⁷ Statement of Claim, p. 22, para. 65.

¹⁰⁸ Request for Arbitration, p. 15, para. 46.

¹⁰⁹ Statement of Claim, pp. 20-21, paras. 57 to 60.

¹¹⁰ Request for Arbitration, p. 13, para. 38.

¹¹¹ Statement of Claim, p. 23, paras. 67-68.

- (c) *the IBL Loan effectively amounts to a shareholder loan by Mr. Barzani to Korek (albeit structured via IBL so as to disguise the source of the funds and make the loan appear as a third party bank loan), despite the IH SHA requiring shareholder loans should be provided on a pari passu basis and on substantially similar terms to the IT-IH Shareholder Loan [Exhibit N° C-35, Clause 5.2(d)]."*

446. Therefore, the Claimant submits that it is clear that the IBL Loan transaction was nothing more than a sham designed to trick it into subordinating its USD 285 million shareholder loan and allowing Mr. Mustafa to extract funds from the Respondent N° 2 for his own personal benefit.¹¹²

c The Subordination Agreement

447. The Claimant reminds that the IBL Loan was originally repayable by 21 July 2012 (for the Short-Term Loan) and by 21 June 2014 (for the Long-Term Loan) (Exhibit N° C-7, Clause 3.1). However, the Parties to the IBL Loan subsequently agreed to extend the loan as follows:¹¹³

- On 21 July 2012, pursuant to the First Loan Supplemental, the Short-Term Loan was extended until 1 February 2013 (Exhibit N° C-9), being added that, at the same time, pursuant to the First Subordination Supplemental, the Parties to the Subordination Agreement "*confirm[ed] that the provisions of the [Subordination] Agreement shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the [First Loan Supplemental]*" (Exhibit N° C-10).
- On 1st February 2013, pursuant to the Second Loan Supplemental, the Short-Term Loan was extended until 1 February 2014 (Exhibit N° C-11), being added that, at the same time, pursuant to the Second Subordination Supplemental, the Parties to the Subordination Agreement "*confirm[ed] that the provisions of the [Subordination] Agreement shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the [Second Loan Supplemental]*" (Exhibit N° C-12).

448. The Claimant further submits that, in 2014, the Parties discussed a third extension to the IBL Loan, pursuant to which it was proposed to extend the repayment date of: (i) the Short-Term Loan until 31 January 2015 and (ii) the Long-Term Loan until 21 June 2015 (the Third Loan Supplemental) (Exhibit N° C-42). However, the Claimant stresses that the Respondent N° 1 failed to execute all relevant documents relating to the proposed third extension, including the third supplemental agreement to the IBL Loan Agreement (Exhibit N° R-2).¹¹⁴

¹¹² Statement of Claim, p. 23, para. 66.

¹¹³ Statement of Claim, pp. 11-12, paras. 26-29 and p. 13, para. 37.

¹¹⁴ Statement of Claim, p. 14, para. 38.

449. Despite this Respondent N° 1's failure, the Respondent N° 2 informed the Claimant, on 11 February 2015, that (Exhibit N° C-42):¹¹⁵

"[...]

- [...], even though certain June Documents [relating to the third extension] were **not** executed on behalf of IBL Bank (e.g., the *Third Supplemental Agreement to the Term Loan Agreement* (hence the reason why they were not circulated earlier)), the 2015 Extension occurred *de facto*.
- I was further advised that IBL is now willing to extend the repayment dates until the 31st of January 2016 (U.S.\$40 Million Short Term Loan) and the 21st of June 2016 (U.S.\$110 Million Long Term Loan), respectively (collectively, the "**2016 Extension**") [the fourth extension].
- Given the fact that certain June Documents relating to the 2015 [third] Extension were **not** executed on behalf of IBL, they would, accordingly (i) be **cancelled ab initio** (as if they had never existed), and (ii) be replaced with the attached new documents, which relate to the 2016 [fourth] Extension (which also covers the 2015 [third] Extension).

[...]"

450. The Respondent N° 2 further circulated revised drafts of the extension documents, including draft shareholder and KSC resolutions proposing a further extension of the Subordination Agreement (referred to as the "*Third Supplemental Agreement to the Subordination Agreement*") (Exhibit N° C-42, pp. 5 and 9). However, the Claimant underlines that these documents were never fully signed and therefore no further extension to the IBL Loan Agreement or the Subordination Agreement was agreed by the Parties.¹¹⁶

451. Later in these proceedings and after having been provided with the full documentation, the Claimant withdrew its allegation that the Third Loan Supplemental was not fully executed by all the Parties (Exhibit N° R1-23).¹¹⁷ The same applies to the Third Subordination Supplemental (Exhibits N° R1-3 and R1-24). In this respect, the Claimant strongly denies the Respondent N° 1's allegation that these amendments of position are evidence of its bad faith. As explained, the Claimant made these allegations on a reasonable misapprehension stemming from missing documentation and representations made to it by Korek representatives (Exhibit N° C-42).¹¹⁸

452. The Claimant stresses that the Subordination Agreement (as amended) refers solely to the IBL Loan Agreement dated 14 December 2011, as amended on 21 July 2012 and 1st February 2013, but it does not refer to the IBL Loan Agreement as amended or varied from time to time. Further, the Subordination Agreement does not contain indication that the Parties intended for the subordination to remain in place no matter the status of the IBL Loan.¹¹⁹

¹¹⁵ Statement of Claim, pp. 14-15, paras. 39-40.

¹¹⁶ Statement of Claim, pp. 15-16, paras. 41-42.

¹¹⁷ Statement of Reply and Defense to Counterclaim, pp. 52-53, paras. 105-106.

¹¹⁸ Statement of Reply and Defense to Counterclaim, p. 53, para. 109.

¹¹⁹ Request for Arbitration, p. 12, paras. 31-32 and p. 13, para. 35.

453. Therefore, the Claimant contends that the Subordination Agreement lapsed with the effect that the IT-IH Loan and the Korek Guarantee were no longer subordinated to the IBL Loan.¹²⁰

d The Respondent N° 2's default under the IBL Loan Agreement

454. The Claimant recalls that according to the extensions of the repayment dates of the IBL Loan until 2015, the Respondent N° 2 was required to repay the Short-Term Loan by 31 January 2015 and the Long-Term Loan by 21 June 2015 (Exhibit N° C-13). It further stresses that, around the same time, the Claimant and the Respondents N° 2 and N° 3 were also negotiating a potential extension of the IT-IH Loan, which was originally repayable by 15 March 2015 (Exhibit N° C-3, Clause 6), but the Claimant agreed to extend repayment until 14 June 2015. However, the Claimant also formally reserved its rights with respect to the Respondent N° 3's failure to make any interest payments under the IT-IH Loan since September 2014 (Exhibit N° C-14).¹²¹

455. On 18 June 2015, the Claimant issued a notice of default in respect of the IT-IH Shareholder Loan (Exhibit N° C-14). Notwithstanding the fact that the Respondent N° 1 was entitled to issue a notice of default from 31 January 2015, the Respondent N° 1 only issued a (belated) Notice of Event of Default under the IBL Loan Agreement due to the Respondent N° 2's failure to repay the IBL Loan and requested full repayment of the IBL Loan by 9 August 2015 (Exhibits N° C-13 and R1-4).¹²² Further, in the same notice, the Respondent N° 1 purported to invoke the terms of the Subordination Agreement prohibiting the Claimant from taking any action to recover the amounts due under the IT-IH Loan (Exhibits N° C-13 and R1-4). The Claimant stresses that the Respondent N° 3 has since refused to repay the IT-IH Loan on the basis of the Subordination Agreement (Exhibits N° C-17 to C-20).¹²³

456. The Claimant adds that the Respondent N° 1 reiterated its notice to the Respondent N° 2 granting it an extension for repayment until October 2015 (Exhibits N° C-16 ad R1-5).¹²⁴ However, whilst the Respondent N° 2 continues to pay interest to the Respondent N° 1, it did not repay the IBL Loan and, to the Claimant's knowledge, the Respondent N° 1 did not send another notice to the Respondent N° 2 until August 2017 (Exhibit N° C-21), nor take any action to recover the IBL Loan from the Respondent N° 2 or Mr. Mustafa under his guarantee, i.e. seizing the (more than 100%) cash collateral that it holds (CWS-Aziz-1, paras. 32 and 44).¹²⁵

¹²⁰ Request for Arbitration, p. 12, paras. 31-32 and p. 13, para. 35.

¹²¹ Statement of Claim, p. 16, paras. 43-44; Statement of Reply and Defense to Counterclaim, p. 54, para. 110.

¹²² Statement of Reply and Defense to Counterclaim, p. 54, paras. 111-112.

¹²³ Request for Arbitration, pp. 12-13, paras. 33-35; Statement of Claim, p. 16, para. 45.

¹²⁴ Request for Arbitration, pp. 12-13, paras. 34-35; Statement of Claim, p. 16, para. 45; Statement of Reply and Defense to Counterclaim, p. 55, para.113.

¹²⁵ Request for Arbitration, p. 13, paras. 36-37; Statement of Claim, p. 4, para. 7 and p. 17, para. 46; Statement of Reply and Defense to Counterclaim, p. 55, para.114.

457. The Claimant submits that the Respondents are satisfied with the *status quo* and are willing to maintain it indefinitely by keeping the Respondent N° 2 in "default" under the IBL Loan, whilst extracting more and more funds from the latter via regular interest payments, and at the same time preventing the Claimant from being able to recover its USD 285 million shareholder loan which has been in default for more than four years.¹²⁶
458. The Claimant submits that sustained non-enforcement of the IBL Loan is not common banking practice but rather evidence of *dol* and an abuse of rights on the part of the Respondents (CER-Griffiths-1, paras. 6.106-6.115, 7.23-7.25; CER-Zein-1, para. 131). The Claimant adds that it is reasonable for a lender to allow a grace period to a borrower which is in default but if the borrower does not either repay the loan or produce a credible proposal for repayment over time, then a lender will be expected to exercise its rights over its security in order to have the loan repaid, six months likely being the maximum for such a grace period and, in the present case, a bank in the Respondent N° 1's position should have begun the process of enforcing its security around 31 December 2015.¹²⁷
459. The Claimant argues that the Respondent N° 1 has no incentive or desire to have the IBL Loan settled as it continues to receive 0.9% p.a. (equivalent to USD 1,350,000 million p.a.) as a "fronting" fee in respect of a transaction that it now belatedly admits has no risk whatsoever. Indeed, to date, the Respondent N° 1 has seemingly received more than USD 12 million in "fronting" fees since 2011 in respect of this transaction. On Mr. Mustafa's side (who is in control of the Respondents N° 2 and N° 3), the Claimant stresses that he continues to benefit from having his loan rank senior to its and continues to receive priority distributions from the Respondent N° 2, masking these in the form of "interest payments". To date, Mr. Mustafa has seemingly received more than USD 160 million in interest payments from the Respondent N° 2 since 2011, more than the entire principal value of the IBL Loan.¹²⁸
460. Moreover, contrary to the Respondent N° 1's allegation, the Claimant asserts that the latter's classification of the IBL Loan is wrong as a matter of Lebanese Banking Law (CER-Zein-1, paras. 115-127).¹²⁹
461. The Claimant concludes that it is clear that the Respondent N° 1's non-enforcement of the IBL Loan for over five years is not common banking practice and, to the contrary, is inconsistent with Lebanese banking law. It stresses that the Respondent N° 1's non-enforcement of the IBL Loan for a period of many years beyond a standard, six-month "grace period", while continuing to invoke the Subordination Agreement and receive significant interest payments from the Respondent N° 2 on a zero-risk basis, is therefore inexplicable and abusive, this being particularly true in circumstances where the IBL Loan is fully cash

¹²⁶ Request for Arbitration, pp. 12-13, paras. 33-34; Statement of Claim, p. 4, para. 7; Statement of Reply and Defense to Counterclaim, p. 55, para. 115.

¹²⁷ Statement of Reply and Defense to Counterclaim, pp. 56-57, paras. 116-117.

¹²⁸ Statement of Reply and Defense to Counterclaim, p. 57, paras. 118-119.

¹²⁹ Statement of Reply and Defense to Counterclaim, p. 57, para. 120.

collateralised (and guaranteed). The Claimant therefore submits that the only available inference is that this conduct is consistent with the Respondent N° 1 participating in, and continuing, the fraud/*dol* perpetrated on it by the Respondents on or before entry into the Subordination Agreement in December 2011 (CER-Fadlallah-2, para. 17). As confirmed by Prof. Fadlallah (CER-Fadlallah-2, para. 17), fraud can be proven under Lebanese law by reference to subsequent events. The Tribunal should therefore infer, based on non-enforcement of the IBL Loan, that IBL participated in the fraud perpetrated on IT Ltd, which resulted in the Claimant entering into the Subordination Agreement.¹³⁰

462. The Respondent N° 1's conduct confirms the Claimant's position that (i) there is no true Event of Default and the notices of default sent by the Respondent N° 1 are fictitious and (ii) even if there were, to the extent that the Respondent N° 1 already has full security in the form of cash collateral, it is acting abusively in preventing it from enforcing the IT-IH Shareholder Loan and the Korek Guarantee.¹³¹

2 The Respondent N° 1's Position

a Introduction

463. The Respondent N° 1 generally denies each and every allegation made by the Claimant and further denies any liability averred by the Claimant, being stressed that the factual allegations contained in the Claimant's submissions are inaccurate, unfounded and unsubstantiated.¹³² The Respondent N° 1 is of the opinion that the Claimant filed this arbitration for wrongful purposes of (i) requesting the declaration of the Subordination Agreement entered into amongst the Parties as null and void or no longer in full force and effect and (ii) initially, claiming damages in a bad faith attempt to illegally extort compensation from the Respondent N° 1 for the Respondent N° 2's default under the IBL Loan Agreement.¹³³ The Respondent N° 1 notes that the Claimant amended its relief sought for damages. However, the Respondent N° 1 considers that, by amending its relief sought in this manner and requesting a declaration, the Claimant is wrongly attempting to include the Respondent N° 1 as an additional party in its dispute with its former partners. Further, the Respondent N° 1 stresses that the amended relief sought remains dependent on whether the Claimant is entitled to receive a compensation or any amount of any nature under the IT-IH Shareholder Loan, the Shareholder Loan Agreement or the Korek Guarantee. Therefore, any relief that the Claimant may allegedly be entitled to may only be determined by proceedings which will be initiated by the Claimant under the agreements governing the IT-IH Loan, the Shareholder Loan Agreement and the Korek Guarantee and which do not concern the Respondent N° 1.¹³⁴

¹³⁰ Statement of Reply and Defense to Counterclaim, pp. 60-61, para. 125-128.

¹³¹ Statement of Reply and Defense to Counterclaim, p. 61, para. 129.

¹³² Answer and Counterclaim to the Request for Arbitration, p. 2, para. 1.

¹³³ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 3, para. 4.

¹³⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 6, para. 10.

464. The Respondent N° 1 states that, in the absence of any valid grounds for its claims, the Claimant fabricated its farfetched theory of "*orchestrated fraud*", of an alleged conspiracy amongst the Respondents and of a "*kick-back arrangement*" on the basis of a collateral granted to secure the Respondent N° 1's loan to the Respondent N° 2. Contrary to the Claimant's allegations, no "*sham or secret arrangement*" ever existed between the Respondents.¹³⁵
465. The Respondent N° 1 asserts that the present dispute is the result of the Claimant's bad faith conduct in order to unlawfully and unjustly escape its obligations under the Subordination Agreement after its investment in the Respondent N° 2 became jeopardized for reasons that neither concern the Respondent N° 1 nor that the Respondent N° 1 is aware of.¹³⁶ Indeed, it is indubitable that this dispute does not concern the Respondent N° 1. The Respondent N° 1 recalls that its role, as a banking institution, was limited to extending a commercial loan to the Respondent N° 2, being stressed that the terms and conditions of the lending operation were mutually agreed upon by the relevant Parties and were, and continue to be, lawful and consistent with banking rules and practices that are applicable to the granting of a loan and the subsequent management of a credit file by a Lebanese banking institution.¹³⁷
466. The Respondent N° 1 submits that it has acted in good faith by extending a loan to the Respondent N° 2, a subsidiary of the Claimant, pursuant to the Respondent N° 2's request for the purpose of financing the payment of its License fees. Indeed, the Respondent N° 1 acted in full compliance with its legal and contractual obligations and was never a party to any kind of collusion or fraud.¹³⁸ The Respondent N° 1 reiterates that the terms and conditions of the requested loan were duly approved by all the concerned Parties, including the Claimant.¹³⁹ In fact, the Respondent N° 1 entered into a regular lending operation with standard commercial terms and conditions and in conformity with the applicable laws and regulations (i.e. a typical cash collateral transaction).¹⁴⁰

¹³⁵ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 3, paras. 5-6; Respondent N° 1's Statement of Defence and Counterclaim, p. 4, para. 2 and p. 5, para. 7.

¹³⁶ Respondent N° 1's Statement of Defence and Counterclaim, p. 4, para. 2; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 4, paras. 4-5.

¹³⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 4, para. 4 and p. 5, paras. 7-8.

¹³⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 5, para. 8.

¹³⁹ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 2, paras. 2-3 and p. 3, para. 6. Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 4, para. 3 and p. 5, paras. 7-8.

¹⁴⁰ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 11, para. 52; Respondent N° 1's Statement of Defence and Counterclaim, p. 4, paras. 2, 4 and p. 5, para. 7; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 5, para. 7.

467. The Respondent N° 1 adds that, contrary to the Claimant's allegation that it did not agree to any further extension or variation of the Subordination Agreement in respect of the Third Loan Supplemental dated 21 June 2014, the Third Subordination Supplemental was signed amongst the respective Parties, including the Claimant (Exhibit N° R1-3). However, the Respondent N° 1 admits that there was no formal approval for a fourth extension which was under negotiation.¹⁴¹ The Respondent N° 1 notes that the Claimant admitted in its Statement of Reply and Defense to Counterclaim that the Third Loan Supplemental and Third Subordination Supplemental were executed by the relevant Parties, being stressed that the Claimant's reversal of position proves the latter's approach of distorting facts whenever possible for the purpose of serving its own strategy and interests. The Respondent N° 1 therefore maintains that, in considering the allegations of the Claimant in these proceedings, the Arbitral Tribunal should make a negative inference that the Claimant is ready and has no issue with making inaccurate statements and arguments to attempt to escape its obligations under the Subordination Agreement.¹⁴²
468. The Respondent N° 1 insists on the fact that the IBL Loan, the Subordination Agreement and their respective supplements had all been approved by the Claimant prior to their execution as the Respondent N° 1 had ensured that all the corporate resolutions of the relevant parties were duly obtained for their valid execution.¹⁴³
469. Moreover, the Respondent N° 1 reminds that it was not aware of, nor was it involved in the correspondence, exchanges and communications that took place between the other Respondents and the Claimant regarding the IBL Loan Agreement and the Subordination Agreement, particularly as it is the contractual counterparty of the Respondent N° 2 in those dealings and would not therefore be privy to the Respondent N° 2's discussions with its indirect shareholders in that regard.¹⁴⁴
470. The Respondent N° 1 further explains that due to the deterioration of the economic and political situation in Iraq and, while the Respondent N° 2 continued to pay the interest due under the IBL Loan in a timely manner, the Respondent N° 2 failed to honour its obligations under the IBL Loan Agreement as amended in respect of the payment of the principal of the IBL Loan.¹⁴⁵ It stresses that it treated the Respondent N° 2 as it would treat any other well-established client, namely by not immediately seeking enforcement against a debtor in the event of default, especially when the client is well-known to the Respondent N° 1 and interest is paid in a timely manner.¹⁴⁶

¹⁴¹ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 7, paras. 31-32.

¹⁴² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 14, para. 36.

¹⁴³ Respondent N° 1's Statement of Defence and Counterclaim, p. 4, para. 3.

¹⁴⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 5, paras. 5, 6; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 9, para. 22 and p. 11, paras. 29-31.

¹⁴⁵ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 7, para. 33.

¹⁴⁶ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 9, para. 40.

471. Therefore, the Respondent N° 1 submits that the Claimant's allegation that upon variation and extension of the IBL Loan pursuant to the Third Loan Supplemental, the Subordination Agreement lapsed with the effect that the IT-IH Loan and the Korek Guarantee were no longer subordinated to the IBL Loan is wrong. Indeed, the absence of approval to enter into the fourth extension along with the Respondent N° 2's failure to meet its obligations under the IBL Loan Agreement (as amended) triggered the application of Clause 1.2 of the Subordination Agreement and thus, no further extension of the Subordination Agreement was required.¹⁴⁷

472. The Respondent N° 1 concludes that:

"The Claimant would want us to believe that the Respondent [N° 1], an alpha bank (i.e. top ten tier bank in Lebanon) with a crystal reputation in Lebanon and the MENA region, would make itself involved in such a scheme, for purposes of serving an alleged third party's interests. The Respondent [N° 1] has no will and no interest whatsoever in participating to the so-called "orchestrated fraud", especially that the Respondent [N° 1] is a highly regulated entity operating under the scrutiny of the Lebanese monetary institutions and notably, Banque du Liban."¹⁴⁸

473. Finally, the Respondent N° 1 simply reminds that it is a leading Lebanese bank that is a member of the alpha group of banks in Lebanon, that has been active in Iraq since 2005 and plays an instrumental role in project financing transactions in addition to being involved in international trade finance in the Iraqi market. Further the Respondent N° 2, a major Iraqi mobile telecommunications company founded in 2000, has been a client of the Respondent N° 1 since 2008.¹⁴⁹

b Nature of the IBL Loan

(i) The negotiations preceding the lending transaction

474. The Respondent N° 1 first reminds that the Respondent N° 2 approached it seeking to obtain financing for the urgent payment of its License fees' instalment owed to the CMC in order not to lose its License. The Respondent N° 1 stresses that, according to the Respondent N° 2, this request came after careful exploration of the Respondent N° 2's possible resources, whereby the shareholders of the Respondent N° 3 decided to seek third-party financing to make this payment, as opposed to financing the payment themselves through a shareholders' loan (Exhibit N° C-56, p. 3, para. 11).¹⁵⁰

¹⁴⁷ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 7, para. 34.

¹⁴⁸ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 11, para. 51.

¹⁴⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 5, para. 10 and p. 6, para. 11.

¹⁵⁰ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 4, paras. 12-15; Respondent N° 1's Statement of Defence and Counterclaim, p. 6, para. 12.

475. Upon receiving the Respondent N° 2's request to obtain the Loan, the Respondent N° 1 affirms that it carried out and completed the steps that would typically precede any agreement by a bank to extend a loan to a client, which steps being the following:¹⁵¹

- conducting the required due diligence and know your customer checks on the Respondent N° 2 to ensure that the Loan may be extended to it from a compliance standpoint;
- seeking to ensure that the terms and conditions of the lending operation would meet the regulations imposed by the Central Bank of Lebanon (the regulatory body that oversees the Lebanese banking sector) (hereinafter referred to as the "**BDL**");
- seeking to obtain the Respondent N° 2's approval on the terms and conditions of the Loan as reflected in the Loan documentation;
- verifying that the Corporate Approvals at the level of the Respondents N° 2 and N° 3 and at the level of the relevant indirect shareholders of the Respondent N° 2 (including that of the Claimant) were duly obtained to approve the entry into and execution of the relevant Loan documentation;
- seeking to ensure that the proceeds of the Loan will be used as agreed upon with the Respondent N° 2, in its capacity as the borrower under the Loan; and,
- completing the study of the Respondent N° 2's credit file and seeking to obtain the necessary internal credit approvals to extend the Loan in accordance with the terms and conditions of the lending operation.

476. The Respondent N° 1 submits that, by completing the above steps, it followed the standard processes applied by financial institutions to approve the extension of a loan to any borrower, being stressed that those standard processes do not include interfering in the relationship of a borrower with its direct or indirect shareholders or participating in internal discussions with respect to the terms and conditions of the lending operation, a lender only being concerned with obtaining the relevant corporate resolutions approving a loan. Therefore, the Respondent N° 1 states that it had no obligation in respect of the information that was being communicated by the Respondent N° 2 to its direct and indirect shareholders (including the Claimant) regarding the terms and conditions of the Loan since it was not involved in these communications as admitted by the Claimant's witness, Mr. Froissart, who stated that the Claimant's representatives "*never even had a direct channel of communication with IBL Bank*" (CWS-Froissart-2, para. 11).¹⁵²

¹⁵¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 8, para. 19.

¹⁵² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 9, paras. 20-22.

477. Consequently, in view of the above and being aware of the existence of the IT-IH Loan, of the Shareholder Loan Agreement and of the Korek Guarantee, the Respondent N° 1 agreed to extend to the Respondent N° 2 the requested financing under certain terms and conditions which obviously factored in the risk elements associated with the granting of the loan in Iraq, including among others (a) to apply an interest rate of 13,25%, (b) to obtain sufficient guarantees and securities and (c) to rank senior to the rights associated with the existing Shareholder Loan Agreement.¹⁵³
478. Contrary to the Claimant's position, the Respondent N° 1 submits that the sequence of events leading up to the conclusion of the IBL Loan, including the series of communications and meetings held during that period as presented by the Claimant, clearly exonerate it of any involvement or responsibility in this so-called "*fraudulent scheme*".¹⁵⁴
479. In that respect, the Respondent N° 1 stresses that the shareholders' arrangements and arrangements signed by and among the indirect shareholders of the Respondent N° 2 in relation to the financing of the License fee are the business of the Respondent N° 2 and its indirect shareholders. Further, the Respondent N° 1 considers that if the Respondent N° 2 had access to financing from another third-party lender offering better terms than the Loan, then it would have sought to obtain a loan from that third party and not from the Respondent N° 1.¹⁵⁵
480. Moreover, the Respondent N° 1 insists on the fact that all the communications and/or meetings in which the Claimant was involved took place solely between its representatives, the other indirect shareholders at the level of the Respondent N° 2 and the representatives of the Respondent N° 2 (whoever they are). Therefore, there is no evidence of the Respondent N° 1's alleged active participation in the alleged "*fraudulent scheme*", the only email sent on its behalf by Mr. Rayes on 9 December 2011 to the Respondent N° 2's representatives was not intended to include any representations or any other form of commitment whatsoever towards the Claimant and most importantly it was not sent to the Claimant nor was the Claimant in copy (Exhibits N° R2-13 and C-89).¹⁵⁶

¹⁵³ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 4, paras. 12-15 and p. 6, paras. 13, 14.

¹⁵⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 9, para. 23.

¹⁵⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 9-10, paras. 24-28.

¹⁵⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 11, paras. 29-31.

(ii) The conditions of the IBL Loan

481. The Respondent N° 1 asserts that the terms and conditions of the IBL Loan were in line with the prevailing market practices, rates and standards for lending operations in Iraq, and were in conformity with Lebanese laws and BDL regulations applicable to it, which terms were agreed by the Respondents N° 1 and N° 2 (including its indirect shareholders, CS Ltd. and the Claimant).¹⁵⁷

a The interest rate

482. First and foremost, the Respondent N° 1 states that the interest rate applied on the Loan was determined by the mutual agreement of the parties to the IBL Loan Agreement. The Respondent N° 1's counterparties to the IBL Loan Agreement could have simply exercised their right not to agree to the interest rate applied on the Loan prior to the execution of the said agreement had they deemed the interest rate exorbitant, in which case the Loan would have simply not been extended.¹⁵⁸

483. The Respondent N° 1 states that an interest rate of 13.25% *per annum* was, contrary to the Claimant's position, at market rate as compared to the average rate applied on lending transactions in Iraq in 2011, the average lending rate being at that time approximately 14.1% *per annum* (Exhibit N° C-56, p. 6, para. 28).¹⁵⁹

484. Further and still contrary to the Claimant's allegations, the Respondent N° 1 did not set the interest rate on the Loan based on the World Bank's data. Rather it relied on the market rates announced by International Financers to determine the applicable interest rate on the Loan (Respondent N° 1's letter dated 3 June 2020, comment on Claimant's request number 7 at p. 2). The Respondent N° 1 explains that it referred to the World Bank lending interest rate applicable in 2011 in Iraq for illustrative and argumentative purposes (Exhibit N° R1-33). Further, it is helpful to look at this indicator for the purpose of demonstrating that the 13.25% interest rate applicable on the Loan is not excessive.¹⁶⁰

485. Moreover, the Respondent N° 1 asserts that, when setting interest rates on a given loan, it takes into consideration various factors, including the risk margin and the profit margin, this approach being in line with how Lebanese banks generally set the interest rate on all types of loans (R1-ER-Hammoud-1, para. 35).¹⁶¹

¹⁵⁷ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 4, paras. 16-17; Respondent N° 1's Statement of Defence and Counterclaim, p. 4, para. 3 and p. 21, paras. 100-101. Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 14, para. 39.

¹⁵⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 15, para. 41.

¹⁵⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 6, paras. 15-19; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 16, para. 47.

¹⁶⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 15-16, paras. 42-47.

¹⁶¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 16, paras. 49-50.

486. The Respondent N° 1 considers that the Claimant's allegations that the interest rate is exorbitant should be dismissed, particularly as the interest rate applied to the Loan was determined by the mutual agreement of the parties to the IBL Loan Agreement.¹⁶²

b The Subordination Agreement

487. The Respondent N° 1 denies the Claimant's allegation that, in the presence of the cash collateral, the Subordination Agreement had no commercial basis. This conclusion is entirely incorrect as a collateral arrangement does not substitute a subordination arrangement and *vice versa*, each of these two arrangements being separate and independent components of any lending transaction, as well as complementing each other as each such arrangement has its own reason and commercial purpose.¹⁶³

488. Indeed, the Respondent N° 1 states that the reason and commercial purpose of the Subordination Agreement in the context of the Loan was to ensure that, in the event of default under the IBL Loan Agreement, the Respondent N° 1 would be reimbursed its Loan in priority to the IT-IH Loan and the Shareholder Loan Agreement. It adds that, as a general global lending practice, any bank extending a loan to a company would request that its loan rank senior to any shareholders' loans and other intra-group liabilities. Therefore, the Respondent N° 1 argues that it was consistent with applicable market practice that it required the Shareholder Loan Agreement and the Korek Guarantee to be subordinated to its Loan. This request does not relate in any manner or form to the unsecured nature of the Loan.¹⁶⁴ On the other hand, the reason and the commercial purpose of the security package in the context of the Loan was to provide the Respondent N° 1 with recourse to assets of the providers (i.e. the guarantor and the cash collateral provider), whereby it would be able to collect its Loan from enforcement proceedings against those assets, in the event that it determines that the Respondent N° 2 will no longer be in a position to reimburse the Loan from its own funds, as the principal obligor.¹⁶⁵

489. Consequently, the Respondent N° 1 submits that it is crystal clear that the reason and commercial purpose of the cash collateral is separate and independent from that of the Subordination Agreement and the entry into one of these arrangements does not preclude or substitute the other (R1-ER-HAMmoud-1, paras. 71-74). Further, the Respondent N° 1 objects to the Claimant's argument that a lender would, in the event of default under a loan, directly seek enforcement against the assets of the guarantor or the third-party security provider, which argument is inconsistent with market practice and good faith dealings. The Respondent N° 1 contends that, according to widespread lending practices, if a default occurs under a loan agreement, a lender should, from an ethical and bona fide standpoint,

¹⁶² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 17, para. 55.

¹⁶³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 17, para. 56.

¹⁶⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 7, paras. 20-23; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 18, para. 56(i).

¹⁶⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 18, para. 56(ii).

continue to seek to collect its loan from its principal borrower (R1-ER-Hammoud-1, para. 111).¹⁶⁶

490. Finally, the Respondent N° 1 recalls that the structure of any transaction must take into consideration the interests of the various stakeholders and participants in the transaction. The Respondent N° 1 concludes that had there been no cash collateral, it would not have been able to extend the Loan to the Respondent N° 2 and the Loan would have never been extended to the Respondent N° 2.¹⁶⁷

c The security package

491. Regarding the condition to be provided with securities relating to the Loan, the Respondent N° 1 considers that this matter should not be subject to any discussion since it appears obviously logical and founded for a banking institution of its size which extends a loan to a single borrower, in a high-risk jurisdiction such as Iraq, in the amount of USD 150,000,000.00, to require security. Moreover, the Respondent N° 1 had to comply with the Basic Decision No. 7055 dated 13 August 1998 issued by the Central Council of BDL (hereinafter referred to as the "**BD 7055**") which sets, among other matters, the ceiling on credit facilities extended by banks for use outside of Lebanon (Exhibits N° R1-15 and C-52). In light of this regulation, the Respondent N° 1 affirms that it was not its intention for the Loan to be unsecured.¹⁶⁸ Consequently, to be compliant with the applicable laws and regulations, it requested that the IBL Loan be secured by collateral, this collateralization being materialized in the form of cash collateral.¹⁶⁹

492. The Respondent N° 1 reiterates that it was neither the sender nor the addressee, nor the recipient, nor was it copied on any of the communications and correspondence referred to by the Claimant and allegedly referring to the unsecured nature of the Loan, these letters and emails solely concerning the Respondents N° 2 and N° 3 and the Claimant and not reflecting the position of the Respondent N° 1 regarding the secured or unsecured nature of the Loan.¹⁷⁰

493. Further, the Respondent N° 1 states that it is not a credible argument for an entity having the sophisticated profile of the Claimant and multinational shareholders to consider that it would accept or would be able to extend a loan to a foreign company that is a resident of a high credit risk jurisdiction without receiving adequate security (R1-ER-Hammoud-1, para. 60; R1-ER-Nammour-1, para. 175).¹⁷¹

¹⁶⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 18, paras. 57-58.

¹⁶⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 19, para. 60.

¹⁶⁸ Respondent N° 1's Statement of Defence and Counterclaim, pp. 7-8, paras. 24-32.

¹⁶⁹ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 5, para. 21, p. 14, para. 57 and p. 15, paras. 60-64; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 20, para. 63.

¹⁷⁰ Respondent N° 1's Statement of Defence and Counterclaim, pp. 7-8, paras. 24-32; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 11, paras. 29-31.

¹⁷¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 19, paras. 61-62.

494. The Respondent N° 1 clarifies that a "security package" would include, along with tangible security, intangible security and any other guarantees, covenants and protections made in favour of the lender by the relevant parties. On that basis, and in order to ensure that the Respondent N° 2, being the principal party that benefitted from the Loan, would itself reimburse the Loan, the parties agreed to include the following provisions set out in Clause 8.1.9 of the IBL Loan Agreement that "*the Borrower will pay all of its operating revenues into the bank account opened with the Lender pursuant to Section 9.1.2 below (the "Account")*", i.e. an additional mechanism for the purpose of allowing the Respondent N° 1 to collect its Loan from the operating revenues of the Respondent N° 2 (Exhibit N° C-7).¹⁷²
495. The Respondent N° 1 submits that these provisions were set out in the IBL Loan Agreement purposefully to grant it the very protection that it sought, which is that the Respondent N° 2 will deposit its operating revenues in the account and that those revenues generated by the latter (and not by the guarantor or the cash collateral provider) will be used to repay the Loan (the Revenue Account Requirement). When and if the Respondent N° 1 determines that the Respondent N° 2 is unable to repay the Loan, it may then proceed with the enforcement of the further protections that were granted to it, which are the personal guarantee provided by Mr. Mustafa pursuant to the IBL Loan Agreement (the Barzani Guarantee) and/or the cash collateral. The Respondent N° 1 insists on the fact that all of these protections were consistent with its relationship with its client, the Respondent N° 2, the guarantor and the cash collateral provider, as well as with the fact that the Loan was secured.¹⁷³
496. Moreover, the Respondent N° 1 submits that it had no intention to and did not hide any information regarding the above-mentioned security package (including the cash collateral) (Exhibit N° C-21).¹⁷⁴
497. Finally, the Respondent N° 1 reiterates that the Claimant failed to evidence that it made a representation to the Claimant that the Loan was unsecured. Indeed, it is only the Respondent N° 2's obligations that are unsecured. Further, it is reminded that the IBL Loan Agreement by its own terms provides that the "***Lender may now or hereafter have or hold***" security, the term "***now***" means that the Respondent N° 1 could concurrently with the execution of the IBL Loan Agreement execute a security agreement (such as the agreement establishing the cash collateral) to secure the obligations of the Respondent N° 2 (emphasis added by the Respondent N° 1).¹⁷⁵

¹⁷² Respondent N° 1's Statement of Defence and Counterclaim, p. 14, para. 55; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 20, paras. 66-67.

¹⁷³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 21, para. 68.

¹⁷⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 21, para. 69.

¹⁷⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 21, para. 70.

d The corporate approvals

498. The Respondent N° 1 contests the Claimant's insinuations that the terms and conditions of the Loan were imposed upon it. Indeed, the Respondent N° 1 made sure that all the corporate governing bodies of the Respondents N° 2 and N° 3 (in which the Claimant is duly represented) approved the terms of the Loan, in line with good corporate governance practices. In support of the foregoing, the Respondent N° 1 received, prior to the execution of the IBL Loan Agreement, executed copies of the following corporate resolutions and documents approving the execution of the IBL Loan Agreement and the Subordination Agreement and detailing the terms and conditions on the basis of which the Parties have agreed to enter into the lending transaction (hereinafter referred to as the "**Corporate Approvals**"): ¹⁷⁶

- Letter dated 7 December 2011 from the Respondent N° 2 to the Claimant, the Respondents N° 2 and N° 3 and Mr. Mustafa (Exhibit N° R1-16);
- Written Resolution of the members of the Board of the Respondent N° 3 dated 14 December 2011 (Exhibit N° R1-17);
- Shareholders' Resolution at the level of the Respondent N° 3 dated 14 December 2011 (Exhibit N° R1-18);
- Written Resolution of the members of the KSC at the level of the Respondent N° 2 dated 14 December 2011 (Exhibit N° R1-19);
- Shareholder Resolution at the level of the Respondent N° 2 dated 14 December 2011 (Exhibit N° R1-20).

499. The Respondent N° 1 stresses that none of the Corporate Approvals mention that the granting of the Loan or the entry into the Subordination Agreement is conditional on the Loan being extended to the Respondent N° 2 on an unsecured basis and without the possibility for the Respondent N° 1 to request collateral. The Corporate Approvals simply did not contain the express condition that the Loan be unsecured. The Respondent N° 1 adds that it is a generally established corporate practice that any material condition for the entry into an agreement is expressly included in the resolution of the board of directors or shareholders of the contracting company approving its terms. In other words, an essential condition to a deal for any given party should be disclosed by that party to its contractual counterparty. Otherwise, the condition cannot be considered essential or be presumed binding on the contracting parties. No international company (such as the shareholders of the Respondent N° 3, including the Claimant) would fail to include a significant condition for the entry into a transaction in the resolution passed by its board of directors or shareholders, as this is contrary to good corporate governance practices and the principle of accountability to shareholders. The Respondent N° 1 further underlines that the Respondents N° 2 and N° 3 and the Claimant were involved in the negotiation of the legal documentation for the

¹⁷⁶ Respondent N° 1's Statement of Defence and Counterclaim, pp. 9-11, paras. 33-35.

extension of the Loan and the Claimant commented on the IBL Loan Agreement prior to its execution, and therefore, the latter was engaged in the process leading up to the execution of the Loan documentation (Exhibit N° R1-21).¹⁷⁷

500. Consequently, the Respondent N° 1 submits that, since the draft of the IBL Loan Agreement had been approved by all Parties as reflected in the email chain between FPC members dated 13 December 2011 (Exhibits N° C-17 and C-65), it is clear that, at the time of the entry into the Subordination Agreement on 14 December 2011, the Claimant's representatives had reviewed a final draft of the IBL Loan Agreement, which contained clear provisions that the Respondent N° 1 may now or hereafter have or hold security for the performance or observance of the obligations and commitments of the borrower under the IBL Loan Agreement (Clause 6.4). Thus, the Claimant agreed to enter into the Subordination Agreement on this basis and no fraud was committed by the Respondent N° 1 in this respect.¹⁷⁸ Further, the fact that the Corporate Approvals do not provide for the condition that the Loan should be "*unsecured*" cannot be considered an incidental matter. Being reminded that corporate approval reflects the intention of the entity that has issued such approval and the terms and conditions upon which the issuing entity agrees to enter into a contractual arrangement, the Respondent N° 1 had each and every right to rely on the content of the Corporate Approvals of the Claimant, which did not include a reference to the so-called "*unsecured*" nature of the Loan as a condition to the entry into the Subordination Agreement.¹⁷⁹

501. In any event, regardless as to which party participated in the drafting of the Corporate Approvals, the Respondent N° 1 contends that the Claimant has no excuse not to have revised the draft corporate approvals prior to their execution to reflect that the unsecured nature of the Loan was an essential condition for it to enter into the Subordination Agreement.¹⁸⁰

502. Based on the above, the Respondent N° 1 argues that it cannot be held liable for the Claimant's own negligence in conveying its conditions for subordinating its rights under the IT-IH Loan and the Shareholder Loan Agreement¹⁸¹ and therefore, it results clearly that "*the Claimant is using these proceedings to seek to unilaterally amend the terms of the Subordination Agreement in a manner that would serve its strategy in its conflicts with the other shareholders of Respondent 3*",¹⁸² the Claimant's actions and allegations being abusive towards the Respondent N° 1.¹⁸³ Indeed, the Claimant has no valid grounds to argue that the Respondent N° 1 made a false representation to the Claimant because of the "one" email sent on its behalf by Mr. Rayes on 9 December 2011 to the Respondent N° 2's representatives that (i) was not addressed to the Claimant in the first place,

¹⁷⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 11, paras. 36-38; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 22, paras. 71, 72 and 74.

¹⁷⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 12, para. 32.

¹⁷⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 22, para. 73.

¹⁸⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 23, para. 76.

¹⁸¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 23, para. 77.

¹⁸² Respondent N° 1's Statement of Defence and Counterclaim, p. 11, para. 39.

¹⁸³ Respondent N° 1's Statement of Defence and Counterclaim, p. 11, para. 39.

(ii) does not state that the Loan was unsecured and (iii) attached the final version of the IBL Loan Agreement that expressly authorizes the Respondent N° 1 to hold security for the performance or observance of the obligations and commitments of the Respondent N° 2 as the borrower (Exhibits N° R2-13 and C-89).¹⁸⁴

(iii) The interpretation of the IBL Loan Agreement

503. The Respondent N° 1 first reminds that the IBL Loan Agreement was signed by and among the Respondent N° 1, as lender, the Respondent N° 2, as borrower, and Mr. Mustafa, as guarantor. Therefore, in application of the principle of the privity of contracts, the Respondent N° 1 argues that the Claimant has no right to interpret the clauses and provisions of the IBL Loan Agreement, to which it is not a party.¹⁸⁵ Indeed, as a matter of Lebanese law, contracts and instruments should be interpreted in a manner that reflects the true intent of the contracting parties. In other words, the Respondents N° 1 and N° 2 and the guarantor, as the signatories of the IBL Loan Agreement, are the only parties that are in a position to interpret the clauses of the IBL Loan Agreement.¹⁸⁶

504. Further, the Respondent N° 1 contends that it is undisputable that the parties to the IBL Loan Agreement had a mutual understanding of the clauses included therein and that the Loan was secured. The Respondent N° 1 considers that this mutual understanding should prevail.¹⁸⁷

505. The Respondent N° 1 stresses that the term "*unsecured*" appears once in the IBL Loan Agreement, in Clause 7.1.6, while the term "*security*" is expressly mentioned multiple times in the IBL Loan Agreement which clearly emphasizes the fact that it was the intention of the Parties for the guarantees and securities to be an integral part of the Loan.¹⁸⁸ Indeed, Clauses 6.2 and 6.4 of the IBL Loan Agreement make express reference that it may hold securities to ensure the Respondent N° 2's performance of its obligations under the IBL Loan Agreement (Exhibit N° C-7). Therefore, the Loan was not intended to be unsecured and the IBL Loan Agreement is clearly secured by the guarantee of Mr. Mustafa.¹⁸⁹ Moreover, the Respondent N° 1 objects to the Claimant's allegations that Clauses 6.2 and 6.4 of the IBL Loan Agreement are "*boiler-plate*" clauses, being reiterated that Clauses 6.2 and 6.4 were clearly included in the IBL Loan Agreement for a reason and they reflect the intention of the parties to the IBL Loan Agreement for the Loan to have a security package.¹⁹⁰

¹⁸⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 12, para. 33.

¹⁸⁵ Respondent N° 1's Statement of Defence and Counterclaim, pp. 14-15, paras. 58-59.

¹⁸⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 23, para. 78.

¹⁸⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 23, para. 80.

¹⁸⁸ Respondent N° 1's Statement of Defence and Counterclaim, p. 14, para. 54.

¹⁸⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 13, paras. 46-50; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 23, para. 82.

¹⁹⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 24, paras. 85-88.

506. Further, the term "*unsecured*" does not appear in a representation made by the Respondent N° 1 but as a representation made by the Respondent N° 2 (the borrower) to the Respondent N° 1 (the lender) (Clause 7.1.6), the Claimant's reliance on Clause 7.1.6 of the IBL Loan Agreement being therefore of no support to the latter's wrongful allegation that the Parties intended for the Loan to be unsecured. According to the Respondent N° 1, Clause 7.1.6 of the IBL Loan Agreement clearly relates specifically to the assets of the Respondent N° 2 remaining unsecured as it refers to the "*unsecured obligations of the Borrower*" and this is expressly stated in Clause 7.2 of the IBL Loan Agreement which provides in relevant part, that "*the representations and warranties of the Borrower [the Respondent N° 2] in Section 1 above (other than pursuant to Sections 7.1.9 and 7.1.10) are and shall be deemed to be made and repeated by the Borrower [the Respondent N° 2] [...]*" (Exhibit N° C-7). Clause 7.1.6 of the IBL Loan Agreement therefore does not prevent securing the Loan by the cash collateral provider. The Respondent N° 1 submits that this reading is consistent with the mutual understanding of the parties to the IBL Loan Agreement, especially in light of the express provisions of Clauses 6.2 and 6.4 that confirm that it had the right to hold, at the time of execution of the IBL Loan Agreement, or at any time thereafter, security for the performance of the Respondent N° 2's obligations under the IBL Loan Agreement.¹⁹¹

507. Finally, the Respondent N° 1 concludes that the accuracy of this interpretation is further established by a review of the remaining executed documents relating to the lending transaction where the term "*unsecured*" is not found. Therefore, Clause 7.1.6 of the IBL Loan Agreement should be interpreted in light of the other provisions of the IBL Loan Agreement (Clauses 6.2 and 6.4) as well as the content of the other executed documents connected to the lending operation, which by their own terms do not reflect that the Loan was unsecured and do not include a single representation on the part of the Claimant that the essential condition for the entry by the Claimant into the Subordination Agreement was that the Loan was "*unsecured*".¹⁹² Therefore, the Respondent N° 1 had the right to hold at the time of execution of the IBL Loan Agreement, or at any time thereafter, security for the performance of the Respondent N° 2's obligations under the IBL Loan Agreement, nothing in the IBL Loan Agreement or the Subordination Agreement preventing or restricting the Respondent N° 1 from obtaining security from any third party.¹⁹³

¹⁹¹ Respondent N° 1's Statement of Defence and Counterclaim, pp. 13-14, paras. 51-53; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 23-24, paras. 83-84.

¹⁹² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 24, paras. 89-90.

¹⁹³ Respondent N° 1's Statement of Defence and Counterclaim, p. 14, para. 56.

(iv) The cash collateral

508. Contrary to the Claimant's misstatement that the cash collateral was kept a secret throughout the life of the IBL Loan, the Respondent N° 1 submits that it acted in full transparency in this respect and reflected the existence of the cash collateral in its yearly audited accounts since 2012.¹⁹⁴ The Respondent N° 1 further reminds that it is precluded, by law, from disclosing the identity of the cash collateral account owner, including in its submissions to the Arbitral Tribunal in this Arbitration, due to the mandatory application of the Lebanese Banking Secrecy Law.¹⁹⁵ It also stresses that it did not have an obligation to inform the Claimant of the existence of the cash collateral or of the structure and details of the lending transaction since shareholders of a company borrowing from a third party should not expect the third party lender to provide them with information relating to the loan, being reiterated that the Claimant is not a contractual counterparty of the Respondent N° 1 under the cash collateral or the IBL Loan Agreement (R1-ER-Hammoud-1, paras. 79, 82 and 83; R1-ER-Nammour-1, paras. 65, 75 and 80-85). The Respondent N° 1 adds that if the Claimant had or has any questions or inquiries regarding the Loan and its secured nature, it should seek to inquire regarding this matter directly with the Respondent N° 2.¹⁹⁶
509. The Respondent N° 1 explains that the Lebanese banking system has its own specificities and characteristics and its behaviour with respect to the Loan and the cash collateral was consistent with applicable lending practices, rules, regulations and laws in Lebanon (R1-ER-Hammoud-1, para. 61; R1-ER-Nammour, para. 98). In any case, the Respondent N° 1 notes that the Claimant failed to produce evidence that it inquired with the Respondent N° 1 regarding the secured or unsecured nature of the Loan during the period leading up to the conclusion of the Loan. Indeed, the Claimant addressed letters to the Respondent N° 1 only containing requests for information regarding the Loan and the security relating thereto, these letters having been sent after receipt of the Respondent N° 1's letter of 30 August 2017 requesting additional collateral (Exhibit N° R1-6). It is further stressed that this took place six years after the IBL Loan Agreement was signed and two years after an event of default had been called under the Loan. Moreover, the Respondent N° 1 states that the Claimant's requests in its 2017 letters for the provision of information were inconsistent with Clause 11 of the IBL Loan Agreement which does not entitle the Claimant to demand information from the Respondent N° 1 (Exhibits N° C-23 and C-25).¹⁹⁷

¹⁹⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 23, para. 107.

