

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL
CONSTITUTED IN ACCORDANCE WITH APPENDIX II OF THE 2017
ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE**

**KOMAKSAVIA AIRPORT INVEST LTD
(Claimant)**

v.

**REPUBLIC OF MOLDOVA
(Respondent)**

**Emergency Award on Interim Measures
Arbitration SCC EA 2020/130**

2 August 2020

Emergency Arbitrator:

Mr. Bernardo M. Cremades

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This Award on Emergency Measures is issued in the SCC Arbitration EA 2020/130 pursuant to Appendix II (Emergency Arbitrator) of the Arbitration Rules of the Stockholm Chamber of Commerce of 2017 (the “**SCC Rules**”). Article 1.1 of Appendix II of the SCC Rules provides that:

“A party may apply for the appointment of an Emergency Arbitrator until the case has been referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules.”

I. INTRODUCTION AND PROCEDURAL HISTORY

1. The emergency proceedings were commenced by the Claimant, Komaksavia Airport Invest Ltd. (the “**Claimant**”) by its “Application for the Appointment of an Emergency Arbitrator and an Emergency Decision on Interim Measures,” dated 24 July 2020, submitted pursuant to Article 2 of Appendix II of the SCC Rules (the “**Application**”). The Application was served by the SCC on the Respondent, the Republic of Moldova (the “**Respondent**”) on 27 July 2020, pursuant to Article 3 of Appendix II of the SCC Rules
2. The Emergency Arbitrator was appointed by the Board of the Arbitration Institute of the SCC (the “**Board**”) on 27 July 2020, pursuant to Article 4 of Appendix II to the SCC Rules. The Emergency Arbitrator’s details are as follows:

Mr. Bernardo M. Cremades
Goya 18, 2º
Madrid, 28001
Spain
Tel: +34 914 237 200
Email: bcremades@bcremades.com

3. Pursuant to Article 8 of Appendix II to the SCC Rules, the Emergency Arbitrator has five (5) days from the date the Application is referred to the Emergency Arbitrator to render a decision.
4. The seat of the arbitration is governed by Article 5 of Appendix II of the SCC Rules, which provides:

“The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.”

5. On 27 July 2020, the Board determined that the seat of the emergency proceedings shall be Stockholm, Sweden.

6. The Parties have requested that the Emergency Arbitrator render its decision in the form of an Award.¹

7. The Claimant is represented in these emergency proceedings by:

Mr. James Hart
Mr. Andrii Chornous
Mr. Sergiy Regeliuk
Lawyer Association Hillmont Partners
105 Victoria Street
Westminster, London
SW1E 6QT
United Kingdom
T: +38 (063) 148 27 37
chornous@hillmont.com.ua

8. The Respondent is represented in these emergency proceedings by:

Government of the Republic of Moldova

Piata Marii Adunari Nationale, nr. 1
MD-2033, Chisinau
Republic of Moldova
Tel: +373 22 250 101
Email: petitii@gov.md
Official website: <https://gov.md/en/content/contacts>

Ministry of Justice of the Republic of Moldova

Str. 31 August 1989, nr. 82
MD-2012, Chisinau
Republic of Moldova
Tel: +373 22 234 795
Email: secretariat@justice.gov.md
Official website: <http://www.justice.gov.md/index.php?1=en>

Ministry of Foreign Affairs and European Integration of the Republic of Moldova

Str. 31 August 1989, nr. 80
MD-2012, Chisinau
Republic of Moldova
Tel: +373 22 578 207
Email: secdep@mfa.md
Official website: <https://www.mfa.gov.md/en/content/contacts-2>

Ministry of Economy and Infrastructure of the Republic of Moldova

Piata Marii Adunari Nationale, nr. 1
MD-2033, Chisinau

¹ Application, para. 146; Response, para. 13.

Republic of Moldova
Tel: +373 22 234 795
Email: secretariat@mei.gov.md
Official website: <https://mei.gov.md/en>

Agency of Public Property of the Republic of Moldova

Piata Marii Adunari Nationale, nr. 1
MD-2033, Chisinau
Republic of Moldova
Tel: +373 22 234 350
Email: office@app.gov.md
Official website: <http://app.gov.md/ro/content/contacte>

Embassy of the Republic of Moldova to the Kingdom of Sweden

Engelbrektsgratan 10, 3Tr
114 32 Stockholm
Sweden
Tel: +46 841 140 74
Email: stockholm@mfa.gov.md
Official website: <https://suedia.mfa.gov.md/en/content/contacts>

9. On 28 July 2020 at 11:24 (all times listed in this procedural background correspond to Stockholm time), the Emergency Arbitrator issued Procedural Order No. 1, which contained the procedural calendar for these emergency proceedings. In doing so, the Emergency Arbitrator requested that the Parties acknowledge receipt. Claimant acknowledged receipt at 11:41 on 28 July 2020. The Respondent did not acknowledge receipt of Procedural Order No. 1.
10. Pursuant to Procedural Order No. 1, the Respondent was to submit its Response to the Application (the “**Response**”) by 23:59 on 29 July 2020. No such Response was submitted.
11. Pursuant to Procedural Order No. 1, the Claimant was to submit its Reply by 14:00 on 30 July 2020. No such Reply was submitted.
12. At 18:28, the Emergency Arbitrator emailed the Parties, noting the procedural calendar and noting that Respondent had failed to file its Response and that Claimant had failed to file its Reply in accordance with said procedural calendar. The Emergency Arbitrator informed the Parties that if Respondent failed to file any submission by the 30 July 2020, 18:00 deadline that had been set for its Rejoinder, then both Parties were invited to provide any final comments they may have on the Application by 10:00 on 31 July 2020. Alternatively, if Respondent did file a Response by the 18:00 deadline, the Emergency Arbitrator stated that he would draft an Award based solely on the Application and Response, and that no further submissions would be requested.
13. Respondent did not file any Response by 18:00 on 30 July 2020.

