International Chamber of Commerce (ICC)
International Court of Arbitration

Mr Ayoub-Farid Michel Saab

Claimant

Mr Fadi Michel Saab

Claimant

and

The Republic of Cyprus

Respondent

REQUEST FOR ARBITRATION

28 October 2014

MADKOUR LAW FIRM
Achrafieh
Sodeco Center,
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Beirut
Lebanon

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INTRODUCTION

1. This Request for Arbitration is filed by Messrs. Ayoub-Farid Michel Saab and Fadi Michel Saab, the Claimants, against the Republic of Cyprus, the Respondent, in accordance with the Rules of Arbitration of the International Chamber of Commerce in force as of 1 January 2012 (the ICC Rules).

2. The Claimants bring this arbitration pursuant to the Agreement on the Reciprocal Promotion and Protection of Investments between the Republic of Lebanon and the Republic of Cyprus dated 9 April 2001 (the Treaty), which entered into force on 19 March 2003. The Republic of Cyprus' consent to arbitrate disputes under the ICC Rules is given under Article 12 of the Treaty.

3. This arbitration is a consequence of the Central Bank of Cyprus' decision to expropriate the assets of FBME Bank's branch in Cyprus (the Branch) and, as a consequence of the manner in which it sought to execute this decision, destroy the Bank. The Branch holds approximately 90% of the Bank's assets and liabilities. The international depositors of the Branch have been deprived of access to their assets for over three months whilst the liquidity of the Bank stood at 104% at the time the Special Administrator was appointed.

4. What is happening today is no less than an illicit expropriation in progress. This is the very reason why the Claimants request the immediate appointment of an Arbitral Tribunal to settle this dispute in a prompt and efficient manner.

5. The Claimants set out below (I) the particulars of the Parties, (II) a summary of the dispute, (III) the applicable Treaty under which the dispute is to be settled, (IV) the violations by the Republic of Cyprus of its obligations under the Treaty, (V) the right of the Claimants to resort to ICC arbitration, (VI) a proposal concerning the constitution of the Arbitral Tribunal as well as the language and place of the proceedings, and finally (VII) a statement of the relief sought.

I. THE PARTIES

A. The Claimants

6. The First Claimant, Mr. Ayoub-Farid Michel Saab, is a citizen of the Republic of Lebanon.[1] Mr. Ayoub-Farid Michel Saab is an ultimate beneficial owner of FBME Bank. He is the beneficiary, on bare trust, of 100% of the shares of Celestina Limited,[2] a company registered under the laws Gibraltar, which stands in the name of Line Holdings Limited,[3] a company also registered under the laws of Gibraltar. Celestina Limited holds 50% of the shares of FBME Limited, which holds 100% of the shares of FBME Bank.[4] His contact details are as follows:

Mr. Ayoub-Farid Michel Saab
Achrafieh
Sodeco Center
Bloc 6, 1st and 3rd floors
Beirut, Lebanon

7. The Second Claimant, Mr Fadi Michel Saab, is a citizen of the Republic of Lebanon.[5] Mr. Fadi Michel Saab is the registered shareholder and ultimate beneficial owner of 50% of FBME Limited, which holds 100% of the shares of FBME Bank.[6] His contact details are as follows:

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1 See copy of Mr. A.-F. Saab's passport, **Exhibit C-28.**

2 Excerpt of the Registry of Commerce of Gibraltar relating to Celestina Limited of 28 October 2014, **Exhibit C-34**.

3 Excerpt of the Registry of Commerce of Gibraltar relating to Line Holdings Limited of 28 October 2014, **Exhibit C-33**.

4 See FBME Ltd's Register of Members, **Exhibit C-26**.

5 See copy of Mr. F. Saab's passport, **Exhibit C-27**.

6 See FBME Ltd's Register of Members, **Exhibit C-26**.

Mr. Fadi Michel Saab
Achrafieh
Sodeco Center
Bloc 6, 1st and 3rd floors
Beirut, Lebanon

8. The Claimants are represented in this arbitration by Messrs. Philippe Pinsolle and Thomas Voisin of Quinn Emanuel Urquhart & Sullivan UK LLP, and Mr. Roy Michel Madkour and Mrs. Rita Abouzeid of Madkour Law Firm. Their contact details are as follows:

Mr. Philippe Pinsolle
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6 rue Lamennais
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Beirut
Lebanon
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rita.abouzeid@madcour.com

9. Both Claimants have duly authorized Quinn Emanuel Urquhart & Sullivan UK LLP and the Madkour Law Firm to institute and pursue these proceedings on their behalf.

10. All correspondence and communications intended for the Claimants should be addressed directly to their counsel of record.

B. The Respondent

11. The Respondent in this arbitration is the Republic of Cyprus. The President of the Republic in office is Mr. Nicos Anastasiades. He was elected in 2013.

12. To the best of the Claimants' knowledge and belief, service of this Request for Arbitration may be made on the Government of the Republic of Cyprus using the following contact details:

The Attorney General of the Republic of Cyprus
c/o the Law Office of the Republic of Cyprus
1 Apelli Street
1403, Nicosia
Cyprus

The Minister of Foreign Affairs of the Republic of Cyprus
Presidential Palace Avenue
1447, Nicosia
Cyprus

The Minister of Justice and Public Order of the Republic of Cyprus
125 Athalassas Avenue
1461, Strovolos, Nicosia
Cyprus

II. SUMMARY OF THE DISPUTE

13. The Claimants will first present the Cyprus Branch of FBME Bank (A) before describing how, in less than two working days, the Central Bank of Cyprus took over the management of the Branch, via a Special Administrator, to sell it (B). The Claimants will then explain how the actions taken by the Special Administrator appointed by the Central Bank of Cyprus are progressively and rapidly destroying the value of the Bank (C), and the actions taken by the Claimants to mitigate the effect of the situation (D).

A. FBME Cyprus

14. FBME Bank is a company incorporated under the laws of Tanzania. Its head office is located in Dar Es Salaam, Tanzania. The Bank conducts banking activities which include the provision of financing and other banking services to its clients, a large

majority of which are international. A majority of its deposit base is international, i.e. sources from outside Cyprus.

15. The main branch of the Bank—FBME Cyprus—is located in Nicosia, Cyprus. It is registered as such with the Cyprus Registrar of Companies and Official Receiver, under registration number AE 1830 as a place of business of an overseas company.[7] The activities of the Branch represent approximately 90% of the global business of the Bank.

