

MOCK CASE

GoArb Madrid 2022

Francis Durin v. The Shire

ICSID Case No. ARB/22/89

1. Mr. Francis Durin [**“Mr. Durin”** or **“Claimant”**] was born on 31 December 1957 in Udun, in the Republic of Mordor, a member country of the Middle Union¹, a union of democratic countries characterized by the free movement of goods, services and people².
2. Coming from humble beginnings, Mr. Durin started working from a very young age and was involved in multiple businesses, from real estate to the commercialization of rare-earth minerals. Having discovered a passion for minerals, Mr. Durin went on to get a degree in geology, graduating top of his class.
3. In 1979 Mr. Durin accepted a job as a geologist at Mount Doom, Mordor’s biggest ore mine. With much hard work, he eventually rose up to Chief Operations Officer of Mount Doom Co. in 1990.
4. But Mr. Durin had other passions in life, beyond geology; among other things, he was deeply engaged in his country’s politics. In 1998 Mr. Durin decided to run for Mayor of Udun, as a candidate for the ruling party, and won by a landslide. He held this position until 2002.
5. The politics of Mordor were delicate. The same ruling party had been in power since 1980 and even though elections had been held every four years, some international observers had questioned their outcome. With the turn of the century, Mordor’s democracy progressively deteriorated: power started to be concentrated in the Government, freedom of speech was slowly curtailed, and rumours of persecution began to spread amongst the opposition.
6. In 2003, after leaving his position as Mayor, Mr. Durin decided it was time to launch his own enterprise. He incorporated his own company, Ash Co., and started to prospect Mordor’s lands for a mining venture. Thanks to his political connections, and with his knowledge of geology and mining operations, in 2004 Mr. Durin secured a concession for a mining project in the north of Mordor.
7. Mr. Durin’s endeavours were a huge success. He was soon able to expand his mining operations and Ash Co. became the biggest mining company in the Republic of Mordor, with a turnover of over USD 3 billion by 2011.

¹ A map of the Middle Union is available as **Exhibit 2**. All countries of the Middle Union are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [**“ICSID Convention”**].

² This Union does not concern any other common policies (e.g., agriculture, monetary, political, defense, etc.). It is merely an area of free movement of people, goods and services.

8. That same year of 2011 Mr. Durin decided it was time to expand his operation not only to neighbouring countries of the Middle Union, but also to new sectors.
9. After having prospected the market in the neighbouring Kingdom of Rohan³, he bought several pieces of land in the capital, Edoras, at a very attractive price, and constructed several luxury compounds. This venture was another huge success, and Rohanese outlets started calling Mr. Durin the “Mordorian Tycoon”.
10. Thanks to his influence, Mr. Durin became a recurrent presence amongst the Rohanese elite. In 2013 married Rohanese socialite, Lady Laura Eon, known for her close ties with the Rohanese royal family. That same year they moved to the Trend Park apartment building, where some of Edoras’ most expensive apartments are located.
11. In 2014 Mr. Durin decided to expand his mining operation to The Shire⁴, a small country of approximately 5 million people, with a soil rich in minerals. Mr. Durin identified vast deposits of galena⁵ in the south of The Shire, which were ideal for the start of his operation. He made plans to obtain a mining concession and start prospecting.
12. Thanks to his reputation in the mining sector, Mr. Durin was able to secure a concession of over 10,000 ha. in The Shire, for a period of 15 years. For this purpose, he incorporated Ash (Shire) S.A., which obtained the concession in 2015. Mr. Durin decided to build four shafts and three process facilities in the mine, which enabled him to extract and produce large quantities of a lead concentrate. By 2020, Ash (Shire) S.A. was set to become one of the main producers and exporters of lead (one of the main components of defensive armament) in The Shire.
13. However, dark skies were hovering over the Middle Union: concerns were growing amongst Middle Union leaders regarding the progressively autocratic turn that the Republic of Mordor was taking. After the prime minister of Gondor⁶ (The Shire’s neighbouring country) made a public declaration on 22 March 2021, criticizing the Government of Mordor for its increasingly “arrogant and dictatorial” stance, the Republic of Mordor threatened to invade Gondor.
14. Several countries of the Middle Union immediately condemned Mordor’s threat, stressing that the Union was characterized by peace and justice between nations. On 25 March 2021, The Shire’s president issued a declaration expressing his country’s commitment to peace but noting that they were prepared to take any measures necessary to protect their security against the actions of “outlaw States”, including requisitioning companies of national interest or expelling nationals from such outlaw States from The Shire.

