In the Matter of an Arbitration
Under the IAC Arbitration and Mediation Rules 2022

IAC Arbitration No. 9 of 2025

Between

STICHTING ZWITSERSE KAMER VAN KOOPHANDEL IN NEDERLAND

Claimant

- and -

HFC BEIJERLANDSELAAN ROTTERDAM B.V.

Respondent

Arbitral Tribunal

Temir Ibrayev
(Sole arbitrator)

Seat of arbitration
Astana International Financial Centre

ARBITRATION AWARD

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01 August 2025

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1. THE PROCEEDINGS

1.1. This Final Arbitration Award (the "Award") is issued by the undersigned Sole Arbitrator (the "Tribunal") to resolve, finally and with binding effect, the disputes that have arisen between the Claimant, a European business association, and the Respondent, a Dutch private limited company.

1.2. The dispute stems from the Corporate Finance Advisory Agreement executed by the Parties on 20 October 2021 (the "Agreement"). The Claimant alleges that the Respondent, in a calculated breach of the Agreement, deliberately circumvented its contractual obligation to pay a success fee (the "Commission") after the Claimant successfully introduced an investor who procured significant financing for the Respondent's affiliated corporate group.

1.3. The Claimant seeks an award of damages equivalent to the unpaid Commission, which it frames as an expectation loss, in addition to the full recovery of its legal costs and accrued interest.

1.4. The Respondent fundamentally denies any liability. Its defence rests on formalistic legal arguments, including the alleged expiration of the Agreement's primary term and the fact that the legal entity which ultimately received the investment was not a signatory to the Agreement, thereby breaking the chain of contractual privity.

1.5. This arbitration is conducted pursuant to the arbitration clause contained in Article 17 of the Agreement. The proceedings were conducted on an ad hoc, documents-only basis, as agreed by the Parties.

2. THE PARTIES

2.1. The Claimant: Stichting Zwitserse Kamer van Koophandel in Nederland, an organisation established under laws of the Netherlands, whose purpose includes facilitating connections between business ventures and a network of professional investors.

2.2. Represented by: Bramble & Holly Ltd, Mr. R.A.U. Juchter van Bergen Quast, LLM, director of Bramble & Holly Ltd.

2.3. The Respondent: HFC Beijerlandselaan Rotterdam B.V., a private limited company (B.V.) incorporated under the laws of The Netherlands. It is an operating entity within the 'Halal Fried Chicken' (HFC) international restaurant franchise group.

2.4. Represented by: The Respondent submitted its Statement of Defence through legal counsel, Ms. K. Mohasselzadeh of Mohasselzadeh Advocaat B.V. No further representation was entered during the subsequent phases of the proceedings.

3. THE ARBITRAL TRIBUNAL

3.1. Sole Arbitrator: Temir Ibrayev. The Tribunal was duly appointed by agreement of the Parties and hereby confirms its independence and impartiality throughout these proceedings.

4. PROCEDURAL HISTORY

4.1. 17 January 2025: The Claimant commenced this arbitration by filing a Request for Arbitration with the International Arbitration Centre (IAC), serving it upon the Respondent. The Request detailed the basis of the claim and was accompanied by a substantial body of documentary evidence.

4.2. 14 February 2025: The Respondent submitted its Statement of Defence, articulating its objections to the claim and providing its narrative of the facts.

4.3. 28 March 2025: The appointment of Temir Ibrayev as Sole Arbitrator was confirmed, and the Tribunal was formally constituted.

4.4. Documents-Only Procedure: In accordance with the Parties' agreement, this matter was decided entirely on the basis of the written record, which included the Agreement, extensive email correspondence, corporate-secretarial documents, business plans, financial records, and witness statements. No oral hearings were held.

5. BACKGROUND OF THE DISPUTE: A NARRATIVE OF THE FACTS

5.1. Having diligently reviewed all the evidence submitted, the Tribunal establishes the following chronology of events as the factual foundation of this Award.

5.2. The Agreement (20 October 2021): The Parties executed the Agreement, the commercial purpose of which was clear: the Claimant was to leverage its network to introduce investors to the Respondent to finance the HFC group's expansion. The Agreement's key financial terms were: (a) a modest retainer fee, which was duly paid, and (b) a 5% Commission on "any and all Financing received by or on behalf of the Company" (Article 2). The definition of "Financing" in Article 3 was deliberately drafted to be exceptionally broad, encompassing debt, equity, and critically, any "financial benefit…invested jointly with the Company into a third company." This demonstrates foresight by the Parties to cover complex investment structures.

