ICC (INTERNATIONAL CHAMBER OF COMMERCE)

ICC Case No. 19644/EMT

COMPAGNIE DES GRANDS HÔTELS D'AFRIQUE V. TRUST HOUSE FORTE MOROCCO SARL AND TRUST HOUSE FORTE LIMITED

FINAL AWARD

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06 May 2015

Tribunal:
Robert Dicker (Appointed by the respondent)
Michael C. Pryles (Appointed by the claimant)
Christine Lecuyer-Thieffry (President)

Table of Contents

Table of Contents

Final Award

I. THE NAMES AND DESCRIPTIONS OF THE PARTIES

A. Claimant

1. The claimant is COMPAGNIE DES GRANDS HOTELS D'AFRIQUE *("Claimant"* or *"CGHA"),* a corporation organized and existing under the laws of Morocco having its registered office at:

   27 Avenue de l'Armée Royale
   Casablanca
   Morocco

2. Claimant was initially represented in this Arbitration by Rajah & Tann LLP, through counsel, Mr. Kelvin Poon, Ms. Thea Sonya Raman and Mr. Jawad Ahmad, with offices in Singapore, and was also advised by Mr. Ian Winter QC, of Cloth Fair Chambers in London, United Kingdom.

3. On 24 July 2014, Claimant informed the arbitral Tribunal of its change of counsel and, on 1 August 2014, Ms. Penny Madden, of Gibson, Dunn & Crutcher LLP, with offices at 2-4 Temple Avenue, London EC4Y OHB, United Kingdom confirmed that her firm had been instructed to represent the Claimant in the Arbitration and provided a power of attorney.

B. Respondents

4. There are two respondents in this Arbitration, designated hereafter separately as the *"First Respondent"* and the *"Second Respondent"* and collectively as *'Respondents".*

5. The First Respondent is TRUST HOUSE FORTE MOROCCO SARL (now known as WOODMAN MAROC SARL) and is also designated hereafter as *"Woodman Maroc".* It is a corporation organised and existing under the laws of Morocco with its registered office located at:

   27 Avenue de l'Armée Royale
   Casablanca
   Morocco

6. The First Respondent was initially represented in this Arbitration by Latham & Watkins LLP, in the persons of Messrs. Philip Clifford and Oliver Browne, with offices at 99 Bishopsgate, London EC2M 3 XF, United Kingdom.

7. On 11 August 2014, Mr. Browne informed the arbitral Tribunal that, with immediate effect, they were no longer instructed in relation to the Arbitration and that all future correspondence should be addressed to the liquidator of Woodman Maroc Sarl's parent company, Iona Maroc Sarl, Mr. Carl Bowles of Carter Baker Winter LLP (the *"Liquidator"),* who would write separately to the arbitral Tribunal in this regard. To the arbitral Tribunal's knowledge, however, at the time it delivers this Final Award, the First Respondent is not itself in liquidation. On 21 August 2014, the president of the arbitral Tribunal wrote to the Parties requesting *inter alia* the First Respondent *"to notify without further delay the Arbitral Tribunal of the name and full contact details of its authorized representative in this arbitration and to whom all correspondence should be sent pursuant to Article 3(2) of the ICC Rules and paragraph 13 of the Terms of Reference."*

8. As from 11 August 2014, the first Respondent has not been represented in this Arbitration and the arbitral Tribunal has taken particular care to comply with the First Respondent' right to be heard. All correspondence and submissions were sent directly to Woodman Maroc at the above-mentioned address and later on to Mr. Martin Cooke as a duly authorized representative of the First Respondent.[1] More particularly, the First Respondent was made aware on 22 December 2014 that pursuant to Article 26 of the ICC Rules if a party, although duly summoned, fails to appear without a valid excuse, the arbitral Tribunal shall have the power to proceed with the hearing.

9. The Second Respondent is TRUST HOUSE FORTE (UK) LIMITED (now known as TRAVELODGE HOTELS LIMITED) and is also designated hereafter as *"Travelodge"* It is a corporation organised and existing under the laws of England and Wales having its registered address at:

Sleepy Hollow,
Aylesbury Road,
Thames,
Oxfordshire 0X9 3AT

10. The Second Respondent is represented in this Arbitration by: Addleshaw Goddard LLP with offices at 60 Chiswell Street, London EC1Y 4AG, United Kingdom through counsel Mr. Jon Tweedale, Mr. Ian Hargreaves and Ms. Naomi Simpson. It is also advised by Mr. Salim Moollan QC, at Essex Court Chambers, 24 Lincoln's Inn Fields London WC2A 3EG, United Kingdom.

11. Claimant and Respondents are herein referred to separately as a *"Party"* and collectively as the *"Parties."*

12. As noted in paragraph 35 below, on 4 February 2014, Claimant discontinued its claims against the Second Respondent, and the Arbitration had been continuing between the Claimant and the Second Respondent for the purpose of the Second Respondent's claim for a declaration and costs only.

II. THE ARBITRAL TRIBUNAL

13. At its session of 14 November 2013, the Court decided to submit the matter to three (3) arbitrators pursuant to Article 12(2) of the ICC Rules of Arbitration in force as of 1 January 2012 (the *"ICC*

[1] Entry of the Trade registry in Casablanca, Exhibit C-156 to the Statement of Claim of 15 October 2014.

Rules").

14. On 27 January 2014, the Secretary General, pursuant to Article 13(2) of the ICC Rules, confirmed Professor Michael Pryles as co-arbitrator upon Claimant's nomination and Mr. Robin Dicker QC as co-arbitrator upon Respondents' joint nomination.

15. At its session of 20 March 2014, pursuant to Article 13(3) of the ICC Rules, the Court appointed Mrs. Christine Lécuyer-Thieffry as president of the arbitral Tribunal upon proposal by the French National Committee.

16. The contact details of the Arbitrators are:

Mrs. Christine Lécuyer-Thieffry
Thieffry & Associés
29 rue de Lisbonne (and as of 1st May 2015, 32 rue de la Bienfaisance)
75008 Paris
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Tel.: +44 (0)20 7696 9900
Facsimile: +44 (0)20 7696 9911
e-mail: robindicker@southsquare.com

III. THE ARBITRATION AGREEMENT

17. The agreement to arbitrate (the *"Arbitration Agreement")* is set forth in Article 19 of the Management Agreement entered into between the Parties on 23 November and 26 December 1989 (the *"Management Agreement")*[2] which provides as follows:

19.1 All disputes arising in connection with this agreement shall he finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules;

19.2 The Laws of Morocco shall he applied;

19.3 The place of arbitration shall be London, England and the language shall be English;

19.4 This agreement shall be signed in English and French versions. In the case of any inconsistency, the English version of this agreement shall prevail.

IV. PLACE OF ARBITRATION

18. The place of arbitration is London, England pursuant to Article 19.3 of the Management Agreement.

19. Pursuant to Articles 18(2) and 18(3) of the ICC Rules, the arbitral Tribunal may, after consultation with the Parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the Parties, and may deliberate at any place it deems convenient.

V. APPLICABLE LAW

20. Pursuant to Article 21 (1) of the ICC Rules, *"the parties are free to agree on the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate."*

21. In addition, according to Article 21(2) of the ICC Rules, the arbitral Tribunal shall take account of the provisions of the relevant contract and any relevant trade usages.

22. In this case, pursuant to Article 19.2, the Management Agreement is governed by the laws of Morocco.

23. However, some of the issues to be determined by the arbitral Tribunal in the Final Award relate to the discontinuance of the claims initially brought by Claimant against the Second Respondent for breach of the Management Agreement and the claim for costs brought by the Second Respondent in connection thereto. Such claims are to be characterized as questions of procedure which do not fall within the scope of the law applicable to the Management Agreement.

24. Pursuant to paragraph 64 of the Terms of Reference confirmed by Procedural Order No. 2 of 16 July 2014, subject to any applicable mandatory rules of law at the place of arbitration, the proceedings before the arbitral Tribunal shall be governed by the ICC Rules, and, where these rules are silent, by any rule determined by the arbitral Tribunal.

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[2] *Gérance libre (Management agreement) of 23 November and 26 December 1989, Exhibit C-l.*

25. Consequently, the arbitral Tribunal shall apply to the issues mentioned in paragraph 23 the relevant provisions of the ICC Rules and of the English Arbitration Act 1996, being the law of the place of Arbitration, on which the Claimant and the Second Respondent relied in their respective submissions.

VI. BACKGROUND OF THE DISPUTE AND PROCEDURAL HISTORY

26. The Claimant is the owner (the *"Owner")* of the hotel known as the Royal Mansour Hotel in Casablanca, Morocco (the *"Hotel"),* which it also operated until it entered into the Management Agreement on 23 November 1989. According to the Claimant, the Hotel was then regarded as a pre-eminent hotel of outstanding quality and had been extensively renovated. The First Respondent is the manager of the Hotel (the *"Manager"),* and the Second Respondent, is the guarantor (the *"Guarantor")* of the First Respondent's obligations under the Management Agreement.

27. The dispute relates to alleged breaches of the Management Agreement by the First Respondent.

A. The Request for Arbitration and the Arbitral Tribunal

28. On 6 August 2013, Claimant filed a Request for Arbitration (the *"Request"*) with the Secretariat, together with eight Exhibits (Exhibits A-H).

29. In the Request, Claimant alleges that the First Respondent breached the Management Agreement (i) in failing to maintain and operate the Hotel to the standard and stature of a five star international hotel and to invest enough resources in maintaining the Hotel to the requisite standard; and (ii) in failing to pay the quarterly fees from December 2012 to-date, notwithstanding the fact that it has continued to occupy the premises of the Hotel subsequently.

30. Claimant further states in the Request that it entered into the Management Agreement in consideration of both Respondents being part of the Trust House Forte Group and that it never occurred to the Claimant that the First Respondent and the Second Respondent might come to be held by two wholly unconnected entities. By changing their nature such as to prejudice the interests of Claimant, the First Respondent and/or - it was originally contented in this Arbitration - the Second Respondent further breached the Management Agreement.

31. Answers to the Request were filed on 18 October 2013, respectively, for the First Respondent *("Woodman Maroc's Answer")* and for the Second Respondent *("Travelodge's Answer"),* both without exhibits.

32. Travelodge's Answer raised a plea under Article 6(3) of the ICC Rules that the English Courts have sole jurisdiction to resolve any issue as to the scope or effect of the Company Voluntary Agreement to which the Claimant and the Second Respondent are allegedly parties under the English insolvency legislation (the *"CPA").* The Second Respondent contended that its guarantee under the Management Agreement had been "compromised" by the CVA on the basis that Claimant is one of the "expired lease creditors" of the Second Respondent.

33. The Claimant originally disputed that it falls within any of the classes of persons under the definition of "expired lease creditors" within the CVA, and contended that it has never given its assent or agreement to the CVA which is, as a matter of Moroccan law (which governs the Management Agreement), unenforceable or ineffective as against Claimant.

34. By letter of 5 November 2013, the Secretariat informed the Parties that, pursuant to Article 6(3) of the ICC Rules, the Secretary' General did not refer the Second Respondent's plea to the Court and that any matter of jurisdiction would be decided directly by the Arbitral Tribunal after providing the Parties with an opportunity to comment.

35. On 4 February 2014, Claimant discontinued its claims against the Second Respondent, such discontinuance being made without prejudice to Claimant's position that it was fully entitled to commence this Arbitration against the Second Respondent.

36. On 14 February 2014, the Second Respondent requested that it remains a Party to the proceedings for the time being so that it can make an application in respect of costs it has incurred in connection with the discontinued claims.

37. The constitution of the arbitral Tribunal was completed as described in paragraphs 13-16 above and, on 20 March 2014, and the Secretariat transmitted the file to the arbitral Tribunal pursuant to Article 16 of the ICC Rules.

B. The Case Management Conference

38. On 4 April 2014, the arbitral Tribunal sent to the Parties for their comments drafts of the Terms of Reference, Procedural Order No. 1 and Provisional Procedural Timetable.

39. On 16 April 2014, Claimant submitted its comments on the above-mentioned documents as well as an Application for a Final Partial Award *("CGHA's Application")* supported by the witness statement of Mr. Karim Khettouch and Exhibits C-l to C-84.

40. Also, on 16 April 2014, the First Respondent provided comments on the Terms of Reference and the Second Respondent confirmed that it was making an Application for an award recording the discontinuance of Claimant's claims against it and in respect of costs it had incurred in connection thereto ("*Travelodge's Application for Costs")* and proposed a procedural timetable to deal with that discrete issue.

41. The Case Management Conference was held on 28 April 2014 in order to (i) finalize the Terms of Reference; (ii) consider procedural matters, including those raised in relation to proposed Procedural Order No. 1, CGHA's Application for a Partial Final Award and Travelodge's Application for Costs, and (iii) adopt a provisional Procedural Timetable.

42. On 2 May 2014, the Arbitral Tribunal, transmitted to the Parties: (i) the minutes of the Case Management Conference of 28 April 2014; (ii) the final version of the Terms of Reference; (iii) Procedural Order No. 1 with the provisional Procedural Timetable adopted in relation to CGHA's

Application and to Travelodge's Application for Costs.

C. The Terms of Reference

43. On 7 May 2014, pursuant to Article 23(2) of the ICC Rules, the Court extended the time limit for establishing the Terms of Reference until 31 July 2014.

44. On 5 June 2014, the Terms of Reference which had been circulated for signature by the duly authorized representatives of the Parties and by the co-arbitrators were received by the president of the arbitral Tribunal who asked the signatories of the Terms of Reference, namely, Ms. Thea Sonya Raman, Mr. Oliver Browne and Mr. Jon Tweedale, respectively, to provide the arbitral Tribunal as soon as possible, by email and courier, with powers of attorney authorizing their signing of the Terms of Reference on behalf of the Party they represented pursuant to Article 17 of the ICC Rules.

45. Powers of attorney from the Claimant and from the Second Respondent were received by the president of the arbitral Tribunal, respectively, on 24 June 2014 and on 27 June 2014. Upon the president's request, counsel for the First Respondent informed the arbitral Tribunal on 20 June 2014 that he had *"prepared a power of attorney [... which] is currently with the First Respondent's director for signature"* and on 4 July 2014, answering to the president's email of even date, that *"there has been a change of control in relation to the First Respondent"* and that he was *"currently awaiting instructions and, in the circumstances,* [was] *not presently able to provide a response to the* [President's] *email or an update as regards the power of attorney."*

46. On 9 July 2014, one original copy of the Terms of Reference signed by the president of the arbitral Tribunal was sent to the Secretariat for its approval by the Court pursuant to Article 23(3) of the ICC Rules.

47. On 16 July 2014, by Procedural Order No. 2, the arbitral Tribunal confirmed certain procedural rules applicable to the Arbitration and ruled that unless and until the First Respondent files a valid power of attorney to counsel, any further notification and communication arising in the course of this Arbitration shall be with respect to the First Respondent made directly to First Respondent.

48. On 17 July 2014, the Terms of Reference were approved by the Court who invited the First Respondent to submit a power of attorney by 1 August 2014.

D. CGHA's Application for a Final Partial Award

49. In accordance with the provisional Procedural Timetable adopted by the arbitral Tribunal following the Case Management Conference held on 28 April 2014, were submitted (i) on 9 May 2014, Woodman's Opposition to CGHA's Application for Final Partial Award *("Woodman's Opposition"),* and (ii) on 14 May 2014, CGHA's Reply Submissions to Woodman's Submissions dated 9 May 2014 *("CGHA's Reply").*

50. After the Terms of Reference had been approved by the Court, by Procedural Order No. 3 of 18 July 2014, the arbitral Tribunal denied CGHA's Application and submitted to the Parties a draft provisional Procedural Timetable (rev.2) for their comments.

E. Travelodge's Application for Costs

51. Also according to the Procedural Timetable adopted by the arbitral Tribunal following the Case Management Conference held on 28 April 2014, were submitted in relation to Travelodge's Application for Costs (i) on 9 May 2014 the Second Respondent's Submissions for Costs *("Travelodge's Costs Submissions")* together with Exhibits SR-1 to SR-15 and Exhibits SRLA-1 to SRLA-2, (ii) on 13 June 2014, Claimant's Reply Submissions to the Second Respondent's Submissions for Costs *("CGHA's Reply to Submissions for Costs")* together with Exhibits C-85 to C-101 and Exhibit CLA-1 and (iii) on 27 June 2014, the Second Respondent's Reply Submissions *("Travelodge's Reply Submissions")* together with Exhibits SR-16 and Exhibits SRLA-3 to SRLA-10.

52. On 30 June 2014, the arbitral Tribunal noted that none of the Parties had requested a hearing on Travelodge's Application for Costs and confirmed that, pursuant to Article 25(6) of the ICC Rules, it will decide said application solely on basis of the documents submitted by the Parties.

53. On 3 July 2014, Claimant moved to apply for leave from the arbitral Tribunal to file a response to Travelodge's Reply Submissions, which application the Second Respondent opposed later that day. Further communications on this application for leave were sent to the arbitral Tribunal in Claimant's letter of 4 July 2014, the Second Respondent's letter of 7 July 2014 and Claimant's letter of 9 July 2014.

54. On 9 July 2014, the arbitral Tribunal authorized Claimant to file a submission limited to the issue of jurisdiction identified in its letter of 4 July 2014 by 16 July 2014, the Second Respondent being at liberty to file an answer on this issue within the next seven days i.e., by 23 July 2014 at the latest. The Claimant's further reply submissions to the Second Respondent's Submissions for Costs *("CGHA's Further Reply to Submissions")* and the Second Respondent's Further Reply Submissions *("Travelodge's Further Reply Submissions")* were filed accordingly.

55. On 24 July 2014, Claimant informed the arbitral Tribunal that it had decided to appoint new counsel based in London and requested an extension until 1 August 2014 of the time limit for providing its comments on the draft provisional Procedural Timetable (rev.2) which was granted on 25 July 2014.

56. On 20 August 2014, Claimant asked the arbitral Tribunal *inter alia* to issue no order or award in respect of the Second Respondent's claim for costs until the arbitral Tribunal issues the Final Award.

57. By Order No. 4 of 10 September 2014, on Travelodge's Application for Costs, the arbitral Tribunal declared and ordered that:

(a) all of the Claimant's claims against the Second Respondent in this Arbitration have been

discontinued as of 4 February 2014;

(b) the Second Respondent's claim for costs, including the costs of Travelodge's Application for costs, are reserved to the Final Award;

(c) the Second Respondent shall remain a Party to this Arbitration until determination of its claim for costs against the Claimant.

F. CGHA's Application for Interim Relief

58. Also on 20 August 2014, the Claimant sought an urgent order *("CGHA's Application for Interim Relief")* that the First Respondent: (i) return the Hotel to the Claimant with immediate effect; (ii) account for all payments made by it since 31 December 2012 (the date of the first alleged breach of its rental payment obligations under the Management Agreement); and (iii) refrain from making any payments to any third party (including under the operating agreement (the *"Operating Agreement"*) allegedly entered into between CGHA and its former ultimate parent company Starwood (M) Hotels Inc.) pending the arbitral Tribunal's award on liability, save with the consent of the arbitral Tribunal.