16. In 1982, when the late father of the Claimants, Mr. Michel Saab, and his two sons—Messrs. Ayoub-Farid Michel Saab and Fadi Michel Saab—decided to invest in Cyprus, there was no developed off-shore banking sector in Cyprus. FBME Bank is in fact the oldest off-shore bank operating in Cyprus (subsequently referred to as an "international banking unit", and then as a "foreign-owned bank"), and has considerably paved the way for other foreign investors of the banking industry to establish a banking presence on the island. The decision of the Saab family to invest in Cyprus and the encouragements they have made to attract other international banks to set up a banking presence in Cyprus have thus played a key role in the development of the Cyprus banking system and, more generally, the development of its economy.

17. FBME Cyprus is today one of the largest foreign-owned banks operating in Cyprus and is highly liquid. It has strong solvency ratios above those required by applicable law and regulations. Prior to the events, and in stark contrast with the situation of certain local systemic banks in Cyprus, the Branch's financial standing was sound and its short term liquidity ratio stood at 104%, thus ensuring it had sufficient assets to meet the claims of its depositors (totaling at that time approximately USD 1.7 billion).

18. In order to operate on a day-to-day basis, FBME Bank, including its branch in Cyprus, relies on correspondent banks which act on its behalf. Almost all of FBME Cyprus' deposits are with its correspondent banks. Further, these correspondent banks

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7 See FBME Cyprus' Certificate of establishment of a place of business dated 4 July 2014, **Exhibit C-1**.

notably conduct business transactions, accept deposits and gather documents on behalf of FBME Cyprus. FBME Cyprus' main correspondent banks are the following:

- Deutsche Bank Trust Company Americas;
- Deutsche Bank AG, London Branch;
- Raiffeisen Bank International AG; and
- Commerzbank AG.

19. The relations with the correspondent banks are thus key to the international operations of FBME and its branch in Cyprus.

B. The taking of FBME Cyprus in two business days

20. Due to the financial turmoil it has recently experienced, Cyprus and certain locally incorporated banks are in dire need of liquidity, in part due to the lack of proper oversight from the Central Bank of Cyprus. The Central Bank of Cyprus, which has a long and sometimes contentious history of dealings with FBME, seized the opportunity of an investigation by the Financial Crime Enforcement Network of the US Department of Treasury (FinCEN), which had expressed certain suspicions of money laundering,[8] to embark in a series of actions aimed at taking control of the assets of FBME Cyprus with a view to selling them. These actions were taken by the Central Bank of Cyprus, in concert with the Minister of Finance, in less than two working days.

21. On Friday 18 July 2014, the shareholders of FBME Bank learned that FinCEN had just issued notices naming FBME Bank as a foreign banking institution of primary money

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[8] FBME bank denies the allegations of wrongdoing as expressed in the Notice and has hired US counsel, Hogan Lovells, to represent it in the FinCEN proceedings. It is confident that these proceedings will be resolved satisfactorily.

laundering concern.[9] These notices are rebuttable and FBME Bank is working with FinCEN to ensure that the notices are withdrawn.

22. Upon issuance of the notices, FBME immediately contacted the Central Bank of Cyprus, which had itself been informed of the situation on or before 17 July 2014. Following a meeting with the Central Bank of Cyprus, FBME therefore requested the Central Bank's support to continue its banking activities as well as assist in addressing the allegations contained in the FinCEN Notices. FBME thus invited the Central Bank of Cyprus to be present at FBME Cyprus to monitor and control its management.[10]

23. On the same day, taking no notice of FBME's invitation to monitor and control the activities of its branch in Cyprus, the Central Bank of Cyprus issued a Supervisory Measure under the provisions of the Business of Credit Institutions Laws of 1997 to (N°3) 2013 to immediately assume the carrying on, in the name of FBME Bank, of the business of the Branch, for so long as may be considered necessary:

> *I refer to our today's meeting between a delegation from your bank and the Board of Directors of the Central Bank of Cyprus and I inform you that the Central Bank of Cyprus in its capacity as the regulatory authority of your Branch in Cyprus and with the aim of safeguarding the interests of its depositors and/or its creditors initiates the following supervisory measure under the provisions of the Business of Credit Institutions Laws of 1997 to (No. 3) 2013: assumes under the relevant legislation and with immediate effect, the carrying in the name of FBME Bank Ltd, the business of your Branch in Cyprus, for so long as the Central Bank of Cyprus may consider necessary.*

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9 FinCEN issued a Notice (FinCEN Notice of a Section 311 action of 17 July 2014, **Exhibit C-3**); Notice of Finding (FinCEN Notice of Finding of 15 July 2014 , **Exhibit C-2**); and, later, Notice of Proposed Rulemaking (FinCEN Notice of Proposed Rulemaking of 22 July 2014, **Exhibit C-9**).

10 Letter from Mr. F. Saab to the Central Bank of Cyprus of 18 July 2014, **Exhibit C-4**.

In this respect, FBME Bank Ltd is obliged to provide the Central Bank of Cyprus with such facilities, support, information, accesses etc. as may be required.[11]

24. Shortly thereafter, still on the same day, Mr. Kyriacos Zingas, Senior Director at the Central Bank of Cyprus, and his team entered the premises of the Branch. The two main tasks of his team were to: (i) supervise the IT system and (ii) monitor the operations of the Bank and especially payments which would only be made with Central Bank approval. Mr. Zingas' team remained at the Bank for some weeks after, though no international customer payments were effected during this time.

25. The FinCEN notices had the effect of causing some correspondent banks to freeze USD accounts of FBME for payments in USD only. On the same day of 18 July 2014, in order to avoid further difficulties, and at the express request of Mr. Zingas that the Branch move as many funds as possible to the Central Bank of Cyprus, the Branch made a transfer of EUR 100 million to the Central Bank of Cyprus.[12] Such transfer was made so that the Central Bank would act as a correspondent bank and reassure the clients and creditors of FBME. However, the Central Bank of Cyprus failed to utilise the funds for the above purposes.

26. If properly implemented, the monitoring of the operation of the Branch put in place by the Central Bank on 18 July 2014 would have been sufficient to allow it to operate in all non USD currency. However, the Central Bank's goal was apparently different: it was to take full control of the Branch and its assets, including its deposits, in order to sell them. The Central Bank of Cyprus thus made a complete *volte face* on the following Monday, 21 July 2014, without even taking the time to assess the measures proposed by FBME and put in place by the Central Bank of Cyprus on the Friday and without any consultation of the Bank, the Claimants, and the bank's home regulator, the Central Bank of Tanzania.

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11 Central Bank of Cyprus' Notice of Supervisory Measures of 18 July 2014, **Exhibit C-5**.