¹⁹⁵ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 5, para. 22; Respondent N° 1's Statement of Defence and Counterclaim, p. 15, paras. 62-63, p. 20, paras. 92-93 and p. 24, para. 113.

¹⁹⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 13, para. 34 and p. 25, paras. 91-95.

¹⁹⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 26, paras. 96-97 and p. 27, para. 101.

510. Contrary to the Claimant's allegations, the Respondent N° 1 asserts that, at that time, had it disclosed to the Claimant the existence of the cash collateral without the approval of the cash collateral provider, it would have been in violation of its banking secrecy obligations despite the disclosure in its audited financial statements since 2012.¹⁹⁸
511. The Respondent N° 1 reiterates that the Claimant's misrepresentations that the IBL Loan was "*an unsecured third party bank loan*" and "*without any collateral*" are simply untrue¹⁹⁹ and unarguable since any person with basic knowledge in the business field would be aware that, from a market practices and regulatory standpoint, no bank or financial institution would agree to lend USD 150,000,000.00 to a company in Iraq without having obtained adequate and sufficient securities, including for instance, an adequate cash collateral.²⁰⁰ Moreover, as already stated, the Respondent N° 1 acted in compliance with the regulatory requirements, notably BD 7055. However, contrary to the Claimant's allegations, the Respondent N° 1 never suggested that the latter had an obligation to conduct a due diligence on the regulatory requirements imposed on it to identify that a cash collateral was required to secure the Loan.²⁰¹
512. With respect to the above, as to the Transfer Evidence submitted by the Claimant and allegedly proving that the identity of the source of the cash collateral was Mr. Mustafa, the guarantor, the Respondent N° 1 submits that, in accordance with Articles 9.151 and 9.2(b)52 of the IBA Rules, the Transfer Evidence should be declared as inadmissible evidence by the Arbitral Tribunal and consequently the Transfer Evidence cannot be invoked by the Claimant in this arbitration in any manner whatsoever.²⁰²
513. Finally, the Respondent N° 1 strongly contests the Claimant's distortion of the facts by alleging that the cash collateral constituted part of an arrangement to hide a "*shareholder loan provided by Mr. Barzani [Mr. Mustafa] with the benefit of a subordination agreement vis-à-vis the IT-IH Loan*", i.e. the so-called "kick-back" arrangement, being stressed that there is no link whatsoever between the cash collateral and the entry into the Subordination Agreement.²⁰³ The Respondent N° 1 notes that, in support of its so-called "kick-back arrangement" theory, the Claimant relies upon the evidence of one of its witnesses, Mr. Bortman, which evidence should be discredited entirely for lack of credibility (CWS-Bortman-1, para. 23) (Exhibit N° C-52, pp. 13-14).²⁰⁴

¹⁹⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 26, paras. 98-100.

¹⁹⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 12, para. 45.

²⁰⁰ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 5, para. 23.

²⁰¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 27, paras. 102-107.

²⁰² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 27-29, paras. 108-116.

²⁰³ Respondent N° 1's Statement of Defence and Counterclaim, p. 22, para. 102.

²⁰⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 22, paras. 104-106; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 29, para. 116.

514. The Respondent N° 1 explains that it would have requested the entry into the Subordination Agreement prior to the extension of the IBL Loan, regardless of the existence of the cash collateral.²⁰⁵ Further, the Respondent N° 1 stresses that the Claimant derived benefits from this straightforward lending operation that it is calling an "orchestrated fraud". Indeed, had the Respondent N° 2 not been granted the Loan, the Respondent N° 2 may have lost the License as a result of the failure to settle the instalment due thereunder to the CMC, which would have led to the situation where the Claimant would have been at risk of loss of its investment at the level of the Respondent N° 2 as early as 2011. Further, as admitted by the Claimant itself, profits were recorded as "*Korek's [Respondent N° 2] revenues increased from approximately USD 351 million (in 2010) to approximately USD 692 million (in 2013)*"^{206, 207}
515. In any event, the Respondent N° 1 asserts that the imaginary "kick-back arrangement" created by the Claimant only aims to disfigure a normal banking transaction in a manner that would fabricate a basis for its "fraudulent scheme" theory. In fact, there is nothing fraudulent in such a transaction (R1-ER-Nammour, para. 110).
516. The Respondent N° 1 concludes that, following the Claimant's loss of its investment, the Claimant found that it no longer had an interest in the Subordination Agreement, so it sought to escape its obligations under the Subordination Agreement by contriving the "orchestrated fraud" theory backed by a "kick-back arrangement" theory, which arrangement is simply an ordinary and lawful banking transaction.²⁰⁸ Therefore, the Respondent N° 1 submits that the Claimant's allegations that it deliberately concealed the existence of the cash collateral or participated in a "fraudulent scheme" with the other Respondents and Mr. Mustafa are unfounded, those allegations being made in bad faith and based on a distorted description of banking operations by the Claimant.²⁰⁹

c The Subordination Agreement

517. The Respondent N° 1 first recalls that the Subordination Agreement was signed on 14 December 2011, prior to the execution of the IBL Loan Agreement, on 21 December 2011, which sequence confirms that the entry into the Subordination Agreement was an essential condition to granting the Loan (Clause 1.1 of the Subordination Agreement) (Exhibit N° C-1).²¹⁰

²⁰⁵ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 6, para. 24.

²⁰⁶ Statement of Claim, p. 10, para. 27.

²⁰⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 22, para. 102.

²⁰⁸ Respondent N° 1's Statement of Defence and Counterclaim, p. 23, paras. 108-109.

²⁰⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 30, para. 121.

²¹⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 12, para. 41.

518. The Respondent N° 1 stresses that none of the clauses of the Subordination Agreement provide or even imply or suggest that the Claimant agreed to subordinate its rights under the Shareholder Loan Agreement on the condition that the Loan be unsecured. The Respondent N° 1 reiterates its surprise that such a fundamental condition for the entry by the Claimant into the Subordination Agreement, according to the Claimant, was not expressly mentioned in the Subordination Agreement. In any event, the Respondent N° 1 submits that the Claimant failed to establish any evidentiary link between its approval to enter into the Subordination Agreement and the secured or unsecured nature of the Loan.²¹¹
519. The Respondent N° 1 reminds that, pursuant to the original terms of the IBL Loan Agreement, the maturity dates of each of the short term and long term portions of the Loan were as follows: (a) the Short Term Loan was payable on 21 July 2012 and the Long Term Loan was payable on 21 June 2014 (Exhibit N° C-7). The Respondent N° 1 further explains that, while the Respondent N° 2 had always been current on the payment of the interest due on the Loan, by admission of all the Parties to this proceeding, the IBL Loan Agreement and the Subordination Agreement were extended three times to postpone the maturity date for the settlement of the principal amount of the Loan (Exhibits N° C-9 to C-12).²¹²
520. More specifically with respect to the third extension, the Respondent N° 1 strongly objects to the Claimant's allegation that it did not sign the documents relating to the third extension, it confirms that it did duly sign each of the Third Loan Supplemental and Third Subordination Supplemental, as did all the other Parties (including the Claimant) (Exhibits N° R1-22 to R1-24). Further, as is the case for all previous extensions, the Respondent N° 2 provided the Respondent N° 1 with duly executed and signed corporate resolutions approving the third extension (including the resolution of the Claimant) (Exhibits N° R1-25 to R1-28). The Respondent N° 1 adds and clarifies that it is not concerned by any internal communications exchanged at the level of the Respondent N° 2 that incorrectly state that it had not signed the documentation relating to the third extension of the IBL Loan Agreement, stressing that it was not copied on these communications, nor was it aware of them.²¹³
521. In view of the foregoing, and contrary to the Claimant's allegations, the Respondent N° 1 submits that it has demonstrated to the Arbitral Tribunal that the Third Loan Supplemental was indeed entered into on 21 June 2014, and on the same day, the Third Subordination Supplemental was duly executed.²¹⁴

²¹¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 12, paras. 42-43.

²¹² Respondent N° 1's Statement of Defence and Counterclaim, pp. 15-16, paras. 65-73.

²¹³ Respondent N° 1's Statement of Defence and Counterclaim, pp. 17-18, paras. 74-79.

²¹⁴ Respondent N° 1's Statement of Defence and Counterclaim, pp. 18-19, paras. 80-83.

d The Respondent N° 2's default under the IBL Loan Agreement

522. The Respondent N° 1 states that, while the Respondent N° 2 had always been and remains current on the payment of interest on the Loan, it had failed to repay the principal at the extended maturity dates that were agreed upon under the Third Loan Supplemental, which led the Respondent N° 1 to send, on 9 July 2015, a "Notice of Event of Default" letter with a copy to the Respondent N° 3 and the Claimant, requesting the immediate repayment of all the amounts due under the Loan (Exhibit N° R1-4).²¹⁵
523. The Respondent N° 1 stresses that the occurrence of the Event of Default triggered, *de jure*, its right to invoke its priority status *vis-à-vis* the Shareholder Loan Agreement and the Korek Guarantee, pursuant to Clause 1.2 of the Subordination Agreement.²¹⁶
524. Since the Respondent N° 2's default on the payment of the principal Loan continued, the Respondent N° 1 sent on 15 September 2015 a second letter to the Respondent N° 2, with a copy to the Respondent N° 3 and the Claimant, insisting on the full repayment of the Loan and requesting the Respondent N° 2 to repay the Loan in full by 15 October 2015 (Exhibit N° R1-5), being stressed that none of the Respondent N° 2, the Respondent N° 3 or the Claimant responded to either notice. The Respondent N° 1 stated that, during that period, the Respondent N° 2 never failed to make an interest payment under the Loan.²¹⁷
525. In that respect, the Respondent N° 1 explains that, given its business relationship with the Respondent N° 2 and the deterioration in the economic situation in Iraq, it did not seek enforcement under the Loan, bearing in mind that the borrower is a well-reputed and well-established client of the bank, which decision was not an uncommon banking practice, especially if a loan is still current on payment of interest, as it is not yet doubtful or irrecoverable under BDL's loan classification criteria. The Respondent N° 1 further points out that, during this period, the Claimant did not object to that decision to provide a reasonable delay nor voiced any concern that this decision was adversely affecting its rights under the Shareholder Loan Agreement and the Korek Guarantee because, actually, it invoked its rights under the Subordination Agreement.²¹⁸ Further, the Respondent N° 1 asserts that it cannot be disputed that, by sending the first notice less than three weeks following the maturity date of the Long Term Loan, it acted swiftly in exercising its rights under the Loan documentation to preserve its own interests in collecting the Loan from the Respondent N° 2 (Exhibit N° R1-4).²¹⁹

²¹⁵ Respondent N° 1's Statement of Defence and Counterclaim, p. 19, paras. 84-85; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 31, para. 122.

²¹⁶ Respondent N° 1's Statement of Defence and Counterclaim, p. 19, para. 85.

²¹⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 19, paras. 86-88; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 31, para. 122.

²¹⁸ Respondent N° 1's Statement of Defence and Counterclaim, p. 19, paras. 89-90.

²¹⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 31, paras. 123-127.

526. The Respondent N° 1 adds that, as the Respondent N° 2 remained in default and did not repay the principal amount of the Loan, it sent to the Respondent N° 2 a third letter on 30 August 2017, with a copy to the Respondent N° 3 and the Claimant, reiterating its demand for repayment of the Loan and requesting to be provided with additional collateral (Exhibit N° R1-6). The Respondent N° 1 states that such request was in compliance with its rights under the IBL Loan Agreement, notably Clause 6.4. The Respondent N° 1 surprisingly noted that, upon the receipt of this third letter and following more than two years of absolute silence, the Claimant's representatives, Messrs. Deepak Jain and Ehab Aziz, suddenly decided to react by sending to it successive letters dated 25 September 2017 (Exhibit N° R1-7), 25 October 2017 (Exhibit N° R1-9) and 17 December 2017 (Exhibit N° R1-10), containing requests for information regarding the Loan and the security relating thereto. Because of its secrecy obligation not to disclose clients' information to third parties as required by applicable law, the Respondent N° 1 was unable to provide the requested information to the Claimant. Indeed, the Respondent N° 1 maintains that it acted in accordance with its obligations under the Lebanese Banking Secrecy Law, pursuant to which, it is obliged to hold in secrecy, all information relating to its clients, including their names or any other fact relating to them, unless it obtains the relevant client's consent to waive this secrecy obligation; such a waiver was never provided.²²⁰
527. The Respondent N° 1 considers that if it had something to hide it would not have acted in such full transparency *vis-à-vis* all Parties (including the Claimant) by requesting "additional" collateral in its letter dated 30 August 2017 to the Respondent N° 2, but would have only requested "collateral". Alternatively, it could have sought to secretly request the additional collateral from the Respondent N° 2 without involving the Claimant.²²¹
528. In any event, the Respondent N° 1 insists on the fact that the Claimant failed to object to the notice of default for two years following (the first and second notices) nor raise any concern regarding the Respondent N° 1's invocation of its rights under the Subordination Agreement, but the Claimant only reacted following the dispute between the shareholders of the Respondent N° 2. Further, during that period, the Claimant did not address any requests to the Respondent N° 1 to take any enforcement measures against the Respondent N° 2 or the guarantor and seek collection of the Loan.²²²
529. Finally, the Respondent N° 1 reminds that, on 29 March 2018, it sent a letter to the Respondent N° 2 inviting the shareholders at the level of the Respondent N° 2 to resolve their dispute (Exhibit N° R1-14).²²³

²²⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 20, paras. 91-95.

²²¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 20, para. 96.

²²² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 32-34, paras. 129-143.

²²³ Respondent N° 1's Statement of Defence and Counterclaim, p. 21, para. 98.

530. In view of the foregoing, the Respondent N° 1 submits that it established that it did not commit any wrongful act by granting the Respondent N° 2 a reasonable time to settle the Loan voluntarily before proceeding with enforcement measures, especially that the Loan is still classified as performing. Therefore, the Respondent N° 1 acted in line with the prevailing standards applied by Lebanese banks in similar circumstances and did not abuse its rights under the Subordination Agreement.²²⁴

3 The Respondents N° 2 and N° 3's Position

a Introduction

531. The Respondents N° 2 and N° 3 first state that the present dispute forms only part of a broader dispute between the Claimant, on the one side, and, on the other, CS Ltd. (the majority shareholder in the Respondent N° 3) and Mr. Mustafa (the majority shareholder in the Respondent N° 2) arising out of the Claimant's disappointment with its indirect investment in the Respondent N° 2.²²⁵ Indeed, it is reminded that the Claimant's ultimate shareholders, Agility and Orange, failed to comply with the conditions laid down by the CMC at the time of its approval of their investment. As a result, in July 2014, the CMC issued a decision withdrawing its consent for the joint venture, declaring it to be null and void and requiring the Respondent N° 2's shareholding to revert to the position as at March 2011 (Exhibit N° R2-20). The Respondents N° 2 and N° 3 stress that this decision was implemented in March 2019, meaning that, while the Claimant retains its shareholding in the Respondent N° 3, it no longer has an indirect interest in the Respondent N° 2.²²⁶

532. The Respondents N° 2 and N° 3 submit that the present claim is one of the Claimant's numerous attempts to be indemnified through litigation for a failed strategy, for its unsuccessful investment. However, they state that, apart from all its factual and legal deficiencies, the Claimant's claim suffers from fundamental jurisdictional and logical flaws.²²⁷

533. Moreover, the Respondents N° 2 and N° 3 maintain that the Claimant's motivation for bringing this misguided claim is to seek to recover the IT-IH Shareholder Loan (Exhibits N° R-21, R2-23, R2-25, R2-26 and R2-28). Nevertheless, they argue that the Claimant is perfectly aware that the Subordination Agreement prevents it from recovering the IT-IH Shareholder Loan and the Korek Guarantee whilst the IBL Loan remains outstanding (Exhibits N° R2-27, R2-29 and R2-30).²²⁸

²²⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 34, para. 144.

²²⁵ Respondents N° 2 and N° 3's Statement of Defence, pp. 3-4, paras. 1.2-1.3.

²²⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 3, para. 1.2; Respondents N° 2 and N° 3's Rejoinder, p. 1, paras. 1.2-1.3.

²²⁷ Respondents N° 2 and N° 3's Statement of Defence, pp. 4-5, paras. 1.4-1.6(a); Respondents N° 2 and N° 3's Rejoinder, p. 1, paras. 1.2-1.3.

²²⁸ Respondents N° 2 and N° 3's Statement of Defence, pp. 24-25, paras. 3.52-3.56.

534. According to the Respondents N° 2 and N° 3, the Claimant's summary of the background to the execution of the IBL Loan Agreement and the Subordination Agreement contains a number of notable omissions which confirms that the Claimant's claim amounts to a misguided attempt to recover its Shareholder Loan (IT-IH Loan). In particular, the omissions are the following:²²⁹

- "(a) The Claimant's summary of its investment in 2011 omits the financial contributions made by the original shareholders in Korek and the significant rights that IT Limited obtained to approve any financing entered into by Korek or IH Limited. [Exhibits N° C-25 and C-25]"²³⁰*
- (b) The Claimant downplays the vital commercial importance of the IBL Loan to Korek and the unavailability of other sources of financing.*
- (c) The Claimant fails to address its own role in approving the IBL Loan and the Subordination Agreement.*
- (d) The Claimant fails to mention that it had already accepted that the IT Shareholder Loan could be subordinated in certain circumstances.*
- (e) The Claimant was well aware that there was, or could be, security for the IBL Loan.*
- (f) The Claimant has misstated the background of the various extensions to the IBL Loan."*

535. The Respondents N° 2 and N° 3 firmly contest the Claimant's allegation of fraud and misrepresentation which would have induced it to enter into the Subordination Agreement.²³¹ They remind that entry into the Subordination Agreement was an essential pre-condition to the IBL Loan which represented the only means of obtaining the needed financing for the Respondent N° 2. Further, they state that there is no conspiracy, which Claimant's allegation is not supported by any evidence.²³²

536. The Respondents N° 2 and N° 3 argue that, whether or not, security of any nature was provided to the Respondent N° 1, this could not affect the legal validity of the Subordination Agreement. Moreover, there would be nothing improper in the provision of any such security, which, as the Respondent N° 1 has confirmed, reflects standard commercial practice in the region, especially for a high-risk loan in a politically volatile part of the Middle East.²³³

²²⁹ Respondents N° 2 and N° 3's Statement of Defence, p. 9, paras. 3.1-3.2.

²³⁰ Respondents N° 2 and N° 3's Statement of Defence, pp. 11-12, paras. 3.10-3.14.

²³¹ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 2, para. 1.3.

²³² Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 3, para. 1.4; Respondents N° 2 and N° 3's Statement of Defence, pp. 3-4, para. 1.6.

²³³ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 3, para. 1.4.

537. The Respondents N° 2 and N° 3 add that the Claimant's argument that the Subordination Agreement has somehow "*lapsed*" is unavailing, since to present this claim, the Claimant had to misrepresent the evidential record by astonishingly omitting that it did in fact enter into a Third Subordination Supplemental. Consequently, the Respondents N° 2 and N° 3 submit that the Subordination Agreement has not lapsed and remains in full force and effect today contrary to the Claimant's position.²³⁴

538. In sum, the Respondents N° 2 and N° 3 argue that the Claimant cannot or could not be released from the binding contractual obligations under the Subordination Agreement into which it freely entered seven years ago and which continues to apply, the IBL Loan Agreement remaining outstanding. Therefore, the Respondents N° 2 and N° 3 request the Arbitral Tribunal to dismiss all the Claimant's claims.²³⁵

b Nature of the IBL Loan

539. As a preliminary remark, the Respondents N° 2 and N° 3 remind that the mechanics of the Investment Transaction are complex and they point out one of the omissions made by the Claimant in its description of the background to the execution of the IBL Loan Agreement and the Subordination Agreement, which factual omission is quite relevant and relates to the IH SHA. They stress that the IH SHA also contains provisions governing the terms of the Parties' financial arrangements, in particular, Clause 5 sets out in detail the circumstances in which the Respondent N° 2 could seek additional financing, the sources of that financing and the order of priority in which additional financing was to be obtained (Exhibit N° C-35).²³⁶

540. The Respondents N° 2 and N° 3 refer to Clause 5 of the IH SHA which provides that should the Respondent N° 2 need financing it was obliged to obtain financing in the following order of priority:²³⁷

- "(a) *unsecured loans made by financial institutions on market terms or if such loans were unavailable, an overdraft with Korek's usual bankers on normal commercial terms (defined in the IH SHA as an "External Unsecured Loan");*
- (b) *loans made by financial institutions to Korek on market terms and secured against the assets of Korek (defined in the IH SHA as an "External Secured Loan");*
- (c) *loans made by financial institutions to Korek on market terms and guaranteed (on a pro rata basis and on terms reasonably acceptable to them) by each of the Shareholders in their respective Relevant Shareholder Percentages in International Holdings (defined in the IH SHA as an "External Secured and Guaranteed Loan");*

²³⁴ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 3, para. 1.5.

²³⁵ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 3, para. 1.6; Respondents N° 2 and N° 3's Statement of Defence, p. 9, para. 3.2.

²³⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 9, para. 3.1 and p. 12, para. 3.14.

²³⁷ Respondents N° 2 and N° 3's Statement of Defence, p. 12, para. 3.14.

(d) *unsecured loans to IH Limited on market terms (as agreed between the International Holdings board and the shareholders and on terms pari passu and substantially the same (other than in respect of conversion rights) as the terms of the IT-IH Shareholder Loan) made, by each of the shareholders in proportion to their shareholding in IH Limited and ranking ahead of all shares issued from time to time by IH Limited (defined in the IH SHA as an "Shareholders Unsecured Loan")."*

541. The Respondents N° 2 and N° 3 submit that it results clearly from this contractual provision that, in the event the Respondent N° 2 had not been able to obtain external financing (which, in the event, was obtained under the IBL Loan), it would have been necessary for the shareholders to provide additional financing. They further stress that the Claimant did not provide any evidence that it was willing to offer such additional financing and did not use any of the control it was provided under the IT SHA, rather it approved the Respondent N° 2's entry into the IBL Loan on a number of different occasions.²³⁸
542. The Respondents N° 2 and N° 3 further contend that the IBL Loan Agreement was entered into to meet an urgent financing need (Exhibits N° R2-4, C-41 and R2-12).²³⁹ On 31 October 2011, Mr. Junde, the chair of the FPC (established by the IT SHA, Clause 5.10) (Exhibit N° R2-4), informed the KSC of the urgent need of financing and he noted that the only available options at that point in time were to obtain third party financing of USD 150 million or for the Respondent N° 3's shareholders to provide a capital injection, being stressed that at no stage in these discussions did the Claimant indicate that it or its ultimate shareholders had any intention of providing a capital injection into the Respondent N° 2 and no evidence has been advanced in these proceedings that suggests that it would have been willing to do so. The Respondents N° 2 and N° 3 insist on the fact that the IBL Loan represented an essential opportunity to obtain the required financing as there is no suggestion that there were various alternative (more advantageous) options for the Respondent N° 2 at the time or even subsequently (Exhibits N° R2-12 and R2-19).²⁴⁰
543. With respect to the negotiations of the IBL Loan with the Respondent N° 1, the Respondents N° 2 and N° 3 refer to the draft letter shared on 20 November 2011 by Mr. Junde with Mr. Aziz (one of the Claimant's representatives on the FPC) which would ultimately be sent by Mr. Mustafa on 7 December 2011 (Exhibit N° R2-5). They stress that this letter set out the headline terms of the IBL Loan as they stood at the time, which draft was reviewed and commented upon by the Claimant's representatives who confirmed that the terms were acceptable (Exhibits N° R2-6 to R2-9).²⁴¹ Further, the Respondents N° 2 and N° 3 assert that, ultimately, the proposed terms of the IBL Loan, including subordination of the Claimant's rights

²³⁸ Respondents N° 2 and N° 3's Statement of Defence, p. 13, paras. 3.15-3.16.

²³⁹ Respondents N° 2 and N° 3's Statement of Defence, pp. 15-16, paras. 3.24-3.25.

²⁴⁰ Respondents N° 2 and N° 3's Statement of Defence, pp. 13-14, paras. 3.17-3.20 and p. 16, para. 3.25.

²⁴¹ Respondents N° 2 and N° 3's Statement of Defence, p. 16, para. 3.26.

under the IT-IH Shareholder Loan and the Korek Guarantee, were the Respondent N° 1's "best offer" to the Respondent N° 2 (Exhibit N° R2-13).²⁴²

544. According to the Respondents N° 2 and N° 3, the Claimant had actually an active role in reviewing the terms of the IBL Loan and securing the necessary consents to obtain the financing. They state that the Claimant approved on a number of occasions the Respondent N° 2's entry into the IBL Loan:²⁴³

- On 7 December 2011, the FPC on which the Claimant had equal representation, issued a unanimous written resolution recognizing that the Respondent N° 2 needed additional financing for the payment of its License instalment (Exhibit N° R2-10).
- On 7 December 2011, the Claimant provided a written waiver of its rights pursuant to Clause 11.3 of the IH SHA to veto the Respondent N° 2's entry into the IBL Loan (Exhibit N° R2-11).
- On 14 December 2011, the Respondent N° 3's board and the KSC (which included representatives of the Claimant) issued written resolutions setting out and approving the terms of the IBL Loan and the Subordination Agreement (Exhibits N° R2-15 and R2-16).
- On 14 December 2011, the Respondents N° 2 and N° 3 issued shareholder resolutions also approving the terms of the IBL Loan and Subordination Agreement (Exhibits N° R2-17 and R2-18).

545. Moreover, the Respondents N° 2 and N° 3 submit that the Respondent N° 1 made clear to the Respondent N° 2 (and communicated to the Claimant's representatives) that its pre-conditions to lending included (i) payment of interest at a rate of 13.25%, (ii) Mr. Mustafa providing a guarantee for the full value of the IBL Loan and (iii) the cash proceeds of the Respondent N° 2 being deposited into a Respondent N° 1's account and for all of the Respondent N° 2's payments being processed through that account (Exhibit N° R2-13). This was the Respondent N° 1's "*final proposal*" (Exhibit N° R2-13).²⁴⁴

546. The Respondents N° 2 and N° 3 further stress that the Subordination Agreement was a perfectly normal and reasonable commercial requirement of the Respondent N° 1 prior to lending USD 150 million to a company in urgent need of financing in an unpredictable region. In addition, the Claimant accepted, as provided under the IT-IH Loan Agreement (Clauses 19.16 and 19.17), that there were situations in which the IT-IH Shareholder Loan and Korek Guarantee would rank in priority behind other debts (Exhibit N° C-3).²⁴⁵

²⁴² Respondents N° 2 and N° 3's Statement of Defence, pp. 14-15, paras. 3.21-3.22.

²⁴³ Respondents N° 2 and N° 3's Statement of Defence, p. 16, paras. 3.27-3.28.

²⁴⁴ Respondents N° 2 and N° 3's Statement of Defence, p. 15, para. 3.23.

²⁴⁵ Respondents N° 2 and N° 3's Statement of Defence, p. 17, paras. 3.29-3.30.

547. Therefore, in view of the above, it is indisputable that the Claimant had repeated opportunities to object to or refuse to approve the terms of the IBL Loan and the Subordination Agreement. However, on each occasion the Claimant and its representatives confirmed their approval for the IBL Loan and the Subordination Agreement, since anyway the IBL Loan was the best available financing for the Respondent N° 2 on commercial terms in the circumstances.²⁴⁶
548. The Respondents N° 2 and N° 3 remind that the terms of the IBL Loan transaction were "memorialised" in the following three contractual documents: (i) the Subordination Agreement (Exhibit N° C-1), (ii) the IBL Loan Agreement (Exhibit N° C-7) and (iii) the Deed of Indemnity concluded between the Claimant, Mr. Mustafa and the Respondents N° 2 and N° 3 (Exhibit N° C-8). The Respondents N° 2 and N° 3 note that, surprisingly, the Claimant downplays the Deed of Indemnity, which contains severable notable features, and omits to mention its failure to comply with said contractual document.²⁴⁷
549. In that respect, the Respondents N° 2 and N° 3 underline that Clause 6.1 of the Deed of Indemnity is the only place in the suite of documents at which they actually make representations directed to the Claimant, being stressed that the alleged representations relied on by the Claimant are not given by them or directed to the Claimant (Exhibit N° C-8). Further, and most importantly, there is no representation in the Deed of Indemnity to the effect that the IBL Loan is unsecured nor is any representation given by Mr. Mustafa to that effect.²⁴⁸
550. The Respondents N° 2 and N° 3 further assert that the Deed of Indemnity was comprised of both the indemnity itself in respect of Mr. Mustafa's guarantee under the IBL Loan (Clause 3 of the Deed of Indemnity) and an undertaking by the Claimant to, subject to the Respondent N° 1's approval, provide its own guarantee under the IBL Loan for its proportionate (44%) share of the guaranteed sums (Clause 7.5 of the Deed of Indemnity). They consider that the purpose of Clause 7.5 of the Deed of Indemnity is to ensure that the Claimant was on risk for its share of Mr. Mustafa's guarantee of the IBL Loan. However, the Claimant has failed to provide any such guarantee which illustrates its unwillingness to provide any further financial support to the Respondent N° 2 at the time of the IBL Loan.²⁴⁹
551. In any event, the Respondents N° 2 and N° 3 submit that the Claimant was, at all relevant time, aware that there was, or could be, security for the IBL Loan. The Claimant's awareness is evidenced by the following:²⁵⁰

²⁴⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 18, para. 3.31.

²⁴⁷ Respondents N° 2 and N° 3's Statement of Defence, p. 18, paras. 3.32-3.33.

²⁴⁸ Respondents N° 2 and N° 3's Statement of Defence, p. 18, para. 3.34.

²⁴⁹ Respondents N° 2 and N° 3's Statement of Defence, p. 19, paras. 3.35-3.39.

²⁵⁰ Respondents N° 2 and N° 3's Statement of Defence, pp. 19-21, paras. 3.40-3.41.

- The Claimant was aware that the Respondent N° 1 had requested an extensive security package in support of the IBL Loan, in particular that it had required Mr. Mustafa to provide a personal guarantee for the full value of the IBL Loan (with the Claimant sharing some of the risk of that guarantee through the Deed of Indemnity) (CWS-Froissart-1, para. 13; CWS-Aziz-1, para. 25).
 - It is unlikely that a sophisticated commercial party such as the Claimant would have expected the Respondent N° 1 to have simply accepted a paper guarantee, without also having the benefit of some form of collateral.
 - This is borne out by the provisions of the IBL Loan Agreement itself, which makes several references to IBL Bank holding security, in particular, Clauses 6.2 and 6.4 (Exhibit N° C-7).
 - As part of that security package, it was a condition precedent of the IBL Loan Agreement that the Respondent N° 2 open an account with the Respondent N° 1 and a requirement of the IBL Loan that the Respondent N° 2 pay its operating revenues into that account (Clause 9.12) (Exhibit N° C-7). The Claimant was aware that following an event of default under the IBL Loan, the Respondent N° 1 was entitled to take security over the revenues held by the Respondent N° 2 in that account (Clause 10). Therefore, the Claimant was aware that the Respondent N° 2 would provide a form of cash collateral under the IBL Loan.
 - On 13 October 2015 during a meeting of the KSC, the Claimant's representative, Mr. Froissart, *"asked about the issue between the Company and IBL as the loan was fully collateralised"* (Exhibit N° C-43).
 - The Claimant's witnesses have failed to mention in any of their witness evidence that prior to the Respondent N° 1's request for *"additional collateral"* in 2017, the Respondent N° 2 had also made references to *"additional collateral"* (email dated 4 March 2016) (Exhibit N° R2-23), being stressed that at no point following this email did the Claimant seek further clarification of the collateral already provided nor express any concern or dismay at the fact that collateral had been provided.
552. Finally, as to the Transfer Evidence which allegedly demonstrates that Mr. Mustafa made a transfer on 20 December 2011 from a HSBC bank account in Dubai to an account in his name with the Respondent N° 1 in Beirut in the sum of USD 155 million and which payment allegedly corresponds to the cash collateral that the Respondent N° 1 has confirmed it holds in respect of the IBL Loan, the Respondents N° 2 and N° 3 submit that the Transfer Evidence is not admissible in these proceedings (Exhibit N° C-63). Indeed, on 8 July 2020, the Second Circuit Court of Appeals in New York determined that Section 1782 proceedings cannot be used to obtain discovery for use in private international arbitrations such as these proceedings (Exhibits N° R2-23 and R2L-1). In any event, the Respondents N° 2 and N° 3 stress that they are not party to any collateral arrangements that may

exist between the Respondent N° 1 and Mr. Mustafa, therefore, as such they take no position in these proceedings as to the accuracy of the Claimant's allegations in respect of the Transfer Evidence.²⁵¹

c The Subordination Agreement

553. The Respondents N° 2 and N° 3 reiterate their position that there is no basis for declaring the Subordination Agreement to be "null and void".

554. First, the Respondents N° 2 and N° 3 stress that the Claimant failed to produce any evidence that the Subordination Agreement is part of a "*sham*" or an "*elaborate fraud*". To the contrary and as admitted by the Claimant itself, the Respondents N° 2 and N° 3 remind that the Subordination Agreement was entered into for a legitimate business purpose, namely as one of the prerequisites for the Respondent N° 2 to secure funds from the Respondent N° 1 to ensure that it could make due payment to the CMC on its telecommunications Licence (Exhibit N° R-19). It is not disputed by the Claimant that the Respondent N° 1 required the Claimant to agree to enter into the Subordination Agreement as a precondition to the IBL Loan being made available to the Respondent N° 2 (Exhibit N° R-18).²⁵²

555. Further, as confirmed by the Respondent N° 1, the Respondents N° 2 and N° 3 underline that the posting of collateral would have reflected standard business practice in the region, in order to provide greater comfort to a bank in extending a high-risk loan in politically volatile circumstances.²⁵³

556. Second, the Respondents N° 2 and N° 3 consider that it is not clear what the provision of collateral has to do with the legal validity of the Subordination Agreement. They note that there is no written representation in the Subordination Agreement that the IBL Loan would be unsecured, nor any extra-contractual misrepresentations made by the Respondent N° 2 or the Respondent N° 3 during the negotiation of the Subordination Agreement. The Respondents N° 2 and N° 3 recall that the Subordination Agreement, as well as the broader loan transaction, was the product of many weeks of negotiations between the Respondents N° 1 and N° 2 and the Claimant.²⁵⁴

557. The Respondents N° 2 and N° 3 find astonishing that the Claimant is able to refer only to the terms of the IBL Loan Agreement concluded between the Respondents N° 1 and N° 2 in support of the alleged misrepresentation and not to any provision of the Subordination Agreement, which cross-reference simply weakened the Claimant's position. Indeed, the Respondents N° 2 and N° 3 point out that the Claimant is not a party to the IBL Loan Agreement and the representation in Clause 7.1.6 of the IBL Loan Agreement cross-referred to by the Claimant is made between the Respondents N° 1 and N° 2. Therefore, this provision describing the

²⁵¹ Respondents N° 2 and N° 3's Rejoinder, pp. 5-6, paras.2.7-210.

²⁵² Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 6, para. 4.2.

²⁵³ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 7, para. 4.3.

²⁵⁴ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 7, para. 4.4.

commercial relationship between the Respondents N° 1 and N° 2 cannot constitute any kind of representation to the Claimant.²⁵⁵

558. The Respondents N° 2 and N° 3 state that, in any event, *arguendo* that some form of representation to the Claimant concerning the provision or non-provision of collateral by a third party (which clearly it did not), it does not follow that the Claimant relied on such a representation in any way in entering into the Subordination Agreement, which agreement is not in any way predicated or conditioned on the existence or non-existence of any collateral.²⁵⁶

559. Consequently, the Respondents N° 2 and N° 3 submit that, in absence of any factual (or legal) basis to the contrary, the Subordination Agreement is a legally binding contract into which the Claimant entered freely and willingly seven years earlier and the Claimant cannot escape its contractual obligations. The Respondents N° 2 and N° 3 qualify the Claimant's argument as a bad faith attempt to damage the Respondent N° 2.²⁵⁷

560. As to the Claimant's alternative argument that the Subordination Agreement has lapsed, the Respondents N° 2 and N° 3 note that again there is no factual or legal basis for this claim.²⁵⁸

561. The Respondents N° 2 and N° 3 recall that, after the IBL Loan Agreement was executed in December 2011, the IBL Loan was formally extended in writing three times by the Parties, each time, the Parties having executed a supplemental agreement to the Subordination Agreement confirming that the Subordination Agreement remained in full force and effect (Exhibit N° C-7). The relevant extensions were the following: (a) the First Loan Supplemental and the First Subordination Supplemental dated 21 July 2012 (Exhibits N° C-9 and C-10), (b) the Second Loan Supplemental and the Second Subordination Supplemental dated 1 February 2013 (Exhibits N° C-11 and C-12) and the Third Loan Supplemental and the Third Subordination Supplemental dated 21 June 2015 (Exhibits N° C-13, R1-2, R1-3, R1-23 and R1-24).²⁵⁹

562. The Respondents N° 2 and N° 3 object to the Claimant's allegation that it did not agree to any further extension or variation of the Subordination Agreement in respect to the third extension of the IBL Loan, such allegation being simply contradicted by the production of the Third Subordination Supplemental by the Respondent N° 1 (Exhibits N° R1-3, R1-24 and C-42). The Arbitral Tribunal is invited to draw whatever inferences it feels appropriate from the omission of a document of such fatal import to the Claimant's case.²⁶⁰ The Respondents N° 2 and N° 3 note that the Claimant has finally abandoned its claim that the Third Loan

²⁵⁵ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 7, para. 4.5.

²⁵⁶ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 7, para. 4.6.

²⁵⁷ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 8, para. 4.7.

²⁵⁸ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 8, para. 4.8.

²⁵⁹ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 8, para. 4.9; Respondents N° 2 and N° 3's Statement of Defence, pp. 22-23, paras. 3.42-3.49.

²⁶⁰ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 9, paras. 4.10-4.12; Respondents N° 2 and N° 3's Statement of Defence, pp. 23-24, paras. 3.49-3.51.

Supplemental was not signed by all the Parties and its assertion that it did not agree to any further extension or variation of the Subordination Agreement in respect of the Third Loan Supplemental.²⁶¹

563. The Respondents N° 2 and N° 3 stress that the Subordination Agreement does not have a fixed term to be extended, the purpose of the supplementals is stated clearly "*the Parties wish to confirm that the provisions of the Agreement shall remain in full force and effect and shall extend to the IBL Loan Agreement as amended and supplemented pursuant to the [First Loan Extension Agreement]*" (emphasis added by the Respondents N° 2 and N° 3) (Exhibits N° C-10 and C-12, Recitals). In other words, the intention of the Parties to the First Subordination Supplemental was to confirm that the Subordination Agreement continued to apply to the IBL Loan, even if the terms of the IBL Loan were amended.²⁶²

564. Therefore, the Respondents N° 2 and N° 3 submit that the Subordination Agreement has not lapsed and remains in full force and effect. Moreover, they request the Arbitral Tribunal to dismiss the Claimant's case that it should be released from its binding contractual obligations under the Subordination Agreement.²⁶³

D Counterclaims

1 The Respondent N° 1's position

565. The Respondent N° 1 reminds first that it is a prominent bank, having a regional presence and reputation, its goodwill constituting one of its major assets and any attempt to harm such goodwill would cause it damages that are irreparable.²⁶⁴

566. The Respondent N° 1 stresses that, for the purpose of serving its own interests in its dispute with the other shareholders at the level of the Respondent N° 2, the Claimant has abusively involved it into this dispute and has falsely accused it of committing fraudulent acts and being part of a so-called "sham arrangement". The Respondent N° 1 contends that such Claimant's conduct and wrongful accusations has inflicted severe damage on it, its reputation and good standing.²⁶⁵ Indeed, the Respondent N° 1 considers that the Claimant has acted improperly in bringing the present claim against it under Lebanese law and the Claimant's liability is thus engaged under Articles 10, 11 and 551 LCCP) (Exhibits N° R1-LA-39 to R1-LA-41).²⁶⁶

²⁶¹ Respondents N° 2 and N° 3's Rejoinder, p. 4, paras. 2.3-2.5.

²⁶² Respondents N° 2 and N° 3's Statement of Defence, p. 22, paras. 3.45-3.46.

²⁶³ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 10, para. 4.13.

²⁶⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 46, para. 230.

²⁶⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 86, paras. 411-413.

²⁶⁶ Respondent N° 1's Answer and Counterclaim to the Request for Arbitration, p. 11, paras. 54-55; Respondent N° 1's Statement of Defence and Counterclaim, pp. 46-47, paras. 231-236; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 87, paras. 416-422.

567. The Respondent N° 1 asserts that the Claimant's allegations are made in bad faith and amount to malice which is defined by some Lebanese legal scholars as the language of deceit and slyness, and slyness is diverting a person from his intention by manipulation (Exhibits N° R1-LA-41, R1-LA-96 and R1-LA-97). The Respondent N° 1 argues that the Claimant's bad faith and malice can be concluded from the following:²⁶⁷

- "a) *the Claimant cherry-picked parts and parcels of facts, out of context, in order to try and paint a picture that does not reflect the reality of the contractual relationship of the parties and in fact distorts such reality;*
- b) *the Claimant fabricated its far-fetched theory of "orchestrated fraud" and of an alleged conspiracy by Respondent 1 along with the other respondents, based purely on the Claimant's discovery of the existence of the Cash Co. account, that was established by a person other than Respondent 2 to secure the Loan. Contrary to the Claimant's allegations, no "sham" or secret arrangement ever existed between Respondent 1 and the other Respondents, [...] and*
- c) *the Claimant is attempting to escape its obligations under the Subordination Agreement in a manner that is suitable for the Claimant's interests only, at the detriment of Respondent 1 and its rights and obligations under Lebanese law; the Claimant is therefore using this Arbitration to interfere with Respondent 1's right under the Loan documentation."*

568. Further, as it has been demonstrated, the Respondent N° 1 contends that the Claimant advanced no evidence that it participated in the so-called "fraudulent scheme". Instead, the Claimant uses the behaviour of the Respondents N° 2 and N° 3 that it considered to be allegedly "fraudulent" against the Respondent N° 1 by abusively concluding that the Respondent N° 1 conspired with the Respondents N° 2 and N° 3. The Respondent N° 1 demonstrated that there is absolutely no evidence of fraud, *dol*, abuse, bad faith or any other accusation made by the Claimant against it in any of the Claimants "critical facts" allegedly evidencing its involvement in the alleged "fraudulent scheme". On the contrary, there is in fact evidence of abuse and bad faith on the part of the Claimant *vis-à-vis* the Respondent N° 1. Therefore, the Respondent N° 1 stresses that this list of the so-called "critical facts" brought by the Claimant actually serves to prove its Counterclaim that the Claimant has abused its right to sue.²⁶⁸

569. In addition to the foregoing, the Respondent N° 1 asserts that the ultimate proof of the Claimant's bad faith and malicious intent towards it is the Claimant's decision to amend its relief sought to a declaration. By amending its relief sought, the Claimant implicitly admits that it initially abused its right to sue the Respondents, including the Respondent N° 1, because the relief it initially sought in its Statement of Claim dated 22 November 2019 was improper as it compounded the risk of double recovery. In fact, the Respondent N° 1 considers that the risk of double recovery continues to exist in these proceedings also with respect to the other monetary

²⁶⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 47, paras. 237-239.

²⁶⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 87-89, paras. 423-432.

compensation claims made against it that were maintained by the Claimant and which cannot be unpunished by the Arbitral Tribunal.²⁶⁹

570. The Respondent N° 1 maintains that the proper remedy to punish the Claimant's malicious actions against it is for the Arbitral Tribunal to dismiss the Claimant's case against the Respondent N° 1 and award it damages pursuant to Article 124 COC and Articles 10, 11 and 551 LCCP, being stressed that it has suffered pecuniary damages as it had to invest substantial time, resources and incur significant costs for the purpose of defending itself against the Claimant's frivolous claims in these proceedings.²⁷⁰
571. Alternatively and additionally, in the event the Arbitral Tribunal finds that the Claimant did not act maliciously by bringing the present claim against the Respondent N° 1, the Respondent N° 1 submits that the Claimant should be found liable towards it and pay damages to it because the Claimant violated Article 122 COC by exercising its right to bring a claim in a way that exceeds the limits of good faith (Exhibits N° R1-LA-34 and R1-LA-43). The Respondent N° 1 maintains that the prejudice that it suffered is damage to its reputation.²⁷¹
572. The Respondent N° 1 argues that the accusations raised by the Claimant against it are defamatory and libellous and, in any case, remain unsubstantiated (Articles 385, 582 and 584 of the Lebanese Criminal Code) (Exhibits N° R1-LA-98 to R1-LA-102). These Claimant's harmful allegations evidence that it committed a fault in the civil sense for which it should be held liable.²⁷²
573. More specifically as to the defamation under Articles 385(1) and 582 of the Lebanese Criminal Code, the Respondent notes that the specific incident attributed to it is its alleged engagement in a conspiracy with the Respondents N° 2 and N° 3 to defraud the Claimant, which incident satisfies the first condition for defamation. These allegations of the Claimant most definitely harmed the Respondent N° 1's reputation and good-will as a financial institution, as trust is essential for the Respondent N° 1 to attract business and therefore satisfy the second condition for defamation. As for the third condition for defamation, all of these allegations are on the record in this arbitration and were distributed to all those involved in this arbitration. This satisfies the publication element under Article 582, as this satisfies the element of being "*distributed to one person or more*"²⁷³

²⁶⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 89, para 434.

²⁷⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 90, paras. 435-436.

²⁷¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 48, paras. 240-242; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 90-91, paras. 437-443.

²⁷² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 90-91, paras. 437-443.

²⁷³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 91, paras. 445-447.

574. Regarding libel under Articles 385(2) and 584 of the Lebanese Criminal Code, the Respondent N° 1 stresses that the Claimant has referred to it as a "*fraudster*"²⁷⁴ which is most definitely a word of contempt and insult that causes harm to its reputation and with the intent to harm it. Moreover, as Article 584 also punishes libel disseminated through the means of publication listed in Article 209, this element is also satisfied in this case for the same reasons referred to in relation to defamation above.²⁷⁵
575. The Respondent N° 1 adds that Article 417 of the Lebanese Criminal Code, which permits writings that would otherwise qualify as defamation and libel in the context of court submissions, does not apply in the present case (Exhibit N° R-1-LA-104). Therefore, the Respondent N° 1 submits that the Claimant has clearly committed an illicit prejudice towards it and the moral damage to its reputation is undeniable (Exhibits N° R1-LA-105 and R1-LA-106).²⁷⁶
576. The Respondent N° 1 therefore concludes that, in application of Article 122 COC, and Articles 10, 11 and 551 LCCP in conjunction with Article 20 of the Rules, the Claimant is liable to indemnify it for the damages and losses that it has suffered, as a result of the latter's groundless allegations, in an amount to be determined by the Arbitral Tribunal (Exhibits N° R1-LA-107 to R1-LA-109).²⁷⁷

2 The Claimant's position

577. The Claimant strongly rejects the Respondent N° 1's primary counterclaim that it allegedly abused its right to sue by initiating these arbitration proceedings with malicious intent and in bad faith, in breach of Article 124 of the COC and Articles 10, 11 and 551 LCCP.²⁷⁸ Further, the Claimant denies the Respondent N° 1's alternative and additional counterclaims that it has allegedly, in breach of Article 122 of the COC, made defamatory and/or libellous allegations about the Respondent N° 1 causing illicit prejudice/damage to reputation to the latter entitling it to compensation. The Claimant asserts to have legitimate reasons for commencing this claim and did so on the basis of compelling factual evidence. In any event, the Claimant stresses that the Respondent N° 1's alleged losses for both limbs of its counterclaim are wholly unparticularised and unsubstantiated by evidence.²⁷⁹

²⁷⁴ Statement of Reply and Defense to Counterclaim, paras.16 and 109.

²⁷⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 92, paras. 448-449.

²⁷⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 92, paras. 450-452.

²⁷⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 48, para. 243; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 93, paras. 453-457.

²⁷⁸ Statement of Reply and Defense to Counterclaim, p. 127, paras. 331-333; Statement of Rejoinder to Reply to Defence to Counterclaim, p. 1, para. 3.

²⁷⁹ Reply to Counterclaim, p. 1, paras. 4-5; Statement of Reply and Defense to Counterclaim, p. 127, paras. 331-333; Statement of Rejoinder to Reply to Defence to Counterclaim, p. 1, para. 4.