59. On 1 September 2014, the Claimant was heard on the merits of the Application by the arbitral Tribunal in the presence of counsel for the Second Respondent. The First Respondent, having been duly notified by the president of the arbitral Tribunal of the Application for Interim Relief on 21 August 2014 (letter received on 25 August 2014) and of the date and time of the hearing on 27 August 2014 (letter received on 28 August 2014), did not participate.

60. Answering to the arbitral Tribunal's request by letter to the Parties of 4 September 2014, the Claimant provided on 16 September 2014 (i) a draft order sought by Claimant, (ii) a draft affidavit of Ms. Penelope Jane Madden confirming the facts set out in the Application for Interim Relief and in CGHA's Submissions and updating the Arbitral Tribunal on correspondence with the First Respondent since 4 September 2014, (iii) copies of letters from the First Respondent to Maître Alain Chedal of Landwell & Associés of 11 and 12 September 2014 and of Maître Chedal's response of 16 September 2014 (which enclosed the copy of the order that the Claimant proposed to be made by the Arbitral Tribunal).

61. On 17 September 2014, Claimant forwarded a sworn copy of the affidavit referred to in paragraph 59 and its exhibits (the *"Affidavit").*

62. On 19 September 2014, in its reasoned Order on CGHA's Application for Interim Relief, the Arbitral Tribunal granted the relief sought as follows:

a) *Within 31 days of the date of this Order, the First Respondent shall hand back the possession, operation and business of the Hotel to the Claimant together with all furniture, fixtures and equipment including kitchen equipment, carpets, curtains, wall covering and other similar movable assets; Loose Equipment and Stocks (other than stationery and similar printed materials*

bearing the First Respondent's name or any other names or trade marks then used by the First Respondent in its business) as may then be in existence in relation to the Hotel's business (the "Handover Date").

b) *Within 14 days of the Handover Date, the First Respondent shall (a) provide to the Claimant a full financial statement, including the closing balance sheet and profit and loss account of the business as at the Handover Date, and (β) account to the Claimant for all payments of whatsoever nature made by the First Respondent since 31 December 2012.*

c) *Within 30 days of the Handover Date, the Claimant and the First Respondent shall (a) agree on and provide to the Arbitral Tribunal (or in the absence of agreement the Claimant shall provide to the Arbitral Tribunal) an inventory of Stocks as contemplated by Article 16.1 of the Management Agreement as well as any receivables or cash pertaining to the First Respondent management period, and (β) provide to the Arbitral Tribunal a joint Statement of Condition, provided that if the Claimant and the First Respondent cannot agree such a statement, each of them shall provide its own Statement of Condition.*

d) *Subject to the provisions of sub-paragraph (e) below, the First Respondent shall take all necessary steps to terminate or assign as at the Handover Date to the Claimant (subject to the Claimant's consent to any assignment) all contracts entered into by the First Respondent with third parties relating to the Hotel, save that all contracts with any member of the Starwood Group shall be terminated and shall not be assigned. Any obligation of the First Respondent that has accrued prior to the Handover Date or that has not been assigned to the Claimant as at the Handover Date shall remain the responsibility and liability of the First Respondent.*

e) *The Claimant and the First Respondent shall take all necessary steps to assign by law all existing contracts of employment with the First Respondent relating to the Hotel to the Claimant or to any duly appointed assignee taking over the management of the Hotel (as notified by the Claimant). For the avoidance of doubt, this provision shall not apply to any employees employed or contracted by the Starwood Group or any other third party involved in the operation and management.*

f) *The Claimant and the First Respondent shall take all practical measures needed to effect an orderly handover of the Hotel's business, including with respect to the transition of hotel guest and reservation data.*

g) *Subject to and until further determination by the Arbitral Tribunal, the Management Agreement shall be deemed to have been terminated no later than the Handover Date.*

h) *Other than as provided therein, this Order shall not affect any rights, remedies, obligations or liabilities of the Parties, including the right to claim damages for any beach of the Management Agreement.*

i) *The First Respondent shall desist from making any payments to any party (including under the Operating Agreement between Woodman Maroc Sarl and Starwood (M) Hotels Inc) until the Arbitral Tribunal has issued its final award on liability, save that payments may be made: (a) with the express consent of the Arbitral Tribunal pursuant to an express request for permission to pay notified to the Arbitral Tribunal and the Claimant; or (β) to discharge the First Respondent's liability to pay reasonable sums for legal advice received or to discharge its liability to pay employees' wages or utilities' charges accrued prior to the Handover Date.*

j) *The costs of the Application shall be determined by the Arbitral Tribunal in the Final Award.*

G. Further Submissions of the Parties and Evidentiary Hearing

63. Also on 19 September 2014, by Procedural Order No. 5, the arbitral Tribunal adopted the provisional Procedural Timetable (rev.2) providing for a hearing on the merits from 27-30 January 2015 which was sent to the Secretariat for communication to the Court pursuant to Article 22(1) of the Rules.

64. According to the provisional Procedural Timetable (rev.2), on 15 October 2014, Claimant submitted its Statement of Claim (the *"Statement of Claim")* together with its index of exhibits and accompanying expert reports, as follows: (i) a Moroccan law opinion by Professor Amin Hajji (drafted in English), (ii) an expert report of Mace (drafted in English), and (iii) an expert report of Abergel & Associés *("Abergel"*) (drafted in French with English translation to follow). Hard and soft copies of the same and of Claimant's Exhibits C-105 to C-167 were forwarded by courier to the arbitral Tribunal and to all Parties on 21 October 2014.

65. In response to the letter of the president of the arbitral Tribunal of 17 November 2014, regarding the forthcoming hearing on the merits, by separate letters of 25 November 2014, respectively, (i) counsel to the Second Respondent informed the arbitral Tribunal, *inter alia,* that, given the status of Travelodge's Application for Costs as it results from Procedural Order No. 4 and the limited role of the Second Respondent in these proceedings, the Second Respondent will not be represented at the hearing on the merits, and (ii) counsel to the Claimant submitted that the First Respondent is most likely not to attend and proposed that, for costs saving purposes, the hearing venue be at Gibson Dunn's offices in London and that the hearing dates run from Wednesday 28 to Friday 30 January 2015.

66. None of the Parties has opposed such arrangements for the hearing proposed by Claimant before 8 December 2014, being the time limit set in the letter of 1 December 2014 from the president of the arbitral Tribunal to the Parties' counsel and to the First Respondent at its last known address, and which counsel to the Claimant copied to Mr. Martin Cooke (a director of Woodman Maroc, the First Respondent) and Mr. Carl Bowles (liquidator of Woodman Maroc's parent company).

67. The First Respondent's Memorandum which, as per provisional Procedural Timetable (rev.2), was due to be filed on 15 December 2014 was not submitted.

68. On 22 December 2014, pursuant to paragraph 48 of Procedural Order No. 1 and Provisional Procedural Timetable (rev.2), the arbitral Tribunal convened a prehearing conference call to be held on 5 January 2015 at 10:00 a.m. London Time for the organisation of the forthcoming hearing and sent to the Parties the Procedural Order No. 6 of 22 December 2014 whereby the arbitral Tribunal (i) ordered that the hearing shall be held from Wednesday 28 to Friday 30 January 2015 (as may be necessary) at Gibson Dunn's offices located at 2-4 Temple Avenue, in London, England (the *"Hearing"),* (ii) noted that the Second Respondent will not be represented at the Hearing, and (iii) summoned the other Parties, pursuant to Article 26(1) of the ICC Rules, to be heard through

oral argument and/or the presentation of evidence in relation to Claimant's Statement of Claim and defence to such Statement of Claim, noting that pursuant to Article 26(2) of the ICC Rules, *any of the parties, although duly summoned, fails to appear without a valid excuse, the arbitral Tribunal shall have the power to proceed with the hearing."*

69. On 24 December 2014, Counsel to the Claimant confirmed its availability for the prehearing conference call. In addition, referring to paragraph 101 of its Statement of Claim, Claimant further offered an update regarding the handover of the Hotel and the quantum of its claim. It provided (i) a Statement of Condition on the handover of the Hotel, (ii) the written witness statement of Mr. Hichame Hamdaoua, and (iii) the Abergel Addendum Report in its original French language with its translation into English, and requested that these documents be admitted in the arbitration. Hard and soft copies of the same and of Claimant's Exhibits C-168 to C-179 were forwarded by courier to the arbitral Tribunal and all Parties on 2 January 2015.

70. On 30 December 2014, the Second Respondent informed the arbitral Tribunal that it would not take part in the prehearing conference call and indicated that, as it would not be attending the Flearing, it was important that a transcript be taken of the Hearing.

71. By Procedural Order No.7 of 3 January 2015, the arbitral Tribunal (i) ordered that the new evidence provided by the Claimant and referred to in paragraph 69 above be admitted in the Arbitration, and (ii) granted the Respondents until 15 January 2015 to respond to such new evidence.

72. On 8 January 2015, the president of the arbitral Tribunal sent to the Parties (i) the minutes of the prehearing conference which was held as scheduled, and (ii) the agenda for the Hearing.

73. On 14 January 2015, Mr. Martin Cooke wrote to the arbitral Tribunal *"for and on behalf of Woodman Maroc Sarl"* stating that the First Respondent was not participating in the Arbitration and that it would not be attending and would not be represented at the Hearing. On 15 January 2015, the Second Respondent stated that all claims against the Second Respondent were withdrawn and that the Second Respondent is a party to the Arbitration solely for the purpose of pursuing its costs against the Claimant so that it is not for the Second Respondent to make any substantive comments on any of the claims or allegation of facts advance in the Statement of Claim or any evidence filed in support of the same (including the further evidence filed by the Claimant).

74. The Hearing was held on 28 and 29 January 2015 and the non proofed version of the transcript was sent by Claimant to all of the Respondents and the arbitrators at the end of each day of the Hearing. On 2 February 2015, the arbitral Tribunal granted the Parties until 15 February 2015 to file Post-Hearing Briefs. On 13 February 2015, the Second Respondent indicated that it did not intend to file a Post-Hearing Brief and, on 17 February 2015, the Claimant, which had requested a short extension of time, filed a Post-Hearing Brief (Claimant's Post-Hearing Brief) together with a revised as well as a redline version of the transcript.

H. Time Limit for the Award and Closing of the Proceedings

75. Pursuant to Article 30(1) of the ICC Rules, the time limit of six months within which the arbitral

Tribunal must render its Final Award started to run on 17 July 2014, the date on which the approval of Terms of Reference by the Court was notified by the Secretariat to the arbitral Tribunal, until 17 January 2015. On 8 January 2015, pursuant to Article 30(2) of the Rules, it was extended by the Court until 29 May 2015 as noted in the Secretariat's letter to the arbitral Tribunal and the Parties of 20 January 2015.

76. By Procedural Order N° 8 of 17 March 2015, the arbitral Tribunal invited (a) the Claimant to provide (i) the translation into English of Article 256 of the *Dahir* of 12 September 1913 forming the Moroccan Code of the Obligations and Contracts, it has produced as Exhibit C-166, (ii) Section 2.1 of the Operating Agreement it has produced as Exhibit C-178 which was partly missing and (iii) the relevant provision of the *Dahir* of 16 June 1950 and of the Moroccan Code of Civil Procedure relied upon by the Claimant to support its claim for interest, and (b) the Parties to submit their detailed statements of costs in support of their respective claims for costs. Also by Procedural Order N°8 the proceedings were closed pursuant to Article 27 of the ICC Rules and the arbitral Tribunal informed the Secretariat and the Parties that it expected to submit its Final Award to the Court for its approval within the first two weeks of April. On 31 March 2015 the Claimant provided the documents referred to in Procedural Order N° 8 as well as its detailed statement of costs and the Second Respondent submitted its updated schedule of costs.

77. The draft of the Final Award has been approved by the Court pursuant to Article 33 of the ICC Rules at its session of 23 April 2015.

VII. SUMMARY OF THE PARTIES' CLAIMS AND RELIEF SOUGHT

A. SUMMARY OF THE RELEVANT FACTS

78. The Claimant, CGHA, as the owner of the Hotel (the *"Owner"),* entered into the Management Agreement[3] on 23 November 1989 with Trust House Forte Morocco Sarl as manager (the *"Manager")* and Trust House Forte (UK.) Limited as guarantor (the *"Guarantor").* The First Amendment to the Management Agreement dated 1 April 1991[4] and the Second Amendment to the Management Agreement dated 31 October 1998[5] subsequently varied the payment terms under the Management Agreement.

79. Prior to the conclusion of the Management Agreement, the Claimant fully owned and operated the Hotel which had been extensively refurbished between 1987 and 1989.

80. When Claimant entered into the Management Agreement, the Manager and the Guarantor were both part of the Trust House Forte Group, a large international hotel group which had expressed interest in operating the Hotel to a luxury standard[6]. The Trust House Forte Group formed a wholly owned Moroccan subsidiary, Trust House Forte Sarl, to carry out the operation and maintenance

[3] Management Agreement, Exhibit C-l.

[4] First Amendment to the Management Agreement, Exhibit C-2.

[5] Second Amendment to the Management Agreement, Exhibit C-3.

[6] Letter from Rocco Forte of Trust House Forte to Dr. Joseph Barzilai, Counsel for French Exterior Trade dated 5 August 1988, Exhibit C-107.

of the Hotel and undertook to guarantee the Moroccan subsidiary's compliance with its obligations under the Management Agreement. According to the Claimant, it was solely for this reason and on this basis that CGHA entered into the Management Agreement in 1989.

81. In 1994, the Trust House Forte Group acquired the Group *Le Méridien* from Air France. Starting in 1996, the Manager underwent a succession of ownership restructurings and, in November 2005, Starwood Hotels & Resort Worldwide Inc. *("Starwood Hotels")* acquired the *Le Méridien* brand and managing fee business while the leased and owned real estate assets were acquired in a separate deal by a new company named Starman Hotel Holdings LLC *("Starman"),* a joint venture formed by Lehman Brothers Holdings Inc. *("Lehman Brothers")* - which had acquired *Le Méridien's* debt in principal on 30 December 2003 - and Starwood Capital Group Global LLC *("Starwood Capital").* As part of Starman's acquisition in November 2005 of the leased and owned real estate assets of *Le Méridien,* Starman had taken over the Hotel and had entered into an operating agreement (the *"Operating Agreement")* with Starwood (M) Hotels Inc. *("Starwood (M)")* for the management of the Hotel.[7]

82. On 7 June 2006, CGHA wrote to *Le Méridien* raising concerns regarding the lack of investment over several years in the Hotel[8] and, on 3 July 2006, Starwood Hotels informed CGHA that, as a result of the acquisition of the *Le Méridien* Group, the Management Agreement had been transferred to a company named "Starman" and that Starman had taken over all responsibilities in relation to the Management Agreement.[9] Further details were provided in a letter dated 17 July 2006[10] from the First Respondent's direct owner, Starman UK Services Company Limited, which letter Claimant declared to have not initially received.[11]

83. During 2007, CGHA, Starman and Starwood Hotels explored an amicable resolution of the matter, including termination of the Management Agreement.

84. From 2008 to mid-2010, the First Respondent and its direct owner, Starman UK Services Company Limited, sought to negotiate a commercial exit from the Management Agreement, to no avail. On 29 August 2011, CGHA's counsel wrote to Woodman Maroc, noting that Woodman Maroc's various defaults constituted a unilateral termination of the Management Agreement.[12] In its response of 4 October 2011, Woodman Maroc asserted that it was *"in compliance with the terms of the Management Agreement and* intend[ed] *to continue to operate the Hotel Royal Mansour in accordance with the terms of the Management Agreement*[13]

85. The Claimant and the First Respondent continued to hold discussions in 2012 until Claimant send termination notices by letters of 18 October 2012 and of 8 January' 2013[14] in furtherance of its previous termination notice of 29 August 2011 as well as to demand the First Respondent to vacate the Hotel.

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[7] Operating agreement between Le Méridien Maroc Sarl and Starwood (M) Hotels Inc., dated 25 November 2005, Exhibit C-178.

[8] Letter from CGHA to Le Méridien dated 7 June 2006; Exhibit C-113.

[9] Letter from Starwood Hotels to CGHA dated 3 July 2006; Exhibit C-114.

[10] Letter from Starman UK Services Company Limited to CGHA dated 17 July 2006; Exhibit C-115.

[11] Letter from CGHA to Starman UK Services Company Limited dated 26 December 2006; Exhibit C-117.

[12] Letter from A. Chedal to Woodman Maroc (Formal Notice) dated 9 February 2011, Exhibit C-126.

[13] *Letter from Woodman Maroc to A. Chedal dated 4 October 2011, Exhibit C-127.*

[14] Letter from CGHA to Woodman Maroc and Starman dated 8 January 2013, Exhibit C-74.

86. While Woodman Maroc disputed the fact that it was in default of its obligations under the Management Agreement, whilst indicating that it *"was willing to exit the Hotel on mutually agreeable terms,"* on 7 January 2013, it informed CGHA that it *"was unable to pay the Minimum Fee due quarterly in arrears in accordance with clause 5.3 of the Management Agreement."*[15]

87. In parallel, the Second Respondent's ownership changed from the Trust House Forte Group to Golden Tree Asset Management, Avenue Capital Group and Goldman Sachs New York.[16]

88. Following the change in ownership, the Guarantor has denied any liability to Claimant under the Management Agreement to guarantee the First Respondent's due performance of its obligations.[17] Subsequently, owing to its own insolvency, the Second Respondent pursued a CVA[18] and contended (i) that its guarantee under the Management Agreement had been *"compromised"* by the CVA on the basis that Claimant is one of the *"expired lease creditors"* of the Second Respondent, and (ii) that the arbitral Tribunal had no jurisdiction over the Claimant's claims in the Arbitration.

89. On 26 July 2014, CGHA received a *"notice of change in ownership of shareholder"* dated 2 July 2014[19] that, on 19 June 2014, the First Respondent's ultimate shareholder had transferred the entire issued share capital of the First Respondent's sole shareholder, Starman (Maroc) Sarl *("Starman Maroc"),* to Maquay Investments Ltd *("Maquay Investments"),* a company incorporated in England on 7 May 2014. On 15 July 2014, Starman Maroc was renamed Iona (Maroc) Sarl before being placed into voluntary liquidation.[20]

90. Following the arbitral Tribunal's Order on CGHA's Application for Interim Relief, on 10 October 2014, a meeting was held at the Hotel premises between CGHA, Woodman Maroc and Starwood Hotels and their various legal and accounting advisors[21] during which the most practical measures for the Handover were agreed in principle.[22]

91. On 19 October 2014 the Hotel's general manager and representatives of Starman met with CGHA for the handover of the Hotel and as result of this meeting:

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[15] *Letter from Woodman Maroc to A Chedal and CGHA dated 7 January 2013, Exhibit C-73.*

[16] Statement of Claim, paragraph 64; Evidence on record shows that: in 1996, the Trust House Forte Group, including its shareholding in Travelodge, was acquired by Granada Group Plc, and became a subsidiary, and in 2001, the ownership of the Forte Hotel Group and its three brands Le Méridien, Heritage Hotels and Posthouse Hotels passed solely on Compass Group Plc which also inherited Travelodge (Statement of Claim paragraphs 26 and 65; Exhibit C-108). Compass Groups apparently sold Le Méridien to Normura international Plc in May 2001 and Travelodge to Permina funds in December 2002 (Statement of Claim paragraph 65, Exhibit C-137) and in or about late September 2006 Permina Group sold Travelodge to a private equity' firm, Dubai International Capital, which became Travelodge's shareholder prior to the CVA proceedings (Statement of Claim paragraph 65, Exhibit C-138).

