

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ABH HOLDINGS S.A.

Claimant

v.

UKRAINE

Respondent

(ICSID Case No. ARB/24/1)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Bernard Hanotiau, President of the Tribunal

Mr. Francis Xavier SC, Arbitrator

Prof. Sean D. Murphy, Arbitrator

Secretary of the Tribunal

Mr. Yuichiro Omori

Assistant to the President of the Tribunal

Ms. Iris Raynaud

October 7, 2024

Contents

1. Applicable Arbitration Rules	4
2. Constitution of the Tribunal and Tribunal Members’ Declarations.....	4
3. Fees and Expenses of Tribunal Members	5
4. Presence and Quorum	5
5. Rulings of the Tribunal	5
6. Power to Fix Time Limits	6
7. Secretary of the Tribunal	6
8. Assistant to the President	7
9. Representation of the Parties	8
10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances.....	9
11. Place of Proceeding and Hearings	10
12. Procedural Language(s), Translation and Interpretation	10
13. Routing of Communications	11
14. Number of Copies and Method of Filing of Parties’ Pleadings.....	12
15. Number and Sequence of Pleadings – Procedural Calendar.....	13
16. Production of Documents	14
17. Submission of Documents	15
18. Witness Statements and Expert Reports	17
19. Examination of Witnesses and Experts.....	17
20. Pre-Hearing Organizational Meetings	19
21. Case Management Conferences.....	19
22. Hearings	20
23. Recordings of Hearings and Sessions	20
24. Post-Hearing Memorials and Statements of Costs.....	21
25. Transparency Matters.....	21
26. Data Privacy and Cybersecurity.....	21
27. Amicable Dispute Settlement	22
Annex A – Electronic File Naming Guidelines.....	23
Annex B – Procedural Schedule	25

Scenario 1: Bifurcation is not requested	25
Scenario 2: Bifurcation is requested and granted	26
Scenario 3: Bifurcation is requested and denied	27
Annex C – Document Production Schedule	29

Introduction

The first session of the Tribunal was held on September 12, 2024 at 9:00am (Washington D.C. time), by video conference via Zoom. The session was adjourned at 10:50am (Washington D.C. time).

A recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal:

Prof. Bernard Hanotiau, President of the Tribunal
Mr. Francis Xavier SC, Arbitrator
Prof. Sean D. Murphy, Arbitrator

Assistant to the President of the Tribunal

Ms. Iris Raynaud, Assistant to the President

ICSID Secretariat:

Mr. Yuichiro Omori, Secretary of the Tribunal
Mr. Shay Lakhter, Paralegal

On behalf of the Claimant:

Mr. Baiju Vasani, Twenty Essex
Mr. Alexander Yean, Twenty Essex
Mr. Vladimir Gladyshev, ABH Holdings S.A.
Mr. Pavel Nazariyan, ABH Holdings S.A.

On behalf of the Respondent:

Mr. Epaminontas Triantafilou, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Stephen Jagusch KC, Quinn Emanuel Urquhart & Sullivan UK LLP
Dr. Eirini Kikarea, Quinn Emanuel Urquhart & Sullivan UK LLP
Ms. Eirini Tsoutsou, Quinn Emanuel Urquhart & Sullivan UK LLP
Ms. Iuliia Zozulia, Quinn Emanuel Urquhart & Sullivan UK LLP
Mr. Georgiy Grabchak, Ministry of Justice of Ukraine
Mr. Vladyslav Navolskyi, Ministry of Justice of Ukraine

The Tribunal and the Parties considered the following:

- Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on July 22, 2024; and

- The Parties' comments on the Draft Procedural Orders received on August 28, 2024, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

On September 23, 2024, the Tribunal circulated revised versions of the Draft Procedural Orders for the Parties' further comments. The Parties provided their respective comments on September 30, 2024.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on April 9, 2024 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted based on currently-available information.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on February 26, 2024, March 8, 2024 and April 9, 2024.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.

4. Presence and Quorum
Arbitration Rule 33
 - 4.1. The participation of a majority of the members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
 - 5.3. Orders, decisions and the Award may be signed electronically.
 - 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
 - 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
 - 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).

