C. Is KBC entitled to damages?

79. There can be no doubt that in case of breach of contract, the prejudiced party is entitled to damages. This general principle of law, which is part of Indonesian law, has not been disputed by either party. Consequently, since the Respondents have been found in breach of their contractual obligations towards KBC, they are liable for the damages resulting thereof. Only the amount of such damages has to be consequently asserted.

The Claimant requests compensation for its lost expenditures and for its loss of profits. As an alternative to the compensation for loss of profits, the Claimant requests the amount of deemed dispatch payments.

[(b) Lost profits]

[...]

C-13

[...]

(b) Lost profits

[...]

C-13

[...]

[(b) Lost profits]
3. The Arbitral Tribunal's Decision

121. Indonesian Law, like numerous other legal systems, provides for the recovery of lost profit ("lucrum cessans") as a component of the damages to which the innocent party is entitled in case of inexcusable breach of contract, in addition to the other damages component, the "damnum emergens".

As in other legal systems, recovery is limited to damages that were foreseeable when the contract was made and that are the immediate and direct result of the breach.

122. There is no doubt in the Arbitral Tribunal's opinion that the Claimant is entitled to obtain the benefit of its bargain in addition to recovering the expenditures it has incurred, as stated by the award in the Himpurna California Energy Ltd. v. P.T. (Persero) Perusahaan Listruik Negara, filed by The Claimant in these proceedings, "To limit the recovery of the victim of a breach to its actual expenditures is to transform it into a lender, which is commercially intolerable when the party was at full risk for the amount of investments made on the strength of the contract" (paragraph 195 on Page 143). The loss of a business opportunity ("perte de chance") is a widely recognized basis for the lost profits damages component.

[...]