

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

BLUE BANK INTERNATIONAL & TRUST (BARBADOS) LTD.

CLAIMANT

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

RESPONDENT

REQUEST FOR ARBITRATION

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I. Introduction

1. In accordance with Article 8 of the Agreement between the Government of Barbados and the Government of the Republic of Venezuela for the Promotion and Protection of Investments (the “Treaty”),¹ Blue Bank International & Trust (Barbados) Ltd. (“Blue Bank”),² a Barbados corporation, as trustee of the Qatar International Authorised Purpose Trust (“Qatar Trust”), submits to arbitration at the International Centre for the Settlement of Investment Disputes (“ICSID”) certain claims against the Bolivarian Republic of Venezuela (“Venezuela”), as established further below.

2. Blue Bank and its representatives, affiliates, and agents in Venezuela invested far in excess of one hundred million dollars (US\$100,000,000.00) as part of its efforts to rehabilitate numerous tourism and hospitality facilities throughout Venezuela for which it was granted concessions to develop and to operate.³ Specifically, through a series of intermediary entities,⁴ Blue Bank and its representatives, affiliates, and agents in Venezuela were granted concessions relating to (i) the Sistema Teleférico Caracas (the “Teleférico”), an elaborate elevated cable car system that connects the urban core of Caracas, the Venezuelan capital, with the heights of the

¹ Agreement between the Government of Barbados and the Government of the Republic of Venezuela for the Promotion and Protection of Investments, entered into force 31 October 1995, *available at* http://www.sice.oas.org/bits/venbar_e.asp, attached as Claimant’s Appendix 1.

Because of the date on which the treaty was executed, the official name of what is as of the date of filing this Request for Arbitration the “Bolivarian Republic of Venezuela”, omits the newly inserted nomenclature “Bolivarian”.

² Blue Bank and Trust (Barbados) Ltd. previously operated under the names Oceanic Bank and Trust (Barbados) Ltd. and Premier Bank International & Trust (Barbados) Ltd.

³ The relevant concession agreements and incident instruments are here attached as Appendices 3, 8, 9, and 10.

⁴ The intermediaries include Inversora Turística Caracas, C.A. and Corporación Hotelera Hemesa, S.A.

Ávila Mountain Range, which in approximately 1955 were developed as a tourist and recreation zone; (ii) the Hotel Humboldt, a vast and stately hotel located in the mountains at the terminus of the Teleférico; and (iii) the Gran Hotel de Puerto la Cruz in the State of Anzoátegui (“Hotel Puerto La Cruz”), a luxurious seafront hotel (collectively, the “subject properties”). All of these properties were in a severe state of disrepair and abandonment at the time the concessions were granted. Therefore, their renovation was a central motive for the public bidding process that Venezuela promoted and published to the known universe of prospective investors.

3. The Venezuelan government (also the “Venezuelan authorities”) provided numerous written and oral representations that directly and explicitly concerned the security and treatment of any prospective investments specifically concerning these properties and more generally relating to the hospitality industry sector. The Venezuelan authorities were keen on emphasizing the pivotal role that the hospitality sector can play in providing the country with resources that were needed to supplement revenue generated by the energy sector to be used for the government’s operations.

4. Blue Bank and its representatives, affiliates, and agents in Venezuela relied materially on the oral and written assurances, invitations, and promises of support that the Venezuelan authorities communicated in making the decision to invest. These communications, which were *both* pre- and post-investment entry, were specifically provided to Blue Bank and its representatives, affiliates, and agents in Venezuela as material conditions for investing in Venezuela, as well as for purposes of maintaining and enhancing the investment in Venezuela. Blue Bank and its representatives, affiliates, and agents in Venezuela also relied upon the legal framework for foreign investment in Venezuela. In reliance on these communications, Blue Bank and its representatives, affiliates, and agents in Venezuela invested far in excess of

US\$100,000,000.00 dollars in the Venezuelan hospitality industry through 2007. These funds exclusively were invested as part of Blue Bank's performance pursuant to the subject concession agreements.

5. Following the investment to renovate, upgrade, construct, design, and restore the subject properties, without any assistance from Venezuela despite contractual provisions requiring Venezuela and its instrumentalities to provide (without limitation) financial and logistical support, these properties were arbitrarily and discriminatorily expropriated, without public purpose or even the pretense of due process, by Venezuela which employed tactics intended to provide a false veneer of legality. Moreover, Venezuela did not even purport to tender *any* compensation for the expropriation, let alone actually issue payment. Indeed, as shall be highlighted, in both cases Venezuelan authorities imposed excessive fines that purported to represent "compensation". The expropriation of the subject properties was not only wanting in public purpose, but actually contrary to any public purpose.

6. Blue Bank's redevelopment, operation, and management of the subject properties were strictly in accordance with Venezuelan law. The terms of the concession agreements entered into for each property, including all subsequent modifications, were meticulously followed.

7. Venezuela undertook a series of measures specifically targeting the Venezuelan investments that were in violation of the investment protection and promotion obligations under the Treaty. These actions included (without limitation) the denial of permits, the initiation of wrongful judicial and administrative proceedings, the arbitrary and capricious termination of the concession agreements, and the improper enforcement of the termination of these contracts by Venezuelan government and military forces. In addition, Venezuela, through its agencies and

instrumentalities, specifically violated and breached agreements entered into with Blue Bank's representatives, affiliates, and agents in Venezuela with respect to the development of several of the subject properties. These illegal acts by Venezuela culminated in the outright expropriation of the subject properties.

8. Following the wrongful, expropriatory termination of the concessions that had been granted to intermediary corporations that Blue Bank owned, several administrative actions were brought before Venezuela's Ministry of Tourism (Ministerio de Poder Popular para el Turismo) and various instrumentalities of the Venezuelan Government. These administrative actions were ignored – and continue to be – by Venezuelan authorities despite specific requirements in Venezuelan law imposing a 20 day period for the Venezuelan Government to respond to such actions.

9. Similar attempts to seek relief through the Venezuelan judiciary not only have failed, but actually have been counter-productive, with the courts entering discriminatory adverse rulings against Blue Bank's intermediary entities without having been petitioned for such relief.

10. Put simply, Blue Bank's investments in Venezuela have been commercially destroyed. Venezuela's actions constitute indefensible violations of the Treaty, customary international law, international conventional law, and the domestic laws of Venezuela in their totality. They have caused accruing losses and damages to Blue Bank materially exceeding US\$200,000,000.00.

II. THE PARTIES

A. The Claimant

11. Claimant Blue Bank International & Trust (Barbados) Ltd. is a corporation created under the laws of Barbados.⁵ Blue Bank has taken all necessary internal actions to authorize the initiation and prosecution of these arbitral proceedings against the Bolivarian Republic of Venezuela.⁶

12. Blue Bank is represented in these proceedings by DLA Piper LLP (US). Contact details for all communications in relation to this matter are:

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B. The Respondent

13. The Respondent in this arbitration is the Bolivarian Republic of Venezuela, a sovereign state and a Party to the Treaty, as well as a Contracting State under the Convention on

⁵ Article 1 of the Treaty provides:

“[C]ompanies” means, in respect of each Contracting Party, corporations, firms and associations incorporated or constituted under the law in force of that Contracting Party;

For the purposes of the Convention referred to in Article 8 “Company” shall include any company incorporated or constituted under the law in force in one Contracting Party which is owned or effectively controlled by nationals or companies of the other Contracting Party.

⁶ See Blue Bank Power of Attorney, a true and correct of which has been attached as Appendix 2.

the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”).

14. Pursuant to Article 8(4) of the Treaty, Venezuela has consented to arbitration of claims by investors of Barbados alleging breaches of obligations under the Treaty.

15. Venezuela has not yet appointed counsel in these proceedings. Contact details for all communications in relation to this matter are:

Dra. Cilia Flores
Procuradora General de la República
Av. Los Ilustres, cruce con Calle Francisco Lazo Martí
Edificio Sede Procuraduría General de la República
Urb. Santa Mónica, Caracas 1040
Venezuela

Dr. Nicolás Maduro Moros
Ministro del Poder Popular de Relaciones Exteriores
Esquina de Principal, Lado Oeste de la Plaza Bolívar
1010 Caracas
Venezuela

16. The Treaty contains no predicate waiting or “cooling-off” period. Similarly, recourse to local remedies is not required or warranted pursuant to the Treaty.

III. SUMMARY OF RELEVANT FACTS

17. Summarized below are the factual bases for Blue Bank’s claims against Venezuela, without prejudice to its right to supplement these facts during the course of this arbitration.

A. The Expropriation of Blue Bank’s Interest in Inversora Turística Caracas, C.A.

1. Inversora Turística Caracas, C.A.

18. Inversora Turística Caracas, C.A. (“ITC”), is a Venezuelan corporation with its principal place of business in Venezuela. It was incorporated on September 15, 1980, and its

primary business purpose is the development, management, and expansion of tourist-oriented commercial ventures in the hospitality sector.

19. ITC is fully owned by Humboldt International Ltd., a BVI corporation, the shares of which are divided between INVACA, a Venezuelan corporation, and GIM Tour Ltd. (“GIM”), a British Virgin Islands (“BVI”) corporation. Each of the companies owns 50% of Humboldt International. These ownership interests are, in turn, structured through two classes of stock, which entitle each party to a different share of Humboldt International, and, consequently, ITC’s dividends. GIM owns 100% of Humboldt International’s Class A stock, while INVACA owns 100% of Humboldt International’s Class B stock. Consequently, GIM was entitled to 60% of ITC’s dividends (through its participation in Humboldt International) while INVACA only was entitled to 40%.

20. GIM is held (100%) by the Qatar Trust, a Barbados trust. Blue Bank is the trustee of Qatar Trust.

21. ITC’s principal assets include a concession contract that was awarded to it on April 15, 1998 (the “Concession Contract”) for the operation of the Teleférico, an elevated cable car system that provided passengers with access to the Ávila Mountain Range surrounding the city of Caracas with a culminating route having a point of disembarkation at the Hotel Humboldt.⁷

2. The Concession Contract

22. The Concession Contract awarded to ITC provided it with a right of operation of the Hotel Humboldt, a large convention hotel located at the terminus of the Teleférico, near the top of the mountain range. Originally built in 1956, the Hotel Humboldt was the centerpiece of a

⁷ A true and correct copy of the Concession Contract is attached as Appendix 3.

broader tourism district, which included restaurants, entertainment facilities, lodging, and casino facilities. Situated on Pico de Ávila, at 2,100 meters above sea level, one of the highest peaks of the Ávila Mountain Range, the Hotel Humboldt overlooks the city of Caracas to the south, and the Caribbean Sea to the north (in fact, it was contemplated in the Concession Contract that a second line of the Teleférico would be developed between the Hotel Humboldt and the El Cojo Station on the northern side of the Ávila Mountains along the Caribbean Sea). Following the hotel's closure in 1970, it had fallen into severe disrepair and was abandoned for decades.