5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties.

6. Power to Fix Time Limits

Arbitration Rules 10 and 11

6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).

6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

7.1. The Tribunal Secretary is Mr. Yuichiro Omori, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Yuichiro Omori
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.

Tel.: +

Fax: +

Email:

Paralegal name: Mr. Shay Lakhter

Paralegal email:

ICSID case address:

7.3. For local messenger deliveries, the contact details are:

Mr. Yuichiro Omori
ICSID
1225 Connecticut Ave. N.W.

(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: [REDACTED]

8. Assistant to the President

8.1. By letter of April 9, 2024, the President explained to the Parties that he considered that it would greatly assist the overall cost and time efficiency of the proceedings if the President had an assistant. The President proposed, with the approval of the other members of the Tribunal, that Ms. Iris Raynaud be appointed as assistant to the President. Ms. Raynaud's *curriculum vitae* was distributed to the Parties on the same date.

8.2. The President further explained that the assistant would: (i) undertake only such specific tasks as are assigned to her by the President, such as assisting the President of the Tribunal (a) in the management of the case, (b) in examining the evidence and issues in dispute, including the review of submissions and exhibits, the preparation of summaries and/or memoranda, and researching specific questions of fact or law, (c) in the preparation of its decisions on procedural or substantive matters including the preparation of their first drafts, under the direction and control of the President of the Tribunal, and (d) at meetings and deliberations in which he participates; as well as (ii) be subject to the same confidentiality obligations as the Members of the Tribunal, and would sign a declaration to that effect. The President emphasized that he would not delegate to the assistant any of the duties and obligations incumbent on the President as an arbitrator.

In the same letter, the President proposed that Ms. Raynaud would be remunerated directly by the President of the Tribunal, without causing any additional cost to the Parties, save that she would be entitled to reimbursement of reasonable expenses related to a hearing, session or meeting, as follows: (i) actual expenses of overnight lodging and other charges when traveling to an ICSID hearing, session or meeting held away from her residence up to but not exceeding US\$900 per day; and (ii) reimbursements for the costs of air (at one class above economy class) and ground transportation to and from the city where the hearing, session or meeting is held.

8.3. By emails of July 29, 2024, the Parties consented to the appointment of Ms. Raynaud as assistant to the President on the terms set out in §8.1.

8.4. Ms. Raynaud signed a declaration, and it was transmitted to the Parties on 1 August, 2024.

8.5. Ms. Raynaud's email address is [REDACTED].

9. Representation of the Parties

Arbitration Rule 2

9.1. Each Party shall be represented by counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For the Claimant

ABH Holdings S.A.
c/o Mr. Baiju S. Vasani
Mr. Alexander Yean
Twenty Essex
London WC2R 3AL
United Kingdom
Tel.: [REDACTED]
Email: [REDACTED]

For the Respondent

Ukraine
c/o Mr. Epaminontas Triantafilou
Mr. Stephen Jagusch KC
Mr. Alex Gerbi
Mr. James McSweeney
Mr. Matthew Tse
Dr. Eirini Kikarea
Ms. Eirini Tsoutsou
Ms. Iuliia Zozulia
Ms. Yuliia Prokhorenko
Quinn Emanuel Urquhart & Sullivan UK
LLP
90 High Holborn
London, WC1V 6LJ
United Kingdom
Tel.: [REDACTED]
Email: [REDACTED]

and

Oleksandr Frolov
Oksana Legka
Andriy Stetsenko
Oleksiy Didkovskiy
Anna Tkachova
Viktoriiia Kurus
Maksym Zeltser

Procedural Order No. 1

Mariia Moroz
Daryna Ushchapivska
Oleksandr Lutsenko
Asters
Leonardo Business Center, 14th floor
19-21 Bohdana Khmelnytskoho St.
Kyiv, 01054, Ukraine

Tel.: [REDACTED]

Email: [REDACTED]

[REDACTED]

and

Mr. Zakhar Tropin
Mr. Mykola Yurlov
Mr. Georgiy Grabchak
Mr. Vladyslav Navolskyi
Ministry of Justice of Ukraine
13, Horodetskogo St.,
Kyiv, 01001

