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International Arbitration Case Law
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Award Name and Date: Bank Melli Iran, Bank Saderat Iran v The Kingdom of Bahrain (PCA Case No. 2017-25) – Award – 9 November 2021

Case Report by: Arno Janssens and Tarunima Vijra[**], Editor Ignacio Torterola[***]

Summary: Iranian investors initiated PCA arbitration under the 2002 Iran-Bahrain BIT alleging several treaty breaches by Bahrain, including expropriation of a joint-venture bank located in Bahrain. The bank allegedly engaged in widespread violations of international sanctions imposed against Iranian entities by the UN Security Council, the United States, and the European Union. The alleged infringements also implicated Bahraini law. The Arbitral Tribunal refused to decline jurisdiction or declare Claimants' claims inadmissible, citing insufficient evidence of serious and widespread violations of fundamental norms of international law that bore a close relationship to the claims. On the merits, the Arbitral Tribunal found Bahrain's measures against the bank to be expropriatory in nature, politically motivated and lacking rational justification, rendering them unlawful and triggering compensation obligations under the BIT.

Main Issues: (1) Jurisdiction over and admissibility of claims based on conduct allegedly violating the unclean hands doctrine and the international public order; (2) indirect expropriation as a result of alleged violations of domestic law and international sanctions.

Arbitral Tribunal: Prof. Gabrielle Kaufmann-Kohler (President), Prof. Bernard Hanotiau (Arbitrator), Rt. Hon. Lord Collins of Mapesbury (Arbitrator)

Claimants' Counsel: Dr. Hamid Gharavi, Mr. Emmanuel Foy, Ms. Déborah Schneider (Derains & Gharavi International, Paris)

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Digest:

1. Relevant Facts

Bank Melli Iran and Bank Saderat Iran ("**Claimants**") instituted arbitration proceedings against the Kingdom of Bahrain ("**Bahrain"** or "**Respondent**", together with Claimants, the "**Parties**"), alleging breaches by Bahrain of its international obligations under the Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Islamic Republic of Iran and the Kingdom of Bahrain, dated 19 October 2002 ("**BIT**") (¶¶1-3).

The Parties' dispute arose against the backdrop of international sanctions imposed in relation to the development of Iran's nuclear program. The sanctions regime comprised United Nations Security Council ("**UNSC**") Resolutions under Chapter VII of the UN Charter mandating asset freezes and identifying a list of sanctioned entities, as well as economic sanctions imposed by the US and the EU (¶¶189-196).

The arbitration was initiated following the forced administration of Future Bank ("**Future Bank**") (a bank established by Claimants in Bahrain in 2004 together with the Ahli United Bank), by the Central Bank of Bahrain ("**CBB**") (¶¶294-295). The CBB decided to place Future Bank under administration on 30 April 2015 ("**CBB Decision**") pursuant to Article 136 of the Central Bank of Bahrain and Financial Institutions Law (Decree No. 64 of 2006) ("**CBB Law**"), informing Future Bank that it must "cease trading immediately" and that the CBB had "assumed full managerial control over [Future Bank's] business" (¶294). The CBB Decision, published in the Official Gazette on 7 May 2015, recorded that Future Bank was placed into administration, *inter alia*, as it offered services that could "cause harm to the industry of financial services in the Kingdom of Bahrain" (¶¶299-300).

Future Bank's appeal against the CBB Decision was dismissed by the CBB on 18 May 2015, citing violations by Future Bank of the CBB Law, anti-money laundering laws, and other local and international regulations in relation to bank transactions with institutions that are subject to international sanctions (¶302).

On 5 May 2015, the CBB initiated an investigation into Future Bank, and issued its investigation report on 24 May 2015 ("**2015 CBB Report**") (¶305). The 2015 CBB Report contained the CBB's findings regarding violations by Future Bank, amongst others, of various Resolutions passed by the UNSC and of the CBB Directive of 8 September 2010, arising out of Future Bank's alleged transactions with legal entities, directly or indirectly, owned by the Government of Iran and those falling within the list of OFAC sanctioned entities (¶¶308-309).

