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Dear Mr. Fouret, dear Mrs. Caudrillier,

we took notice of the sole Arbitrator's statement dated 5 May 2011.

The sole Arbitrator doesn't describe correct the hearing in Lugano of 8 January 2008. We agree that the discussion happened during this hearing. During a break Dr. Patocchi had in Italian a private conversation with avv Solari. They did address each other with "tu". Mr. Klinkert was irritated about this and informed Dr. Thelen. Dr. Thelen suggested to asked the sole Arbitrator for the reason of this pronoun. Thereafter Mr. Klinkert asked the sole Arbitrator who to understand the usage of "tu". The sole Arbitrator answered that in Switzerland are lawyers who use the pronounce "tu" among themselves. Not knowing the real situation the claimant accepted the sole Arbitrator's explanation and considered the usage of "tu" as a Swiss speciality. Later in this hearing the sole Arbitrator mentioned that he grew up in Lugano and that his mother is still living in Lugano. He did not mention his school time in Lugano and also not his time at the University of Geneva. He also did not mention avv Solari's education history.
It is a surprise to read that the sole Arbitrator and avv Solari visited the same school in Lugano. If the sole Arbitrator would have explained the complete situation regarding his relationship to Mr. Solari the claimant would have asked the ICC Court of Arbitration for a change of the sole Arbitrator immediately.

It is not the spirit of Arbitration under the rules of ICC to let two persons work who know each other since the common school time. The world is big enough to hinder such a small minded and local acting of officials.

We point out that the sole Arbitrator's statement is not correct when he reports:

- to have disclosed the relationship to avv Solari at the beginning of the hearing
- to have explained that he visited the same school as avv Solari
- that he did not talk about the practice of Swiss lawyers using normally the pronoun "tu".

We attach the written testimonies of Mr. Klinkert and Dr. Thelen regarding the hearing in Lugano of 8 January 2008. They are witnesses and ready to confirm their written statements to the ICC International Court of Arbitration in a hearing.

There is another suspected circumstance regarding the sole Arbitrator's relationship to avv Solari. For the first time on 10 May 2011 Dr. Thelen examined the website of avv Solari and took notice that his year of birth is 1955. This is also the sole Arbitrator's year of birth. Both gentlemen may be born in Lugano. From the sole Arbitrator's today statement we learned that they attended the same school. In the sole Arbitrator's statement is not mentioned that he and

Mr. Solari started their study at the University of Geneva in the same year 1974. If the descriptions in their websites are correct it seems to be impossible that they did not have seen each other after their school time in Lugano. The sole Arbitrator should explain how it could happen not to have had contact with avv Solari since more than 35 years. Their time at the University of Geneva ended in 1977. The period of time of more than 35 years after losing the contact seems doubtful. The University time of both persons is described in their attached websites.

The claimant does not accept the sole Arbitrator's statement and expects further detailed information. Questions are for example:

1. Did the sole Arbitrator and avv Solari attend the same class in school and how long did this happen?

2. Did they start at the University in Geneva at the same semester?

3. Did they have social or private contacts during their school time and their time at the University of Geneva?

4. Are the parents or brothers and sisters or children resp. uncles and aunts of avv Solari and the sole Arbitrator in a relationship to these two persons?

5. Where the sole Arbitrator and avv Solari did spent their time as post-graduate civil service trainee's time and when did it happen?

We stress again to have taken notice of these private contacts between the sole Arbitrator and avv Solari first time by reading the statement to the ICC International Court of Arbitration dated 5 May 2011. The claimant does not accept the sole Arbitrator's behavior. He did not tell the truth to Mr. Klinkert when he had been asked for the reason of the pronoun "tu". This shady attitude must have a reason.

The claimant wants to point out his doubts regarding the correctness of the sole Arbitrator's explanations.

The claimant insists on the investigation of the circumstances during the hearing in Lugano of 8 January 2008. The sole Arbitrator should be asked for a more detailed statement to the following questions:

6. Did the sole Arbitrator start the hearing in Lugano of 8 January 2008 with the disclosure regarding his relationship to avv Solari or did it happen as the result of Mr. Klinkert's question during the break and during a private conversation between the sole Arbitrator and avv Solari?

7. Did the sole Arbitrator explain the reasons for using the pronoun “tu” in this hearing as an answer to the claimant’s question?

The work off for this hearing is important. After the examination the ICC International Court of Arbitration may declare if the sole Arbitrator’s acting of is correct in relation to the claimant under the view of his relationship to avv Solari.

