

PCA Case No. 2020-59

SVEA HOVRÄTT
020117INKOM: 2025-01-29
MALMÖ: 740588-24
AKTIV: 119

**IN THE MATTER OF AN ARBITRATION UNDER THE 1976 ARBITRATION RULES OF
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW****UAB “GARSU PASAULIS”
(Lithuania)**

Claimant

v.

THE KYRGYZ REPUBLIC

Respondent

PROCEDURAL ORDER NO. 3**DECISIONS ON THE PARTIES’ REQUESTS FOR DOCUMENT PRODUCTION**

Arbitral Tribunal

Prof. Dr. Kaj Hobér (Presiding Arbitrator)

Mr. Ian Laird

Prof. Nina Vilkova

Tribunal Secretary

Dr. Joel Dahlquist

30 June 2022

I. INTRODUCTION

1. The present Order is made in an arbitration between UAB Garsu Pasaulis. (“**Garsu Pasaulis**” or the “**Claimant**”) and The Kyrgyz Republic (also referred to as the “**Respondent**”), pursuant to the Agreement Between the Government of the Republic of Lithuania and the Government of the Kyrgyz Republic on the Promotion and Protection of the Investments of 15 May 2008.
2. The purpose of this Order is to resolve the Parties’ contested requests for document production (the “**Claimant’s Requests**” and “**Respondent’s Requests**” respectively).

II. RELEVANT PROCEDURAL HISTORY

3. On 5 March 2021, the Arbitral Tribunal issued Procedural Order No. 1 (“**PO1**”), including a procedural calendar attached as Annex A.
4. Pursuant to the procedural calendar annexed to PO1, the Parties exchanged document production requests, followed by responses and replies. The Parties’ completed schedules related to their respective document requests were submitted to the Tribunal on 31 May 2022.

III. THE ARBITRAL TRIBUNAL’S DECISIONS

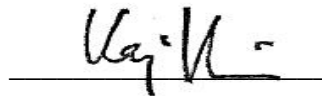
5. The Arbitral Tribunal’s decisions on the Claimant’s Requests and the Respondent’s Requests are attached to this Order as Annex A (the Claimant’s Requests) and Annex B (the Respondent’s Requests) respectively.
6. In making its decisions, the Arbitral Tribunal has been guided by the 2020 IBA Rules on the Taking of Evidence in International Arbitration (pursuant to para. 12.4(e) of PO1), as well as the applicable 1976 UNCITRAL Arbitration Rules (pursuant to para. 5.1 of PO1).
7. Finally, the Arbitral Tribunal notes that its decisions on the Parties’ contested requests are not intended to provide implied decisions on any issues in dispute between the Parties. Accordingly, it should not be taken as any indication as to the Tribunal’s views on the merits if a request is denied or granted.

IV. ORDERS

8. The Arbitral Tribunal orders as follows:

- (a) The Arbitral Tribunal decides on the contested document production requests as set out in Annex A (the Claimant's Requests) and Annex B (the Respondent's Requests). These Annexes, which have been kept as separate documents for ease of reading, form an integral part of this Order.
- (b) Pursuant to para 12.4(f) and Annex A to PO1, the Parties shall produce to each other (but not to the Arbitral Tribunal or the Tribunal Secretary) the documents indicated in Annexes A and B, to the extent located after a reasonable and diligent search, by 30 July 2022 subject to any adjustments hereafter agreed or ordered by the Arbitral Tribunal.

Place of Arbitration: Stockholm, Sweden

A handwritten signature in black ink, appearing to read 'Kaj Hobér', is written over a horizontal line.

Kaj Hobér
Presiding Arbitrator

(On behalf of the Arbitral Tribunal)

**UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
AND
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE
GOVERNMENT OF THE KYRGYZ REPUBLIC ON THE PROMOTION AND PROTECTION OF THE
INVESTMENTS OF 15 JUNE 2008**

PCA Case No. 2020-59

BETWEEN

UAB “GARSU PASAULIS”

Claimant/Investor

v.

THE KYRGYZ REPUBLIC

Respondent

**THE TRIBUNAL’S DECISIONS ON THE CLAIMANT’S REQUEST FOR DOCUMENT
PRODUCTION**

30 June 2022

I. ABBREVIATIONS

9. Throughout this Request (including the section “*Abbreviations*”), the following abbreviations are used:

Abbreviation	Term
Agreement	Agreement Between the Government of the Republic of Lithuania and the Government of the Kyrgyz Republic on the Promotion and Protection of the Investments of 15 June 2008, C-1 .
Alina Shaikova	Former Head of the State Registration Service of the Kyrgyz Republic (GRS)
2012 Tender	Tender for services for the manufacture and supply of blank (expendable materials) for manufacture of the Kyrgyz Republic citizen passport and ID card No. GN27-07/12.
2018 Tender	Tender for production of e-passports No. 181023129327015 organized by the Kyrgyz Republic
2018 Tender regulations	Tender regulations for Tender for production of e-passports No. 181023129327015 organized by the Kyrgyz Republic, C-2 .
Alenkina Report	Expert Report of Prof. Natalia Alenkina, CER-2-1 .
Baltag Report	Expert Report of Dr. Crina Baltag, CER-1-1 .
Claimant	Garsu Pasaulis
Contracting Parties	The Parties to the Agreement, Lithuania and the Kyrgyz Republic
Damages Report	Expert Report of Dr. Jurgita Banyte, CER-3-1 .
Dr. Baltag	Dr. Crina Baltag
Dr. Banyte	Dr. Jurgita Banyte
E-passports contract	E-passports contract with the Kyrgyz Government pursuant to the results of 2018 Tender
FET	Fair and Equitable treatment
Garsu Pasaulis	JSC Garsu Pasaulis
Garsu Pasaulis LLC	Garsu Pasaulis company in the Kyrgyz Republic
Government	The Government of the Kyrgyz Republic
GKNB	The State Committee for National Security Prosecution of the Kyrgyz Republic
GRS	The State Registration Service of the Kyrgyz Republic

ILC Articles	United Nations, Responsibility of States for Internationally Wrongful Acts, Y.B. OF INT.L. COMM'N. Vol. II (Part Two) (2001)
Idris Kadyrkulov	Former Head of the Kyrgyz Republic's State Committee for National Security Prosecution
Interdepartmental Commission	Independent Interdepartmental Commission on complaints and protests and the inclusion of the companies in the database of unreliable and unscrupulous suppliers
Lithuania	The Republic of Lithuania
Lukosevicius	Andrius Lukosevicius
Lukosevicius Witness Statement	Witness Statement of Andrius Lukosevicius, CWS-1-1 .
Mieliauskas	Vytautas Mieliauskas
Mieliauskas Witness Statement	Witness Statement of Vytautas Mieliauskas, CWS-2-1 .
Mühlbauer	Mühlbauer ID Services GmbH
Prof. Alenkina	Prof. Natalia Alenkina
Respondent	The Kyrgyz Republic
Sagyndykov	Marat Sagyndykov
Sagyndykov Witness Statement	Witness Statement of Marat Sagyndykov, CWS-3-1 .
SoC	Statement of Claim of the Claimant filed on 31 August 2021
SoD	Statement of Defense of the Respondent filed on 11 March 2022
Tender Commission	Tender Commission of the State Registration Service under the Government of the Kyrgyz Republic
Tribunal	This arbitral tribunal
UNCITRAL Rules	The Arbitration Rules of the United Nations Commission on International Trade Law, as adopted in 1976
Working Group	Working Group for examination of the technical parts of the 2018 Tender bidders' bids

10. Specially for and only for its Request the Claimant used special abbreviations:

“and”, “and/or” and “or”	shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.
“concerning”	means relating to, referring to, analyzing, discussing, describing, evidencing, or constituting.
Claimant’s legal affiliates	means any natural person related with the Claimant by an employment or commercial relationship, including members of the Claimant’s governing bodies (shareholders, board’s members and etc.)
“document” / “documentation”	<p>shall have the meaning provided in the IBA Rules, namely “a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means” (see (¶ 13.1 of the PO1).</p> <p>Accordingly, the term “document” in this Request includes, but is not limited to, correspondence, emails, letters, memoranda, minutes of meeting, agreements, analyses, reports, agendas, notes, presentations, protocols, spread-sheets, and/or audio/video recordings, including all annexes or attachments thereto. For the avoidance of doubt, a draft or a non-identical copy is a separate document.</p>
IBA Rules	means IBA Rules on the Taking of Evidence in International Arbitration, adopted by a resolution of the IBA Council of May 29, 2010
“include”, “includes”, and “including”	shall be construed to mean a reference to a particular category that does not limit the scope of the request. For instance, “including” should be read as “including, but not limited to”.
Request	means this Request for Document Production of 31 March 2022
“relating to” or “regarding”	means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, prepared in connection with, used in preparation for, or being in any way legally, factually, or logically concerned with the matter or document described, referred to, or discussed or having any connection, association, or concern with, or any relevance, pertinence, or applicability to, or any implication for or bearing upon the subject of the matter of the request.

II. INTRODUCTION

1. Pursuant to Section 12 of PO1, UAB “Garsu Pasaulis” (the “**Claimant**”) hereby submits its Request for Documents production together with Respondent’s objections, Claimant’s Responses & Claimant’s Requests for resolution (the “**Request**”).
2. Section 12 of PO1 requires that Requests for the production of documents be in writing, identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist; and shall set forth, in respect of each document or category of documents requested, a statement as to why such materials are considered relevant to the case at hand and material to its outcome.
3. In accordance with the Tribunal’s instruction above and Annex 2 of PO1, the Claimant sets out its request in vertical tabular form pursuant to the model appended to PO1. Each line of the Claimant’s tabular sets out in sufficient detail “*a narrow and specific category of documents that are reasonably believed to exist*”. Each line of the tabular explains “why such materials are considered relevant to the case at hand and material to its outcome”.
4. **Relevance and materiality of the Request to the outcome of the case.** As set out in detail below, the documents requested by the Claimant are directly relevant and material to the issues in dispute.
5. **Possession, custody or control of the documents requested by Claimant.** The Claimant reasonably believes that the documents requested are or should be in the possession, custody or control of the Respondent, in particular, because they were prepared by or for, and/or were provided to, the Respondent (as well as its authorities and officers).
6. **Lack of possession, custody or control of the requested documents by the Claimant.** To the best of the Claimant’s knowledge, the documents requested are not in its possession, custody or control, or would be unreasonably burdensome for it to produce.
7. For each document request itemized in the table below, and in accordance with ¶ 12.2 of the PO1, to each of the document and (or) category of documents the Claimant provides detailed motivation why it considers that

these documents exist and should contain, in relation to each document or category of documents sought, information that is directly relevant to the case at hand and material to its outcome.

8. **Scope of the Request.** In responding to each of the Requests itemized in the table below, the Respondent shall search for and produce all documents responsive to below requests.
9. The present Request should not be interpreted as an admission of any of the Respondent's arguments.