12 Deutsche Bank FFT, MTA Form and Corresponding Swift Messages of 18 July 2014, **Exhibit C-6**.

27. That Monday evening, taking everybody by surprise and giving no explanation, the Central Bank of Cyprus informed Mr. Ayoub-Farid Michel Saab by email at 22:51 PM that it had issued a resolution to sell the Branch (Decree 356/2014).[13] The Notice of Resolution Measures of the Central Bank of Cyprus reads as follows:

> *I wish to inform you that the Resolution Committee, acting under the powers vested in it in accordance with the Resolution of Credit and Institutions Laws of 2013 and 2014 ("the Law") and having obtained the consent of the Minister of Finance, has decided to apply the measure of the sale of business of the Cyprus branch of your bank. To this end, the Resolution Committee has issued a decree, a copy of which it attached for your information.* [14]

28. The Central Bank of Cyprus completely changed both its position and the legal basis of its actions between Friday 18 July and Monday 21 July 2014.

29. The reason for this *volte face* is that the initial measures adopted and the appointment of Mr. Zingas and his team to monitor and control the activities of the Branch did not enable the Central Bank of Cyprus to take the assets of the Branch. To achieve its goals, the Central Bank improperly based its decision on a different legal basis: the Law on the Resolution of Credit and Other Institutions of 2013. Yet, this law is not designed to apply to situations of this sort.[15]

30. The law is designed to deal with banks' bankruptcy, and more specifically to deal with the bankruptcy of the two largest systemic Cypriot banks in 2013, namely Laiki Bank and Bank of Cyprus. This law was drafted in a haste and its drafting is, to say the least, imperfect. However, under no reasonable interpretation, can it be argued that it applies to the situation of FBME. The Central Bank's decision to sell the Branch on the basis of this law thus constitutes a flagrant abuse of the law.

31. The following morning, Tuesday 22 July 2014, approximately 12 hours after receipt of the Notice of Resolution Measures and the Decree by email, the Special

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13 Email from the Central Bank of Cyprus to Mrs. E. Farrell and Mr. F. Saab of 21 July 2014, **Exhibit C-7**.

14 Central Bank of Cyprus' Notice of Resolution Measures of 21 July 2014, **Exhibit C-7**.

15 See Article 5 of the Law on the Resolution of Credit and Other Institutions of 2013, **Exhibit CL-6**.

Administrator, Mr. Dinos Christophides, took over the management of the Branch to fulfill its mandate, i.e. to sell the Branch.[16]

32. Thus, it only took two business days for the Central Bank of Cyprus to brutally take control of the Branch and set in motion the sale of FBME Cyprus' assets.

33. No explanation was provided as to why it was necessary to dispose of the assets of the Branch in a fire sale. This is because there is none. The Sale of the Branch has nothing to do with the FinCEN proceedings. The sale of the Branch—if at all feasible—will solve nothing and will definitely not allow the Bank to resume operations by restoring the relationship with correspondent banks.

34. The Special Administrator noted regarding the decision to sell the Branch that:

> *In case that the said decision* [the FinCEN Notice] *is overturned, there is a big possibility that tha* [sic] *the Branch of the Tanzanian Bank in Cyprus to restore its banking relations with the rest banks* [sic] *of the global system in order to be able to function properly. In such case, the Decree of the Central Bank which was issued based on the Resolution of Credit and Other Institutions Law 17(1)2013 is possible to be canceled.*[17]

35. The difficulty of course is that if the decision to sell is implemented, it will not be possible to undo it. Thus, in essence, the Special Administrator of the Branch indirectly conceded that the sale of the Branch would create a *fait accompli*.

36. The decision to sell the Branch has obviously been taken in great haste and has not been thought through completely. In the Notice of Resolution Measures, it is expressly stated that the Branch would be sold. The Branch does not, either as a matter of Tanzanian or Cyprus law, have legal personality and does not have any assets of its own. During the Cyprus court proceedings, the representative of the

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16 Central Bank of Cyprus' Notification of 22 July 2014, **Exhibit C-8**.

17 Affidavit of Mr. D. Christofides filed with the Nicosia District Court on 5 September 2014, **Exhibit C-25**.

Central Bank referred to a sale of "the operations" of the Branch, although it is difficult to understand what this would entail.[18]

37. The FinCEN notices, which only affect USD payments, are merely a pretext for the Republic of Cyprus to take control of and sell the Branch. Should the Central Bank achieve its goals and sell the Branch, the Claimants' investment would have been irreparably destroyed for no valid reason.

38. The regulatory measures and the Decree of the Central Bank of Cyprus have also set in motion regulatory developments in Tanzania, where FBME Bank has its headquarters.

39. On 24 July 2014, the Bank of Tanzania took over the management of FBME Bank, pursuant to Section 56(1)(g)(iii) of the Banking and Financial Institutions Act of 2006.[19] The Central Bank of Tanzania further noted that this decision was a direct result of the measures taken in Cyprus by the Central Bank of Cyprus:

> *Pursuant to the provisions of section 56(1)(g)(iii) of the Banking and Financial Institutions Act, 2006, the Bank of Tanzania has decided to take over the management of FBME Bank Limited following the decision taken by the Central Bank of Cyprus to take over the management of the operations of the branch of the bank in Cyprus. This decision has been taken mindful of the potential effect that the bank may cause in banking system* [sic].[20]

40. Far from restoring confidence in the Branch and enabling it to operate, the decision of the Republic of Cyprus to sell the Branch has produced contrary effects. The unilateral decision to sell and the actions of the Special Administrator have paralyzed FBME Bank as a whole and are severely affecting its value and its viability.

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18 Transcript of the Supreme Court Hearing on FBME Bank's Application for an Interim Order of 31 July 2014, **Exhibit C-20**.

19 Bank of Tanzania's Public Notice of 23 July 2014, **Exhibit C-10**.

20 Letter from the Bank of Tanzania to Mr. L. Mafuru of 24 July 2014, **Exhibit C-11**.

C. The management of FBME Cyprus under the Special Administrator

41. The taking control of the Branch and the following actions of the Central Bank of Cyprus and the Special Administrator are progressively—yet rapidly—destroying the value of the Bank by preventing it to operate at all and causing enormous damage and hardship to its customers and those who rely on its functioning. The Claimants will not seek at this point in time to describe in a comprehensive manner the myriad of actions taken by the Special Administrator and the Central Bank, which are contrary to common sense. The Claimants however would emphasize the following striking actions.