³ The Kingdom of Rohan is a member of the Middle Union.

⁴ The Shire is a member of the Middle Union.

⁵ Galena, also known as lead glance, is the natural mineral form of lead(II) sulfide (PbS). It is the most important ore of lead (and also an important source of silver).

⁶ Gondor is a member of the Middle Union.

15. On 5 April 2021 Mr. Durin applied for citizenship of the Kingdom of Rohan, which, thanks to his influence and his marriage to Lady Eon, he obtained in a matter of weeks.
16. That same month, Mordor made good on its threat and invaded the south of Gondor. This shocked the Middle Union. Fears of further unrest brewed throughout the member States, which immediately imposed sanctions against the Republic of Mordor and threatened to expel it from the Union.
17. Three weeks later, on 7 May 2021, citing fears that the attack on Gondor might spill over to neighbouring countries, The Shire's Ministry of Defence informed Mr. Durin that the State needed to take over the operation of his mine.
18. Mr. Durin protested this decision, and held several meetings with Government officials, including the Minister of Defence. To no avail: on 1 June 2021 the Shire's administration revoked Mr. Durin's concession, invoking "imperious reasons of public interest". On 8 June 2021 a delegation from The Shire's army took over the mining operation.
19. Mr. Durin launched an administrative appeal against the revocation of his mining concession, arguing that the administration had exceeded its powers; but the case was quickly dismissed, after the first instance administrative court found that there were imperious motives of public interest in the administration's decision.
20. In August 2021 Mr. Durin wrote an inflammatory letter to the Minister of Defence, claiming that he had brought good business to The Shire and that there was no reason for the intervention of the military, since Mr. Durin would be happy to sell the products of his mining operation to The Shire at a bargain price. Furthermore, Mr. Durin noted that no other mining concessions had been requisitioned or taken over by the Shire's Government.
21. The Minister of Defence's answer came a week later, in a letter in which he argued that Mr. Durin's mining concession had faced opposition from local communities, and that the State had to intervene for the sake of these communities.
22. On 15 September 2021, Mr. Durin once again wrote to the Minister of Defence, declaring that he was prepared to negotiate a compromise with the State, but if negotiations failed, he would be forced to start arbitration proceedings under Article 7 of the Agreement on the Promotion and Reciprocal Protection of Investments between The Shire and The Kingdom of Rohan⁷, signed on 30 January 2003 (which entered into force on 18 May 2006) [henceforth the "**Treaty**" or the "**BIT**"]⁸.
23. On 1 October 2021, the Government of The Shire agreed to negotiate with Mr. Durin. Several high-level meetings took place, where the payment of a

⁷ Significantly, there are no bilateral or multilateral investment treaties between the Republic of Mordor and its neighbouring countries.

⁸ The Treaty is attached as **Exhibit 1**.

monetary compensation for the mine's activities was negotiated, but no firm commitment was signed.

24. By March 2022, after long diplomatic efforts by the Middle Union, the Republic of Mordor and Gondor signed a peace agreement, pursuant to which Mordor agreed to withdraw its troops from Gondor.
25. Since The Shire did not return Mr. Durin's concession, Mr. Durin decided to break off all negotiations with The Shire. On 4 July 2022 Mr. Durin filed a request for arbitration against The Shire with the International Centre for the Settlement of Investment Disputes ["**ICSID**"], invoking the dispute resolution clause contained in Article 7(2)(c)(i) of the Treaty⁹.
26. In his request for arbitration, Mr. Durin accused The Shire of having expropriated the concession given to his company in a discriminatory manner, without payment of compensation, and without a public purpose.
27. Upon the constitution of the arbitral tribunal, in November 2022 Mr. Durin informed the Secretary-General of ICSID that he had concluded an agreement with a Mordorian company named Silmarillion for the funding of his claims in the arbitration [the "**Funding Agreement**"].
28. Upon being asked to reveal who the persons and entities that own and control Silmarillion were, Mr. Durin simply argued that Silmarillion was an investment fund administered by private individuals, based in Mordor.
29. Upon obtaining this information, The Shire asked Mr. Durin to disclose the Funding Agreement, in order to verify the terms of this Agreement, including learning who would be responsible for the costs of the arbitration and who the final beneficiaries of Silmarillion were.
30. The issues in discussion in this arbitration are summarized in the tribunal's Procedural Order No. 1¹⁰.

