INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION

GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAAHHÜT A.S.

Claimant

v.

THE REPUBLIC OF NORTH MACEDONIA

Respondent

ICC Arbitration No. 26696/HBH

Procedural Order No. 2
(Document Production)

Members of the Tribunal
Lucinda A. Low, President
Klaus Reichert
Barton Legum

9 June 2023

GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAAHHÜT A.S.
v.
THE REPUBLIC OF NORTH MACEDONIA
(ICC Arbitration No. 26696/HBH)

Procedural Order No. 2

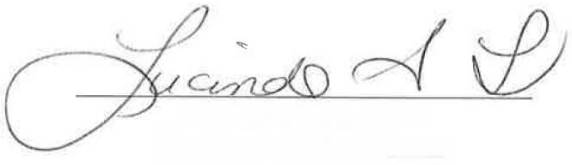
1. Pursuant to Procedural Order No. 1 and the Procedural Timetable annexed thereto as Annex 1, on 29 May 2023,[1] the Claimant and the Respondent each submitted to the arbitral Tribunal their respective replies to objections to the other parties' document production requests and applications regarding document production. The replies and applications of each party were provided to the other party by the arbitral Tribunal by email on 31 May 2023.
2. Having carefully considered the parties' respective applications regarding document production, the arbitral Tribunal hereby issues its decisions on these applications. Those decisions are set forth in the designated section for the Decision of the Tribunal with respect to each request in the parties' respective Stern schedules, attached.
3. In connection with these decisions, the arbitral Tribunal reminds the parties of the provisions of Procedural Order No. 1, Section B.(i)f., which provides as follows:

> The Parties should note, well in advance of any document production requests, that any future decision by the Tribunal on the Parties' contested requests, or indeed any voluntary agreement to produce documents, will not be taken by the Tribunal as an implied decision on any issue in dispute between the Parties. Accordingly, if a request is denied, or granted in a modified fashion, or agreed to between the Parties, that should not be taken as any indication as to the Tribunal's views on the merits. The Parties should not thereinafter plead, submit (particularly at any oral hearing) or allege that the Tribunal's decision to uphold or deny a request, or an agreement to produce, is indicative of a position either in their favour or against them. If a request is denied, for example, that does not mean that the requested Party can consider that its own burden of proof has been discharged.

[1] Extended from 26 May 2023 by the Tribunal as communicated to counsel for the parties in an email of that date following their request.

Moreover, if a Party refuses to produce documents on an issue for which it bears the burden of proof, then such Party runs the risk of having the issue resolved in due course as not proven. The Parties are expected to bear this in mind in facilitating disclosure of relevant and material documents.

Issued on behalf of the Tribunal,



Lucinda A. Low
President

9 June 2023

Attachments:
1) Claimant's Request to Produce Documents and Replies to Respondent's Objections of 29 May 2023, with Decisions of the Tribunal of 9 June 2023
2) Respondent's Stern Schedule of 29 May 2023, with Tribunal Decisions of 9 June 2023

International Chamber of Commerce (ICC)
International Court of Arbitration
ICC Arbitration No. 26696/HBH

GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAHHÜT A.Ş.

Claimant

– vs –

THE REPUBLIC OF NORTH MACEDONIA (MACEDONIA)

Respondent

CLAIMANT'S REQUEST TO PRODUCE DOCUMENTS AND REPLIES TO RESPONDENT'S OBJECTIONS (with Tribunal Decisions of 9 June 2023)

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COUNSEL FOR CLAIMANT

29 May 2023

In accordance with Procedural Order No.1, Part II, Section (B)(i)(c)(5) and Procedural Timetable, Claimant hereby submits to the Tribunal its requests to produce documents and replies to Respondent's objections, as detailed in Claimant's Stern Schedule below. Claimant respectfully requests the Tribunal to order Respondent to produce the documents it has refused to produce pursuant to Claimant's requests.

I. CLAIMANT'S REQUEST TO PRODUCE DOCUMENTS

1. In accordance with Procedural Order No.1, Part II, Section (B)(i)(b) and (c) and Procedural Timetable, Claimant hereby submits to Respondent its requests to produce documents ("**Request to Produce**").[1] These requests are submitted in the form of a vertical Stern Schedule and guided by the IBA Rules on the Taking of Evidence in International Arbitration (2020) ("**IBA Rules**").[2]

2. The Requested Documents, as defined below, are relevant to the case and material to it its outcome, for the reasons explained below.

3. The Requested Documents are not within Claimant's possession, custody, or control. Claimant reasonably assumes that the Requested Documents exist and are within the possession, custody, or control of Respondent, because the Requested Documents were created by or for Respondent, and/or provided to Respondent (and not to Claimant), and/or should be kept and maintained by Respondent in the ordinary course of business. To the extent that the Requested Documents did exist but are said to no longer exist and/or be in Respondent's possession, custody, or control, Respondent should identify such documents and the circumstances in which they are said to have been lost and/or destroyed and/or to have left Respondent's possession, custody, or control.

4. Documents in Respondent's possession, custody, or control include documents in the possession, custody, or control of Respondent, its state organs, governmental agencies, and/or state-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including principals, officers, directors, employees, representatives, or agents during the time periods relevant to these requests.

5. Claimant requests that responsive documents be numbered by Respondent and produced in an electronic form sufficient to identify each separate document, document families (e.g., e-mails and their attachments) and the relationship between documents within a family (e.g., multiple attachments to an e-mail). In addition, in the event that the native files of the Requested Documents exist (e.g., files with Microsoft Excel or Microsoft Outlook format), Claimant requests that Respondent produce said files in their native format.

[1] All capitalized terms not defined herein have the meaning ascribed in Claimant's Statement of Claim dated 2 December 2022.

[2] IBA Rules on the Taking of Evidence in International Arbitration, Articles 3(2) and 3(3).

6. Claimant reserves the right to amend or supplement these requests in light of the documents produced (or not produced) by Respondent. Claimant also reserves the right to amend or supplement these requests should Respondent seek to raise any new allegations or produce any additional evidence.

DEFINITIONS

7. As used in these Requests:

"**Anticorruption Commission**" means the State Commission for the Prevention of Corruption of the Republic of North Macedonia, a specialised anti-corruption institution responsible for the prevention of corruption and conflict of interests in the public administration of the Republic of North Macedonia.

"**Association of Toplifikacija's Stockholders**" means the Association for the Protection of the Rights of the Stockholders in Toplifikacija AD Skopje, a not-for-profit organisation established by the stockholders of Toplifikacija with a principal objective to protect their interests, whose registered office is at Londonska Street no. 9, 1000 Skopje, Republic of North Macedonia.

"**Competition Commission**" means the Commission for the Protection of Competition of the Republic of North Macedonia, a state organ with exclusive jurisdiction for assessing and monitoring state aid in Macedonia and enforcing the Law on Protection of Competition.

"**Document**" means a writing or recording of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information under Respondent's possession, custody or control, including, but not limited to, e-mails, faxes, correspondence, memoranda, working drafts, loose and pad notes, presentations, internal files, guidelines, charts, advertising or reporting material, contemporaneous meeting notes, minutes and analyses, advice or recommendations, records of discussions or deliberations, draft decisions or assessments, orders or instructions, however retained, and whether or not prepared by Respondent. Documents recorded on "electronic means" include Documents that are readily accessible from computer systems and other electronic devices and media, Documents stored on servers and back-up systems, and electronic Documents that have been software deleted. Any reference to "Documents" includes drafts of those Documents.

"**Financial Police**" means the Financial Police Administration of the Republic of North Macedonia, a specialised operational, investigative and law enforcement organisation within the Ministry of Finance of the Republic of North Macedonia, responsible for the prevention, detection and repressing the administrative and penal violations of the economic and financial laws.

"**Government**" means the government of North Macedonia, including its political subdivisions, entities, departments, agencies and organs.

"**Macedonia**" or "**Respondent**" means the Republic of North Macedonia.

"**Public Revenue Office**" or "**PRO**" means the Public Revenue Office of the Republic of North Macedonia, a state organ within the Ministry of Finance of the Republic of North Macedonia, which has exclusive jurisdiction to implement the tax policy in Macedonia, including maintaining the single tax register and tax records of taxpayers, receiving tax returns, assessing, collecting, and refunding taxes, social contributions on wages and other public levies, to carry out tax audit, and to monitor and analyse the operation of the tax system.

"**Public Prosecution Office**" means the Basic Public Prosecution Office Skopje, responsible for prosecuting perpetrators of crimes on the territory where the Basic Criminal Court Skopje has jurisdiction.

"**Public Prosecution Office for Organised Crime and Corruption**" means the Basic Public Prosecution Office for Prosecution of Organized Crime and Corruption, responsible for prosecuting organised crime and corruption on the whole territory of the Republic of North Macedonia.

"**Requested Documents**" means the Documents requested by Claimant pursuant to these Requests.

"**SoC**" means Claimant's Statement of Claim dated 2 December 2022.

"**SoD**" means Respondent's Statement of Defence dated 4 April 2023.

Claimant's Stern Schedule for Document Requests

Document Request No	1
A. Documents or category of documents requested (requesting party)	All Documents relating to the investigation by the Financial Police and the filing of criminal complaints against TE-TO and individuals and entities involved in TE-TO's judicial reorganisation, including but not limited to: 1. The criminal complaint filed in 2019 by the Financial Police to the Public Prosecution Office for Organized Crime and Corruption against (i) Mr Vadim Mihailov, the President of the Management Board of TE-TO; (ii) Mrs Sashka Trajkovska, the bankruptcy judge who approved the Reorganisation Plan dated 6 June 2018; and (iii) Mrs Snezana Sardzovska, the notary who certified the annexes to the loan agreements and the Loan acceleration agreements based on a well-founded suspicion that the individuals committed the criminal offences "*abuse of official position*" and "*false Insolvency".* 2. The criminal complaint filed in 2019 by the Financial Police to the Public Prosecution Office for Organized Crime and Corruption against TE-TO based on a well-founded suspicion that TE-TO committed the criminal offence of "*deliberately causing insolvency*". 3. The criminal complaint filed in 2019 by the Financial Police to the Public Prosecution Office for Organized Crime and Corruption against three former directors of TE-TO based on a well-founded suspicion that the individuals committed the criminal offence of "*money laundering*". 4. The criminal complaint filed in 2019 or thereafter by the Financial Police to the Public Prosecution Office against Mr Marinko Sazdovski, TE-TO's bankruptcy trustee, based on a well-founded suspicion that the individual committed the criminal offences of "*abuse of bankruptcy proceedings*" and "*abuse of official position*".

B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties about whether TE-TO's judicial reorganisation and the conduct of Respondent's state organs in relation thereto, resulting in the write-off of 90% of Claimant's claim and the default interest against TE-TO, was in breach of Macedonian law and, subsequently, whether it amounts to a breach of the Treaty. The Requested Documents are relevant and material to the case and its outcome as they relate to the investigation of TE-TO's judicial reorganisation by the Financial Police, a state organ of Respondent (a part of Respondent's "judicial police"), with the authority to investigate organized financial crimes. The Financial Police filed criminal complaints against TE-TO and all individuals and entities involved in TE-TO's judicial reorganisation based on a well-founded suspicion that TE-TO's bankruptcy and judicial reorganisation were fraudulent. The Financial Police's findings support Claimant's allegations that TE-TO's reorganization proceedings and its endorsement by Respondent's state organs were in breach of Macedonian law and the Treaty. Specifically, the findings indicate that the shareholder's loans granted to TE-TO derived from illicit activities in Russia, that the statutory conditions for TE-TO's bankruptcy were fabricated, and that TE-TO's judicial reorganisation was approved by the Macedonian courts in breach of the statutory priorities of creditors' claims, the maximum time limits for reorganisation plan implementation (SoC, ¶¶ 73-75, 98-110, 115-127, 197(e), 255-271, 278(b)), 285(b), 286, 298(c)) and resulted in unlawful discrimination of GAMA compared to TE-TO's shareholders (SoC, ¶¶ 212-217). The record confirms and the parties acknowledge that criminal complaints against TE-TO and individuals and entities involved in TE-TO's judicial reorganisation, as described above at A, were filed by the Financial Police (see SoC, ¶¶ 122 to 127 and exhibits C-019, C-105, C-106, C-109, C-110, as well as SoD, ¶ 76). The Requested Documents are not in the possession, custody or control of Claimant. The Financial Police, the Public Prosecution Office and the Public Prosecution Office for Organized Crime and Corruption are state organs of Respondent, and the Requested Documents are in the possession, custody and control of Respondent.
C. Objections to document request (objecting party)	**Objection No. 1: Overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** This request is overbroad and unduly burdensome insofar as it requires Macedonia to search for every document "relating to" investigations of "TE-TO and individuals and entities involved in TE-TO's judicial reorganization," without any limitation on the meaning of "relating to," or with respect to the custodian of the Document or the date when the Document was prepared. This request extends, for example, to all Documents in the possession, custody or control of any organ of the State that touch on any investigation conducted by the Financial Police with respect to complaints filed against TE-TO, or against any of the individauls or entities involved in TE-TO's reorganization. It would be unduly burdensome to require Macedonia to conduct such an expansive search.

	Objection No. 2: Not relevant or material (IBA Rules Art. 9.2(a)) The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA requests Documents "relating to the investigation by the Financial Police and the filing of criminal complaints" presumably to support its case that "Respondent refrained from prosecuting the fraudulent TE-TO's bankruptcy and reorganisation to prevent the collapse of the Reorganisation Plan" (*see* justification for Claimant's Request No. 2). GAMA's case is far-fetched fiction. Unsubstantiated (and, on their face, implausible) allegations are no license to conduct a wide-ranging fishing expedition through sensitive and classified documents relating to criminal investigations. **Objection No. 3: Classified as secret (IBA Rules Arts. 9.2(f))** This request seeks "Documents relating to the investigations by the Financial Police and the filing of criminal complaints." Under Macedonian law, actions taken by both the Prosecutor and the Police during preliminary investigations (that is, the procedure before formal charges are made) are secret . *See* Macedonian Law on Criminal Procedure (**R-11 Resubmitted**), Art. 289 ("All actions taken in the preliminary investigation procedure by the public prosecutor or the police are considered secret"). The filing of international arbitration proceedings does not give Claimant a license to trawl through police and prosecution files and other secret documents. On the contrary, the IBA Rules Article 9.2(f) recognizes that a tribunal "shall, at the request of a Party or on its own motion, exclude from evidence or production any Document [on] … (f) grounds of special political or institutional sensitivity (including evidence that has been **classified as secret** by a government or a public international institution) that the Arbitral Tribunal determines to be compelling." For example, in *Merril and Ring v. Canada*, referring to Article 9.2(f), the tribunal declined to order production of classified documents, observing that "the purpose of the privilege is quite evidently to prevent disclosure of documents containing information which is sensitive by nature" (*Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Decision of the Tribunal on Production of Documents (18 July 2008) (**RL-115**, ¶ 18). Just so here the request seeks classified information that is eminently sensitive by nature (concerning criminal investigations). **Objection No. 4: Legal impediment (IBA Rules Art. 9.2(b))** Under IBA Rules Article 9.2(b), a tribunal shall, at the request of a Party, exclude from production any Document falling under a "legal impediment or privilege under the legal or ethical rules determined by the Abitral Tribunal to be applicable." In declining to order production of documents regarding criminal prosections, the tribunal in *Elliott Associates, LP (USA) v. Republic of Korea* explained that "the question of whether [there is] any 'legal impediment,' such as the principle of secrecy of criminal investigations … is ultimately a matter of Korean law" – the law under which the investigations were conducted, which here

	is Macedonian law (PCA Case No. 2018-51, Procedural Order No. 14, 24 June 2020 (**RL-118**) ¶ 72). The legal impediment here, as explained above, is that all actions taken by the Police during preliminary investigations are considered "secret" (Macedonian Law on Criminal Procedure (**R-11 Resubmitted**), Art. 289). Multiple other investment tribunals regularly have rejected attempts to obtain access to documents concerning criminal investigations. In *Lupaka Gold Corp. v. Republic of Peru*, the claimant requested documents concerning six criminal complaints. The tribunal limited production to "documents showing the final dispositions of the six complaints" so as to avoid "problematic matters such as prosecutor's legal analysis and witness interview statements" (Procedural Order No. 4 (Production of Documents), ICSID Case No. ARB/20/46, 2 June 2022 (**RL-119**), Request No. 3; *see also* Request No. 4). *See also Churchill Mining v. Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award (6 December 2016) (**RL-116**) ¶ 250 ("[T]he Tribunal adds that it accepts the invocation of privilege by the Respondent in relation to the police files concerning investigations into the alleged forgery, and in relation to documents concerning investigations into Messrs. Ishak and Noor by the anti-corruption agency KPK, since they are covered by the secrecy of criminal investigations."). **Conclusion** For all of these reasons, Macedonia objects to this request.
D. Response to objections and request for resolution (requesting party)	**Response to Objection No. 1: Request is not overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** *First*, the Request specifies a narrow group of Documents related to the investigation by a specific state organ, *i.e.,* the Financial Police, and its filing of criminal complaints against specific individuals and entities involved in TE-TO's judicial reorganisation. Claimant has narrowed this request to the best of its ability based on the knowledge and information in its possession at this time. Given that the Requested Documents were created by, belong to, and are in the exclusive control of Respondent, Claimant cannot be reasonably expected to articulate with more precision the specific identity or nature of any given Document (other than specific Documents listed in the request, the existence of which is known from public sources and not disputed) that may be responsive to this Request. The breadth of the Request is limited to the issues material to the claims asserted by the parties (see justification for materiality and relevance in Section B and below), including the applicable dates for Requested Documents. For this request, the appropriate date range is 30 August 2018 – 29 September 2020. To the extent that Claimant's requests are broad, they are necessarily so. *Second*, the Requested Documents are in the possession of the Financial Police. Contrary to what Respondent suggests in its objection, the request does not extend to "*Documents in the possession, custody*

	or control of any organ of the State that touch on any investigation conducted by the Financial Police". Accordingly, it would not be unduly burdensome to require Respondent to produce the Requested Documents since they are reasonably accessible to Respondent. In any event, even if such documents would be held by any other Sate organs (which is not the case), this would still not be an excuse for Respondent to produce such documents, as case law confirms.[3] *Third*, Claimant's request is framed with a higher degree of precision and responsiveness than the document production requests put forward by Respondent.[4] As a result, if Claimant's request does not comply with Article 3(3)(a) of the IBA Rules, Respondent's requests also do not comply with Article 3(3)(a) of the IBA Rules and should be dismissed. **Response to Objection No. 2: The Requested Documents are relevant and material (IBA Rules Art. 9.2(a))** At the heart of this arbitration is the legality of TE'TO's judicial reorganisation and Respondent's liability in relation thereto under the Treaty and customary international law. The parties have opposing views on this matter. The Requested Documents are not only relevant in support of Claimant's claims that Respondent refrained from prosecuting the fraudulent TE-TO's bankruptcy to prevent the collapse of the TE-TO's judicial reorganisation, as Respondent is trying to downplay. They are also relevant and material to show that TE-TO's bankruptcy and judicial reorganisation were indeed fraudulent and in breach of Macedonian law, because the statutory conditions for TE-TO's bankruptcy were fabricated and TE-TO's judicial reorganisation was approved by the Macedonian courts in breach of the statutory priorities of creditors' claims, the maximum time limits for implementation of reorganisation plan and resulted in unlawful discrimination of GAMA compared to TE-TO's shareholders, constituting a breach of the Treaty (see Section B). The Financial Police investigated and determined that criminal complaints should be filed, even against the judge who authorized TE-TO's reorganization. Claimant's claims that TE-TO's judicial reorganisation was fraudulent and approved in breach of Macedonian law therefore coincide with publicly known results of the investigation of the Financial Police, which identified serious criminal wrongdoings by all actors involved in

