BUSTAMANTE

IN THE ARBITRATION UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES, AND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CALPURNIA AND THE GOVERNMENT OF THE FEDERATED STATES OF GAUL ON THE PROMOTION AND PROTECTION OF INVESTMENTS IN THE MATTER BETWEEN

VANGUARD INTERNATIONAL
(CLAIMANT/THE INVESTOR)

V.

THE GOVRNMENT OF CALPURNIA
(RESPONDENT)

ICSID Case No. **ARB**/x/x/

VANGUARD INTERNATIONAL

(MEMORANDUM FOR CLAIMANT)

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Acronyms

- BIT Bilateral Investment Treaty
- CCC Conservative Conscience of Calpurnia
- ICSID International Convention on the Settlement of Investment Disputes
- MFN Most Favored Nations Treatment
- NT National Treatment
- SFCDC State Fund For Commerce and Development in Calpurnia

List of Legal Sources

I Treaties and Laws

1. The Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention)
2. The Bilateral Investment Treaty between the Government of the Republic of Calpurnia and the Federated State of Gaul on the promotion and protection of Investment (The Calpurnia-Gaul BIT)
3. The Bilateral Investment Treaty between the government of the Republic of Calpurnia and the Government of the State of Flatland (The Calpurnia-Flatland BIT)

II Cases

1. *Siemens A.G V. Argentina,* ICSID case No.ARB/02/08 Decision on jurisdiction (2004).
2. *Maffezini V. Spain,* ICISD case No.ARB/97/7,Decision on jurisdiction (2000).
3. *MetalCald Corporations V. Mexico*, Award, ICSID Caser No. ARB (AF)/97/1, IIC 161 (2000), 30 August 2000
4. *PSEG Global Inc and Ors V. Turkey,* ICISD case No.ARB/02/5/ Decision on jurisdiction (2007).
5. *Sempra Energy International V Argentina Republic,* ICSID case No ARB/02/6/, Award, 2 September 2007.
6. *Eastern Sugar B.V V. Czech Republic,* SCC Case No 008/2004, Final Award, 12 April 2007.
7. *Ronald S. Lauder V. Czech Republic,* Final Award, Ad hoc—UNCITRAL Arbitration rule 205 (2001)

✽ Statement of facts

1. Vanguard international is a mobile telecommunication company with its headquarters in Nova Parigi, the capital city of Gaul. Calpurnia and the government of Gaul have concluded a Bilateral Investment Treaty (BIT) on August1, 1995. They are also contracting states to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID convention.). The state of Calpurnia has also concluded a BIT with the government of the state of Flatland on February 8, 1992.

2. By the year 1997, Vanguard participated in the establishment of a joint venture company, VanCal incorporated, and with its headquarters in San Inocente de Irkoustk, the capital of Calpurnia. It also provided technical assistance and trademark licensing to VanCal by a separate agreement. Vanguard International, the State Fund for Commerce and Development, which is 100%, owned by the state of Calpurnia, and other several individuals own VanCal.

3. The Conservative Conscience of Calpurnia (CCC) won majority seats in the November 2003 election, in both chambers of the Calpurnian Parliament.

4. After the coming into power of CCC, the diplomatic relation of Calpurnia with some states including Gaul deteriorated.

5. On November 15, 2004 SFCDC head Dr. Jhonatan Swift made a statement that SFCDC did not regard VanCal as really being a private company.

6. On March 10, 2005 SFCDC leaders expressed their intention of minimizing the amount of money to be paid to foreign shareholders and the board decided not to pay any sum of money to Vanguard stating that the existing dispute between the government of Calpurnia and Gaul demands suspension of such payment.

7. On November 16, 2005 Ms. Pescara, who holds 1% share in trust for Vanguard and was the managing director of VanCal, was voted off from the board of directors.

