

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

QATAR PHARMA FOR  
PHARMACEUTICAL INDUSTRIES,  
W.L.L., DR. AHMED BIN  
MOHAMMAD AL HAIE AL SULAITI

Petitioners,

THE KINGDOM OF SAUDI ARABIA

Respondent.

Index No. \_\_\_\_\_

**PETITION TO CONFIRM FOREIGN ARBITRAL AWARD**

Petitioners Qatar Pharma For Pharmaceutical Industries, W.L.L. (“**Qatar Pharma**”) and Dr. Ahmed Bin Mohammad Al Haie Al Sulaiti (“**Dr. Al Sulaiti**,” collectively “**Petitioners**”), by and through their undersigned counsel, hereby petition this Court for an order pursuant to 9 U.S.C. § 207 (1) confirming and recognizing the final arbitral award (the “**Award**”) rendered on October 23, 2024 in an arbitration between Petitioners and Respondent the Kingdom of Saudi Arabia (“**Saudi Arabia**”) pursuant to the Arbitration Rules of the International Court of Arbitration of the International Chamber of Commerce in force as from March 1, 2017 (the “**ICC Rules**”); (2) entering judgment in Petitioners’ favor against Saudi Arabia in the amount set forth in Award, including post-award, pre-judgment interest of 2.82% p.a. on a *sukuk* issued by Saudi Arabia, plus the costs of this proceeding, plus post-judgment interest at 9% pursuant to Section 5004 of the Civil Practice Law and Rules (“**CPLR**”); and (3) awarding Petitioners such other and further relief as this Court deems just and proper. A true and correct copy of the Award and the ICC Rules are attached as **Exhibit A** and **Exhibit B**, respectively, to the Affirmation of Erin Collins, dated December 5, 2024 (“**Collins Aff.**”).

**Parties, Jurisdiction and Venue**

1. Petitioners bring this summary proceeding under the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards (June 10, 1958), 21 U.S.T. 2517, 330 U.N.T.S. 38 (the “**New York Convention**”) and Chapter 2 of the Federal Arbitration Act (“**FAA**”), 9 U.S.C. §§ 201 *et seq.*, to obtain recognition of the Award, a duly-rendered arbitration award issued in its favor and against Saudi Arabia.

2. Petitioner Qatar Pharma for Pharmaceutical Industries, W.L.L. is a With Limited Liability company established under the laws of Qatar and registered with the Qatar Ministry of Economy and Commerce. It has its registered office at P.O. Box 41119, Doha, Qatar. Collins Aff., Ex. A, ¶ 1.

3. Petitioner Dr. Ahmed Bin Mohammad Al Haie Al Sulaiti is a citizen and resident of Qatar and is the chairman and majority owner of Qatar Pharma. His address is New Salata Area No. 40, Street No. 970, Building No. 23, Doha, Qatar. *Id.* ¶ 2.

4. Respondent The Kingdom of Saudi Arabia is a foreign state within the meaning of the Foreign Sovereign Immunities Act (“**FSIA**”), 28 U.S.C. §§ 1330, 1332, 1391(f), 1441(d), 1602-611.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1330(a) and personal jurisdiction over Saudi Arabia pursuant to 28 U.S.C. § 1330(b).

6. Specifically, 28 U.S.C. § 1330(a) provides that federal and state courts shall have subject matter jurisdiction over any claim against a foreign state as to which the foreign state does not enjoy sovereign immunity by virtue of the applicability of an exception to immunity. Saudi Arabia does not have sovereign immunity in connection with this claim, as 28 U.S.C. § 1605(a)(6) provides that a foreign state is not immune with respect to any claim against it that seeks

recognition of an arbitration award made pursuant to an agreement to arbitrate if the “agreement or award may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards.” 28 U.S.C. § 1605(a)(6)(B). This Court therefore has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1330(a), because Saudi Arabia is not entitled to sovereign immunity in connection with this proceeding, which seeks recognition of a foreign arbitral award falling under the New York Convention.