42. First, less than a month after his appointment, the Special Administrator in Cyprus has attempted to siphon the liquidities of the Branch (despite it being an asset of FBME Bank) to the benefit of the Central Bank of Cyprus. Without consulting the Statutory Manager of the head office appointed by the Central Bank of Tanzania, the Special Administrator instructed three of the correspondent banks to transfer a total amount of 187,686,074.95 Euros to the Central Bank of Cyprus, i.e. a transfer of:

- 37,686,074.95 Euros from Deutsche Bank FFT accounts;[21]
- 50,000,000.00 Euros from Raiffeisen Bank International AG;[22] and
- 100,000,000.00 Euros from Commerzbank AG.[23]

43. Fortunately, these instructions were not executed.[24] There was indeed no valid reason to transfer these funds, especially given that 100 million Euros had already been transferred by FBME to the Central Bank of Cyprus on 18 July 2014.

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21 Deutsche Bank FFT, MTA Form of 13 August 2014, **Exhibit C-22**.

22 Raiffeisen Bank International AG, MTA Form of 14 August 2014, **Exhibit C-23**.

23 Commerzbank AG, MTA Form of 14 August 2014, **Exhibit C-24**.

24 All three transfer forms bear the mention "Contract reversed". See Deutsche Bank FFT, MTA Form of 13 August 2014, **Exhibit C-22**; Raiffeisen Bank International AG, MTA Form of 14 August 2014, **Exhibit C-23**; Commerzbank AG, MTA Form of 14 August 2014, **Exhibit C-24**.

44. The correspondent banks have now received conflicting claims from the Special Administrator in Cyprus and Statutory Manager in Tanzania, the head office of the Bank. As a result, the relations with the correspondent banks are now in a deadlock and, consequently, it is impossible for FBME Bank—as a whole—to operate. This deadlock, exacerbated by the failure of the Cyprus Special Administrator and the Central Bank of Cyprus to constructively engage with their counterparts in Tanzania is causing grave prejudice to FBME Bank and its customers and it is solely due to the Respondent's actions.

45. Second, the Special Administrator has not only refused to take any necessary steps to allow FBME Bank to resume normal activities in non USD currency or to assist it in rebutting the allegation contained in the FinCEN notices, but has actively sought to obstruct the ability of the Bank to do so itself.

46. For instance, FBME Bank retained the services of Hogan Lovells to represent it before FinCEN as early as the first week-end after the FinCEN notices were issued. This is key for the future of the Bank. In spite of this, the Special Administrator has been uncooperative, to say the least, refusing to answer Hogan Lovells' requests to meet with them.[25] Further, the Special Administrator refused numerous requests of Hogan Lovells for them and the international forensic accountants engaged by them to be able to access the Branch premises and staff. It is only after being confronted with this issue during the Supreme Court hearing of 31 July 2014,[26] that the Central Bank of Cyprus issued an official authorization and that the Special Administrator reluctantly acceded to the requests.[27] Such behaviour is directly contrary to the interest of the Bank and its Branch.

47. Third, the Special Administrator has also frozen, without giving any reason, the accounts of both Claimants. Not only their personal accounts have been frozen, but also the accounts of close members of their family, such as a trust account put in

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25 Letter from Hogan Lovells to Mr. D. Christophides of 28 July 2014, **Exhibit C-13**.

26 Transcript of the Supreme Court Hearing on FBME Bank's Application for an Interim Order of 31 July 2014, **Exhibit C-20**.

27 Letter from the Central Bank of Cyprus to Hogan Lovells of 31 July 2014, **Exhibit C-19**.

place to take care of various medical expenses necessary for the daughter of one of the Claimants. To this date, these accounts are still frozen. Each time a Claimant wants to use any of these accounts, special permission has to be obtained from the Special Administrator. These oppressive and vexatious measures are unjustifiable under any circumstances.

48. FBME and its ultimate beneficial owners have on several occasions voiced their concern regarding the behaviour of the Special Administrator.[28] FBME and the Claimants repeatedly warned the Respondent of the consequences of its actions and what should be done.[29]

49. In a letter to the Central Bank of Cyprus dated 29 July 2014, the Claimants stated:

> *We would caution that careful consideration should be given to the following when assessing any such course of action:*
>
> *1. The adverse reaction of FBME's depositors if they are forced to bank with a less liquid institution noting that FBME's current short term liquidity ratio stands at 104%;*
>
> *2. The self-evident need for all parties, including any prospective buyer, to ensure that there is a resolution of all matters with the US Department of the Treasury's Financial Crimes Enforcement Network (FinCen);*
>
> *3. The interests of the numerous staff and suppliers of FBME in Cyprus and Tanzania;*
>
> *4. The need to protect the financial information of the Bank, noting that the Home Regulator, the Bank of Tanzania and we as*

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28 First Letter from Messrs. A.-F. Saab and F. Saab to the Central Bank of Cyprus of 29 July 2014, **Exhibit C-15**; Letter from Messrs. A.-F. Saab and F. Saab to Mr. D. Christophides of 29 July 2014, **Exhibit C-16**.

29 Letter from Messrs. A.-F. Saab and F. Saab to the Ministry of Finance of Cyprus of 28 July 2014, **Exhibit C-14**; First Letter from Messrs. A.-F. Saab and F. Saab to the Central Bank of Cyprus of 29 July 2014, **Exhibit C-15**; Second Letter from Messrs. A.-F. Saab and F. Saab to the Central Bank of Cyprus of 29 July 2014, **Exhibit C-16**.

Owners each have an interest in ensuring that financial information is not disseminated to the detriment of the Bank as a whole. We are given to understand that confidential data provided to you and the Central Bank of Cyprus ("CBoC") is already circulating widely on the island, and the potential adverse commercial impact is no doubt self-evident;

5. Our legal rights as Owners should any resolution be imposed that does not take into account our rights and interests.[30]

50. Despite the Claimants' warning, the Central Bank of Cyprus and the Special Administrator have not changed their course of action, destroying the Claimants' investment in Cyprus. Rather, in the day-to-day business of the Branch, the actions of the Special Administrator are simply eroding the value of the Bank at a very rapid pace. These actions are causing great harm to the Claimants.

D. The actions taken by the Claimants to mitigate the effects of the situation

51. The ultimate beneficial owners of FBME Bank, both of whom are citizens of Lebanon, immediately reacted by exercising their rights under the Treaty. They sent various notices of disputes and, in particular, a notice of dispute dated 28 July 2014.[31]

52. In parallel, several actions were initiated before the courts of Cyprus in order to prevent the sale of FBME's assets, though none has resulted in immediate relief.