8. Mr. Rindler was representing Ms. Pescara and Mr.Neilshepherd.

9. On October 5, 2005 proxies held by Mr. Rindler was accepted for the October11, 2005 meeting.

10. The October11, 2005 meeting was postponed to November16, 2005.

11. The two proxies issued on October 5, 2005 and which were held by Mr. Rindler were found out not to be formally valid for the November 16, 2005 meeting

12. On September 28, 2006 allegedly dividends due to Vanguard were credited on VanCal's books to Vanguard's account.

13. Three police searches (on December 2003, June 2004 and July 2004) were made at the homes of two Gaulois nationals and Vanguard International employees, Francesca Pescara and David Kolowenko.

14. The Calpurnian Security Directorate made a press release based on the searches.

15. The Calpurnian Constitutional Court dismissed Vanguard's application to have the December 2003, June 2004 and July 2004 searches declared unlawful.

16. On July 14, 2006 the Commercial Court of San Inocente de Irkoustk summarily dismissed the application by Ms. Pescara to order VanCal to transfer to her account any payment due to her in relation to the 1% share she indirectly holds for Vanguard.

17. In September 2004, Ms. Pescara's application for renewal of "a three year business visa" was denied.

I. Submission on Jurisdiction

18. The jurisdiction of this arbitral tribunal is established based on Article 25 of the ICSID convention. Under this Article, there are three essential requirements that should be fulfilled for the center to assume jurisdiction.[1] These are:

    i) The parties should give their consent in writing to submit to the jurisdiction of ICSID. With regard to this requirement, the parties concerned (Calpurnia and Gaul) have concluded a BIT in which they consented to ICSID's jurisdiction regarding investment disputes.[2]

    ii) The dispute should arise out of investment. This requirement is also a pre-requisite under Article 11(1) of the Calpurnia- Gaul BIT to bring the dispute to the attention of the center. Investment is defined under Article 1 of the same BIT to include shares, claims in relation to any property right or money, technical assistance, trademark, goodwill and others.[3]Therefore, the claims, which are in relation to claims of money, interference in the property and goodwill of the claimant and expropriation of the property of the claimant clearly fall under the jurisdiction of this tribunal

    iii) The dispute should be between a contracting state and a national of another contracting state investing in the former state. The dispute in our case is between Calpurnia (a contracting state) and Vanguard international (a national of another contracting state –Gaul). Both Calpurnia and Gaul are parties to ICSID.[4]

19. Additionally, the specific requirements stated under the Calpurnia-Gaul BIT for ICSID to assume jurisdiction, are also fulfilled as it is shown herein below

[1] Article 25 of the ICSID Convention
[2] Article 11(2)(b) of Calpurnia-Gaul BIT
[3] Article 1 of Calpurnia-Gaul BIT
[4] Abstract from claimant's request for arbitration, Paragraph 6.

i) Under Article 11(1) and (2) of the Calpurnia- Gaul BIT, the claimant is obliged to try to resolve any dispute arising out of an investment amicably within 18 months starting from the date of request of amicable settlement. This is to be done before submitting its case to ICSID.[5] However, under article 4(1) of the same BIT the claimant is entitled to get a treatment, which is not less favorable than what the respondent accords to the investments made by its own nationals or by investors of any third state. Therefore, in this regard the respondent has concluded a BIT with the state of Flatland [6] (which can be referred as a third state as per Article 4(1) of the Calpurnia-Gaul BIT). Article 7 of the BIT between Calpurnia and Flatland provides a much shorter consultation period, (two months), as compared to the 18 months waiting period of Calpurnia and Gaul BIT. This shows that investors from Flatland are entitled to a more favorable treatment when compared with the claimant. As stated above, the MFN provision of the Calpurnia-Gaul BIT entitles the claimant to enjoy this kind of more favorable treatment. Consequently, the claimant argues that it is not required to comply with the 18 months consultation period. Rather it should only be required to wait for two months.

ii) Accordingly the claimant has complied with the requirement of requesting an amicable settlement within the two months consultation period. On February 5, 2007 the claimant asked Mr. Poe (Chairman of SFCDC) to notify the appropriate ministers regarding the prevailing circumstances.[7] The February 5, 2007 notification clearly shows the claimant's intention to resolve the dispute amicably through the government Ministers before resorting to any other way out.