14. Neither Party filed any further submissions by the subsequent 31 July 2020, 10:00 deadline.
15. On 31 July 2020 at 19:29, Respondent filed a Response to Claimant's Application.
16. While Respondent's Response was filed after the deadline set by the Emergency Arbitrator, its content was fully considered in the making of this Award.

II. FACTUAL SUMMARY PROVIDED BY CLAIMANT

17. The following summary does not intend to be an exhaustive summary of all of the factual allegations in dispute and the history of the dispute between the Parties to date. Given the urgency of the Application, this summary intends to recount a brief summary of the main factual issues at hand as presented by Claimant.
18. The Claimant is a legal entity incorporated and existing in compliance with Cypriot law in the Republic of Cyprus with unique company registration number HE 359258 and having its seat in the territory of the Republic of Moldova.²
19. Claimant acquired a controlling shareholding in a Moldovan company incorporated and existing within the territory of the Respondent (Avia Invest Limited Liability Company ("**Avia Invest**")), thereby making an investment in the Republic of Moldova for purposes of the BIT.³
20. Avia Invest was founded in 2013 and is currently the sole legal operator of a concession to Chisinau International Airport (the "**Airport**") under the long-term "*Concession Agreement for assets under the Management of S.E. 'Chisinau International Airport' and their adjacent land*" (the "**Concession Agreement**").⁴
21. The Concession Agreement was concluded between Avia Invest and the Agency of Public Property of Moldova (a sub-division of the Ministry of Economy and Infrastructure of the Republic of Moldova ("**PPA**")) on 30 August 2013.⁵ Several details of such Concession Agreement are noted in the Application and need not be repeated here.⁶
22. Since August 2013, Avia Invest has been performing its obligations under the Concession Agreement.⁷
23. The investments of Avia Invest were adopted by the Respondent through the Concession Monitoring Committee, and they were certified in compliance with terms of the Concession Agreement by the Respondent through the PPA.⁸

² Application, para. 11.

³ Application, para. 8.

⁴ Application, para.8.

⁵ Application, para. 8.

⁶ Application, para. 17.

⁷ Application, para. 52.

⁸ Application, para. 54.

24. On 6 September 2016, the Claimant purchased 95% of the shareholding in Avia Invest for 80,852,030 Moldovan lei, which at the time amounted to EUR 3,658,247 and in doing so made an investment in Moldova which is protected in terms of the BIT (the “**Investment**”).⁹
25. Supervised by the Claimant, Avia Invest has invested at the Airport at least EUR 30 million.¹⁰
26. The Respondent passed a Law on State Security on 31 October 1995 No. 618 that regulated its state security policies.¹¹
27. On 23 August 2019, the Security Council held a meeting discussing the situation regarding the Concession Agreement. After the meeting, the President of Moldova made an official statement that the Moldovan authorities will take a decision to terminate the Concession Agreement for one of two reasons : i) there is a breach of the contractual obligations by Avia Invest; or ii) There is a failure to meet the investment obligations by Avia Invest.¹²
28. The Claimant denies there are grounds for such termination.¹³
29. 23 August 2019 is the starting point at which the Moldovan authorities agreed a plan for the termination of the Concession Agreement and to deprive the Claimant of its investments (the “**Action Plan**”).¹⁴
30. On 12 September 2019, the Security Council held a 2nd meeting to discuss the Claimant’s investment. After the meeting, the President of Moldova made an official statement confirming that the Concession Agreement will be terminated.¹⁵
31. On 4 December 2019, the Security Council held a 3rd meeting to discuss the Claimant’s investment. The official press release states that the Security Council discussed several “*important issues for our fellow citizens,*” including “*the situation around Chisinau Airport*” (i.e. the proposed termination of the Concession Agreement and the return of Chisinau Airport to state management).¹⁶
32. On 21 January 2020, the Security Council held a 4th meeting to discuss the Claimant’s investment. The official press release stated that: “*The second broad topic of discussion during the meeting refers to actions taken by the state authorities in connection with the implementation of the decision of the Supreme Security Council on the assessment of risks and threats to national security in connection with the alienation of Avia-Invest, the concessionaire of Chisinau International*”

⁹ Application, para. 57.

¹⁰ Application, para. 59.

¹¹ Application, para. 61.

¹² Application, para. 63.

¹³ Application, para. 64.

¹⁴ Application, para. 65.

¹⁵ Application, para. 66.1.

¹⁶ Application, para. 66.2.