Ukraine

Tel.: [REDACTED]

Email: [REDACTED]

[REDACTED]

9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

10.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

- 10.2. Following registration of the Request for arbitration, by letter of January 11, 2024, ICSID informed the Parties that USD 400,000 would be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal and requested that the Claimant pay USD 200,000. ICSID received the Claimant's payment on January 29, 2024. By letter of April 9, 2024, ICSID requested that the Respondent pay USD 200,000. As no payment was made, on July 16, 2024, ICSID notified the Parties of the Respondent's default. On July 29, 2024, the Respondent informed ICSID that it was unable to make the requested payment because (i) it was in a state of war with limited financial resources, (ii) there were serious concerns over the Claimant's source of funds, and (iii) Ukrainian law prevented the Respondent from making any payment in this case. Following ICSID's letter of August 8, 2024, informing the Parties of the Secretary-General's intention to suspend the proceeding if payment was not made, on August 12, 2024, ICSID received the payment from the Claimant for the Respondent's portion of the advance requested by ICSID on April 9, 2024.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Washington D.C. shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate with the agreement of the Parties. The method of holding a hearing will be determined in accordance with §22.3.
- 11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English is the procedural language of the arbitration.
- 12.2. The Tribunal and the Secretariat shall communicate with the Parties in the English language.
- 12.3. Documents filed in any other language must be accompanied by a translation into English.

Procedural Order No. 1

- 12.4. It is sufficient to translate only the relevant part of a supporting document insofar as the partial translation provides sufficient context for the part being translated, unless the Tribunal orders a Party to provide a fuller or a complete translation.
- 12.5. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 12.6. The cost of translation shall be borne initially by the Party providing the translation, without prejudice to the decision of the Tribunal as to which Party or Parties shall ultimately bear those costs and in what proportion.
- 12.7. Documents exchanged between the Parties in a language other than English under §16 below (Production of Documents) need not be translated.
- 12.8. The Parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing (see Annex B below) and as soon as possible.
- 12.9. The testimony of a witness called for examination during the hearing is required to give evidence in a language other than in English shall be interpreted, simultaneously if possible.
- 12.10. The interpreters to be used during hearings will be selected by the ICSID Secretariat in consultation with the Parties.
- 12.11. The costs of interpretation will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

13. Routing of Communications
Arbitration Rule 6

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal.

13.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

Arbitration Rules 4, 5 and 9

14.1. By the relevant filing date, the Parties shall:

14.1.1. submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and

14.1.2. upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.²

14.2. Within five business days following the electronic filing, the Parties shall courier to each Member of the Tribunal, at the addresses indicated immediately below, hard copies of the submissions, witness statements and expert reports (excluding exhibits and legal authorities) in A5 format.

Prof. Bernard Hanotiau	Mr. Francis Xavier S.C.	Prof. Sean D. Murphy
------------------------	-------------------------	----------------------

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

14.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word), unless it is impossible or disproportionately burdensome to produce a particular document in such format.

14.4. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Supporting documentation shall be uploaded as individual files, not in .zip format.

document number, the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**.

- 14.5. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.³
- 14.6. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.7. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

