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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTEENTH INSTALMENT OF "E4" CLAIMS

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Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the first Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti private sector corporations and entities, other than oil sector and environmental claimants, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. A fifteenth instalment consisting of 15 "E4" claims was submitted to the Panel on 31 January 2001, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the fifteenth instalment claims.

I. OVERVIEW OF THE FIFTEENTH INSTALMENT CLAIMS

4. The fifteenth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. Thirteen of the fifteenth instalment claimants filed claims that were asserted in Kuwaiti dinars (KWD). Two of the fifteenth instalment claimants, Kuwait Airways Corporation ("KAC") and Gulf Investment Corporation G.S.C. ("GIC"), filed claims that were asserted in United States dollars (USD). These two claims, along with the corresponding awards, will be reported hereafter in United States dollars, while the remaining 13 claims will be reported in Kuwaiti dinars.

6. The fifteenth instalment claimants, other than KAC and GIC, filed losses aggregating KWD 142,414,872 (approximately USD 492,785,024). These claimants also filed claims for interest totalling KWD 17,882,702 (approximately USD 61,877,862) and claim preparation costs aggregating KWD 237,908 (approximately USD 823,211). KAC submitted a claim for losses aggregating USD 956,361,035, exclusive of claim preparation costs of USD 758,161. GIC filed a claim for losses aggregating USD 76,003,554, exclusive of interest of USD 10,020,205 and claim preparation costs of USD 34,483.

7. The claims, other than those submitted by GIC and KAC, range between KWD 2,974,942 and KWD 42,927,210 (i.e. between approximately USD 10,293,917 and USD 148,537,059) in value. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the

amount of compensation sought by the claimants, all of the claims in the fifteenth instalment are classified as "unusually large or complex" within the meaning of article 38(d) of the Rules.

8. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 12 months of the date on which the fifteenth instalment claims were submitted to the Panel.

9. All of the claimants in the fifteenth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants carried on business operations in the construction, printing, sanitation, transportation and tourism industries.

10. The two most common loss types asserted by claimants in this instalment are loss of tangible property (mainly stock, plant equipment and machinery) and loss of earnings or profits. Claimants have also sought compensation for real property, uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

11. KAC, the national airline of Kuwait, sought compensation for losses relating to contracts, real property, tangible property, payment or relief to others, additional costs, mitigation costs and claim preparation costs. KAC's claim for loss of tangible property relates mainly to the loss of and repairs to KAC's aircraft, aircraft spares and equipment, including engines, ground equipment and simulators. The tangible property claim also includes a claim for the payment made by KAC in relation to certain aircraft flown by Iraq to the Islamic Republic of Iran ("Iran"). The claim by KAC for additional costs includes claims for financing costs related to the purchase of replacement aircraft and leasing costs related to the hire of temporary replacement aircraft. KAC's claim for mitigation costs consists of legal costs incurred in a dispute between KAC and its insurers. As more fully described below, in certain circumstances, the Panel reclassified KAC's losses to other loss types based on the nature and type of loss identified.

II. THE PROCEEDINGS

12. Before the fifteenth instalment claims were submitted to the Panel, the secretariat of the Commission undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat of the Commission (the "Claims Database").

13. Originally three claims presented formal deficiencies and the secretariat issued notifications to the relevant claimants pursuant to article 15 of the Rules. These claimants corrected all formal deficiencies.

14. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

15. The Executive Secretary of the Commission submitted report Nos. 27, 32 and 33, dated 26 April 1999, 6 July 2000 and 6 October 2000, respectively, to the Governing Council in accordance with article 16 of the Rules ("article 16 reports"). These reports covered, inter alia, the fifteenth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

16. In addition to having access to narrative claim summaries for each claim in the fifteenth instalment, the Panel also directed the secretariat to request specific information and documents from the claimants pursuant to article 34 of the Rules.

17. At the conclusion of the (a) preliminary assessment; (b) substantive review; and (c) article 16 reporting, the following documents were made available to, and were taken into account by, the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Narrative claim summaries and reports;

(d) Further information and documentation provided by the claimants pursuant to specific requests made pursuant to article 34 of the Rules;

(e) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(f) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

18. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the fifteenth instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

19. During the period from 19 to 25 April 2001, at the direction of the Panel, members of the secretariat of the Commission and expert accounting and loss adjusting consultants travelled to Kuwait to

obtain information for the Panel's assessment of the claimants and to carry out an on-site inspection. In addition, on 31 May and 1 June 2001, at the direction of the Panel, members of the secretariat and expert accounting and loss adjusting consultants met with representatives of KAC in London, England to obtain further information in respect of the claim by KAC.

20. By its procedural order dated 31 January 2001, the Panel gave notice of its intention to complete its review of the fifteenth instalment claims and submit its report and recommendations to the Governing Council within 12 months of 31 January 2001. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait. This timetable required the Panel to submit its recommendations before the final outcome of certain legal proceedings in municipal courts relating to some of the losses forming the subject of the claim by KAC (see paragraphs 57-65 below).

21. By its second procedural order dated 31 January 2001, the Panel instructed the secretariat to transmit a copy of the original claim files (consisting of the claim form, the statement of claim and all supporting documents) filed by all fifteenth instalment claimants with claims greater than KWD 30 million (approximately USD 100 million) to the Government of Iraq. Four fifteenth instalment claims met this criterion: The Public Institution for Social Security, Overland Transport Co. K.S.C., Kuwait Public Transport Company K.S.C. and KAC. The Panel invited the Government of Iraq to submit its comments within 180 days of the date of the procedural order.

22. The Government of Iraq submitted written comments on these claims, which raised some specific issues, particularly in connection with the claim by The Public Institution for Social Security for loss of investment income and the claim by Overland Transport Co. K.S.C. for loss of profits and payment of fines. The Government of Iraq also submitted written comments in relation to KAC's claims for loss of aircraft and aircraft spares, for financing and leasing costs related to the replacement of aircraft and for certain mitigation costs, as well as in relation to the Government of Iraq's concern about the possibility of multiple recovery from an award to be made by the Commission and awards made or to be made by municipal courts. These comments were taken into consideration by the Panel when making its recommendations on compensation for these claims.

23. Pursuant to article 34 of the Rules, additional information and evidence was requested from the claimants in order to assist the Panel in its review of the claims. Claimants that were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information and evidence were directed through the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). These requests were made in relation to the entire "E4" claims population and not just the fifteenth instalment claims. Pursuant to article 34 of the Rules, the secretariat also sought specific clarifications from all claimants in the fifteenth instalment. The Panel has considered the responses submitted by these claimants.

24. The requests for additional information and evidence are described in prior "E4" reports, e.g., paragraphs 21-26 of the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) (the "Second 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

25. An additional level of verification was performed to determine if related claimants filed duplicate claims with the Commission. This review is described in paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report").

26. In respect of the claim by KAC, certain insurers of KAC together with some of their reinsurers[1] and retrocessionaires[2] (collectively, the "KAC Insurers") claimed before the Commission for payments made to KAC relating to the losses of aircraft, aircraft spares, engines and ground equipment. The KAC Insurers' claims were being reviewed by the "E/F" Panel at the same time as KAC's claim was being reviewed by the Panel. The Panel and the "E/F" Panel worked together to identify and investigate issues relating to the losses claimed by KAC and to ensure that there would be no duplication of compensation between KAC's claim and the KAC Insurers' claim.

27. By its third procedural order dated 18 May 2001, the Panel invited KAC and the Government of Iraq to attend oral proceedings (the "KAC Oral Proceedings") and to present arguments and evidence on certain issues relating to KAC's claim. The KAC Oral Proceedings were convened on 30 August 2001 and representatives of KAC and the Government of Iraq appeared before the Panel and in the presence of the "E/F" Panel. The Panel took the presentations made by the parties at the KAC Oral Proceedings into account in making the recommendations set out in this report. The specific issues raised by the Panel, as well as the main arguments advanced by KAC and the Government of Iraq at the KAC Oral Proceedings, are summarized in the sections of this report entitled "KAC's aircraft, aircraft spares and other tangible property" at paragraphs 64-65 and 79-81 below and "KAC's other losses" at paragraphs 138-139, 145-146 and 160-161 below.

28. As described above, the Panel retained the services of certain expert consultants in connection with the claims in the fifteenth instalment. Further in respect of KAC's claim, the Panel had the benefit of reports prepared by expert consultants retained by it and the "E/F" Panel, including aircraft valuers, in addition to other expert evidence in relation to KAC's claimed losses. The Panel also reviewed information and documents provided to the Commission in connection with the KAC Insurers' claims being reviewed by the "E/F" Panel.

29. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the fifteenth instalment claims had been adequately

developed and that oral proceedings, other than the KAC Oral Proceedings, were not required to explore such issues further.

III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

30. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment are the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

31. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefor are set out in the annexes to this report.

32. Before discussing the Panel's specific recommendations for compensating the fifteenth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

IV. THE CLAIMS

33. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

A. Real property

34. Nine claimants in this instalment filed claims aggregating KWD 22,741,590 (approximately USD 78,690,623) for loss of real property. These claims sought compensation for damage to a number of owned and rented premises in Kuwait. In addition, the claim by KAC for loss of real property aggregated USD 34,928,358, consisting of USD 26,377,326 relating to repair costs incurred and USD 8,277,370 relating to estimated repair costs in respect of office buildings, hangars and other structures located at Kuwait International Airport (the "Airport"), and USD 273,662 relating to repair costs incurred in respect of KAC's employee club facilities (the "KAC Club").

35. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

36. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

37. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. Similar adjustments were made by the Panel in cases of unforced "betterment", as explained in paragraph 97 of the First "E4" Report.

38. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant's failure to repair or replace the affected property. Where such explanation was absent, the Panel adjusted the claim to offset the "risk of overstatement" created by this shortcoming.

39. The Panel's recommendations on real property losses are summarized in annex II below.

B. Tangible property, stock, cash and vehicles

1. General

40. Tangible property losses are claimed by a majority of the fifteenth instalment claimants. The claimed losses, relating to industrial plant and machinery, stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 58,619,910 (approximately USD 202,837,059), excluding the tangible property losses claimed by GIC which aggregate USD 294,819 and the tangible property losses claimed by KAC which are described below at paragraphs 48-93.

41. When determining the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report. In respect of claims for the repair or replacement costs of tangible assets, the Panel reviewed the claims to verify whether adjustments were made by the claimant to reflect, inter alia, applicable depreciation (see paragraph 113 of the First "E4" Report).

42. The claimants in this instalment generally submitted the same type of evidence encountered by the Panel in earlier "E4" instalments in relation to claims for loss of tangible property. (See the Second "E4" Report, paragraphs 55-56.)

43. For most claimants, the existence, ownership and value of stocks lost were supported by copies of their audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report.

44. As was the case in prior instalments of "E4" claims, claims for loss of goods in transit related to goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. Successful claimants were able to submit sufficient proof of payment for the goods and establish the ownership, existence and loss of the goods from certificates issued by the Kuwaiti port authorities or shipping agents.

45. Some of the claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by sufficient contemporaneous evidence establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no compensation.

46. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses.

47. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II below.

2. KAC's aircraft, aircraft spares and other tangible property

(a) Background facts

48. Prior to Iraq's invasion and occupation of Kuwait, KAC operated a fleet of 23 aircraft and maintained its administrative and operational base at the Airport. On 2 August 1990, Iraqi armed forces attacked and took control of the Airport. At that time, 15 of KAC's aircraft were on the ground at the Airport. Between August 1990 and no later than 20 September 1990, Iraqi forces (with the assistance of Iraqi Airways Co. ("IAC") civilian pilots and crew) flew all of these 15 aircraft to Iraq. Iraqi forces also removed and took to Iraq certain of the aircraft spares, engines and ground equipment stored at the Airport. Other aircraft spares remained at the Airport during Iraq's invasion and occupation of Kuwait, some of which KAC asserts were damaged.

49. Seven of KAC's aircraft were destroyed during the bombing of Iraq by Allied Coalition Forces in January and February 1991. These aircraft included two Boeing Company ("Boeing") 767 aircraft and two Airbus Industrie ("Airbus") A300 aircraft (collectively, the "Mosul Four") which were destroyed at an airfield at Mosul, Iraq. In or about January 1991, Iraq moved six of KAC's aircraft, consisting of five Airbus A310 aircraft and one Airbus A300 aircraft (collectively, the "Iran Six"), from Iraq to Mashad Airport in Iran. KAC recovered the Iran Six from the Government of Iran in July and August 1992.

