

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE 2017 ARBITRATION RULES OF THE
INTERNATIONAL CHAMBER OF COMMERCE

between

AS IUTECREDIT EUROPE

– Claimant –

and

THE REPUBLIC OF KOSOVO

– Respondent –

ICC Case No. _____

REQUEST FOR ARBITRATION

14 February 2020

Dr. Sabine Konrad
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I. REQUEST FOR REGISTRATION

1. In accordance with Article 4 ICC Rules of Arbitration ("**ICC Rules**"), the Estonian finance company AS IuteCredit Europe ("**Claimant**") hereby respectfully submits this Request for Arbitration to the International Chamber of Commerce (the "**ICC**") International Court of Arbitration (the "**Court**").
2. This Request for Arbitration is addressed to:

The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du President Wilson
75116 Paris, France
Phone No. +33149532878
Fax No. +33186266751
Email: arb@iccwbo.org
3. Claimant respectfully requests that the Secretariat of the Court register this arbitration against the Republic of Kosovo ("**Kosovo / Respondent**").
4. Claimant respectfully requests the ICC to allow Claimant to make the payment of the filing fee on the administrative expenses in the amount of USD 5,000.00 as required pursuant to Article 4(4)(b) ICC Rules and Article 1(1) Appendix III ICC Rules in **Euro**. Claimant's bank is unable to make transfers in USD. Claimant therefore requests the ICC to send the payment instructions in Euro based on the daily OANDA exchange rate for USD 5,000 upon receiving the Request for Arbitration. Claimant will then make the transfer promptly. As required by the ICC, the transfer will originate from Claimant and indicate on the transfer the full name of Claimant.

5. Pursuant to Articles 4(4)(a) and 3(1) ICC Rules this Request for Arbitration will be accompanied by five additional signed copies. A hard copy of the Request of Arbitration will be dispatched promptly to the above stated address of the Secretariat. Also, an electronic version has been sent to the Secretariat by email.
6. The below contains the following additional information required under Article 4(3) ICC Rules to register the Request:
 - *Section II.* specifies the Parties as per Article 4(3) *lit. a* ICC Rules;
 - *Section III.* sets out the nature and circumstances of the dispute as per Article 4(3) *lit. b* ICC Rules;
 - *Section IV.* sets out the arbitration agreement providing for the Court's jurisdiction as per Article 4(3) *lit. d* ICC Rules;
 - *Section V.* addresses procedural matters such as the Tribunal constitution as per as per Article 4(3) *lit. f* ICC Rules and the place of the arbitration as per *lit. g*; and
 - *Section VI.* provides a preliminary indication of the relief sought as per Article 4(3) *lit. d* ICC Rules.

12. Claimant is represented in this arbitration by Dr. Sabine Konrad of Morgan, Lewis & Bockius LLP. Power of attorney is attached as **Exhibit C-0004**.³

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13. All email communication should be addressed to:

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nika.rassadina@morganlewis.com; pierre.trippel@morganlewis.com;
evelinevelin.kanter@iutecredit.com; sejdiu@sq-law.com.

³ Power of Attorney, 12 February 2020 [C-0003].

B. Respondent

14. The Republic of Kosovo is the Respondent in this arbitration. To the best of Claimant's knowledge and in accordance with Article 67(1) Kosovo Law No. 03/L-048⁴ and Article 16(3) Kosovo Law on Foreign Investment (the "**Investment Law**")⁵, this Request for Arbitration should be served to Respondent at the following addresses:

Mr. Albin Kurti
Prime Minister
Government Building
"Mother Teresa" Square
10000 Pristina, Republic of Kosovo

Mr. Glauk Konjufca
Minister of Foreign Affairs
Ministry of Foreign Affairs Building
Str. "Luan Haradinaj"
10000 Pristina, Republic of Kosovo

Mrs. Albulena Haxhiu
Minister of Justice
Ministry of Justice
Former Rilindja Building
Pristina, Republic of Kosovo

Mr. Fehmi Mehmeti
Governor of the Central Bank of the
Republic of Kosovo
Central Bank of the Republic of Kosovo
Rr. Garibaldi Nr. 33
Pristina, Republic of Kosovo

Kosovo Investment and Enterprise
Support Agency (KIESA)
Muharrem Fejza str. n.n.
Lagja Spitalit
10000 Prishtina, Republic of Kosovo

15. For the sake of good order, a copy of this Request for Arbitration should be served to the Kosovo Investment and Enterprise Support Agency.

⁴ Law No. 03/L-048 on Public Financial Management and Accountability (as amended by Law No. 03/L-221) [C-0004], Article 67(1): *"If, at any time after this Part XIII becomes effective, any person or organization files with a court or an arbitral tribunal a complaint or claim against a public authority seeking monetary or any other form of compensation from such public authority, or a complaint or claim alleging a right in or to property in the ownership or possession of a public authority or under the administration of a public authority, such person or organization (the "complainant") must pay all required court filing fees and provide a copy of such complaint or claim to the concerned public authority and the Minister of Justice"* (emphasis added).

⁵ Law No. 04/L-220 on Foreign Investment, 12 December 2013 [C-0005].

III. NATURE AND CIRCUMSTANCES OF THE DISPUTE

A. Summary of the Dispute

16. Claimant brings this damages claim because on 6 December 2019, the Central Bank of the Republic of Kosovo (the “**Central Bank**”) revoked the microfinance institution license of Claimant’s 100% subsidiary, IuteCredit Kosovo JSC (the “**Local Subsidiary**”) and ordered the liquidation of the Local Subsidiary. At the time, the Local Subsidiary had a loan portfolio of approximately **EUR 12 million** spread over more than **25,000** loans. This Measure violated Kosovo’s obligations under its Foreign Investment Law as there was no valid reason for it.
17. Contrary to the Central Bank’s reasoning, there was no valid basis for the decision. The decision was based on the alleged difference between the average effective interest rate (“**EIR**”) of allegedly 82.11% of the Local Subsidiary’s loan contracts, and an EIR of 34% stated in the 2017 business plan submitted during the registration process. However, this is not a suitable basis. Indeed, to base the revocation of the Local Subsidiary’s license on this fact alone negates the role of the 2017 business plan, negates the market circumstances and negates all relevant legal sources.
18. To begin with, the Local Subsidiary’s EIR have been agreed with its customers in good faith, they are reasonable, and they are legal. The EIR are for microfinance loans. That is, the fees themselves already amount to a significant portion of them. More importantly, these loans are almost exclusively provided without any collaterals and an enforcement of claims in the national court system is inefficient. The Local Subsidiary is exposed to a high default risk. Hence, the Local Subsidiary’s EIR are fixed taking into account a large range of relevant risk factors.⁶

⁶ See *infra*, ¶¶ 33, 73.

19. At the time of the 2017 application, the Local Subsidiary had no determinative basis for this risk assessment. Indeed, the Local Subsidiary was **one of the first significant non-NGO microfinance institution in Kosovo**. Therefore, the 2017 business plan itself stated that *“the values applied in the future may differ from those presented in this document.”*⁷
20. Subsequent to the 2017 application, Kosovo’s trade deficit in 2018 increased by 11.6% compared to the previous year.⁸ In 2017, the average wage growth in the private sector was expected at 5%. Instead, the actual growth was merely 3.5% and thus only reflected the country’s increasing inflation rate. The unemployment rate increased to 30.7% at the end of 2018 from 27.5% in 2016.⁹ Therefore, there were significant market necessities to claim higher EIR than foreseen in the 2017 business plan.¹⁰
21. On the legal side, the Central Bank itself did **not** restrict the license issued in 2017. In particular, it did not state the license would be issued under the condition of the EIR mentioned within the 2017 business plan. Nor could it. The business plan did not serve the purpose to **restrict** the applicant’s business. It was only supposed to have the Central Bank assess **the viability and the prospects** of the applicant’s business as both the regulatory provisions and the legislative history for microfinance institutions underline that Kosovo had a strong interest ascertaining that licensed microfinance institutions would be sustainable and endure on the difficult market.¹¹

⁷ See *infra*, ¶ 71.

⁸ International Trade Statistics 2018, Kosovo Agency of Statistics, June 2019 [C-0006], p. 5.

⁹ Labour Force Survey 2016, Kosovo Agency of Statistics, May 2017 [C-0007]; Labour Force Survey 2018, Kosovo Agency of Statistics, April 2019 [C-0008].

¹⁰ See *infra*, ¶¶ 68-75.

¹¹ See *infra*, ¶¶ 83-87.

22. Moreover, **no provision of Kosovo law** whatsoever states that a deviation of the actual EIR from those foreseen in the business plan – let alone deviations that arose due to market conditions – would necessitate any measures of the Central Bank.¹²
23. Indeed, the very liquidator appointed by the Central Bank **continues to collect** the interest rates as contracted by the Local Subsidiary.¹³
24. Finally, even if the Central Bank could have taken any measure against the Local Subsidiary's EIR (*quod non*), Kosovo law provided the Central Bank with an array of no less than **nine alternative and less intrusive options**. Even though it should have considered the less drastic options, the Central Bank immediately opted for the harshest one without justification or need.¹⁴

B. The Investment

1. Establishment of the Local Subsidiary

25. On 2 February 2017, Claimant founded the Local Subsidiary in order to enter the microfinance market in the Republic of Kosovo.¹⁵ The Local Subsidiary has its registered Headquarter at Str. Ukshin Hoti Nr. 49/1, 1000 Pristina, Republic of Kosovo.¹⁶ It operates eight branches within its branch network in Kosovo.¹⁷ The initial capital is EUR 1,500,000.00.¹⁸ The Local Subsidiary obtained its Corporate

¹² See *infra*, ¶¶ 76-81.

¹³ See *infra*, ¶ 89.

¹⁴ See *infra*, ¶¶ 96-105.