7. Saudi Arabia has also waived any sovereign immunity it might have in connection with this matter pursuant to 28 U.S.C. § 1605(a)(1), which provides an exception to immunity in any case “in which the foreign state has waived its immunity either explicitly or by implication . . .” Specifically, Saudi Arabia’s agreement to arbitrate outside its own territory and in a state that is a signatory to the New York Convention (in this case, the United Kingdom) constitutes an implied waiver of immunity from any claim related to the arbitration. *See Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 579 (2d Cir. 1993), *as amended* (May 25, 1993) (holding that under §1605(a)(1) when an instrumentality or agency of a State agrees to submit its dispute to arbitration, it “implicitly waived any sovereign immunity defense” as “it had to have contemplated the involvement of the courts of any of the [New York Convention] Contracting States in an action to enforce the award.”); *Tatneft v. Ukraine*, 301 F. Supp. 3d 175, 192 (D.D.C. 2018), *aff’d*, 771 F. App’x 9 (D.C. Cir. 2019), *cert. denied sub nom.* 140 S. Ct. 901 (2020) (holding that because Ukraine agreed to arbitrate in France (a signatory to the New York Convention), it waived immunity to enforcement actions in signatory states).

8. Venue is proper in this Court pursuant to CPLR 503(a), and the amount in controversy herein exceeds the jurisdictional limits of all courts of inferior jurisdiction.

### The Arbitration Agreement

#### A. Saudi Arabia's Agreement to Arbitrate

9. Saudi Arabia made a standing offer to arbitrate its dispute with Petitioners by ratifying the Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference, (the "**OIC Agreement**"), dated 5 June 1981. A true and correct copy of the OIC Agreement is attached as **Exhibit C** to the Collins Affirmation. The arbitration agreement between Petitioners and Saudi Arabia consists of two elements: (1) Saudi Arabia's consent contained in Article 17 of the OIC Agreement; and (2) Petitioners' consent contained in their Notice of Arbitration dated 28 March 2019. A true and correct copy of the Notice of Arbitration is attached as **Exhibit D** to the Collins Affirmation.

10. Saudi Arabia signed the OIC Agreement on June 5, 1981 and it entered into force in Saudi Arabia on September 23, 1985.<sup>1</sup>

11. Article 17(2) of the OIC Agreement provides as follows:

a) If the two parties to the dispute do not reach an agreement as a result of their resort to conciliation, or if the conciliator is unable to issue his report within the prescribed period, or if the two parties do not accept the solutions proposed therein, then each party has the right to resort to the Arbitration Tribunal for a final decision on the dispute.

b) The arbitration procedure begins with a notification by the party requesting the arbitration to the other party to the dispute, clearly explaining the nature of the dispute and the name of the arbitrator he has appointed. The other party must, within sixty days from the

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<sup>1</sup> The OIC Agreement was adopted by the 12th Islamic Conference of Foreign Ministers ("**ICFM**") held in Baghdad, Iraq, in June 1981. It became effective on February 26, 1988 when 10 Member States signed and ratified it, including Saudi Arabia. See Report of the Fourth Meeting of the Follow-Up Committee of the COMCEC, Apr. 6-8, 1988, Annex II, pp. 56-57, available at [https://www.comcec.org/wp-content/uploads/2021/07/COMCEC\\_FC04\\_88E.pdf](https://www.comcec.org/wp-content/uploads/2021/07/COMCEC_FC04_88E.pdf).

date on which such notification was given, inform the party requesting arbitration of the name of the arbitrator appointed by him. The two arbitrators are to choose, within sixty days from the date on which the last of them was appointed arbitrator, an umpire who shall have a casting vote in case of equality of votes. If the second party does not appoint an arbitrator, or if the two arbitrators do not agree on the appointment of an Umpire within the prescribed time, either party may request the Secretary General to complete the composition of the Arbitration Tribunal.