Respondent's general comments to Claimant's document requests

1. The vast majority of Claimant's document requests must be dismissed outright and without consideration as they do not relate to any of Claimant's own claims and arguments in this arbitration, but arise out of Respondent's argument, in relation to which Respondent – not Claimant – bears the burden of proof.¹
2. Claimant seems to fundamentally misunderstand the purpose of the document production exercise, which exists to help a Party to obtain documents necessary to discharge its burden of proof in relation to the points it wishes to make in the arbitration, not to “ascertain”² the extent to which the other Party has discharged the burden of its own.
3. Any other approach would essentially transform document production into American-style ‘discovery’, allowing the Parties to ‘fish’ for arguments via a flurry of overbroad and speculative document requests. As explained by Professor Yves Derains,

Arbitrators all too often grant requests for document production as soon as they appear to relate to facts that are relevant and material to the outcome of the dispute, and disregard the additional requirement that **the party making the request actually has the burden and the need to prove these facts in order to succeed**. The result is an avalanche of needless documents.³
4. He adds that

To be efficient, document production must serve the purpose of bringing to the arbitral tribunal's knowledge not just any documents relevant and material to the outcome of the dispute, but documentary evidence without which a party would not be able to discharge the burden of proof lying upon it.⁴
5. In other words,

[W]hen a document production request is disputed, the arbitrators have the responsibility of determining whether the requesting party actually needs the documents to discharge its burden of proof. **If not, the request should be denied**. Hence, a document production request that fails to clearly indicate the allegations the documents are supposed to prove and to explain that proof cannot be otherwise discharged **should not be granted**. When assessing requests arbitrators must carefully check that the burden of proof actually lies on the requesting party. In too many cases parties request the production of documents to prove the inaccuracy of statements made by the other party, whereas it is in fact for the latter party to prove that they are accurate even though that party may not have made any move to do so.⁵

¹ This is the case of all of Claimant's Document Requests except for Claimant's Document Requests Nos. 3, 13 and 17-22.

² See e.g., Claimant's Document Request No. 1.

³ **Exhibit RL-203**, Y. Derains, *Towards Greater Efficiency in Document Production before Arbitral Tribunals—A Continental Viewpoint*, ICC Bulletin, Special Supplement 83 (2006), ¶13 [emphasis added].

⁴ *Ibid*, ¶14.

⁵ *Id* [emphasis added].

6. The above considerations have been explicitly endorsed by Professor Bernard Hanotiau who has observed that “[t]he importance of the burden of proof in determining whether or not a request should be granted is often underestimated”⁶ and suggested that “when a party alleges that its opponent has failed to prove a submission it has made and requests that party to produce the relevant evidence, this request should in most cases be dismissed.”⁷
7. The same approach has been upheld by investment arbitration tribunals. For example, in the *Aguas del Tunari v. Bolivia* case, the tribunal chaired by Professor David D. Caron held with respect to document production requests that
[C]onsiderations in evaluating whether or not to order the production of evidence [...] include: **the necessity of the requests made to the point the requesting party wishes to support**, the relevance and likely merit of the point the requesting party seeks to support, the cost and burden of the request on the Claimant and the question of how the request may be specified so as to both fulfill legitimate requests by a party while not allowing inquires that are an abuse of process.⁸
8. As will be demonstrated further below in more detail, the vast majority of Claimant’s Document Request do not satisfy the above criteria.

⁶ **Exhibit RL-204**, B. Hanotiau, *Document Production in International Arbitration: A Tentative Definition of ‘Best Practices’*, ICC Bulletin, Special Supplement 113 (2006), ¶15.

⁷ *Id.*

⁸ **Exhibit RL-205**, *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction, October 21, 2005, ¶25 [emphasis added].

III. REQUEST FOR DOCUMENT PRODUCTION

Document Request No.	1
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.1. Preparatory materials of the 2018 Tender (from 2015 to 2019)</p> <p>A.1.1. Documentation containing information on the preparing, adopting, negotiating and approving of the technical specification of the 2018 Tender documentation by the Respondent's authorities:</p> <p>(1) Documentation (minutes, decisions, orders, and other documents with all the amendments) on the establishment of the interdepartmental working group under the order No. 635-p of the Government of the Respondent of 28 December 2015 (see R-0063) as well as its members appointment documents (orders, protocols and decisions with all the amendments).</p> <p>(2) Documentation (minutes, decisions, orders, and other documents with all the amendments) on the establishment of the two interdepartmental commissions under the decision No. 19 of the Chief of the Government office of the Respondent of 15 February 2016 for designation of passports and development of technical specification (see R-0063) as well as its members appointment documents (orders, protocols and decisions with all the amendments).</p> <p>(3) Documentation (minutes, decisions, orders, and other documents with all the amendments) on the establishment of the expert group for development of technical specification (see R-0063) as well as its members appointment documents (orders, protocols and decisions with all the amendments).</p> <p>(4) Documentation (minutes, decisions, orders, the other documents with all amendments) and communication (requests, answers, notes, and other documents) of and between the Respondent's authorities</p>

	<p>(interdepartmental commission; interdepartmental working group, expert group; GKNB, GKITS⁹, SCITC¹⁰, Government office, Ministry of Justice of the Respondent and others) on preparation, adoption, negotiation and approval of the technical specification as well as other 2018 Tender documentation.</p> <p>(5) International (ICAO¹¹, OSCE¹²) experts' reports (conclusions) on a draft of the technical specification and other 2018 Tender documentation as well as other documentation (communication) between Respondent's authorities (GRS, Departament) and international institutions regarding 2018 Tender documentation.</p> <p>(6) All other reports / notices of the GRS to the Respondent's authorities on the preparation actions for the execution of the 2018 Tender (preliminary lists of the bidders, action plans and schedules related to the execution of 2018 Tender and etc.).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>(1) See ¶¶ 12, 83.3-83.4 and 170 footnote of the SoD, R-0063.</p> <p>(2) This evidence is important (relevant) to ascertain the Respondent's contention that the Claimant and its co-workers allegedly interfered with the 2018 Tender documentation (¶¶ 12, 83.3-83.4 and 170 footnote of the SoD), i.e. the Respondent alleges that 2018 Tender documentation was created solely and exclusively for the Claimant (¶ 12.2 and 170 footnote of the SoD).</p> <p>Having examined the exhibits to the SoD (see R-0063), the Claimant assumes that the 2018 Tender documentation had been created and approved at the government level by the authorized permanent commission, interdepartmental commissions, interdepartmental working group as well as the Government. No documentation (minutes of meetings, decisions, etc.) of the authorised bodies were provided together with the SoD. In addition, the Claimant assumes that the 2018 Tender documentation have been approved by Respondent's authorities such as the GKNB, GKITS, SCITC, Government office, Ministry of Justice of the Respondent and others) as well as by the international experts from the ICAO, OSCE and etc. Thus, the requested documents will prove that the</p>

⁹ Ministry of Digital Development of the Kyrgyz Republic.

¹⁰ State Committee of Information Technologies and Communications of the Kyrgyz Republic.

¹¹ International Civil Aviation Organization.

¹² Organization for Security and Co-operation in Europe.

	<p>Claimant had no influence whatsoever on the preparing, adopting, negotiating and approving of the 2018 Tender documentation, which was prepared with the active involvement of multiple the Respondent's authorities, including the governmental bodies.</p> <p>Following the above, the relevance of the requested documents to the case at hand is evident and indispensable.</p> <p>The requested documents are material to the outcome of the case at hand as these documents will help the Tribunal find that the Claimant is entitled to all damages as per ¶¶ 716-717 of the SoC, etc. Proving that the Claimant did not commit any unlawful acts in relation to the creation of the 2018 Tender documentation will be the first step to dismantling the Respondent's baseless objections and granting ¶¶ (a) and (b) of the Claimant's relief sought in this arbitration.</p>
<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. This document request is not meant to support <u>any</u> of Claimant's claims and arguments advanced in this arbitration, but relate solely and exclusively to arguments advanced by the Republic. Claimant itself admits as much, stating that the purpose of this document requests is to "<i>to ascertain the Respondent's contention that the Claimant and its co-workers allegedly interfered with the 2018 Tender documentation</i>", and making references only to Respondent's own submissions in support of this document production request.</p> <p>(2) Requested documents are not sufficiently relevant to the case or material to its outcome</p> <p>Claimant fails to demonstrate that the requested documents have sufficient relevance to the issues at stake in the present case for this document request to be granted. Claimant argues that it needs the requested documents because "<i>the Respondent alleges that 2018 Tender documentation was created solely and exclusively for the Claimant.</i>" This is a blatant misrepresentation of Respondent's position. As explained at paragraph 83 of the Statement of Defense, the corruption investigation in relation to the 2018 Tender has revealed that in order to secure the win in the 2018 Tender, Claimant had received assistance from the SRS officials who had <i>inter alia</i> shared tender documentation with Claimant beforehand, had influenced members of the tender commission to promote Claimant's bid, and had influenced members of the Independent Interdepartmental Commission, ensuring that the complaints of Claimant's competitors Idemia and Mühlbauer were dismissed. Evidence of those facts would not be found in the documents concerning technical specifications of the 2018 Tender, but rather in Claimant's own private communications with the SRS</p>

	<p>officials, which are subject of Respondent's own Document Requests Nos. 5 and 6. This document request is thus simply an attempt to draw the Tribunal's attention away from the issues that are actually relevant to the present case.</p> <p>(3) Requested documents would contain commercially and technically confidential information and are institutionally sensitive</p> <p>By advancing this document request Claimant seeks to improperly obtain an advantage over its market competitors by getting access to privileged documentation regarding the Republic's public procurement tenders. Indeed, as explained at Sections II(B) and (F) of the Statement of Defense, despite the failure of the 2018 Tender, Claimant has not left Kyrgyzstan and has continued to perform its excise stamps contract with the Kyrgyz State Tax Inspectorate, as well as planned to take part in the new e-passports tender in 2020. It is undeniable that Claimant wants to make new business in the country. Moreover, it is public knowledge that Claimant has and will likely continue to participate in tenders around the world, competing with the same Idemia, Mühlbauer and other companies that participated in the 2018 Tender along with Claimant. Obtaining internal public procurement documents from the Kyrgyz State through document production would thus make Claimant privy to information that its competitors simply do not have and will give Claimant a significant undue competitive advantage.</p> <p>Moreover, considering that the production of State identity documents is a matter of sovereign authority and national security, the requested documents are institutionally sensitive and cannot be simply shared with a private party.</p> <p>(4) The request is not specific and is overly broad</p> <p>Despite Claimant's allegations to the contrary, this document request fails to identify a "<i>narrow and specific category of documents that are reasonably believed to exist</i>", as prescribed by paragraph 12.2 of the Procedural Order No 1. Instead, Claimant essentially asks Respondent to produce any and all documents that are even remotely related to the preparation of the 2018 Tender. Such document requests is essentially impossible to comply with, which is another independent ground for it to be dismissed.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 1</p> <ol style="list-style-type: none"> 1. Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to not only prove its claims, but also to substantiate its defenses. 2. Article 27(1) of the UNCITRAL Rules states that: "[e]ach party shall have the burden of proving the facts relied on to support its claim or defence." Doctrinally, this principle means that the burden of proof refers to the principle that both parties shall produce evidence to substantiate their cases, i. e. the party seeking to