[3] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 5, 15 January 2021 (**CL-62**), ¶ 34 ("The Tribunal agrees with Claimants that the Korean courts and prosecutors, as (undisputed) State organs, form an inextricable part of the Republic of Korea for the purposes of this document production. […]") Ibid., ¶ 35 ("Even if the Ministry of Justice were unable to obtain documents held by the Korean courts or prosecutors under Korean law […], it would not release other Korean State organs, including the Korean courts and prosecutors, from its obligations under international law.") Ibid., ¶ 36 ("Consequently, the Tribunal considers documents held by the Korean courts, the Prosecutor's Office or the office of the Special Prosecutors, to be in Respondent's possession, custody and control.").

[4] *See* e.g., Respondent's Stern Schedule, dated 14 April 2013, Requests nos. 1, 2, 4, 5.

	TE-TO's reorganization (SoC, ¶¶ 122 to 127 and exhibits C-019, C-105, C-106, C-109, C-110). The Requested Documents are therefore highly relevant and material to determine Respondent's liability for acts of its organs in the conduct of TE-TO's judicial reorganization in breach of the Treaty. **Response to Objections Nos. 3 and 4: Respondent cannot withhold production of documents on the basis of purported secrecy or legal impediment (IBA Rules Arts. 9.2(f) and 9.2(b))** *First*, Respondent cannot rely on its national law to avoid producing the Requested Documents, particularly where Respondent agreed to and consented to the arbitration being governed by international law. Tribunal in *Biwater Gauff v Tanzania* observed that "*[i]f a State were permitted to deploy its own national law in this way, it would, in effect, be avoiding its obligation to produce documents in so far as called upon to do so by this Tribunal. This […] is an international legal obligation arising from the State's consent from the BIT to ICSID arbitration*," which "*may also thereby stifle the evaluation of its own conduct and responsibility*," and "*undermine the well-established rule that no State may have recourse to its own internal law to avoid its international responsibilities*."[5] Similarly, Tribunal in *Mason Capital v Korea* considered that "*Korean laws and regulations, such as the Korean Criminal Procedure Act, are not decisive for Respondent's disclosure obligations under international law*".[6] *Second*, Respondent asserts that the Requested Documents are "*eminently sensitive by nature (concerning criminal investigations)*" without demonstrating that its sensitivity grounds are compelling or that the documents are indeed classified as State secrets. Case law confirms that mere assertion of sensitivity is insufficient to sustain a privilege claim unless Respondent demonstrates that its privilege claims are compelling (*Clayton/Bilcon v Canada* tribunal observed that "*a mere assertion of sensitivity is not enough to sustain a privilege claim. The party that claims protection must adduce additional information to demonstrate that its special political or institutional sensitivity grounds are compelling*" and that "[*s]uch information should be sufficiently detailed to allow a tribunal and the opposing party to see that relevant documents are withheld*

[5] *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 2, dated 24 May 2006 (**CL-63**), p. 8. *See* also ibid. ("More fundamentally, however, the nature of this dispute resolution process is entirely different from a national court process. This is an international tribunal, governed by an international convention, which is mandated to enquire into the conduct and responsibility of a State in light of its international treaty and customary international law obligations. It is hardly conceivable that, in this setting, a State might invoke domestic notions of public interest and policy relating to the operations of its own Government as a basis to object to the production of documents which are relevant to determine whether the State has violated its international obligations and whether, therefore, its international responsibility is engaged.")

[6] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 6, 2 March 2021 (**CL-66**), ¶ 4

	only through a controlled review process and on the basis of appropriate legal criteria.").[7] Respondent fails to show why the Requested Documents are sensitive to Macedonia. *Third*, Respondent also fails to show that the Requested Documents are classified as State secrets under the Macedonian law.[8] Respondent asserts that the Requested Documents are classified as a secret by relying on Art. 289 of the Macedonian Law on Criminal Procedure. However, this does not mean that the Requested Documents are classified as State secrets. The purpose of secrecy of criminal pre-investigations is *inter alia* to prevent interference with ongoing pre-investigations by allowing the police to make inquiries without alerting suspects, accomplices, or others who may be involved in criminal activities, preserve the presumption of innocence of the suspects and prevent obstruction of justice *i.e.* tampering with evidence, influencing witnesses, or impeding the investigative process.[9] Accordingly, the rule of secrecy applies only to ongoing criminal pre-investigations. In contrast, the Requested Documents refer to criminal investigations completed three years ago without indictments being raised against any of the actors involved in TE-TO's judicial reorganisation. This is also a distinguishing factor from cases cited by Respondent, where criminal cases were ongoing at the time of the relevant investment arbitration,[10] which is not the case here. Moreover, in

[7] *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada,* PCA Case No. 2009-04, Procedural Order No. 13, 11 July 2012 (**CL-64**), ¶ 28.

[8] Law on Classified Information (Official Journal of the Republic of North Macedonia no. 275/19), (**C-146**), Art. 9 para 1 ("The information classified STATE SECRET shall be the information the unauthorized disclosure of which would put in jeopardy and cause irreparable damage to the permanent interests of the Republic of North Macedonia.") and Art. 11 para 1 ("The STATE SECRET classification level can be granted to an information by the President of the Republic of North Macedonia, the President of the Assembly of the Republic of North Macedonia, the President of the Government of the Republic of North Macedonia, the President of the Constitutional Court of the Republic of North Macedonia, the President of the Supreme Court of the Republic of North Macedonia, the ministers within their sphere of activity, the Public Prosecutor of the Republic of North Macedonia, the Chief of the General Staff of the Army of the Republic of North Macedonia, the Director of the Intelligence Agency, the Director of the National Security Agency, the Director of the Operational Technical Agency, the Director of the Crisis Management Centre, the Director of the Directorate for Security of Classified Information and the persons authorized by the abovementioned entities.")

[9] Prof. Dr. Gordan Kalajdziev et al, Commentary on the Law on Criminal Procedure (2018), (**C-147**), at pp. 639, 640 ("All activities and actions taken by the competent authorities during the pre-investigation procedure are carried out when there is knowledge that, based on criminal knowledge and experience, can be evaluated as evidence of a committed crime (grounds of suspicion), and at the same time, the principle of presumption of innocence should be respected. Bearing in mind that this is a phase of the procedure, in which information and evidence are still being collected, their disclosure can frustrate the procedure and therefore there is also the stated legal obligation that all actions in the pre-investigation procedure taken by the public prosecutor and the police are considered a secret")

[10] *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 14, 24 June 2020 (**RL-118**), ¶ 72 ("First, it is undisputed between the Parties that the requested documents pertain to ongoing criminal investigations that have not yet been completed and have not yet resulted in an indictment or commencement of court proceedings.") [emphasis added]; *Churchill Mining v. Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, 6 December 2016, (**RL-116**) ¶ 473 (noting that police initiated criminal investigations on forgery of documents in March 2014, while the investment arbitration case commenced already in 2012).

	Lupaka v Peru and *Churchill Mining v. Indonesia*, both cited by Respondent, Tribunals ordered production of documents from criminal proceedings.[11] Because GAMA was not a party to criminal proceedings specified above and because they are closed in any event, there would also be no risk of impediment of law enforcement. Tribunal in *Mason Capital v Korea* considered as a relevant fact that the disclosure of the requested documents from criminal proceedings would not impede law enforcement and that "[*s]uch conclusion cannot be drawn from the mere fact that Korean law restricts the access to non-public evidence and other prosecution documents in pending criminal proceedings*".[12] *Fourth*, Respondent has a duty to arbitrate in good faith, including an express duty under the IBA Rules to act in good faith in the production of the requested Documents. Respondent has not even attempted to mitigate its effect through alternative terms that might allow for production of the Documents, in whole or in part. Claimant is content to consider any reasonable accommodations to preserve the confidentiality of any documents outside of the arbitration for which there is a valid claim of sensitivity. Respondent has not proposed any such terms. The wrong assertion that the Requested Documents are classified as a secret and reliance on Macedonian law to avoid producing requested Documents runs contrary to Respondent's obligation to arbitrate in good faith and undermines the fairness and equality of parties in these proceedings. **Conclusion** Claimant maintains its request and asks the Tribunal to order the production of Requested Documents.
E. Decision of the Tribunal	Request Denied.

[11] *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Procedural Order No. 4 (Production of Documents), dated 2 June 2022 (**RL-119**), ¶¶ 3-4 (limited to final dispositions of the requested criminal complaints and investigations of the prosecutor's office and to certain cases); *Churchill Mining v. Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Annex A to Procedural Order No. 16 (**CL-65**), Request 11 (grating production of documents collected or generated during police or other government sponsored investigations).

[12] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 6, 2 March 2021 (**CL-66**), ¶ 4

Document Request No	2
A. Documents or category of documents requested (requesting party)	All Documents relating to the review of the Public Prosecution Office and the Public Prosecution Office for Organised Crime and Corruption of the criminal complaints by the Financial Police, Toplifikacija and Toplifikacija's stockholders, including but not limited to: 1. The decision of the Public Prosecution Office not to raise indictments against any of (i) Mr Vadim Mihailov, the President of the Management Board of TE-TO, (ii) Mrs Snezana Sardzovska, the notary who certified the annexes to the loan agreements and the Loan acceleration agreements; (iii) Mr Nikola Arsovski, the attorney at law who prepared the Loan acceleration agreements; (iv) Mr Vasko Blazhevski, the enforcement agent who enforced the Loan acceleration agreements against TE-TO for the criminal offence of "*abuse of official position*" upon the criminal complaint by Toplifikacija filed on 29 May 2018. 2. The decision of the Public Prosecution Office not to raise indictments against TE-TO and Bitar Holdings for the criminal offence of "*damaging and privileging of creditors*", upon the criminal complaint by Toplifikacija filed on 29 May 2018. 3. The decision of the Public Prosecution Office not to raise indictments against any of (i) Mr Vadim Mihailov, the President of the Management Board of TE-TO; (ii) Mrs Sashka Trajkovska, the bankruptcy judge who approved the Reorganisation Plan dated 6 June 2018; and (iii) Mrs Snezana Sardzovska, the notary who certified the annexes to the loan agreements and the Loan acceleration agreements for the criminal offences "*abuse of official position*" and "*false Insolvency*", upon the criminal complaint by the Financial Police filed in 2019. 4. The decision of the Public Prosecution Office not to raise an indictment against TE-TO for the criminal offence "*deliberately causing insolvency*", upon the criminal complaint by the Financial Police filed in 2019. 5. The decision of the Public Prosecution Office not to raise an indictment against Mr Marinko Sazdovski, the bankruptcy trustee of TE-TO, for the criminal offences of "*abuse of bankruptcy proceedings*" and "*abuse of official position*" upon the criminal complaint by the Financial Police and Toplifikacija's stockholders.

	6. The decision of the Public Prosecution Office for Organised Crime and Corruption not to raise indictments against any of the three individuals – former directors of TE-TO for the criminal offence "*money laundering*" upon the criminal complaint by the Financial Police filed in 2019.
B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties about whether TE-TO's judicial reorganisation and the conduct of Respondent's state organs in relation thereto, resulting in the write-off of 90% of Claimant's claim and the default interest against TE-TO, was in breach of Macedonian law and, subsequently, whether it amounts to a breach of the Treaty. The Requested Documents are relevant and material to the case and its outcome, as they relate to decisions by state organs of Respondent not to raise indictments on any count against TE-TO and any of the individuals and entities involved in TE-TO's reorganisation in contradiction with the findings of the Financial Police and Toplifikacija. The Requested Documents will show that Respondent refrained from prosecuting the fraudulent TE-TO's bankruptcy and reorganisation to prevent the collapse of the Reorganisation plan dated 6 June 2018 in support of Claimant's assertions that the statutory conditions for TE-TO's bankruptcy were fabricated, and that TE-TO's judicial reorganisation was approved by the Macedonian courts in breach of the statutory priorities of creditors' claims, the maximum time limits for reorganisation plan implementation (SoC, ¶¶ 73-75, 98-110, 115-127, 197(e), 255-271, 278(b)), 285(b), 286, 298(c)) and resulted in unlawful discrimination of GAMA compared to TE-TO's shareholders (SoC, ¶¶ 212-217), entailing Respondent's liability under the Treaty. The record confirms and the parties acknowledge that criminal complaints against individuals and entities involved in TE-TO's judicial reorganisation, which were filed by the Financial Police (see SoC, ¶¶ 122 to 127 and exhibits C-019, C-105, C-106, C-109, C-110, as well as SoD, ¶ 76) and by Toplifikacija (see SoC, ¶ 79 and exhibit C-087, as well as SoD, ¶ 75), were eventually dismissed by the Public Prosecution Office and the Public Prosecution Office for Organized Crime and Corruption (SoC, ¶¶ 126-127, exhibit C-110 and SoD, ¶ 76). The Requested Documents are not in the possession, custody or control of Claimant. The Financial Police, the Public Prosecution Office and the Public Prosecution Office for Organized Crime and Corruption are state organs of Respondent, and the Requested Documents are in the possession, custody and control of Respondent.
C. Objections to document request (objecting party)	**Objection No. 1: Overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** This request is overbroad and unduly burdensome insofar as it requires Macedonia to search for Documents "relating to" reviews by public prosecutors without any limitation on the meaning of "related to," or with respect to the custodian of the Document or the date when the Document was prepared.