Airport.” This was an explicit recognition that the Security Council had decided to “alienate” Avia Invest.¹⁷

33. On 14 May 2020 the Security Council held a 5th meeting to discuss the Claimant’s investment and the actions being taken to expropriate it. After the meeting, the President of Moldova made an official statement confirming that the Concession Agreement will be terminated by one of the following three methods: (i) Cancellation of the Concession Agreement due to non-compliance of Avia Invest with the tender selection process; (ii) Termination of the Concession Agreement due to the complete non-execution of investment obligations by Avia Invest; and (iii) Automatic cancellation of the Concession Agreement following the insolvency of Avia Invest.¹⁸
34. The Claimant also exhibits a series of reports in the wider media of Moldova, which demonstrate this intention on the part of its public authorities and the fact that it has been put on public record by those in executive positions of authority.¹⁹

A. *Actions by the Government*

35. On 4 September 2019, the Government of Moldova adopted Resolution No. 431 which cancelled its previous four long-standing Resolution Nos. 438, 321, 715 and 780, which had been adopted by the Respondent as the legal framework for the tendering process by which the Concession Agreement was awarded to Avia Invest pursuant to which Avia Invest and the PPA entered into the Concession Agreement.²⁰
36. On 12 September 2019, the Government of Moldova instructed the competent state authorities to return Chisinau International Airport to state ownership and terminate the Concession Agreement.²¹
37. On 1 April 2020, the Government of Moldova adopted Resolution No. 213 introducing a new “special airport tax” on Avia Invest pursuant to which 50% of the monthly accumulated recoverable fees for airport modernization is to be transferred by Avia Invest to the Respondent’s National Social Assistance Agency.²²

B. *Actions by the PPA*

38. After the first meeting of the Security Council, the PPA also started to take measures to deprive Claimant of its investment. These included (i) issuing proceedings in the Moldovan domestic courts against Avia Invest seeking the termination of the Concession Agreement; and (ii) issuing a Notification of Resolution No. 09-05-3113 announcing the termination of the Concession

¹⁷ Application, para. 66.3.

¹⁸ Application, para. 66.4.

¹⁹ Application, para. 67.

²⁰ Application, para. 71.1.

²¹ Application, para. 71.4.

²² Application, para. 71.5.

Agreement because of an alleged non-fulfilment of contractual obligations by Avia Invest (the “**Notification of Termination**”), according to which Avia Invest is demanded to return all assets that were the subject of the Concession with their improvements within 180 days to the Respondent.²³

39. The Notification of Termination is a matter of grave concern to the Claimant because it has the effect of destroying the investment, as Avia Invest is a worthless shell company in the absence of the right to manage the concession project.²⁴ According to witness statements provided the Claimant, there is a considerable risk that the Respondent will begin to unwind the concession assets sooner than the expiration of this 180-day period.²⁵

C. The Action of Law Enforcement Agencies

40. Starting from August 2019, the Respondent’s law enforcement agencies have acted to implement the Action Plan. Such acts include: (i) unreasonably seizing the Claimant’s shareholding in Avia Invest through the Respondent’s Anticorruption Prosecutor’s Office; (ii) initiating an illegal, politically-motivated criminal investigation concerning the procurement process for the Concession Agreement; (iii) the resuming of an illegal, politically-motivated criminal investigation by Anticorruption Prosecutor’s Office against Avia Invest, accusing the Claimant’s investment of having been involved in money-laundering; and (iv) the issuing by the Anticorruption Prosecutor’s Office of an unlawful indictment against Avia Invest alleging that Claimant’s investment, including the shareholding in Avia Invest, is illegal.²⁶

D. The Action of the Parliament

41. The role of the Parliament in the implementation of the Action Plan has consisted, *inter alia* of: (i) the creation of a Parliamentary *ad hoc* investigative committee immediately upon the 1st meeting of the Security Council to investigate the circumstances surrounding the Concession Agreement; (ii) the *ad hoc* committee’s issuing of a preliminary report recommending the termination of the Concession Agreement; (iii) the adoption of Law No. 60, establishing a new “special airport tax” on Avia Invest pursuant to which 50% of the monthly accumulated recoverable fees for airport modernization would be transferred by Avia Invest to the Respondent’s National Social Assistance Agency; (iv) and the entering into force of the new “special airport tax” on 1 July 2020.²⁷

E. The Actions of the Civil Aviation Authority

42. The role of the Civil Aviation Authority (the “**CAA**”) in the implementation of the Action Plan has consisted of the following: (i) a 5 July 2019 agreement between Avia Invest and the CAA, pursuant to which Avia Invest was obliged to pay funds

²³ Application, paras. 73.1-73.5.

²⁴ Application, para. 74.

²⁵ Application, para. 74.

²⁶ Application, paras. 75-75.5.

²⁷ Application, paras. 78-78.6.

to the CAA in the amount of 118,158,980.06 Moldovan lei (approximately EUR 6,124,738.26) according to a fixed schedule (the “**Payment Agreement**”); (ii) the fulfilment of said Payment Agreement by Avia Invest with a slight delay on 20 May 2020 due to extraordinary circumstances; (iii) the statement by Respondent that Avia Invest’s failure to make payments would result in the commencement of insolvency proceedings and the cancellation of the Concession Agreement; (iv) the blocking a payment by Claimant’s shareholders into Avia Invest’s bank account due to allegations of money laundering and terrorist financing; and (v) the issuing by the CAA of an insolvency petition against Avia Invest on 18 May 2020.²⁸