Following their return to KAC, the Iran Six underwent extensive repairs, some of which were performed at an aircraft repair facility in France, and consequently were unavailable for commercial service until August 1993. In addition, Iraq returned one of KAC's aircraft in June 1991 and KAC collected another of its aircraft from Iraq in or about August 1991. Both of these recovered aircraft also underwent repairs. In summary, of KAC's 15 aircraft on the ground at the Airport on 2 August 1990, seven aircraft (including the Mosul Four) were destroyed and eight aircraft (including the Iran Six) were damaged but recovered and subsequently repaired.

50. In May 1991, an Iraqi representative provided KAC with a list of aircraft spares and engines for redelivery to Kuwait through the United Nations Return of Property programme. KAC asserts, however, that not all aircraft spares were returned and those spares that were returned had to be repaired and/or recertified as fit for use before KAC could use them in servicing or replacing parts on aircraft.

51. Prior to Iraq's invasion and occupation of Kuwait, KAC maintained at the Airport a stock of spare aircraft engines and auxiliary power units ("APUs"). KAC states that 13 of its spare aircraft engines were taken from Kuwait by Iraqi forces. KAC asserts that four of these engines and four of the APUs were destroyed. KAC provided evidence that nine of the engines taken by Iraq were returned to KAC and these underwent repairs at facilities in Belgium and India. KAC asserts that, in addition to damage to or loss of its spare engines, several of the engines which had been mounted on the Iran Six also required repairs.

52. In relation to its aircraft and aircraft spares, KAC incurred certain recovery expenses. KAC paid USD 20 million to the Government of Iran for keeping and maintaining the Iran Six. KAC also paid Iran Air for specific maintenance services on the Iran Six. In addition, KAC incurred travel and other personnel expenses in relation to both the Iran Six and the aircraft spares taken to Iraq. These claims were reclassified and reviewed as either "restart costs" or "other losses" and are discussed in the sections of this report entitled "KAC's restart costs" at paragraphs 126-127 below and "KAC's other losses" at paragraphs 144-149 below.

53. KAC also had two aircraft simulators and six trainers, as well as related simulator and trainer tools and test equipment, at the Airport on 2 August 1990. KAC asserts that one of the simulators and five of the trainers were damaged beyond economic repair and that the tools and equipment were removed by the Iraqi forces. KAC states that one aircraft simulator and one evacuation trainer suffered some damage as a result of Iraq's invasion and occupation of Kuwait and KAC provides evidence that both were repaired following the liberation of Kuwait.

54. In addition, KAC had purchased two further aircraft simulators prior to Iraq's invasion and occupation of Kuwait. KAC provided evidence that as a result of Iraq's invasion and occupation of Kuwait, these simulators could not be delivered to Kuwait but instead were leased to a Dutch company in Maastricht, the Netherlands. One of the simulators, a Boeing 767 simulator (the "767 Simulator"), was sold by KAC because two of KAC's Boeing 767 aircraft were destroyed in Iraq (as described at

paragraph 49 above) and KAC's remaining Boeing 767 aircraft was sold following the liberation of Kuwait. KAC submitted a claim in respect of the 767 Simulator consisting of the difference between the net book value as at 31 December 1995 and the expected sale proceeds of such simulator, as adjusted for lease income earned on the 767 Simulator, and for costs which KAC incurred to lease an alternative simulator at Luton Airport while the 767 Simulator was at Maastricht. The other simulator, an Airbus A310 simulator (the "A310 Simulator"), was relocated to Kuwait following liberation and KAC alleged that it incurred certain costs relating to this relocation.

55. KAC also maintained certain ground support equipment at the Airport, including such equipment as aircraft tow units, scissor lift vehicles and cargo hoists. KAC claimed that as a result of Iraq's invasion and occupation of Kuwait, the vast majority of such ground equipment was either damaged beyond repair or was stolen by Iraqi forces.

56. In addition to the losses of tangible property described above, KAC also claimed tangible property losses relating to vehicles and furniture and fixtures. Certain claims relating to the KAC Club were reclassified and reviewed as real property losses.

(b) Municipal litigation

57. The loss of KAC's aircraft, aircraft spares, engines and ground equipment was the subject of legal proceedings between KAC and the KAC Insurers in the English courts (the "Insurance Proceedings"). The factual and legal issues in the Insurance Proceedings concerned the liability of the KAC Insurers under a policy issued to KAC in respect of its aircraft, aircraft spares, engines and ground equipment.

58. KAC's primary insurers had issued a policy to KAC covering loss of or damage to its aircraft and some aircraft spares, engines and ground equipment. Under the policy, the 15 aircraft taken by Iraq had a total insured value of USD 692 million. In January 1991, the KAC Insurers agreed to pay USD 300 million to KAC, relying on a clause in the policy that limited the liability of the KAC Insurers to that amount for loss of or damage to aircraft on the ground (the "Ground Limit"). The policy also contained a limit for aircraft spares, engines and ground equipment of USD 150 million in respect of any one location. Initially, the KAC Insurers denied KAC's claim for the loss of aircraft spares, engines and ground equipment on the basis that the Ground Limit applied to the 15 stolen aircraft and the aircraft spares, engines and ground equipment together. The KAC Insurers denied KAC's claim for their recovery expenses on the same basis.

59. KAC commenced the Insurance Proceedings in the English courts against its primary insurers, seeking payment of the total insured value of the 15 stolen aircraft and payment in respect of the aircraft spares, engines and ground equipment. The first court to rule on the issues held that the KAC Insurers were liable only for the Ground Limit, which covered the aircraft and the aircraft spares, engines and ground equipment. On final appeal,[3] however, the House of Lords held that KAC was also entitled to recover up to the maximum limit in the policy for aircraft spares, engines and ground equipment.[4] The

House of Lords also held that KAC's recovery expenses were subject to the same limits.[5] As these limits had been exhausted by the payments for the aircraft and for the aircraft spares, engines and ground equipment, the KAC Insurers were not additionally liable for the recovery expenses.[6]

60. Following the House of Lords decision, KAC and the KAC Insurers continued to dispute the treatment of credits for the recovered aircraft, as well as the quantum of aircraft spares, engines and ground equipment lost. These matters were remitted to the Commercial Court, which ordered the KAC Insurers to pay USD 150 million to KAC for aircraft spares, engines and ground equipment, in addition to interest on that amount. The Commercial Court did not decide the specific quantum of the loss of or damage to aircraft spares, engines and ground equipment, as it found that the quantum exceeded the insured limit of USD 150 million.[7] The Commercial Court held that KAC could keep the eight recovered aircraft because their market value was less than KAC's uninsured loss of USD 392 million, that is, the difference between the USD 300 million paid by the KAC Insurers and the total insured value of the 15 stolen aircraft.[8] The Commercial Court also found that the cover for the aircraft spares, engines and ground equipment under the policy was only in respect of engines, spare parts, tools, aircraft material and equipment, including supporting ground equipment and that the policy did not extend to the loss of or damage to simulators, trainers or spares for the simulators or trainers.[9]

61. KAC also brought proceedings in the English courts against IAC and the Government of Iraq in relation to losses suffered by KAC as a result of Iraq's invasion and occupation of Kuwait. The proceedings against the Government of Iraq have been discontinued. The proceedings against IAC (the "IAC Proceedings") relate to the wrongful interference and conversion of 10 of the 15 stolen aircraft (i.e. the Mosul Four and the Iran Six) and the aircraft spares.

62. The IAC Proceedings in connection with KAC's aircraft are currently on appeal by both parties to the House of Lords on a number of issues. The IAC Proceedings in connection with KAC's aircraft spares have not yet been heard by the applicable English trial court. The Panel recognizes that it must submit its recommendations prior to the final resolution of the IAC Proceedings.

63. The Panel notes that, although certain losses form the subject of both KAC's claim in the IAC Proceedings and KAC's claim to the Commission, there are significant differences between these claims. Insofar as the IAC Proceedings against the Government of Iraq have been discontinued, such proceedings do not, and will not, directly address the liability of the Government of Iraq. In addition, the applicable law in the IAC Proceedings is not the same as the legal framework in which the Panel must make its recommendations. Accordingly, the Panel finds that the IAC Proceedings are not directly relevant to its considerations. However, the Panel has taken note of certain expert evidence prepared on behalf of and agreed by KAC and IAC in connection with the IAC Proceedings (for example, expert aircraft valuations) and certain findings of fact made by the English courts in the IAC Proceedings.

64. At the KAC Oral Proceedings, the Panel requested that KAC and the Government of Iraq address the issue of "[w]hether proceedings instituted by [KAC] against [IAC] before the English courts would

result in the duplicative recovery of compensation for any losses claimed before the Commission". In its principal address, KAC submitted that it would provide an undertaking to the Commission that credit would be given in the IAC Proceedings if recoveries were made pursuant to an award of compensation from the Commission. KAC also requested that the Panel, in making its recommendations on compensation, identify precisely what losses are being compensated, in order that both parties to the IAC Proceedings know what credits should be given. The Panel notes that such an undertaking was received by the secretariat on 31 August 2001.

65. The Government of Iraq argued at the KAC Oral Proceedings that, due to the risk of duplicative recovery, KAC should not be entitled to advance claims for the same losses before both the Commission and the English courts. The Government of Iraq argued that the Panel should allow the English courts to resolve the IAC Proceedings and that the Panel should not recommend an award of compensation for KAC until the English courts have determined the matter.

(c) KAC's claimed tangible property losses

66. KAC claimed tangible property losses aggregating USD 453,376,306. Such losses relate to the loss of and/or repairs to aircraft, aircraft spares, engines, simulators, trainers, ground equipment, vehicles, furniture and fixtures.

(i) Aircraft

67. In relation to the 15 aircraft taken from the Airport by the Iraqi forces, KAC claimed losses of USD 240,090,000, representing the market value of the seven destroyed aircraft and USD 37,076,590 relating to repair costs incurred in respect of the eight recovered aircraft, including USD 36,359,450 in respect of repairs to the Iran Six.

68. The Panel finds that the claimed losses relating to the loss of the seven destroyed aircraft and the repair costs incurred in respect of the eight recovered aircraft are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait.

69. In respect of the verification and valuation of the loss of the seven destroyed aircraft, the Panel finds that the most appropriate basis for valuation is the market value of these aircraft as at the date of loss (i.e. 2 August 1990). In verifying and valuing this claimed loss, the Panel reviewed the information provided by KAC, as well as alternative valuation opinions, including the evidence of expert aircraft valuers, prepared on behalf of the Commission and on behalf of KAC and IAC in connection with the IAC Proceedings.

70. The claimed amount of the loss was based on the report of an expert aircraft valuer which valued the seven destroyed aircraft on a market value basis as at 2 August 1990. In addition to KAC's valuation evidence, the Panel also took note of further valuations of the seven destroyed aircraft on or about 2

August 1990. In respect of four of the seven destroyed aircraft (i.e. the Mosul Four), the Panel reviewed valuations which had been agreed upon between KAC's experts and IAC's experts in connection with the IAC Proceedings. The Panel recognizes that the valuations referenced in the decision of Aikens J. in the Commercial Court[10] were based on a date of loss other than 2 August 1990 and accordingly considers that such figures were not relevant to the Panel's determinations. However, the Panel notes that KAC provided evidence that the parties' experts had also agreed upon values for the Mosul Four at or about 2 August 1990. These valuations had been negotiated between KAC's experts and IAC's experts and included certain adjustments in respect of estimated aircraft maintenance costs. The Panel finds that these agreed values are most reflective of the market value of the Mosul Four as at the date of loss and accordingly applied these values in calculating the appropriate award of compensation for the loss of the Mosul Four.

71. The Panel notes that KAC did not advance claims for the three remaining destroyed aircraft in the IAC Proceedings and accordingly KAC and IAC did not agree on expert valuations for such aircraft. In determining an appropriate award of compensation for these three aircraft, the Panel took into account KAC's expert valuation and an alternative valuation of such aircraft as at 2 August 1990 commissioned by the "E/F" Panel in connection with the KAC Insurers' claim.

72. In relation to the claimed repair costs for the eight recovered aircraft, the Panel finds that this claim did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraph 113 of the First "E4" Report in verifying and valuing this loss.

73. As described above in paragraph 58, the KAC Insurers paid USD 300 million to KAC in relation to the loss of aircraft on the ground at the Airport on 2 August 1990. This amount was based on the insured values as defined in the insurance policy. The Panel notes that its aggregate recommended award of compensation for the loss of seven aircraft and the repairs to eight recovered aircraft is less than the USD 300 million which KAC received in insurance recoveries. This is due to the fact that the Panel has recommended an award of compensation for the actual value of the loss suffered by KAC, rather than the value of the loss as agreed or contractually defined for insurance purposes.