On 14 July 2015, Iran, China, France, Germany, Russia, the UK, and the US signed a Joint Comprehensive Plan of Action ("**JCPOA**") providing for the lifting of sanctions against Iran upon confirmation by the IAEA of the peaceful nature of its nuclear program (¶287). On 16 January 2016, the IAEA confirmed that Iran's nuclear program was on hold (¶288).

On 22 December 2016, the CBB decided to liquidate Future Bank (¶311). A second investigation into Future Bank was initiated by the CBB in August 2017, following the commencement of the

arbitration proceedings. The investigation report issued on 16 February 2018 ("**2018 CBB Report**") contained the CBB's findings regarding multiple violations by Future Bank of, *inter alia*, the CBB Law, CBB Directives implementing the UNSC and OFAC sanctions, anti-money laundering laws and counter financing of terrorism policies (¶314).

Future Bank's liquidation process was ongoing until the date of the Award (¶¶311-313).

2. Procedural History

On 8 February 2017, Claimants served the Notice of Arbitration, appointing Prof. Emmanuel Gaillard as Arbitrator. Claimants proposed that the arbitration be conducted under the 2010 UNCITRAL Rules and administered by the Permanent Court of Arbitration in The Hague ("**PCA**") (¶11). On 8 May 2017, Respondent appointed Rt. Hon. Lord Collins of Mapesbury as Arbitrator (¶19). Prof. Rudolf Dolzer was appointed as President on 26 July 2017, following the Parties' request to have the Secretary-General of the PCA nominate the President (¶26).

On 14 August 2017, the Arbitral Tribunal determined that the 1976 UNCITRAL Rules governed the arbitration ("**UNCITRAL Rules**") (¶28).

On 16 November 2017, the Arbitral Tribunal denied Respondent's application for security for costs that was filed on 10 August 2017. On 1 February 2018, the Arbitral Tribunal denied Claimants' request to stay Future Bank's administration proceedings, but ordered Respondent to secure and store all documentation pertaining to Future Bank's liquidation (¶¶34-49).

The Hearing took place from 6 to 10 May 2019 in Paris, France (¶99).

After the Parties and the co-arbitrators were informed of the passing of Prof. Dolzer, the co-arbitrators appointed Prof. Gabrielle Kaufmann-Kohler as President (¶120). A re-hearing took place on 10 and 11 August 2020 (¶124). On 6 April 2021, the PCA informed the Parties of the passing of Prof. Gaillard (¶156). On 12 April 2021, the Arbitral Tribunal was reconstituted with the appointment of Prof. Bernard Hanotiau as substitute Arbitrator.

3. Positions of the Parties

3.1 Admissibility and Jurisdiction

3.1.1 Respondent's Position

Respondent contends that Claimants' violations of (i) the unclean hands doctrine and (ii) international public policy render their claims inadmissible "*and / or*" result in the lack of jurisdiction of the Arbitral Tribunal (¶328).

Respondent submits that the unclean hands doctrine is a "*fundamental principle of international law and a prerequisite for legal claims*" that applies even in the absence of an express treaty provision (¶¶329-330). The unclean hands doctrine prevents a party from bringing treaty claims

based on conduct that is "*prejudicial to the public interest*",[1] irrespective of any treaty breach (¶329). The conduct must be assessed throughout the duration of the investment (¶333). It includes cases where the investor engages in serious or repeated wrongdoing that is closely connected with the claim (¶332). Here, Respondent alleges that Future Bank (i) systematically violated international sanctions against Iranian entities; (ii) failed to monitor and disclose suspicious transactions; (iii) engaged in recurrent wire stripping; (iv) used an unauthorized alternative messaging system ("**AMS**"); and (v) misrepresented its exposure to Iranian entities (¶379). Respondent asserts that Claimants' conduct amounts to serious and repeated wrongdoing, rendering Claimants' claims inadmissible (¶334).