[17] In a letter of 16 February 2011, Travelodge acknowledged that "the company number for Trust House Forte UK Limited is now that belonging to Travelodge" but it did "not accept that the obligations under the guarantee have passed to Travelodge" and it denied that the guarantee "relate [d] to Travelodge and/or was enforceable against Travelodge" requesting that various evidentiary documents be provided (Exhibit C-86). In a letter from Travelodge Hotels Limited to CGHA dated 14 July 2011 (received on 8 August 2011) after CGHA had provided evidence, Travelodge continued to deny any liability as Guarantor under the Management Agreement (Exhibit C-87).

[18] Company Voluntary Arrangement issued on 17 August 2012, Exhibit G to the Request for Arbitration.

[19] Letter from S. Purdy "for and on behalf of Woodman Maroc" to CGHA with copy to Mr. Hadri General Manager of Royal Mansour dated 2 July 2014, Exhibit C-139, which CGHA asserts it received on 26 July 2014, Statement of Claim paragraph 71.

[20] Extract of the Gazette, Appointment of Liquidators for Iona (Maroc) Sarl, Exhibit C-14L

[21] Minutes of Meeting prepared by Woodman Maroc's counsel, Exhibit C-153.

[22] Witness Statement of Mr. Hichame Hamdaoua, paragraph 17.

(a) Woodman Maroc and CGHA agreed on (i) the inventory of stocks and its valuation at MAD 563,157.58 (EUR 53,850.41) the corresponding invoice being booked in CGHA's accounts after set off against the amounts owed to CGHA by Woodman, [23] and on (ii) all receivable and cash pertaining to Woodman's management period, [24] and

(b) CGHA took over all existing contract of employment. [25] They did not agree a joint statement of condition which was prepared by CGHA against the Mace Report. [26]

92. On 3 November 2014, Woodman Maroc provided to CGHA (a) a full financial statement including the balance sheet and profit and loss account of the business as at 19 October 2014 [27] which showed a negative balance of MAD 24,219,582.82 (EUR 2,198,828) and (b) a list of all payments made by Woodman since 31 December 2012, which showed that Woodman had made a total payment of MAD 10,107,524 (EUR 915,495.77) to Starwood during 2013 and 2014. [28]

B. The Parties' Positions

1. Claimant's position

93. Claimant contends that the First Respondent breached the Management Agreement in the following respects:

(a) in failing to pay the quarterly fees provided for by Article 5 of the Management Agreement from December 2012 to 20 October 2014 [29], the date on which operation of the Hotel was in fact handed back to CGHA;

(b) in failing to maintain and operate the Hotel to the standard and stature of a five star international hotel in breach of Article 7.2 of the Management Agreement, and/or

(c) in failing to perform the Management Agreement in good faith. [30]

94. According to the Claimant, the Manager's unilateral defaults gave rise to termination of the Management Agreement at the latest on 8 January 2013 or alternatively on the Handover Date on

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[23] Witness Statement of Mr. Hichame Hamdaoua, paragraph 11, Exhibit C-170.

[24] Witness Statement of Mr. Hichame Hamdaoua, paragraph 12, Exhibit C-l71.

[25] Witness Statement of Mr. Hichame Hamdaoua, paragraphs 14-15, Exhibit C-l73 and Exhibit C-l 74.

[26] Witness Statement of Mr. Hichame Hamdaoua, paragraph 13, Exhibit C-172.

[27] Witness Statement of Mr. Hichame Hamdaoua, paragraph 9, Exhibit C-168.

[28] Witness Statement of Mr. Hichame Hamdaoua, paragraph 10, Exhibit C-169.

[29] Claimant asserts that the Hotel was effectively handed over by the First Respondent on 20 October 2014 instead of 19 October 2014.

[30] Claimant's Post-hearing brief of 17 February 2015, paragraph 30. The breach was initially formulated as resulting from the First Respondent's actions "in changing its nature such as to prejudice the interests of CGHA in the context of a contract entered on an intuitu personae basis" (Statement of Claim of 15 October 2014, paragraph 102). In either of its formulation, the claim is based on the same factual background and on the same legal basis i.e., the principle of good faith enshrined in Article 231 of the Dahir forming the Code of Obligations and Contracts of 12 September 1913 (the "DOC').

19 October 2014. [31]

95. Claimant further contends it is also entitled to damages. It asserts that, by reason of the Manager's breaches of the Management Agreement and continued occupation of the Hotel, the Hotel has suffered damage to its goodwill and business and also lost its clientele and substantial revenue. [32]

96. According to the Claimant, under Moroccan Law, in the absence of contractual provisions, damages awarded are equivalent to the loss suffered by the non-defaulting party as a result of the breaches and termination of the agreement and the associated loss of profit. [33]

2. The First Respondent's position

97. When the Request was filed, the First Respondent was part of a group of companies, ultimately owned by Starman Hotel Holdings LLC, which, the First Respondent asserts, is involved in the business of owning and leasing hotels and has a history of being involved in the management of numerous, high quality hotels around the world. It appears from the affidavit of Ms. Penelope Jane Madden and its exhibits which were filed in support of CGHA's Application for Interim Relief on 17 September 2014 that, on 19 June 2014, the First Respondent's ultimate shareholder transferred the entire issued share capital of the First Respondent's sole shareholder, Starman (Maroc) Sarl, to Maquay Investments Ltd, a company incorporated in England on 7 May 2014 [34], and that Starman (Maroc) Sarl was renamed Iona (Maroc) Sarl before being placed into voluntary liquidation on 15 July 2014. [35] Consequently, the First Respondent ceased to belong to the Starman Group of companies as of 7 May 2014.

98. The First Respondent's position has been stated in Woodman's Answer. The First Respondent denies being in breach of the Management Agreement. [36] However, it acknowledges that it has not paid the quarterly fees from December 2012 due to difficult financial circumstances predominantly experienced as a result of the financial crisis which started in 2007/2008 [37] and which resulted in the global fall in property prices and the tightening of credit, and not as a result of the operational performance of the First Respondent or the Hotel.

99. According to the First Respondent, the Claimant offers no evidence that, during the term of the Management Agreement, the Hotel had not remained an international five-star hotel and, in any event, Claimant did not raise any serious concerns about the maintenance and operation of the Hotel until eight years after the start of the alleged continuing breach in 2005.

100. It also alleges that the Claimant breached the Management Agreement (i) in failing to decorate, maintain and keep in good substantial repair and condition, and when necessary renew or

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[31] Statement of Claim of 15 October 2014, paragraph 103 and paragraphs 146-147; Claimant's Post-Hearing Brief of 17 February 2015, paragraph 43.

[32] Statement of Claim of 15 October 2014, paragraph 148.

[33] Statement of Claim of 15 October 2014, paragraph 149.

[34] Certificate of incorporation of a private limited company of Maquay Investments Ltd.; Exhibit C-140.

[35] Extract of the Gazette, Appointment of Liquidators for Iona (Maroc) Sarl; Exhibit C-141.

[36] Woodman Maroc's Answer, paragraph 17.

[37] Woodman Maroc's Answer, paragraph 20.

renovate, the "Structure" of the Hotel so that it would remain an international five star Hotel as required by Article 7.1 of the Management Agreement, and (ii) in attempting to terminate the Managing Agreement despite the very limited termination rights provided therein. The First Respondent reserves all of its rights in that regard, including its right to seek damages for Claimant's apparent breach of the Management Agreement.

101. As to the damages claimed by the Claimant, the First Respondent asserts that damages are completely unsubstantiated and that the Claimant did not comply with its obligation of good faith in the contractual relations under Moroccan law which would require the Claimant to mitigate its loss.

102. The term of the Management Agreement is 35 years and the First Respondent has unsuccessfully attempted to negotiate with Claimant for many months either an exit from the Management Agreement or a joint project to invest in and refurbish the Hotel.

103. Claimant's claim is an attempt to put further financial pressure on the First Respondent and force it to exit from the Management Agreement on the worst possible terms.

3. The Second Respondent's position

104. As noted in paragraphs 35 and 57 above, on 4 February 2014, Claimant discontinued its claims against the Second Respondent and the Arbitration is continuing between the Claimant and the Second Respondent solely for the purpose of the Second Respondent's claim for wasted costs.

105. As for the sole remaining issue between the Claimant and the Second Respondent (that of the treatment of the Second Respondent's costs wasted through its having to address the Claimant's now discontinued claims in the present arbitration), the Second Respondent's position is that it is entitled to these costs under the curial law and the ICC Rules in circumstances where (i) the Claimant commenced claims against the Second Respondent in these proceedings despite being on notice of the CVA at the latest by a letter dated 25 January 2013, (ii) the Second Respondent was forced to address these claims in these proceedings and did so under protest, disputing the claims on the basis *inter alia* that the English Courts had exclusive jurisdiction over the CVA, (iii) the Second Respondent threatened, and was on the verge of starting, a claim before the Chancery Division to resolve the purported issues under the CVA, and (iv) the Claimant then discontinued its claims against the Second Respondent so that the Second Respondent has effectively succeeded in this Arbitration and is entitled to its costs.

C. Relief sought by the Parties

1. Relief sought by Claimant

106. The Claimant's claims have been modified as compared to the Terms of Reference. Compared to

the Statement of Claim,[38] they have also been reformulated in Claimant's Post-Hearing Brief as to the declaration sought, the currency for the payment obligations and the rate of interest. The Claimant seeks the following relief against the First Respondent:

(a) a declaration that the First Respondent, has breached the Management Agreement in that:

(i) it breached its payment obligations under Article 5 of the Management Agreement from 1 October 2012 up to the Date of Handover;

(ii) it breached its obligations under the Management Agreement to maintain the interior of the Hotel, the Fixed Plant and FF&E and to operate the Hotel to the standard of a five-star international hotel; and

(iii) it breached its Moroccan law good faith obligation to perform the Management Agreement in good faith;

(b) a declaration that the Management Agreement was terminated either on 8 January 2013, or, alternatively, as at 19 October 2014 (at the latest);

(c) an award that the First Respondent, pay to CGHA:

(i) damages in the amount of MAD 96,353,371 or such sum as may be determined being the loss of revenue since 2005 up to the Date of Termination as a result of the Hotel being maintained by Woodman at a standard less than an international five-star standard (which figure includes the loss of fees resulting from the First Respondent's breach of Article 5 in the amount of MAD 46,264,266);

(ii) alternatively, in the event that damages claimed at (i) above are not awarded, damages in the amount of MAD 46,264,266 or such sum as may be determined being the loss of unpaid fees under the Management from October 2012 to the Date of Termination;

(iii) damages in the amount of MAD 372,382,996 or such sum as may be determined being the costs of returning the Hotel to an international five-star standard;

(iv) damages in the amount of MAD 94,644,505 or such sum as may be determined being the loss of the value of the Hotel's brand as a result of the maintenance and operation of the Hotel at a standard less than an international five-star standard;

(d) an award that the First Respondent pay simple interest at a rate of 6% simple interest per annum on all amounts awarded that remain unpaid 21 days after the date of any award to the date of payment;

(e) an award that the First Respondent pay all the costs of this Arbitration incurred by the Claimant, including the Claimant's legal costs and any costs incurred in relation to the Second Respondent;

(f) an award that all claims advanced by the First Respondent in the Arbitration are dismissed; and/or

(g) any other relief that the arbitral Tribunal deems just and appropriate to grant in the

[38] See, Statement of Claim, paragraphs 102 and 169.

circumstances.

107. The total of the damages claimed under paragraph 106 (c) above amounts to MAD 563,380,872 (EUR 51,216,443) (see, sub paragraphs (i), (iii) and (iv)) and, alternatively, to MAD 513,291,767 (see, sub paragraphs (ii), (iii) and ((iv)).

2. Relief sought by the First Respondent

108. As stated in the Terms of Reference, the First Respondent requests the arbitral Tribunal to:

(a) dismiss the Claimant's claims;

(b) order the Claimant to pay the costs of the Arbitration, including the administrative fees and costs of the ICC, the fees and expenses of the arbitral Tribunal and of any experts appointed by it, and the First Respondent's costs, fees and expenses, legal or otherwise, reasonably incurred in connection with this Arbitration; and

(c) grant the First Respondent such further or other relief as may be appropriate.

109. The First Respondent has not amended its claims after the Terms of Reference were approved by the Court.

3. Relief sought by the Second Respondent

110. The Second Respondent's claims and relief sought result from Travelodge's Submissions for Costs and from the updated schedule of costs produced with Travelodge's Reply Submissions and then with Travelodge's Further Reply Submissions which increased the amount of costs claimed from GBP 179,834.78 to GBP 214,982.38 and GBP 230,027.18, respectively.

111. The Second Respondent seeks an award:

(a) declaring that all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued;

(b) declaring that the Arbitration is only proceeding between the Claimant and the First Respondent; and

(c) ordering the Claimant to pay Travelodge the sum of GBP 230,027.18 together with simple interest at the rate of LIBOR + 1% (alternatively at such rate as the arbitral Tribunal deems fit pursuant to Article 49 of the English Arbitration Act 1996) from the date the award is rendered until the date the award is satisfied in full.

VIII. ANALYSIS OF THE ARBITRAL TRIBUNAL ON THE SUBSTANCE OF THE DISPUTE

112. The arbitral Tribunal shall first consider the requests related to the discontinuance of the claims initially brought by the Claimant against the Second Respondent (A) before turning to the merits of the claims against the First Respondent (B).

A. The Discontinuance of the Claims against the Second Respondent

113. The Second Respondent asks the arbitral Tribunal to declare (i) that all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued, and (ii) that the Arbitration is only proceeding between the Claimant and the First Respondent.

114. In its Procedural Order No. 4 of 10 September 2014, the arbitral Tribunal ordered and declared that:

(a) all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued as of 4 February 2014;

(b) the Second Respondent's claim for costs, including the costs of Travelodge's Application for costs, are reserved to the Final Award;

(c) the Second Respondent shall remain a Party to this Arbitration until determination of its claim for costs against the Claimant.

115. In Procedural Order No. 4, the arbitral Tribunal noted that *"The Parties made very few comments on the declarations sought* [by the Second Respondent]" in relation to the discontinuance of the claims against the Second Respondent and observed that *"the facts underlying the request are not challenged by either Party."* [39]

116. The arbitral Tribunal further noted that, *"there is an agreement between the signatories to the Terms of Reference that the claims initially brought by Claimant against the Second Respondent were discontinued on 4 February 2014, it is also clear that the Second Respondent remains a party to the Arbitration at least until the claim for costs it has brought against Claimant is settled one* way *or another.* " [40]

117. The arbitral Tribunal also observed that resolution of the issue of whether the discontinuance of the claim was made with or without prejudice is not a prerequisite for the declaration sought by the Second Respondent and would need to be addressed if, and only if, the Claimant chose at some stage of the proceedings to reintroduce its claims against the Second Respondent, which Claimant did not.

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[39] Procedural Order No. 4, paragraph 14.

[40] Procedural Order No. 4, paragraph 18.

118. In addition, the arbitral Tribunal also notes that the First Respondent has no claims against the Second Respondent in this Arbitration, that it has not made any submissions or taken any position on the discontinuance of the claim, that until 11 August 2014 it was represented by counsel who had participated in the establishment of the Terms of Reference, and that it was at all times thereafter kept informed of the proceedings and provided with copies of the submissions and communications made in this Arbitration.

119. Under the circumstances, there is no reason for the arbitral Tribunal not to confirm in the Final Award its Procedural Order No. 4 and declare that all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued as of 4 February 2014, and that the Arbitration has been proceeding between the Claimant and the Second Respondent only on the particular issue of costs.

120. As a result, the arbitral Tribunal declares that (i) all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued as of 4 February 2014, and (ii) as from 10 September 2014, the Arbitration has proceeded between the Claimant and the First Respondent, only as to the Second Respondent's claim for costs which is disposed of in part IX of this Final Award.

B. The Merits of the Claims

121. The arbitral Tribunal will examine the relevant provisions of the Management Agreement (1.) in order to determine to what extent, if any, the First Respondent breached the Management Agreement (2.), before turning to: the legal consequences of any said breaches, i.e., whether or not Claimant is entitled to termination of the Management Agreement and/or damages (3.), the quantum of the claims (4.) and interest (5.).

1. The Relevant provisions of the Management Agreement

122. The Management Agreement is a long-term contract entered into for an initial period of 35 years from 1 April 1989 (the "Term").[41]

123. Pursuant to Article 2 of the Management Agreement, CGHA, as the Owner, granted the Manager the sole and exclusive right to manage the Hotel during its Term, so that the Manager *"shall be entirely responsible for and shall have full and absolute day to day control and discretion in the marketing operation and management of the Hotel and the Owner shall not attempt to interfere with or he in any way concerned with such management"* and *"shall have the right to call the Hotel 'Royal Mansour' for the duration of the agreement".*

124. Article 5 provides for the payment by the Manager of:

- a minimum annual fee (the *"Minimum Fee")* to be paid quarterly on arrears at the end of each

[41] Management Agreement, Article 3, Exhibit C-l.

quarter, the amount of which was revised as of 1 April 1991[42] and as of 1 April 2000 and fixed, as from that later date, to an amount not lower than MAD 20,500,000.00[43];

- a profit share (the *"Profit Share")* of 50% of the "Hotel Profits" as defined in Exhibit 1 to the Management Agreement (if any) for each year after deducting the Minimum Fee for that year.

125. "Hotel Profits" are specified in Exhibit 1 to the Management Agreement as "Gross Sales less Costs of Sales, Direct and Service Wages, Direct Expenses and Service Expenses", all terms defined in Exhibit 1 "in line with standard THF practice." More specifically, "Service Expenses" include (i) "Sales & Marketing", (ii) "Administration", (iii) "Insurance", (iv) "Legal & Professional Fees", (v) "Energy Costs", (vi) "Decoration and Maintenance", (vii) "Taxes", (viii) "Provision for refurbishment of and alterations and additions to the interior of the Hotel and for replacement and renewal of and alterations and additions to, Fixed Plant, FF&E and Loose Equipment", (ix) "Depreciation" and (x) "Expenses", all terms defined in Exhibit 1 to the Management Agreement.

126. Pursuant to Article 4, on 1st April 1989, being the effective date of the Management Agreement (the "Effective Date"), the Hotel had undergone a complete renovation by the Owner who, in Article 14 and by reference to Exhibit 5, warrants that, as at such Effective Date, the Hotel shall be (i) constructed in a good and workmanlike manner in compliance with all applicable legislation and regulation to the standard of an international five-star hotel, and (ii) fully and properly equipped with all necessary Fixed Plant, FF&E and Loose Equipment, in sufficient quantity and to a sufficiently high standard to enable the Hotel to be run as an international five star Hotel.