(ii) Aircraft spares

74. KAC claimed losses of USD 101,228,123 relating to the loss of aircraft spares and USD 13,674,861 and USD 2,995,733 relating to repair and recertification costs incurred externally and internally, respectively, in relation to the aircraft spares recovered from Iraq.

75. The Panel finds that the claimed losses relating to the loss of aircraft spares and the repair and recertification costs incurred in respect of the aircraft spares recovered from Iraq are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait.

76. KAC's claimed loss of aircraft spares was based on a valuation prepared by expert accountants retained by KAC, which valued such spares on an average cost basis. KAC alleges that most of the documents relating to its inventory of aircraft spares were destroyed during Iraq's invasion and occupation of Kuwait. Following liberation, KAC retained expert accountants to prepare a reconstruction of KAC's aircraft spares inventory as at 2 August 1990 (the "Spares Reconstruction"). The original claimed amount of USD 101,228,123 was calculated as the estimated value of the spares inventory as at 2 August 1990 of USD 177,303,741 less the estimated value of spares recovered at the Airport of USD 6,765,618 and less the estimated value of spares recovered from Iraq of USD 69,310,000.

77. Subsequent work performed by KAC's expert accountants in connection with the Insurance Proceedings resulted in the revision of certain of these estimated values. The estimated value of spares recovered at the Airport increased to approximately USD 12.7 million while the estimated value of the spares recovered from Iraq decreased to approximately USD 57.2 million. Further work has also been performed by KAC's expert accountants in connection with the IAC Proceedings. The Panel noted, however, that the valuations used by the English courts in the Insurance Proceedings and those prepared in respect of the IAC Proceedings were based on replacement value not on an average cost basis, as the claim was filed before the Commission.

78. The Panel identified certain valuation issues in respect of the Spares Reconstruction. The Panel noted that the Spares Reconstruction was based on pre-invasion figures which were manually input by KAC's expert accountants. In addition, KAC stated that some of the recovered aircraft spares could not be matched to the Spares Reconstruction and accordingly the expert accountants estimated their value. Evidence was also provided by KAC that the Spares Reconstruction included certain assumptions regarding the pre-invasion consumption and replacement of aircraft spare parts.

79. At the KAC Oral Proceedings, KAC discussed certain documents relating to its pre-invasion inventory of aircraft spares which had recently been located. KAC's expert accountants provided the Panel with a report explaining the contents of these documents and their possible effect on the Spares Reconstruction. The Panel noted that the documents provided further contemporaneous evidence regarding KAC's inventory of aircraft spares but also indicated that certain aircraft spares may have been held outside of the Airport on 2 August 1990.

80. KAC also argued at the KAC Oral Proceedings that aircraft spares are not subject to normal considerations of age and obsolescence. KAC's aircraft spares were categorized as consumables, rotables or repairables. KAC stated that consumable aircraft spares are new and retain their full value while the aircraft to which they relate are in operation. KAC explained that rotable and repairable aircraft spares either are new or can be refurbished and recertified for use as effectively the equivalent of new.

81. The Government of Iraq also made submissions at the KAC Oral Proceedings relating to the valuation of KAC's aircraft spares. The Government of Iraq submitted that the valuation of KAC's claimed loss lacked precision and credibility given that different loss amounts had been claimed in the

Insurance Proceedings, in the IAC Proceedings and to the Commission. In addition, the Government of Iraq raised its concerns to the Panel regarding the fact that KAC had only recently located further documents relating to the pre-invasion inventory of aircraft spares.

82. The Panel considered all of the above factors in determining the appropriate valuation of KAC's claimed losses relating to the loss of aircraft spares. While the Panel accepts the basis of valuation submitted by KAC, the Panel finds that the valuation issues referred to at paragraphs 78-79 above, and in particular the unmatched aircraft spares and the possibility that some aircraft spares may have been held outside Kuwait, give rise to a "risk of overstatement" of the claim. The Panel finds that the claim must be adjusted to offset such "risk of overstatement".

83. The Panel also finds that KAC's claim for aircraft spares should be further adjusted to take into account depreciation of such spares. The Panel notes that the majority of KAC's claim relates to rotable and repairable aircraft spares. The Panel further notes that, for accounting purposes, depreciation is the mechanism used to spread the cost of aircraft spares over the life of the aircraft to which such spares relate. This accounting treatment recognizes that rotable and repairable aircraft spares form part of the cost of the aircraft as a whole and retain their value only as long as the aircraft is in service, regardless of whether such aircraft spares have been refurbished and recertified throughout their useful lives. In addition, the Panel notes that this approach is consistent with the accounting practices of the airline industry and is, in fact, the accounting practice which was used by KAC in its financial statements.

84. The Panel finds that the claimed repair and recertification costs incurred in respect of recovered aircraft spares did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraph 113 of the First "E4" Report in verifying and valuing these losses.

85. As described in paragraph 60 above, the English courts awarded USD 150 million to KAC in relation to its loss of aircraft spares, engines and ground equipment, based on the insured limits as set out in the insurance policy. The Panel notes that its aggregate recommended award of compensation for loss of and repairs to aircraft spares, engines and ground equipment is less than the USD 150 million which KAC received in insurance recoveries. In the same manner as in respect of the aircraft losses, the Panel has recommended an award of compensation for the actual value of the loss suffered by KAC, rather than the value of the loss as agreed or contractually defined for insurance purposes. The same treatment applies to the recommended awards relating to engines and ground equipment as described below.

(iii) Engines

86. KAC claimed losses of USD 5,833,822 relating to the loss of four destroyed engines and four destroyed APUs. KAC also claimed USD 6,006,055 and USD 753,273 relating to repair costs incurred externally and internally, respectively, in relation to nine engines recovered from Iraq. KAC further claimed USD 5,347,391 and USD 795,203 relating to repair costs incurred externally and internally, respectively, in relation to engines which had been mounted on the Iran Six.

87. The Panel finds that the claimed losses relating to the loss of destroyed engines and APUs and the repair costs incurred in respect of damaged engines are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel also finds that these losses did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraphs 110-135 of the First "E4" Report in verifying and valuing these losses.

(iv) Simulators and trainers

88. In relation to simulators and trainers, KAC claimed losses of USD 3,180,581 relating to the loss of one destroyed simulator and five destroyed trainers and USD 19,572 relating to the loss of simulator and trainer tools and test equipment. In addition, KAC claimed losses of USD 462,329 and USD 304,933 relating to repair costs incurred in relation to one damaged simulator and one damaged trainer, respectively. In relation to the 767 Simulator, KAC claimed losses of USD 5,330,327, consisting of the difference between the net book value as at 31 December 1995 and the expected sale proceeds of such simulator, as adjusted for costs incurred to lease an alternative simulator at Luton Airport and for lease income earned on the 767 Simulator.

89. The Panel finds that the claimed losses relating to the loss of simulators, trainers and related tools and test equipment and the repair costs incurred in respect of damaged simulators and trainers are compensable in principle as direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel also finds that these losses did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraphs 110-135 of the First "E4" Report in verifying and valuing these losses.

90. KAC provided evidence that the 767 Simulator was sold by KAC because two of its Boeing 767 aircraft had been destroyed in Iraq and its remaining Boeing 767 aircraft was sold following the liberation of Kuwait. The Panel finds that KAC's decision to sell the 767 Simulator was an independent business decision linked to KAC's independent business decisions to sell its remaining Boeing 767 aircraft and to purchase a new fleet of Airbus aircraft as more fully set out at paragraphs 134-143 below. The Panel also finds that the decision to sell the 767 Simulator broke the chain of causation between Iraq's invasion and occupation of Kuwait and the claimed losses relating to this simulator. Accordingly, the Panel finds that KAC's claim for losses in relation to the 767 Simulator are not direct losses resulting from Iraq's invasion and occupation of Kuwait and recommends that no award of compensation be made to KAC for this claim.

(v) Other tangible property

91. KAC claimed losses of USD 24,344,844 relating to the loss of ground equipment, USD 657,637 relating to the loss of registered and unregistered vehicles, USD 5,102,184 relating to the loss of furniture

and fixtures and USD 172,848 relating to repair costs incurred in relation to other tangible property located at the KAC Club.

92. The Panel finds that these losses are compensable as direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel also finds that these losses did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraphs 110-135 of the First "E4" Report in verifying and valuing these losses.

(vi) KAC's tangible property

93. The Panel's recommendations on KAC's tangible property losses are summarized in annex II below.

C. Payment or relief to others

94. Six claimants in this instalment submitted claims in the amount of KWD 1,244,087 (approximately USD 4,304,799) for losses due to payment or relief to others. In addition, GIC submitted a claim for losses due to payment or relief to others in the amount of USD 576,939.

95. The claims did not raise any new legal or verification and valuation issues. When reviewing the claims for payment or relief to others, the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports. (See, for example, the Second "E4" Report, paragraphs 70-74.)

96. The Panel's recommendations on claims for payment or relief to others are summarized in annex II below.

D. Loss of profits

97. Eleven claimants in this instalment submitted claims for loss of profits aggregating KWD 50,721,104 (approximately USD 175,505,550). In addition, the claim by GIC for loss of profits aggregated USD 34,474,783. The claim by KAC for loss of profits aggregated USD 59,147,028, consisting of USD 1,098,113 relating to the loss of rental income from KAC's office building in Kuwait City and USD 58,048,915 relating to the payment of salaries to certain employees for the period of 2 August 1990 to 31 May 1991.

98. Four significant legal and factual issues raised in the first instalment claims were all raised in the claims in this instalment. These relate to the impact and assessment of (a) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (b) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (c) the indemnity period for loss of profits claims, and (d) claims for loss of profits selectively based on profitable lines of

business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

99. Most claimants in the fifteenth instalment provided annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. The Panel noted that all claimants who did not submit such annual accounts provided sufficient explanations; for example, where the claimant had commenced trading in the period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

100. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

101. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

102. One claimant, The Public Institution for Social Security, claimed for loss of profits in the amount of KWD 35,809,904 on the basis of a loss of expected revenues from its investment income. The claimant was established by the Government of Kuwait for the purpose of administering the national insurance and pension schemes. The claimant claimed that it was unable to manage its investment funds properly from the date of Iraq's invasion and occupation of Kuwait until November 1990 since it was unable to operate in Kuwait during that period, and because of the international freeze on Kuwaiti assets imposed after Iraq's invasion of Kuwait. The claimant calculated its loss on the basis of the difference between the total amount of profit that it expected to generate on its investment income during the 1990/91 financial years, and the amount that it actually generated for the same time period.

103. In reviewing the compensability of the claim, the Panel finds that investment income was only one component of the revenue stream received by the claimant and that, in addition to investment income, the claimant generated income from insurance subscriptions, public treasury support, sundry income and other income. The Panel finds that, when taking into account the claimant's income as a whole, the claimant achieved a net surplus in 1990/91 that was in excess of the results achieved for each of the four previous years. In addition, the actual net surplus achieved by the claimant in both 1989/90 and 1990/91 was greater than the average net surplus between 1987 and 1989.

104. In recommending that no compensation be awarded for this claim, the Panel reiterates its findings in paragraph 189 of the First "E4" Report that the measure of a claimant's loss must be assessed in relation to the historic profits of the business taken as a whole and not merely in relation to one particular division or line of the business. The Panel concludes that, in the light of the overall net surplus achieved by the claimant during its 1990 and 1991 financial years, the claimant did not demonstrate that it had suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait.

105. Another claimant, Oriental Hotel Co. Sheraton, submitted a claim for loss of profits that was calculated on the basis of profit results set out in the audited accounts of its operating division, Kuwait Sheraton Hotels (the "Hotel"). Although not a separate legal entity, the claimant maintained the Hotel as a distinct division with its own audited accounts. In reviewing the Hotel's accounts for the three-year period prior to Iraq's invasion and occupation of Kuwait, the Panel finds that such accounts reflected the Hotel's revenues, operating expenses and management charges paid to the Sheraton Corporation. In reviewing the claimant's audited accounts for the same period, the Panel finds that, with the exception of interest income earned in 1989, the claimant's sole source of revenue was income from the Hotel. The Panel further finds that the claimant's audited accounts reflected its ownership interest in the Hotel's real and tangible property, and included depreciation allowances for the Hotel's real and tangible property. However, the Panel finds that while the Hotel's audited accounts reflected income and operating expenses, such accounts did not reflect the depreciation expenses.