23. The Concession Contract outlined the term for which the concession would extend (30 years),⁸ the consideration to be delivered by each of the parties,⁹ the manner in which the Concession Contract could be extended or terminated,¹⁰ and established that the investor was entitled to an “exclusive, peaceful, and uninterrupted” right of development of the Teleférico, Hotel Humboldt, and the Ancillary Properties.¹¹

⁸ See *infra* at paragraph 29.

⁹ See *infra* at paragraph 26.

¹⁰ See *infra* at paragraph 30.

¹¹ Specifically, the Concession Contract provided:

CLÁUSULA SECUNDA: OBJETO DEL CONTRATO.-

CORPOTURISMO por el presente CONTRATO DE OPERACIÓN otorga a [ITC], durante la vigencia del CONTRATO DE OPERACIÓN el derecho de exclusivo, pacífico e ininterrumpido de la explotación comercial del SISTEMA TELEFÉRICO y EL HOTEL, con todas sus instalaciones conexas, accesorios, dotación . . . por un periodo de treinta (30) años según se establece en la Cláusula Cuarta del presente CONTRATO DE OPERACIÓN.

Similarly, the Concession Contract also provides:

CLÁUSULA OCTAVA: DE LAS OBLIGACIONES DE CORPOTURISMO.-

CORPOTURISMO se obliga a permitir y garantizar a la OPERADORA la explotación comercial del SISTEMA TELEFÉRICO y EL HOTEL, de manera exclusiva, pacífica y ininterrumpida en las condiciones previstas en el presente CONTRATO DE OPERACIÓN.

24. Following ITC's successful participation in a public bidding process that the Venezuelan government sponsored for the operation and management of the Hotel Humboldt and the Teleférico, the Concession Contract was signed on April 15, 1988 by ITC and the Corporación de Turismo de Venezuela ("CORPOTURISMO"), an instrumentality of the Venezuelan Government charged with the development of tourism and the hospitality industry. The Concession Contract provided ITC with the right to exploit ancillary facilities and attractions in El Ávila National Park (the "Ancillary Facilities").¹²

¹² The full extent of the facilities involved, including ancillary facilities and attractions, are more fully detailed in Chapter 1 of the Concession Contract, which provides:

2- SISTEMA TELEFÉRICO

Significa el SISTEMA TELEFÉRICO CARACAS-LITORAL, con una longitud total de diez mil quinientos sesenta y un metros (10.561 Mts), partiendo de la estación Maripérez, ubicada al Norte de la Ciudad de Caracas, al pie del Parque Nacional El Ávila, llegando hasta la fila más alta de dos mil ciento cinco metros (2.105 Mts) sobre el nivel del mar, para completar el recorrido hasta la Estación El Cojo, en el Municipio Vargas y todos sus anexos, tales como estacionamientos, áreas de esparcimiento, servicios, acceso vial, sanitarias, alimentos o comedores, administrativas y cualquier otra área que forme parte integral de las estaciones. El recorrido está integrado por ocho (8) estaciones; tres (3) principales denominadas: Maripérez, El Cojo y El Ávila. Dos (2) estaciones intermedias denominadas Galipán y San José; y tres (3) estaciones de tensión, denominadas Papelón, San Francisco y Aguilón.

...

5- HOTEL HUMBOLDT

Significa el Hotel constituido por una construcción, tipo torre en forma cilíndrica, cuya construcción data del año 1957, integrada por las siguientes áreas: dos (2) sótanos, una (1) Planta Baja con una (1) piscina temperada cubierta al nivel de la Planta Baja, quince (15) Plantas Tipo, y, una Planta Pent-House, en adelante denominado EL HOTEL, el cual se encuentra ubicado en la fila más alta del Cerro El Ávila, PARQUE NACIONAL EL ÁVILA, sobre una extensión de terreno de aproximadamente seis (6) hectáreas del cual la construcción ocupa, aproximadamente, tres mil setecientos sesenta y cinco metros con setenta y cuatro decímetros cuadrados (3.765,74 Mts²) . . .

See Concession Contract, attached as Appendix 3, at 5-7.

25. ITC's responsibilities, generally stated, consisted of carrying out all activities necessary for the restoration, operation, maintenance, and development of the Teleférico; ensuring its continued operations; and maintaining rest and recreation areas along the Teleférico's course and at the Hotel Humboldt.

26. As consideration for this development right, ITC contracted to pay 5.29% of gross monthly revenues generated by these activities (the "Consideration") to CORPOTURISMO. Pursuant to the Concession Contract, these payments became due following the expiration of a grace period of three (3) years from the date of the Concession Contract's execution.¹³

27. In August 1999, the parties modified the Concession Contract in response to CORPOTURISMO's failure to perform its contractual responsibility to relocate within the nine month time period contemplated in the Concession Contract a National Guard base operating at the Teleférico's Maripérez Station, which obstructed ITC's restoration activities. Recognizing that the Teleférico was in far worse condition than was represented to ITC, the parties amended the inventory of existing materials and their condition. Although the Concession Contract originally had contemplated commencing payment of the Consideration three years following the execution of the Concession Contract, because of a delay that was in no part imputable to ITC, this timeframe was revised to commence three years after the execution by both parties of an "Acta de Entrega Definitiva" ("Certificate of Completion").

28. This modification was made necessary not only as a consequence of CORPOTURISMO's failure to perform its own contractual responsibilities, but also by

¹³ As described in paragraphs 47, 48, and 51, ITC made numerous payments to CORPOTURISMO's successor agencies in the amounts of Bs. 2,415,195,100.75 on March 28, 2006, and Bs. 293,921,858.44 on May 18, 2006. Further, on July 13, 2007, ITC informed VENETUR and the Ministry of Tourism that additional funds (amounting to Bs. 1,729,993,908.09) were being held in anticipation of transfer pursuant to the contract.

CORPOTURISMO's misrepresentations and material omissions regarding the condition and status of the Teleférico's facilities and premises, which rendered ITC's timely performance impossible.

29. The Concession Contract – both as to the Teleférico and the Hotel Humboldt – had a term of 30 years with a clause providing for a renewable term of 30 years. Article 5 of the Concession Contract, which address renewals, reads:

CLAUSULA QUINTA: PRORROGA

El presente CONTRATO DE OPERACIÓN podrá ser prorrogado por periodos iguales, si así lo solicita LA OPERADORA, con no menos de un (1) año de anticipación al vencimiento del plazo originalmente establecido para su vigencia, y así lo acuerde CORPOTURISMO de manera expresa, atendiendo razones de oportunidad o conveniencia.

A los fines de la procedencia de la(s) prórroga(s), será condición necesaria que LA OPERADORA hubiere demostrado, el fiel y exacto cumplimiento de las obligaciones asumidas en el mismo, durante el lapso de vigencia original.

Con independencia a lo estipulado precedentemente, CORPOTURISMO podrá condicionar la efectividad de la prórroga, al ajuste de las disposiciones económicas, financieras u otras integradas originalmente al CONTRATO DE OPERACIÓN, en el entendido que toda prórroga, addendum, o modificación del contrato original, deberá constar por escrito y será suscrito por las partes en señal de conformidad.¹⁴

30. Based upon the very terms of the Concession Contract neither party could terminate or modify it without first undertaking numerous specifically enumerated steps.¹⁵ This provision was grounded upon the long-term nature of the restoration project, which required significant investments to be made many years in advance of any anticipated revenues, and reflects a policy in favor of encouraging the investor to deploy its assets over a long period of

¹⁴ Because the languages of this arbitration are both English and Spanish, translations have not been supplied.

¹⁵ See Concession Contract, attached as Appendix 3, at 52-59.

time to restore fully the Teleférico and the Hotel Humboldt facilities by offering protection against sudden and arbitrary termination upon completion of the restoration.

31. Quite significantly, none of the procedures and substantive standards established in the Concession Contract for termination were undertaken by Venezuela, including the requirement that CORPOTURISMO compensate ITC for its losses.¹⁶ Nevertheless, Venezuela sought technically to comply with these terms in order to create an appearance of legality.

3. The Venezuelan government's actions to undermine the Concession Contract

32. ITC's efforts to perform effectively were continuously and repeatedly undermined and frustrated as a direct and proximate result of the misconduct of the Venezuelan government, including its failure to comply with the terms of the Concession Contract and affirmative actions taken to challenge ITC. In addition, the Venezuelan government repeatedly made changes to the ownership structures of the underlying assets, despite which ITC carried out Consideration payments and performed – to the extent possible given the impediments imposed by the Venezuelan government – its responsibilities under the Concession Contract.

i. Venezuela prevents ITC's performance of its obligations pursuant to the Concession Contract

33. During the course of its performance, the Venezuelan government's and CORPOTURISMO's acts or omissions frustrated or rendered materially more costly ITC's efforts to restore the Teleférico, its Ancillary Facilities, and the Hotel Humboldt, including:

- (i) The infrastructure, assets, and property delivered to ITC were in a near-total state of deterioration and neglect.
- (ii) Commercial establishments continued to operate at the Maripérez Station following the execution of the agreement, which prevented ITC from

¹⁶ *See id.*

taking immediate possession of the premises, as contemplated by the Concession Contract, and initiating its restoration activities.

- (iii) The service and recreation areas of the Teleférico, including the Maripérez Station, were riddled with large metal scraps left after the careless demolition and subsequent abandonment of the old Teleférico. CORPOTURISMO expressly prohibited ITC's attempts to move or clear the materials, adding additional delay and expense to the restoration activities.
- (iv) National Guard and Metropolitan Police Stations continued to operate at the Teleférico's Maripérez Station despite CORPOTURISMO's contractual obligation to deliver the space completely vacant to ITC.
- (v) The Teleférico's El Ávila Station was littered with equipment belonging to Teleferia Venta de Comidas C.A., a corporation that was engaged in litigation against CORPOTURISMO that CORPOTURISMO had failed to disclose during the negotiation of the contract and its subsequent execution.
- (vi) CORPOTURISMO was required, but failed, to relocate numerous radio and television antennas at the top of the Ávila mountain range, further obstructing and delaying ITC's activities.
- (vii) The government's Institute for Cultural Heritage ordered an immediate stoppage of ITC's restoration work through an administrative proceeding initiated on September 11, 2006, preventing ITC from obtaining numerous permits and significantly delaying its restoration activities.
- (viii) The *Comisión Nacional de Casinos, Salas de Bingo y Máquinas Tragapapeles* denied approval of the license for the operation of the casino at the Hotel Humboldt.
- (ix) The Teleférico's El Cojo Station was occupied and utterly taken over by squatters who had constructed buildings and other structures in the area of the station, which CORPOTURISMO failed to vacate.