15. Number and Sequence of Pleadings – Procedural Calendar

Arbitration Rule 30

- 15.1. The number and sequence of pleadings or written submissions, comprising the written phase of the arbitration in accordance with Arbitration Rule 30, is established in the Procedural Timetable, attached as **Annex B** to this Procedural Order.
- 15.2. The Parties' initial written submissions (i.e., Memorial and Counter-Memorial) shall contain a comprehensive statement of the facts and legal arguments upon which they rely, together with the relief they claim, and shall attach all documentary evidence, evidence of any witness of fact or expert witness and all statutes, case law, doctrine or other legal writings on which that Party relies in support of those submissions.
- 15.3. The Parties' further written submissions (i.e., Reply and Rejoinder) may include new factual allegations, and be accompanied by additional factual exhibits, legal authorities, witness statements, and expert reports, insofar as such factual allegations or accompanying materials i) respond to or rebut matters raised in the adverse Party's immediately preceding written submission (and accompanying materials), ii) relate to the documents produced by the Parties during the document production phase, or iii) relate to new factual or legal developments that could not have been addressed in prior submissions.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control. Such a request for production shall identify each document or narrow category of documents sought with precision, in the form attached in **Annex C** hereto ("**Document Production Schedule**"), in both Word and pdf format, specifying why the document sought is relevant to the dispute and material to the outcome of the case. The reasons for each request shall not exceed 250 words. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant to the President of the Tribunal.
- 16.2. The Tribunal recommends that the number of requests per Party shall be reasonable.
- 16.3. Within the time limit set forth in **Annex B**, the other Party shall either produce the requested documents or, using the Document Production Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.4. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for the production of the documents requested sought and not produced, in which case it shall reply to the other Party's objections in that same Document Production Schedule. At the same time, it shall submit the Word and pdf copies of the Document Production Schedule to the Tribunal.
- 16.5. The Parties shall make no submissions in respect of the steps set out in §§ 16.1 to 16.3 above other than those incorporated in the Document Production Schedules.
- 16.6. On or around the date set forth in **Annex B**, the Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof.
- 16.7. The Tribunal may for this purpose refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 in regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this procedural order or the Arbitration Rules. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 16.8. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal. Documents so communicated shall not be considered to be on record unless and until the

requesting Party subsequently files them as exhibits in accordance with § 17 below.

- 16.9. In addition, the Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with § 17 below and shall be considered to be on record.
- 16.10. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may deem, in light of all circumstances including the reasons advanced by a Party to explain its inability to produce any given document, that the document is adverse to the interests of that Party.
- 16.11. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 17.2. The documents shall be submitted in the manner and form set forth in §14, above.
- 17.3. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written application followed by observations from the other Party.
 - 17.3.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
 - 17.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such document.
- 17.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.5. Documents shall be submitted in the following form:

Procedural Order No. 1

- 17.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 17.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §17.5.4.
- 17.5.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.7. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 17.8. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record.
- 17.9. An electronic copy of each demonstrative exhibit, other than PowerPoint slides, shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunals, the Tribunal Secretary, to the court reporter and to the interpreters as necessary by the morning of the day of the hearing on which such exhibit will be used.
- 17.10. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 38

- 18.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 18.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §17.3).
- 18.3. Each witness statement and expert report shall be signed and dated by the witness.
- 18.4. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, and to assist with the preparation of witness statements and for witness examinations during hearings.

19. Examination of Witnesses and Experts

Arbitration Rule 38

- 19.1. Each Party shall be responsible for securing the appearance of its own witnesses at the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. If a witness fails to appear at the hearing without justification, the Tribunal may order that the witness statement be struck from the record, or may attach such weight to the witness statement as it thinks appropriate in the circumstances. If a Party does not exercise its right to cross-examine a witness, it shall not amount to any admission as to that witness's testimony, and the Tribunal shall attach such weight thereto as it deems appropriate in the circumstances.
- 19.2. Witnesses shall in principle be examined in person. By way of exception, examination by videoconference may be permitted for justified reasons at the discretion of the Tribunal, including reasons pertaining to the ongoing conflict in Ukraine. In the event any witness is examined by videoconference, each Party shall have the right to have counsel physically present in the room with the witness during the examination.
- 19.3. The Parties will determine the order in which the witnesses and experts upon whom they rely will be called, subject to the views of the Tribunal after consultation with the Parties during the pre-hearing organizational meeting.
- 19.4. By the date set forth in Annex B, each Party shall notify the other Party, with a copy to the Tribunal, which witnesses and experts of the opposing Party it wishes to cross-examine at the hearing. The Tribunal will then, by the date set forth in Annex

B, identify the witnesses or experts not called by the Parties whom it wishes to question, if any.