⁹ The Request for Arbitration is attached as **Exhibit 3**.

¹⁰ Procedural Order No. 1 is attached as **Exhibit 4**.

List of Exhibits

- **Exhibit 1:** Treaty
- **Exhibit 2:** Map of the Middle Union
- **Exhibit 3:** Request for Arbitration
- **Exhibit 4:** Procedural Order No. 1

EXHIBIT 1

**AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF
INVESTMENTS BETWEEN THE SHIRE AND THE KINGDOM OF ROHAN**

The Government of The Shire

and

The Government of the Kingdom of Rohan

Their States hereinafter referred to as the “**Contracting Parties**”,

Desiring to intensify economic relationship between them,

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefits, and

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital, and that the promotion and protection of investments on the basis of this Agreement will foment business initiative in this field,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

(1) the term “**investment**” means every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, and in particular, though not exclusively, includes:

- (a) an enterprise constituted or organised under the applicable law of the first Contracting Party;
- (b) movable and immovable property as well as any other rights *in rem* in respect of every kind of asset;
- (c) shares in stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;
- (d) claims to money to other assets or to any performance under contract having an economic value;
- (e) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill;
- (f) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any changes of the form in which assets are invested or reinvested shall not affect their character as an investment.

(2) “**returns**” means the amounts yielded by investments and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

(3) “**investor(s)**” means any natural or juridical persons of either Contracting Party who invest in the territory of the other Contracting Party:

(a) the term “**natural persons**” means natural persons having the nationality of the former Contracting Party in accordance with its laws and regulations; and

(b) the term “**juridical persons**” means any entity such as companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of the former Contracting Party.

(4) “**territory**” means:

(a) with respect to the The Shire: the territory comprising The Shire in accordance with its national laws and in accordance with international law:

(b) with respect to the Kingdom of Rohan: the territory of the Kingdom of Rohan and any area adjacent to the territorial sea which, under the laws applicable in the Kingdom of Rohan, and in accordance with international law;

(5) “**freely convertible currency**” means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

Article 2

Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Investments made by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(3) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

Article 3

Treatment of Investments

(1) Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and no less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to investors.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards management, maintenance, use, enjoyment or disposal of their investments, treatment

which is fair and equitable and no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to investors.

(3) Nothing in this Article shall be construed so as to oblige the Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- (a) any international agreement or arrangement relating wholly or mainly to taxation or;
- (b) any existing or future participation in a free trade zone, a customs union, a common market or any other similar economic union.

Article 4

Transfers

(1) Each Contracting Party shall guarantee that all payments relating to an investment by an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular:

- (a) the initial capital and additional amounts to maintain or increase an investment;
- (b) returns;
- (c) payments made for the reimbursement of the credits for investments, and interest due;
- (d) proceeds from the sale or liquidation of all or any part of an investment;
- (e) payments arising out of the settlement of a dispute;
- (f) earnings and other remuneration of personnel engaged from abroad in connection with an investment.

(2) Each Contracting Party shall further guarantee that such transfers may be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made.

(3) Notwithstanding paragraphs (1) and (2) of this Article, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of measures to protect the rights of creditors, relating to or ensuring compliance with laws and regulations on the issuing, trading and dealing in securities, futures and derivatives, reports or records of transfer, or in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

Article 5

Expropriation

(1) Investments of investors of one Contracting Party shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as “**expropriation**”) in the territory of the other Contracting Party except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law.

(2) Compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realizable and be freely transferable. In both expropriation and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

(3) Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.

(4) Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party participate or own shares or debentures, the provisions of this Article shall be applied.

Article 6

Security Exceptions

Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures aimed at preserving or protecting its essential security interests or public order, or to apply the provisions of its criminal laws or comply with its obligations regarding the maintenance of international peace and security.

Article 7

Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party including expropriation of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way.