20. The respondent may argue against the applicability of MFN clause to issues of dispute settlement. However, the agreed and general purpose of MFN provisions is to entitle investors from contracting states to the best treatment given to foreign investors from any

[5] Article 11 of Calpurnia-Gaul BIT
[6] Abstract from the claimants request for arbitration, on paragraph 5
[7] Calendar of events-February 5, 2007

other third state.[8] As the honorable tribunal has noted in the case of *Maffezini V. Spain,* these treatments may be treatments with regard to the investors' substantive or procedural rights.[9] In this case the tribunal concluded that notwithstanding the fact that the basic treaty containing the clause does not refer expressly to dispute settlement as covered by the most favored nation clause, the tribunal considers that "there are good reasons to conclude that today dispute settlement arrangements are inextricably related to the protection of foreign investors, as they are also related to the protection of rights of traders under treaties of commerce"[10] Hence access to international arbitral tribunal is the most important safeguard, which needs to be given equally and it would be a paradox to exclude it from the scope of MFN treatment.

21. This same position has also been reflected in the subsequent decision of the honorable tribunal. For instance, in the case of *Siemens V. Argentina,* the tribunal found that "Siemens A.G (Siemens) could rely on an MFN clause contained in the BIT between Argentina and Germany to take advantage of dispute resolution provisions, which it considered to be more favorable, contained in the BIT between Argentina and Chile''.[11]

Therefore, it can be concluded that, if a third party treaty (Calpurnia-Flatland BIT) contains provisions for the settlement of disputes that are more favorable to the protection of the investors' rights and interests than those contained in the main treaty (Calpurnia-Gaul BIT), such provisions should be extended to the beneficiary of the most favored nation clause, the claimant.

22. The claimant in addition and in the alternative argues that, the non- compliance with the 18 months or the 2 months waiting period requirement should not be a bar to ICSID's jurisdiction. This is because such requirements are simple consultation period that by no means vitiate the parties consent to submit to ICSID jurisdiction.

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[8] Article 4 of Calpurnia-Gaul BIT and Article 3 of Calpurnia-Flatland BIT
[9] *Maffezini V Spain*, ICSID case No, ARB /97/7, Decision on jurisdiction (2000)
[10] *Id.,*
[11] *Siemens A.G V Argentina*, ICSID case No, ARB/02/8, decision on jurisdiction (2004)

23. In the case between *Ronald S Lauder V the Czech Republic*, this ICSID tribunal stated, "consultation period is [a] procedural [requirement] rather than [a] jurisdictional obligation and a failure to comply with it doesn't vitiate consent to the tribunal's jurisdiction." [12]

24. Another issue is, the respondent may consider Ms. Pescara's application to the commercial court of San Inocete de Irkoutsk [13] as a submission of the dispute to the competent courts of the respondent, which could be raised as a bar pursuant to Article 11(3) of the Calpurnia-Gaul BIT. However, the claimant strongly argues that such argument by the respondent is not tenable due to the following reasons;

   i) Ms Pescara's application was made only with respect to the transfer of dividends concerning the 1% shareholding, which she holds on behalf of the claimant. Therefore, not all claims were brought to the attention of the domestic court; particularly a claim based on expropriation was not made.

   ii) The application was even rejected by the commercial court stating that Ms Pescara as a mere nominee has no beneficial interest in the shares and therefore, [she] lacks standing to bring this action.[14] It is therefore the claimant's submission that none of the claims was brought to the attention of the domestic courts by Vanguard.

   iii) Alternatively, even if it could be said that the claimant had submitted its claims to the domestic courts, Article 11(3) of the BIT should not be a bar against the claimant to submit its application to one of the tribunals mentioned under Article 11(2). This is because, unlike Article 11(3) of the Calpurnia–Gaul BIT, there is no "fork-in-the –road" provision in the Calpurnia-Flatland BIT. This difference implies that an investor from Flatland can submit its claims to tribunals including ICSID after having recourse to domestic remedies whereas, a Gaulois investor cannot. As per Article 4 (the MFN clause) of the Calpurnia-

[12] *Ronald S. Lauder V. Czech republic*, Final Award, Ad hoc—UNCITRAL Arbitration Rules, IIC 205 (2001)
[13] Calendar of events-June 14, 2006
[14] Id.