127. Under Article 7, the Owner and the Manager had maintenance obligations *"so that the Hotel shall remain an international five star Hotel"* in that:

- "the Owner shall decorate and maintain and keep in good and substantial repair and condition and when necessary renew or renovate the Structure of the Hotel";

- "the Manager shall decorate and maintain and keep in good and substantial repair and condition the interior of the Hotel, the Fixed Plant, FF&E, and Loose Equipment and shall when necessary renew the Fixed Plant FF&E and Loose Equipment."

128. Under Article 10, the Manager was entitled to alter, modify or improve the Hotel with the consent of the Owner, and without such consent if the alterations and additions were necessary or required, in the Manager's reasonable opinion, to comply with any relevant regulations or statutes or to ensure the safety and security of the Hotel and of its guests. The expenditures incurred in relation thereto "may", or in the event they are required to comply with regulations or statutes or to ensure safety or security of the Hotel and its guests "shall", be charged to the provision referred to in Exhibit 1, paragraph (viii) to the Management Agreement.

129. Article 11 provides that *"the Manager may assign this agreement to a third-party with the Owner's prior written consent and, without such consent, to any other company in which the Trusthouse*

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[42] First Amendment to the Management Agreement, Article 2, Exhibit C-2.

[43] Second Amendment to tire Management Agreement, Exhibit C-3.

Forte group of companies holds the majority of the issued share capital."

130. Pursuant to Article 17, *"the Guarantor guarantees to the Owner jointly and indivisibly with the Manager the due performance by the Manager of its obligations under this agreement."*

2. The alleged breaches of the Management Agreement

131. In its last submission, the Claimant asserts that the First Respondent breached the Management Agreement in failing (a) to pay the Minimum Fee; (b) to maintain and operate the Hotel to an international five-star standard, and (c) to perform the Management Agreement in good faith.

a. The payment of the Minimum Fee

132. The payment of the Minimum Fee is an obligation of the Manager provided for by Article 5 of the Management Agreement as amended. As from 1 April 2000, the Minimum Fee was to be *"equal to twenty percent of the turnover without being lower than the lease amount for the year 11, i.e. MAD 20,500,000."* Pursuant to Article 5.3 of the Management Agreement which remained unchanged, the Minimum Fee was *"payable quarterly in arrears at the end of each quarter, on the last day of March, June, September and December."*

133. Claimant has provided evidence of the bills in an amount of MAD 5,125,000 which it sent quarterly to the Manager from 1 January 2005 to 31 December 2013 and of payments received covering the period 1 January 2005 to 30 September 2012.[44]

134. The non-payment of the Minimum Fee as from 31 December 2012 (for the period from 1 October to 31 December 2012 and the four following quarterly periods)[45] is admitted by the First Respondent in the Answer[46] and in the Terms of Reference where it is stated that *"the First Respondent has not paid the quarterly fees from December 2012 due to difficult financial circumstances predominantly experienced as a result of the financial crisis which started in 2007/2008".*[47]

135. The Moroccan Law expert, Professor Hajji, confirmed that, pursuant to Articles 254 and 255 of the *Dahir* forming the Code of Obligations and Contracts of 12 September 1913 (the *"DOC")* which provide in substance that the party who has not met its contractual commitments without valid cause is considered in default by the expiry of the term set in the agreement, the failure to pay the Minimum Fee when due is a clear breach of Article 5 of the Management Agreement.

136. The arbitral Tribunal notes that the First Respondent has admitted not having paid the Minimum Fee for the last quarter of the year 2012 and that under the Management Agreement, payment was to be made *"quarterly in arrears at the end of each quarter."* Consequently, the First Respondent was not in default before 31 December 2012 when the Minimum Fee for the period from 1 October

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[44] Exhibits C-4 to C-67 to the Application for the Final Partial Award.

[45] See, corresponding invoices, Exhibits C-68 to C-73.

[46] Woodman's Answer, paragraph 20.

[47] Terms of Reference, paragraph 48.

2012 to 31 December 2012 became payable and the breach occurred only on 31 December 2012. This is consistent with the First Respondent's admission on 7 January 2013 that it was not in a position to cure its breach of Article 5.3 of the Management Agreement.[48] Therefore the breach occurred from 31 December 2012 and not from 1 October 2012 as submitted by the Claimant.

137. The Claimant further contends that *"up to the date of termination of the Management Agreement, such fees constitute outstanding debts which are due and payable pursuant to Article 5.3; and, from the date of termination to the date on which the Hotel was handed back to CGHA, such fees are due and owing in damages as a result of Woodman's wrongful continued occupation of the Hotel."*[49] Therefore, for the purpose of the declaration sought by the Claimant that the First Respondent breached its obligation under Article 5 of the Management Agreement, the arbitral Tribunal finds that the breach occurred up to the termination date to be determined by the arbitral Tribunal.

138. In the premises, the arbitral Tribunal declares that the First Respondent breached its payment obligations under Article 5 of the Management Agreement from 31 December 2012 up to the termination date as determined in paragraph 207 below.

b. The maintenance and operation of the Hotel to the international five-star standard

139. The Claimant's case is that the First Respondent failed to maintain the *"interior of the Hotel",* the *"Fixed Plant", "FF&E",* and *"Loose Equipment"* to the international five-star standard in breach of Article 7.2 of the Management Agreement and, as a matter of construction of that provision, that it also had to *"operate"* the Hotel to the international five-star standard and had failed to do so.

140. Claimant relies on Articles 254 and 255 of the DOC which in their relevant parts provide in substance that, when no term is set out in a contract, the debtor is considered in default by a formal written request of its legitimate representative which contains a request to comply with the contractual obligation within a reasonable period of time and a statement that, beyond this time limit, the creditor will consider itself released from contractual obligation.[50]

141. In the Answer, the First Respondent raises three defences to the claim. First, it asserts that Claimant offers no evidence that, during the term of the Management Agreement, the Hotel had not remained an international five-star hotel. Second, it adds that, in any event, Claimant did not raise any serious concerns about the maintenance and operation of the Hotel until eight years after the start of the alleged continuing breach in 2005. Third, the First Respondent also alleges that the Claimant is in breach of Article 7.1 of the Management Agreement and of its obligation to *"decorate and maintain and keep in good substantial repair and condition and when necessary renew or renovate the Structure of the Hotel so that it shall remain an international five star Hotel"*

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[48] The First Respondent informed the Claimant on 7 January 2013 that it "was unable to pay the Minimum Fee due quarterly in arrears in accordance with Article 5.3 of the Management Agreement" and that it does "not anticipate having the funds available to pay the monies in the immediate future"' Exhibit C-73. The Answer, in paragraph 20, also acknowledges that the First Respondent had not paid "the quarterly fee from December 2012."

[49] Claimant's Post-Hearing Brief of 17 February 2015, paragraph 14.

[50] Extract from Dahir forming the Code of Obligations and Contracts of 12 September 1913 (the "DOC"), Exhibit C-166.

142. This raises at least four issues for the arbitral Tribunal to consider: (i) the definition of what would constitute the international five-star hotel standard, (ii) the scope of the obligation to maintain the standard, (iii) whether or not the Hotel actually meets that standard, and (iv) whether, as alleged, the Claimant lacked serious concern about the maintenance and operation of the Hotel and is in breach of its obligation to maintain the "Structure" provided for by Article 7.1 of the Management Agreement.

(i) *The definition of the international five-star hotel standard*

143. In its letter of 18 October 2011 to CGHA's Counsel, Mr. Chedal, the First Respondent has taken the position that the actual status of the Hotel is such that it *"is an 'international five star hotel' as is specified in section 7.2".* It adds: *"your client's concerns appear to be based on a perceived comparative position between the Hotel and other hotels 'of the same category' in Casablanca. Whilst it is not accepted that this is relevant measure of Woodman's performance under the Management Agreement...".* [51] The First Respondent however does not specify what it considers should be the relevant standard.

144. Evidence on record shows that written directives for hotel standards may be issued from time to time by local authorities such as the Ministry of Tourism in Morocco. When an official classification exists, it usually refers to objective criteria like the number of restaurants, 24-hours room service, etc., and subjective criteria such as *"equipment and furnishing that appear luxurious*." [52] Those criteria may differ from one country to another so that, from one country to another, the same star rating does not correspond to the same level of comfort and services. [53] However, no international body, travel group or organisation has published written specifications for an "international five-star hotel." [54]

145. From the Abergel Report and from the questioning of the experts at the Hearing, one may consider that the international five-star standard has emerged from the practice and the expectation of international travellers to find a hotel with the same level of comfort and services in whatever country they are visiting. Leading hospitality groups such as *Park Hyatt* or *Ritz Carlton* thus tend to offer the same level of services in all the countries where the brand is represented and constitute a benchmark of what would constitute an international five star standard. [55] An "international five-star standard" is thus a worldwide uniform standard developed by the hospitality industry as opposed to a local standard issued by local regulatory authorities. As such, it is the result of the competition between hotels to maintain a high standard which takes into consideration the evolution of technical requirements and the clients' expectations and the standard is a constantly evolving one. [56]

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[51] Letter from Woodman Maroc to Mr, A. Chedal dated 18 October 2011, Exhibit C-128.

[53] Transcript, 29 January 2015, p. 13.

[54] Transcript, 29 January 2015, p. 13.

[55] Transcript, 29 January 2015, pp. 14-15.

[56] Ms. Lassen an engineer of Mace, an international constructing and consulting company specializing in the hotel industry, although not an expert in the field testified that it was her understanding having worked on a number of international five-star hotel projects that the standard is a benchmark of competitive hotels (Transcript, 28 January 2015, pp. 150-152). Mr. Hamdaoua also testified that in his opinion it is the other existing five-star establishments that create the positioning of a hotel, (Transcript, 28 January 2015, p. 115).

146. Abergel thus reports that an international five-star hotel is a hotel complying with the standard provided by leading international hospitality groups operating five-star hotels worldwide and offering a uniform high level of services in all their hotels in all countries. The five-star standard is by definition a constantly evolving industry standard set by reference to a uniformity of conditions and operations of the best international hotels. Therefore, as an industry standard, it has to be assessed by reference to the relevant competition, hence by standards afforded by international five-star competitors. [57]

147. Abergel further specifies that *"the criteria to distinguish an international '5-star' hotel from a lower ranked hotel"* are two key elements: (i) superior amenities and material services for the building and the rooms translating into more space and in particular a general state of very high standard, requiring recurrent renovations and/or upgrading every 5-7 years, and (ii) superior services provided by more numerous (higher staff to room ratio) and better qualified, hence better paid, staff. [58]

148. Thus the arbitral Tribunal accepts that the obligation under Article 7 of the Management Agreement that the Hotel shall remain an international five-star hotel does not refer to the local classification and has to be assessed by reference to leading international competitors in Casablanca.

(ii) *The scope of the obligation to maintain the international five-star standard*

149. The obligation to *"maintain"* the Hotel to the international five-star standard provided for by Article 7 of the Management Agreement rests on the Owner with regard to the "Structure" of the Hotel and on the Manager as regards the interior and the "Fixed Plant", "FF&E", and "Loose Equipment" and deals solely with the physical condition of the Hotel. It is a continuous obligation for all the 35-year duration of the Management Agreement.

150. The arbitral Tribunal observes that Article 7.2 of the Management Agreement in requiring the Manager to maintain the *"interior of the Hotel,"* primarily refers to the newly refurbished premises. [59] Likewise, the obligation of the Owner under Article 7.1 with regard to the "Structure" is clearly in relation to the premises. The arbitral Tribunal accepts that the obligation to *"decorate, and maintain and keep in good and substantial repair and condition the interior of the Hotel, the Fixed Plant, FF&E and Loose Equipment and* [...] *when necessary to renew the Fixed Plant, FF&E and Loose Equipment"* provided for by Article 7.2 of the Management Agreement requires the Manager to undertake what is necessary in this regard and to provide whatever services are required to that effect and, as set out in more detail below and based on the observations of the Mace Report and the Abergel Report, concludes that the First Respondent failed to provide the required level of services in this regard. [60]

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[57] Abergel, PowerPoint presentation of 29 January 2015, slide 5; Transcript, 29 January 2015, pp. 9-14.

[58] Abergel, Report of 15 October 2014, English version, pp. 30-31.

[59] Article 1.5 of the Management Agreement: "Hotel" means the premises registered at Land Administration of Casablanca under number 13,675 on which is built a hotel called Royal Mansour currently being refurbished as such hotel is described in Exhibit 2 to which a plan is attached and shall include (without limitation) garages and such rights as the Owner may have to the car parking space adjacent to the Hotel".

151. Claimant's claim that the First Respondent failed to "operate" the Hotel to the standard of an international five-star hotel obviously goes further. Rather than being limited to the works and services required for the refurbishing and maintenance of the premises and equipment, it addresses the level of services delivered to the guests staying in a well maintained Hotel and more generally the positioning of the Hotel. Claimant contends that Article 7.2 should be read and interpreted together with the provisions of Article 2.1 of the Management Agreement, its Exhibit 5 (paragraph 4) and its Exhibit 1, and Claimant contends that the Management Agreement must be construed to imply that the First Respondent was required not only to maintain the interior and the equipment of the Hotel but also to operate the Hotel at the international five-star standard.

152. Claimant relies in this regard on the long 35-year term of the Management Agreement during which the Manager is granted the sole and exclusive right to manage the Hotel, on Claimant's representation provided for by Article 14 that, by reference to Exhibit 5, *"the Hotel shall be fully and properly equipped... to a sufficiently high standard to enable the Hotel to be run as an international five-star hotel,"* - which it asserts is more than just an expectation by the Owner and creates an obligation on the Manager to do so based on the principle of performance in good faith of the obligations under Moroccan law -, and on the provision of Article 7.2 which provides that the *"costs expanded by the Manager will be dealt with as set out in Exhibit 1"* which costs include "Direct and Service Wages" for all employees, "Decorating and Maintenance" and a provision of 6% of the "Gross Sales" for refurbishment and alteration costs.

153. Upon questioning from the arbitral Tribunal, Professor Hajji confirmed that under Moroccan law, the contract is the law of the parties, that the matter of interpretation of a contract is objective and not subjective, that if the contract is ambiguous, in other words capable of two different meanings, a court is entitled to have regard to what makes more commercial sense, and that if one ends up with an apparent meaning which is absurd or irrational, then the court may as a matter of construction conclude that the parties must have made a mistake and read the contract in a slightly different way.[61] Such an approach to interpretation has to be conducted in the light of the obligation of good faith under Moroccan law.[62]

154. There is no provision in the Management Agreement that expressly deals with the obligations of the Manager as far as the operation of the Hotel is concerned and which would require the First Respondent to provide a certain level of services to the guests or to operate the Hotel to a certain standard, nor is there an express provision that the Manager is to operate the Hotel at the international five-star standard. Further, pursuant to Article 2.1, the Manager *"shall be entirely responsible for and shall have full and absolute day to day control and discretion in the marketing operation and management of the Hotel and the Owner shall not attempt to interfere with or he in any way concerned with such management."* The Manager's responsibilities under Article 2.1 include the hiring and discharge of the Hotel staff and the assignment of duties of that staff.

155. The arbitral Tribunal notes, however, the Owner's representation provided for by Article 14 that, by reference to Exhibit 5, *"the Hotel shall be fully and properly equipped... to a sufficiently high standard to enable the Hotel to be run as an international five-star hotel,"* - The arbitral Tribunal further notes that the obligations undertaken in Article 7 are *"so that the Hotel shall remain an*

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[60] Transcript, 28 January 2015, pp. 148 and 164; Abergel, Report, English version, Section IV.5, pp. 28-29.

[61] Transcript, 28 January 2015, pp. 132-133.

[62] Transcript, 28 January 2015, pp. 136; Professor Hajji testified as follows; "good faith is the basis of Moroccan civil law."

international five star hotel" and that this applies to the Owner's as well as to the Manager's obligations. The general purpose of the obligations is thus to keep the Hotel to the international five star standard. It would make little commercial sense and could be said to be irrational economically to impose an obligation on both parties, including in particular the Owner, to invest in keeping, for a 35-year period, the "Structure" and the "interior of the Hotel", the "Fixed Plant", "FF&E" and "Loose Equipment" to the international five-star standard, whilst at the same time permitting the Manager to say that it was performing its obligations and doing so in good faith, even if it did not offer the level of services required to maintain the Hotel at the international five-star standard.

156. This is confirmed by the distinctive criteria of the international five-star standard submitted by Abergel which, as previously noted, includes two key elements: superior amenities and material services for the building and rooms, and superior services by a higher staff to room ratio and better qualified personnel.[63] The obligation of Article 7 that *"the Hotel shall remain an international five star hotel"* coupled with the Owner's representation set forth in Exhibit 5 to the Management Agreement that *"the Hotel shall be fully and properly equipped... to a sufficiently high standard to enable the Hotel to be run as an international five-star hotel,"* particularly when construed against the background of the obligation of good faith under Moroccan law, would therefore encompass an obligation that the services provided to the guests be in line with such standard and more generally that the Hotel be operated at such standard.

157. This is supported by the economics of the transaction, i.e. the bargain underlying the Management Agreement and the fact that the Owner and the Manager had a common interest in the operation of the Hotel and the development of the "Profits" defined in Exhibit 1 - which are calculated after deduction from the gross sales of various costs including "Direct and Service Wages" for all employees - and which the Owner and the Manager shared equally pursuant to Article 5.5 of the Management Agreement. Thus, the Owner and the Manager had an equal interest in the profitability resulting from the operation of the Hotel. It would not be contrary to the parties' commercial expectations if the Manager was to be expected to operate the Hotel as an international five-star hotel as it was in its own interests to do so to maximise its share of the profits.

158. As a result, the Manager's discretion in the operation of the Hotel can be construed so as to be exercised within the more general obligation that the Hotel remains an international five-star hotel as envisaged by Article 7. The existence of such discretion is also consistent with the absence of any express provision setting out the precise way in which the Hotel was to be operated, as, provided that the Hotel did not cease to satisfy the international five-star standard, such details were a matter for the Manager.

159. The arbitral Tribunal therefore accepts that, as a matter of construction of the Management Agreement under Moroccan law and taking into account the obligation of good faith, the Manager had to provide the services needed not only to maintain the interior of the Hotel, the "Fixed Plant", "FF&E" and "Loose Equipment" to the international five-star standard, but also for the Hotel to be operated by the Manager to that standard.

[63] Abergel, Report of 15 October 2014, English version, pp. 30-31.

(iii) The actual status of the Hotel

160. The third issue for the arbitral Tribunal to determine is whether the condition of the Hotel actually meets that standard.

161. The expert commissioned by the Claimant, Mace, has undertaken a detailed 1.5-day due diligence exercise with a four person team in order to review the condition of the Hotel and confirm the level of historic maintenance undertaken following an on-site visit on 3 September 2014.