	For example, as drafted, this request would cover all information "relating to" the subjects of investigations, prepared at any time and in the possession, custody or control of any State organ. **Objection No. 2: Not relevant or material (IBA Rules Art. 9.2(a))** The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA justifies this request as relevant and material "to decisions by state organs of Respondent not to raise indictments on any count against TE-TO and any of the individuals and entities involved in TE-TO's reorganisation." That point is not in dispute. Respondent agrees that criminal complaints were made and that charges were ultimately dismissed by the prosecutor (SoD ¶ 76). GAMA speculates, without evidence, that the requested Documents somehow "will show that Respondent refrained from prosecuting the fraudulent TE-TO's bankruptcy and reorganisation to prevent the collapse of the Reorganisation Plan." This is far-fetched fiction. Unsubstantiated (and, on their face, implausible) allegations are no license to trawl through sensitive and classified documents relating to criminal investigations and prosecutorial decisions. **Objection No. 3: Classified as secret (IBA Rules Art. 9.2(f))** Please refer to Objection No. 3 to Document Request No. 1. This request is for Documents "relating to the review" by two public prosecution offices of certain complaints. Under Macedonian law, as explained above, actions taken by the Public Prosecutor during preliminary investigations are secret. *See* Macedonian Law on Criminal Procedure (**R-11 Resubmitted**), Art. 289 ("All actions taken in the preliminary investigation procedure by the public prosecutor or the police are considered secret"). **Objection No. 4: Legal impediment (IBA Rules Art. 9.2(b))** Please refer to Objection No. 4 to Document Request No. 1. Under IBA Rules Article 9.2(b), a tribunal shall, at the request of a Party, exclude from production any Document falling under a "legal impediment or privilege under the legal or ethical rules determined by the Abitral Tribunal to be applicable." **Objection No. 5: No possession, custody or control (IBA Rules Art. 3.3(c)(ii))** This request is for Documents "relating to the review [by]" the Public Prosecution Office and the Public Prosecution Office for Organised Crime and Corruption. The Macedonian Public Prosecutor is an "independent state body," constitutionally independent from other branches of the Government (Constitution of Macedonia, Art. 106 with Amendment XXX (**R-18**)). As such, the Public Prosecution Office and the Public Prosecution Office for Organised Crime and Corruption have no legal obligation to provide the requested Documents to any other organs of Respondent (including the

	executive organs of Respondent that are acting on behalf of Respondent in this arbitration). And these organs have no more legal authority to obtain the requested Documents than GAMA does. In any case, as explained above, the requested documents are classified as secret and thus unavailable to either GAMA or Respondent. **Conclusion** For all these reasons, Macedonia objects to this request.
D. Response to objections and request for resolution (requesting party)	**Response to Objection No. 1: Request is not overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** *First*, the Request specifies a narrow group of Documents related to the review by specific state organs, i.e., the Public Prosecution Office and the Public Prosecution Office for Organised Crime and Corruption, of the criminal complaints by the Financial Police, Toplifikacija and Toplifikacija's stockholders against specific individuals and entities involved in TE-TO's judicial reorganisation. Claimant has narrowed this request to the best of its ability based on the knowledge and information in its possession at this time. Given that the Requested Documents were created by, belong to, and are in the exclusive control of Respondent, Claimant cannot be reasonably expected to articulate with more precision the specific identity or nature of any given Document (other than specific Documents listed in the request, the existence of which is known from public sources and not disputed) that may be responsive to this Request. The breadth of the Request is limited to the issues material to the claims asserted by the parties (see justification for materiality and relevance in Section B and below), including the applicable dates for Requested Documents. For this request, the appropriate date range is 19 June 2019 – 29 September 2020. To the extent that Claimant's requests are broad, they are necessarily so. *Second*, the Requested Documents are in the possession of the Public Prosecution Office and the Public Prosecution Office for Organized Crime and Corruption. The request does not extend to any other state organs of Respondent, as Respondent suggests in its objection. Accordingly, it would not be unduly burdensome to require Respondent to produce the Requested Documents since they are reasonably accessible to Respondent. *Third*, Claimant's request is framed with a higher degree of precision and responsiveness than the document production requests put forward by Respondent. As a result, if Claimant's request on its face, does not comply with Article 3(3)(a) of the IBA Rules, Respondent's requests also do not comply with Article 3(3)(a) of the IBA Rules, and should be dismissed.

	Response to Objection No. 2: The requested Documents are relevant and material (IBA Rules Art. 9.2(a)) The Requested Documents are relevant in support of Claimant's claims that Respondent refrained from prosecuting the fraudulent TE-TO's bankruptcy to prevent the collapse of the TE-TO's judicial reorganisation, which Respondent is trying to downplay. They are also relevant and material to show that TE-TO's bankruptcy and judicial reorganisation were fraudulent and in breach of Macedonian law, because the statutory conditions for TE-TO's bankruptcy were fabricated and TE-TO's judicial reorganisation was approved by the Macedonian courts in breach of the statutory priorities of creditors' claims, the maximum time limits for implementation of reorganisation plan and resulted in unlawful discrimination of GAMA compared to TE-TO's shareholders, constituting the breach of the Treaty (see section B above). The Financial Police investigated and determined that criminal complaints should be filed, even against the judge who authorized TE-TO's reorganization, but the Public Prosecution Office decided not to indict any of the actors involved in TE-TO's judicial reorganisation. The Public Prosecution Office did so in breach of the statutory deadline of three months[13] after more than one year after the filing of the criminal complaints and with a controversial explanation that "*the rights and obligations between these legal entities [TE-TO, Bitar Holdings and Toplifikacija] and their mutual claims are the subject of other procedures regulated by law, because business relations have been established between those legal entities and they are not subject to criminal legal proceedings*"[14] (SoC, ¶ 127). Mr. Arafat Muaremi, the former director of the Financial Police, publicly criticized the Public Prosecution Office for Organised Crime and Corruption's inaction regarding the criminal complaints filed by the Financial Police in relation to TE-TO's judicial reorganisation "[*b]y law, we must cooperate with [Public Prosecution Office for Organised Crime and Corruption], but for certain large, high stake cases, the prosecution has no interest in cooperating with us. Such are, for example, the investigations for FFM, MRT, TE-TO […]*"[15] The Requested Documents are therefore relevant and material because they will provide additional facts and analysis by Respondent's state organs of these criminal complaints, which will be highly relevant to determine Respondent's liability under the Treaty for acts of its organs involved in TE-TO's reorganisation.

[13] Macedonian Law on Criminal Procedure (**R-11 Resubmitted**), Art. 275 ("If the public prosecutor does not make a decision on the criminal charges within a period of three months from the day of receipt of the report, he or she will be obliged to immediately inform the applicant and the higher public prosecutor thereof.")

[14] Public Prosecution Office announcement (29 September 2020), "Four criminal charges rejected relating to TE- TO's dealings", <https://jorm.gov.mk/otfrleni-chetiri-krivichni-prijavi-vo-vrska-so-raboteneto-na-te-to/>, last accessed 25 May 2023 (**C-110 Resubmitted**)

[15] 24 Vesti Article (3 August 2022), "Muaremi announced criminal charges against prosecutors Ruskovska, Trajcheva and Josifovska" < https://24.mk/details/muaremi-najavi-krivichni-prijavi-za-obvinitelkite-ruskovska-trajcheva-i-josifovska>, last accessed 25 May 2023 (**C-148**)

	Response to Objections Nos. 3 and 4: Respondent cannot withhold production of documents on the basis of purported secrecy or legal impediment (IBA Rules Arts. 9.2(f) and 9.2(b)) Respondent's objections are not grounded. Please refer to Responses to Objections Nos. 3 and 4 in Document Request No. 1. **Response to Objection No. 5: Requested documents are in Respondent's possession, custody and control (IBA Rules Art. 3.3(c)(ii))** Respondent asserts that the Requested Documents are not in its possession, custody or control but in the possession of the Public Prosecution Office as an "*independent state body*" and asserts that it has no access to the Requested Documents. This argument is manifestly flawed. Respondent cannot avail of itself of the duty to produce Documents in this arbitration by invoking its internal division of branches of the Government. Under international law the Republic of North Macedonia is a single entity, and its judiciary and prosecutors are State organs, which are indistinguishable from the Republic of North Macedonia (ILC Articles on State Responsibility, Article 4(1)) and are under a direct obligation to comply with the Tribunal's orders. Respondent must be considered in possession, custody or control of documents of its judiciary and its prosecutors. Case law confirms this position in the context of document production as well (*Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 5 (**CL-62**), ¶ 34: "*The Tribunal agrees with Claimants that the Korean courts and prosecutors, as (undisputed) State organs, form an inextricable part of the Republic of Korea for the purposes of this document production*." […] Ibid., ¶ 35: "*Even if the Ministry of Justice were unable to obtain documents held by the Korean courts or prosecutors under Korean law […], it would not release other Korean State organs, including the Korean courts and prosecutors, from its obligations under international law.* Ibid., ¶ 36*: Consequently, the Tribunal considers documents held by the Korean courts, the Prosecutor's Office or the office of the Special Prosecutors, to be in Respondent's possession, custody and control.* Ibid.*,* ¶ 37: *"As regards Respondent's legal impediment argument, the Tribunal disagrees with Respondent that any alleged inability under domestic law for the Ministry of Justice or other parts of the executive branch to request documents from the Korean judiciary or prosecutors would amount to a legal impediment for the Republic of Korea in the sense of Article 9.2(b) IBA Rules. As stated before, it does not make any difference from the perspective of international law whether it is the Ministry of Justice, the Korean courts, prosecutors or any other State organ producing the requested documents."*).

	Conclusion Claimant maintains its request and asks the Tribunal to order the production of requested Documents.
E. Decision of the Tribunal	Request Denied.

Document Request No	3
A. Documents or category of documents requested (requesting party)	All Documents in the files or possession of the Government, in particular the Public Revenue Office, regarding TE-TO's corporate income tax debt for 2018 and the corporate income tax advance payments debt for 2019, including but not limited to all correspondence, email or other communications, memoranda, reports, opinions, meeting minutes and all other records to or from TE-TO and any other individuals, entities or state organs up to the date of the payment of the tax debt.
B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties as to whether, if the Public Revenue Office had commenced proceedings for enforced collection of the corporate income tax debt against TE-TO, this would have triggered the collapse of TE-TO's reorganisation and immediate opening of bankruptcy proceedings over TE-TO whereby the write-off of Claimant's claim against TE-TO would have been annulled and Claimant would have recovered its claim in its entirety (SoC, ¶¶ 129-130, 271). In particular, Respondent alleges that this assertion is unsupported, speculative, and implausible (SoD, ¶¶ 98, 232). The Requested Documents are relevant and material to the case and its outcome. They will further show that Respondent abstained from the enforced collection of the corporate income tax debt for 2018 and the corporate income tax advance payments debt for 2019 against TE-TO to ensure that TE-TO's judicial reorganisation would not collapse (SoC, ¶¶ 128-131,189(c), 197(f), 298(d)) and finally decided to grant TE-TO unlawful State aid in the form of a tax debt deferral, to the detriment of Claimant and in breach of the Treaty (SoC, ¶¶ 132-140, 147-159, 189(c), 197(f), 271, 278(c), 298(d)). The record confirms and the parties acknowledge that TE-TO submitted several different proposals to the Government to receive State aid concerning its tax debt for 2018 and the corporate income tax advance payments debt for 2019 (see exhibit C-139, SoD ¶ 95) and that Respondent acknowledged that TE-TO had financial difficulties and was unable to pay its tax debt (SoC, ¶¶ 137 -138 and exhibits C-024, C-139, as well as SoD, ¶¶ 94-95). The Requested Documents are not in the possession, custody or control of Claimant. The Government is a state organ of Respondent and the Requested Documents are therefore in the possession, custody and control of Respondent.

C. Objections to document request (objecting party)	**Objection No. 1: Not relevant or material (IBA Rules Art. 9.2(a))** The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA seeks to justify this request on the grounds that the requested Documents would show that Macedonia abstained from collecting TE-TO's income tax debt "to ensure that TE-TO's judicial reorganization would not collapse." It is not in dispute, however, that Macedonia deferred TE-TO's tax payment obligations, and did so because TE-TO was having financial difficulties (SoD ¶ 95). The requested Documents are thus not material on the basis of those uncontroverted issues. GAMA seeks also to justify this request by pointing to an issue that *is* in dispute: what would have happened "if the Public Revenue Office had commenced proceedings for enforced collection of the corporate income tax" (SoD ¶ 98). But the requested documents are not relevant to determining that counter-factual. All that the requested documents can show is what *did* happen regarding TE-TO's tax debt (and which is uncontroverted). The requested documents cannot show how TE-TO or others involved in its reorganization would have responded to tax collection efforts, or how the reorganization proceedings would have been altered, if at all, had Macedonia not deferred the tax debt. The requested Documents are thus not relevant to the issue in dispute that is relied upon by GAMA to make this request. **Objection No. 2: Overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** This request is overbroad and unduly burdensome insofar as it requires Macedonia to search for Documents "in the files or possession of the Government" without limiting the request to specific organs of the State. GAMA emphasises one Government agency ("in particular the Public Revenue Office") but that does not exclude any other agency or organ of the Government. It would be unduly burdensome to require Macedonia to search for all Documents "regarding" TE-TO's tax debt in every agency of the Government. **Conclusion** For all these reasons, Macedonia objects to this request. Without prejudice to its objections, Respondent agrees nevertheless to make its best efforts to obtain Documents from the Public Revenue Office evidencing TE-TO's income tax account balance for the fiscal year 2018.
D. Response to objections and request for resolution (requesting party)	**Response to Objection No. 1: The requested Documents are relevant and material (IBA Rules Art. 9.2(a))** It is not in dispute that Respondent deferred TE-TO's tax payment obligations because TE-TO was having financial difficulties. However, Respondent granted the tax debt deferral to TE-TO in breach of Macedonian

	law, as acknowledged by Respondent (SoC, ¶¶ 151-153; SoD, ¶ 96). Moreover, the tax debt deferral could not have been implemented by the Public Revenue Office, as established by the Anticorruption Commission[16] and TE-TO remained the largest tax debtor in Macedonia throughout 2019 and 2020 (SoC, ¶ 128), notwithstanding the granted tax debt deferral by Respondent. Still, the Public Revenue Office refrained from enforcing the tax debt against TE-TO at any time prior to, during the validity of the tax debt deferral[17] and after the termination of the tax debt deferral (SoC, ¶ 129). Respondent admitted that enforcing the tax debt against TE-TO would have caused its judicial reorganization to collapse and would have nullified the write-off of Claimant's claim against TE-TO (SoC, ¶ 130).[18] Accordingly, Claimant has reason to believe that the Government, particularly the Public Revenue Office, discussed the possibility of TE-TO's reorganization collapsing and bankruptcy proceedings opening if Macedonia didn't abstain from enforcing the tax debt. This information is reflected in the Requested Documents. **Response to Objection No. 2: Request is not overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** *First*, the Request specifies a narrow group of documents related to TE-TO's corporate income tax debt for 2018 and the corporate income tax advance payments debt for 2019. Claimant has narrowed this request to

[16] Non-confidential version of the Decision of the State Commission for the Prevention of Corruption no. 12-120/33 dated 27 November 2020 (**C-139 Resubmitted**), at p. 3 ([…] thus avoiding the interest that is accrued during the maturity extension of the already due tax debt, being reduced revenues of the state, i.e. it means interest write off in a tax procedure, which is not in accordance with the Law on Tax Procedure. This was indicated by the acting Minister of Finance Nina Angelovska since, thus the total amount of the debt for which the state aid is granted amounts to Denar 2,6 billion instead of the proposed Denar 872 million, however such explanation - indication did not affect the signing of the Agreement. Thus, this Agreement is not operational after a whole year since the signing, while TE-TO AD is still treated as a debtor.") See also Decision of the Commission for the Protection of Competition UP No. 10-81 dated 29 November 2019 (**C-126 Resubmitted**), at p.1 ("[…] the interest calculated for postponing the payment of the principal debt - monthly advance payments in the amount of Denar 889,174,390, arising from the 2018 tax balance of the Company for Production of Electricity and Heat TE-TO AD Skopje, seated at "515" Street, no. 8, 1000, Skopje, calculated from the day of their maturity until the day of submitting the 2019 tax balance, i.e. the 2020 tax balance, when they are cancelled[…]")

[17] Annual financial statements of TE-TO for the year ended on 31 December 2019 (**C-149**), at p. 13 ("The Public Revenue Office, until the day of preparation of the Reports, has not implemented the Agreement for granting state aid no. 08-2909/12 of 28.10.2019 and the Annex to the Agreement for granting state aid no. 08-2909/21 of 06.12.2019 and has not issued a Decision to defer the tax liability for the income tax for 2018, the monthly tax advances for 2019 resulting from the tax balance for 2018, as well as the calculated interest.")

[18] E-mail from Spokesperson of the Government of the Republic of North Macedonia dated 18 November 2019 (**C-24 Resubmitted**) ("[…] *the eventual approach to forced collection of that profit tax not only will prevent the reorganization of the company, but it is quite certain that it will lead to the opening of bankruptcy proceedings over it and the collapse of the Reorganization Plan. In that case, the "written off liabilities" according to the Reorganization Plan will be transformed again into actual liabilities of the company to creditors and will not have profit treatment, and thus the tax liability - profit tax for 2018 based on written off liabilities, no more to exist and the state will not charge it*.")

	the best of its ability based on the knowledge and information in its possession at this time. Given that requested Documents were created by, belong to, and are in the exclusive control of Respondent, Claimant cannot be reasonably expected to articulate with more precision the specific identity or nature of any given Document that may be responsive to this request. The breadth of the Request is limited to the issues material to the claims asserted by the parties (see justification for materiality and relevance in Section B and above), including the applicable dates for Requested Documents. For this request, the appropriate date range is 1 April 2019 – 1 April 2021. *Second*, the Requested Documents are in the possession of the Government and the Public Revenue Office, even if certain of the Requested Documents originated from other organs of the Government or third parties. Accordingly, it would not be unduly burdensome to require Respondent to produce the Requested Documents since they are reasonably accessible to Respondent. *Third*, Claimant's request is framed with a higher degree of precision and responsiveness than the document production requests put forward by Respondent. As a result, if Claimant's request on its face, does not comply with Article 3(3)(a) of the IBA Rules, Respondent's requests also do not comply with Article 3(3)(a) of the IBA Rules, and should be dismissed. **Conclusion** Claimant maintains its request and asks the Tribunal to order the production of requested Documents. Claimant notes Respondent's agreement to use its best efforts to produce part of the requested Documents, (documents from the Public Revenue Office evidencing TE-TO's income tax account balance for the fiscal year 2018).
E. Decision of the Tribunal	Request granted in part. Respondent is directed to produce documents from the Public Review Office evidencing TE-TO's income tax account balance for the fiscal year 2018 and any debt relating to corporate income tax advance payments for 2019.

