

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

In the arbitration proceeding between

**AYAT NIZAR RAJA SUMRAIN, ESHRAKA NIZAR RAJA SUMRAIN, ALAA NIZAR  
RAJA SUMRAIN AND MOHAMED NIZAR RAJA SUMRAIN**

Claimants

and

**STATE OF KUWAIT**

Respondent

**ICSID CASE NO. ARB/19/20**

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**ORDER OF THE TRIBUNAL TAKING NOTE OF THE  
DISCONTINUANCE OF THE PROCEEDING**

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***Members of the Tribunal***

Prof. Zachary Douglas QC, President of the Tribunal  
Mr. Fernando Piérola Castro, Arbitrator  
Mr. Samuel Wordsworth QC, Arbitrator

***Secretary of the Tribunal***

Ms. Leah Waithira Njoroge

*Date of dispatch to the Parties: 11 February 2022*

## REPRESENTATION OF THE PARTIES

*Representing Ayat Nizar Raja Sumrain and others:*

Dr. Ezzat A. M. Youssef  
Villa 26, 1<sup>st</sup> District, Block 7  
90th Street, 5<sup>th</sup> Settlement  
New Cairo  
Arab Republic of Egypt

and

Mr. Noah Rubins QC  
Mr. Sami Tannous  
Mr. Matei Purice  
Ms. Camille Strosser  
Ms. Tala Fahoum  
Freshfields Bruckhaus Deringer LLP  
Al Fattan Currency House  
Tower 2, 20<sup>th</sup> Floor  
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PO Box 506569  
Dubai  
United Arab Emirates

*Representing the State of Kuwait:*

Mr. Abdulrahim AlAwadhi  
Ms. Dhuha AlSayer  
Ms. Noura AlRoudan  
Ms. AlZain AlSabah  
Mr. Sulaiman AlFoudari  
Department of Legal Advice and Legislation  
Council of Ministers  
Ahmad Al-Jaber Street  
Al-Sharq – Kuwait City  
State of Kuwait

and

Mr. Ed Poulton  
Ms. Ekaterina Finkel  
Mr. Stephen Abraham  
Ms. Katia Contos  
Baker & McKenzie LLP  
100 New Bridge Street  
London EC4V 6JA  
United Kingdom

## **I. PROCEDURAL HISTORY**

1. On 12 June 2019, Ayat Nizar Raja Sumrain, Eshraka Nizar Raja Sumrain, Alaa Nizar Raja Sumrain, and Mohamed Nizar Raja Sumrain (together, the “**Claimants**”), filed with the International Centre for Settlement of Investment Disputes (“**ICSID**”) a Request for Arbitration against the State of Kuwait (the “**Respondent**”) under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (the “**ICSID Convention**”) and on the basis of the Agreement for the Promotion and Reciprocal Protection of Investments between the Government of the Arab Republic of Egypt and the Government of the State of Kuwait (the “**BIT**”).
2. The Claimants and the Respondent are referred to together as the “**Parties.**”
3. The Request for Arbitration (the “**Request**”) was supplemented by the Claimants’ communications of 25 and 28 June 2019.
4. On 30 June 2019, the ICSID Secretary-General registered the Request, as supplemented, pursuant to Article 36(3) of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings and notified the Parties of the registration. In the Notice of Registration, the ICSID Secretary-General invited the Parties to proceed to constitute an Arbitral Tribunal as soon as possible in accordance with Rule 7(d) of the Centre’s Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.
5. In the absence of an agreement between the Parties on the method of constitution, on 12 September 2019, the Claimants informed ICSID that they opted for the formula provided in Article 37(2)(b) of the ICSID Convention; in accordance with that provision, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party, and a presiding arbitrator appointed by agreement of the parties.
6. The Tribunal was initially constituted on 3 October 2019 and composed of Prof. Zachary Douglas QC, a national of Australia, President, appointed by agreement of the Parties; Mr. N. Fernando Piérola Castro, a national of Peru and Switzerland, appointed by the Claimants; and Mr. V.V. Veeder QC, a national of the United Kingdom, appointed by the

Respondent. Ms. Leah Waithira Njoroge, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.