F. Obstructions in Obtaining a Performance Guarantee

43. According to Article 19.2 of the Concession Agreement, “*Avia Invest undertakes to guarantee financing of the concession throughout the term of the Agreement in amount and terms provided in Article 13 herein, by establishing a performance guarantee issued either by a bank or an insurance company or other financial institution for each Implementation Stage specified herein.*”²⁹
44. According to Article 19.4 of the Concession Agreement, “*failure of Avia Invest to establish guarantees required for investments assumed in amount and terms provided herein or to fulfil contractual obligations relating to amount and terms of investments serves as grounds for termination of the Agreement.*”³⁰
45. Respondent has taken multiple measures to make it impossible for Avia Invest to obtain a performance guarantee in Moldova. In doing so, Respondent has prevented Avia Invest and the Claimant from resolving the Performance Guarantee Issue, enabling Respondent to proceed with the termination of the Concession Agreement.³¹
46. The details surrounding the alleged measures taken by Respondent to render the obtainment of the Performance Guarantee impossible will not be detailed in the summary, but the Emergency Arbitrator notes that they are detailed in paras. 84.1-84.4 of the Application.
47. As a result, Avia Invest had to approach foreign insurance companies despite the risk that such a guarantee would not be accepted by the Respondent.³²
48. On 23 June 2020, an Insurance Agreement was concluded between Avia Invest and a Russian insurance company, and on 26 June 2020 the PPA was informed by Avia Invest about the conclusion of the requested Insurance Agreement.³³
49. On 8 July 2020, the PPA issued a Notification of Termination announcing that it does not recognize the performance guarantee under the Insurance Agreement and

²⁸ Application, paras. 79-79.4.6.

²⁹ Application, para. 82.

³⁰ Application, para. 83.

³¹ Application, para. 84.

³² Application, para. 85.

³³ Application, para. 86.

thereby terminated the Concession Agreement.³⁴ According to the Notification of Termination, Avia Invest is demanded to return all assets that were the subject of the Concession with their improvements within 180 days to the Respondent.³⁵ This directly links the Performance Guarantee Issue to the Termination Issue.³⁶

G. Recent Events Surrounding the Termination

50. On 13 July 2020, Avia Invest responded to the 8 July 2020 Notification of Termination, laying out several grounds that it argued rendered the Notification of Termination inappropriate.³⁷
51. On that same day, Avia Invest sent a request to the Concession Monitoring Committee to which the PPA was copied.³⁸ This letter, *inter alia*, (i) informed the Concession Monitoring Committee about the dispute; (ii) referred to the Concession Monitoring Committee Avia Invest's 9 July 2020 letter to the PPA; and (iii) requested that the Concession Monitoring Committee organize a joint meeting to settle the dispute between Avia Invest and the PPA and fix said meeting within 15 days of Avia Invest's letter (i.e. by 24 July 2020) in order to avoid having the matter referred to the Moldovan courts.³⁹
52. The PPA responded to this letter on 17 July 2020, stating (i) that the Concession Agreement has been terminated, so the Concession Monitoring Committee ceases to exist; and (ii) that a new commission will be established to ensure that Avia Invest transfers to the PPA the assets that were the object of the concession, including those which arose as a result of the investments made by Avia Invest and those assets which cannot be separated from the Concession, and requesting Avia Invest's appointment of representatives.⁴⁰
53. In a further letter of 17 July 2020, the PPA stated, *inter alia*, that the PPA is entitled to unilaterally terminate the Concession agreement and that the Notification of Termination will not be annulled or suspended.⁴¹

III. FACTUAL SUMMARY PROVIDED BY RESPONDENT

54. As noted, Respondent's response to Claimant's Application does not provide any factual summary.

³⁴ Application, para. 87.

³⁵ Application, para. 87.

³⁶ Application, para. 87.

³⁷ Application, paras. 88-88.19.

³⁸ Application, para. 89.

³⁹ Application, paras. 89-89.4.

⁴⁰ Application, paras. 90-90.2.

⁴¹ Application, para. 92.

IV. LEGAL SUMMARIES AND ANALYSIS

55. As was the case with the factual summary, the following summaries of the Parties' positions do not intend to be exhaustive summaries of each claim that has been made.

A. *Jurisdiction*

1. Claimant's Position

56. Claimant makes the following assertions.

57. Article 10 of the BIT expressly refers to the SCC as a means of resolving disputes between one party to the Treaty and an investor of the other party.⁴²

58. The SCC Rules apply equally to commercial and investment arbitration.⁴³

59. By agreeing to the SCC Rules, the Parties agree to the three Appendices, including Appendix II – Emergency Arbitrator, unless the Parties have specifically opted out of the Emergency Arbitrator Rules.⁴⁴

60. Pursuant to Article 32(1) and Article 1(2) of Appendix II to the SCC Rules, an Emergency Arbitrator has the power to “grant any interim measures it deems appropriate.” The term “interim measures” implies that the Emergency Arbitrator has wide discretion to efficiently and effectively provide needed relief in appropriate circumstances. It is universally accepted that “interim measures” includes injunctions of all kinds and allows an Emergency Arbitrator to order or enjoin any particular course of conduct or make any other order that in the Emergency Arbitrator’s opinion will be conducive to the proper conduct of the proceedings, to preserve the integrity of the arbitration, to eliminate or reduce economic loss or other impairment of valuable rights and to provide reasonable safeguards for the preservation of the relief sought against improper or unwarranted conduct.⁴⁵

61. Here, the interim measures seek to secure a claim or a future claim and to safeguard the Claimant’s rights. The interim measures seek to preserve the possibility that the arbitration can proceed effectively and that any ultimate award will be capable of being given effect. The arbitration cannot proceed effectively if the Concession Agreement is terminated before an arbitral tribunal has been convened.⁴⁶

2. Respondent's Position

62. Respondent does not specifically address the Emergency Arbitrator’s jurisdiction but does state that “*Claimant is not entitled to separate arbitration proceedings for*

⁴² Application, para. 110.

