

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko

v.

Republic of Serbia

(ICSID Case No. ARB/22/14)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Sir Daniel Bethlehem KC, Presiding Arbitrator

Mr. Andrés Jana, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Oladimeji Ojo

Assistant to the Tribunal

Professor Philippa Webb

26 May 2023

Background

1. The Tribunal was constituted on 25 January 2023. The first session of the Tribunal was held on 22 March 2023. On 31 March 2023, the Tribunal adopted Procedural Order No.1, which set out the Procedural Rules governing this arbitration, subject to the ICSID Convention and the ICSID Arbitration Rules in force as of 10 April 2006.
2. By correspondence dated 22 March 2023, the Tribunal invited the Parties to “consider further the issues in the schedule of proceedings with a view to reaching agreement to the extent possible” and to submit to the Tribunal, by 12 April 2023 “(a) any outstanding issues in relation to which they would benefit from the guidance of the Tribunal, and (b) a brief statement of the differences between the parties on those issues and the parties’ respective positions on those differences.”
3. On 31 March 2023, the Claimants filed an electronic version of their Memorial, together with accompanying expert reports, exhibits and legal authorities.
4. On 1 April 2023, the Tribunal transmitted the following message to the Parties:

“The Tribunal acknowledges receipt of the Claimants’ Memorial, dated 31 March 2023, and associated documents, but notes that a procedural schedule had not yet been set down, with the Tribunal waiting to hear from the Parties on whether they have been able to reach agreement on this matter. Given this, and to avoid any prejudice to the Respondent, the Tribunal, having regard to §6 of Procedural Order No. 1, directs that, unless the Parties have agreed otherwise, time will not begin to run against the Respondent on any issue addressed in PO1 until such time as the Tribunal has, by a Procedural Order, laid down a procedural calendar or has otherwise directed that a given time period is deemed to be running. This direction includes, *inter alia*, the time periods specified in §§15.1 and 16.3 of PO1.”

5. By separate correspondence dated 12 April 2023, the Parties informed the Tribunal that they had been unable to reach agreement on a procedural schedule and set out their respective positions in respect of their preferred proposed schedule.

Decision

6. The Tribunal has given careful consideration to the Parties’ respective proposals. Having regard to those proposals, the Tribunal’s appreciation of what is necessary, fair and appropriate by way of procedural steps and calendar in respect of these proceedings, and diary and other similar constraints that may be expected to impact on the procedural schedule, the Tribunal adopts the procedural schedule attached as an Annex hereto.
7. The Tribunal makes three observations in respect of the annexed schedule. First, the Tribunal has concluded that it is not necessary, and would not be appropriate, to schedule

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two rounds of written pleadings in respect of any application for a bifurcated hearing of any preliminary objections to jurisdiction and/or admissibility that may be raised. This conclusion is implicit in Paragraphs 16.3 and 16.4 of Procedural Order No. 1. Second, the Tribunal has similarly concluded that it is not necessary, and would not be appropriate, to schedule a discrete document production phase in the course of any bifurcated proceedings that the Tribunal may direct for purposes of a preliminary hearing on any objections to jurisdiction and/or admissibility that the Respondent may raise. Third, the annexed procedural schedule is without prejudice to any question that may arise pursuant to Paragraph 15 of Procedural Order No. 1 concerning the possible bifurcation of the liability and damages phases of the proceedings. Having regard to the Tribunal's correspondence to the Parties dated 1 April 2023, noted in paragraph 4 above, the date by which any bifurcation application under Paragraph 15 of Procedural Order No. 1 must be submitted is 26 June 2023.

