UKSC-2025-0177
UKSC-2025-0176

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N:

THE CZECH REPUBLIC

Claimant

-and-

(1) DIAG HUMAN SE
(2) MR JOSEF STAVA

Defendants

AGREED STATEMENT OF FACTS AND ISSUES

A Statement of Facts

A1 Summary

1 These appeals arise out of challenges before the English Courts to an arbitration award dated 18 May 2022 (the "**Award**") rendered in an arbitration (the "**Treaty Arbitration**") between Diag Human SE and Mr Josef Stava ("**Ds**", who were claimants in the arbitration) and the Czech Republic ("**CR**") pursuant to an investment protection treaty made between the Czech and Slovak Federal Republic (as it then was) and the Swiss Confederation dated 5 October 1990 (the "**Treaty**"). {TAB21.10/738} {TAB21.1/651}

2 The Award ordered CR to pay a very substantial sum, now in excess of the equivalent of USD 800 million. Mr Stava was at a time a shareholder in Diag Human SE (and its predecessor[1]). The damages awarded by the Tribunal were awarded to both Ds.

[1] See paragraph 26 below where this is addressed in more detail.

3 The Court of Appeal ("**CA**") handed down its judgment on the matters under appeal before it on 7 May 2025 with neutral citation [2025] EWCA Civ 588; [2026] Bus. L.R. 205; [2025] 1 Lloyds Rep 458 (the "**CA Judgment**"). {TAB6/240}

4 In the CA, Ds failed on what was termed the First Appeal (made by Ds). See paragraphs 49 – 89 in the CA Judgment. There is no appeal from that decision, which is recorded in paragraph 1 of the Court of Appeal's Order dated 28 July 2025 (the "**CA Order**"). {TAB6/253} {TAB8/362}

5 CR failed on what was termed the Second Appeal (made by CR), which related to CR's objection to the claim made by Mr Stava. CR's appeal on this aspect was addressed in paragraphs 90 – 142 of the CA Judgment. This appeal was dismissed as recorded in paragraph 2 of the CA Order. CR appeals (with permission granted by the Supreme Court on 18 December 2025) from that decision and against that paragraph of the CA Order. {TAB6/268} {TAB8/362} {TAB16/621}

6 CR succeeded on what was termed the Third Appeal (made by CR), which related to CR's jurisdictional objection to the claim of Diag Human SE. CR's appeal on this aspect was addressed in paragraphs 143 – 208 of the CA Judgment. That appeal was allowed and the CA determined that the award in favour of Diag Human SE should be set aside. Ds appeal (also with permission granted by the Supreme Court on 18 December 2025) from that decision and against the relevant paragraphs of the CA Order. {TAB6/281}

7 After receipt of the CA Judgment, the CR contended that the set aside of the award in favour of Diag Human SE also affected the award in favour of Mr Stava. The CA rejected this contention in its judgment dated 28 July 2025 with neutral citation [2025] EWCA Civ 998 (dealing with matters consequential on the CA Judgment) (the "**CA Second Judgment**"), [21]. The CR applied for permission to appeal against that decision. Both the CA and the Supreme Court refused permission. {TAB7/353}

8 In the CA Order, the CA declared that the Tribunal does not have jurisdiction in respect of the claims of Diag Human SE (paragraph 3 of the CA Order). The Award in favour of Diag Human SE was set aside (paragraph 5 of the CA Order). The CA Order also confirmed the award in favour of Mr Stava and varied the dispositive part of the Award (paragraphs 4 and 6 of the CA Order and the Schedule to it). {TAB8/362}

9 In this document, the parties:

9.1 Identify the relevant international treaties and legislation (Section A2);

9.2 Provide a summary of the underlying dispute and the Treaty Arbitration (Section A3), CR's challenge in the High Court (Section A4), the appeals to the Court of Appeal (Section A5), and the appeals to the Supreme Court (Section A6); and

9.3 Identify the issues for the Supreme Court (Section B) on the two appeals before it, referred to in paragraphs 5 and 6 above.

10 Annexed to this document is a chronology of the key factual background and of the judgments made by the courts below.

11 References to the judgments below are as follows:

11.1 "**March Judgment**": the judgment of Foxton J (as he was then) dated 8 March 2024 with neutral citation [2024] EWHC 503 (Comm); [2024] 1 Lloyd's Rep 367. This judgment contains an annex setting out findings about the parties' cases as pleaded in the Treaty Arbitration, which was then also included as an Annex to the CA Judgment. That Annex is referred in this document as the "**March Judgment Annex**"; {TAB11/372} {TAB11/450}

11.2 "**August Judgment**": the judgment of Foxton J dated 9 August 2024 with neutral citation [2024] EWHC 2102 (Comm); [2025] 1 Lloyds Rep 1. This judgment also contained an annex of findings regarding the Koruna Trust and the Lawbook Transaction ("**Annex 3 of the August Judgment**"); {TAB13/484} {TAB13/579}

11.3 "**CA Judgment**": as already defined above; and {TAB6/240}

11.4 "**CA Second Judgment**": as already defined above. {TAB7/348}

A2 Relevant International Treaties and Legislation

12 CR is a sovereign state and a successor party to the Treaty (as defined in paragraph 1 above) (following the dissolution of the Czech and Slovak Federal Republic). The second defendant, Mr Stava, was a Swiss national from 10 June 1991 (Award [397]-[398]).[2] The first defendant, Diag Human SE, was also treated as an investor for as long as Mr Stava "*controlled*" it (Award [397]-[398]). {TAB21.10/860}

13 The term "investor" is defined in Article 1(1): {TAB21.1/653}

> "*The term "investor" refers with regard to either Contracting Party to*

[2] Foxton J held that the CR was precluded by s.73 of the Arbitration Act 1996 from challenging his nationality in this arbitration claim. The CR did not appeal that decision.

(a) natural persons who are nationals of that Contracting Party in accordance with its laws;

(b) legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of that Contracting party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party."

14 The preamble to the Treaty reads as follows: {TAB21.1/652}

"*The Czech and Slovak Federal Republic and the Swiss Confederation,*

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States.

Considering the Final Act of the Conference on Security and Cooperation in Europe,

Have agreed as follows"

15 The term "investments" is defined in Article 1(2) as follows: {TAB21.1/653}

"*The term "investments" shall include every kind of assets and particularly:*

(a) movable and immovable property as well as any other rights in rem such as servitudes, mortgages, liens, pledges;

(b) shares, parts or any other kinds of participation in companies;

(c) claims and rights to any performance having an economic value;

(d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law."

16 Article 2 is headed "Scope of application" and provides: {TAB21.1/654}

> "*(1) The present Agreement shall apply to investments in the territory of one Contracting Party by investors of the other Contracting Party, if the investments have been made later than 1st January 1950 in accordance with the laws and regulations of the former Contracting Party.*
>
> *(2) The present Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments that are not within the scope of the Agreement*."

17 Article 4 provides for "Protection, treatment". It provides in relevant part: {TAB21.1/655}

> "*(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments…*
>
> *(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party...*"

18 Article 5(1) provides for "Free Transfer". It provides in relevant part: {TAB21.1/655}

> "*Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the [payments[3]] relating to these investments, particularly of:*
>
> *(a) returns on investments;*
>
> *(b) amounts relating to loans incurred for the investment;*
>
> *(c) additional contributions of capital necessary for the maintenance or development of the investment;*
>
> *(d) the proceeds, including possible capital appreciation, arising from the sale or the partial or total liquidation of the investment."*

19 Article 6(1) relates to "Dispossession, Compensation". It provides in relevant part: {TAB21.1/656}

> "*Neither of the Contracting parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the*

[3] The word is missing in the English version of the Treaty but the word 'payments' appears in the German version of the Treaty and was the parties' agreed translation used below.

same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereof without regard to its residence or domicile."