⁴³ Application, para. 111.

⁴⁴ Application, para. 112.

⁴⁵ Application, para. 113.

⁴⁶ Application, para. 114.

their Application's claims since the Tribunal in the main arbitration proceedings has been formed."⁴⁷

3. Emergency Arbitrator's Analysis

63. Claimant correctly notes that the BIT refers to the SCC as a means of resolving disputes between one party of the BIT and an investor of the other party. This in turn implies application of the SCC Rules, including the Appendices.
64. While Respondent does not address the issue, the Emergency Arbitrator finds it appropriate to examine, on a *prima facie* basis, whether the Claimant's case is covered by the BIT, as the Claimant's Application is based on the dispute resolution system contained in the BIT, including the reference to the SCC Rules.
65. In doing so, the Emergency Arbitrator need not delve into the merits of the dispute, but rather must only review the submitted documentation to determine whether the Claimant's case is *prima facie* covered by the BIT.
66. The Emergency Arbitrator finds that for the purpose of these emergency proceedings, the Claimant has submitted sufficient evidence to establish that its claims are, *prima facie*, covered by the BIT. While the Respondent may be correct that the tribunal in this matter may soon be handed the file to take this case, such a fact does not affect the Emergency Arbitrator's jurisdiction.
67. Within its jurisdictional arguments, the Claimant discusses the appropriateness of the specific relief sought in this Application. Having established the Emergency Arbitrator's jurisdiction to rule on this Application, the specific relief sought will be discussed below under the analysis of the interim measures themselves.

B. Request for Interim Relief

1. Claimant's Requests

68. Claimant has listed six specific requests for relief.⁴⁸ However, for the purpose of engaging in proper analysis, the Emergency Arbitrator notes that the substance of some requests overlap and thus can reasonably be grouped together when evaluating the requirements for granting the relief sought.
69. Specifically, the first two requests concern Article XII of Respondent's Resolution No. 213 dated 1 April 2020 and Article VIII of the consequential Law of the Parliament of the Republic of Moldova No. 60 dated 23 April 2020.⁴⁹ These will be analyzed together and will herein be referred to as "**Special Airport Tax.**"
70. The next two requests both concern termination of the Concession Agreement under Articles 19, 24, 25 and/or 26 of the Concession Agreement and/or for failure on the

⁴⁷ Response, para. 6.

⁴⁸ Application, para. 146.

⁴⁹ Application, paras. 146.1, 146.2.

part of Avia Invest to obtain and/or present a performance guarantee otherwise required by Article 19 of the Concession Agreement.⁵⁰ These will be analyzed together and will herein be referred to as “**Performance Guarantee.**”

71. The next request concerns the Notification of Termination dated 8 July 2020.⁵¹ This will be referred to herein as “**Termination.**”
72. The final request seeks an order prohibiting Respondent from interfering with Avia Invest’s entitlement under the Concession Agreement by taking any steps having a similar or equal effect as those in issue in the previous categories of requested relief.⁵² This will be referred to herein as “**Request Six.**”
73. Finally, Claimant seeks an Award ordering Respondent to pay all costs and expenses of this Application and the emergency proceedings, including, without limitation, the Emergency Arbitrator’s fees and expenses and the Claimant’s costs, pursuant to Article 10(5) to Appendix II of the SCC Rules.⁵³

2. Standard for Relief

74. Article 1(2) of Appendix II to the SCC Rules provides:

“The powers of the Emergency Arbitrator shall be those set out in Article 37(1)-(3) of the Arbitration Rules. Such powers terminate on referral of the case to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules, or when an emergency decision ceases to be binding according to Article 9(4) of this Appendix.”

75. Article 37(1)-(3) in turn provides:

“(1) The Arbitral Tribunal may, at the request of a party, grant any interim measures it deems appropriate.

(2) The Arbitral Tribunal may order the party requesting an interim measure to provide any security in connection with the measure.

(3) An interim measure shall take the form of an order or an award.”

76. As the language above indicates, the SCC Rules provide an emergency arbitrator broad discretion to grant interim measures if warranted by the issues presented in the case.

⁵⁰ Application, paras. 146.3, 146.4.

⁵¹ Application, para. 146.5.

⁵² Application, para. 146.6.

⁵³ Application, para. 147.