34. Notwithstanding these obstructions, and CORPOTURISMO's consistent failure to meet its contractual obligations, ITC continued its restoration efforts at great additional cost.

35. The lack of maintenance and cumulative deterioration during the years of abandonment not only required the expenditure of significant sums of money, but also the importation of specialized teams of professionals skilled in the design, engineering, and renovation of similar facilities.

36. During that period, ITC also restored the roads and paths connecting the Ávila Station to the Hotel Humboldt.

37. But for one year of operation, the Teleférico had been “closed” for approximately twenty years. During this time, although operationally “closed”, the facilities were poorly policed and thus rendered an attractive looting and loitering target. Moreover, the facilities were not at all maintained, let alone appropriately serviced. In some locations, for example at the El Cojo Station, the Teleférico’s facilities had been overrun by squatters.

38. Despite all the impediments and challenges caused by the Venezuelan government, in October 2001, following three years of extensive restoration and reconstruction efforts, ITC completed the installation of a completely new, state-of-the-art cable car line, acquired from industry-leading Doppelmayr Seilbahn-Vertriebsgesellschaft m.b.h., connecting the Teleférico’s Maripérez, which is located at the base of the mountains in the city of Caracas, and Ávila Stations, which is located in the heights of the Ávila mountains. As of October 2001, ITC began initial operations of the first section of the Teleférico, and within months, in February 2002, the Teleférico opened its doors to the public and has remained open since that time.

39. Following the restoration of this initial portion of the Teleférico, ITC continued its efforts to restore the Hotel Humboldt, including commissioning architectural and technical studies, the removal of debris, repair of elevators, pipelines, and electrical systems, construction of bathrooms in the Hotel Humboldt’s lobby, and fixing the complex’s derelict roofs. ITC also engaged in extensive restoration and development of the Hotel Humboldt’s casino facility, which was to be the only legal gambling facility in Caracas.

ii. Changes to the Ownership of the Teleférico and the Hotel Humboldt

40. On November 13, 2001, CORPOTURISMO, which had been created in 1973, was formally dissolved pursuant to the new “Law of Tourism” (“Ley Orgánica de Turismo”) (published in Gaceta Oficial Extraordinaria No. 5554, dated November 13, 2001 and Gaceta Oficial No. 37.332, dated November 26, 2001).¹⁷

41. The liquidation of CORPOTURISMO was to take place within a period of two years. The Law of Tourism, however, specifically provided that all contractual rights and duties would remain in force:

DISPOSICIONES TRANSITORIAS

. . .

Tercera. Se suprime la Corporación de Turismo de Venezuela, creada mediante Ley de fecha 23 de mayo de 1973, publicada en la Gaceta Oficial de la República de Venezuela N° 1.591 extraordinario de fecha 22 de junio de 1973. Su liquidación se regirá por las normas establecidas en este Decreto Ley.

Cuarta. El proceso de liquidación se realizará en un plazo de dos (2) años improrrogables, contados a partir de la publicación del presente Decreto Ley en la Gaceta Oficial de la República Bolivariana de Venezuela.

Quinta. *Los derechos y obligaciones de naturaleza contractual que en la actualidad tenga la Corporación de Turismo de Venezuela se regirán por lo previsto en los contratos correspondientes.* Sin embargo, sus acreedores deberán respetar los plazos establecidos en los mismos para el cumplimiento de las obligaciones estipuladas.

Sexta. Las atribuciones de la Corporación de Turismo de Venezuela serán asumidas por el Ministerio del ramo, salvo las competencias de promoción y capacitación para la participación turística que corresponden al Instituto Autónomo Fondo Nacional de Promoción y Capacitación para la Participación Turística.¹⁸

¹⁷ True and correct copies of Gaceta Oficial Extraordinaria No. 5554 and Gaceta Oficial No. 37.332 are attached as Appendices 4 and 5, respectively.

¹⁸ See Gaceta Oficial No. 37.332, attached as Appendix 5, at 36 (emphasis supplied).

As a consequence of this provision, which caused the referenced dissolution and liquidation, in 2005 – two years after the liquidation of CORPOTURISMO – ownership of the Teleférico and Hotel Humboldt was transferred to the direct ownership of the Venezuelan government, through its Ministry of Tourism, and thus became direct Government-owned assets. The liquidation of CORPOTURISMO, however, merely exacerbated what already was an unbearable situation.

42. Adding to the substantive impediments resulting from Venezuela’s failure to comply with the terms of the Concession Contract, Venezuela initiated numerous legal impediments to ITC’s efforts, including creating serious ambiguities as to the entities to which ITC should make Consideration payments.

43. Thus, although the Concession Contract required ITC to begin making payments of the Consideration (5.29% of gross revenues) beginning on the third year after the formal completion of the project upon execution by the parties of the Certificate of Completion, ITC sent a letter to Mr. Wilmar Castro Soteldo, then Minister of Production and Commerce, in which ITC voluntarily and as a sign of good faith stated its intention to initiate Consideration payments as of the date on which the Teleférico was placed into operation (long before the date of the Certificate of Completion’s execution), and proposed a possible agreement to modify the Concession Contract to provide for such early payment. ITC’s proposal was reaffirmed in subsequent correspondence to Mr. Soteldo dated April 1, 2005. ITC received no response to these communications.

44. On November 10, 2005, ITC once again corresponded with Mr. Soteldo, then serving as the President of the Board of Directors of the *Consortio Venezolano de Industrias Aeronáuticas y Servicios Aéreos, S.A.* (“CONVIASA”), expressing its understanding that control

of the Teleférico and Hotel Humboldt was transferred to CONVIASA by the Venezuelan Ministry of Tourism following the liquidation of CORPOTURISMO.

45. In this communication, ITC established that although the parties had not yet executed the “Certificate of Completion” because numerous impediments to ITC’s restoration projects remained (including the Venezuelan government’s failure to vacate the Maripérez Station), and although it was under no obligation to do so, it intended to initiate payments of the Consideration. In connection with this intention, ITC requested payment instructions because of the change in the Teleférico’s and Hotel Humboldt’s ownership status.

46. On February 20, 2006, ITC received a letter from Mr. Soteldo, then the Minister of Tourism, confirming that payment of the Consideration – calculated as of October 16, 2001 – be made to CONVIASA.

47. On March 28, 2006, notwithstanding the grace period and other payment terms that previously had been agreed to with respect to the Consideration, ITC delivered payment in the amount of Bs. 2,415,195,100.75 representing payment of the Consideration for the period from October 16, 2001 (the date on which the Teleférico was once again operational) through December 31, 2005.¹⁹

48. Subsequently, on May 18, 2006, ITC delivered an additional payment of Bs. 293,921,858.44²⁰ as payment of the Consideration for January through March 2006.

49. On June 2, 2006, the President of the Bolivarian Republic of Venezuela, Mr. Hugo Chávez Frías, issued Decree No. 4.518 (published in the Gaceta Oficial No. 38.450)

¹⁹ This represents a value of US\$1,125,550.00 as of March 28, 2006 (not adjusted for inflation).

²⁰ This represents a value of US\$136,974.00 as of May 18, 2006 (not adjusted for inflation).

transferring the Teleférico and Hotel Humboldt to a newly created Venezuelan instrumentality, Venezolana de Turismo, S.A. (“VENETUR”).²¹

Se transfiere sin compensación y en propiedad a la Sociedad Mercantil Venezolana de Turismo VENETUR S.A., inscrita en el Registro Mercantil Quinto de la Circunscripción Judicial del Distrito Capital y Estado Miranda, en fecha 10 de noviembre de 2005, bajo el N° 6, Tomo 1215-A, siendo publicado su estatuto social en la Gaceta Oficial de la República Bolivariana de Venezuela N° 38.409, de fecha 30 de marzo de 2006, los bienes muebles e inmuebles, que se describen a continuación:

...

Hotel Humboldt: sus edificaciones anexas y demás pertenencias sobre el construidas, constituido por un terreno de aproximadamente seis hectareas (6 Ha.) situado en la fila más alta del cerro El Ávila, dentro del Parque Nacional El Ávila, declarado Parque Nacional por Decreto del Ejecutivo N° 473 del 12 de diciembre de 1.958, publicado en la Gaceta Oficial de la República de Venezuela No. 25.841, de fecha 18 de diciembre de 1.958; cuyas coordenadas y demás especificaciones aparecen descritas en el último documento protocolizado en el Registro Inmobiliario del Segundo Circuito del Municipio Libertador del Distrito Capital, en fecha 24 de marzo de 2006, bajo el No. 19, Tomo 19, Protocolo Primero, Primer Trimestre. El bien transferido ha sido valorado por la extinta Comisión Liquidadora de la Corporación de Turismo de Venezuela, a los sólo efectos fiscales, por la cantidad de Nueve Mil Cuatrocientos Sesenta y Siete Millones Ochocientos Setenta y Ocho Mil Seiscientos Ochenta y Cinco Bolívares con Cuarenta y Cuatro Céntimos (Bs. 9.467.878.685,44), en sesión NO 2003-083, celebrada el 25 de agosto de 2003.

Sistema Teleférico del Ávila: conocido como Sistema Teleférico Caracas; sistema de transporte, suspendido por guayas, destinado a fines recreacionales y turísticos, que va desde la estación Maripérez ubicada en la Urbanización Maripérez, Parroquia El Recreo, Distrito Capital y se adentra en el Parque Nacional El Ávila para atravesarlo hasta la estación terminal El Cojo ubicada en Macuto, Municipio Vargas, Estado Vargas; constituido por cinco estaciones denominadas Maripérez, El Ávila, San Isidro de Galipán, San José de Galipán y El Cojo, cuyas demás instalaciones y especificaciones y bienes muebles se encuentran descritos en el documento último protocolizado en el Registro Inmobiliario del Segundo Circuito del Municipio Libertador del Distrito Capital, en fecha 24 de marzo de 2006, bajo el No. 20, Tomo 19, Protocolo Primero, Primer Trimestre, y en expediente que del mismo bien se lleva en el Ministerio de

²¹ A true and correct copy of Gaceta Oficial No. 38.450 is attached as Appendix 6.

Turismo. El bien transferido ha sido valorado por la extinta Comisión Liquidadora de la Corporation de Turismo de Venezuela, a los solos efectos fiscales, por la cantidad de Veintisiete Mil Setecientos Cuarenta y Nueve Millones Sesenta y Dos Mil Ciento Treinta y Cuatro Bolívares con Sesenta y Siete Céntimos (Bs. 27.749.062.134,67).