12. Following Petitioners' service of the Notice of Arbitration (discussed below), the Parties appointed their respective arbitrators, the president of the arbitral tribunal (the "**Tribunal**"), and agreed to have the International Chamber of Commerce ("**ICC**") administer the Arbitration and to have it proceed under the ICC Rules. Terms of Reference ("**TOR**"), ¶ 23. A true and correct copy of the Terms of Reference reflecting the Parties' agreement is attached hereto as **Exhibit E** to the Collins Affirmation.

13. Accordingly, Saudi Arabia provided its written consent to the arbitration in Article 17 of the OIC Agreement, as it is a Contracting Party to the Treaty. Saudi Arabia further agreed to arbitrate under the ICC Rules as reflected in the Parties' agreement in the Terms of Reference.

#### **B. Petitioners' Consent to Arbitrate**

14. Qatar signed the OIC Agreement on October 26, 2000 and it entered into force in Qatar on November 5, 2002.<sup>2</sup>

15. As "Investors" under Article 1(6) of the OIC Agreement, Petitioners' investment-based claims against Saudi Arabia were properly submitted to arbitration in accordance with the OIC Agreement, and the Tribunal properly found that it had jurisdiction over Petitioners' claims.

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<sup>2</sup> Qatar signed and ratified the OIC Agreement in 2000 and 2002, respectively. See List of Member States who Signed/Ratified the Different Agreements and Statutes on Economic, Commercial and Technical Cooperation Among OIC Member States, *available at* [https://www.oic-oci.org/upload/pages/conventions/en/accords\\_oct\\_30\\_en.pdf](https://www.oic-oci.org/upload/pages/conventions/en/accords_oct_30_en.pdf).

16. Petitioners provided their written consent to arbitrate pursuant to Article 17 of the OIC Agreement in their Notice of Arbitration. Collins Aff., Ex. D, Notice of Arbitration, ¶ 1. Accordingly, under Article 17 of the OIC Agreement, Petitioners submission to arbitration, coupled with Saudi Arabia's consent reflected in its status as an OIC Agreement Contracting Party, constituted an enforceable agreement to arbitrate.

17. Petitioners likewise agreed to arbitrate under the ICC Rules as reflected in the Parties' agreement in the Terms of Reference. Collins Aff., Ex. E, TOR ¶ 23.

### **Summary of the Dispute**

18. Qatar Pharma is a developer, manufacturer and distributor of pharmaceutical products founded in 2006 in Doha, Qatar, by Dr. Al Sulaiti. Collins Aff., Ex. A, Award, ¶ 102. Qatar Pharma's factory in Doha was completed in 2009, and at that point Qatar Pharma began manufacturing intravenous solution bags and intravenous solution bottles. *Id.* ¶ 105. Over time, Qatar Pharma increased its production lines to include irrigation solutions, hemodialysis solutions and topical medication. *Id.* By 2016, it was operating 14 different production lines.

19. In 2010, Qatar Pharma decided to expand into the Saudi market, given its geographic proximity, large population, and growing pharmaceutical market. *Id.* Qatar Pharma initially worked with a local licensed Saudi agent (*id.* ¶ 108). In 2013, however, Qatar Pharma established a local branch in Saudi Arabia, Qatar Establishment for Medical Solutions ("QEMS"). Qatar Pharma registered this branch office in the Saudi Commercial Register, and set up a local scientific office and various warehouses in full compliance with Saudi law. *Id.* ¶¶ 111-114. In 2014, Dr. Al Sulaiti then expanded Petitioners' presence in Saudi Arabia by establishing a transport company, Al Qima Transport, Shipping and Storage ("Al Qima"), which leased trucks to QEMS to transport products from Qatar to Saudi Arabia and vice-versa. *Id.* ¶ 115.

20. In 2016, in light of its success, Qatar Pharma began contemplating issuing an initial public offering on the Qatar Stock Exchange. *Id.* ¶ 127. However, on June 5, 2017, before it complete its initial public offering, Saudi Arabia (and several other states including Egypt, the United Arab Emirates and Bahrain) announced, via press release, a blockade against Qatar. *Id.* ¶ 140. *Id.* ¶ 142. Specifically the blockade: (1) severed diplomatic and consular relations with Qatar; (2) closed all communications to and from Qatar; (3) prevented all crossings from Qatar into its territory, airspace and waters; (4) prohibited Saudi citizens from traveling to or through Qatar; (5) required Saudi citizens resident in Qatar to leave within 14 days; and (6) ordered Qatari citizens visiting or residing in Saudi territory to leave within 14 days (the “Measures”). *Id.* ¶ 142.

