The International Court of Arbitration of the ICC (“**the Court**”) acknowledges receipt of Justice Armawi’s Statement of Acceptance, Availability, Impartiality and Independence (“**the Statement**”), dated 24 September, and, Respondent’s letter dated 26 September 2014.

Justice Armawi declared in his Statement that “*while he has the requisite experience, knowledge and understanding of real estate laws and regulations, conventions and practices in his country, he does not have five years experience with construction and/or management of projects similar to the Project in question*”*.*

In its correspondence, Respondent objects to the nomination of the prospective arbitrator claiming that although it holds Justice Armawi in “*very high regard*”, and does not doubt “*his credentials and achievements in the field of law*”, “*the lack of at least five years experience with construction and/or management of projects similar to the Project makes it impossible for Justice Armawi to act as an arbitrator in this case and asked the ICC Court not to confirm him as an arbitrator*”.

With regards to Article 13(1) of the ICC Rules of Arbitration (“**the Rules**”), the Court may confirm the nomination of the each arbitrator, as it deems appropriate.

The Arbitration Clause (“**the Clause**”) contained in the construction contract (“**the Contract**”) provides that “*each arbitrator so appointed shall have the requisite experience, knowledge and understanding of real estate laws and regulations, and conventions and practices of the Country X. In addition, none of such arbitrators shall be a Person who has any pecuniary interest in or relationship with any of the Parties and shall have at least 5 (five) years experience with construction and/or management of projects similar to the Project*”.

Firstly, it results from the Clause that the Parties agreed onto the nomination of arbitrators with strong links to the Country X. Given that Justice Armawi holds the function of Supreme Court Judge of Country X, the Court considers thereof that Justice Armawi demonstrates sufficient links with regards of his nationality, residence and other relationship with the countries of which the parties or the other arbitrators are nationals.

Secondly, as the Parties’ agreement provides for several detailed requirements with regards to the skills of prospective arbitrators, the Court shall evaluate the prospective arbitrator’s availability and ability to conduct the arbitration in light of the criteria contained in the above referenced Clause.

Respondent points out “*the lack of at least five years experience with construction and/or management of projects similar to the Project*”. The Project is defined in the contract as *“the development, in accordance with Real Estate Act, other Applicable Laws and Schedule IV, of the Project Land by construction thereon of commercial and serviced apartments, hotel and information technology units to include, subject to the actual area sanctioned for construction as per the architectural drawings approved by the Investors, a constructed area of approximately 1.6 million square feet, including car parks common areas, internal roads, landscaping, cafeteria and other ancillary facilities as may be permitted by the relevant local Applicable Law and as mutually agreed between the Parties*”.

It results from the peculiarities of the Project, and from the wording and layout of the Clause, that the Parties did not mean to provide an exhaustive list of criteria to respect, but rather guidelines to follow to nominate an agent with a high degree of expertise.

Thus, with regards to Justice Armawi’s Statement, the Court confirms its nomination.

The International Court of Arbitration of the ICC (“**the Court**”) acknowledges receipt of Claimant 1 and 2, Respondent and Mr. Antares’ correspondences, respectively dated 24, 29 and 30 September.

Claimants challenge Mr. Antares acting as an arbitrator. Claimants allege that Mr. Antares’ and Mr. Polaris’ serving as co-counsel in several arbitrations and litigations “*(i) prove the existence of a long- standing professional association between them, (ii) which enables the latter to have an insight into Mr. Antares’ legal reasoning and, thus, to secure an advantage over the Claimants’ counsel*”. Therefore giving rise to “*justifiable doubts as to Mr. Antares’ impartiality*” and “*independence*”.

According to Article 14(3) of the ICC Rules of Arbitration (“**the Rules**”), the Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge.

As with regards to the admissibility of the challenge, Article 14 of the Rules provides for the submission to respect a form and to be contained within a certain delay. The Secretariat of the ICC acknowledged receipt of Claimants’ submission of a “Written Statement” specifying the facts and circumstances of the challenge on 18 September, that is to say 16 days after the Secretariat’s letter confirming the appointment of Mr. Antares as Sole Arbitrator. The submission of Claimants’ statement was followed by an exchange of letters.

Therefore, in accordance with Article 14(1) and (2), the Court considers that the Parties have been given the opportunity to comment the challenge within a sufficient period of time and the challenge to be admissible.

In accordance with Article 14 of the Rules, the Court will proceed now to the examination of the merits of the challenge. Under Article 14(1) of the Rules, a challenge may be brought “*whether for an alleged lack of impartiality or independence, or otherwise*”.

Indeed, any close links with the Parties to the arbitral proceedings compromise an arbitrator’s independence and impartiality. Two distinct types of relationships can be established hereof.

Firstly, Claimants highlights prior relationships between the arbitrator and a Party, as Mr. Antares, the sole arbitrator, and Mr. Polaris, the Respondent’s Council, “*were joint legal advisers to Claimant 2 before a national court*”.

Mr. Antares states that his involvement in the Case involving Claimant 2 “*was limited to the drafting* *of a legal opinion regarding the annulment proceedings*”. Therefore, it seems that the relationship between the arbitrator and Claimant 2 is not of a nature to impact its independence and impartiality.