5.3. The Non-Circumvention Clause: The Contractual Fortress: At the heart of this dispute lies Article 9 of the Agreement, a robustly drafted non-circumvention clause. This provision stipulates that if any transaction is "consummated within twenty-four (24) months of the termination of this Agreement" with an "Introduction" made by the Claimant, that transaction is deemed to be governed by the Agreement, and the Commission becomes immediately payable. This clause is not mere boilerplate; it is the central protection afforded to the Claimant, ensuring that its efforts cannot be negated by procedural delays or strategic manoeuvres.

5.4. The Introduction (13 December 2021): The Claimant performed its core obligation by identifying and formally introducing Mr. Bart Claessens to Mr. Ilhan Zengin, the ultimate beneficial owner of the HFC group. The email evidence (Exhibit 2a) is irrefutable. The Claimant's endorsement of Mr. Claessens as an investor who was "impressed by the concept" acted as the catalyst for all subsequent events.

5.5. The Evolving Negotiations and the Claimant's Exclusion (March-May 2022): The period following the introduction was marked by a distinct shift in communication dynamics. While initial discussions included the Claimant's representatives, the nexus of the negotiations gradually moved to direct engagement between the HFC principals (Mr. Zengin and his partner, Mr. Ahmet Biçer) and Mr. Claessens. The evidence demonstrates a progressive and deliberate marginalisation of the Claimant, culminating in key strategic meetings, such as the one in Dordrecht on 30 March 2022, from which the Claimant was effectively excluded. It was at these meetings that the architecture of the ultimate transaction was conceived.

5.6. The Evasive Corporate Restructuring (April 2023): The evidence reveals a classic circumvention strategy. Instead of a direct investment into the Respondent, a new corporate vehicle was created. On 3 April 2023, IBA Food B.V. was incorporated in Belgium (Exhibit 6a). A forensic examination of its structure reveals a common control nexus designed to obscure the flow of funds:

- Shareholding: 80% of IBA Food B.V. is held by Etizen Holding B.V.
- Common Control: Etizen Holding B.V. is, in turn, 50% owned by Mr. Zengin's principal holding company, and Mr. Zengin himself serves as its sole director.
- The Investor's Role: Mr. Bart Claessens was made a 20% shareholder in IBA Food B.V. for a nominal contribution, cementing his role not merely as an external financier but as an integral partner in the new venture.

This structure was not an organic business development but an artificial construct whose primary function was to create legal distance between the recipient of funds and the signatory of the Agreement.

5.7. The Inflow of Funds (2023): Through this newly created channel, the HFC group secured financing totalling €425,001, directly attributable to the efforts of Mr. Claessens: (1) a capital injection of €175,001; and (2) a loan of €250,000 from Belfius Bank.

5.8. The Breach Crystallised (August 2023): Upon discovering the consummated transaction, the Claimant, on 21 August 2023, issued an invoice for the Commission due (Exhibit 8). The Respondent's refusal to honour this invoice constituted a definitive breach of the Agreement and triggered the instant arbitration.

6. SUMMARY OF THE PARTIES' POSITIONS

6.1. The Claimant's Case: The Claimant's position is that the Respondent's actions constitute a flagrant and calculated breach of its contractual duties.

- Performance: It fully discharged its primary obligation by making the "effective cause" introduction.
- Breach: The Respondent's failure to pay is a direct violation of Articles 2, 3, and 9 of the Agreement.
- Circumvention: The IBA Food B.V. structure was a sophisticated legal artifice, a "sham" designed to evade liability. The Tribunal is urged to pierce the corporate veil to deliver substantive justice.
- Damages: The Claimant is entitled to expectation damages to put it in the position it would have been in but for the breach, including lost commission on both realised and proximate future investments.

6.2. The Respondent's Defence: The Respondent raises a series of formalistic defences.

- Expiration: The Agreement's initial 6-month term lapsed before the investment occurred.
- Privity of Contract: It has no contractual link to IBA Food B.V. and therefore cannot be held liable for funds received by it.
- Lack of Causation: The Claimant did not participate in the final negotiations and thus did not "earn" the Commission.
- Divergent Purpose: The financing sought was for a different purpose than originally envisaged.

7. JURISDICTION AND APPLICABLE LAW

7.1. Jurisdiction: The Tribunal's authority to adjudicate this dispute is unequivocally established by the arbitration agreement in Article 17 of the Agreement. It provides for the final and exclusive resolution of all disputes by arbitration administered by the IAC. The Parties have thereby irrevocably submitted to the jurisdiction of this Tribunal.

7.2. Applicable Law: Article 17 contains a clear choice-of-law provision: "The governing law of this Agreement shall be the substantive law of England and Wales". Consequently, all matters of contractual interpretation, breach, and remedies must be determined exclusively by reference to the common law and statutes of England and Wales. Any arguments or principles based on Dutch, Belgian, or other civil law systems are hereby dismissed as inapplicable to the substance of this dispute.

8. THE TRIBUNAL'S ANALYSIS AND FINDINGS

8.1. Having considered all the evidence and arguments in light of the governing principles of English law, the Tribunal finds comprehensively in favour of the Claimant.