21. The Measures immediately and negatively impacted Petitioners’ business. *Id.* ¶ 990. With Saudi Arabia closing Qatar’s only border, Al Qima trucks were no longer able to supply medical products to Petitioners’ Saudi-based customers—much less its customers located elsewhere in the Gulf. *Id.* ¶ 990. All Qatari employees working for QEMS in Saudi Arabia were forced to leave the country. *Id.* During this time period, the Saudi Food and Drug Authority (“SFDA”) also forcibly closed and sealed Petitioners’ warehouse in Riyadh. *Id.* ¶ 895. Sometime thereafter, the Riyadh Warehouse was ransacked, and Petitioners’ documents and computers were largely destroyed. *Id.* ¶ 903. The Measures caused QEMS’ sales in Saudi Arabia to collapse, resulting in a substantial decline in Qatar Pharma’s revenues, which at the point the Measures were imposed, were derived in large part by its sales in the Saudi market. *Id.* ¶¶ 990-91.

22. Their Saudi business in shambles, Petitioners commenced arbitration, alleging that when Saudi Arabia issued the Measures it breached its OIC Agreement obligations: (1) to provide their investment full protection and security (Article 2); (2) to grant Petitioners’ and their employees permits necessary for entry, exit and residence (Article 5); and (3) to treat Petitioners



no less favorably than investors belonging to states not party to the OIC Agreement (Article 8); and (4) not to expropriate their investment (Article 10);. *Id.* ¶ 482. As explained in detail below, the Tribunal unanimously found Saudi Arabia breached its obligations under Articles 2, 5 and 8 of the OIC Agreement.

### **The Arbitration**

23. As explained above, Petitioners commenced the Arbitration by serving the Notice of Arbitration on Saudi Arabia on March 28, 2019. The Notice of Arbitration invoked Article 17 of the OIC Agreement—which provides for the arbitration of disputes between an investor of one contracting party with the other contracting party.

24. Consistent with the terms of Article 17, Petitioners appointed Mr. Charles Poncet as their appointed arbitrator simultaneous with their Notice of Arbitration. Collins Aff., Ex. A, Award, ¶ 8. On May 27, 2018, Saudi Arabia appointed Prof. Nassib G. Ziadé as their arbitrator. *Id.* ¶ 14. The Parties then agreed on a procedure to appoint the presiding officer, Prof. Juan Fernández-Armesto. *Id.* ¶ 15; *see also id.* ¶¶ 22-32. Collectively, these three arbitrators composed the Tribunal.

25. The Parties further agreed that “the arbitration shall be administered by the ICC in accordance with the 2017 ICC Rules.” *Id.* ¶ 20. The Parties codified this agreement in the Terms of Reference. *See* Collins Aff., Ex. E, TOR at 21-22.

26. Throughout the course of the Arbitration, Saudi Arabia was represented by counsel, including counsel from 3 Verulam Buildings Gray’s Inn, Greenberg Traurig Khalid Al-Thebity



Law Firm, and Enyo Law LLP.<sup>3</sup> Saudi Arabia submitted multiple written submissions throughout the proceeding, including a Statement of Defense, Rejoinder and Post-Hearing Brief.

27. The Tribunal conducted the first procedural conference on February 10, 2021, where it discussed with the Parties an agreed procedural timetable and Petitioners' request for interim measures. Collins Aff., Ex. A, Award ¶ 48. Petitioners ultimately sought no specific relief from the Tribunal, and so the Tribunal's procedural schedule proceeded to first address Saudi Arabia's request for bifurcation before addressing the substance of Saudi Arabia's jurisdictional and admissibility objections or Petitioners' claims on the merits. *Id.* ¶ 51.