Document Request No	4
A. Documents or category of documents requested (requesting party)	Documents relating to the authorisation, the granting and the termination of the State aid granted by Respondent to TE-TO in the form of deferral of TE-TO's corporate income tax debt for 2018 and the corporate income tax advance payments for 2019 for nine years, including but not limited to: 1. Notification for Planned Granting of State Aid No. 45-7232/2 dated 10 October 2019, by the Government to the Competition Commission with all enclosures. 2. Notification of Planned Granting of State aid no. 50-9096/2 dated 15 November 2019, by the Government to the Competition Commission with all enclosures. 3. Agreement for Granting State Aid, no. 08-2909/12 dated 28 October 2019, entered into between the Government as State aid grantor and TE-TO AD Skopje as State aid grantee. 4. Annex to the Agreement for Granting State Aid, no. 08- 2909/21, dated 6 December 2019, entered into between the Government as State aid grantor and TE-TO AD Skopje as State aid grantee. 5. Letter no. 44-11524/1 dated 1 December 2020 by the Government to the Competition Commission for the implementation of the Decision on Unilateral Termination of the Agreement for Granting State Aid, no. 08-2909/12, dated 28 October 2019 entered into between the Government as State aid grantor and TE-TO AD Skopje as State aid grantee with all enclosures. 6. Letter no. 44-11524/2 dated 1 December 2020 by the Government to the Competition Commission for the implementation of the Decision on Unilateral Termination of the Annex to the Agreement for Granting State Aid, no. 08- 2909/21 dated 6 December 2019, entered into between the Government as State aid grantor and TE-TO AD Skopje as State aid grantee with all enclosures.

B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties as to whether, absent the Respondent's unlawful tax debt deferral to TE-TO, TE-TO's reorganisation would collapse and lead to the immediate opening of bankruptcy proceedings over TE-TO whereby the write-off of Claimant's claim against TE-TO would have been annulled and Claimant would have recovered its claim in its entirety (SoC, ¶¶ 129-130, 132-140, 271 and SoD, ¶¶ 98, 232). The Requested Documents are relevant and material to the case and its outcome. They will show that TE-TO was unable to pay its tax debt and that Respondent decided to grant TE-TO tax debt deferral "*to promote the execution of an important project of significant economic interest for the Republic of Macedonia*" as an excuse not to enforce the tax debt against TE-TO, which would lead to the collapse of TE-TO's unlawful judicial reorganisation and full repayment of Claimant's claim against TE-TO, to the detriment of Claimant and in breach of the Treaty (SoC, ¶¶ 132-140, 147-153, 189(c), 197(f), 271, 278(c), 298(d) and exhibit C-024). The existence of the Requested Documents listed above follows from exhibits C-120, C-126, C-141 and C-142, which refer to them. The Requested Documents are not in the possession, custody or control of Claimant. The Government and the Competition Commission are state organs of Respondent, and the Requested Documents are therefore in the possession, custody and control of Respondent.
C. Objections to document request (objecting party)	**Objection No. 1: Not relevant or material (IBA Rules Art. 9.2(a))** The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA says that the requested Documents "will show that TE-TO was unable to pay its tax debt and that Respondent decided to grant TE-TO tax debt deferral." Macedonia does not dispute that TE-TO could not "fulfil its existing monetary obligations" (SoD ¶ 66) and that Macedonia granted TE-TO a tax debt deferral (SoD ¶¶ 94-97). Since these facts are not controversial, the requested documents are not material on that basis to issues in dispute in this arbitration. GAMA says that the requested documents will show that if Macedonia had enforced the tax debt, it "would lead to the collapse" of TE-TO's Reorganisation Proposal. But the requested documents – "Documents relating to the authorisation, the granting and the termination of the State aid" – show only what *did* happen. They are not relevant to the counterfactual scenario of what would have happened if Macedonia had *not* granted a tax deferral to TE-TO. The requested Documents are not relevant to whether TE-TO's Reorganization Proposal would have "collapsed" if the tax deferral was not granted for a year, as GAMA speculates. **Objection No. 2: Overbroad and unduly burdensome (IBA Rules Art. 9.2(c))**

	This request is overbroad and unduly burdensome insofar as it requires Macedonia to search for Documents "relating to the authorisation, the granting and the termination" of the tax deferral without any limitation on the meaning of "relating to," or with respect to the custodian of the Document or the date when the Document was prepared. It would be unduly burdensome to require Macedonia to search for such a broad category of Documents across all State offices and organs to which it has access. Moreover, this request potentially covers an unconstrained range of Documents including Macedonian law, policy and procedural Documents "relating to" taxes, national economy and energy security communications related to the Plant, internal and external public relations and media communcations related to TE-TO, as well as any internal or external communications relating to either the authorization, granting, or termination of the tax deferral. **Conclusion** For all these reasons, Macedonia objects to this request. Without prejudice to its objections, Macedonia agrees nevertheless to make its best efforts to obtain the six specific Documents identified in this request, if they exist and are within the possession, custody and control of Respondent.
D. Response to objections and request for resolution (requesting party)	**Response to Objection No. 1: The requested Documents are relevant and material (IBA Rules Art. 9.2(a))** It is not in dispute that Respondent deferred TE-TO's tax payment obligations because TE-TO was having financial difficulties. However, Respondent granted the tax debt deferral to TE-TO in breach of Macedonian law, as acknowledged by Respondent (SoC, ¶¶ 151-153; SoD, ¶ 96). Moreover, the tax debt deferral could not have been implemented by the Public Revenue Office, as established by the Anticorruption Commission[19] and TE-TO remained the largest tax debtor in Macedonia throughout 2019 and 2020 (SoC, ¶ 128),

[19] Non-confidential version of the Decision of the State Commission for the Prevention of Corruption no. 12-120/33 dated 27 November 2020 (**C-139 Resubmitted**), at p. 3 ([…] thus avoiding the interest that is accrued during the maturity extension of the already due tax debt, being reduced revenues of the state, i.e. it means interest write off in a tax procedure, which is not in accordance with the Law on Tax Procedure. This was indicated by the acting Minister of Finance Nina Angelovska since, thus the total amount of the debt for which the state aid is granted amounts to Denar 2,6 billion instead of the proposed Denar 872 million, however such explanation - indication did not affect the signing of the Agreement. Thus, this Agreement is not operational after a whole year since the signing, while TE-TO AD is still treated as a debtor.") See also Decision of the Commission for the Protection of Competition UP No. 10-81 dated 29 November 2019 (**C-126 Resubmitted**), at p.1 ("[…] the interest calculated for postponing the payment of the principal debt - monthly advance payments in the amount of Denar 889,174,390, arising from the 2018 tax balance of the Company for Production of Electricity and Heat TE-TO AD Skopje, seated at "515" Street, no. 8, 1000, Skopje, calculated from the day of their maturity until the day of submitting the 2019 tax balance, i.e. the 2020 tax balance, when they are cancelled[…]")

	notwithstanding the granted tax debt deferral by Respondent. Still, the Public Revenue Office refrained from enforcing the tax debt against TE-TO at any time prior to, during the validity of the tax debt deferral[20] and after the termination of the tax debt deferral (SoC, ¶ 129). Respondent acknowledged that if the tax debt would have been enforced against TE-TO, its judicial reorganization would collapse and the write-off of Claimant's claim against TE-TO would be annulled (SoC, ¶ 130).[21] Based on this publicly available information Claimant reasonably believes that the Requested Documents will confirm (i) the counterfactual scenario of the collapse of TE-TO's reorganization and immediate opening of bankruptcy proceedings, had Macedonia not deferred the tax debt, as discussed by the Government and its agencies and (ii) that in order to prevent such a scenario, Government granted an unlawful State Aid in the form of a tax deferral. **Response to Objection No. 2: Request is not overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** *First*, the Request specifies a narrow group of documents related to the State aid granted by Respondent to TE-TO in the form of deferral of TE-TO's corporate income tax debt for 2018 and the corporate income tax advance payments for 2019. Claimant has narrowed this request to the best of its ability based on the knowledge and information in its possession at this time. Given that Requested Documents were created by, belong to, and are in the exclusive control of Respondent, Claimant cannot be reasonably expected to articulate with more precision the specific identity or nature of any given Document that may be responsive to this request. The breadth of the Request is limited to the issues material to the claims asserted by the parties (see justification for materiality and relevance in Section B and above), including the applicable dates for Requested Documents. For this request, the appropriate date range is 1 April 2019 – 1 December 2020. To the extent that Claimant's requests are broad, they are necessarily so. *Second*, the requested Documents are in the possession of state organs specified above, *i.e.* the Government, the Competition Commission and the Public Revenue Office. Accordingly, it would not be unduly burdensome

[20] Annual financial statements of TE-TO for the year ended on 31 December 2019 (**C-149**), at p. 13 ("The Public Revenue Office, until the day of preparation of the Reports, has not implemented the Agreement for granting state aid no. 08-2909/12 of 28.10.2019 and the Annex to the Agreement for granting state aid no. 08-2909/21 of 06.12.2019 and has not issued a Decision to defer the tax liability for the income tax for 2018, the monthly tax advances for 2019 resulting from the tax balance for 2018, as well as the calculated interest.")

[21] E-mail from Spokesperson of the Government of the Republic of North Macedonia dated 18 November 2019 (**C-24 Resubmitted**) ("[…] *the eventual approach to forced collection of that profit tax not only will prevent the reorganization of the company, but it is quite certain that it will lead to the opening of bankruptcy proceedings over it and the collapse of the Reorganization Plan. In that case, the "written off liabilities" according to the Reorganization Plan will be transformed again into actual liabilities of the company to creditors and will not have profit treatment, and thus the tax liability - profit tax for 2018 based on written off liabilities, no more to exist and the state will not charge it*.")

	to require Respondent to produce the Requested Documents since they are reasonably accessible to Respondent. *Third*, Claimant's request is framed with a higher degree of precision and responsiveness than the document production requests put forward by Respondent. As a result, if Claimant's request on its face, does not comply with Article 3(3)(a) of the IBA Rules, Respondent's requests also do not comply with Article 3(3)(a) of the IBA Rules, and should be dismissed. **Conclusion** Claimant maintains its request and asks the Tribunal to order the production of requested Documents. Claimant notes Respondent's agreement to use its best efforts to produce part of the requested Documents, (six specific Documents identified in this request).
E. Decision of the Tribunal	Granted with respect to the six documents specifically identified in this Request, which the Respondent is directed to produce.

Document Request No	5
A. Documents or category of documents requested (requesting party)	All Documents in the files or possession of the Anticorruption Commission concerning case no. 12-5267 from 2019 leading to the adoption of the Decision of the Anticorruption Commission no. 12-120/33 dated 27 November 2020, including but not limited to all correspondence, email or other communications, memoranda, reports, opinions, meeting minutes and all other records to or from: 1. Civil Court Skopje 2. Financial Police 3. Public Prosecution for Organised Crime and Corruption 4. Public Prosecution 5. Public Revenue Office 6. Competition Commission 7. Regulatory Commission for Energy and Water Services of the Republic of North Macedonia 8. MEPSO AD Skopje 9. Central Registry of the Republic of North Macedonia 10. Government 11. Representatives of the Association of Toplifikacija's Stockholders 12. Online meeting with Mr Zoran Zaev, then Prime Minister of the Republic of North Macedonia; and 13. Representatives and experts from other state organs, individuals and entities.
B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties about whether TE-TO's judicial reorganisation and the conduct of Respondent's state organs in relation thereto, resulting in the write-off of 90% of Claimant's claim and the default interest against TE-TO, was in breach of Macedonian law and, subsequently, whether it amounts to a breach of the Treaty. Furthermore, the parties are in disagreement on whether, absent the Respondent's unlawful tax debt deferral to TE-TO, TE-TO's reorganisation would collapse and lead to the immediate opening of bankruptcy proceedings over TE-TO whereby the write-off of Claimant's claim against TE-TO would have been annulled and Claimant would have recovered its claim in its entirety (SoC, ¶¶ 129-130, 132-140, 271 and SoD, ¶¶ 98, 232). The Requested Documents are relevant and material to the case and its outcome as they relate to the investigation of TE-TO's judicial reorganisation and the tax debt deferral granted by Respondent to TE-TO by a state organ of Respondent. The Anticorruption Commission established that TE-TO's judicial reorganisation and

	the tax debt deferral granted by Respondent to TE-TO were in breach of Macedonian law and recommended that Respondent discontinue the tax debt deferral. They will further show that TE-TO's judicial reorganisation was in breach of Macedonian law (SoC, ¶¶ 102-103, 128-131) and that Respondent, although aware that the granting of a tax debt deferral to TE-TO was unlawful, decided to grant it to prevent the collapse of TE-TO's unlawful judicial reorganisation whereby Claimant would have recovered its claim against TE-TO in its entirety, to the detriment of Claimant and in breach of the Treaty (SoC, ¶¶ 130, 132-140, 147-159, 189(c), 197(f), 271, 278(c), 298(d)). The record confirms and the parties acknowledge that the Anticorruption Commission investigated TE-TO's judicial reorganisation and the tax debt deferral granted by Respondent to TE-TO and established that the tax debt deferral granted by Respondent to TE-TO was unlawful (SoC, ¶¶ 151-152 and exhibit C-139 as well as SoD, ¶ 96). The existence of the Requested Documents listed above follows from exhibit C-139, which refers to them. The Requested Documents are not in the possession, custody or control of Claimant. The Anticorruption Commission, as well as other state organs which provided information to the Anticorruption Commission, as listed above, are state organs of Respondent, and the Requested Documents are therefore in the possession, custody and control of Respondent.
C. Objections to document request (objecting party)	**Objection No. 1: Not relevant or material (IBA Rules Art. 9.2(a))** The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA justifies the requested Documents as relevant and material "as they relate to the investigation of TE-TO's judicial reorganisation and the tax debt deferral." As GAMA acknowledges, however, there is no dispute that the Anticorruption Commission found that the tax deferral should be terminated. Its reasons for that finding are on the record and GAMA does not assert that its reasons are in dispute (*see* Decision of the State Commission for Prevention of Corruption, dated 7 December 2020 (C-139)). **Objection No. 2: Overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** This request is overbroad and unduly burdensome. Despite the decision of the Commission being on the record, and despite GAMA apparently having no quarrel with that decision, GAMA speculates that there might be a Document "concerning" the decision that could establish GAMA's theory that the Government was, at the time of granting the tax deferral, "aware that the granting of a tax debt deferral to TE-TO was unlawful." In service of its speculation, GAMA seeks to undertake a fishing expedition for correspondence engaging 13 different categories of State and non-State actors, including Macedonian courts, public prosecution offices, the Financial Police, other independent agencies, private individuals, and a former Prime Minister.

	Objection No. 3: No possession, custody or control (IBA Rules Art. 3.3(c)(ii)) Documents "in the files or possession of the Anticorruption Commission" are not in the possession, custody or control of Respondent. The Anticorruption Commission is statutorily independent of the executive and other branches of the Government. The Anticorruption Commission was established under the Law on Prevention of Corruption and Conflict of Interests (**R-19**) as "autonomous and independent" (Article 9(1)). The executive organs of Respondent (which act on behalf of Respondent in this arbitration) have no authority to oversee the Anticorruption Commission's work, direct its actions, or demand Documents. Since the executive branch has no legal basis to compel production from the Anticorruption Commission, the requested Documents are not in its possession, custody or control. **Objection No. 4: Institutional sensitivity (IBA Rules Arts. 9.2(f))** The requested "Documents in the files or possession of the Anticorruption Commission concerning case no. 12-5267" are sensitive in nature and thus fall outside the scope of production in this arbitration. The IBA Rules Article 9.2(f) recognize that a tribunal "shall, at the request of a Party or on its own motion, exclude from evidence or production any Document [on] … (f) grounds of special political or **institutional sensitivity** (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling." Records of the Anticorruption Commission are sensitive by nature as they relate to the Commission's quasi-judicial investigations and its ability to fulfill its "autonomous and independent" mandate. The *Merrill and Ring* tribunal explained that "[e]ven if such information is not formally classified as "secret", the purpose of the privilege is quite evidently to prevent disclosure of documents containing information which is sensitive by its nature" (*Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Decision of the Tribunal on Production of Documents (18 July 2008) (**RL-115**, ¶ 18). **Conclusion** For all these reasons, Macedonia objects to this request.
D. Response to objections and request for resolution (requesting party)	**Response to Objection No. 1: The requested Documents are relevant and material (IBA Rules Art. 9.2(a))** Claimant's request has been made with adequate particularity and reference to the relevant factual and legal issues identified in the SoC and the SoD (see Section B). Claimant's claims that TE-TO's judicial reorganisation was approved by the Macedonian courts in manifest breach of Macedonian law and that the