8.2. Enforceability of the Agreement and the Non-Circumvention Clause

The Respondent's reliance on the expiration of the six-month term is misplaced and without merit. It fundamentally misconstrues the nature and purpose of Article 9 (Non-Circumvention). This clause is a quintessential "survival clause," an essential feature in agreements of this nature. Its explicit 24-month post-termination "tail" period is designed precisely to safeguard the introducer against a principal who might otherwise opportunistically delay a transaction's consummation to avoid a fee. The investment of April 2023 falls comfortably within this contractually agreed period. The obligations under the Agreement were therefore alive and fully enforceable at the time of the transaction.

8.3. Causation and the "Effective Cause" Doctrine

The Respondent's contention that the Claimant did not "secure" the deal because it was absent from the final negotiations is a flawed interpretation of English agency law. The controlling legal test is not final participation but causality. The central question is whether the Claimant's actions were the "effective cause" of the ultimate outcome.

The Tribunal's analysis of this point is guided by the foundational authority of *Millar, Son and Co v Radford*. The enduring relevance of this principle was recently reaffirmed by the Court of Appeal in *The County Homesearch Company v Cowham*, where it was described as "the starting point of the modern law" for this area. These authorities establish that for an agent to be entitled to a commission, their introduction must be an "efficient" (i.e., effective) cause of the consummated transaction.

Furthermore, as the court in *County Homesearch* clarified, a term requiring the agent to be the effective cause is implied as a matter of law into agency agreements of this nature. This is done to reflect the commercial intentions

of the parties and to prevent the "artificial" result where an agent's crucial groundwork goes unrewarded. The consequence of this is that the burden was on the Respondent to demonstrate that the Agreement contained express and unambiguous wording that would displace this standard, implied term. The Respondent has failed to do so; indeed, the Agreement's broad language in Articles 3 and 9 actively reinforces it[1].

The evidence in this case is compelling. The introduction of Mr. Claessens was the seminal event – the sine qua non from which all subsequent negotiations and the eventual investment flowed. To argue otherwise is to ignore the commercial reality of the chain of events. The Claimant unlocked the door; the fact that the Respondent chose to walk through it without them does not extinguish their right to be paid for providing the key. The Claimant's actions were, therefore, the very definition of an "effective cause."

8.4. Piercing the Corporate Veil and the Evasion Principle

The Respondent's main defence – that IBA Food B.V. is a separate legal person and thus breaks the chain of liability – is a direct challenge that requires the Tribunal to consider the doctrine of "piercing the corporate veil." The Tribunal approaches this doctrine with caution, acknowledging its exceptional nature as affirmed in *Salomon v. A. Salomon & Co. Ltd*[2].

However, the law does not permit the principle of separate personality to be used as an engine of fraud or as a means to evade existing legal obligations. The Tribunal finds this case to be a paradigm for the application of the narrow, but crucial, "evasion principle" as authoritatively defined by Lord Sumption in the UK Supreme Court case of *Prest v. Petrodel Resources Ltd*[3].

The evasion principle is engaged when: (1) a person is under a pre-existing legal obligation; and (2) they deliberately interpose a company under their control to defeat that obligation or frustrate its enforcement.

This test is met in full on the facts before the Tribunal:

- Existing Obligation: The Respondent was subject to a clear contractual obligation under the Agreement to pay the Commission.
- Deliberate Evasion via a Controlled Company: The corporate structure of the HFC group, as evidenced by Exhibits 6a and 7, demonstrates an undisputed unity of control radiating from Mr. Zengin. The creation of IBA Food B.V. – with its interwoven shareholding and directorship linking it back to the Respondent's beneficial owner and bringing in the introduced investor – was not a coincidence. It was an intentional act of corporate engineering designed for the specific purpose of placing the investment proceeds into a legal entity that was not a signatory to the Agreement.

This case resonates strongly with the classic authority of *Gilford Motor Co Ltd v. Horne*[4], where the court deemed the newly created company a "cloak or sham." Here, too, IBA Food B.V. was used as a device, a "sham," to conceal the true substance of the transaction: the HFC group, the contracting party, was receiving the benefit of the Claimant's introduction.

Therefore, the Tribunal finds that it is not only empowered but required by the principles of justice to pierce the corporate veil and treat the investment received by IBA Food B.V. as financing received "on behalf of the Company" for the purposes of the Agreement.

9. DETERMINATION OF RELIEF AND QUANTUM OF DAMAGES

9.1. The Legal Standard: The Expectation Measure

[1] *The County Homesearch Co (Thames & Chilterns) Ltd v Cowham* [2008] EWCA Civ 26, [2008] 1 WLR 909.

[2] *Salomon v A Salomon & Co Ltd* [1896] UKHL 1, [1897] AC 22.