Finally, Respondent argues that the claims must be dismissed for contempt of the international public order. Respondent contends that Claimants' unlawful conduct implicates the "*the clearest form of international public policy,*" including the UNSC Resolutions directed at combatting terrorism, nuclear proliferation, and money laundering (¶336).

3.1.2 Claimants' Position

Claimants reject the proposition that a stand-alone clean hands doctrine exists in international law. The principle cannot apply to investment claims under a treaty whose text does not embody the doctrine (¶343).

Claimants further contend that the investor's conduct must be assessed only at the time when the investment is made, and not during the life of the investment (¶344). Once a valid investment is made, subsequent illegal conduct must be assessed in the context of the substantive provisions of the treaty. Indeed, the investment award relied upon by Respondent concerned an investment that had been procured by corruption.[2] At any rate, Claimants submit that Respondent failed to prove any illegality during the life of Claimants' investment (¶347).

Finally, Claimants argue that investment tribunals do not categorize violations of "international public policy" as impediments to admissibility or jurisdiction. At best, they pertain to the merits of the case. Claimants further point to the fact that Respondent failed to raise these allegations until many years after the conduct allegedly took place (¶¶347-350).

3.2 Exhaustion of Local Remedies

3.2.1 Respondent's Position

Respondent contends that Claimants are barred from arguing due process violations by the CBB, because they failed to seek redress before the Bahraini courts. Respondent submits that an investor must make reasonable efforts to obtain relief before recourse to arbitration becomes available. Had Claimants appealed the CBB's decision, they would have been afforded the due process protections they now claim to have been denied (¶¶509-511).

[1] Hesham T.M. Al Warraq v Republic of Indonesia, UNCITRAL, Final Award, December 15, 2014, ¶645.
[2] World Duty Free v. Republic of Kenya, ICSID Case No. ARB/00/7, Award, October 4, 2006.

3.2.2 Claimants' Position

Claimants argue that there is no general requirement to exhaust local remedies as a precondition to arbitration, unless the treaty provides otherwise. The BIT is silent on exhaustion of local remedies. In addition, the BIT does not distinguish between the judiciary, legislative, or executive powers of a Contracting State, so that the CBB's conduct suffices to trigger the substantive protections granted by the BIT. The BIT also includes a fork-in-the-road clause,[3] which would be rendered inoperable if Respondent's position was adopted (¶¶512-514).

In the alternative, Claimants argue that appealing the CBB's decision would have been futile. Future Bank had been informed that the taking was a "*sovereign decision,*" and Bahrain's judiciary is highly dependent on the executive (¶515).

3.3 Merits

3.3.1 Expropriation

3.3.1.1 Claimants' Position

Claimants contend that through the CBB Decision, Respondent directly or at least indirectly expropriated Claimants' investment in Bahrain, in breach of Article 6 of the BIT (¶¶534, 536). Claimants contend that the CBB Decision contravened all conditions for lawful expropriation under Article 6 of the BIT (¶539) on the grounds that:

(i) the timing of the CBB Decision, the surrounding political climate and the absence of any cogent public purpose justifications, establishes that the CBB Decision was politically motivated and was not made in pursuit of a legitimate public purpose (¶¶540-560);

(ii) the CBB Decision was discriminatory against Iranian investments (¶¶561-565);

(iii) the CBB Decision was issued and implemented in complete disregard of due process as Respondent failed to provide Future Bank (a) an opportunity to cure violations prior to the CBB Decision; (b) notice of the CBB Decision; (c) reasons for the Decision; and (d) a meaningful opportunity to challenge the CBB Decision. Further, the CBB Decision was issued in contravention of domestic procedures for placing a bank under administration (¶¶566-580);

(iv) the placement of Future Bank under administration was disproportionate to the stated basis for such decision, namely the protection of the Bahraini financial services sector (¶¶581-584); and

[3] Article 11(3) of the BIT reads as follows (¶527): "*A dispute primarily referred to the competent courts of the host Contracting Party, as long as it is pending, cannot be referred to arbitration save with the parties' agreement; and in the event that a final judgment is rendered, it cannot be referred to arbitration.*"

(v) the failure to provide prompt, adequate, and effective compensation contravened the express requirement under Article 6 of the BIT and is also violative of customary international law (¶¶585-590).