162. Its conclusion is clearly that the current condition of the Hotel is far short of an international five-star standard. The summary of its findings on the date of the survey shows: (i) overall a poor level of maintenance for many years of electrical and mechanical installations (Fixed Plant and internal wiring and pipe work) as well as FF&E requiring complete refurbishment and replacement, (ii) an understaffed maintenance team which decreased from 32 to 12 over the years with no proper replacement strategy and no planned preventive maintenance strategy showing a clear lack of investment in maintenance, (iii) dilapidated plant & systems and neglected interior, (iv) a number of mechanical and electrical systems at high risk of failure, and (v) an accelerated deterioration of the building due to lack of planned preventive maintenance.

163. The evaluation expert, Abergel, confirms the observation after a physical visit to the Hotel on 4 and 5 September 2014 as follows:

(i) the current services offered by the Royal Mansour fail to meet the level of services reasonably expected from an international 5 star hotel, particularly in terms of:

a. furnishing, decoration and layout which state is inadequate for an international "5 star" luxury hotel;

b. bathrooms and toilets;

c. staff number.

(ii) the current services offered by the Royal Mansour appear to be well below those offered by its two closet international '5 star' direct competitors:

a. the Hyatt Regency, located in Place des Nations Unies;

b. the Sofitel Casablanca, which opened in 2012 and became the reference for many European businessmen met there. [64]

164. The poor level, if not the absence, of maintenance of the premises is confirmed by the First Respondent's accounting documents. Having reviewed the fixed assets table in Woodman's accounts, Abergel concluded that investments made by the Manager *"appear highly insufficient for a '5 star' luxury hotel and [with the exception of 2008 and 2010,] below the amount of 6% stipulated in the agreement as a minimum required to ensure the continued positioning as an international '5 star' hotel"* [65] Abergel further stresses that *"the investments effectively made [...] are misleading*

[64] *Abergel, Report of 15 October 2014, English version, p. 16.*

as they are based on the turnover, which has drastically declined since 2005." [66]

165. As regard services, while personnel is acknowledged to be a key element of the international five-star standard, Abergel has noted (i) a 40% reduction of the workforce which has gone from 256 full time employee in 2005 to 154 in 2013, (ii) a very significant reduction of the payroll which has gone from 41,5 million Dirham in 2005 to 29,7 million Dirhams in 2013, and (iii) a very steep decline of the staff per room ratio which has gone from 1.4 in 2005, a ratio appropriate for a '5-star' luxury hotel, to 0.8, a very low and insufficient ratio for an international '5-star' luxury hotel. [67]

166. The arbitral Tribunal also notes that the Mace Report highlighted *inter alia* a maintenance cycle 10 years behind that required by international five-star standard [68] and that the maintenance that has been carried out by the Manager has been late, degrading in advance the building and increasing the maintenance costs. [69] In this regard, Ms. Lassen testified unambiguously that there was no proper plant replacement, no planned preventative maintenance strategy, and more generally that there has been a *"very clear lack of maintenance"* from the early 2000s. [70]

167. Both the Mace Report and the Abergel Report [71] are clear evidence of the lack of maintenance by the First Respondent and poor level of services in the operation of the Hotel at least since 2005, in breach of its obligations under the Management Agreement.

(iv) Claimant's obligations

168. Turning to the Claimant's alleged breach of Article 7.1, the arbitral Tribunal needs to examine whether or not the Claimant complied with its obligation to maintain the "Structure" of the Hotel to the international five-star standard. To deny the First Respondent's allegation that it did not, Claimant relies on several invoices as evidence of structural works by CGHA done in 2004, 2008, 2010 and 2013. [72] Claimant's position in this regard is that when Claimant was required and requested to do anything that was necessary for the Structure, being the exterior shell of the building, the maintenance obligation was complied with and the money was spent and to the extent that there were structural issues that were not apparent, the Owner was dependent on the Manager telling him that anything needed to be done [73].

169. There is no evidence before the arbitral Tribunal that the Manager had at any time requested or enjoined the Owner to have specific structural work done which the Owner had refused to

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[65] *Abergel, Report of 15 October 2014, English version, p. 17.*

[66] *Abergel, Report of 15 October 2014, English version, p. 30.*

[67] Abergel, Report of 15 October 2014, English version, p. 28.

[68] Mace Report tables pages 52-55.

[69] Mace Report Section 5.1.

[70] Transcript, 28 January 2015, pp. 149-150; See, also, Mace Report, pp. 53-54.

[71] The conclusions reached by Mace and Abergel are confirmed by the audit conducted by Abserve "anonymously and using an objective methodology commonly used to evaluate luxury hotels", following a surprise stay in the Hotel from 19 to 22 January 2014 which shows "a mediocre overall score" and that "the general condition of the hotel reaches worrying levels averaging 58.2% and below the 60% limit." (Exhibit C-83).

[72] Statement of Claim of 15 October 2014, paragraph 129 and invoices produced as Exhibits C-157 to C-l64.

[73] Ms. Madden's Opening Statement, Transcript, 28 January 2015, page 18.

undertake.

170. Using the evaluation grid of the French Ministry of Tourism of 23 December 2009 for five-star hotels, the Quality Audit Report of T & L Europraxis (the *"Europraxis Audit Report")* shows that the score for the criteria of a *"clean and well maintained facade"* is 2 out of 5 with the following comment: *"Dirty facade, Needs refurbishment. Holes in stairs of main entrance."*[74] The facade of the building is clearly part of the contractual definition of the "Structure". However, Claimant has also produced invoices for *"External paintwork"* and for *"refurbishing of the external facades walls and ironwork"*[75] which prove that the facade had been repainted in 2004 and 2008. Other works were undertaken in 2008 on the marble of the facade, to supply and install anti-pigeon spikes and to repair the central leaded window.[76] The Mace expert, Ms. Lassen, affirms that the work required to be done on the facade arises from regular maintenance which requires the facade to be repainted every five years and that she could not find any structural work which needed to be fixed. Claimant emphasises that when the Europraxis Audit Report was delivered in October 2013, the Manager was four quarters in arrear for the payment of the Minimum Fee and the Owner was trying to have the Hotel handed back to it to undertake a complete renovation which would include the repainting of the facade.

171. Thus, no evidence of the Claimant's alleged failure to comply with its obligations under Article 7.1 of the Management Agreement has been put before the arbitral Tribunal.

172. As to the First Respondent's third defence to the claim, and contrary to its allegation, correspondence between the Claimant and the Manager or Starman is evidence for the Claimant's continuous concern as to the ongoing deterioration of the Hotel, the Manager's lack of investment in relation thereto in breach of the Management Agreement, and the consequences of such breach on the positioning of the Hotel[77]. The letter by registered mail and by express courier dated 29 August 2011 expressly refers to Article 7.2 of the Management Agreement and to Claimant's past several requests that Woodman remedy the situation which Woodman had been unable to satisfy.[78]

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[74] Quality Audit Report by T & L Europraxis of October 2013, Section 1 "Facilities" - EXTERIOR OF THE HOTEL, Exhibit C-81.

[75] Invoice No. 36/2004 from Moudni Travaux Sarl to CGHA dated 4 August 2004 Exhibit C-157 and Invoice No. 38/2008 from Mica-Revet to CGHA dated 7 May 2008, Exhibit C-158.

[76] Invoice No. 08/2008 from Bio Conseil to CGHA dated 8 September 2008, Exhibit C-l60.

[77] In a letter of 7 June 2006 (Exhibit C-l13) which was sent to Le Méridien and to the Manager, the Claimant noted that the Manager had not invested for more than eight years in the reserve for renovation set at 6% of the turnover and that had it complied with this obligation the hotel would be in a better position to face the competition. In a letter dated 26 December 2006 (Exhibit C-l17), with reference to "failure to maintain and renovate the Royal Mansour and termination of the free management agreement," the Claimant - which had been made aware of the transfer of the Management Agreement to a company named "Starman" by Starwood Hotels - wrote to Starman UK insisting on the urgent need to entirely renovate the Hotel and on the Manager's failure to invest in the reserve for renovation of 6% of the turnover provided for by Exhibit 1 to the Management Agreement. Further discussion with Starman UK in 2007 in relation to compensation for termination of the Management Agreement included among its topics "the need and urgency to renovate the hotel" (Exhibit C-l18) and Claimant reiterated its "position set out on numerous occasions these last years in relation to the obvious lack of maintenance of the hotel and reaffirm the urgency of upgrading the hotel" (Exhibit C-l 19). On 20 July 2010, Claimant wrote saying that it considered it "important to revisit the terms of the [...] agreement (...) and the performance of the commitments binding upon [the Starman] group i.e., performance of the Management Agreement until its expiry including the commitment to maintain and renew if necessary the assets assigned for the operation of the hotel 'in such a way that the hotel maintains the standard of a five star hotel. (Exhibit C-123). The formal notice dated 9 February 2011 stales that Woodman should consider that the notice "not only concern the default of payment of the quarterly rent but also generally speaking the unsatisfactory performance of [Woodman's] commitments as lessee-manager of the Royal Mansour Hotel in Casablanca" (Exhibit C-124).

[78] Letter from Mr. A. Chedal to Mr. Thierry Drinkra of Woodman Maroc, Exhibit C-126.

173. In the premises, the arbitral Tribunal is satisfied that the First Respondent failed to maintain and operate the Hotel to an international five-star standard in breach of the Management Agreement, that such breach has been a continued breach since at least 2005, and that, in turn, Claimant complied with its obligation with regard to the Structure as provided for by Article 7.1.

174. Therefore, the arbitral Tribunal declares that the First Respondent breached its obligations under the Management Agreement to maintain the interior of the Hotel, the Fixed Plant and FF&E and to operate the Hotel to the standard of a five-star international hotel.

c. The performance in good faith

175. The Claimant contends that the First Respondent failed to perform the Management Agreement in compliance with the principle of good faith enshrined in Article 231 of the DOC which reads as follows:

> *All commitments must be performed in good faith and bind not only for that which is expressed, but also to all the consequences which the law, the usages or fairness draw from the commitment according to its nature.* [79]

176. In particular, the Claimant contends that, in breach of its good faith obligation under Moroccan law : (a) the First Respondent circumvented the provisions of Article 11.1 through a restructuring that resulted in the Management Agreement no longer being held by a member of the Trusthouse Forte Group without CGHA's consent, in disregard of the *intuitu personae* nature of the Management Agreement, (b) the First Respondent subsequently participated in a further restructuring and defeasance scheme in order to circumvent its payment obligations, (c) Woodman's lack of good faith is further illustrated by its continued payments to Starwood Group entities both during the period of default under the Management Agreement from October 2012 onwards, and after the Order on Interim Relief prohibiting such payments without the Tribunal's consent, [80]

177. The First Respondent denies any breach of the Management Agreement resulting from an alleged change in nature. According to the First Respondent, the parties to the Management Agreement have remained the same at all times and the First Respondent's change of name from *"Trust House Forte Morocco S.a.r.l."* to *"Woodman Maroc S.a.r.l."* has not caused any injury to the Claimant. It alleges that there is no change of control provision in the Management Agreement and, as a result, the change in the ownership of the First Respondent is permitted under the Management Agreement and that *"there is no provision in the Management Agreement which provides that the Manager and the Guarantor will at all times be part of the same group."* [81]

178. It is established that, although Woodman Maroc remained the same Moroccan company (save for a change of name), it no longer remained part of the Trusthouse Forte Group at least from November 2005 onwards.

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[79] Extract from the DOC, Exhibit C-166.

[80] Claimant's Post Hearing Brief, 17 February 2015, paragraph 30.

[81] See, Letter from Woodman Maroc to Mr. A Chedal and CGHA, Exhibit C-135.

179. Article 11 of the Management Agreement restricts in a certain way the Manager's right to freely assign such contract to a third party in that the Owner's consent is required unless the assignment is made *"to any other company in which the Trusthouse Forte group of companies holds the majority of the issued share capital."*

180. It is not disputed that the Manager has remained the same legal entity.[82] As a consequence, the Management Agreement was not assigned to a third party and Claimant made clear that it does not rely on a breach of Article 11. Thus, the issue for the arbitral Tribunal is not whether the Management Agreement was assigned to a third-party in breach of Article 11. Claimant's claim rather addresses the unfair use by the Manager of a contractual right, which is the right to assign the contract provided for by Article 11, in breach of the Moroccan law principle of good faith in the performance of the contract. The Claimant's case appears to be that, although the First Respondent may have strictly complied with Article 11 of the Management Agreement, it did so in a manner which amounts to the First Respondent having circumvented that provision and the *intuitu personae* nature of the Management Agreement between CGHA, on the one hand, and, on the other hand, the Manager and the Guarantor, both as part of the Trusthouse Forte group.

181. The Claimant relies on the opinion of Professor Hajji to the effect that the Management Agreement is a contract entered into on an *intuitu personae* basis where the person of one of the contracting parties is an essential term of the contract. The provisions of the Management Agreement leading to that characterisation are: (i) the granting of a sole and exclusive right pursuant to Article 2.2, (ii) the assignment clause requiring that CGHA gives its consent prior to any assignment to a third party outside the Trusthouse Forte Group, (iii) the prohibition to use the names *"Trusthouse Forte"* after the expiry of the term, and (iv) the long duration of that term which is 35 years and is renewable.[83]

182. According to Professor Hajji, a restructuring which would result in the Manager no longer being held by a member of the Trusthouse Forte Group and in the Manager and the Guarantor being entities of unrelated groups of companies without CGHA's consent is a breach of the principle of good faith embodied in Article 231 of the DOC.

183. The issue for the arbitral Tribunal to consider is whether the characterisation of the Management Agreement as a contract entered into *intuitu personae* prevents the change in control of the Manager, i.e., the change in the ownership of the First Respondent, and would require the Manager to seek the prior consent of the Owner in the absence of an express provision to that effect.

184. One may consider as a matter of principle that the autonomy of Woodman Maroc as a separate legal entity would necessitate such an express provision. This, however, leaves untouched the issue of *intuitu personae* which is the concept underlying the Claimant's claim that the First Respondent did not perform the contract in good faith. Indeed, *intuitu personae* does not refer solely to the identity of the person, whether it is an individual or a legal entity, but also to the particular attributes, i.e., qualities, technical skills and abilities (capabilities), of the contracting party that were crucial to the commitments of the other party. The issue is then whether or not the change of control is modifying the personal attributes of the contracting party. Applied to a corporation, it seems sensible that the controlling ownership be among the distinctive features of the contracting

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[82] Claimant's Statement of Claim, paragraph 133.

[83] Hajji Opinion, paragraph 3.6: Exhibit CW-3.

party, as such control determines the corporate actions and the direction and essential modalities of the company's activities. This is all the more true in the context of a fully-owned subsidiary such as the First Respondent and in the context of a long term exclusive contract.

185. Indeed, Claimant asserts that it "was *entitled to the continued management of the Hotel under the auspices of the Trust House Forte Group in order to guarantee the high quality operation and maintenance of the Hotel to the standard of a five-star international Hotel*"[84] (emphasis added) and relies on Starman's Directors' Report and Financial Statements dated 31 December 2011 to the effect that, within the Starwood Group, the direct owner of the Manager, Starman UK Services, was in the business of owning and leasing hotels and describes itself as a *"head office cost center."*[85]

186. Some evidence on record supports the contention that the reputation of the Trusthouse Forte Group and its ability to operate the Hotel to the international five-star standard had been the basis on which the Owner had entered into the Management Agreement.[86] As noted in paragraph 181 above, Professor Hajji has identified several provisions of the Management Agreement to that effect[87] and has testified that of particular relevance are the long duration of the contract granting an exclusive right, the guarantee given by the Guarantor, as an entity within the same group as the Manager which is not a mere financial guarantee but a guarantee of performance,[88] and the assignment clause which makes clear that the Management Agreement could not be assigned outside the Trust House Forte group without the Owner's consent.[89]

187. According to Professor Hajji, the Claimant would thus have then been entitled to terminate the Management Agreement irrespective of any contractual provision to that effect and of any default in the performance of the Management Agreement.

188. On this basis, it may be accepted, on the one hand, that, given the *intuitu personae* nature of the Management Agreement, the Owner could require that both the Manager and the Guarantor would remain within the Trust House Forte group or at least within a group of companies of a reputation equivalent to that of the Trust House Forte Group in the maintenance and operation of an international five-star hotel. On the other hand, absent an express change of control provision, the principle of performance in good faith of the contract cannot bind the strategy of a group and cannot extend beyond what is strictly necessary for the protection of the owner's rights under the Management Agreement. Against this background, the Manager's failure to inform the Owner of the change of control would deprive the Claimant of the opportunity to terminate the Management Agreement or to negotiate a better guarantee of performance. As a consequence, the Manager would have no more than a duty to inform the Owner of the change of control in order to give it the opportunity to terminate the Management Agreement if it considered the change of control to be in breach of the *intuitu personae* nature of the Management Agreement. And the Owner would have the correlative duty to satisfy itself that, following the change of control, the Manager still

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[84] Claimant's Post-Hearing Brief, 17 February 2015, paragraph 33.

[85] Starman's Directors' Report and Financial Statements dated 31 December 2011, Exhibit C to the Request for Arbitration.

[86] Letter from Rocco Forte of Trust House Forte to Dr. Joseph Barzilai, Counsel for the French Exterior Trade, Exhibit C-107.

[87] Professor Hajji's Opinion, paragraph 3.6, Exhibit CW-3.

[88] The guarantee of performance which is given "jointly and indivisibly" requires the Guarantor to either substitute for the party in default in the performance of the contract or to indemnify the beneficiary of the guarantee. It seems to be the Claimant's case that the Guarantor should therefore offer the same characteristics as the Manager itself in that it should substitute for the Manager's default in the operation of the Hotel.

[89] Transcript, 28 January 2015, pp. 133-137.

presents the particular attributes required for the performance of the Management Agreement and, should it come to the conclusion that it does not,[90] as a sole remedy, the Owner would be entitled to terminate the contract.

189. Evidence on record shows that, in a letter of 6 January 2004, *Le Meridien* informed the Claimant of its financial difficulties and of ongoing discussions for the restructuring of its debt,[91] that a letter dated 3 July 2006 from Starwood Hotels informed CGHA that, following the acquisition of *Le Méridien* Group, the Management Agreement *"had been transferred to a company named "Starman" and that Starman had taken over all responsibilities in relation to the Management Agreement"*[92] and that, at the latest at end of the year 2006, Starman UK made CGHA aware of the effective change of control of the Manager and of Starwood Hotels' implication in the operation of the Hotel.[93] It was then Starman which sought a termination of the Management Agreement which CGHA was not ready to accept without appropriate compensation for the Manager's failure to maintain the Hotel to the international five-star standard.[94]

190. However, there is no evidence on record that the Owner and/or the Manager were made aware that the Guarantor had left the Trust House Forte group.[95]

191. The Claimant further asserts that the restructuring and defeasance scheme undertaken in the course of this Arbitration whereby Woodman participated and conspired in the liquidation of its parent company in order to escape any payment of monetary liabilities owed to CGHA is a further breach of its obligation to perform the Management Agreement in good faith[96] and that "[a]gainst *the background of this defeasance structure, Woodman's bad faith conduct is further confirmed by its wrongful disregard of the Order on Interim Relief, both in respect of the prohibited payments made to Starwood, and also in relation to Woodman s refusal (at Starwood's request) to effect an orderly transition of guest data.* "[97]

192. As noted above, on 19 June 2014, the First Respondent's ultimate shareholder transferred the entire issued share capital of the First Respondent's sole shareholder, Starman Maroc, to Maquay Investments, a company incorporated in England on 7 May 2014,[98] and Starman Maroc was

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[90] Only on 29 August 2011, CGHA claimed that Starman was "a purely financial company which [was] bearing the carve-out and defeasance of a former comprehensive hotel business" and that, as a consequence, Woodman Maroc, no longer had the ability to "support and satisfy" its contractual obligations under the Management Agreement Exhibit C-126.