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578. The Claimant reminds that, for the first time, the Respondent N° 1 admitted that the IBL Loan was secured by cash collateral. However, the Claimant notes that the Respondent N° 1 has not provided any evidence to suggest that the Claimant was made aware of such cash collateral and further the Respondent N° 1 does not assert that it ever disclosed the existence of the cash collateral to the Claimant.²⁸⁰
579. Moreover, the Claimant states that the Respondent N° 1 failed to provide any explanation as to what reason there could possibly be for an arrangement pursuant to which the Respondent N° 1 holds cash collateral of more than 100% of the IBL Loan (other than to disguise the source of the loan *vis-à-vis* the Claimant), especially in circumstances where the Respondent N° 1 charges the Respondent N° 2 interest of 13.25% which is far in excess of what prevailing market practices could justify for a fully cash collateralised loan.²⁸¹
580. The Claimant further notes that the Respondent N° 1 remains completely silent with respect to "*the Claimant's allegations that IBL entered into a secret side-agreement with Mr. [Mustafa] pursuant to which IBL undertook to pay Mr. [Mustafa] an amount equal to 12.75% of the 13.25% total interest received by IBL from Korek*", as well as on "*what basis it could possibly be demanding additional collateral from Korek, including a pledge over Korek's shares, if it already held cash collateral of more than 100% of the loan*". The Claimant considers that the Respondent N° 1's failure to address these critical matters speaks volumes.²⁸²
581. The Claimant submits that it has a clear and unequivocal right to bring these proceedings and, on the basis of the facts before this Arbitral Tribunal, was fully justified in doing so. Indeed, there is clear evidence of a fraudulent scheme perpetrated on it by the Respondents, including the Respondent N° 1 and, in such circumstances, it has every right to make the allegations it has made and to seek redress from the Respondents. The following critical facts that are incontestable have to be kept in mind:²⁸³
- The IBL Loan is and always has been fully cash collateralised. However, there is no mention of cash collateral in any of the negotiations leading up to the execution of the IBL Loan and the Subordination Agreement. Indeed, it was repeatedly represented, including in the terms of the IBL Loan itself (Clause 7.1.6) that the IBL Loan was unsecured (Exhibits N° R2-8 and C-41). The Respondent N° 1 participated in misrepresenting and/or concealing the fact that the IBL Loan was fully cash collateralised. Indeed, the misrepresentations made to the Claimant were made with the Respondent N° 1's full knowledge. Further, it is reiterated that the Respondent N° 1 cannot hide behind the Lebanese Banking Secrecy Law which do not prevent it from disclosing the

²⁸⁰ Reply to Counterclaim, p. 3, para. 6.

²⁸¹ Reply to Counterclaim, p. 3, para. 7.

²⁸² Reply to Counterclaim, p. 3, para. 8.

²⁸³ Statement of Reply and Defense to Counterclaim, p. 128, para. 334.

mere existence of the cash collateral (CER-Zein-1, paras. 44-53 and 66; CER-Griffiths-1, paras. 6.33-6.44, 7.4-7.8).²⁸⁴

- The Respondent N° 1 required the Claimant to enter into the Subordination Agreement when the same was wholly unnecessary since the Subordination Agreement, together with the other conditions imposed by the Respondent N° 1 (i.e. the high interest rate of 13.25%, the Barzani Guarantee and the Revenue Account Requirement), were deliberately designed to give the impression that the IBL Loan was unsecured and to conceal/misrepresent the existence of the cash collateral (CER-Zein-1, paras. 83-86; CER-Griffiths-1, paras.6.59-6.61, 6.64-6.65).²⁸⁵
- It was Mr. Mustafa, the Statutory Manager of the Respondent N° 2, who provided the cash collateral without the knowledge of the Claimant.²⁸⁶
- Notwithstanding calling an Event of Default in July 2015, the Respondent N° 1 has taken no steps whatsoever to enforce the IBL Loan, notwithstanding holding Mr. Mustafa's cash collateral and, at the same time, it has enforced the terms of the Subordination Agreement (Exhibits N° R1-5 and R1-6) (CER-Griffiths-1, paras. 6.106-6.115 and 7.23-7.25).²⁸⁷
- Esteemed judges and arbitrators in other proceedings have found the Respondents' conduct to be highly suspicious/fraudulent (Exhibit N° C-LA-31).²⁸⁸

582. In view of the above, the Claimant submits that it cannot be disputed that it has always acted in good faith and in a reasonable manner.²⁸⁹

583. The Claimant will further demonstrate that the Respondent N° 1's primary and alternative counterclaims are fundamentally deficient for the reasons set out below. In summary, regarding the Respondent N° 1's primary counterclaim:²⁹⁰

- Articles 10, 11 and 551 LCCP do not apply to the Claimant's commencement or prosecution of these arbitration proceedings.
- The Claimant has adduced compelling evidence of fraud, *dol*, abuse of rights and bad faith on the part of the Respondent N° 1, all its allegations against the Respondent N° 1 being fully substantiated.

²⁸⁴ Statement of Rejoinder to Reply to Defence to Counterclaim, pp. 7-8, paras. 17-20.

²⁸⁵ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 9, paras. 21-22.

²⁸⁶ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 9, para. 23.

²⁸⁷ Statement of Rejoinder to Reply to Defence to Counterclaim, pp. 10-12, paras. 24-28.

²⁸⁸ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 12, para. 29.

²⁸⁹ Reply to Counterclaim, p. 3, para. 10.

²⁹⁰ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 2, para. 5.

- Alternatively, in the unlikely event that the Claimant does not succeed in establishing its claims against the Respondent N° 1, this in and of itself is insufficient to establish a breach of Articles 10, 11 and 551 LCCP or Article 124 of the COC. Those provisions do not apply to an arguable claim (even if unsuccessful) that is brought in good faith and without any collateral purpose. The right to bring proceedings should not be unduly circumscribed by the expansive application of claims for abuse of the right to sue, as that would have a chilling effect on access to justice.

584. The Claimant first refers to Article 811(1) LCCP according to which where the parties explicitly designated the rules applicable to their arbitration, the tribunal (and the parties) are bound by that agreement (Exhibits N° C-LA-24 and C-LA-25). *In casu*, the Claimant submits that the procedure for these arbitration proceedings is governed solely by the mandatory procedural law for arbitrations in Lebanon, the LAMC Rules, the Terms of Reference and the Specific Procedural Rules issued by the Arbitral Tribunal. Therefore, Articles 10, 11 and 551 LCCP have never been agreed or incorporated into these arbitration proceedings and thus do not apply.²⁹¹

585. The Claimant adds that, as demonstrated above and summarized under paragraph 580, it has a very strong case against the Respondent N° 1 and these proceedings have been brought in good faith and for a legitimate purpose (certainly not for a collateral purpose). This alone defeats the Respondent N° 1's primary counterclaim. The Claimant explains that a claim of abuse of the right to sue must, by its nature, have a very high bar (for otherwise such claims would compromise the due administration of justice and stymie meritorious claims) (Exhibits N° C-LA-26 to C-LA-30). This means that there can be no abuse if a claimant's claim has any merit whatsoever. The Claimant further stresses that abuse of the right to sue is not applicable at all where a claimant has an arguable claim, but rather to where proceedings have been brought for a collateral purpose (e.g. intimidation or harassment). The Claimant contends that this was certainly not its intention in bringing these proceedings and the Respondent N° 1 has failed to adduce any evidence whatsoever of any collateral intention on the part of the Claimant.²⁹²

586. Moreover, the Claimant states that the amendment of its relief sought is not abusive. It submits that its decision to withdraw its claim for quantified damages and to refine its requests for relief was made in good faith in order to conduct and pursuit of these proceedings. The Claimant stresses that amendments to pleadings and the relief sought by a party are entirely standard in international arbitration (and other dispute resolution proceedings). It further reiterates that the aim of the amendment was to eliminate any argument regarding double-recovery issues with parallel and subsequent proceedings and also to narrow the focus of this arbitration to the critical issue: the invalidity of the Subordination Agreement and its entitlement to damages (in principle) for any losses flowing directly or indirectly from entry into the Subordination Agreement. Moreover, it cannot be disputed that the amendment causes no prejudice to the Respondents as it merely narrows the

²⁹¹ Statement of Rejoinder to Reply to Defence to Counterclaim, pp. 4-5, paras. 9-13.

²⁹² Statement of Rejoinder to Reply to Defence to Counterclaim, pp. 5-12, paras. 14-29.

scope of issues to be determined and avoids the need for the Arbitral Tribunal to determine the existence and/or quantum of any losses, the Respondents having been given an opportunity to respond in their Rejoinders. Further, the withdrawal of the claim for damages has nothing to do with its legitimate exercise of rights under Lebanese law, Article 124 of the COC being therefore inapplicable.²⁹³

587. The Claimant insists on the fact that there can be no double recovery in circumstances where it is seeking only a declaration of its in principle entitlement to compensation (i.e. in circumstances where it is not seeking the award of any monetary sum in this arbitration, save for costs, interest and any other sums the Tribunal deems appropriate).²⁹⁴

588. In any event, the Claimant recalls that damages owed to it from the Respondent N° 1 will not be quantified in the proceedings to be brought under those Loans/Guarantee. The Claimant reiterates that if it will be seeking compensation for damages, this would be made in separate proceedings with a tribunal constituted under the arbitration agreement contained in the Subordination Agreement and governed by Lebanese law in which the Respondent N° 1 would have ample opportunity respond.²⁹⁵

589. Finally, regarding this primary counterclaim, the Claimant argues that such counterclaim suffers from a further fundamental deficiency, i.e. it is entirely unparticularised and devoid of detail such that the Respondent N° 1 has failed to discharge its burden of proof. The Claimant stresses that the lack of any evidence or particularisation is particularly problematic in terms of the Respondent N° 1's alleged losses. Indeed, no loss has been proven by the Respondent N° 1.²⁹⁶

590. As to the Respondent N° 1's alternative/additional counterclaim related to the prejudice suffered due to the alleged damages to its reputation, the Claimant denies the Respondent N° 1's unsupported counterclaim for the following reasons:²⁹⁷

- Insofar as it is based on Lebanese criminal law, the Respondent N° 1's counterclaim falls outside of the jurisdiction of the Arbitral Tribunal, i.e. outside the ambit of the arbitration clause in the Subordination Agreement. The reliance on Lebanese Criminal Code Provisions through Article 122 COC is merely a "back-door" attempt to impermissibly expand the scope of these arbitration proceedings.²⁹⁸

²⁹³ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 13, paras. 30-31 and p. 14, para. 33.

²⁹⁴ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 14, para. 32.

²⁹⁵ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 14, paras. 34-35.

²⁹⁶ Statement of Rejoinder to Reply to Defence to Counterclaim, pp. 15-16, paras. 36-39.

²⁹⁷ Reply to Counterclaim, p. 4, para. 11; Statement of Rejoinder to Reply to Defence to Counterclaim, p. 2, para. 6.

²⁹⁸ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 16, paras. 40-41.

- The Respondent N° 1 has failed to satisfy the elements of defamation and libel as a matter of Lebanese law (thus preventing the application of Article 122 of the COC), in particular the requirements that there be a public disclosure and criminal intent.²⁹⁹
- Alternatively, in the event that the elements of defamation or libel are established (which is denied), Article 417 of the Lebanese Criminal Code is applicable and is a complete defence to any claim for defamation or libel in the circumstances.

591. With respect to Article 122 COC, the Claimant reminds that such provision provides that any act by one person that causes unjust damage to another person, triggers compensation to the victim. Accordingly, the requirements under this provision are threefold: (i) the existence of a breach by one party, (ii) the harm suffered by another party and (iii) that the harm is caused by the harmful act.³⁰⁰ *In casu*, the Claimant submits first that there is no breach on its side, the Respondent N° 1 has failed to demonstrate that the requisite elements making up the criminal wrongs of defamation (Articles 385(1)-(2) and 582 of the Lebanese Criminal Code) and of libel (Article 584 of the Lebanese Criminal Code) are met. The Claimant argues that both libel and defamation require that there be a public disclosure. Arbitral proceedings being confidential, it cannot be disputed that there has been no public disclosure in the circumstances and Article 209(3) of the Lebanese Criminal Code is inapplicable. Alternatively, the Claimant contends that, even if there was public disclosure (which is denied), the absence of public dissemination and the existence of strict confidentiality restrictions in the arbitration necessarily means that the Respondent N° 1 has suffered no loss.³⁰¹

592. Further, the Claimant asserts that both defamation and libel require a "*moral element, which is found in the criminal intent*".³⁰² The Claimant argues that it has no such criminal intent, its intent having been to protect its legitimate commercial interests and seek redress for blatant wrongs committed against it by the Respondents (which are ongoing). In any event, the Claimant refers to Article 417 of the Lebanese Criminal Code which provides: "*No claim for defamation or libel may result from speeches and writings pronounced or presented before the courts in good faith and within the limits of legitimate defense*" (Exhibit N° R1-LA-104). Therefore, to the extent that the Arbitral Tribunal considers that it may have recourse to the provisions of defamation and libel under the Lebanese Criminal Code, Article 417 of the Lebanese Criminal Code also applies and the Claimant's allegations clearly fall within the scope of that provision.³⁰³

²⁹⁹ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 16, para. 42.

³⁰⁰ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 16, para. 42.

³⁰¹ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 17, para. 43(a).

³⁰² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 92, para. 448.

³⁰³ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 17, paras. 43(b)-44.

593. Consequently, in view of the above, the Claimant submits that there is no breach on its side nor illicit or unjust prejudice suffered by the Respondent N° 1 under Article 122 of the COC in the circumstances.³⁰⁴

594. As to the requirements of the harm suffered by the Respondent N° 1 and the causation link, the Claimant first notes that the Respondent N° 1's claim for damage is in two parts: (i) alleged harm to the Respondent N° 1's reputation entitling it to compensation and (ii) the Respondent N° 1 "*suffered damage by having to invest a tremendous amount of time, resources and incur significant costs to defend itself [...]*". Regarding the second limb, the Claimant refers to its argumentation made in relation to the Respondent N° 1's primary counterclaim, which argumentation applies *mutatis mutandis*.³⁰⁵

595. Regarding the first limb (losses due to reputational harm), the Claimant submits that the Respondent N° 1's claim is again bereft of any evidence or particularisation whatsoever. The Claimant stresses that, under 122 COC, the Respondent N° 1 would have to prove the following (Article 134 COC) (Exhibit N° R1-LA-36):³⁰⁶

- Its reputation has been harmed.
- The reputational harm was the result of libellous/defamatory allegations made by the Claimant in these proceedings.
- The reputational harm has resulted in pecuniary loss, moral damage and/or collateral damage to it.
- The quantum of the pecuniary loss, moral damage and/or collateral damage.

596. The Claimant argues that none of the above elements come even close to being satisfied on the balance of probabilities and the Respondent N° 1 has failed to discharge its burden of proof.³⁰⁷

597. The Claimant concludes that commencing this arbitration was and is fully justified and the Respondent N° 1 has not proven that it has suffered any loss and the Arbitral Tribunal cannot quantify and award damages in the circumstances. Therefore, the Respondent N° 1's counterclaims should be dismissed with costs.³⁰⁸

³⁰⁴ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 17, para. 44.

³⁰⁵ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 18, para. 45.

³⁰⁶ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 18, para. 46.

³⁰⁷ Statement of Rejoinder to Reply to Defence to Counterclaim, p. 18, para. 46.

³⁰⁸ Statement of Reply and Defense to Counterclaim, p. 128, para. 335.

E Legal Arguments

1 The Claimant's position

a Introduction

598. The Claimant instructed Professor Ibrahim Fadlallah (hereinafter referred to as "**Prof. Fadlallah**") to provide an expert opinion as to the consequences under Lebanese law of the facts object of the present dispute, including:³⁰⁹

- "(a) the fraudulent misrepresentations based on which the Claimant agreed to enter into the Subordination Agreement (i.e. that the IBL Loan was an unsecured third party bank loan provided by IBL to Korek on arms' length terms, and that entry into the Subordination Agreement was a condition for IBL agreeing to make the IBL Loan);*
- (b) the true nature of the IBL Loan transaction, including:*
 - (i) the (now admitted) fact that the IBL Loan is secured by more than 100% cash collateral;*
 - (ii) the fact that 96% of the interest payments made by Korek to IBL are secretly kicked-back by IBL to Mr. Barzani;*
- (c) IBL's failure to take any action to recover the IBL Loan since calling an event of default more than four years ago (neither against Korek under the IBL Loan Agreement, Mr. Barzani under his guarantee, or by seizing the cash collateral admittedly held by IBL); and*
- (d) the apparent de-registration of International Holdings' shareholding interest (and thus the apparent loss of IT Ltd.'s indirect shareholding interest) in Korek on the basis of the KCR Decree in March 2019."*

599. In summary, Prof. Fadlallah concludes on the above-mentioned facts as follows:³¹⁰

- "(a) the Subordination Agreement is null and void on the basis of fraud, with the Claimant entitled to damages for the loss it has suffered as a result of the fraud; [CER-1, Section II]*
- (b) IBL's reliance on the Subordination Agreement amounts to an abuse of rights, which (independently of the above fraud) entitles the Claimant to damages for the loss it has suffered as result of IBL's conduct; [CER-1, Section III]*
- (c) independently of the above grounds, the Subordination Agreement has expired and does not prevent the Claimant from seeking to recover amounts owed by Korek under the Korek Guarantee or from International Holdings under the IT-IH Shareholder Loan Agreement; [CER-1, Section IV] and*
- (d) independently of the above grounds, the Subordination Agreement has lapsed for lack of cause on the basis of the de-registration of International Holdings' shareholding in Korek. [CER-1, Section V]"*

³⁰⁹ Statement of Claim, p. 25, para. 74.

³¹⁰ Statement of Claim, p. 26, para. 75.

b Fraud/Dol

600. According to Prof. Fadlallah, in order to prove fraud under Lebanese law, one must prove that a contracting party (or a third party, with the contracting party's knowledge) tricked the other contracting party to enter into the contract on the basis of material misrepresentations (including the concealment of material information), intended to mislead the innocent contracting party, and that but for those misrepresentations, the innocent party would not have entered into the contract (or would have done so on different terms) (CER-Fadlallah-1, para. 23). He further explains that, if the innocent party would not have entered into the contract but for the fraud, the fraud renders the contract null and void (CER-Fadlallah-1, para. 23).³¹¹

601. To sum up, Article 202 COC provides for the annulment of contracts entered into by a party whose consent was vitiated, including due to *dol* acts, if the following four conditions of *dol* are met (Article 208 COC) (Exhibits N° C-ER-41 and C-LA-8) CER-Fadlallah-1, para. 29):³¹²

- a. *fraudulent maneuvers (manoeuvres dolosives), which can be in the form of both positive acts (such as lies, maneuvers), or acts of concealment (réticence dolosive) such as silence;*
- b. *the fraudulent maneuvers must be determinative of the victim's consent to the contract, meaning that, absent the fraudulent maneuvers, the victim would not have consented to the contract;*
- c. *the fraudulent maneuvers must be committed by one of the victim's contracting parties (or by a third party if the victim's contracting party was aware of them at the time of the formation of the contract); and*
- d. *the fraudulent maneuvers must be intended to mislead/deceive the counterparty."*

602. The Claimant adds that the existence of *dol* is to be examined at the time the parties entered into the contract and the victim of a *dol* can prove by any means that its consent, at the time of entering into the contract, has been vitiated by *dol* (Exhibit N° C-LA-9) (CER-Fadlallah-1, para. 34), and to this end may, for example, rely on: (i) witness testimony (Exhibit N° C-LA-10) and/or (ii) acts or omissions that took place subsequent to the formation of the contract but which establish the existence of *dol* at the time the contract was formed (Exhibit N° C-LA-11).³¹³

603. The Claimant stresses that the victim of a *dol* is entitled to request that the contract be voided *ab initio* where the victim of the *dol* can demonstrate that it would not have consented to the agreement but for the *dol* (Exhibit N° C-ER-41, p. 100). Additionally, the victim of a *dol* is entitled to claim damages under tortious liability (CER-Fadlallah-1, para. 50; CER-Fadlallah-2, para. 59).³¹⁴

³¹¹ Statement of Claim, p.26, para. 76.

³¹² Statement of Reply and Defense to Counterclaim, p. 78, paras. 174-175.

³¹³ Statement of Reply and Defense to Counterclaim, p. 79, para. 176.

³¹⁴ Statement of Reply and Defense to Counterclaim, p. 79, para. 177.

604. The Claimant argues that all the conditions for *dol* are met in the present case:³¹⁵

- The Respondents committed *dol* acts in relation to the existence of the cash collateral by taking active/positive steps to deny or, alternatively, by concealing ("*réticence dolosive*") the existence of the cash collateral.
- The Claimant would not have entered into the Subordination Agreement had it been aware of the existence of the cash collateral.
- The Respondents are contracting parties to the Subordination Agreement.
- The Respondents carried out *dol* acts with the intention to mislead the Claimant as to the true nature of the IBL Loan Agreement.

(i) Positive acts of *dol*

605. The Claimant submits that the Respondents committed positive acts of *dol* by denying the existence of the cash collateral.³¹⁶

606. As a preliminary remark, the Claimant states that it is indisputable that at the time of execution of the Subordination Agreement and the IBL Loan Agreement, the Respondent N° 1 was aware of the cash collateral since it acknowledges that "*the Loan was not intended to be unsecured*".³¹⁷ Further, the Respondents N° 2 and N° 3 were also fully aware of the existence of the cash collateral as the cash collateral was provided by Mr. Mustafa, who is the Statutory Manager of the Respondent N° 2 and a board member/Chairman and ultimate majority owner of the Respondent N° 3. Moreover, the Claimant stresses that Mr. Mustafa represented both Respondents N° 2 and N° 3 in negotiating the IBL Loan and in entering into the Subordination Agreement and IBL Loan (as applicable) on their behalf (Exhibit N° C-41).³¹⁸

607. The Claimant argues that notwithstanding their knowledge of the cash collateral, the Respondents repeatedly denied the existence of the same and/or structured the Loan in a manner intended to mask the existence of the cash collateral. This is evident from the critical representations that were made to the Claimant by the Respondents regarding the IBL Loan and the Subordination Agreement from around 17 November 2011 (these representations are listed above under paragraph 402). The Claimant considers that this amounts to active *dol*.³¹⁹

³¹⁵ Statement of Reply and Defense to Counterclaim, p. 79, para. 178.

³¹⁶ Statement of Reply and Defense to Counterclaim, p. 80, para. 179.

³¹⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 13, para. 50.

³¹⁸ Statement of Reply and Defense to Counterclaim, p. 80, paras. 180-182.

³¹⁹ Statement of Reply and Defense to Counterclaim, p. 81, para. 183.

608. For the Claimant, the most telling misrepresentation by the Respondents N° 1 and N° 2 is Clause 7.1.6 of the IBL Loan Agreement, which expressly provides that (Exhibit N° C-7):³²⁰

*"[Korek] hereby represents, warranties and agrees with [IBL] as at the date of this Agreement, as follows: [...] the obligations of [Korek] in respect of the Loan and otherwise under this Agreement constitute, and at all times will constitute, the direct, general, unconditional, unsubordinated **unsecured** obligations of [Korek]."*

(Emphasis added by the Claimant).

609. The Claimant draws the Arbitral Tribunal's attention to the fact that any representation contained in the IBL Loan Agreement necessarily results from discussions between the Respondents N° 1 and N° 2 since the Respondent N° 2 would not have made any representations that were not required, and agreed to, by the Respondent N° 1. Further, the Claimant alleges that Clause 7.1.6 confirms that the Respondents N° 1 and N° 2 specifically negotiated and agreed on the false representation that the IBL Loan was unsecured. While the Respondent N° 1 attempts to argue that Clause 7.1.6 is not a representation made by itself, it has nonetheless committed *dol* under Article 209 COC (C-ER-41) (CER-Fadlallah-2, para. 14), as it expressly accepted a representation that it knew to be false. Therefore, both the Respondents N° 1 and N° 2 committed a *dol* by denying the existence of the cash collateral in the IBL Loan Agreement (CER-Fadlallah-2, para. 14).³²¹

610. The Claimant denies the Respondents' interpretation of Clause 7.1.6 of the IBL Loan Agreement, which interpretation contradicts the clear meaning of the clause and disregards the fact that, as an uncontroversial matter of global banking practice, the term "secured" refers to tangible security, i.e. *sureté réelle* (which is not the case of the Barzani Guarantee and the Revenue Account Requirement). In that respect, the Claimant reminds that as a basic principle of Lebanese law, contracts "*must be understood, interpreted and performed in conformity with good faith, fairness and **usages***" (emphasis added by the Claimant) (Article 221 COC) (Exhibit N° C-ER-41, pp. 103-104). The Claimant adds that had the parties wished to represent that the term "*unsecured*" only referred to future security granted by the Respondent N° 2, they should have so specified. Absent this, the Claimant cannot be expected to construe the representation in a way that distorts the clear meaning of the clause and contradicts the meaning it is given by the banking industry.³²²

³²⁰ Statement of Reply and Defense to Counterclaim, p. 81, para. 184.

³²¹ Statement of Reply and Defense to Counterclaim, p. 81, para. 185.

³²² Statement of Reply and Defense to Counterclaim, pp. 81-82, paras. 186-190.

611. In any event, the Claimant submits that the Respondents' *dol* is not premised solely on Clause 7.1.6 of the IBL Loan Agreement, but the multiple misrepresentations made to it by the Respondents in the lead up to execution of Clause 7.1.6 independently support a finding of *dol* (these misrepresentations are summarized above in paragraph 402).³²³
612. The Claimant further argues that it is entitled to rely on Clause 7.1.6 of the IBL Loan Agreement even though it is not a party to this agreement. It reminds that the principle of privity of contract defines the scope of the persons bound by a contract or entitled to derive rights from it, but it does not prevent third parties from referring to the provisions of the contract for interpretation purposes (CER-Fadlallah-2, para. 39). As a matter of Lebanese law, the principle of privity of contract means only that a contract may not "award rights" to, nor impose obligations upon, third parties (Article 225 COC) (Exhibit N° C-ER-41, p. 104). The principle of privity thus does not preclude third parties from invoking circumstances resulting from a contract they are not a party to. In any event, the Claimant stresses that it was the direct target of the Respondents' *dol* acts in the lead up to execution of the IBL Loan, therefore the fact that it is not formally a party to the IBL Loan Agreement is wholly irrelevant. In addition, the Claimant recalls that its representatives, in their capacities as members of the FPC and/or the KSC, were required to review and give consent to the proposed terms of the IBL Loan prior to the conclusion of the Subordination Agreement, which terms included the representation that the IBL Loan was unsecured.³²⁴
613. Moreover, the Claimant points out that the principle of subordination was originally intended to be inserted into the draft IBL Loan Agreement and it was thus at that stage potentially to be a party to the IBL Loan Agreement itself. However, a few days before the contract was signed, the Respondent N° 1 requested the document to be split so that the Subordination Agreement became a separate instrument (Exhibits N° C-84, C-90 and C-91). The Claimant therefore considers that it is indisputable that the two contracts are intimately linked and part of the same transaction ("*ensemble contractuel*"). Indeed, the Claimant explains that the Subordination Agreement and the IBL Loan Agreement are interrelated contracts that pursue the realization of the same economic goal (i.e. the extension of a loan to the Respondent N° 2) and must accordingly be interpreted in relation to each other (CER-Fadlallah-2, paras. 15-16). This is also confirmed by Clause 1.1 of the Subordination Agreement, which expressly states that the Claimant entered into the Subordination Agreement "*in consideration of IBL making a loan available to Korek pursuant to the Loan Agreement*" (Exhibit N° C-1) (CER-Zein-1, para. 64).³²⁵

³²³ Statement of Reply and Defense to Counterclaim, p. 83, para. 191.

³²⁴ Statement of Reply and Defense to Counterclaim, p. 83, paras. 192-193.

³²⁵ Statement of Reply and Defense to Counterclaim, p. 84, paras. 194-195.

614. Consequently, since in the present case the IBL Loan Agreement and the Subordination Agreement are interrelated contracts that must be interpreted in relation to each other, the Claimant submits that it is entitled to refer to the terms of the IBL Loan Agreement to demonstrate the nature and extent of its consent to the Subordination Agreement, being reminded that prior to consenting to the Subordination Agreement it was requested to review and approve the main terms of the IBL Loan Agreement on multiple occasions (CER-Fadlallah-2, para. 39; CER-Zein-1, paras. 65 and 73).³²⁶
615. Finally, the Claimant asserts that the Respondent N° 1's purported contractual right to secure additional collateral for the IBL Loan is irrelevant. Indeed, the Claimant argues that Clauses 6.2 and 6.4 of the IBL Loan Agreement are couched in hypothetical terms and must be read subject to Clause 7.1.6, which unequivocally says that "*the obligations of [Korek] in respect of the Loan...constitute, and at all times will* constitute [...] unsecured obligations of [Korek]" (emphasis added by the Claimant). Therefore, at best, Clauses 6.2 and 6.4 of the IBL Loan Agreement suggest that the Respondent N° 1 may have the right to hold security in respect of the IBL Loan in the future, although even this is not certain as a matter of contractual construction given the bolded part of Clause 7.1.6 above (Article 368 COC) (Exhibit N° C-LA-1, p. 5). In any event, the Claimant considers that the right to seek collateral in the future is fully consistent with the misrepresentation that there would be no existing cash collateral at the time of entry into the IBL Loan (CER-Griffiths-1, paras. 6.51-6.52). Overall, given the carefully orchestrated fraudulent scheme targeting the Claimant, it was legitimate for the latter to interpret Clauses 6.2 and 6.4 in a way that was consistent with the repeated representations made by the Respondents that the IBL Loan was unsecured. Indeed, the Claimant had no objective reason to interpret Clause 7.1.6 as having a meaning different from what it clearly stated.³²⁷
616. The Claimant adds that the Respondents further committed an act of active *dol* by insisting on and agreeing to terms of the IBL Loan that were consistent only with it being unsecured, those being (i) the requirement for the Subordination Agreement, (ii) the high interest rate of 13.25%, (iii) the Revenue Account Requirement and (iv) the Barzani Guarantee. The Claimant stresses that, as if that were not enough, the Respondent N° 1's letter requesting "*additional collateral*" further confirms the active *dol* insofar as it confirms the Respondent N° 1's willingness to knowingly collude with the Respondents N° 2 and N° 3 in not simply remaining silent, but seeking to actively deceive it as to the true nature of the security arrangements. Indeed, to the extent that the Respondent N° 1 already had cash collateral for more than 100% of the total principal amount of the IBL Loan, why would it require any additional collateral?³²⁸

³²⁶ Statement of Reply and Defense to Counterclaim, p. 84, paras. 196-197.

³²⁷ Statement of Reply and Defense to Counterclaim, pp. 85-86, paras. 198-200.

³²⁸ Statement of Reply and Defense to Counterclaim, p. 86, paras. 201-202.

(ii) Concealment ("*réticence dolosive*")

617. In addition (and/or in the alternative) to the Respondents being liable for positive acts of *dol*, the Claimant submits that the Respondents are liable for having concealed the existence of the cash collateral to obtain its consent to enter into the Subordination Agreement. This constitutes *réticence dolosive* under Lebanese law (Exhibits N° C-ER-5 to C-ER-7, C-ER-13 to C-ER-16 and C-ER-19).³²⁹
618. The Claimant states that, contrary to the Respondents' position, there is no specific legal pre-contractual duty to disclose as a condition to concealment, other than the obligation to inform resulting from the requirements of good faith and honesty in contractual dealings. Lebanese courts have indeed grounded contracting parties' pre-contractual obligation to inform on the principles of contractual loyalty and good faith so that each contracting party perfectly understands the scope of what he/she is agreeing to when entering into a contract (Exhibits N° C-LA-12 to C-LA-14, C-ER-42, pp. 103-104) (CER-Fadlallah-2, paras. 24-25).³³⁰
619. Therefore, the Claimant argues that the Respondents N° 1 and N° 2 had a duty to inform it of any material information, relating to the IBL Loan Agreement, which necessarily included the cash collateral (CER-Fadlallah-2, para. 36). It adds that a duty of loyalty and good faith applied to the Respondents during the pre-contractual negotiations, such that it had the right to obtain all important information concerning the IBL Loan, in particular information which was decisive for its own commitment (CER-Zein-1, para. 66). Further and in any event, the Claimant stresses that both mutual trust and the circumstances surrounding the contract required the Respondents to reveal any material information to it. In circumstances where the cash collateral rendered the Subordination Agreement wholly unnecessary and without commercial justification, the Claimant submits that it is indisputable that the existence of the cash collateral was information that ought to have been disclosed to all the participants to the transaction (Exhibit N° C-51) (CER-Griffiths-1, paras. 6.33 and 7.5).³³¹
620. The Claimant argues that the Respondents' concealment of the existence of the cash collateral is clearly evidenced by the following facts:³³²
- The various representations referred to in paragraph 402 above to the effect that the IBL Loan was "unsecured", which also formed the basis of the Corporate Approvals of the IBL Loan procured from the Claimant.
 - The Respondent N° 1's insistence upon the Subordination Agreement (as well as the requirement for the Barzani Guarantee and the Revenue Account Requirement), in circumstances where the loan was fully cash collateralised, which insistence was commercially unnecessary and intended to mislead the Claimant into believing that there was no cash collateral.

³²⁹ Statement of Reply and Defense to Counterclaim, pp. 87-88, paras. 203-204.

³³⁰ Statement of Reply and Defense to Counterclaim, pp. 88-89, paras. 206-208.

³³¹ Statement of Reply and Defense to Counterclaim, p. 90, paras. 209-212.

³³² Statement of Reply and Defense to Counterclaim, p. 91, para. 213.

- While cash collateral was an essential term of the transaction for the Respondent N° 1 (and was allegedly a regulatory requirement), and was therefore central to the Respondent N° 1's decision and ability to enter into the IBL Loan Agreement, the IBL Loan Agreement makes no mention of the existence of cash collateral (and in fact expressly represents to the contrary) (Exhibit N° C-LA-23) (CER-Griffiths-1, para. 6.10).
- The Respondents have a history of being evasive as regards the existence and source of the cash collateral. In particular, the correspondence confirms that the Claimant raised the issue of cash collateral with the Respondent N° 1 directly, repeatedly asking the latter to confirm what, if any, collateral it held with respect to the IBL Loan (four separate letters sent on 25 September 2017, 25 October 2017, 17 December 2017, and 21 March 2018). However, the Respondent N° 1 did not provide any substantive response. Further, the Claimant raised the matter repeatedly with Mr. Mustafa (on 31 October 2017, 1 and 19 November 2017) who failed to provide any credible explanation.
- The Respondents adopted the same conduct in the Share Pledge Arbitration and the DFIC Court proceedings.
- The Transfer Evidence establishes that Mr. Mustafa was, indeed, the provider of the cash collateral. Therefore, it is now incontrovertible that, as set out above: *"(1) all of the Respondents failed to acknowledge the very existence of the cash collateral arrangements until challenged with evidence in legal proceedings by IT Ltd (at which point this was finally admitted by IBL but not by IH/Korek); (2) all of the Respondents have to date actively concealed the fact that Mr. Barzani is the source of the cash collateral; and (3) IH, Korek and Mr. Barzani have all failed to give a bank-secrecy waiver to IBL to disclose this information."*³³³

621. The Claimant argues that the Respondents' far-fetched justifications for their behavior should be rejected. Firstly, with respect to the Respondent N° 1's reliance on the regulations issued by the BDL, in particular the BD 7055 (Exhibit N° R1-LA-7), the Claimant finds that it is unclear what conclusion the Respondent N° 1 draws from the fact that it complied with BDL regulations. It appears that the Respondent N° 1 implies that the Claimant should have been aware of its regulatory requirements. However, the Claimant asserts that this conclusion is fundamentally flawed as a matter of fact, law and banking practice (CER-Zein-1, paras. 93-98; CER-Fadlallah-2, para. 49). It is not for a bank's clients or counterparties to ascertain the banking regulations applicable to the bank.³³⁴

³³³ Statement of Reply and Defense to Counterclaim, p. 93, para. 213(i).

³³⁴ Statement of Reply and Defense to Counterclaim, pp. 93-94, paras. 214-218.

622. The Claimant contends that if the Respondent N° 1 implies that, as cash collateral was a regulatory requirement for it to grant the IBL Loan, the existence of the cash collateral is not objectionable, this is totally irrelevant, as it is not the existence of the cash collateral that is the subject of the present arbitration proceedings *per se*, but the fraudulent denial and concealment of the same towards the Claimant, and the Claimant's entry into the Subordination Agreement on this fraudulent premise. The Claimant argues that in fact, the Respondent N° 1's regulatory obligations undermine its case:³³⁵
- Given that the cash collateral was required pursuant to BD 7055, it is very surprising that the Respondent N° 1 insisted on obtaining the Subordination Agreement, the Barzani Guarantee and/or the Revenue Account Requirement (CER-Zein-1, paras. 91 and 99; CER-Griffiths-1, paras. 6.26-6.27).
 - Since cash collateral was a regulatory requirement and the single most important requirement to enable the Respondent N° 1 to make the loan, it is incomprehensible that its existence was not disclosed in Mr. Rayes' email dated 9 December 2011, forwarded to the Claimant, or referred to in the IBL Loan Agreement, whereas there was specific reference to the Barzani Guarantee and the Revenue Account Requirement.
623. Secondly, the Claimant contends that the Respondent N° 1's reliance on Article 1062 COC to argue that it was validly entitled to secure the cash collateral without obtaining the approval of, or informing, the Respondent N° 2 or the Claimant is completely irrelevant when it comes to *dol*. The Claimant explains that Article 1062 COC deals with the validity and the effects of a personal guarantee (caution) that is not disclosed to the debtor (or entered into against the debtor's will). Because the cash collateral is not a personal guarantee (caution), Article 1062 does not apply (CER-Fadlallah-2, para. 45). In any event, the Claimant adds that by no means does this Article prevent the existence of a *dol vis-à-vis* a third-party should the conditions for such *dol* be met (CER-Fadlallaf-2, para. 45; CER-Zein-1, para. 76).³³⁶
624. Thirdly, the Claimant reiterates that the Respondent N° 1 banking secrecy does not apply to the existence of the cash collateral, as distinct from the identity of its provider (CER-Zein-1, paras. 48-50). This is further admitted by the Respondent N° 1 itself, which has only belatedly disclosed the existence of the cash collateral in these proceedings (in its Statement of Defence and Counterclaim, paras. 31 and 62) (Exhibits N° C-22 and C-51 to C-55).³³⁷ Therefore, the Claimant argues that there was nothing to prevent the Respondent N° 1 from disclosing the existence of cash collateral when the IBL Loan was being negotiated, but the latter chose not to do so because it was part of the fraudulent scheme through which it also benefitted from the IBL Loan arrangements at zero risk to itself.³³⁸

³³⁵ Statement of Reply and Defense to Counterclaim, p. 95, paras. 219-220.

³³⁶ Statement of Reply and Defense to Counterclaim, pp. 96-97, paras. 221-225.

³³⁷ Statement of Reply and Defense to Counterclaim, pp. 97-98, paras. 226-228.

³³⁸ Statement of Reply and Defense to Counterclaim, p. 2, para. 2(e).

625. The Claimant further notes that the Respondent N° 1's approach to banking secrecy is highly inconsistent, contradictory and self-serving. Indeed, the Respondent N° 1 has selectively disclosed information relating to the Respondent N° 2 throughout the course of this arbitration. For instance, the Claimant stresses that the Respondent N° 1 provided information on:³³⁹

- The Respondent N° 2's payment history under the IBL Loan, both before and after the Respondent N° 1 declared an Event of Default.
- The Respondent N° 1's internal assessment of the Respondent N° 2's creditworthiness under the IBL Loan.
- The corporate approval and decision-making process of the Respondent N° 2 in relation to the receipt of external financing, including significant details thereof.
- The location of the Respondent N° 2's assets.

626. Fourthly, the Claimant denies that it was under a legal due diligence obligation. The Claimant reminds that any person invoking an obligation bears the burden to prove its existence (Article 362 COC) (Exhibit N° C-LA-1, p. 5). *In casu*, the Respondents provide no explanation as to the legal source of such a duty to investigate. Therefore, for this reason alone this argument should be dismissed. Moreover, the Claimant asserts that a banking practice can only be deemed to be known to professionals of the same specialty, in the case at hand, by Lebanese bankers, which was certainly not its case, namely a holding company incorporated in the UAE for the purpose of holding shares in an Iraqi telecommunications operator (Exhibits N° C-LA-14, C-LA-18, C-LA-23 and C-LA-23) (CER-Zein-1, paras. 81-82, 86, 95 and 96; CER-Fadlallah-2, paras. 49 and 52).³⁴⁰

(iii) Respondents' dol was determinative of the Claimant's consent to the contract

627. The Claimant states that, under Lebanese law, for the *dol* to lead to the annulment of the contract, it is necessary to prove that the fraudulent act has been determinative of the consent, i.e. that the victim of the *dol* would not have entered into the contract had it been aware of the truth (CER-Fadlallah-1, para. 30).³⁴¹

628. In the present case, the Claimant submits that it is self-evident that it would not have entered into the Subordination Agreement had it been aware of the existence of the cash collateral (CWS-Aziz-1, paras. 28, 48-49; CWS-Froissart-1, paras. 14, 16 and 23; CWS-Froissart-2, para. 14). Moreover, it cannot be disputed that the cash collateral renders the Subordination Agreement wholly unnecessary (and radically alters the entire loan arrangement). The Claimant contends that it would never have agreed to the scheme by which the IT-IH Shareholder Loan and the

³³⁹ Statement of Reply and Defense to Counterclaim, p. 98, para. 228.

³⁴⁰ Statement of Reply and Defense to Counterclaim, pp. 99-101, paras. 232-235.

³⁴¹ Statement of Reply and Defense to Counterclaim, p. 101, para. 236.

Korek Guarantee were subordinated to a *de facto* shareholder loan from Mr. Mustafa with priority repayment rights. Further, it would never have consented to a 13.25% interest rate had it known that the IBL Loan was fully cash collateralized, being stressed that this interest rate, already perceived as extremely onerous, was accepted on the understanding that the IBL Loan was unsecured, and by no means fully cash collateralized (CWS-Aziz-1, para. 49).³⁴²

629. In sum, the Claimant reminds that the evidentiary record confirms that Mr. Mustafa and the Respondent N° 1 entered into a secret kick back-arrangement whereby the latter agreed to kick back to Mr. Mustafa approximately 96% of the 13.25% interest payments made by the Respondent N° 2 to it (Exhibit N° C-51, p. 105). This meant that the Respondent N° 2 was in fact borrowing money from Mr. Mustafa who was benefitting from a priority right of repayment under the Subordination Agreement, in clear contradiction with the express terms of the IH SHA which expressly requires that any shareholder loans rank *pari passu* with each other (including the IT-IH Shareholder Loan) (Exhibit N° C-35, Clause 5.2(d)). Had the Claimant known about the true nature of the IBL Loan, IT Ltd would never have entered into the Subordination Agreement, and would have instead required that said loan comply with the terms of the IH SHA and therefore rank *pari passu* with the IT-IH Shareholder Loan (CER-Zein-1, para. 48; CER-Fadlallah-2, para. 17).

(iv) Intention to mislead for an unlawful purpose

630. The Claimant asserts that the victim of the *dol* is required under Lebanese law to prove that the maneuvers or the concealment were carried out with the intent to mislead (Exhibit N° R2/3-ER-3). According to Professor J. Ghestin, to establish the intention to mislead, it is sufficient to bring evidence that the other party knew (i) the truth and (ii) the importance of the hidden fact for the other party (Exhibit N° C-LA-16).³⁴³

631. The Claimant submits that it clearly results from the facts and the contemporaneous documentation that both conditions are met in the present case:³⁴⁴

- As signatories to the IH SHA, the Respondents knew full well that the Claimant would not agree to subordinate the IT-IH Shareholder Loan, the Korek Guarantee and/or the IH-Korek Loan to a shareholder loan provided by Mr. Mustafa (whether through CS Ltd or independently). Therefore, the Respondents orchestrated the secret "kick-back" scheme, by which Mr. Mustafa's *de facto* shareholder loan was masked as an arms' length loan from an external bank (i.e. the Respondent N° 1).

³⁴² Statement of Reply and Defense to Counterclaim, p. 101, para. 237 and p. 102, para. 239.

³⁴³ Statement of Reply and Defense to Counterclaim, p. 103, paras. 241-243.

³⁴⁴ Statement of Reply and Defense to Counterclaim, p. 103, para. 244.

- The hidden cash collateral was the fundamental feature of this scheme. At all times the Respondents knew the truth of the arrangement and knew of the importance the hidden fact would have for the Claimant Ltd and its willingness to enter into the Subordination Agreement.
- As can be seen from Mr. Mustafa's letter dated 7 December 2011, he had been in negotiations with the Respondent N° 1 expressly "*on behalf of Korek*" and had "*been able to obtain a commitment in principle from IBL*". It is clear, therefore, that Mr. Mustafa was acting on behalf of the Respondent N° 2 in the negotiations and in making representations about the prospective loan to the Claimant. The purpose of the letter was to lay out the in-principle agreement between the Respondents. All the key terms of the IBL Loan are mentioned in the letter (including the need for subordination by the Claimant and the Respondent N° 3, the Barzani Guarantee, the Revenue Account Requirement and the interest rate of 13.25%), except for the cash collateral. It can only be inferred that Mr. Mustafa and the Respondents had agreed to the cash collateral arrangement, but the same was deliberately omitted from the letter. This is corroborated by the date of transfer of the cash collateral as shown by the Transfer Evidence (i.e. 20 December 2011) which indicated that Mr. Mustafa and the Respondent N° 1 must have agreed on the provision of the secret cash collateral far in advance given the large sum of money involved.
- The same applies to the omission of the cash collateral in Mr. Mustafa's letter of 7 December 2011 (and the draft versions of the same), Mr. Rayes' email dated 9 December 2011 (Exhibit N° R2-13), the IBL Loan Agreement (in both draft and final form) and the relevant Corporate Approvals prepared at the direction of Mr. Junde (i.e. the written resolutions of the KSC and the IH Board).
- The Respondents actively misrepresent that the IBL Loan was unsecured by expressly stating as much in Clause 7.1.6, and also by including conditions (at the Respondent N° 1's instigation) that were specifically designed to give the impression that the IBL Loan was unsecured, i.e. the Barzani Guarantee, the Revenue Account Requirement and the 13.25% interest rate.
- The representation in Clause 7.1.6 of the IBL Loan Agreement was also repeated in every extension to the IBL Loan Agreement (Exhibit N° C-9 to C-12).
- The denial of the existence of the cash collateral was repeated at the KSC meeting of 13 October 2015 (Exhibit N° C-43, p. 5).
- The Respondents N° 2 and N° 3 have been continually evasive regarding the existence and source of the cash collateral in these and in related legal proceedings.

- It is difficult to see why the Respondents would have labelled the IBL Loan as "unsecured" and deployed considerable efforts towards concealing the existence of the cash collateral had it not been to mislead the Claimant into believing that the IBL Loan was not cash collateralised.

632. In view of the foregoing, the Claimant concludes that it is clear that the misrepresentation and concealment of the cash collateral were intentional (and indeed carefully orchestrated) and were done with the knowledge that it would never have agreed to the scheme, and in particular would never have agreed to the Subordination Agreement, had it known the truth.³⁴⁵

(v) The dol of one party in a multi-partite contract

633. The Claimant submits that all three Respondents were Parties to the Subordination Agreement and the *dol* of only one of the Respondents is sufficient to void the Subordination Agreement (Exhibit N° C-1). It adds that it does not have to establish that each of the Respondents is guilty of *dol* (although it is able to do so for the reasons set out above) in order for the Subordination Agreement to be set aside (CER-Fadlallah-2, paras. 18-19).³⁴⁶

(vi) Conclusion

634. Based on the above, Prof. Fadlallah contends that (CER-1, paras. 47 and 49):³⁴⁷

"IBL committed the fraud. Not only had IBL obviously knowledge of the cash collateral from which it benefited, it further contracted by denying this essential truth. Mr. BARZANI (the managing director of KOREK and chairman of IH), beneficiary of the manipulation and not a third party as such, and his associate Mr. RAHMEH (another director of IH and member of KOREK's supervisory committee), are active accomplices of the manoeuvres having led to this manipulation. [...]"

The existence of a cash collateral provided by Mr. BARZANI, who collects the interest thereon, completely modifies the transaction. In economic terms, this means that KOREK has secretly borrowed Mr. BARZANI's money at a rate of 12.75%, in addition to a commission for an unnecessary intermediary, the bank, and benefits from a repayment priority over the shareholder loan granted by IT. Such a transaction is not the one for which IT consented in the Subordination Agreement.

The bank's presence helped conceal the origin of the funds and give one of the partners, through the Subordination Agreement, priority over the other partner for the repayment of his debt.

Such a scheme is a misrepresentation about the substance of the transaction and disregards the affectio societatis existing between partners. It therefore also breaches the principles of contractual honesty and good faith."

³⁴⁵ Statement of Reply and Defense to Counterclaim, p. 106, para. 245.

³⁴⁶ Statement of Reply and Defense to Counterclaim, p. 102, para. 240.

³⁴⁷ Statement of Claim, p. 27, para. 77.