50. On March 27, 2007, without prior notice of a breach of any kind, let alone non-compliance with material terms of the Concession Contract, and similarly without having been accorded an opportunity to address any perceived breaches, acts, or omissions of non-performance, a supervisory board of “managers and directors” was appointed and charged with the operation and management of the Teleférico as well as of the Hotel Humboldt. The appointment issued from the Ministry for Popular Authority for Tourism (“Ministerio del Poder Popular para el Turismo”). This supervisory board was formally constituted on April 2, 2007 and was given the following responsibilities:

- (i) Review and analysis of the Concession Contract and its execution by ITC;
- (ii) Undertake site inspections of Teleférico and the Hotel Humboldt;
- (iii) Obtain any and all data, information, or documentation related to the Concession Contract necessary to the completion of its purpose;
- (iv) Preparation of a Final Report regarding the results of its inspection.

51. Despite these actions taken by the Venezuelan government, on July 13, 2007, ITC sent letters to VENETUR and to the Ministry of Tourism once again requesting payment instructions. ITC also informed VENETUR and the Ministry of Tourism that the Consideration funds for the period from April 2006 through May 31, 2007 (amounting to Bs. 1,729,993,908.09)²² were being held separately in a bank account established solely for that

²² This represents a value of US\$806,374.00 as of July 13, 2007 (not adjusted for inflation).

purpose pending confirmation by the Venezuelan government of which entity should receive the Consideration payments.

4. The Venezuelan government asserts wrongful administrative proceedings against ITC and falsely manufactures a breach of the Concession Contract

52. On July 17, 2007, purporting to act in conformance with the Concession Contract and the Law of Administrative Procedures (*Ley Orgánica de Procedimientos Administrativos*), VENETUR officially initiated wrongful administrative proceedings ostensibly to determine whether ITC had breached its obligations under the Concession Contract, and whether such a breach was sufficiently serious to permit termination. VENETUR permitted ITC only ten business days to provide evidence and/or any defenses.

53. Also on July 26, 2007, in addition to asserting VENETUR's lack of standing, ITC submitted significant evidence that uncontrovertibly established its satisfactory performance of all terms material to the Concession Contract. This evidence was not disputed in any cognizable manner during the subject proceeding.

54. Specifically, in its first production of evidence on July 26, 2007, ITC provided documentation, letters, judicial decisions, news reports, and other communications demonstrating that:

- (i) The physical condition of the Teleférico and Hotel Humboldt facilities as of the date of the execution of the Concession Contract were considerably worse than represented;
- (ii) The existence of numerous acts by the Venezuelan government that impeded ITC's peaceful possession of the Teleférico and Hotel Humboldt as required in the Concession Contract;
- (iii) The Venezuelan National Assembly, as of the date of the administrative proceeding's initiation, had not authorized the transfer of the subject properties to VENETUR;

- (iv) The Venezuelan government had failed to remove scrap materials from the Teleférico's Mariperez Station, which significantly hampered ITC's restoration efforts;
- (v) ITC had not breached the late-payment penalty provision with respect to the Consideration payments, because, as noted above, the payments were not due (as reported in the newspaper *Diario El Universo*); and
- (vi) Since the Concession Contract's execution, and throughout the first five years of its implementation, Venezuelan government entities advanced several judicial processes that prevented ITC from taking peaceful possession of the subject properties.

55. On July 26, 2007, only days after VENETUR's initiation of the administrative proceedings against ITC, and on the very day that ITC asserted its defenses, Venezuela's Asamblea Nacional enacted legislation belatedly authorizing the more than one-month old transfer ordered by President Chávez's Decree No. 4.518. This legislation was published in the Gaceta Oficial No. 38.733.²³

56. On July 27, 2007, ITC presented its second production of evidence consisting of documentary evidence that conclusively established that ITC diligently acted upon its obligations under the Concession Contract, but was consistently proscribed in its efforts by the Venezuela government, that included the following specific instances:

- (i) The Venezuelan Institute for Cultural Heritage (*Instituto de Patrimonio Cultural*), a government agency, initiated administrative proceedings against ITC that forced stoppages in ITC restoration efforts;
- (ii) The National Casino Commission (*Comisión Nacional de Casinos*), a government agency, obstructed ITC's efforts to secure a casino permit for the Hotel Humboldt;
- (iii) The National Parks Institute (*Instituto Nacional de Parque*), a government agency, impeded ITC efforts to restore the Teleférico and Hotel Humboldt facilities.

²³ A true and correct copy of Gaceta Oficial No. 38.733 is attached as Appendix 7.

57. On July 30, 2007, ITC presented its third production of evidence, which provided additional proof that ITC had not breached the Concession Contract, including the fact that Consideration payments had been made even though ITC was not yet obligated to make such payments according to the terms of the Concession Contract.

58. On August 1, 2007, ITC tendered its fourth production of evidence, which provided the results of an inspection of the Teleférico and Hotel Humboldt facilities. In addition, ITC demonstrated that it had obtained insurance policies required pursuant to the Concession Contract.

59. On August 2, 2007, ITC provided its memorandum of defenses and conclusions in the administrative proceeding.

60. On that very date, August 2, 2007, scarcely two weeks after the administrative proceeding had commenced and on the same day that ITC provided its memorandum of defenses and conclusions, VENETUR, acting as both judge and interested party, a government instrumentality presiding over and participating in an administrative government proceeding, unilaterally and in stark denial of any semblance of due process, without explanation or the pretense of a reasoned decree, issued a Resolution (i) terminating the administrative proceeding, (ii) holding that ITC had materially breached the Concession Contract, (iii) awarding VENETUR relief in the form of rescission of the Concession Contract, (iv) order ITC to pay Bs. 19,788,415,485.14 in penalties,²⁴ (v) ordering the complete cessation of ITC's involvement concerning the operation of the Teleférico and the Hotel Humboldt, (vi) compelling the restitution and return of all assets relating or pertaining to the Teleférico and the Hotel, including those pertaining to ancillary recreational assets within El Ávila National Park, and (vii) ordering

²⁴ This represents a value of US\$ 9,222,700.00 as of August 2, 2007 (not adjusted for inflation).

the provision of all documents and information related to the operation of the Teleférico and the Hotel Humboldt, including accounting, employment, and any other information related to the Concession Contract. Additionally, the Resolution established that because of ITC's supposed "breach" of the Concession Contract, all improvements completed by ITC became the property of VENETUR without any compensation of any kind.

61. All of these measures were undertaken without considering *any* of the exculpatory evidence that ITC introduced during and as part of the proceeding that demonstrated ITC's complete compliance with all terms material to the Concession Contract. Indeed, the final Resolution issued in the administrative proceedings not only issued on the very day on which ITC presented its final writing, but also fails to in any way establish a "serious breach" of the Concession Contract.

62. Neither CORPOTURISMO nor its purported successor in interest, VENETUR, ever tendered or pretended to offer to ITC any (i) compensation for the revocation of the Concession Contract, (ii) restitution of the funds that ITC tendered to CORPOTURISMO and VENETUR during a nine year timeframe, (iii) percentage of the funds that ITC expended in modernizing, repairing, rendering viable and competitive, the Teleférico, the Hotel Humboldt, and ancillary El Ávila National Park assets that had been virtually abandoned for over three decades, and (iv) funds for the approximately two remaining decades (approximately through April 15, 2028) of lost profits arising from the remaining term of the Concession Contract.

63. The expropriation in the form of the unilateral and unjustified revocation of the Concession Contract, the establishment of a board of managers and directors, and the taking of physical possession of the subject properties in disavowance of public purpose and public utility, without compensation to ITC and without restitution of the capital investments undertaken to

modernize and render viable this project, was actually tactically effectuated in a violent manner through the use of armed National Guard troops.

64. The surrounding facts under no reasonable hypothesis of fact, law, or logic, justified the deployment of armed National Guardsmen for purposes of assuming control of the facilities. The Venezuelan Government had no factual basis from which to infer that the most viable means for taking physical control of the facility required the deployment of armed national guard units. No threats had been communicated to the Venezuelan government concerning physical resistance or opposition to the expropriation of the subject properties.

65. The expropriation was both strategic and tactical. It ensued after a material reconfiguration of the parties' relative bargaining postures. Only after benefiting from the know-how, expertise, and significant capital investment that ITC caused to be invested in the refurbishment, restoration, and modernization of the Teleférico, Hotel Humboldt, and ancillary El Ávila National Park assets, did Venezuela conclude that it would be in its best interest to appropriate for its own self-interest the benefits of these payments and investments, both monetary and in-kind, and to extract all possible value from the benefits of the Concession Contract without having to share any of these gains with its once-strategic and necessary partner.

66. The wanton expropriation of the subject properties took place in keeping with a discernible pattern of change in the parties' relationship. In addition to serving as an investor, ITC also functioned as a strategic partner whose experience, knowledge, and technical team building capabilities were both meaningfully sought by the Venezuela government at the time of entry into the Concession Contract.

67. The Concession Contract explicitly emphasizes that experience and technical ability in the management of funicular and hotel facilities were essential elements considered in selecting ITC:

[ITC] resultó beneficiada en el Acto Público de Presentación y Selección de Ofertas por haber presentado la oferta más favorable, y en razón de su experiencia en la explotación, comercialización y operación de sistemas teleféricos y prestación de servicios de hotelería.²⁵

68. On August 16, 2007, without prejudice to recourse to any international tribunal or relief provided in applicable treaties, in an effort to exhaust all local remedies despite any normative imperative to proceed so, ITC filed a petition pursuant to which it sought a rehearing and reconsideration of the termination of the Concession Contract, and demanded from VENETUR compensation for damages caused by the unlawful termination of the Concession Contract. These damages consisted of (i) Bs. 94,781,480,000.00 in consequential damages, and (ii) Bs. 355,218,520,000.00 in lost profits.²⁶

69. Without any pretense of even the most fundamental due process, respondent VENETUR and the Ministry of Tourism, simply elected to ignore the petition. As of the date of the filing of this Request for Arbitration the petition is yet to be acknowledged, let alone appropriately responded to – as required by Venezuelan law – so that the proceeding may prosper to a logical resolution rather than sit in deliberate perpetual abeyance, as now clearly is the case.

70. The revocation of the Concession Contract was discriminatory, arbitrary, and in violation of international minimum standards for the protection of investments in Venezuela, in breach of the national treatment standard for the protection of investments, contrary to the

²⁵ See Concession Contract, attached as Appendix 3, at 12-13.

²⁶ The aggregate damages sought, amounting to Bs. 450,000,000,000.00, represents a value of US\$209,722,000.00 as of August 16, 2007 (not adjusted for inflation).

doctrine of fair and equitable treatment of investments, in violation of full protection and security, denial of justice, and in direct and explicit violation of Venezuela's obligation to provide protection and security to investments of this kind.

71. As part of ITC's duties established under the Concession Contract, it upgraded, modernized, and rendered viable and competitive the Teleférico as well as the hotel and auxiliary facilities, which had severely deteriorated as a result of lack of funding, mismanagement, abandonment, deficient maintenance, want of security (vandalism), and sporadic, if any, use during the years immediately preceding award of the Concession Contract.