53. On 25 July 2014, FBME Bank filed an Administrative Recourse against the Cyprus Resolution Authority with the Supreme Court of Cyprus.[32] The Recourse challenged the validity of the Central Bank of Cyprus' Decree of 21 July 2014 to sell the operations of the Branch. The Recourse was accompanied by an Ex-parte Application for an Interim Order aimed at suspending the application of the Decree

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30 Letter from Messrs. A.-F. Saab and F. Saab to Mr. D. Christophides of 29 July 2014, **Exhibit C-17**.

31 Letter from Messrs. A.-F. Saab and F. Saab to the Ministry of Finance of Cyprus of 28 July 2014, **Exhibit C-14**.

32 Recourse for Administrative Action filed with the Supreme Court on 25 July 2014, **Exhibit C-29**.

during the course of the proceedings.[33] This Application for an Interim Order was served by the Supreme Court on the Respondent. It was ultimately rejected on 8 August 2014. The Administrative Recourse is still pending.

54. In addition, on 14 August 2014, the Claimants filed, in their own name, an Application for an Injunction against the Republic of Cyprus, the Central Bank of Cyprus and the Special Administrator appointed by the Central Bank of Cyprus with the District Court of Nicosia.[34] A hearing was held in the matter, but the court has reserved its judgment.

III. THE TREATY IS APPLICABLE TO THE DISPUTE

55. The Treaty entered into force on 19 March 2003 and is thus binding on both the Republic of Lebanon, the country of the investors, and the Republic of Cyprus, the host State. Under Article 12 of the Treaty, the following conditions must be met for the Treaty to apply to a dispute:

- The dispute is between a Contracting Party and an investor of another Contracting Party; and
- The dispute relates to an investment.

56. These criteria are met in the present case: (A) the Claimants are Lebanese investors within the meaning of Article 1(1)(a) of the Treaty, and (B) the dispute relates to an investment in the territory of the Republic of Cyprus under Article 1(2) of the Treaty.

A. The Claimants are investors under the Treaty

57. Both Claimants are protected Lebanese investors under the Treaty. Pursuant to Article (1)(1)(a), "investor" means:

> *Natural persons having the citizenship of* [either] *Contracting Party in accordance with its law;*

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33 Ex-parte Application for an Interim Order filed with the Supreme Court on 25 July 2014, **Exhibit C-30**.

34 See Originating Summons filed with the District Court of Nicosia on 14 August 2014, **Exhibit C-31**; and Ex-parte Application for an Interim Order filed with the District Court of Nicosia on 14 August 2014, **Exhibit C-32**.

58. As already shown, both Messrs. Ayoub-Farid Michel Saab and Fadi Michel Saab are citizens of the Republic of Lebanon.[35] Therefore, they are both protected investors within the meaning of Article (1)(1)(a) of the Treaty.

B. The dispute arises out of an investment

59. Article 1(2) of the Treaty defines the term "investment" as "every kind of asset." This broad definition is followed by an illustrative list of assets including under subparagraph (b):

> [A] *company or business enterprise or shares in and stock and debentures of a company or any other form of participation in a company or business enterprise;*

60. It follows that the Branch of FBME in Cyprus is an investment within the meaning of Article 1(2) of the Treaty, and thus qualifies for protection under the Treaty.

IV. THE REPUBLIC OF CYPRUS HAS BREACHED THE TREATY

61. The Treaty imposes a number of substantive obligations upon the Republic of Cyprus for the protection of investments made in Cyprus by investors from the Republic of Lebanon.

62. In particular, Article 4 of the Treaty provides that such investments shall at all times be accorded fair and equitable treatment, enjoy full protection and security, and that no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal:

> *1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law;*

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35 See copy of Mr. A.-F. Saab's passport, **Exhibit C-28** and copy of Mr. F. Saab's passport, **Exhibit C-27**.

> *2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, expansion or disposal of such investments. Each Contracting Party shall observe any obligation in writing it may have entered into with regard to investments of investors of the other Contracting Party.*

63. Articles 4(1) and 5 also contain Most-Favoured-Nation clauses. The Claimants reserve the right to make claims based on the violation of these clauses, and to rely on more favourable provisions of investment treaties the Republic of Cyprus has entered into with other States.

64. Furthermore, according to Article 6(1), investments may not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation:

> *Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest as established by law, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.*

65. The Respondent's acts and omissions in relation to its supervision, management and sale in progress of the Branch (described above in Section II) constitute, separately and together, violations of the obligations of the Republic of Cyprus under the Treaty. These violations have caused, and are continuing to cause, significant harm to the Claimants.

66. Although they will particularize their requests for relief in their Statement of Claim, the Claimants' respectfully request that the Tribunal order Cyprus to withdraw immediately its Decree for the sale of FBME Cyprus. In addition, the Claimants request full compensation for the Respondent's breaches under the Treaty.

V. THE CLAIMANTS ARE ENTITLED TO SUBMIT THEIR DISPUTE TO ICC ARBITRATION

67. Under Article 12(3) of the Treaty, the Republic of Cyprus has given its unconditional consent to submit the dispute to arbitration and the Claimants chose to submit their

dispute to ICC arbitration (A). The Claimants have fulfilled the requirement to pursue amicable settlement (B).

A. The choice of ICC arbitration

68. Article 12 of the Treaty provides that a dispute between a Contracting Party and an investor of another Contracting Party relating to an investment can be submitted to arbitration under certain conditions. Article 12 of the Treaty provides in the relevant parts that:

> *1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.*
>
> *2. If these disputes cannot be settled amicably within 6 months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:*
>
> *- the competent court of the Contracting Party in whose territory the investment was made; or*
>
> *- the Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm; or*
>
> *- the Arbitral Tribunal of the International Chamber of Commerce in Paris; or*
>
> *- the International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, in case both Contracting Parties have become members of this Convention; or*
>
> *- the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules) if one of the Contracting Parties is not a Contracting State of the ICSID Convention.*

> *3. In the case that the investor decides to submit the dispute to international arbitration, each Contracting Party hereby consents to the submission of such dispute to international arbitration.*

69. The Republic of Cyprus has thus given its unconditional consent under Article 12 of the Treaty to submit disputes to arbitration. Among the different forums available, the investor can choose to submit the dispute to the ICC pursuant to Article 12(2) of the Treaty.

70. The Claimants choose to submit their dispute with the Republic of Cyprus to arbitration under the ICC, as provided under Article 12(2) of the Treaty, in order to benefit from the substantive protections accorded by the Treaty and, pursuant to the Most-Favoured-Nation clause contained in Articles 5 and 9 of the Treaty, by any more favourable treatment/terms accorded to investors by Cyprus.