635. Accordingly, Prof. Fadlallah adds that the facts relied upon by the Claimant "*amount to fraud in the absence of which IT would not have consented to the Subordination Agreement. IT's consent having been vitiated, it follows that the Subordination Agreement is null and void*" (CER-1, para. 50). Further he notes that, in addition to having the Subordination Agreement declared null and void, the Claimant is also entitled to compensation for the loss it has suffered as result of the Respondents' fraud (CER-1, para. 50).³⁴⁸
636. The Claimant reiterates that it cannot be disputed that the Respondent N° 1 was an active participant in the fraud/*dol* in that it "dressed up" the IBL Loan as being an arms' length unsecured loan, not only in terms of the specific representations made, but also in its appearance as an unsecured loan as evidenced by (i) the requests for security in the form of a guarantee from the shareholders (the Barzani Guarantee), (ii) the requirement for the Respondent N° 2's operating revenues to be paid into an account held at the Respondent N° 1 itself (the Revenue Account Requirement), (iii) the extortionate interest rate that it charged for what was in reality a fully cash-collateralised loan and (iv) the requirement for subordination – subordination which it asserts is valid to this day and which effectively protects the Respondents N° 2 and N° 3 against calls on the IT-IH Shareholder Loan and the Korek Guarantee, allowing it (the Respondent N° 1) to continue to benefit from its portion of the interest paid by the Respondent N° 2 under the IBL Loan. According to the Claimant, there is no doubt that the Respondent N° 1 is willing to maintain this arrangement into perpetuity since it holds USD 155,000,000.00 in cash collateral and thus has no risk exposure regarding the IBL Loan.³⁴⁹
637. The Claimant concludes by stating that the Respondents acted in a deliberate and coordinated fashion to ensure that the IBL Loan had every appearance of an unsecured loan, in circumstances where the Statutory Manager of the Respondent N° 2 and Chairman of the Respondent N° 1 (Mr. Mustafa) was secretly providing cash collateral for the IBL Loan, effectively rendering it risk-free. Contrary to the Respondents' allegation, this was not an ordinary commercial agreement.³⁵⁰
638. As demonstrated by the above, all the conditions for *dol* are met in the present case. Therefore, the Claimant requests that the Arbitral Tribunal order the nullity of the Subordination Agreement and declare that the Respondents are in principle liable for damages as a result of the harm suffered by the Claimant from its entry into the Subordination Agreement.³⁵¹

³⁴⁸ Statement of Claim, p. 28, paras. 78-79.

³⁴⁹ Statement of Reply and Defense to Counterclaim, p. 2, para. 2(f).

³⁵⁰ Statement of Reply and Defense to Counterclaim, p. 3, para. 4.

³⁵¹ Statement of Reply and Defense to Counterclaim, p. 106, para. 245.

c Abuse of rights

639. Alternatively, the Claimant argues that the Respondent N° 1 is abusively invoking the Subordination Agreement. It submits that, irrespective of whether or not the relevant conduct amounts to *dol*, the Respondent N° 1's reliance on the Subordination Agreement amounts to an abuse of rights in circumstances where it holds cash collateral (CER-Fadlallah-1, para. 58). The Claimant asserts that the Respondent N° 1's abusive conduct has been to its detriment since it has been paralysed and prevented from enforcing the IT-IH Shareholder Loan/the Korek Guarantee for over five years, with no corresponding benefit to the Respondent N° 1 (CER-Fadlallah-2, para. 56).³⁵²

640. In that respect, Prof. Fadlallah therefore states that (CER-Fadlallah-1, para. 52):³⁵³

"The Term Loan Agreement is entirely guaranteed by a cash collateral provided by Mr. BARZANI, which IBL could enforce against at any time. Respondents' continued reliance on the Subordination Agreement, which prevents IT from enforcing the Shareholder Loan Agreement and the Guarantee issued in its favour by KOREK, and which is of no use to IBL because of the cash collateral, amounts per se to an abuse of rights."

641. The Claimant explains that abuse of rights is prohibited in Lebanese law pursuant to Article 124 COC (Exhibit N° C-ER-41). Lebanese Courts have held that the exercise of a right is abusive when it is harmful to another and the holder does not derive any personal interest from its exercise (Exhibit N° C-ER-38) (CER-Fadlallah-1, paras. 51, 55 and 56). Where a party exercises a right in such a way that either exceeds the limits set by *bona fides* or the purpose for which such right was granted and thereby causes prejudice to another and/or does not derive a personal benefit therefrom, such conduct amounts to an abuse of rights under Lebanese law (CER-Fadlallah-1, para. 51). Therefore, as such, abuse of rights does not require there to be an intention to harm or bad faith (CER-Fadlallah-1, para. 54) and, even where a party acts in good faith, its objective conduct may amount to an abuse of rights where the above objective criteria are met (CER-Fadlallah-1, para. 54).³⁵⁴

642. *In casu*, the Claimant stresses that the Respondent N° 1 does exercise rights under the Subordination Agreement by continuously invoking its priority rights against the Claimant (Exhibits N° R1-4 to R1-6). The Claimant further reminds that the priority right held by the Respondent N° 1 under the Subordination Agreement ensures that, if the Respondent N° 2 defaults on the IBL loan, the Respondent N° 1 is entitled to a full repayment pursuant to the IBL Loan Agreement before the Claimant can be repaid pursuant to the IT-IH Shareholder Loan and the Korek Guarantee. In other words, the Subordination Agreement does not purport to prevent the Claimant from being repaid, it simply implies that once an Event of Default occurs under the IBL Loan, a certain ranking among the creditors should be observed. Therefore, the Claimant asserts that by abusively maintaining the IBL

³⁵² Statement of Claim, p. 28, paras. 80-81; Statement of Reply and Defense to Counterclaim, p. 106, para. 247.

³⁵³ Statement of Claim, p. 28, para. 82.

³⁵⁴ Statement of Claim, p. 28, paras. 80-81; Statement of Reply and Defense to Counterclaim, p. 107, paras. 249-252 and p. 111, para. 264.

Loan and the Subordination Agreement the Respondent N° 1 prevents the Claimant from ever being repaid.³⁵⁵

643. The Claimant argues that the Respondent N° 1 distorts the purpose of the Subordination Agreement by using for over five years its priority right. Indeed, the Respondent N° 1 is using its priority right under the Subordination Agreement for a purpose that is different from its natural purpose: while it notified the Respondent N° 2 of an Event of Default under the IBL Loan in July 2015 (and again in September 2015), the Respondent N° 1 has since failed to take any steps to enforce the IBL Loan, while continuing to get paid interest and utilisation fees. The Claimant contends that this conduct amounts to a breach of the Respondent N° 1's regulatory obligations under Lebanese law.³⁵⁶

644. The Claimant insists on the fact that the Respondent N° 1's failure to exercise its right to repayment under the IBL Loan Agreement leads to a situation in which its priority right is not being used to collect the amounts due and payable to it under the IBL Loan, which is the true function of a subordination agreement. Instead, the Claimant stresses that, due to the Respondent N° 1's behaviour, the priority right functions as part of a fraudulent scheme, preventing the Claimant from exercising its repayment rights, while the Respondent N° 1 reaps the benefit of a 0.9% return on a risk-free investment (USD 1,350,000.00 p.a.) into perpetuity (with Mr. Mustafa receiving the balance. i.e. approximately USD 160 million over nine years). This *status quo* will continue until the Respondent N° 2 repays the IBL Loan or the Respondent N° 1 decides to enforce the IBL Loan Agreement (which, based on events to date, is unlikely to ever happen), there being no evidence of the Respondents' intentions to enforce or repay the IBL Loan. However, the Claimant reminds that the Respondent N° 1 can at any time enforce the IBL Loan against Mr. Mustafa's cash collateral.³⁵⁷

645. In view of the above, the Claimant submits that the Respondent N° 1's failure to enforce the IBL Loan Agreement for over five years, whilst enforcing the Subordination Agreement against it, is insurmountable evidence of the Respondent N° 1's bad faith and abuse of rights. Further, this confirms the deliberate *manœuvres dolosives* which induced the Claimant to enter into the Subordination Agreement (CER-Fadlallah-1, para. 58).³⁵⁸

646. The Claimant states that the Respondent N° 1 cannot justify its abusive behaviour by trying to hide behind its discretionary right not to enforce the IBL Loan. The Claimant does not deny that the Respondent N° 1 has discretion to determine whether to enforce against the main debtor, the guarantor or the cash collateral provider. However, *in casu*, the Claimant stresses that the Respondent N° 1 has not exercised its discretion for over five years since it first called an Event of Default under the IBL Loan and, in circumstances where the latter is in parallel enforcing

³⁵⁵ ; Statement of Reply and Defense to Counterclaim, p. 108, para. 255 and p. 109, para. 258.

³⁵⁶ Statement of Reply and Defense to Counterclaim, p. 109, para. 259.

³⁵⁷ Statement of Reply and Defense to Counterclaim, p. 110, paras. 260-261.

³⁵⁸ Statement of Reply and Defense to Counterclaim, pp. 110-111, paras. 261-265.

the Subordination Agreement, the failure to exercise its discretion to enforce the IBL Loan is an additional abuse of rights and amounts to bad faith in that it deliberately impedes the repayment of the IT-IH Shareholder Loan.³⁵⁹

647. Moreover, the Claimant submits that the Respondent N° 1 also cannot hide behind the allegation that it is "*customary practice in Lebanon that a bank does not seek immediate enforcement against a borrower and the security relating to a loan, unless such loan becomes doubtful or irrecoverable, pursuant to the provisions of the Basic Decision No. 7159 dated 10 November 1998 issued by BDL on the classification of loans*".³⁶⁰ According to the Claimant, the Respondent N° 1's refusal to enforce the IBL Loan has no legitimate justification since it knows full well that, as the IBL Loan is fully cash collateralised in USD, there is no chance that the value of the security will be diminished or jeopardised, including if the Claimant were to enforce the IT-IH Loan and/or Korek Guarantee. Therefore, the Claimant states that there is no doubt that the Respondent N° 1 has no concern whatsoever with respect to the Respondent N° 2's financial strength or performance, or whether it will ever repay any part of the principal amount owing under the IBL Loan. The Claimant is of the opinion that the Respondent N° 1's failure to enforce the IBL Loan Agreement is part and parcel of the fraudulent scheme between the Respondents and is intended to prevent the Claimant from collecting its debt, indefinitely, by virtue of the Subordination Agreement.³⁶¹

648. Accordingly, the Claimant concludes that the Respondent N° 1 is liable to the Claimant for the losses caused by its abusive invocation of the Subordination Agreement preventing it from recovering the amounts due from the Respondents N° 2 and N° 3 under the IT-IH Loan and the Korek Guarantee (CER-1, para. 58).³⁶² Therefore, the Claimant requests the Arbitral Tribunal to order the Respondent N° 1 to compensate it for its harm under principles of tortious liability as set out under Article 134 COC and to cease invoking the Subordination Agreement (Exhibits N° C-LA-17 and C-LA-36).³⁶³

d Has the Subordination Agreement expired?

(i) The term of the Subordination Agreement is linked to the maturity of the IBL Loan

649. The Claimant submits that the term of the Subordination Agreement is linked to the maturity of the IBL Loan, i.e. the latest date on which the Respondent N° 1, as senior lender, was supposed to be repaid and as such it has expired in June 2015 (upon expiry of the third extension), before the Respondent N° 1 sent its first notice of default on 9 July 2015 purporting to invoke the terms of the Subordination

³⁵⁹ Statement of Reply and Defense to Counterclaim, pp. 111-112, paras. 266-270.

³⁶⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 37, para. 180.

³⁶¹ Statement of Reply and Defense to Counterclaim, p. 112, paras. 271-272.

³⁶² Statement of Claim, p. 29, para. 83.

³⁶³ Statement of Claim, p. 29, para. 83; Statement of Reply and Defense to Counterclaim, p. 113, paras. 273-275.

Agreement, or within a reasonable time thereafter (CER-1, para. 60).³⁶⁴ Indeed, since the Subordination Agreement does not contain a maturity or termination date, the Parties repeatedly linked the term of the Subordination Agreement to the maturity date of the IBL Loan by extending it simultaneously as extending the IBL Loan through supplemental agreements (Exhibits N° C-9 to C-13, R1-23 and R1-24) (CER-Fadlallah-1, para. 60; CER-Fadlallah-2, para. 62).³⁶⁵

650. The Claimant asserts that these extensions demonstrate that the Parties decided to link the term of the Subordination Agreement with the term of the IBL Loan Agreement as it is further confirmed in the recitals of the Subordination Supplementals (Exhibits N° C-10 and C-12) (CER-Fadlallah-1, para. 60; CER-Fadlallah-2, para. 63).

651. Consequently, the Claimant argues that the term of the Subordination Agreement has expired at the maturity date of the Long Term Loan on 21 June 2015, thereby entitling it to recover the amounts due from the Respondents N° 2 and N° 3 under the IT-IH Shareholder Loan and the Korek Guarantee (CER-Fadlallah-1, paras. 60 and 68; CER-Fadlallah-2, para. 63).³⁶⁶ In any event, and in light of Lebanese banking regulations, the Claimant notes that the Subordination Agreement shall be considered to have expired after the lapse of a reasonable period of time upon the maturity of the IBL Loan, which could correspond in the present case to 180 days after the maturity date of the Long Term Loan (i.e. before the end of 2015) (CER-Fadlallah-2, para. 75; CER-Zein-1, para. 120).³⁶⁷

652. The Claimant adds that the term of the subordination mechanism (as opposed to the term of the Subordination Agreement), namely the Respondent N° 1's right to invoke its priority right under the Subordination Agreement, was in turn dependent on the Respondent N° 2's default on the IBL Loan being notified in writing by the Respondent N° 1 to the Claimant and the Respondent N° 3 at a time when the Subordination Agreement was still in full force and effect (Clause 1.2) (Exhibit N° C-1).³⁶⁸

653. *In casu*, it is reiterated that the Subordination Agreement was systematically renewed by the Parties from 2011 to 2015, but the Parties nevertheless failed to renew it in 2015 (CER-Fadlallah-2, para. 62). Indeed, while the Respondent N° 1 was aware that the Respondent N° 2 was in default as early as February 2015 on the Short Term Loan, it failed to request a further extension of the Subordination Agreement and waited until 9 July 2015 to send the Claimant a notice of default and purport to invoke its priority right under the Subordination Agreement, namely after the expiry of the Subordination Agreement on 21 June 2015 (Exhibit N° C-13). Furthermore, the maturity date of the Short Term Loan expired on 31 January 2015, i.e. during the validity of the Subordination Agreement, however the

³⁶⁴ Statement of Claim, p. 29, paras. 84-85.

³⁶⁵ Statement of Reply and Defense to Counterclaim, p. 114, para. 276(a) and p. 115, paras. 278-279.

³⁶⁶ Statement of Claim, p. 29, paras. 84-85 and p. 30, para. 87; Statement of Reply and Defense to Counterclaim, p. 116, para. 281.

³⁶⁷ Statement of Reply and Defense to Counterclaim, p. 116, para. 282.

³⁶⁸ Statement of Reply and Defense to Counterclaim, p. 114, para. 276(b).

Respondent N° 1 failed to notify the Claimant of an Event of Default. As for the Long Term Loan, the Claimant stresses that the Respondent N° 1 failed to enquire with the Respondent N° 2 whether it intended to pay the loan on its maturity date, i.e. on 21 June 2015.³⁶⁹

654. Consequently, the Claimant points out that the Respondent N° 1 triggered the subordination mechanism at a time when the Subordination Agreement had already expired.³⁷⁰

655. Alternatively, the Claimant contends that the Respondent N° 1's notice of default was of no effect as it is fictitious (CER-Fadlallah-2, para. 73). Indeed, the Claimant argues that the Respondent N° 1 has never intended to give the notice of default the effects conferred to such notice in the IBL Loan Agreement. The Claimant states that the Respondent N° 1 sent its notice of default as a consequence of the Claimant having sent its own notice under the IT-IH Shareholder Loan, with the sole purpose of activating the Subordination Agreement and blocking the Claimant from collecting its debt. In that respect, the Claimant stresses that the events following the notice of default are telling as since the Respondent N° 1 has sent the notice of default in July 2015, it has never sought either to obtain payment of the principal of the Respondent N° 2's debt nor to exercise its rights over the cash collateral, even putting itself at risk from a regulatory perspective (CER-Fadlallah-2, para. 72).³⁷¹

656. In view of the above, the Claimant submits that the notice of default was an instrument purporting to implement the secret scheme orchestrated by the Respondents, who never intended this notice to trigger any repayment. Consequently, as the notice of default is a fictitious and a simulated act, the Respondent N° 1 is prevented from invoking it against third parties to the IBL Loan, such as the Claimant. Further, the Claimant reiterates that, given that there has been no extension of the Subordination Agreement beyond the maturity of the IBL Loan and that the Respondent N° 1 is deemed to have sent no notice of default, the Subordination Agreement has necessarily expired.³⁷²

(ii) *The Subordination Agreement can be unilaterally terminated*

657. The Claimant states that, even if the Arbitral Tribunal were to find that the Subordination Agreement has not expired (which it has), and the notice of default was not fictitious (which it was), it is in any event entitled to unilaterally terminate the Subordination Agreement as a result of the prohibition on perpetual undertakings (CER-Fadlallah-1, para. 65; CER-Fadlallah-2, para. 71).³⁷³

³⁶⁹ Statement of Reply and Defense to Counterclaim, pp. 117-120, paras. 285-299.

³⁷⁰ Statement of Reply and Defense to Counterclaim, p. 118, paras. 290 and 293.

³⁷¹ Statement of Reply and Defense to Counterclaim, p. 120, paras. 300-302.

³⁷² Statement of Reply and Defense to Counterclaim, p. 121, paras. 303-304.

³⁷³ Statement of Claim, p. 29, para. 86; Statement of Reply and Defense to Counterclaim, p. 121, para. 305.

658. The Claimant argues that the term of the Subordination Agreement is dependent upon the sole attitude of the Respondent N° 1, which has had the power to extend the Subordination Agreement without limitation. However, *in casu*, the Subordination Agreement has an indefinite term since the subordination of the Claimant's rights has been ongoing now for over five years while the Respondent N° 1 has failed to take any actions whatsoever to recover the IBL Loan from the Respondent N° 2. According to the Claimant, the Respondent N° 1's failure to enforce the IBL Loan, notwithstanding the existence of the cash collateral, the Barzani Guarantee and the Revenue Account Requirement, clearly demonstrates that it has no intent to recover the IBL Loan from the Respondent N° 2. To the contrary, the Respondent N° 1 is content with the *status quo* knowing that it can continue to hold Mr. Mustafa's USD cash collateral and earn 0.9% p.a. on USD 150 million into perpetuity at no risk to itself. Therefore, the Respondent N° 1 has no incentive to enforce the IBL Loan and thereby allow the Subordination Agreement to fall away (Exhibit N° R1-14).³⁷⁴
659. The Claimant contends that it clearly results that the Respondent N° 1 has thereby deliberately created a stalemate by declaring the IBL Loan in default while continuously receiving payments of interest under that loan and refusing to enforce the IBL Loan (CER-Fadlallah-2, para. 70). Consequently, the Claimant submits that it is entitled to unilaterally terminate the Subordination Agreement by virtue of the prohibition against perpetual undertakings (CER-Fadlallah-1, paras. 63-65; CER-FADlallah-2, para. 71) provided it has observed a reasonable notice period (which corresponds here to the reasonable period of time the Respondent N° 1 had to exercise its right under the IBL Loan Agreement).³⁷⁵
660. The Claimant concludes by requesting the Arbitral Tribunal to declare that it duly terminated the Subordination Agreement upon the commencement of this arbitration in 26 June 2018 (CER-FADlallah-1, para. 64; CER-FADlallah-2, paras. 70-74).³⁷⁶

e Has the Subordination Agreement lapsed?

661. The Claimant argues that the Subordination Agreement has lapsed on the basis of lack of cause following the deregistration of the Respondent N° 3's shareholding interest (and thus the loss of the Claimant's indirect shareholding interest) in the Respondent N° 2 by virtue of the KCR Decree in March 2019 (CER-Fadlallah-1, para. 70; CER-Fadlallah-2, para. 86).³⁷⁷

³⁷⁴ Statement of Reply and Defense to Counterclaim, pp. 121-122, paras. 306-308.

³⁷⁵ Statement of Reply and Defense to Counterclaim, p. 122, para. 309.

³⁷⁶ Statement of Reply and Defense to Counterclaim, pp. 123-124, paras. 310-314.

³⁷⁷ Statement of Claim, p. 30, paras. 88-89; Statement of Reply and Defense to Counterclaim, p. 124, para. 315.

662. The Claimant explains that, although the concept of lapse is not formally enshrined in the COC, Lebanese law defines lapse (*caducité*) as the non-retroactive termination of a contract due to the disappearance of one of the objective elements required for its validity, which includes circumstances where the underlying reason or motivation for a contract subsequently disappears, where such reason/motivation was known to both parties (CER-Fadlallah-1, paras. 69, 72 and 83 to 86). In sum, the disappearance of the cause of a contract leads to the lapse of the said contract where the cause of the contract was known to both contracting parties and was thereby incorporated into the contractual field (CER-Fadlallah-1, para. 69). Lebanese scholars have observed that, because the cause of a contract is a condition for its validity, the extinguishment of a contract's cause extinguishes the contract, i.e. leads to the *caducité* of the contract (Exhibits N° C-LA-19 to C-LA-21).³⁷⁸
663. In the present case, the Claimant contends that the Subordination Agreement has lapsed because the cause of the agreement for itself has disappeared upon the cancellation of its indirect legal shareholding in the Respondent N° 2 by the KCR Decree of 19 March 2019, i.e. the deregistration of the Respondent N° 3's shareholding in the Respondent N° 2. Indeed, the Claimant's primary reason for entering into the Subordination Agreement was its status as indirect shareholder of the Respondent N° 2, which justified the subordination of its shareholder loan to an alleged unsecured loan granted by a third-party bank. This can be inferred from Clause 1.1 of the Subordination Agreement which expressly provides that the Claimant and the Respondent N° 3 agreed to subordinate the Subordinated Liabilities (as defined) "[i]n consideration of IBL **making a loan available to Korek pursuant to the IBL Loan Agreement**" (emphasis added by the Claimant) (Exhibit N° C-1) (CWS-Froissart-1, paras. 15-16).³⁷⁹
664. Consequently, the Claimant submits that the disappearance of its indirect shareholding interest in the Respondent N° 2 means that the Subordination Agreement, initially designed to support its indirect investment in the Respondent N° 2, is reduced to a burden without any consideration for it (CER-Fadlallah-1, para. 87; CER-Fadlallah-2, para. 86).³⁸⁰ The Claimant insists on the distinction to be made between the object of the Subordination Agreement and its cause (Article 200 COC) (CL-ER-41) (CER-Fadlallah-2, para. 87). While the object of the Subordination Agreement is to be found in the priority right of payment afforded to the Respondent N° 1, the Claimant's essential cause to enter the Subordination Agreement originated from its indirect shareholding in the Respondent N° 2. It is therefore logical to find that the Subordination Agreement lapsed at the very moment the Claimant was deprived of the essential cause it had in the Subordination Agreement.³⁸¹

³⁷⁸ Statement of Claim, p. 30, paras. 88-89; Statement of Reply and Defense to Counterclaim, pp. 124-125, paras. 317-321.

³⁷⁹ Statement of Claim, p. 30, para. 90; Statement of Reply and Defense to Counterclaim, pp. 125-126, paras. 322-324.

³⁸⁰ Statement of Reply and Defense to Counterclaim, p. 126, para. 325.

³⁸¹ Statement of Reply and Defense to Counterclaim, pp. 126-127, paras. 326-329.

665. The Claimant concludes that the Subordination Agreement has lapsed following the deregistration of the Respondent N° 3's legal shareholding interest (and thus the loss of its indirect shareholding interest) in the Respondent N° 2 by virtue of the KCR Decree of 19 March 2019 (CER-Fadlallah-1, para. 70).

f Respondents' alleged disclosure failures (Document Production Process)

666. The Claimant recalls that, on 20 May 2020, the Arbitral Tribunal ordered the Respondents N° 2 and N° 3 to produce documents (hereinafter referred to as the "**IH/Korek Decision**") in response to no less than 17 (in whole or in part) of the Claimant's 20 Requests to Produce (hereinafter referred to as the "**IH/Korek Requests**"). On 3 June 2020, the Respondents N° 2 and N° 3 produced only 3 documents in response to the IH/Korek Requests (Exhibits N° C-65, C-65A, C-66, C-83 and C-94). On 18 June 2020, the Respondents N° 2 and N° 3 then produced one further responsive document. Therefore, as at the date of the filing of the Statement of Reply and Defense to Counterclaim, the Respondents N° 2 and N° 3 disclosed 4 documents which is patently inadequate. The Claimant addressed the Respondents N° 2 and N° 3's justifications for their disclosure failure which excuses were wholly unsatisfactory (Exhibits N° C-68 to C-73).³⁸²

667. Therefore, the Claimant invites the Arbitral Tribunal to infer that any evidence that the Respondents N° 2 and N° 3 could and should have produced would not have assisted their case. Given the Respondents N° 2 and N° 3's manifest disclosure failings, the Arbitral Tribunal should draw the following adverse inferences (without limitation), such adverse inferences being further justified by the fact that the Respondents N° 2 and N° 3 have failed to provide evidence from any witnesses of fact:³⁸³

- a. *The Respondents deliberately intended to mislead IT Ltd and conceal the existence of the cash collateral provided by Mr. Barzani.*
- b. *This concealment caused Korek's financing options to be significantly (and artificially) stymied.*
- c. *IBL and Mr. Barzani, unbeknownst to IT Ltd, colluded to create the 'kick-back' arrangement detailed above, whereby Mr. Barzani received 96% of the interest paid by Korek on the IBL Loan.*
- d. *The interest rate of 13.25% charged by IBL on the IBL Loan was grossly and knowingly inflated in circumstances where the IBL Loan was fully cash collateralised.*
- e. *The concealment of the cash collateral and the grossly inflated interest rate were designed to mask the fact that the IBL Loan was in truth a de-facto shareholder loan, and thereby ensure that Mr. Barzani's loan ranked senior to the IT-IH Shareholder Loan, the Korek Guarantee and the IH-Korek Loan."*

³⁸² Statement of Reply and Defense to Counterclaim, pp. 61-64, paras. 130-137.

³⁸³ Statement of Reply and Defense to Counterclaim, p. 65, paras. 138-139.

668. As to the Respondent N° 1's disclosure failures, the Claimant notes that, on 20 May 2020, the latter was ordered to produce documents in respect of 9 requests (hereinafter referred to as the "**IBL Decision**"). Upon a further order from the Arbitral Tribunal dated 22 June 2020, the Respondent N° 1 produced 2 documents which were heavily redacted and are of limited evidential value. The Claimant states that it submitted its position on the Respondent N° 1's disclosure in correspondence (Exhibits N° C-75 to C-80 and C-82). Therefore, the Arbitral Tribunal is invited to infer that any evidence that the Respondent N° 1 could and should have produced would not have assisted its case.³⁸⁴

2 The Respondent N° 1's position

a Introduction

669. The Respondent N° 1 will demonstrate below that it acted in compliance with its legal and contractual obligations and that the Claimant's allegations are unfounded, unsubstantiated and must be rejected as being made in bad faith. It reminds that in the factual section above it demonstrated that (i) it acted in good faith, (ii) the entry into the Subordination Agreement was a condition to the entry into the IBL Loan Agreement, without which it would not have granted the Loan and the investments of all of the direct and indirect shareholders of the Respondent N° 2 would have been jeopardized, (iii) it is customary banking practice to subordinate shareholders' loans to banking loans and seek collateral (which is also, in this case, a regulatory requirement) and (iv) the Subordination Agreement did not include a provision that the so-called "unsecured" nature of the Loan was a condition for the execution of said agreement by the Claimant. Based on these outlined facts and in application of the provisions of Article 221 COC (Exhibit N° R1-LA-1), the Respondent N° 1 submits that the Subordination Agreement is a valid contract that was lawfully formed based on a valid "cause" and is therefore binding on the Parties thereto and must be interpreted in good faith and in line with customary practice.³⁸⁵

b Fraud/*Dol*

670. The Respondent N° 1 points out the distinction to be made between the notion of fraud and the notion of *dol* (Exhibits N° R1-LA-11 to R1-LA-13).³⁸⁶ It then addresses the elements of *dol* that should be cumulatively met pursuant to Articles 208 and 209 COC, which burden of proof lies on the Claimant according to Article 219 COC (Exhibits N° R1-LA-14 to R1-LA-17). The three conditions to be met for a *dol* act to be retained are the following:³⁸⁷

- First, the perpetrator of the *dol* should have committed a material act which would have led the other party to enter into the contract.

³⁸⁴ Statement of Reply and Defense to Counterclaim, pp. 65-66, paras. 140-141.

³⁸⁵ Respondent N° 1's Statement of Defence and Counterclaim, p. 25, paras. 115-117.

³⁸⁶ Respondent N° 1's Statement of Defence and Counterclaim, p. 30, paras. 146-151.

³⁸⁷ Respondent N° 1's Statement of Defence and Counterclaim, pp. 30-31, paras. 152-156; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 54, paras. 239-240.

- Second, the perpetrator of the *dol* should have the intention to deceive the other party and cause it to enter into the contract as a result of the illusion created in the perception of the deceived party, arising from the *dol* act.
- Third, the impact of the *dol* act should be determinative and material in leading the other party to enter into the contract.

671. The Respondent N° 1 submits that the Claimant has failed to prove that (i) it committed a fraudulent act, (ii) it had the intention to deceive the Claimant and (iii) the so-called deception had a determinative impact on the Claimant's decision to enter into the Subordination Agreement. Further, the Respondent N° 1 stresses that the Claimant failed to show that the *dol* of one party in a multi-partite contract is sufficient to void the contract.³⁸⁸

672. Before addressing the issue of the alleged *dol*, the Respondent N° 1 invites the Arbitral Tribunal to be cautious when considering arguments made by the Claimant based on French sources. Although it is not disputed that French sources can be persuasive in many contexts, they are never binding on any Lebanese Court, especially in the absence of an equivalent provision in Lebanese law (Exhibit N° R1-LA-64).³⁸⁹

(i) The valid execution of the Subordination Agreement

673. The Respondent N° 1 submits that the Subordination Agreement was validly formed in accordance with the provisions of the COC and, therefore, is and must remain in full force and effect (Exhibits N° R1-La-2, R1-LA-57 and R1-LA-58).³⁹⁰

674. Pursuant to Article 268 COC, Lebanese contract law expressly recognizes the principle of the seniority of certain creditors to others, as it clearly allows creditors to agree on preference rights among themselves, whereby one creditor would, for example, contractually agree to subordinate its right of repayment in favour of a senior creditor of the same debtor for legitimate causes (Exhibit N° R1-LA-2). The Respondent N° 1 states that this is what the Subordination Agreement provides by granting it a right of preference to collect its Loan from the Respondent N° 2 in priority to the Claimant's Shareholder Loan Agreement for a legitimate cause.³⁹¹

675. The Respondent N° 1 further relies upon Articles 177 and 200 COC and argues that the "cause" (and the "*motif determinant*" of the Subordination Agreement, which is assimilated to the "cause") is to grant it a right of preference over the Claimant, and to prioritize the Loan over the Shareholder Loan Agreement and the Korek Guarantee, as of the date that an event of default occurs under the IBL Loan Agreement (Exhibits N° R1-LA-3 to R1-LA-5). The Respondent N° 1 stresses that the "cause" of the Subordination Agreement further resides in the fact that the

³⁸⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 54, para. 241.

³⁸⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 55, para. 242.

³⁹⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 25, para. 119; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 46-48, paras. 195-206.

³⁹¹ Respondent N° 1's Statement of Defence and Counterclaim, pp. 25-26, paras. 120-122

Subordination Agreement was an essential condition required by it, without which it would not have granted the Loan and this is reflected in Clause 1.1 of the Subordination Agreement, which stipulates, *inter alia*, that the Subordination Agreement is entered into "*in consideration of IBL making a loan available to Korek [...]*" (Exhibit N° C-1). It is further reflected in the fact that the Subordination Agreement was entered into on 14 December 2011, a week before the entry into the IBL Loan Agreement.³⁹²

676. The Respondent N° 1 reminds that the Claimant, as an indirect shareholder of the Respondent N° 2, benefitted from the Loan as it was in its interest at the time to enter to the Subordination Agreement to protect its own investment in the Respondent N° 2. Therefore, according to the Respondent N° 1, the Claimant agreed to enter into the Subordination Agreement to subordinate its rights under the Shareholder Loan Agreement and Korek Guarantee for a valid reason, being its clear interest to protect its investment in Respondent N° 2 from being jeopardized because of a potential loss of the License.³⁹³

677. Consequently, the Respondent N° 1 submits that the entry into the Subordination Agreement is consistent with the provisions of Article 268 COC and the Subordination Agreement was therefore lawfully formed under Lebanese Law and is a valid contract that remains valid until today.³⁹⁴

(ii) The IBL Loan complies with Lebanese laws and regulations

678. The Respondent N° 1 asserts that, for the purpose of establishing its "fraudulent scheme" theory, the Claimant misinterprets the terms and conditions of the IBL Loan Agreement to groundlessly conclude that the Loan was not extended on an arms' length basis and that it was "dressed up" as an "unsecured" loan. However, the Claimant is unjustly attempting to escape its obligations under the Subordination Agreement. Contrary to the Claimant's allegations, the Respondent N° 1 argues that the IBL Loan was extended to the Respondent N° 2 on an arms' length basis and that the terms and conditions of the loan were customary and compliant with Lebanese laws and banking practices and regulations.³⁹⁵

679. The Respondent N° 1 asserts that the Claimant violates the principle of contractual freedom under Lebanese law in evaluating the terms and conditions of the Loan Agreement, this principle providing that the parties to a contract are free to form their contractual relationships as they see fit (Article 166 COC) (Exhibits N° R1-LA-49 and R1-LA-50). *In casu*, all the parties to the IBL Loan Agreement, i.e. the Respondents N° 1 and N° 2 and the guarantor were free to form their contractual relationship as they saw fit.³⁹⁶

³⁹² Respondent N° 1's Statement of Defence and Counterclaim, p. 26, paras. 123-126.

³⁹³ Respondent N° 1's Statement of Defence and Counterclaim, p. 22, para. 127.

³⁹⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 27, para. 128.

³⁹⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 41-42, paras. 163-169.

³⁹⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 43, paras. 172-178.

680. First, the Respondent N° 1 contends that there is no legal basis to argue that the interest rate under the IBL Loan Agreement is excessive. The Respondent N° 1 reminds that, pursuant to Article 257 of the Lebanese Code of Commerce (hereinafter referred to as the "**LCC**"), the legal interest rate is set at 9% in commercial matters (Exhibit N° R1-LA-51). In commercial matters, it is permitted to set an interest rate that is higher than the legal interest rate (Exhibit N° R1-LA-52), Article 6(4) LCC stipulating that banking operations are commercial operations by nature (Exhibits N° R1-LA-53 and R1-LA-54). Therefore, the Respondent N° 1 submits that under Lebanese law, the interest rate set in loan agreements is not subject to any ceiling (Exhibits N° R1-LA-55 and R1-LA-56).³⁹⁷
681. Consequently, the Respondent N° 1 contends that there is no legal basis for the Claimant's allegation that the interest rate set under the IBL Loan Agreement is excessive, especially that this interest rate was agreed upon between the contracting parties and was duly approved by all concerned persons, including the Claimant, being stressed that the interest rate on the IBL Loan (a loan granted by a third party bank on an arms' length basis) is lower than or approximately the same as the interest rate payable under the IT-IH Loan (a loan granted by the Respondent N° 2's indirect shareholder) (R1-ER-Hammoud-1, para. 21).³⁹⁸
682. Second, the Respondent N° 1 states that there was nothing illegal about the provision of the cash collateral since it could not have granted the IBL Loan without obtaining such cash collateral. The Respondent N° 1 recalls that, as a Lebanese banking institution, it is regulated by BDL and is subject to BDL's extensive oversight and is compelled to abide, at all times, by the circulars and regulations issued by BDL, failing which it may be subject to a series of sanctions such as those provided for under the Law of Money and Credit, and in particular Article 208 (Exhibit N° R1-LA-6). As already mentioned, the most relevant regulation is BD 7055 that sets, among other matters, the ceiling on credit facilities extended by banks for use outside of Lebanon, which applies in the present case given that the Respondent N° 2 is an Iraqi company operating in the Iraqi market (Exhibits N° R1-LA-7 and R1-15).³⁹⁹
683. *In casu*, the Respondent N° 1 states that its equity amounted to approximately USD 267,000,000.00 in 2011 and therefore it was prohibited from extending the Loan without having obtained sufficient security and this is in accordance with its obligations to abide by the regulations of BDL, including BD 7055 (R1-ER-Hammoud-1, para. 29).⁴⁰⁰

³⁹⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 43-44, paras. 179-181.

³⁹⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 44, paras. 182-183.

³⁹⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 27, paras. 130-132.

⁴⁰⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 28, paras. 133-134; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 44-45, paras. 184-189.

684. The Respondent N° 1 further stresses that the Claimant's so-called kick-back arrangement is simply a lawful cash collateral arrangement which is a customary banking operation that is typically concluded in Lebanon (R1-ER-Nammour-1, para. 111; R1-ER-Hammoud-1, para. 41). The Respondent N° 1 therefore argues that the existence of the cash collateral and the structure of the lending operation, as a whole, are consistent with Lebanese banking practices and regulations (R1-ER-Nammour-1, para. 110; R1-ER-Hammoud-1, para. 42).⁴⁰¹
685. The Respondent N° 1 submits that, pursuant to Article 1062 COC, it was allowed to obtain a guarantee or security, including the cash collateral, without the knowledge or consent of the Respondent N° 2 and by extension the Claimant, as an indirect shareholder of the Respondent N° 2, or despite its dissent (Exhibit N° R1-LA-8). Indeed, Lebanese law permits the Respondent N° 1 to obtain any securities and guarantees it wishes to obtain in addition to the cash collateral (R1-ER-Nammour-1, para. 181).⁴⁰² The Respondent N° 1 further states that, based on the provisions of Article 1062 COC, such guarantee does not create a legal relationship between the guarantor and the debtor, the guarantor only being obliged towards the creditor. Therefore, the relationship between the Respondent N° 1 and the provider of the cash collateral is independent from the relationship between the Respondent N° 1 and the Claimant, the latter, as a third party to the IBL Loan Agreement and an indirect shareholder of Respondent N° 2, having no grounds to argue that the Respondent N° 1 had a legal obligation relating to the cash collateral towards it.⁴⁰³ The Respondent N° 1 insists on the fact that, as a matter of customary banking practice, the cash collateral does not substitute the Subordination Agreement and *vice-versa*, they complement each other as separate and independent components of the same lending operation and there is nothing illegal about that (R1-ER-Hammoud-1, paras. 74-75).⁴⁰⁴
686. In addition, the Respondent N° 1 contends that it is customary for Lebanese banks to obtain collateral whose value is well in excess of the value of the amount of a loan extended to a borrower. It submits that there was nothing illegal or unusual about requesting the Subordination Agreement, the Barzani Guarantee and the Revenue Account Requirement even if the IBL Loan was secured by the cash collateral. Therefore, based on the above, the IBL Loan Agreement, the Subordination Agreement, the cash collateral, the Barzani Guarantee and the Revenue Account Requirement are all lawful terms of the lending operation.⁴⁰⁵

⁴⁰¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 45-46, paras. 190-194.

⁴⁰² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 47, para. 202 and p. 48, paras. 207-208.

⁴⁰³ Respondent N° 1's Statement of Defence and Counterclaim, pp. 28-29, paras. 135-139; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 51, paras. 223-224

⁴⁰⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 47, para. 203.

⁴⁰⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 49, paras. 209-213.

687. Third, the Respondent N° 1 contends that it complied with the mandatory provisions of the Banking Secrecy Law which is of public order (Exhibit N° R1-LA-60). Indeed, pursuant to Article 2 of the Banking Secrecy Law, the Respondent N° 1 is precluded from disclosing any information regarding its clients to a third party, unless it obtains the relevant client's prior authorization (Exhibits N° R1-LA-9, R1-LA-62 and R1-LA-63), being reminded that the Respondent N° 1's obligations as a bank under the Lebanese Banking Secrecy Law are owed only to its clients, which the Claimant is not.⁴⁰⁶ Therefore, by not providing information on the cash collateral to the Claimant or anyone else, the Respondent N° 1 acted in accordance with applicable Lebanese laws and regulations (Exhibit N° R1-LA-10).⁴⁰⁷ The Respondent N° 1 insists on the fact that there are no Lebanese laws or regulations that would have required it to disclose the existence of the cash collateral to the Claimant (R1-ER-Nammour-1, para. 94; R1-ER-Hammoud-1, para. 79). By contrast, the Claimant's expert, Prof. Zein, fails to point to any legal provision that could support the Claimant's proposition that the Respondent N° 1 had the legal obligation to make such disclosure.⁴⁰⁸

688. The Respondent N° 1 adds that it did not disclose information relating to the cash collateral and its provider in its financial statements, but it simply abided by IFRS9 standards by properly reflecting the Loan and the security attached thereto in the financial statements. The Respondent N° 1 stresses that the disclosures were made in a generic manner and did not include any indication whatsoever regarding the identity of the clients.⁴⁰⁹

689. Keeping in mind that it acted in compliance with its legal and contractual rights and obligations, the Respondent N° 1 argues that the Claimant failed to establish that it committed a *dol* act and/or "*réticence dolosive*".

(iii) There were no fraudulent acts

690. The Respondent N° 1 first refers to the elements of *dol* that should be cumulatively met pursuant to Articles 208 and 209 COC and detailed in paragraph 669 above and stresses that even Prof. Fadlallah, the Claimant's expert, did not conclude in his expert report that the Respondent N° 1 committed a *dol* act.⁴¹⁰

691. In any case, the Respondent N° 1 submits that the following facts (which summary is not exhaustive) demonstrate that it did not commit a *dol* act:⁴¹¹

"i. No reference whatsoever was made in any of the Loan documentation or the Corporate Approvals or the Subordination Agreement that the subordination of the Shareholder's Loan and the Korek Guarantee to the Loan is conditional on the Loan being extended on an unsecured basis;

⁴⁰⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 53-54, paras. 231-238.

⁴⁰⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 29, paras. 140-143.

⁴⁰⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 50-51, paras. 215-222 and pp. 52-53, paras. 227-230.

⁴⁰⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 52, paras. 225-226.

⁴¹⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 31, para. 156.

⁴¹¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 31, para. 157.

this therefore could not have been a material and determining factor for the entry by the Claimant into the Subordination Agreement;

- ii. [...] there are no emails or communications exchanged between Respondent 1 and the Claimant during the period leading up to the signature of the Subordination Agreement, in which the Claimant states, or even implies, that it is entering into the Subordination Agreement on the basis that the Loan will be unsecured;*
- iii. The Claimant did not address to Respondent 1 an inquiry requesting a confirmation that the Loan was unsecured, prior to the execution of the Subordination Agreement;*
- iv. The course of events [...] clearly evidence that the reason for the execution of the Subordination Agreement by the Claimant resides in the Claimant's intention that Respondent 2 obtain the Loan and its intention that Respondent 2 does not lose the License.*
- v. Finally, the extension of the Loan was clearly in the interest of the Claimant and did not cause it any prejudice."*

692. The Respondent N° 1 reminds that, in support of its claim for *dol*, the Claimant mainly relies on the word "unsecured" in Clause 7.1.6 of the IBL Loan Agreement and interprets that clause in a manner that serves its own interests. However, Clause 7.1.6 of the IBL Loan Agreement is not by any means a false declaration, the Claimant's interpretation being actually just incorrect. Indeed, it must be stressed that the Respondent N° 2 did not provide security for the IBL Loan and the Revenue Account Requirement is a contractual covenant and not security, whereas the Barzani Guarantee and the cash collateral were also not provided by the Respondent N° 2.⁴¹²

693. The Respondent N° 1 contends that the fact that the Respondent N° 2 did not provide security for the IBL Loan is fully consistent with the content of the representation made in Clause 7.1.6 of the IBL Loan Agreement, which is a representation by the Respondent N° 2, that its own obligations in respect of the IBL Loan and under the IBL Loan Agreement remain unconditional, unsubordinated and unsecured, this representation being made for the benefit of the Respondent N° 1 (Exhibit N° C-7). Therefore, there is no false declaration in that respect. Further, the Respondent N° 1 argues that its interpretation of Clause 7.1.6 of the IBL Loan Agreement is consistent with Clauses 6.2 and 6.4 of the IBL Loan Agreement, which clauses do not address security granted specifically by the Respondent N° 2.⁴¹³

694. The Respondent N° 1 submits that the Claimant's interpretation of Clauses 7.1.6, 6.2 and 6.4 of the IBL Loan Agreement goes against the general organization of the IBL Loan Agreement and its spirit and would result in neglecting the rights granted to it under Clauses 6.2 and 6.4 of the IBL Loan Agreement. Further, the Respondent N° 1 finds that, by advancing a distorted interpretation of the IBL Loan Agreement, the Claimant is acting abusively and in violation of the legal principles

⁴¹² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 55, paras. 244-247.

⁴¹³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 56-57, paras. 248-259.

applicable to contracts and their interpretation as a matter of Lebanese law, i.e. Articles 366 to 371 of the COC (Exhibits N° R1-LA-65 to R1-LA-67).⁴¹⁴

695. The Respondent N° 1 explains that, pursuant to decisions of the Lebanese Court of Cassation, the courts must ascertain the parties' common intent by reading provisions of the same contract and provisions of related contracts harmoniously together and this should be made based on the intent of the signatory parties to the contract and not third parties to the contract, such as the Claimant (CER-Fadlallah-2, para. 15).⁴¹⁵
696. Consequently, the Respondent N° 1 submits that the Claimant should be banned from imposing its own interpretation of Clause 7.1.6 of the IBL Loan Agreement, as this interpretation distorts the intent of the real parties to the IBL Loan Agreement, which was expressed by these parties at several instances. Moreover, pursuant to the principle of privity of contracts (Article 225 COC) (Exhibit N° R1-LA-68), the Claimant should not be allowed to benefit from and rely on Clause 7.1.6 of the IBL Loan Agreement to pretend that it was the victim of a fraudulent misrepresentation. Therefore, the Respondent N° 1 stresses that the Claimant cannot rely on a representation made in a contract to which it is not a party to create a right for itself to claim damages from the Respondent N° 1.⁴¹⁶
697. The Respondent N° 1 notes that the Claimant raises the argument that the Subordination Agreement and the IBL Loan Agreement are part of the same group of contracts. However, even if, we assume *arguendo*, that the IBL Loan Agreement and the Subordination Agreement are part of a same group of contracts, their interpretation should be made in a logical manner that is consistent with the provisions of Articles 367 and 368 COC. The Respondent N° 1 adds that nothing in the Subordination Agreement indicates that the subordination of the IT-IH Loan, the Shareholder Loan Agreement and the Korek Guarantee was made in consideration for the Respondent N° 1 agreeing to extend an "unsecured" Loan to the Respondent N° 2. In any event, the Respondent N° 1 states that the COC does not recognize the concept of "*ensemble contractuel*", the COC evoking the indivisibility of obligations but not the indivisibility of contracts, in contrast to the French Civil Code (R1-ER-Nammour-1, para. 157). Moreover, it is not disputed that in any multi-party contract, there can be clauses that apply to some of the contracting parties, but not to all of them. Therefore, regardless of whether the Subordination Agreement and the IBL Loan Agreement are part of the same group of contracts, which is irrelevant and immaterial in this context, the Claimant cannot logically succeed in claiming that it relied on a representation made by the Respondent N° 2 for the benefit of the Respondent N° 1 as a basis for its decision to enter into the Subordination Agreement.⁴¹⁷

⁴¹⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 57-58 paras. 260-265.

⁴¹⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 57, paras. 266-267.

⁴¹⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 58-59 paras. 268-274.

⁴¹⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 59-60 paras. 275-280.

698. Finally, the Respondent N° 1 submits that it has sufficiently evidenced that it did not commit, during the period leading up to the conclusion of the IBL Loan, any act that may be considered as fraudulent. Having no obligation towards the Claimant during that period, it did not make any direct statement or representation to the Claimant with respect to the alleged "unsecured" nature of the IBL Loan. The Respondent N° 1 further stresses that the Claimant did not address any inquiry regarding the "secured" or "unsecured" nature of the IBL Loan to it during the negotiations phase of the Loan, nor did it produce any evidence in these proceedings that it informed the Respondent N° 1 during the period leading up to the conclusion of the Loan that it was entering into the Subordination Agreement on the basis that the Loan was "unsecured". Moreover, the Respondent N° 1 considers that it demonstrated that the way it structured the IBL Loan was not meant to deceive the Claimant into thinking that the Loan is unsecured, being reiterated that the entire lending operation was structured in compliance with applicable laws and regulations and in line with customary lending practices in Lebanon.⁴¹⁸

699. Based on the above, the Respondent N° 1 concludes that the Claimant failed to prove that it committed any act that may be characterized as *dol*.

(iv) There was no concealment/"*réticence dolosive*"

700. The Respondent N° 1 argues that it may not be found liable for *réticence dolosive* as the elements that must be present to qualify a silence as a *réticence dolosive* do not exist in this case.

701. The Respondent N° 1 first addresses the legal conditions for silence to be deemed *réticence dolosive* which cumulative conditions are the following (Exhibits N° R1-LA-18 to R1-LA-21):⁴¹⁹

- "i. *The legal grounds to consider silence as *réticence dolosive* resides in the duty imposed on a party to provide its counterparty with certain information, prior to the execution of the contract.*
[...]
- ii. [...]
 - *The silence should relate to a material fact or matter which affects the other party's intention to enter into the contract;*
 - *The party knew about such facts or matters and concealed them premeditatedly;*
 - *The party claiming the fraud did not have the legal duty to verify or investigate these facts or matters prior to the signature of the contract.*
- iii. *Some scholars added that for a silence to be considered dolosive and having affected the other party's intention, said party should be unable to obtain the information by any means other than receiving it from its counterparty. [...]."*

⁴¹⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 60 paras. 281-282.

⁴¹⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 32, para. 162.