72. This revocation was not part of any specific sector nationalization or expropriation effort.

B. Expropriation of Blue Bank's Interest in Corporación Hotelera Hemesa, S.A.

1. Hotelera Hemesa, S.A.

73. Corporación Hotelera Hemesa, S.A. ("Hemesa"),²⁷ a Venezuelan corporation incorporated on October 8, 1998, was awarded the concession contract for the operation of the Gran Hotel de Puerto la Cruz in the State of Anzoátegui ("Hotel Puerto La Cruz") (the "Second Concession Contract").²⁸

74. Ownership of Hemesa is divided between Grandes Hoteles del Caribe, Ltd. (70%), a BVI corporation, and Grupo Inversor Hesperia, S.A. (30%). In turn, Grandes Hoteles del Caribe, Ltd., is owned (100%) by Western Hemisphere Hotels Ltd., also a BVI corporation, which is held (100%) by Qatar Trust. As noted above, the trustee of Qatar Trust is Blue Bank.

²⁷ Hemesa was a special purpose corporation created solely for the purpose of completing this transaction.

²⁸ A true and correct copy of the Second Concession Contract is attached as Appendix 8. In the Second Concession Contract, Hemesa is identified as "LA OPERADORA" and Hotel Turístico is identified as "LA COMPAÑIA".

2. The Second Concession Contract

75. On October 15, 1998, in response to a successful public bidding process, Hemesa was awarded with the Second Concession Contract for the operation of the Hotel Puerto La Cruz.

76. The Second Concession Contract took the form of an operating contract between C.A. Hotel Turístico de Puerto La Cruz (“Hotel Turístico”), an entity owned by the Venezuelan government, and Hemesa.

77. The Hotel Puerto La Cruz, a luxury hotel fronting the Caribbean Sea, located in the Venezuelan resort city of Puerto La Cruz, was constructed in the early 1970s. It is owned by Hotel Turístico, which in turn is owned by the Venezuelan government instrumentality VENETUR. The facilities that encompass the Hotel Puerto La Cruz are described in Article 2(A) of the Second Concession Contract:

. . . el alojamiento propiamente dicho, así como las demás áreas e instalaciones que lo conforman, tales como: restaurantes; bares; discoteca, y demás áreas de recreación existentes tales como: piscina, piano bar; salas de conferencia; salones de reuniones y/o recepciones . . . ²⁹

78. Article 12 of the Second Concession Contract outlines Hotel Turístico’s duties and responsibilities owed to Hemesa:

- (a) LA COMPAÑÍA es responsable frente a LA OPERADORA por todas las obligaciones, y/o responsabilidades establecidas en el presente CONTRATO DE OPERACIÓN.
- (b) LA COMPAÑÍA expresamente se obliga y garantiza a LA OPERADORA durante la vigencia del presente CONTRATO DE OPERACIÓN, la explotación comercial de manera exclusiva, pacífica e ininterrumpida de EL HOTEL y en consecuencia deberá colaborar activamente a objeto de subsanar cualquier perturbación bien sea por terceras personas, o, por actos de los poderes públicos, en la explotación comercial exclusiva, pacífica e ininterrumpida antes mencionada.

²⁹ See Second Concession Contract, attached as Appendix 8, at Art. 2.

79. Underscoring the fundamental importance of Hotel Turístico’s obligation to ensure Hemesa’s “exclusive, peaceful, and uninterrupted” right of development, this duty is repeatedly referenced throughout the Second Concession Contract, including in Article 2, which defines the Second Concession Contract’s purpose:

LA COMPAÑÍA por el presente CONTRATO DE OPERACIÓN otorga a LA OPERADORA, durante la vigencia del CONTRATO DE OPERACIÓN el derecho exclusivo, pacífico e ininterrumpido de la explotación comercial de EL HOTEL, con todas sus instalaciones conexas, accesorios, dotación . . . por un periodo de QUINCE (15) años según se establece en la Cláusula Cuarta del presente CONTRATO DE OPERACIÓN, para lo cual LA COMPAÑÍA pondrá a la disposición de LA OPERADORA, LOS BIENES CONTRATADOS definidos en la Cláusula Primera de este Contrato.³⁰

80. This requirement is once again referenced in Article 8 of the Second Concession Contract, along with numerous other obligations ascribed to Hotel Turístico:

CLÁUSULA OCTAVA: DE LAS OBLIGACIONES DE LA COMPAÑÍA.-

LA COMPAÑÍA se obliga a permitir y garantizar a LA OPERADORA la explotación comercial de EL HOTEL, de manera exclusiva, pacífica e ininterrumpida en las condiciones previstas en el presente CONTRATO DE OPERACIÓN.

Como consecuencia de la presente obligación, LA COMPAÑÍA a la fecha de la suscripción del presente documento, deberá:

- 1.- Poner a LA OPERADORA en posesión efectiva y pacífica de LOS BIENES CONTRATADOS incluyendo, las áreas conexas, de todo lo cual se levantará Acta de Entrega e inventario físico con especificación de los bienes muebles, inmuebles, de EL HOTEL.
- 2.- Ejecutar las reparaciones y mejoras contenidas en el Plan de Inversión . . . en un periodo que no excederá de dieciocho (18) meses contados a partir de la suscripción del presente contrato. A tal efecto las partes acuerdan que para la ejecución del Plan, LA COMPAÑÍA tomará en cuenta, previamente las sugerencias y recomendaciones para el cabal cumplimiento o ampliación de dicho Plan formuladas por LA OPERADORA. En el caso de ampliación, las partes acordaran extender el plazo de mutuo acuerdo.

³⁰ See Second Concession Contract, attached as Appendix 8, at Art. 2.

3.- LA COMPAÑÍA deberá atender de forma directa cualesquiera de los procesos judiciales que intenten terceras personas o entidades publicas nacionales, estatales y/o municipales que aleguen tener derechos de cualquier naturaleza sobre LOS BIENES CONTRATADOS objeto del presente CONTRATO DE OPERACIÓN derivados de relaciones jurídicas de cualquier naturaleza, nacidas antes de la suscripción del presente CONTRATO DE OPERACIÓN. En este sentido, LA COMPAÑÍA será la única responsable por el pago de los costos asociados con la atención y defensa de estos procesos, así como del pago de las eventuales indemnizaciones por daños y perjuicios o de cualquier otra naturaleza que pudieran determinarse, incluyendo las costas procesales, si las hubiere.

81. All three elements of “exclusivity, peace, and continuity” were repeatedly and irreparably violated.

82. The Second Concession Contract emphasizes that Hemesa’s experience and technical abilities in the management of five-star hotel and restaurant facilities were essential elements leading to its receiving the concession for the Hotel Puerto La Cruz, explaining in Article 3:

LA OPERADORA . . . resultó beneficiada en el Acto Público de Presentación y Selección de Ofertas por haber presentado la oferta más favorable, y *en razón de su experiencia en la administración, comercialización y operación de los servicios de hotelería y restaurantes, en hoteles cinco(5) estrellas.*³¹

83. The Second Concession Contract established an initial term of 15 years, with specific procedures provided for its extension:

CLÁUSULA QUINTA: DURACIÓN.-

La vigencia del presente CONTRATO DE OPERACIÓN será de QUINCE (15) años contados a partir de su otorgamiento notarial.

³¹ See Second Concession Contract, attached as Appendix 8, at Art. 3 (emphasis supplied).

CLÁUSULA CUARTA: DE LA SUSCRIPCIÓN DE UN NUEVO CONTRATO.-

Si a la finalización del término de este Contrato existiese interés por parte de LA OPERADORA en suscribir un nuevo contrato, deberá notificarlo a LA COMPAÑÍA con una antelación de seis (6) meses a la fecha de terminación del presente contrato. En tal caso el nuevo contrato se suscribirá si así lo convienen las partes y en igualdad de condiciones tendrá derecho preferencial LA OPERADORA, con respecto a otros ofertantes para la suscripción del nuevo contrato.

84. Addendum I to the Second Concession Contract modified the duration terms by establishing that the initial term of 15 years started to run as of Addendum I's execution:

CLÁUSULA CUARTA: DURACIÓN.-

Se modifica la Cláusula de 13 de la siguiente forma: “La vigencia del presente CONTRATO DE OPERACIÓN será de quince (15) años contados a partir del otorgamiento del presente Addendum”.

85. Addendum I also modified the renewal provision of the Second Concession Contract, providing for a renewable term of 15 years upon satisfaction of specific performance conditions:

CLÁUSULA QUINTA: DE LA SUSCRIPCIÓN DE UN NUEVO CONTRATO.-

Se modifica de la siguiente forma: “Queda entendido que este Contrato podrá ser prorrogado a solicitud de LA OPERADORA con la previa aprobación de LA COMPAÑÍA por un lapso de quince (15) años adicionales en razón del derecho de preferencia otorgado a LA OPERADORA. En cuyo caso LA OPERADORA deberá notificarlo a LA COMPAÑÍA con una antelación de seis (6) meses a la fecha del vencimiento del CONTRATO DE OPERACIÓN o cualquiera de sus prórrogas.

86. Article 30 of the Second Concession Contract provides that termination of the Second Concession Contract by Hotel Turístico is *only* permitted in the event of a fundamental breach of the agreement.

87. Article 34 establishes specific procedures that Hotel Turístico must follow in the event that of the Second Concession Contract's termination or rescission.

3. Venezuela's obstruction of the Second Concession Contract

88. Following the execution of the Second Concession Contract, Hemesa took possession of the Hotel Puerto La Cruz, which was in a severely deteriorated state, due to many years of negligent maintenance, and required a complete modernization. The facility required extensive renovations and upgrades to its facilities in order to meet the "5 Star" standard established in the Second Concession Contract.

89. In fulfillment of its obligations under the Second Concession Contract, Hemesa tendered payment to Hotel Turístico in the amount of US\$1,869,271.00 (approximately Bs. 1,067,353,741.00 at the prevailing exchange rate in October 1998) as consideration for 15 years of operation.

90. Hemesa also was required (i) to make a monthly payment of 14% of profits to Hotel Turístico as consideration for exclusive right to operate, manage, and develop the Hotel Puerto La Cruz; (ii) to make an additional monthly payment of 6% of profits to an improvements fund established for the property; and (iii) to assume responsibility for the management of the property.

91. Pursuant to this concession contract, Hotel Turístico was required to evaluate and execute an Investment Plan with a minimum investment of Bs. 604,828,800.00 (approximately USD\$ 1,059,244.00 at the then-prevailing exchange rate), and to establish a Reserve Fund to be used in connection with improvements, renovations, and acquisitions of new equipment. The Reserve Fund was to be financed through the agreed payments, 6% of gross revenues, that Hemesa was to make to Hotel Turístico.