20 Article 9 provides for "Disputes between a Contracting Party and an investor of the other Contracting Party". It provides in relevant part: {TAB21.1/657}

> "*(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement (Disputes between Contracting Parties), consultations will take place between the parties concerned.*
>
> *(2) If these consultations do not result in a solution within six months, the dispute shall upon request of the investor be submitted to an arbitral tribunal. Such arbitral tribunal shall be established as follows*: …"

21 The Treaty parties agreed a Protocol to the Treaty which states that they: {TAB21.1/662}

> "*have, in relation to Article 1, agreed on the following clarification, which shall be regarded as an integral part of the said Agreement:*
>
> > *(1) An investor according to Article 1, paragraph (1), letter (c) may be required to submit proof of such control in order to be recognized by the Contracting Party in the territory of which the investment has been or is to be made as an investor of the other Contracting Party.*"

22 Also relevant is the 1969 Vienna Convention on the Law of Treaties ("**VCLT**"), to which the Czech Republic and Switzerland are parties. {TAB29.32/2417}

23 As for statutory provisions, sections 30 and 67 of the Arbitration Act 1996 are of particular relevance to CR's appeal. {TAB33.1/3380} {TAB26.1/1642}

A3 Underlying Dispute and Treaty Arbitration

24 In respect of the underlying dispute, the factual background to the Award and hence to these appeals is briefly set out below.

(1) Early 1990s in Czechoslovakia / Czech Republic

25 By the late 1980s, there was an acute shortage of certain blood plasma derivatives in Czechoslovakia (Award [96]). In early 1989 the Ministry of Health began searching for a partner to address these needs and it started discussions with the representatives of a number of companies. The Czech Republic had declined an offer from Mr Stava in 1985 (Award [95]) but in the late 1980s Mr Stava had discussions with representatives of the Ministry of Health which did not result in an agreement. (Award [98]-[99]). {TAB21.10/758} {TAB21.10/759}

26 As of 1992, Mr Stava was an indirect shareholder in Conneco a.s. ("**Conneco**"). Conneco later changed its name to Diag Human a.s., and later still merged with another company and came to be known as Diag Human SE (Award [92]). Thus, Diag Human SE, one of the two Claimants in the Treaty Arbitration, is the successor of Conneco. {TAB21.10/757}

27 In 1990 and 1991, the CR Ministry of Health ran two tender processes in order to obtain blood plasma derivatives for use by Czechoslovak medical institutions. The first tender committee recommended that CR should not conclude a contract with Conneco, and the procedure concluded with a formal recommendation to begin a new tender (Award [103], [109]). Conneco was not successful in the second tender process. In the Treaty Arbitration Diag Human and Mr Stava pursued claims in respect of the two tender processes. However, the Tribunal held that it did not have jurisdiction to consider claims regarding the two tender processes, as they were completed before the Treaty entered into force (Award [649]-[650]). {TAB21.10/760} {TAB21.10/762} {TAB21.10/941-942}

28 In 1991/1992, Conneco entered into co-operation agreements with a number of hospitals and other health institutions whereby (i) those institutions agreed to provided Conneco with blood plasma, and (ii) Conneco agreed to provide those institutions with certain blood plasma derivatives and other medical equipment needed by those institutions. There was a dispute about how many and how significant those agreements were. However, Foxton J concluded that Conneco had created a business model and network which it had legitimate expectations would continue over a number of years and that it had established the necessary infrastructure to implement that model (March Judgment [103]). {TAB11/409}

29 Conneco's business model involved sending blood plasma collected in the Czech Republic to its business partner, Novo Nordisk, for fractionation. Although there was no written agreement, the parties' dealings established a legally binding and continuing co-

operation agreement for the supply and fraction of blood plasma from the Czech Republic and the return of blood plasma derivatives to the Czech Republic (August Judgment [104]). {TAB13/515}

30 After a second tender process had been recommended, the CR Ministry of Health sent successive letters to Czech hospitals and transfusions centres instructing them to conclude contracts only with the two foreign companies that had been selected in the second tender process, namely Immuno Wien and Instituto Grifols Barcelona (Award [121] and [653]). The legal status and effect of these letters was disputed, but the Tribunal held that the Ministry of Health had the power to issue orders to certain entities under its authority. (Award [660]) It also found that by ordering Czech hospitals and transfusion centres to contract with the preferred fractionators instead of Conneco, the CR had acted in what it perceived to be the interest of the Czech healthcare sector (Award [668]) and that such orders were not a breach of the Treaty (Award [683]). However, the Tribunal also determined that the CR had failed to establish that Conneco, a Czech company, lacked any relevant permits to carry out its activities (Award [679]).

{TAB21.10/765} {TAB21.10/942} {TAB21.10/945} {TAB21.10/946} {TAB21.10/950} {TAB21.10/949}

31 The Tribunal held that CR (as a successor to Czechoslovakia) breached the Treaty when the Czech Minister of Health, Dr Bojar, sent a letter to Novo Nordisk in March 1992 in which it "*indirectly, but clearly asked, Novo Nordisk to discontinue its co-operation with Conneco if it wished to have any chance of working with the Czech government*" (the "**Bojar Letter**"), following which Novo Nordisk suspended co-operation with Conneco (Award, [129], [685]). The Tribunal held that the sending of the Bojar Letter represented a clear and manifest breach of the fair and equitable treatment standard in the Article 4(2) of the Treaty, and in particular the prohibition on bad faith and abusive conduct (Award [698]-[699]). This was the only breach of the Treaty found by the Tribunal during this period.

{TAB21.10/768} {TAB21.10/951} {TAB21.10/956}

32 At the time of the Bojar Letter breach in 1992, Mr Stava had only an indirect shareholding in Conneco. The CR's case in the Treaty Arbitration was that Mr Stava's indirect shareholding at that point was 53.4% (which the CR said was relevant to the level of damages that could be recovered by Mr Stava). The Tribunal did not make a finding on this point.

33 By April 2001, Mr Stava had acquired 100% of the shares in Conneco's successor, Diag Human a.s. (Award [92]; CA Judgment [29]).

{TAB21.10/757} {TAB6/248}

(2) Commercial Arbitration and Review Proceedings

34 In 1996, Conneco (by then having changed its name to Diag Human a.s.) and the CR Ministry of Health concluded an *ad hoc* agreement to arbitrate the dispute "*in respect of compensation for the loss allegedly caused in connection with the [Bojar Letter]*" (the "**Commercial Arbitration Agreement**"). This arbitration considered Czech law claims (the "**Commercial Arbitration**").

35 The tribunal in the Commercial Arbitration rendered an interim award in 1997 finding that Diag Human a.s. had suffered losses as a result of the Bojar Letter, which had breached Czech competition and commercial law rules. Damages were reserved for a further award. That tribunal issued a partial award in 2002 declaring that CR should pay Diag Human a.s. an equivalent of approximately USD 11m for the minimum losses suffered by the Bojar Letter (referred to in these proceedings as the "**Partial Award**"). This award represented the minimum damage which was indisputable, based on the expert reports that the parties had presented. The Commercial Arbitration tribunal directed that the balance of the dispute and damages should be determined in a final award. CR paid the Partial Award sum.

