

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Mabco Constructions SA**

**v.**

**Republic of Kosovo**

**(ICSID Case No. ARB/17/25)**

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**PROCEDURAL ORDER NO. 3**  
**(As revised on October 10, 2019)**

***Members of the Tribunal***

Professor George A. Bermann, President of the Tribunal

Mr. Gianrocco Ferraro, Arbitrator

Professor Dr. August Reinisch, Arbitrator

***Secretary of the Tribunal***

Mr. Francisco Abriani

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October 10, 2019

On the basis of the telephone preliminary conference held on September 23, 2019 and the Parties' joint communication to the Tribunal and Secretary of September 27, 2019, the Tribunal has determined that the upcoming hearing on jurisdiction and admissibility shall be conducted in accordance with the following specifications:

**A. Hearing schedule and time allocation**

1. The hearing will take place in Paris, France. The hearing dates are to be determined in consultation with the Parties.
2. Logistical arrangements (set-up details, transcription, interpretation and technical requirements for use of visual aids, if any) are to be addressed by separate email.
3. The total time reserved for the hearing is 1-1.5 days. Daily hearing start time shall be 9:30 a.m. There shall be one morning break of 20 minutes, a lunch break between 1:00 – 2:30 p.m. (subject to adaptation for convenience), and 2 afternoon breaks of 20 minutes each. End time shall be 7:00 p.m.
4. Due to a likely uneven number of witnesses, time will be kept contemporaneously, stage by stage. The Tribunal Secretary will keep record of the time used by the parties.
5. The sequence of hearing shall be as follows:
  - Opening of the hearing by the Tribunal
  - Opening statement by the Respondent (45 minutes maximum)
  - Opening statement by the Claimant (45 minutes maximum)
  - Examination of the Respondent's witnesses
  - Examination of the Claimant's witnesses
  - Closing statement by the Respondent (15 minutes maximum)
  - Closing statement by the Claimant (15 minutes maximum)
  - Organizational discussion with the Tribunal
  - Closing of the hearing by the Tribunal

**B. Witness Examination**

1. On September 24, 2019, the Respondent informed the Tribunal that it did not request the presence of any of the Claimant's witnesses at the oral hearing, but that, if the Tribunal were to determine otherwise, it would be sufficient to question Mr. Bexhet Pacolli, Mr. Remzi Ejupi and Ms. Lucina Maesani-Gaiatto. However, the Respondent intends in any event to cross-examine all of the Claimant's witnesses who attend the hearing.

2. On September 19, 2019, the Claimant informed the Tribunal that it intended to cross-examine Respondent's witness Mr. Shala.
3. Given Respondent's request for postponement of the hearing, Claimant reserves the right to call further witnesses, in particular Mr. Lluka for cross-examination, depending on further developments in the jurisdictional phase of the case and on Respondent's conduct. The Tribunal invites the Claimant to confirm, by Wednesday, October 9, 2019 whether it intends to cross-examine Mr. Lluka.
4. Witness examination shall be conducted as follows:
  - For all witnesses other than Mr. Behgjet Pacolli and Mr. Ahmet Shala, examination shall occupy 1 hour maximum per witness and consist of:
    - Direct examination: 10 Minutes
    - Cross examination: 30 Minutes
    - Redirect examination: 10 Minutes
  - For witnesses Mr. Behgjet Pacolli and Mr. Ahmet Shala, examination shall occupy 1.5 hours maximum per witness and consist of:
    - Direct examination: 10 Minutes
    - Cross examination: 50 Minutes
    - Redirect examination: 15 Minutes
  - Apart from the time for direct examination, these time limits are indicative only, leaving a margin of discretion to the Tribunal on the length of the segments of the witness examination. The remaining time is reserved to the Tribunal for questioning of witnesses. Upon request, a Party may be granted the opportunity to ask further questions on matters brought up by the Tribunal and not previously discussed.
  - Cross-examination shall not be limited in scope to the scope of the relevant witness statement or expert report. Redirect examination shall be limited to the scope of cross-examination.
  - The Tribunal may question the witness at any moment of its examination.
  - Witnesses shall be required to remain outside the hearing room while they are not testifying and shall be prohibited from hearing or discussing the testimony of other witnesses. Witnesses shall remain separated from each other throughout the hearing. Measures shall be taken to prevent the witnesses from talking to each other outside the hearing room.

- The possibility of witness conferencing may be discussed during the hearing.

**C. Hearing materials**

1. Hearing materials shall be presented as follows:

- At the start of the hearing, a joint hearing bundle, including every document that both Parties wish to use for cross-examination or otherwise invoke at the hearing shall be provided to each member of the Tribunal and the Secretary. Each Party will similarly provide separate hearing bundles containing every document that that Party alone wishes to use for cross-examination or otherwise invoke at the hearing.
- A USB drive with consolidated case file and hyperlinked index of all pleadings, witness statements, exhibits and authorities shall also be jointly prepared and made available to each member of the Tribunal, the Secretary and the Court Reporter at start of hearing.
- Visual aids and demonstrative exhibits, if any, are to be submitted to the Tribunal and opposing Party at least 48 hours before the hearing. Their use at the hearing is subject to the rules set forth at paragraph 16.7 of Procedural Order No. 1.
- No new evidence shall be allowed at the hearing, absent good cause shown as determined by the Tribunal.

2. Whether there will be Closing Arguments and/or simultaneous Closing Briefs will be determined in the course of the hearing.

3. Simultaneous cost submissions shall be submitted by counsel by a date to be determined in the course of the hearing. The Parties' first submission on costs shall not contain any details of counsel's work, i.e. shall consist only of the cover sheet of the counsel's invoices. Parties may request to be granted leave to submit comments on the other Party's submission on costs. If the Tribunal deems it necessary or upon a reasoned request of either Party, the Tribunal may order the Parties to submit details of the work performed. However, such details shall only be provided to the Tribunal and not to the other Party.

On behalf of the Tribunal,

[Signed]

George A Bermann  
President of the Tribunal  
October 10, 2019