B. The requirement to pursue amicable settlement prior to filing the Request for Arbitration has been met

71. Article 12(2) of the Treaty provides for a six-month negotiation period, or cooling-off period, before submitting the dispute to arbitration. The Claimants have respected their obligation to file a notice of dispute. This was done on 25 July 2014 and renewed on 28 July 2014 (1). They have also respected their obligation to pursue an amicable settlement prior to filing the present Request for Arbitration since the Respondent has turned down all good-faith negotiation efforts from the Claimants, thereby waiving its right to have a six-month negotiation period and being stopped from relying on it now (2). In any event, the Claimants have respected the three-month negotiation period required under other treaties and applicable to the present case by application of the Most-Favoured-Nation clause of Article 5 of the Treaty (3).

1. The Claimants have duly filed a notice of dispute

72. On 25 July 2014, Mr Ayoub-Farid Michel Saab sent, via his attorney, a letter to the President of the Republic of Cyprus regarding Decree 356/2014 and invoking its

rights under the Treaty. The letter specifically mentioned Article 12 and invited the Respondent to enter into discussion to settle the dispute amicably.[36]

73. On 28 July 2014, the Claimants sent to the Ministry of Finance of Cyprus a notification of dispute pursuant to Article 12 of the Treaty and informing the Republic of Cyprus that they were "*at* [its] *disposal to arrange a meeting to initiate negotiations as soon as possible.*"[37]

74. Both Claimants have thus duly filed a notice of dispute.

2. The Respondent has turned down all good-faith negotiations efforts from the Claimants waiving its right to a six-month negotiation period

75. In spite of the Claimants' invitation to settle the dispute amicably, which was renewed on several occasions,[38] the Respondent categorically refused to engage in such a path. It also refused to engage in settling the dispute amicably when invited to do so by the representatives of the Republic of Lebanon. Indeed, the Republic of Cyprus left unanswered a letter from the Ministry of Economy and Trade of the Republic of Lebanon addressed a letter to the Ministry of Energy, Commerce, Industry and Tourism on 5 August 2014.[39]

76. In fact, on 31 July 2014, the Central Bank of Cyprus informed the Claimants in unequivocal terms that it refused to discuss any matter relating to the decision to sell the Branch, which was the subject of a recourse before the Cypriot Supreme Court:

> *With reference to your letter dated 29 July 2014 I note that the issues raised are the subject matter of recourse no 1024/2014 pending*

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36 Letter from Madkour Law Firm on behalf of Mr. A.-F. Saab to the president of the Republic of Cyprus of 25 July 2014, **Exhibit C-12**.

37 Letter from Messrs. A.-F. Saab and F. Saab to the Ministry of Finance of Cyprus of 28 July 2014, **Exhibit C-14**.

38 See for instance First Letter from Messrs. A.-F. Saab and F. Saab to the Central Bank of Cyprus of 29 July 2014, **Exhibit C-15**.

39 Letter from the Ministry of Economy and Trade of the Republic of Lebanon to the Ministry of Energy, Commerce, Industry and Tourism of the Republic of Cyprus of 5 August 2014, **Exhibit C-21**.

> *before the Supreme Court. Any further discussion or meeting relating to these issues regretfully cannot be accepted.*[40]

77. It restated its position through some of its employees in a meeting held on 21 September 2011 with Mr Ayoub-Farid Michel Saab and his counsel Mr Markides .

78. By doing so, the Respondent has unequivocally waived its right to avail itself of the six-month negotiation period. Moreover, the Respondent cannot at the same time expressly refuse to discuss and claim the benefit of a negotiation period. This explains why the Respondent is also estopped from relying on the six-month negotiation period.

79. In addition, it is generally accepted that cooling-off periods provided for in dispute resolution provisions of BITs can be disregarded if their application will impede or obstruct arbitration proceedings where such a settlement cannot be achieved. In *BGT v. Tanzania*, for instance, the arbitral tribunal held:

> *In the Arbitral Tribunal's view, however, properly construed, this six month period is procedural and directory in nature, rather than jurisdictional and mandatory. Its underlying purpose is to facilitate opportunities for amicable settlement. Its purpose is not to impede or obstruct arbitration proceedings, where such settlement is not possible. Noncompliance with the six month period, therefore, does not preclude this Arbitral Tribunal from proceeding.*[41]

80. Thus, Arbitral Tribunals have not enforced amicable settlement periods where the Respondent had failed to respond to correspondence from the Claimant requesting a meeting to discuss the situation between the parties, and had not initiated any sort

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40 Letter from the Central Bank of Cyprus to Messrs. F.-A. Saab and F. Saab of 31 July 2014, **Exhibit C-18**. See also Letter from the Central Bank of Cyprus to Hogan Lovells of 31 July 2014, **Exhibit C-19**.

41 *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania,* Procedural Order N°1 (ICSID Case No. ARB/05/22), 31 March 2006, **Exhibit CL-14**, ¶ 343.

of discussion between the parties.[42] Similarly, tribunals have not enforced amicable settlement periods where *"a long process of negotiation and renegotiation had already failed"*;[43] or where there was *"an evident refusal of Claimant's position by Respondent."*[44]

81. Further, Arbitral Tribunals have noted that where there is no chance of amicable settlement of a dispute, and the only consequence of enforcing the cooling-off period would be to aggravate a party's claim for damages, the settlement-period requirement should not be enforced:

> *The purpose of the six-month waiting period in the BIT is to encourage parties to exercise reasonable efforts to resolve disputes before resorting to the costly and time-consuming remedy of international arbitration. The Tribunal believes that where, as here, there is an evident refusal of Claimant's position by Respondent, such a waiting period should be interpreted restrictively. Indeed, we are comforted in this view by the fact that a year has passed since the commencement of this arbitration and no peaceful settlement of the dispute has proven possible during this period. The only consequence of adopting a liberal interpretation of the six-month waiting period, as Respondent proposes, would therefore have been to aggravate the possible claim of damages.*[45]

82. Finally, in some instances, Arbitral Tribunals have found that the State has waived its right to the cooling-off period if its actions effectively precluded any possibility of negotiation between the parties. In *BGT v. Tanzania*, for instance, the Arbitral Tribunal held:

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42 *Lauder v. Czech Republic*, Final award, 3 September 2001, **Exhibit CL-10**, ¶¶ 188-189.

