

Warsaw, 2016-05-09

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**To: Bloom & Dinello Law Firm**

To the attention of: Teodora Bloom  
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**Subject: Case No. SA 381/2015– Procedural Order No 2**

Dear Ms Pablo, dear Ms Bloom,

The Arbitral Tribunal hereby confirms receipt of the requests concerning the procedure and the facts of the case made by the parties. The members of the Tribunal have discussed the issues and decided to make the following clarifications regarding:

**1. Documents**

**1.1** Several documents are listed as attachments on Page 1 of the Case File. Several of them (namely a) the Power of Attorney granted by Shoe Dream, b) the Court register excerpt of Shoe Dream, c) the Power of Attorney granted by FT Team, and d) the Court register excerpt of FT Team) were not attached to the Case File, in spite of being referenced in the list of attachments. Additionally, there is no mention regarding the Power of Attorney granted by International Business Best Bank. Are these documents of relevance for the Moot, or did the drafters of the problem specifically intend to leave them out?

Indeed, the Arbitral Tribunal was provided with a complete set of documents listed as attachments to the Request for Arbitration. Power of Attorney granted by Shoe Dream – Lace and Insole Production, Court register excerpt of Shoe Dream – Lace and Insole Production, Power of Attorney granted by FT Team and Court register excerpt of FT Team did not give rise to doubt of the Arbitral Tribunal as to their correctness. The same remark applies to the Power of Attorney granted by International Business Best Bank to Ms. Teodora Bloom.

- 1.2** On September 13, 2015 International Best Business Bank received an official statement from Shoe Dream, declaring the CIRS contract to be invalid. This statement, however, was not enclosed with the rest of the documents. Unless it would be possible to get this statement, could you please provide us the legal grounds on which Shoe Dream relied in its official statement to declare the contract invalid?

There was no legal basis provided by Shoe Dream in the mentioned statement from 13<sup>th</sup> September 2015 where Shoe Dream declared the CIRS contract to be invalid.

## **2. Facts**

- 2.1** On page 6 para. 14 it is said that an “exchange of positions” took place between both parties. What is exactly meant with this expression?  
The “exchange of positions” involved the exchange of e-mail correspondence between the Parties where International Business Best Bank claimed for next EUR 2,680,00.00 as a missing part of additional surety to the CIRS contract no. 2987/14 and Shoe Dream – Lace and Insole Production presented its own position where it completely denied the correctness of EUR 5,000,00.00 charge as additional surety.
- 2.2** On page 10, Mr. Giro talks about the “need [of] a small financial support”. Is this to be considered the same loan that was established with the CIRS contract?  
Writing an email with wording “a small financial support” (page 10) Mr. Giro considered other kind of financial assistance of the bank. However proposed by International Business Best Bank financial tool – CIRS contract met the needs of financial support that Shoe Dream needed at that time.
- 2.3** Page 2 indicates that Shoe Dream is active “also in other countries”. What particular countries is this in reference to, and is Japan one of them?  
Shoe Dream – Lace and Insole Production did not conduct any business activity in Japan.
- 2.4** What is the type of accounts held by the Claimants from which International Best Business Bank took the money: current accounts, deposit accounts, loan accounts?  
International Best Business Bank recouped from standard business accounts maintained in Euro currency.

## **3. Dispute Resolution Mechanism**

- 3.1** What was the exact Dispute Resolution Mechanism provided in the original (non-amended) agreement? (For disputes arising out of and in connection with the agreement between Shoe Dream and Best Bank)  
The previous version of the General Terms from December 2014 provided that all disputes arising out of and in connection with the CIRS contract between Shoe Dream and International Business Best Bank would be settled by Antylland's national courts.

- 3.2** Was there any distinct or specific Dispute Resolution Mechanism regarding the guarantor, FT Team, either in the original as well as in the amended agreement? (For potential disputes between FT Team and Best Bank)  
There were no separate provisions regarding dispute resolution mechanism between International Business Best Bank and the Guarantor. The General Terms, the CIRS contract and the Guaranty Statement are silent on this issue.