28. On October 15, 2021, the Tribunal decided, by majority, to dismiss Saudi Arabia's request for bifurcation and joined its jurisdiction and admissibility objections to the merits phase of the proceeding. *Id.* ¶ 55.

29. Following the Parties' briefing on the merits, the Tribunal held an evidentiary hearing from May 22, 2023 through June 2, 2023 at the International Dispute Resolution Centre in London, UK during which the Tribunal heard testimony from witnesses and experts. *Id.* ¶ 82. Saudi Arabia's counsel participated fully in the hearing.

30. On September 29, 2023, the Parties submitted post-hearing briefs. *Id.* ¶ 88. On November 6, 2023, the Tribunal held a closing hearing, in which Saudi Arabia participated fully. *Id.* ¶ 90.

31. Shortly thereafter, the Parties submitted their statements of costs, and on August 12, 2024 the Tribunal closed the proceedings. *Id.* ¶ 100.

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<sup>3</sup> Squire Patton Boggs LLP initially represented Saudi Arabia, until they were replaced by 3 Verulam Buildings Gray's Inn and Enyo Law LLP. Collins Aff., Ex. A, Award ¶¶ 59, 62. Mr. Khalid Al-Thebity was counsel to Saudi Arabia throughout the proceeding.

The Award

32. The Tribunal issued the Award on October 23, 2024.

33. With respect to jurisdiction, the Tribunal dismissed Saudi Arabia's objection that the Tribunal lacked jurisdiction under Article 17 of the OIC Agreement because the Parties were required to engage in conciliation as a pre-condition to arbitration, but failed to do so. *Collins Aff.*, Ex. A, ¶ 287. The Tribunal found that Article 17 reflected a standing offer to arbitrate and that the Parties could choose arbitration or conciliation. *Id.* ¶¶ 307-8.

34. With respect to admissibility, the Tribunal unanimously rejected Saudi Arabia's argument that Petitioners were not entitled to protection under the OIC Agreement because their investment in Saudi Arabia failed to comply with Saudi law and regulations. *Id.* ¶ 479.

35. On the merits, the Tribunal unanimously found that Saudi Arabia breached its obligations under Article 2, 5 and 8 of the OIC Agreement. *Id.* ¶¶ 1168-69.

36. Regarding Article 2, the Tribunal analyzed whether two measures by the SFDA—(1) the issuance of a seizure order prohibiting disposal or destruction of Petitioners' pharmaceutical products left in its Riyadh Warehouse; and (2) the seals placed on the Riyadh Warehouse doors, prohibiting entry or exit—constituted a breach of Saudi Arabia's full protection and security obligations. *Id.* ¶ 895. While the Tribunal found insufficient evidence that the first measure was improperly (or properly) issued, and as a result “pa[id] deference to the SFDA,” (*id.* ¶ 899), the Tribunal found the second measure—regarding the SFDA's placement of seals—“difficult to explain.” *Id.* ¶ 903. As a result, the Tribunal found “the SFDA's and the [Saudi] police's failure to adopt any measure to protect the Warehouse”—which was ultimately ransacked—meant Saudi Arabia failed to comply with its obligation to grant Petitioners' investment full protection and security. *Id.* ¶ 904.

37. The Tribunal also found that when Saudi Arabia revoked the work and residency permits of Dr. Al Sulaiti and the other QEMS's employees, it breached Article 5 of the OIC Agreement. *Id.* ¶ 912. Specifically, it found that Saudi Arabia failed to identify “the laws and regulations” that supported the withdrawal of these permits, and having failed to do so, Saudi Arabia was “precluded from invoking the defence that the withdrawal of Permits complied with its laws and regulations.” *Id.*

38. The Tribunal further agreed with Petitioners that, pursuant to Article 8 of the OIC Agreement, Saudi Arabia was required to grant Petitioners and their investment treatment no less favorable than Saudi Arabia would grant other foreign investors. *Id.* ¶ 911. This meant that Petitioners were entitled to the same protections investors from other states would receive under other international investment treaties involving Saudi Arabia, including the Saudi-Austria Bilateral Investment Treaty (the “**Saudi-Austria BIT**”). *Id.* Article 2 of the Saudi-Austria BIT grants investors fair and equitable treatment and precludes impairing an investors' investment by arbitrary measures. *Id.* ¶ 911. The Tribunal found that the Measures violated Article 2 of the Saudi-Austria BIT—and, as a result, Article 8 of the OIC Agreement—because they were arbitrary. *Id.* ¶ 888.