	<p>rely on a particular fact in question on which it relied in its claims or in its defense have the burden of establishing it¹³.</p> <p>3. In the light of the case at hand, rejection of the Request No. 1 could leave Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that the 2018 Tender was allegedly created solely and exclusively for the Claimant or that the Claimant was allegedly involved in the preparation of the 2018 Tender. Accordingly, Respondent's arguments on the reversal of the burden of proof contradict the requirements of Article 27(1) of the UNCITRAL Rules and cannot be considered as an independent ground for rejecting the Request No. 1.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 1</p> <p>4. The Request No.1 exclusively relates to Claimant's defense against Respondent's allegations, set out in ¶¶ 12, 83.3-83.4 and 170 footnote of the SoD, Exhibit R-0063, according to which the 2018 Tender documentation was allegedly created solely and exclusively for Claimant. Respondent in its objection No. (2) to the Request No. 1 mistakenly considers that Claimant is misinterpreting Respondent's allegations. Respondent's arguments can be easily rebutted by examining the evidence previously submitted by Claimant to the SoC. The chief of the GKNB (i.e. chief of Respondent's authority which conducted / conducts the criminal investigation) publicly declared in the public media outlets that the 2018 Tender may have been held for an affiliated company [Claimant]: <i>"If you look at it first, it seems that the tender was held specifically for a certain company. The technical specification was amended, mitigating changes were made, and articles were somewhere tightened. It seems that there had been a preparation for affiliated companies"</i> (see Exhibit CWS_Lukosevicius_1-28). Respondent focused on identical allegations in its SoD (see ¶¶ 12, 83.3-83.4 and 170 footnote of the SoD, Exhibit R-0063). So, there is no doubt that Respondent solely or by its authorities, even before filing its SoD, expressed its hypothesis that the 2018 Tender was allegedly created "for Claimant".</p> <p>5. Having established the latter, and considering Article 27(1) of the UNCITRAL Rules (see ¶¶ 1-3 of part D of the Request No. 1), Claimant has to be provided means to substantiate its defenses and Claimant shall be</p>
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¹³ **Exhibit CLA-36:** David D Caron and Lee M Caplan, The UNCITRAL Arbitration Rules (2nd Edition): A Commentary, Oxford Commentaries on International Law, 2013, p. 558; **Exhibit CLA-37:** Michael Hwang SC and Clarissa Chern, Standards of Proof and Requirements for Evidence in Special Situations, GAR, 2021, <https://globalarbitrationreview.com/guide/the-guide-evidence-in-international-arbitration/1st-edition/article/standards-of-proof-and-requirements-evidence-in-special-situations#footnote-072>

	<p>entitled to obtain the requested documents which will show that there were absolutely no involvement of the Claimant in the process of preparation and execution of the 2018 Tender.</p> <p>6. Therefore, the Request No. 1 should be granted and the requested documents should be recognised as relevant to the case at hand and material to its outcome.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 1</p> <p>7. In order to satisfy the application of Article 9.2(e) of the IBA Rules, the Respondent shall provide¹⁴:</p> <p style="padding-left: 40px;"><i><u>"a clear statement of the nature of the confidentiality relied on together with an explanation of the potential adverse consequences for anyone who may be affected by disclosure or production must be the proper starting point for submissions to the tribunal."</u></i></p> <p>8. Respondent's objections to produce the requested documents set forth in the Request No. 1 on grounds of confidentiality have no reasonable and legitimate basis and are not covered by the protection of Article 9.2(e) of the IBA Rules.</p> <p>9. The requested documents are products of Respondent's <i>acta jure imperii</i> (public powers) for the purpose of creating and executing public 2018 Tender, i. e. these documents were created by Respondent in the exercise of its public powers (e.g., by issuing public acts establishing the 2018 Tender and the commissions / working groups responsible for the preparation the 2018 Tender documentation; ordering and obtaining expert opinions; communicating between the Respondent and public authorities regarding the establishment of the 2018 Tender and etc.), but not in the field of private business. The content of these documents contains mostly legal provisions or explanations or analysis of it, rather than the commercial terms of any kind of deals. Therefore, the protection of Article 9.2(e) of the IBA Rules does not apply to requested documents.</p> <p>10. Confidentiality of the commercial or technical information is not presumed in the light of the application of Article 9.2(e) of the IBA Rules and, as explained in legal doctrine, "[d]etermining what may be considered a compelling commercial or technical reason for denying or excluding evidence under Article 9.2(e) is largely a question of fact in each case."¹⁵ Therefore, the objecting party (Respondent) has the burden of proving the existence of grounds for the application of Article 9.2 of the IBA Rules, including the factual / physical existence of confidential commercial or technical information in the requested documents.</p>
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¹⁴ Exhibit RL-0206, ¶ 12.288.

¹⁵ Exhibit RL-0206, ¶ 12.278.

11. In its objections, Respondent failed to prove the application of 9.2(e) of the IBA Rules in relation to the requested documents:
- Respondent has provided zero evidence that the requested documents are subject to state secrecy and cannot be disclosed to Tribunal and Claimant.
 - Respondent did not argue that there was any economic value in the requested documents or that the production of the requested documents would cause any damage to Respondent.
 - Each country's procedure for establishing a tender is individual and specific and understanding how a particular tender is established in one country does not have an effect on bidder's ability to compete in another country's tender. Therefore, there is no doubt that discovering how the 2018 Tender was created and recognising that Claimant had no hand on it (Claimant's defense) is important only for the present case and will not create an unfair advantage and affect the competitiveness of Claimant in other public tenders in other countries.
12. Therefore, none of the requirements of Article 9.2(e) of the IBA Rules have been proven by Respondent. Accordingly, Article 9.2(e) of the IBA Rules is not applicable to the requested documents.
13. In addition, under the Article 3(13) of the IBA Rules, the parties and the tribunal are obliged to keep the requested documents confidential. Claimant considers that the protection granted by this article sufficiently protects the Respondent's objective to keep the requested documents confidential and there is no need for the additional protection under Article 9.2(e) of the IBA Rules.
- Claimant's response to the Respondent's objection No. (4) to the Request No. 1**
14. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶ 11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder.
15. In the Request No. 1 Claimant has sufficiently and clearly expressed the category of documents requested. In addition, Claimant provided dates and numbers of certain documents and the number of the exhibit in which these documents were referred to in a particular form. As stated in the IBA's commentary to the IBA

	<p>Rules, Claimant may not be aware of such detailed information on dates and numbers of documents, but this circumstance does not preclude a finding that “[s]uch a request may qualify as a “narrow and specific category of Documents”, as permitted under Article 3.3(a)(ii).”¹⁶</p> <p>16. The requested documents, as explained in part B and D of the Request No. 1, would enable the Claimant to substantiate its defenses, proving that Claimant was not involved in the process of preparation and execution of the 2018 Tender, as well as 2018 Tender was not “procedurally rigged” in Claimant’s favor.</p> <p>Request for Resolution</p> <p>17. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 1.</p>
E. Decision of the Tribunal	<p>The request is granted, subject to the next paragraph below. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant’s defence.</p> <p>To the extent that responsive documents contain commercially and technically confidential information that relates to third parties, such documents shall be produced with appropriate redactions.</p>

¹⁶ **Exhibit CLA-38:** 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, p 9 <https://www.ibanet.org/MediaHandler?id=DD240932-0E08-40D4-9866-309A635487C0>

Document Request No.	2
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.1. Preparatory materials for the 2018 Tender (from 2015 to 2019)</p> <p>A.1.2. Documentation relating to the calculation and setting of the 2018 Tender price by the contracting authority (GRS):</p> <p>(1) Preliminary tender bids or other documentation (e.g., consultations) from the consultants who advised the contracting authority (GRS) to set the 2018 Tender price at 1 263 800 000 soms (R-0063, C-5).</p> <p>(2) Written communication (letters, notices, minutes and protocols, etc.) between the Respondent's authorities (Department, GRS, members of commissions, indicated in Document Request No. 1, etc.) and the consultants related to the 2018 Tender price above.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 12, 83.3-83.4 and footnote 170 of the SoD.</p> <p>(2) The requested information is relevant to the case at hand and material to its outcome because it will refute the Respondent's allegations that the 2018 Tender was created solely for the Claimant (¶¶ 12, 83.3-83.4 and footnote 170 of the SoD) whereas the Claimant was never involved in the setting of the 2018 Tender price. Also, the requested information will shed further light on the indicators that were used to set the maximum 2018 Tender price. In the absence of the requested information, it is not possible to assess how the maximum 2018 Tender price was set; consequently, it is not possible to objectively assess the value of bidders' bids based on the principles of economy of procurement and other principles of the Law on Public Procurement.</p> <p>The requested information will show that the Claimant was never involved in the setting of the 2018 Tender price as well as rebutting the allegations that the 2018 Tender was created solely for the Claimant.</p>

C. Objections to document request (objecting Party)

Respondent objects to this document request in its entirety for the following reasons:

(1) Reversal of the burden of proof

Respondent refers to its general comments with respect to Claimant's Document Requests above. Here again, the requested documents are not related to any of Claimant's own arguments in this arbitration, but are meant to *inter alia* "refute the Respondent's [purported] *allegations that the 2018 Tender was created solely for the Claimant* [...]"

(2) Requested documents are not relevant to the case or material to its outcome

Claimant further justifies this document request by stating that requested documents "*will shed further light on the indicators that were used to set the maximum 2018 Tender price*" and that "[i]n the absence of the requested information, it is not possible to assess how the maximum 2018 Tender price was set; consequently, it is not possible to objectively assess the value of bidders' bids based on the principles of economy of procurement and other principles of the Law on Public Procurement." However, just how the 2018 Tender's price was determined has strictly nothing to do with any of the contested issues set out in the Parties written submissions to date. Claimant itself has not expressed any concerns with regard to the 2018 Tender price (be it in this arbitration or even before): it has not argued for example that the 2018 Tender price was unreasonable or had been specifically set in a way that would disadvantage Claimant's bid. Rather, this document request is a shameless attempt at obtaining privileged commercial information to which Claimant would not be otherwise privy to, as explained at point (3) below.

(3) Requested documents would contain commercially confidential information

As explained by academic commentaries to the 2010 IBA Rules, objection to a document request on the grounds of commercial or technical confidentiality covers concerns over third-party confidentiality.¹⁷ With respect to this document request, Claimant is openly seeking to obtain privileged commercial information that would have been provided to Respondent by unrelated third-party consultants in preparation for the 2018 Tender. Certainly, Claimant would never have access to such information outside of these arbitral proceedings. Providing the requested documents to Claimant would give it unfair advantage over its competitors on the Kyrgyz market, and would potentially put Respondent in breach of its own confidentiality obligations towards unrelated third parties.