36 The Commercial Arbitration tribunal issued a final award in 2008 (the "**2008 Award**"), holding that the CR Ministry of Health was liable to pay to Diag Human SE (the successor, by that time, to Diag Human a.s., see paragraph 26 above) an additional CZK 8.3 billion (approximately USD 350m), comprising approximately: (i) CZK 4.1 billion in lost profits for the period from 1 July 1992 to 30 May 2000; and (ii) CZK 4.2 billion in interest until 30 June 2007.

37 The Commercial Arbitration Agreement provided that an award could be reviewed. Both parties applied for review of the 2008 Award (the "**Review Proceedings**"), though Diag Human SE subsequently withdrew its application. On 23 July 2014, the review tribunal issued a resolution in respect of the CR's application (the "**2014 Resolution**") which discontinued the Commercial Arbitration. The effect of the 2014 Resolution was disputed as between the parties. It was held by the Tribunal in the Treaty Arbitration that, as a matter of Czech law, the 2014 Resolution cancelled the 2008 Award: Award [795]. {TAB21.10/984}

38 Diag Human SE has sought to enforce the 2008 Award in eight jurisdictions and, except in Luxembourg, courts in those jurisdictions have held that the 2008 Award was not enforceable as a result of the ongoing Review and/or the 2014 Resolution (CA Judgment {TAB6/250}

[42]). In Luxembourg, the 2008 Award is now recognised as finally enforceable: March Judgment [27]. All the decisions declining to enforce the 2008 Award were made prior to the Award in the Treaty Arbitration and the Tribunal's finding of abuse by the CR in the Review Proceedings. {TAB11/378}

39 The time period of the Commercial Arbitration and Review Proceedings was also the subject of claims in the Treaty Arbitration. The Tribunal found (CA Judgment [47]-[48]): (i) in the period prior to the 2008 Award the CR abused its sovereign powers by interfering in the Commercial Arbitration and thereby breached Article 4(2) (Award [752]), although it also found this caused no loss because it did not affect the actual outcome of the 2008 Award (Award [1027]); and (ii) the entire Review Proceedings were riddled with due process violations of a level and gravity affecting principles of such importance that the entire Review Proceeding and the 2014 Resolution were in breach of Article 4(2) (Award [754], [796]). {TAB6/252} {TAB21.10/972} {TAB21.10/1052} {TAB21.10/972} {TAB21.10/984}

40 In relation to the Review Proceedings breaches, the Tribunal concluded that there were the following breaches. By way of summary:

40.1 First, the Review Proceedings were in breach of the fundamental principle of equality of the parties. The CR had nominated all three members of the review tribunal (Award [797]). The last of the three nominations occurred on 11 May 2010 (Award [180]). The Tribunal addressed the CR's argument that the appointments had been based on the commercial arbitration agreement and the CR's reliance on decisions of the Czech courts (in 2012, 2013 and 2014) regarding the appointment of arbitrators. The Tribunal held that (i) compliance with domestic law was not outcome dispositive under international law and that an arbitration procedure in which only one of the parties nominates all members of the tribunal manifestly does not comply with the principle of equality of the parties (Award [799]), (ii) the conclusion that it was possible to read the commercial arbitration agreement as permitting one of the parties to appoint all three members of the tribunal was the result of an interpretation of the commercial arbitration agreement, but (iii) it would also have been possible to interpret the arbitration agreement as requiring each party to appoint one tribunal member, and the latter interpretation would have conformed to Article 4(2) of the Treaty. (Award [801]) {TAB21.10/984} {TAB21.10/787} {TAB21.10/984} {TAB21.10/984} {TAB21.10/985}

40.2 Second, whatever right the CR had to request the appointment of an arbitrator, it exercised that right abusively. (Award [802] – [804]). As noted above, the last of the three nominations occurred on 11 May 2010. (Award [180]) The Tribunal referred in its analysis of this breach to the legal processes involved in respect of the appointment of Mr Kużel and Mr Schwarz. Proceedings in respect of those appointments continued until 2013 and 2014 respectively. {TAB21.10/787} {TAB21.10/985}

40.3 Third, the CR appointed arbitrators who manifestly lacked the independence and impartiality, as well as the moral standing, to solve the sensitive and high stakes dispute (Award [807]). {TAB21.10/987}

40.4 Fourth, the Review Proceedings were riddled with conduct that was highly suspicious, but the CR refused to intervene and investigate very serious allegations of corruption (Award [813]). {TAB21.10/988}

(a) The Tribunal concluded that the CR had advance information about the inner workings of the Review Tribunal. The Tribunal found that on 23 December 2009 various Czech government officials attended a meeting at which a deputy minister informed participants that the presiding arbitrator had been elected and accepted the case file, even though it was not until around two months later that the Review Tribunal informed both parties of this. (Award [814]). The Tribunal considered that the only possible source for this information was one of the arbitrators on the Review Tribunal. {TAB21.10/988}

(b) On 8 December 2009 a meeting was held in the office of the Prime Minister. The Tribunal found that handwritten notes had been made on the basis of that meeting and showed an attempt by the CR to influence two members of the tribunal so as to grant an outcome favourable to the CR. One arbitrator (Mr Kuzel) was soliciting a bribe, with the notes noting a connection to an imminent decision by him. The Tribunal found that this note showed that another arbitrator (Mr Kindl) was subject to pressure from the Czech intelligence services and police (Award [823]).The manuscript appears to record in reference to Mr Kindl that *"[Czech Security Services], [Czech Police] hold by the balls*". {TAB21.10/991}

(c) The conduct of Mr Kuzel (an arbitrator nominated by the CR) was suspicious. In January 2010 he granted permission to two companies

connected with Mr Kindl, another review arbitrator (nominated by the CR), to intervene in the arbitration (Award [824]). That decision was subsequently reversed by Mr Kuzel and Mr Kindl. {TAB21.10/992}

(d) The review arbitrator who had been appointed by Diag Human SE (Mr Della Ca) was excluded from deliberations involving the two arbitrators appointed by the CR and accused the other arbitrators of backdating a resolution. After he resigned, he wrote to the Czech Prime Minister on 15 April 2010. He made very serious allegations about the conduct of Mr Kuzel and Mr Kindl, including that Mr Kuzel and Mr Kindl were co-operating with the CR and engaging in corruption (Award [818]). {TAB21.10/990}

40.5 Fifth, August 2011 the CR (through its police force) commenced a criminal investigation. The Tribunal determined that it was reasonable to commence this investigation (Award [741]). However, it soon became obvious that the investigation was used as a pretext by the CR to collect evidence that could be used to its advantage in the review proceedings (Award [742], [826]). This involved various steps between August 2011 and February 2013 (Award [200] – [214]). {TAB21.10/966} {TAB21.10/992} {TAB21.10/793}

41 The Tribunal also concluded: (Award [831], quoted at CA Judgment [47]): {TAB21.10/993}

"*To conclude, the Tribunal has found that Respondent breached the FET standard in Article 4(2) of the BIT through the following conduct: (i) by issuing the Bojar Letter in bad faith; (ii) by abusing its sovereign powers in order to interfere with the Commercial Arbitration; and (iii) by manifestly failing to comply with the principle of due process during the review proceedings. In particular, as a result of the latter violation, the Tribunal considers that the 2014 Resolution is not entitled to recognition under international law. By way of necessary implication, from the point of view of international law, the 2008 Award has not been cancelled.*" {TAB6/252}