¹⁵ IuteCredit Kosovo JSC Statute (as last amended on 30 May 2019) [C-0009], Article 4 – Founder and register of shares: “1. Founder of the company is *IuteCredit Europe AS*, registered in Estonia, Rotermanni Street 5-26, Tallinn 10111, with registration number 11551447. 2. The sole shareholder owning 100% of the capital is *IuteCredit Europe AS* [...]”

¹⁶ IuteCredit Kosovo JSC Statute (as last amended on 30 May 2019) [C-0009], Article 3.2.

¹⁷ IuteCredit Kosovo JSC Statute (as last amended on 30 May 2019) [C-0009], Article 3.2.

¹⁸ IuteCredit Kosovo JSC Statute (as last amended on 30 May 2019) [C-0009], Article 7.

II. THE PARTIES

A. Claimant and its Counsel

7. AS IuteCredit Europe is a leading European personal finance, microcredit and fintech group established in 2008 and the Claimant in this arbitration. It has its registered seat in Tallinn, the Republic of Estonia.¹ It is registered with the commercial register of Estonia.²
8. Claimant has the following business address:

AS IuteCredit Europe
Maakri 19/2
10145 Tallinn
Republic of Estonia
9. Claimant is a holding company that focuses its commercial operations on consumer credits. Credits are issued as installment loans via its 100% subsidiaries to customers in Moldova, Albania, North-Macedonia, Kosovo, and Bosnia and Herzegovina. IuteCredit thereby turns its own equity and its investors' limited term placements into unsecured consumer loans with maturities between one month and 36 months as well as car-secured loans with maturities of up to 60 months.
10. Claimant as the holding company is responsible for the strategic and operational management of the group and takes major decisions on, *inter alia*, the organizational structure, risk management, investor relations and all strategic targeting, planning and its implementation. The local subsidiaries implement the decisions and processes designed by Claimant with local teams, local customers and local loan portfolios.
11. In early July 2019, Claimant acquired IuteCredit Finance SARL. The entity issues senior secured bonds and lists them on the Frankfurt Stock Exchange.

¹ AS IuteCredit Europe Articles of Association, 14 December 2018 [C-0001].

² AS IuteCredit Europe Commercial Register Excerpt, 10 February 2020 [C-0002].

Registration Certificate from the Ministry of Trade and Industry of the Republic of Kosovo and is incorporated under the laws of Kosovo.¹⁹

26. Pursuant to Article 6 of its Statutes, the activity of the company is as follows:

“1. To perform its activity, the Company shall have a valid license issued by the Central Bank of the Republic of Kosovo (‘the CBK’) for microfinance institutions.

2. Activities of the Company shall include only activities permitted under Article 93 of the Law on Banks, Microfinance Institutions and Non Bank Financial Institutions, or a successor law governing this field.”

2. Microfinance License of the Local Subsidiary

27. Pursuant to Article 92 Law No. 04-L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (the “**Banking Law**”),²⁰ a microfinance institution requires a license / registration as a microfinance institution to carry out credit / loan provision activity in the Republic of Kosovo (the “**Microfinance License**”). A Microfinance License is distinct from a bank license.

28. On 15 March 2017, the Local Subsidiary applied to the competent Central Bank for the Microfinance License and provided all necessary documentation as set out in Section 2.2 of the Microfinancial Institutions and Non-Bank Financial Institutions

¹⁹ IuteCredit Kosovo JSC Corporate Registration Certificate, 3 April 2019 [C-0010].

²⁰ Law No. 04/L-093 on Banks, Microfinance Institutions and Non Bank Financial Institutions, as affected by Constitutional Court of the Republic of Kosovo Judgment in Case No. KO97/12 (2013), 12 April 2012 [C-0011]; see also Law No. 03/L-209 on Central Bank of the Republic of Kosovo, 22 July 2010 [C-0012].

Registration Manual (the “Registration Manual”).²¹ Its application of 603 pages included a business plan.²²

29. On 27 October 2017, the Local Subsidiary received the Microfinance License with Decision 65-20/2017 of the Central Bank.²³ Pursuant to Section 2.5 of the Registration Manual, the Microfinance License was indefinite. That is, there is no mandatory regular review procedure.²⁴ The Decision stated:

- I. It is approved the registration of the company ‘IuteCredit Kosovo’ J.S.C. [...] as a microfinance institution for carrying out credit provision activities.
- II. ‘IuteCredit Kosovo’ J.S.C. is authorized to carry out the financial activity of providing loans [...].
- III. This decision is effective from the date of its approval.”²⁵

30. Under Section 2.5 of the Registration Manual,²⁶ the Central Bank had to examine a list of more than nine mandatory preconditions before granting the registration. These include, *inter alia*, that the microfinance institution has proven the legal source of its capital funds, that the management has sufficient qualifications and experience, the compatibility with competition law, the Banking Law and other regulatory requirements. However, there is no provision stating that a certain maximum EIR cannot be surpassed. This understanding is confirmed by the Kosovo

²¹ IuteCredit Kosovo JSC Application for Microfinance Institution Registration / License with the Central Bank of the Republic of Kosovo, 15 March 2017 [C-0013]; Microfinancial Institutions and Non-Bank Financial Institutions Registration Manual, Central Bank of the Republic of Kosovo, July 2017 [C-0014].

²² IuteCredit Kosovo JSC Application for Microfinance Institution Registration / License with the Central Bank of the Republic of Kosovo, 15 March 2017 [C-0013]; IuteCredit Kosovo JSC Business Plan, 1 June 2017 [C-0015].

²³ Decision 65-20/2017 for Registration of the Company “IuteCredit Kosovo” as a Microfinance Institution, Central Bank of the Republic of Kosovo, 27 October 2017 [C-0016].

²⁴ Registration Manual, Section 2.5: “Pursuant to Article 92, paragraph 5 of the Law on Banks, MFIs and NBFIs, the registration of the MFIs or NBFIs is approved for an **indefinite period of time** [...]” (emphasis added).

²⁵ Decision 65-20/2017 for Registration of the Company “IuteCredit Kosovo” as a Microfinance Institution, Central Bank of the Republic of Kosovo, 27 October 2017 [C-0016], p. 1.

²⁶ Registration Manual, Section 2.5.

Central Registry of Permits and Licenses which also does not list the EIR as information required to be submitted with the business plan.²⁷ By providing the Microfinance License, the Central Bank confirmed that the Local Subsidiary met all these requirements.

31. On the basis of the Decision, the Local Subsidiary received the Registration Certificates and subsequently commenced its microfinance business in Kosovo.²⁸

3. Start of Business in Reliance on the Microfinance License

32. After receiving its Microfinance License, the Local Subsidiary started its business operations in Kosovo with a rapidly-growing customer base due to its attractive microfinance products for consumers.
33. As of 30 June 2019, the Local Subsidiary had 35,822 active loans, having increased its active loans by 660% within one year.²⁹ On 30 June 2019, the average gross loan amount (total outstanding principal and accrued primary fee amount) within this portfolio was around EUR 219.³⁰ These micro-loans are provided without any collaterals, thereby exposing the Local Subsidiary to a very significant default risk. The ratio of actual loan repayments compared to contractual repayment pursuant to the loan repayment schedules plus 30 days was only over 86%.³¹

²⁷ Central Registry of Permits and Licences, Registration of Micro-finance Institutions, <https://lejelicenca.rks-gov.net/en/licence?id=1029&showAll=true> (accessed on 4 February 2020) [C-0017], page 2 “Documents requested”: “The business plan including, inter alia, the organizational structure of the proposed MFI, the anticipated type of activity, the financial statements anticipated for three years and, if any, the audited financial statements and annual reports for two (2) last years”.

²⁸ IuteCredit Kosovo JSC Certificate of Registration as a Microfinance Institution, 20 September 2018 [C-0018].

²⁹ AS IuteCredit Europe Management Report for H1/2019, 30 June 2019 [C-0019], p. 7.

³⁰ This calculation is based on 35,822 active loans and the gross total loan portfolio of EUR 7,855,000 as stated in AS IuteCredit Europe Management Report for H1/2019, 30 June 2019 [C-0019], p. 7.

³¹ AS IuteCredit Europe Management Report for H1/2019, 30 June 2019 [C-0019], p. 7.

C. The Measures

34. The Local Subsidiary's business operation was taken to an abrupt and unforeseen stop in early December 2019.³² The Central Bank revoked the Microfinance License and ordered the liquidation of the Local Subsidiary.³³ The decision was based on one allegation, *i.e.* that the Effective Interest Rates (the "EIR") of the loan contracts actually concluded between the Local Subsidiary and its customers deviated from the EIR provided for in the business plan at registration. This Measure occurred in the following steps.
35. On 25 June 2018, the Central Bank issued a Draft First Report based on a visit of Central Bank officials to the Local Subsidiary on 17 May 2018 and a review of a small sample of ten loans issued by the Local Subsidiary.³⁴ The selection of the loans could not be challenged. The Report identified four alleged instances of non-compliance, with one of them being the Local Subsidiary's deviation from the EIR of 34.0% set out in the 2017 business plan.³⁵
36. On 13 July 2018, the Local Subsidiary commented on the Report of the Central Bank and stated that none of its actions were taken in bad faith. It committed itself to remedying any deviations from the regulatory standard and explained that any increase in EIR was due to the entry into a new emerging market.³⁶

³² See Kosovo Banking Law, Article 105. The Central Bank has ten different options (paragraph 1.1 – 1.10) to address alleged shortcomings in compliance with Central Bank Regulations. The possible options are ranked with regard to the gravity of their impact on the addressee beginning with the least invasive measure (paragraph 1.1 – issuance of written warning). A revocation of the registration (paragraph 1.10) constitutes the most invasive measure in the hierarchy set forth by the applicable law.

³³ See Decision No. 78 – 32/2019 on the Revocation of License / Registration of the Microfinance Institution "IuteCredit Kosovo" JSC, Central Bank of the Republic of Kosovo, 6 December 2019 [C-0020].