106. In determining the appropriate accounts to be used in assessing the claimant's loss of profits claim, the Panel again reiterates that a claimant's losses must be measured in relation to its business as a whole. Further, the Panel reiterates its findings in paragraph 197 of the First "E4" Report that "a claim for loss of profits cannot be based solely on revenues lost. It must be matched with corresponding expenses. Claims based on gross revenues or gross profit are therefore adjusted to net values (operating revenues less operating expenses)". The Panel finds that since revenues must be matched against expenses, including depreciation expenses, the appropriate accounts to be used in assessing the claimant's loss of profits claim should be the claimant's own accounts and not the Hotel accounts, and to do otherwise would result in a "risk of overstatement" of the claim.

107. The Panel's recommendations on loss of profits claims are summarized in annex II below.

E. Receivables

108. Six claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KWD 5,452,569 (approximately USD 18,867,021). All of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion and occupation.

109. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The Panel reiterates its determination on this matter as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

110. The fifteenth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

111. As discussed above, the Panel has recommended no compensation for claims that relied on the mere assertion that uncollected debts were ipso facto uncollectible because the debtors did not return to Kuwait. Most of the claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants in the context of the additional information requested from claimants (see paragraphs 16 and 18 above). While a number of responses were received from claimants, four claimants did not satisfy the above criteria.

112. One claimant, Middle East Telecommunications Co. W.L.L., submitted a claim for a debt that it repaid to the Burgan Bank on behalf of W.J. Towell Agencies Co. ("Towell"). The claimant and Towell had a common shareholder, Mohammed Ali Abdul Ammer Sultan. In the 1980s, Towell borrowed funds from the Burgan Bank, among others. By 1988, its total liability to this and other banks exceeded KWD 18 million. In 1988, Towell entered into negotiations with the Burgan Bank pursuant to the Kuwaiti Difficult Debt Settlement Program respecting the repayment of its loan. As part of the ensuing repayment plan, the claimant voluntarily accepted an assignment of debt from Towell in favour of the Burgan Bank in the amount of KWD 2,500,000 plus interest. In December 1988, the claimant and Towell entered into a side agreement whereby Towell agreed to repay the claimant for any amounts it paid to the Burgan Bank pursuant to the assignment.

113. By 31 December 1993, the claimant owed the Burgan Bank a total of KWD 3,064,042. In 1994, the claimant entered into its own agreement with the Burgan Bank whereby it agreed to pay a total amount of KWD 2,827,350, representing a final settlement amount for the principal and accrued interest. Thereafter, the claimant paid the Burgan Bank the outstanding amount. The claimant alleges that Towell has not repaid it for the amounts that it paid to the Burgan Bank pursuant to the side agreement because Towell was "financially devastated" as a result of Iraq's invasion and occupation of Kuwait.

114. The Panel finds that at the time of signing the assignment of debt in December 1988, the claimant and Towell were related parties and that the assignment of debt was accepted by the claimant without security or consideration. The Panel also finds that although the assignment of debt agreement was signed in December 1988, it was not reflected in the claimant's accounts until 1991. The Panel further finds that Towell was in financial difficulty prior to Iraq's invasion and occupation of Kuwait and its 1989 accounts were heavily qualified in that regard. The Panel also finds that Towell commenced limited business operations following the liberation of Kuwait.

115. The Panel finds that given the financial difficulties faced by Towell in 1988 and 1989, there was a real possibility that Towell would not have been able to repay the claimant pursuant to the side agreement absent Iraq's invasion and occupation of Kuwait. The Panel further finds that, by accepting the assignment of debt in the light of the real possibility that Towell would not be able to repay it, the claimant voluntarily assumed the risk that it would not be reimbursed pursuant to the side agreement for any amounts it paid to the Burgan Bank. Finally, the Panel finds that since Towell commenced

operations after the liberation of Kuwait, albeit in a limited form, the possibility remains that it may be able to repay the claimant at some time in the future. In the light of these findings, the Panel concludes that the claimant has not established that it suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait, and recommends no award of compensation for this claim.

116. The Panel's recommendations on claims for receivables are summarized in annex II below.

F. Restart costs

1. General

117. Six claimants in this instalment asserted claims aggregating KWD 95,946 (approximately USD 331,993) for restart costs, excluding the restart costs claimed by GIC which aggregated USD 2,186,993, and the restart costs claimed by KAC which are described at paragraphs 119-132 below. The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report.

118. The Panel's recommendations on restart costs are summarized in annex II below.

2. KAC's restart costs

119. KAC claimed restart costs aggregating USD 79,529,206. Such costs relate to leasing costs incurred to hire temporary replacement aircraft, recovery expenses incurred by KAC in relation to aircraft spares and other restart costs related to simulators and real property.

(a) Aircraft leasing charges

120. KAC submitted a claim for the costs incurred in leasing replacement aircraft during the period from the liberation of Kuwait until KAC's fleet was replaced.

121. As described in paragraph 49 above, the Mosul Four were destroyed in Iraq and the Iran Six were flown to Iran where they remained until August 1992. Following the recovery of the Iran Six, such aircraft underwent repairs and were unavailable for commercial service until August 1993. KAC states that, in light of the typical two to three-year lead time involved in acquiring new aircraft, it entered into charter agreements to lease replacement aircraft and crews in order to resume scheduled services in 1991. KAC claimed costs of USD 74,964,101 in relation to several lease agreements entered into during the period of June 1991 to October 1993.

122. In reviewing this claim, the Panel considered the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'F3' claims" (S/AC.26/2001/7) (the "Second 'F3' Report") in which, at paragraphs 299-306, the "F3" Panel reviewed a claim by the Kuwaiti

Ministry of Electricity and Water for the costs of leasing a mainframe computer as a temporary replacement for its mainframe computer which had been destroyed as a direct result of Iraq's invasion and occupation of Kuwait. The "F3" Panel recommended that the cost of leasing the replacement computer be compensated as a direct loss resulting from Iraq's invasion and occupation of Kuwait, subject to adjustments for enhancement, saved expenses and insufficient evidence.

123. The Panel also considered the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'F3' claims" (S/AC.26/1999/24) (the "First 'F3' Report") in which the "F3" Panel found that the costs of leasing temporary premises during the period required for the Government of Kuwait to effect site restoration, repairs or to complete construction were compensable as a direct result of Iraq's invasion and occupation of Kuwait. The "F3" Panel found that the costs were compensable subject to them being incurred for a reasonable period and subject to adjustments for any saved expenses.

124. The Panel adopts the "F3" Panel's findings and finds that leasing costs incurred by KAC to replace aircraft destroyed or otherwise unavailable for commercial service as a direct result of Iraq's invasion and occupation of Kuwait are compensable, subject to adjustments for enhancement and saved expenses and subject to the condition that the period of leasing be reasonable.

125. In valuing KAC's claim for leasing costs, the Panel finds that the reasonable leasing period for the purposes of this claim extends until the Iran Six became available for commercial service in August 1993. The Panel also concludes that KAC replaced one of the Iran Six, an Airbus A300 aircraft, by leasing a number of aircraft with greater range and capacity than the original aircraft. The Panel finds that an adjustment to the claimed amount is necessary to offset any resulting "risk of overstatement".

(b) Spares recovery expenses

126. As described in paragraph 52 above, KAC incurred certain recovery expenses in relation to aircraft spares taken to Iraq. In particular, KAC entered into an agreement to charter aircraft to retrieve these spares.

127. KAC claimed costs of USD 1,618,786 in relation to the charter costs incurred to recover aircraft spares from Iraq. The Panel finds that KAC incurred these recovery expenses as a direct result of Iraq's invasion and occupation of Kuwait and accordingly finds that such losses are compensable subject to adjustments for evidentiary shortcomings.

(c) Simulators

128. As described in paragraph 54 above, the A310 Simulator was transported to Maastricht and leased to a Dutch company. Following the liberation of Kuwait, KAC terminated the lease agreement and transported the A310 Simulator to Kuwait. KAC provides evidence that, in doing so, it incurred a lease agreement termination penalty and other expenses related to the relocation of this simulator.

129. KAC claimed restart costs of USD 2,766,872 in relation to the A310 Simulator, including the costs of transporting KAC personnel to Maastricht, the costs of relocating such simulator to Kuwait and the lease agreement termination penalty, less lease income earned on such simulator. The Panel finds that these restart costs were a direct result of Iraq's invasion and occupation of Kuwait and accordingly finds that such losses are compensable subject to adjustments for evidentiary shortcomings.

(d) Real property

130. KAC also claimed restart costs of USD 179,447 in relation to the removal of debris from certain of KAC's real property.

131. The Panel finds that these costs are compensable as direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel also finds that these costs did not raise any new verification or valuation issues and the Panel applied the approach set out in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report in verifying and valuing these losses.

(e) KAC's restart costs

132. The Panel's recommendations on KAC's restart costs are summarized in annex II below.

G. Other losses

1. KAC's other losses

133. KAC claimed "other losses" aggregating USD 329,380,137. Such losses relate to financing costs incurred in connection with the purchase of replacement aircraft, the payment made by KAC to the Government of Iran and other recovery expenses in relation to the Iran Six and legal costs incurred in the Insurance Proceedings.

(a) Aircraft replacement financing costs

134. KAC claimed for certain financing costs related to the purchase of 11 replacement aircraft. The claim is comprised of interest income foregone as a result of applying KAC's cash reserves earlier than expected to the purchase of new aircraft and interest costs incurred in financing the purchases of replacement aircraft.

135. As described in paragraphs 48-49 above, 15 of KAC's aircraft were flown from Kuwait to Iraq during August and September 1990. Seven of these aircraft, including two Boeing 767 aircraft, were destroyed in Iraq and the Iran Six were transported to Iran. KAC states that, following the liberation of Kuwait, it was uneconomical to maintain and operate its one remaining Boeing 767 aircraft and such Boeing aircraft was sold. As a result of these circumstances, KAC entered into agreements in September 1991 (the "Airbus Agreements") to purchase 11 new Airbus aircraft as replacements for the Mosul Four, the Iran Six and KAC's remaining Boeing 767 aircraft. The Iran Six were subsequently recovered by KAC and repaired. As described in paragraphs 67-73 above, KAC submitted a claim, and the Panel has recommended an award of compensation, for the cost of these repairs. Following the completion of these repairs, five Airbus A300 aircraft, comprising five of the Iran Six, were sold to Airbus under a put option that was concluded on 5 November 1993 pursuant to the Airbus Agreements.

136. KAC provides evidence that, prior to Iraq's invasion and occupation of Kuwait, it had planned to replace its fleet during the period from 1998 to 2001, with the costs of replacement from December 1998 onwards to be financed principally out of KAC's accumulated cash reserves. KAC claims that, as a direct result of Iraq's invasion and occupation of Kuwait, it was obliged to replace its fleet earlier than planned. KAC claims that by doing so, it disbursed funds that it had been accumulating for future aircraft purchases, thereby losing the benefit of continued investment of such funds. KAC also alleges that it was obliged to borrow funds to finance this aircraft replacement programme earlier than originally planned, as it had not yet accumulated the requisite cash reserves.

137. KAC originally claimed USD 306,163,951 relating to aircraft replacement financing costs. This claimed amount consisted of KAC's estimated interest income foregone in applying its cash reserves to a portion of the aircraft purchase price and KAC's estimated interest costs incurred to finance the remaining portion of the aircraft purchase price through commercial borrowings, less the sale proceeds of KAC's remaining Boeing 767 aircraft. In response to requests made pursuant to article 34 of the Rules and in its submissions in connection with the KAC Oral Proceedings, KAC revised its claim relating to aircraft replacement financing costs to USD 241,681,254. This revised claimed amount takes into account certain credits for the insurance proceeds received from the KAC Insurers, the disposal of five of the Iran Six and the disposal of the remaining Boeing 767 aircraft as these funds were, in principle, available to finance the claimant's replacement of the aircraft.

138. At the KAC Oral Proceedings, the Panel requested that KAC and the Government of Iraq address the issue of "[w]hether the claim for (i) lost interest on investment funds used to purchase replacement

aircraft and/or (ii) interest costs incurred in financing the purchase of replacement aircraft would be duplicative of any interest paid or earned on compensation for the underlying losses". In its principal address, KAC submitted that, but for Iraq's invasion and occupation of Kuwait, KAC would not have replaced its aircraft until the scheduled dates in 1998 to 2001. KAC also submitted that it was foreseeable that KAC would seek to replace such aircraft and that it suffered a real, one-off loss in relation to the early replacement. KAC further submitted that, in a replacement cycle, it is not the case that reduced investment income and increased interest costs at one part of the cycle will lead to increased investment income and reduced interest costs at another part of the cycle. KAC also noted that the Court of Appeal in the IAC Proceedings found that KAC had acted reasonably in purchasing new aircraft rather than used aircraft.