43 *Biwater Gauff (Tanzania) Ltd. v. United* Republic *of Tanzania,* Procedural Order N°1 (ICSID Case No. ARB/05/22), 31 March 2006, **Exhibit CL-14**, ¶ 348.

44 *Link-trading v. Moldova*, Award on Jurisdiction, 16 February 2001, **Exhibit CL-8**, p. 6.

45 *Link-trading v. Moldova*, Award on Jurisdiction, 16 February 2001, **Exhibit CL-8**, p. 6.

> *Even if the six month period in Article 8(3) constituted a strict condition precedent to this Arbitral Tribunal's jurisdiction, or the admissibility of BGT's claims, the Arbitral Tribunal considers that any such condition was waived by the Republic, or cannot be relied upon by it, since it was the Republic's own actions in May to June 2005 (in particular, its public statements; deportation of City Waterstaff; and forced takeover of the Project) that effectively precluded any possibility of negotiation between the parties.*[46]

83. The Respondent has consistently refused to abide by the amicable settlement obligation of Article 12 of the Treaty. The Respondent has thus precluded any possibility of settlement discussions between the parties. More importantly, the Respondent is pursuing actions that will inevitably lead to the sale of the Branch and its destruction.

84. The Claimants' only option left is to seek redress in the present arbitration proceedings. Should the Claimants have to wait six months before submitting the dispute to arbitration, it is more than likely that, at the date of the filing of the Request for Arbitration, FBME Bank would have been sold or completely destroyed.

85. Importantly, as the Claimants have already explained, the impending sale of the assets of the Branch will cause immediate and irreparable harm to the Claimants. Given the Respondent's constant refusal to discuss an amicable settlement of the situation, any further delay in this procedure can only aggravate the harm already suffered by the Claimants.

86. As a result, the Claimants have complied with the requirement of Article 12(2) and can submit the dispute to arbitration.

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[46] *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania,* Procedural Order N°1 (ICSID Case No. ARB/05/22), 31 March 2006, **Exhibit CL-14,** ¶ 348.

3. In any event, the Claimants have observed the three-month cooling-off period applicable through Article 5 of the Treaty

87. In any event, should the Arbitral Tribunal decide that the Claimants have to observe the cooling-off period of Article 12 of the Treaty, the Claimants submit that the six-month cooling-off period should be reduced to three by application of the Most-Favored-Nation clause of Article 5 of the Treaty (MFN clause).

88. Article 5 of the Treaty reads as follows:

> *1. Once a Contracting Party has admitted an investment in its territory in accordance with its laws and regulations, it shall accord to such investment made by investors of the other Contracting Party treatment no less favourable than that accorded to investments of its own investors or of investors of any third State whichever is more favourable to the investor concerned.*
>
> *2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment, expansion or disposal of their investment, treatment no less favourable than that accorded to its own investors or to investors of any third State whichever is more favourable to the investor concerned.*

89. It is widely accepted that MFN clauses can enable investors to benefit from more favourable pre-arbitration requirements found in other treaties entered into by the host State. In *Maffezini v. Kingdom of Spain*, for instance, the Arbitral Tribunal agreed that the MFN clause was applicable to dispute resolution provisions and could be used to reduce the cooling-off period. The Tribunal held that:

> *From the above considerations it can be concluded that if a third-party treaty contains provisions for the settlement of disputes that are more favorable to the protection of the investor's rights and interests than those in the basic treaty, such provisions may be extended to the beneficiary of the most favored nation clause as they are fully*

> *compatible with the* ejusdem generis *principle. Of course, the third-party treaty has to relate to the same subject matter as the basic treaty, be it the protection of foreign investments or the promotion of trade, since the dispute settlement provisions will operate in the context of these matters; otherwise there would be a contravention of that principle.* [...][47]

90. This approach has been endorsed by a number of Arbitral Tribunals, using similarly-drafted MFN clauses, to allow an investor to benefit from shorter cooling-off periods.[48] In each of these cases, the Arbitral Tribunal held that the applicable MFN clause applied to the substantive treatment of the investment, as well as to the procedural treatment of a claim.

91. Article 5 of the Treaty has a similar ambit. As is plain upon reading Article 5 of the Treaty, it applies to the "*treatment* [...] *accorded to investment.*" As such, it is not limited to the substantive treatment of the investment. The notion of "treatment" of an investment encompasses both the substantive and the procedural treatment unless the treaty provides otherwise, which is not the case here. Similarly, the fact that Article 5 refers to the "*management, maintenance, use, enjoyment, expansion*

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47 *Emilio Agustín Maffezini v. Kingdom of Spain*, Decision on Jurisdiction (ICSID Case No. ARB/97/7), 25 January 2000, **Exhibit CL-7**, ¶ 56.

48 For similar conclusions under the Argentina-Spain BIT, see *Gas Natural SDG, S.A. v. The Argentine Republic*, Decision of the Tribunal on Preliminary Questions on Jurisdiction (ICSID Case No. ARB/03/10), 17 June 2005, **Exhibit CL-13**, ¶ 31; *Suez et al v. The Argentine Republic*, Decision on Jurisdiction (ICSID Case No. ARB/03/17), 16 May 2006, **Exhibit CL-15**, ¶ 52-66 ; *Suez and AWG v. The Argentine Republic*, Decision on Jurisdiction (ICSID Case No. ARB/03/19), 3 August 2006, **Exhibit CL-16**, ¶ 57 ; Under the Germany-Argentina BIT, see *Hochtief Aktiengesellschaft v. The Argentine Republic*, Decision on Jurisdiction (ICSID Case No. ARB/07/31), 24 October 2011, **Exhibit CL-24**, ¶ 66; Under the Argentina-Italy BIT, see *Impregilo S.p.A. v. The Argentine Republic*, Award (ICSID Case No. ARB/07/17), 21 June 2011, **Exhibit CL-23**, ¶ 99 ; Under the UK-Russia BIT, see *RosInvest UK Ltd. v. Russian Federation*, Award on Jurisdiction (SCC Case No. Arbitration V 079/2005), 5 October 2007, **Exhibit CL-18**, ¶ 135.

or disposal of their investment" of the investment also leads to concluding that the MFN clause of the Treaty covers procedural treatment.

92. This reading of Article 5 of the Treaty is fully compliant with the ordinary meaning rule of interpretation found in Article 31 (1) of the Vienna Convention On the Laws of Treaties, 1969, which represents customary international law on this issue.[49] The Republic of Cyprus acceded to the Convention on 28 December 1976.