#### **4. Currency**

- 4.1** Was Yen the only currency considered when the proposal for the CIRS agreement was made, or were there other currencies presented as options to the claimant by the bank? How did they exactly choose the Yen specifically?  
The Yen currency was the only one proposition for the CIRS contract no 2987/14 made by International Business Best Bank. No other currency was considered by the Parties.
- 4.2** Was the loan which International Best Business Bank gave to Shoe Dream only *denominated* in yens, and not *paid* in yens? Therefore, is it safe to assume that Shoe Dream was never making payments in yens, but in euros?  
According to CIRS contract no. 2987/14 all payments due from Shoe Dream to the Bank were made in Euro currency and not in Yen currency.
- 4.3** How was the amount of surety calculated: was the amount of surety firstly calculated in yens, and then converted into euros?  
The amount of surety was calculated firstly in YEN currency, and then converted into Euro currency. Shoe Dream was obliged to make all due payments to International Business Best Bank in Euro currency.

#### **5. Correspondence between International Business Best Bank, Shoe Dream and FT Team**

- 5.1** Was FT Team notified, by means of any communication, when the proposal to amend the General Terms was made?  
FT Team received all relevant information regarding the CIRS Contract by email from International Business Best Bank; these correspondence was marked as "for the attention of..." – information that "the proposal to amend the General Terms was made" was also delivered in this way.
- 5.2** Was FT Team notified, by means of any communication, when the surety was increased?  
FT Team received all relevant information regarding the CIRS Contract by email from International Business Best Bank; these correspondence was marked as "for the attention of..." – information that "the surety was increased" was also delivered in this way.

- 5.3** On page 25, para. 12, the word “turned” is used. Does this imply that International Business Best Bank contacted FT Team beforehand or did they in fact just withdraw money without giving notice?

FT Team received all relevant information regarding the CIRS Contract by email from International Business Best Bank; these correspondence was marked as “for the attention of...” – information that “in case of Shoe Dream's failure to comply with the obligation to provide the additional surety, the Bank will be entitled to use its rights stipulated in the General Terms, the CIRS contract and the Guaranty Statement” was also delivered in this way.

- 5.4** Did International Best Business Bank try to notify Shoe Dream that it would take money from their accounts?

International Business Best Bank notified Shoe Dream about an obligation of the additional surety payment between 10<sup>th</sup> September 2015 and 15<sup>th</sup> October 2015 by email. International Business Best Bank's correspondence contained also information that in case of Shoe Dream's failure to comply with the obligation to provide the additional surety, the Bank will be entitled to use its rights stipulated in the General Terms, the CIRS contract and the Guaranty Statement.

## **6. Dates' correction**

- 6.1** The Guarantee Statements on both page 8 and page 32 are dated 19 December 2015. Applying the information stated in the Statement of Claim, are we assuming correctly that this is a typo and the drafters of the problem actually meant 19 December 2014?

The Organizers inform that there is a mistake in the content of the Exhibit-C1 on page 8 and in the content of the Exhibit-R4 on page 32 of the Case, where the date 19 December 2015 was used. The adequate date is 19 December 2014.

## **7. The Applicable Law**

- 7.1** Are Reinoland and Antylland parties to the New York Convention 1958?

For the purpose of this Moot, it can be assumed that Antylland, Reinoland and Poland are all signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Furthermore, they all have adopted the UNCITRAL Model Law on International Commercial Arbitration.

- 7.2** Have Antylland and Reinoland transposed the EU directives on consumer protection, i.e. The Directive on Consumer Rights (2011/83/EC) and Directive 93/13/EEC on unfair terms in consumer contracts?

For the purpose of this Moot, it can be assumed that Antylland, Reinoland and Poland transposed both mentioned Directives: Directive 2011/83/EC and Directive 93/13/EEC.

- 7.3** Is there any provision in the CIRS contract no 2987/14 that explicitly derogates from the DCFR provisions?

No. The CIRS contract no 2987/14 did not contain a specific provision that explicitly derogates from the DCFR provisions.

Yours sincerely,  
Mr Chairman  
(on behalf of the Arbitral Tribunal)