702. The Respondent N° 1 adds that, according to scholars' opinion, Lebanese jurisprudence stresses on the requirement of intent that the victim be inexperienced and easy to trick, otherwise it will decline to find *dol* (Exhibits N° R1-LA-22 to R1-LA-23).⁴²⁰
703. The Respondent N° 1 argues that *in casu* none of the conditions mentioned above apply since first it did not have a legal obligation to inform the Claimant of the existence of the cash collateral because (i) pursuant to Article 1062 COC, it may obtain security for the Loan without informing the borrower, the Respondent N° 2, and by extension the Claimant, (ii) the Banking Secrecy Law prohibits it from disclosing details regarding the cash collateral and its provider to a third party, such as the Claimant. Further, the IBL Loan Agreement, which was reviewed and approved by the Claimant, prior to the execution of the Subordination Agreement, acknowledges that security may be granted to it (Exhibits N° R1-LA-69 and R1-LA-70).⁴²¹
704. Second, the Respondent N° 1 submits that none of the conditions referred to by Prof. Fadlallah in his report are met, since (i) the so-called "unsecured" nature of the Loan was not a material fact to enter into the Subordination Agreement, (ii) assuming *arguendo* that the Claimant's allegations that the unsecured nature of the Loan was a condition to the entry into the Subordination Agreement, the Respondent N° 1 was not made aware of such a condition and (iii) being a sophisticated party with access to vast resources and whose shareholders are international players in their respective industries, the Claimant ought to have known that the Respondent N° 1 would not extend a loan of the size of the IBL Loan, without adequate security. The Respondent N° 1 stresses that the Claimant had the legal duty to verify or investigate these facts or matters prior to the signature of the Subordination Agreement.⁴²²
705. Third, the Respondent N° 1 reminds that the Claimant plays a major role in the management of the Respondent N° 2, its subsidiary, as it is represented in a number of corporate bodies of both Respondents N° 2 and N° 3. Therefore, during the negotiations that led to the signature of the IBL Loan Agreement and the Subordination Agreement, the Claimant was in a position to be kept informed regarding the terms and conditions of the Loan.⁴²³ Further, according to the Respondent N° 1, the Claimant had the obligation to enquire about the terms and conditions of the IBL Loan from its own subsidiary (Exhibits N° R1-LA-71 and R1-LA-72).⁴²⁴

⁴²⁰ Respondent N° 1's Statement of Defence and Counterclaim, p. 32, para. 163.

⁴²¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 34, para. 165(i); Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 61 paras. 285-289.

⁴²² Respondent N° 1's Statement of Defence and Counterclaim, p. 34, para. 165(ii); Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 52, para. 227.

⁴²³ Respondent N° 1's Statement of Defence and Counterclaim, p. 35, para. 165(iii).

⁴²⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 61-62 paras. 290-291.

706. Fourth, the Respondent N° 1 reiterates that, contrary to the Claimant's allegation, the latter, as a shareholder of the Respondent N° 2, may not rely on the representation made by the Respondent N° 2 in Clause 7.1.6 of the IBL Loan Agreement that the Loan would be "unsecured", which representation is made by the Respondent N° 2 as borrower for the benefit of the Respondent N° 1 as lender. This representation clearly states that the Loan is unsecured only *vis-à-vis* the Respondent N° 2, as it is the Respondent N° 2 that is making it and this representation in the IBL Loan Agreement itself does not give rise to any rights for the Claimant to sue the Respondent N° 1.⁴²⁵
707. Fifth, the Respondent N° 1 asserts that it never represented to the Claimant that the Loan would be unsecured, as an arms' length third party, it is not concerned with what was discussed internally between the Claimant and its partners.⁴²⁶
708. In view of the above, the Respondent N° 1 contends that it has evidenced that none of the conditions of *réticence dolosive* are met. Therefore, the Respondent N° 1 may not be held liable with respect to the extent of information communicated to the Claimant in respect of the IBL Loan, as it did not have the obligation to inform the Claimant of any such information and also taking into account its banking secrecy obligations. The Respondent N° 1 stresses that the Claimant could have obtained this information from the Respondents N° 2 and N° 3, however the Claimant neglected its due diligence obligation and is attempting to vitiate the Subordination Agreement, which was validly entered into, solely for the purpose of escaping its own obligations thereunder.⁴²⁷

(v) Intention to deceive

709. The Respondent N° 1 reminds that an act may only be qualified as "fraudulent" if its actor committed it with the intention to deceive its counterparty (Exhibits N° R1-LA-73 and R1-LA-74).⁴²⁸
710. The Respondent N°1 submits that the Claimant failed to establish that it had the intention to deceive it or that it had conspired with the other Respondents to mislead the Claimant. On the contrary, the Respondent N° 1 contends that it has sufficiently evidenced that it had acted at all times, in good faith, and in compliance with its legal rights and obligations. Indeed, it assures that it has acted since the very beginning of the lending transaction and to date, in a manner consistent with its role as a third-party lender and has fulfilled its duties and obligations towards its client. Moreover, the Respondent N° 1 reiterates that it did not have an information obligation towards the Claimant who is not its client, being stressed that the non-disclosure of the existence of the cash collateral was and is in line with its banking

⁴²⁵ Respondent N° 1's Statement of Defence and Counterclaim, p. 35, para. 165(iv).

⁴²⁶ Respondent N° 1's Statement of Defence and Counterclaim, p. 35, para. 165(v).

⁴²⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 62, para. 292.

⁴²⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 63, paras. 293-295.

secrecy obligation and the culture of limited disclosure pervading the Lebanese banking sector.⁴²⁹

711. On that basis, the Respondent N° 1 concludes that the moral element of the *dol* accusation is not met and therefore, it may not be held liable for the wrongful allegations brought by the Claimant against it in this respect.⁴³⁰

(vi) The alleged fraudulent act was not determinative

712. The Respondent N° 1 asserts that the Claimant failed to prove that the "unsecured" nature of the IBL Loan was a determinative factor in its decision to enter into the Subordination Agreement. On the contrary, the Respondent N° 1 submits that the Claimant's actions indicate that this nature did not have any bearing on its decision for the following reasons:⁴³¹

- The Claimant failed to express this condition or communicate it to the Respondent N° 1 during the negotiations leading up to the conclusion of the Subordination Agreement.
- The Claimant did not include this condition in its Corporate Approvals, which state the main conditions upon which it agreed to enter into the Subordination Agreement.
- The Claimant omitted to include any provision in respect of the unsecured nature of the Loan in the Subordination Agreement.

713. According to the Respondent N° 1, it results from the above that there is no credible justification advanced by the Claimant to explain why knowing of the existence of the cash collateral was determinative to the Claimant's decision to enter into the Subordination Agreement. Moreover, the Respondent N° 1 reiterates that the Claimant is a sophisticated party whose shareholders are international pioneers in their field of expertise (R1-ER-Nammour-1, para. 66). Therefore, the Claimant may not be allowed to pretend that it has simply overlooked to record the very basic condition on which it accepted to enter into the Subordination Agreement in any written document (Exhibits N° R1-LA-75 and R1-LA-76). Consequently, the Respondent N° 1 submits that it would be unreasonable to believe that the "unsecured" nature of the Loan was an essential condition to the Claimant's decision to enter into the Subordination Agreement.⁴³²

⁴²⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 63, paras. 296-298.

⁴³⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 63, para. 299.

⁴³¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 64, paras. 300-301.

⁴³² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 64-65, paras. 302-306.

714. Finally, the Respondent N° 1 addresses the Claimant's expert opinion that *dol* may be evaluated on the basis of events that took place further to the formation of the contract (Exhibit N° C-ER-IF-49). The Respondent N° 1 first stresses that a decision of the Lebanese Court of Appeal came to the opposite conclusion by holding that facts subsequent to a contract's date cannot be taken into consideration when assessing an error that vitiates consent (Exhibit N° R1-LA-77). This decision illustrates the notable differences between French law and Lebanese law on this particular point, and it is proof that the Claimant's argument cannot succeed under Lebanese law (Article 233 COC) (Exhibit N° R1-LA-12). The Respondent N° 1 contends that the general legal principle that the contracting parties' behavior must be examined only at the time of the formation of the contract is applicable in relation to each of the vices that vitiate consent enumerated under Article 233 COC, including *dol*, being a natural consequence of the logic behind Article 219 COC (Exhibit N° R1-LA.17).⁴³³
715. The Respondent N° 1 concludes that the Claimant's argument should be dismissed, as the elements of *dol* and their existence should be evaluated at the date of formation of the contract and not on the basis of actions and statements made years after its formation.⁴³⁴

(vii) The *dol* of one party in a multi-partite contract

716. The Respondent N° 1 denies the Claimant's argument that the *dol* of one party in a multi-partite agreement is sufficient to void the agreement, the Claimant having failed to validly substantiate its position (Exhibits N° R1-LA-78 and R1-LA-79).⁴³⁵
717. The Respondent N° 1 submits that the Subordination Agreement is an indivisible contract, and therefore, even in the event that the Arbitral Tribunal found that the Respondents N° 2 and N° 3 committed *dol* (which is rejected), while the Respondent N° 1 was found to be innocent, the Subordination Agreement should not be annulled, stressing that this is even more logical as the real beneficiary under the Subordination Agreement is the Respondent N° 1. Thus, it would defeat logic to deprive the Respondent N° 1 from the right that was granted to it by virtue of the Subordination Agreement, only because another party to the Subordination Agreement, which did not acquire rights thereunder, has allegedly committed *dol*.⁴³⁶

⁴³³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 65, paras. 307-308.

⁴³⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 66, para. 309.

⁴³⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 66-67, paras. 310-312.

⁴³⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 67, para. 313.

(viii) Conclusion

718. In view of the foregoing, the Respondent N° 1 argues that the Claimant failed to prove that it committed any act that may be characterized as *dol* and that its intention was to mislead the Claimant to enter into the Subordination Agreement on the basis of a deception. Consequently, the Respondent N° 1 concludes on the issue of *dol* that the Claimant's allegations must be dismissed.⁴³⁷

719. The Respondent N° 1 submits that the Arbitral Tribunal must reject the Claimant's argument that the Subordination Agreement is null, void and of no effect on the basis of *dol*, being stressed that the Claimant, who failed to express that it would not have entered into the Subordination Agreement unless the IBL Loan was unsecured (assuming that such allegations are correct), was negligent towards itself and it is only the Claimant that should be held liable for its own negligence, *nemo auditor propriam turpitudinem allegans*.⁴³⁸

c Abuse of rights

720. The Respondent N° 1 strongly objects to the Claimant's false allegation that it abused its rights under the Subordination Agreement.⁴³⁹

721. The Respondent N° 1 first reminds the conditions of application (according to legal writings) of the abuse of rights (Article 124 COC), stressing that there needs to be an intention to harm or to act in bad faith (Exhibits N° R1-LA-25 to R1-LA-27). The Respondent N° 1 adds that it is important to clarify that the notion of abuse of rights under French law differs from the notion of abuse of rights under Lebanese law, each notion being subject to different terms and conditions regarding its applicability (Exhibits N° R1-LA-80 to R1-LA-82). However, in both cases, courts would be required to assess whether a real prejudice occurred as a result of the alleged abuse of right, i.e. to establish a clear causality link between the prejudice caused and the abuse.⁴⁴⁰

722. The Respondent N° 1 notes that the Claimant considers that, a reputable Lebanese banking institution, (i) has agreed to neglect its own regulatory obligations, (ii) has failed to downgrade the IBL Loan's classification pursuant to the Basic Decision No. 7159 dated 10 November 1998 issued by BDL on the classification of loans (hereinafter referred to as the "**BD 7159**") and (iii) has failed to enforce the IBL Loan, all to please Mr. Mustafa, in exchange for a "fronting" fee.⁴⁴¹

⁴³⁷ Respondent N° 1's Statement of Defence and Counterclaim, p. 32, paras. 158-159.

⁴³⁸ Respondent N° 1's Statement of Defence and Counterclaim, pp. 35-36, paras. 166-167.

⁴³⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 36, paras. 168-170.

⁴⁴⁰ Respondent N° 1's Statement of Defence and Counterclaim, pp. 36-37, paras. 171-174; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 67-68, paras. 314-316.

⁴⁴¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 68-69, paras. 318-321.

723. As to the Claimant's evidence of an alleged fronting fee, the Respondent N° 1 asserts that this is a mischaracterization of the nature of a "spread" in the context of bank financing transactions. The Respondent N° 1 has demonstrated that the lending operation as a whole, including the cash collateral, is an ordinary and straightforward banking transaction. Consequently, the Respondent N° 1 submits that the Claimant's allegations that it is acting as a front for Mr. Mustafa and for his benefit must be dismissed. Further, since the Claimant's abuse of rights theory is based on the so-called "fraudulent scheme", it follows that the Claimant's claim against it must also be dismissed in its entirety.⁴⁴²
724. The Respondent N° 1 submits that it did not commit an abuse of right in requesting the application of a contractual right that the Claimant expressly granted to it. Indeed, the Respondent N° 1 states that, by invoking the terms of the Subordination Agreement following the occurrence of an event of default, it exercised its right in accordance with the provisions of the contract and for the purpose for which it was granted. Further, its right was exercised in good-faith, in its own interests, which it is allowed to do under Lebanese Law, and with no intention to cause prejudice to the Claimant or any other party (Exhibit N° R1-LA-84).⁴⁴³ Therefore, the fact that the Claimant considers that the Respondent N° 1's exercise of its contractual rights under the Subordination Agreement is not in the Claimant's interest does not prevent the Respondent N° 1 from exercising its legitimate and contractual right that favours its own interests over the interests of the Claimant and for which it derives a correct advantage.⁴⁴⁴
725. The Respondent N° 1 reiterates that the entry into the Subordination Agreement by the Claimant was a condition which the Claimant agreed to fulfil in order for its subsidiary to obtain a much needed loan, the purpose and "cause" of the Subordination Agreement being to ensure that the IBL Loan would rank senior to the Shareholder Loan Agreement and the Korek Guarantee to ensure that the Respondent N° 1 would have higher chances to collect the payments due under the Loan from its borrower, the Respondent N° 2, in the event of the latter's default under the IBL Loan Agreement. The Respondent N° 1 further insists on the fact that the existence of the cash collateral does not alter or change the purpose for which the Subordination Agreement was signed, being stressed that it reserves, at all times, the right to discretionally decide whether, further to the Respondent N° 2's default under the IBL Loan Agreement, it will seek enforcement against the Respondent N° 2 or the guarantor under the IBL Loan Agreement, or the cash collateral provider. Further, the Subordination Agreement and the cash collateral serve completely different purposes and the fact that there is a cash collateral does not make the Subordination Agreement useless (R1-ER-Hammoud-1, para. 74).⁴⁴⁵

⁴⁴² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 69, paras. 322-323.

⁴⁴³ Respondent N° 1's Statement of Defence and Counterclaim, p. 37, paras. 175 and 177; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 70, paras. 332-333.

⁴⁴⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 69, paras. 324-328.

⁴⁴⁵ Respondent N° 1's Statement of Defence and Counterclaim, p. 37, paras. 178-180; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 72-3, paras. 348-354.

726. Consequently, the Respondent N° 1 asserts that it did not exceed the purpose for which its right to rely on the Subordination Agreement was given. By relying on the express terms of the Subordination Agreement, it is exercising its rights for the exact purpose that such rights were granted to it, in good faith (R1-ER-Hammoud-1, para. 108). Moreover, the Respondent N° 1 contends that it did not commit any fault by granting its borrower, the Respondent N° 2, a grace period to repay the IBL Loan, which is a customary practice in Lebanon according to which a bank does not seek immediate enforcement against a borrower and the security relating to a loan, unless such loan becomes doubtful or irrecoverable, pursuant to the provisions of the BD 7159 (Exhibit N° R1-LA-28) (R1-ER-Hammoud-1, para. 105). In any event, the Respondent N° 1 alleges that it has no intention to cause any prejudice to the Claimant and is acting in good faith *vis-à-vis* the Respondent N° 2 by granting it the opportunity to voluntarily repay the Loan.⁴⁴⁶ Further, the fact that the Claimant does not derive an interest from the Respondent N° 1's approach *vis-à-vis* the management of the IBL Loan and its relationship with its clients does not qualify this approach as abusive (Exhibit N° R1-LA-85).⁴⁴⁷

727. To further support its position, the Respondent N° 1 maintains that:⁴⁴⁸

- the Respondent N° 2 remained at all times current on the payment of interest. Contrary to the Claimant's allegations, the IBL Loan was neither doubtful nor unrecoverable under BD 7159. The IBL Loan continues to be a performing loan (R1-ER-Hammoud-1, para. 102);
- the Respondent N° 2, the guarantor and the cash collateral provider continually acknowledged the Respondent N° 1's rights under the IBL Loan Agreement.

728. Therefore, the Respondent N° 1 submits that by granting the Respondent N° 2 additional time to reimburse the IBL Loan and delaying enforcement, it acted in its commercial interests and the Claimant may not use this against it to infer bad faith (Exhibit N° R1-LA-86). Further, the Respondent N° 1 reminds that, according to the jurisprudence, it has a discretionary right to decide how it will proceed to ensure the reimbursement of the IBL Loan (Exhibits N° R1-LA-88 and R1-LA-89).⁴⁴⁹

729. Moreover, the Respondent N° 1 stresses that the Claimant remained silent regarding the Respondent N° 2's failure to pay the IBL Loan for a period that exceeded two years following non-payment of the principal of the IBL Loan and the delivery of the Notice of Event of Default. The Claimant also did not question the Respondent N° 1's actions until late in 2017. The Respondent N° 1 adds that, at all times, the Claimant as a principal indirect shareholder of the Respondent N° 2 did not offer or cause its subsidiary, the Respondent N° 2, to propose to the

⁴⁴⁶ Respondent N° 1's Statement of Defence and Counterclaim, p. 38, paras. 181-185; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 69-71, paras. 329-338.

⁴⁴⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 71, paras. 339-340.

⁴⁴⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 71, para. 341.

⁴⁴⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 71-72, paras. 342-343 and pp. 74-75, paras. 355-366.

Respondent N° 1 a repayment plan for the IBL Loan. In any case, the Respondent N° 1 contends that the Claimant failed to evidence that it intended to cause the latter harm (Exhibit N° R1-LA-87) (R1-ER-Nammour-1, paras. 89-90).⁴⁵⁰

730. Finally, assuming *arguendo* that Article 124 COC applies in this case, the Respondent N° 1 argues that this would considerably impede contractual freedom in the commercial context which opinion is supported by scholars who recognize that there is a risk underlying the use of Article 124 COC, which is that any person that exercises a legitimate right conferred to such person by law may be subject to liability, due to the application of Article 124 COC, simply because another person has suffered a prejudice, and this would make rights afforded in theory rather than in practice, which would not be consistent with the law (Exhibits N° R1-LA-29 and R1-LA-30).⁴⁵¹

731. In view of the foregoing, the Respondent N° 1 concludes that it is demonstrated that, by invoking its rights under the Subordination Agreement without proceeding at this stage with enforcement measures against the Respondent N° 2, the guarantor and/or the cash collateral provider, it acted in good faith and did not intend to cause any prejudice to the Claimant. Consequently, the Respondent N° 1 did not commit any abuse in the exercise of its rights under the Subordination Agreement, the conditions of Article 124 COC not being met.⁴⁵²

d Has the Subordination Agreement expired?

732. The Respondent N° 1 asserts that the Subordination Agreement remains valid, in full force and effect.

733. Contrary to the Claimant's allegations, the Respondent N° 1 contends that the term of the Subordination Agreement did not expire. Pursuant to Clause 1.2 of the Subordination Agreement (Exhibit N° C-1), while the Respondents N° 2 and N° 3 may make payments in respect of the Shareholder Loan Agreement prior to the occurrence of an event of default, the Subordination Agreement clearly creates obligations on the latter not to pay following the occurrence of an event of default by the Respondent N° 2 under the IBL Loan Agreement. The Respondent N° 1 stresses that this is customary banking practice and in line with the purpose for which the Subordination Agreement was entered into.⁴⁵³

⁴⁵⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 72, paras. 344-346, p. 74, para. 360 and p. 75, para. 367.

⁴⁵¹ Respondent N° 1's Statement of Defence and Counterclaim, p. 39, paras. 189-190.

⁴⁵² Respondent N° 1's Statement of Defence and Counterclaim, pp. 38-39, paras. 186-188; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 72, para. 347.

⁴⁵³ Respondent N° 1's Statement of Defence and Counterclaim, pp. 40-41, paras. 193-198.

734. Consequently, contrary to the Claimant's theory, the term of the Subordination Agreement is not linked to the maturity of the IBL Loan in the event that a default occurs under the IBL Loan Agreement, which if it was the case would undermine the purpose for which the Subordination Agreement was entered into and violates the provisions of Article 221 COC (Exhibit N° R1-LA-1).⁴⁵⁴ The Respondent N° 1 stresses that the Claimant is actually making a false distinction between the term of the Subordination Agreement and that of the subordination mechanism. The Claimant's argument not only contradicts the terms of the IBL Loan Agreement and the Subordination Agreement, but also goes against commercial norms and ordinary business practices. The Respondent N° 1 insists on the fact that the terms of the IBL Loan Agreement are fully consistent with the commercial norms and ordinary business practices (Clause 10.1) (Exhibit N° C-7).⁴⁵⁵
735. The Respondent N° 1 adds that the Claimant's argument that the Subordination Agreement expired on 21 June 2015 and that the Respondent N° 1 had to send a notice of default before the IBL Loan's maturity date of 21 June 2015 directly contradicts the terms of the IBL Loan Agreement:⁴⁵⁶
- Pursuant to Clause 10.1, the Respondent N° 1 can only give written notice to the Respondent N° 2 that an event of default occurred if this event of default is also "continuing".
 - Pursuant to Clause 10.1.1, in the specific case of non-payment of the principal of the IBL Loan, the Respondent N° 2 has three business days after the maturity date passes to remedy the default. If the Respondent N° 2 does not remedy this default within this short timeline, and the Respondent N° 1 does not waive it, only then does this event of default become "continuing", thereby entitling the Respondent N° 1 to send a notice of default at its discretion. Therefore, when the Respondent N° 2 failed to pay the principal of the Long Term Loan on 21 June 2015, the Respondent N° 1 could only send a notice of default starting 24 June 2015.
 - There is no provision in the IBL Loan Agreement that imposes a deadline for the Respondent N° 1 to send a notice of default or to exercise any of the rights available to it under the IBL Loan Agreement or under any other agreement or any applicable law.
736. Consequently, the Respondent N° 1 submits that it was impossible for it to "*trigger the subordination mechanism*" before the IBL Loan's maturity date, given that Clause 1.2 of the Subordination Agreement provides that the subordination mechanism is triggered following the occurrence of an event of default that is continuing. It is also impossible that the Subordination Agreement expired at the IBL Loan's maturity date, otherwise the Subordination Agreement could never be invoked by the Respondent N° 1 in any situation.⁴⁵⁷ Reminding that contractual

⁴⁵⁴ Respondent N° 1's Statement of Defence and Counterclaim, pp. 40-41, paras. 199-201.

⁴⁵⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 75-76, paras. 368-372.

⁴⁵⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 76, para. 373.

⁴⁵⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 77-78, paras. 374-376.

provisions must only be interpreted in a manner that is consistent with their spirit, the purpose for which they are granted and to give them effect, the Respondent N° 1 states that it is therefore indisputable that so long as the obligations of the Respondent N° 2 are not discharged under the IBL Loan Agreement, the Subordination Agreement remains in full force and effect, being stressed that the Subordination Agreement has a term, and this term would expire as soon as the IBL Loan is reimbursed by the Respondent N° 2 to the Respondent N° 1.⁴⁵⁸

737. In that respect, the Respondent N° 1 concludes that it was under no obligation to require the renewal of the Subordination Agreement or send a notice of default after the Respondent N° 2 failed to pay the Short Term Loan at the maturity date of 31 January 2015, in accordance with the proper interpretation of Clause 10.1 of the IBL Loan Agreement and Clause 1.2 of the Subordination Agreement.⁴⁵⁹

738. The Respondent N° 1 firmly contests the Claimant's allegation that its notice of default is fictitious. It reminds that its good faith is presumed under Lebanese law and that the Claimant has the burden of showing otherwise. However, the Claimant did not present a single factual element to support the argument that the Respondent N° 1 maliciously sent a notice of default only to block the Claimant from exercising its rights, the Claimant relying only on the fraudulent scheme theory. Moreover, the Respondent N° 1 contends that it is evident that it would have sent a notice of default after 18 June 2015, given that the IBL Loan's final maturity date was 21 June 2015, and Clause 10.1.1 of the IBL Loan Agreement gave the Respondent N° 2 three business days after 21 June 2015 to remedy its failure to pay the principal of the IBL Loan before the event of default became continuing.⁴⁶⁰

739. Contrary to the Claimant's allegation, the Respondent N° 1 submits that it did not contravene the prohibition on perpetual commitments. Indeed, the Respondent N° 1 explains that the Subordination Agreement is not of indeterminate duration, it has a term that is linked to the term of the IBL Loan Agreement and the full payment of any amounts thereunder, which is not a condition that limits or prevents the exercise of the Claimant's civil rights, but simply the term of the contract (R1-ER-Nammour-1, para. 186; R1-ER-Hammoud-1, para. 99). The Respondent N° 1 reiterates that the negotiations with the Respondent N° 2 also highlight that it is not maintaining the Subordination Agreement based only on its unilateral will, the repayment of the IBL Loan also depends on the Respondent N° 2. Therefore, the Respondent N° 1 argues that it did not have an arbitrary or unfair behaviour and it follows that the Claimant should not be entitled to unilaterally terminate the Subordination Agreement.⁴⁶¹

⁴⁵⁸ Respondent N° 1's Statement of Defence and Counterclaim, p. 42, paras. 202-206.

⁴⁵⁹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 78, para. 377.

⁴⁶⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 78-79, paras. 378-384.

⁴⁶¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 80-81, paras. 385-389.

740. Finally, the Respondent N° 1 states that the Claimant's arguments that the cash collateral was disposed of or enforced on must be rejected, as they do not assist the latter's case in any way, including its attempts to argue that the Subordination Agreement expired.⁴⁶²

e Has the Subordination Agreement lapsed?

741. The Respondent N° 1 submits that the Subordination Agreement is still in full force and effect and did not lapse. It argues that the Claimant cannot be released from its contractual obligations only because it no longer has an interest in honouring its obligations thereunder for reasons that do not concern the Respondent N°1, the Claimant's analysis going against the principle of trust in commercial dealings as well as the law.⁴⁶³

742. *In casu*, relying upon Article 200 COC (Exhibit N° R1-LA-4), the Respondent N° 1 reiterates that the essential "cause" of the Subordination Agreement was to prioritize the Loan *vis-à-vis* the Shareholder Loan Agreement and the Korek Guarantee in order to ensure that the Respondent N° 2 will be able to repay the IBL Loan in priority to the Shareholder Loan Agreement if there is an event of default, this cause being valid and cannot be annulled because it is legitimate and does not contravene public order (Exhibits N° R1-LA-32 and R1-LA-33).⁴⁶⁴

743. Consequently, the Respondent N° 1 submits that the Claimant's argument that the Subordination Agreement lapsed for lack of cause should be dismissed, especially given that the Respondent N° 2 is in a situation of default under the IBL Loan Agreement, which does not authorize at all a lapse of the Subordination Agreement.⁴⁶⁵

744. The Respondent N° 1 adds that all of the doctrine in France relating to the notion of lapse of a contract for lack of cause is not applicable in Lebanon as Lebanese civil law does not include a provision similar to Article 1186 of the French Civil Code, which relates to the "lapse of contract". The Respondent N° 1 therefore argues that, as a matter of Lebanese law, the loss of the Claimant's interest in the Respondent N° 2 in 2019 is irrelevant to and has no effect on the validity of the Subordination Agreement that was executed in 2011. Whether the Claimant is today a shareholder of the Respondent N° 3 or not has absolutely no impact on the Subordination Agreement and its cause, especially given that the Subordination Agreement does not include any provisions that so state.⁴⁶⁶

⁴⁶² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 81-82, paras. 390-394.

⁴⁶³ Respondent N° 1's Statement of Defence and Counterclaim, pp. 42-43, paras. 207-209.

⁴⁶⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 43, paras. 210-213; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 85, paras. 406-408.

⁴⁶⁵ Respondent N° 1's Statement of Defence and Counterclaim, p. 43, para. 213.

⁴⁶⁶ Respondent N° 1's Statement of Defence and Counterclaim, pp. 43-44, paras. 214-216; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 83, paras. 395-397 and p. 84, para. 400.

745. The Respondent N° 1 stresses that Article 196 COC expressly addresses the situations where a lack of cause leads to a contract's annulment (Exhibit N° R1-LA-91). Pursuant to Article 196 COC, there are three situations recognized in Lebanese law where a contract is annulled on the basis of the cause: either the cause does not exist, the cause is erroneous or the cause is illicit (Exhibits N° R1-LA-92 to R1-LA-94). The Respondent N° 1 submits that given that the COC specifically enumerates the situations where a contract must be annulled on the basis of an issue relating to the cause and that Article 196 COC does not contemplate the concept of lapse, it inevitably follows that lapse is not a recognized legal principle under Lebanese law (R1-ER-Nammour-1, para. 158).⁴⁶⁷
746. Alternatively, even if the Arbitral Tribunal concluded that the concept of lapse could exist under Lebanese law, in this case lapse does not apply. Indeed, the Respondent N° 1 insists on the fact that the Claimant's reasoning for why the Subordination Agreement lapsed, i.e. the loss of its shareholding interest in the Respondent N° 2, cannot be accepted in the commercial context. The Claimant's attempt to argue that its shareholding interest in the Respondent N° 2 is the "cause" of the Subordination Agreement is directly contradicted by the terms of Clause 1.1 of the Subordination Agreement, which stipulates that the Claimant agrees to subordinate its rights under the IT-IH Loan, the Shareholder Loan Agreement and Korek Guarantee "*in consideration of IBL making a loan available to Korek pursuant to the IBL Loan Agreement*". Rather, the Respondent N° 1 argues that, from the Claimant's perspective, the "cause" is actually to obtain the financing needed to pay the License fee (Exhibit N° R1-LA-95) (R1-ER-Nammour-1, paras. 60 and 168).⁴⁶⁸
747. In view of the foregoing, the Respondent N° 1 submits that because an event of default has occurred under the IBL Loan Agreement, the Subordination Agreement cannot lapse and should remain in full force and effect until the reimbursement of the IBL Loan and, at such time, the Subordination Agreement would terminate as it would no longer have an object. Further, it is reiterated that the Respondent N° 2's defaults on paying the principal of the Short-Term Loan and the Long-Term Loan in 2015 engendered the legitimate right of the Respondent N° 1 to rely on the Subordination Agreement as of the date of the event of default under the IBL Loan Agreement. The fact that the Claimant has allegedly lost its indirect participation in the Respondent N° 2 has no effect on the validity of the Subordination Agreement which does not include a provision that states that the Subordination Agreement will lapse if the Claimant is no longer a shareholder in the Respondent N° 2 and/or in the Respondent N° 3 (R1-ER-Nammour-1, paras. 157-160). Therefore, the Respondent N° 1 contends that the Subordination Agreement remains in effect until the discharge of all the obligations under the IBL Loan Agreement, regardless of whether the Claimant is still a shareholder in the Respondent N° 2 and/or in the Respondent N° 3 or not.⁴⁶⁹

⁴⁶⁷ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 83-84, paras. 398-400.

⁴⁶⁸ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 84-85, paras. 401-405.

⁴⁶⁹ Respondent N° 1's Statement of Defence and Counterclaim, p. 44, paras. 217-218; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 85, paras. 409-410.

748. The Respondent N° 1 concludes that the Subordination Agreement did not lapse.

f Respondents' alleged disclosure failures (Document Production Process)

749. The Respondent N° 1 asserts that the Claimant acted in bad faith during the Document Production Process since it was "fishing" for evidence and insisted on disregarding the Respondent N° 1's banking secrecy obligations.⁴⁷⁰

750. The Respondent N° 1 submits that it complied, in good faith, with the IBL Decision by providing the Arbitral Tribunal with the necessary explanation to justify which documents it could not provide and why it was prevented from producing certain documents by virtue of mandatory Lebanese laws. Further, it produced documents to the other Parties in this arbitration in the format that complies with its banking secrecy obligations, and in conformity with the IBL Decision. As to the specific criticism of the Claimant regarding the use by Mr. Rayes of his Hotmail account, the Respondent N° 1 explains that Mr. Rayes used this account for technical reasons relating to the need to access documents from a location other than his office. Therefore, being a purely technical matter, the Claimant's criticism is irrelevant to the dispute.⁴⁷¹

751. Consequently, the Respondent N° 1 argues that, in line with the IBA Rules, the Arbitral Tribunal should not draw negative inferences against it, as its inability to provide documents responsive to the Granted Requests is the result of a good faith invocation of its banking secrecy obligation, which is a legal obligation that was expressly recognized in the IBL Decision. Further, it reiterates that it discharged its obligation by providing satisfactory explanations for its inability to produce documents responsive to the Granted Requests in accordance with Article 4.8 of the SPR.⁴⁷²

752. Finally, as to the Claimant's criticism that it failed to provide any witness of fact, the Respondent N° 1 asserts that the reason is that its employees, officers and board members are bound by banking secrecy and are prohibited from revealing any information relating to the Respondent N° 1's clients, failing which they would be subject to imprisonment (Articles 2 and 8 of the Banking Secrecy Law) (Exhibits N° R1-LA-9 and R1-LA-10).⁴⁷³

⁴⁷⁰ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 35, paras. 145-148.

⁴⁷¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 35, paras. 149-150.

⁴⁷² Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 36, para. 151.

⁴⁷³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 36, para. 152.

3 The Respondents N° 2 and N° 3

a Introduction

753. In addition to its primary fraud claim, the Respondents N° 2 and N° 3 note that the Claimant submits the following alternative claims under Lebanese law:⁴⁷⁴

- The Claimant asserts that the Respondent N° 1 is abusing its rights under the Subordination Agreement by continuing to invoke those rights. This claim is not directed at the Respondents N° 2 and N° 3 and so is not addressed further by them.
- The Claimant asserts incorrectly and in defiance of its clear terms that the Subordination Agreement has expired or been terminated.
- The Claimant improperly imports into Lebanese law a French law doctrine of *caducité* to assert that the Subordination Agreement has lapsed.

b Fraud/Dol

754. The Respondents N° 2 and N° 3 note that the Claimant's primary claim is that the Subordination Agreement is null and void on the basis of fraud (R2/3-ER-Moghaizel-1, para. 40). They thus present the conditions that should be met, stressing that, under Lebanese law, it is for the Claimant to establish its claim and therefore show the following:⁴⁷⁵

- The Respondents have committed deceitful maneuvers or made untrue statements or provided deceitful information regarding the components of a contract (the so-called "material element"). Where the alleged misrepresentation takes the form of a statement of fact, that statement must be clear and not a mere speculation about the future (R2/3-ER-Moghaizel-1, paras. 34 and 39).
- The untrue statement was made with an intention to mislead for an unlawful purpose. It must entail wilful trickery aimed at misleading the victim with the intention of having him/her make a mistake (R2/3-ER-Moghaizel-1, para. 33).
- The untrue statement induced the claimant to enter into the relevant contract, i.e. the victim of the misrepresentation would not have entered into the contract had it known the true situation (R2/3-ER-Moghaizel-1, paras. 40-41). As a result, the misrepresentation must have been made at the time of contracting, or reasonably soon before then (R2/3-ER-Moghaizel-1, paras. 40-41). Where the claim rests on an allegation of non-disclosure, the party who failed to disclose a specific fact must also have been aware that his/her non-

⁴⁷⁴ Respondents N° 2 and N° 3's Rejoinder, p. 39, para. 6.1.

⁴⁷⁵ Respondents N° 2 and N° 3's Statement of Defence, pp. 27-28, paras. 4.3-4.4; Respondents N° 2 and N° 3's Rejoinder, p. 11, paras. 4.2-4.3.

disclosure of such fact would have a direct impact on the decision of the other party to enter into the contract (R2/3-ER-Moghaizel-1, para. 37).

- The Claimant, exercising its duty of pre-contractual diligence, must have had no means of ascertaining the true position before entering into the contract (R2/3-ER-Moghaizel-1, para. 40).

755. The Respondents N° 2 and N° 3 submit that the Claimant's primary claim fails for, at least, the following reasons:⁴⁷⁶

- There were no untrue statements, the Claimant being unable to point to a single false representation made to it by the Respondents N° 2 and N° 3. The Claimant's case rests primarily on a representation given by the Respondent N° 2 to the Respondent N° 1 in the IBL Loan, to which the Claimant was not a party, about whether the Respondent N° 2 had given security. That representation was plainly correct.⁴⁷⁷
- There was no concealment, the Claimant's case relying only on speculation.
- There was no obligation to disclose. The existence of a separate cash collateral relationship was plainly not a matter for the Respondents N° 2 and N° 3. Further, the terms of the IBL Loan plainly contemplated the existence of security in respect of the IBL Loan.⁴⁷⁸
- There was no intent to defraud, again, the Claimant's case relying on speculation that Mr. Mustafa intended to trick it into entering into the Subordination Agreement. In any event, the Claimant entirely fails to explain how the alleged intention of Mr. Mustafa could be imputed to the Respondents N° 2 and N° 3.
- There was no inducement. The Claimant adduces no evidence of inducement. There is no dispute that (i) the financing provided by the Respondent N° 1 was necessary, (ii) the terms of that financing (including entering into the Subordination Agreement) were acceptable to the Claimant and (iii) there was no better alternative.⁴⁷⁹

⁴⁷⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 29, para. 4.5.

⁴⁷⁷ Respondents N° 2 and N° 3's Rejoinder, p. 2, para. 1.5(a).

⁴⁷⁸ Respondents N° 2 and N° 3's Rejoinder, p. 2, para. 1.5(b).

⁴⁷⁹ Respondents N° 2 and N° 3's Rejoinder, p. 2, para. 1.5(c).

(i) There were no untrue statements

756. The Respondents N° 2 and N° 3 first refer to the two allegations made by the Claimant relating to the arrangements surrounding the IBL Loan and serving as the basis of its fraud claim/misrepresentation argument. The Claimant asserts that (i) the IBL Loan was cash collateralised and (ii) that the Respondent N° 1 agreed to pay a large proportion of the interest received under the IBL Loan to Mr. Mustafa.⁴⁸⁰

757. The Respondents N° 2 and N° 3 stress that both of these arrangements are said to exist between the Respondent N° 1 and Mr. Mustafa, but they themselves are not party to any such arrangements (and are not alleged to be). They contend that, even assuming that these arrangements exist, this would not ground a claim for fraud against them.⁴⁸¹

758. The Respondents N° 2 and N° 3 submit that the starting point for any analysis is that the Claimant has only entered into two relevant agreements with them, namely the Subordination Agreement and the Deed of Indemnity (which is, in any event, outside the jurisdiction of the Arbitral Tribunal). In neither of these agreements do the Respondents N° 2 and N° 3 make any representations to the Claimant as to the status, whether secured or unsecured, of the IBL Loan nor do the Recitals to either agreement.⁴⁸²

759. Being unable to point to any representation by the Respondents N° 2 and N° 3, the Claimant attempts to impute to them the following three alleged misrepresentations:⁴⁸³

- The Claimant relies on the term "unsecured" in Clause 7.1.6 of the IBL Loan Agreement (Exhibit N° C-7). However, the Respondents N° 2 and N° 3 recall that the Claimant is not a party to the IBL Loan Agreement and was not the beneficiary of this representation. Moreover, the opening language of Clause 7.1 makes clear that the statement in Clause 7.1.6 is a representation, warranty and undertaking made to the Respondent N° 1, not to the Claimant. The Respondents N° 2 and N° 3 add that Clause 7.1.6 cannot have been understood by the Claimant as meaning that no security at all has been given for the IBL Loan, since such understanding would be contrary to the other express terms of the IBL Loan which (i) requires the Respondent N° 2 to hold its revenues in a bank account at the Respondent N° 1 which operates as security for the IBL Loan, (ii) is guaranteed by Mr. Mustafa and (iii) contains several references to the provision of security. Further, Clauses 6.2 and 6.4 of the IBL Loan Agreement both contemplate security being held by the Respondent N° 1 in respect of the IBL Loan. They consider that the Claimant appears to have proceeded on the basis that the IBL Loan was secured. The Respondents N° 2 and N° 3 argue that, the only logical reading of the use of the term "unsecured" is that it is a statement that no further security over

⁴⁸⁰ Respondents N° 2 and N° 3's Statement of Defence, p. 29, para. 4.6.

⁴⁸¹ Respondents N° 2 and N° 3's Statement of Defence, p. 30, para. 4.7.

⁴⁸² Respondents N° 2 and N° 3's Statement of Defence, p. 30, para. 4.8.

⁴⁸³ Respondents N° 2 and N° 3's Statement of Defence, p. 30, para. 4.9.

any of its assets was to be provided by the Respondent N° 2 to secure the IBL Loan, the clause saying nothing at all about any collateral or security that might be provided by other parties and nothing in the IBL Loan Agreement prohibiting any such arrangement.⁴⁸⁴ Finally, and in any event, the Respondents N° 2 and N° 3 submit that it is a central principle of Lebanese law that the alleged misrepresentation must have been made on or reasonably before the date of the relevant contract which is not the case *in casu* since the IBL Loan Agreement was entered into on 21 December 2011, namely seven days after the execution of the Subordination Agreement on 14 December 2011 (R2/3-ER-Moghaizel-1, paras. 41-42 and 56-60; R2/3-ER-Moghaizel-2, para. 16). Consequently, the IBL Loan cannot have induced the Claimant to enter into the Subordination Agreement.⁴⁸⁵

- The letter dated 7 December 2011, which was prepared in consultation with the Claimant and the FPC, and sent by Mr. Mustafa, is presented by the Claimant as if it was the occasion on which the IBL Loan was proposed (Exhibits N° R2-5, R2-6 and C-41). However, the Respondents N° 2 and N° 3 recall that the terms of this letter had been negotiated with the Claimant's representatives (Exhibits N° R2-5 to R2-7) and the Claimant's reliance on Mr. Mustafa's statement that "*IBL Bank has agreed, in principle, to make these loans on an unsecured basis provided that Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees*" of no support to its case (Exhibit N° C-41). They argue that this statement (as with Clause 7.1.6 of the IBL Loan Agreement) cannot be construed as meaning that no security would be provided at all for the IBL Loan. Further, Mr. Mustafa's letter is merely a statement about the future possible course of negotiations with the Respondent N° 1, setting out what the Respondent N° 1 had agreed to "*in principle*" (R2/3-ER-Moghaizel-1, paras. 65-67). The Respondents N° 2 and N° 3 stress that since relevant documents were still subject to further commercial negotiation and where the Claimant sought to amend fundamental terms of the IBL Loan, Mr. Mustafa's statement cannot constitute an actionable misrepresentation.
- The Claimant relies on a statement made by Mr. Rahmeh in a meeting of the KSC on 13 October 2015. However, the Respondents N° 2 and N° 3 consider the Claimant's reliance as being misplaced. According to the Respondents N° 2 and N° 3, the minutes of the meeting show that Mr. Froissart was not asking a question about cash collateral (Exhibit N° C-43). In any event, they contend that a statement made so long after the execution of the Subordination Agreement and by an individual who is not party to the Subordination Agreement cannot constitute a misrepresentation in respect of the Subordination Agreement.

⁴⁸⁴ Respondents N° 2 and N° 3's Answer to the Request for Arbitration, p. 7, para. 4.5.

⁴⁸⁵ Respondents N° 2 and N° 3's Rejoinder, p. 13, paras. 4.7-4.8.

760. The Respondents N° 2 and N° 3 further note that the Claimant, in support of its claim, relies on the findings of previous courts and tribunals without suggesting that such statements in any way bind this Arbitral Tribunal. In any event, they submit that the findings of other tribunals in separate proceedings considering different matters of law and fact do not and cannot assist the Arbitral Tribunal in its determination of the claims in these proceedings.⁴⁸⁶
761. After having reviewed the Claimant's position in its Statement of Reply and Defense to Counterclaim the Respondents N° 2 and N° 3 address below the Claimant's response to their above-mentioned arguments.

The Claimant's reliance on the term "unsecured" in Clause 7.1.6 of the IBL Loan

762. First, as to the fact that the Claimant is not a party to the IBL Loan or beneficiary of the representation in Article 7.1.6 of the IBL Loan Agreement, the Respondents N° 2 and N° 3 assert that the Claimant's position (that the doctrine of privity of contract does not prevent it from referring to the provisions of the IBL Loan "for interpretation purposes" and to establish liability) amounts to an attempt to convert a representation that on its own clear terms was not given to the Claimant into one that can form the basis of a claim of fraudulent misrepresentation by the latter. According to the Respondents N° 2 and N° 3, this is illogical and finds no support in Lebanese law (R2/3-ER-Moghaizel-2, para. 32). Further, contrary to the Claimant's allegation, the alleged fact that the IBL Loan Agreement and the Subordination Agreement are interrelated contracts does not evidence how a representation that was not made to the Claimant can form the basis of a claim that it was induced by that representation to enter into the Subordination Agreement (R2/3-ER-Moghaizel-2, para. 24).⁴⁸⁷
763. Second, the Respondents N° 2 and N° 3 object to the Claimant's allegation that Clause 7.1.6 of the IBL Loan Agreement should be read not as a representation about whether security had been provided by the Respondent N° 2 but as a general representation about the whole security package applicable to the IBL Loan. They reiterate that Clause 7.1.6 is concerned with representations given by the Respondent N° 2 and expressly said to relate to the Respondent N° 2's obligations. It is therefore a representation that is concerned with the borrower's obligations, not those of third parties to the loan agreement (Exhibit N° R2L-2).⁴⁸⁸
764. Third, with respect to the Claimant's response that Clause 7.1.6 cannot be understood as saying that no security at all would be given for the loan, the Respondents N° 2 and N° 3 state that such response is simply wrong on the plain language of Clauses 6.2 and 6.4 of the IBL Loan which are concerned not just with potential future security but also with actual present security. Further, while Clauses 6.2 and 6.4 are concerned with any security provided for the IBL Loan,

⁴⁸⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 33, paras. 4.10-4.11; Respondents N° 2 and N° 3's Rejoinder, p. 15, para. 4.9(b)(iii).

⁴⁸⁷ Respondents N° 2 and N° 3's Rejoinder, p. 14, para. 4.9(a).

⁴⁸⁸ Respondents N° 2 and N° 3's Rejoinder, p. 15, para. 4.9(b).

Clause 7.1.6 is a specific representation given by the Respondent N° 2 in relation to security provided by itself.⁴⁸⁹

765. Fourth, as concerns the timing of the representation, the Respondents N° 2 and N° 3 remind that Clause 7.1.6 of the IBL Loan Agreement is contained in an agreement executed after the Subordination Agreement. Contrary to the Claimant's allegation, drafts do not reflect the final signed version of the contract. It is only when the IBL Loan Agreement has been signed that its content crystalizes. Terms or conditions that are negotiated by the parties to such contract before its execution are subject to change and thus cannot be considered as actionable representations (R2/3-ER-Moghaizel-2, para. 125).⁴⁹⁰

766. In any event, the Respondents N° 2 and N° 3 stress that the Respondent N° 3 is not party to the IBL Loan Agreement and the Claimant has not articulated any basis on which it could be asserted that the representation given in the IBL Loan Agreement (or any drafts exchanged prior to execution) could have been given by the Respondent N° 3.⁴⁹¹

a The letter dated 7 December 2011

767. The Respondents N° 2 and N° 3 assert that the Claimant's argument that the letter of 7 December 2011 and its draft dated 20 November 2011 amount to representations that no security at all had been provided for the IBL Loan is unfounded. Indeed, they stress that the Claimant has failed to articulate how either the draft or final form of this letter can be treated as representations for which the Respondents N° 2 and N° 3 are liable. In any event, the Respondents N° 2 and N° 3 argue that the fact that Mr. Mustafa was a member of the KSC, which, as Claimant conceded, was merely a contractual body established by the agreement of the parties to the Respondent N° 3's joint venture, does not mean that his statements bind the Respondent N° 2 or are representations by the Respondent N° 2. There is nothing to suggest that all statements made by a member of the KSC are automatically representations by the Respondent N° 2, nor to suggest that the 7 December 2011 letter was written by Mr Mustafa in his capacity as Chairman of the board of the Respondent N° 3 (or on behalf of the Respondent N° 3 at all). Moreover, even if the 7 December 2011 letter were treated as being a statement by the Respondent N° 2 and/or the Respondent N° 3, it is clear that it does not constitute an actionable representation since it is stated that the IBL Loan terms were agreed "*in principle*" (R2/3-ER-Moghaizel-1, para. 65).⁴⁹²

⁴⁸⁹ Respondents N° 2 and N° 3's Rejoinder, p. 17, para. 4.9(c).

⁴⁹⁰ Respondents N° 2 and N° 3's Rejoinder, p. 17, para. 4.9(d).

⁴⁹¹ Respondents N° 2 and N° 3's Rejoinder, p. 18, para. 4.10.