(3) The shares in Diag Human SE were placed in the Koruna Trust

42 In 2011, during the Review Proceedings and before the 2014 Resolution, Mr Stava settled the Diag Human SE shares into a discretionary trust he had established (CA Judgment, [2], [146]). Prior to this, he had owned 100% of the shares in Diag Human SE. This process took place as follows: {TAB6/242} {TAB6/282}

42.1 On 25 May 2011, Mr Stava established a Liechtenstein trust, called the "**Koruna Trust**" (CA Judgment [36]). According to his own evidence, this trust was set up for succession planning purposes and asset protection (CA Judgment [183]). {TAB6/294} {TAB6/249}

42.2 On 27 May 2011, various contracts were also concluded relating to the [purported][4] sale by Mr Stava of the shares in Diag Human SE to an Irish company called Lawbook Limited (the "**Lawbook Transaction**"). The sale aspect of the transaction was never intended to complete, as it was never intended that Lawbook should purchase the shares. Instead, it was designed to create apparent distance between himself and Diag Human SE following indications from the CR government that this illusion would be helpful to any attempt to help resolve the dispute (CA Judgment [37] and Annex 3 of the August Judgment [19]). {TAB6/249} {TAB13/581}

42.3 The effect of the various contracts forming the Lawbook Transaction (summarised in the CA Judgment [36] and Annex 3 of the August Judgment [3]) was that, if the purchase price for Mr Stava's shares was not paid by the buyer by 31 December 2011, Mr Stava's shares in Diag Human SE would be settled into the Koruna Trust, whilst in the meantime Lawbook Limited pledged the shares and associated entitlements of Diag Human SE to the trustee of the Koruna Trust as security for its performance, and Mr Stava assigned to the trustee his rights under the sale arrangement. {TAB6/249} {TAB13/579}

42.4 The purchase price was not paid by the deadline. The result was that, as at midnight on 31 December 2011, the shares were settled into the Koruna Trust (CA Judgment [38] and Annex 3 of the August Judgment [20]). It was common ground before Foxton J and in the Court of Appeal (and remains common ground before this Court) that the Koruna Trust was a valid and effective trust under its governing law, Liechtenstein law. Its sole asset was the shares in Diag Human SE (August Judgment [20]). {TAB6/250} {TAB13/582} {TAB13/490}

[4] Diag Human / Mr Stava comment: Diag Human SE and Mr Stava contend that this should be described as a "purported" sale, since the sale identified in the contract was never intended to take place. It would therefore be incorrect to describe it as an actual sale. CR comment: it is unclear to the CR what (if anything) Diag Human SE and Mr Stava intend to mean by the term "purported" beyond the fact that the sale aspect of the transaction was never intended to complete. That finding is reflected in the next sentence and the CR therefore has not agreed to that description.

43 The trustee of the Koruna Trust was a corporate trustee incorporated in Liechtenstein (LNR Trust Reg) established by a Liechtenstein lawyer who acted as Mr Stava's personal lawyer, Dr Rabanser. Mr Stava had certain roles, powers, rights and responsibilities in relation to the Koruna Trust, namely as: (i) the settlor of the Koruna Trust, (ii) the protector of the Koruna Trust, and (iii) one of various discretionary beneficiaries of the Koruna Trust, along with three of his children.

44 There was expert evidence of relevant Liechtenstein law at the hearing before Foxton J which resulted in the August Judgment, much of which was agreed in a joint memorandum made by the experts.[5] Amongst other things, as a matter of Liechtenstein law, following the settling of the shares into the Koruna Trust:

44.1 Mr Stava did not own the Diag Human SE shares. Once settled into the Koruna Trust, he had no proprietary or other legal interest in the shares, which were henceforth held by the trustee (CA Judgment [146]). {TAB6/282}

44.2 Mr Stava's powers as Protector of the Trust (to be exercised in what he believed to be the best interests of the Koruna Trust) included a power to reconstitute the trust by removing the existing trustee and appointing himself and a Liechtenstein company under his control as new trustees, subject to obtaining the prior written consent of at least two of his three daughters (which consent the Judge found could have been obtained) (CA Judgment [205]). {TAB6/301}

45 After the shares had been settled into the Koruna Trust:

45.1 Mr Stava remained chairman of Diag Human SE;

45.2 Mr Stava was permitted by the trustee to hold the bearer shares in Diag Human SE and exercise the voting rights in respect of them (Annex 3 of the August Judgment [51]); {TAB13/593}

45.3 In practice, the trustee was likely to act (entirely properly) in accordance with his wishes (CA Judgment [201]); {TAB6/300}

45.4 It is virtually inconceivable that the Trustee would have concluded that the best interests of the Koruna Trust, and prudent business judgment, justified a sale of

[5] 'Joint Statement of the Experts: Nicholas Reithner and Christian Batliner' (24 November 2023). The experts were cross-examined at the trial. {TAB22.1/1074}

{TAB13/593} the shares if Mr Stava was opposed to it (Annex 3 of the August Judgment [54], [61(vii)]); {TAB13/595}

45.5 The trustee could not have sold the shares in defiance of Mr Stava's wishes (Annex 3 of the August Judgment [55]); {TAB13/593}

45.6 Mr Stava was the driving force behind Diag Human SE and the pursuit of its claim against the CR, which was its only business and asset (August Judgment {TAB13/549} [216(iii)]; Annex 3 of the August Judgment [47]); {TAB13/592}

45.7 Diag Human SE was dependent on him for funding that claim (Annex 3 of the August Judgment [47]); and {TAB13/592}

45.8 Mr Stava had the same scope for decision-making in fact in relation to the conduct of Diag Human SE's business as he did when he was the owner of the shares (August Judgment [216(iv)(b)]). {TAB13/550}

46 On 22 May 2024, the trustee entered into a Deed of Appointment which stated that the shares in Diag Human SE "*shall be distributed and transferred to* [JS]".[6]

A4 CR's Objections in the Treaty Arbitration

47 The Treaty Arbitration was commenced on 22 December 2017 at which time the shares in Diag Human SE remained in the Koruna Trust.[7] The arbitration was brought pursuant to the standing offer to arbitrate contained in the Treaty, Article 9 of which provides for the resolution of "*disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party*". {TAB21.1/657}

48 The extent to which the CR made certain objections before the Tribunal in time and raised certain merits points before the Tribunal was disputed between the parties and was the subject of a trial before Foxton J and the March Judgment,[8] which considered (among other things) whether (i) objections that the CR sought to raise before the Court as jurisdictional objections were barred by s 73 of the 1996 Act and were objections going

[6] In light of the cut off date, the parties disagree about the admissibility, relevance and/or weight to be afforded to this document, which will be addressed in submissions. Neither Foxton J nor the Court of Appeal placed any weight on this late pre-trial development in their written judgments.
[7] Diag Human and Mr Stava rely on the finding of the Court of Appeal summarised at paragraph A659.8 below.
[8] Diag Human and Mr Stava do not consider that any of paragraph 48 – 50 is relevant beyond what was determined by Foxton J in paragraphs 121-122 of the March Judgment. CR comment: it appears that the Ds may be seeking to contend that if the CR succeeds in its appeal, this could not affect an award in Mr Stava's favour. If that is Ds' contention, and without prejudice to the question of whether such an issue is open to Ds and is one for this Court: the position adopted in the Arbitration could be relevant by way of response. {TAB11/414}

to substantive jurisdiction, and (ii) whether certain quantum arguments had been put to the Tribunal. Foxton J summarised the arbitral record (so far as relevant to issues before him at that hearing) in an Annex to the March Judgment and made findings in the March Judgment. He also addressed points that were in issue between the parties in the Treaty Arbitration in the August Judgment. {TAB11/450}