- 19.5. Upon a reasoned request by either Party, the Tribunal shall have the power to call any witness who is within the control of a Party and has knowledge material to the dispute for cross-examination at the hearing, regardless of whether such witness has submitted a witness statement. A witness shall be presumed to be within the control of a Party if he or she holds a position within the Party's organization or group, or serves as a Party's agent or representative. If a witness called pursuant to this provision fails to appear at the hearing without justification, the Tribunal may draw any adverse inferences regarding the witness's potential evidence as it deems appropriate in the circumstances. Examination of a witness called pursuant to this provision shall proceed according to the procedures set out in this Section 19.
- 19.6. In principle, fact witnesses shall be examined before expert witnesses, and Claimants' witnesses shall be examined first, followed by Respondent's witnesses.
- 19.7. Witnesses shall be examined by each Party under the control of the Tribunal, which shall at all times ensure balance and fairness between the Parties. At the hearing, the examination of each witness shall proceed as follows:
 - 19.7.1. The witness shall make the declaration specified in Arbitration Rule 38.
 - 19.7.2. The written witness statement or report of each witness called for cross-examination shall stand in lieu of the examination by the Party producing the witness ("direct examination"). However, the Party which presents the witness may briefly (in principle no more than 10 minutes for a witness of fact) examine the witness in direct for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address facts which have arisen after such statement was drafted.
 - 19.7.3. The scope of cross-examination shall in principle be limited to the contents of the witness statement of the person being examined. Where a Party wishes to ask questions outside the scope of the witness Statement, and subject to the Tribunal's control, such questions must be justified and based on facts of which the witness has direct knowledge that are relevant to an issue in dispute in the arbitration.
 - 19.7.4. The Party who has presented the witness may conduct a redirect examination of the witness with respect to any matters arising out of the cross-examination.
 - 19.7.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

- 19.8. A fact witness shall be permitted to attend and/or read transcripts of the opening statements, but otherwise shall not be present in the hearing room or read transcripts of oral testimony prior to his or her examination. If a Party considers that this procedure should not apply with respect to a particular witness or hearing, that Party may submit a reasoned request to the Tribunal for a different procedure in advance of the relevant pre-hearing organizational meeting.
- 19.9. The rules set forth in §19.7 above shall apply by analogy to the evidence of experts, with the following specifications:
- 19.9.1. Before giving oral evidence, the expert shall make the declaration specified at Arbitration Rule 38.
- 19.9.2. At the Party's discretion, experts may summarize their reports and findings, either through direct examination or in the form of a presentation of no longer than forty-five (45) minutes.
- 19.9.3. Subject to a different agreement by the Parties or a different ruling by the Tribunal, the limitation at §19.8 shall not apply to expert witnesses.
- 19.9.4. Subject to the approval or at the discretion of the Tribunal, experts of similar discipline, if any, may be examined by way of expert conferencing.

20. Pre-Hearing Organizational Meetings

Arbitration Rule 31

- 20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the Parties and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 20.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

21. Case Management Conferences

Arbitration Rule 31

- 21.1. The Tribunal shall convene case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 in order to (i) put in place a process to

identify uncontested facts (e.g., through the submission of a joint chronology of facts); (ii) clarify and narrow the issues in dispute (e.g., by addressing tribunal questions, or submitting a decision tree, road map, matrix(es) and/or skeleton arguments); or (iii) address any other procedural or substantive issue related to the resolution of the dispute (e.g., the appointment of a Tribunal-appointed expert, or the production of evidence).

22. Hearings

Arbitration Rule 32

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. Unless otherwise agreed during the pre-hearing conference, the Parties shall make opening statements. At the pre-hearing conference, the Parties and the Tribunal will discuss the need and modalities for oral closing statements.
- 22.3. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with §11 above.
- 22.4. Having due regard to the views of the Parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 22.5. The date of the hearing shall be determined at a later stage.
- 22.6. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 22.7. Consideration of the question of the allocation of time between the Parties at the hearing is deferred to the pre-hearing organizational meeting. In principle, each Party will have an equal time allocation for examinations and oral arguments at the hearing, subject to adjustments ordered by the Tribunal required or appropriate under the circumstances.

23. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.