(2) If the dispute cannot be settled within six (6) months from the date on which the dispute has been raised by either party, the investor may choose to submit it for resolution:

(a) to the competent courts or administrative tribunals of the Contracting Party, party to the dispute;

(b) in accordance with any applicable previously agreed dispute settlement procedure; or

(c) in accordance with this Article to:

(i) the International Centre for Settlement of Investment Disputes (the “**Centre**”) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, signed in Washington on 18 March 1965 (the “**ICSID Convention**”), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention;

(ii) the Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility Rules), if one of the Contracting Parties is not a Contracting State of the Convention mentioned in c(i) of this Article;

(iii) an *ad hoc* arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”);

(iv) the International Chamber of Commerce.

(3) Unless the disputing parties otherwise agree, the tribunal shall be composed of three arbitrators. Each disputing party shall appoint one arbitrator and the arbitrators shall agree upon a third arbitrator, who shall be the chairman of the tribunal.

(4) The award made by the tribunal shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

Article 8

Settlement of Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Contracting Parties or by the arbitrators, shall govern.

(2) Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply *mutatis mutandis* to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Permanent Court of Arbitration.

Article 9

Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investments which was settled before its entry into force.

Article 10

Entry into Force, Duration and Termination

(1) This Agreement shall enter into force on the date of the receipt of the last notification on which the Parties inform each other that their respective domestic legal procedures formalities have been completed. It shall be applicable from the date of its entering into force and shall remain in force for an initial period of fifteen years and, by tacit renewal, for consecutive periods of two years.

(2) Either Party may terminate this Agreement by prior notification in writing addressed to the other Contracting Party, six months before the date of its expiration.

(3) With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

Done in The Shire, on the 30th day of January 2003, in two original copies, each in the Shiren, Rohanese and English languages, all texts being equally authentic.

In case of divergence in the interpretation of any of the provisions of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE SHIRE

A handwritten signature in black ink, consisting of several fluid, connected strokes that are difficult to decipher as specific letters.

FOR THE GOVERNMENT OF THE KINGDOM OF ROHAN

A handwritten signature in black ink, featuring a large, prominent initial 'J' followed by several loops and a long horizontal tail stroke.