³⁴ Draft First Report No. 819-D-2018 on the Visit to IuteCredit for Verifying the Compliance with the Regulation on Effective Interest Rate and Disclosure Requirements, Central Bank of the Republic of Kosovo, 25 June 2018 [C-0021]; Regulation on Effective Interest Rate and Disclosure Requirements, Central Bank of the Republic of Kosovo, 29 August 2013 [C-0022].

³⁵ Draft First Examination Report by Central Bank, 25 June 2018 [C-0021], p. 3: "Deadline for correctional actions: immediately after receiving this Report".

³⁶ IuteCredit Kosovo JSC Response to the Central Bank's of the Republic of Kosovo Draft Compliance Report of 25 June 2018, 13 July 2018 [C-0023].

37. On 2 August 2018, the Central Bank issued a Notice of Intent to issue unspecified administrative punitive measures.³⁷ The Notice merely restated the findings of the previous Report. It generically stated that the Local Subsidiary's comments on the Report did not change the Central Bank's assessment.³⁸
38. On 11 October 2018, the Local Subsidiary responded to the Notice of Intent.³⁹ The response, setting out the Local Subsidiary's explanations and commitments to comply with the regulatory framework, remained unanswered.
39. On 13 November 2018, the Central Bank issued Decision No. 63-21/2018, which imposed a monetary penalty in the amount of EUR 15,000.00 against the Local Subsidiary.⁴⁰ Further, the Central Bank issued orders towards the CEO, the "steering board" and the shareholders of the Local Subsidiary.⁴¹
40. On 25 March 2019, the Central Bank issued its preliminary Draft Second Report on the examination of the Local Subsidiary after a second visit of Central Bank officials to the Local Subsidiary between 29 January and 6 February 2019.⁴² Based on a revision of 24 loan contracts, the Central Bank found that the Local Subsidiary had made major improvements on all alleged instances of non-compliance. With regard to three out of the four instances, the Central Bank confirmed that the Local

³⁷ Notice No. 2018/247 for the Purpose of Imposing Administrative Punitive Measures against MFI "Iute Credit", Central Bank of the Republic of Kosovo, 2 October 2018 [C-0024], p. 4: "The abovementioned violations may be punished according to Article [...]."

³⁸ First Notice of Intent, 2 October 2018 [C-0024], p. 4: "We inform you that even after we have reviewed your comments dated 13 July 2018, such violations in the examination report remain unchanged."

³⁹ IuteCredit Kosovo JSC Response to the Central Bank's of the Republic of Kosovo Notice of 2 October 2018, 11 October 2018 [C-0025]. Unfortunately, Claimant is not in possession of the second page of the original Albanian version of the document that was sent to the Central Bank since the liquidator took possession of the Local Subsidiary's documentation. See *infra*, at ¶ 49.

⁴⁰ Decision No. 63-21/2018 on Imposing Measures against the Microfinance Institution "IuteCredit", Central Bank of the Republic of Kosovo, 13 November 2018 [C-0026], p. 1.

⁴¹ Decision No. 63-21/2018 on Imposing Measures against the Microfinance Institution "IuteCredit", Central Bank of the Republic of Kosovo, 13 November 2018 [C-0026], p. 1.

⁴² Draft Second Report No. 2019/739 on Examination of IuteCredit Kosovo JSC, Central Bank of the Republic of Kosovo, 25 March 2019 [C-0027]; Notice No. 2019/544 on Commencement of a Focus Examination by the Banking Supervision Department, 25 January 2019 [C-0028].

Subsidiary remedied them. With regard to the fourth, the Central Bank found that the EIR had been reduced significantly since the First Report. However, the Central Bank demanded a further lowering of the EIR in order to reach the level of the 2017 business plan.

41. On 19 April 2019, the Local Subsidiary responded that the EIR had been lowered significantly more than it had been described in the Draft First Report.⁴³ Moreover, it reiterated that the process of implementing a reduction of the EIR was making fast progress and that a full compliance with the demands of the Central Bank would be possible. Such a change would however require time, given that it had more than 25,000 active loans.⁴⁴ The Local subsidiary thus stated:

“Within a timeframe of 12-18 months, we will aim to approximate the targets listed in the business plan submitted to the CBK.”⁴⁵

42. On 5 September 2019, the Central Bank published a Third Report on the examination of the Local Subsidiary.⁴⁶ This Third Report, by contrast, did not examine the EIR. Instead, it focused on the source of the Local Subsidiary’s funds. The Central Bank demanded that funds should not be borrowed from natural persons but only be provided by the shareholder of the Local Subsidiary.⁴⁷
43. On 6 September 2019, the Local Subsidiary issued its immediate response on the Third Report. Regardless of whether it was obligated to do so under Kosovo law, it

⁴³ IuteCredit Kosovo JSC Response to the Draft Second Report by the Central Bank of the Republic of Kosovo, 19 April 2019 [C-0029].

⁴⁴ See *supra*, at ¶ 33.

⁴⁵ IuteCredit Kosovo JSC Response to the Draft Second Report by the Central Bank of the Republic of Kosovo, 19 April 2019 [C-0029].

⁴⁶ Third Report No. 2019/1361 on Examination of IuteCredit Kosovo by the Central Bank of the Republic of Kosovo, 5 September 2019 [C-0030].

⁴⁷ Third Report No. 2019/1361 on Examination of IuteCredit Kosovo by the Central Bank of the Republic of Kosovo, 5 September 2019 [C-0030].

returned all funds addressed by the Central Bank in its Report within ten days to demonstrate its continuous willingness to cooperate with the Central Bank.⁴⁸

44. On 13 September 2019, the Central Bank issued a Second Notice of Intent to impose unspecified administrative penalties against the Local Subsidiary.⁴⁹
45. On 27 September 2019, the Local Subsidiary requested a review of the Second Notice of Intent by the Central Bank's Review Division referring to the legality of its business operations.⁵⁰
46. On 6 December 2019, the Central Bank revoked the Microfinance License of the Local Subsidiary and referred to the deviation between the actual EIR and those foreseen in the 2017 business plan.⁵¹ The Central Bank's Review Division rejected the Local Subsidiary's request for review of the Notice of Intent without addressing any of its arguments.⁵² The decision was rendered without giving the Local Subsidiary any further specific notice in advance.
47. Additionally, in the same decision of 6 December 2019, the Central Bank ordered the initiation of the liquidation procedure of the Local Subsidiary pursuant to the

⁴⁸ Iute Credit Kosovo JSC Response to the Third Report by the Central Bank of the Republic of Kosovo, 6 September 2019 [C-0031].

⁴⁹ Notification No. 2019/1368 for the Purpose of Imposing Administrative Penalties against MFI "Iute Credit", 13 September 2019 [C-0032].

⁵⁰ IuteCredit Kosovo JSC Request to Review the Notice of Intent No. 2019/1368 by the Central Bank of the Republic of Kosovo Review Division, 27 September 2019 [C-0033].

⁵¹ Decision No. 78 – 32/2019 on the Revocation of License / Registration of the Microfinance Institution "IuteCredit Kosovo" JSC, Central Bank of the Republic of Kosovo, 6 December 2019 [C-0020], p. 1 para. 1: *"The Microfinance Institution 'The Local Subsidiary' JSC (hereinafter MFI IuteCredit), address st. Ukshin Hoti, no. 49/1, 1st Floor, 10000 Pristina, Kosovo, shall be revoked the license/registration dated 27 October 2017"*.

⁵² Decision No. 78 – 32/2019 on the Revocation of License / Registration of the Microfinance Institution "IuteCredit Kosovo" JSC, Central Bank of the Republic of Kosovo, 6 December 2019 [C-0020], p. 3: *"The Review Division has reviewed the request [...] and, having administered all the evidence at its disposal, has found that the aforementioned violations, identified during the examination process are apparent [...]"*.

Banking Law.⁵³ The Central Bank appointed Eduard Bakija as liquidator of the Local Subsidiary and granted him a total monthly reimbursement for his services in the amount of EUR 3,000.00.⁵⁴

48. The decision entered into force on the day of its approval by the Board of the Central Bank, 6 December 2019.⁵⁵ As a recourse to the national courts of Kosovo against the decision has no suspensory effect, the implementation of the Central Bank's decision could not be postponed by any legal action.⁵⁶ Thus, there was no immediate legal remedy to effectively stop the Central Bank from initiating the liquidation procedure.
49. On the very same day, the Central Bank initiated the liquidation procedure. The appointed liquidator physically took over the offices of the Local Subsidiary, blocked the Local Subsidiary from using its bank accounts, assumed control over the Local Subsidiary's Bank accounts at all banking and payment institutions in Kosovo and assumed control over the Local Subsidiary's staff.⁵⁷ Moreover, the liquidator took full possession of all of the Local Subsidiary's documentation including the documents archive. To date, Claimant has not received an original version of the Decision by the Central Bank as it is in the possession of the liquidator and the Central Bank does not answer Claimants requests to receive an original version of the Decision.⁵⁸

⁵³ Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 1 para. 2: "MFI IuteCredit shall be subject to liquidation procedure, under the Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Banking Financial Institutions."

⁵⁴ Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 1 para. 3.

⁵⁵ Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 1 para. 4.

⁵⁶ Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 3: "Legal advice: Aggrieved party can file a lawsuit against this Decision with the competent court within thirty (30) days of the receipt of the Decision, but the lawsuit will not prevent the implementation of the Decision".

⁵⁷ See Letter by AS IuteCredit Europe to the Appointed Liquidator of IuteCredit Kosovo JSC, 13 December 2019 [C-0034], pp. 1-2.

⁵⁸ See Letter by AS IuteCredit Europe to the Governor of the Central Bank of the Republic of Kosovo requesting an original of the Decision of 6 December 2019, 23 December 2019 [C-0035].