⁴⁹² Respondents N° 2 and N° 3's Rejoinder, pp. 18-22, paras. 4.11-4.21.

b The 13 October 2015 meeting

768. The Respondents N° 2 and N° 3 reiterate that the statement of Mr. Rahmeh cannot provide a logical basis for a claim of *dol* because it is an essential element of such a claim that the relevant statement must have induced the Claimant to enter into the Subordination Agreement and that statement was made nearly three years after the execution of the Subordination Agreement. Consequently, this cannot constitute an actionable representation.⁴⁹³

c The Claimant's additional allegations

769. The Respondents N° 2 and N° 3 note that the Claimant relied upon the following additional alleged representations in its Statement of Reply and Defense to Counterclaim:⁴⁹⁴

- An email from Mr. Junde dated 9 December 2011, forwarding a communication from Mr. Rayes of the Respondent N° 1 setting out the "*principal conditions of the IBL Loan*" (Exhibit N° C-89).
- An email exchange between FPC members on 13 December 2011 in which Mr. Junde circulated final versions of the IBL Loan Agreement and the Subordination Agreement for review and approval (Exhibit N° C-65).
- The KSC and IH Board Resolutions circulated by Mr. Junde on 14 December 2011 approving the IBL Loan Agreement and Subordination Agreement (Exhibits N° R2-15 and R2-16).

770. The Respondents N° 2 and N° 3 stress that all of these documents were, or should have been, known to the Claimant at the time it prepared its Statement of Claim. The Claimant's failure to plead these alleged representations until its Statement of Reply and Defense to Counterclaim further demonstrates the deficiency of its case. The Respondents N° 2 and N° 3 remind that it is not disputed that a representation cannot give rise to a claim of *dol* unless the Claimant can demonstrate that it was determinative of its consent to the Subordination Agreement. Therefore, the Respondents N° 2 and N° 3 submit that one can only conclude that these alleged misrepresentations were not in fact relied upon by the Claimant.⁴⁹⁵

771. The Respondents N° 2 and N° 3 add that the Claimant's attempt to introduce new allegations is procedurally irregular and represents a failure by the Claimant to properly plead its case in accordance with the requirements of the Specific Procedural Rules. In any event, they submit that the newly alleged representations do not assist the Claimant's case.⁴⁹⁶

⁴⁹³ Respondents N° 2 and N° 3's Rejoinder, p. 22, para. 4.22.

⁴⁹⁴ Respondents N° 2 and N° 3's Rejoinder, pp. 22-23, paras. 4.23-4.26.

⁴⁹⁵ Respondents N° 2 and N° 3's Rejoinder, p. 24, paras. 4.27-4.28.

⁴⁹⁶ Respondents N° 2 and N° 3's Rejoinder, pp. 24-25, paras. 4.29-4.32.

772. In conclusion, the Respondents N° 2 and N° 3 state that the Claimant failed to demonstrate that they made any untrue representations.

(ii) There was no concealment

773. The Respondents N° 2 and N° 3 contest the Claimant's allegation that they have an outright obligation to disclose any information to it that was potentially relevant to its decision to enter into the Subordination Agreement, the Lebanese law not providing for such alleged obligation (R2/3-ER-Moghaizel-1, paras. 72-73). This allegation is not supported by the authorities relied upon by the Claimant (CER-14).⁴⁹⁷

774. The Respondents N° 2 and N° 3 stress that, in any event, the Claimant failed to substantiate its allegation that they concealed any information from it, the Claimant's argumentation being made of speculations about the actions and intentions of Mr. Mustafa who is not party to these proceedings or to the Subordination Agreement.⁴⁹⁸

775. The Respondents N° 2 and N° 3 further consider that the evidence provided by Mr. Bortman, a partner of Raedas, is highly problematic for the following reasons:⁴⁹⁹

- Mr. Bortman is unable to provide any first-hand evidence of the alleged fraud, he introduced unattributed hearsay evidence from purported anonymous sources. Therefore, this evidence is inherently unreliable.
- Mr. Bortman relies on information allegedly provided by four sources from the Respondents N° 1 and N° 2 whose identity he has refused to provide (CWS-Bortman-1, para. 6). The Respondents N° 2 and N° 3 contend that there is no basis to test this claim and thus the Arbitral Tribunal has no means of testing the reliability or credibility of the alleged evidence of these employees.
- Mr. Bortman does not indicate whether he spoke to any other potential sources.
- Mr. Bortman has provided only summaries of the interviews conducted with these unnamed sources, the Tribunal having not been provided with transcripts of the alleged conversations, Raedas' contemporaneous notes or any internal reports on the sources and the information provided.
- Throughout the various interlocking arbitration and Court actions brought by the Claimant, Mr. Bortman has been shown to have given evidence that either required correction or included incorrect statements or predictions.

⁴⁹⁷ Respondents N° 2 and N° 3's Statement of Defence, p. 34, paras. 4.12-4.14.

⁴⁹⁸ Respondents N° 2 and N° 3's Statement of Defence, p. 34, para. 4.15; Respondents N° 2 and N° 3's Rejoinder, pp. 25-26, paras. 4.34-4.35.

⁴⁹⁹ Respondents N° 2 and N° 3's Statement of Defence, pp. 35-36, paras. 4.16-4.17; Respondents N° 2 and N° 3's Rejoinder, p. 33, para. 4.54.

- Mr. Bortman is not a witness of fact providing first-hand evidence of events, he is providing evidence of his assessment and opinion of matters which have been reported to him. However, Mr. Bortman is not an independent expert providing his opinion on a specific matter, Raedas being not an independent party.

(iii) There was no intention to mislead for an unlawful purpose

776. The Respondents N° 2 and N° 3 submit that the Claimant has again failed to demonstrate that the alleged misrepresentations were made with the intention of deceiving it. Instead, the Claimant speculates about an alleged conspiracy between Mr. Mustafa (who is not party to these proceedings), Mr. Rahmeh (who is neither party to these proceedings nor any of the documents) and the Respondent N° 1.⁵⁰⁰ However, the Respondents N° 2 and N° 3 stress that it has been demonstrated that there was no misrepresentation on the part of the Respondents and that Clauses 6.2 and 6.4 of the IBL Loan Agreement expressly contemplate the existence of security.⁵⁰¹

777. The Respondents N° 2 and N° 3 emphasize that the matters in dispute happened in the most part in 2011, only months after the Investment Transaction. Therefore, they state that for the Claimant's theory to succeed, the latter must demonstrate that, right from the outset of the Investment Transaction, the Respondents intended to defraud it. According to the Respondents N° 2 and N° 3, such a counter-intuitive and serious allegation cannot rest on a mere conspiracy theory. In any event, and as already mentioned, the Arbitral Tribunal does not have jurisdiction to rule on such allegations against individuals who are not party to the Subordination Agreement.⁵⁰²

778. Finally, the Respondents N° 2 and N° 3 emphasize that they are distinct legal entities and it cannot simply be assumed that they both have the same knowledge or intention as their shareholders.⁵⁰³

(iv) Any representation did not induce the Claimant to enter into the Subordination Agreement

779. The Respondents N° 2 and N° 3 argue that, in order to succeed in its claim, the Claimant has to demonstrate that it would not have entered into the Subordination Agreement if it were not for the alleged misrepresentations, which it cannot do (R2/3-ER-Moghaizel-1, para. 23). The Claimant's witness evidence is of no support since such witness evidence, delivered long after the relevant time and in the context of bitter litigation and an atmosphere of mutual mistrust, has little value (CWS-Aziz-1, para. 47; CWS-Froissart-1, para. 23). The Respondents N° 2 and N° 3 stress that this is particularly the case where the Claimant has provided no

⁵⁰⁰ Respondents N° 2 and N° 3's Statement of Defence, p. 37, para. 4.18; Respondents N° 2 and N° 3's Rejoinder, p. 33, para. 4.52(c).

⁵⁰¹ Respondents N° 2 and N° 3's Rejoinder, ppp. 32-33, paras. 4.51-4.52.

⁵⁰² Respondents N° 2 and N° 3's Statement of Defence, p. 37, paras. 4.18-4.19.

⁵⁰³ Respondents N° 2 and N° 3's Rejoinder, p. 33, para. 4.53.

documentary evidence of the factors it took into account at the time in deciding whether to enter into the Subordination Agreement.⁵⁰⁴

780. The Respondents N° 2 and N° 3 submit that, when the relevant contemporaneous materials are considered, it is clear that the question of whether or not the IBL Loan was collateralised did not play an important role in the Claimant's decision to enter into the Subordination Agreement:⁵⁰⁵

- First, there is nothing in the Subordination Agreement which suggests that the Parties entered into it in reliance upon any representations by any of the Respondents. To the contrary, the Subordination Agreement contains no representations at all (R2/3-ER-Moghaizel-1, para. 70).
- Second, the Deed of Indemnity, which does contain representations given by the Respondents N° 2 and N° 3 to the Claimant, contains no representation concerning collateral or, indeed, whether the IBL Loan was secured at all.
- Third, it was clear to the Claimant that security had been provided for the IBL Loan: (i) it had been guaranteed by Mr. Mustafa, (ii) the Respondent N° 2's revenues account had been secured to the Respondent N° 1 and (iii) the IBL Loan Agreement made several references to security.
- Fourth, the fact that the existence of collateral was a matter of indifference to the Claimant is evidenced by the absence of any request from the Claimant as to whether collateral had been provided.

781. The Respondents N° 2 and N° 3 add that:⁵⁰⁶

- The Claimant has not contested the commercial necessity of the IBL Loan. Indeed, it is reminded that the IBL Loan was obtained in order to pay outstanding License payments due to the CMC in respect of the Respondent N° 2's operating License, being stressed that the payment of the License instalment was regarded as being essential to the survival of the Respondent N° 2 given that non-payment could have resulted in the loss of its License (Exhibit N° C-86) (CWS-Froissart-2, para. 8). The Respondents N° 2 and N° 3 submit that the reality is that the Claimant was willing to approve the IBL Loan and to enter into the Subordination Agreement on the terms sought by the Respondent N° 1 because it recognised the commercial necessity of obtaining financing through the IBL Loan.⁵⁰⁷

⁵⁰⁴ Respondents N° 2 and N° 3's Statement of Defence, p. 37, paras. 4.20-4.21; Respondents N° 2 and N° 3's Rejoinder, p. 27, para. 4.36.

⁵⁰⁵ Respondents N° 2 and N° 3's Statement of Defence, p. 37, para. 4.22.

⁵⁰⁶ Respondents N° 2 and N° 3's Rejoinder, p. 27, para. 4.37.

⁵⁰⁷ Respondents N° 2 and N° 3's Rejoinder, pp. 27-28, paras. 4.38-4.39.

- The Claimant has not demonstrated the existence of any viable alternative to the IBL Loan and Subordination Agreement or that it seriously contested the terms of the IBL Loan Agreement and Subordination Agreement. The Respondents N° 2 and N° 3 stress that there is no dispute that the IBL Loan was the only source of financing that was actually available and offered to meet this pressing financial obligation (CWS-Froissart-2, para. 9). While the Claimant may have considered internally whether or not to provide shareholder financing, it does not appear to have ever proposed this as a possibility to either the Respondent N° 2 or CS Ltd. The Claimant also provides no evidence that it considered or pursued any other alternative sources of financing.⁵⁰⁸
- The Claimant has simply conjectured the existence of alternative sources of financing based on an unsubstantiated and improbable hypothesis.⁵⁰⁹
- All the evidence suggests that, at the time, the Claimant considered the terms of the IBL Loan and Subordination Agreement to be commercially reasonable and as representing the only option available to the Respondent N° 2.⁵¹⁰
- The Claimant has produced no contemporaneous evidence that it was induced to enter into the Subordination Agreement by an alleged understanding that the IBL Loan was unsecured.⁵¹¹

782. The Respondents N° 2 and N° 3 conclude by reiterating that the IBL Loan was the only financing available to the Respondent N° 2 and was vitally needed and the Subordination Agreement was a non-negotiable pre-condition to that financing.⁵¹²

(v) *The dol of one party in a multi-partite contract*

783. The Respondents N° 2 and N° 3 assert that the Claimant has failed to articulate any basis on which either of the Respondents could be found to have committed fraud or to be liable for damages, stressing that the Claimant's case is particularly deficient in relation to the Respondent N° 3. In particular:⁵¹³

- The Respondent N° 1 is not controlled by and is totally independent of the Respondent N° 3.
- At relevant period, the Respondent N° 3 was under the joint control of CS Ltd and the Claimant and took decisions following the approval of the Claimant.
- The Respondent N° 3 cannot be made liable for its entry into agreements in accordance with the joint instruction of its shareholders.

⁵⁰⁸ Respondents N° 2 and N° 3's Rejoinder, pp. 28-30, paras. 4.40-4.43.

⁵⁰⁹ Respondents N° 2 and N° 3's Rejoinder, pp. 30-31, paras. 4.44-4.47.

⁵¹⁰ Respondents N° 2 and N° 3's Rejoinder, p. 31, para. 4.48.

⁵¹¹ Respondents N° 2 and N° 3's Rejoinder, p. 32, paras. 4.49-4.50.

⁵¹² Respondents N° 2 and N° 3's Statement of Defence, p. 38, para. 4.23.

⁵¹³ Respondents N° 2 and N° 3's Rejoinder, p. 49, paras. 8.1-8.2.

- The Respondent N° 3 is not party to the IBL Loan and is not liable for any payments of interest under the IBL Loan.
- The principal representation relied upon by the Claimant is found in Clause 7.1.6 of the IBL Loan Agreement, together with its ancillary case concerning the negotiation of that clause, the Respondent N° 3 not being party to the IBL Loan it cannot have been understood as giving that representation.
- The letter from Mr. Mustafa dated 7 December 2011 makes no reference to the Respondent N° 3 and contains no suggestion that it is issued on behalf of the Respondent N° 3.

784. The Respondents N° 2 and N° 3 submit that, if, against all evidence, the Claimant were to demonstrate that the Subordination Agreement was procured by a *dol* on the part of the Respondents N° 1 and N° 2, that would be sufficient for the Arbitral Tribunal to order the nullification of the Subordination Agreement. It would not be necessary, and for the reasons given would be inappropriate, for the Arbitral Tribunal to also make findings against the Respondent N° 3. As a result, even if the Arbitral Tribunal were to determine that the Claimant has made good its primary claim, the Respondent N° 3 contends that it is not responsible for any wrongful actions by either the Respondent N° 1 or the Respondent N° 2. Consequently, the Respondent N° 3 concludes that it should not be made the subject of any declaration to the effect that it is jointly and severally liable for any damages that the Claimant may have suffered as a result of the alleged *dol*.⁵¹⁴

(vi) Conclusion

785. The Respondents N° 2 and N° 3 conclude by reiterating that the Claimant's claim must fail since the Claimant:⁵¹⁵

- is unable to show any inaccurate representation or concealment;
- cannot demonstrate that the alleged inaccurate representation or concealment induced it to enter into the Subordination Agreement;
- has not demonstrated any intent to conceal; and
- either knew or ought to have known of the cash collateral. Indeed, the IBL Loan Agreement indicates that security may have been provided for the IBL Loan. Further, Mr. Froissart's post-closing statements demonstrate that the Claimant either was aware of the existence of cash collateral or unconcerned by whether or not such collateral had been provided.⁵¹⁶

⁵¹⁴ Respondents N° 2 and N° 3's Rejoinder, p. 50, para. 8.3.

⁵¹⁵ Respondents N° 2 and N° 3's Rejoinder, p. 35, para. 4.56.

⁵¹⁶ Respondents N° 2 and N° 3's Rejoinder, p. 34, para. 4.55.

c Abuse of rights

786. The Respondents N° 2 and N° 3 note that the Claimant claims that, by insisting on its rights under the Subordination Agreement, the Respondent N° 1 is committing an abuse of rights under the Subordination Agreement, which allegedly entitles it to recover damages directly from the Respondent N° 1.⁵¹⁷

787. The Respondents N° 2 and N° 3 consider that the Claimant does not appear to claim that this abuse of rights argument, if proven, would allow it (i) to claim that the Subordination Agreement is null and void or (ii) to claim damages from them. Consequently, the Respondents N° 2 and N° 3 do not address further this argument.⁵¹⁸

d Has the Subordination Agreement expired?

788. The Respondents N° 2 and N° 3 note that the Claimant asserts that the Subordination Agreement has expired on three separate grounds, namely that (i) the term of the Subordination Agreement was linked to the maturity of the IBL Loan Agreement and therefore expired (at the latest) on expiry of the Third Extension in June 2015, (ii) the Subordination Agreement may be unilaterally terminated under a supposed Lebanese law prohibition against perpetual undertakings and (iii) the absence of effect of the notice of default. However, the Respondents N° 2 and N° 3 argue that the three arguments are wrong.⁵¹⁹

(i) *The term of the Subordination Agreement was not linked to the maturity of the IBL Loan*

789. The Respondents N° 2 and N° 3 argue that the IBL Loan did not contemplate gradual repayment of the principal. Instead, repayment would be in two tranches, with the largest falling due on the maturity date of the IBL Loan. They explain that Lebanese banks, in common with other commercial banks, use subordination agreements to provide them with protection against default, protection that remains in effect until such time as the debt is settled in full (R2/3-ER-Moghaizel-1, para. 103; R2/3-ER-Moghaizel-2, para. 43). Consequently, the Respondents N° 2 and N° 3 state that it is illogical and contrary to normal commercial practice that the Subordination Agreement would lapse on the date of maturity.⁵²⁰

⁵¹⁷ Respondents N° 2 and N° 3's Statement of Defence, p. 26, para. 4.1(b).

⁵¹⁸ Respondents N° 2 and N° 3's Statement of Defence, p. 26, para. 4.1(b); Respondents N° 2 and N° 3's Rejoinder, p. 39, para. 6.1(a).

⁵¹⁹ Respondents N° 2 and N° 3's Statement of Defence, p. 39, paras. 4.24-4.25.

⁵²⁰ Respondents N° 2 and N° 3's Statement of Defence, p. 39, para. 4.27; Respondents N° 2 and N° 3's Rejoinder, pp. 41-42, paras. 6.9-6.12.

790. The Respondents N° 2 and N° 3 contend that Clause 1.2. of the Subordination Agreement provides the contrary to the Claimant's theory (Exhibit N° C-1), such clause meaning that the Subordination Agreement remains in effect until the Respondent N° 2's obligations pursuant to the IBL Loan have been discharged. There is no fixed time limit placed on the Subordination Agreement and its term is not tied to the maturity date of the IBL Loan (R2/3-ER-Moghaizel-1, paras. 100-107).⁵²¹

791. Moreover, the Respondents N° 2 and N° 3 assert that the Claimant's case is not supported by the various Subordination Supplementals entered into in respect of the Subordination Agreement, the wording of which is substantially similar (Recitals, Article II) (R2/3-ER-Moghaizel-1, para. 101).⁵²² The Subordination Supplementals contain no language stating that their effect would terminate upon the date on which the IBL Loan was due to be repaid.⁵²³

(ii) The Subordination Agreement cannot be unilaterally terminated

792. The Respondents N° 2 and N° 3 contest Prof. Fadlallah's assertion that the Subordination Agreement can be unilaterally terminated by the Claimant on the basis that the Respondent N° 1's decision not to pursue enforcement proceedings against the Respondent N° 2 means that the Subordination Agreement is an allegedly impermissible perpetual contract (CER-Fadlallah-1, para. 65).⁵²⁴

793. The Respondents N° 2 and N °3 note that Prof. Fadlallah provides support neither for his bald assertion that Lebanese law forbids "perpetual contracts" nor (if such a prohibition exists) a clear definition of what types of contracts constitute impermissible perpetual contracts, the Lebanese law referred to by him pointing in the opposite direction (Exhibit N° C-ER-41, Articles 166 and 245 COC).⁵²⁵

794. In any event, the Respondents N° 2 and N° 3 submit that the Subordination Agreement is not a perpetual contract with an undefined term. Instead, Clause 1.2 of the Subordination Agreement makes clear that it remains in effect "*until the obligations of Korek pursuant to the IBL Loan Agreement have been discharged*" (R2/3-ER-Moghaizel-1, para. 106; R2/3-ER-Moghaizel-2, para. 47).⁵²⁶ Therefore, the obligations under the Subordination Agreement are subject to an "uncertain term", being stressed that agreements with such term are expressly permitted under Article 100 COC (Exhibits N° R2/3-ER-23 and R2/3-ER-24).⁵²⁷

⁵²¹ Respondents N° 2 and N° 3's Statement of Defence, p. 40, paras. 4.28-4.29; Respondents N° 2 and N° 3's Rejoinder, p. 41, para. 6.8 and p. 42, para. 6.13.

⁵²² Respondents N° 2 and N° 3's Statement of Defence, pp. 40-41, paras. 4.30-4.32.

⁵²³ Respondents N° 2 and N° 3's Rejoinder, p. 40, paras. 6.3-6.7.

⁵²⁴ Respondents N° 2 and N° 3's Statement of Defence, p. 42, para. 4.33.

⁵²⁵ Respondents N° 2 and N° 3's Statement of Defence, p. 42, para. 4.34.

⁵²⁶ Respondents N° 2 and N° 3's Statement of Defence, p. 43, para. 4.35.

⁵²⁷ Respondents N° 2 and N° 3's Rejoinder, p. 44, paras. 6.16-6.17.

795. The Respondents N° 2 and N° 3 conclude that the Subordination Agreement is an agreement of uncertain term that is not invalid for perpetuity (R2/3-ER-Moghaizel-2, para. 57).⁵²⁸

e Has the Subordination Agreement lapsed?

796. The Respondents N° 2 and N° 3 contend that the Claimant's argument that the Subordination Agreement has lapsed because the underlying motivation for the contract has disappeared as a result of the implementation of the CMC Decision and that once it no longer had an indirect interest on the Respondent N° 2 as a result of the implementation of the CMC Decision (therefore it no longer has an interest in subordinating its debt) suffers from three fundamental flaws:⁵²⁹

- First, the doctrine of lapse ("*caducité*") that the Claimant relies upon does not form part of Lebanese law. Article 232 of the COC providing for the circumstances in which a contract can be terminated does not include the doctrine of lapse (R2/3-ER-Moghaizel-1, paras. 108-121; R2/3-ER-Moghaizel-2, paras. 68-72).⁵³⁰
- Second, even if such a doctrine did exist, the Claimant's justifications for its application are inadequate, being reminded that the primary purpose of the Subordination Agreement was to provide protection for the Respondent N° 1's loan to the Respondent N° 2 (R2/3-ER-Moghaizel-1, paras. 119-121).⁵³¹
- Third, the Respondents N° 2 and N° 3 stress that the Claimant's argument that the Subordination Agreement should lapse because it no longer holds an indirect interest in the Respondent N° 2 runs directly contrary to arguments it advances in other proceedings.⁵³²

f Respondents' alleged disclosure failures

797. The Respondents N° 2 and N° 3 note that the Claimant makes a number of requests for the Arbitral Tribunal to draw adverse inferences on the basis that they have failed to comply with the Tribunal's document production order of 20 May 2020.⁵³³

⁵²⁸ Respondents N° 2 and N° 3's Rejoinder, p. 45, para. 6.18.

⁵²⁹ Respondents N° 2 and N° 3's Statement of Defence, p. 43, paras. 4.36-4.37.

⁵³⁰ Respondents N° 2 and N° 3's Statement of Defence, p. 43, para. 4.38; Respondents N° 2 and N° 3's Rejoinder, p. 45, para. 6.21.

⁵³¹ Respondents N° 2 and N° 3's Statement of Defence, pp. 43-44, paras. 4.39-4.41; Respondents N° 2 and N° 3's Rejoinder, p. 46, para. 6.23.

⁵³² Respondents N° 2 and N° 3's Statement of Defence, p. 434, paras. 4.42-4.43; Respondents N° 2 and N° 3's Rejoinder, p. 46, para. 6.23.

⁵³³ Respondents N° 2 and N° 3's Rejoinder, p. 35, para. 5.1.

798. The Respondents N° 2 and N° 3 argue that each of the Claimant's requests is without merit. Indeed, they state that it is not a sufficient basis to invite the Arbitral Tribunal to make serious adverse inference without pointing to any specific adverse inference which could credibly be drawn from the evidence before the Tribunal. Actually, the Respondents N° 2 and N° 3 assert that the Claimant has simply set out its own case theory and invited the Arbitral Tribunal to determine it has proved its case. That is not a permissible use of adverse inferences. The Respondents N° 2 and N° 3 recall that the Arbitral Tribunal may only draw adverse inferences if it is satisfied, on the evidence before it, that the only likely and rational explanation is that the Respondents have failed to produce evidence which would not assist their case. They submit that the Claimant has failed to demonstrate that the Tribunal could reasonably draw this conclusion.⁵³⁴

799. Further, the Respondents N° 2 and N° 3 contend that the limited submissions made by the Claimant in support of its request for the adverse inferences are flawed, as:⁵³⁵

- The Claimant neglects to acknowledge that the vast majority of documents relevant to the negotiation of the IBL Loan were copied to the IH Board of Directors, including the representatives of the Claimant. As such, the majority of documents were already in the possession, custody and control of the Claimant and were not produced in document production.
- The Respondent N° 2 is not a party to any cash collateral agreement.
- Mr. Mustafa is not a party to these proceedings. Further, Mr. Mustafa, the Respondents N° 2 and N° 3 are under no obligation to waive their rights or protections under Lebanese banking secrecy law.
- The Claimant makes a number of unwarranted complaints regarding the Respondents N° 2 and N° 3's document production process. However, they have provided a significant amount of details in respect of the document search process.

800. Therefore, the Respondents N° 2 and N° 3 submit that the Claimant has failed to demonstrate that the Arbitral Tribunal is able to, let alone should, draw adverse inferences. The Claimant has relied on a series of generalities in order to invite the Tribunal to make serious findings of fraud and dishonesty. This is not a permissible or appropriate use of adverse inferences.⁵³⁶

⁵³⁴ Respondents N° 2 and N° 3's Rejoinder, pp. 36-37, paras. 5.2-5.6.

⁵³⁵ Respondents N° 2 and N° 3's Rejoinder, p. 37, para. 5.7.

⁵³⁶ Respondents N° 2 and N° 3's Rejoinder, p. 38, para. 5.10.

801. Finally, the Respondents N° 2 and N° 3 contend that the Claimant's additional and vague request for further adverse inferences (from their alleged failure to call evidence from the attendees at the KSC meeting on 13 October 2015) does not withstand scrutiny.⁵³⁷

F Quantum

1 The Claimant's position

802. The Claimant reminds that the Respondent N° 3 has failed to make any interest payments under the IT-IH Loan since September 2014 and further failed to repay the IT-IH Loan in full by 14 June 2015 (Exhibits N° C-14, C-15, C-17 to C-20 and C-61 to C-62).⁵³⁸

803. The Claimant submits that the Respondents by their fraudulent conduct deprived it from the ability to recover its USD 285 million shareholder loan and they therefore caused it a loss of USD 601.9 million, corresponding to the amounts due, but unrecoverable,⁵³⁹ under the Claimant's USD 285 million shareholder loan (including USD 316.9 million of accrued interest⁵⁴⁰).⁵⁴¹

804. The Claimant further claims that, because of the secret kick-back arrangement between Mr. Mustafa and the Respondent N° 1, the Respondent N° 2 has been deprived of USD 138.6 million⁵⁴² (i.e. the portion of the interest payments made by the Respondent N° 2 to the Respondent N° 1 which the latter improperly kicked-back to Mr. Mustafa), resulting in an additional loss to the Claimant commensurate to its 44% shareholding in the Respondent N° 2 during that time.⁵⁴³

805. The Claimant stresses that it has amended its claim for damages to a claim for declaratory relief. It explains that it has decided to revise its request for relief and is no longer seeking quantified damages against the Respondents in these proceedings in order to eliminate any argument regarding double-recovery issues with parallel and subsequent proceedings (TR Day 1, 90:14-92:2). Consequently, the Claimant is no longer seeking quantified damages.

⁵³⁷ Respondents N° 2 and N° 3's Rejoinder, p. 38, paras. 5.11-5.12.

⁵³⁸ Statement of Claim, p. 24, paras. 69-70.

⁵³⁹ The Claimant specifies that "*For the avoidance of doubt, the Claimant confirms that to the extent it is able to recover any amounts owed under the IT-IH Shareholder Loan, it will not seek recover such amounts from the Respondents in this arbitration (and vice versa).*"

⁵⁴⁰ The Claimant notes that "*whilst the above figures are correct as at the date of this Statement of Claim, they will need to be updated as at the date of the Award.*"

⁵⁴¹ Statement of Claim, p. 24, paras. 71-72.

⁵⁴² The Claimant states that "*The above figure has been calculated on the basis of interest payments understood to have been made by Korek to IBL between December 2011 (when Korek entered into the IBL Loan Agreement) and March 2019 (when International Holdings' shareholding in Korek was apparently de-registered) pursuant to the KCR Decree.*"

⁵⁴³ Statement of Claim, p. 25, para. 73.

2 The Respondent N° 1's position

806. The Respondent N° 1 requests the Arbitral Tribunal to compensate it for the damages and losses suffered as a result of the Claimant's malicious claims in these proceedings and groundless accusations which impacted its reputation as a financial institution, in application of Article 124 COC, Articles 10, 11 and 511 LCCP and Article 122 COC in conjunction with Article 20 of the Rules. The Claimant's frivolous claims abusively involved the Respondent N° 1 in a dispute that does not concern it and caused the latter a moral prejudice resulting from false accusations of having participated in a so-called "fraudulent scheme".⁵⁴⁴

807. The Respondent N° 1 invites the Arbitral Tribunal to determine the amount of its indemnification (Exhibits N° R1-LA-108 and R1-LA-109) (TR Day 1, 152:13-153:3 and 153:18-157:21; TR Day 4, 196:21-198:14, 205:7-209:2).⁵⁴⁵

XII THE ARBITRAL TRIBUNAL'S DETERMINATION

808. The Arbitral Tribunal turns to its examination and determination of the Parties' claims and counterclaim. The Arbitral Tribunal has carefully heard the totality of the Parties' submissions and has carefully reviewed the totality of the same in preparing this Award, but only deals below with the points which it finds of sufficient relevance to its determination and in the order and structure which it has found most conducive to its determination.

A Jurisdiction

809. The Arbitral Tribunal first notes that it is not disputed by the Parties that the relevant and applicable arbitration clause to this case is Clause 5.2 of the Subordination Agreement which provides (Exhibit N° C-1):

"Any dispute, claim, question or disagreement arising out of or relating to this Agreement or the transactions contemplated herein (a "Dispute"), shall be settled by binding arbitration in accordance with the Rules of Conciliation and Arbitration of the Beirut Chamber of Commerce and Industry by one or more arbitrators, and the procedures set forth below. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction over such dispute. The Arbitration is to take place in Beirut in the English language unless otherwise agreed by the parties. The award shall be final and binding and the parties waive their rights to lodge an appeal against the award. Nothing in this Agreement including this Section 5.2 shall prevent a party from seeking injunctive relief including but not limited to injunctive relief before the Fast Track Judge in the case of any breach or alleged breach by another party."

⁵⁴⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 86, para. 413, p. 90, paras. 435-436 and p. 93, paras. 455-456.

⁵⁴⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 86, para. 413, p. 90, paras. 435-436 and p. 93, paras. 455-456.

810. The Respondents N° 2 and N° 3 raise jurisdictional objections with respect to two aspects: (i) the Claimant's claim is allegedly directed against individuals who are not parties to the arbitration agreement (*ratione personae* jurisdiction) and (ii) the Claimant's claim allegedly arises under separate agreements (*ratione materiae* jurisdiction).
811. As to the *ratione personae* jurisdiction issue, the Arbitral Tribunal stresses that, contrary to the Respondents N° 2 and N° 3's position, the present arbitration is not brought against individuals but against the three Respondents in their capacity as company/corporate entities, and that no relief is specifically sought/directed against named individuals. The fact that Mr. Mustafa was acting in his capacity as Statutory Manager of the Respondent N° 2 and/or as Chairman of the Respondent N° 3, whereas Mr. Rahmeh was acting in his capacity as member of the KSC, Director of the Respondent N° 3 and/or as representative of the Respondent N° 2 in negotiating the IBL Loan with the Respondent N° 1 does not make them parties to this arbitration. Consequently, the Arbitral Tribunal rejects the Respondents N° 2 and N° 3's argument in that respect.
812. As to the *ratione materiae* jurisdiction issue, the Arbitral Tribunal recalls that the Claimant's principal/primary relief sought is a declaration⁵⁴⁶ from the Tribunal that the Subordination Agreement is null, void and/or no longer in force and effect and that the Respondents are liable for the alleged harmful consequences of their alleged fraudulent maneuvers which led it to consent to the Subordination Agreement.
813. The Arbitral Tribunal notes that the finding and declaration which are sought by the Claimant are made in connection to the Subordination Agreement ("*On the basis of **the finding that IT Ltd's entry into the Subordination Agreement** was procured by dol [...] an order declaring that IT Ltd is entitled to full compensation for damages, including pecuniary and non-pecuniary damages that were directly or indirectly **caused by entry into the Subordination Agreement**, from the Respondents on a joint and several basis*", emphasis added by the Arbitral Tribunal)⁵⁴⁷ and not in connection with any other agreement, such as the IT-IH Shareholder Loan.
814. The Arbitral Tribunal further notes that the arbitration clause contained in the Subordination Agreement, to which the Claimant and all three Respondents are Parties, has a wider scope than usual as it is applicable to any dispute/claim/question/disagreement arising out of or relating not only to the Subordination Agreement but also to the "*transactions contemplated herein*" (Exhibit N° C-1).
815. Consequently, the Arbitral Tribunal concludes that it has jurisdiction to decide the Claimant's claims and rejects the Respondents N° 2 and N° 3's jurisdictional objections.

⁵⁴⁶ Reply and Defense to Counterclaim, p. 130, para. 340b.

⁵⁴⁷ Reply and Defense to Counterclaim, p. 130, para. 340b.

B Admissibility of declaratory reliefs

816. As already mentioned, the Claimant submitted the following two requests for declaratory relief:⁵⁴⁸

- **"An order declaring** that IT Ltd's entry into the Subordination Agreement was procured by dol, and that the Subordination Agreement is therefore null and void" (emphasis added by the Arbitral Tribunal); and
- "On the basis of the finding that IT Ltd's entry into the Subordination Agreement was procured by dol, and on the basis of the finding of liability for each of the Respondents, **an order declaring that** IT Ltd is entitled to full compensation for damages, including pecuniary and non-pecuniary damages that were directly or indirectly caused by entry into the Subordination Agreement, from the Respondents on a joint and several basis" (emphasis added by the Arbitral Tribunal).

817. The Arbitral Tribunal will first examine the general question as to whether declaratory reliefs are admissible under Lebanese law and then will address the Claimant's specific declaratory reliefs sought.

818. The Arbitral Tribunal would like first to refer to Article 811 LCCP which is applicable to international arbitration and which provides (Exhibit N° C-LA-24):

"The arbitration agreement may specify, directly or by reference to arbitration rules, the principles applicable to the arbitration. Such arbitration may also be governed by a special law set forth in the procedural rules mentioned in the (arbitration) agreement.

In the absence of such wording in the (arbitration) agreement, the arbitrator shall, as required by the case on hand, apply the rules that he deems appropriate, directly or by reference to a special law or to the arbitration rules."

819. Pursuant to the above provision, an arbitral tribunal sitting in Lebanon shall first determine the applicable procedural rules on the basis of what is provided for in the arbitration clause and, if nothing is provided by such clause, enjoys broad discretion in the determination of the applicable procedural.

820. In the present case, the Arbitral Tribunal stresses that the procedural rules agreed upon between the Parties are the Rules of Arbitration of the Lebanese Arbitration Centre, the procedural rules contained in the Terms of Reference and the Specific Procedural Rules.

821. The Arbitral Tribunal notes that the above procedural rules do not address the issue of the admissibility of declaratory relief which a party may seek. Therefore, nothing in those rules prevents a party from seeking declaratory relief.

⁵⁴⁸ Statement of Reply and Defense to Counterclaim, p. 130, para. 340(a) and (b).

822. As to Article 9 LCCP, the Arbitral Tribunal concludes that such provision is not directly applicable to international arbitrations seated in Lebanon, even if an international arbitral tribunal sitting in Lebanon may, in application of Article 811 LCCP, choose to apply such provision by analogy.
823. In light of the above, the Arbitral Tribunal concludes that declaratory reliefs are admissible under the applicable procedural rules.
824. With respect to the *first declaratory relief* requested by the Claimant,⁵⁴⁹ the Arbitral Tribunal concludes that it is clearly admissible under Lebanese law.
825. With respect to the *second declaratory relief* requested by the Claimant,⁵⁵⁰ namely an order that the Claimant is entitled to claim damages that are found (in subsequent proceedings) to have been caused by the entry into the Subordination Agreement, the Arbitral Tribunal recalls that, pursuant to Article 122 COC, a claimant must demonstrate in order to be entitled to compensation that (i) the Respondents committed *dol*, (ii) it suffered damages and (iii) the existence of a causal link between the *dol* and the damages (Exhibits N° R1-LA-34 and R1-LA-43). Further, pursuant to Article 134 COC, the damages to be compensated must be actual and any future damage shall be compensated only if it is certain to occur and can be quantified. Eventual and uncertain damages cannot be taken into consideration (R2/3-ER-Moghaizel-2, paras. 79-84).
826. In the present case, it cannot be disputed that the Claimant has withdrawn its claim for damages and therefore that it is no longer seeking quantified damages. Further, the Arbitral Tribunal notes that the Claimant expressly submitted that it intends to seek damages in subsequent proceedings before a "*subsequent tribunal*" (TR Day 1, 91:23-25). In sum, the Claimant is not seeking damages in the present proceedings and consequently, the Arbitral Tribunal concludes that the *second declaratory relief*, as presently submitted by the Claimant, is inadmissible under Lebanese law.

⁵⁴⁹ Statement of Reply and Defense to Counterclaim, p. 130, para. 340(a).

⁵⁵⁰ Statement of Reply and Defense to Counterclaim, p. 130, para. 340(b).

C Transfer Evidence

827. By letter dated 11 July 2020, the Claimant advised the Arbitral Tribunal that it had recently obtained evidence (the "**Transfer Evidence**") relevant to the present proceedings as a result of Section 1782⁵⁵¹ discovery proceedings in the Southern District of New York.⁵⁵² The Claimant attached to its letter a Stipulation, a Protective Order dated 7 February 2020 issued by the U.S. District Court for the Southern District of New York and the Transfer Evidence.
828. The Protective Order states that the Claimant filed, and was granted, an application for "*certain limited disclosures from nonparties [including HSBC Bank USA, N.A.] for use in certain pending and contemplated foreign proceedings, as set out in its application for assistance pursuant to 28 U.S.C. §1872*" (hereinafter referred to as the "**Application**").
829. In addition, the Protective Order expressly provides that the Transfer Evidence may be used in the present Arbitration proceedings before the Lebanese Arbitration and Mediation Center.⁵⁵³
830. The Transfer Evidence records that, on 20 December 2011, Mr. Mustafa transferred the amount of USD 155,000,000.00 from his account with HSBC Bank Middle East in Dubai to his account with IBL Bank in Beirut. The Claimant formally submitted the Transfer Evidence into the record along with its Statement of Reply and Defense to Counterclaim as Exhibit N° C-63.
831. The Respondents request that the Transfer Evidence be deemed inadmissible.⁵⁵⁴

⁵⁵¹ Section 1782 of Title 28 of the United States Code authorizes a U.S. District Court upon application by a foreign or international tribunal or any interested person to order a person found or resident in the U.S. district *inter alia* to produce documents "*for use in a proceeding in a foreign or international tribunal*", 28 U.S.C. §1782.

⁵⁵² Letter from Gibson Dunn, on behalf of the Claimant, to the Arbitral Tribunal dated 11 July 2020; *refer also* Letter from Boies Schiller Flexner, on behalf of the Respondents N° 2 and N° 3, dated 16 July 2020 and Letter from Gibson Dunn, on behalf of the Claimant, to the Arbitral Tribunal dated 29 July 2020.

⁵⁵³ The Protective Order provides at para 2: "*The Confidential Information disclosed will be held and used by the person receiving such information solely for use in connection with (a) the pending and contemplated foreign proceedings named in the Application ('Named Proceedings'); or potential foreign proceeding brought by Iraq Telecom relating to the same transactions and/or occurrences underlying the Named Proceedings [...]*" (emphasis added by the Arbitral Tribunal).

At page 2, footnote 1, the Named Proceedings are defined to include: "*(1) DIFC Breach of Duty Litigation; (2) DIFC Self-Dealing Litigation; (3) LAMC Arbitration; (4) Breach of Agreement Arbitration; and (5) Contemplated ICC Self-Dealing Arbitration*" (emphasis added).

⁵⁵⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 27, paras. 108 *et seq.* and Respondents N° 2 and N° 3's Rejoinder, p. 5, paras. 2.7 *et seq.* In their Opening Statement, the Respondents N° 2 and N° 3 confirmed that they maintain their objection to the admissibility of the Transfer Evidence, TR Day 1, 166: 2-4.

832. In particular, the Respondent N° 1 refers to Articles 9.1 and 9.2(b) of the IBA Rules on the Taking of Evidence in International Commercial Arbitration (hereinafter referred to as the "**IBA Rules**") which provide that the Arbitral Tribunal may exclude from evidence a document based on "*legal impediment or privilege*". The Respondent N° 1 alleges that the provider of the cash collateral "*benefits from banking secrecy*", in the same manner that the Respondent N° 2 and therefore that the Transfer Evidence should be deemed inadmissible.⁵⁵⁵ The Respondent N° 1 further states that "*in line with [its] banking secrecy obligations, Respondent 1 is in no position to affirm or deny the content of the Transfer Evidence*".⁵⁵⁶
833. The Respondents N° 2 and N° 3 argue that, on 8 July 2020, the Second Circuit Court of Appeals in New York determined that Section 1782 proceedings cannot be used to obtain discovery for use in private international arbitrations such as these proceedings (Exhibit N° R2-LA-1).⁵⁵⁷ The Respondents N° 2 and N° 3 further argue that the "*Second Circuit Court of Appeals binds all lower federal courts in New York and as such the Transfer Evidence has not been obtained in a manner compliant with Section 1782 as applied in that federal district. As such, it is not admissible evidence*".⁵⁵⁸
834. The Arbitral Tribunal is not persuaded by the Respondents' arguments.
835. As a preliminary matter, the Arbitral Tribunal recalls that, in accordance with Clause 14.1 of the SPR, the Tribunal may be guided by the IBA Rules.
836. Article 9.1 of the IBA Rules provides that the "*Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence*" (emphasis added by the Arbitral Tribunal). In addition, Article 9.2(b) provides that the "*Arbitral Tribunal shall, at the request of a party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons [...] legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable*" (emphasis added by the Arbitral Tribunal).
837. Accordingly, the Arbitral Tribunal is empowered to determine the admissibility of the Transfer Evidence and may exclude from evidence a document on the basis of "*legal impediment or privilege*".

⁵⁵⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 28, paras. 109-111.

⁵⁵⁶ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 28, para. 112.

⁵⁵⁷ *In re Application and Petition of Hawei Guo*, Case No. 19-781. The argument of the Respondents N° 2 and N° 3 is also supported by Professor Fadi Nammour in his Expert Report (paras. 44 *et seq.*).

⁵⁵⁸ Respondents N° 2 and N° 3's Rejoinder, p. 5, para. 2.9.

838. The Respondent N° 1's argument relating to banking secrecy does not, however, survive scrutiny. Indeed, Article 1 of the Lebanese Law on Banking Secrecy expressly provides that it applies to banks established in Lebanon in the form of joint-stock companies, and banks that are branches of foreign companies.⁵⁵⁹ HSBC Bank USA, N.A. (hereinafter referred to as "**HSBC**") – which disclosed the Transfer Evidence – is not a Lebanese bank nor a branch of a foreign bank operating in Lebanon. As such, the Lebanese Law on Banking Secrecy is not applicable to HSBC nor is there any allegation that HSBC has, in disclosing the Transfer Evidence, violated any other laws, rules or regulations applicable to it.
839. As for the Respondents N° 2 and N° 3's argument that the Transfer Evidence is inadmissible in the present Arbitration proceedings because it *"has not been obtained in a manner compliant with Section 1782 as applied in that federal district"*, it misinterprets New York law.
840. The Claimant filed the Application with the U.S. District Court for the Southern District of New York (hereinafter referred to as the "**Court**"). On 7 November 2018, the Court granted both Mr. Mustafa and the Respondent N° 2 the right to intervene in the New York proceedings. On 13 August 2019, the Court granted the Claimant's Application for the production of certain documents. Pursuant thereto, the Transfer Evidence was disclosed to the Claimant. On 7 February 2020, the Court issued the Protective Order.
841. Nearly one year after the granting of the Claimant's Application, on 8 July 2020, and in unrelated proceedings, the Second Circuit Court of Appeals in New York held that Section 1782 *"does not sweep so broadly as to include private commercial arbitrations"* and concluded in the case before it that *"because the CIETAC arbitration at issue in this case is a private commercial arbitration, Guo [the applicant] may not rely on § 1782 to request discovery"* (Exhibit N° R2-LA-1).⁵⁶⁰
842. This latter decision dated 8 July 2020 in unrelated proceedings does not have a retroactive effect on the Claimant's Application which was granted nearly one year prior. Indeed, there is no allegation that the granting of the Claimant's Application has been reversed in any way. As such, the Transfer Evidence was validly obtained through legal means and submitted into the record before the present Arbitral Tribunal. The fact that since the granting of the Claimant's Application the law may have evolved in New York – and indeed may continue to evolve as the U.S. Supreme Court resolves the existing Circuit split – has no bearing on the validity of the granting of the Application at the time it was ordered nor on the admissibility of the Transfer Evidence in the present Arbitration proceedings.
843. Accordingly, the Respondents' request to deem the Transfer Evidence inadmissible is denied and the Transfer Evidence is determined to form part of the record in this Arbitration as Exhibit N° C-63.

⁵⁵⁹ Lebanese Law on Banking Secrecy of 3 September 1956; refer also to Letter from Claimant's Counsel to Arbitral Tribunal dated 20 March 2020, para. 18.

⁵⁶⁰ *In re Application and Petition of Hawei Guo*, Case No. 19-781, pp. 25-26.

D Principal claims

844. As already mentioned, the Arbitral Tribunal notes that the Claimant's principal claim is based on an allegation of *dol* committed by the Respondents and that the Claimant seeks from the Tribunal "[a]n order that *IT Ltd*' entry into the *Subordination Agreement* was procured by *dol*, and that the *Subordination Agreement* is therefore null and void".⁵⁶¹

845. The Arbitral Tribunal further notes that the Claimant is alternatively⁵⁶² seeking an order declaring:

- the Subordination Agreement (i) has expired on 21 June 2015 or (ii) is terminated as of the date of starting the present proceedings (26 June 2018) and is no longer in force and effect;
- the Respondent N° 1 has abused its rights under the Subordination Agreement;
- the Subordination Agreement lapsed on 19 March 2019 and is no longer in force and effect.

846. Therefore, the Arbitral Tribunal will first review and assess the Claimant's principal/main claim based on the allegation of *dol*.

1 Dol / fraud

847. The Arbitral Tribunal will first set out hereafter the principles applicable to *dol* under Lebanese law as relied upon by the Parties and will identify the points of agreements and disagreements between the Parties and their experts in that respect.

a Applicable principles to *dol* under Lebanese law

(i) Relevant Article of the Code of Obligations and Contracts

848. The starting point of the Arbitral Tribunal's analysis of *dol* is the Lebanese Code of Obligations and Contracts (COC), and in particular Articles 202, 208, 209, and 233 thereof.

⁵⁶¹ Statement of Reply and Defense to Counterclaim, p. 130, para. 340(a).

⁵⁶² Statement of Reply and Defense to Counterclaim, p. 130, para. 340(c)-(f).

849. Article 202 COC, under the heading "*Les vices du consentement*", provides (Exhibit N° C-ER-41):

"Article 202 – *Le consentement est vicié ou même parfois complètement exclu lorsqu'il a été donné par erreur, surpris par dol, extorqué par crainte, ou encore au cas de lésion anormale ou d'incapacité."*

(Emphasis added by the Arbitral Tribunal.)

"Article 202 – *Consent is vitiated or even sometimes completely excluded when it has been given by mistake, obtained by fraud, extorted by fear, or even when there is a case of abnormal prejudice or incapacity."*

(Free translation; emphasis added by the Arbitral Tribunal.)

850. Articles 208 and 209 COC, under the heading "*Du dol*", provide as follows (Exhibits N° R1-LA-14 and R1-LA-15):

"Article 208 – *Le dol n'est jamais exclusif du consentement; il le vicie et entraîne la nullité du contrat lorsqu'il a été déterminant et a décidé la victime à contracter.*

Le dol incident, qui, sans avoir déterminé la formation du contrat, en a modifié les clauses, ouvre seulement à la victime une action en dommages-intérêts."

(Emphasis added by the Arbitral Tribunal.)

"Article 208 – *Fraud is never exclusive of consent; it vitiates it and entails nullity of the contract when it has been a determining factor and convinced the victim to enter into a contract.*

Incidental fraud, which, without having determined the formation of the contract, has modified its clauses, affords the victim no more than action for damages."

(Free translation; emphasis added by the Arbitral Tribunal.)

"Article 209 – *Le dol déterminant n'entraîne la nullité du contrat qu'autant qu'il a été commis par l'une des parties au détriment de l'autre; toutefois, le dol pratiqué par un tiers est lui-même dirimant si la partie qui en bénéficie en avait connaissance lors de la formation du contrat; dans le cas contraire, il ne donne ouverture qu'à une action en dommages-intérêts, au profit de la victime et contre son auteur."*

(Emphasis added by the Arbitral Tribunal.)