Gaul BIT, this kind of unequal treatment is unacceptable and it relieves the claimant from being subject to such provision. Thus, the 'fork–in-the–road' provision of the Calpurnia-Gaul BIT should not be applied.

25. The other submission of the claimant is that, Flatland's denunciation[15] from the ICSID Convention should by no means affect the jurisdiction of ICSID extended based on the MFN provision (Article 4 of the Calpurnia-Gaul BIT). Flatland's denunciation from the ICSID Convention does not affect the applicability of the BIT between Flatland and Calpurnia. An investor from Flatland or any other beneficiary of the BIT is entitled to bring its claims to any of the tribunals mentioned under Article 7 of the Calpurnia-Flatland BIT, except ICSID, without being required to wait for 18 months and without being subjected to the "fork-in- the- road" provision so long as the BIT is there.

26. The MFN clause is intended to avoid unequal treatment. Hence, the tribunal to which this case is brought should not matter for the purpose of applying the MFN clause. What should matter is whether the Calpurnia-Flatland BIT is still in force or not. As a result, the claimant should be able to bring its claims without being required to wait for 18 months and without being subjected to the "fork-in–the–road" provision to any of the international tribunals including ICSID.

[15] On the hypothetical case footnote No 1

II. Submission on the Merits

A. Unlawful Interference in the Claimant's Investment

27. Since the Conservative Conscience of Calpurnia (CCC) won absolute majority in both chambers of the Calpurnia Parliament in November 2003, the ruling party's attitude towards the economic environment has dramatically changed. As a result, the diplomatic relations between the two countries changed to an environment of unsubstantiated allegations of political and industrial espionage and destabilization. This hostile environment, in effect, gave birth to the respondent's intention of interfering with the claimant's investment since the latter is a Gaulois national.

28. The State Fund for Commerce and Development (SFCDC) which is 100% owned by the government of Calpurnia as a majority voting block (30% direct & 22% indirect)[16] become the best means through which the respondent could highly involve in the claimant's investment and implemented its economic agenda by making different decisions to the disadvantage of the claimant.

29. After November 2003, VanCal was seen as being a non-private company in the eyes of the respondent. This was made clear by the SFCDC head, Dr Swift, at VanCal's board meeting, which was held on November 15, 2004. He said, "SFCDC did not regard VanCal as really a private company."[17]Accordingly, the interference of the government through the instrumentality of the SFCDC became very clear. This is shown by the different decisions made by the company that were proposed by SFCDC leaders. The respondent's hostile attitude towards Gaul and its nationals motivated such decisions.

30. The hostile attitude of SFCDC as a government entity towards Vanguard is clear from the statement made by Dr. Jhonatan Swift on November 15, 2004, which is attested by Mr. Korchnoi's affidavit dated 22 April 2007. On the same day, Dr. Swift stated "He will not stay at a meeting with Gaulois Spies[18] [emphasis added]

[16] Abstract from the claimants request for arbitration, on paragraph 10
[17] Calendar of events-November 15, 2004
[18] Calendar of events- November 15, 2004 and April 22, 2007

31. The subsequent (series) of decisions taken at the board of directors and shareholders meetings which are clear manifestations of the hostile attitude towards the claimant by the respondent and the latter's involvement in the investment of the former include the following:

i) The March 10, 2005 decision of VanCal board meeting. At this meeting, the SFCDC leaders expressed their clear intention of minimizing the amount of money to be paid to foreign shareholders.[19] (Vanguard international being the only foreign shareholder in VanCal).