49 In the March Judgment, these findings included:

49.1 Foxton J determined that CR advanced objections in the Treaty Arbitration regarding both Mr Stava's and Diag Human SE's claims given the Lawbook Transaction: March Judgment [121]. {TAB11/414}

49.2 Foxton J concluded that insofar as a purported jurisdictional objection was concerned, an objection was sufficiently taken for the purposes of s 73 in respect of the Koruna Trust but the scope of that objection was not advanced on any wider basis that the Lawbook Transaction: March Judgment [122(v)]. He also held that that objection to Mr Stava's claim was limited to conduct / breaches post-dating June 2011. He held that this was not an objection to substantive jurisdiction under s 67 (this second point is the subject of the CR's appeal). In respect of Diag Human SE, the jurisdictional objection went to Diag Human SE's status as an investor: March Judgment [121(ii)]. {TAB11/415} {TAB11/414}

49.3 CR contended in its Rejoinder that Mr Stava had no standing to ask the Tribunal to find the 2008 Award enforceable: see March Judgment Annex [50]; March Judgment [118(i)]. {TAB11/466} {TAB11/414}

49.4 On quantum, CR contended in its Rejoinder that Mr Stava could not recover any loss arising after the date of the alleged sale by Mr Stava of his stake in Conneco (i.e. Diag Human SE) in 2011: March Judgment Annex [54(vi)]. {TAB11/468}

49.5 CR also contended that Mr Stava could only recover damages reflecting what was said to be his 53.4% holding in Conneco in 1992. Mr Justice Foxton found that this point was taken by CR in relation to <u>both</u> the Ds' claim for damage to the Czech business and their claim in respect of the 2008 Award: March Judgment [222]-[223]; March Judgment Annex [55]. {TAB11/447} {TAB11/468}

50 The allegation that Mr Stava had lost control of Diag Human SE in June 2011 was raised by the Czech Republic as a complete answer to his claim in both the Treaty Arbitration and in the s.67 application which the Czech Republic issued: see August Judgment [254]. {TAB13/564}

Mr Justice Foxton noted that that point had not been disputed by Diag Human SE / Mr Stava before the Court and that they had instead contended that an objection based on the Koruna Trust was not open to CR before the Court under s 67: August Judgment [254]. {TAB13/564} Mr Stava and Diag Human SE do not accept that this provides the CR with a basis to challenge Mr Stava's claim in respect of loss suffered before June 2011. If advanced by Mr Stava / Diag Human, CR will address such point in submissions.

51 As to the Treaty Award:

51.1 The Tribunal made an award in favour of both Ds.

51.2 On jurisdiction, the Tribunal upheld certain of CR's objections, but held the following were "*investments*" under Article 1(2) of the Treaty: (i) Conneco's business co-operation agreements with Czech hospitals and transfusion centres and with its fractionation partner, Novo Nordisk (Award [390]); (ii) Mr Stava's {TAB21.10/858} shares in Conneco (Award [391]); (iii) Conneco's know how and goodwill {TAB21.10/859} (Award [392]); and (iv) the Commercial Arbitration Agreement (Award [393]). The Tribunal did not determine whether additional rights/assets relied on by Ds also constituted investments.

51.3 It dismissed CR's objections to Ds' claims that were based on the Lawbook Transaction and the Koruna Trust: Award [396]-[413]. The Tribunal made a {TAB21.10/859} finding that Mr Stava controlled the Koruna Trust, and through the Koruna Trust Diag Human SE (including after June 2011), which the Tribunal then used as the basis for dismissing objections regarding both Ds: Award [403], [408]-[410] and [412]-[413] (as Foxton J noted in August Judgment at [249]). {TAB13/562}

51.4 On merits, the Tribunal made the findings of breach noted above. These findings included that the entire Review Proceedings (which had commenced in 2008) were in breach of the FET standard (Award [754]). The Tribunal also found that {TAB21.10/972} the 2014 Resolution was a breach of Article 4(2) of the Treaty (Award [754]). {TAB21.1/655}

51.5 On quantum, the reasoning of the Tribunal is set out at Award [1024]-[1044]. {TAB21.10/1052}

A5 CR's Challenges in the High Court

52 On 15 June 2022, CR issued a challenge to the Award seeking the set aside of the Award and/or an order that the Award was of no effect or alternatively an order for remission, pursuant to s 67 and s 68 AA 1996. A six-day hearing was listed for January 2024.

53 On 16 January 2024, Foxton J ordered that the trial be partially adjourned, such that it would take place over two hearings.

54 The first hearing took place over six days from 30 January to 7 February 2024. Foxton J heard: (i) Ds' submissions that certain challenges were barred by s 73(1) AA 1996; (ii) Ds' submission that certain of the CR's challenges brought under s 67 (including the objection that the Tribunal had no jurisdiction to consider a claim by Mr Stava in respect of breaches / conduct after June, alternatively December, 2011) were not jurisdictional and thus should fail; and (iii) CR's s 68 challenges. Following that hearing, on 8 March 2024, Foxton J handed down the March Judgment which, *inter alia*: {TAB11/372}

54.1 Dismissed CR's s 68 challenges, save that: (i) the issue of whether the award of damages should be reduced to reflect an assignment by Diag Human SE of 30% of the value of its Commercial Arbitration claim to a third party called Mr Oršula (the "**Remitted Issue**") was remitted to the Tribunal; and (ii) Foxton J held that the Tribunal had failed to determine whether Mr Stava was entitled only to 53.4% of any losses calculated as arising in respect of the Bojar Letter breach (that being Mr Stava's indirect interest in Conneco at that point), but the question whether that had caused CR substantial injustice was to be determined at the second hearing (paragraph 2 of the Order dated 11 April 2024); {TAB12/481}

54.2 Dismissed parts of the s.67 challenge as barred by s.73;

54.3 As to Mr Stava, determined that the CR's purported challenge to jurisdiction (if it was such) was limited by operation of s.73 to Mr Stava's claims in respect of breaches/conduct after June 2011. (March Judgment [121-[122]) The CR was {TAB11/414} barred from contending that the Tribunal lacked jurisdiction in respect of Mr Stava's claims for breaches in, or prior to, June 2011;

54.4 Held that the objection that the Tribunal had no jurisdiction to consider a claim by Mr Stava in respect of breaches after June 2011 did not raise a point of "*substantive jurisdiction*".