EXHIBIT 2

MAP OF THE MIDDLE UNION

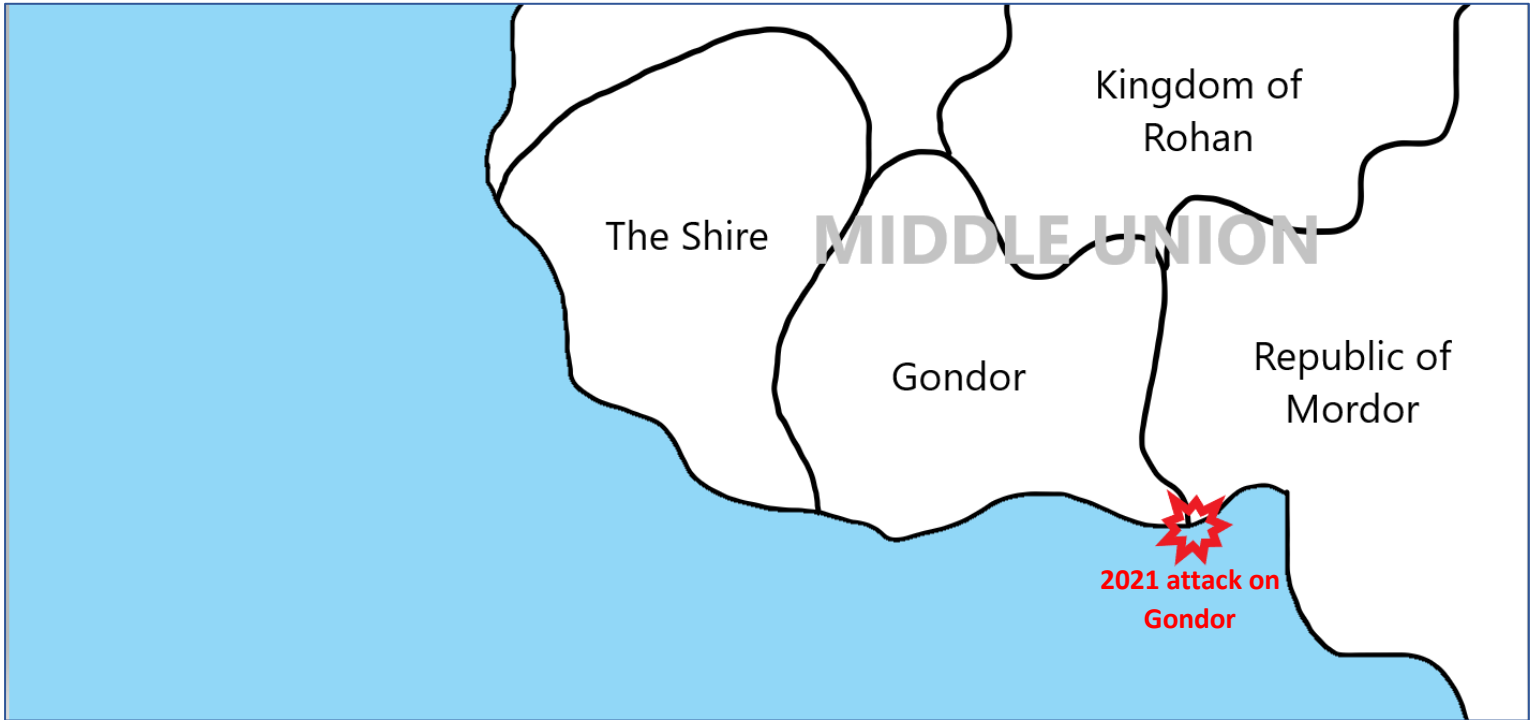


EXHIBIT 3

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

FRANCIS DURIN

Claimant

v.

THE SHIRE

Respondent

REQUEST FOR ARBITRATION

4 July 2022

Counsel for Claimant

Ms. Johanna R. Tolk

Brookish LLP

83 Baker St.

Udun

Republic of Mordor

jrtolk@brookish.com

I. INTRODUCTION

1. Mr. Francis Durin (“**Mr. Durin**” or the “**Claimant**”), a national of the Kingdom of Rohan (“**Rohan**”), hereby submits his request for arbitration against The Shire (“**The Shire**” or the “**Respondent**”) pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States (the “**ICSID Convention**”).

II. JURISDICTION

2. By submitting this Request for Arbitration, Mr. Durin accepts the standing offer made by The Shire to arbitrate investment disputes with investors from Rohan, as expressed in Article 7 of the Agreement On The Promotion And Reciprocal Protection Of Investments Between The Shire And The Kingdom Of Rohan (“**Treaty**” or “**BIT**”) dated 30 January 2003:

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party including expropriation of investments shall, as far as possible, be settled by the parties to the dispute in an amicable way

(2) If the dispute cannot be settled within six (6) months from the date on which the dispute has been raised by either party, the investor may choose to submit it for resolution: [...]

(c) in accordance with this Article to:

(i) the International Centre for Settlement of Investment Disputes (the “Centre”) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, signed in Washington on 18 March 1965 (the “ICSID Convention”), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention; [Emphasis added]

3. The present dispute arises out of an “investment” as provided under Article 25 of the ICSID Convention. Mr. Durin is bringing a claim with respect to the concession of its wholly-owned company, Ash (Shire) S.A. (“**Ash**”), which was expropriated by The Shire.
4. Mr. Durin is a national of the Kingdom of Rohan, a Contracting Party to the ICSID Convention. The Shire is also a Contracting Party to the ICSID Convention.
5. Pursuant to Article 1 of the Treaty, an “investment” means:

[...] every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, and in particular, though not exclusively, includes:

(a) an enterprise constituted or organised under the applicable law of the first Contracting Party; [...]

(c) shares in stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom; [...]

(f) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

6. Mr. Durin is the sole owner of Ash, a company incorporated under the laws of The Shire, which was granted a business concession for 15 years to extract and exploit natural resources in The Shire.

III. THE SHIRE VIOLATED ITS OBLIGATIONS UNDER THE BIT

7. Pursuant to Article 5(1) of the BIT:

*(1) Investments of investors of one Contracting Party shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as “**expropriation**”) in the territory of the other Contracting Party except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law.*

8. Furthermore, Article 5(5) of the BIT provides that:

Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party participate or own shares or debentures, the provisions of this Article shall be applied.