ii) On the same day the board decided, as proposed by the SFCDC leaders, not to pay any money to the Claimant noting that, "the existing dispute between the government of Calpurnia and Gaul demands the suspension of such payment.''[20] This fact shows beyond doubt the involvement of the government in the investment and the board being a rubber stamp for its agendum of punishing Gaulois nationals through the instrumentality of SFCDC. This allegation is also clear from the fact that on November 16, 2005 Dr. Jhonatan Swift has made a statement stating that "the main objective of the company is... to protect the interests of the country. . ."[21]

32. The other unlawful interference of the respondent in the claimant's investment is manifested in the election of members to the VanCal board of directors. On November 16, 2005, government representatives ousted Ms. Pescara from VanCal board of directors and improperly rejected the two shareholder proxies held by Mr. Rindler.[22]

33. On top of the above indirect involvement of the respondent into the claimant's investment, it has also directly and determinedly involved in the claimant's investment, more specifically in

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[19] Calendar of events-March 10, 2005
[20] Id.
[21] Calendar of events-November 16,2005
[22]Calendar of events- November 16, 2005

its goodwill. Goodwill is one component of an investment.[23] Such interference of the respondent state is very clear from the following two facts:

i) The three unlawful police searches, which were conducted without having search warrant,[24] of the private houses of Vanguard international personnel, Ms. Pescara and Mr. Kolowenko.[25]

ii) The press releases issued by the Calpurnian security directorate following the searches, which agitated public sentiment against the claimant and its personnel. This no doubt negatively affected the goodwill of the claimant.

B. Discrimination Against the Claimant.

34. The concept of non–discrimination is embodied in Bilateral and Multilateral investment treaties in the National Treatment and Most Favored Nation treatment standard clauses, which are incorporated in the two BITs to which the respondent state is a party.[26]

35. According to these standard clauses, any host state is obliged to maintain at all times fundamental equality among all investors irrespective of the their nationality. This twofold obligation of any host state contains both negative and positive obligations. The obligation to abstain from actions, which are discriminatory (negative obligation) and the obligation to provide protection against any action by other organs, which have discriminatory effect (positive obligation).

36. The state of Calpurnia as a host state, however, failed to discharge the two-obligation incumbent upon it by indirectly involving itself into the claimants' investment and by taking discriminatory decisions against the claimant.

The decisions taken at the board and shareholders meeting concerning the joint venture were clearly intended to favor national shareholders at the expense of the claimant's interest.

[23] Article1 (1)(d) of Calpurnia-Gaul BIT
[24] First clarification No. 17
[25]Calendar of events- December 8, 2003, June 4, 2004 and July 17, 2004
[26]. Article 4 of Calpurnia-Gaul BIT and Article. 3 of Calpurnia-Flatland BIT

i) On March 10, 2005, SFCDC leaders expressly declared their intention to decrease the amount of money to be paid to the foreign shareholders to the minimum.[27]

ii) On the same day, with the intention to preserve the right of Calpurnian shareholders the company, based on the idea proposed by of the SFCDC, unlawfully and discriminatorily suspended the payment of any sum of money to the claimant while national investors were paid.[28]

iii) On September 28, 2006 in the absence of any provision to that effect under the memorandum of association of the company and without Vanguard's consent, dividends due to it were credited to Vanguard's account on VanCal's books[29]while, national investors were actually paid.

37. Concerning its positive obligation (the obligation to protect), the respondent has failed to take any protective measures while SFCDC through instrumentality of the board made the above arbitrary and discriminatory decisions against the claimant's investment.

38. In addition to the discriminatory acts stated under paragraph 36(i-iii), VanCal's failure to pay license fees and sums due in relation to the technical assistance agreement clearly shows the violation of the claimant's right of free transfer, as stated in the two BITs[30], by the respondent. This violation was done by the respondent itself obstructing the transfer or by failing to prevent such obstruction.