55 By an order dated 11 April 2024, Foxton J granted permission to appeal: (i) to CR (against {TAB12/479} his dismissal of the objection regarding Mr Stava's claim as just summarised: this became what was termed the Second Appeal before the CA, and is appealed again to the Supreme Court); and (ii) to Ds (against the decision that certain of CR's jurisdictional objections were open to CR, despite, on Ds' case, having been made late: this became what was

termed the First Appeal before the CA. This is no longer in issue) (paragraph 6 of the Order dated 11 April 2024). {TAB12/482}

56 The second hearing took place over nine days from 18 to 27 June 2024 with an additional hearing day on 2 July 2024. On 9 August 2024, Foxton J issued the August Judgment. {TAB13/484} By an order dated 25 October 2024, Foxton J, *inter alia*: {TAB14/597}

56.1 Dismissed the s 67 challenges that had not been dismissed in the March Judgment – that included the s 67 challenge to Diag Human SE's status as investor on the basis that it was not "*controlled*" by Mr Stava (paragraph 1 of the Order dated 25 October 2024); {TAB14/599}

56.2 Granted CR permission to appeal in respect of the dismissal of its challenge to the Award on the basis that Diag Human SE was not "*controlled*" by Mr Stava and did not qualify as an investor under Article 1(1) of the Treaty (that was referred to in the Court of Appeal as the Third Appeal, and it is again under appeal in the Supreme Court) (paragraph 2 of the Order dated 25 October 2024); {TAB14/599} and

56.3 Dismissed the remaining s 68 challenge (held over from the first hearing) on the basis that the Tribunal's breach of s 68 by failing to determine the issue of Mr Stava's 53.4% ownership did not cause substantial injustice (August Judgment [264]) but provided that, in the event of a successful appeal by CR which has the effect that CR is able successfully to challenge any award in Mr Stava's favour in respect of the 2014 Review breach under s 67, CR may apply to re-open that determination and the dismissal of that s 68 challenge (paragraph 12 of the Order dated 25 October 2024). {TAB13/567} {TAB14/602}

A6 Appeal to the Court of Appeal

57 On 3 to 7 February 2025, the CA (Males LJ, Popplewell LJ and Andrews LJ) heard the following three appeals:

57.1 Appeal no. CA-2024-000986: Ds' appeal against Foxton J's decision that certain of CR's jurisdictional objections were open to CR, despite, on Ds' case, having been made late (termed the First Appeal);

57.2 Appeal no. CA-2024-000977: CR's appeal against Foxton J's determination (at March Judgment [145]-[147]) that its objection that the Tribunal had no {TAB11/422}

jurisdiction to consider a claim by Mr Stava in respect of conduct / breaches after June 2011 was not an objection to substantive jurisdiction (termed the Second Appeal); and

57.3 Appeal no. CA-2024-002263: CR's appeal against Foxton J's dismissal of CR's challenge to the Award on the basis that Diag Human SE was not controlled by Mr Stava and did not qualify as an investor under Article 1(1) of the Treaty (termed the Third Appeal).

58 On 7 May 2025, the CA gave the CA Judgment that contains the decisions under appeal in the Supreme Court. The CA's reasoning in respect of the First Appeal is not relevant for the appeals to the Supreme Court. {TAB6/240}

59 In summary, the CA held in respect of the Second Appeal:

59.1 The effect of the objection, if upheld, would be that the Tribunal would have no jurisdiction to determine the dispute about whether Mr Stava retained those investments after June 2011: CA Judgment [90] (echoing March Judgment [145]). {TAB6/268} {TAB11/422}

59.2 The CA stated that it needed to determine: (i) to whom the offer to arbitrate in the Treaty was addressed; and (ii) the disputes to which it applies: CA Judgment [125]. {TAB6/277}

59.3 The offer to arbitrate in Article 9 is an offer made to a qualifying investor who, after 1 January 1950, makes a qualifying investment in the Czech Republic. When someone becomes a qualifying investor in a qualifying investment, that is the point in time at which the rights to protection which the Treaty confers are vested in them. The offer is capable of being accepted by such a person even if they have in the meantime disposed of their investment, because they are still someone who made a qualifying investment after the date of the Treaty: CA Judgment [126]. {TAB6/277}

59.4 Article 9 is wide and did not require that the investor hold the investment at the time of breach. Instead, all that it requires is that the subject matter of the dispute is "investments": CA Judgment [127]. If an investor parts with an investment, that will give rise to an issue of "*standing / admissibility*" in respect of claims arising thereafter, but such points are within the jurisdiction of the Tribunal *ratione materiae*: CA Judgment [129]. {TAB6/277} {TAB6/278}

59.5 This is the natural interpretation of Article 9 and neither the preamble of the Treaty nor Article 2 of the Treaty gave rise to any constraints on this interpretation: CA Judgment [128]. {TAB6/278}

59.6 There is no need to resort to either the requirement under Article 31(1) of the Vienna Convention to use good faith in the interpretation of the Treaty or to the requirement in Article 26 that the Treaty be performed in good faith in order for Article 9 to embrace a claim brought under Article 6 or Article 5(d): CA Judgment [128]. {TAB6/278}

59.7 The decisions of other tribunals relied upon by CR were of very limited assistance and they provided no reasoned basis to conclude the objection went to substantive jurisdiction. The decisions were either irrelevant or distinguishable: CA Judgment [130], [132], [133]. {TAB6/278}

59.8 It was not open to the CR to raise a second variant of this objection, namely that, irrespective of whether a claimant is an investor at the time of the alleged breaches, they must continue to hold the investments as at the date of the commencement of the arbitration: CA Judgment [101], [123]. {TAB6/271} {TAB6/277}

60 In summary, the CA held in respect of the Third Appeal:

60.1 The word "control" or "controlled" is capable of referring to *de facto* or *de jure* control: CA Judgment [161]. {TAB6/287}

60.2 There were indications in Article 1(1) that paragraph (c) is concerned with legal control: CA Judgment [161]-[163]. {TAB6/287}

60.3 Paragraph 1 of the Protocol to the Treaty provides a procedure to give comfort to an existing or potential investor that they do or will benefit from the protection of the Treaty. The Protocol is likely to be of practical value if the control referred to in Article 1(1)(c) is *de jure* control; it is likely to be unworkable if what is referred to is *de facto* control: CA Judgment [165]-[170]. {TAB6/289}

60.4 As regards the "object and purpose" of the Treaty, the Court of Appeal reasoned that investments are more likely to be made, thereby intensifying economic cooperation and fostering economic prosperity of both states, if it is known in advance that a prospective investor will qualify, and a predictable and clear test of control provides certainty for the investor and host state alike and furthers the

achievement of the object and purpose of the BIT (CA Judgment [172]). A test of *de facto* control would be "*vague and unmanageable*" (CA Judgment [175]), whereas the object of certainty and predictability is best achieved by interpreting control as meaning *de jure* control [175]-[181]. {TAB6/290} {TAB6/292}

60.5 Interpreting "*control*" as referring to *de jure* control would not give priority to form over substance. There was nothing formal about having ownership of, or the legal right to control, an asset: CA Judgment [182]-[184]. {TAB6/294}

60.6 The judge at first instance considered that the majority of the investment treaty jurisprudence to which he was referred acknowledged that *de facto* control could be sufficient in some circumstance to satisfying a requirement of control (August Judgment, [215(ii)]). However, the Court of Appeal found it neither necessary nor helpful to repeat the extensive review of that jurisprudence undertaken by the judge at first instance, in particular because there is no rule of precedent in public international law; while the judge at first instance might well have been right that the majority of the awards do not insist that control should exist by virtue of a legal right, there is a minority view that control should exist by virtue of a legal right, so it cannot be said (and it was not suggested) that there is a settled consensus on the point in international law; and none of the other cases to which the Court of Appeal was referred contained any equivalent of the Protocol and others contained different or defined treaty language: CA Judgment [185]-[186]. {TAB13/548} {TAB6/294}

60.7 Mr Stava established the Koruna Trust for succession planning[9] and asset protection purposes. It was essential for the achievement of those purposes that he did not have any ownership interest in, or control over, the shares: CA Judgment, [183]. {TAB6/294}

60.8 In order for a legal entity to qualify as an investor under Article 1(1)(c), it must be controlled *de* jure either by a Swiss national or by a legal entity which, if it were the investor, would qualify under Article 1(1)(b): CA Judgment [193]. {TAB6/297}

[9] At first instance (August Judgment. [20]), Foxton J stated that "*he did not find* [succession planning] *a particularly informative explanation of why a discretionary trust was set up whose sole asset was shares in a non-trading company whose sole business was the attempt to enforce a commercial arbitration award against the Czech Republic. I accept, however, that Mr Stava had benefiting his family in mind when he established the trust*". {TAB13/490}