77. The Application considers the necessary requirements for the granting of interim relief to consist of (i) urgency; (ii) *prima facie* case on the merits; and (iii) proportionality.⁵⁴
78. The Emergency Arbitrator considers these requirements to reflect the international norms with respect to the granting of interim measures.
79. In doing so, the Emergency Arbitrator notes that Respondent has chosen not to address any of the requested relief specifically. Instead the Respondent has taken the following general positions:
- The subject matter of the Application is related to the merits of the alleged dispute in the main arbitration and cannot be decided upon without deciding on then merits of the alleged dispute;
 - In the Application, Claimant speculates on what they would “anticipate” the Republic of Moldova will or will not do, on the steps they “anticipate” the republic of Moldova will or will not take;
 - In case of the issuance of any of the relief sought by Claimant, Respondent will suffer serious harm and substantial loss, including damages;
 - There is no irrevocable loss to Claimant’s rights as shareholder of Avia Invest; and
 - Claimant does not satisfy the requirements for the relief of injunctions sought.⁵⁵
80. While such positions will not be repeated below with respect to each category of relief sought, they were fully considered in the making of this Award

3. Special Airport Tax

(a) Urgency

(i) Claimant’s Position

81. As discussed in the Application, these requests for relief concern alleged Respondent actions regarding what Claimant describes as a new “special airport tax.”⁵⁶ Under this special airport tax, Claimant alleges that Avia Invest will be required to transfer to Respondent 50% of the monthly accumulated recoverable fees for airport modernization.⁵⁷

⁵⁴ Application, paras. 116-144.

⁵⁵ Response, paras. 7-13.

⁵⁶ Application, paras. 48, 71.5, 78.4.

⁵⁷ Application, paras. 48, 71.5, 78.4.

82. According to Claimant, this special airport tax “*is discriminatory and unlawful with respect to Avia Invest and the Claimant*” and “*constant substantial loss and harm would occur to the Claimant in the event that this special tax is enforced.*”⁵⁸ Claimant also alleges that this tax obligation has been established for an indefinite period and thus its execution could have a negative impact on the Claimant’s prospect of reimbursement of its investments in a manner anticipated by Article 15.11 of the Concession Agreement.⁵⁹

83. The Claimant argues that this requested relief meets the urgency requirement as it “*cannot await the outcome of the award on the merits.*”

(ii) Emergency Arbitrator’s Analysis

84. As an initial matter, the Emergency Arbitrator notes that it is not proper to analyze the requested relief in the same manner as a constituted tribunal would approach a request for interim relief, as the Claimant suggests is appropriate by arguing that the requested relief “*cannot await the outcome of the award on the merits.*” Here, there will eventually be a fully constituted tribunal that will have the opportunity to review any request for interim measures. It is not the case that a failure to grant emergency relief would bar Claimant from obtaining the requested relief until an award on the merits.

85. Instead, the proper urgency evaluation here concerns whether there is a sufficiently urgent need to grant the relief before a tribunal is constituted and able to address such interim measures.

86. The Emergency Arbitrator does not find sufficient urgency to grant the relief requested with respect to the special airport tax.

87. Claimant merely alleges here that permitting the enforcement of the special airport tax would result in financial harm. This is precisely the type of harm that can be rectified in a subsequent award. Further, importantly, the Emergency Arbitrator need only be concerned with the harm that could occur before a tribunal is constituted and can address Claimant’s requested interim relief. In doing so, the Emergency Arbitrator need not consider Claimant’s argument that such a special airport tax has been established for an “indefinite period,” as any future execution of the tax can be properly addressed by the tribunal in this case.

88. Claimant has failed to show sufficient urgency that would justify prohibiting Respondent from imposing this tax before the tribunal in this case is constituted. Claimant has failed to demonstrate how the execution of this tax obligation in the short term would result in any irreparable harm as to justify emergency interim measures.

⁵⁸ Application, para. 120.

⁵⁹ Application, para. 120.

89. Because Claimant has failed to establish sufficient urgency for these requests, the Emergency Arbitrator need not analyze the remaining factors.
90. However, factors beyond these traditional elements are relevant to the Emergency Arbitrator's decision and will now be discussed separately.

(b) Other Grounds for Decision

91. The requested special airport tax relief concerns a sovereign State's legitimate exercise of its tax collection process. An Emergency Arbitrator should be quite hesitant in exercising its authority with respect to such sovereign powers. In doing so, an Emergency Arbitrator risks overstepping the reasonable boundaries of such arbitration proceedings and inappropriately undermining such sovereign authority. The Emergency Arbitrator is of the opinion that the bar is raised when dealing with emergency actions sought in relation to such fundamental government authority.
92. Here, Claimant has failed to demonstrate that the relief requested with respect to the special airport tax would justify infringing on such a fundamental sovereign right.

4. Performance Guarantee

(a) Urgency

(i) Claimant's Position

93. Claimant argues that there is sufficient urgency because on 8 July 2020, the PPA started the process of termination of the Concession agreement by issuing the Notification of Resolution No. 09-05-3113 announcing such termination and demanding the return of the airport with all improvements and investments. Claimant argues that such termination is directly linked to the performance guarantee issue.⁶⁰
94. Claimant argues that because the PPA has already issued the Notification of Termination, pursuant to Article 26.3 of the Concession Agreement, the Respondent may at any time take possession and control over the concession assets (the Airport), prohibiting access/administration by Avia Invest of the concession assets or any part thereof, without any chance for the investor to recover its instruments.⁶¹

(ii) Emergency Arbitrator's Analysis

95. The Emergency Arbitrator finds that there is sufficient urgency with respect to these measures.

⁶⁰ Application, para. 118.

⁶¹ Application, para. 119.

96. As the Claimant correctly notes, the administration and control over the concession assets (i.e. the Airport) is the fundamental issue at hand in this arbitration, and the sole purpose of Avia Invest.