In the official paper of the ICC International Court of Arbitration of 19 October 2007 the sole Arbitrator confirmed to be absolutely independent and to see no fact or circumstance that need to be disclosed because they might be of such nature as to call into question his independence in the eyes of any of the parties. Therefore it is remarkable to read his statement and to take notice of his wrong description to the hearing in Lugano of 8 January 2008. In case the relationship to avv Solari would have been absolutely unimportant it would have been the best option to describe the common school time to the claimant and to mention as well the common years spent in the University of Geneva. Why these facts have been hidden?

The claimant points out that the sole Arbitrator was obliged to describe his relationship to avv Solari upfront to the Arbitration procedure to the ICC International Court of Arbitration and also to the claimant. He simply putted his cross in the questionnaire in the wrong box. The claimant got the impression to have an Arbitrator who is really independent. The claimant never would have accepted Mr. Patocchi as sole Arbitrator after taking notice of such a relation as it is now disclosed. The claimant wants to have an absolutely independent Arbitrator and this has to be guaranteed by the ICC International Court of Arbitration.

The claimant confirms that the point of view is the hearing of 8 January 2008 and that the hearing of 3 / 4 May 2010 is not relevant. After this hearing of 8 January 2008 the claimant did not raise this matter again.

After the receipt of the Final Award Mr. Klinkert contacted the Zürich lawyer Mr. Brusa and asked him to work out the appeal. During a phone conversation with him, Mr. Klinkert told Mr. Brusa that during a hearing (8 January 2008) he noted that the sole Arbitrator used the “tu” in a small talk with avv Solari. Brusa explained that some lawyers in Tessin use the wording “tu”, even not being in a familiar relationship.

The sole Arbitrator’s acting in this case, as described in the *domanda di ricusazione* dated 29 March 2011, shows the reason for the challenge procedure. In his statement dated 5 May 2011 the sole Arbitrator did not go into detail. He is mistaken when insisting on the final effect of his Award. The challenge can take place until the end of the Arbitration. That means until the last decision in this case. In other words the lodged Appeal to the *Schweizer Bundesgericht* is relevant. The competence belongs to Article 11 (2) of the guidelines for arbitrating under the ICC Rules of Arbitration the ICC International Court of Arbitration.

If the sole Arbitrator states that all his decisions are excluded as a result of the final Award the claimant does not agree. The point of view in a challenge is not focused on a special theme. The principle for a challenge procedure is:

> The investigation has to include all acts and decisions of the Arbitrator if there is a concrete reason for the challenge request. If the claimant shows that he must be afraid to have a prejudiced Arbitrator the ICC International Court of Arbitration has to change the Arbitrator.

In the *domanda di ricusazione* the claimant described several aspects. They are all important and show the prejudice. So the sole Arbitrator has to give his detailed statement. His today statement does not contain comments. He has to explain for example the following conspicuous decisions:

1. The Arbitration procedure was so extremely extended that the time in force (three years) of the Employment Contract was exceeded. [Stipulation of Employment Contract on 12 March 2006 (Allegato 1) and hearing in Lugano of 3/4 May 2010]

   On 8 April 2008 the sole Arbitrator asked Dr. Thelen to excuse the three month of inaction after the first meeting in Lugano on 8 January 2008. The sole Arbitrator told him to be unable to give a schedule for the expected hearing.

   The long time of Arbitration procedure also produced an increase of the claims as the result of preventing the statute of limitation of the demands. The object of the Arbitration raised from 1.000.000,00 € to 1.328.514,25 € as a result of the delay.

   The object of the initial claim was simply an ascertainment of the stipulations of the employment contract (Allegato 1). The claimant cannot understand why this initial claim was not terminated by the Arbitrator within six month. During the arbitration procedure the case has become a real big volume at last.

2. Violation of legal hearing in fact of not discussing the several aspects of the case with the parties. Also rejecting the completely renewed documents.

3. In § 147 award the sole Arbitrator states that claimant has not presented all existing documents. As result of this the claimant has to bear resulting disadvantages. The claimant values this statement as an unbelievable affront of the sole Arbitrator against the claimant.

4. Refusal of examination Mr. Klinkert and Dr. Thelen as witnesses to several aspects of the matter in a way of anticipated evidence appreciation. The court in Ried/Innkreis heard Mr. Klinkert and Dr. Thelen in cases referring the relation of the claimant to the defendant’s K-Service GmbH in the same connection and the judges believed in them.

5. Refusal of wide parts of the claimant’s presentation with the stereotyped reason not to understand the description without heeding the documentations and hearing the witnesses and discussing the matter with the claimant.