92. One year after the October 15, 1998 execution of the Second Concession Contract, Hotel Turístico had yet to comply with its obligations to execute the Investment Plan or to establish the Reserve Fund despite having received Hemesa's initial payment upon entry into the Second Concession Contract and subsequent payments of 6% of gross revenues.

93. Notwithstanding this failure, Hemesa agreed to assume financial and managerial responsibility for the Investment Plan pursuant to an Addendum to the Second Concession Contract executed on December 1, 1999 ("Addendum I").³² Additionally, Addendum I expanded the amount to be invested to Bs. 4,949,142,667.90.³³

94. Hemesa essentially assumed all the risk inherent in this investment, which became apparent as the Venezuelan economy entered a prolonged and sustained contraction in 2002.³⁴

95. On February 17, 2004, the Hotel Puerto La Cruz Concession Agreement was modified once again ("Addendum II") in recognition of the investments realized in the intervening years by Hemesa and with the purpose of establishing a new Investment Plan.³⁵

96. The purpose of this modification was to establish the final terms of the continued renovation of the Hotel Puerto La Cruz, which had been suspended since December 2002 due to the general workers' strike that took place that year in Venezuela and was national in scope.

³² A true and correct copy of Addendum I is attached as Appendix 9. Addendum I to the Second Concession Contract modified the duration terms by establishing that the initial term of 15 years started to run as of Addendum I's execution. It also revised the renewal provision of the Second Concession Contract, providing for a renewable term of 15 years upon satisfaction of specific performance conditions.

³³ This represents a value of US\$7,855,782.01 as of December 1, 1999 (not adjusted for inflation).

³⁴ See, e.g., Juan Forero, *Venezuela Economy Falters, Despite Abundant Oil*, N.Y. TIMES, September 24, 2002.

³⁵ A true and correct copy of Addendum II is attached as Appendix 10. Addendum II explicitly documented and recognized the investments already delivered by Hemesa and established new, extended timeframes.

97. Addendum II recognized the payment made by Hemesa of US\$1,869,271.00 upon execution of the Second Concession Contract in exchange for the right to develop, and established that this payment was made “con la finalidad de financiar parcialmente el plan de inversiones que inicialmente y de conformidad con el contrato de operación antes mencionado, debían ser ejecutadas por [Hotel Turístico].”

98. Addendum II also confirmed the investment of US\$7,855,782.01 that Hemesa had committed to make in Addendum I and established that Hemesa had complied with that obligation. Following the execution of Addendum II, Hemesa made investments in the renovation of the Hotel Puerto La Cruz which exceeded the amounts previously agreed upon by the parties, but which were necessary in order to meet the desired “5 Star” designation for the Hotel.

99. The Hotel Puerto La Cruz continued to operate during the course of the renovations and gradually, due to the efforts of Hemesa, the property’s financial performance began to improve. Nevertheless, Hotel Turístico became increasingly distant and less cooperative, and failed to comply with its own obligations under the Second Concession Contract.

100. Following the completion of Addendum II, the purpose of which was to reestablish the final investment plan, Hemesa sought to pay to Hotel Turístico its share of the Hotel Puerto La Cruz’s revenues and profits. In 2005, Hemesa proposed a payment plan, but Hotel Turístico failed to respond to Hemesa’s proposal. Similarly, in 2007, Hemesa once again proposed a full payment to Hotel Turístico, but Hotel Turístico rejected this proposal without offering any explanation. Despite this demonstrated willingness to make payments to Hotel Turístico, Hemesa had not made any payments of dividends to its shareholders because, due to

the economic environment (including the national strike and the devaluation of the currency), no profits had been posted by the Hotel Puerto La Cruz.

101. It was only after a shift in the relative positions of power between the contracting parties at the conclusion of the in-kind capital contribution (in the form of experience and expertise) that the Second Concession Contract was unilaterally and unjustifiably rescinded in breach of its material terms.

102. Neither the Venezuelan government, nor its instrumentality, Hotel Turístico, complied with the substantive or procedural requirements for termination or rescission of the Second Concession Contract.

4. Venezuela's wrongful administrative proceedings

103. On May 4, 2007, Hotel Turístico notified Hemesa of its intention to seize control of the Hotel Puerto La Cruz facility, and demanded the immediate transfer of documents and other information.

104. On May 16, 2007, Hotel Turístico notified Hemesa of the initiation of administrative proceedings to terminate the Second Concession Contract on the basis of alleged breaches of contract.

105. On May 30, 2007, Hemesa provided Hotel Turístico with a detailed writing that unequivocally established Hemesa's compliance with the terms of the concession contract, while also identifying economic or government-imposed impediments that had arisen in the preceding years including the devaluation of the currency, the 2002 national strike, the nationwide economic downturn, the establishment of currency exchange controls, and an increase in the value-added tax. Hemesa also identified the inability to obtain licenses and permissions for the

operation of numerous commercial activities at the Hotel Puerto La Cruz because of Hotel Turístico's consistent failure to collaborate.

106. Nevertheless, only days later, on June 7, 2007, Hotel Turístico purported to provide Hemesa with a formal notice concluding the administrative proceeding and unilaterally cancelling the Second Concession Contract.³⁶ This "notice" not only asserted that the Second Contract was cancelled, but also ordered Hemesa's management and operation of the property to cease immediately, and – remarkably – ordered Hemesa to make a payment of Bs. 2,363,409,842.00³⁷ for a supposed breach of contract:

PRIMERO: Rescindir unilateralmente por incumplimiento grave de la Operadora: i) el contrato de operación suscrito por la C.A. HOTEL TURÍSTICO DE PUERTO LA CRUZ en fecha 16 de octubre de 1998, con la empresa CORPORACIÓN HOTELERA HEMESA, S.A., para la explotación comercial del HOTEL TURÍSTICO PUERTO LA CRUZ, autenticado por ante la Notaria Pública Vigésima Tercera del Municipio Libertador del Distrito Federal el 16 de octubre de 1998, bajo el N° 75, Tomo 155; ii) el Addendum de este contrato suscrito en fecha 10 de diciembre de 1999 por ante la Notaria Pública Vigésima Tercera del Municipio Libertador del Distrito Federal el 16 de octubre de 1998, bajo el N° 43, Tomo 124 y iii) el Segundo Addendum de dicho contrato, suscrito el 17 de febrero de 2004 por ante la Notaria Pública Segunda de Puerto La Cruz, Estado Anzoátegui, bajo el N° 65, Tomo 17.

SEGUNDO: Se ordena a la CORPORACIÓN HOTELERA HEMESA, S.A., el pago de la cantidad de DOS MILLARDOS TRESCIENTOS SESENTA Y TRES MILLONES CUATROCIENTOS NUEVE MIL OCHOCIENTOS CUARENTA Y DOS BOLÍVARES EXACTOS Bs. 2.363.409.842,00, derivado del incumplimiento del Contrato de Operación del HOTEL TURÍSTICO PUERTO LA CRUZ, por conceptos de derechos de operación, por la explotación comercialmente la actividad relacionada con casinos, salas de bingo y máquinas tragapapeles, una cantidad equivalente al ocho por ciento (8%) de todos los ingresos operativos mensuales, por el incumplimiento del Plan de Inversiones y las respectivas penalidades de cada una de ellas, todo conforme a las cláusulas Cláusula Décima Tercera, Modificada en Addendum N° 1, Tercera del Addendum 2, y Vigésima Primera modificada por el Addendum 1.

³⁶ A true and correct copy of the June 7, 2007 Termination Notice is attached as Appendix 11.

³⁷ This represents a value of US\$551,040.00 as of June 7, 2007 (not adjusted for inflation).

TERCERO: Se ordena a la CORPORACIÓN HOTELERA HEMESA, S.A., la entrega material inmediata del Hotel Turístico Puerto La Cruz (Hoy Gran Hotel Puerto La Cruz), de todas sus instalaciones conexas, accesorios y dotación que aparecen señaladas en los Anexos C y E del contrato original, mencionadas en la cláusula segunda del mismo, así como de las obras, mejoras, bienes muebles e inmuebles adquiridos con ocasión de la explotación del servicio objeto del contrato de operación.³⁸

107. Hotel Turístico failed to even mention any of the claims and defenses asserted by Hemesa in a letter to Hotel Turístico of May 30, 2007, indicating that those defenses were not even considered in Hotel Turístico's wrongful decision to unilaterally terminate the Second Concession Contract. Hotel Turístico failed to establish that any of the "breaches" it claimed existed were material or were even the responsibility of or caused by Hemesa. Additionally, the penalty that Hotel Turístico was not supported or even credibly explained.

108. In conformance with a similar methodology employed in the expropriation based on the revocation of the Concession Contract, as to the Second Concession Contract, military units and police violence was unnecessarily deployed.

109. In particular, on June 8, 2007, the Governor of the State of Anzoátegui, accompanied by a representative of Hotel Turístico, marshaled a police and military force and dispatched these units to the Gran Hotel Puerto La Cruz. At that time, the troops were ordered to remove from the premises all Hemesa employees, and to seal all access to books, records, documents and even personal belongings. The use of such force was unjustified and abusive.

110. On August 24, 2007, Hemesa initiated administrative proceedings before the Ministerio del Poder Popular para el Turismo against Hotel Turístico for breach of the Second Concession Contract, and the wrongful and illegal unilateral rescission of the agreement. Hemesa

³⁸ See June 7 Termination Notice, attached as Exhibit 11, at 1-2.

sought compensation for damages caused by the unlawful termination of the Concession Contract amounting to Bs. 85,552,453,778.30.³⁹

111. Despite numerous subsequent writings sent to the Minister of Tourism and the President of VENETUR reaffirming the August 24, 2007 administrative action filed by Hemesa, the administrative proceeding has not moved forward. Indeed, the C.A. Hotel Turístico de Puerto La Cruz, the Ministry and VENETUR simply have ignored the proceeding.

112. Simultaneous with the administrative action, Hemesa also sought to challenge the expropriation of the Hotel Puerto La Cruz by filing an action before Venezuelan courts seeking to reverse the decision to rescind the Second Concession Contract. Hemesa also sought preliminary injunctive relief. Hemesa configured this petition as an application to enforce the particular Concession Contract with C.A. Hotel Turístico de Puerto La Cruz.

113. In a surprise ruling issued on June 22, 2007, the First Court for Administrative Disputes issued order No. 2007-1525, in which it specifically rejected the preliminary injunctive relief sought by Hemesa, and instead ordered preliminary relief *in favor of* Hotel Turístico, “authorizing” it to adopt and execute all the measures that it *already* had adopted since June 8, 2007, including the physical seizure of the property and possession of documentation and accounting records.

114. The taking of the Hotel Puerto La Cruz on October 16, 2007, perpetrated through the termination of the Second Concession Agreement and imposition of cease and desist orders on the hotel was undertaken without *any* compensation and application of even a pretense of due process.