Secondly, Claimants point out relationships between the arbitrator and a Party’s Counsel. Indeed, Mr. Antares and Mr. Polaris “*have previously acted as co-counsel in three arbitrations*”, and, “*in between 2009 and 2011*” they “*jointly represented*” two parties in litigation proceedings.

Furthermore, as stated by Respondent, “*all proceedings*” where they acted together “*ended a long time ago with the exception of one that ended in April 2011*”, and, “*Mr. Antares and Mr. Polaris charged their fees separately*”, which Mr. Antares confirmed only as far as it concerned the last case.

Therefore, if the relationship between Mr. Antares and Mr. Polaris cannot be qualified as commerce stream *per se*, the adjunction of “*Mr. Antares’ failure to disclose his participation*” in the above mentioned cases makes it “*sufficient to give rise*” in the Claimants’ spirit“*to justifiable doubts*” as with regards to his impartiality and independence.

Thus, the Court accepts the challenge and refers the Parties to Article 15 of the Rules for the replacement of the said arbitrator. The Court also reminds the Parties of the necessity to conduct the arbitration in an expeditious and cost-effective manner.

Yours faithfully,

The International Court of Arbitration of the ICC (“**the Court**”) acknowledges receipt of Company (“**the Claimant**”) and State-Owned entity (“**the Respondent**”)’s correspondences.

On 30 August 2014, Respondent filed a challenge against the Claimant’s nominated arbitrator, Mr. Zuckenburg, because of his participation as an expert witness appointed by Group Inc in a case filed by the latter against Z’s Ministry of Interior in the dispute arising out of the contract for the refurbishment of Z Ministry of Interior’s information data system (“**the Group case**”).

According to Article 14(3) of the ICC Rules of Arbitration (“**the Rules**”), the Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge.

As with regards to the admissibility of the challenge, the Secretariat of the ICC acknowledged receipt of Claimants’ submission of a written statement specifying the facts and circumstances of the challenge on 30 August, 24 days after the Secretariat’s letter confirming the appointment of Mr. Zuckenburg as co-arbitrator. The submission of Claimants’ statement was followed by an exchange of letters, giving to the Parties the opportunity to comment the challenge within a sufficient period of time. Therefore, in accordance with Article 14(1) and (2), the Court considers the challenge to be admissible.

As to the merits of the challenge, under Article 14(1) of the Rules, a challenge may be brought “*whether for an alleged lack of impartiality or independence, or otherwise*”.

Respondent indicates that “*in the past eight years Mr. Zuckenburg has rendered three expert opinions expressing opinions and views that are diametrically opposed to Respondent’s position in this case*”. In such regard, “*in the Group case Mr. Zuckenburg has expressed views against Z’s judiciary indicating that there is an absolute political control of the executive over the judiciary and that it is unreasonable for Group Inc to litigate its dispute with Country Z in Z’s courts*”, and that, “*Mr. Zuckenburg has commented disapprovingly of the provision of the Z’s Arbitration Law*”. Given the precise circumstances of the Group case and this arbitration and Mr. Zuckenburg’s different roles in them, Respondent alleges “*he cannot act impartially as he evidently has a consolidated opinion about Z’s legal system and most of the issues in dispute in this arbitration*”.

Claimant states the issues at the heart of this dispute are dissimilar to those in the Group case. Neither Claimant nor Respondent were parties to the Group case. The two proceedings are completely separate and distinct.

Mr. Zuckenburg claims that the facts raised by Respondent refer to an unrelated issue in which he has had limited involvement as an independent expert retained by counsel for one of the parties which are not involved in this arbitration. He has not been counsel for any of the parties and has no financial or professional interest in the outcome of either the Group case or this arbitration. His independent assessment in the Group case concerning the conditions present in Z’s legal system, relate to a question of whether it has become impracticable to adhere to an arbitration forum selection agreed upon by the parties to the Group case, which established the capital of Country Z as the place of arbitration.

Therefore, as it appears from the exchange of letters that Mr. Zuckenberg has produced three legal opinions in a case involving Group Inc and Z’s Ministry of Interior, who are not parties to this arbitration, with regards to the Group Case, deprived from any links with the present proceedings. Therefore, even though it results from the exchange of letters that Mr. Zuckenberg has limited involvement in the Group Case, his absence of personal or professional links with the parties, are not sufficient grounds for challenge.

The Court rejects Respondent’s challenge against Claimant’s nominated arbitrator and reminds hereof the Parties of the necessity to conduct the arbitration in an expeditious and cost-effective manner.

The International Court of Arbitration of the ICC (“**the Court**”) acknowledges receipt of Justice Armawi’s Statement of Acceptance, Availability, Impartiality and Independence (“**the Statement**”), dated 24 September, and, Respondent’s letter dated 26 September 2014.

The International Court of Arbitration of the ICC (“**the Court**”) acknowledges receipt of Claimants 1 and 2, Respondent and Mr. Antares’ correspondences, dated 24, 29 and 30 September.