93. It is also entirely in line with the interpretation of a similar MFN clause given by the Arbitral Tribunal in the ICSID case of *Hochtief AG v. The Argentine Republic*:

> *The Tribunal considers that the phrase "the management, utilization, use and enjoyment of an investment" does include recourse to dispute settlement, as an aspect of the management of the investment. Indeed, the ('procedural') right to enforce another ('substantive') right is one component of the bundles of rights and duties that make up the legal concept of what property is.*[50]

94. As a result, the Claimants could benefit from more favourable terms concerning the cooling-off period in other treaties entered into by the Respondent. Several treaties entered into by the Republic of Cyprus contain a procedural treatment which is more favourable than that found in the Lebanon-Cyprus BIT. In particular, these treaties contain a cooling-off period limited to three months.

95. First, the Romania-Cyprus BIT dated 26 July 1991 and which entered into force on 10 July 1993 provides for an obligation to arbitrate after a three-month negotiation period. Article 8 provides in the relevant parts:

> *Any dispute between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in*

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49 "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose,*" **Exhibit CL-1**.

50 *Hochtief Aktiengesellschaft v. The Argentine Republic*, Decision on Jurisdiction (ICSID Case No. ARB/07/31), 24 October 2011, **Exhibit CL-24**, ¶¶ 66, 69 and 70.

the territory of the former Contracting Party shall be settled between the interested parties.

In the event that such a dispute cannot be settled amicably within three months of the date of a written application, the investor in question may submit the dispute, at his choice, for settlement to:

(a) the Contracting Party's court, at all instances, having territorial jurisdiction;

(b) the "International Centre for the Settlement of Investment Disputes" for the application of the conciliation and arbitration procedure provided by the Washington Convention of 18 March 1965 on the "Settlement of Investment Disputes as between States and Nationals of other States." [...] (Emphasis added)

96. Second, the Energy Charter Treaty dated 17 December 1994 and which entered into force on 16 April 1998 also provides for an obligation to arbitrate after a three-month negotiation period:

(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.

(2) If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:
[...]

97. Finally, the Bulgaria-Cyprus BIT dated 12 November 1987 and which entered into force on 18 May 1988 also provides for an obligation to arbitrate disputes over the compensation of an expropriation after a three-month negotiation period. Article 4 Section 4.1 of the BIT provides that:

> *The legality of the expropriation shall be checked at the request of the concerned investor through the regular administrative and legal procedure of the Contracting Party that had taken the expropriation steps. In cases of dispute with regard to the amount of the compensation, which disputes were not settled in an administrative order, the concerned investor and the legal representatives of the other Contracting Party shall hold consultations for fixing this value. If within 3 months after the beginning of the consultations no agreement is reached, the amount of the compensation at the request of the concerned investor shall be checked either in a legal regular procedure of the Contracting Party which had taken the measure on expropriation or by an international 'Ad Hoc' Arbitration Court.*

98. The relevant language of Article 5 of the Treaty evidences the signatories' intent that it extend to procedural, as well as substantive, matters. The Claimants are therefore entitled to the benefit of the shorter cooling-off period provided for in the Romania-Cyprus BIT, the Bulgaria-Cyprus BIT and the Energy Charter Treaty.

99. Given that the Claimants sent their triggering letter on 28 July 2014, the cooling-off period has elapsed.

100. The Respondent's refusal to engage in amicable settlement discussions warrants the Claimants' direct application for relief. In any event, should the Arbitral Tribunal consider that the present situation still requires that a cooling-off period be respected, it will have to find that Claimants have respected the three-month cooling off period afforded by the Republic of Cyprus to investors of more favoured nations, and therefore applicable to the Claimants by way of Article 5 of the Treaty.

VI. PROCEDURAL MATTERS

A. Constitution of the Arbitral Tribunal

101. There is no agreement between the Parties regarding the number of arbitrators or the constitution of the Arbitral Tribunal. In accordance with Article 12(1) of the ICC

Rules, the Claimants propose that the Tribunal consist of three arbitrators: two co-arbitrators and a president.

102. Pursuant to Article 12(1) of the ICC Rules, the Claimants hereby nominate as arbitrator Mr. Ibrahim Fadlallah, whose contact details are as follows:

Mr. Ibrahim Fadlallah
61 rue la Boétie
75008 Paris
France
Tel: +33 1 40 76 00 40
Fax: +33 1 40 76 02 50
Email: Ibrahim.fadlallah@wanadoo.fr

103. To the best of the Claimants' knowledge, Mr. Ibrahim Fadlallah is willing to serve as arbitrator in these proceedings and is independent of all parties involved therein.

B. The language and place of the proceedings

104. The Claimants propose that the arbitral proceedings be conducted in English.

105. Regarding the place of arbitration, Article 12 of the Treaty specifies that it should be Paris, France. The Claimants consider that Paris is in any event an adequate choice for the seat of these proceedings.

VII. REQUEST FOR RELIEF

106. For the reasons set out above, the Claimants respectfully request the Arbitral Tribunal to:

- Declare that the Republic of Cyprus has breached its obligations under the Treaty;
- Order the Republic of Cyprus to withdraw immediately its Decree 356/2014 for the sale of FBME Cyprus;
- Order the Republic of Cyprus to compensate in full the Claimants for the Respondent's breaches under the Treaty, which shall be quantified at a later stage but are estimated at at least USD 500 million.

107. In any event

- Order the Republic of Cyprus to pay the Claimants the full costs of the arbitration, including but not limited to compensation for all arbitrators' fees and costs, legal fees and expenses incurred by the Claimants in connection with the present dispute; and

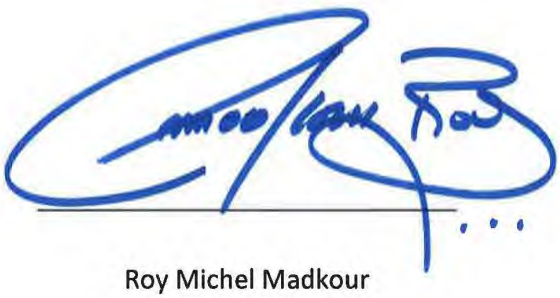
- Order the Republic of Cyprus to pay applicable interests to any amount awarded until the Republic of Cyprus complies with such award.

108. The Claimants reserve their right to modify or supplement the claims and prayer for relief stated in this Request for Arbitration, to advance further claims, arguments, and prayers for relief and to produce further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of those claims, and to respond to any arguments or allegations raised by the Republic of Cyprus.

109. For all the reasons set forth above, the Claimants respectfully request that the ICC register this arbitration against the Republic of Cyprus.

Paris, 28 October 2014

Respectfully submitted,



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