	State aid granted to TE-TO by Respondent was unlawful coincide with the results of the investigation of the Anticorruption Commission. The Requested Documents are therefore relevant and material because they will provide additional facts and analysis gathered by Respondent's state organ, which investigated the legality of TE-TO's judicial reorganisation and State Aid, forming part of the factual matrix to establish Respondent's liability under the Treaty and customary international law for acts of its organs involved in TE-TO's reorganisation. **Response to Objection No. 2: Request is not overbroad and unduly burdensome (IBA Rules Art. 9.2(c))** *First*, Claimant's Request specifies a narrow group of documents related to the investigation by Anticorruption Commission of TE-TO's judicial reorganisation and the tax debt deferral granted by Respondent to TE-TO. Claimant has narrowed and particularized this request to the best of its ability based on the knowledge and information in its possession at this time. Given that the Requested Documents were created by, belong to, and are in the exclusive control of Respondent, Claimant cannot be reasonably expected to articulate with more precision the specific identity or nature of any given Document that may be responsive to this request. The breadth of the Request is limited to the issues material to the claims asserted by the parties (see justification for materiality and relevance in Section B and above), including the applicable dates for requested Documents. For this request, the appropriate date range is 30 August 2018 – 7 December 2020. *Second*, Claimant's Request refers exclusively to Documents in possession of the Anticorruption Commission concerning case no. 12-5267 from 2019 leading to the adoption of the Decision of the Anticorruption Commission no. 12-120/33 dated 27 November 2020 (**C-139**). The request does not extend to any other state organs of Respondent, including not to organs, which sent or received information to or from the Anticorruption Commission, unless the requested Documents are no longer in the files of the Anticorruption Commission. Accordingly, it would not be unduly burdensome to require Respondent to produce the Requested Documents since they are reasonably accessible to Respondent. *Third*, Claimant's request is framed with a higher degree of precision and responsiveness than the document production requests put forward by Respondent. As a result, if Claimant's request on its face, does not comply with Article 3(3)(a) of the IBA Rules, Respondent's requests also do not comply with Article 3(3)(a) of the IBA Rules, and should be dismissed. **Response to Objection No. 3: Requested documents are in Respondent's possession, custody and control (IBA Rules Art. 3.3(c)(ii))** Respondent asserts that the Documents requested are not in its possession, custody or control but in the

	possession of the Anticorruption Commission as an independent state body and asserts that it has no access to the Requested Documents. This argument is manifestly flawed. Respondent cannot avail of itself of the duty to produce Documents in this arbitration by invoking its internal division of branches of the Government. Under international law the Republic of North Macedonia is a single entity and its agencies, such as the Anticorruption Commission, are State organs which are indistinguishable from the Republic of North Macedonia (ILC Articles on State Responsibility, Article 4(1)) and are under a direct obligation to comply with the Tribunal's orders. This basic premise has been confirmed by Tribunal in *Mason Capital v Korea*.[22] **Response to Objection No. 4: Respondent cannot withhold production of documents on the basis of the purported institutional sensitivity (IBA Rules Arts. 9.2(f))** *First*, Respondent cannot rely on its national law to avoid producing Requested Documents, particularly where Respondent agreed to and consented to the arbitration being governed by international law. Tribunal in *Biwater Gauff v Tanzania* observed that "*[i]f a State were permitted to deploy its own national law in this way, it would, in effect, be avoiding its obligation to produce documents in so far as called upon to do so by this Tribunal. This […] is an international legal obligation arising from the State's consent from the BIT to ICSID arbitration*," which "*may also thereby stifle the evaluation of its own conduct and responsibility*," and "*undermine the well-established rule that no State may have recourse to its own internal law to avoid its international responsibilities*."[23] Similarly, in the context of disclosure of documents from criminal proceedings, Tribunal in *Mason Capital v Korea* considered that "*Korean laws and regulations, such as the Korean Criminal*

[22] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 5, 15 January 2021 (**CL-62**), ¶ 34 ("The Tribunal agrees with Claimants that the Korean courts and prosecutors, as (undisputed) State organs, form an inextricable part of the Republic of Korea for the purposes of this document production." […] Ibid., ¶ 35: "Even if the Ministry of Justice were unable to obtain documents held by the Korean courts or prosecutors under Korean law […], it would not release other Korean State organs, including the Korean courts and prosecutors, from its obligations under international law. Ibid., ¶ 36: Consequently, the Tribunal considers documents held by the Korean courts, the Prosecutor's Office or the office of the Special Prosecutors, to be in Respondent's possession, custody and control. Ibid., ¶ 37: "As regards Respondent's legal impediment argument, the Tribunal disagrees with Respondent that any alleged inability under domestic law for the Ministry of Justice or other parts of the executive branch to request documents from the Korean judiciary or prosecutors would amount to a legal impediment for the Republic of Korea in the sense of Article 9.2(b) IBA Rules. As stated before, it does not make any difference from the perspective of international law whether it is the Ministry of Justice, the Korean courts, prosecutors or any other State organ producing the requested documents.")

[23] *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 2, dated 24 May 2006 (**CL-63**), p. 8. *See* also ibid. ("More fundamentally, however, the nature of this dispute resolution process is entirely different from a national court process. This is an international tribunal, governed by an international convention, which is mandated to enquire into the conduct and responsibility of a State in light of its international treaty and customary international law obligations. It is hardly conceivable that, in this setting, a State might invoke domestic notions of public interest and policy relating to the operations of its own Government as a basis to object to the production of documents which are relevant to determine whether the State has violated its international obligations and whether, therefore, its international responsibility is engaged.")

	Procedure Act, are not decisive for Respondent's disclosure obligations under international law".[24] *Second*, Respondent merely asserts that the Requested Documents are "*sensitive in nature and thus fall outside the scope of production in this arbitration*" without demonstrating that its institutional sensitivity grounds are compelling or referring to any corresponding provision of Macedonian law. Case law confirms that mere assertion of sensitivity is insufficient to sustain a privilege claim unless Respondent demonstrates that its privilege claims are compelling. [25] Respondent fails to show why the Requested Documents are sensitive to Macedonia insofar that they relate to the investigation of the Anticorruption Commission of TE-TO's judicial reorganization and the Government's granting of State aid to TE-TO. **Conclusion** Claimant maintains its request and asks the Tribunal to order the production of requested Documents.
E. Decision of the Tribunal	Request denied.

[24] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 6, 2 March 2021 (**CL-66**), ¶ 4

[25] *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 13, 11 July 2012 (**CL-64**), ¶ 28 (Where the tribunal observed that "*a mere assertion of sensitivity is not enough to sustain a privilege claim. The party that claims protection must adduce additional information to demonstrate that its special political or institutional sensitivity grounds are compelling*" and that "[*s]uch information should be sufficiently detailed to allow a tribunal and the opposing party to see that relevant documents are withheld only through a controlled review process and on the basis of appropriate legal criteria*.")

Document Request No	6
A. Documents or category of documents requested (requesting party)	All Documents in the files or possession of the Civil Court Skopje in case no. 03 IZZ No.102/2018 relating to the request for recusal of Mrs Sashka Trajkovska, the bankruptcy judge who approved the Reorganisation Plan dated 6 June 2018, including but not limited to the written statement provided by the judge in response to the motions for recusal by Claimant and Toplifikacija.
B. Relevance and materiality, including references to submissions (requesting party)	There is a dispute between the parties as to whether the decision of the Deputy President of the Civil Court Skopje to reject Claimant's and Toplifikacija's motions for recusal of Mrs Sashka Trajkovska, the bankruptcy judge who approved the Reorganisation Plan dated 6 June 2018 was taken in accordance with Macedonian law (SoC, ¶¶ 111-113 and SoD, ¶¶ 183-184). The Requested Documents are relevant and material to the case and its outcome as they will show that the Deputy President of the Civil Court Skopje decided to reject Claimant's and Toplifikacija's motions for recusal of Mrs Sashka Trajkovska after the vote on TE-TO's judicial reorganisation by its creditors and that Claimant was not served with the decision for rejection of its motion prior to the vote on TE-TO's judicial reorganisation in breach of Macedonian law and forming part of the breach of the Treaty (SoC, ¶¶ 111-113, 262-266). The record confirms the existence of the Requested Documents (exhibit C-103, p. 2). The Requested Documents are not in the possession, custody or control of Claimant. The Civil Court Skopje is a state organ of Respondent, and the Requested Documents are therefore in the possession, custody and control of Respondent.
C. Objections to document request (objecting party)	**Objection No. 1: Not relevant or material (IBA Rules Art. 9.2(a))** The requested Documents are not relevant or material to issues in dispute in this arbitration. GAMA justifies the requested Documents as relevant and material "as they will show that the Deputy President of the Civil Court Skopje decided to reject Claimant's and Toplifikacija's motions for recusal of Mrs Sashka Trajkovska after the vote on TE-TO's judicial reorganisation." That assertion is contradicted by the minutes of the hearing (SoD ¶ 183). GAMA nevertheless speculates that the bankruptcy judge must have lied when she said that the motion to recuse her had been rejected (SoD ¶ 184). Unsubstantiated (and, on their face, implausible) allegations are no license to trawl through confidential and privileged documents relating to judicial decision making.

	Objection No. 2: Legal impediment (IBA Rules Arts. 9.2(b) and (f)) This request is for Documents "relating to the request for recusal." The request thus includes Documents evidencing judicial deliberations and internal court communications. The filing of international arbitration proceedings does not give Claimant a license to trawl through privileged documents regarding judicial deliberations. The IBA Rules recognize the need to exclude from production Documents sheltered by legal impediment or that enjoy special institutional sensitivity. Under the IBA Rules a tribunal "shall, at the request of a Party or on its own motion, exclude from evidence or production any Document" protected by "(b) legal impediment or privilege under the legal or ethical rules determed by the Arbitral Tribunal to be applicable" or on "(f) grounds of special political or institutional sensitivity." Here, the requested Documents are protected by judicial deliberation privilege as informed by the constitutional independence of the Macedonian courts (Constitution of Macedonia (**R-18**) Art. 98). Macedonian courts carry out the constitutionally-assigned judicial function in Macedonia under supervision of the (independent) Judicial Council of Macedonia (Constitution of Macedonai (**R-18**) Art. 104)). There is no basis in Macedonian law for the Government or any other third party to peer into court deliberations. Facing a similar request, the tribunal in *Bridgestone Licensing Services Incorporated and Bridgestone Americas Incorporated v. Panama*, Procedural Order No. 7, ICSID Case No ARB/16/34, 15 January 2019 (**RL-117**) at 6, rejected Claimants' request for records of communications between judges in a municipal court, reasoning that the "privilege that protects judicial deliberations should be respected." The same reasoning applies in this case. **Objection No. 3: No possession, custody or control (IBA Rules Art. 3.3(c)(ii))** Documents "in the files or possession of the Civil Court Skopje" are not in the possession, custody or control of the executive branch of the Government. The Constitution of Macedonia guarantees the independence of the judiciary. Article 98 of the Constitution (**R-18**) provides that Macedonian ["[c]ourts are autonomous and independent." The executive branch of Respondent (which acts on behalf of Macedonia in this arbitration) has no legal authority to direct the actions of Macedonian courts and enjoys no advantage in obtaining information or documents from Macedonian courts. **Conclusion** For all these reasons, Macedonia objects to this request.
D. Response to objections and	

request for resolution (requesting party)	**Response to Objection No. 1: The requested Documents are relevant and material (IBA Rules Art. 9.2(a))** Claimant argues that the decision of the Deputy President of the Civil Court Skopje to reject Claimant's and Toplifikacija's motions for recusal of the bankruptcy judge was not taken in accordance with Macedonian law. Specifically, the Decision for rejection of the request of recusal by the Deputy President of the Civil Court Skopje, dated 14 June 2018 (**C-103 Resubmitted**) shows that (i) the Judge Sashka Trajkovska submitted to the Deputy President a detailed written statement explaining her reasons why she believed the request was not grounded (p.2), which is implausible, considering that the hearing where her recusal was requested was suspended only for an hour, until the Deputy President's decision[26] and (ii) her statement refers to creditors' vote and her approval of the Reorganisation plan dated 6 June 2018[27] (SoC, ¶ 112), which should have taken place only after the Deputy President was supposed to decide upon the request for recusal. These inconsistencies cast serious doubts on the legality of the process. The requested Documents will therefore show whether the decision of the Deputy President to reject motions for recusal of the bankruptcy judge was taken in accordance with Macedonian law, which is in dispute between parties (SoC, ¶¶ 111-113, 262-266; SoD, ¶ 184), and relevant to establish Respondent's liability under the Treaty and customary international law. **Response to Objection No. 2: Respondent cannot withhold production of documents on the basis of the purported legal impediment (IBA Rules Arts. 9.2(b) and (f))** *First*, Respondent cannot rely on its national law to avoid producing requested Documents, particularly where Respondent agreed to and consented to the arbitration being governed by international law. Tribunal in *Biwater Gauff v Tanzania* observed that "*[i]f a State were permitted to deploy its own national law in this way, it would, in effect, be avoiding its obligation to produce documents in so far as called upon to do so by this Tribunal. This […] is an international legal obligation arising from the State's consent from the BIT to ICSID arbitration*," which "*may also thereby stifle the evaluation of its own conduct and responsibility*," and "*undermine the well-established rule that no State may have recourse to its own internal law to avoid its*

[26] Minutes of the hearing before the Civil Court Skopje, dated 14 June 2018 (**C-102 Resubmitted**), at p. 5 ("the Court pauses the procedure and declares a one-hour recess for the Court President to decide on the motions for removal of the Judge").

[27] Decision for rejection of the request of recusal by the Deputy President of the Civil Court Skopje, dated 14 June 2018, at p. 4 (**C-103 Resubmitted**)

	international responsibilities."[28] *Second*, the written statement of the judge explaining her reasons why she believed the request for recusal was not grounded is summarized in detail in the Decision for rejection of the request of recusal by the Deputy President of the Civil Court Skopje, dated 14 June 2018 (**C-103 Resubmitted**), at p. 2-3. Consequently, there can be no legal impediment to produce it. Rather, the relevant legal question underlying this Request is *when* such a written statement was drafted and provided to the Deputy President. This cannot be a privileged information. The same applies to a decision-making with respect to the Decision for rejection of the request of recusal by the Deputy President of the Civil Court Skopje, dated 14 June 2018 (**C-103 Resubmitted**), the content of which is known, but parties are in dispute *when* it was rendered, *i.e.* before the resumption of the 14 June 2018 hearing or only after the hearing, which is a relevant fact to determine the legality of the process (see Response to Objection No. 1 above). *Third*, a mere assertion of sensitivity is insufficient to sustain a privilege claim unless Respondent demonstrates that its privilege claims are compelling.[29] Respondent failed to show any such compelling reasons. **Response to Objection No. 3: Requested documents are in Respondent's possession, custody and control (IBA Rules Art. 3.3(c)(ii))** Respondent cannot avail of itself of the duty to produce Documents in this arbitration by invoking its internal division of branches of the Government. Under international law the Republic of North Macedonia is a single entity and its organs, such as the Civil Court Skopje, are State organs which are indistinguishable from the Republic of North Macedonia (ILC Articles on State Responsibility, Article 4(1)) and are under a direct obligation to comply with the Tribunal's orders. This basic premise has been confirmed in case law (Tribunal in *Mason Capital v Korea* "*disagree[d] with Respondent that any alleged inability under domestic law for the*

[28] *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 2, dated 24 May 2006 (**CL-63**), p. 8. *See* also ibid. ("More fundamentally, however, the nature of this dispute resolution process is entirely different from a national court process. This is an international tribunal, governed by an international convention, which is mandated to enquire into the conduct and responsibility of a State in light of its international treaty and customary international law obligations. It is hardly conceivable that, in this setting, a State might invoke domestic notions of public interest and policy relating to the operations of its own Government as a basis to object to the production of documents which are relevant to determine whether the State has violated its international obligations and whether, therefore, its international responsibility is engaged.")

[29] *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Procedural Order No. 13, 11 July 2012 (**CL-64**), ¶ 28.

	Ministry of Justice or other parts of the executive branch to request documents from the Korean judiciary or prosecutors would amount to a legal impediment for the Republic of Korea in the sense of Article 9.2(b) IBA Rules. As stated before, it does not make any difference from the perspective of international law whether it is the Ministry of Justice, the Korean courts, prosecutors or any other State organ producing the requested documents.")[30] Respondent's argument that the executive branch of Respondent has no legal authority to direct the actions of Macedonian courts and enjoys no advantage in obtaining information or documents from Macedonian courts is therefore manifestly flawed. Moreover, this stance is also contradicted by Respondent's own actions in this arbitration. Respondent had already submitted in the record of this arbitration documents from court proceedings (GAMA's submission, dated 31 January 2023 (R-12); SoD, ¶¶ 124, 149). **Conclusion** Claimant maintains its request and asks the Tribunal to order the production of requested Documents.
E. Decision of the Tribunal	Request denied.

[30] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Procedural Order No. 5, 15 January 2021 (**CL-62**), ¶ 37. *See* also ibid., ¶¶ 34--36.

Respectfully submitted,

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INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION

GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAHHÜT A.Ş.

Claimant

v.

THE REPUBLIC OF NORTH MACEDONIA

Respondent

RESPONDENT'S STERN SCHEDULE

(with Tribunal Decisions of 9 June 2023)

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29 May 2023

WHITE & CASE

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Counsel for Respondent

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I. INTRODUCTION

This request for production of documents (this "Request") is submitted by Respondent in accordance with Procedural Order No. 1, dated 28 July 2022.