Whilst Claimants maintain that their investment underwent economic depreciation on account of the CBB Decision, they do not consider economic depreciation to be a necessary component of indirect expropriation (¶¶536-537). Claimants dispute that the CBB Decision could not amount to an expropriation because a banking license allegedly is a privilege and that the placement of Future Bank into administration was a legitimate exercise of regulatory power, as contended by Respondent (¶538).

3.3.1.2 Respondent's Position

Respondent contends that the CBB Decision was not expropriatory in nature as it was a valid exercise of regulatory authority, which does not carry a compensation obligation. Respondent emphasizes in this regard that Future Bank's license was a privilege, which was revokable by the CBB (¶592).

Should the Arbitral Tribunal regard Respondent's actions against Future Bank as expropriatory, Respondent contends that the expropriation was not unlawful, as (i) it was undertaken in pursuit of a *bona fide* public purpose to protect the Bahraini financial sector from Future Bank's systemic and persistent violations (¶¶597-605); (ii) was proportionate to that purpose (¶¶619-622); (iii) was non-discriminatory (¶¶598-609); and (iv) was undertaken in accordance with due process, after affording Claimants ample opportunity to rectify the violations identified by the CBB (¶¶610-618). Respondent contends that a certain degree of deference must be accorded to the host State to undertake the requisite measures to promote a social or general welfare purpose (¶598).

Respondent draws a distinction between the CBB Decision placing Future Bank into administration and the subsequent decision to liquidate Future Bank, contending that, contrary to Claimants' position, the CBB Decision did not constitute a "permanent taking" (¶593). Respondent further contests Claimants' allegations of indirect expropriation, arguing that Future Bank's value has increased in value since its placement into administration and that Claimants have retained ownership of their shareholding in Future Bank and will receive their share of the liquidation proceedings (¶¶594-595).

3.4 Quantum

3.4.1 Claimants' Position

Claimants claim monetary compensation and moral damages from Respondent (¶703).

As monetary compensation, they seek full reparation through recovery of the fair market value of their investment, including lost profits and pre-award interest, to compensate for the loss of business opportunities following the CBB Decision (¶¶704-705). Claimants favor the income-based approach for valuation of the damages suffered by them, contending that they are entitled to at least an amount between EUR 271.7 million and EUR 300.9 million, which is derived from

the book value of Future Bank's equity and the present value of its future economic profits (measured as Future Bank's earnings less a charge reflecting Future Bank's cost of equity) (¶708).

Claimants request compensation for moral damages in the amount of EUR 10 million, contending that their professional reputation has been seriously affected (¶¶721-722).

Claimants further seek pre-award and post-award interest (¶¶714-718).

3.4.2 Respondent's Position

Respondent contends that Claimants are not entitled to any reparation as the value of Future Bank increased under administration and Claimants continue to hold the assets of Future Bank (¶¶723-724).

Respondent favors the asset-based approach for calculation of the fair market value of Claimants' investment (¶¶728-729). Respondent contends that Future Bank's continued profitability is speculative and, therefore, the application of either the income-based or market-based approaches is not appropriate (¶¶729-731). Respondent contends that Claimants are not entitled to receive any compensation as their debt to Future Bank exceeds any reasonable valuation of their shares (¶727). It further contends that any damages awarded to Claimants must account for the proceeds Claimants would receive upon liquidation, to avoid unjust enrichment for Claimants (¶726).