(4) Claimant has failed to explain why it believes that requested documents exist and are in Respondent's custody or control

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Exhibit RL-206, R. Khodykin, C. Mulcahy et al., *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration*, OUP (2019), ¶¶12.284-12.286.

	<p>Article 3(3)(c)(ii) of the 2010 IBA Rules requires from the requesting Party to provide a “<i>statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.</i>” Claimant has failed to provide such a statement. Instead, it has contented itself with a blanket disclaimer at paragraph 7 in the introductory section above that it “<i>reasonably believes that [all] the documents requested are or should be in the possession, custody or control of the Respondent.</i>” Obviously, such self-serving statements are not sufficient to discharge the burden set by the 2010 IBA Rules. With respect to this document request, Claimant has failed to explain why it believes that Respondent had engaged any third-party consultants in preparation of the 2018 Tender at all, or why it believes that such consultants had provided any advise to Respondent as to the price to be set for the 2018 Tender.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 2</p> <ol style="list-style-type: none"> 1. Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant also to substantiate its defenses. Therefore, rejection of the Request No. 2 could therefore leave Claimant without the means to substantiate its defenses against Respondent’s ill-founded allegations that the 2018 Tender was allegedly created solely and exclusively for Claimant or that the Claimant was allegedly involved in the process of preparation and execution of the 2018 Tender. <p>Claimant’s response to the Respondent’s objection No. (2) to the Request No. 2</p> <ol style="list-style-type: none"> 2. As Claimant pointed out in ¶¶ 4-5 of the part D of the Request No. 1, in the present case the Respondent directly accuses Claimant of participating in the process of preparation and execution of the 2018 Tender as well as that the 2018 Tender was allegedly designed exclusively for the Claimant. 3. On the basis of Article 27(1) of the UNCITRAL Rules, Claimant seeks to prove that it was never involved in the process of preparation and execution of the 2018 Tender, including, but not limited to, the setting of the 2018 Tender price. Eliminating all possible doubts as to whether Claimant was involved in establishment of the 2018 Tender will help the Tribunal conclude that Claimant was never involved in any corruption alleged by the Respondent. Thus, the Request No. 2 should be granted and the requested documents should be recognised as relevant to the case and material to its outcome.

	<p>Claimant's response to the Respondent's objection No. (3) to the Request No. 2</p> <p>4. Respondent's objections to produce the requested documents set forth in the Request No. 2 on grounds of confidentiality have no reasonable and legitimate basis and are not covered by Article 9.2(e) of the IBA Rules.</p> <ul style="list-style-type: none"> • Respondent has not provided any evidence or reference that the requested documents are subject to state secrecy and cannot be disclosed to Tribunal and Claimant. • Respondent did not argue that there was any economic value or that the production of the requested documents is likely cause any damage to Respondent. • Respondent has not indicated what kind of confidential information is contained in the requested documents. Thus, due to the lack of sufficient justification for the existence of confidential information in the requested documents, Respondent has no legitimate basis for relying on Article 9.2(e) of the IBA Rules. • Respondent has not provided any evidence that Respondent is under a non-disclosure obligation regarding the requested information. • Respondent did not explain how the requested documents would create an unfair advantage and affect the competitiveness of Claimant in other public tenders in other countries. <p>5. Therefore, none of the requirements of Article 9.2(e) of the IBA Rules have been proven by Respondent. Accordingly, Article 9.2(e) of the IBA Rules is not applicable to the requested documents.</p> <p>Claimant's response to the Respondent's objection No. (4) to the Request No. 2</p> <p>6. On the one hand, Respondent argues that the requested documents may contain confidential information; on the other hand, Respondent argues that Claimant failed to prove that Respondent has possession of these documents. However, in case the Respondent has no possession of these documents, the Respondent should have provided confirmation of that.</p> <p>7. In any event, Respondent should have carried out a public consultation to establish the 2018 Tender price, and the products of these consultations are precisely what Claimant is requesting. Otherwise, Respondent simply would not have had any knowledge of the 2018 Tender price and could not have substantiated it.</p>
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	<p>Claimant therefore has a reasonable expectation that the requested documents exist and are in the possession of Respondent.</p> <p>Request for Resolution</p> <p>8. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 2.</p>
E. Decision of the Tribunal	<p>The request is granted, subject to the next paragraph below. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence. The requested documents are sufficiently relevant and material for the Claimant's defence.</p> <p>To the extent that responsive documents contain commercially and technically confidential information that relates to third parties, such documents shall be produced with appropriate redactions.</p>

Document Request No.	3
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.2. All requests for the clarification of the 2018 Tender documentation issued by the bidders and answers of the 2018 Tender Commission to these requests</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>Certain clarifications (as indicated above) can be found on the official procurement page¹⁸.</p> <p>That said, the Claimant requests to receive either (1) confirmation by the Respondent that no other questions/answers were provided by the 2018 Tender Commission to the bidders (other than the ones currently available on the official procurement page), or (2) all information that is not currently reflected and disclosed on the official procurement page.</p> <p>The requested information is relevant to the case at hand and material to its outcome since it provides important contemporaneous insights into the 2018 Tender documentation. It also helps to show that the Claimant won the Tender without any undue interference, contrary to what the Respondent insinuates.</p>
C. Objections to document request (objecting Party)	Respondent is conducting searches with respect to this document request and will produce any responsive internal documents, if they exist and are located.
D. Response to objections and request for resolution (requesting Party)	On 27 May 2022, Respondent produced to Claimant the bidders' requests for the clarification of the 2018 Tender documentation and answers of the 2018 Tender Commission to these requests, which was requested by the Request No. 3. Considering the fulfilment of the Request No. 3 by Respondent, the Claimant has no further demands in respect of this Request No. 3.

¹⁸ <http://zakupki.gov.kg/popp/view/order/view.xhtml?id=129327015>

E. Decision of the Tribunal	No decision is required.
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Document Request No.	4
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.1. Documents related to the appointment of 2018 Tender Commission and its members:</p> <p>(1) All orders, protocols, and decisions (e.g., GRS's order No. 297 of 3 October 2018 (see R-0063)) issued by the Respondent's authorities (including the GRS) on appointing the 2018 Tender Commission and its members.</p> <p>(2) All communication between the Respondent's authorities on setting up the 2018 Tender Commission (e.g., letters inviting the officers of the Respondent's authorities to join the 2018 Tender Commission and replies to these letters).</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 83.6, 244.6 of the SoD, R-0063.</p> <p>(2) The requested documents are important (relevant) to the case at hand as they will demonstrate that the Respondent has failed to discharge the burden of proof to prove its case. This evidence will rebut the Respondent's contention that the members of the Tender Commission lacked sufficient competence and independence as well as were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.6, 244.6 of the SoD, R-0063).</p> <p>The requested documents are material to the outcome of the case at hand because they will shed light on the fact that the members of the Tender Commission were: (1) legally appointed (on the basis of laws and by legal acts (see R-0063)); (2) competent and capable of making independent and autonomous decisions in the 2018</p>

	<p>Tender, irrespective of the alleged pressure and influence. Also, this evidence will show which of the Respondent's authorities were involved in the appointment of the members of the Tender Commission, which officers of the Respondent's authorities were appointed, which of the Respondent's authorities refused to send their officers to the Tender Commission and for what reasons.</p> <p>Assessing the documents relating to the Respondent's baseless contention that the members of the Tender Commission have been somehow subjected to the alleged pressures and influences as well as lacked sufficient competence and independence (which it is for the Respondent to prove) is important for the Tribunal's task in light of the position the Respondent chose to take in its SoD (¶¶ 83.6, 244.6 of the SoD, R-0063).</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Claimant unequivocally admits that the purpose of this document request is to <i>"demonstrate that the Respondent has failed to discharge the burden of proof to prove its case"</i> and that requested documents <i>"will rebut the Respondent's contention that the members of the Tender Commission lacked sufficient competence and independence."</i> This document request is thus not related to any of Claimant's own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) Requested documents are not sufficiently relevant to the case or material to its outcome</p> <p>Claimant argues that requested documents concerning the setting up of the 2018 Tender Commission would somehow rebut <i>"Respondent's contention that the members of the Tender Commission lacked sufficient competence and independence as well as were subservient and incapable of making independent and autonomous decisions in the 2018 Tender."</i> It is unclear how Claimant makes this conclusion. As explained with respect to Claimant's Document Request No. 1 above, evidence of the undue influence exerted on the 2018 Tender Commission by certain SRS officials at Claimant's behest would be found in Claimant's own private communications with the SRS officials, which are subject of Respondent's own Document Requests Nos. 5 and 6. This document request is thus simply another attempt to draw the Tribunal's attention away from the issues that are actually relevant to the present case.</p>
D. Response to objections and	Claimant's response to the Respondent's objection No. (1) to the Request No. 4

<p>request for resolution (requesting Party)</p>	<ol style="list-style-type: none"> 1. Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules. Therefore, rejection of the Request No. 4 could leave Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that the members of the Tender Commission allegedly lacked sufficient competence and independence as well as allegedly were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.6, 244.6 of the SoD, R-0063). 2. Moreover, as set out in ¶¶ 3-5 of the part D of the Request No. 1, Claimant aims to prove that the Claimant was never involved in any way in the process of preparation and execution of the 2018 Tender, including the composition / appointment process of the Tender Commission. Determination of the details of the composition / appointment of the Tender Commission shall assist Claimant in its defense (Article 27(1) of the UNCITRAL Rules) and thereby rebut Respondent's position referred to in part B of this Request No. 4. <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 4</p> <ol style="list-style-type: none"> 3. Respondent's objection concerning the relevance and materiality of the requested documents is refuted by the Respondent's own position and arguments presented in the case at hand. 4. The composition / appointment of the Tender Commission should have been executed in accordance with the relevant legal requirements of the Respondent's laws. This procedure (requirements) were designed to suppress any illegal interference in the process of appointing the Tender Commission. In the present case, there is no information on how the Tender Commission was composed / appointed and whether Claimant could have allegedly influenced the appointment of the members of the Tender Commission which, according to the Respondent, were allegedly subservient and incapable of making independent and autonomous decisions (¶¶ 83.6, 244.6 of the SoD, R-0063). In order present Claimant's defense and to rebut the Respondent's position, it is necessary to determine whether Claimant could have any influence on: (1) the composition / appointment of the Tender Commission; (2) the work of the Tender Commission. Therefore, the production of the requested documents is relevant to the present case and material to its outcome and will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the Tender Commission, nor influenced the work of the Tender Commission or its members.
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	<p>Request for Resolution</p> <p>5. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 4.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is granted. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant's defence.</p>