60.9 Even if *de facto* control in some circumstances were sufficient to satisfy Article 1(1)(c), the function of the definition of "investor" suggests that the "control" referred to in Article 1(1)(c) is control of the economic interest in the entity in question, as distinct from control over the conduct of the entity's business (CA Judgment [196]). {TAB6/297}

60.10 In everything he did as chairman of the company (which included exercising complete control over the company in the conduct of its business which, during the relevant period, was confined to the pursuit of its claim against CR in the review of the 2008 Award) and holder of its bearer shares (which included exercising voting rights), Mr Stava acted as agent of the trustee and was obliged to act, not in his own interest, but in the best interest of the Koruna Trust (CA {TAB6/300} Judgment [202]). The control Mr Stava exercised as agent of the trust in law is regarded as control by the trust and not by Mr Stava (CA Judgment [203]). It was irrelevant that the interest of the principal and the agent were in practice aligned, with no conflict between them, and that Mr Stava was the driving force behind Diag Human SE and the pursuit of its claim and its funding (CA Judgment [204]). {TAB6/301}

60.11 As to Mr Stava's powers as Protector (including the power to reconstitute the Trust by removing the existing trustee and appointing himself and a Liechtenstein company under his control as new trustees) those were not powers as agent, but were Mr Stava's personal powers. To do so he was required to obtain the prior written consent of at least two other members of the class of potential beneficiaries (i.e. two of his three daughters) (which consent the Judge found could have been obtained) and had to exercise the powers in what he believed to be the best interest of the Koruna Trust (CA Judgment [202], [205]). {TAB6/300} {TAB6/301}

60.12 Mr Stava was in practice in a position to acquire [qualifying][10] control of Diag Human SE if he wished to do so (CA Judgment [205]-[206]).

[10] This wording is proposed by Diag Human SE and Mr Stava, but the CR does not agree that the CA were referring to "qualifying" control in this section of the CA Judgment. The CR notes that the CA does not refer to "qualifying" control in this paragraph of the CA Judgment and that the CA draws its conclusions about qualifying *de facto* control in [208], which is already recorded in agreed form in this SoFI at [60.14]. {TAB6/302}

60.13 However, having the power to acquire control is different from actually having control. By the end of 2011 (being the relevant point in time[11]), Mr Stava had not exercised his power to acquire such control and he had no intention of doing so; on the contrary, it was important to him that he was not regarded as having such control (CA Judgment [206]). {TAB6/301}

60.14 Thus, Mr Stava did not have qualifying *de facto* control of the shares in Diag Human SE (CA Judgment [208]). {TAB6/302}

61 On 15 July 2025, a consequentials hearing took place before the CA regarding the appropriate relief to grant following CR's success on the Third Appeal. The CR contended that the effect of setting aside the award against Diag Human SE also had an effect on the award in favour of Mr Stava despite all challenges against him having been dismissed.

62 On 28 July 2025, the CA handed down the CA Second Judgment on those issues and made the CA Order. The CA rejected the CR's argument that the outcome of the CR's challenge to Diag Human's claim affected Mr Stava's position. (CA Second Judgment [19] – [23]). It held that decisions on the merits regarding Mr Stava were not open to review, as all jurisdictional challenges regarding Mr Stava had been exhausted ([20]). The CA considered that the fact that Mr Stava divested himself of his shareholding in Diag Human SE did not affect the tribunal's jurisdiction over his claim for loss which, on the tribunal's findings, he had already suffered ([21])[12]. It noted that whether that divestment meant that his claim ought to fail was a point going to the merits of the claim and not the tribunal's jurisdiction over that claim. The fact that the Tribunal had no jurisdiction to make an award against Diag Human SE did not undermine the Tribunal's decision as regards Mr Stava. The Court held that Mr Stava had a valid award in his favour and saw no good ground to deprive him of it merely because the Tribunal had no jurisdiction over Diag Human SE's claim ([23]). The CA confirmed the award in Mr Stava's favour. As noted above, the Court of Appeal and the Supreme Court have refused the CR permission to appeal this determination. The CA Order *inter alia*: {TAB7/352}

62.1 Set aside the Award in favour of Diag Human SE: CA Order [5]; {TAB8/362}

[11] Decided by the judge for the purpose of the trial (August Judgment, [167]-[168]), and not challenged in the Court of Appeal (CA Judgment, [148]). {TAB13/531} {TAB6/282}

[12] The CR does not accept that this is the correct reading of the Award but in any event contends that if the objection to Mr Stava's claim is jurisdictional, the approach to quantum would be affected.

62.2 Confirmed the Award in favour of Mr Stava: CA Order [4]; {TAB8/362}

62.3 Varied the dispositif of the Award so that the award of damages was to Mr Stava alone and not to Ds, and the Tribunal's order that Mr Stava (and Diag Human SE) provide an undertaking not to enforce the 2008 Award was deleted: CA Order [6] and Schedule; and {TAB8/362}

62.4 Varied the Award so that CR had to pay 70% of Mr Stava's legal costs of the Treaty Arbitration and reimburse him 70% of his share of the arbitration costs: see Schedule to the CA Order. {TAB8/363}

A7 Appeals to the Supreme Court

63 On 23 October 2025, CR applied to the Supreme Court for permission to appeal the CA's decision in respect of the Second Appeal, and Ds applied for permission to appeal the CA's decision in respect of the Third Appeal. The CR also applied to the Supreme Court for permission to appeal from the CA Second Judgment. {TAB18/633} {TAB17/622}

64 On 18 December 2025, the Supreme Court granted permission to appeal on the CR's application in respect of the Second Appeal, and Ds' application in respect of the Third Appeal. It denied permission to appeal for the CR's application in respect of the CA Second Judgment. {TAB16/621}

65 On 14 January 2026, in respect of CR's appeal, Ds lodged a notice that they wished to argue that the orders appealed from should be upheld on grounds different from or additional to those relied on by the Courts below. {TAB20/649}

B Issues for the Supreme Court

B1 CR's Appeal

66 So far as the issues for the Supreme Court to determine in CR's appeal, the following issue arises from CR's Grounds of Appeal, namely: is CR's objection to Mr Stava's claim in respect of breaches / conduct after June 2011, alternatively 31 December 2011, on the basis that in view of his divestment of the shares in Diag Human SE, he did not own or control an "investment" after this time, an objection to "substantive jurisdiction"

as defined in sub-sections 1(a) and/or (1)(c) of section 30 of the Arbitration Act 1996? (**Issue 1**).[13]

B2 Ds' Appeal

67 So far as the issues for the Supreme Court to determine in Ds' appeal, the following points arise from Ds' Grounds of Appeal:

67.1 **Issue 2**: does "controlled" for the purposes of Article 1(1)(c) require that the legal entity in question be controlled *de jure*, or can it be established by *de facto* control without *de jure* control?

67.2 **Issue 3**: if "controlled" for the purposes of Article 1(1)(c) can be established by *de facto* control without *de jure* control, (i) what is the correct test for such *de facto* control and (ii) on the findings of fact in the present case, was the CA correct to conclude that Diag Human SE was not "*controlled*" by Mr Stava within the meaning of Article 1(1)(c)?