Respondent refutes Claimants' claim for moral damages, contending that any damage inflicted to Claimants' reputation is not attributable to Respondent.

4. Arbitral Tribunal's analysis

4.1 Admissibility and Jurisdiction

The Arbitral Tribunal examines the issues of admissibility and jurisdiction separately.

4.1.1 Illegalities as Jurisdictional Bar

Pursuant to Article 1(1) of the BIT, for the dispute to come within the Arbitral Tribunal's jurisdiction, it must have arisen out of an investment made in accordance with the laws of Bahrain. The BIT does not address the consequences of any illegal conduct after the making of the investment. Such illegalities do not rise to the level of a jurisdictional bar, but instead involve the Arbitral Tribunal's power to decide on the merits (¶¶353-355). This reading is confirmed by numerous investment tribunals who have consistently interpreted similar provisions to be temporally limited to the making of the investment.[4]

[4] Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia, ICSID Case No. ARB/12/39, Award, July 26, 2018, ¶ 303; Vladislav Kim and others v. Republic of Uzbekistan, ICSID Case No. ARB/13/6, Decision on Jurisdiction, March 8, 2017, ¶¶ 374-377; Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia, ICSID Case No. ARB/06/2, Decision on Jurisdiction, September 27, 2012, ¶ 266; Vannessa Ventures Ltd v. Bolivarian Republic of Venezuela, ICSID Case No. ARB(AF)/04/6, Award, January 16, 2013, ¶ 167; Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic, ICSID Case No. ARB/07/26, Decision on Jurisdiction, December 19, 2012, ¶ 260.

In the present case, "the record contains insufficient evidence to demonstrate that the Claimants have initially made their investment unlawfully or for the overarching purpose of engaging in illegal activities" (¶359).

The Arbitral Tribunal dismisses the jurisdictional objection raised by Respondent.

4.1.2 Illegalities as Admissibility Bar

International adjudicatory bodies have a duty not to entertain claims tainted by violations of certain universally accepted fundamental norms. Claimants' argument that investment treaties are 'self-contained' must be rejected to the extent that it would prevent the Arbitral Tribunal from applying said norms (¶372). The rationale for this principle is that perpetrators of international crimes must not be assisted by the arbitral process. As such, the inadmissibility extends to the making and the life of the investment (¶362-368).

Under this theory, international tribunals have commonly recognized that claims tainted by serious wrongful conduct are inadmissible, be it under the doctrine of clean hands, international public policy, or other general principles. The Arbitral Tribunal must determine whether the illegal conduct (i) is serious and widespread, and (ii) bears a close relationship to the claims (¶¶375-376).

(a) Seriousness and Scale of the Illegalities

To rise to the level of inadmissibility, the investor's wrongful conduct must relate to a fundamental rule of law. The sanctions imposed by the UNSC pursuant to Chapter VII of the UN Charter meet this qualification: they take precedence over all other international agreements (*cf.* Article 103 of the UN Charter) and were instigated by concerns over international peace and security and the prevention of proliferation of nuclear weapons (¶¶381-382). National and regional sanctions, such as those taken by the US and the EU, are different. They "d[o] not themselves constitute fundamental rules of law forming part of international public policy" insofar as they diverge from the scope of the UN sanctions (¶383). The seriousness and scale of the illegalities must therefore be analyzed exclusively under the UN sanction framework.[5]

In relation to Future Banks' alleged violations of international sanctions, the Arbitral Tribunal finds as follows:

(i) Alleged systematic violations of international sanctions against Iranian entities: The Arbitral Tribunal finds that the record contains only sporadic evidence of violations of the Iran sanctions (¶448). It is established that Future Bank actively facilitated the *Islamic Republic of Iran Shipping Lines*' efforts to evade the effects of the UN sanctions (¶410). In its dealings with *Pars Oil & Gas Co* and *Sepahan Oil Company*, Future Bank purposefully misrepresented the nature of its transactions and failed to comply with its due diligence and reporting obligations (¶436). However, the