On behalf of the Tribunal,

[signed]

Sir Daniel Bethlehem KC
President of the Tribunal

Date: 26 May 2023

ANNEX

PROCEDURAL TIMETABLE

Alternative Schedule 1 – The following timetable shall apply if the Respondent raises preliminary objections under Arbitration Rule 41(1) and requests bifurcation:

Description	Party / Tribunal	Final date / period
Memorial	Claimant	[31 March 2023]
Memorial on Preliminary Objections and Request for Bifurcation	Respondent	9 June 2023 (10 weeks)
Observations on Request for Bifurcation	Claimant	30 June 2023 (3 weeks)
Decision on Bifurcation	Tribunal	31 July 2023 (1 month)
IF NO BIFURCATED HEARING Counter-Memorial on the Merits	Respondent	23 October 2023 (12 weeks)
Request for Production of Documents	Parties	13 November 2023 (3 weeks)
Production of Non-Contested Documents and/or Objections to Requests for Production of Documents	Parties	4 December 2023 (3 weeks)
Reply to Objections to the Request for Production of Documents – Sent to Tribunal	Parties	18 December 2023 (2 weeks)
Decision on Objections to Request for Production of Documents	Tribunal	15 January 2024 (4 weeks)

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Description	Party / Tribunal	Final date / period
Production of Documents ordered by the Tribunal	Parties	29 January 2024 (2 weeks)
Reply on the Merits and Counter-Memorial on Preliminary Objections	Claimant	1 April 2024 (9 weeks)
Rejoinder on the Merits and Reply on Preliminary Objections	Respondent	5 August 2024 (18 weeks)
Rejoinder on Objections to Jurisdiction, Admissibility or Competence	Claimant	16 September 2024 (6 weeks)
Notification of Witnesses/Experts for Cross-Examination	Parties	No later than 4 October 2024
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	No later than 18 October 2024
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing	All	13 – 17 January 2025 (with 10 January 2025 to be held in reserve)
<i>[Post-Hearing Briefs]</i>	Parties	<i>TBD</i>
Statements on Costs	Parties	<i>TBD</i>
Award	Tribunal	<i>TBD</i>

Procedural Order No. 2 – Procedural Timetable

Alternative Schedule 2 – The following timetable shall apply if the Tribunal decides to bifurcate the proceedings:

Description	Party / Tribunal	Final period / date
Decision on Bifurcation	Tribunal	31 July 2023
Counter-Memorial on Preliminary Objections	Claimant	25 September 2023 (8 weeks)
Reply on Preliminary Objections	Respondent	27 November 2023 (9 weeks)
Rejoinder on Preliminary Objections	Claimant	12 February 2024 (11 weeks)
Notification of Witnesses/Experts for Cross-examination, if any	Parties	No later than 22 March 2024
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	No later than 5 April 2024
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing on Preliminary Objections	All	<i>TBD in the period</i> 14 – 17 May 2024
<i>[Post-Hearing Briefs]</i>	Parties	<i>TBD</i>
Statements of Costs	Parties	<i>TBD</i>
Decision/Award on Preliminary Objections	Tribunal	<i>TBD</i>
<i>[Subsequent procedure, if any]</i>	All	<i>TBD</i>

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Alternative Schedule 3 – The following timetable shall apply if the Respondent does not raise preliminary objections under Arbitration Rule 41(1) or does not request bifurcation for the hearing of any such objection/s:

Description	Party / Tribunal	Final date / period
Memorial	Claimant	[31 March 2023]
Counter-Memorial	Respondent	29 September 2023 (6 months)
Request for Production of Documents	Parties	20 October 2023 (3 weeks)
Production of Non-Contested Documents, and/or Objections to Requests for Production of Documents	Parties	10 November 2023 (3 weeks)
Reply to Objections to the Request for Production of Documents – Sent to Tribunal	Parties	24 November 2023 (2 weeks)
Decision on Objections to Request for Production of Documents	Tribunal	8 December 2023 (2 weeks)
Production of Documents Ordered by the Tribunal	Parties	22 December 2023 (2 weeks)
Reply	Claimant	23 February 2024 (9 weeks)
Rejoinder	Respondent	14 June 2024 (16 weeks)
<i>[Rejoinder on Objections to Jurisdiction, Admissibility or Competence]</i>	Claimant	26 July 2024 (6 weeks)
Notification of Witnesses/Experts for Cross-Examination	Parties	No later than 4 October 2024
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	No later than 18 October 2024

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Description	Party / Tribunal	Final date / period
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing	All	13 – 17 January 2025 (with 10 January 2025 to be held in reserve)
<i>[Post-Hearing Briefs]</i>	Parties	<i>TBD</i>
Statements on Costs	Parties	<i>TBD</i>
Award	Tribunal	<i>TBD</i>