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[27]. Calendar of events- March 10, 2005
[28]. Id.
[29]. Calendar of events-September 28, 2006.
[30]. Article 8 of Calpurnia-Gaul BIT and Article 6 of Calpurnia-Flatland BIT.

C. Violation of the Fair and Equitable Treatment

39. The state of Calpurnia as a host state is obliged under international law and the specific BITs, to which it is a party, to provide fair and equitable treatment and full protection and security to foreign investments and investors within its territory.[31]

40. The obligation to provide fair and equitable treatment primarily requires a host state to avoid engaging in activities, which are fraudulent, in bad faith, discriminatory actions or omissions. It also requires a host state to protect and/or avoid deprivation of investors from acquiring rights in a manner that would result in the unjust enrichment of the state.

41. The tribunal in the case *Siemens Vs Argentina* has noted that, "fair and equitable treatment denotes treatment in an evenhanded and just manner, conducive to fostering the promotion and protection of foreign investment and stimulating private initiative."[32]

42. In addition, some elements and concrete examples of what acts or omissions would amount to a failure to accord fair and equitable treatment are now being established by recent tribunal decisions including ICSID tribunals. They have found discrimination against foreigners, state actions or omissions that deny investors justice, failure to accord due process or procedural fairness, lack of transparency and disruption of investors' legitimate expectations as all violating, in certain circumstances, principles of fairness and equity.

43. The respondent state, however, has engaged itself in actions and omissions that are clear cases of violation of the fair and equitable treatment obligations. The following facts, among many others, prove this point.

    i) On December 7, 2003, June 3, 2004 and July 15, 2004 the respondent unlawfully subjected the houses of Vanguard International personnel to police searches[33], which negatively affected the personnel from performing their duty towards the claimant. Moreover, the claimant's application to have those

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[31] Article 2of Calpurnia-Gaul BIT

[32] *Siemens A.G V Argentina*, ICSID case No, ARB/02/8, decision on jurisdiction (2004)

[33] Calendar of events- December 8, 2003, June 4, 2004 and July 17, 2004

searches declared unlawful and request for compensation was dismissed by the Calpurnian Constitutional Court [34] which in effect deprived the claimant's right to obtain justice as one component of the fair and equitable treatment standard.

ii) Similarly, on June 14, 2006 the Commercial Court of San Inocente de Irkoustk summarily dismissed the application by Ms. Pescara to order VanCal to transfer to her account in Gaulois any payment due to her in relation to the 1% shareholding that the claimant indirectly possesses through her.[35]

iii) More importantly, the respondent through the instrumentality of SFCDC is making decisions with regard to the joint venture, which in effect denied the claimant from earning any sum of money due to it in relation to the profit the company generated, the technical assistance and the patent for the use of "VANGUARD INTERNATIONAL" trademark. This is, therefore, a clear violation of one component of fair and equitable treatment standard that condemns discriminatory deprivation of sums of money due to any foreign investor.

D. Unlawful Expropriation of Claimant's Investment

44. Under international law it is a well-settled principle that investments of aliens shall not be expropriated except for public purpose and against prompt, adequate and effective compensation. This principle is also recognized in the two BITs to which the respondent is a party.[36]

45. As it has been clearly stated under Article 6(1) of the Calpurnia-Gaul BIT, expropriation of investments may occur either directly (by deliberate and formal taking) or indirectly by measures tantamount to expropriation (i.e., through actions or omissions that result in substantial deprivation of the investment even though the actual title of the investment remains with the investor.) Therefore, the respondent has rendered the property rights of

[34] Abstract from the claimants request for arbitration, on paragraph 17
[35] Calendar of events-June 14, 2006
[36] Article 6(1) of Calpurnia-Gaul BIT and Article 5(1) of Calpurnia-Flatland BIT

the claimant so useless, through actions and omissions that it will be deemed to have expropriated them.