[5] Although UNSC resolutions under Chapter VII are not directly opposable to private individuals, Bahrain implemented the UNSC sanctions by way of circulars, directives, and laws (¶384-390). It did not do so with respect to the US sanctions, which it implemented "*with a different level of binding force,*" meaning they were not opposable to Future Bank (¶388).

remainder of the violations alleged by Respondent are unproven,[6] do not concern a sanctioned entity,[7] are unfounded,[8] or relate solely to US and EU sanctions and are therefore not opposable to Future Bank.[9] Since direct evidence of widespread violations is lacking, the Arbitral Tribunal continues its assessment by considering the circumstantial evidence on record.

(ii) Alleged failure to monitor and disclose suspicious transactions: Future bank failed to monitor and disclose suspicious transactions on numerous occasions. It processed large Euro-denominated cash transactions for the Iranian embassy and held cash deposits for several other entities without adhering to the applicable due diligence regulations (¶¶449-452). Nevertheless, the Arbitral Tribunal is not persuaded that these specific violations rise to the level of a *"systematic and severe breach of the applicable laws*," nor that they demonstrate Future Bank's intention to evade international sanctions (¶453).

(iii) Alleged engagement in recurrent wire stripping: Although it is common ground that Future Bank engaged in wire stripping (¶456), Respondent has failed to identify a rule of Bahraini law prohibiting wire stripping in the relevant period. Nor did it prove that the wire stripping practices were linked to the alleged sanction violations (¶461).

(iv) Alleged unauthorized use of the AMS: Future Bank has misrepresented its use of the AMS. Future Bank violated Bahraini law by representing to the CBB that it had only started using AMS after it was disconnected from SWIFT in 2012, while in reality, it had been using AMS since 2008 (¶¶465-470). Tellingly, Future Bank's use of the AMS skyrocketed after Bahrain implemented the UN sanctions in September 2010. 89% of AMS messages were sent to or by entities sanctioned by the US or the EU. Future bank also exchanged 182 messages with the *Islamic Republic of Iran Shipping Line* after its designation as sanctioned entity by the UNSC. As Future Bank failed to keep records of at least 955 messages sent through the AMS (in clear violation of Bahraini AML laws), the Arbitral Tribunal concludes that it is possible that Future Bank's violations of UN sanctions may have been more numerous than what emerged from the individual violations established above (¶484).

(v) Alleged misrepresentation of its exposure to Iranian entities: Although Future Bank managed to gradually reduce its exposure to Iran over time, it sporadically violated exposure limits imposed by the CBB in the years 2007-2015 (¶¶487-496). Future Bank also failed to comply with the CBB's instruction of 1 April 2014 to reduce its shareholder exposure to Iran to zero (¶¶497-501).

Based on the above, the Arbitral Tribunal concludes that only an insignificant number of sanction violations are established. Even though Future Bank's violations of its reporting obligations and

[6] ¶424-425; ¶447.
[7] ¶428.
[8] ¶422, ¶439.
[9] ¶403; ¶416-417; ¶444.

the use of the AMS suggest that more violations exist, the record contains insufficient indications to establish systematic or severe infringements of fundamental rules of international law (¶503).

(b) Relationship of the Illegalities to the Claims

In addition, where investment tribunals have declared an investor's claim inadmissible, the claims arose out of transactions directly tainted by illegal activities. The declaration of inadmissibility then serves to prevent the claimant from benefiting from its own wrongdoings. However, in this arbitration, the claims arise out of measures taken by the CBB against Future Bank. They do not arise out of a transaction tainted by Future Bank's alleged unlawful conduct. As a result, the illegalities do not bear a sufficiently close relationship to the claims (¶¶504-507).

The Arbitral Tribunal dismisses the admissibility objection raised by Respondent.