- 23.2. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 23.3. The Parties shall agree on any corrections to the transcripts within a period starting from the later of the dates of the receipt of the sound recordings and transcripts, which shall be decided at the pre-hearing organizational meeting. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 24.1. At the conclusion of any hearing, the Tribunal will consult with the Parties and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials. Unless the Tribunal determines otherwise, the post-hearing briefs shall contain no new evidence.
- 24.2. At the appropriate stage, the Tribunal will also consult with the Parties in relation to when and in what form the Parties shall file evidence regarding the quantification of the costs, including any argument in relation thereto.

25. Transparency Matters

Convention Article 48(5), Arbitration Rules 62-66

- 25.1. The Parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

26. Data Privacy and Cybersecurity

- 26.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 26.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law

require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.

- 26.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

27. Amicable Dispute Settlement

- 27.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. If the Parties settle the dispute in full, they may request that the Tribunal issue an order taking note of the discontinuance of the proceeding pursuant to ICSID Arbitration Rule 55(2)(a). Any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.

On behalf of the Tribunal,

[signature]

Prof. Bernard Hanotiau
President of the Tribunal
Date: October 7, 2024

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report–Name of Expert–Type–Name of Submission–LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion–Name of Expert–Name of Submission–LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i> <i>MJ-0001</i>

ABH Holdings S.A. v. Ukraine
(ICSID Case No. ARB/24/1)

Procedural Order No. 1 – Annex A

Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	<i>LS-0002</i>
	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
OTHER APPLICATIONS	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
<i>Costs Submissions-[Respondent]-ENG</i>	
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Procedural Schedule

Event	Date	Interval
Request for Arbitration	29 December 2023	
Constitution of the Tribunal	9 April 2024	
Decision to reject Claimant’s Proposal to Disqualify Professor Murphy	15 July 2024	
First session	12 September 2024	Within 60 days after the constitution of the Tribunal, i.e. by 13 September 2024
Order of the Tribunal on procedure	TBC	15 days after the later of the first session or the last written submission on procedural matters addressed at the first session, or as the Tribunal may require
Claimant’s Memorial	20 December 2024	12 months from Request for Arbitration
Scenario 1: Bifurcation is not requested		
Respondent’s Counter-Memorial	3 September 2025	8 months and 2 weeks from Claimant’s Memorial
<u>Document production phase:</u>		
Parties’ Request for Production of Documents	3 October 2025	1 month
Parties’ Responses and/or Objections to Requests for Production of Documents	3 November 2025	1 month
Parties’ Replies to Objections to Requests for Production of Documents and Application to Tribunal for Orders for Production of Documents	3 December 2025	1 month
Parties’ Production of Documents that are not subject to Objections	7 January 2026	5 weeks
Tribunal’s Decision on Objections to Requests for Production of Documents	7 January 2026	5 weeks from Parties’ Applications
Parties’ Production of Documents ordered by Tribunal	4 February 2026	4 weeks

ABH Holdings S.A. v. Ukraine
(ICSID Case No. ARB/24/1)

Procedural Order No. 1 – Annex B

Claimant's Reply	4 March 2026	1 month from production of documents
Respondent's Rejoinder	4 September 2026	6 months from Claimant's Reply
Parties to confirm which witnesses and experts they wish to examine	TBC	At least 6 weeks before the hearing
Tribunal to indicate whether it wishes to examine any witnesses/experts not called for examination by the Parties	TBC	4 weeks before the hearing, or as the Tribunal may require
Pre-hearing organizational meeting	TBC	
Hearing on Jurisdiction and Merits [8-10 days]	TBC	
Parties' Post-hearing briefs	TBC	
Parties' Costs Submissions	TBC	
Award	TBC	Within 240 days after the last submission in the proceeding, or as the Tribunal may require
Scenario 2: Bifurcation is requested and granted		
Respondent's Request for bifurcation	18 February 2025	The request for bifurcation shall be filed within 60 days after filing the Memorial on the Merits
Claimant's Response to the request for bifurcation	19 April 2025 <i>[Saturday, thus the submission would be due on 21 April 2025]</i>	Within 60 days from request for bifurcation
Tribunal's Decision on Bifurcation (bifurcation granted)	TBC, e.g., 21 May 2025	Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request for bifurcation, or as the Tribunal may require
Respondent's Memorial on Jurisdiction	4 September 2025 <i>[if Tribunal's Decision is issued on 21 May 2025. Same for subsequent dates under this scenario]</i>	3 months and 2 weeks from the Decision on bifurcation
Claimant's Counter-Memorial on Jurisdiction	4 December 2025	3 months from the Memorial on Jurisdiction
Document production phase:		
a. Request	a. 5 January 2026	a. 4 weeks and 4 days
b. Objection	b. 26 January 2026	b. 3 weeks
	c. 16 February 2026	c. 3 weeks