"Article 209 – *Determinative fraud entails nullity of the contract solely in so far as it has been committed by one of the parties to the detriment of the other; however fraud committed by a third party has within itself cancellation effect if the party benefiting from it was acquainted with it when the contract was formed; in the contrary case, it solely affords grounds for damages, in favour of the victim and against its author."*

(Free translation; emphasis added by the Arbitral Tribunal.)

851. Article 233 of the COC, under the heading "Annulation d'un contrat", provides (Exhibit N° R1-LA-12):

"Article 233 – *L'annulation d'un contrat est toujours déterminé par un vice original contemporain de sa naissance (erreur, dol, violence, lésion, incapacité).*

[...]"

(Emphasis added by the Arbitral Tribunal.)

"Article 233 - *A contract can be annulled due to an original vice in consent at the time of its formation (such as error, dol, lesion, incapacity)*

[...]"

(Free translation; emphasis added by the Arbitral Tribunal.)

852. As can be seen from the above provisions, *dol* is not expressly defined in the COC.

853. There does not appear to be substantive disagreement, however, amongst the Parties with respect to the general conditions for a finding of *dol*, namely:⁵⁶³

- the existence of fraudulent maneuvers, in the form of positive acts or acts of concealment (*réticence dolosive*);
- such fraudulent maneuvers must emanate from a contracting party or from a third party if one of the contracting parties knew of their existence at the time of conclusion of the contract;
- such fraudulent maneuvers must have been intended to deceive/mislead the counterparty; and
- such fraudulent maneuvers must be determinative, without which the contracting party would not have entered into the contract or would have entered into it on different conditions.

854. Drawing on Articles 208 and 209 COC, the Respondent N° 1 argues:

"Dol therefore necessitates that two elements are cumulatively met:⁵⁶⁴

- The first element is material, whereby the dol act must have led the other party to enter into the contract. The impact of the dol act should be determinative and material in leading the other party to enter into the contract;*

⁵⁶³ Statement of Reply and Defense to Counterclaim, p. 78, para. 175; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 54, para. 240; Respondents N° 2 and N° 3's Statement of Defense, p. 28, para. 4.4; Respondents N° 2 and N° 3's Rejoinder, para. 4.2: "[...] *there appears to be no significant dispute about the following criteria the Claimant must satisfy in order to demonstrate the existence of a dol under Lebanese law, namely [...]*"; CER-Fadlallah-1, paras. 23 and 29; R1-ER-Nammour-1, para. 55: "*nous renvoyons aux développements apportés par les soins de monsieur le professeur Fadlallah*".

⁵⁶⁴ Respondent N° 1's Statement of Defence and Counterclaim, p. 31, para. 154.

- ii. *The second element is moral, and it relates to the intention to deceive the other party and cause it to enter into the contract as a result of the illusion created in the perception of the deceived party, arising from the dol act.*"

(Emphasis added by the Arbitral Tribunal.)

855. On the Arbitral Tribunal's reading, the primary areas of disagreement amongst the Parties relate to (i) the extent to which the silence of a contracting party can amount to an act of concealment (*réticence dolosive*), (ii) the nature of the intention required for a finding of *dol*, (iii) the elements which a tribunal may take into consideration in assessing the existence of *dol*, and (iv) the consequences of a finding of *dol*.

(ii) Extent to which silence can amount to an act of concealment (*réticence dolosive*)

856. There is no dispute that fraudulent maneuvers in the form of positive acts can constitute *dol*.⁵⁶⁵

857. The Claimant argues that, under Lebanese law, acts of concealment, in French, *réticence dolosive*, can amount to *dol*:⁵⁶⁶

*"As stated by Professor Fadlalah [CER-Fadlallah-1, para. 31], *réticence dolosive* is also condemned under Lebanese law. Lebanese authors unanimously recognize that *dol* can be in the form of concealment. [...]*

[Exhibits N° C-ER-5 to C-ER-7]

*Likewise, Lebanese jurisprudence has on multiple occasions recognized that concealment could constitute a maneuver of *dol* under Lebanese law:*

[Exhibits N° C-ER-13 to C-ER-17 and C-ER-19]"

858. In this regard, the Claimant argues that a contracting party has a duty of disclosure to its counterparty, a duty which is anchored in "*the principles of contractual loyalty and good faith so that each contracting party perfectly understands the scope of what he/she is agreeing to when entering into a contract*"⁵⁶⁷. A contracting party that maintains its silence, in breach of its duty of disclosure, therefore commits *dol*.

859. The Respondent N° 1 argues, however, that for silence to be deemed *réticence dolosive* the following cumulative conditions must be met:⁵⁶⁸

- there must be a "*duty imposed on a party to provide its counterparty with certain information, prior to the execution of the contract*";

⁵⁶⁵ Statement of Reply and Defense to Counterclaim, p. 78, para. 175(a); Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 54, para. 240(i); Respondents N° 2 and N° 3's of Rejoinder, p. 11, para. 4.2(a).

⁵⁶⁶ Statement of Reply and Defense to Counterclaim, p. 87, paras. 204-205.

⁵⁶⁷ Statement of Reply and Defense to Counterclaim, p. 89, para. 208.

⁵⁶⁸ Respondent N° 1's Statement of Defence and Counterclaim, p. 33, para. 162.

- (i) the "*silence should relate to a material fact or matter which affects the other party's intention to enter into the contract*", (ii) the "*party knew about such facts or matters and concealed them premeditatedly*", and (iii) the party alleging *dol* did not have a legal duty to verify these facts or matters prior to signature of the contract;
- according to some scholars, the party alleging *réticence dolosive* must be unable to obtain the information by any means other than from the counterparty.

860. Similarly, the Respondents N° 2 and N° 3 argue that where "*the claim rests on an allegation of non-disclosure, the party who failed to disclose a specific fact must also have been aware that his/her non-disclosure of such fact would have a direct impact on the decision of the other party to enter into the contract*" and "*the claimant [...] must have had no means of ascertaining the true position before entering into the contract*".⁵⁶⁹

861. Each of the Respondents argues that for the concealment to amount to *dol*, a legal precontractual obligation to inform the counterparty must have existed. Each of the Respondents takes the position that no such obligation existed under the circumstances.⁵⁷⁰

862. *A contrario*, according to the Respondents, the Claimant had a duty of due diligence under Lebanese law, which it failed to meet. In particular, the Claimant "*had the obligation to enquire about the terms and conditions of the Loan from its own subsidiary*".⁵⁷¹

863. The Arbitral Tribunal is persuaded that Lebanese case law (Exhibits N° C-ER-13, p. 235, C-ER-14, p. 144, C-ER-15, p. 871, C-ER-16 and C-ER-19, p. 229) and legal scholarship (Exhibits N° C-ER-5 to C-ER-7) recognize that fraudulent concealment (*réticence dolosive*) can amount to *dol*.

⁵⁶⁹ Respondents n° 2 and n° 3's Statement of Defense, p. 28, para. 4.4(c) and (d); Respondent N° 2 and N° 3's Rejoinder, p. 12, para. 4.3(b): "*the Claimant, fulfilling its duty of precontractual diligence, must have had no means of ascertaining the true position before entering into the contract.*"

⁵⁷⁰ Respondent N° 1's Statement of Defense and Counterclaim, p.33, para. 162(i); Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 61, para. 285; Respondents N° 2 and N° 3's Statement of Defense, p. 34, para. 4.14.

⁵⁷¹ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 61, para. 290 and p. 62, para. 292; Respondent N° 2 and N° 3's Statement of Defense, p.27, para. 4.3.

864. In addition, Lebanese courts have confirmed that a duty to disclose can arise from statutory provisions "*or in view of the nature of the contract that requires a reciprocal trust between the parties*" (Exhibit N° R2/3-ER-6):

"Whereas doctrine holds that non-disclosure in civil law suffices as such to constitute misrepresentation, if it appears that it affected the will of the contracting party, who, had he known the truth of the matter, he would not have made the contract, and if the party who remained silent had an obligation to disclose what he knew, either pursuant to statutory provisions, or in view of the nature of the contract that requires a reciprocal trust between the parties, or in view of the circumstances surrounding it."

(Emphasis added by the Arbitral Tribunal.)

865. Accordingly, the Arbitral Tribunal concludes that, under Lebanese law, a duty to disclose can arise both from an affirmative statutory provision as well as from the requirements of good faith and honesty in contractual dealings (Exhibit N° R1-LA-1), *a fortiori* in circumstances involving banking transactions and transactions amongst shareholders and partners which presume "*a reciprocal trust between the parties*".

(iii) Nature of the intention required for a finding of *dol*

866. To constitute *dol*, an intention to deceive or mislead is required.⁵⁷²

867. Prof. Nammour refers in his Expert Report to the intention to harm (*intention de nuire*) (R1-ER-Nammour-1, paras. 56 (bullet points 1 and 2), 69 (bullet points 2 and 4), 81 and 88).

868. Having reviewed the case law on record, the Arbitral Tribunal was unable to identify any case law supporting the existence of such requirement.

869. In addition, the Arbitral Tribunal notes that Prof. Nammour did not refer, in his Expert Report or during his oral examination, to any legal material supporting his statement (French TR Day 3, 60:29-44).

(iv) Elements which the Tribunal may take into consideration in assessing the existence of *dol*

870. The Lebanese Court of Cassation has held that courts are entrusted with "*appreciating the elements of *dol* and evaluating the extent of seriousness of the maneuver and its consequences*" (Exhibit N° C-LA-10). As such, *dol* must be assessed *in concreto*, on the basis of the circumstances within which consent was given.

871. In making this assessment, Lebanese law does not limit courts to one element, i.e. courts are entitled to refer to various elements (*faisceau d'indices*) which, taken together, constitute *dol*.

⁵⁷² Statement of Reply and Defense to Counterclaim, p. 78, para. 175(d) and p. 103, para. 241; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 63, para. 293; Respondents N° 2 and N° 3's Rejoinder, p. 11, para. 4.2(c).

872. Furthermore, *dol* being of a *vice du consentement*, it is undisputed that it must be assessed at the time of formation of the contract.⁵⁷³

873. In this regard, the Claimant asserts:⁵⁷⁴

"The victim of a dol can prove by any means that its consent, at the time of entering into the contract, has been vitiated by dol [Exhibit N° C-LA-9] [CER-Fadlallah-1, para. 34], and to this end may, for example, rely on: (i) witness testimony [Exhibit N° C-LA-10] and/or [(ii)] acts or omissions that took place subsequent to the formation of the contract but which establish the existence of dol at the time the contract was formed. [Exhibit N° C-LA-11] [CER-Fadlallah-2, para. 17]"

874. The Respondent N° 1 argues, however, that *"elements of dol and their existence should be valuated at the date of formation of the contract and not on the basis of actions and statements made years after its formation"*.⁵⁷⁵

875. Similarly, the Respondents N° 2 and N° 3 argue that *"events that post-date the execution of the Subordination Agreement"* could not *"have induced the Claimant to enter into the Subordination Agreement and so are legally irrelevant"*.⁵⁷⁶

876. In this regard, the Respondents N° 2 and N° 3 rely on the Expert Report of Dr. Moghaizel (R2/3-ER-Moghaizel-1, para. 41):⁵⁷⁷

"To be actionable, misrepresentation must take place at the time when the contract is made or reasonably before such time. Clearly, a statement, action, or non-disclosure that takes places after the contract is made cannot as a matter of law be relied on to claim misrepresentation."

877. Naturally, the Arbitral Tribunal is persuaded that *dol* must be assessed at the time of formation of the contract, not subsequent thereto. The Tribunal is further persuaded, however, that elements subsequent to formation of the contract may be relied upon to demonstrate the existence of *dol* at the time of contract formation.

878. Indeed, the Lebanese Court of Cassation has held that the victim of *dol* has the possibility to prove the defect in consent *"by all means of proof"* (Exhibit N° C-LA-9, p. 233):

⁵⁷³ Statement of Reply and Defense to Counterclaim, p. 79, para. 176; Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 65, para. 308; Respondents N° 2 and N° 3's Statement of Defense, p. 31, para. 4.9(a)(iv); Respondents N° 2 and N° 3's Rejoinder, p. 26, para. 4.34(c).

⁵⁷⁴ Statement of Reply and Defense to Counterclaim, p. 79, para. 176 and p. 41, para. 89: *"any subsequent event which reveals fraudulent behavior at the time the contract was made can be taken into account by the Tribunal."*

⁵⁷⁵ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p. 66, para. 309.

⁵⁷⁶ Respondents N° 2 and N° 3's Rejoinder, p. 26, para. 4.34(c); Respondents N° 2 and N° 3's Statement of Defence, p. 31, para.4.9(a)(iv): *"it is a central principle of Lebanese law that the alleged misrepresentation must have been made on or reasonably before the date of the relevant contract."*

⁵⁷⁷ R2/3-ER-Moghaizel-1, para. 57: *"[...] in order for a contract to be nullified on the ground of misrepresentation, such misrepresentation must have either preceded the formation of the contract, or be contemporaneous to it."*

"The dol, being one of the defects of consent, leads to the annulment of what its victim had consented to, even if [the consent] is evidenced in a formal document, if the dol was the determining factor of what [the victim] had consented to. Therefore, the victim has the right to challenge the validity of that [formal] document and to prove the defects of consent by all means of proof."

(Emphasis added by the Arbitral Tribunal.)

879. The Court of Cassation has also held that relying on (subsequent) witness testimony and presumptions is permissible (Exhibits N° C-LA-10 and C-LA-11):⁵⁷⁸

"Whereas the Court of Appeal, which ultimately has competence over appreciating the elements of dol and evaluating the extent of seriousness of the maneuver and its consequences, based its decision on a significant number of witness statements as well as on presumptions it inferred from the facts. Its decision is therefore justified and cannot be said to have no legal basis."

(Emphasis added by the Arbitral Tribunal.)

880. This view is also reflected in the legal scholarship. According to Judge Atef Al-Nakib, "*proof can be adduced by any means*" (Exhibit N° R1-LA-79, p. 214):

"The principle is that whoever claims dol to annul a contract must prove its existence and this proof can be adduced by any means, including testimonies and presumptions. And the judge may take into account facts subsequent to the formation of the contract if it appears to him that such facts attest that dol occurred at the time of contract formation."

(Emphasis added by the Arbitral Tribunal.)

881. Similarly, Prof. Fadlallah states in his Expert Report (CER-Fadlallah-2, para. 17):⁵⁷⁹

"A 'dol' must certainly be assessed at the time of conclusion of the contract. But any subsequent element which reveals unlawful conduct at that date may be taken into account by the court."

(Emphasis added by the Arbitral Tribunal.)

882. Accordingly, the Arbitral Tribunal is persuaded that under Lebanese law elements subsequent to formation of the contract may be relied upon but only to assess the existence of *dol* at the time of contract formation.

⁵⁷⁸ Exhibit N° C-LA-11, p. 4: "*Dol is a legal fact which may be proved by any means, including by reference to elements subsequent to the conclusion of the contract if they permit establishing the dol at the time of conclusion of the contract.*"

⁵⁷⁹ Oral presentation of Prof. Fadlallah dated 3 February 2021, p. 10: "*Le juge peut tenir compte d'éléments postérieurs. Parce que nous sommes dans le domaine du fait et il est incontestable que le fait se prouve par tout moyen et par conséquent, que le juge peut asseoir sa conviction sur n'importe quel élément. Mais il doit apprécier avec ces éléments postérieurs, s'il y a eu dol au moment du contrat" (emphasis added by the Arbitral Tribunal).*

In this regard, Lebanese law echoes French law (Exhibit N° C-LA-11): "*Le dol est un fait juridique qui peut être prouvé par tout moyen, y compris en se référant à des éléments postérieurs à la conclusion du contrat s'ils permettent d'établir le dol au moment de celle-ci.*"

(v) Consequences of a finding of dol

883. The Claimant argues that in the event *dol* is proven "*in respect of any of the three Respondents then that is sufficient for the Subordination Agreement to be rendered void*".⁵⁸⁰ In support of its claim, the Claimant relies on Prof. Fadlallah's Second Expert Report, wherein Prof. Fadlallah cites to French and Lebanese legal scholars in this regard (CER-Fadlallah-2, para. 28).⁵⁸¹

884. Similarly, the Respondents N° 2 and N° 3 argue that, in multi-party contracts, the *dol* of one of the parties to the contract is sufficient to nullify the contract as a whole.⁵⁸²

"If, against all evidence, the Claimant were to demonstrate that the Subordination Agreement was procured by a dol on the part of the First and Second Respondents, that would be sufficient for the Tribunal to order the nullification of the Subordination Agreement."

(Emphasis added by the Arbitral Tribunal.)

885. The Respondent N° 1, however, argues that the "*Subordination Agreement is an indivisible contract, and therefore, even in the event that the Arbitral Tribunal found that Respondents 2 and 3 committed dol (which is rejected), while Respondent 1 was found to be innocent, the Subordination Agreement should not be annulled*".⁵⁸³

886. In this regard, the Respondent N° 1 argues that the sources cited by Prof. Fadlallah "*do not in fact lead to this conclusion*" and that the contrary view, advanced by Judge Atef Al Nakib, should in fact be accepted by the Arbitral Tribunal.⁵⁸⁴

887. As a preliminary matter, the Arbitral Tribunal, by a majority, notes that the very drafting of Article 209 COC seems to indicate that the *dol* of one party leads to the annulment of the contract:

"Article 209 – Determinative fraud entails nullity of the contract solely in so far as it has been committed by one of the parties to the detriment of the other; however fraud committed by a third party has within itself cancellation effect if the party benefiting from it was acquainted with it when the contract was formed; in the contrary case, it solely affords grounds for damages, in favour of the victim and against its author."

(Emphasis added by the Arbitral Tribunal.)

888. First, the clause expressly refers to *dol* by one of the parties (in French, "*par l'une des parties*").

⁵⁸⁰ Statement of Reply and Defense to Counterclaim, p. 102, para. 240.

⁵⁸¹ CER-Fadlallah-2, para. 18: "*Indeed, in case of multiparty contracts, the doctrine and case law find that the misrepresentation of one party is sufficient to annul the contract vis-à-vis all parties (even vis-à-vis third parties acting in good faith). This finding applies both in French and Lebanese law: [...]*"

⁵⁸² Respondents N° 2 and N° 3's Rejoinder, p. 50, para. 8.3.

⁵⁸³ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, pp. 66-67, paras. 310-313.

⁵⁸⁴ Respondent N° 1's Statement of Rejoinder and Reply to Counterclaim, p.66, paras. 311 *et seq.*

889. Second, even the *dol* of a third party gives rise to nullity of the contract in circumstances where a co-contractor knew of its existence. *A fortiori* when the person committing the *dol* is a co-contractor.

890. In addition, having reviewed the Lebanese and French sources cited by Prof. Fadlallah, the Arbitral Tribunal finds such sources persuasive.

891. Prof. Fadlallah's position is also supported by Dr. Moghaizel who stated during his oral examination that the *dol* of one party is sufficient to render the contract inapplicable (TR Day 4, 41:6-18):

"Q. Right. Would you agree with me that, in the specific context of multi-party contracts, if the dol is committed by one of those several parties, this is sufficient to find the dol?"

A. As long as there is a dol by one person that caused the other party to enter into the contract then it doesn't apply.

Q. Very good. So now that you've agreed on this principle, in practical terms, that means, in our case, that IT must show that it was the victim of manoeuvres committed by either IBL or Korek or IH to establish the dol. Would you agree with that?"

A. I do."

(Emphasis added by the Arbitral Tribunal.)

892. Prof. Nammour is the only expert who supported the contrary view (R1-ER-Nammour-1, paras. 122 *et seq.*). However, Prof. Nammour did not provide adequate support for his position in his Expert Report or during his oral examination (French TR Day 3, 61:7-40).

893. As such, a majority of the Arbitral Tribunal is persuaded that, in multiparty contracts, the *dol* of one party leads to the annulment of the contract as a whole (i.e. *vis-à-vis* all parties).

b Factual chronology of the relevant events and Parties' correspondence

894. The Arbitral Tribunal will now in light of the above principles review the relevant factual evidence in order to determine whether the Respondents (as the case maybe any of them) did commit a *dol*.

(i) Parties' correspondence up to the conclusion of the IBL Loan Agreement

895. On 31 October 2011, Mr. Junde (a member of the KSC) informed the representative of Agility and Orange that the payment of the next installment for the Respondent N° 2's License fee was due by 18 November 2011 stressing that, in view of the Respondent N° 2's cash position, a cash solution was "urgently" needed (Exhibit N° R2-4):

"[...]"

We expect that delays in payment will cause repressive reactions forced by the government on the CMC.

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Many informal signals are given to us that it is important to pay the next installment on time (which is 125 million usd for the installment and approximately 30 million usd interest).

The Korek cash position is 15 million usd. At its best the Korek cash position at years end may reach 25 million usd which falls far too short of the needed sum.

Based on above, Korek needs urgently cash to settle its license fee obligations towards the CMC.

We think that we need to raise up to 150 million Usd in short term loans or in case off [sic] none availability of loans we need a shareholder resolution on shareholder capital injection.

[...]"

896. On 2 November 2011, Mr. Junde sent an email to Mr. Rahmeh (copying Mr. Mustafa) that "*any loan to repay CMC indebtedness will rank ahead the existing (shareholder) loans*". The subject matter of the email reads "Good news". In such email, Mr. Junde further explained that (Exhibit N° C-83):

"[...]

Any part of a new loan i.e. \$145 million provided as shareholder loan cannot rank ahead of the \$285 million loan from IT, only pari passu with it. All external third party loans used to repay the CMC can rank ahead.

The not good news part of above is: that you asked the executive management to middel [sic] with SC and shareholder matters and I assume you will reverse this. The deal structure and design is made to give all parties a certain roll. The executie [sic] matters as well as SC and shareholder matters are kept separate to keep and secure the best interest of the shareholders. Undermining the structure will cause seriouse [sic] damage to the balance of interest and the security of the sharehodler [sic] interest.

[...]"

897. Between 10 and 17 November 2011, Orange's representatives internally exchanged positions on the financing to be found and proposed by the Respondent N° 1 for the payment of the Respondent N° 2's License fee (Exhibit N° C-86).
898. On 20 November 2011, Mr. Junde provided Mr. Aziz (Agility) (copying Mr. Rahmeh) with a draft letter to be sent by Mr. Mustafa to the Claimant and setting out the draft terms of the discussed and proposed financing, i.e. the draft terms of the IBL Loan opportunity (Exhibit N° R2-5):

"[...]

On behalf of Korek, I have been able to obtain a commitment in principle from IBL Bank in Lebanon for a total of US\$145 million as follows:

- (i) a loan of US\$110 million with a final maturity date of two and half to four years (yet to be agreed on) with the possibility to repay not earlier than 31st of December 2012 subject to prepayment penalties of one present;*
- (ii) a short term loan of US\$ 35 million repayable in six months (no later than 31st of June 2012);*
- (iii) the loan is used to pay the CMC license fees and will have seniority on existing Korek Loans; and*
- (iv) each loan has an interest rate of 13.25 per cent. per annum.*

IBL Bank has agreed to make these loans on an unsecured basis if Korek's revenues are paid into an account held by Korek with IBL Bank and shareholders provide guarantees and as we discussed I will provide a personal guarantee. I am prepared to provide this personal guarantee provided that either:

- (i) a credit worthy affiliate of IT Ltd provides me with a guarantee on the same terms in proportion to IT Ltd's holding in International Holdings Limited;*
- (ii) a credit worthy affiliate of IT Ltd provides an indemnity to me in proportion to IT Ltd's holding in International Holdings Limited.*

The purpose of this letter is to request that:

- (i) these matters are discussed and approved at the board meeting of International Holdings Limited and the meeting of the members of the Supervisory Committee of Korek which are due to be held later on this week;*
- (ii) IT Ltd assists Korek International (Management) Ltd. in procuring that a meeting of the Financing Proposal Committee is held or a resolution is executed approving the entry into the loans summarised in this letter in accordance with the Shareholders' Agreement;*
- (iii) IT Ltd waives clauses 5.8 and 11.4 of the Shareholders' Agreement; and*
- (iv) IT Ltd notifies me as to whether it shall provide a guarantee or and indemnity from one or more of its credit worthy affiliates.*

[...]"

899. On 21 November 2011, Mr. Junde provided the KSC members with the draft letter setting out the draft terms of the IBL Loan proposal and stressed that *"the terms are being discussed/negotiated with IBL, however, these are the current terms IBL has put on the table and we need to negotiate final terms"* (Exhibit N° R2-8).

900. On 7 December 2011, Mr. Mustafa, as Chairman of the KSC, sent a letter to the Claimant enumerating the conditions of the IBL Loan which can be summarized as follows: (i) a long term loan amount and its due date, (ii) a short term loan amount and its due date, (iii) the seniority of IBL loan over *"current shareholder loan"*, (iv) an interest rate of 13.25% p.a., (v) the Respondent N° 2's revenues to be paid into account with the Respondent N° 1 and (vi) the shareholders required to provide guarantees. In addition, Mr. Barzani reassured the Claimant that he was *"prepared to provide a personal guarantee to IBL Bank provided that a credit worthy affiliate of IT Ltd provides [him] with a guarantee and indemnity [...]"* (Exhibit N° C-41). The relevant parts of this letter read as follows:

"[...]"

On behalf of Korek, and in response of the Financing Proposal Committee (FPC) recommendation set forth in the attached written and signed resolution, I have been able to obtain a commitment in principle from IBL Bank in Lebanon for a total of US\$150 million as follows:

- (i) a loan of US\$110 million with a final maturity date of two and half to four years (yet to be agreed on) with the possibility to repay not earlier than 31st of December 2012 subject to prepayment penalties of one per cent.;*
- (ii) a short term loan of US\$40 million repayable in six months (no later than 31st of June 2012);*
- (iii) the loan will be used to pay the CMC license fees and will have seniority on existing Korek Loans (including any current shareholder loan); and*

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(iv) *each loan has an interest rate of 13.25 per cent. per annum.*

IBL Bank has agreed, in principle, to make these loans on an unsecured basis provided that Korek's revenues are paid into an account held by Korek with JBL Bank and shareholders provide guarantees. As we have discussed, I am prepared to provide a personal guarantee to IBL Bank provided that a credit worthy affiliate of IT Ltd provides me with a guarantee and indemnity agreeing, on demand, in the event that a payment obligation arises under this personal guarantee to pay to me an amount equal to IT Ltd's pro rata proportion (by reference to its shareholding in International Holdings Limited) of any such guarantee payment I make on a payment by payment basis.

The purpose of this letter is to provide you with a copy of the written resolution of the Financing Proposal Committee recommending Korek enter into the loans with JBL, and to request that:

- (i) *these matters are discussed at the board meeting of International Holdings Limited and the meeting of the members of the Supervisory Committee of Korek which are held as soon as possible after the FPC delivers the FPC Proposal on these matters this week;*
- (ii) *IT Ltd and Korek International (Management) Ltd. waive the operation of clause 5.8 of the Shareholders' Agreement (in the form attached to this letter) in respect of the IBL Loan, which if executed will be financing under clause 5.2 of the Shareholders' Agreement;*

[...]"

901. On 9 December 2011, Mr. Rayes (of the Respondent N° 1) informed Mr. Rahmeh (copying Mr. Junde) that the loan terms and conditions, i.e. the "*principal conditions*", were "[c]onsidered as *"Best Offer"* and [were] *not negotiable*" (Exhibits N° R2-13 and C-89). This email was then promptly forwarded by Mr. Junde to Agility's representative, i.e. the Claimant (Exhibits N° R2-13 and C-89).

902. On the same day, the Claimant (more specifically Mr. Musset from Orange) acknowledged receipt of the draft loan terms and conditions and raised some concerns as to Clauses 8.1.3 and 8.1.4 of the draft loan (Exhibit N° C-89).

903. On 12 December 2011, Mr. Junde sent to Mr. Rayes on his Hotmail account the final versions of the IBL Loan Agreement and of the Subordination Agreement (Exhibit N° C-65):

"[...]

As per your request I send you the final versions to your Hotmail account.

Attached are the last versions of the loan documents as discussed internally within Korek financing committee, the documents are;

- 1- *The term loan agreement*
- 2- *The subordination agreement*

In my opinion the documents contain all the points raised by parties and carries the consensus between our parties.

[...]"

904. On 13 December 2011, Mr. Rayes confirmed the Respondent N° 1's agreement with the final versions of the agreements subject to minor issues (Exhibit N° C-65).

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905. On the same day, Mr. Junde sent to Claimant an email entitled "*Last version of Loan agreement documents*" providing the "*final version of the agreement as approved by the IBL Bank representative*" and requesting the following (Exhibit N° C-65):

"[...]

I will appreciate receiving your consent and confirmation that attached agreements (The Korek Term loan agreement and the Korek Subordination agreement)

FPC members; kindly send me your consent per e-mail and I will appreciate receiving (later) a scan copy of documents with your initials to confirm the agreed form of attached final versions of the agreements.

"[...]"

906. Further on 13 December 2011, Mr. Musset (Orange) confirmed to Mr. Junde the Claimant's approval of the IBL Loan Agreement and the Subordination Agreement (Exhibits N° C-65 and C-65A):

"Further to a discussion with Deepak, I confirm our approval for the attached agreements."

907. Still on 13 December 2011, Mr. Junde provided the Respondent N° 2 with the FPC representatives' approval to the IBL Loan Agreement and the Subordination Agreement, stressing that they were running against the clock (Exhibit N° C-65):

"Attached is the approval of FT representatives regarding the loan agreement and the subordination agreement which is collectively negotiated and collectively approved.

We feel that we are running against the clock and need to organize the signatures (first by the boards of IH and by the Korek SC).

"[...]"

908. On 14 December 2011, Mr. Jain (Agility) submitted to Mr. Junde the Claimant's lawyer comments to the drafts of the IBL Loan Agreement and Subordination Agreement. Mr. Junde answered by stressing the urgency of the situation to finalize the financing of the Respondent N° 2's License fee (Exhibit N° C-92).

909. On the same day, the following corporate approvals were obtained and issued on the basis of the final versions of the above-mentioned agreements circulated amongst the Parties:

- IH Board Resolution (Exhibits N° R1-17 and R2-15);
- IH Shareholder Resolution (Exhibits N° R1-18 and R2-18);
- KSC Resolution (Exhibits N° R1-19 and R2-16);
- Respondent N° 2's Shareholder Resolution (Exhibits N° R1-20 and R2-17).

910. On the same day, the Claimant and the three Respondents concluded the Subordination Agreement (Exhibit N° C-1).

911. On 20 December 2011, Mr. Mustafa transferred the amount of USD 155,000,000.00 from his account with HSBC Bank Middle East in Dubai to his account with the Respondent N° 1 in Beirut (Exhibit N° C-63).

912. On 21 December 2011, namely seven days after the execution of the Subordination Agreement, the IBL Loan Agreement was concluded between the Respondent N° 1 as lender, the Respondent N° 2 as borrower and Mr. Mustafa as independent guarantor to the borrower, for the amount of USD 150,000,000.00 (Exhibit N° C-7).

(ii) *Events and related Parties' correspondence which occurred after the conclusion of the Subordination Agreement and of the IBL Loan Agreement*

913. On 2 July 2014, the CMC issued a decision ordering the Respondent N° 2 to reinstate the shareholding as it was before the implementation of the Investment Transaction (the CMC Decision) (Exhibit N° C-39).

914. On 18 June 2015, the Claimant sent to the Respondents N° 2 and N° 3 a "Reservation of Rights Letter" by which it notified the Respondent N° 3's failure to pay the interest due under the IT-IH Loan and reserved its rights accordingly (breach of Clause 9.3 of the IT-IH Loan) (Exhibits N° C-14 and R2-21).

915. On 24 June 2015, pursuant to Clause 20.2 of the IT-IH Loan, the Claimant sent to the Respondent N° 3 a Notice of Event of Default under the IT-IH Loan due to the Respondent N° 3's failure to pay the interest due under this agreement (breach of Clause 9.3 of the IT-IH Loan) (Exhibit N° C-15).

916. On 9 July 2015, the Respondent N° 1 notified to the Respondent N° 2 a Notice of Event of Default under the IBL Loan Agreement notifying the Respondent N° 2 that an event of default commenced as of 5 February 2015 and requesting: (i) the immediate repayment of all amounts due under the IBL Loan and (ii) the compliance with the terms of the Subordination Agreement, including ceasing to make any payments in respect of the Shareholder Loan Agreement and the Korek Guarantee (Exhibits N° C-13 and R1-4).

917. On 15 September 2015, the Respondent N° 1 sent to the Respondent N° 2 another letter insisting on the full repayment of the IBL Loan (Exhibit N° R1-5).

918. On 13 October 2015, the KSC held a meeting. The draft minutes of such meeting filed in this arbitration state regarding the IBL Loan that "*Mr. Froissart asked about the issue between the Company and IBL as the loan was fully collateralised, and Mr. Rahmeh, while noting that this was not the case as Mr. Mustafa had personally guaranteed the IBL Loan, asked whether it was in the Company's best interests to invite the lender to foreclose*" (Exhibit N° C-43, p. 5).

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919. On 4 March 2016, Mr. Abou Charaf (the Respondent N° 2) sent an email to the members of the KSC addressing the issue of "additional collateral" (Exhibit N° C-93):

"[...]

IBL Bank does not appear to be insisting on an immediate repayment of the Korek loan so long as the interest is being serviced and the subordination is in effect. Discussions regarding a formal extension have immediately lead to demands for additional collateral by way of a pledge of shares in Korek, significant repayment and other measures.

[...]"

920. On 15 March 2016, Mr. Jain (Agility) requested the Respondent N° 2 to be provided with clarifications (Exhibit N° C-93):

"[...]

So that we can better understand the potential options, please could we request Raymond to set out in writing exactly what IBL has proposed/requested in discussions to date?

[...]"

921. On 12 April 2016, Mr. Jain reiterated his request for clarifications stressing the urgency of the situation (Exhibit N° C-93):

"[...]

We have not heard from you regarding the information requested in our email of 15 March 2016 regarding the negotiations with IBL, and in particular the proposals/requests made by the bank.

Please could you update us as to when we can expect to receive this information as a matter of priority?

We have emphasized repeatedly that the current situation, with Korek sitting in default of its obligations to a third party lender, is untenable and not in the best interests of the company. The information we have requested is crucial for the formulation of a comprehensive and acceptable long term resolution to this issue.

[...]"

922. On 1st June 2016, Mr. Jain further reiterated his request for clarifications stressing again the urgency of the situation and referring to the Claimant's contractual entitlement to the information requested (Exhibit N° C-93):

"[...]

Please could you urgently update us regarding our request for information in respect of IBL?

A comprehensive long term solution and strategy regarding the IBL Loan and Korek's financing overall is clearly needed as a priority, and we are unable to properly consider the same without having the relevant information.

It is unacceptable in circumstances where Korek is sitting in default of a third party loan for the shareholders not to be kept fully apprised of discussions with the bank and the potential solutions that have been proposed.

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We remind you that IT Ltd is contractually entitled to the information requested pursuant to clause 15 of the IH Shareholders' Agreement.

[...]"

923. On 6 June 2016, Mr. Abou Charaf replied to the members of the KSC as follows (Exhibit N° C-93):

"[...]

Further to the below query, I was advised by Ray that he had nothing significant to add to the email including his initial feedback (circulated on March 4, 2016) as discussions regarding a formal extension of the IBL Loan have immediately lead to demands by IBL for additional collateral by way of a pledge of shares in Korek, significant repayment and other measures.

[...]"

924. On 12 June 2016, Mr. Jain insisted on receiving the information requested referring again to the Claimant's contractual entitlement to the information requested (Exhibit N° C-93):

"[...]

Further to your email below and the response from Raymond, we request all documents relating to communications with IBL (whether by letter, email or otherwise, including any meeting notes).

For the avoidance of doubt, this request includes all documents evidencing the demands from IBL for 'additional collateral, repayment and other measures', as referenced in your email below and in Raymond's email of 4 March 2016.

As previously noted, IT Ltd is contractually entitled to the information requested pursuant to clause 15 of the IH Shareholders' Agreement. Furthermore, it is imperative for IT Ltd to be apprised of exactly what demands IBL has made in order to be able to properly evaluate the proposals and formulate a strategy regarding the IBL loan which is in the best interests of the company.

[...]"

925. On 26 July 2016, Mr. Jain reminded Mr. Abou Charaf that the Claimant was still waiting for the requested information which it was contractually entitled to receive (Exhibit N° C-93):

"[...]

We are yet to receive any response to the information request regarding IBL in the email below of 12 June 2016.

We need not repeat the importance of IT Ltd being provided with all relevant information (to which it is contractually entitled pursuant to the IH Shareholders' Agreement) in respect of the discussions with IBL regarding the IBL Loan.

We therefore request that a substantive response to this request be provided as a matter of priority.

[...]"

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926. On 3 August 2016, Mr. Abou Charaf informed Mr. Jain and Mr. Mustafa (copying Mr. Froissart from Orange) of the position of the Respondent N° 1 with respect to the issue of the "additional collateral" (Exhibit N° C-93):

"[...]

I have spoken again with Ray and he has confirmed that the discussions that have taken place with IBL (without prejudice to Korek's rights) have been in the form of face-to-face meetings, whose outcome I have summarised in my previous emails.

The potential demands by IBL for "additional collateral, repayment and other measures", referenced in your email dated 12 June 2016, were referred to orally in the course of those meetings and have not been made formally in writing. I understand from Ray that in order to avoid committing IBL to a formal position, written communications between him and their representatives have been very limited and non-substantive; he does not consider that pressing for additional formal documents from IBL would be in the best interests of Korek at this stage.

I was further advised by Ray that IBL appears (a priori) inclined to allow the IBL loan to remain outstanding so long as the interest is being serviced and the subordination is in effect; accordingly, it appears to be in Korek's best interests to let the situation lie as it is.

"[...]"

927. On 30 August 2017, the Respondent N° 1 sent to the Respondent N° 2 a letter requesting (i) the repayment of the IBL Loan and (ii), in the interim, to be provided with additional collateral in the form of a pledge over the Respondent N° 2's shares (Exhibits N° C-21 and R1-6):

"[...]

Further to our previous correspondences which remained unanswered, we hereby reiterate that the Repayment Dates of each of the Short Term Loan and the Long Term Loan have expired, and IBL Bank SAL insists on a full repayment of the loan.

In the interim, you are requested to provide, within 30 days from the date hereof, additional collateral to IBL Bank SAL to secure the Loan, in the form of a pledge of the Borrower's shares in addition to any other acceptable collateral to IBL Bank SAL.

If we do not receive any positive response from you within the aforementioned delay, we reserve our right to take any and all appropriate actions to safeguard our rights under the Agreement.

This letter is without prejudice to any other rights which the Lender may have under the Agreement or as a matter of general law, which are expressly reserved and are not waived or antedated by the terms of this letter, in particular, the terms of the Subordination Agreement which must continue to be complied with by all parties.

"[...]"

928. On 25 September 2017, Messrs. Jain and Aziz (Agility) sent to the Respondent N° 1 a letter requesting information about the relationship between the Respondent N° 2 and the Respondent N° 1 as well as the additional collateral requested (Exhibits N° C-23 and R1-7):

"[...]

You have referred in your letter to the provision of additional collateral in connection with the Short Term Loan and the Long Term Loan (as defined in the Agreement). So that we can properly consider your request in context, please address the following:

- (a) *Could you please explain on which ground IBL considers itself entitled to request additional collateral in the form of a pledge of the shares of Korek.*
- (b) *Could you please describe the collateral that IBL currently holds in connection with the loans that are outstanding, together with details of the sums that you consider are currently due.*
- (c) *Your letter makes reference to Mr. Mustafa as guarantor. Please also advise whether any call has been made under that guarantee provided by Mr. Mustafa and whether it is the intention of IBL to do so. As you are aware, pursuant to Clause 6 of the Agreement, the foregoing guarantee is a primary obligation.*
- (d) *Is IBL taking the position that this loan is non-performing? If it is your position that the loan is non-performing, would you please explain how the provision of additional collateral would remedy this.*
- (e) *IBL has referred to other previous correspondence sent by it and allegedly remained unanswered. We are not aware of such correspondence and request that a copy is sent to us urgently.*

"[...]"

929. On 25 October 2017, Messrs. Jain and Aziz reiterated their request to the Respondent N° 1 stressing the urgency of their request (Exhibits N° C-24 and R1-9).

930. On 30 October 2017, the Claimant sent to the Respondents N° 2 and N° 3, Mr. Mustafa and CS Ltd. a Notice of Dispute under Article 11 of the IH SHA and requested to be urgently provided with clarifications as to the status of the IBL Loan and the request for additional collateral (Exhibit N° C-50):

"[...]

By letter dated 30 August 2017 (and received on 11 September 2017), IBL demanded that Korek provide "additional collateral" for the loan. IT was not previously informed that the IBL Loan was collateralised. IBL has demanded that Korek provide, within 30 days, a pledge over its shares. This would have the effect of securitising, in IBL's favour, the entirety of IH's assets.

Article 11 of the SHA prevents the other parties to the SHA (i.e., Korek, Mr Barzani, IH and CS) from granting an interest over Korek's shares without IT's prior approval or written consent. IT will not approve of or provide its written consent to a pledge being granted over Korek's shares in connection with the IBL Loan (or otherwise).

"[...]

Additionally, Article 11.3 of the SHA prevents the other parties to the SHA from taking any action or decision relating to financing, disposals, amendments to material contracts (which, in our view, would include the grant of a share pledge in respect of the IBL Loan), and borrowings (including the granting of pledges in certain circumstances), without IT's prior approval or written consent (see Article 11.4(a), (c), (f) and (o) respectively). Articles 12.3(a), (c), (f) and (n) likewise render financing, disposals, amendments to material contracts and borrowings to be Super Majority Approval Matters, requiring the prior positive vote of at least five members of the IH Board and/or the KSC, i.e., matters in respect of which resolutions cannot be passed without the vote of at least one IT-appointed director.

IT is concerned that Korek, Mr Barzani, IH and/or CS will act unilaterally in granting a pledge over Korek's shares (or allowing a pledge to be granted) despite IT's shareholder and director veto rights in Articles 11 and 12. IT's concerns are set out as follows.

First, as stated, Mr Barzani has provided a personal guarantee in respect of the IBL Loan. To the best of IT's knowledge, IBL has not yet called upon the personal guarantee. It is in Mr Barzani's personal interests to provide the requested share pledge in order to prevent IBL from calling upon his personal guarantee.

Second, it has come to IT's attention that it is very likely that the IBL Loan was not unsecured. IBL's 2015 annual report strongly indicates that the IBL Loan is cash collateralised. IT was surprised to receive a request for "additional collateral" in circumstances where its understanding is and has always been that the IBL Loan was unsecured. IT wrote to IBL on 25 September 2017 asking for details of the existing collateral held by IBL. IBL has not responded.

IT has reason to believe that Mr Barzani secretly provided full cash collateral for the IBL Loan by way of cash held in a bank account with IBL. The effect of the arrangements would be that the IBL Loan is, in reality, a shareholder loan provided by Mr Barzani on preferential terms. IT believes that the arrangements were designed to prioritise Mr Barzani's creditor rights over those of IT's. Furthermore, Korek is paying 13.25% interest on what is most likely a fully collateralised loan, for which an appropriate market rate would be around 4.1%.

If Mr Barzani (or one of his affiliates) cash collateralized the IBL Loan then it would be in his (or their) personal interests to provide the requested share pledge in order to prevent IBL from enforcing against that cash collateral.

[...]

IT fears that Korek, Mr Barzani, CS and/or IH will similarly provide IBL with a pledge over Korek's shares (or acquiesce if a share pledge is granted) in breach of IT's shareholder veto rights. If this were to occur, IT would suffer irreparable loss.

*We request that, **within 7 days** of receipt of this notice, you:*

- 1. Provide full disclosure of the circumstances behind the IBL Loan. In particular, we require you to disclose details of any collateral provided in relation to the IBL Loan, the dates on which such collateral was provided and the circumstances surrounding the provision of such collateral;*
- 2. Explain why neither IT nor the Board of IH was informed of the full circumstances behind the IBL Loan when the IBL Loan was made and the IT Shareholder Loan was subordinated, or at any point in time since then;*
- 3. Provide full disclosure of any demands made (or, to the best of your knowledge, contemplated) by IBL in respect of the personal guarantee provided by Mr Barzani;*
- 4. Provide full disclosure of the circumstances that has led to IBL requesting "additional collateral", including any requests that cash collateral be released or the personal guarantee discharged.*

We look forward to hearing from you as soon as possible so that we may seek to resolve this dispute amicably without needing to escalate the matter further.

IT reserves all rights and remedies in relation to any breach. This notice is not to be taken as an affirmation or termination of the SHA or a waiver of any rights.

[...]"

931. On 1st November 2017, the Claimant wrote to the IH Board requesting the Directors to take urgent action towards Mr. Mustafa as a result of his misconduct and failure to disclose that the IBL Loan was a collateralised facility with the consequence that the interest rate agreed on the IBL Loan was excessive and there was no need for the Claimant to subordinate its creditor rights (Exhibit N° C-48):

"[...]

Conclusion

18. *As a result of the above misconduct on the part of Mr Barzani, the Board must urgently take appropriate steps to ensure the full disclosure of information and transactions entered into by Mr Barzani on behalf of Korek and assess the financial consequences of these transactions on Korek. To address this point, we request that the Board procure that IH, as sole shareholder of Korek, takes the appropriate steps to obtain the appointment of a professional inspector by the Companies Registrar under Iraqi law with the power to investigate the alleged mismanagement of Korek, gather information related to the transactions concluded by Mr Barzani, and provide a report on the assets and liabilities of Korek.*

19. *Furthermore, the Board must urgently take appropriate steps to ensure the removal of Mr Barzani as the Statutory Manager of Korek and any other steps to prevent the further deterioration of Korek' financial situation through the conclusion of other transactions detrimental to Korek's interests, and transactions with third parties in which Mr Barzani has a personal interest.*

[...]"

932. On 19 November 2017, the Claimant referred to its letter dated 1st November 2016 which remained unanswered (Exhibit N° C-49).

933. On 17 December 2017, Messrs. Jain and Aziz addressed a third letter to the Respondent N° 1 enquiring again about the requested additional collateral and referred to their letters dated 25 September and 25 October 2017 (Exhibits N° C-25 and R1-10).

934. On 21 March 2018, the Claimant reiterated its requests for clarification with respect to the additional collateral, requests which remained unanswered since its previous letters dated 25 September, 25 October and 17 December 2017. It further notified the Respondent N° 1 that it would initiate legal actions on the basis of the "*sham loan arrangement*" (Exhibits N° C-26 and R1-12).

935. On 26 March 2018, the Respondent N° 2 sent to the Respondent N° 1 a letter indicating its willingness to (i) maintain a good relation with the Respondent N° 1 and (ii) deposit in its accounts with the Respondent N° 1 the quarterly interest payment on the IBL Loan, in compliance with the terms of the IBL Loan Agreement (Exhibit N° R1-13).

936. On 29 March 2018, the Respondent N° 1 sent the Respondent N° 2 a letter (i) reiterating its position on the line of communications among the Parties to the IBL Loan Agreement and (ii) firmly inviting the Respondent N° 2 to resolve the dispute amongst its shareholders (Exhibit N° R1-14).

c The Arbitral Tribunal's determination

937. Having determined (see paragraph 876 above) that, pursuant to Lebanese law, the existence of *dol* has to be assessed in this case at the time of the execution of the Subordination Agreement, the Arbitral Tribunal will now assess this issue on the basis of the above factual evidence. In doing so, the Arbitral Tribunal will particularly focus on (i) the above-mentioned correspondence for the period running from 31 October 2011 to 14 December 2011, but will also assess (ii) whether any subsequent event (*faisceau d'indices*) may need to be taken into account in assessing *dol* at the time of the execution of the Subordination Agreement, be it for the seven day period running between the execution of the Subordination Agreement and the execution of the IBL Loan Agreement or for the period subsequent to the latter.

(i) Parties' correspondence up to the conclusion of the Subordination Agreement

938. The Arbitral Tribunal first notes that it clearly results from the correspondence running from 31 October 2011 to 14 December 2011, the date of the conclusion of the Subordination Agreement (Exhibit N° C-1), that both the Subordination Agreement and the IBL Loan Agreement were always dealt and discussed together, the Parties having negotiated the terms and conditions of both agreements at the same time and the Claimant having been provided with the drafts of both of them. Therefore, the Arbitral Tribunal considers that the Subordination Agreement and the IBL Loan Agreement formed a whole, were part of the same overall transaction, and that this was the clear understanding of all the Parties.

939. As a further preliminary remark, the Arbitral Tribunal stresses that it should be kept in mind that the relevant above-mentioned correspondence needs to be read in light of the fact that, eight months before the execution of the Subordination Agreement, namely in March 2011, the Parties entered into the IH SHA (Shareholders' Agreement) which provides for a cascading "order of priority" for future financing and that shareholder loans would be *pari passu* (Clauses 5.2 and 5.3) (Exhibit N° C-35) (TR Day 1, 220: 5-11; TR Day 2, 10:19-21, 13:1-10 and 14:6-9).

940. The Arbitral Tribunal notes that in autumn 2011 there was a certain urgency and pressure for the Claimant to find the financing for the payment of the next installment of the License fee of the Respondent N° 2 in order for the latter not to lose its License (Exhibit N° R2-4). However, despite this time pressure, in the view of the Arbitral Tribunal, each Party was still expected to act in good faith and in a transparent manner.