4.2 Exhaustion of Local Remedies

It is common ground that no requirement of exhaustion of local remedies applies in investment treaty arbitration unless the parties have agreed otherwise. Here, the BIT is silent on exhaustion of local remedies (¶516-518).

Instead, Respondent bases its objection on the 'requirement to take reasonable efforts' to obtain relief. In Respondent's view, Claimants should have made reasonable efforts to obtain correction of the alleged due process violations before the local courts. The Arbitral Tribunal rejects Respondent's position, as there exists no requirement to pursue local remedies except when the arbitration claim is for denial of justice. Respondent's due process defense is not akin to a denial of justice claim, as the latter assumes a systemic failure of the state's justice system as a whole, while Respondent reproaches Bahrain for a specific breach of protection against expropriation and fair and equitable treatment. Additionally, the Arbitral Tribunal notes that (i) at any rate, States are responsible under international law for decisions of their administrative bodies; (ii) a judgment by a Bahraini court over the CBB's decision would, in any case, not be dispositive under international law; (iii) numerous ICSID cases confirm the Arbitral Tribunal's view; and (iv) the BIT's fork-in-the-road clause would be rendered inoperable under Respondent's position (¶¶516-531).

The Arbitral Tribunal dismisses the objection raised by Respondent.

4.3 Expropriation

Claimants' shareholding interests in Future Bank are "undoubtedly property interests", which Claimants were permanently deprived of following the issuance of the notice of liquidation dated 22 December 2016. The Arbitral Tribunal takes note that Claimants have been deprived of their shareholding rights since December 2016 and have not received any liquidation proceeds as on the date of the Award, with no anticipated deadline in the horizon for the conclusion of the liquidation process. The Arbitral Tribunal considers it irrelevant for purposes of the expropriation analysis whether Future Bank's banking license is regarded as a property interest or a privilege (¶¶629-630).

The Arbitral Tribunal accepts that a certain degree of deference must be afforded to the CBB Decision, issued by a specialized regulatory arm of Respondent, and focuses its analysis on the evidence (or the lack thereof) of the connection between the CBB Decision and Future Bank's alleged violations to assess whether the Respondent's measures were arbitrary, discriminatory, disproportionate and contrary to the requirements of due process (¶¶636-637).

The Arbitral Tribunal finds Respondent's measures against Future Bank not to be genuine regulatory measures but rather the outcome of a "contrived agenda of political retribution against Claimants' investment" and, therefore, concludes that the administration and liquidation of Future Bank constituted indirect expropriation (¶¶689-690). In reaching this determination, the Arbitral Tribunal takes into account: (i) the lack of a contemporaneous record of the CBB's consideration of reasons for the placement of Future Bank under administration (¶¶652-665). The Arbitral Tribunal finds the absence of a record of investigations and deliberations preceding the decision to place Future Bank under administration (¶¶662-665) and contemporaneous evidence of Future Bank's allegedly unlawful activities (¶¶659-661) as demonstrating a "manifest lack of reasoning" for the CBB Decision (¶666); (ii) the prevalent political context when Future Bank was placed into administration coupled with the fact that Future Bank was placed into administration together with another Iranian entity, Iran Insurance Company. The Arbitral Tribunal considers this to constitute "strong circumstantial evidence of a motivation of political retribution" behind the CBB Decision (¶¶667-672); (iii) the limited evidence of prior warnings and notices to Future Bank regarding the alleged violations by the latter in the record, which the Arbitral Tribunal considers as corroborating the view that the CBB Decision was not motivated by a *bona fide* regulatory objective (¶¶676-681); and (iv) the non-consideration of less severe measures against Future Bank by the CBB (¶¶682-687).

In view of its determination that the CBB's administration and liquidation decisions were politically motivated decisions lacking contemporaneous rational justification, the Arbitral Tribunal finds the CBB's decisions lacked public purpose, rendering the expropriation unlawful (¶694).