Document Request No.	5
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.2. 2018 Tender Commission's working documents:</p> <p>(1) All documentation (minutes and protocols, annexes and other materials thereto) related to the examination (evaluation) procedures of the 2018 Tender bidders' bids.</p> <p>(2) Other materials examined (evaluated) by the 2018 Tender Commission during the examination (evaluation) procedures of the 2018 Tender bidders' bids.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 83.6, 244.6 of the SoD, R-0063.</p> <p>(2) The requested documents are essential (relevant) for the case at hand. The documents submitted by the Respondent (see R-0063) demonstrate that there were at least several meetings of the Tender Commission and minutes of these meetings where the Claimant's bid and other bidders' bids were discussed and evaluated by the Tender Commission (for example, minutes dated 11 January 2019 (see R-0063)). Disclosure of the contents of these documents will help the Tribunal, and the Parties understand and assess the motives of the Tender Commission in assessing the bids as well as selecting the winner of the 2018 Tender. Also, these requested documents will help ascertain the legality of the Tender Commission's actions during the evaluation of the bidders' bids as well as selecting the winner of the 2018 Tender.</p> <p>The requested documents are material to the outcome of the case at hand since the legality of the Tender Commission's actions during the evaluation of the bidders' bids as well as selecting the winner of the 2018 Tender is questioned by the Respondent and needs to be assessed based on all available evidence.</p>

<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant’s Document Requests above. Here again, the documents in question are not related to any of Claimant’s own arguments in this arbitration, but are requested by Claimant <i>“since the legality of the Tender Commission’s actions during the evaluation of the bidders’ bids as well as selecting the winner of the 2018 Tender is questioned by the Respondent and needs to be assessed based on all available evidence.”</i></p> <p>(2) Requested documents would contain commercially confidential information</p> <p>Disclosing the 2018 Tender Commission’s working documents on the evaluation of the tender bids would inevitably give Claimant access to the details of the bids of its competitors in the 2018 Tender. As explained at paragraph 22.2 of the Statement of Defense, under Kyrgyz law only the final bid amounts, and not payment conditions or other financial details, are made public and available to tender participants. Accordingly, Claimant would be getting access to commercially sensitive information, which is unavailable to its competitors, giving Claimant an unfair advantage over its competitors, including Idemia and Mühlbauer with whom Claimant has and will most likely keep competing around the world. Such disclosure would also put Respondent in violation of its own laws and regulations.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 5</p> <p>1. Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules. Therefore, rejection of the Request No. 5 could therefore leave Claimant without the means to substantiate its defenses against Respondent’s ill-founded allegations that the members of the Tender Commission lacked sufficient competence and independence as well as that they were allegedly subservient and incapable of making independent and autonomous decisions in the 2018 Tender as well as that they ignored the relevant criteria for the assessment, while considered Claimant’s victory in the 2018 Tender (¶¶ 83.6-83.7, 244.6-244.7 of the SoD, R-0063).</p>

	<p>Claimant's response to the Respondent's objection No. (2) to the Request No. 5</p> <ol style="list-style-type: none"> 2. Respondent's objection concerning the relevance and materiality of the requested documents are refuted by the Respondent's own position and arguments. 3. As set out in ¶ 4 of the part D of the Request No. 4, Claimant seeks to defend against the Respondent's grave accusations that Claimant allegedly: (1) had influence on the composition / appointment of the Tender Commission; (2) had influence on the work of the Tender Commission. Determination of the details of the work of the Tender Commission shall assist Claimant and the Tribunal in examining the Respondent's position referred to in part B of this Request No. 5. Therefore, the production of the requested documents is relevant to the present case and material to its outcome. 4. Respondent failed to prove in that the Tender Commission's working documents contain information which would give Claimant an unfair advantage over its competitors and which Respondent cannot provide to the Tribunal and Claimant due to the requirements of the IBA Rules. By its nature, the information of Tender Commission's working documents does not reflect confidential business information. Notwithstanding this, the case file contains only limited information on the Tender Commission's working documents (dates and numbers of meetings), which makes it impossible to assess whether Claimant could have any influence on the examination process of the bidders' bids, directly executed by the Tender Commission. Nevertheless, Respondent failed to prove that the information contained in the requested documents could be used by Claimant in other tenders in other countries and that the production of this information is incompatible with the Article 9.2 of the IBA Rules. 5. Moreover, Respondent failed to prove any of the criteria which were disclosed in detail by Claimant in ¶¶ 7-11 of the part D of the Request No. 1 and ¶ 4 of the part D of the Request No. 2. Therefore, the Respondent's objections should not be considered sufficient to satisfying the requirements of Article 9.2 of the IBA Rules. <p>Request for Resolution</p> <ol style="list-style-type: none"> 6. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 5.
<p>E. Decision of the Tribunal</p>	<p>The request is granted, subject to the next paragraph below. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence.</p>

	To the extent that responsive documents contain commercially confidential information that relates to third parties, such documents shall be produced with appropriate redactions.
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Document Request No.	6
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.3. Documents related to the appointment of the Working Group and its members:</p> <p>(1) All orders of the Respondent's authorities (GRS) on appointing the Working Group and its members in the 2018 Tender.</p> <p>(2) Any procedures, descriptions, etc., governing the organisation of the work of the Working Group in the 2018 Tender.</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>(1) ¶¶ 83.7, 244.7 of the SoD, R-0063.</p> <p>(2) This evidence is important (relevant) to the case at hand as it will demonstrate that the Respondent has failed to discharge the burden of proof to prove its case and will challenge the Respondent's contentions that the members of the Working Group did not have the required qualification or evaluated the bidders' bids superficially as well as lacked competence or were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.7, 244.7 of the SoD, R-0063).</p> <p>The requested documents are material to the outcome of the case at hand because they will shed light on whether the members of the Working Group were: (1) legally appointed (on the basis of laws and by legal acts (see R-0063)); (2) competent and capable of making independent and autonomous decisions in the 2018 Tender, irrespective of the alleged pressure and influence.</p>

	<p>Showing that there is no basis (evidence) to find that the members of the Working Group have been subjected to the alleged pressures and influences as well as lacked sufficient competence and independence (which it is for the Respondent to prove) is important for rebutting the position the Respondent chose to take in its SoD (¶¶ 83.7, 244.7 of the SoD, R-0063). It is also important for the granting of ¶¶ (a) and (b) of the Claimant's relief sought in this arbitration.</p>
<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Claimant unequivocally admits that the purpose of this document request is to <i>“demonstrate that the Respondent has failed to discharge the burden of proof to prove its case and [...] challenge the Respondent's contentions that the members of the Working Group did not have the required qualification or evaluated the bidders' bids superficially as well as lacked competence or were subservient and incapable of making independent and autonomous decisions in the 2018 Tender.”</i> This document request is thus not related to any of Claimant's own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) Requested documents are not sufficiently relevant to the case or material to its outcome</p> <p>Claimant argues that requested documents concerning the setting up of the Working Group in the 2018 Tender would somehow demonstrate that members of the Working Group were <i>“competent and capable of making independent and autonomous decisions in the 2018 Tender, irrespective of the alleged pressure and influence.”</i> It is unclear how Claimant makes this conclusion. As explained with respect to Claimant's Document Request No. 1 above, evidence of the undue influence exerted on the 2018 Tender Commission by certain SRS officials at Claimant's behest would be found in Claimant's own private communications with the SRS officials, which are subject of Respondent's own Document Requests Nos. 5 and 6. This document request is thus simply another attempt to draw the Tribunal's attention away from the issues that are actually relevant to the present case.</p>
<p>D. Response to objections and request for</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 6</p> <p>1. Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules. Rejection of the Request No. 6 could therefore leave</p>

<p>resolution (requesting Party)</p>	<p>Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that the members of the Working Group allegedly did not have the required qualification or evaluated the bidders' bids superficially as well as allegedly lacked competence or were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.7, 244.7 of the SoD, R-0063).</p> <p>2. Moreover, as set out in ¶¶ 3-5 of the part D of the Request No. 1, Claimant seeks to prove that the Claimant was never involved in any way in the process of preparation and execution of the 2018 Tender, including the composition / appointment process of the Working Group. Determination of the details of the composition / appointment of the Working Group will assist the Claimant in its defense (Article 27(1) of the UNCITRAL Rules) and thereby will rebut Respondent's position referred to in part B of this Request No. 6.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 6</p> <p>3. Respondent's objection concerning the relevance and materiality of the requested documents is refuted by the Respondent's own position and arguments.</p> <p>4. The composition / appointment of the Working Group (identically as the Tender Commission) should have been done in accordance with the relevant requirements of the Respondent's laws. This procedure (requirements) is designed to suppress any illegal interference in the process of appointing the Working Group. In the present case, there is no information on how the Working Group was composed / appointed, whether the Claimant could have influenced the appointment of the members of the Working Group, which, according to the Respondent, were subservient and incapable of making independent and autonomous decisions regarding the 2018 Tender (¶¶ 83.7, 244.7 of the SoD, R-0063). Therefore, production of the requested documents is relevant to the present case and material to its outcome and will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the Working Group, nor influenced the work of the Working Group or its members.</p> <p>Request for Resolution</p> <p>5. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 6.</p>
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E. Decision of the Tribunal	The request is granted. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant's defence.
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Document Request No.	7
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.4. Working Group's working documents:</p> <p>(1) All documentation (minutes and protocols, annexes and other materials thereto) related to the examination (evaluation) of the technical parts of the 2018 Tender bidders' bids.</p> <p>(2) Other materials examined (evaluated) by the Working Group during the examination (evaluation) procedures of the technical parts of the 2018 Tender bidders' bids.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 83.7, 244.7 of the SoD, R-0063.</p> <p>(2) In addition to the reasons given in Document Request No. 6, these requested documents are also essential (relevant) for the case at hand. The documents submitted by the Respondent (R-0063) demonstrate that there were at least several meetings of the Working Group and minutes of these meetings where the bidders' bids (including the Claimant's) were discussed and evaluated for compliance with technical requirements by the Working Group (for example, minutes No. 1 of 27 December 2018 with annexes; minutes No. 2 of 9 January 2019 (see R-0063)). Disclosure of the contents of these documents will help the Tribunal and the Parties to understand and assess the motives of the Working Group in evaluating the bidders' bids for its compliance with technical requirements. Also, these requested documents will help to assess the transparency and legality of the Working Group's actions during the evaluation of the bidders' bids.</p> <p>The requested documents are material to the outcome of the case since the legality of the Working Group's actions during the evaluation of the bidders' bids for its compliance with technical requirements of the 2018 Tender documentation as well as selecting the winner of the 2018 Tender by the Tender Commission in accordance with the conclusions of the Working Group is questioned by the Respondent and needs to be assessed based on all available evidence.</p>

<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant’s Document Requests above. Here again, the documents in question are not related to any of Claimant’s own arguments in this arbitration, but are requested by Claimant <i>“since the legality of the Working Group’s actions during the evaluation of the bidders’ bids for its compliance with technical requirements of the 2018 Tender documentation as well as selecting the winner of the 2018 Tender by the Tender Commission in accordance with the conclusions of the Working Group is questioned by the Respondent and needs to be assessed based on all available evidence.”</i></p> <p>(2) Requested documents would contain commercially confidential information</p> <p>Disclosing the documents relating to the evaluation of the technical parts of the 2018 Tender bids would inevitably give Claimant access to the details of the bids of its competitors. As explained at paragraph 22.2 of the Statement of Defense, under Kyrgyz law details of the participants’ bids are not made publicly available. Accordingly, Claimant would be getting access to commercially sensitive information, which is unavailable to its competitors, giving Claimant an unfair advantage over its competitors, including Idemia and Mühlbauer with whom Claimant has and will most likely keep competing around the world. Such disclosure would also put Respondent in violation of its own laws and regulations.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 7</p> <p>1. Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules. Therefore, rejection of the Request No. 7 could leave Claimant without the means to substantiate its defense against Respondent’s ill-founded allegations that the members of the Working Group allegedly did not have the required qualification or evaluated the bidders’ bids superficially (¶¶ 83.7, 244.7 of the SoD, R-0063).</p> <p>Claimant’s response to the Respondent’s objection No. (2) to the Request No. 7</p> <p>2. Respondent’s objection concerning the relevance and materiality of the requested documents is refuted by the Respondent’s own position and arguments.</p>