³⁹ This represents a value of approximately US\$39,874,400.00 as of August 24, 2007 (not adjusted for inflation).

115. The revocation of the Second Concession Contract was discriminatory, arbitrary, and in violation of international minimum standards for the protection of investors in Venezuela, in breach of the national treatment standard for the protection of investments, contrary to the doctrine of fair and equitable treatment of investments, and in direct and explicit violation of the Government of Venezuela’s obligation to provide full protection and security to investments of this kind, and constitutes a denial of justice.

IV. ICSID JURISDICTION

116. Article 25(1) of the ICSID Convention defines the scope of the Centre’s jurisdiction. The claims submitted here fall within that scope.

117. The elements of Article 25(1) constitute predicates that must be satisfied in order for ICSID to retain jurisdiction over a dispute submitted to it:

- (i) the dispute must be “between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State;”⁴⁰
- (ii) the dispute must be “legal” in nature;⁴¹
- (iii) the dispute must be one “arising directly out of an investment;”⁴²
- (iv) the parties to the dispute must consent in writing to submit [the dispute] to the Centre;”⁴³

⁴⁰ *ICSID Convention, Article 25(1).*

⁴¹ *ICSID Convention, Article 25(1).*

⁴² *ICSID Convention, Article 25(1).*

⁴³ *ICSID Convention, Article 25(1).* Article 25(1) provides, in full:

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

- (v) “[w]hen the parties have given their consent, no party may withdraw its consent unilaterally.”

118. As demonstrated below, this dispute amply satisfies the Article 25 jurisdictional requirements.

119. Blue Bank and Venezuela have a legal dispute that arises directly out of an investment.

120. Blue Bank is a corporation established under the laws of Barbados, a Contracting State to the Convention.

121. Venezuela is a Contracting State to the Convention. Blue Bank and Venezuela have consented in writing to ICSID arbitration.

122. Venezuela cannot avert jurisdiction by unilaterally withdrawing consent at any time before or as of the date that this Request of Arbitration is presented.

A. Nationality

123. Blue Bank is incorporated in Barbados, which became a signatory to the ICSID Convention on May 1, 1981.⁴⁴ The Convention entered into force with respect to Barbados on December 1, 1983. Thus, Blue Bank is a national of a Contracting State for purposes of the ICSID Convention.

124. Venezuela is also a party to the ICSID Convention, which it signed on August 18, 1983. The ICSID Convention entered into force with respect to Venezuela on June 1, 1995.

B. Legal Dispute

125. This dispute involves Venezuela’s violations of the Treaty, customary international law, and Venezuelan law. The acts and omissions of Venezuela described here and

⁴⁴ See ICSID, “List of Contracting States and Other Signatories of the Convention,” available at <http://icsid.worldbank.org/ICSID>.

to be developed further in the course of this proceeding violate, among others, the following Treaty provisions:

- (a) Article 5: Expropriation;⁴⁵
- (b) Article 2: (1) Venezuela's Failure to Accord Fair and Equitable Treatment;⁴⁶ (2) Denial of Justice;⁴⁷ and (3) Violations of Contractual Duties Pursuant to the Treaty's Umbrella Clause;⁴⁸
- (c) Article 3: National Treatment and Most-Favoured-Nation Provisions.⁴⁹

126. Venezuela's violations of the Treaty provisions, as well as its violations of customary international law and Venezuelan law, concern Claimant's legal rights and entitle Claimant to legal remedies.

127. Venezuela's treatment of Blue Bank, its representatives, affiliates, and agents in Venezuela, and its investment violated these obligations through, *inter alia*, the following acts and omissions:

- (i) The arbitrary denial of permits;
- (ii) The initiation of wrongful judicial and administrative proceedings;
- (iii) The arbitrary and capricious termination of the First Concession Contract by the Venezuelan government;
- (iv) The arbitrary and capricious termination of the Second Concession Contract by the Venezuelan government;

⁴⁵ See *infra* at paragraphs 138 through 145.

⁴⁶ See *infra* at paragraphs 149 through 152.

⁴⁷ See *infra* at paragraphs 153 through 159.

⁴⁸ See *infra* at paragraphs 160 through 164.

⁴⁹ See *infra* at paragraphs 165 through 169.

- (v) The improper enforcement of the termination of the First Concession Contract by Venezuelan government and military forces;
- (vi) The improper enforcement of the termination of the Second Concession Contract by Venezuelan government and military forces;
- (vii) The violation and breach of contractual agreements and promises made to Blue Bank's representatives, affiliates, and agents in Venezuela with respect to the management and development of several of the subject properties;
- (viii) Failure to provide national treatment;
- (ix) Failure to provide international minimum standard protection;
- (x) Failure to provide most-favored nation treatment;
- (xi) Failure to provide full protection and security;
- (xii) Unreasonable, arbitrary, and damaging public announcements and declarations regarding the termination of the concession contracts;
- (xiii) Denying Blue Bank justice under customary international law;
- (xiv) The operation and management of the subject properties by Venezuelan agents and government instrumentalities, notwithstanding pending legal challenges to the purported termination.

C. Investment

128. Although, as is widely known, the term "investment" by design is not defined in Article 25 of the ICSID Convention, the term is well understood to have a broad definition, such as in the Treaty. Article 1(a) of the Treaty provides:

“investment” means every kind of asset invested by nationals or companies of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes:

- i. movable and immovable property and other property rights such as mortgages, liens, or pledges;
- ii. shares in and stock and debentures of a company and any other form of participation in a company;
- iii. claims to money or to any performance under contract having financial value;
- iv. intellectual property rights, goodwill, technical processes and know-how;
- v. business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which the assets are invested does not affect their character as investments and the term “investment” includes all investments, whether made before or after the date of entry into force of this Agreement.

129. Pursuant to this operative definition, the investment is comprised of its ownership interests in ITC and Hemesa, as well as the over US\$100,000,000.00 dollars those entities directly invested in the Teleférico, Hotel Humboldt, Hotel Puerto La Cruz, and related projects. Thus, Blue Bank’s investment includes contractual rights as well as legal rights.

130. Therefore, this dispute directly arises out of an investment, as required by Article 25(1) of the ICSID Convention.

D. Consent

131. Claimant has consented to ICSID arbitration pursuant to this Request for Arbitration.

132. Venezuela has consented to arbitration under the auspices of ICSID pursuant to Article 8 of the Treaty, which provides:

1. Disputes between one Contracting Party and a national or company of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter shall, at the request of

the national concerned, be submitted to the International Centre for Settlement of Investment Disputes for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.

...

4. Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article.

133. All jurisdictional requirements and conditions for submitting this dispute to arbitration before ICSID have been met.

V. VENEZUELA'S BREACHES OF ITS TREATY OBLIGATIONS

134. On July 15, 1994, the Governments of Barbados and the Bolivarian Republic of Venezuela signed the Treaty, which was subsequently ratified by the parties, and entered into force on October 31, 1995.

135. The object and purpose of the Treaty was unequivocally expressed in the Treaty's preamble, in which both Contracting Parties affirmed that they entered into the Treaty:

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party.

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of capital and technology and the economic development of the Contracting Parties, and that fair and equitable treatment is desirable.

136. Consistent with general bilateral investment treaty practice, the Treaty expresses the clear purpose of establishing favorable conditions for investment to flow from one Contracting Party to the other Contracting Party, promoting the investment process, and granting to these investments a high standard of protection.

137. Venezuela's treatment of Blue Bank, its representatives, affiliates, and agents in Venezuela, and its investments violate Venezuela's international legal obligations under the Treaty and customary international law as set forth below and as will be further developed in the course of this arbitration.

A. Venezuela's Breach of Article 5 - Expropriation

138. Article 5 of the Treaty prohibits expropriation, whether direct or indirect, except for a public purpose, in a non-discriminatory manner, in accordance with due process, and upon payment of prompt, adequate, and effective compensation.

139. Specifically, Article 5 of the Treaty provides:

1. Investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.
2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that provisions of paragraph (1) of this Article are applied in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

140. For there to be an expropriation there must be a "substantial deprivation" of the investor's property rights as a result of the measure taken by the host State. As expropriation

occurs when the “owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral.”⁵⁰

141. The entire value of the investments in Venezuela derives from the right to operate the subject properties. The combination of Venezuela’s illegal termination of the concession agreements related to the subject properties, the government further granting effect to this wrongful termination by ousting Blue Bank’s representatives, affiliates, and agents in Venezuela from several of the subject properties, and compelling Blue Bank’s representatives, affiliates, and agents in Venezuela to cease operations has eviscerated the value of the investments for reasons other than a public purpose under international law, in a discriminatory manner, wanting in due process, and without prompt, adequate and effective compensation, renders the actions of Venezuela an illegal expropriation.

142. Venezuela’s actions have destroyed Blue Bank’s investments. As of the Fall of 2007, Venezuela terminated the concession agreements in violation of the very termination provisions of these agreements, which were the single basis for Blue Bank’s Venezuelan entities to operate, redevelop, and manage the subject properties. Venezuela, however, did not simply terminate the concessions as the parties contemplated pursuant to the operative termination clauses. Instead, Venezuela exercised its military power and forcibly removed Blue Bank’s Venezuelan entities from the subject properties. In this same spirit of reckless disregard for the rule of law, administrative and judicial proceedings filed in Venezuela challenging the propriety of the taking have been ignored by Venezuela. Venezuela’s judiciary consequently has been complicit by endorsing these actions.

⁵⁰ *Biwater Gauff (Tanzania) Ltd. V. United Republic of Tanzania*, ICSID Case No. ARB/05/22 (Award dated 24 July 2008), ¶¶ 438, 438 (quoting *Tippets, Abbett, McCarthy, Stratton v. TAMS-AFFAA Consulting Engineers of Iran*, Case No. 7 (141-7-2), 6 Iran-US C.T.R. 219, 225 (Award dated 29 June 1984)).

143. The Venezuelan judiciary has demonstrated that it is neither impartial nor independent.

144. The combined actions of numerous Venezuelan officials throughout several governmental agencies and instrumentalities have been coordinated to deprive Blue Bank and its representatives, affiliates, and agents in Venezuela of the control, use, enjoyment, and economic value of its investments in Venezuela.

145. This expropriation was not effected for any legitimate public purpose. The expropriation at issue was discriminatory, and was not undertaken in accordance with due process of law. Moreover, it was not accompanied by payment of compensation as required by Article 5 of the Treaty. Consequently, Venezuela's conduct constitutes a stark violation of the Treaty.

B. Venezuela's Breach of Article 2 - Promotion and Protection of Investment; Umbrella Clause

146. Article 2 of the Treaty requires Venezuela to "encourage and create favourable conditions for nationals or companies of the other Contracting Party." Article 2 also requires Venezuela to accord "fair and equitable treatment in accordance with the rules and principles of International law," including "full protection and security."