139. The Government of Iraq submitted that KAC's decision to purchase new aircraft was an intervening act and that the basis of the decision was the fact that KAC's fleet was ageing and had become obsolete in comparison with its competitors in the region. The Government of Iraq also submitted that the decision to purchase new aircraft put KAC in a better position than in which it would otherwise have been.

140. In reviewing this claim, the Panel considered the factual background to KAC's purchase of new Airbus aircraft. The Panel reviewed a number of KAC's internal documents generated in 1990 and 1991, during the period of negotiations with Airbus, such as board minutes, fleet plans and a report of the claimant's aircraft purchasing committee.

141. The Panel also considered the Court of Appeal's findings in the IAC proceedings, as these were raised by KAC in the KAC Oral Proceedings. The Panel noted that a similar claim for financing costs forms part of the IAC Proceedings and that KAC's claim for such costs was rejected by the Court of Appeal on a number of grounds. The Panel notes, as described at paragraph 62 above, that this decision is currently pending an appeal to the House of Lords. The Panel reiterates its finding that the applicable law in the IAC proceedings is not the same as the legal framework in which the Panel must make its recommendations and therefore the findings of the Court of Appeal in relation to the claim for financing costs are not directly relevant to the considerations of the Panel. However, the Panel does take cognizance of findings of fact made in the IAC Proceedings, as KAC has submitted in the KAC Oral Proceedings that the Panel should properly do.

142. The Panel notes that a document entitled "Fleet Plan for Kuwait Airways up to the Year 2000" discussed the potential purchase of the Airbus aircraft in the following terms:

> "… [The fleet plan] addresses itself to replacement of the ageing B747/B727 with better technology/more efficient and longer range aircraft and also replacing the A/C lost due to invasion if these cannot be retrieved. The purpose is also to take advantage of being able to sell the old fleet at reasonable prices while they still have market value and also to place early orders

on new A/C in order to avoid price escalations and reduce lease period of A/C in case the last fleet is not retrieved."

143. After taking into account all the factual circumstances surrounding KAC's purchase of new aircraft, the Panel finds that the decision to purchase a new fleet of Airbus aircraft was an independent business decision of KAC to upgrade its fleet with better technology and to take advantage of favourable business conditions. Furthermore, the Panel also finds that by compensating KAC for the repair costs of the Iran Six, in addition to the costs of recovering those aircraft from Iran, the Panel has put KAC into the position that it would have been in had Iraq's invasion and occupation of Kuwait not occurred and that to compensate KAC for the financing costs of replacing those aircraft in addition to the repair and recovery costs would result in a risk of duplicative recovery. Finally, the Panel finds that the decision to sell KAC's remaining Boeing 767 aircraft was also an independent business decision linked to KAC's decision to purchase a new fleet of Airbus aircraft. Accordingly, the Panel recommends that no award of compensation be made for KAC's claim for financing costs.

(b) Payment to the Government of Iran

144. As described in paragraphs 48-49 above, the Iran Six were first taken from the Airport to Iraq and then transported by Iraqi authorities to Mashad Airport in Iran. Following the liberation of Kuwait, the Government of Iran requested payment for the costs and expenses of keeping, sheltering and maintaining the aircraft. After a series of diplomatic negotiations between the Governments of Kuwait and Iran, and upon KAC's agreement in principle to make a payment to the Government of Iran, the Iran Six were recovered from Iran by KAC in August 1992. Under an agreement dated 5 March 1994, KAC paid USD 20 million to the Government of Iran. KAC claimed losses of USD 20 million on the basis that the payment was made to the Government of Iran in order to mitigate KAC's losses and recover the Iran Six.

145. At the KAC Oral Proceedings, the Panel requested that KAC and the Government of Iraq address the issue of "[w]hether the payment made by [KAC] to the Government of Iran for the recovery of its aircraft was a direct result of Iraq's invasion and occupation of Kuwait." In its principal address, KAC submitted that it was foreseeable that its aircraft would be evacuated to another state and that it would be very costly to retrieve the aircraft. KAC stated that these arguments were accepted by the Court of Appeal in the IAC Proceedings. KAC also submitted that the actions of the Government of Iran did not break the chain of causation as a new intervening act.

146. The Government of Iraq, in its response, submitted that Iraq had attempted to secure the safety of the six aircraft by flying them to Iran and that the payment made to the Government of Iran was not a direct result of Iraq's actions. The Government of Iraq also submitted that the English courts had awarded a sum of USD 20 million to KAC in relation to this payment and that, as this issue is still pending appeal to the House of Lords, any decision of the Panel should await the final decision of such court.

147. The Panel finds that the USD 20 million payment by KAC to the Government of Iran is compensable as a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel finds that the appropriate test of directness is to determine whether the claimed loss suffered by the claimant was sufficiently proximate (i.e. not too remote) to Iraq's invasion and occupation of Kuwait. In this case, the Panel finds that the acts of Iraq in taking the Iran Six first from Kuwait and then to Iran were proximate to the claimed loss and that the actions of the Government of Iran in demanding payment did not break the chain of causation. In addition, the Panel finds that the payment to the Government of Iran is compensable as a reasonable cost incurred by KAC in mitigation of further losses in relation to these aircraft.

(c) Aircraft recovery expenses

148. As described in paragraph 52 above, KAC incurred certain recovery expenses in relation to the Iran Six. KAC personnel travelled to Iran to inspect such aircraft and to prepare them for transport to the repair facilities. In addition, KAC paid Iran Air for specific maintenance and other services performed on the Iran Six.

149. KAC claimed costs of USD 338,885 in relation to the expenses of KAC personnel to travel to Iran and USD 269,458 in relation to maintenance and other services performed by Iran Air. The Panel finds that KAC incurred these recovery expenses as a direct result of Iraq's invasion and occupation of Kuwait and accordingly finds that such losses are compensable subject to an adjustment for insufficient evidence.

(d) Legal costs

150. As described in paragraphs 57-60 above, the loss of KAC's aircraft, aircraft spares, engines and ground equipment was the subject of the Insurance Proceedings between KAC and the KAC Insurers in the English courts. KAC claimed that it pursued the Insurance Proceedings in order to mitigate its losses and to avoid the complete loss of the value of the aircraft spares, engines and ground equipment which it believed were covered by the insurance policy. KAC claimed losses of USD 2,607,843 in relation to legal costs incurred in connection with the Insurance Proceedings.

151. In reviewing this claim, the Panel considered the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E/F' claims" (S/AC.26/2001/6) (the "First 'E/F' Report") in which the "E/F" Panel considered a claim brought by British Airways' underwriters in respect of legal fees reimbursed by them to British Airways as required by an insurance contract. Certain passengers of British Airways had commenced legal proceedings against British Airways in respect of losses arising out of their detention by Iraqi forces in Kuwait and Iraq and the loss of their personal property. British Airways successfully defended or settled most legal proceedings brought against it and in doing so, incurred legal costs. British Airways' legal costs were reimbursed by its underwriters under the legal liability provision of the policy.

152. The claimant underwriters sought compensation from the Commission for payments made to British Airways in respect of payments to passengers and the costs of the legal proceedings and settlements. The "E/F" Panel concluded at paragraph 199 that "… the portion of the claim relating to the legal costs of the proceedings brought by passengers against British Airways is compensable in principle. These costs in general were incurred in mitigation of British Airways' losses."

153. The Panel also noted that a number of other Panels of Commissioners have found that legal fees incurred in the mitigation of losses are compensable where those fees were not incurred in relation to a claim before the Commission. (See, for example, "Report and recommendations made by the Panel of Commissioners concerning the third instalment of 'E1' claims" (S/AC.26/1999/13) at paragraphs 439 to 441, "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E2' claims" (S/AC.26/2000/2) at paragraph 203 and the Sixth "E4" Report at paragraph 84.)

154. The Panel adopts the findings of these Panels of Commissioners and finds that legal costs incurred in connection with the mitigation of losses are compensable in principle provided that the underlying loss in respect of which the legal costs have been incurred is compensable and the steps taken by the claimant were reasonable in the circumstances.

155. The Panel finds that, as described in paragraphs 48-93 above, the underlying losses of KAC's aircraft spares, engines and ground equipment are compensable as direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel also finds that KAC acted reasonably in pursuing the Insurance Proceedings against the KAC Insurers, not only because KAC was ultimately successful in such proceedings but also because at such time there was no assurance that KAC would be entitled to an award from the Commission or from another source in relation to the underlying losses. Accordingly, the Panel finds that the legal costs claimed by KAC are compensable as a direct loss resulting from Iraq's invasion and occupation of Kuwait.

156. In respect of the valuation of this loss, the Panel notes that KAC initially claimed the sum of USD 2,607,843 in respect of its legal costs in the Insurance Proceedings. KAC subsequently sought to increase this amount in its responses to article 34 notifications and procedural orders. However, the Panel notes that the Governing Council has permitted claimants to file unsolicited supplements up to and including 11 May 1998. (See (S/AC.26/SER.A/1) at page 185.) The Panel has therefore only considered those losses contained in KAC's original claim as any purported increase in the amount claimed by KAC was contained in documents filed after 11 May 1998.

157. In valuing this claim, the Panel notes that the legal costs which are the subject of the claim represent costs in connection with the Insurance Proceedings up to and including the hearing at first instance. The Panel notes that, in the decision of the House of Lords referred to at paragraph 59 above, the court ordered the KAC Insurers to bear one-third of KAC's costs of the hearing at first instance.

Therefore, the Panel finds that KAC's claim for legal costs must be adjusted to offset the "risk of overstatement" arising from the fact that some of the costs which are claimed were ordered to be paid to KAC by the KAC Insurers.

(e) KAC's other losses

158. The Panel's recommendations on KAC's other losses are summarized in annex II below.

(f) Set-off and avoidance of multiple recovery

159. As described above in paragraphs 57-60, KAC received or became entitled to receive a total of USD 450 million from the KAC Insurers, consisting of USD 300 million paid by the KAC Insurers in respect of the 15 stolen aircraft and USD 150 million ordered by the English courts in the Insurance Proceedings to be paid by the KAC Insurers in respect of some aircraft spares, engines and ground equipment.

160. At the KAC Oral Proceedings, the Panel requested that KAC and the Government of Iraq address the issue of "[w]hether the total amounts recovered by [KAC] from its insurers, for losses to its aircraft, spares, engines and ground equipment should be set off against its entire Claim, on the basis that the insurance recoveries represent compensation from other sources". In its submissions, KAC agreed that credits should be given in respect of the insurance recoveries. However, KAC argued that these credits should only be applied against specific claimed losses (i.e. those relating to aircraft and aircraft spares) and not be set off against the entire claim. KAC also argued that the insurance recoveries do not represent compensation from another source but are contractual benefits for which KAC paid premiums. KAC referred to the First "E/F" Report in arguing that the Commission has recognized that there is a difference between what insurers are contractually obligated to pay and what a claimant is entitled to recover from the Commission. KAC argued that, where a claimant has paid premiums to entitle it to recover the higher, agreed values, the benefit of this higher recovery should not go to the party causing the loss (in this case, Iraq).

161. The Government of Iraq argued at the KAC Oral Proceedings that the insurance recoveries should be set off against KAC's entire claim. The Government of Iraq stated that KAC had received from the KAC Insurers compensation which exceeded the actual value of both its lost aircraft and aircraft spares and that for the Commission to award any further amount to KAC would be considered "illicit enrichment" at the expense of Iraq.

162. In considering this issue, the Panel considered paragraph 25 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which states that "[a]ny compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered."[11]

163. In the First "E4" Report, the Panel stated at paragraph 169 that it is of the view that the expression "compensation", as used by the Governing Council in decision 7, "is intended to refer to payments made for losses suffered as a direct result of Iraq's invasion and occupation of Kuwait, i.e., compensable losses."[12]

164. Based on the foregoing, the Panel finds that the insurance recoveries are payments made for losses suffered as a direct result of Iraq's invasion and occupation of Kuwait and that they constitute "compensation" from another source for the purposes of Governing Council decision 7.[13] Accordingly, the Panel finds that the insurance recoveries of USD 450 million should be deducted from the total amount of losses suffered by KAC. As the total amount of the insurance recoveries exceeds the total amount of compensable losses suffered by KAC as determined by the Panel, the Panel recommends that no award of compensation be made for KAC's claimed losses.