50. It was only on 10 December 2019, and thus four days after the Decision of the Central Bank had already been issued, that the Central Bank finally published the Final Second Report on the examination of the Local Subsidiary.⁵⁹

51. On 20 December 2019, Claimant requested the liquidator to grant a power of attorney to Claimant to pursue legal remedies against the Central Banks' Decision on behalf of the Local Subsidiary. This is necessary since the liquidator became the exclusive legal representative of the Local Subsidiary upon commencement of the liquidation procedure. Claimant stated:

"[...] we kindly request from You as the sole authorised representative of ICKO to sign the Power of Attorney, which is attached to this request, based on which we would be able to undertake legal action in regards to ICKO's liquidation procedure.

We hope that the right to use legal remedies, including an injunction issued by the court, will not be restricted or disregarded by You [...]"⁶⁰

52. On 23 December 2019, Claimant extended this request for a power of attorney to the Governor of the Central Bank and requested the Central Bank to order the appointed liquidator to issue the power of attorney to Claimant.⁶¹

⁵⁹ Final Second Report No. 2019/739 on Examination of IuteCredit Kosovo JSC, Central Bank of the Republic of Kosovo, 10 December 2019 [C-0036], p. 1: "After reviewing the draft examination report at the microfinance institution "Iute Credit Kosovo", please find attached the final examination report of your institution, conducted by the examiners of the Central Bank of the Republic of Kosovo, from 28 January 2019 to 06 February 2019."

⁶⁰ Letter from AS IuteCredit Kosovo to the Appointed Liquidator of IuteCredit Kosovo JSC, 20 December 2019 [C-0037], p. 1.

⁶¹ Letter by AS IuteCredit Europe to the Governor of the Central Bank of the Republic of Kosovo Requesting a Power of Attorney, 23 December 2019 [C-0038], pp. 1-2: "In Decision no. 78-32/2019, as provided by applicable law, you have provided the legal advice to IuteCredit Kosovo J.S.C. for the use of legal remedies through the filing of a lawsuit with the competent court. To exercise this right (we as representatives selected by the shareholder), IuteCredit Kosovo J.S.C. must authorize us through the liquidator, who, as a result of Decision no. 78-32/2019, is the only person who can now speak on behalf of IuteCredit Kosovo J.S.C. [...] we respectfully request that you oblige the liquidator to sign the attached authorization, which gives us the opportunity to use the guaranteed remedies on behalf of IuteCredit Kosovo J.S.C."

53. Neither the liquidator nor the Central Bank answered this request. To date, the liquidator has not initiated any legal remedies on behalf of the Local Subsidiary against the Decision of the Central Bank. Consequently, the 30-days period to request a review of the Central Bank's Decision before Kosovo courts has elapsed.⁶² Due to the denial to issue a power of attorney, Claimant had no possibility to defend the Local Subsidiary's rights.
54. Finally, on 26 December 2019 the appointed liquidator of the Local Subsidiary issued the decision that all employment contracts of the Local Subsidiary with its employees are terminated as of 31 January 2020.⁶³

D. Kosovo's Liability

55. By adopting the Measures, Kosovo breached the following obligations under the Foreign Investment Law:
- the obligation to accord Claimant with fair and equitable treatment under Article 3(1) Foreign Investment Law (*see infra*, 1.);
 - the obligation to provide full protection and security to Claimant under Article 3(2) Foreign Investment Law (*see infra*, 2.);
 - the obligations not to interfere with or impair Claimant's investment under Article 3(4) Foreign Investment Law (*see infra*, 3.);
 - the obligation to comply with Respondent's obligations created by law or other legal acts (umbrella clause) under Article 5(1) Foreign Investment Law (*see infra*, 4.); and
 - the obligation not to expropriate Claimant's investment without immediate, adequate and effective compensation under Article 7 Foreign Investment Law (*see infra*, 5.).

⁶² Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 3: "Legal advice: Aggrieved party can file a lawsuit against this Decision with the competent court within thirty (30) days of the receipt of the Decision, but the lawsuit will not prevent the implementation of the Decision".

⁶³ Decision of the Appointed Liquidator of IuteCredit Kosovo JSC, 26 December 2019 [C-0039].

1. Fair and Equitable Treatment (Article 3(1) Foreign Investment Law)

56. Kosovo violated the fair and equitable treatment (“FET”) standard under Article 3(1) Foreign Investment Law which is further defined *infra*, at (a).
57. Primarily, the FET standard protects Claimant’s legitimate expectations to claim its effective interest rates (“EIR”) that are reasonable and legal as they conform to actual market and credit risks, to the customers’ expectations, to the Microfinance License and to Kosovo law (‘Ground 1’, *see infra*, (b).).
58. Even if the Central Bank could have taken actions against the Local Subsidiary’s EIR (*quod non*), the Central Bank had ample less intrusive alternatives. Hence, it should have ordered the License revocation and liquidation only as an *ultima ratio* (‘Ground 2’, *see infra*, (c).).

(a) Applicable Legal Standard

59. Article 3(1) Foreign Investment Law states:

“Republic of Kosovo shall accord fair and equitable treatment to foreign investors and their investments in Kosovo with any local investors and local investors.”

60. While included in the Foreign Investment Law, *i.e.* a national law of Kosovo, the FET standard has to be construed in line with international, *i.e.* investment treaty jurisprudence. Indeed, Article 3(1) uses a formulation included in hundreds, if not thousands, of investment treaties. Moreover, the Foreign Investment Law’s rationale to “*protect, promote and encourage foreign investment*”⁶⁴ is the formulation also found in investment treaties. Above all, the Foreign Investment Law applies in confluence with international law because of the context of

⁶⁴ Foreign Investment Law, Article 1: “*The purpose of this law is to protect, promote and encourage foreign investment in the Republic of Kosovo, to provide investors with a set of fundamental rights and guarantees that will ensure foreign investors that their investments will be protected and treated with fairness in strict accordance with the accepted international standards and practices.*”

Articles 3(3)⁶⁵, 17(2)⁶⁶ and Article 1 Foreign Investment Law stating in the relevant part:

“investments will be protected [...] in strict accordance with the accepted international standards and practices.”⁶⁷

61. International practice has developed a non-exclusive catalogue of concretizations for the FET standard while not limiting that standard to those situations. The *Total v. Argentina* award put it as follows:

“tribunals have endeavoured to pinpoint some typical obligations that may be included in the standard, as well as types of conduct that would breach the standard, in order to be guided in their analysis of the issue before them.”⁶⁸

62. The award in *Rumeli v. Kazakhstan* provides a persuasive summary of such categorizations in reference to other arbitral awards:

“As it emerges from the arbitral case law, the principle encompasses, inter alia, the following concrete principles:

the State must act in a transparent manner (*Metalclad, Tecmed*);

the State is obliged to act in good faith (*Tecmed, Waste Management*);

State conduct cannot be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, or lacking in due process (*Waste Management*);

the State must respect procedural propriety and due process (*Amco, Azinian, Fabiani, Brown*).”⁶⁹

⁶⁵ Foreign Investment Law, Article 3(3): “In no case shall the treatment, protection or security required by this paragraph be less favourable than that required by generally accepted norms [of] international law or any provision in the present law.”

⁶⁶ Foreign Investment Law, Article 17(2): “[...] the court or tribunal shall apply [...] such rules of public international law as may be applicable to the issues in dispute.”

⁶⁷ For the wording of Article 1 Foreign Investment Law, see *supra*, fn. 64 (emphasis added).

⁶⁸ *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010 [CL-0001], ¶ 109.

⁶⁹ *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 [CL-0002], para. 583.

63. The investors' legitimate expectations are "one of the major components" (*EDF v. Romania*)⁷⁰, "an important element" (*Duke Energy*)⁷¹ or even the "dominant element" (*Saluka*)⁷² of the FET standard.
64. The test for determining whether a breach of the FET standard has occurred by virtue of the frustration of legitimate expectations is self-explanatory:
- (i) the State's conduct must give rise to an expectation;
 - (ii) this expectation is legitimate;
 - (iii) the investor relies on this expectation to make investments (such that it is "investment-backed");
 - (iv) the State frustrates the expectation; and
 - (v) the State thereby causes harm to the investor.
65. The decisive legitimate expectations can arise from all kinds of conduct of any of the three branches of a State, *i.e.* its executive authorities, its legislative and its judiciary.⁷³ As held in *Total v. Argentina*, the higher the degree of clarity with which authorities of these branches have expressed their intention to bind themselves for the future, the easier it will be for a claimant to establish a breach.⁷⁴
- (b) *Ground 1: Claimant's Right to the Current Effective Interest Rates*
66. In the present case, Claimant's legitimate expectations arose through an act with very high clarity: the Microfinance License set out *supra*, at ¶ 27-31. The Microfinance License confirmed the legality of the application. It permitted Claimant to commence its business in Kosovo through the Local Subsidiary. And

⁷⁰ *EDF (Service) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 [CL-0003], ¶ 216.

⁷¹ *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 [CL-0004], Award dated 18 August 2008, ¶ 340.

⁷² *Saluka Investment BV v. Czech Republic* (UNCITRAL), Partial Award, 17 March 2006 [CL-0005], ¶ 302.

⁷³ *Micula v. Romania*, Final Award, 11 December 2013 [CL-0006], ¶ 671.

⁷⁴ *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010 [CL-0001], ¶ 121.

it was indefinite. Hence, it created Claimant's legitimate expectations.⁷⁵ Claimant relied on these expectations by setting up and financing the Local Subsidiary. Respondent, in turn, frustrated these expectations.