7. On 18 October 2019, the Claimants submitted a Proposal to Disqualify Prof. Douglas and Mr. Veeder (the “**Disqualification Proposal**”). On that same date, ICSID informed the Parties that the proceeding was suspended pending a decision on the Disqualification Proposal, pursuant to Rule 9(6) of the ICSID Rules of Procedure for Arbitration Proceedings (the “**ICSID Arbitration Rules**”)
8. Following submissions from the Parties and observations furnished by Prof. Douglas and Mr. Veeder, on 2 January 2020, the Chairman of the ICSID Administrative Council issued a decision dismissing the Disqualification Proposal.
9. On 15 January 2020, ICSID informed the Parties that Mr. Veeder had submitted his resignation in accordance with ICSID Arbitration Rule 8(2) and, further to that Rule, Prof. Douglas and Mr. Piérola had considered the reasons for Mr. Veeder’s resignation and consented. Therefore, the proceeding was suspended as of that date pursuant to ICSID Arbitration Rule 10(2).
10. On 28 February 2020, the Respondent appointed Mr. Samuel Wordsworth QC, a national of the United Kingdom, as arbitrator.
11. The Members of the Tribunal recall, with deep sadness, that Mr. Veeder passed away on 8 March 2020.
12. On 11 March 2020, the ICSID Secretary-General informed the Parties that the vacancy on the Tribunal following the resignation of Mr. Veeder had been filled, and the Tribunal was therefore deemed reconstituted as of that date, with the proceeding resuming in accordance with ICSID Arbitration Rule 12.
13. On 23 March 2020, the Respondent requested the suspension of the proceeding for 60 days on account of the impact of the COVID-19 pandemic. Upon invitation from the Tribunal, the Claimants responded on 26 March 2020 and indicated that they would be agreeable to suspending the proceeding; also in their response the Claimants, *inter alia*, requested that the Tribunal make a recommendation for provisional measures.

14. Following further communications between the Parties, on 9 April 2020, the Tribunal wrote to the Parties concerning the suspension of the proceeding and the Claimants' request for provisional measures. In its letter, the Tribunal, *inter alia*, reminded the Parties that the 60-day time limit for holding the first session pursuant to ICSID Arbitration Rule 13(1) would expire on 13 April 2020. The Tribunal therefore requested the Parties to confirm, by 10 April 2020, their agreement to extend the 60-day deadline, absent which the Tribunal would hold a first session without the Parties on 13 April 2020.
15. Pursuant to the Tribunal's instructions, on 10 April 2020, each Party wrote to the Tribunal concerning the first session. The Respondent agreed to extend the 60-day deadline; the Claimants refused to extend the deadline for the first session, and they also retracted their position that a suspension of the proceeding was necessary as a result of the COVID-19 pandemic.
16. On 13 April 2020, the Tribunal held a first session without the Parties by teleconference.
17. Also on 13 April 2020, the Claimants filed a document entitled "Request for Provisional Measures" wherein they explained the urgency of the request; however, the document was not accompanied by supporting evidence.
18. Upon invitation from the Tribunal, on 16 April 2020, the Respondent filed observations on the Claimants' submission focussing, *inter alia*, on the urgency of the requested measures. The Respondent also reiterated its argument that the proceeding should be suspended immediately.
19. In its Decision of 23 April 2020, the Tribunal, *inter alia*, informed the Parties that it was not persuaded that a full suspension of the proceeding was warranted at the present time. The Tribunal also provided further directions to the Parties regarding the request for provisional measures.
20. Following communications between the Parties, on 5 May 2020, the Tribunal invited the Claimants to file a definitive request for provisional measures with supporting evidence, and legal authorities on or before 8 May 2020.