9. In the present case, Mr. Durin incorporated the company Ash in The Shire in 2015, which was granted a concession for 10,300 ha. for a period of 15 years, to develop a galena mine.
10. The mine developed with four shafts and three process facilities, which permitted the extraction and production large quantities of a lead concentrate. By 2020, Ash was set to become one of the main producers and exporters of lead in The Shire.
11. However, on 7 May 2021 The Shire’s Ministry of Defence informed Mr. Durin that due to concerns regarding the conflict between Gondor and the Republic of Mordor, which unfolded between April 2021 and March 2022, the State needed to take over the operation of Ash’s mine.
12. Despite Mr. Durin’s protests, and meetings with several Government officials, on 1 June 2021 the Shire’s administration revoked the mining concession, arguing that there were “imperious reasons of public interest”.
13. On 8 June 2021 a delegation from the Shire’s army entered the mine and took over Ash’s operation, prohibiting access to the mine to anyone related to Mr. Durin.

14. Mr. Durin launched an administrative appeal against the revocation of the mining concession, arguing that the administration had exceeded its powers. However, a first instance administrative court found that there were imperious motives of public interest in the administration's decision to revoke the concession.
15. This decision was clearly discriminatory, since no other mining concessions were taken over by the Shire's Government. Furthermore, the Government's decision was not based on a public purpose, considering that The Shire was never under attack by any foreign countries. As to the excuse found by the Minister of Defence, according to whom the mining concession had faced opposition from local communities, this is only a red herring and there is no evidence that there was ever an opposition from local communities.
16. Mr. Durin met the amicable settlement period of six months required by Articles 7(1) and (2) of the Treaty, having tried to negotiate with The Shire's Government from October 2021 until the filing of this Request for Arbitration.
17. However, The Shire's Government never offered to pay any compensation to Mr. Durin, which is why Mr. Durin is forced to start the present arbitration.
18. Mr. Durin was illegally expropriated by The Shire, who used false motives to expropriate Mr. Durin in a discriminatory manner, without reasons of public purpose and without the payment of prompt, adequate and effective compensation.

IV. THE ARBITRAL TRIBUNAL AND PROCEDURE

19. Claimant proposes that the parties agree to conduct the arbitration under the Expedited Arbitration rules contained in Chapter XII of the ICSID Arbitration Rules.
20. Considering that the Article 7(3) of the BIT provides for a three-member arbitral tribunal, the Claimant hereby appoints Prof. Mary Grand as the party appointed arbitrator. Prof. Grand may be contacted at:

Prof. Mary Grand
Real Street 8
Beachfront
Kingdom of Craist
Email: mgrand@grand.law
21. The Shire is hereby requested to agree to the use of the Expedited Arbitration rules and to appoint an arbitrator within twenty (20) days of the parties' agreement to conduct an Expedited Arbitration.
22. Mr. Durin further requests that the proceedings be conducted in English.

V. RELIEF SOUGHT

23. In view of the foregoing, Claimant respectfully requests that the Tribunal:

- Declare that it has jurisdiction over the present dispute.
- Declare that The Shire has breached its obligations under the Treaty, particularly under Article 5, for having illegally expropriated Mr. Durin's concession in a discriminatory manner, without the payment of prompt, adequate and effective compensation, and without a public purpose.
- Award compensation to Mr. Durin in an amount to be quantified in subsequent submissions.
- Order The Shire to fully reimburse Mr. Durin for all costs and expenses incurred in connection with the present proceedings, including counsel's fees and expenses.

On behalf of Claimant
Ms. Johanna Tolk
Brookish LLP

EXHIBIT 4

**THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

In the arbitration proceeding between

FRANCIS DURIN

Claimant

v.

THE SHIRE

Respondent

ICSID Case No. ARB/22/89

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Mr. Louis Took, President of the Tribunal

Prof. Mary Grand, Arbitrator

Dr. Cristina Holt, Arbitrator

Secretary of the Tribunal

Mr. Brian Leg

10 October 2022

The First Session of the Tribunal was held on 3 October 2022, at 5 p.m., by videoconference. The Session was adjourned at 6 p.m.