67. The one reason provided within Decision No. 78 – 32/2019 of the Central Bank, *i.e.* that the current EIR is higher than the one foreseen in the 2017 business plan, does **not** affect the frustration of Claimant's legitimate expectations because:

- the Local Subsidiary's EIR are reasonable (*see infra, (i).*);
- neither the Microfinance License nor Kosovo Law restrain the Local Subsidiary from applying higher EIR than foreseen in the 2017 business plan (*see infra, (ii).*);
- the role of the 2017 business plan was indeed a different one, namely to verify that the Local Subsidiary had the prospects to turn into a profitable and sustainable business (*see infra, (iii).*); and
- the Central Bank's contrary allegations are inconsistent and even arbitrary (*see infra, (iv).*).

(i) Reasonableness of Effective Interest Rates

68. In the Measure, the Central Bank provides a distorted picture of the Local Subsidiary's Business. The allegation that the 2017 business plan foresaw an EIR of 34% for 2017 – 2019 and that the average EIR was allegedly 82.11% does **not** mention that Claimant and its Local Subsidiary, at all times, acted in good faith when establishing the EIR. It was not Claimant's change of mind, but a change of the **market** that required Claimant to adapt its EIR. That is, Claimant acted as any reasonable businessman would. This derives from the following:

⁷⁵ Registration Manual, Section 2.5: "Pursuant to Article 92, paragraph 5 of the Law on Banks, MFIs and NBFIs, the registration of the MFIs or NBFIs is approved for an indefinite period of time [...]" (emphasis added).

69. *First*, in 2017, when the Local Subsidiary submitted its business plan, the Republic of Kosovo was still a very young and unexplored market with limited economic data available.⁷⁶ This is also true today. Hence, providing precise financial projections was difficult.
70. Indeed, the Local Subsidiary was **one of the first significant non-bank microfinance institution in Kosovo**. The Local Subsidiary was an early market entrant. There was **very limited empirical data** available for the basic risk of microfinance loans on the Kosovo market. To compensate for the lack of available data on Kosovo, the Local Subsidiary based its financial projections largely on its data from the neighboring Albanian market. The Local Subsidiary explicitly outlined in its business plan that its experiences in Albania might be significantly different from Kosovo and might ultimately result in different interest rates.⁷⁷ That is, the Central Bank issued the License upon the explicit information that the Local Subsidiary's data was not and could not have been based on Kosovo, but on Albanian data. Against this background, the Local Subsidiary did its utmost to estimate the market risk.
71. *Second*, as any realistic predictive business document, the Business Plan must allow for some flexibility. Claimant not only trusted the business mechanisms in this regard. Instead, the business plan explicitly disclosed on its second page:

"the financial projections presented in this Business plan are based on a number of assumptions and expectations and as a result the values applied in the future may differ from those presented in this document."⁷⁸

⁷⁶ Even the limited official data made available by the Kosovo Agency of Statistics on the GDP has been revised so frequently that this lead to an increased risk perception due to a lack of reliable data.

⁷⁷ IuteCredit Kosovo JSC Business Plan, 1 June 2017 [C-0015], p. 2: "*Despite the fact that this business plan is prepared based on the analysis of market data and analysis of IUTE Credit Albania operations as well as other data from IUTE Credit Europe, and despite the fact that all efforts have been made to present reasonable assumptions and achievable outcomes, the financial projections presented herein are based on a number of assumptions and expectations and as a consequence values achieved in the future may differ from values presented herein.*" (emphasis added).

⁷⁸ IuteCredit Kosovo JSC Business Plan, 1 June 2017 [C-0015], p. 2 (emphasis added).

72. *Third*, upon commencing its business, the Local Subsidiary was exposed to shifting market circumstances. The trade deficit in 2018 increased by 11.6% compared to the previous year.⁷⁹ In 2017, the average wage growth in the private sector was expected at 5%. Instead it only increased by 3.5% and thus merely reflected the country's increasing inflation rate. The unemployment rate increased to 30.7% at the end of 2018 from 27.5% in 2016.⁸⁰
73. *Fourth*, these market circumstances have a particular impact on the Local Subsidiary as micro-loans are regularly issued **without any collaterals**. This aspect is exacerbated by the ineffectiveness of the Kosovo national legal system regarding enforcement of claims. Hence, the issuer can only rely on the re-payment by the debtor.
74. *Fifth*, the current EIR do **not** result in any windfall profits. There is no excessive return on investment. Also, the EIR are agreed upon by the customers upon their free will. The number of credit applications is indeed constantly rising. This underlines that the Local Subsidiary plays an important part for small business in the emerging market of Kosovo.⁸¹
75. *Sixth*, the EIR are ordinary for the institutions such as the Local Subsidiary.

(ii) No Restriction in License or Kosovo Law

76. It is not only common economic sense that justifies the EIR claimed by the Local Subsidiary. It is also the Kosovo Law applicable at the time Claimant made its investments in the Local Subsidiary. Indeed **none** of the relevant legal sources states that the business plan is a condition precedent for the Microfinance License,

⁷⁹ International Trade Statistics 2018, Kosovo Agency of Statistics, June 2019 [C-0006], p. 5.

⁸⁰ Labour Force Survey 2016, Kosovo Agency of Statistics, May 2017 [C-0007]; Labour Force Survey 2018, Kosovo Agency of Statistics, April 2019 [C-0008].

⁸¹ See AS IuteCredit Europe Management Report for H1/2019, 30 June 2019 [C-0019], p. 7: "During H1/2019 ICKO processed 59,188 loan applications (H1/2018: 10,355)".

that any change of the circumstances mentioned in the business plan or any change of the EIR could trigger a revocation of the Microfinance License.

77. *First*, this is **not** stated in the Microfinance License itself. The Microfinance License does **not** state *e.g.* ‘under the condition that the EIR foreseen in the 2017 business plan will be applied.’ It does not even say that the EIR would be in any way decisive. Instead, the Microfinance License only contained the following generic phrase:

“After reviewing the submitted documentation [...]. The business plan is based on reasonable predictions regarding main items in the planned financial statements. [...]”⁸²

78. *Second*, this is **not** stated in the Banking Law. Indeed the decisive Article 7(1.4) Banking Law does not even state that the plan has to mention the EIR.
79. *Third*, this is not stated in the Regulation on Effective Interest Rate and Disclosure Requirements.⁸³ This law exclusively deals with the disclosures towards the customer. It does not mention the business plan at all, let alone any definitive role of it in the determination of the admissible EIR.
80. *Fourth*, this is not set out in the Registration Manual. In its Section 2.2.1, titled “Business Plan”, it requires the “*details on the planned financial activity.*” It does **not** require any specific details of the EIR, let alone for a specific period.
81. *Fifth*, the applicable law does not even require a microfinance institution to notify the Central Bank, the Commercial Register or any other institution if the circumstances foreseen in a business plan change. Article 95(1) Banking Law conclusively lists all actions or transactions of a microfinance institution that require prior written approval by the Central Bank. Changes to a business plan, let

⁸² Decision 65-20/2017 for Registration of the Company "IuteCredit Kosovo" as a Microfinance Institution, Central Bank of the Republic of Kosovo, 27 October 2017 [C-0016], p. 2.

⁸³ Regulation on Effective Interest Rate and Disclosure Requirements, Central Bank of the Republic of Kosovo, 3 December 2012 [C-0040].

alone a change of a single parameter such as the EIR a business plan, are not listed as changes that require the Central Bank's prior approval.

(iii) Role of 2017 Business Plan

82. The 2017 business plan was relevant for the application procedure as it was required under Article 7(1.4) Banking Law. However, contrary to the Central Bank's allegations, the rationale for the submission of a business plan when applying for a Microfinance License, was **not** that the Local Subsidiary should be restrained in its business or that a cap on its EIR could be imposed.
83. To the very contrary, the business plan was required to **guarantee the viability of the business and, hence, of the Local Subsidiary**. The Central Bank was supposed to review the business plan and the prospects of the Local Subsidiary in order to ascertain that only such microfinance institution would receive a license that would be able to survive on the market.
84. *First*, this derives from the decisive Section 2.5 of the Registration Manual:

"The CBK shall approve the registration of an MFI / NBFI only if the following conditions are met: the business plan is based on accurate analysis based on reasonable assumptions and thus **realistic and competitive in the market**.

[...] the legal source of capital funds is proven, and the financial capacity for investing the planned funds, as well as the realization of the necessary funding for the **sustainable continuation of the activity of the institution**."⁸⁴

85. Section 2.2 of the Registration Manual further underlines the emphasis of the long-term sustainability of the applicant's business:

"2.2.1 Application Process for Registration – Application Phase – Business Plan

⁸⁴ Registration Manual, Section 2.5 (emphasis added).

The business plan is one of the key elements in the decision-making process for granting registration to the MFI or NBFI. The business plan of the proposed IMF or NBFI shall be constructed in such a form as to clearly outline the long-term strategic development of the proposed MFI or NBFI in the target market taking into account financial sustainability.

The proposed MFI's or NBFI's long-term strategy should translate into specific medium-term and short-term measurable objectives, which should justify the projected growth as well as to rely in the proposed MFI or JFJB capital by justifying thus the financial projections.”⁸⁵

86. *Second*, this derives from the context of the assessment. Pursuant to Section 2(5) of the Registration Manual, not only the financial prospect but also of the qualifications and experience of the board of directors of an applicant are assessed.⁸⁶
87. *Third*, this derives from the relevant history of the microfinance market in Kosovo. After the war, microfinance institutions in Kosovo were registered as local NGO's with limited funding. Especially the less affluent had virtually no access to traditional banking services. Soon, microfinance loans for the poor were identified as an important tool to help initiate small business activities and economic growth. Consequently, the regulatory purpose of the new Banking Law was to ascertain that investors in microfinance institutions would not abandon their business after a short term but rather find success and promote their microfinance business ventures to other investors.⁸⁷ Indeed, this understanding has been recently confirmed by the

⁸⁵ Registration Manual, Section 2.2 (emphasis added).