[91] Letter from Le Méridien dated 6 January' 2004, Exhibit C-l11.

[92] *See, Statement of Claim, paragraph 33 and Exhibit C-l 14.*

[93] The letter dated 17 July 2006 (Exhibit C-l15) of Starman UK to the Claimant, of which the Claimant was made aware at the end of the year 2006 (See, Exhibit C-117) provided details regarding the restructuring of Le Méridien Group in November 2005.

[94] On 26 December 2006, CGHA wrote to Starman UK: "White we were expecting a definite commitment from you as to the coming renovation of the Hotel, you notified us in your letter of 19 December referred to above of your intention to look into the possibility of terminating the lease and to allow us to enter into a direct relationship with HOT. We therefore take note of this new intention" (Exhibit C-l17) and on 17 July 2007 it reiterated the main points of several matters discussed with Starman during a meeting of 25 June 2007, which includes: "Starman's wish to terminate the lease management contract in exchange for compensation to he paid to our company and amendment of the hotel's management contract by Starwood' (Exhibit C-l 18).

[95] The Second Respondent asserts that it ceased to be a member of the same group of companies as Woodman before 2004 (Travelodge's Answer, paragraph 6); this seems to have occurred when Compass Group, which had sold Le Meridien to Normura International Plc in May 2001, sold Travelodge to Fermina funds in December 2002 (Statement of Claim paragraph 65, Exhibit C-137).

[96] Claimant's Post-Hearing Brief, paragraph 33.

[97] Claimant's Post-Hearing Brief, paragraph 40-41.

[98] Certificate of incorporation of a private limited company of Maquay Investments Ltd.; Exhibit C-140.

renamed Iona (Maroc) Sarl before being placed into voluntary liquidation on 15 July 2014.[99] There is no evidence before the arbitral Tribunal that the Owner was informed of the identity of the directors or shareholders of Maquay Investments. The arbitral Tribunal notes that on 3 July 2006, Starwood Hotels wrote to CGHA that *"as a result of the acquisition of the Le Méridien Group by Starwood Hotels and Resorts the lease has been transferred to Starman "* and that Starman *"has assumed all the responsibilities related to said lease (free management) "*[100] (emphasis added). Thus the Owner was led to believe that it could rely on Starman assuming all the responsibilities of the Manager under the Management Agreement.[101] The restructuring of the Manager's sole shareholder after the Management Agreement had been terminated and this Arbitration started by the Owner, suggests that Maquay Investments, which does not appear in any way related to the international five-star hospitality industry or involved in the operation of hotels of such category, was created for the sole purpose of receiving the shares of the Manager's sole shareholder before being renamed and placed in voluntary liquidation and, as a result, avoid any possible liabilities under the Management Agreement.

193. Evidence on record shows that (i) Woodman and Starwood refused to transfer to CGHA all the electronic files and data relating to the Hotel's clientele and guest activity,[102] and, (ii) while failing to pay the Minimum Fee to the Claimant, the Manager continued to make payments to Starwood entities, including after the arbitral Tribunal's Order on Interim Relief and in breach of such order.[103]

194. Against this background, the arbitral Tribunal declares that the First Respondent breached its Moroccan law obligation to perform the Management Agreement in good faith.

3. The Legal Consequences of the Breaches

195. Turning to the legal consequences of the breaches, the arbitral Tribunal needs to examine (a) the Claimant's termination rights, and (b) its right to claim damages, it being noted that the Claimant asserts no consequence from the First Respondent's breach of its Moroccan law obligation to perform the Management Agreement in good faith other than the declaration sought.

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[99] Extract of the Gazette, Appointment of Liquidators for Iona (Maroc) Sarl; Exhibit C-141.

[100] *Letter from Starwood Hotels to Siger dated 3 July 2006, Exhibit C-l14.*

[101] The Witness Statement of Mr. Hichame Hamdaoua of 23 December 2014, paragraph 22 states: "the Hotel‘s senior management had employment links to both Woodman and Starwood. There has been confusion between the two entities ever since Woodman delegated the management and operation of the Hotel to Starwood (M) Hotels Inc. in 2005.15 Woodman's director. Mr Cooke, issued a power of attorney to the Hotel's General Manager, Mr Hadri (who was employed by Starwood) to authorize third party-payments. Thus Starwood was effectively authorizing payment to itself"

[102] The Witness Statement of Mr. Hichame Hamdaoua of 23 December 2014, paragraphs 19-20 sates: "Woodman simply provided a paper list of forthcoming bookings (with only the guests' names but no contact details). Access to the Hotel's LT operating system was blocked. Woodman left behind all the computers but deleted all data regarding the Hotel guests. We lost the data needed to service guests with active bookings and also lost 20 years of historic data essential for the orderly transition of the business.Not only did Starwood fail to provide the data necessary to take over the business, leaving guests unable to book from five days before the handover onwards, but Starwood also took active steps during that time to migrate customers away from the Hotel to its own nearby Sheraton hotel." Regarding the active steps referred to by Mr. Hamdaoua, see, the email from Mr. Hadri to Mr. Hichame Hamdaoua dated 15 October 2014, Exhibit C-155 to the Statement of Claim.

[103] Witness Statement of Mr. Hichame Hamdaoua of 23 December 2014, paragraphs 21 -22 and List of payments made by Woodman. Transcript, 28 January 2015, p. 113.

196. Claimant relies on Article 259 of the DOC [104] which provides in substance:

> Where the debtor is given notice of default, the creditor has the right to compel the debtor to perform its obligation if the performance is still possible failing which it may request the cancellation (termination) of the agreement, along with damages in both cases.
>
> When the performance is only partially possible, the creditor may require, either the performance of that part of the obligation which it is still possible to carry out or the cancellation (termination) thereof, with damages in both cases.
>
> In any event, the rules relating to special contracts shall apply.
>
> The cancellation (or termination) does not operate as of right but must be pronounced in court.

197. Thus, pursuant to Article 259 of the DOC, the termination of the contract (a) is not the exclusive remedy available to the Claimant which is also entitled to damages (b), the quantum of which needs to be ascertained by the arbitral Tribunal.

a. The Termination of the Management Agreement

198. Claimant contends that the termination of the Management Agreement is deemed to have occurred at the latest on 8 January 2013, the date of its letter to the First Respondent stating that Woodman Maroc unilaterally breached the Management Agreement causing its termination [105] or, alternatively, on the Handover Date on 19 October 2014.

199. The First Respondent objects that the tenu of the Management Agreement is 35 years and that it contains very limited termination rights so that Claimant's attempt to terminate the Management Agreement is in itself a breach thereof.

200. It is clear that the Management Agreement is a contract for a fixed term and Professor Hajji testified that, under Moroccan law, (i) the requirements for terminating a fixed term commercial contract are the same as those required for terminating such a contract entered into for an indefinite period, and (ii) there is no specific requirement as to the seriousness of the breach permitting termination of such a contract. [106]

201. The Management Agreement contains no provision for unilateral termination. Professor Hajji further testified that, in the absence of such provision, the requirements for termination are determined by the substantive law of the contract, i.e., Moroccan law, and in the absence *of "special law",* by the general rules of civil law. [107]

202. Professor Hajji opines that, in the event of a default, the principles set forth by Article 259 of the

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[104] See, Exhibit C-84 and Exhibit C-166 which contain slightly different translations of Article 259 of the DOC.

[105] Letter from CGHA to Woodman Maroc and Starman dated 8 January 2011, Exhibit C-74.

[106] Transcript, 28 January 2015, p. 126.

[107] Transcript, 28 January 2015, p. 127.

DOC should apply.[108] Pursuant to Article 259, the termination has to be pronounced in a Court having jurisdiction and Professor Hajji confirmed that, under Moroccan Law, the termination pronounced by a Court having jurisdiction does not necessarily operate retroactively on the date of the breach and that the Court may fix the termination date as it sees fits. According to Professor Hajji, the termination is deemed to have occurred at the latest on 8 January 2013.[109]

203. Pursuant to Article 259 of the DOC, the Claimant would be entitled to terminate the contract when the Manager became in default.

204. The Claimant relics upon the termination notice sent on 8 January 2013 to the Manager[110] and to the Guarantor.[111] The notice expressly refers to a prior notice of 29 August 2011.

205. The arbitral Tribunal notes that none of these formal written requests of the First Respondent explicitly requests that it complies with its contractual obligation within a reasonable period of time with a statement that, beyond this time limit, the Owner will consider itself released from contractual obligation as required by Article 255 of the DOC. The arbitral Tribunal also observes that the validity of the notice is not challenged by the First Respondent which only disputes the cause for termination relied upon by the Claimant and denies being in breach of the Management Agreement.

206. In addition, the arbitral Tribunal notes that, in the particular circumstances of the case, the formal notice is not a pre-requirement to the termination according to Article 256 of the DOC which provides that a formal request is not required when the defaulting party formally refused to perform its obligations. Indeed, by 8 January 2013, the First Respondent had admitted that it was not able to cure its breach of Article 5.3 of the Management Agreement.[112] Furthermore, the First Respondent had already been on notice of its breach of Article 7.2 for more than a year,[113] had been given ample opportunity to cure the breach and had constantly denied being in breach, which amounts to a refusal to remedy.[114]

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[108] See, Hajji's opinion of 15 October 2014, Section 3.3.

[109] Hajji's opinion of 15 October 2014, Section 3.4, p.9.

[110] Letter from CGHA to Woodman Maroc and Starman dated 8 January 2011, Exhibit C-74.

[111] Letter from CGHA to Travelodge dated 8 January 2011, Exhibit C-89.

[112] The First Respondent informed the Claimant on 7 January 2013 that it "was unable to pay the Minimum Fee due quarterly in arrears in accordance with Article 5.3 of the Management Agreement" and that it does "not anticipate having the funds available to pay the monies in the immediate future" Exhibit C-73.

[113] In the notice of 29 August 2011 (Exhibit C-126), which was copied to the Guarantor (Exhibit C-167), CGHA mentioned in particular to the following defaults: (i) Woodman Maroc being "unable to maintain [CGHA's] properties in an operating condition which satisfies the original 5-star ranking of Royal Mansour hotel" in violation of its obligations under article 7.2 of the Management Agreement; (ii) Woodman Maroc being "unable to satisfy its rental payments in due course... a default which has been ascertained and evidenced repeatedly" which "repeated delays evidence absence the Manager lacks of financial resources"; and (iii) the structuring of the group 'in such a way that [the Manager's] guarantor, which is contractually obliged to remedy and satisfy the Manager's obligations on a Joint basis, is itself challenging its obligations toward [the Owner]. The Owner also requested that Woodman Maroc hand back the Hotel as soon as possible, listing the various steps that would be required to implement such handover. As discussions on the conditions of the termination failed, on 18 October 2012, CGHA requested the Manager to vacate the Hotel by 31st March 2013 (Exhibit H to the Request for Arbitration), a time-limit which was extended until 30 June 2013 by formal notice to pay the rent in arrears and vacate the premises delivered through a bailiff on 15 May 2013 (Exhibit C-75).

[114] On 4 October 2011, Woodman Maroc confirmed that it was "in compliance with the terms of the Management Agreement and intend[s] to continue to operate the Hotel in accordance with the terms of the Management Agreement" Exhibit C-l27; See, also Woodman Maroc's letter of 2 November 2012: "it remains our position that we are meeting our obligations under the Management Agreement" Exhibit C-133 and that of 22 November 2012, Exhibit C-135.

207. The arbitral Tribunal thus finds that the First Respondent had been given proper notice of default, and that the Claimant was entitled to terminate the Management Agreement as from 8 January 2013.

b. The Damages

208. The Claimant relies on Article 264 of the DOC which reads as follows:

> The damage is the actual loss that the creditor has proven and the profit of which he was deprived, which are the direct result of the breach of the obligation. The assessment of special circumstances in each case remains in the discretion of the court: the court must assess differently the extent of the damages, whether it results from the fault of the debtor or from his *dol.*

209. The Claimant also relies on the Abergel Report which was given the assignment to analyse and assess as an independent expert the substance of the economic loss suffered by CGHA due to the alleged failure by Woodman to maintain the Hotel as an international 5-star hotel and, if so, to determine the quantum of the financial damage suffered by CGHA.

210. Pursuant to Article 264 of the DOC, the damages the Claimant is entitled to are those *"which are the direct result of the breach."* For Abergel, as a direct result of the failure to maintain the Hotel to the five-star standard, the Hotel has suffered a steep decline of its competitive positioning over the period 2005-2013 which it characterises as follows:

> (a) a steady decrease in the level of activity in contrast with the expansion of the '5 star' hospitality market. Abergel observed:
>
> (i) in terms of overnight stays, a continuous and material decline in overnight stays of the Hotel with a Compound Annual Growth Rate *("CAGR")* of -3.8%, as opposed to the strong growth trend of its relevant market with a CAGR of 7.3%;
>
> (ii) in terms of Occupancy Rate *("OR"),* a continuous decline in the OR and falling trend of the Hotel (53% in 2013 vs. 72% in 2005) as opposed to the growth trend of the OR of its relevant market (67% in 2013 vs. 57% in 2005);
>
> (iii) in terms of Average Daily Rate *("ADR"),* a growth of the ADR until 2008 followed by a continuous and steep decline ever since and over the period 2005-2013 as well as a negative CAGR of the ADR of the Hotel of-1.2%;
>
> (iv) in terms of turnover *("T/O"),* sales growth until 2007 followed by a continuous and steep decline ever since and since 2007, a very negative CAGR of sales of the Hotel of -5.6%.
>
> (b) an acceleration of the loss of competitive position since 2010-2011 compared to the market of '5 star' hotels due to the evolution of the competition and the development of '5 star' hotels in Casablanca which has known the renovation of two '5 star' establishments *(Palace d'Anfa* and *Mövenpick),* the opening of a new 'international 5 star' establishment *(Sofitel)* while all other '5 star' hotels, whether local or international, had undergone recent renovation works between 2004

and 2008. For Abergel, the impact of the lack of renovation of the Hotel explains the loss and competitive positioning since 2010-2011 which is shown by (i) a continuous decline in OR and negative trend since 2011 for the Hotel (-4.4%) completely diverging from the strong growth in OR and positive trend (+2.6%) of its relevant market since 2011; and (ii) in terms of average Revenue Per Available Room *("RevPAR"* = OR x ADR) since 2010 a negative CAGR in RevPAR of the Hotel of -3.4% diverging from the strong growth trend of its relevant market since 2010 with a RevPAR CAGR of +6.8%. The loss of competitive positioning can only continue and increase in the short term in view of the announced opening in 2015 and 2016 of three new '5 star' luxury international establishments (the *Four Season,* the *Oberoi* and the *Marriot).* [115]

211. Abergel then indentified three types of damages as a direct result of the First Respondent's failure to maintain the Hotel to the international five-star standard: (a) a loss of revenue as a result of the sub-standard maintenance and operation of the Hotel by the Manager; (b) the costs of restoring the Hotel to the international five-star standard, and (c) a loss of value of the brand "Royal Mansour".

212. The three types of damages cover three different time periods during which the damages were incurred: the operating loss relates to the period from 1st January 2005 until the Handover Date of 20 October 2014 during which the Hotel was operated by the First Respondent; the cost of restoring the Hotel to the international five-star standard extends from 20 October 2014 up to one year after the completion of the renovation works; while damage to the "Royal Mansour" brand has been ongoing for the whole period. [116]

213. Under the Management Agreement, the Manager had the right to call the Hotel the *Royal Mansour* and was to return the Hotel to the Owner at the international five-star standard as a consequence of its continuous obligation to maintain that standard. The damages identified by Abergel are thus the direct result of the breach.

4. The Quantum of Damages

214. As a result of the First Respondent's breaches of the Management Agreement, Claimant asserts that it is entitled to MAD 563,380,872 (EUR 51,216,443), broken down as follows:

(a) a loss of revenue from 2005 to the Handover Date in an amount of MAD 96,353,371 (EUR 8,759,397), which loss of revenue includes the loss of fees resulting from the breach of Article 5.3;

(b) the costs of renovating the Hotel to the international five-star standard;

(c) the loss of value of the brand of the Hotel estimated at MAD 94,644,505 (EUR 8,604,046).

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[115] *Abergel Report, English version, Section IV.4 pp. 22-27.*

[116] Abergel notes that "the Hotel was returned on 20 October 2014, while our [...] report dated 15 October 2014 was based on the assumption that the Hotel would be returned on 31 December 2014, Period 1 is accordingly reduced by a little more than two months, while the other Periods shift' and start a little more than two months earlier, with unchanged durations" and "that all of the methodology and assumptions used in our report dated 15 October 2014 (which are not affected by these recent developments) remain the same." Abergel, Addendum Report, English version, pp. 4 and 1, respectively.

215. The Claimant initially requested payment to be made in Euros on the basis of the average exchange rate of 11 Dirhams per 1 Euro which had been adopted in the Abergel Report. [117]

216. Under Section 48(4) of the English Arbitration Act 1996, the arbitral Tribunal has the power to order payment in any currency. However, this subsection does not have the effect of empowering the arbitrators to disregard the substantive law in relation to foreign currency obligations. The arbitral Tribunal notes that the law applicable to the Management Agreement is Moroccan law, the payment obligations of the Management Agreement are stipulated in MAD, the revenue for the operation of the Hotel are in MAD, and the damages were to a large extent localized in Morocco and were evaluated by Abergel in the Moroccan currency. Claimant's Post Hearing Brief, requests, as indicated during the Hearing, that the arbitral Tribunal issue any award for damages in MAD. [118]

217. In the Answer, the First Respondent contended that the damages are highly unsubstantiated. Since then, the Claimant has submitted the Abergel Report and the amounts claimed are those resulting from quantum determined by Abergel under the three heads of damages it had identified. The amount of the Claimant's damages needs to be assessed by the arbitral Tribunal, in the absence of the First Respondent participating in this Arbitration, on the basis of the evidence provided by the Claimant. Having heard oral evidence from the relevant expert witnesses, the arbitral Tribunal is satisfied that they were unbiased and did their best to comply with their duty to assist the arbitral Tribunal which sought to test their views by putting to them the questions that it had or that it thought the First Respondent might have sought to raise had it attended.

a. Loss of revenue from 2005 to the Handover Date

218. To calculate Claimant's loss of revenue in respect of the Minimum Fee and Profit Share provided for by the Management Agreement, Abergel estimated the loss of revenue over the period 2005 to the Handover Date which consists in the difference between the theoretical "Minimum Fee and Profit Share" which the Claimant should have received if the Hotel had remained at the international "five-star" standard and the actual Minimum Fee and Profit Share which were actually paid to the Claimant by the Manager.