[3] *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415.

[4] *Gilford Motor Co Ltd v Horne* [1933] Ch 935 (CA).

The foundational principle for assessing damages for breach of contract in English law is the "expectation principle." In *Robinson v. Harman*, the rule states that the aggrieved party is to be placed, so far as money can do it, in the same situation as if the contract had been performed[5].

9.2. Direct Expectation Loss (Commission on Realised Investments):
This is the most straightforward head of damage. Had the contract been performed, the Claimant would have received 5% of the €425,001 financing procured through its introduction.
Calculation: 0.05 * €425,001 = €21,250.05. This sum is awarded as direct loss.

9.3. Consequential Loss (Loss of a Valuable Chance):
The Claimant's demand for a €50,000 commission based on an anticipated €1,000,000 investment requires a more nuanced analysis. While seemingly forward-looking, this claim is properly framed not as a claim for speculative profits, but as compensation for the "loss of a chance.".

This doctrine, established in the venerable case of *Chaplin v. Hicks*6, provides that where a defendant's breach has deprived a claimant of a tangible chance to obtain a benefit, the claimant may recover damages for that lost chance, even if they cannot prove on the balance of probabilities that they would have secured the benefit.

Applying this to the present case:

- The Chance was Real and Valuable: The €1,000,000 figure was not a fantasy. It was a core component of the HFC group's own expansion plans, as detailed in the presentation materials (Exhibits 5 and 10) used to attract Mr. Claessens. The chance to earn a commission on this sum was, therefore, a concrete and valuable part of the commercial opportunity presented by the Agreement.
- The Chance was Lost Due to the Breach: The Respondent's circumvention and exclusion of the Claimant directly extinguished this chance. By severing the communication line, the Respondent made it impossible for the Claimant to facilitate the next stage of financing.

The Tribunal finds that the Respondent's breach denied the Claimant a substantial and quantifiable commercial opportunity. The valuation of this loss at €50,000 (5% of the target amount) is a reasonable assessment of the lost chance and is hereby awarded.

10. INTEREST AND COSTS

10.1. Legal Costs: The default principle in English-seated arbitration, "costs follow the event," dictates that the successful party should recover its reasonable legal costs. The Respondent's conduct not only necessitated these proceedings but also complicated them through evasive corporate structuring. The Tribunal has reviewed the Claimant's statement of costs, detailing 56 hours of work at a commercial rate of €625 per hour. The Tribunal finds the total claimed amount of €35,000 to be a reasonable and proportionate reflection of the work required to prosecute this claim successfully. This sum is awarded in full.

10.2. Pre-Award Interest: An award of interest is intended to compensate the Claimant for being kept out of its money. The Tribunal awards simple interest at a commercial rate of 6% per annum on the realised commission component of the damages (€21,250.05) from the date the payment was wrongfully withheld (August 2023) until the approximate date of this Award (June 2025, a period of 23 months).
Calculation: (€21,250.05 * 0.06 / 12) * 23 = €2,443.75.

10.3. Value Added Tax (VAT): The Claimant's request for VAT on the awarded sums is denied. An award of damages is compensatory and is not a payment for a taxable supply. The recovery of input or output VAT is a fiscal matter between the Claimant and its domestic tax authorities and does not form part of the contractual loss recoverable from the Respondent.

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[5] *Robinson v Harman* (1848) 1 Ex 850.

[6] *Chaplin v Hicks* [1911] 2 KB 786.

11. OPERATIVE PART (THE AWARD)

FOR THE FOREGOING REASONS, THE TRIBUNAL HEREBY AWARDS, DECLARES, AND ORDERS AS FOLLOWS:

IT IS DECLARED that the Respondent is in breach of its obligations under the Corporate Finance Advisory Agreement dated 20 October 2021.

IT IS ORDERED that the Respondent shall pay to the Claimant the total sum of €108,693.80 (one hundred eight thousand, six hundred ninety-three Euros and eighty cents), comprising:

a) €21,250.05 as damages for unpaid commission;
b) €50,000.00 as damages for the loss of a valuable commercial chance;
c) €35,000.00 as partial reimbursement of legal costs; and
d) €2,443.75 as pre-award interest.

IT IS FURTHER ORDERED that the Respondent shall bear the Costs of the Arbitration. Accordingly, the Respondent shall reimburse the Claimant the sum of USD 3,500 (three thousand five hundred United States Dollars), representing the fees of the Arbitral Tribunal.

The aforementioned sums shall be paid in full by the Respondent to the Claimant within 30 days from the date of communication of this Award.

All other claims and requests for relief are hereby dismissed.

This Award is final and binding upon the Parties and is in full and final settlement of all claims submitted to this arbitration.

Temir Ibrayev
Sole Arbitrator,
on behalf of the Arbitral Tribunal

01 August 2025