⁸⁶ Registration Manual, Section 2(5): “[...] *The CBK shall approve the registration of an MFI only if the following conditions are met: [...] the qualifications, experience, integrity and reputation of its directors, director or senior manager are proper and fit for the proposed business plan and financial activities [...]*.” (emphasis added).

⁸⁷ Banking Law, Article 1: “*The purpose of this Law is to foster and maintain a stable financial system through promoting the sound and prudent management of banks, microfinance institutions and other non bank financial institutions and providing an appropriate level of protection for depositors' interests*” (emphasis added).

Central Bank in its press release on the revocation of the license of the Local Subsidiary. The Central bank stated:

“Through its licensing policy, CBK continually aims to provide the best conditions for access to finance in Kosovo, enabling operation in our financial market only to the institutions that contribute to the stability and development of the financial system and, consequently, the sustainable economic development of the country.”⁸⁸

(iv) Arbitrariness of Central Bank's Conduct

88. In any case, the contrary justifications of the Central Bank are inconsistent and arbitrary.
89. *First*, the liquidator appointed by the Central Bank himself continues to collect on the very micro-loans for which the Central Bank reprimanded the amount of the EIR.
90. *Second*, the Central Bank pays the liquidator a mere EUR 3,000.00 per month to liquidate a multi-million dollar microfinance banking operation with more than 25,000 open individual loan contracts. This leaves Claimant with little hope that its business and financial interests will be adequately protected and that it receives anything close to a satisfactory monetary compensation at the end of the liquidation procedure.
91. *Third*, the Measure contains the non-understandable finding that the shareholder of the Local Subsidiary is “*inadequate and inappropriate*”.⁸⁹ This finding is arbitrary as the Central Bank provides no reasoning, factual evidence or context. It is, in fact,

⁸⁸ Press Release of the Central Bank of the Republic of Kosovo, <https://www.bqk-kos.org/index.php?id=104&l=1707> (accessed on 13 February 2020), 6 December 2019 [C-0041].

⁸⁹ Decision No. 78 – 32/2019 on the Revocation of License / Registration of the Microfinance Institution “IuteCredit Kosovo” JSC, Central Bank of the Republic of Kosovo, 6 December 2019 [C-0020], p. 3: “*In addition to the findings addressed above, security institutions have also received information that the shareholder of IMF IuteCredit is inadequate and inappropriate.*”

an entirely secret allegation. Nonetheless, the Central Bank includes this finding as a cornerstone to justify its decision.

92. By basing its decision on this finding the Central Bank violated Articles 47(1.3) and 48(1) and 48(2) Law on General Administrative Procedure as the decision lacks any sufficient reasoning.⁹⁰ In particular, the Central Bank did not provide the Local Subsidiary “*with the opportunity to properly understand the administrative act*” since there was no sufficient “*explanation of the factual situation upon which the decision was taken*” which renders the Decision “*incomprehensible*”.⁹¹
93. The finding becomes even more arbitrary against the background that the Central Bank included this very same statement in its decision on the revocation of the license of the microfinance-institution Monego JSC that was also issued on 6 December 2019.⁹² The shareholders of Monego JSC and the Local Subsidiary are completely different as Claimant is not a shareholder in Monego JSC or any of its holding companies.
94. *Fifth*, the Central Bank only examined a total of 34 loans during its two examinations of the Local Subsidiary to determine the average EIR.⁹³ To assess a statistically reliable average EIR of all of the Local Subsidiary’s 35,822 open loan contracts,⁹⁴ the sample size of a mere 34 contracts is insufficient and leads to incorrect and unreliable results.

⁹⁰ Law No. 05/L-031 on General Administrative Procedure [C-0042].

⁹¹ Law No. 05/L-031 on General Administrative Procedure [C-0042], Article 48(1), (1.2) and (2).

⁹² Decision No. 77-32/2019 by the Central Bank of the Republic of Kosovo on the Revocation of License / Registration of the Non-Banking Financial Institution "Monego" JSC, 6 December 2019 [C-0043], p. 3: “*In addition to the findings addressed above, security institutions have also received information that the shareholder of NBFJ Monego is inadequate and inappropriate.*”

⁹³ Draft First Report No. 819-D-2018 on the Visit to IuteCredit for Verifying the Compliance with the Regulation on Effective Interest Rate and Disclosure Requirements, Central Bank of the Republic of Kosovo, 25 June 2018 [C-0021], p. 1; Draft Second Report No. 2019/739 on Examination of IuteCredit Kosovo JSC, Central Bank of the Republic of Kosovo, 25 March 2019 [C-0027], p. 2.

⁹⁴ AS IuteCredit Europe Management Report for H1/2019, 30 June 2019 [C-0019], p. 7.

Interim Conclusion

95. In consequence, the reasonableness of the Local Subsidiary's EIR, their legality, the purpose of the 2017 business plan and the arbitrary conduct of the Central Bank necessitate that the fair and equitable treatment standard required Kosovo **not** to take any measures against the Local Subsidiary's EIR, let alone revoke the Local Subsidiary's Microfinance License.

(c) Ground 2: License Revocation and Liquidation are ultima ratio

96. Even if, in general, the Central Bank was in a position to take measures against the Local Subsidiary's EIR (*quod non*), Article 105(1) Banking Law gives the Central Bank no less than **ten options** of how to act.⁹⁵ By revoking the Microfinance License and ordering the Local Subsidiary's liquidation, the Central Bank went for the most invasive one. For the following reasons, however, this measure should have only been adapted as an *ultima ratio*.

⁹⁵ Article 105(1) Banking Law: "The Central Bank of the Republic of Kosovo may take one or more of the following actions [...]:

1. issue written warnings;
2. require the Microfinance Institution or NBFI to submit a remedial plan;
3. conclude a written agreement with the Board of Directors providing for a program of remedial action;
4. impose limits and/or place restrictions on the activities and operations of the Microfinance Institution or the NBFI;
5. issue written Orders to cease and desist from such infractions and to undertake remedial action;
6. impose fines on the Microfinance Institution, the NBFI or on its Senior Managers, Directors, Principal shareholders or those holding Significant interest in it, in amounts of from one hundred (100) to one thousand (1,000) Euros for each day that the infraction continues;
7. appoint an advisor to the Microfinance Institution or the NBFI;
8. suspend temporarily or dismiss Senior Managers or a member or members thereof, the Board of Directors or a member or members thereof;
9. appoint an Official Administrator in place of current Senior Management and the Board of Directors; and
10. revoke the registration of the Microfinance Institution or NBFI and appoint a Receiver pursuant to the provisions of this Law."

97. *First*, the FET standard encompasses the State's obligation to adopt proportional measures,⁹⁶ which requires that a measure is necessary in that there are no less intrusive means realizing an objective equally effective.⁹⁷ As summarized in the *Occidental v. Ecuador II* award⁹⁸ (and later confirmed in the annulment decision⁹⁹): a State violates the proportionality principles when it adopts a certain measure even though it has "other less traumatic, legal options."¹⁰⁰
98. *Second*, Kosovo law also contains this obligation. Article 13(1) of the Regulation on Procedures for Imposing Administrative Penalties of the Central Bank states:

"The decision to impose administrative penalties should be in accordance with the Law on General Administrative Procedures."¹⁰¹

99. The Law on General Administrative Procedures, in turn, states in its Article 5(1) that "[a]ny administrative action [...] must be proportional." Article 5(2) then specifies:

"An administrative action is deemed proportional only if it meets the following conditions:

2.1 it is necessary to attain the purpose prescribed by law [...]."

⁹⁶ *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 [CL-0007], ¶ 109 (as per statement of Judge Schwebel); Benedict Kingsbury and Stephan Schill, "the Concept of Proportionality", in Stephan Schill (ed.), *International Investment and Comparative Law*, pp. 86-87; Gebhard Bücheler, *Proportionality in Investor-State Arbitration* (OUP, 2013), pp. 67 *et seq.*

⁹⁷ *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002 [CL-0008], ¶ 143.

⁹⁸ *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA Case No. UN 3467, Final Award, 1 July 2004 [CL-0009], ¶¶ 428-436.

⁹⁹ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Decision on Annulment of the Award, 2 November 2015 [CL-0010], ¶¶ 343-348.

¹⁰⁰ *Id.*, ¶ 327.

¹⁰¹ Regulation on Procedures for Imposing Administrative Penalties, 1 April 2015 [C-0044], Article 13(1).

100. *Third*, both the content and the order of the ten options under Article 105(1) Banking Law leave no doubt that the license revocation and liquidation of the Local Subsidiary was only the **ultimate option** the Central Bank should consider. Indeed, the revocation is the last out of ten options mentioned. More importantly, it is the harshest as it terminates the addressee's business. The other options, such as appointing an advisor to the microfinance institutions or requiring a remedial plan, are evidently less severe and should therefore be considered first.
101. *Fourth*, the Central Bank gave **no explicit warning** about the possible license revocation and/or liquidation. As set out *supra*, at ¶¶ 37 and 41, the prior notices of intent were **unspecified** and did not even mention the possibility of a liquidation. Article 4 of the Central Bank's Regulation on Procedures for Imposing Administrative Penalties, however, states:

“The notification should include and **clearly prescribe** the subject to which it is addressed, the administrative penalties to be imposed.”