ABH Holdings S.A. v. Ukraine
(ICSID Case No. ARB/24/1)

Procedural Order No. 1 – Annex B

c. Replies d. Decision e. Production	d. 9 March 2026 e. 6 April 2026 <i>[if Tribunal's Decision is issued on 9 March 2026. Same for subsequent dates under this scenario]</i>	d. 3 weeks, or as the Tribunal may require e. 4 weeks
Respondent's Reply on Jurisdiction	6 June 2026 <i>[Saturday, thus the submission would be due on 8 June 2026]</i>	2 months from Production under (e)
Claimant's Rejoinder on Jurisdiction	22 August 2026 <i>[Saturday, thus the submission would be due on 24 August 2026]</i>	2 months and 2 weeks from Reply on Jurisdiction
Pre-hearing conference	TBC	
Hearing on Jurisdiction	TBC	
Tribunal's Decision on Jurisdiction	TBC	Within 6 months days after the last submission, or as the Tribunal may require
N.B.: If jurisdiction is accepted, calendar for the merits phase will be drawn up in consultation with the Parties.		
Scenario 3: Bifurcation is requested and denied		
Respondent's Request for bifurcation	18 February 2025	The request for bifurcation shall be filed within 60 days after filing the Memorial on the Merits
Claimant's Response to the request for bifurcation	19 April 2025 <i>[Saturday, thus the submission would be due on 21 April 2025]</i>	Within 60 days from request for bifurcation
Tribunal's Decision on Bifurcation (bifurcation denied)	TBC, e.g., 21 May 2025	Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request for bifurcation, or as the Tribunal may require
Respondent's Counter-Memorial	28 January 2026 <i>[if Tribunal's Decision is issued on 21 May 2025. Same for subsequent dates under this scenario]</i>	8 months and 1 week from decision on bifurcation

ABH Holdings S.A. v. Ukraine
(ICSID Case No. ARB/24/1)

Procedural Order No. 1 – Annex B

Document production phase: a. Request b. Objections c. Replies d. Decision e. Production	a. 28 February 2026 [<i>Saturday, thus the submission would be due on 2 March 2026</i>] b. 2 April 2026 c. 2 May 2026 [<i>Saturday, thus the submission would be due on 4 May 2026</i>] d. 25 May 2026 e. 25 June 2026 [<i>If Tribunal's Decision is issued on 25 May 2026. Same for subsequent dates under this scenario</i>]	a. 1 month b. 1 month c. 1 month d. 3 weeks or as the Tribunal may require e. 1 month
Claimant's Reply	25 July 2026 [<i>Saturday, thus the submission would be due on 27 July 2026</i>]	1 month from document production
Respondent's Rejoinder	27 January 2027	6 months from Claimant's Reply
Parties to confirm which witnesses and experts they wish to examine	TBC	6 weeks before the Hearing
Tribunal to indicate whether it wishes to examine any witnesses/experts not called for examination by the Parties	TBC	4 weeks before the Hearing, or as the Tribunal may require
Pre-hearing organizational meeting	TBC	
Hearing on Jurisdiction and Merits [8-10 days]	TBC	
Parties' Post-hearing briefs	TBC	
Parties' Submissions on Costs	TBC	
Award	TBC	Within 240 days after the last submission in the proceeding, or as the Tribunal may require

Annex C – Document Production Schedule

Document Request No.	
Identification of documents or category of documents requested	
Relevance and materiality according to requesting Party, including reference to submissions	
Responses and/or Objections by disputing Party to production of requested documents	
Reply to objections	
Decision of the Tribunal	