941. In that context, the issue as to whether the IBL Loan was or was not fully collateralized was obviously a key element for the Claimant in relation to the discussions between the Parties relating to the Subordination Agreement and it is striking to note that at no point during the numerous emails exchanged between the Parties in Autumn 2011 did the Respondents make any reference to the IBL Loan Agreement being fully collateralized.
942. The Arbitral Tribunal notes in particular that whereas the Respondent N° 2 in its letter dated 7 December 2011 to the Claimant refers to the "*personal guarantee*" which Mr. Mustafa (founder and Statutory Manager of the Respondent N° 2) was willing to provide as well as to the key terms of the IBL Loan (the need for subordination by the Claimant and the Respondent N° 3, the Barzani Guarantee, the Revenue Account Requirement and the interest rate of 13.25%), such letter did not mention anything about the cash collateral (Exhibit N° C-41).
943. Moreover, the Respondent N° 1's email dated 9 December 2011 enumerates all the "*principal conditions*" of the IBL Loan but fails to mention the key element (namely the cash collateral) which, according to the Respondents, is a legal requirement and therefore the *sine qua non* for the granting of the Loan (Exhibits N° R2-13 and C-89).
944. It is further noted that, on 13 December 2011, i.e. one day prior to the signing of the Subordination Agreement (Exhibit N° C-65), the Claimant has been provided with the "*final version*" of the IBL Loan Agreement as approved by the Respondent N° 1 where there was still no mention nor any allusion to the existence of the cash collateral and it is on that basis, namely on the representations provided by the Respondents, that all of the corporate approvals were obtained, i.e. the IH Board Resolution (Exhibits N° R1-17 and R2-15), the IH Shareholder Resolution (Exhibits N° R1-18 and R2-18), the KSC Resolution (Exhibits N° R1-19 and R2-16) and the Respondent N° 2's Shareholder Resolution (Exhibits N° R1-20 and R2-17).
945. The Arbitral Tribunal stresses that it is indisputable that the cash collateral was a fundamental element of that specific transaction since, in the banking practice, one would never subordinate a loan which is fully collateralized (TR Day 1, 221:13-20).
946. In view of the above elements, the Arbitral Tribunal considers that there was no indication that would have allowed the Claimant to realize that the Loan would be fully collateralized.
947. The reviewed correspondence further evidences that the Claimant was acting in good faith during the relevant period up to the signing of the Subordination Agreement and trusted the Respondents, including the Respondent N° 1. Therefore, there was no reason for the Claimant to take the initiative to conduct further investigations (due diligence), especially as time was running out.

948. The Arbitral Tribunal also notes that the Claimant did not refuse to provide a shareholder loan, but it did consider another/alternative solution for the financing of the Respondent N° 2's next installment of the License fee (Exhibit N° C-86) (TR Day 1, 220: 5-11; TR Day 2, 13:1-10 and 46:2-7). Therefore, the Respondents cannot rely on the Claimant's behavior to justify their own behavior and lack of information and transparency.
949. The Arbitral Tribunal finds that, while the Respondents were not under "*a statutory duty*" to disclose the existence of the cash collateral, each of the Respondents was under a duty to disclose this fact "*in view of the nature of the contract that requires a reciprocal trust between the parties*" (Exhibit N° R2/3-ER-6), being reminded that the obligation to inform results from the requirements of good faith and honesty in contractual dealings (Exhibit N° R1-LA-1). Therefore, the Arbitral Tribunal is of the opinion that the Respondents' failure to disclose to the Claimant the existence of the cash collateral is a violation of the requirements of good faith and honesty in banking transactions, in particular in transactions amongst shareholders and partners.
950. In that respect, the Arbitral Tribunal adds that the duty to negotiate in good faith relies upon the three Respondents. More specifically in regard to the Respondent N° 1, the Arbitral Tribunal is of the opinion that it cannot invoke banking secrecy to justify the non-disclosure of the existence of the cash collateral since the disclosure of the existence of this security has to be clearly distinguished from the disclosure of the identity of the provider of the cash collateral and is not a violation of the Lebanese banking secrecy (CER-Zein-1, paras. 48-53 and 79) (Exhibit N° C-ER-YZ-1). Indeed, it should be kept in mind that banking secrecy is used to protect the client but certainly not the bank. Further, if indeed the cash collateral was legally required, it is difficult to understand why the fact of its existence would be subject to banking secrecy, a fact cannot be simultaneously legally required and legally confidential. In any event, the Arbitral Tribunal notes that banking secrecy of course does not apply to the Respondents N° 2 and N° 3 and in no way justifies their non-disclosure of the cash collateral.
951. The Arbitral Tribunal adds that, in its view, the Respondents' argument that the IBL Loan Agreement was only in draft form when the Subordination Agreement was signed is not convincing. Indeed, the Arbitral Tribunal stresses that corporate approvals are inevitably obtained on the basis of draft documents, it cannot be otherwise. As already mentioned, the approvals are obtained on the good faith understanding that the versions before the Parties were indeed the final versions. The Arbitral Tribunal's consideration is further compounded by the fact that the drafts agreements and the signed versions are identical. Therefore, the fact that the IBL Loan Agreement was formally executed on 21 December 2011 is irrelevant.

952. Even assuming (*quod non*) that between the signing of the Subordination Agreement on 14 December 2011 and the execution of the IBL Loan Agreement on 21 December 2011 (i.e. only 7 days later) the situation would have suddenly changed with the setting up of the cash collateral, then in any case, the Respondents should have warned the Claimant and the final version of the IBL Loan Agreement should have been adapted, as the Respondents were well aware that the Claimant had agreed to the subordination on the basis of the IBL Loan Agreement, the final version of which it had reviewed and which would not change.
953. In any case, the Arbitral Tribunal finds that it appears obvious that the Respondents N° 1 and N° 2 did not wait until 15 December 2011, i.e. the day after the signing of the Subordination Agreement, to start discussions on the cash collateral, the significant amount of which, USD 155 million, was transferred on 20 December 2011, i.e. the day before the IBL Loan Agreement was executed (Exhibit N° C-63). Mr. Mustafa and the Respondent N° 1 must have agreed on the provision of the cash collateral far in advance (even prior to the date of execution of the Subordination Agreement) given the large sum of money involved. The Arbitral Tribunal considers that the date of the transfer, the beneficiary bank, i.e. the Respondent N° 1, and the transferred amount evidence the Respondents' plan carefully orchestrated in order to conceal the fact that Mr. Mustafa was in reality providing a shareholder loan and to prioritise Mr. Mustafa's creditor-rights over the Claimant's, notwithstanding Mr. Mustafa agreeing to the contrary in the IH-SHA. This scheme cannot be disputed given the fact that Mr. Mustafa earned a 12.75% p.a. deposit rate, which equates to around LIBOR plus 12% p.a., that being more than 96% of the total interest expense paid by the Respondent N° 2 to the Respondent N° 1 was paid to Mr. Mustafa.
954. The Arbitral Tribunal adds that, since the requirement of the cash collateral was a condition *sine qua non* for the granting the IBL Loan, it has no doubt that this issue was discussed between the Respondents before the signing of the Subordination Agreement but that the Respondents knowingly refrained from indicating to the Claimant that the cash collateral was part of the Respondent N° 1's requirements whereas all the other key terms of the IBL Loan were mentioned and "[c]onsidered as "Best Offer"" and "not negotiable" (emphasis added by the Arbitral Tribunal) (Exhibits N° R2-13 and C-65). In summary, the Arbitral Tribunal finds that, throughout this crucial period, the Respondent N° 1 clearly and knowingly participated in the deception of the Claimant.
955. The Arbitral Tribunal wishes to stress that it was unfortunately not afforded an opportunity to hear any of the Respondents' representatives in order to question them about their knowledge of the requirement of the cash collateral and about their intent not to disclose this issue to the Claimant (TR Day 4, 264:12 to 265:14). The Arbitral Tribunal does not dispute in that context that intention is difficult to prove (TR Day 4, 74:1-3). However, the Arbitral Tribunal (pursuant to Article 9(6) of the IBA Rules referred to in section 14 of the Specific Procedural Rules) is entitled and will draw adverse inference from the Respondents' behavior as evidenced by the correspondence exchanged between the Parties in Autumn 2011.

956. Further, the Arbitral Tribunal considers important to assess whether the Claimant would have agreed to enter into the Subordination Agreement if it had been aware of the existence of the cash collateral and of the fact that the IBL Loan was fully cash collateralized. The Arbitral Tribunal concludes in that respect that it has been demonstrated that had the Claimant known the existence of the cash collateral and Mr. Mustafa's interest-splitting arrangement with the Respondent N° 1, it would never have agreed to the IBL Loan and it would never have agreed to enter into the Subordination Agreement (to subordinate its USD 285 million shareholder loan) nor approved the Respondent N° 2's entry into the IBL Loan under any circumstances (CWS-Aziz-1, paras. 24, 48-49; CWS-Froissart-1, paras, 14, 16 and 23; CWS-Froissart-2, para. 14) (TR Day 1, 218:7-25, 219:9-11, 256:19 to 257:24; TR Day 2, 28:19-23 and 45:2-6). There is no reason to cast doubt on the veracity of the testimonies of Messrs. Froissart and Aziz, being reiterated that the Respondents did not offer any witnesses evidencing the contrary. This is also evidenced by contemporaneous documents, i.e. Orange's representatives internal correspondence of 17 November 2011 (Exhibit N° C-86), where there is no mention of the cash collateral and where the Claimant (respectively Orange/Agility) specified that it would never have accepted the very high interest rate of 13.25% for a loan guaranteed by France Telecom.
957. Finally, the Arbitral Tribunal finds that the email dated 2 November 2011 from Mr. Junde to Mr. Rahmeh (copying Mr. Mustafa) notifying "*Good news*" (Exhibit N° C-83) coupled with the email of 12 December 2011 sent by Mr. Junde to Mr. Rayes' private Hotmail account (Exhibit N° C-65) further supports the existence of an orchestrated and deliberate deception/*dol*.

(ii) *Parties' exchanges after the conclusion of the Subordination Agreement and of the IBL Loan Agreement*

958. As detailed above, *dol* must be assessed *in concreto*, on the basis of the circumstances within which consent was given, but a tribunal is entitled to refer to various elements (*faisceau d'indices*), such as elements subsequent to formation of the contract that may demonstrate the existence of *dol* at the time of contract formation (Exhibits N° C-LA-9, p. 233: "*by all means of proof*", C-LA-10, C-LA-11, R1-LA-79, p. 214).
959. In that respect, the Arbitral Tribunal will examine the correspondence exchanged between the Parties from 11 December 2015 to 3 August 2016 (Exhibit N° C-93).
960. The first email referring to "*additional collateral*" is dated 4 March 2016 and is sent by Mr. Abou Charaf (the Respondent N° 2) to the members of the KSC. In this email, Mr. Abou Charaf states that "[d]iscussions regarding a formal extension have immediately lead to demands for additional collateral by way of a pledge of shares in Korek, significant repayment and other measures" (emphasis added by the Arbitral Tribunal) (Exhibit N° C-93).

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961. Thereafter, and on five separate occasions, Mr. Jain (Agility) requested clarifications in this regard in no uncertain terms and stressing the urgency. In the last three emails, he expressly referred to the Claimant's contractual entitlement to the information (Exhibit N° C-93):

- *"So that we better understand the potential options, please could we request Raymond to set out in writing exactly what IBL proposed/requested in discussions to date?"* (Exhibit N° C-93, email dated 15 March 2016).

- *"We have not heard from you regarding the information requested in our email of 15 March 2016 regarding the negotiations with IBL, and in particular the proposals/requests made by the bank.*

Please could you update us as to when we can expect to receive this information as a matter of priority?" (Exhibit N° C-93, email dated 12 April 2016).

- *"Please could you urgently update us regarding our request for information in respect of IBL?"*

[...]

We remind you that IT Ltd. is contractually entitled to the information requested pursuant to clause 15 of the IH Shareholder's Agreement." (Exhibit N° C-93, email dated 1 June 2016).

- *"Further to your email below and the response from Raymond, we request all documents relating to communications with IBL (whether by letter, email or otherwise, including any meeting notes).*

[...]

As previously noted, IT Ltd is contractually entitled to the information requested pursuant to clause 15 of the IH Shareholder's Agreement. Furthermore, it is imperative for IT Ltd to be apprised of exactly what demands IBL has made [...]" (Exhibit N° C-93, email dated 12 June 2016).

- *"We are yet to receive any response to the information request regarding IBL in the email of 12 June 2016.*

We need to repeat the importance of IT Ltd being provided with all relevant information (to which it is contractually entitled pursuant to the IH Shareholder's Agreement) in respect of the discussions with IBL regarding the IBL Loan." (Exhibit N° C-93, email dated 26 July 2016).

962. The Arbitral Tribunal notes that, in his request for clarification in 2016, Mr. Jain made no specific inquiry about the term "additional" (Exhibit N° C-93).

963. The Arbitral Tribunal also notes that when, the Claimant received the Respondent N° 1's formal letter dated 30 August 2017 (Exhibit C-21), it expressed for the first time its surprise with respect to the reference to "*additional*" collateral.
964. On the basis of its review of the emails exchanged between the Parties in 2016 and 2017 and on the basis of the examination of Claimant's witnesses, Messrs. Froissart⁵⁸⁵ and Aziz⁵⁸⁶ who were examined orally at some length during the Evidentiary Hearing, the Arbitral Tribunal makes the following findings:
- (a) In the context of less formal email exchanges, the Claimant treated the 2016 emails less formally. However, when the Respondent N° 1 sent a "formal letter" to the Respondent N° 2 (copying the Claimant) in 2017, requesting that the Respondent N° 2 "*provide, within 30 days from the date hereof, additional collateral*", the context and tone of the letter were different thereby triggering greater scrutiny.
 - (b) In 2016, the Claimant's primary concern related to the possible pledge of shares. Therefore, the Claimant's focus was on "*additional collateral by way of a pledge of shares*". Importantly, in the backdrop to these exchanges was the CMC's decision revoking the "*partnership between Korek Ltd. and France Telecom/Agility*" (Exhibit N° C-39).
 - (c) Therefore, it appears that the focus of the Claimant's 2016 emails was on the future rather than on the past.
 - (d) In mid-2017, tensions and suspicions having increased, the formality and the tone of the correspondence became more formal with the probable involvement of the legal departments of the Parties (Exhibits N° C-21, C-23 to C-25, C-27, C-29, C-44 and C-48 to C-50).
965. In view of the foregoing, the Arbitral Tribunal is of the opinion that the Claimant had reasons to start paying particular attention to the wording "*additional collateral*" as from 2017 and that 2016 email exchanges (when placed in the proper context) are insufficient to reach the conclusions that they would evidence that the Claimant would have been aware of the existence of the cash collateral before executing the Subordination Agreement or that the existence of such cash collateral would have never been an issue for the Claimant, be it before or after the execution of the Subordination Agreement, or that by not reacting in 2016 in the same way as in 2017, the Claimant would have waived its right to raise that issue.

⁵⁸⁵ TR Day 1, 235:2 to 246:9 and 261:1 to 262:22.

⁵⁸⁶ TR Day 2, 30:15 to 39:7 and 50:11 to 53:5.

(iii) Conclusion

966. In view of the foregoing, the Arbitral Tribunal finds that there can be no doubt that, prior to the signature of the Subordination Agreement, there were deliberate and intentional acts from the Respondents which induced the Claimant to enter into the Subordination Agreement, the Respondents' silence clearly amounting to an act of concealment. The majority of the Arbitral Tribunal considers that the Respondents' act of concealment was the determinative factor which convinced the Claimant to subordinate its rights by concluding the Subordination Agreement (Article 208 COC) (Exhibit N° R1-LA-14). The majority of the Arbitral Tribunal stresses that the need to quickly find funds to maintain the License of the Respondent N° 2 was simply an underlying fact which led the Parties to find a solution through the various agreements but such fact does not affect the determining role of *dol* (the Respondents' act of concealment) in the Claimant's acceptance of the various agreements of which the terms of the Subordination Agreement and the IBL Loan Agreement were intimately linked, in particular the terms of the ILB Loan which played a primordial role as confirmed by the email of 13 December 2011 sent to the Claimant from Mr. Junde and "Last version of Loan agreement documents" (emphasis added by the Arbitral Tribunal) (Exhibit N° C-65).
967. The four conditions for a finding of *dol* being met, the Arbitral Tribunal unanimously reaches the conclusion that each of the three Respondents actively participated in the commission of *dol*. Indeed, had any one of the Respondents disclosed to the Claimant the existence of the cash collateral, the Claimant would not have entered into the Subordination Agreement. Therefore, for the maneuver to succeed, it required the participation of all three Respondents.
968. It cannot be disputed that the Respondents N° 2 and N° 3, while having separate legal personalities, acted as one or, at the very least, colluded to obtain the desired result, noting inter alia the following:
- (i) the Claimant owns 44% of the Respondent N° 3 and is therefore a significant minority shareholder. The Respondent N° 3 is the sole shareholder of the Respondent N° 2. Information available to the Respondent N° 2 about the IBL Loan, including the cash collateral and the fact that its existence was being concealed from the Claimant, can, and should, be imputed to the Respondent N° 3;
 - (ii) Interlocking directorates:
 - Pursuant to the IH SHA (Shareholders' Agreement): "*the members of the Korek Supervisory Committee shall, at all times, be the same persons as the members of the International Holdings Board of Directors*" (Exhibit N° C-35, Clause 7.6);

- Mr. Mustafa was both the Statutory Manager of the Respondent N° 2 and the Chairman of the Board of the Respondent N° 3, as such, Mr. Mustafa's knowledge of the existence of the cash collateral and the fact that its existence was being concealed from the Claimant can, and should, be imputed to the Respondents N° 2 and N° 3;
- Mr. Rahmeh was a member of the Respondent N° 2's Steering Committee and a Director of the Respondent N° 3, as such, his knowledge of the existence of the cash collateral and the fact that its existence was being concealed from the Claimant can, and should, be imputed to both Respondents N° 2 and N° 3.

969. As for the Respondent N° 1, the Arbitral Tribunal points out that the latter denied the existence of the cash collateral ("*Borrower represents, warrants and agrees with the Lender*" that, *inter alia*, the loan is "*unsecured*") and fraudulently concealed its existence (reference can be made to, *inter alia*, the detailed terms of the IBL Loan Agreement which fail to mention the cash collateral and Mr. Rayes' email dated 9 December 2011 enumerating the "*principal conditions*" of the IBL Loan (Exhibits N° R-18 and R2-13)). The Respondent N° 1's subsequent conduct (reviewed above) further confirmed its engagement in *dol* at the time of contract formation.

970. Consequently, the Arbitral Tribunal unanimously concludes that all three Respondents committed *dol* and the Arbitral Tribunal, at its majority, concludes that *dol* was the determinative factor for the Claimant to enter into the Subordination Agreement. Therefore, the Arbitral Tribunal, at its majority, concludes that the Subordination Agreement is null and void.

971. The minority of the Arbitral Tribunal is of the opinion that although the three Respondents had committed *dol*, it was an incidental *dol* (and not a principal *dol*) which therefore did not nullify the Subordination Agreement but provides the Claimant with the right to claim damages (Article 208 COC). The minority of the Arbitral Tribunal reminds that a distinction should be made between the principal *dol* and the incidental *dol*. There is a principal *dol* when it has been a determinative factor and has convinced the victim to enter into a contract, whereas the *dol* is incidental when it modifies contractual clauses without having determined the formation of the contract (Article 208 COC). In the present case, the minority of the Arbitral Tribunal considers that the determinative factor for the conclusion of the Subordination Agreement was to ensure to obtain the loan in order to be in the position to pay the Respondent N° 2's License fees, the "unsecured" nature of the IBL Loan having not played a determinative role in the Claimant's decision to enter into the Subordination Agreement. Indeed, the Claimant's issue was the modification of the interest clause of the Loan which was not determinative for its decision to contract.

972. Having decided, at its majority, that the Subordination Agreement is null and void as a result of the Respondents' *dol*, the Arbitral Tribunal unanimously concludes that it does not need to examine and decide upon the Claimant's alternative claims listed above in paragraph 844. In that context, the Arbitral Tribunal stresses that the wording of the Claimant's prayers leaves no doubt about the alternative nature of the other claims (see in particular Claimant's prayer for relief (c), (d) and (f) contained in its Statement of Reply and Defense to Counterclaim, p. 131, paragraph 340: (c) "In the alternative [...]", (d) "*In the further alternative [...]*" and (f) "*In the further alternative [...]*".
973. Finally, the Arbitral Tribunal dismisses the Respondent N° 1's counterclaim for indemnification of damages and losses allegedly suffered as a result of the Claimant's alleged groundless allegations of *dol* against it since the Arbitral Tribunal did admit the existence of *dol* committed by the Respondents.

XIII COSTS OF THE ARBITRATION

A Advances on the LAMC Arbitration Costs

974. On 15 May 2019 and pursuant to Article 9(1) of the Rules, the Secretariat informed the Parties that the Court fixed the provisional advance on costs at USD 286,400.00 to be paid in equal shares by the Claimant and the Respondents.
975. Each Party paid its share of the advance on costs.
976. On 19 May 2020, the Secretariat informed the Parties that the Court decided to readjust the advance on costs and requested a second instalment of USD 89,800.00 to be paid in equal shares by the Claimant and the Respondents.
977. Each Party paid its share of the advance on costs.
978. On 10 February 2021, the Secretariat informed the Parties that the Court decided to readjust the advance on costs and requested a third instalment of USD 336,856.00 to be paid in equal shares by the Claimant and the Respondents.
979. Each Party paid its share of the advance on costs.

B Costs of the Arbitration fixed by the LAMC

980. On 8 February 2021, the Court fixed the arbitration costs at USD 683,000.00 (excluding VAT).

981. On 18 August 2021, the Secretariat provided the Arbitral Tribunal with the details of the arbitration costs, stressing that the VAT would be paid directly to the Ministry of Finance. The Arbitral Tribunal notes that the total amount of the advance on costs paid by the Parties is USD 712,935.00 of which USD 70,651.00 correspond to the applicable VAT. As a result, the amount of fees and administrative expenses are the following:

	Amount (USD)
Administrative expenses	USD 142,284.00
Arbitrators' fees	USD 500,000.00
President	USD 200,000.00
Co-arbitrators	USD 300,000.00
Total (excluding VAT)	USD 642,284.00

982. Therefore, since the total amount of costs fixed by the Court corresponds to the total amount of the advance on costs made by the Parties, no money will be reimbursed to the Parties.

C The Parties' representation costs and other costs

983. On 26 February 2021, the Claimant filed its Submission on Costs by which it claims a total amount of USD 5,065,955.19 (USD 5,422,360.19 less the costs of the LAMC/Tribunal of USD 356,405.00) for its representation costs and other costs, composed of the following cost items:

- Legal fees: USD 4,197,942.96
- Legal costs: USD 28,170.90
- Expert/witness costs: USD 771,727.17
- Other costs: USD 68,114.16

984. In its Submission on Costs, the Claimant submits that the Arbitral Tribunal has broad discretion to award costs as the Parties have agreed in Clause 5.2 of the Subordination Agreement that the LAMC Rules apply to the present arbitration. Further, the LAMC Rules do not prescribe the standards for awarding costs, and therefore this is a matter over which the Tribunal has full discretion. Moreover, according to the Claimant, as this is an international arbitration, the Arbitral Tribunal should be guided by factors and principles generally followed by other international tribunals and institutions, such as the relative success and failure of the parties, and whether they conducted the proceedings in an expeditious and cost-effective manner (Exhibits N° C-LA-32 to C-LA-36).

The Claimant states that other factors are taken into account by the Tribunal like the reasonableness of the parties' positions, their participation in or obstruction of the document production process and lack of professional courtesy (Exhibit N° C-LA-36) and the importance of the dispute in terms of the parties' overall relationship/network of disputes (Exhibit N° C-LA-36), being stressed that in the present case the outcome of this arbitration and the impact it has on recovery of the IT-IH Shareholders' Loan is of the utmost importance to the Claimant and its shareholders.

985. More specifically as to the proceedings and the Respondents' conduct, the Claimant first reminds that it dealt with two sets of Respondents with very different cases, each of which filed detailed pleadings, supporting exhibits and expert reports, which therefore significantly increased the Claimant's costs. Second, the Respondents, particularly the Respondent N° 1, created several procedural incidents which also increased the Claimant's resources spent in the present case (for example: Prof. Merheb's failure to appear at the Evidentiary Hearing although he presented an expert report; the Respondents' continued failure to meet their disclosure obligations following the Tribunal's decision of 20 May 2020; the Respondent N° 1's unreasonable refusal to let in the supplementary translations of exhibits already on the record prior to the Evidentiary Hearing and the Respondent N° 1's meritless and legally deficient counterclaim).

986. The Claimant contends that its multi-jurisdictional team was appropriate in the circumstances, given the scale and importance of this and related disputes, being stressed that at all times the Claimant's Counsel worked in a coordinated manner to avoid duplicative work, as evidenced by the split of responsibility during the Evidentiary Hearing. The Claimant adds that its costs are reasonable and proportionate with respect to the issues in dispute, the importance and seriousness of its relief sought and the evidence that it adduced in support of its claims, these costs reflecting the extensive work that has been carried out in order to pursue complex and detailed claims which are of extremely high strategic importance.

987. The Claimant further submits that it has acted responsibly and professionally in the face of non-cooperative and hostile Respondents. Indeed, the Claimant proactively sought to limit the costs for all Parties by withdrawing the quantum aspect of its request for relief. Moreover, the Claimant reminds that it was the only Party to put forward witnesses for the Evidentiary Hearing to assist the Tribunal in its fact-finding task.

988. Finally, the Claimant stresses that added together, its costs in this arbitration amounted to 0.9 % of the amounts due under the IT-IH Shareholder Loan, which evidences that these costs are very much reasonable and proportionate.

989. The Claimant concludes by requesting to be awarded the amount of USD 5,422,360.19 (including the costs of the LAMC and of the Tribunal of USD 356,405.00), a sum that should be paid within 30 days, failing which such amount shall accrue interest at the legal interest rate of 9% *per annum* until full payment in accordance with Article 257 of the LCC.

990. On 26 February 2021, the Respondent N° 1 filed its Statement of Costs claiming the following representation costs and other costs, composed of the following cost items:

- Legal costs: USD 1,177,970.00
- Experts' fees and expenses: USD 92,000.00
- Technical fees: GBP 33,846.48
EUR 2,927.50

991. In its Statement of Costs, the Respondent N° 1 seeks to be awarded the costs it has incurred in relation to these proceedings, in accordance with Article 20 of the Rules, which costs it considers reasonable and justified by the elements of the present case.

992. The Respondent N° 1 submits that the Claimant complicated the proceedings by abusively amending the relief sought with respect to the loss suffered and, to that end, the Claimant needlessly appointed three experts leading the Respondent N° 1 to appoint its own experts to correct the erroneous conclusions that the Claimant endeavoured to prove to the Tribunal. Accordingly, the Claimant's wrongful claims in these proceedings, its abuse of right and bad faith in bringing this case should be construed against it.

993. The Respondent N° 1 concludes that, having acted in good faith from the outset of this dispute, it should be indemnified against any and all payments made or losses suffered in connection with this arbitration. Exercising its discretionary powers pursuant to Article 20(1) of the Rules, the Arbitral Tribunal should order the Claimant to bear the totality of the arbitration costs incurred by the Respondent N° 1. The Respondent N° 1 further requests that the Tribunal award legal interest starting as of the date of the Arbitral Tribunal's determination of the costs and their allocation until the date of payment to the Respondent N° 1 of the total cost and interest.

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994. On 26 February 2021, the Respondents N° 2 and N° 3 submitted their Cost Submission claiming the following representation costs and other costs, composed of the following cost items:

- Legal costs: USD 781,854.16
- Experts' fees: USD 99,692.98
- Other expenses: USD 53,748.43

995. In their Cost Submission, the Respondents N° 2 and N° 3 refer to Article 20 of the LAMC Rules which provides that the Arbitral Tribunal has the power to fix and allocate the costs of the arbitration. They further refer to Articles 541 and 543 LCCP which guide the Lebanese courts' decision on allocation of costs and required them to take into account the relative success and failure of each party in the arbitration. The Respondents N° 2 and N° 3 stress that the Lebanese approach is in line with international arbitration practice. They add that the Arbitral Tribunal should consider whether the successful Parties' costs were reasonable in the circumstances and award that which is reasonable. When assessing whether costs were reasonably incurred, the Arbitral Tribunal should take into account a variety of factors, including the respective conduct of the parties and whether they conducted the arbitration in an expeditious and cost-effective manner.

996. The Respondents N° 2 and N° 3 submit that they should recover their costs as the prevailing party. Indeed, they submit that they have conducted these proceedings in a cost-effective and efficient manner:

- The Respondents N° 2 and N° 3's costs are plainly proportionate to the matters raised in the arbitration and the value of the claim, i.e. approximately 0.002% of the value of damages originally claimed.
- At any one time, there have been up to two partners and four associates working on this matter. In contrast with the Claimant's four separate law firms, the size of team reflects the complexity of the issues raised in the proceedings and the fact that it forms part of a wider set of connected proceedings, whilst also ensuring that the team was cost-efficient and effective.
- The work has been appropriately delegated to associates with partners only incurring time and costs where necessary.
- The team has included associates of a range of seniority with more junior associates carrying out a significant amount of work where appropriate.
- At the Evidentiary Hearing, the Respondents N° 2 and N° 3 were represented by the same small team.

997. The Respondents N° 2 and N° 3 reiterate that the Arbitral Tribunal has a wide discretion to award costs and should take into account whether the Parties have been successful on particular issues. Even if the Claimant succeeds on certain points, the Tribunal should have regard to those aspects of the Claimant's case that were abandoned during the course of the arbitration, but in respect of which the Respondents N° 2 and N° 3 were required to dedicate time and resources. Therefore, the Respondents N° 2 and N° 3 submit that they should plainly be awarded their costs in connection with these issues (i.e. the costs of the Expert Report of Dr. Barnes, their legal fees in connection with the Claimant's damages claim), regardless of the wider outcome of the arbitration.
998. The Respondents N° 2 and N° 3 conclude that irrespective of the outcome of the case, the Tribunal should award them 20% of their total legal costs as having been incurred in respect of the Claimant's damages claim.
999. On 5 March 2021, the Claimant filed its Reply to Second and Third Respondents' Costs Submission in which it updated its claim for costs to reflect the further legal fees that were not included in its submission of 26 February 2021. The Claimant claims a total amount of USD 5,087,806.19 (USD 5,444,211.19 less the costs of the LAMC/Tribunal of USD 356,405.00) for its representation costs and other costs. In this submission, the Claimant objects to the Respondents N° 2 and N° 3's reliance on Articles 541 to 543 LCCP. The Claimant reminds that, pursuant to Article 811 LCCP, a tribunal is bound by the parties' agreement where they explicitly designate the rules applicable to their arbitration which is the case in the present arbitration. Consequently, while this Arbitral Tribunal would need to take into account the mandatory provisions of Lebanese Law (including certain provisions in the LCCP), it would otherwise have broad discretion in allocating costs under the LAMC Rules.
1000. The Claimant stresses that the mandatory rules that the Arbitral Tribunal would need to observe include Articles 809 to 826 LCCP relating to international arbitration and general principles of due process and fairness. However, Articles 541 to 543 LCCP, which relate to costs in Lebanese court proceedings, are not such mandatory provisions, and the Tribunal is not bound to apply them. The Claimant further adds that the Respondents N° 2 and N° 3 submitted an incorrect English translation of Article 541 LCCP which provides for joint and several liability and not only to the joint liability of the Respondents.
1001. As to the Respondents N° 2 and N° 3's costs related to its damages claim, the Claimant argues that the costs incurred by the Respondents N° 2 and N° 3 in respect of (i) analysing the Claimant's right as a matter of law to obtain damages and (ii) the preparation of the portions of Dr. Moghaizel's report which concerned the Claimant's right to such damages did not solely derive from the Claimant's initial quantum claim, but would have been carried out regardless of the Claimant's amended request for relief. The Claimant submits that Respondents N° 2 and N° 3 and Dr. Moghaizel still had to consider its entitlement to damages as a matter of law even after the withdrawal of the quantum claim because the Claimant maintained a claim for a declaration of liability in damages (to be quantified

subsequently) in the event of a finding of *dol* against any or all of the Respondents. Therefore, the Respondents N° 2 and N° 3 are in no way entitled to the costs of items (i) and (ii) in any event.

1002. In the event the Arbitral Tribunal would be minded to award a portion of the Respondents N° 2 and N° 3's costs to account for the Claimant's withdrawal of its quantum claim, the Claimant submits that this amount should be limited to the cost of Dr. Barnes' report (USD 38,892.98) plus the Respondents N° 2 and N° 3's legal costs for reviewing their expert report. Regarding the quantum of reviewing the expert report, considering the straightforward and discrete nature of the Claimant's initial quantum claim, the Respondents N° 2 and N° 3's entitlement should be set at a maximum of 2.5% of their total legal costs (i.e. USD 19,546.35). The Claimant considers that it is clearly reasonable to cap the Respondents N° 2 and N° 3's recovery for reviewing Dr. Barnes' report at 50% of the amount Dr. Barnes charged for actually writing the report. In any case, the Claimant contends that the Respondents N° 2 and N° 3's global 20% estimate is significantly overinflated and completely arbitrary.
1003. On 5 March 2021, the Respondent N° 1 submitted its response position on the Claimant's Submission on Costs. The Respondent N° 1 objects to the Claimant's excessive, unreasonable and disproportionate costs and the latter's general false allegations regarding itself specifically. Indeed, the Claimant's cost claim by far exceeds the cost claims of the three Respondents put together, the Claimant's costs amounting to more than double the aggregate amount of the costs claimed by the three Respondents put together. The Respondent N° 1 further stresses that the number of opposing law firms vis-a-vis the Claimant (two for the Respondent N° 1 and one for the Respondents N° 2 and N° 3) is the same as the number of law firms used by the Claimant on the record, which law firms are one Lebanese law firm and three international law firms. The Respondent N° 1 submits that this choice of representation, including three expert witnesses, has undoubtedly inflated the costs on the Claimant's side.
1004. The Respondent N° 1 contends that the reasons presented by the Claimant to explain its excessive costs are not justified. Moreover, it particularly rejects the false and baseless allegations made by the Claimant in bad faith against it, specifically regarding the allegations made in relation to Prof. Merheb's unavailability for cross-examination, the allegations made in relation to its refusal to let in the supplementary translation of exhibits and the allegations concerning its counterclaim, the basis and validity of which have been argued and proven and the merits of which must be determined by the Arbitral Tribunal, and not the Claimant.
1005. The Respondent N° 1 concludes that the Claimant's costs are excessive, unreasonable and disproportionate and that its allegations against it are groundless and in bad faith.

1006. On 5 March 2021, the Respondents N° 2 and N° 3 filed their response submission on the Claimant's Cost Submission. In this submission, the Respondents N° 2 and N° 3 submit that the costs claimed by the Claimant are "*shockingly*" high and excessive, the Claimant is claiming costs five times of those of the Respondents N° 2 and N° 3 and two times those of the Respondents as a whole. They state that even were the Claimant to succeed in this arbitration, it cannot recover its costs in full because they are plainly neither reasonable nor proportionate.
1007. The Respondents N° 2 and N° 3 argue that the two grounds relied upon by the Claimant to justify its costs, i.e. (i) that the Respondents' conduct during the proceedings resulted in it incurring additional costs and (ii) that its multijurisdictional legal team is appropriate and so the entirety of the costs thereby incurred must be reasonable and proportionate, are unfounded. First, the Respondents N° 2 and N° 3 stress that the Claimant instructed two international law firms and the fact that the Claimant has multiple shareholders does not justify that it had to appoint multiple law firms. Second, even if this were a justifiable approach in principle, the manner in which it was implemented by the Claimant with both Jones Day and Gibson Dunn appearing to be involved in each aspect with an almost equal split of the work can only have resulted in a significant amount of duplication between them. The Respondents N° 2 and N° 3 argue that the Claimant should be forced to accept the costs of its own inefficiencies, not the Respondents. Third, the Respondents N° 2 and N° 3 note that the Claimant has failed to disclose a breakdown of its fees among the fee earners but has instead provided a lump-sum. Further, the Claimant's team included at least 5 partners, 2 counsel and 4 associates which is entirely disproportionate and unreasonable.
1008. Fourth, following the submission of the Respondents' Statements of Defence, the Claimant elected to change its legal counsel and has included USD 699,996.12 in respect of work carried out by Kirkland & Ellis, its previous Counsel. The Respondents N° 2 and N° 3 submit that the Claimant cannot claim costs for its own decision to replace its legal counsel and change its case half-way through proceedings. Consequently, all of Kirkland & Ellis' costs should be denied. Fifth, the Respondents N° 2 and N° 3 object to the Claimant's argument that the transition between Kirkland & Ellis and Gibson Dunn was "*seamless*" because Gibson Dunn is also co-Counsel for the Claimant on a number of related disputes. It cannot be contested that there will be inevitable duplicative work, which is typical when counsel teams are replaced. Accordingly, even in the event that the costs claimed in relation to Kirkland & Ellis' work costs are not denied in full, the Respondents N° 2 and N° 3 contend that a reduction must be given for the duplicative work done by both Kirkland & Ellis and Gibson Dunn. Sixth, the Respondents N° 2 and N° 3 insist on the fact that Prof. Fadlallah's costs of USD 600,278.00 are clearly excessive for an individual playing the role of legal expert in such an arbitration. The excessiveness of Prof. Fadlallah's costs is further underlined by comparing them to those of the Respondents N° 2 and N° 3, who claim one-tenth the amount, USD 60,800.00, for the work of legal expert Dr. Moghaizel.

1009. Contrary to the Claimant's allegation, the Respondents N° 2 and N° 3's conduct was not unreasonable and did not necessitate incurring additional costs, in particular their alleged deficiencies in document production is a settled issue.

1010. Finally, the Respondents N° 2 and N° 3 submit that the Claimant's request for indemnity costs should be rejected for the reasons set out below:

- "(a) First, no explanation has been offered as to how the concept of indemnity costs (a feature of English court procedure) find any application in a Lebanese seated arbitration. The concept simply does not apply.*
- (b) Second, the Claimant mischaracterizes indemnity costs. Indemnity costs are awarded to reflect a sense of disapproval when procedural behaviour is unreasonable, disrespectful or inappropriate. It is not awarded as a mark of disapproval of the underlying wrong in the case—it is not a judgment on the merits nor is it a damages entitlement. [...]*
- (c) Finally, even assuming arguendo the concept of indemnity costs would be applicable, this would not materially affect the assessment. When indemnity costs are concerned, any doubt as to its reasonableness is resolved in favour of the receiving party (in contrast to the standard basis where it is resolved in favour of the paying party).*
- (d) Here, for the reasons given above, it is clear that the costs claimed by the Claimant are unreasonable. As such, these costs cannot be recovered in full, even on the indemnity basis."*

1011. The Respondents N° 2 and N° 3 conclude that the total costs claimed by the Claimant are unreasonable. As a result, even if the Claimant succeeds in this case it cannot recover its costs in full and its costs should be (on any view) reduced to:

- "(a) Remove any recovery of the Kirkland & Ellis costs; and*
- (b) It should only be allowed to recover its reasonable and proportionate costs (less Kirkland & Ellis' costs)."*

D Decision of the Arbitral Tribunal on the admissibility of the costs submitted

1012. Where the parties seek payment of legal or other costs, the Arbitral Tribunal must first determine whether and to what extent they are at all recoverable and in doing so, the Arbitral Tribunal enjoys broad discretion (Article 20 of the Rules). It shall also take into account any Party's objection as to the reasonableness and/or recoverability of such costs.

1013. The Arbitral Tribunal first notes that whereas both the Claimant and the Respondent N° 1 are claiming legal interest on costs, the Claimant specifically requesting a legal interest rate of 9% *per annum* to be paid within 30 days from the Arbitral Tribunal's award (in accordance with Article 257 of the LCC), the Respondents N° 2 and N° 3 do not claim any interest on their costs of arbitration. The Arbitral Tribunal further notes that neither the claim for interest on costs of the Claimant and the Respondent N° 1 nor the legal interest rate of 9% *per annum* claimed by the Claimant have been contested by any Party. Therefore, the Arbitral Tribunal concludes that interest on costs can be claimed and that if claimed and awarded the legal interest of 9% *per annum* as provided by Article 257 of the LCC shall apply.

1014. Regarding the Respondents' objection to the reasonableness and proportionality of the Claimant's costs, the Arbitral Tribunal notes that the Claimant's costs amount to more than double the aggregate amount of the costs claimed by the three Respondents as a whole.
1015. The Arbitral Tribunal notes that in principle each party is entitled to select its Counsel and may for instance decides to be assisted by more than one law Firm. Moreover, it is for each law Firm to assess the number of lawyers which needs to be involved, it being understood that such number shall remain reasonable and justified by the work required. This being said, having carefully reviewed the Respondents' criticism as well as Claimant's justifications and taking into account the total figure of the Respondents' representation costs, the Arbitral Tribunal concludes that it is appropriate to reduce the amount of Claimant's representation costs and other costs (namely USD 5,087,806.19) to USD 3,500,000.00. This reduction takes into account in particular the following elements. *First*, it cannot be disputed that the Claimant's decision to change its Counsel had an impact on the total amount of its lawyer's fees and that such amount includes a certain duplication of work. In this respect, the Claimant did not provide evidence that such duplication of work would have been accounted for. *Second*, the Arbitral Tribunal notes that there is a very important discrepancy between the fees charged by the Claimant's legal expert Prof. Fadlallah (USD 600,278.00) and the fees charged by the Respondents N° 2 and N° 3's legal expert Dr. Moghaizel (USD 60,800.00).
1016. With respect to the Claimant's criticism relating to the Respondent N° 1's cost claim, the Arbitral Tribunal is of the opinion that the Respondent N° 1's counterclaim (though dismissed) was not meritless from the outset and that the Respondent N° 1's behaviour relating to the submission by the Claimant of supplementary translations of exhibits prior to the Evidentiary Hearing constitutes a minor procedural incident which did not have any major impact on the Claimant's lawyer's fees. Consequently, the Arbitral Tribunal concludes that the representation costs claimed by all the Respondents are reasonable and shall not be subject to reduction.
1017. As to the Claimant's request for the Respondents to be ordered to jointly and severally support its arbitration costs (including the LAMC costs), the Arbitral Tribunal refers to Articles 24 and 137 COC which provide:

"Article 24 – *La solidarité entre débiteurs ne se présume pas.*

Elle doit résulter formellement du titre constitutif de l'obligation, de la loi ou de la nature de l'affaire.

Cependant, la solidarité est de droit dans les obligations contractées entre commerçants, pour affaires de commerce si le contraire ne résulte du titre constitutif de l'obligation ou de la loi."

"Article 137 – *Lorsque le dommage a été causé par plusieurs personnes la solidarité passive existe entre elles :*

1 – s'il y a eu communauté d'action ;

2 – s'il est impossible de déterminer la proportion dans laquelle chacune de ces personnes a contribué au dommage."

1018. The Arbitral Tribunal notes that two Lebanese Court of Cassation cases in the record expressly address the issue of whether the two above-mentioned conditions are alternative or cumulative conditions and reach the same conclusion, namely that the conditions are not cumulative (Exhibits N° R1-ER-FN-71 and R1-ER-FN-72). Therefore, the Arbitral Tribunal finds that the three Respondents are jointly and severally liable for (i) the costs of arbitration and (ii) the post-award interest.
1019. Finally, the Arbitral Tribunal rejects the Claimant's request for indemnity costs as such request was not formally included in the prayers for relief of the Claimant's Submission on Costs. Further, the Claimant failed to provide any explanation as to how the concept of indemnity costs finds application in a Lebanese seated arbitration.
1020. Consequently, the Arbitral Tribunal concludes (without prejudice to its decision on the cost apportionment) that the Claimant's representation costs and other costs are recoverable for an amount of USD 3,500,000.00, whereas the Respondents' representation costs and other costs are admissible and reasonable and therefore recoverable.

E Apportionment of the arbitration costs

1021. According to the Parties' agreement under Clause 5.2 of the Subordination Agreement, the LAMC Rules apply to the present arbitration. Article 20(1) of the Rules provides:

"The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties."

1022. It is not disputed by the Parties that the Arbitral Tribunal has wide discretion in determining which party should bear all or part of the costs of the arbitration. In exercising its discretionary power, the Arbitral Tribunal will nevertheless follow a classic approach according to which the allocation of the costs is in proportion to the outcome of the case taking into account in particular the relative success of the claims and defenses.
1023. Pursuant to Article 811 LCCP, a tribunal is bound by the parties' agreement where they explicitly designate the rules applicable to their arbitration and this is specifically the case in the present dispute as mentioned above in paragraph 1019.
1024. The Arbitral Tribunal concurs with the Claimant's position and objection regarding the Respondents N° 2 and N° 3's reliance on Articles 541 to 543 LCCP. Indeed, such provisions are not mandatory and do not bind international arbitral tribunals sitting in Lebanon.
1025. Consequently, the Arbitral Tribunal will apply Article 20 of the Rules under which it enjoys broad discretion in allocating costs.

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1026. To decide on the allocation of the arbitration and representation costs, the Arbitral Tribunal takes into consideration in particular (i) the fact that the Claimant was partially successful on its main claims (the request for a declaration of entitlement for compensation for damages having been declared inadmissible), (ii) the dismissal of the Respondents N° 2 and N° 3's jurisdictional objection and (iii) the dismissal of the Respondent N° 1's counterclaim. The Arbitral Tribunal further finds that the Claimant's withdrawal of its claim for damages resulted in the Respondents incurring additional costs.

1027. Consequently, taking into account its ruling on the claims and counterclaim, the Arbitral Tribunal concludes that the arbitration and representation costs shall be apportioned as follows:

- 20% to be borne by the Claimant;
- 80% to be borne jointly and severally by the three Respondents.

1028. Therefore:

- (i) The Claimant shall bear 20% of the Respondents' representation costs, namely USD 253,994.00, GBP 6,769.30 and EUR 585,50 (20% of USD 1,269,970.00, of GBP 33,846.48 and of EUR 2,927.50) for the Respondent N° 1's representation costs and USD 187,059.11 (20% of USD 935,295.57) for the Respondents N° 2 and N° 3's representation costs. In addition, the Claimant shall bear 20% of the total amount of the arbitration costs of USD 712,935.00 paid by the Parties, namely USD 142,787.00.
- (ii) The three Respondents shall bear jointly and severally 80% of the Claimant's representation costs, *i.e.* USD 2,800,000.00 (80% of USD 3,500,000.00). In addition, the three Respondents shall bear jointly and severally 80% of the total amount of the arbitration costs of USD 712,935.00 paid by the Parties, namely USD 570,348.00.

1029. The Parties shall bear themselves the remainder of their representation costs.

1030. With respect to the arbitration costs fixed by the Court on 8 February 2021, 20% of such amount has to be borne by the Claimant, namely USD 136,600.00, and 80% by the three Respondents, namely USD 546,400.00. Consequently, the three Respondents are ordered jointly and severally to reimburse to the Claimant an amount of USD 219,867.50.

XIV DISPOSITIVE SECTION

1031. In light of the foregoing, the Arbitral Tribunal hereby:

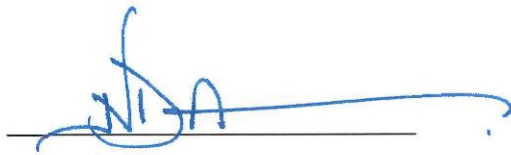
- (i) unanimously dismisses the Respondents N° 2 and N° 3's jurisdictional objections;
- (ii) unanimously declares that it has jurisdiction to decide the Claimant's claims;
- (iii) unanimously dismisses the Respondents' request to deem the Transfer Evidence inadmissible;
- (iv) unanimously declares that the Transfer Evidence forms part of the record;
- (v) unanimously declares that all three Respondents committed *dol* inducing the Claimant to enter into the Subordination Agreement;
- (vi) declares, at its majority, that the Subordination Agreement is null and void;
- (vii) unanimously declares inadmissible the Claimant's request for an order that it is entitled to the compensation by the Respondents on a joint and several basis of its damages caused by entry into the Subordination Agreement;
- (viii) unanimously orders the Claimant to pay to the Respondent N° 1 the amounts of USD 253,994.00, GBP 6,769.30 and EUR 585.50 as participation to the Respondent N° 1's representation costs and other costs, plus legal interest of 9% *per annum* from the issuance of the present Award until full payment;
- (ix) unanimously orders the Claimant to pay to the Respondents N° 2 and N° 3 the amount of USD 187,059.11 as participation to the Respondents N° 2 and N° 3's representation costs and other costs;
- (x) unanimously orders the three Respondents to jointly and severally pay to the Claimant the amount of USD 2,800,000.00 as participation to the Claimant's representation costs and other costs, plus legal interest of 9% *per annum* within 30 days from the issuance of the present Award until full payment;
- (xi) unanimously orders the three Respondents jointly and severally to pay to the Claimant the amount of USD 219,867.50 as participation to the Claimant's share of the LAMC arbitration costs;
- (i) unanimously dismisses any other relief claimed or counterclaimed.

LAMC Case No. 175/2018

The Final Award is issued in 9 original copies.

Place of Arbitration: Beirut, Lebanon

Date: 21/09/2021



Ms. Nadine Debbas Achkar
Co-Arbitrator



Mr. Choucri Sader
Co-Arbitrator



Mr. Pierre-Yves Gunter
President of the Arbitral Tribunal