102. *Fifth*, throughout the entire procedure initiated by the Central Bank, the Local Subsidiary had shown its commitment to complying with the Central Bank's order and the regulatory framework. Out of the 4 requirements initially imposed in the First Report, the Local Subsidiary fulfilled 3. Indeed, the Central Bank itself, in its second Report, stated:

“By testing 9 (nine) contracts of regular interest and penalty interest returns (refunds) which has also been applied to the loan approval fee, we ascertained that the institution has made **significant progress in this regard**, respectively it is in the process of returning funds that have been calculated in violation of CBK regulation, whereby a **significant part** of the existing customers have now been **adequately reimbursed**.”¹⁰²

103. Moreover, the Local Subsidiary already proved its effort and ability to reduce the EIR. Since the commencement of its business activity, the Local Subsidiary has

¹⁰² Draft Second Report No. 2019/739 on Examination of IuteCredit Kosovo JSC, Central Bank of the Republic of Kosovo, 25 March 2019 [C-0027], p. 3 (emphasis added).

managed to drop the EIR significantly each financial quarter. Between Q3/2018 and Q4/2018, the EIR was reduced by a total of 32.42% and between Q4/2018 and Q1/2019, by 6.2%.¹⁰³ Even the Central Bank confirmed in its Second Report, that the EIR had been dropped by a “significant percentage if compared to the EIR applied previously”.¹⁰⁴

104. As already outlined *supra*, at ¶ 41 the Local Subsidiary was confident that it could achieve full compliance of its EIR with the Central Bank’s demands within 12-18 months. Given the amount of up to 25,000 active loans and the potential difficulties of adjusting all individually calculated EIR, for these contracts, the Central Bank should have granted the Local Subsidiary more time or set certain benchmarks linked to specific dates to grant the Local Subsidiary the possibility to further lower the EIR.
105. In conclusion, out of the ten possible measures, the Central Bank should have first adopted other, less drastic options available under Article 105(1) Banking Law, such as appointing an advisor or requiring a remedial plan. By going directly to the harshest out of 10 options, however, Kosovo violated the FET standard.

(d) Ground 3: Denial of justice

106. Moreover, Kosovo authorities systematically violated Claimant’s and its Local Subsidiary’s fundamental right to access to justice by preventing them to bring any legal recourse against the Decision of the Central Bank before Kosovo courts.
107. The liquidator took full operational control over the Local Subsidiary and became the sole legal representative of the Local Subsidiary in its function of public authority of the Central Bank on the same date that the Central Bank issued its Decision on the revocation of the license. With the commencement of the

¹⁰³ IuteCredit Kosovo JSC Response to the Draft Second Report by the Central Bank of the Republic of Kosovo, 19 April 2019 [C-0029], pp. 4-5.

¹⁰⁴ Draft Second Report No. 2019/739 on Examination of IuteCredit Kosovo JSC, Central Bank of the Republic of Kosovo, 25 March 2019 [C-0027], p. 4.

liquidation procedure, neither Claimant nor the original management of the Local Subsidiary were able to demand judicial review.

108. As established *supra*, at ¶ 51, Claimant, as the 100% shareholder of the Local Subsidiary, requested a power of attorney from the liquidator to challenge the Decision of the Central Bank in local Kosovo Courts on behalf of the Local Subsidiary.¹⁰⁵
109. The liquidator did not answer Claimant's request. Without the requested power of attorney, Claimant was consequently unable to appeal the Decision of the Central Bank on behalf of the Local Subsidiary within the 30-days period set forward in the Decision.¹⁰⁶
110. Equally, Claimant's request to the Central Bank to order its liquidator to issue the power of attorney on behalf of the Local Subsidiary remained unanswered.¹⁰⁷
111. By its actions or rather omission thereof, Kosovo authorities have effectively denied Claimant and its Local Subsidiary any access to Kosovo courts to enforce its rights and assert its claims. Not only does this violate Kosovo's obligations under the Investment Law and the standards under public international law, but also Kosovo's own constitutional right to legal remedies as set out in Article 32 of the Constitution of the Republic of Kosovo.¹⁰⁸

¹⁰⁵ Letter by AS IuteCredit Europe to the Appointed Liquidator of IuteCredit Kosovo JSC, 13 December 2019 [C-0034].

¹⁰⁶ Decision on Revocation of Registration, 6 December 2019 [C-0020], p. 3: "*Legal advice: Aggrieved party can file a lawsuit against this Decision with the competent court within thirty (30) days of the receipt of the Decision, but the lawsuit will not prevent the implementation of the Decision*".

¹⁰⁷ Letter by AS IuteCredit Europe to the Governor of the Central Bank of the Republic of Kosovo Requesting a Power of Attorney, 23 December 2019 [C-0038].

¹⁰⁸ Constitution of the Republic of Kosovo [C-0045], Article 32: "*Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.*"

112. Finally, as stated *supra*, at ¶ 54, Claimant has up to date not received an original version of the Decision of the Central Bank despite its direct request to the Central Bank.¹⁰⁹

2. Full Protection and Security (Article 3(2) Foreign Investment Law)

113. As established *supra*, at ¶ 60, the full protection and security standard under the Foreign Investment Law has to be construed in line with international jurisprudence. A welter of arbitral awards have established that the standard does not only apply to 'physical', but also to 'legal' protection and security.¹¹⁰
114. Kosovo violated this obligation to provide Claimant with legal protection and security. As described in detail *supra*, at ¶¶ 66-105, it has adopted an unjustified Measure without any prior warning and without any prior answers to the Local Subsidiary's explanations and inquiries.

¹⁰⁹ Letter by AS IuteCredit Europe to the Governor of the Central Bank of the Republic of Kosovo requesting an original of the Decision of 6 December 2019, 23 December 2019 [C-0035].

¹¹⁰ *Lauder v. Czech Republic*, UNCITRAL, Award of 3 September 2001 [Exhibit CL-0011], ¶ 314; *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award of 13 September 2001 [Exhibit CL-0012], ¶ 613; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award of 5 October 2012 [Exhibit CL-0013], ¶ 187; *Ceskoslovenska Obchodni Banka, A.S. v. Slovak Republic*, ICSID Case No. ARB/97/4, Award of 29 December 2004 [Exhibit CL-0014], ¶ 170; *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award of 14 July 2006 [Exhibit CL-0015], ¶ 408; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award of 20 August 2007 [Exhibit CL-0016], ¶ 7.4.17.; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award of 24 June 2008 [Exhibit CL-0017], ¶ 729; *National Grid p.l.c. v. Argentina Republic*, UNCITRAL, Award of 8 November 2008 [Exhibit CL-0018], ¶ 189; *Al-Bahloul v. Republic of Tajikistan*, SCC Case No. V064/2008, Partial Award on Jurisdiction and Liability of 2 September 2009 [Exhibit CL-0019], ¶ 246; *AES Summit Generation Ltd. et al. v. Republic of Hungary*, ICSID Case No. ARB/07/22, Award of 23 September 2010 [Exhibit CL-0020], ¶ 13.3.2.; *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, Final Award of 12 November 2010 [Exhibit CL-0021], ¶ 264; *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability of 27 December 2010 [Exhibit CL-0001], ¶ 343; *Marion and Reinhard Unglaube v. Republic of Costa Rica*, ICSID Cases Nos. ARB/08/1 and 09/20, Award of 16 May 2012 [Exhibit CL-0022], ¶ 281; *Teinver S.A. et al. v. Argentina Republic*, ICSID Case No. ARB/09/01, Award of 21 July 2017 [Exhibit CL-0023], ¶ 905 ("intangible assets"); *Anglo American PLC v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/14/1, Award of 18 January 2019 [Exhibit CL-0024], ¶ 482.

115. Moreover, the Measure became **immediately effective** as the Local Subsidiary did not even have an opportunity for recourse or interim relief. Claimant was then also not granted a power of attorney to seek legal recourse against the Decision.¹¹¹

3. No Impairment or Interference (Article 3(4) Foreign Investment Law)

116. Regardless of whether the obligations “*not [to] impair by any unreasonable [...] action [...] the operation, management, maintenance, use, enjoyment or disposal of a [...] investment by a foreign investor*” and “*not [to] interfere with the lawful activities, rights and legally recognized interests of a foreign investor*” under Article 3(4) Foreign Investment Law are a part of the fair and equitable treatment standard under Article 3(1) Foreign Investment Law or an independent standard, these obligations have been violated. The Measure is an unreasonable and unjustified interference with the Local Subsidiary’s microfinance business as described in detail supra, at ¶ 61-97.

4. Umbrella Clause (Article 5(1) Foreign Investment Law)

117. The umbrella clause in Article 5(1) Foreign Investment Law not only applies to investment contracts concluded between Kosovo and a foreign investors but also with regard to obligations arising out of Kosovo’s own law. This would not only apply under standard umbrella clauses as held in jurisprudence.¹¹² Article 5(1) Foreign Investment Law has a clear wording in that regard:

“Republic of Kosovo shall comply in good faith with all obligations that it has to the foreign investors. This provision shall apply to any

¹¹¹ See supra, at ¶¶ 5152.

¹¹² *LG&E Energy Corp. et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006 [CL-0025], ¶ 175: “Argentina’s abrogation of the guarantees under the statutory framework [...] violated its obligations to Claimants’ investment. Argentina made these specific obligations to foreign investors, such as LG&E, by enacting the Gas Law and other regulations. [...] laws and regulations became obligations within the meaning of [the umbrella clause], by virtue of targeting foreign investors and applying specifically to their investments”; *Enron Corporation et al. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007 [CL-0026], ¶ 275: “Through the Gas Law and its implementing legislation, the Respondent assumed ‘obligations with regard to investments’.”

type of obligation, whether created by law, agreement or other legal act.” (emphasis added).

118. In the present case, Article 105(1) Banking Law establishes the obligation that the Central Bank may exclusively consider a license revocation and liquidation (i) as *ultima ratio*¹¹³ and (ii) if a microfinance institution has “*violated a provision of any Regulation or Order of the CBK, or has engaged in unsafe or unsound practices.*” It was established *supra*, at ¶¶ 68-81, however, that the Local Subsidiary’s EIR do not violate any law, regulation, order or standards of sound practice.

5. No Expropriation without Compensation (Article 7 Foreign Investment Law)

119. Finally, the Measure violated Article 7 Foreign Investment Law stating:

“The foreign investment shall not be subject to any form of expropriation or nationalization directly or indirectly or any other equivalent measure with it, except in cases of special public interest established by law, without discrimination, immediate, adequate and effective compensation in accordance with legal procedures.”