	<p>3. As set out in ¶ 4 of the part D of the Request No. 4, it is essential in the present case and material to its outcome to clarify (determine) whether the Claimant could have had any alleged influence on: (1) the composition / appointment of the Working Group; (2) the work of the Working Group. Determination of the details of the work of the Working Group will assist Claimant in its defense (Article 27(1) of the UNCITRAL Rules). Requested documents will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the Working Group, nor influenced the work of the Working Group or its members.</p> <p>4. In the other part of its objections Respondent has failed to prove that the Working Group's working documents contain information which would give Claimant an unfair advantage over its competitors. By its nature, information of Working Group's working documents does not reflect any confidential business information. The case file contains only limited information on the Working Group's working documents (dates and numbers of meetings), which makes it impossible to assess whether Claimant could have had any alleged influence on examination process of the bidders' bids, directly executed by the Working Group. Nevertheless, Respondent failed to prove that the information contained in the requested documents could be used by Claimant in other tenders in other countries and that the production of this information is incompatible with Article 9.2 of the IBA Rules.</p> <p>5. Also, Respondent failed to prove any of the criteria indicated by Claimant in ¶¶ 7-11 of the part D of the Request No. 1 and ¶ 4 of the part D of the Request No. 2.</p> <p>Request for Resolution</p> <p>6. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 7.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is granted, subject to the next paragraph below. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence.</p> <p>To the extent that responsive documents contain commercially confidential information that relates to third parties, such documents shall be produced with appropriate redactions.</p>

Document Request No.	8
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.5. Documents related to the appointment of the Interdepartmental Commission and its members:</p> <p>(1) All orders of the Respondent's authorities (Government, GRS, etc.) on appointing the Interdepartmental Commission and its members.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 83.9, 244.9 of the SoD, R-0063, CWS_Lukosevicius_1/23 and CWS_Lukosevicius_1/24.</p> <p>(2) This evidence is important (relevant) to the case at hand as it will demonstrate that the Respondent has failed to discharge the burden of proof to prove its case. It will challenge the Respondent's contention that the members of the Interdepartmental Commission lacked competence and were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.9, 244.9 of the SoD).</p> <p>The requested documents are material to the outcome of the case at hand because they will shed light on whether the members of the Interdepartmental Commission were: (1) legally appointed (on the basis of laws and by legal acts (see R-0063)); (2) competent and capable of making independent and autonomous decisions on the 2018 Tender, irrespective of the alleged pressure and influence. Also, these requested documents will shed light on which of the Respondent's authorities were involved in the appointment of the members of the Interdepartmental Commission, which officers of the Respondent's authorities were appointed, which of the Respondent's authorities refused to send their officers to the Interdepartmental Commission and for what reasons.</p> <p>Assessing the documents relating to the Respondent's baseless contention that the members of the Interdepartmental Commission have been somehow subjected to the alleged pressures and influences as well as lack sufficient competence and independence became important in light of the position the Respondent chose to take in its SoD (¶¶ 83.9, 244.9 of the SoD, R-0063).</p>

<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant’s Document Requests above. Claimant unequivocally admits that the purpose of this document request is to “<i>demonstrate that the Respondent has failed to discharge the burden of proof to prove its case [and] challenge the Respondent’s contention that the members of the Interdepartmental Commission lacked competence and were subservient and incapable of making independent and autonomous decisions in the 2018 Tender.</i>” This document request is thus not related to any of Claimant’s own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) Requested documents are not sufficiently relevant to the case or material to its outcome</p> <p>Claimant argues that requested documents concerning the setting up of the Independent Interdepartmental Commission would somehow demonstrate that members of the Independent Interdepartmental Commission were “<i>competent and capable of making independent and autonomous decisions on the 2018 Tender, irrespective of the alleged pressure and influence.</i>” It is unclear how Claimant makes this conclusion. As explained with respect to Claimant’s Document Request No. 1 above, evidence of the undue influence exerted on the Independent Interdepartmental Commission by certain SRS officials at Claimant’s behest would be found in Claimant’s own private communications with the SRS officials, which are subject of Respondent’s own Document Requests Nos. 5 and 6. This document request is thus simply another attempt to draw the Tribunal’s attention away from the issues that are actually relevant to the present case.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 8</p> <ol style="list-style-type: none"> 1. Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to substantiate its defenses. Therefore, rejection of the Request No. 8 could leave Claimant without the means to substantiate its defenses against Respondent’s ill-founded allegations that the members of the Interdepartmental Commission lacked competence and were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.9, 244.9 of the SoD). 2. Moreover, as set out in ¶¶ 3-5 of the part D of the Request No. 1, it is essential to clarify whether Claimant could have been involved in any way in the process of preparation and execution of the 2018 Tender,

	<p>including the composition / appointment process of the Interdepartmental Commission. Determination of the details of the composition / appointment of the Interdepartmental Commission will assist Claimant in its defense (Article 27(1) of the UNCITRAL Rules) and thereby rebut Respondent's position referred to in part B of this Request No. 8.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 8</p> <p>3. Respondent's objection concerning the relevance and materiality of the requested documents is refuted by the Respondent's own position and arguments.</p> <p>4. The composition / appointment of the Interdepartmental Commission (identically as the Tender Commission and Working Group) should have been done in accordance with the requirements of the Respondent's laws. This procedure (requirements) is designed to suppress any illegal interference in the process of appointing the Interdepartmental Commission. In the present case, there is no information on how the Interdepartmental Commission was composed / appointed and whether Claimant could have influenced the appointment of the members of the Interdepartmental Commission (¶¶ 83.9, 244.9 of the SoD). Therefore, production of the requested documents is relevant to the present case and will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the Interdepartmental Commission, nor influenced the work of the Interdepartmental Commission or its members.</p> <p>Request for Resolution</p> <p>5. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 8.</p>
E. Decision of the Tribunal	<p>The request is granted. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant's defence.</p>

Document Request No.	9
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.3. Documentation related to the execution of the 2018 Tender</p> <p>A.3.6. Interdepartmental Commission's working documents:</p> <p>(1) The full packages of the 2018 Tender bids of Mühlbauer and IDEMIA.</p> <p>(2) All information that was provided by Respondent's authorities (GRS, Department) or other persons / authorities in writing or orally to the Interdepartmental Commission for examination of the Mühlbauer and IDEMIA complaints as well as 2018 Tender results.</p> <p>(3) All documentation (minutes and protocols, annexes and other materials thereto) related to the examination of the Mühlbauer and IDEMIA complaints as well as 2018 Tender results.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 56-62, 83.9 of the SoD, R-0063, CWS_Lukosevicius_1/23 and CWS_Lukosevicius_1/24.</p> <p>(2) In addition to the reasons given in Document Request No. 8, these requested documents are important (relevant) to the case at hand since they will challenge the Respondent's contention that the members of the Interdepartmental Commission were allegedly pressured and influenced (¶ 83.9 of the SoD). The documents submitted by the Respondent (see R-0063) demonstrate that there were at least several letters from the GRS to the Interdepartmental Commission regarding the position of the GRS related to the execution of the 2018 Tender proceedings (for example, letters No. 2-12/144 and No. 2-13/145 both dated 18 February 2019). Case materials additionally demonstrate that there were several Interdepartmental Commission's meetings for examination of the IDEMIA's complaint, involving different specialists from the GRS, as well as at least one meeting for examination of the Mühlbauer's complaint (CWS_Lukosevicius_1/23, CWS_Lukosevicius_1/24, these documents contain only the final decisions produced by the Interdepartmental Commission). All this information (documentation) will establish whether the members of the Interdepartmental Commission were in fact influenced by other persons and how this alleged influence has been made.</p>

	<p>The requested documents are material to the outcome of the case at hand since the legality of the Interdepartmental Commission's actions during the examination of the IDEMLA's and Mühlbauer's complaints as well as its independent and autonomous decisions is questioned by the Respondent and needs to be assessed based on all available evidence.</p>
<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Here again, the documents in question are not related to any of Claimant's own arguments in this arbitration, but are requested by Claimant to "<i>challenge the Respondent's contention that the members of the Interdepartmental Commission were allegedly pressured and influenced</i>" and "<i>since the legality of the Interdepartmental Commission's actions during the examination of the IDEMLA's and Mühlbauer's complaints as well as its independent and autonomous decisions is questioned by the Respondent and needs to be assessed based on all available evidence.</i>"</p> <p>(2) Requested documents would contain commercially confidential information</p> <p>Disclosing the documents relating to the evaluation of Mühlbauer's and Idemia's complaints with respect to the 2018 Tender results, as well as Mühlbauer's and Idemia's bids would give Claimant access to commercially privileged information about its competitors which it would not be able to obtain outside of these arbitral proceedings. As explained at paragraph 22.2 of the Statement of Defense, under Kyrgyz law details of the participants' bids are not made publicly available. Accordingly, Claimant would be getting access to information which is unavailable to its competitors, giving Claimant an unfair advantage over its competitors, including Idemia and Mühlbauer with whom Claimant has and will most likely keep competing around the world. Such disclosure would also put Respondent in violation of its own laws and regulations.</p> <p>(3) This document request is overly broad</p> <p>Despite its allegations to the contrary, Claimant has failed to identify a "<i>narrow and specific category of documents that are reasonably believed to exist</i>", as prescribed by paragraph 12.2 of the Procedural Order No 1, with regard to part (2) of this document request. Indeed, Claimant is asking for "[a]ll <i>information</i> that was provided by Respondent's authorities (GRS, Department) or other persons / authorities in writing <i>or orally</i> to the Interdepartmental Commission for examination of the Mühlbauer and IDEMLA complaints as well as 2018 Tender results" [emphasis added] Not only such documents request is overly broad – it is outright impossible to comply with.</p>