- The following terms and abbreviations are used in this Request:
    - "Case File" means all Submissions, Documents, Communications and Records of Meetings and Calls submitted, filed or issued in connection with a Proceeding.
    - "Communication" means the transmission or conveyance of any data, fact, statement or record in any form whatsoever, including, but not limited to, emails, facsimiles, letters, memoranda, instant messages, oral conversations, text messages, telephone calls and voicemails.
    - "Document" means "a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means" (*see* 2020 IBA Rules at 7).
    - "IBA Rules" means the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
    - "Parties" refers collectively to Claimant and Respondent.
    - "Proceedings" means any hearing, trial, appeal, inquiry, conference, interview, meeting, assembly, negotiation, presentation, gathering or other process before a judge, jury, master, officer of the court, arbitrator, notary, trustee, or other adjudicator or similar official.
    - "Records of Meetings and Calls" means notes, minutes, summaries, and other records documenting the date, time, place, existence, or contents of in-person meetings, video- and tele-conferences or telephone calls (including emails and other internal reports on such meetings, conferences and calls).
    - "SoC" means Claimant's Statement of Claim dated 2 December 2022.
    - "SoD" means Respondent's Statement of Defence dated 4 April 2023.
    - "Submission" means a written presentation of fact, argument, or procedure submitted to a court, judge, jury, master, officer of the court, notary, or trustee, including a pleading, factum, motion, response, reply, letter, and any other writing.
- Other capitalised terms not defined herein have the meaning ascribed to them in the Parties' written submissions.
- The Document Requests set out below are continuing in nature and apply both to Documents already in Claimant's possession, custody or control, and to Documents that may come into existence, or in Claimant's possession, custody or control, at any point during the course of this arbitration.

- The following rules of interpretation shall apply to this Request:
    - The singular form of a word should be interpreted in the plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of each specific request any information that might otherwise be considered beyond its scope.
    - The use of the present tense shall be construed to include the past tense, and vice versa, so as to make the request inclusive rather than exclusive.
    - As used herein, "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.
    - As used herein, "any" and "all" shall each be construed to mean "each and every," so as to acquire the broadest meaning possible.
- All produced Documents should be organized in folders identifying to which request the documents are responsive.
- All electronic Documents are requested to be produced in their native format with metadata intact.
- Unless otherwise specified, copies and not originals are requested.
- This Request requires the production of all responsive Documents that are in the possession, custody or control of Claimant or any officers, employees, agents or representatives over whose Documents Claimant has possession, custody or control.
- Respondent does not seek any Document that has been filed in this arbitration by any Party.
- All references to Claimant's arguments of fact, law or procedure are without any admission as to the correctness of the same and without prejudice to Respondent's position on the same.

II. RESPONDENT'S DOCUMENT REQUESTS

1. REQUEST NO. 1

Documents or Category of Documents Requested by Respondent	All Communications, and all Records of Meetings and Calls, between GAMA, on the one hand, and TE-TO, its shareholders, any member of the Sintez Group or Alstom, on the other hand, regarding payment under the Settlement Agreement. Time period: February 2012 onward.
Relevance and Materiality According to Respondent	GAMA claims that the conduct of the Macedonian courts led to its inability to collect the EUR 5 million allegedly due by TE-TO under the Settlement Agreement (*see* SoC ¶ 303). Macedonia's position is that the Macedonian courts acted properly and that, in any event, the dominant cause of GAMA's loss was TE-TO's inability (or unwillingness) to pay and its subsequent bankruptcy (*see* SoD Sections III C and IV A). The requested Documents will reveal the true reasons that GAMA has been unable to collect the amounts allegedly due from TE-TO and are thus relevant and material to both the merits of GAMA's claim and causation. They will shed light, *inter alia*, on GAMA's contemporaneous views about why it was unable to collect from TE-TO, TE-TO's explanations with respect to payment or non-payment, and whether GAMA and TE-TO came to any temporary or lasting agreement with respect to payment of EUR 5 million, in whole or in part. The temporal scope of this request begins when the Settlement Agreement was executed, and continues until the present, as GAMA continues to seek recovery of EUR 5 million from TE-TO in the Macedonian courts (*see* GAMA's new submissions to the Basic Court, dated 31 January 2023 (R-12)). The requested Documents are reasonably believed to be in Claimant's possession, being either internal to GAMA or relating to Communications to which GAMA was a party. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant objects** to Respondent's request for the production of documents because Respondent has failed to establish how the requested documents are both relevant and material to the outcome of the dispute, as required by PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a). In this arbitration, Claimant complains that Respondent's state organs committed wrongful acts in breach of the Treaty and customary international law. The reasons why TE-TO did not pay GAMA's claim

	under the Settlement Agreement or GAMA's contemporaneous views about why it was unable to collect from TE-TO and TE-TO's explanations with respect to payment or non-payment are not relevant or material to determining Respondent's liability for the actions of its state organs under the Treaty and customary international law (SoC, ¶¶ 182-186). The dispute regarding TE-TO's payment obligations should have been resolved by the Macedonian courts (notwithstanding that the Macedonian courts unlawfully assumed jurisdiction over the dispute and applied Macedonian law instead of English law as the governing law of the EPC Contract and the Settlement Agreement (SoC, ¶¶ 228-244)), based on all the evidence presented by GAMA and TE-TO, and not by extraneous communications between GAMA, Alstom, TE-TO, and its shareholders. The Macedonian courts failed to decide the dispute between GAMA and TE-TO in a timely manner and repeatedly denied GAMA's claim in fragrant breach of the rules of procedure and the substantive provisions of Macedonian law. It is the Macedonian courts' wrongful treatment of GAMA that constitutes a breach of Respondent's obligations under the Treaty. Any communications between GAMA, Alstom, TE-TO, and its shareholders regarding payment under the Settlement Agreement that are not already a part of the Macedonian courts' case files are not relevant to assessing the legality of Respondent's actions under the Treaty standards. The requested documents are, therefore, extraneous to Respondent and the decision-making of its organs, and are not material for determining the legality of Respondent's actions under the Treaty and customary international law. Thus, the request for production of such documents is unfounded and should be rejected by the Tribunal.
Reply to Objections to Document Request	Claimant's objection should be overruled. Preliminarily, Claimant does not contend that the production of the requested Documents would be burdensome or otherwise impractical. Claimant's sole objection is that the requested Documents "are not relevant or material to determining Respondent's liability for the actions of its state organs." This ignores Respondent's explanation that this request is "relevant and material to both the merits of GAMA's claim and causation" – not merely to liability. As Respondent has argued, the dominant cause of Claimant's loss was TE-TO's failure to pay (SoD, ¶¶ 292-296). Claimant does not deny that causation is in dispute and that the requested Documents are relevant and material to that disputed issue (SoC ¶¶ 1, 7; SoD ¶¶ 286-296). That should be the end of the matter. *See* Waincymer, Procedure and Evidence in International Arbitration (2012) (**RL-123**) 830 ("[T]he parties in dispute should co-operate in the presentation of the truth by producing all the elements of evidence which they have in their possession.").

	In any event, Claimants' sole objection is misconceived. The requested Documents are relevant to GAMA's assertion that the Macedonian judiciary prevented GAMA from collecting what it says was "an unconditional and undisputed claim" (SoC ¶ 7). The requested Documents will test GAMA's characterization of its claim against TE-TO as "unconditional and undisputed." Since TE-TO is not a party to this arbitration, GAMA's assertions regarding its claim against TE-TO should not go untested. All responsive Documents should be produced.
Tribunal's Decision	Request denied.

2. REQUEST NO. 2

Documents or Category of Documents Requested by Respondent	All Communications, and all Records of Meetings and Calls, regarding the Settlement Agreement, including offers to settle, that were: 1) internal to GAMA; 2) between GAMA and Alstom; or 3) between GAMA or Alstom, on the one hand, and TE-TO or other members of the Sintez Group, on the other hand. Time period: 2011 through 2013.
Relevance and Materiality According to Respondent	GAMA's claim against Macedonia rests on GAMA's assertion that TE-TO was obligated to pay GAMA EUR 5 million under the Settlement Agreement. GAMA describes its debt claim against TE-TO as "unconditional and uncontested" (SoC ¶ 30). On that basis, GAMA argues that it submitted "overwhelming evidence on the unconditionality of GAMA's claim" to the Basic Court (SoC ¶ 61), that the Court of Appeal failed "to consider GAMA's claim under the straight-forward Settlement Agreement as unconditional" (SoC ¶ 197(c)), and that Macedonian courts failed "to consider GAMA's claims against TE-TO as unconditional" (SoC ¶ 278(a)). The requested Documents are relevant and material to GAMA's position that, in purported breach of Macedonia's international obligations, the Macedonian courts erred by finding that GAMA's entitlement to payment under the Settlement Agreement was conditional upon GAMA performing its own obligations under such Agreement (i.e., curing latent defects and completing Punch List items) (*see* SoC ¶¶ 61, 197(c), 278(a); SoD ¶¶ 211, 262). The requested Documents will shed light on the context of the Settlement Agreement and reveal the contemporaneous understanding and expectations of GAMA and TE-TO regarding TE-TO's obligation to pay GAMA the remaining EPC Contract price, GAMA's obligation to remedy defects and complete Punch List items, and the conditional or unconditional nature of such obligations. The temporal scope of this request begins in the year during which GAMA and TE-TO contemplated and executed the MOU and continues through December 2013 at which time the dispute between TE-TO and GAMA over the Settlement Agreement had fully crystallized and Mr. Goran Markovski prepared an expert report for TE-TO detailing GAMA's non-compliance with its obligations under the Settlement Agreement (*see* C-48).

	The requested Documents are reasonably believed to be in Claimant's possession, being either internal to GAMA or relating to Communications to which GAMA was a party. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant objects** to Respondent's request because Respondent has failed to demonstrate how the requested documents are relevant and material to the outcome of the dispute (PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a)). This arbitration concerns the actions of Respondent's state organs and not those of TE-TO. To determine Respondent's liability for the actions of its state organs under the Treaty and customary international law, the Tribunal will need to review the decision-making and evidence in the possession of such organs. Both parties also agree that the role of this Tribunal is not to act as an appellate court (SoC, ¶ 185; SoD, ¶ 4), and it is even less so to review acts of Respondent's state organs on the basis of information, which were not part of the record of Respondent's state organs. Any evidence of the contemporaneous understanding and expectations of GAMA and TE-TO regarding TE-TO's obligation to pay GAMA the outstanding amount under the Settlement Agreement, GAMA's obligation to remedy defects and complete Punch List items, and the conditional or unconditional nature of such obligations, which were not submitted or known to Macedonian courts, is irrelevant to determine Respondent's liability. The relevant information on the context of the Settlement Agreement and the (un)conditional nature of obligations, on the basis of which Respondent's courts reached disputed decisions, is in the court files and in possession of Respondent's state organs. Moreover, in TE-TO's reorganization proceedings, GAMA's claim was entirely acknowledged by the Macedonian courts as undisputed[1] (SoC, ¶¶ 108-109, 241, 244; SoD, ¶ 58, 69), which indicates by itself that prior decisions of Macedonian courts in debt collection proceedings on the conditionality of GAMA's claim were erroneous. Therefore, any communications between GAMA, Alstom, TE-TO, and its shareholders regarding payment under the Settlement Agreement, which are not already in Macedonian courts' case files, are extraneous to Respondent and the decision-making of its organs and thus not relevant to assess the legality of Respondent's actions under the Treaty standards.

[1] Consolidated version of the Reorganization Plan of TE-TO AD Skopje no. 030 - 702 dated 07 June 2018 (**C 014**), p. 83 ("The GAMA GUC's claim is not disputed and the same is encompassed with the repayment method planned for the Second class of creditors.")

Reply to Objections to Document Request	Claimant's objection should be overruled. Preliminarily, Claimant does not contend that the production of the requested Documents would be burdensome or otherwise impractical. Claimant's sole objection is that the requested Documents are "irrelevant to determine Respondent's liability." That narrow objection fails for at least two reasons. First, the requested Documents are relevant to GAMA's entitlement to payment under the Settlement Agreement, which is material to the disputed quantum of GAMA's purported loss and to causation for any loss (SoC ¶¶ 1, 7, 303-304; SoD ¶¶ 286-303). If GAMA is not entitled to payment, then GAMA cannot establish that it suffered a loss, let alone that Macedonia caused any purported loss. Second, Respondent reiterates that the requested Documents "are relevant and material to GAMA's position that, in purported breach of Macedonia's international obligations, the Macedonian courts erred by finding that GAMA's entitlement to payment under the Settlement Agreement was conditional upon GAMA performing its own obligations under such Agreement." The requested Document are relevant and material to the question of whether GAMA's claim against TE-TO was "unconditional and uncontested" (SoC ¶ 30), as GAMA asserts. All responsive Documents should be produced.
Tribunal's Decision	Request denied.

3. REQUEST NO. 3

Documents or Category of Documents Requested by Respondent	The Punch List attached to the Commercial Operation Certificate (C-27) and all Documents, Communications, and Records of Meetings and Calls, discussing the status of Punch List items and latent defects under the EPC Contract and Settlement Agreement. Time period: December 2011 through December 2013
Relevance and Materiality According to Respondent	GAMA's claim against Macedonia rests on GAMA's assertion that TE-TO was obligated to pay GAMA EUR 5 million, which in turn rests on GAMA's view of its debt claim against TE-TO as "unconditional and uncontested" (SoC ¶ 30). The requested Documents are relevant and material to GAMA's position that, in breach of Macedonia's international obligations, the Macedonian courts erred by finding that GAMA's entitlement to payment under the Settlement Agreement was conditional upon GAMA performing its own obligations under such Agreement (i.e., curing latent defects and completing Punch List items). The requested Documents will indicate the contemporaneous understanding of GAMA and TE-TO regarding GAMA's obligations to remedy defects and complete Punch List items under the Settlement Agreement, including with respect to deadlines for doing so. The temporal scope of this request begins in the month during which GAMA and TE-TO executed the MOU and continues through December 2013 at which time the dispute between TE-TO and GAMA over the Settlement Agreement had fully crystallized and Mr. Goran Markovski prepared an expert report for TE-TO on the status of GAMA's obligations to cure defects and complete Punch List items (*see* C-48). The requested Documents are reasonably believed to be in Claimant's possession, being either internal to GAMA or relating to Communications to which GAMA was a party. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant objects** to Respondent's document production request on the basis that Respondent has failed to establish how the requested documents are relevant and material to the outcome of the dispute, as required by PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a). It should be noted that the subject matter of this arbitration concerns the acts of Respondent's state organs and not the acts of TE-TO. Thus, the Tribunal will need to examine the decision-making processes and actions of Respondent's state organs based on the evidence and arguments submitted by GAMA and TE-TO in debt collection proceedings (as noted in SoD,

	¶ 211) to determine Respondent's liability under the Treaty and customary international law. Both parties also agree that the role of this Tribunal is not to act as an appellate court (SoC, ¶ 185; SoD, ¶ 4), and it is even less so to review acts of Respondent's state organs on the basis of information, which were not part of the record of Respondent's state organs. Any evidence of the contemporaneous understanding of GAMA and TE-TO regarding GAMA's obligations under the Settlement Agreement, including the deadlines for remedying defects and completing Punch List items, which were not submitted by GAMA or TE-TO or known to Macedonian courts, is irrelevant to determining Respondent's liability. All relevant information on the (un)conditional nature of obligations under the Settlement Agreement, including the Punch List, which served as the basis for Respondent's disputed decisions, is already in the files and possession of Respondent's state organs or has been submitted by Claimant in the record of this arbitration. Moreover, the fact that GAMA's claim was entirely acknowledged by the Macedonian courts as undisputed in TE-TO's reorganization (as noted in SoC, ¶¶ 108-109, 241, 244; SoD, ¶ 58) provides further evidence that prior decisions of Macedonian courts in debt collection proceedings on the conditionality of GAMA's claim were erroneous. Thus, the requested documents are neither relevant nor material to the outcome of the dispute, and as such, Claimant objects to Respondent's request.
Reply to Objections to Document Request	Claimant's objection should be overruled. Preliminarily, Claimant does not contend that the production of the requested Documents would be burdensome or otherwise impractical. Claimant's sole objection is that the requested Documents are "irrelevant to determining Respondent's liability" and that the "subject matter of this arbitration" does not concern "the acts of TE-TO." That narrow objection fails at the threshold because it ignores the matter of causation, which is disputed between the Parties and involves TE-TO's actions under the Settlement Agreement (SoC ¶¶ 1, 7; SoD ¶¶ 286-296). GAMA recognizes that "TE-TO failed to pay" (SoC ¶ 7) yet seeks to thwart an inquiry into why TE-TO failed to pay. The requested Documents are relevant to the question of why TE-TO did not pay GAMA, and thus to the material issue of whether GAMA's purported loss was caused by its failure to perform under the Settlement Agreement. Further, as regards questions of liability, Respondent reiterates that the requested Documents are relevant to GAMA's position that Macedonian courts erred by finding that the Settlement Agreement was conditional. GAMA put the question of whether the Settlement Agreement was conditional into issue (*see e.g.* SoC ¶ 8 ("the Macedonian courts repeatedly denied GAMA's claim by passing arbitrary and manifestly

	unreasonable judgements asserting that GAMA's claim is conditional")). GAMA cannot now deny Macedonia an opportunity to test GAMA's assertion that its claim against TE-TO was "unconditional and uncontested" (SoC ¶ 30), or refuse an inquiry into whether there was a basis for the courts' decisions on that issue. GAMA objects to producing Documents that "were not submitted by GAMA or TE-TO or known to Macedonian courts," but does not deny that some of the requested Documents *were* submitted to Macedonian courts. Even taking GAMA's objection at the highest – that only the evidence before Macedonian courts is relevant to whether the Settlement Agreement was conditional, whether the courts issued "manifestly unreasonable judgements," and whether GAMA's purported loss was caused by Macedonia – GAMA offers no basis for refusing production of the requested Documents that were before Macedonian courts. Finally, regarding the Document that is specifically requested here (the Punch List attached to the Commercial Operation Certificate), Claimant does not deny that this Documents exists, is in its possession custody and control, and was appended to Exhibit C-27, which Claimant put on the record in this arbitration. Claimant should not be permitted to withhold selectively attachments to the documentary evidence it has chosen to put on the record. All responsive Documents should be produced.
Tribunal's Decision	Request granted to the extent of the Punch List stated to be attached to the Commercial Operation Certificate (C-27) but not included in the exhibit produced.