120. *First*, the Measure, *i.e.* the revocation of the Microfinance License and the liquidation of the Local Subsidiary is an expropriation. An expropriation occurs when the investor is **deprived** of its investment. This is the case as Claimant loses its subsidiary through liquidation and lost its microfinance business through revocation of the license.
121. In particular, an expropriation occurs irrespective of whether Kosovo takes over the Local Subsidiary or liquidates it. As held by the Iran-U.S. Claims Tribunal and confirmed by subsequent authorities:

“the Tribunal prefers the term ‘deprivation’ to the term ‘taking’, although they are largely synonymous, because the latter may be

¹¹³ See *supra*, at ¶¶ 88-97.

understood to imply that the government has acquired something of value, which is not necessary.”¹¹⁴

122. *Second*, Article 7 Foreign Investment Law obligates Kosovo to expropriate exclusively “in cases of special public interest established by law.” As set out in detail *supra*, at ¶¶ 61-97, however, there was no public interest in expropriating Claimant. If anything, there was a public interest to **preserve** Claimant’s business in Kosovo as the Local Subsidiary’s micro-loans are an important factor for the financing of small business in Kosovo. Moreover, there was no legal basis to take the Measure.
123. *Third*, in any case, Kosovo does not provide Claimant with “adequate and effective compensation” because Claimant, as the Local Subsidiary’s shareholder, will only receive a fraction of the Local Subsidiary’s loan claim in the liquidation procedure, if any, and will not be compensated for any lost profits.

E. Claimant’s Losses

124. As a result of the aforementioned measures in breach of Kosovo’s obligations under the Foreign Investment Law, Claimant has incurred significant damages. The total amount of outstanding loan claims currently is approximately EUR 12 million. In addition, the Measures deprives Claimant of future profits.
125. Claimant is entitled to be put in the position it would have been in but-for the Measures and thus to receive compensation for the losses. The specific amount will be determined in this arbitration. For fee purposes, Claimant indicates that the preliminary amount in dispute is **EUR 30 million**.

¹¹⁴ *Teppetts et al. V. TAMS-AFFA Consulting Engineers of Iran*, (1984) 6 Iran-USCTR 219, 22 June 1984 [CL-0027], ¶ 225. See *AWG Group Ltd. v. Argentine Republic*, UNCITRAL, Decision on Liability, 30 July 2010 [CL-0028], ¶ 132; *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. The United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010 [CL-0029], ¶ 8.23; Campbell McLachlan et al., *International Investment Arbitration* (2nd ed., OUP 2018), ¶ 8.68.

IV. JURISDICTION

126. The Parties have consented to arbitration under the ICC Rules and to the Court's jurisdiction.

127. Respondent consented pursuant to Article 16 Foreign Investment Law which reads:

“(1) In the absence of such an agreed procedure, a foreign investor shall have the right to require that the investment dispute be settled either through litigation before a court of competent jurisdiction in the Republic of Kosovo or through local and international arbitration. The foreign investor may choose any of the following procedural rules to govern the arbitration of the investment dispute: [...] the ICC Rules.”

(3) The consent of the Republic of Kosovo to the submission of an Investment Dispute for arbitration under this Article is hereby given under the authority of the present law.”

128. Claimant consented by submitting this Request for Arbitration to the Court as provided under Article 16(3) sentence 2 Foreign Investment Law stating:

“The consent of the foreign investor may be given at any time **either by filing a request for arbitration** or by providing to the Agency a written statement expressing such consent.”

129. Article 16 Foreign Investment Law is applicable for the following reasons:

130. *First*, Claimant is established pursuant the laws of Estonia as set out *supra*, at ¶ 25. Hence, it is a foreign legal person pursuant to Article 1.3.3. Foreign Investment Law (jurisdiction *ratione personae*).

131. *Second*, Claimant is an investor pursuant to Article 1.4.3. Foreign Investment Law as it holds the shares in the Local Subsidiary (jurisdiction *ratione materiae*).

132. *Third*, Claimant's claims are a Foreign Investment Dispute under Article 1.19 Foreign Investment law as they are “*arising from a foreign investment*”.

V. PROCEDURAL MATTERS

A. Constitution of the Arbitral Tribunal

134. The Parties have no agreement on the number of arbitrators of the Tribunal or the method of appointing the President of the Tribunal.
135. Pursuant to Articles 12(2) and 4(3) *lit. g* ICC Rules, Claimant hereby respectfully requests the Court to decide that the Arbitral Tribunal should consist of three arbitrators.¹¹⁵
136. The nature of the dispute warrants three arbitrators. The claims are based on complex banking and regulatory measures with potentially difficult damages calculations involving multi-national parties in an investment arbitration setting.
137. The two party-appointed co-arbitrators should be appointed pursuant to Article 12(2) ICC Rules. Claimant will appoint its arbitrator within 15 days after the notification of the court's decision on the number of arbitrators pursuant to Article 12(2) ICC Rules.
138. With regard to the appointment of the President, Claimant proposes the following method:

The two arbitrators so appointed, after consultation with the Parties, shall jointly designate a third arbitrator to be the President of the Tribunal within 30 days after the appointment of the second Party-appointed arbitrator, or within such other time period as may be jointly agreed by both of them and the Parties;

Failing an agreement by the two arbitrators on the designation of the President of the Tribunal, the Court, within the time limit set forth under Article 12(5) ICC Rules, shall designate a third

¹¹⁵ Article 12(2) ICC Rules: "Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. [...]"; Article 4(3)(g) ICC Rules: "The Request shall contain the following information: all relevant particulars and any observations or proposals concerning the number of arbitrators and their choice in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby."

arbitrator with significant practical experience in the banking and/or finance sector to be the President of the Tribunal.

B. Place of the Arbitration

139. The Parties have no agreement on a particular place of the arbitration. However, the applicable Article 16(5) Foreign Investment Law confines the choice of the Court pursuant to Article 18(1) ICC Rules as it stipulates that the seat of arbitration shall be in an EU member country that is party to the New York Convention.
140. In accordance with this prerequisite, the Claimant therefore respectfully requests the Court to determine Paris, France as the seat of the arbitration. France is an EU member state and signatory of the New York Convention.¹¹⁶ For efficiency purposes, Claimant proposes that the oral hearing shall be held at the office premises of its Counsel in Frankfurt, Germany and, alternatively, at the ICC's premises in Paris.

C. Applicable Rules of Law

141. This dispute is brought under the Foreign Investment Law of Kosovo.
142. The Parties have no agreement in writing on the law applicable to the dispute pursuant to Article 17(1) Foreign Investment Law and Article 21(1) ICC Rules. Article 17(2) Foreign Investment Law provides, that in the absence of such an agreement, the applicable substantive law is the law applicable in the Republic of Kosovo – excluding the private international law rules thereof – and such rules of **public international law** as may be applicable to the issues in dispute. Moreover, as set out *supra*, at ¶ 25, the Foreign Investment Law states that it has to be construed in line with international practice and jurisprudence.

¹¹⁶ New York Convention, List of Contracting States, <http://www.newyorkconvention.org/countries> (accessed on 13 January 2020) [C-0046].

D. Language of the Arbitration

143. The Parties have no agreement on the language of the arbitration. In accordance with Article 20 ICC Rules, the Claimant hereby respectfully requests the Tribunal to determine the language of the arbitration to be English. As the Parties and its respective counsel are from multiple different countries, the English language is the most common and cost-efficient solution. Moreover, the Foreign Investment Law, which stipulates the Parties consent to arbitrate, is published in English.

VI. PRELIMINARY INDICATION OF THE RELIEF SOUGHT

144. As a preliminary indication of the relief sought, Claimant requests that the Arbitral Tribunal to be constituted in this case issue a final award:

(I) **DECLARING** that by enacting the Measures, Respondent breached its obligations towards Claimant under the Foreign Investment Law of the Republic of Kosovo;

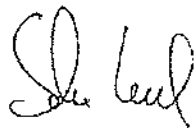
(II) **ORDERING** Respondent to pay damages to Claimant in an amount to be determined in the course of the proceedings, plus pre-award and post-award interest at a commercial rate established on a market basis to be determined during the course of the arbitration, as well as in an amount equivalent to any taxes payable on the awarded amount;

(III) **ORDERING** Respondent to compensate Claimant for the costs of the arbitration, including its legal fees and expenses, the fees and expenses of the Tribunal and the fees of the Court.

145. Claimant reserves the right to amend or to supplement the relief sought in the course of this arbitration. Claimant reserves the right to amend its claim if any new measures are introduced by Kosovo in the future or there will be unfavorable developments concerning the Measures already introduced. Claimant also reserves the right to introduce such evidence or arguments as may be necessary to defend its case or rebut any case which may be put forward by the Respondents.

Respectfully submitted on behalf of the Claimant,

Frankfurt am Main, 14 February 2020



Dr. Sabine Konrad
Rechtsanwältin

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GLOSSARY

Banking Law	Law No. 04/L-093 on Banks, Microfinance Institutions and Non Bank Financial Institutions of the Republic of Kosovo (2012), as affected by Constitutional Court of the Republic of Kosovo Judgment in Case No. KO97/12 (2013)
Central Bank	Central Bank of the Republic of Kosovo
The Court	International Court of Arbitration
EIR	Effective interest rates
FET	Fair and equitable treatment
Foreign Investment Law	The Republic of Kosovo Law No. 04/L-220 on Foreign Investment from 12 December 2013
Local Subsidiary	IuteCredit Kosovo JSC, a wholly owned subsidiary of AS IuteCredit Europe, the Claimant
Microfinance License	License / Registration of IuteCredit Kosovo JSC issued by the Central Bank of the Republic of Kosovo
Registration Manual	Microfinancial Institutions and Non-Bank Financial Institutions Registration Manual by the Central Bank of the Republic of Kosovo