39. For these reasons, the Tribunal awarded Petitioners damages in the amounts of: (1) QAR 276,783,057 to Qatar Pharma; (2) SAR 62,373,653 to Dr. Al Sulaiti; and (3) QAR 24,142,807 to Dr. Al Sulaiti. The Tribunal further ordered Saudi Arabia to pay Petitioners a rate of return of 2.82% post award on a *sukuk* issued by Saudi Arabia from the date of the Award until full payment.<sup>4</sup> This Petition seeks recognition of the Award by this Court.

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<sup>4</sup> *Sukuks* are financial instruments issued by Islamic States and enterprises, compliant with Sharia law. *Sukuks* are akin to bonds and represent an ownership interest (not a loan) valued at the time of purchase and at the time of redemption, with the difference in value representing the economic return to their holder. Collins Decl., Ex. A,

**Cause of Action**

40. Petitioners repeat and reallege the allegations in paragraphs 1 through 39 as if set forth fully herein.

41. Article II of the New York Convention provides that “The term ‘agreement in writing’ shall include an arbitral clause in a contract or an arbitration agreement, signed by the Parties or contained in an exchange of letters or telegrams.”

42. The arbitration agreement set forth herein at paragraphs 9 through 17 constitutes “an agreement in writing” within the meaning of Article II(2) of the New York Convention.

43. The Award arose out of a legal relationship that is commercial within the meaning of 9 U.S.C. § 202.

44. The Award was made in the United Kingdom, a signatory to the New York Convention, and which is a state other than the state where recognition and enforcement is sought hereby.

45. Qatar and Saudi Arabia are also each signatories to the New York Convention.

46. The Award is final and binding within the meaning of the New York Convention and Chapter 2 of the FAA.

47. None of the grounds for refusal or deferral of the Award set forth in the New York Convention applies.

48. The Award is required to be recognized, and judgment entered thereon, pursuant to Article II of the New York Convention and 9 U.S.C. § 207.

WHEREFORE, Petitioners respectfully request:

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Award, ¶ 1133. As explained in the Award, the Tribunal granted Petitioners *sukuk* on the amounts awarded to “fully indemnify” Petitioners for their losses that could have otherwise been reinvested. *Id.* ¶ 1137.

- (a) That the Court enter an order pursuant to 9 U.S.C. § 207 recognizing the Award against Saudi Arabia; and
- (b) That, on the basis of the Award, the Court enter judgment against Saudi Arabia holding that Saudi Arabia is liable to Petitioners in the amounts set forth in the Award, namely:
  - (i) QAR 276,783,057 to Qatar Pharma;
  - (ii) SAR 62,373,653 and QAR 24,142,807 to Dr. Al Sulaiti
  - (iii) (a) Post-award, prejudgment interest at the rate of 2.82% on a *sukuk* issued by Saudi Arabia, for the period commencing on December 5, 2018 until judgment is entered herein; and (b) post-judgment interest at the statutory rate of nine percent (9%); and
- (c) That Petitioner be awarded such other and further relief as may be proper.

Dated: New York, New York  
December 5, 2024

Respectfully submitted,

/s/ James E. Berger

James E. Berger  
Erin Collins  
Alice A. Gyamfi  
**DLA Piper LLP (US)**  
1251 Avenue of the Americas  
New York, New York 10020  
Tel: (212) 335-4500  
Fax: (212) 335-4501  
james.berger@us.dlapiper.com  
erin.collins@us.dlapiper.com  
alice.gyamfi@us.dlapiper.com

*Attorneys for Petitioners*