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Counsel for the Defendants

28 May 2026

[13] If the Court were to determine that this is an objection as to substantive jurisdiction then Diag Human SE and Mr Stava intend to rely on paragraph 3 of their Notice of Acknowledgment. {TAB20/650}

UKSC-2025-0177
UKSC-2025-0176

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N:

THE CZECH REPUBLIC

Claimant

-and-

(3) DIAG HUMAN SE
(4) MR JOSEF STAVA

Defendants

ANNEX A - CHRONOLOGY

Key:

	Treaty Arbitration underlying facts and proceedings
	English challenge proceedings
	International Treaties

Date	Event	Appendix Pages
5 October 1990	Agreement between the Czech and Slovak Federal Republic and the Swiss Confederation on the Promotion	

{TAB21.1/651}

Date	Event	Appendix Pages
	and Reciprocal Protection of Investments (the "**Treaty**"). The Treaty did not enter into force until 7 August 1991.	
24 October 1990	The first tender process results in a recommendation that the State should not conclude a contract with Conneco	
From early 1991	Conneco begins entering into co-operation agreements with hospitals and transfusion facilities directly.	
25 June 1991	Meeting of the Ministry of Health tender committee at which point the committee rejected Conneco's and Novo Nordisk's proposals in the 1991 tender process.	
12 July 1991	The Ministry of Health tender committee decided to recommend projects with Immuno Wien and Instituto Grifols Barcelona to the Minister.	
7 August 1991	The Treaty enters into force.	
9 March 1992	Dr Bojar sent the Bojar Letter.	
18 March 1992	Novo Nordisk informed Conneco that until further notice all blood plasma cooperation agreements between them relating to the Czech Republic would be temporarily suspended.	
16 September 1992	Novo Nordisk and Diag Human AG agreed to settle their outstanding claims and terminated their relationship.	
1 January 1993	Czechoslovakia was dissolved with the Czech Republic and the Slovak Republic coming into existence as successor states.	
18 September 1996	Diag Human a.s. and CR entered into an ad hoc arbitration agreement pursuant to which the dispute in respect of the Bojar Letter was referred to a domestic commercial	

Date	Event	Appendix Pages
	arbitration ("**Commercial Arbitration**") and the Czech court proceedings were abandoned.	
19 March 1997	Interim Award issued by the Commercial Arbitration tribunal, dismissing the claim for harm to Diag Human a.s.'s business reputation but finding that Diag Human a.s. had suffered losses as a direct result of the Bojar Letter and that its claims for lost profits and an apology were justified.	
27 May 1998	The Interim Award was upheld by a review tribunal.	
6 April 2001	Mr Stava became the 100% shareholder in Diag Human a.s.	
25 June 2002	Partial Award issued by the Commercial Arbitration tribunal declaring that the Czech Republic should pay Diag Human a.s. the sum of CZK 326,608,334 (i.e. approximately USD 11 million) as *"the minimal damage, which is undisputable"* and reserving the calculation of other damages and interest for a further award. This sum was paid by CR.	
17 December 2002	The review tribunal upheld the Partial Award.	
18 August 2006	Diag Human SE was formed by the merger of Diag Human a.s. and a Slovakian company. Mr Stava became the 100% owner of Diag Human SE.	
4 August 2008	2008 Award issued by the Commercial Arbitration tribunal in which they determined (although CR disputes that the award has any legal effect under Czech law) that the CR was liable to pay to Diag Human SE approximately CZK 8.3 billion in additional damages (CZK 4,089,716,666 in lost profits for the period 1 July 1992 to 30 May 2000, and	

Date	Event	Appendix Pages
	CZK 4,244,879,686 in interest up to 30 June 2007) (i.e. approximately USD 350 million).	
22 August 2008	Ministry of Health applied for a review of the 2008 Award pursuant to the Commercial Arbitration Agreement.	
25 May 2011	Mr Stava established a discretionary Liechtenstein trust, the Koruna Trust.	
27 May 2011	The 'Lawbook Transaction' This Transaction was comprised of various contracts relating to the sale by Mr Stava of the shares in Diag Human SE to an Irish company called Lawbook Limited. Foxton J held that the sale aspect of the transaction was never intended to complete, as it was never intended that Lawbook should pay for the shares, but rather was designed to create apparent distance between himself and Diag Human SE following indications from the CR government that this illusion would be helpful to any attempt to help resolve the dispute (CA Judgment [37] and [19], August Judgment Annex 3). {TAB6/246} {TAB6/249} The effect of the various contracts forming the Lawbook Transaction (summarised in the CA Judgment, [36] and Annex 3 [3]) was that, if the purchase price for Mr Stava's shares was not paid by the buyer by 31 December 2011, Mr Stava's shares in Diag Human SE would be settled into the Koruna Trust, whilst in the meantime Lawbook Limited pledged the shares and associated entitlements of Diag Human SE to the trustee of the Koruna Trust as security for its performance, and Mr Stava assigned to the trustee his rights under the sale arrangement. {TAB13/579} {TAB6/249}	

Date	Event	Appendix Pages	
31 December 2011	The seller under the Lawbook Transaction failed to pay the purchase price. The shares in Diag Human SE were settled into the Koruna Trust.		
23 July 2014	The review tribunal issued a resolution. The Tribunal held that this resolution cancelled the 2008 Award as a matter of Czech law but that due to CR's interference in the review process, in breach of its obligations under the Treaty, the 2014 Resolution was not entitled to international recognition.		
1 April 2017	Notice of Dispute served in the Treaty Arbitration		
22 December 2017	Ds commenced the Treaty Arbitration by submitting a Request for Arbitration to the Permanent Court of Arbitration.		
6-10 July 2020	Hearing of the Treaty Arbitration (conducted remotely).		
18 May 2022	The Treaty Arbitration Tribunal issued the Award.		{TAB21. 10/738}
15 June 2022	C issued ss 67 and 68 challenges to the Award.		
16 January 2024	Mr Justice Foxton ordered that the trial be partially adjourned, such that it would take place over two hearings.		
30 January – 7 February 2024	The first hearing took place before Mr Justice Foxton.		
8 March 2024	Mr Justice Foxton handed down the March Judgment with neutral citation [2024] EWHC 503 (Comm); [2024] 1 Lloyd's Rep 367.		{TAB11/ 372}

Date	Event	Appendix Pages	
11 April 2024	Order of Mr Justice Foxton, inter alia, dismissing a number of challenges brought by the CR under ss.67 and 68 but also granting one section 68 challenge and remitting to the Tribunal the issue whether any damages should be reduced by 30% because of an alleged assignment by Diag Human SE to a third party.		{TAB12/ 479}
18-27 June, 2 July 2024	The second hearing took place before Mr Justice Foxton.		
9 August 2024	Mr Justice Foxton handed down the August Judgment with neutral citation [2024] EWHC 2102 (Comm); [2025] 1 Lloyds Rep 1.		{TAB13/ 484}
25 October 2024	Order of Mr Justice Foxton dismissing the s 67 challenges that had not been dismissed in the March Judgment.		{TAB14/ 597}
3-7 February 2025	Court of Appeal hearing		
7 May 2025	The Court of Appeal handed down their First Judgment with neutral citation [2025] EWCA Civ 588, [2025] 1 Lloyds Rep 458.		{TAB6/ 240}
26 May 2025	Tribunal issues award on remitted issue in favour of both Diag Human SE and Mr Stava.		
23 June 2025	CR commences pending s67 and s68 challenge against Tribunal's award on remitted issue dated 26 May 2025		
15 July 2025	Court of Appeal hearing		
28 July 2025	The Court of Appeal handed down their Second Judgment with neutral citation [2025] EWCA Civ 998.		{TAB7/ 348}