4. REQUEST NO. 4

Documents or Category of Documents Requested by Respondent	The Case Files of all Proceedings in Macedonia and elsewhere involving both GAMA and TE-TO (or its shareholders), including all: 1) orders, procedural rulings, interlocutory decisions, final decisions, Submissions, letters, reasons given, and other Communications by any judge, master, notary, or trustee; 2) transcripts, minutes, or similar records of a Proceeding; 3) Submissions made by GAMA, TE-TO and its shareholders; 4) evidence submitted by GAMA, TE-TO and its shareholders; and 5) expert reports submitted by GAMA, TE-TO and its shareholders. Time period: February 2012 onward, including on an ongoing basis.
Relevance and Materiality According to Respondent	The core of GAMA's case against Macedonia consists of allegations about the conduct of the Macedonian courts, including with respect to the adjudication of GAMA's attempts to enforce the Payment Order and collect from TE-TO and the approval of TE-TO's Reorganization Proposal. GAMA makes these allegations without providing the complete record of those Proceedings. Missing Documents include, for example (and without limitation): • Notary Snezhana Vidovska's referral of GAMA's application for the Payment Order to the Basic Court (*see* SoC ¶ 40) • GAMA's Submission to the Basic Court on 1 November 2016 (*see* Decision of Basic Court, dated 4 May 2018 (C-10) at 4) • GAMA's Submission to the Basic Court on 4 April 2019 regarding TE-TO's damages claim (*see* Decision of Basic Court, dated 23 April 2019 (C-63) at 1) • TE-TO's Submissions to the Basic Court in response to GAMA's submissions on 31 January 2023 (*see* GAMA submissions to the Basic Court, dated 31 January 2023 (R-12)) • any Submissions made or decisions rendered between the time of TE-TO's objection to the Payment Order on 13 December 2012 and GAMA's application to withdraw its claim on 9 May 2013 (*see* SoC ¶¶ 39, 43) The requested Documents are relevant and material to GAMA's argument that it was denied justice in the Macedonian courts. The requested Documents will complete the record of the Proceedings at the heart of GAMA's case and are necessary to assess fairly GAMA's claim that it was denied justice in the Macedonian courts. Absent a complete record of the Payment Order and reorganization Proceedings, Macedonia is handicapped in preparing a full answer and defense, and the Tribunal is asked to assess whether there has been a denial of justice without a full

	picture of the Proceedings. A complete record is essential, in particular, to evaluating whether there has been a failure of the Macedonian judicial "system as a whole" and thus a denial of justice.[2] A complete record is also necessary to assess specific complaints made by GAMA, including to determine who bears responsibility for the duration of the Proceedings, which duration GAMA says was excessive (*see* SoC ¶¶ 189(a), 197(d); SoD ¶¶ 204-205, 264), whether GAMA submitted any evidence on the content of English law (*see* SoC ¶ 197(b); SoD ¶¶ 106, 117, 122, 209-210, 260-261), and whether GAMA has exhausted local remedies (*see* SoC ¶ 242; SoD ¶¶ 149, 213-214). The temporal scope of this request begins with the execution of the Settlement Agreement and continues until the present. As Macedonia observed in its SoD, GAMA continues to litigate this matter against GAMA in the Macedonian courts and filed new proceedings in January of this year (*see* SoD ¶¶ 149, 213; submissions dated 31 January 2023 (R-12)). The requested Documents would have been prepared by GAMA or its counsel, or would have been served on or otherwise made available to GAMA as a party to the Payment Order or reorganization Proceedings, and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent. While the Macedonian courts are formally part of the Macedonian state, the executive branch, which is responsible for defending Macedonia in this arbitration, does not have unfettered access to the records of Proceedings.
Response/Objections to Document Request	**Claimant objects** to Respondent's request because all the requested documents are in the possession, custody and control of Respondent (PO1, Section II(B)(i)(c)(2) and IBA Rules, Art. 3(3)(c)). Respondent has also failed to show why it would be unreasonably burdensome for Respondent to access such Documents. The requested Documents are in the files of Macedonian courts, which are Respondent's state organs. Respondent submits no basis for its claim that the executive branch, responsible for defending Macedonia in this arbitration, would purportedly not have unfettered access to the records of Case Files of all Proceedings in Macedonia. This is false and contradicted by Respondent's own actions in this arbitration. Respondent had already submitted in the record of this arbitration documents from Proceedings (GAMA's submission, dated 31 January 2023 (R-12); SoD, ¶¶ 124, 149). Moreover, under Macedonian law, all state administrative organs and legal entities must provide data, evidence, and information to the State

[2] *Chevron v. Ecuador* (**CL-46**) ¶ 8.36.

	Attorney's Office within five working days to legally protect the property rights and interests of the Republic of Macedonia in a specific case.[3] Further, the overly broad definition of "Case Files of all Proceedings", requested by Respondent, encompasses documents, which are not even in the possession, custody and control of Claimant, such as, *e.g.* Communications or Records of Meetings and Calls of respective judges or bankruptcy trustees, which are internal or communicated to other parties, such as other creditors in TE-TO's reorganization proceedings. Regarding Respondent's request to produce the Case Files of all Proceedings involving both GAMA and TE-TO (or its shareholders) "*elsewhere*", *i.e.* outside Macedonia, Claimant confirms that no such Case Files exist.
Reply to Objections to Document Request	Claimant's objections should be overruled. At the outset, Claimant does not contend that the production of the requested Documents would be burdensome or otherwise impractical. This should be the end of the matter, as Claimant does not contest that the requested Documents are relevant and material to the outcome of this arbitration. *See* Waincymer, Procedure and Evidence in International Arbitration (2012) (**RL-123**) 830 ("[T]he parties in dispute should co-operate in the presentation of the truth by producing all the elements of evidence which they have in their possession."). In any case, GAMA's objections are misplaced. Respondent reiterates that the requested Documents are not in the possession, custody or control of the executive branch, which is responsible for defending Macedonia in this arbitration. That Respondent obtained GAMA's submission to the Basic Court dated 31 January 2023 (R-12) does not establish that Respondent has unfettered access to the records of Macedonian courts. To the contrary, the Constitution of Macedonia guarantees the independence of the judiciary. Article 98 of the Constitution (R-18) provides that Macedonian ["[c]ourts are autonomous and independent." The executive branch has no legal authority to direct the actions of Macedonian courts. GAMA is not assisted by its reliance on Article 12(1) of the Law on the State Attorney's Office. The powers granted to the State Attorney's Office under that Law are in support of its role "before the courts and other bodies" (Law on the State Attorney's Office (R-22), Art. 5). Article 12(1) does not provide the State Attorney's Office with a plenary power to obtain documents from the courts, or to share the documents it obtains

[3] Law on the State Attorney's Office, Official Journal of the Republic of Macedonia, Nos. 87/07 and 104/15, Art. 12, ¶ 1 ("The state administration bodies and legal entities are obliged to submit data, evidence and information to the State Attorney's Office for the purpose of legal protection of the property rights and interests of the Republic of Macedonia for the needs of dealing with a specific case within five working days.")

	under that power with other State organs. Nor does Article 12(1) override the constitutionally-guaranteed independence of the Macedonian courts (*see* Constitution of Macedonia (R-18) Art. 98). GAMA argues that Respondent has "failed to show why it would be unreasonably burdensome for Respondent to access such Documents." There is no obligation for Respondent to make such a showing. That production of requested Documents would be an "unreasonable burden" is a basis for the Tribunal to exclude requested Documents from production (*see* IBA Rules, Art. 9(2)(c)) – it is not a requirement to be established by the party requesting production. GAMA, on the other hand, has not denied that some of the requested documents are in its possession, custody or control. GAMA says only that this request "encompasses" some documents which are not. Indeed, as a party to all the proceedings for which Case Files are requested, GAMA presumably has copies of Submissions and Documents placed on the court record in its possession, custody or control. Finally, Respondent relies on GAMA's statement that no Case Files for proceedings outside of Macedonia exist. No ruling is requested regarding Case Files for any proceedings outside of Macedonia. All responsive documents should be produced.
Tribunal's Decision	Request granted to the extent of responsive documents which are in the possession, custody or control or the Claimant. With respect to any other documents comprising part of the Case Files, including documents in the possession of the Macedonian courts, the parties shall cooperate as necessary or appropriate to secure access to such Case Files with a view to ensuring that there is access to the full record of the proceedings at issue in this case. Request denied to the extent that it concerns case files in proceedings outside of Macedonia.

5. REQUEST NO. 5

Documents or Category of Documents Requested by Respondent	All advice provided to GAMA by its Macedonian counsel and advisors with respect to actual or contemplated Proceedings in Macedonia involving GAMA and TE-TO (or its shareholders), including: 1) memoranda; 2) Communications; 3) Records of Meetings and Calls; and 4) other Documents recording or discussing such advice. Time period: February 2012 onward.
Relevance and Materiality According to Respondent	GAMA impugns how the Macedonian judiciary responded when GAMA pursued various litigation strategies to collect from TE-TO. Those strategies included, for example: • pursuing an enforcement order from a Macedonian notary instead of commencing arbitration under the Settlement Agreement (*see* GAMA's application for the Payment Order (C-36)); • seeking to withdraw its claim after TE-TO predictably objected to the Payment Order (*see* GAMA application to the Basic Court (C-46)); • arguing that English law should apply to the Settlement Agreement but failing to introduce evidence about English law or argument about how English law should apply (*see* GAMA submissions (*e.g.* C-50, C-69, C-72)); • failing to introduce expert evidence regarding whether GAMA had met its obligations under the Settlement Agreement (*see* Decisions of Basic Court (C-10, C-11)); and • continuing litigation before the Macedonian courts after commencing this arbitration (*see* GAMA submissions to Court of Appeal on 2 February 2022 (C-72), and submissions to the Basic Court on 31 January 2023 (R-12)). The requested Documents are relevant and material to assess whether GAMA was denied justice in the Macedonian courts (as it claims) or whether (as Macedonia has explained) the outcome of the Proceedings was predictable and the result of poor litigation choices by GAMA or ill advice from counsel.[4] Macedonia is hampered in its ability to make a complete defense without evidence as to the reasons for GAMA's choices before the Macedonian courts, GAMA's understanding and expectations in making those choices,

[4] *See e.g. Amto v. Ukraine* (**RL-36**) ¶ 76 ("The investor that fails to exercise his rights within a legal system, or exercises its rights unwisely, cannot pass his own responsibility for the outcome to the administration of justice, and from there to the host State in international law.")

	and whether GAMA's counsel made errors of law or procedure for which GAMA now seeks to pin responsibility on Macedonia. If GAMA intends to claim privilege over any of the requested Documents, it should be put to the task of proving the existence of such a privilege as a matter of Macedonian law. In any event, advice given to GAMA by Macedonian counsel regarding Macedonian Proceedings is squarely a matter of fact in this arbitration. The 2020 IBA Rule 9.4(e) provides that in considering privilege with respect to the production of documents, the Tribunal may take into account "the need to maintain fairness and equality of the Parties." Here, by seeking to pin the blame for the outcome of the administration of justice on the Macedonian courts (instead on itself or the other litigants), GAMA has put at issue its litigation choices before those courts. Fairness demands that advice received by GAMA with respect to those choices be placed on the record so that Respondent can prepare a full answer and defense. The temporal scope of this request begins with execution of the Settlement Agreement and thus the earliest date for any Macedonian legal advice regarding enforcement of GAMA's alleged rights under the Settlement Agreement, and continues to the present in light of GAMA's choice to continue Proceedings before Macedonian courts. GAMA retained Macedonian counsel, including at least the firm Debarliev, Dameski and Kjeleshoska,[5] to advise on Macedonian Proceedings. The requested Documents would have been provided to GAMA by GAMA's Macedonian counsel and advisors and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant** objects to Respondent's request for documents on two grounds: first, the requested documents are privileged under the attorney-client privilege, as provided for in the Macedonian Law on Advocacy and the Code of Professional Ethics of the Macedonian Bar Association, and cannot be subject to production, as also required by IBA Rules, Art. 9(2)(b); and second, the requested documents are not relevant or material to the outcome of the dispute, as required under PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a). Regarding the attorney-client privilege, under Macedonian law, any communication between lawyers and their clients is privileged and cannot be used as evidence in legal proceedings. [6] Furthermore, under the Code

[5] *See e.g.* GAMA application to Basic Court, dated 30 November 2012 (**C-31**).

[6] Law on Advocacy, Official Journal of the Republic of Macedonia Nos. 59/2, 60/06, 29/07, 106/08, 135/11, 113/12 and 148/15 (**R-21**) Art. 3a(2) ("Lawyer's records, files, data in electronic form and other means of communication

	of Professional Ethics of the Macedonian Bar Association confidentiality is a fundamental obligation of lawyers since it is necessary to establish trust between lawyers and their clients, and it provides lawyers with special protection from the state.[7] Anything that a client discloses to its attorney constitutes a 'professional lawyer's secret' and cannot be disclosed unless necessary for the defense of the client's interests or with the prior consent of the Macedonian Bar Association.[8] The requested documents are thus covered by the attorney-client privilege and cannot be disclosed. Regarding relevance and materiality, the requested documents are not necessary to determine Respondent's liability under the Treaty and customary international law. The Tribunal needs to review the acts of Respondent's state organs and their decision-making in response to procedural actions of GAMA and TE-TO in debt collection and reorganization proceedings. The privileged information between GAMA and its Macedonian counsel, such as the reasoning and expectations in making procedural choices, is irrelevant to this analysis. Rather, what is relevant is a legal analysis of how the Macedonian courts acted upon GAMA's procedural choices, as recorded in the court files that are in the possession of Respondent's state organs and which have been submitted into the record of this arbitration. The Tribunal must determine whether such acts of the Macedonian courts complied with Treaty standards and customary international law.
Reply to Objections to Document Request	Claimant's objections should be overruled. Regarding relevance and materiality, GAMA objects to producing the requested Documents on the basis that they "are not necessary to determine Respondent's liability." That misses the mark. Respondent reiterates that the requested Documents are relevant to whether the

are inviolable and are not subject to review, copying, inspection and confiscation, except in cases provided by law.") and Art. 3a(3) ("Communication between lawyers, as well as between the lawyer and his client, regardless of how it is carried out, is not subject to review, copying, inspection or confiscation and cannot be used as evidence in proceedings conducted before courts and others state authorities, in accordance with the law.")

[7] Code of Professional Ethics of Lawyers, Associate Lawyers, and Trainee Lawyers of the Bar Association of the Republic of Macedonia (**R-20**) § I(3) ("Confidentiality is the primary and fundamental right and obligation of the lawyer, because the essence of the lawyer's profession allows him to find out such things that the client would not disclose to anyone else. Without the functioning of the principle of confidentiality, there can be no trust between the lawyer and the client. The lawyer's obligation to respect the principle of confidentiality is unlimited in time and applies to all information that he learns from his client in the course of his professional activity. This principle provides the lawyer with special protection from the state.")