An audio recording of the Session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal

Mr. Louis Took, President of the Tribunal
Prof. Mary Grand, Arbitrator
Dr. Cristina Holt, Arbitrator

ICSID Secretariat:

Mr. Brian Leg, Secretary of the Tribunal

Participating on behalf of Claimant:

Ms. Johanna Tolp, Brookish LLP
Mr. Francis Durin, Claimant

Participating on behalf of Respondent:

Mr. Gordon Plum, Legal Advisor to the State
Ms. Helena Trent, Legal Advisor to the State

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 19 September 2022; and
- The Parties' comments on the Draft Procedural Order received on 28 September 2022, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the Session, the Tribunal now issues the present Order:

ORDER

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A. Amendments to the Procedural Timetable will be made by reissuing Annex A.

1. Applicable Arbitration Rules

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 1 July 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

- 2.1. The Tribunal was constituted on 12 September 2022 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.
- 2.4. The contact details for the Members of the Tribunal are:

Prof. Mary Grand
 Real Street 8
 Beachfront
 Kingdom of Craist
 Email: mgrand@grand.law

Mr. Louis Took
 12 Tree Street
 Fraiser
 Email: louis-took@gmail.com

Dr. Cristina Holt
 Humbolt Street 99
 Speer Town
 Helt Republic
 Email:
 holt@holtpartners.com

3. Fees and Expenses of Tribunal Members

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. Subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

4. Presence and Quorum

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. The Tribunal will draft all rulings, including the Award, within a reasonable time period.
- 5.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.5. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

- 7.1. The Tribunal Secretary is Mr. Brian Leg, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

[intentionally omitted]

8. Representation of the Parties

Arbitration Rule 18

- 8.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

Ms. Johanna Tolk, Brookish LLP

For Respondent

Mr. Gordon Plum, Legal Advisor to the State
Ms. Helena Trent, Legal Advisor to the State

9. Apportionment of Costs and Advance Payments to ICSID

9.1. [*Intentionally omitted*]

10. Place of Proceeding

10.1. Washington D.C. shall be the place of the proceeding.

10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the Parties so agree.

10.3. The Tribunal may deliberate at any place and by any appropriate means it considers convenient.

11. Procedural Language, Translation and Interpretation

11.1. English is the procedural language of the arbitration.

11.2. Documents filed in any other language must be accompanied by a translation in English.

11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.

11.4. Translations need not be certified unless there is a dispute as to the translation provided and the Party disputing the translation specifically requests a certified version.

12. Routing of Communications

12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.

12.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.

12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal once both Parties' communications are received.

12.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

13.1. [*Intentionally omitted*]

14. Number and Sequence of Pleadings

14.1. The proceedings shall consist of a written phase followed by an oral phase.

14.2. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in Annex A.

14.3. The Parties' first submissions shall set forth the facts, the legal argumentation and the relief sought. The Parties' subsequent submissions shall be limited to replying to the arguments that the counterparty has raised in its previous submission.

15. Submission of Documents

15.1. [*Intentionally omitted*].

16. Witness Statements, Expert Reports and other evidence

16.1. The Parties agree that the evidence that may be relied upon in the arbitration will be limited to the facts and assertions contained in the Mock Case, including any exhibits attached thereto.

17. Pre-Hearing Organizational Meetings

17.1. [*Intentionally omitted*].

18. Hearing and list of issues

18.1. Having regard to the Parties' submissions on the organization of pleadings, and with regard to the Respondent's objections to the jurisdiction of this Tribunal, the Tribunal determines the following organization of the hearing and fixes the procedural calendar for the Parties' submissions.

18.2. The Parties and the Tribunal have agreed that they shall address only the issues identified below at the Hearing:

18.2.1. Whether Claimant has an obligation to reveal the terms of the Funding Agreement, in particular to disclose who the final beneficiaries of Silmarillion are and who will be responsible for the costs of the arbitration.

18.2.2. Whether Claimant has committed an abuse of process and is entitled to benefit from the protections of the Treaty.

18.2.3. Whether Respondent violated its obligations regarding Expropriation contained in Article 5 of the Treaty, and whether Respondent can rely on the provisions of Article 6 of the Treaty.

19. Records of Hearings and Sessions

19.1. [*Intentionally omitted*].

20. Post-Hearing Memorials and Statements of Costs

20.1. [*Intentionally omitted*].

21. Publication

21.1. The Parties consent to ICSID publication of the Award and any order or decision issued in the present proceeding.



Louis Took
President of the Tribunal

Date: 10 October 2022