21. On 7 May 2020, the Claimants informed the Tribunal that they would not be pursuing their request for provisional measures, but reserved their right to do so in the future. The Tribunal took note of the Claimants' communication on 8 May 2020.
22. On 26 June 2020, the Tribunal held a case management meeting with the Parties by teleconference.
23. On 30 June 2020, the Tribunal issued Procedural Order No. 1 which set forth, *inter alia*, the procedural calendar, including a separate briefing schedule in the event that the Respondent requested bifurcation. Annex A was subsequently modified by agreement of the Parties on 22 July 2020 and further modified by the Parties' agreements of 6 and 28 October 2020.
24. On 9 July 2020, counsel for the Claimants submitted a Request for Joinder of Third Party as a Claimant on behalf of Ms. Amal Ibrahim Abdel Hamid (the "**Joinder Application**"). The Respondent objected to the Joinder Application by letter of 17 July 2020. On 8 August 2020, each Party filed a further submission on the Joinder Application. On 8 September 2020, Ms. Abdel Hamid filed a reply to the Parties' submissions.
25. On 5 October 2020, the Tribunal issued its Decision rejecting the Joinder Application.
26. Pursuant to the procedural calendar, on 10 December 2020, the Claimants filed a Memorial on the Merits.
27. On 8 January 2021, the Respondent filed a request that the Tribunal bifurcate the proceeding (the "**Request for Bifurcation**"), wherein it raised five objections concerning the Tribunal's jurisdiction and the admissibility of the Claimants' claims, arguing that these be determined in a preliminary phase of the proceeding. The Claimants filed observations on the Request for Bifurcation on 21 January 2021.
28. On 1 February 2021, the Tribunal issued Procedural Order No. 2 on the Request for Bifurcation, wherein it decided to bifurcate three of the Respondent's objections to the Tribunal's jurisdiction.
29. The Parties subsequently made the following submissions on jurisdiction:
  - on 26 February 2021, the Respondent filed a memorial;

- on 26 March 2021, the Claimants filed a counter-memorial;
  - on 9 April 2021, the Respondent filed a reply; and
  - on 25 April 2021, the Claimants filed a rejoinder.
30. On 29 April 2021, the Tribunal held a pre-hearing organizational meeting with the Parties by video conference.
31. Also on 29 April 2021, the Tribunal issued Procedural Order No. 3 concerning the organization of the hearing on jurisdiction.
32. On 11 May 2021, the Parties informed the Tribunal that they had reached an agreement and jointly requested that the Tribunal suspend the proceeding and vacate the scheduled hearing dates.
33. On 12 May 2021, the Tribunal issued Procedural Order No. 4 taking note of the Parties' agreement, wherein it vacated the dates for the upcoming hearing on jurisdiction and confirmed that the proceeding was suspended as of 11 May 2021. Also in the Order, the Tribunal invited the Parties to update the Tribunal on the status of the proceeding by 11 June 2021.
34. By correspondence of 11 and 12 June 2021, the Parties informed the Tribunal that their discussions regarding the proceeding were ongoing and they would provide a further update by 12 July 2021.
35. By correspondence of 12 July 2021, the Parties informed the Tribunal that they were working on finalizing a settlement agreement and would revert in due course.
36. On 14 December 2021, the Tribunal invited the Parties to provide an update concerning the current status of their discussions by 23 December 2021.
37. By email of 23 December 2021, the Claimants informed the Tribunal that the Parties had agreed to the terms of the settlement agreement and requested an extension of the suspension of the proceeding until 31 January 2021. The Tribunal subsequently confirmed the extension on 30 December 2020.

38. On 2 February 2022, the Tribunal invited the Parties to provide a further update on their settlement discussions by 4 February 2022.
39. On 3 February 2022, the Parties jointly informed the Tribunal that they had reached a settlement agreement and formally requested that the Tribunal order the discontinuance of the proceedings in accordance with Rule 43(1) of the ICSID Arbitration Rules.
40. Rule 43(1) of the ICSID Arbitration Rules provides:

*If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.*

## **II. ORDER**

41. THEREFORE, in accordance with the Parties' request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.
42. After deducting any remaining costs of the arbitration, ICSID will reimburse to the Parties the balance of their advance payments in proportion to the payments they advanced to ICSID.

Dated as of 11 February 2022:

[signed]  
\_\_\_\_\_  
Mr. Fernando Piérola Castro  
Arbitrator

[signed]  
\_\_\_\_\_  
Mr. Samuel Wordsworth QC  
Arbitrator

[signed]  
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Prof. Zachary Douglas QC  
President of the Tribunal