97. Without going into the merits of Claimant's claims concerning Respondent's actions, the fact remains that the status quo with respect to the subject of this arbitration would be significantly altered were the Concession Agreement terminated with the return of the Airport to the Respondent. Such actions would very likely aggravate the dispute, the avoidance of which is a primary purpose of interim relief.

(b) *Prima facie case on the merits*

(i) Claimant's Position

98. Claimant correctly notes that this factor does not require Claimant to demonstrate that its case is likely to succeed on the merits but rather that there is a reasonable possibility that it will succeed.⁶²

99. Claimant stresses the relatively low threshold of this requirement, citing language from an ICSID Tribunal.⁶³

(ii) Emergency Arbitrator's Analysis

100. Without going into details of the merits, the Emergency Arbitrator is satisfied that the Claimant has provided evidence sufficient to determine that it has established at least a *prima facie* case on the merits.

(c) *Proportionality*

(i) Claimant's Position

101. The Claimant argues that its rights at issue include: i) the right to prevent contract and legal rights that are the subject matter of the arbitration from being impaired or eviscerated prior to a final determination of the dispute by the tribunal; and ii) the right to safeguard the procedural integrity of the arbitration and the enforceability of a final award.⁶⁴

102. Specifically, Claimant notes that it seeks to: (i) preserve its assets; (ii) eliminate or reduce economic loss or other impairment of valuable rights; (iii) preserve the present position and/or seek the restoration of the *status quo ante*, inasmuch as it seeks avoidance of the sequestration of revenues to which Avia Invest is contractually entitled and prevention of the termination proceedings which have already been started by the Respondent; (iv) to preserve the integrity of the

⁶² Application, para. 122.

⁶³ Application, para. 123.

⁶⁴ Application, para. 126.

arbitration; and (v) to provide reasonable safeguards for the preservation of the relief sought against the improper or unwarranted conduct of the Respondent.⁶⁵

103. Claimant contends that monetary compensation would be inadequate here, as no monetary compensation can properly represent the “real value” of the Claimant’s Investment in the sense that Claimant may, before a tribunal can be constituted and address these issues, have lost its Investment and all rights that flow therefrom, as the Concession Agreement will have been terminated.⁶⁶ Further, Claimant contends that it would be impossible for the tribunal to calculate Claimant’s true loss, since the indirect and reputational cost to the Claimant and to Avia Invest of the termination of the Concession Agreement will be difficult to accurately quantify, the term of the Concession Agreement is so long, and the impact of the coronavirus remains difficult to forecast.⁶⁷
104. Essentially, the Claimant requests the Emergency Arbitrator to preserve the *status quo*, by ordering the Respondent to refrain from taking any steps which may lead to interference with the Claimant’s investment.⁶⁸
105. The Claimant’s request is narrow and reasonable and is only concerned with the preservation of the legal situation relating to the Claimant’s investment and only future events over which the Respondent’s authorities have full control.⁶⁹
106. The threat faced by Claimant far outweighs any harm that might be caused to the Respondent by the granting of the interim measures. In fact, the Respondent will suffer no harm at all.⁷⁰
107. Granting the relief will not interfere with Respondent’s sovereign power to govern or regulate because the Respondent will be able to proceed with the full enforcement of the acts in question if it can demonstrate in the arbitration that they are lawful and justified.⁷¹
108. Finally, since the arbitral tribunal is not bound by any decision(s) of the Emergency Arbitrator, any prejudice to Respondent is limited because such decisions would have limited temporal effect.⁷²

(ii) Emergency Arbitrator’s Analysis

109. Claimant correctly highlights that operation of the Airport is at the center of this dispute. While the Emergency Arbitrator questions whether “no monetary compensation” can properly represent the real value of Claimant’s investment if such termination were to proceed, the Emergency Arbitrator agrees that there is a

⁶⁵ Application, para. 127.

⁶⁶ Application, para. 129.

⁶⁷ Application, para. 129.

⁶⁸ Application, para. 133.

⁶⁹ Application, para. 133.

⁷⁰ Application, para. 141.

⁷¹ Application, para. 143.

⁷² Application, para. 144.

considerable difference between a mere monetary alteration and the stripping of an entity of its rights to continue maintaining a separate, significant entity (i.e. an Airport).

110. The prejudice that would be suffered by the Claimant if the Concession Agreement were to be terminated would be substantial.
111. Claimant correctly notes that if the termination of the concession were to be accomplished, the entirety of its investment would appear to be nullified, as the existence of Avia Invest is solely for the purpose of maintaining the Airport under the Concession Agreement.
112. On the other hand, the Emergency Arbitrator sees little risk of imposing a significant burden on Respondent by prohibiting Respondent to proceed with the termination until an arbitral tribunal can be constituted. In theory, the full termination may not take place until the end of the 180 period from the Notification of Termination, and thus prohibiting such termination for the time being would not likely prejudice Respondent in any considerable manner.
113. While the Emergency Arbitrator makes no finding on the appropriateness of any aspect of the “Performance Guarantee” dispute, he notes that Claimant’s request merely seeks to prevent Respondent from terminating the Concession Agreement due to such Performance Guarantee issues.
114. Because of the prejudice that would be suffered by Claimant if the Concession Agreement to be terminated, and the lack of significant prejudice suffered by Respondent, the Emergency Arbitrator finds that this factor is satisfied.

(d) Emergency Arbitrator’s Analysis

115. The Emergency Arbitrator concludes that the Claimant has fulfilled the necessary factors for the Performance Guarantee requests for relief.