2. General

165. Six claimants in this instalment asserted claims aggregating KWD 3,539,666 (approximately USD 12,247,979) for other losses, excluding the other losses claimed by GIC which aggregate USD 38,470,020 and are described below at paragraphs 172-185 and the other losses claimed by KAC which are described above at paragraphs 133-164.

166. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, for example, paragraph 108 of the Second "E4" Report, dealing with the treatment of prepaid expenses. See also paragraphs 106-107 of the "Report and recommendations made by the Panel of Commissioners concerning the third instalment 'E4' claims" (S/AC.26/2000/6) (the "Third 'E4' Report") dealing with refundable deposits.)

167. In order to provide infrastructure and services in Kuwait in the immediate post-liberation period, the Government of Kuwait set up the Kuwait Emergency and Recovery Program ("KERP"). (See the Second "F3" Report at paragraph 52.) This was a procurement programme that, inter alia, supplied buses, vehicles and a quantity of spare parts and other tangible property to Kuwait Public Transport Company K.S.C. ("KPTC"), an "E4" claimant in charge of administering Kuwait's transportation services.

168. The Government of Kuwait lodged a claim with the Commission for the funds it expended through the KERP programme, including the emergency buses, vehicles and other tangible property that it provided to KPTC. These amounts were found by the "F3" Panel to be USD 6,808,000 (KWD 1,967,512) for the buses, vehicles and other tangible property, and USD 1,081,819 (KWD 312,646) for interest charges. KPTC lodged a claim with the Commission in relation to the buses, vehicles and other tangible property that it lost during Iraq's invasion and occupation of Kuwait.

169. In order to avoid potential duplication between the KPTC's claim for lost buses, vehicles and other tangible property and the Government of Kuwait's claim for the buses, vehicles and other tangible

property provided to the claimant through the KERP programme, the "F3" Panel of Commissioners directed the Government of Kuwait's claim in respect of these lost buses, vehicles and other tangible property to be severed from the "F3" claims population and transferred to the "E4" claims population (see paragraph 93 of the Second "F3" Report), where it was consolidated with the claim of KPTC.

170. KPTC's initial claim for lost buses and vehicles was based on their market and net book values at the date of Iraq's invasion and occupation of Kuwait. KPTC's claim for other tangible property was based on the net book value of the tangible property (or in the case of spare parts, the lower of the original cost and replacement value) at the date of Iraq's invasion and occupation of Kuwait. In relation to the buses, vehicles and other tangible property that were provided to it by the Government of Kuwait pursuant to the KERP programme, KPTC stated that it was invoiced by the Government of Kuwait for such buses, vehicles and other tangible property, that it repaid all such amounts to the Government of Kuwait in full, and that it made no claim in respect of them.

171. On the basis of the evidence submitted, the Panel finds that the claimant suffered a compensable loss in relation to its vehicles, buses and other tangible property. The Panel also finds, however, that KPTC cannot be compensated both on the basis of its original claim and on the basis of the amount it paid to the Government of Kuwait pursuant to the KERP programme, as this would result in double recovery. Since KPTC did not specifically seek compensation for the amounts it paid to the Government of Kuwait for the buses, vehicles and other tangible property that it received through the KERP programme, the Panel directs that KPTC's claim for buses, vehicles and other tangible property be valued and compensated on the basis of its initial claim. As a result, the Panel recommends no compensation be awarded in relation to the vehicles supplied pursuant to KERP.

172. Another claimant, GIC, submitted a claim in relation to two donations that it made to the Kuwaiti embassy in Bahrain in the total amount of 25,000 Bahraini dinars (BHD) during Iraq's occupation of Kuwait. The claimant relocated its business operations to Bahrain following Iraq's invasion and occupation of Kuwait. During that time, it made one donation to the Kuwaiti embassy in the amount of BHD 5,000 for "public media activity", and a second donation in the amount of BHD 20,000 "to assist dislodged Kuwaitis in Bahrain".

173. In relation to the claim for the payment made for "public media activity", the claimant was requested, pursuant to an article 34 notification, to clarify the purpose of such activity of the Kuwaiti embassy and to explain how the cost was incurred as a direct result of Iraq's invasion and occupation of Kuwait. Despite such a request, the claimant did not provide a specific explanation of the purpose of the "public media activity" nor did it explain how the cost was incurred as a direct result of Iraq's invasion and occupation of Kuwait. In the absence of such an explanation, the Panel finds that the claimant did not demonstrate that the cost was incurred as a direct result of Iraq's invasion and occupation of Kuwait. As a result, the Panel recommends no compensation be awarded in relation to this claim.

174. In relation to the claim for the payment made to "assist dislodged Kuwaitis in Bahrain", the Panel notes that such a payment was of a temporary and extraordinary nature, and was, prima facie, to be used for the purpose of providing relief to persons who suffered losses as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds, however, that the Government of Kuwait itself made a claim in relation to amounts that it distributed to its embassies throughout the world in order to provide relief to Kuwaiti evacuees during Iraq's invasion and occupation of Kuwait. That claim was the subject of an award of compensation set out in the First "F3" Report. As the Panel is not able to determine if the claimant's claim is duplicative of part of the Government of Kuwait's claim, it cannot recommend that any compensation be awarded in respect of this claim.

175. GIC also claimed for losses in the amount of USD 2,750,758 incurred on the sale of its internally-managed portfolios during Iraq's invasion and occupation of Kuwait. The claimant alleged that it suffered a liquidity crisis subsequent to Iraq's invasion and occupation of Kuwait, and was forced to sell assets from the internally-managed portfolios in order to maintain adequate levels of liquidity. The claimant further alleged that, since most of its experienced staff fled after Iraq's invasion and occupation of Kuwait, it did not have the requisite in-house expertise to manage the sale. It was therefore unable to employ sophisticated financial techniques that it otherwise would have used in relation to the sale, and it suffered losses as a result. The claimant claimed for the difference between the actual sales price received for the securities and their book value. The claimant requested that, in the event that the Panel did not make an award for such loss, the claim be reclassified as a claim for loss of profits.

176. The Panel reiterates its position set out in paragraphs 25-26 of the Third "E4" Report respecting the compensability of claims for losses arising from the sale of assets, and recommends no compensation for this claim for the reasons as described more generally in the Third "E4" Report. The Panel finds that, even though the claimant's forced sale of securities was a direct result of Iraq's invasion and occupation of Kuwait, the claimant did not demonstrate that the amount of the loss (i.e. the difference between the sale value and the book or nominal value) was the direct result of Iraq's invasion and occupation of Kuwait.

177. GIC made a further claim in the amount of USD 34,944,207 for the diminution in value of certain externally managed securities as of 31 December 1990. The claimant alleged that due to the international freeze imposed on Kuwaiti assets following Iraq's invasion and occupation of Kuwait, it was obliged to obtain certain clearances so that its external fund managers could resume management of the funds. The claimant alleged that such funds suffered losses between the time that the freeze on Kuwaiti assets was imposed and the time that such clearances were obtained since they were not properly managed during that period. The claimant calculated its claim on the basis of the difference between the market value of the securities on 2 August 1990 and the market value of the securities on 31 December 1990, since the later date was its financial-year end. The claimant conceded that these losses were never realized and that the value of its securities after the liberation of Kuwait increased significantly on account of prevailing market conditions. The claimant requested that, in the event that the Panel did not make an award for losses relating to its externally managed securities, the claim be reclassified as a claim for loss of profits.

178. The Panel finds that the claimant did not provide any evidence that the amount claimed (i.e. the difference between the market value on 2 August 1990 and on 31 December 1990) was a direct loss resulting from Iraq's invasion and occupation of Kuwait. Specifically, the claimant did not provide any evidence demonstrating that the diminution in value of its externally- managed securities as of 31 December 1990 was the direct result of the fund manager's inability to manage the funds. In the absence of such evidence, the Panel finds that the market value of the claimant's securities as of 31 December 1990 was the result of market conditions prevailing at the time. Finally, the Panel finds that since the losses alleged by the claimant were not actually realized on 31 December 1990 or at all, the claimant did not demonstrate that it in fact suffered a compensable loss. As a result, the Panel recommends no compensation be awarded in relation to this claim.

179. Finally, in relation to the claimant's claims for both its internally- and externally-managed securities, the Panel finds that there was no basis to reclassify these claims to a claim for loss of profits, or more specifically, to add these claims to its existing loss of profits claim. The Panel further finds that this result would be inconsistent with the treatment of similar claims in the Third "E4" Report.

180. GIC also claimed for losses in the amount of USD 750,055 relating to its purchase of four securities through its Italian broker, Pasfin S.P.A. ("Pasfin") made just before Iraq's invasion and occupation of Kuwait. At that time, the claimant alleged that it instructed its correspondent bank, Banco Commerciale Italiana Milano ("BCI"), to pay Pasfin against the delivery of the purchased securities. Before it could do so, however, Iraq invaded and occupied Kuwait and the international freeze on Kuwaiti assets was imposed. As a result, the claimant alleged that BCI did not deliver the funds to Pasfin. In order to recuperate the purchase price of the securities, the claimant further alleged that Pasfin sold the securities, and that the prevailing market price was such that the securities were sold at a loss. Pasfin brought an action against the claimant in an Italian court for the difference between the original purchase price and the sale price of the securities. Pursuant to the ensuing court judgement, the claimant alleged that it paid Pasfin the difference between the original purchase price and the sale price of the securities, interest on the outstanding principal amount and legal fees.

181. With respect to the claim for the amount of the difference between the original purchase price of the securities and their sale price, the Panel notes that the claimant was requested, pursuant to an article 34 notification, to submit evidence demonstrating that it had an obligation to pay Pasfin for the difference between the original purchase price of the securities and the sale price of the securities. In particular, the claimant was requested to provide a copy of the judgement of the Italian court that allegedly set forth the claimant's obligation to pay Pasfin. The claimant did not provide a copy of the judgement, and did not provide a satisfactory explanation of why such judgement was not available. The Panel therefore finds that the claimant did not demonstrate that it had an obligation to pay Pasfin in the amount claimed.

182. The Panel further finds that even if the claimant demonstrated that it had an obligation to pay Pasfin in the amount claimed, it did not demonstrate that it paid Pasfin such an amount. The claimant

submitted a document that it alleged was a receipt issued by Pasfin for the amount it was obliged to pay pursuant to the judgement of the Italian court. The document was illegible and despite a request for a legible copy pursuant to an article 34 notification, the claimant did not provide such a copy. As a result, the Panel found that the claimant did not demonstrate that it paid Pasfin in respect of the securities. The Panel therefore is unable to find that the claimant suffered a compensable loss.

183. Finally, the Panel finds that even if the claimant did in fact pay Pasfin in the circumstances alleged, the claimant did not establish that it suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel finds that the claimant's loss was due to BCI's refusal to pay against the delivery of the securities in the face of the international freeze on Kuwaiti assets, which is a loss arising from the trade embargo and related measures imposed on Kuwaiti assets following Iraq's invasion and occupation of Kuwait, and not Iraq's invasion and occupation of Kuwait. As a result of all of these findings, the Panel concludes that the claimant did not establish that it had suffered a direct loss resulting from Iraq's invasion and occupation of Kuwait, and recommends no compensation be awarded in respect of this claim.

184. With respect to the claim for the cost of the legal proceedings between itself and Pasfin, the Panel finds that the claimant did not provide sufficient evidence to establish that its obligation to pay legal fees arose as a direct result of Iraq's invasion and occupation of Kuwait. Again, the Panel notes that the claimant did not provide a copy of the judgement of the Italian court as it was requested to do pursuant to an article 34 notification. Moreover, the claimant did not provide sufficient evidence to establish the nature of the fees paid and ultimately, whether such fees were in fact paid. As a result, the Panel recommends that no compensation be awarded for the cost of legal proceedings.

185. With respect to the claim for interest charges, the claimant advised that it held the funds for Pasfin in a non-interest bearing account pending the outcome of the litigation. The claimant did not provide any documentary evidence of whether it was compelled by law to hold the funds in a non-interest bearing account, or whether this was the result of an independent business decision. Further, it did not provide evidence establishing that it had a legal obligation to pay interest to Pasfin, and whether such interest was in fact paid. In the light of these evidentiary shortcomings, the Panel concludes that the claimant did not establish that its loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait and recommends that no compensation be awarded for the claim for interest.