46. Arbitral tribunals including ICSID tribunals in different cases like *Sempra Vs Argentina, PSEG Vs Turkey, Eastern sugar Vs Argentina, and Tippets Vs TAMS (AFFA)* have decided that a government decree or any other legislation is not a necessary pre-requisite to say that there occurred expropriation.

47. Therfore, though the respondent did not enact any legislation of expropriation, it has engaged itself in many actions and omissions, which resulted in indirect expropriation of the claimant's investment by violating Article 6 of the Calpurnia-Gaul and Article 5 of Calpurnia-Flatland BITs in particular and international law in general.

48. Therefore, it is the claimant's submission that expropriation need not be direct or result in the transfer of title or physical possession but that it can also be indirect if the result as held by the tribunal in Metalcald is to deprive the owner "...in whole or in significant part, of the use or reasonably to be expected economic benefit of property even if not necessarily to the obvious benefit of the host state."[37]

49. The tribunal in the *Lauder* case rightly explained, stating, "[t] he concept of indirect (or "de facto", or "creeping") expropriation is not clearly defined. Indirect expropriation or nationalization is a measure that does not involve an over taking, but that effectively neutralized the enjoyment of the property."[38] The essential question is therefore, to establish whether the enjoyment of the property has been effectively neutralized. It is clear in the claimant's case that the arbitrary measures taken by the respondent constitutes a substantial deprivation of the fundamental rights of ownership.

50. The measures taken by the respondent, which resulted in indirect expropriation, are:

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[37] *Metalcald Corporation V. Mexico*, Award, ICSID Case No ARB (AF)/97/1,IIC 161 (2000), 30 August 2000

[38] *Ronald S. Lauder V. Czech republic*, Final Award, Ad hoc—UNCITRAL Arbitration Rules, IIC 205 (2001)

i) Royalties and other sums due to the claimant from trade mark licensing and the technical assistance agreement have not been paid to the claimant due to the decision of the SFCDC board. Hence, the claimant has been deprived of its investments in a substantial amount as of May 27, 2005.

ii) The above actions and omissions of the respondent, which resulted in the indirect expropriation of the claimant's investment, are not the only ones. The respondent has also involved itself in the management power of the claimant. This is clear from the following facts

A. On November 16, 2005 the already accepted proxies given by Vanguard were improperly rejected claiming that they were not formally valid for the purpose of the November 16, 2005 meeting. This meeting, however, was not an independent meeting rather it was a meeting that was postponed from the October 11, 2005 meeting[39] and for this meeting the proxies held by Mr. Rindler were formally accepted as usual on October 5, 2005. On this meeting Ms Pescara was voted off from the board of directors[40]

B. The hostile condition that existed in Calpurnia towards Gaulois nationals forced the claimant's personnel to leave the country.

C. Ms. Pescara was also denied renewal of her three-year business visa, which in effect obstructs her from performing her duties to Vanguard International.

The cumulative effect of these actions and omissions on the part of the respondent has effectively deprived the claimant of its participation in the management of its investment. The tribunal in some of its decisions especially in the case between *PSEG Vs Turkey* has found that "acts of host states like deprivation of investors from the control of the investment,

[39] First clarification No 8
[40] Calendar of events- October5, 2005

the management of day-to-day operations, involvement in the appointment of officials and impeding distribution of dividends amounts to indirect expropriation." As it has been shown above, the respondent has done all these and expropriated the claimant's investment without any compensation.

III. Prayers for Relief

Based upon all the above submissions, Vanguard International respectfully requests the Tribunal:

1. To declare that the respondent unlawfully interfered in the Claimant's investment and to order the former to pay compensation for damages caused due to the interference.
2. To declare that the respondent unlawfully discriminated against the Claimant's investment and to order it to pay compensation for damages caused to the claimant due to the discriminatory measure.
3. To declare that the respondent has breached its obligation of providing fair and equitable treatment to the Claimant and to order it to pay compensation for such breach.
4. To declare that the respondent has unlawfully expropriated the Claimant's investment and order it to pay compensation.
5. To order any such further relief as may be available and appropriate in the circumstances.