<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 9</p> <p>1. Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to substantiate its defenses. Therefore, rejection of the Request No. 9 could leave Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that the members of the Interdepartmental Commission lacked competence and were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶ 83.9, 244.9 of the SoD).</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 9</p> <p>2. As set out in ¶ 4 of the part D of the Request No. 4, it is essential in the present case and material to its outcome to clarify (determine) whether Claimant could have had any alleged influence on: (1) the composition / appointment of the Interdepartmental Commission; (2) the work of the Interdepartmental Commission. Determination of the details of the work of the Interdepartmental Commission shall assist Claimant in its defense (Article 27(1) of the UNCITRAL Rules) and thereby rebut Respondent's position referred to in part B of this Request No. 9. Production of the requested documents will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the Interdepartmental Commission, nor influenced the work of the Interdepartmental Commission or its members.</p> <p>3. In the other part of its objections Respondent has failed to prove in that the Interdepartmental Commission working documents, including Mühlbauer and IDEMIA bids, and related information, contain information which would give Claimant an unfair advantage over its competitors and which the Respondent cannot provide to the Tribunal and Claimant due to the requirements of the IBA Rules. By its nature, information of each bid does not reflect confidential business information and this information is tailored according to the terms and conditions of each tender individually, i.e. the bidders are not disclosing their commercial secrets in their bids, they are only presenting offers in accordance with the requirements of the tender's regulations. Case file contains only limited information on the 2018 Tender's bids (e.g. bid values, production capacity, etc.) and working documents of the Interdepartmental Commission, which makes it impossible to assess whether the Claimant could have had any alleged influence on examination process of the Mühlbauer and IDEMIA bids, directly executed by the Interdepartmental Commission. Nevertheless, Respondent failed to prove that the information contained in the requested documents could be used by Claimant in other tenders</p>
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	<p>in other countries and that the production of this information is incompatible with the Article 9.2 of the IBA Rules.</p> <p>4. Also, Respondent failed to prove any of the criteria which were indicated by Claimant in ¶¶ 7-11 of the part D of the Request No. 1 and ¶ 4 of the part D of the Request No. 2.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 9</p> <p>9. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. the Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with the Respondent's Rejoinder.</p> <p>10. In the Request No. 9, Claimant has sufficiently and clearly expressed the category of documents requested, Claimant provided dates and numbers of documents and the numbers of the exhibits in which these documents were referred to in a particular form. As stated in the IBA's commentary to the IBA Rules, Claimant may not be aware of such detailed information on dates and numbers of documents, but this circumstance does not preclude a finding that "[s]uch a request may qualify as a "narrow and specific category of Documents", as permitted under Article 3.3(a)(ii)."¹⁹</p> <p>11. The requested documents, as explained in part B and D of the Request No. 9, would enable the Claimant to substantiate its defenses, proving that Claimant was never involved in the process of preparation and execution of the 2018 Tender.</p> <p>5. Claimant also points out that meetings of the Interdepartmental Commission could be recorded (in written or audio form), so any public statements made orally to the Interdepartmental Commission by Respondent's authorities or other persons / authorities should be recorded in the relevant minutes. If the Respondent does not have these minutes or other records, it could have submitted a confirmation on that.</p>
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¹⁹ **Exhibit CLA-38:** 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, p 9 <https://www.ibanet.org/MediaHandler?id=DD240932-0E08-40D4-9866-309A635487C0>

	<p>Request for Resolution</p> <p>6. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 9.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is granted in part. The Tribunal grants the Claimant’s request for production of these “several letters” (as referenced in R-0063 regarding the position of the GRS related to the execution of the 2018 Tender proceedings) and all documentation available with respect to the “several Interdepartmental Commission’s meetings”, and in particular the “minutes and protocols, annexes and other materials thereto” as related to “the examination of the Mühlbauer and IDEMIA complaints as well as 2018 Tender results.”</p>

Document Request No.	10
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.4. Communication (letters, notices, opinions) between the GRS and the Department concerning the legitimacy of requesting the bidders to express their consent to the special and general conditions of the E-passports contract</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>(1) See ¶¶ 83.6, 244.6 of the SoD, R-0063.</p> <p>(2) This evidence is important (relevant) to the case at hand as it will demonstrate that the Respondent has failed to discharge the burden of proof. It will challenge the Respondent's contention that the Tender Commission was influenced by Mr. Sarybaev or other persons during the 2018 Tender due to the alleged absence of certain documentation (bidders' confirmations with special and general conditions of the E-passports contract) (¶¶ 83.6, 244.6 of the SoD, R-0063). The requested documents are relevant to clarify as to who initiated the Department's answers, who drafted them, who in the Department agreed with the answers.</p> <p>The requested documents are material to the outcome of the case at hand. Assessing the documents relating to the Respondent's baseless contention that the members of the Tender Commission have been somehow subjected to the alleged pressures and influences committed by Mr. Sarybaev and other persons during the 2018 Tender will showcase the weakness of the position the Respondent chose to take in its SoD (¶¶ 83.6, 244.6 of the SoD, R-0063).</p>
<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Claimant unequivocally admits that the purpose of this document request is to <i>“demonstrate that the Respondent has failed to discharge the burden of proof [and] challenge the Respondent's contention that the Tender Commission was influenced by Mr. Sarybaev or other persons during the 2018 Tender due to the alleged absence</i></p>

	<p><i>of certain documentation.”</i> This document request is thus not related to any of Claimant’s own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) Requested documents would contain commercially confidential information</p> <p>Disclosing internal documents regarding requirements for the bidders in the 2018 Tender would give Claimant access to information which is unavailable to its competitors, as internal working documents of the public procurement entities are not disclosed to private parties under Kyrgyz law. This would give Claimant an unfair advantage over its competitors, including Idemia and Mühlbauer with whom Claimant has and will most likely keep competing around the world. Such disclosure would also put Respondent in violation of its own laws and regulations.</p> <p>(3) This document request is not specific and fails to identify Respondent’s State organs that would be in possession of the requested documents</p> <p>Footnote 1 at paragraph 12.2 of the Procedural Order No. 1 provides that “[w]ith respect to requests for documents from a State, the request should also specify which department or institution of the State is believed to have possession, custody or control of the documents and why, i.e., based upon its constitutional scope of authority or references in other documents existing in the record.” Under the scope of this document request Claimant asks for “communication (letters, notices, opinions) between the GRS and the Department” without even explaining what “Department” of which State organ of Respondent it refers to. This document request is thus impossible to comply with under its current wording and it is up to Claimant to further clarify the same.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 10</p> <p>1. Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules. Rejection of the Request No. 10 could leave Claimant without the means to substantiate its defenses against Respondent’s ill-founded allegations that the members of the Tender Commission allegedly lacked competence and were subservient and incapable of making independent and autonomous decisions in the 2018 Tender (¶¶83.6, 244.6 of the SoD, R-0063).</p> <p>Claimant’s response to the Respondent’s objection No. (2) to the Request No. 10</p> <p>2. As set out in ¶ 4 of the part D of the Request No. 4 and other Claimant’s Requests therein, it is essential in the present case to clarify (determine) whether Claimant could have had any alleged influence on: (1) the</p>

	<p>composition / appointment of the any public procurement entities (Tender Commission, Working Group and Interdepartmental Commission); (2) work of the these entities, including its initial discussions / communications regarding the 2018 Tender. The determination of the details of evaluation of the 2018 Tender in the aforementioned scope shall assist Claimant in its defense (Article 27(1) of the UNCITRAL Rules) and thereby rebut Respondent's position referred to in part B of this Request No. 10. Production of the requested documents will enable the Tribunal to conclude that Claimant neither influenced the composition / appointment process of the public procurement entities, nor influenced the work of the public procurement entities or its members.</p> <p>3. In the other part of its objections Respondent has failed to prove that the requested documents contain information which would give Claimant an unfair advantage over its competitors. By its nature, the information of the GRS's and Department's explanations concerning the legitimacy of requesting the bidders to express their consent to the special and general conditions of the E-passports contract does not reflect confidential or privileged business information, considering that this information is likely to clarify the interpretation of the provisions of the Law on Public Procurement. The case file contains only limited information on the 2018 Tender's bids evaluation episode, during and after the receipt of the Department's and the DRS's explanations, which makes it impossible to assess whether Claimant could have had any alleged influence on this episode. Nevertheless, the Respondent failed to prove that the information contained in the requested documents could be used by Claimant in other tenders in other countries.</p> <p>4. Moreover, Respondent failed to prove any of the criteria which were indicated by Claimant in ¶¶ 7-11 of the part D of the Request No. 1 and ¶ 4 of the part D of the Request No. 2.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 10</p> <p>5. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder.</p> <p>6. In the Request No. 10, Claimant has sufficiently and clearly expressed the category of documents requested, Claimant provided dates and numbers of documents and the numbers of the exhibits in which these documents were referred to in a particular form. As stated in the IBA's commentary to the IBA Rules,</p>
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	<p>Claimant may not be aware of such detailed information on dates and numbers of documents, but this this circumstance does not preclude a finding that “[s]uch a request may qualify as a “narrow and specific category of Documents”, as permitted under Article 3.3(a)(ii).”²⁰</p> <p>7. Claimant additionally explains that the “Department” means the Public Procurement Department of the Ministry of Finance of the Kyrgyz Republic (for example, see R-0063). As stated in R-0063, the Public Procurement Department of the Ministry of Finance of the Kyrgyz Republic has provided explanations to the GRS on the application of the provisions of the Law on Public Procurement.</p> <p>8. The requested documents, as explained in part B and D of the Request No. 9, would enable the Claimant to substantiate its defenses, proving that Claimant was never involved in the process of preparation and execution of the 2018 Tender.</p> <p>Request for Resolution</p> <p>9. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 10.</p>
E. Decision of the Tribunal	<p>The request is granted, subject to the with the Tribunal noting for the avoidance of doubt that the “Department” is the Public Procurement Department of the Ministry of Finance of the Kyrgyz Republic.</p> <p>To the extent that responsive documents contain commercially confidential information that relates to third parties, such documents shall be produced with appropriate redactions.</p>

²⁰ **Exhibit CLA-38:** 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, p 9 <https://www.ibanet.org/MediaHandler?id=DD240932-0E08-40D4-9866-309A635487C0>

Document Request No.	11
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.5. Independent audit company's conclusion on the execution of the 2018 Tender and all relevant annexes (other materials, transfer-acceptance deeds) thereto</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 185, 716-717 of the SoC, R-0063.</p> <p>(2) The Claimant is seeking production of the independent audit company's report of public procurement No. 18102312129327015 dated 30 January 2019, which is mentioned in R-0063.</p> <p>This report is important (relevant) and material to the outcome of the case at hand as it will rebut the Respondent's attempts to diminish the Claimant's tender victory and allegations that the tender was 'run by a few corrupt individuals without any supervision or oversight' (part II.E. of the SoD).</p>
C. Objections to document request (objecting Party)	<p>Respondent notes that this document request does not relate to any of Claimant's own arguments in this arbitration and that the responsive documents are meant to "<i>rebut the Respondent's attempts to diminish the Claimant's tender victory and allegations that the tender was 'run by a few corrupt individuals without any supervision or oversight'.</i>" It thus should not be granted.</p> <p>Without prejudice to the above, Respondent is however conducting searches with respect to this document request and will produce any responsive internal documents, if they exist and are located.</p>
D. Response to objections and request for resolution (requesting Party)	<p>On 27 May 2022, Respondent produced to Claimant an auditor's report, which was requested by the Request No. 11. Considering the fulfilment of the Request No. 11 by Respondent, the Claimant has no further demands in respect of this Request No. 11.</p>