147. In addition to the above-referenced provisions, Article 2 also includes an "umbrella clause", which requires that Venezuela "shall observe any obligation it may have entered into with regard to the treatment of nationals of the other Contracting Party."

148. Specifically, Article 2 of the Treaty provides:

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its rights to exercise powers conferred by its laws, shall admit such capital.

2. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the rules and principles of International law and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to the treatment of nationals of the other Contracting Party.

1. Venezuela's Failure to Accord Fair and Equitable Treatment

149. The customary international law obligation to accord fair and equitable treatment has been interpreted to require treatment in accordance with an investor's legitimate, investment-backed expectations.⁵¹ It is a standard enshrined in both conventional and customary international law. Also, it has been interpreted as requiring protection of an investor from conduct attributable to the State and harmful to the investor. A State's acts breach this requirement if:

the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process.⁵²

150. The terms “fair” and “equitable” commonly have been interpreted to mean “‘just’, ‘even-handed’, ‘unbiased’, [and] ‘legitimate.’”⁵³ The customary international law obligation to accord full protection and security has been interpreted to require not only physical protection of

⁵¹ See *Mondev International LTD v. United States of America*, ICSID Case No. ARB(AF)/99/2 (Award) (11 October 2002). See also *Tecnicas Medioambientales TECMED S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2 (Award) (May 29, 2003); *Plama Consortium, Ltd. v. Republic of Bulg.*, ICSID Case No. ARB/03/24 (Award) (Aug. 27, 2008).

⁵² *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3 (Award dated 30 Apr. 2004), ¶ 98.

⁵³ *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8 (Award dated 6 Feb. 2007), ¶ 290.

an investor's investment, but also maintenance of "the stability afforded by a secure investment environment."⁵⁴

151. Blue Bank and its representatives, affiliates, and agents in Venezuela have invested over one hundred million dollars (US\$100,000,000.00) to develop and restore the subject properties, which were completely defunct and no longer in use. These efforts included construction, the acquisition of state of the art equipment (including funicular cars for the Teleférico), recruitment, and the completion of countless reports, studies, and permits. Even though the subject properties, including the Teleférico and the Hotel Humboldt, have been carefully restored, these activities have been consistently undermined by Venezuela's reckless, self-serving, and discriminatory conduct.

152. Venezuela also failed to provide protection and security to the investments as required in the Treaty. As referenced, several of the subject properties were subjected to military force, ostensibly in order to remove Blue Bank's Venezuelan entities and to enforce the wrongful termination of the concession contracts despite any cause that would otherwise justify the exercise of such force. During the armed intervention of the subject properties, the employees of Blue Bank and its representatives, affiliates, and agents in Venezuela located on the subject properties were harassed and threatened by the armed forces.

2. Denial of Justice

153. Blue Bank's intermediaries' attempts to seek judicial or administrative recourse have failed, and in some cases have been counter-productive, as they have elicited punitive retribution.

⁵⁴ *Azurix Corp. v. Argentine Republic*, Award, ICSID Case No. ARB/OI112 (Award dated 14 July 2006), ¶ 408.

154. Administrative actions that were filed challenging the termination of the concession contracts have been ignored and left to languish by the Venezuelan Government's design despite specific provisions of Venezuelan law that purport to outlaw such conduct.

155. International law requires that litigants are afforded "even-handed" and "ordinary proceedings".⁵⁵ Proceedings leading to judgments that are "evidently unjust and partial" are internationally unlawful.⁵⁶

156. Judicial and administrative proceedings undertaken in connection with the illegal expropriations of Blue Bank's investments in Venezuela have lacked all indicia of fair and impartial hearings.

157. The Venezuelan judiciary and administrative courts lack any independence from political influence. Judicial and administrative proceedings, to the extent that they are permitted to move forward at all, have been reduced to little more than a formality. The executive branch has declared that Venezuela's judiciary must subordinate itself to executive fiat and the underlying philosophy of President Chavez's "Bolivarian Revolution". Therefore, any exercise of "independence" or "impartiality" by the judiciary is tantamount to treason.

158. Blue Bank and its representatives, affiliates, and agents in Venezuela have not been afforded the right to have its case heard, much less considered in an expeditious manner and in keeping with a reasonable opportunity to present its case.

159. The Venezuelan government's denial of justice to Blue Bank and its representatives, affiliates, and agents in Venezuela is the result of concerted actions by Venezuela's branches of government.

⁵⁵ *Idler (USA) v. Venezuela* (1885) in J. Moore, *The History and Digest of International Arbitrations to which the United States has been a Party* (1898), Vol. IV, 3491 at 3517.

⁵⁶ This age old precedent is artfully explained in the venerable chestnut EMMERICH DE VATTEL, *THE LAW OF NATIONS*, Book II, 350 (1852).

3. Violations of Contractual Duties Pursuant to the Treaty’s “Umbrella” Provision

160. Venezuela also is in violation of the “umbrella” provision of Article 2, which provides that “[e]ach Contracting Party shall observe any obligation it may have entered into with regard to the treatment of nationals of the other Contracting Party,” because of its failure to meet its obligations with respect to the concession agreements.

161. On numerous occasions, as described above, Venezuela simply ignored contractual obligations it had incurred as part of the subject concession agreements.⁵⁷

162. With respect to the Hotel Puerto La Cruz, Venezuela ignored contractual obligations that caused Blue Bank and its representatives, affiliates, and agents in Venezuela to incur increasingly greater risk. Even after these contracts were modified Venezuela continued to violate its new contractual responsibilities as modified. Impervious to law or principle, even the modified terms systematically were disavowed.

163. Venezuela has failed to recognize the rights of Blue Bank and its representatives, affiliates, and agents in Venezuela to “exclusive, peaceful, and uninterrupted” development of its investments.

164. For all the reasons referenced in paragraphs 18 through 72 (with respect to the Concession Contract) and 73 through 115 (with respect to the Second Concession Contract), Venezuela has denied Blue Bank’s investments the standard of treatment that Article 2 of the Treaty requires, including fair and equitable treatment, full protection and security, and the “umbrella clause”.

⁵⁷ See *supra* at paragraphs 18 through 72 (with respect to the Concession Contract) and 73 through 115 (with respect to the Second Concession Contract).

C. Venezuela's Breach of Article 3 - National Treatment and Most-Favored-Nation Treatment

165. Article 3(1) of the Treaty requires that Venezuela shall not subject investors of Barbados and those investors' investments or returns to "treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State." Similarly, Article 3(2) requires that Venezuela accord the same level of treatment with respect to the "management, maintenance, use, enjoyment or disposal of [such] investments." These requirements are commonly referred to as "national treatment" and "most-favored nation" provisions.

166. Article 3 of the Treaty reads:

1. Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals of any third State.
3. The treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

167. Numerous tourism and hospitality facilities located throughout Venezuela, including countless facilities in the Caracas metropolitan area, which Blue Bank believes to be owned by nationals of Venezuela and other third States, are in like circumstances to the subject properties that Blue Bank and its representatives, affiliates, and agents in Venezuela operated and managed.

168. These and other tourism and hospitality facilities are operating, and have been operating, without the challenges that the subject properties faced, which were owned and controlled by Blue Bank, a Barbados investor.

169. Venezuela's failure to treat the subject properties owned and controlled by Blue Bank in a manner "no less favorable" than the manner in which it treats investments owned by Venezuelan nationals and nationals of third States in like circumstances constitutes a breach of Article 3 of the Treaty.

VI. PROCEDURAL MATTERS

170. Claimant respectfully requests that the following measures be taken as Claimant's proposal for purposes of Rule 2(1)(a) of the ICSID Arbitration Rules.

A. Number of Arbitrators and Method for Appointment

171. There is no agreement between the parties regarding the number of arbitrators or the method for the constitution of the Arbitral Tribunal. As a result, for purposes of Rule 2 of the ICSID Arbitration Rules, Claimant proposes that a three-member Arbitral Tribunal be appointed and the 20-day time limit contained in Rule 2(1)(b) of the ICSID Arbitration Rules run from the date of the registration of this Request for Arbitration.

172. Claimant further proposes that the Tribunal be appointed in accordance with the following procedure:

- (i) Within 30 days of registration, Claimant and Respondent shall each appoint one arbitrator;
- (ii) The two appointed arbitrators shall, within 30 days of the Claimant's or Respondent's (whichever is later) appointment of an arbitrator and in consultation with the parties, jointly select a third arbitrator to serve as President of the Arbitral Tribunal; and
- (iii) In the event that a party fails to appoint an arbitrator or the two party-appointed arbitrators are unable to reach agreement on the identity of the President of the Arbitral Tribunal within the time limits specified above,

the Chairman of the ICSID Administrative Council shall appoint the arbitrator or arbitrators not yet appointed and shall designate the President of the Arbitral Tribunal.

B. Language of Proceedings

173. Claimant proposes that the proceedings be conducted in English *and* Spanish.

C. Place of Arbitration

174. Claimant proposes that the place of arbitration be at ICSID's seat in Washington, District of Columbia, United States of America.

VII. RESERVATION OF RIGHTS AND REQUEST FOR RELIEF

175. Blue Bank reserves the right to advance further arguments and produce such additional evidence, factual or legal, as necessary to complete or supplement the presentation of its claims or to respond to any arguments or allegations that Venezuela may advance. Blue Bank also reserves the right to produce further documentary evidence and to produce and render available witness evidence to supplement and support the claims made in this Request for Arbitration.

176. Reserving its right to amend, supplement, or otherwise restate its claims and the relief requested in connection with such demand, Blue Bank requests an award granting, without limitation, the following relief:

- (i) A declaration that Venezuela has violated the Treaty, customary international law, and Venezuelan law with respect to Blue Bank's investments;
- (ii) Compensation to Claimant for all damages that it has suffered, to be developed and quantified in the course of this proceeding, but including, without limitation, compensation for the wrongful expropriation of Claimant's investments, and damages for Venezuela's failure to provide Claimant and its investments fair and equitable treatment, national treatment, and full protection and security, and its arbitrary and discriminatory interference with Claimant's use and enjoyment of its investments;

- (iii) All costs and fees associated with this proceeding, including all professional fees and disbursements;
- (iv) An award of compound interest until the date of Venezuela's final satisfaction of the award at a rate to be fixed by the Tribunal; and
- (v) Such other relief as counsel may advise and the Tribunal may deem appropriate.

VI. CONCLUSION

177. For the reasons here detailed, Claimant respectfully requests that ICSID register this arbitration against the Bolivarian Republic of Venezuela.⁵⁸

Dated: June 22, 2012

Respectfully,

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⁵⁸ In connection with this filing, a wire transfer in the amount of \$25,000.00 has been executed. A true and correct copy of the wire transfer order is attached as Appendix 12.