219. To estimate the "theoretical" Minimum Fee and Profit Share at the international five-star standard Abergel used the following methodology:

(a) identifying a benchmark for luxury hotels (four-star/five-star) in Casablanca: for comparison of RevPAR which, according to Abergel, is the unanimously recognised hotel business indicator (RevPAR = OR x ADR);

(b) analysing and restating the selected relevant benchmark in order to have a benchmark of only five-star (international/local) hotels;

(c) estimating the adjustment coefficient for each year to reflect the evolution of the five-star (international/local) hotel market in Casablanca;

[117] Abergel Report, English version, p. 44.

[118] Claimant's Post Hearing Brief, paragraph 6.

(d) estimating the supplementary adjustment coefficient to reflect the international five-star hotel standard only;

(e) applying the above coefficients to actual sales of the Hotel to estimate theoretical sales for each year (from 2005 to 2014);

(f) estimating a normalised profit and loss account established by reference to prevailing market standards/ratios for international five-star hotels; and

(g) assessing the theoretical profit before taxes in order to assess the theoretical minimum royalty fees and profit sharing under the Management Agreement.

220. The arbitral Tribunal is satisfied that Abergel referred to the relevant period which is the period during which the arbitral Tribunal has found the First Respondent to be in breach of its continuous obligation to maintain the Hotel to the five-star standard.

221. The arbitral Tribunal is also satisfied that the existing benchmark of competitive hotels as restated adopts a prudent and conservative approach in order to keep a representative sample. The same conservative approach has been used in the adoption of the various coefficients applied to the actual turnover of the Hotel. [119]

222. Then, the arbitral Tribunal finds that the sum of MAD 96,353,371 determined by Abergel is a fair evaluation of the operating loss suffered by CGHA from 2005 to the Handover Date. [120]

223. The arbitral Tribunal further notes that the calculation includes any loss for unpaid fees from 1 October 2012 to 19 October 2014. Woodman's breach of Article 5 in failing to pay fees due under the Management Agreement has therefore caused no additional loss; so that there is no need to examine Claimant's alternative claim for damages as being the loss of unpaid minimum fee for the period from October 2012 to the Termination Date.

b. The cost of renovating the Hotel to the five-star standard

224. This type of damages seeks to compensate the restoration costs and related competitive positioning of the Hotel. It covers six distinct items of costs which have been taken into consideration by Abergel [121]

Cost of restoring the Hotel to the five-star standard MAD EUR

- Urgent renovation works 1,724,015 156,729

- Operation of the Hotel during studies and consultation -3,659,286 -332,662

[119] Abergel Report, Section V.l pp. 34-39.

[120] Abergel Addendum Report, English version, pp.3-7.

[121] Abergel Addendum Report, English version, p. 7.

- Costs of studies and business consultations 7,500,000 681,818

- Renovation works necessary to restore the Hotel 272,833,143 24,803,013

- Operating loss throughout the duration of the works (2 year) 69,144,318 6,285,847

- Costs of reopening and persistent operating loss (1 year) 24,840,807 2,258,255

Total 372,382,997 51,216,443

225. Urgent renovation works were performed immediately after the handover of the Hotel in order to continue operating the Hotel in line with minimum health and safety standards. [122]

226. The cash flow (net of corporate taxes) received from the operation of the Hotel during the one year period required to perform studies and consultation prior to the complete renovation works of the Hotel, in an amount of MAD 9,334,433 (EUR 848,585), is deducted from the quantum of the damages.

227. The costs of studies and business consultations were estimated on the usual basis of an indicative percentage of 8% of the total renovation cost to be performed and over a period of one year coherent with the condition of the Hotel as described by Mace.

228. In assessing the works necessary to restore the Hotel to an international five-star standard, Abergel relied on the work of the hospitality department of John Lang Lasalle group (the *"JLL Report")* which had been commissioned by the Manager in 2009. The JLL Report formulated three different scenarios for the renovation of the Hotel. Abergel has discarded the "as is" scenario as well as the "upscale" scenario, which would allow an improvement only to the local five-star standard, and adopted the "luxury" scenario which it considers relevant and conservative. The cost of the "luxury" scenario, estimated at MAD 248,000,000 in 2009, adjusted for inflation and without costs of interior design and project management which were not included in the JLL Report, amounts to MAD 272,833,143. The arbitral Tribunal also notes that the amount of this type of costs has deducted that part of the work to be borne by the Owner under the Management Agreement, i.e. *"Preparatory works - Masonry -Sealing";* work on the façade which were included into the JLL Report and part of the *"contingency."*[123] In addition, the coherence test performed on the basis of a cost of renovation per key compared to that of international five-star hotels shows that the cost of MAD 2.2 million per key on the basis of the JLL Report "luxury" scenario is lower than the MAD 2.9 million for the *Sofitel* Casablanca or the *Kenzi Tower.* [124]

229. The operating loss during the two years of closure of the Hotel necessary for the performance of the renovation works includes the fixed expenses incurred fully or partially (personnel maintenance, security, fees) to the exclusion of loss of future revenue during that period. [125]

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[122] Witness Statement of Mr Hichame Hamdaoua dated 23 December 2014, paragraphs 7-8; see, also Statement of Condition prepared by Mr Hichame Hamdaoua; Abergel Addendum Report, English version, Section 11.2, p. 2, and 7 and Annex I.

[123] Abergel Report, English Version, p.51.

[124] Abergel Report, English Version, pp. 52-56.

[125] Abergel Report, English version, pp.58-62. As noted by the Claimant, "the least burdensome/costly option between lay off of personnel and the conservation of all personnel at their full wages and benefits has been adopted", Claimant's Post Hearing Brief, paragraph 53(e).

230. Abergel has further identified (i) specific costs associated with the reopening of the Hotel consisting in extra costs for the recruitment and training of personnel and costs of specific advertising campaign on a market where competition will have significantly increased and strengthened, and (ii) an operating loss related to the period following the renovation works and the reopening of the Hotel and during the progressive resumption of business to a normalised level. [126]

231. The arbitral Tribunal is satisfied that the sum of MAD 372,382,996 fairly compensates the cost of renovation of the Hotel to the international five-star standard.

c. The loss of value of the Hotel's brand

232. The third head of damage claimed results from the alleged loss of value of the brand "Royal Mansour" which is separate from the loss of revenue and costs of renovation of the Hotel.

233. It is admitted that the brand is an intangible element of a company which distinguishes it from its competitors and contributes to the reputation of the company conducting business under the brand. It allows showing a super profit on sales related to the brand which may vary depending on the attractiveness of the brand.

234. For Abergel, the brand has been existing since the 1950s and it gained strength up to the years 2005 based on the following distinctive features:

- its building date, with a presence in Casablanca since the start of the 1950s;

- its strong national identity in Morocco;

- its association with an owner of international renown;

- the excellence that has been associated with it for fifty years in Casablanca;

- the excellence that is associated with it today in Marrakech;

- its international renown;

- its elitist reference, versus "chain" hotel brands, such as Mercure, Pullman or Méridien. [127]

235. The arbitral Tribunal is satisfied that the Claimant has provided sufficient evidence that at the time the Management Agreement was entered into, the "Royal Mansour" brand was a brand of preeminent reputation. The Claimant relies in this regard on the JLL Report which indicates, *"Le Royal Mansour Méridien was one of the first modern and prestigious hotels in Casablanca and the only five star property for many years. The hotel has gained an international reputation having welcomed many dignitaries including Kings (Mohamed V and Hassan II - Morocco, Faycal -Saudi Arabia), Presidents (Yasser Arafat - Palestine, François Mitterrand - France, Gamal Abdennasser - Egypt), and show-business stars (Sean Connery, Sophia Loren, Jean Claude Van Damme),* and on the

[126] Abergel Report, English version, Section V.2.5, pp. 63-68.

[127] *Abergel Report, English version, Section V.3.3, pp. 72-73.*

fact that the Hotel had undergone a complete renovation in 1989 and was affiliated with *The Leading Hotels of the World,* a luxury hotel collection. [128]

236. Abergel identified three factors which caused the deterioration of the brand:

(a) the deterioration of the premises and the operating conditions of the Hotel which led the Manager to apply prices lower than the standard of the international five-star hotel category and an inadequate long term cost management policy evidenced by a poor rating on Trip Advisor (3.5/5 and 62% of positive feedback versus 4.5/5 and 90% for the Royal Mansour in Marrakech);

(b) the linkage of the *Le Meridien* brand to the *Royal Mansour* brand which diluted the identity of the latter in that it suffered from the standardisation of *"French-inspired standard of European style comfort spread out over 120 units across the world"* by the *Le Méridien* group of French origin to the detriment of the Royal Mansour brand as a symbol of 100% Moroccan-inspired luxury with a strong cultural and visual Moroccan identity through only two distinctive establishments in Marrakech and Casablanca;

(c) the closure of the Hotel for two years during renovation and as a consequence (i) the ongoing weakening of the renown of the brand directly in relation to the Casablanca luxury hotel industry and indirectly in relation to the Marrakech one, and (ii) a negative differentiation of the brand with regard to the new competition and the necessity, upon reopening of the Hotel *"to regain ground to simply hope to recapture market shares vis-à-vis new competitors already in cruising speed."* [129]

237. Abergel reviewed three different methods for the calculation of the loss of value of the Royal Mansour brand two of which could not be implemented in the absence of possible identification of investments made to promote the Royal Mansour brand and used the price differential method which consists in capitalizing the super profit related to the brand. Following this method, the loss of value of the Royal Mansour brand is estimated at MAD 94,644,505. The accuracy of the result was then checked in implementing an alternative method, the "royalty method" based on a projected business plan and using a discounted cash flow calculation in order to obtain the projected value of the brand and its actual value, the differential between the two values representing the loss of brand value. Following this method the loss of value of the Royal Mansour brand is estimated at MAD 80,876,398. [130]

238. Based on the foregoing and in the absence of adverse argument, the arbitral Tribunal is satisfied that the brand "Royal Mansour" has suffered a loss of value which can be estimated at MAD 80,876,398.

239. In the premises, the arbitral Tribunal finds that Woodman Maroc must pay to CGHA, MAD 549,612,765 corresponding to the following:

(i) damages in the amount of MAD 96,353,371 being the loss of revenue since 2005 up to the Date of Termination as a result of the Hotel being maintained and operated at a standard less than an

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[128] JLL Report, paragraph 5.3, p.31, Exhibit C-105.

[129] *Abergel Report, English version, Section V.3.3, p. 76.*

[130] Abergel Report, English version, Section V.3.3, p. 82-84.

international five-star standard;

(ii) damages in the amount of MAD 372,382,996 being the costs of returning the Hotel to an international five-star standard;

(iii) damages in the amount of MAD 80,876,398 being the loss of the value of the Hotel's brand as a result of the maintenance and operation of the Hotel as a standard less than an international five-star standard;

5. Interest

240. In the Statement of Claim, the Claimant seeks "interest" without specifying the basis of the claim, the period with respect to which interest should be awarded, the rate to be applied or whether simple or compound interest should be granted.

241. Claimant's Post-Hearing Brief explains that an award of pre-award interest may be potentially problematic from the perspective of Moroccan law. The Claimant therefore limited its claim for interest to post-award interest in the event that the First Respondent fails to honour any award.

242. The claim for post-award interest is based on English law, being the law of the seat of the Arbitration and, pursuant to Section 49 of the English Arbitration Act 1996, the arbitral Tribunal has the power to grant post-award interest and such power is discretionary. Claimant asks the arbitral Tribunal to apply the statutory English court default rule for unsatisfied judgements. Although the Claimant asserts that it would be entitled to 8% simple interest as the statutory English Court default rate for unsatisfied judgments, it considers that the Moroccan Court judgment rate is more appropriate under Moroccan law.

243. Moroccan Law provides for a rate of 6% per annum set forth by the *Dahir* of 16 June 1950 which is applicable to unpaid Moroccan Court judgments rendered in civil and commercial matters. Such interest rate applies from the date a Moroccan court judgment is rendered and is due 10 days after the judgment is duly notified to the defaulting/condemned party in the event that such party still refuses to pay the amounts ordered (Article 440 of the Moroccan Code of Civil Procedure).

244. The arbitral Tribunal finds that the law of the place of arbitration (English law) is more appropriate than the law of the Management Agreement (Moroccan law) to deal with the issue of post award interest. Taking into consideration Claimant's position as to the rate to be applied the arbitral Tribunal considers that Claimant is entitled to simple interest at a rate of 6% per annum on all amounts awarded hereunder and unsatisfied 21 days after the date of this Final Award.

IX. THE COSTS OF THE ARBITRATION

245. Each one of the Parties presented a claim for costs of the Arbitration.

246. In the Statement of Claim, the Claimant seeks *"costs of this arbitration to be fixed by the arbitral tribunal."* [131] Claimant's Post Hearing Brief further seeks an award that *"the First Respondent pays all the costs of this arbitration, including the Claimant's legal costs and any costs incurred in relation to the Second Respondent."* [132]

247. In the Terms of Reference, the First Respondent requests the arbitral Tribunal to *"order Claimant to pay the costs of the Arbitration, including the administrative fees and costs of the ICC, the fees and expenses of the Arbitral Tribunal and of any experts appointed by it, and the First Respondent's costs, fees and expenses, legal or otherwise, reasonably incurred in connection with this Arbitration."* [133]

248. The Second Respondent has given particular emphasis to the issue of costs in Travelodge's Application for Costs and subsequent submissions where it seeks an award *"ordering the Claimant to pay Travelodge the sum of GBP 230,027.18 together simple interest at the rate of LIBOR + 1% (alternatively at such rate as the arbitral Tribunal deems fit pursuant to Article 49 of the English Arbitration Act 1996) from the date the award is rendered until the date the award is satisfied in full."* The Second Respondent relies on Article 61 of the English Arbitration Act (1996) more specifically on the rule that *"costs follow the event."* The Claimant has vigorously opposed Travelodge's Application for Costs in challenging the jurisdiction of the arbitral Tribunal with respect to, and the admissibility of the claim for costs as well as its merits and quantum. It also objected on 31 March 2015 to the costs order sought by the Claimant in that the First Respondent should be ordered to pay all the costs of this Arbitration incurred by the Claimant, including *"any costs incurred in relation to the Second Respondent."*

249. On this preliminary issue, the Second Respondent rightfully points out that the request for such relief was introduced for the first time in Claimant's Post-Hearing Brief and the Claimant then merely referred to its letters of 20 August and 1 September 2014, adding that the question of the allocation of costs is fully in the discretion of the arbitral Tribunal, [134]

250. The arbitral Tribunal now needs to determine the rules applicable to the issue of costs (A) before allocating the costs between the Parties (B).

A. The Rules Applicable to the Issue of Costs

251. Article 37(3) of the ICC Rules provides that *"the final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties."* Pursuant to Article 37(1), the costs of the arbitration *"include the fees and expenses of the arbitrator and the ICC administrative expenses fixed by the Court (...). as well as the fees and expenses of any expert appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration"*

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[131] Claimant's Statement of Claim, paragraph 169(e).

[132] Claimant's Post-Hearing Brief, paragraph 65(e).

[133] *Terms of Reference, paragraph 56.*

[134] See, respectively, Addleshaw Goddard's letter to the arbitral Tribunal dated 31 March 2015 and Gibson, Dunn's letter to the arbitral Tribunal dated 31 March 2015.

252. The arbitral Tribunal has a wide discretion in making a decision for costs pursuant to Article 37(5) of the ICC Rules which provides that it *"may take into account such circumstances as it considers relevant including the extent to which each party has conducted the arbitration in an expeditious and cost effective manner."*

253. Thus, the arbitral Tribunal is not bound by any specific rule, including that provided by Article 61(2) of the English Arbitration Act 1996 relied upon by the Second Respondent, that costs should follow the event,[135] which is to be applied *"unless the parties agree otherwise."* In any event, the Claimant also rightfully points out that the general rule provided for by Article 61(2) of the English Arbitration Act 1996 is followed by a wide exception where it appears to the arbitral Tribunal that *"in the circumstances this is not appropriate in relation to the whole or part of the costs."*

254. Indeed, Article 61 of the English Arbitration Act 1996 provides that *"the tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties."* The relevant provisions of the English Arbitration Act 1996 are non mandatory and the ICC Rules referred to in the Arbitration Agreement contain several provisions with respect to costs referred to above which either displace or supplement the principles laid down by the English Arbitration Act 1996.

B. The Allocation of Costs between the Parties

255. Although the arbitral Tribunal finds that in exercising its discretion attention may be given to the outcome of the case on the basis of the principle that costs should follow the event, other considerations need to be taken into account in making its decision on costs, and the arbitral Tribunal may have a distinct approach of the costs fixed by the Court, on the one hand (1), and the Parties' legal and other costs, on the other hand (2).

1. The costs fixed by the ICC Court

256. The fees and expenses of the arbitrators and the ICC administrative expenses were fixed by the Court at its session of 23 April 2015 at USD 705,000.

257. The advance on costs fixed by the Court, i.e. the fees and expenses of the arbitrators and the ICC administrative expenses has been supported in full by the Claimant which prevails in all of its claims against the First Respondent. The First Respondent should therefore bear the largest part of these costs.

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[135] The Second Respondent contends "as a matter of principle, that even if one were to assume that Claimant acted perfectly reasonably in starting its claim, but later decided - also perfectly reasonably - to stop the claim, the fact would remain that Travelodge incurred unnecessary expense which it is entitled to recover in a straightforward application of the principle that costs should follow the event" and that, having succeeded in this Arbitration as a result of the discontinuance of Claimant's claim against it, the Second Respondent is entitled to recover the totality of the costs it has incurred because of Claimant's aborted claim. It stresses that, "as a matter of fact, Travelodge made clear its opposition to the claim and its reliance on the CVA (which contains an exclusive jurisdiction clause in favor the English Courts and covenant not to sue in any other jurisdiction) long before the commencement of the Arbitration." Travelodge's Costs Submissions, paragraphs 12-13.

258. The Second Respondent argues that it would be *"wrong in principle and irregular for the Tribunal to allocate to the Second Respondent any part of the advance of costs."* It does not further support its contention and the arbitral Tribunal notes that pursuant to Article 37(5) of the Rules, in making a decision as to costs, the arbitral Tribunal may take into consideration such circumstances as it considers relevant and, therefore, as noted by the Claimant, it has a discretionary power in the allocation of the costs fixed by the Court.

259. The arbitral Tribunal further observes that the costs fixed by the Court include *inter alia* the costs incurred in the examination and disposal of Travelodge's Application for Costs which the arbitral Tribunal reserved to the Final Award in its reasoned Order N° 4 on Travelodge's Application for Costs of 10 September 2014. However, the Application for Costs was made in a situation where the Claimant was made aware of the CVA long before the filing of the Request, the claims against the Second Respondent were discontinued at a very early stage of the proceedings even before the arbitral Tribunal was fully constituted, and where the Second Respondent remained a party to the Arbitration only for the purpose of costs which in Procedural Order N° 4 the arbitral Tribunal considered the Second Respondent might be entitled to.

260. It thus appears fair that the Claimant should bear a part of the fees and expenses of the arbitral Tribunal and of the ICC administrative expenses, which should be limited in view of the size and complexity of the respective claims.