186. Overland Transport Company K.S.C. made a claim in the amount of KWD 73,262 in relation to penalties, fines and taxes it was liable to pay the Government of Jordan for 78 of its vehicles that were in Jordan at the time of Iraq's invasion and occupation of Kuwait. The claimant alleged that in 1988 it entered into a transportation contract with Jordan Phosphates Mine Company Ltd. ("JPMC"), and in performance of its contractual obligations, arranged for 180 vehicles to be transported to Jordan. The claimant alleged that the presence of these vehicles in Jordan triggered penalties, fines and taxes payable to the Government of Jordan in excess of 150 Jordanian dinars ("JOD") per vehicle per month. The claimant further alleged that its contract with JPMC was terminated pursuant to its terms in March 1990,

and by the date of Iraq's invasion and occupation of Kuwait, 102 of the 180 vehicles had been returned to Kuwait.

187. The claimant alleged that both during and after Iraq's invasion and occupation of Kuwait, the penalties, fines and taxes payable to the Government of Jordan continued to accrue. Following the liberation of Kuwait, the claimant decided to sell the 78 remaining vehicles in Jordan. The vehicles were sold subject to the amounts owing to the Government of Jordan, and the purchaser specifically assumed responsibility for this liability as a term of the sale agreement. The claimant alleged that as a result of the assumption by the purchaser of this liability, the purchase price that it received for the 78 vehicles was adversely affected. The claimant sought compensation on the basis of JOD 130 per vehicle per month from the date of the invasion to 17 months following the liberation of Kuwait.

188. The Panel notes that the claimant provided evidence demonstrating that its 78 vehicles were in Jordan during Iraq's invasion and occupation of Kuwait and that it was liable to pay the Government of Jordan JOD 100 per month for such vehicles while they were in Jordan. The Panel also notes that the claimant provided evidence demonstrating that the amounts payable to the Government of Jordan accrued both during and after Iraq's invasion and occupation of Kuwait. The Panel finds, however, that the claimant provided no evidence demonstrating that the amounts payable to the Government of Jordan were ever paid by any party following the liberation of Kuwait. The Panel also finds that the claimant did not provide any evidence demonstrating the amount owing to the Government of Jordan at the date of the sale of the vehicles, nor did it provide any evidence demonstrating the effect of this outstanding amount on the purchase price of the vehicles. In the light of these evidentiary shortcomings, the Panel recommends no award of compensation in relation to this claim.

189. Overland Transport Company K.S.C. also made a claim in the amount of KWD 1,313,088 in relation to interest that accrued on certain of its loans during Iraq's invasion and occupation of Kuwait. The claimant's loans, however, including interest amounts, were settled pursuant to the Government of Kuwait's Difficult Debt Settlement Programme after the claimant's statement of claim was filed with the Commission. Pursuant to the terms of the settlement plan, the claimant was obliged to settle its debt prior to 5 December 1995. The claimant alleged that as a result of Iraq's invasion and occupation of Kuwait, it "could not escape insolvency" and was therefore unable to meet this deadline, and did not settle its debt until 1999. The claimant further alleged that since it did not meet this deadline, it was obliged to pay payment penalties and debt service charges in the amount of KWD 556,854 and sought to modify its claimed based on this reduced amount.

190. The Panel finds that the claimant did not demonstrate that its failure to settle its debts on or before 5 December 1995 was a direct result of Iraq's invasion and occupation of Kuwait. In reaching this conclusion, the Panel notes that the claimant's shareholders decided to liquidate the company in 1992, that this decision was reversed in July 1994, and that the claimant was operated as a going concern thereafter. The Panel finds that although the claimant may have suffered economic hardship following Iraq's invasion and occupation of Kuwait, the decision not to operate as a going concern impacted the claimant's ability to generate a revenue stream and broke the chain of causation between the claimed

losses in respect of the late payment penalties and debt service charges and Iraq's invasion and occupation of Kuwait. Further, the claimant did not demonstrate that its inability to settle its debt from the time it decided to resume operations as a going concern in 1994 to the time that it finally settled its debt in 1999 was a direct result of Iraq's invasion and occupation of Kuwait and not the result of an independent business decision to apply its revenues to other business purposes. In this regard, the Panel notes that while the claimant may have incurred late payment penalties and debt service charges, it in fact had the concomitant benefit of applying revenues it would have otherwise used to settle its debt to such other business purposes. In the light of these findings, the Panel concludes that the claimant did not establish that such late payment penalties and debt service charges were a direct loss resulting from Iraq's invasion and occupation of Kuwait and recommends no award of compensation in relation to this claim.

191. The Panel's recommendations on other losses are summarized in annex II below.

V. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

192. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

B. Claim preparation costs

193. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

VI. RECOMMENDED AWARDS

194. Based on the foregoing, the awards recommended by the Panel for claimants in the fifteenth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest Kuwaiti dinar and therefore the amounts may vary from the amount stated on Form E by KWD 1.

Geneva, 21 December 2001

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

Notes

[1] A reinsurance company insures the risks of insurance companies. Under a contract of reinsurance, the policyholder is an insurance company that passes on or "cedes" part or all of its risks to the reinsurer in consideration of a reinsurance premium. In the event of a claim against the ceding company, the latter may call upon the reinsurance company to pay in accordance with the contract of reinsurance.

[2] A retrocessionaire insures the risks of a reinsurance company. Under a retrocession agreement, the policyholder is a reinsurance company that passes on or "cedes" its risks to the retrocessionaire in consideration of a premium. In the event of a claim against the reinsurance company, the latter may call upon the retrocessionaire to pay in accordance with the retrocession agreement.

[3] The Insurance Proceedings were first appealed from the Commercial Court to the Court of Appeal, which held that the Ground Limit did not include the spares but which found against KAC on other grounds ([1997] 2 Lloyd's Rep. 687). This judgement was appealed to the House of Lords.

[4] [1999] 1 Lloyd's Rep. 803 at 812.

[5] [1999] 1 Lloyd's Rep. 803 at 816, 817.

[6] [1999] 1 Lloyd's Rep. 803 at 817 in respect of the 15 stolen aircraft and [2000] 1 Lloyd's Rep. 252 at 265 in respect of spares (detailing amounts covered by the award).

[7] [2000] 1 Lloyd's Rep. 252 at 265.

[8] [2000] 1 Lloyd's Rep. 252 at 261.

[9] [2000] 1 Lloyd's Rep. 252 at 264.

[10] [2000] 2 All E.R. (Comm) 360 at 378, 448.

[11] The Panel also considered paragraph 3(b) of Governing Council decision 13 (S/AC.26/1992/13) which states that "[w]hen the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories 'C', 'D', 'E' and 'F' has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss."

[12] The Panel also notes that other Panels of Commissioners have not confined "compensation" to the proceeds of a court or arbitral judgement or award but have recognized that "compensation" could arise from a contract. For example, in the "Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of the 'E1' claims" (S/AC.26/2001/1), at paragraphs 79-82, the "E1" Panel treated amounts received pursuant to a contract which had been renegotiated following the liberation of Kuwait as "compensation" to set off against a portion of the claimed loss.

[13] The Panel notes the findings of the "E1" Panel in the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of the 'E1' claims" (S/AC.26/2001/18) at paragraphs 174-320. In that case, the "E1" Panel considered the losses of a claimant oil company that had also earned increased profits during the period of Iraq's invasion and occupation of Kuwait. The "E1" Panel recommended that increased profits arising as a direct result of Iraq's invasion and occupation of Kuwait should be set off against all of the claimant's claimed losses that were otherwise compensable, including tangible property losses and payment or relief to others.

[ENGLISH ONLY]

Annex I

RECOMMENDED AWARDS FOR THE FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY UNSEQ AND UNCC CLAIM NUMBER AND CLAIMANT NAME

UNSEQ claim No. [a]	UNCC claim No.	Claimant's name	Amount claimed (KWD)	Net amount claimed [b] (KWD)	Amount recommended (KWD)	Amount recommended (USD)
E-00126	4003356	Al Mulla Rental & Leasing of Vehicles & Equipment Co.	4,845,736	4,385,286	3,559,663	12,315,486
E-00594	4003687	Kuwait National Hotels and Tourism Co.	5,941,312	5,936,812	5,388,486	18,645,280
E-00800	4003913	Oriental Hotel Co. Sheraton	15,956,195	14,411,336	7,817,729	27,049,108
E-00864	4003943	National Cleaning Co.	3,218,084	3,208,084	2,340,870	8,099,175
E-00917	4002415	Middle East Telecommunications Co. W.L.L.	2,986,676	2,985,176	198,820	687,905
E-00977	4004084	Dar Al Qabas for Printing, Press, Publishing	3,947,184	3,262,216	2,768,048	9,578,021
E-01048	4004111	The Public Institution for Social Security	41,979,047	36,058,842	179,477	621,028
E-01156	4004264	Overland Transport Company K.S.C.	15,287,323	13,148,478	6,439,071	22,280,523
E-01177	4004285	Kuwait Public Transport Company K.S.C.	42,927,210	37,976,838	24,017,669	83,063,762
E-01347	4004454	Dar Al Siyaseh Printing, Press and Publications Co. W.L.L.	3,941,300	3,346,307	1,324,526	4,583,135
E-01441	4004604	Touristic Enterprises Company	12,915,424	11,708,531	6,300,356	21,800,540
E-01975	4005083	Kuwait International Fair K.S.C. (Closed)	3,615,049	3,224,686	1,539,161	5,325,622
E-01976	4005084	Al-Ahlea Circle Cleaning Co.	2,974,942	2,762,280	1,155,965	3,999,603
TOTAL			160,535,482	142,414,872	63,029,841	218,049,188

UNSEQ Claim No.	UNCC Claim o.	Claimant's name	Amount claimed (USD)	Net amount claimed (USD)	Amount recommended (USD)
E-00003	4002422	Gulf Investment Corporation G.S.C.	86,058,242	76,003,554	34,273,710
E-01586	4004694	Kuwait Airways Corporation	957,119,196	956,361,035	nil
TOTAL			1,043,177,438	1,032,364,589	34,273,710

[a] The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

[b] The "Net amount claimed" is the original amount claimed less the amounts claimed for claim preparation costs and interest. As set forth in paragraphs 192 and 193 of the report, the Panel has made no recommendation with regard to these items.

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Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Al Mulla Rental & Leasing of Vehicles & Equipment Co.
UNCC claim number: 4003356
UNSEQ number: E-00126

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	50,877	22,213	Real property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	146,494	146,494	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 40-47 above.
Loss of stock	428,232	325,836	Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of cash	10,367	9,650	Cash claim adjusted to amount of loss. See paragraphs 40-47 above.
Loss of vehicles	2,867,878	2,860,231	Loss of vehicles claim awarded in full. Claim for vehicle repairs adjusted for maintenance and evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Loss of profits	422,800	194,271	Original claim for other loss not categorized reclassified as loss of profits. Profits claim adjusted to reflect historical results for an 11-month indemnity period and for windfall profits. See paragraphs 97-101 above.
Bad debts	455,929	968	Bad debts claim adjusted for evidentiary shortcomings. See paragraphs 108-111 above.
Other loss not categorized	2,709	nil	Claim for other loss not categorized reclassified as other loss not categorized and loss of profits. Insufficient evidence to substantiate claim. See paragraphs 165-166 above.
TOTAL	4,385,286	3,559,663	

Interest	460,450	n.a.	Governing Council determination pending. See paragraph 192 of the report.

Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait National Hotels and Tourism Co.
UNCC claim number: 4003687
UNSEQ number: E-00594

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	5,936,812	5,388,486	Original loss of real property claim reclassified as loss of tangible property. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 40-47 above.
TOTAL	5,936,812	5,388,486	

Claim preparation costs	4,500	n.a.	Governing Council determination pending. See paragraph 193 above.

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Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Oriental Hotel Co. Sheraton
UNCC claim number: 4003913
UNSEQ number: E-00800

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	9,679,632	3,801,132	Original real property claim reclassified as loss of real property and loss of tangible property. Real property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	3,840,943	3,757,148	Original loss of real property claim reclassified as loss of real property and loss of tangible property. Original tangible property claim reclassified as loss of tangible property, stock, cash, and vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of stock	83,379	43,266	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Stock claim adjusted for obsolescence, valuation basis and evidentiary shortcomings. Goods-in-transit claim adjusted for obsolescence, valuation basis and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of cash	400	nil	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Insufficient evidence to substantiate claim for loss of cash. See paragraphs 40-47 above.
Loss of vehicles	1,914	1,531	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Vehicles claim adjusted for maintenance. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Loss of profits	660,463	213,887	Profits claim adjusted to reflect historical results for an 11-month indemnity period and for windfall profits. See paragraphs 105-106 above.
Bad debts	62,281	nil	Insufficient evidence to substantiate claim. See paragraphs 108-111 above.
Restart costs	49,584	765	Original payment or relief to others claim reclassified as loss due to restart costs. Restart costs claim adjusted for evidentiary shortcomings. See paragraphs 117-118 above.
Other loss not categorized	32,740	nil	For claim for prepayments, see paragraph 166 above.
TOTAL	14,411,336	7,817,729	

Claim preparation costs	12,817	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	1,532,042	n.a.	Governing Council determination pending. See paragraph 192 above.

Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: National Cleaning Co.
UNCC claim number: 4003943
UNSEQ number: E-00864

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	44,902	44,323	Real property claim adjusted for evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	128,084	128,084	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim recommended in full. See paragraphs 40-47 above.
Loss of stock	147,743	140,709	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Stock claim recommended in full. Goods-in-transit claim adjusted for evidentiary shortcomings. See paragraphs 40-47 above.
Loss of vehicles	2,190,024	1,826,635	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Loss of profits	366,840	201,119	Profits claim adjusted to reflect historical results for a 10-month indemnity period. See paragraphs 97-101 above.
Bad debts	321,620	nil	Insufficient evidence to substantiate claim. See paragraphs 108-111 above.
Restart costs	8,871	nil	Original claim for other loss not categorized reclassified as loss due to restart of business. Insufficient evidence to substantiate claim. See paragraphs 117-118 above.
TOTAL	3,208,084	2,340,870	

Claim preparation costs	10,000	n.a.	Governing Council determination pending. See paragraph 193 above.

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Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Middle East Telecommunications Co. W.L.L.
UNCC claim number: 4002415
UNSEQ number: E-00917

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	7,340	6,378	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 40-47 above.
Loss of stock	180,459	154,019	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of cash	500	500	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Claim for cash recommended in full. See paragraphs 40-47 above.
Loss of vehicles	5,100	1,813	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Loss of profits	44,910	19,984	Profits claim adjusted to reflect historical results for a nine-month indemnity period and for windfall profits. See paragraphs 97-101 above.
Bad debts	2,726,976	nil	Original loss of contracts claim reclassified as loss due to bad debts. No compensation recommended for this claim. See paragraphs 112-115 above.
Restart costs	19,891	16,126	Restart costs claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 117-118 above.
TOTAL	2,985,176	198,820	

Claim preparation costs	1,500	n.a.	Governing Council determination pending. See paragraph 193 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Dar Al Qabas for Printing, Press, Publishing
UNCC claim number: 4004084
UNSEQ number: E-00977

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	2,231,414	1,990,593	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Tangible property claim adjusted for depreciation and insufficient evidence of reinstatement. See paragraphs 40-47 above.
Loss of stock	1,018,247	772,479	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Stock claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of vehicles	12,555	4,976	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
TOTAL	3,262,216	2,768,048	

Claim preparation costs	5,000	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	679,968	n.a.	Governing Council determination pending. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: The Public Institution for Social Security
UNCC claim number: 4004111
UNSEQ number: E-01048

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of tangible property	231,940	175,160	Original loss of tangible property claim reclassified as loss of tangible property and other loss not categorized. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 40-47 above.
Payment or relief to others	1,453	1,453	Original payment or relief to others claim reclassified as loss due to payment or relief to others and loss of profits. Claim for loss due to payment or relief to others awarded in full. See paragraphs 94-96 above.
Loss of profits	35,809,904	nil	Original payment or relief to others reclassified as loss of profits. No amount awarded for loss of profits claim. See paragraphs 102-104 above.
Restart costs	3,580	2,864	Original loss of real property claim reclassified as loss due to restart costs. Restart costs claimed adjusted for maintenance. See paragraphs 117-118 above.
Other loss not categorized	11,965	nil	For claim for prepayments, see paragraph 166 above.
TOTAL	36,058,842	179,477	

Interest	5,920,205	n.a.	Governing Council determination pending. See paragraph 192 above.

Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Overland Transport Company K.S.C.
UNCC claim number: 4004264
UNSEQ number: E-01156

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	389,238	234,262	Real property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	150,593	132,693	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Tangible property claim adjusted for evidentiary shortcomings. See paragraphs 40-47 above.
Loss of stock	229,253	169,598	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Stock claim adjusted for valuation basis, stock build-up, and obsolescence. See paragraphs 40-47 above.
Loss of vehicles	7,116,107	4,220,698	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values, and for maintenance and evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	81,302	38,704	Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 94-96 above.
Loss of profits	1,956,239	nil	Profits claim adjusted to reflect historical results. See paragraphs 97-101 above.
Bad debts	1,708,148	1,643,116	Original loss of contract claim reclassified as loss due to bad debts. Bad debts claim adjusted for evidentiary shortcomings. See paragraphs 108-111 above.
Other loss not categorized	1,517,598	nil	Original claim for claim preparation costs reclassified as other losses not categorized. For claim for prepayments, see paragraph 166 above. For the other claims, see paragraphs 186-190 above.
TOTAL	13,148,478	6,439,071	

Claim preparation costs	4,500	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	2,134,345	n.a.	Governing Council determination pending. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Public Transport Company K.S.C.
UNCC claim number: 4004285
UNSEQ number: E-01177

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	1,893,208	465,641	Real property claim adjusted for maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	2,389,030	1,499,437	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of stock	2,481,455	2,229,321	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Stock claim adjusted for stock build-up. See paragraphs 40-47 above.
Loss of vehicles	20,016,129	15,690,338	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Original loss of vehicles claim reclassified as loss of tangible property and loss of vehicles. Vehicles claim adjusted for depreciation, maintenance and evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	365,856	261,170	Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 94-96 above.
Loss of profits	8,863,648	3,871,762	Original loss of contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results for a 12-month indemnity period. See paragraphs 97-101 above.
Other loss not categorized	1,967,512	nil	See paragraphs 167-171 above.
TOTAL	37,976,838	24,017,669	

Claim preparation costs	16,600	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	4,933,772	n.a.	For KERP interest claim, see paragraphs 167-171 above. Governing Council determination pending for balance of interest claim. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Dar Al Siyaseh Printing, Press and Publication Co. W.L.L.
UNCC claim number: 40044454
UNSEQ number: E-01347

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	34,728	27,565	Real property claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	2,094,784	700,671	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Tangible property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of stock	755,076	571,741	Original loss of tangible property claim reclassified as loss of tangible property, stock, and vehicles. Stock claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of vehicles	32,050	24,341	Original loss of tangible property claim reclassified as loss of tangible property, stock and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	201,947	nil	Original claim for loss due to payment or relief to others reclassified as loss of profits and payment or relief to others. Insufficient evidence to substantiate claim for payment or relief to others. See paragraphs 94-96 above.
Loss of profits	33,200	nil	Original claim for loss due to payment or relief to others reclassified as loss of profits. Profits claim adjusted to reflect historical results. See paragraphs 97-101 above.
Bad debts	177,615	nil	Insufficient evidence to substantiate claim. See paragraphs 108-111 above.
Restart costs	9,765	208	Claim adjusted for evidentiary shortcomings. See paragraphs 117-118 above.
Other loss not categorized	7,142	nil	Insufficient evidence to substantiate claim. See paragraph 166 above.
TOTAL	3,346,307	1,324,526	

Claim preparation costs	7,700	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	587,293	n.a.	Governing Council determination pending. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Touristic Enterprise Company
UNCC claim number: 4004604
UNSEQ number: E-01441

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	7,574,114	3,816,461	Original loss due to restart of business reclassified as loss of real property. Real property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	1,928,966	1,668,484	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Tangible property claim adjusted for evidentiary shortcomings. Work-in-progress claim adjusted for insufficient evidence of reinstatement. See paragraphs 40-47 above.
Loss of stock	360,112	186,766	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Stock claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of cash	21,369	nil	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Insufficient evidence to substantiate cash claim. See paragraphs 40-47 above.
Loss of vehicles	62,759	58,947	Original loss of tangible property claim reclassified as loss of tangible property, stock, cash and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	577,188	569,698	Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 94-96 above.
Loss of profits	1,184,023	nil	Profits claim adjusted to reflect historical results. See paragraphs 97-101 above.
TOTAL	11,708,531	6,300,356	

Claim preparation costs	151,192	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	1,055,701	n.a.	Governing Council determination pending. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait International Fair K.S.C. (Closed)
UNCC claim number: 4005083
UNSEQ number: E-01975

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	2,786,920	1,168,101	Real property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	274,706	274,706	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim awarded in full. See paragraph 40-47 above.
Loss of vehicles	10,027	6,914	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	16,341	16,341	Claim awarded in full. See paragraphs 94-96 above.
Loss of profits	136,692	73,099	Profits claim adjusted to reflect historical results for a nine-month indemnity period and for windfall profits. See paragraphs 97-101 above.
TOTAL	3,224,686	1,539,161	

Claim preparation costs	14,150	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	376,213	n.a.	Governing Council determination pending. See paragraph 192 above.

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Annex II

RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Al-Ahlea Circle Cleaning Co.
UNCC claim number: 4005084
UNSEQ number: E-01976

Category of loss	Amount asserted (KWD)	Amount recommended (KWD)	Comments
Loss of real property	287,971	109,037	Real property claim adjusted for depreciation, maintenance, insufficient evidence of reinstatement and evidentiary shortcomings. See paragraphs 34-39 above.
Loss of tangible property	306,143	271,996	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of vehicles	921,526	695,114	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values and for maintenance and evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Loss of profits	1,242,385	76,818	Original loss of contracts claim reclassified as loss of profits. Profits claim adjusted to reflect historical results for a 10-month indemnity period. See paragraphs 97-101 above.
Restart costs	4,255	3,000	Claim for restart costs adjusted for evidentiary shortcomings. See paragraphs 117-118 above.
TOTAL	2,762,280	1,155,965	

Claim preparation costs	9,949	n.a.	Governing Council determination pending. See paragraph 193 of the report.
Interest	202,713	n.a.	Governing Council determination pending. See paragraph 192 of the report.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Gulf Investment Corporation G.S.C.
UNCC claim number: 4002422
UNSEQ number: E-00003

Category of loss	Amount asserted (USD)	Amount recommended (USD)	Comments
Loss of tangible property	228,541	79,956	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Tangible property claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 40-47 above.
Loss of vehicles	66,278	61,578	Original loss of tangible property claim reclassified as loss of tangible property and vehicles. Vehicles claim adjusted to reflect M.V.V. Table values. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 40-47 above.
Payment or relief to others	576,939	254,205	Payment or relief to others claim adjusted for evidentiary shortcomings. See paragraphs 94-96 above.
Loss of profits	34,474,783	32,974,783	Profits claim adjusted to reflect historical results for a 12-month indemnity period and evidentiary shortcomings. See paragraphs 97-101 above.
Restart costs	2,186,993	903,188	Restart costs claimed adjusted for evidentiary shortcomings. See paragraphs 117-118 above.
Other loss not categorized	38,470,020	nil	See paragraphs 172-185 above.
TOTAL	76,003,554	34,273,710	

Claim preparation costs	34,483	n.a.	Governing Council determination pending. See paragraph 193 above.
Interest	10,020,205	n.a.	Governing Council determination pending. See paragraph 192 above.

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RECOMMENDED AWARDS FOR FIFTEENTH INSTALMENT OF "E4" CLAIMS
REPORTED BY CLAIMANT NAME AND CATEGORY OF LOSS

Claimant's name: Kuwait Airways Corporation
UNCC claim number: 4004694
UNSEQ number: E-01586

Category of loss	Amount asserted (USD)	Amount recommended before set-off (USD)	Amount recommended (USD)	Comments
Loss of real property	34,928,358	15,625,284	nil	Original loss of real property claim reclassified as loss of real property and restart costs. Real property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 34-39 and 159-164 above.
Loss of tangible property	452,718,669	321,055,210	nil	Original loss of tangible property claim reclassified as loss of tangible property, vehicles, restart costs and other loss not categorised. Tangible property claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 48-93 and 159-164 above.
Loss of vehicles	657,637	595,384	nil	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. For non-M.V.V. Table vehicles, claim adjusted as per paragraph 145 of the First "E4" Report. See paragraphs 48-93 and 159-164 above.
Loss of profits	59,147,028	nil	nil	Original loss of contract and payment or relief to others claims reclassified as loss of profits. Profits claim adjusted to nil to reflect historical results. See paragraphs 97-101 and 159-164 above.
Restart costs	79,529,206	47,957,947	nil	See paragraphs 119-132 and 159-164 above.
Other loss not categorized	329,380,137	22,068,921	nil	See paragraphs 133-164 above.
TOTAL	956,361,035	407,302,746	nil	

Claim preparation costs	758,161	n.a.	n.a.	Governing Council determination pending. See paragraph 193 above.