6. Rejecting of indisputable facts with the justification that the claimant did not offer any proof.

7. Intervention during the hearing of the witness Runti and disturbing the claimants acting by refusing more questions on the 23.000,00 € cash payment done to the defendant who produced a tort against the claimant. The Final Award doesn't content any comment on this point. But the sole Arbitrator had to decide in favour of the claimant. The opportunity of this hearing of the witness Mr. Runti was the clearing up of a sum of completely 250.000,00 €, given in cash from the claimant to Mr. Runti.

8. No acceptance of damaging positions in relation to the defendant's K-Service GmbH in the same connection confirmed by the court Ried/Innkreis (allegato 19 and 19.1).

9. In § 127 Award the sole Arbitrator states that the defendant in accordance to the contract paid regular the monthly installments. This is a false statement of the sole Arbitrator who did not mention that the claimant was on delay for many months in 2006 and in the beginning of 2007.

10. In § 187 Award the sole Arbitrator determined that the claimant never denied that the defendant became never managing director. With that wrong statement the sole Arbitrator is putting the Employment Contract (allegato 1) upside down, because in this contract is expressly written and undersigned by the defendant this nomination with the date 6 April 2006.

11. The hearing of 3/4 May 2010 in Lugano was scheduled for three days and the sole Arbitrator announced that a further meeting could be held in case of necessity. In fact the Arbitrator finished the meeting after two days and did not schedule another meeting. So the claimant had no chance to adjust incorrect testimonies, because the sole Arbitrator sent back three binders with documents he had previously complained as partly incomprehensible. During the hearing he offered no opportunity to explain the facts to him.

12. The sole Arbitrator took over the repeatedly accusations of the defendant and its witnesses regarding the fiscal correctness of the companies involved in the lawsuit without giving the claimant the chance to correct these false statements (protocol 3 May 2010, page 92) and without examining the truthfulness by himself.

13. The claimant can't understand why the sole Arbitrator has not been able to understand within a time of several years basic points of the lawsuit, whereas the lawyer Brusa was able within two weeks to file an appeal to the *Schweizer Bundesgericht* in which all "non comprehensible" cases were correct described.

The Arbitrator's letter dated on 5 May 2011 also shows his prejudice under a new aspect. He pointed out to support the claimant's lawyer Dr. Thelen in acting by doing a conversation in German language. That is true und this way of handling the telephone meetings between the

lawyers and the sole Arbitrator was very helpful. The claimant confirmed this helpful acting in the *domanda di ricusazione* and there is not any criticism on it. The sole Arbitrator wrote that he does not understand the criticism he shows that he has a negative attitude regarding the claimant and his acting is not free of prejudice. This way of acting is not acceptable. Also his discussion of five challenges is not agreeable. His description of the dates of the documents (28/29 March 2011) is correct.

Dr. Thelen reproduced the document for the sole Arbitrator from a word-Data file and he sent to the ICC International Court of Arbitration from the pdf-Data file, which he had received one day before the word data file. The content of both documents is absolutely the same.

If the Sole Arbitrator states that he received five challenges in the sum he does not see this simple fact. This part of the Arbitrator's statement shows also his prejudice in relation to the claimants. During the whole arbitration procedure similar problems happened. The sole Arbitrator mentioned in the hearing in Lugano of May 2010 that he does not mind to examine all the documents given by the claimants because of incomprehensibility of connections. But he did not give the chance to make the things more clearly for him. He closed the Arbitration without accepting the completely renewed documents.

The ICC International Court of Arbitration is able to decide if the sole Arbitrator failed by sending the Declaration of Acceptance and Statement of Independence dated on 19 October 2007 without mentioning his relationship to avv Solari. The form offered him two possible answers. He used the declaration of absolute independence, but he had to use the alternative and he had to describe his relationship to avv Solari. So neither the ICC International Court of Arbitration would have installed him as the Arbitrator nor would the claimant have accepted him for this position.

If the sole Arbitrator declares not to have had a contact with avv Solari outside of the official telephone meetings and hearings the claimant would like to know how he received the invitation for the first meeting (8 January 2008) in avv Solari's office. He is not sure if that happened as a result of comment meeting and he does not remember who proposed to have the meeting in avv Solari's office. It would be helpful to ask the sole Arbitrator for his additional statement.

The claimant can't imagine that the ICC will support and accept an Arbitrator who acted with incorrect statements. The attached two testimonies prove these facts.

Dr. Thelen
Rechtsanwalt