261. Based on the above, the arbitral Tribunal considers that the arbitrators' fees and expenses and the ICC administrative costs should be borne in proportion of 95% by the First Respondent and 5% by the Claimant.

262. Consequently, the arbitral Tribunal finds that the First Respondent should pay to the Claimant, USD 669,750 in reimbursement of the advance on costs.

2. The Parties' Legal and Other Costs

263. Pursuant to Article 37(1) of the ICC Rules, the Parties' legal and other costs are the *"reasonable"* costs incurred *"for the arbitration"* which are not included in the costs fixed by the Court. They may consist in counsel fees and expenses, travel expenses of the parties and their counsel for hearings and meetings, costs of party, appointed experts, witnesses, translators, interpreters including travel costs and accommodation costs for hearings and meetings with counsel, costs of hearing rooms and associated services.

264. On 31 March 2015, the Claimant has provided its detailed statement of costs submitted in the currency in which these legal and other costs were incurred for the following amounts: GBP 706,759.50 (Gibson Dunn fees and incidental costs/charges, translation service, interpretation and transcription service), EUR 652,307.70 (Landwell & Associés' fees, and Mace's and Abergel & Associés' respective expert report and testimony), MAD 428,861 (including VAT on Kettani Associés Avocats' legal advice on Moroccan law and Professor Hajji's expert report and testimony) and SGD 772,356.70 (Rajah & Tan LLP's fees and incidental costs/charges).

265. As noted above, the First Respondent has brought a claim for *"costs, fees and expenses, legal or otherwise, reasonably incurred in connection with this Arbitration.*" However, it has not submitted a detailed statement of costs for those costs incurred before it decided not to participate in this Arbitration although it was invited to do so by Procedural Order N°8.

266. The Second Respondent claims legal costs in a total amount of GBP 269,322.28.

267. As noted in the arbitral Tribunal's Order on Travelodge's Application for Costs, the costs the reimbursement of which is sought by the Second Respondent consist only in legal fees.

268. Before determining which items of the Parties' legal costs may be considered recoverable being *"incurred for the arbitration"* and *"reasonable"* as provided for by Article 37(1) of the ICC Rules (b), the arbitral Tribunal needs to examine the jurisdictional issue raised by the Claimant regarding the Second Respondent's claim for costs (a).

a. The admissibility of the Second Respondent's claim for costs

269. In broad terms, Claimant argues that Travelodge is estopped from asserting that the arbitral Tribunal has jurisdiction to make an award of costs, on the basis that Travelodge contended that the arbitral Tribunal did not have jurisdiction to determine its own substantive jurisdiction *(Kompetenz-Kompetenz),* or that it would now be unfair for it to be allowed to claim any costs. According to the Claimant, having so asserted, it would not now be open to Travelodge to seek an award of costs, inconsistently with such an assertion.

270. The arbitral Tribunal finds that Claimant's contention fails for the following reasons.

271. Travelodge merely contended that the arbitral Tribunal did not have jurisdiction to determine the effect of the CVA given that it is expressly subject to an exclusive jurisdiction clause in favour of the English Courts. However, it did not further argue that the arbitral Tribunal did not have jurisdiction to determine whether that contention was correct or incorrect.[136] Travelodge also reserved the right, and subsequently threatened, to make an application to the English Courts to have, amongst other things, the question of the arbitral Tribunal's substantive jurisdiction determined and to obtain if necessary an injunction to restrain CGHA from proceeding further with the Arbitration against Travelodge. However, such an application would not necessarily be consistent only with an assertion that the Tribunal lacked competence-competence, as such an application could be made on the basis that the English Courts had concurring jurisdiction with the arbitral Tribunal on the basis of the exclusive jurisdiction clause of the CVA. Nor is there anything in the letter of 14 January 2014 inconsistent with Travelodge's Answer in this respect.[137]

272. In any event, even assuming that Travelodge asserted, at some stage, that the arbitral Tribunal did not have jurisdiction to determine its own substantive jurisdiction, such assertion would not, by itself, estop it from subsequently claiming costs. Before any estoppel could arise, it would, on

[136] This is clear from paragraphs 1 to 3 and 16 and 17 of the Second Respondent's Answer.

[137] In paragraph 5 of that letter (Exhibit SR-10), Travelodge made clear that the action before the English Courts would be based on the CVA and only denied in paragraph 3 that the arbitral Tribunal had jurisdiction over matters relating to the scope and effect of the CVA which is an issue which pertains to the subject-matter jurisdiction of the arbitral Tribunal and not to the principle of competence-competence.

ordinary principles, be necessary for the Claimant to establish, in particular, that it had reasonably relied on such an assertion to its detriment so that it would now be unfair for Travelodge to change its position.

273. In CGHA's Further Reply Submissions, the Claimant appears to contend that, even if no formal question of estoppel arises, it had been led to understand that the Tribunal would be permitted to decide the question of jurisdiction and that it proceeded on this basis, only to be told on 14 January 2014 that Travelodge was intending to refer the issue to the English courts. [138]

274. However, the Claimant does not allege that Travelodge represented that the question of jurisdiction would be decided by the arbitral Tribunal, that it had believed that this would occur, and that it had acted to its detriment on the basis of such belief so as to give rise to an estoppel. [139] Nor, given terms of Travelodge's Answer especially at paragraphs 1 and 2, would any such belief have been reasonable, such as to now make it unconscionable or unfair for Travelodge to make any claim for costs.

275. In the premises, the arbitral Tribunal finds that it has jurisdiction over the Second Respondent's claim for costs and that the Second Respondent is not estopped from asserting the arbitral Tribunal's jurisdiction to make an award on legal costs.

b. The Recoverable Costs

276. As noted above all Parties made claims for legal and other costs but only the Claimant (ii) and the Second Respondent (i) quantified and supported such claims.

(i) The Second Respondent's Claim for Legal Costs

277. The Claimant asserts that Travelodge's conduct leading up to the discontinuance of the claims against it disentitles it to receive any of the costs claimed and that it was completely justified and reasonable in both commencing and continuing its claims against Travelodge in this Arbitration. The Claimant further contends that Travelodge is not entitled to its claim for costs in its entirety on the basis of the principle that the costs incurred by Travelodge must be necessary and reasonable.

278. The arbitral Tribunal has first considered whether Travelodge is entitled to any of the costs claimed and, in the affirmative, whether such costs should be regarded as recoverable and reasonable pursuant to Article 37(1) of the ICC Rules.

279. The Claimant asserts that Travelodge should have made its objections to the jurisdiction of the arbitral Tribunal known earlier. The complaint is directed towards Travelodge's conduct between the commencement of the Arbitration and its threat to commence proceedings in the English courts

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[138] See, especially, CGHA's Further Reply Submissions, paragraph 23, where it refers to Travelodge's attempts to "place all parties under the (wrong) assumption that it was content to have the Tribunal determine the question of its own jurisdiction."

[139] In this regard, Claimant relies on the letter of the Secretariat of 5 November 2013 "to which Travelodge did not object." See, CGHA's Further Reply Submissions, paragraph 22 and Exhibit C-96.

in the letter of its counsels of 14 January 2014.[140] The arbitral Tribunal notes, however, that Travelodge referred to the existence and effect of the CVA in a letter of 25 January 2013[141]; the arbitration proceedings were commenced in August 2013[142] in circumstances where a request by Travelodge for an extension of time to respond to a letter before action[143] was rejected by CGHA[144]; Travelodge's position was set out in Travelodge's Answer filed under protest on 18 October 2013[145]; and the threat to commence proceedings in the English courts in January 2014[146] appears merely to have been the catalyst for Claimant's decision to discontinue its claims. Travelodge cannot, in such circumstances, reasonably be said to be the only one to blame for the costs it incurred such as to disentitle it to any costs.

280. The Claimant further asserts that Travelodge seeks to justify its claim for costs on the grounds that the Claimant commenced the Arbitration despite knowing of the CVA and its operation. The Claimant seeks to answer this point by contending, in effect, that it considered that it was not bound by the CVA, that the issue has not been decided and that it therefore acted reasonably in commencing and continuing the Arbitration against Travelodge. This, however, is beside the point. Given that the Claimant has discontinued its claims, Travelodge needs no other basis for its claim for costs. In such circumstances, neither the fact that the effect of the CVA has not been determined one way or the other, nor the fact that the Claimant may or may not have been acting reasonably in contending that it was not bound by the CVA assists it.

281. The assertion that the Claimant acted reasonably in commencing the Arbitration against the Second Respondent also sits unhappily with its criticism of Travelodge for having failed to point out any earlier the potential effect of the exclusive jurisdiction clause in the CVA. Claimant was provided with a copy of the CVA in January 2013 and referred to it in its Request for Arbitration. In the absence of any explanation from Travelodge, it inevitably fell to the Claimant to decide for itself on the implications of the CVA.

282. The arbitral Tribunal thus finds that the Second Respondent is entitled to claim costs and needs to determine which of such costs are recoverable and in which amount.

283. The Second Respondent has detailed its legal costs, as last updated, in a total amount of GBP 269,322.28 as follows:

- Part A Costs incurred prior to the filling of the Request 4,982.40

- Part B Costs incurred following the filling of the Request and in advance of the preparation of the Answer 31,516.42

- Part C Costs incurred preparing the Answer filed by the Second Respondent and reviewing the Answer filed by the First Respondent 39,575.50

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[140] Letter from Addleshaw Goddard LLP to Rajah & Tann, Exhibit SR-10.
[141] Letter from Addleshaw Goddard LLP to CGHA, Exhibit SR-3.
[142] Request for Arbitration dated 6 August 2013, Exhibit SR-7 and Exhibit C-91.
[143] Letter from Ian Winter QC to Travelodge, Exhibit SR-4 and Exhibit C-90.
[144] Letter dated 6 August 2013 from Rajah & Tann to Addleshaw Goddard LLP, Exhibit SR-6 and Exhibit C-92.
[145] Travelodge's Answer, Exhibit SR-9.
[146] Letter from Addleshaw Goddard LLP to Rajah & Tann, Exhibit SR-10.

- Part D Costs incurred following the filing of the Answer 67,690.46

- Part E Costs incurred preparing English Court Proceedings 49,470.00

- Part F Costs incurred from and including 8th May 2014 21,740.60

- Part G Costs incurred from and including 27th June 2014 15,044.80

- Part H Costs incurred from and including 24th July 2014 39,295.10

284. As noted in paragraph 263 above, the costs claimed are to be characterized as *"legal and other costs"* pursuant to Article 37(1) of the ICC Rules and such costs are recoverable only to the extent that they are *"reasonable"* and incurred *"for the arbitration."*. In this regard, Claimant contends that Part E of Travelodge's Schedule of Costs, i.e. costs incurred in preparing the English Court proceedings, should not be allowed as they were not incurred in the present Arbitration.

285. The arbitral Tribunal finds that cost claims associated with ancillary judicial proceedings, although they may be related to the arbitration, should not be considered costs incurred for the arbitration and, as a result, the costs incurred by the Second Respondent in preparing the English Court proceedings are not deemed recoverable under Article 37(1) of the ICC Rules which is the basis of the its claim. Likewise, and for the same reason, the arbitral Tribunal considers that the costs incurred prior to the filling of the Request and identified in Part A of Travelodge's Schedule of Costs should not be deemed recoverable.

286. The Claimant also objects to the quantum of the costs claimed in Parts B-D of Travelodge's Schedule of Costs and argues that Travelodge is seeking double recovery of some of these costs so that Travelodge should be entitled only to part of its Part D costs, i.e. GBP 54,290.56 less GBP 8,647.20, and should not be entitled to the costs claimed in Part B. The Second Respondent asserts that there is no double counting and that the Schedule of Costs has been prepared by a professional costs draftsman, that the time records were carefully reviewed and that the costs were apportioned between the various stages of the proceedings. It is thus entirely accurate and reliable. In its letter to the arbitral Tribunal of 1 September 2014, Claimant further argues that *"it would be unfair to award the inflated sum claimed which extends far beyond the costs of forcing the discontinuance of the claim."*

287. Indeed, as noted above, the discontinuance of the claims against the Second Respondent was obtained even before the constitution of the arbitral Tribunal and was thereafter without trouble recorded in the Terms of Reference. The Second Respondent did not succeed in Travelodge's Application for Costs [147] and thus, as noted in Procedural Order N° 4 on Travelodge's Application for Costs, the Arbitration has been proceeding between the Claimant and the Second Respondent only on the issue of costs which the Second Respondent sought to have determined at an early stage of the Arbitration. The arbitral Tribunal also notes that the resources dedicated by Travelodge to

[147] As noted in paragraphs 115-116 of this Final Award, the Parties' submissions contain only scarce comments on the discontinuance of the Claimant's claims against the Second Respondent and in Travelodge's Application for Costs the Second Respondent sought an award : (a) declaring that all of the Claimant's claims against the Second Respondent in this Arbitration have been discontinued, (b) declaring that the Arbitration is only proceeding between the Claimant and the First Respondent, and (c) ordering the Claimant to pay the Second Respondent costs.

supporting the claim for costs [14]8 appear to be out of proportion with regard to the initial objective of the claims, even taking into account the Claimant's unsuccessful challenge of the arbitral Tribunal's jurisdiction on the issue of costs and the fact that the Claimant had to remain a party to the Arbitration with regard to the issue of costs.

288. The arbitral Tribunal thus finds that it is appropriate to discount by 25% the part of Travelodge's costs it deemed recoverable on this basis and it considers that the sum of GBP 161,147.16 adequately corresponds to the reasonable legal costs the Second Respondent is entitled to.

289. Finally the Second Respondent claims interest on its legal costs from the date the award is rendered until the date the award is satisfied in full on the basis of section 49 of the Arbitration Act 1996. The arbitral Tribunal notes that post award interest on costs is specifically authorized by Section 49(4) of the Arbitration Act 1996 and that it has a discretionary power under Section 49. London being the place of this Arbitration, the arbitral Tribunal finds it is appropriate to grant post-award interest according to the statutory English court default rate for unsatisfied judgements of 8% simple interest per annum starting to run 21 days after the date of the decision until payment is made.

290. The Claimant shall thus pay to the Second Respondent the sum of GBP 161,147.16 plus simple interest at a rate of 8% per annum on any amount that remains unpaid 21 days after the date of this Final Award until the date of payment.

(ii) The Claimant's Claim for Legal and Other Costs

291. The Claimant claims legal and other costs as follows:

1 Gibson Dunn & Crutcher LLP's Fees and Costs GBP 622,520.50

2 Landwell & Associés'Fees from May 2013 to January 2015 EUR 325,500.00

3 Rajah & Tann LLP's Fees for services from June 2013 to July 2014 SGD 658,326.60

4 Disbursements:

- Ian Winter QC from July 2013 to April 2014 GBP 70,100.00

- George Bompas QC (November 2013) SGD 21,294.59

- George Hayman from October 2013 to July 2014 SGD 92,735.00

5 Other expenses:

- Moroccan Counsel (Kettani) MAD 177,775.00

- Expert Report and Testimony on Moroccan law (Hajji & Associés) MAD 251,086.00

- Expert Report and Testimony on condition of the Hotel (Mace) EUR 47,974.15

- Expert Report and testimony on valuation issues (Abergel & Associés) EUR 278,833.50

- Translation services (Transperfect) GBP 8,355.20

- Interpretation and transcription service (Merrill) GBP 5,783.75

292. The arbitral Tribunal accepts that items of costs 1, 3 and 4 corresponding to fees and incidental costs of counsel before the arbitral Tribunal (Gibson, Dunn & Crutcher LLP, Rajah & Tann LLP and Ian Winter QC) as well as costs under item 5 in relation to the experts' reports and testimonies, translation service and interpretation and transcription service, are incurred for the Arbitration and recoverable pursuant to Article 37(1) of the ICC Rules.

293. It considers, however, that other items of costs should not be deemed recoverable. The services of Landwell & Associés although in relation to the Arbitration sound similar to that of an in-house counsel. The services of Moroccan counsel Kettani consist in *"advice on Moroccan law and local representation provided in relation to breaches claimed in arbitration and enforcement of Order on Interim Relief "* and, as noted under paragraph 283 above, such costs although they may be related to the claims the subject-matter of the Arbitration, are not to be deemed incurred for the Arbitration. The same applies to the disbursements under item 4 other than for the services of Ian Winter QC.

294. The arbitral Tribunal then finds that the Claimant is entitled to claim costs as stated in paragraph 293 above and considers also such costs to be reasonable compared to the amount in dispute and to those usually applied in international arbitration practice for an arbitration taking place in London.

295. The arbitral Tribunal however notes that Rajah &Tann's fees incurred in relation to the arbitration includes services in relation to the Request for arbitration, the Application for Final Partial Award which was denied. It also includes services in relation to Travelodge's Application for Costs including the Claimant's unsuccessful challenge of the arbitral Tribunal's jurisdiction. Thus the Claimant should bear such legal costs in a proportion of *66.66%* and the First Respondent should reimburse to the Claimant 33.33% of such costs i.e. SGD 219,442.20.

296. Against this background the arbitral Tribunal finds that the First Respondent should pay to the Claimant for legal and other costs incurred for the arbitration: GBP 706,759.45 (GBP 622,520.50 + GBP 70,100.00 + GBP 8,355.20 + GBP 5,783.75), SGD 219,442.20 (SGD 658,326.60 x 1/3), EUR 326,807.65 (EUR 47,974.15 + EUR 278,833.50) and MAD 251,086.

X. AWARD

297. Having considered the evidence, submissions, and documents, the arbitral Tribunal does hereby render its Final Award as follows.

298. The arbitral Tribunal:

(a) DECLARES that all of CGHA's claims against Travelodge in this Arbitration have been discontinued as of 4 February 2014;

(b) HAS JURISDICTION over Travelodge's claim for costs against CGHA;

(c) DECLARES that Woodman Maroc has breached the Management Agreement in that:

(i) it breached its payment obligations under Article 5 of the Management Agreement from 31 December 2012 up to 8 January 2014;

(ii) it breached its obligations under the Management Agreement to maintain the interior of the Hotel, the Fixed Plant and FF&E and, to operate the Hotel, to the standard of a five-star international hotel; and

(iii) it breached its obligation to perform the Management Agreement in good faith;

(d) DECLARES that the Management Agreement was terminated on 8 January 2013;

(e) ORDERS that Woodman Maroc, pay to CGHA damages in the amount of MAD 549,612,765;

(f) ORDERS that Woodman Maroc pay to CGHA USD 669,750 as fees and expenses of the arbitrators and the ICC administrative expenses, and GBP 706,759.45, SGD 219,442.20, EUR 326,807.65 and MAD 251,086 as legal and other costs incurred for the Arbitration,

(g) ORDERS that Woodman Maroc pay simple interest at a rate of 6% per annum on all amounts awarded that remain unpaid 21 days after the date of this Final Award to the date of payment;

(h) ORDERS that CGHA pay to Travelodge GBP 161,147.16 as legal costs plus simple interest at a rate of 8% per annum on any amount that remains unpaid 21 days after the date of this Final Award until the date of payment; and

(i) REJECTS all other claims of the Parties.

Place of arbitration: London (United Kingdom)