[8] Code of Professional Ethics of Lawyers, Associate Lawyers, and Trainee Lawyers of the Bar Association of the Republic of Macedonia, Section V (**R-20**) ¶¶ 20 - 23. *See also*, e.g., *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Procedural Order No. 2 (**RL-124**) ¶ 7 ("As a general principle, the Tribunal accepts the widely recognized principle that legal advice provided by external legal counsel is covered by privilege and does not need to be justified. Therefore, the documents falling within this description of the legal privilege are excluded from production.")

	conduct of Macedonian courts in response to GAMA's litigation strategies amounts to a denial of justice. If GAMA acted on unsound advice and sought local remedies in an incompetent manner, then GAMA cannot shift responsibility for those mistakes to Macedonia. The requested Documents are also relevant to causation. The requested Documents will show whether GAMA recognized that the cause of its loss was that "TE-TO failed to pay" (SoC ¶ 7) and that its litigation strategy was a considered gamble in response to TE-TO's refusal. GAMA's privileged objection is unsupported. GAMA relies on Article 3-a(3) of the Law on Advocacy to assert that "any communication between lawyers and their clients is privileged and cannot be used as evidence in legal proceedings." But that Article protects a client's records of communications with counsel from "review, copying, inspection and confiscation" in criminal proceedings, for example, by the public prosecutor under Article 194 of the Law on Criminal Procedure (**R-11 Resubmitted**). Further, the protection is not absolute and the client may waive it in the context of criminal proceedings (Law on Criminal Procedure (**R-11 Resubmitted**), Art. 197(1)(2)) ("The following cannot be confiscated by court warrant … (2) "written communications of the accused to the defense counsel … unless the accused voluntarily surrenders them"). In any case, Article 3-a(3) specifies that it applies only to "proceedings conducted before courts and other state authorities."[9] It does not apply to this arbitration. GAMA relies on a lawyer's duties of confidentiality and to maintain "the professional lawyer's secret" under the Code of Professional Ethics of the Macedonian Bar Association (**R-20**). Those duties attach to lawyers, not to clients. Indeed, the Code of Professional Ethics explicitly allows a "professional secret" to be disclosed "when the client, undeniably, allows the disclosure." The IBA Rules similarly permit "the Arbitral Tribunal to take into account … any possible waiver of any applicable legal impediment or privilege" (Art. 9(4)(d)). GAMA has not pointed to any privilege or duty of confidentiality that binds GAMA as opposed to its counsel. In any case, GAMA put at issue its choices of legal strategy and seeks to pin responsibility for those choices on Macedonia (SoD ¶ 201). GAMA should therefore be taken to have waived any privilege. Waiver in similar circumstances is widely accepted under municipal law. *See e.g. Granite Partners, L.P. v. Bear, Stearns & Co., Inc.*, 184 F.R.D. 49, 55 (S.D.N.Y. 1999) (**RL-122**) ("A privilege may be impliedly waived where a party

[9] Law on Advocacy, Art. 3-a(3) ("Communication between lawyers, as well as between the lawyer and his client, regardless of how it is carried out, is not subject to review, copying, inspection or confiscation and cannot be used as evidence in proceedings conducted before courts and others state authorities, in accordance with the law.").

	makes assertions in the litigation or asserts a claim that in fairness requires examination of protected communications").[10] Respondent reiterates that fairness requires the requested documents be placed on the record so that Macedonia can prepare a full answer and defense. Moreover, Macedonia is not a party to the proceedings for which the requested Documents relate, which ameliorates concerns of fairness or prejudice to the parties in the (ongoing) litigation between TE-TO and GAMA. All responsive documents should be produced.
Tribunal's Decision	Request denied.

[10] *See also*: *U.S. v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) (**RL-121**) ("T]he privilege may implicitly be waived when defendant asserts a claim that in fairness requires examination of protected communications."); citing among others *Clark v. United States*, 289 U.S. 1, 15, 53 S. Ct. 465, 469, 77 L. Ed. 993 (1933) (**RL-120**) ("The privilege takes flight if the relation is abused."); *Cicel (Beijing) Science & Technology Co., Ltd. v. Misonix, Inc.*, 331 F.R.D. 218, 228 (E.D.N.Y. 2019) (**RL-126**) ("In addition, it is established law in this Circuit that "[b]oth the attorney-client and work-product privileges may be waived if a party puts the privileged communication at issue by relying on it to support a claim or defense."… Moreover, a waiver may occur even if the asserting party does not make direct use of the privileged communication itself when that party avers material facts at issue related to the privileged communication, and where the validity of those facts can only be accurately determined through an examination of the undisclosed communication. Under such circumstances, fundamental fairness strongly supports a finding that a waiver of attorney-client privilege has occurred."(internal citations omitted))

6. REQUEST NO. 6

Documents or Category of Documents Requested by Respondent	All internal Communications and Records of Meetings and Calls with respect to GAMA's decisions to (*see* SoD ¶ 201): 1) request a Payment Order from a Macedonian notary instead of initiating arbitration under the EPC Contract or other enforcement proceedings; 2) refuse the offer made by TE-TO on 26 December 2012 (*see* letter from Sintez to GAMA (C-41)); 3) attempt to withdraw its Payment Order claim after TE-TO objected to it (*see* application to Basic Court (C-46)); 4) not introduce evidence or argument regarding the English law that GAMA says should have been applied to interpretation of the Settlement Agreement 5) not introduce expert evidence in any Macedonian Proceeding; or 6) fulfill or not fulfill GAMA's obligations under the Settlement Agreement. Time period: February 2012 onward.
Relevance and Materiality According to Respondent	GAMA seeks to place responsibility on the Macedonian judiciary for the outcome of choices that GAMA made in pursuit of payment from TE-TO. Those choices informed GAMA's litigation strategies. The requested Documents are relevant and material to GAMA's contemporaneous understanding of the basis for its choices, whether GAMA accepted the risk of adopting its strategies, and whether GAMA expressed concern or regret with respect to its strategies. The requested Documents are also relevant and material to whether GAMA's claim of a denial of justice fails because of its own poor litigation choices. The temporal scope of this request begins with execution of the Settlement Agreement and continues to the present, as GAMA continues to litigate before the Macedonian courts. The requested Documents would have been prepared by or provided to GAMA and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant** objects to Respondent's request for documents on two grounds: first, the requested documents are not relevant or material to the outcome of the dispute, as required under PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a), and second, the requested documents are privileged under the attorney-client privilege, as provided for in the

	Macedonian Law on Advocacy and the Code of Professional Ethics of the Macedonian Bar Association, and cannot be subject to production, as also required by IBA Rules, Art. 9(2)(b). First, to determine Respondent's liability for acts of its state organs under the Treaty and customary international law, Tribunal will need to review acts of Respondent's organs and their decision-making on the basis of information in possession of such organs, including *inter alia*, arguments, evidence and procedural actions submitted or effected by GAMA and TE-TO in debt collection proceeding (see also SoD, ¶ 211). Both parties also agree that the role of this Tribunal is not to act as an appellate court (SoC, ¶ 185; SoD, ¶ 4), and it is even less so to review acts of Respondent's state organs on the basis of information, which were not part of the record of Respondent's state organs. The requested Documents purportedly reflecting "*GAMA's contemporaneous understanding of the basis for its choices, whether GAMA accepted the risk of adopting its strategies, and whether GAMA expressed concern or regret with respect to its strategies*", which moreover have never been part of Macedonian courts' case files, is irrelevant and not material to determine Respondent's liability under the Treaty. Rather, what is relevant is how Macedonian courts acted upon GAMA's submissions and procedural choices, which are recorded in the court files in possession of Respondent's state organs and evidenced by documents submitted by Claimant into the record of this arbitration, and whether such acts complied with Treaty standards and customary international law. Second, the internal Communications and Records of Meetings and Calls with respect to GAMA's decisions in relation to the dispute with TE-TO include or are based on the legal advice provided to GAMA by its external Macedonian legal counsel which is subject to attorney-client privilege under Macedonian law and cannot be disclosed unless necessary for the defense of the client's interests or with the prior consent of the Macedonian Bar Association.[11] The requested documents are thus covered by the attorney-client privilege and cannot be disclosed.
Reply to Objections to Document Request	Claimant's objections should be overruled. GAMA's objection based on the lack of relevance and materiality of the requested Documents is not well founded. GAMA objects to producing the requested Documents on the basis that they are not relevant "to determine Respondent's liability." Respondent repeats that the requested

[11] Code of Professional Ethics of Lawyers, Associate Lawyers, and Trainee Lawyers of the Bar Association of the Republic of Macedonia, Section V, paras 20 - 23. *See also*, e.g., *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Procedural Order No. 2 (**RL-124**) ¶ 7 ("As a general principle, the Tribunal accepts the widely recognized principle that legal advice provided by external legal counsel is covered by privilege and does not need to be justified. Therefore, the documents falling within this description of the legal privilege are excluded from production.")

	Documents are relevant to assessing whether GAMA was denied justice, as it claims, or merely made poor strategic and tactical choices in the domestic litigations. Moreover, GAMA ignores the material and disputed issue of causation. The requested Documents will show that despite recognizing the cause of its loss ("TE-TO failed to pay" (SoC ¶ 7)), GAMA intentionally gambled on various unsuccessful strategies – to request a Payment Order, refuse the offer made by TE-TO, attempt to withdraw the Payment Order, not introduce evidence or argument regarding English law, not introduce expert evidence in any Macedonian proceeding, and not fulfill its obligations under the Settlement Agreement – for which it now seeks to pin responsibility on Macedonia. GAMA blames Macedonia for the outcome of its litigation choices, and the requested documents will show that causation rests with GAMA and TE-TO and that GAMA confirmed as much before commencing this arbitration. GAMA's privilege objection is unsupported. GAMA objects on the basis that the requested documents "are based on" legal advice. This conflates the subject of Macedonia's Document Request No. 5, which requests legal advice provided to GAMA, and this request which seeks "internal" Documents regarding GAMA's litigation decisions. That those decisions may have been "based on" advice external to GAMA does not insulate the requested Documents from production. The tribunal in *ACP Axos v Kosovo*, a case relied upon by GAMA, explained that something more is required: "The document in question must contain legal advice or seek legal advice in order for privilege to attach to it."[12] An internal Document "based on" legal advice does not meet that standard. All responsive documents should be produced.
Tribunal's Decision	Request denied.

[12] *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Procedural Order No. 3 (5 July 2017) (**RL-125**) ¶ 11.

7. REQUEST NO. 7

Documents or Category of Documents Requested by Respondent	Engagement letters, advice and memoranda, invoices, and other Documents or Communications evidencing any role (whether official or unofficial) or other involvement of Dejan Kostovski in the reorganization Proceedings of TE-TO. Time period: 2018
Relevance and Materiality According to Respondent	GAMA relies on the expert evidence of Dejan Kostovski to support its allegations with respect to the conduct of TE-TO's reorganization Proceedings (*see e.g.* SoC ¶¶ 197(e), 217, 260-261). Mr. Kostovski declares that "there are no facts or circumstances, whether past or present, which could raise any reasonable doubts as to [his] impartiality" (Kostovski ¶ 7). Respondent has reason to believe, however, that Mr. Kostovski advised GAMA or others in relation with the TE-TO reorganization Proceedings. The requested Documents are relevant and material to the credibility of Mr. Kostovski's opinions. Macedonia makes this request to test the assertions made by Mr. Kostovski regarding his independence and impartiality concerning the TE-TO reorganization Proceedings. Any involvement by Mr. Kostovski in those Proceedings would undermine his assertions and cast doubt on GAMA's arguments that rely on Mr. Kostovski's opinions. The temporal scope of this request covers the period from the preparation of TE-TO's Reorganization Plan in April 2018 through the Court of Appeal decision on 30 August 2018 which upheld TE-TO's Reorganization Proposal (C-17). The requested Documents would have been prepared by or provided to Mr. Kostovski and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	Claimant submits that no such requested Documents exist since Mr. Kostovski has never advised GAMA in relation to the TE TO reorganization Proceedings.
Reply to Objections to Document Request	Respondent has reason to believe that Mr. Kostovski provided GAMA with advice, views, or opinion(s) related to TE-TO's reorganization, and reminds GAMA that Communications includes "oral conversations." Claimant should therefore be ordered to search for and produce relevant documents.

	In any case, GAMA has not objected to the entire scope of this request. This request is for Documents "evidencing any role (whether official or unofficial) or other involvement of Dejan Kostovski in the reorganization Proceedings of TE-TO." It is not limited to Documents evidencing Mr. Kostovski's advice to GAMA and includes advice to other parties in those proceedings. GAMA has made no other objection to this request (including no objection on the basis of relevance, materiality, or burden). All responsive Documents should be produced.
Tribunal's Decision	Request granted, with note taken of the representation by Claimant that no such requested documents exist and with further note taken of Respondent's reply regarding the scope of its request.

8. REQUEST NO. 8

Documents or Category of Documents Requested by Respondent	All Documents assessing or otherwise discussing GAMA's possible recovery in a scenario where TE-TO had been liquidated or its proposed reorganization would have failed. Time period: April 2018 onward.
Relevance and Materiality According to Respondent	GAMA claims that it was the conduct of Macedonian courts that led to its inability to collect the EUR 5 million allegedly due by TE-TO under the Settlement Agreement. In particular, GAMA contends that it would have been better off had the Macedonian courts rejected the Reorganization Plan and TE-TO been liquidated (*see* SoC ¶¶ 94, 130). Macedonia has pointed out that this is wishful thinking and that, had TE-TO been liquidated, as an unsecured creditor GAMA would have been paid only after the secured creditors were paid in full and *pari passu* with the other unsecured creditors. In other words, even if GAMA could prove a breach by the Macedonian courts, it has not proven that such breach caused it any damage (*see* SoD ¶¶ 191(a), 233, 291). The requested Documents will reveal GAMA's own understanding of the counter-factual scenario in which the Reorganization Plan would have failed and are thus relevant and material to both causation and damages. The temporal scope of this request runs from the preparation of TE-TO's Reorganization Plan in April 2018 to the present in light of GAMA's ongoing contention in these proceedings that it would have recovered more had TE-TO been liquidated. The requested Documents would have been prepared by GAMA or provided to GAMA by third parties, and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	Claimant submits that no such requested Documents exist.
Reply to Objections to Document Request	Respondent relies on GAMA's representation that no responsive Documents exist. No ruling is required.
Tribunal's Decision	No decision required.

9. REQUEST NO. 9

Documents or Category of Documents Requested by Respondent	All Communications and Documents recording, discussing or otherwise reflecting any agreement between GAMA and Alstom regarding the amounts payable under the Settlement Agreement or in this arbitration. Time period: December 2011 onward.
Relevance and Materiality According to Respondent	GAMA claims that it was the conduct of Macedonian courts that led to its inability to collect the EUR 5 million allegedly due by TE-TO under the Settlement Agreement and seeks compensation in this arbitration for that full amount (*see* SoC ¶¶ 94, 130). Alstom was a party to the Settlement Agreement, however, such that it may have had an entitlement to the EUR 5 million allegedly payable by TE-TO under that Agreement (*see* Settlement Agreement (C-4) at 1, 4). To the extent that Alstom had such an entitlement, then Alstom, and not GAMA, suffered a loss from the inability to collect from TE-TO. Alstom is not a claimant in this arbitration and not entitled to claim under the Turkey-Macedonia BIT, however, and GAMA is not entitled to claim on its behalf. The requested Documents will reveal the true extent of GAMA's own loss and if GAMA is improperly bringing a claim on behalf of a non-party. The Documents are therefore relevant and material to causation and damages. The temporal scope of this request begins when the MOU, which contemplated the Settlement Agreement and was executed in December 2011 (*see* MOU (C-26)), and continues until the present, as GAMA continues to seek recovery of EUR 5 million from TE-TO in the Macedonian courts (*see* GAMA's new submissions to the Basic Court, dated 31 January 2023 (R-12)). The requested Documents would have been prepared and exchanged by GAMA and Alstom, and are thus in the possession, custody or control of GAMA. The requested Documents are not in the possession, custody or control of Respondent.
Response/Objections to Document Request	**Claimant objects** to Respondent's request for the production of documents because Respondent has failed to establish how the requested documents are both relevant and material to the outcome of the dispute, as required by PO1, Section II(B)(i)(c)(2) and IBA Rules, Arts. 3(3)(b) and 9(2)(a). The record proves that GAMA is the sole legal holder of the claim against TE-TO on the basis of the Settlement Agreement under the Macedonian law. The determination of the holder and the scope of the property rights

	comprising the investment is a matter of the municipal law.[13] GAMA's claim against TE-TO was entirely acknowledged by TE-TO[14] and was in TE-TO's reorganization confirmed by the final judgment of the Civil Court Skopje as an executive document[15] (SoC, ¶¶ 108-109, 114, 120; SoD, ¶¶ 58, 69).
Reply to Objections to Document Request	Claimant's objection should be overruled. GAMA objects to this request on the basis that "GAMA is the sole legal holder of the claim against TE-TO." That misses the point. If GAMA is the sole legal holder of the claim against TE-TO, then Alstom must have somehow relinquished its rights under the Settlement Agreement, which Alstom executed with GAMA and TE-TO (Settlement Agreement (C-4) at 4). The requested Documents will reveal any arrangements between GAMA and Alstom with respect to the amount claimed by GAMA in this arbitration, including any amount that GAMA is seeking on behalf of Alstom, a non-party in this arbitration. The requested documents are thus relevant to the material issue of the quantum of GAMA's purported loss. All responsive documents should be produced.
Tribunal's Decision	Request granted in part, limited to any agreement between GAMA and Alstom with respect to the amounts payable under the Settlement Agreement or in this arbitration.

[13] *See*, e.g., Z. Douglas, The International Law of Investment Claims (2012), p. 52 ("General international law contains no substantive rules of property law. […] Whenever there is a dispute about the scope of the property rights comprising the investment, or to whom such rights belong, there must be a reference to a municipal law of property. Insofar as investment treaties require a territorial nexus between the investment and one of the contracting state parties, that property law is the municipal law of the state in which the claimant alleges that it has an investment.")

[14] Consolidated version of the Reorganization Plan of TE-TO AD Skopje no. 030 - 702 dated 07 June 2018 (**C-014**), pp. 15-16 and 35-36 (showing a list of TE-TO's creditors, including GAMA), p. 83 ("The GAMA GUC's claim is not disputed and the same is encompassed with the repayment method planned for the Second class of creditors."). *See* also, Letter of acknowledgment of debt from TE-TO to GAMA, dated 17 March 2015 (**C-009**).

[15] Decision of 14 June 2018 of the First Instance Civil Court Skopje, as amended by decision of the First Instance Civil Court Skopje (Case file no. 3 ST-124/18 and 160/18), dated 17 July 2018 (**C-015**), pp. 3, 5 (showing a list of TE-TO's creditors, including GAMA) and pp. 2, 33 (confirming that the approved reorganization plan has the status of an executive document); Decision of the Appellate Court Skopje (Case file TSZ-1548/18), dated 30 August 2018 (**C-017**) (upholding the decision of the Civil Court Skopje on TE-TO's reorganization).