4.4 Other Alleged Treaty Violations

Claimants also allege violations of other standards of treatment under the BIT by Respondent. However, having upheld Claimants' unlawful expropriation claim, for reasons of procedural economy, the Arbitral Tribunal does not consider it necessary to address the other alleged violations by Respondent under the BIT. The Arbitral Tribunal reasons that an affirmative finding on Respondent's other alleged treaty breaches will not alter its analysis on reparation or quantification of compensation (¶¶698-701).

4.5 Quantum

In the absence of a stipulated standard of compensation for internationally wrongful acts in the BIT, the Arbitral Tribunal determines that the standard governing Claimants' claim for compensation for unlawful expropriation is the customary international law principle of full reparation (¶741).

The Arbitral Tribunal determines that the damage suffered by Claimants on account of Respondent's unlawful conduct is equal to the difference between (i) Claimants' economic position but-for the wrongful measures (but-for scenario) and (ii) their actual economic position (actual scenario) (¶746). The appropriate valuation date of Future Bank is the date of the CBB Decision, as this eliminates all consequences of Respondent's breaches of the BIT and restores Claimants to the situation in which they would have been had Respondent not breached the BIT (¶742).

The Arbitral Tribunal considers the asset-based approach most suitable for calculating Claimants' damages (¶772). It rejects the income-based and market-based approaches on the grounds that the continued profitability of Future Bank is speculative in view of its violations of applicable laws and regulations, historical business model (which was largely based on transactions with Iranian entities), and the uncertainties created by the conclusion of the JCPOA (¶¶762-771).

The Arbitral Tribunal calculates the damages due to Claimants without discounting the alleged current value of their shares in Future Bank, noting that whilst Claimants retain formal title over their shares, they have been permanently deprived of the control and benefits of their shareholding (¶¶747-748). The Arbitral Tribunal also does not discount the amount that Claimants may receive at the end of the liquidation proceedings of Future Bank, in view of Claimants' undertaking that they will not seek double recovery and will deduct the liquidation proceeds (¶¶754-756).

The Arbitral Tribunal dismisses Respondent's set-off request on the grounds that it is beyond the Tribunal's jurisdiction, and, in any event, has not been appropriately pleaded (¶¶781-786).

The Arbitral Tribunal dismisses Claimants' claim for moral damages, finding that Claimants have failed to satisfy the burden of proof regarding the existence of a reputational damage and the causal link between Respondent's breaches of the BIT and such damage (¶¶793-794).

The Arbitral Tribunal awards pre-award interest from the valuation date of 30 April 2015 (*i.e.*, the date of the CBB Decision) using a risk-free interest rate in order to compensate Claimants for the time value of money without compensating them for the business risks associated with the investment for the period during which Claimants did not bear those risks anymore (¶¶799-800). The Arbitral Tribunal calculates pre-award interest on the basis of the average return of 5-year US Treasury bonds (¶¶801-802), and awards post-award interest on the same basis (¶807).

5. Costs

Pursuant to Article 38 and 40 of the UNCITRAL Rules, the Arbitral Tribunal enjoys a wider discretion in apportioning legal fees than it does for other cost categories (¶¶823-824). Claimants largely prevailed on jurisdiction and liability, but lost on valuation methodology, interest rate, and moral damages. The additional costs that resulted from the reconstitution of the Arbitral Tribunal on two occasions must be borne in equal parts by the Parties (¶826). It is therefore appropriate to order Respondent to reimburse Claimants for 60% of the legal fees actually incurred. The fact that Claimants' costs for legal representation were tied to a success fee is immaterial (¶¶833-834).

As the Arbitral Tribunal does not find any of the Parties to have engaged in obstructive procedural conduct, it is fair and appropriate to order Respondent to reimburse Claimants for 80% of their share of the fees and expenses of the PCA and the Arbitral Tribunal (¶828).