5. Termination

116. The Termination request for relief and the Performance Guarantee requests for relief both concern the prevention of the termination of the Concession Agreement. Accordingly, the analysis above with respect to the Performance Guarantee requests apply equally here.
117. The Emergency Arbitrator again notes that its decision with respect to the Performance Guarantee requests did not concern the specifics revolving around the performance guarantee itself. Rather, the Emergency Arbitrator focused on the fact that the requested relief sought to temporarily prevent termination of the Concession Agreement.
118. Under the Termination request, the relief sought is the same – prevention of the termination of the Concession Agreement.

119. Accordingly, for the reasons discussed by the Emergency Arbitrator in its finding that the Claimant satisfied its burden concerning the Performance Guarantee requests, the Emergency Arbitrator finds that the Claimant has satisfied its burden here.

6. Request Six

120. Claimant's final request for relief requests that Respondent be ordered to refrain from otherwise interfering with Avia Invest's entitlements under the Concession Agreement by taking any steps having a similar or equal effect to those described in its other areas of requested relief.⁷³

121. Without analyzing the traditional factors for emergency relief, the Emergency Arbitrator notes that this request is fatally vague, as it concerns actions that may have a similar effect to the implementation of certain taxes as well as termination of the Concession Agreement due to various reasons.

122. Such a request is vague, overbroad and incapable of meaningful analysis in such emergency proceedings and must be rejected at the outset.

123. Accordingly, the Emergency Arbitrator rejects this request.

V. COSTS

124. Pursuant to Article 10(5) of Appendix II to the SCC Rules, at the request of a party, the Emergency Arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.

125. Pursuant to Article 10(6) of Appendix II to the SCC Rules, when apportioning the costs of the emergency proceedings, the Emergency Arbitrator shall apply the principles of Articles 49(6) and 50 of the SCC Rules.

126. Article 49(6) of the SCC Rules directs the Tribunal to apportion the costs of the arbitration, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

127. Article 50 permits the Tribunal to order one party to pay any reasonable costs incurred by the other party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

128. In their submissions, the Parties request that the Emergency Arbitrator order the other Party to bear the costs of the emergency proceedings, as well as all legal fees and expenses.⁷⁴

⁷³ Application, para. 146.6.

⁷⁴ Application, para. 147; Response, para. 13.

129. Here, the Claimant was successful with respect to some of its requests, but not all. Accordingly, the Emergency Arbitrator finds it appropriate to apportion the costs of the emergency proceedings equally, and to have each Party cover its own legal fees and expenses.

VI. EMERGENCY AWARD ON INTERIM MEASURES

130. For the reasons stated above, the Emergency Arbitrator:

130.1. **DENIES** Claimant's request for a stay and/or suspension of enforcement against Avia Invest of the provisions of: (a) Article XII of the Republic of Moldova's Resolution No. 213 dated 1 April 2020 and (b) Article VIII of the consequential Law of the Parliament of the Republic of Moldova No. 60 dated 23 April 2020;

130.2. **DENIES** Claimant's request that the Republic of Moldova (whether acting on its own behalf or by or through any other person) be ordered to refrain from taking any steps concerning the enforcement and/or implementation against Avia Invest of the provisions of: (a) Article XII of the Republic of Moldova's Resolution No. 213 dated 1 April 2020; and (b) Article VIII the consequential Law of the Parliament of the Republic of Moldova No. 60 dated 23 April 2020;

130.3. **ORDERS** the Republic of Moldova (whether acting on its own behalf or by or through any other person, and in particular the PPA) to refrain from taking any steps to terminate the Concession Agreement under Articles 19, 24, 25 and/or 26 of the Concession Agreement and/or otherwise for any failure on the part of Avia Invest to obtain and/present a performance guarantee otherwise required by Article 19 of the Concession Agreement;

130.4. **ORDERS** a stay and suspension of any steps already taken by the Republic of Moldova (whether acting on its own behalf or by or through any other person, and in particular through the PPA) to terminate the Concession Agreement under Articles 19, 24, 25 and/or 26 of the Concession Agreement and/or otherwise for any failure on the part of Avia Invest to obtain and/or present a performance guarantee otherwise required by Article 19 of the Concession Agreement;

130.5. **ORDERS** a stay and suspension and otherwise prohibits the enforcement of the Notification of Termination dated 8 July 2020, including the stay, suspension and prohibition of any steps to terminate the Concession Agreement based on the Notification of Termination or on the basis of any of the matters stated therein;

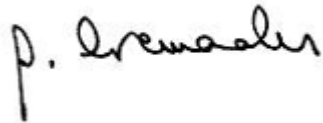
130.6. **DENIES** Claimant's request to order that the Republic of Moldova refrain from otherwise interfering with Avia Invest's entitlements under the Concession Agreement by taking any steps having a similar or equal effect to those described at paragraphs 146.1-146.5 of the Application;

130.7. ORDERS the Parties to equally split the costs of these emergency arbitration proceedings; and

130.8. ORDERS the Parties to bear their own legal costs

Decided by the Emergency Arbitrator:

Seat of Arbitration: Stockholm, Sweden

A handwritten signature in black ink, appearing to read "P. Cremades". The signature is written in a cursive, slightly slanted style.

Mr. Bernardo M. Cremades

Date: 2 August 2020