E. Decision of the Tribunal	No decision is required.
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Document Request No.	12
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.6. Information that indicates if Claimant has ever been placed on the list of unreliable (careless) suppliers (contractors)</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 80, 83-91, 241, 247 of the SoD.</p> <p>(2) Despite all its allegations of corruption against the Claimant (¶¶ 80, 83-91, 241, 247 of the SoD), the Respondent has never confirmed whether the Claimant was and when placed on the list of unreliable suppliers, i.e., whether it committed any illegal acts under Kyrgyz Law on Public Procurement.</p> <p>The requested documents are relevant to the case at hand and material to its outcome because they will shed further light on whether, according to the information available to the Respondent, the Claimant has ever committed any illegal acts under Kyrgyz Law on Public Procurement. It is important to see whether and when the Claimant has been placed on the list of unreliable suppliers.</p>
C. Objections to document request (objecting Party)	<p>Respondent notes that this document request does not relate to any of Claimant's own arguments in this arbitration.</p> <p>Respondent further notes that requested documents are not relevant to any disputed issues at stake in this arbitration. As explained at paragraphs 246-247 of the Statement of Defense, the investigations with respect to the corruption scheme that tainted the 2018 Tender are still ongoing and are complicated by Claimant's avoidance from cooperating with Kyrgyz investigators. Accordingly, the fact of whether or not today Claimant has been placed on the list of unreliable suppliers is not indicative of whether or not Claimant had actually committed any illegal acts with respect to the 2018 Tender. This document request thus should not be granted.</p> <p>Without prejudice to the above, Respondent is however conducting searches with respect to this document request and will produce any responsive internal documents, if they exist and are located.</p>

D. Response to objections and request for resolution (requesting Party)	<p>Without prejudice to the below, the Claimant agrees and does not dispute that it is the Respondent who bears the burden of proof to prove its corruption allegations with direct, clear and convincing evidence.</p> <p>However, Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules. Rejection of the Request No. 12 could leave Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that Claimant somehow influenced the 2018 Tender's results (see Claimant's responses above).</p> <p>Claimant further considers that the requested documents are relevant to the case as they will demonstrate Claimant's clean reputation and will further prove that the Respondent has brought ill-founded allegations against the Claimant.</p> <p>Request for Resolution</p> <p>Without any prejudice to Claimant's response above, in connection with the Respondent's declaration that the requested documents are being searched for and while taking into account that the Respondent, to the present date, did not provide the requested documents, the Claimant sustains its request and hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 12.</p>
E. Decision of the Tribunal	<p>The Tribunal takes note of the Respondent's representation that is conducting searches for responsive documents, which will be produced if and when they are located. No Tribunal decision is therefore necessary at this stage.</p>

Document Request No.	13
A. Documents or category of documents requested (requesting Party)	<p>A. Documentation related to the 2018 Tender for passports</p> <p>A.7. Communication and other documentation (requests, states' notes, etc.) between Respondent's authorities (Ministry of Foreign Affairs, GKNB, etc.) and third parties of the foreign states (in particular, but not limited, embassies of Germany and France or other authorities of these countries), regarding the 2018 Tender and its results (its execution, examination of the bidders' complaints) as well as the criminal investigation</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 10, 69 of the SoD, R-0046.</p> <p>(2) The requested documents are relevant and material to the outcome of the case at hand because they will shed light on the political influence that the German and French authorities may have tried to exert on the Respondent's authorities (Ministry of Foreign Affairs, GKNB, etc.) with regard to the 2018 Tender results.</p> <p>The documents submitted by the Respondent (R-0046) as well as ¶¶ 10, 69 of the SoD demonstrate that losing bidders (Mühlbauer and IDEMIA) disputed the 2018 Tender results via political means. Since the beginning of February 2019, there have been meetings between the French embassy and the Respondent's Ministry of Foreign Affairs regarding the 2018 Tender. R-0046 shows only part of the recorded information in relation to these meetings. There is a strong possibility that there is much more documentation (letters, states' notes) on communications between the Respondent's authorities as well as between the Respondent's authorities with other countries' authorities (i. e. French and German). These documents are very likely to have been circulated amongst the Respondent's authorities (Ministry of Foreign Affairs, GKNB, etc.), so they are in its possession.</p> <p>Thus, these documents should be produced in order to: (1) verify whether the German and French authorities have tried to exert political influence on the Respondent's authorities to alter the Tender results and (2) whether they have successfully influenced the Respondent's authorities (influenced the initiation of the criminal investigation and the cancellation of the 2018 Tender).</p>

<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) This document request is a ‘fishing expedition’</p> <p>This document request is not related to any of Claimant’s arguments in this arbitration. Instead, the requested documents would allegedly:</p> <p>1) “<i>shed light on the political influence that the German and French authorities <u>may have tried to exert</u> on the Respondent’s authorities (Ministry of Foreign Affairs, GKNB, etc.) with regard to the 2018 Tender results</i>”;</p> <p>2) “<i>verify <u>whether</u> the German and French authorities have tried to exert political influence on the Respondent’s authorities to alter the Tender results</i>”; and</p> <p>3) “[verify] <u>whether</u> they have successfully influenced the Respondent’s authorities (influenced the initiation of the criminal investigation and the cancellation of the 2018 Tender).” [emphasis added]</p> <p>Put simply, Claimant attempts to ‘test’ its various case theories by means of document production. This is a textbook example of a ‘fishing expedition’ that is not allowed in document production.</p> <p>(2) This document request is overly broad</p> <p>Claimant has failed to provide any temporal or material limits to this document request by asking for Respondent’s communications concerning the 2018 Tender with “<i>third parties of the foreign states</i>” indiscriminately. Accordingly, this document request is overly broad and is impossible to comply with.</p> <p>(3) Grounds of special political or institutional sensitivity</p> <p>To the extent the requested documents make part of the case file of the (still ongoing) criminal investigation into the 2018 Tender corruption scheme, those documents are covered by the secrecy of investigation and cannot be produced.²¹</p>
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²¹ Exhibit RLA-12, Criminal Procedure Code, Article 160(1). See also *ibid*, 251-254.

<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 13</p> <ol style="list-style-type: none"> 1. Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant also to substantiate its defenses. Therefore, rejection of the Request No. 13 could leave Claimant without the means to substantiate its defenses against Respondent's ill-founded allegations that Claimant somehow influenced the 2018 Tender's results (see Claimant's responses above) as well as it would also leave the Claimant without a means to examine the possible influences of the German and French authorities on the Respondent and see how this influence may have affected the outcome of the 2018 Tender and the initiation of criminal proceedings. 2. Claimant further objects to the Respondent's position regarding the 'fishing expedition'. Respondent has already provided one document (see R-0046) which is the main subject of the present Request No. 13. Production of this document to a case file evidences that Respondent considers that the disclosure of these kinds of requested documents (official documentation between Respondent and other countries concerning the execution 2018 Tender) for purpose of its defense is relevant to the present case and material to its outcome. Therefore, a finding that Claimant is engaged in a 'fishing expedition' in the scope of the requested documents is not appropriate. 3. Furthermore, the document submitted by Respondent confirms that the French Embassy in Kyrgyzstan directly interfered in the 2018 Tender process without hiding its bias exclusively for the benefit of one bidder (IDEMIA) immediately after the internal and mysterious consultations with Respondent, the outcome of which, is unknown (see R-0046): <ul style="list-style-type: none"> <i>"The Embassy of France in the Kyrgyz Republic presents its compliments to the Ministry of Foreign Affairs of the Kyrgyz Republic and has the honour, as a result of the working group held on February 8, 2019 in the framework of bilateral French-Kyrgyz consultations, to pass the information regarding the market of biometric passports in the Kyrgyz Republic (attached):</i> <ul style="list-style-type: none"> <i>- IDEMIA's complaint sent to the Independent Interdepartmental Complaints Commission with annexes;</i> <i>- Protocol of the hearing of the Independent Interdepartmental Complaints Commission;</i> <i>- Letter of February 21, 2019 from IDEMIA to the Prime Minister of the Kyrgyz Republic, H.E. Mr. Mukhammedkalyy Abylgaziev."</i> 4. Exactly on the day this document was signed, Respondent's Prosecutor General's Office registered a criminal case (¶¶ 70-71 of the SoD). Thus, there are strong indications that the political influence of other
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	<p>countries on the Respondent could have led to the initiation of criminal proceedings and the subsequent expulsion of the Claimant.</p> <p>5. Having regard to the circumstances described above and having taken into account the Claimant's right to substantiate its defense in accordance with Article 27(1) of the UNCITRAL Rules, Claimant has a right to apply for the production of requested documents on the basis of the reasons provided in Part B and D of the Request No. 13.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 13</p> <p>6. In the Request No. 13, Claimant has sufficiently and clearly expressed the category of documents requested. Respondent has provided evidence of the existence and its possession of the requested documents (see R-0046). As stated in the IBA's commentary to the IBA Rules, Claimant may not be aware of such detailed information on dates and numbers of documents, but this this circumstance does not preclude a finding that "[s]uch a request may qualify as a "narrow and specific category of Documents", as permitted under Article 3.3(a)(ii)."²²</p> <p>7. Claimant also considers that only authorities of Germany and France had an interest in 2018 Tender. Therefore, Respondent cannot face any difficulties in collecting the requested documents, given that Respondent has recognised that such documents are in its possession.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 13</p> <p>8. Respondent has failed to prove the requirements of the application of Article 9.2(f) of the IBA Rules. In particular, the Respondent has failed to prove that under the national laws and regulations (1) the requested documents contain state or military secrets that are classified as secret by a government or a public international institution and that (2) these documents contain sensitive political information for Respondent²³. In light of this, there are no reasons to presume that the information contained in the requested documents is the subject to the cabinet privilege, deliberative process privilege or public interest immunity. Respondent has not substantiated the grounds for the application of Article 9.2(f) of the IBA Rules.</p> <p>9. Moreover, Respondent's arguments regarding ongoing criminal proceedings do not prove that the requested documents could not be produced pursuant to Article 9.2(f) of the IBA Rules, as well as that the requested</p>
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²² **Exhibit CLA-38:** 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration, p 9 <https://www.ibanet.org/MediaHandler?id=DD240932-0E08-40D4-9866-309A635487C0>

²³ RL-206, para 12.295-12.296

	<p>documents were, in fact, kept in the criminal case file. No argument in this regard has been presented by the Respondent.</p> <p>10. In addition, Respondent's objection concerning the prohibition of production of criminal case materials is also rejected by the fact that Respondent has already provided approx. 30%+ of documents from this criminal case into the present case (see R-0034; R-0036-R-0037; R-0041-R-0052; R-0054-R-0059; R-0061-R-0066; R-0069; R-0078-R-0082; R-0084). This proves that the Respondent can produce the requested documents in the present case, and also proves that Respondent deliberately avoids producing the requested documents by trying to create imaginary pretext (it is simply incomprehensible that Claimant is allegedly barred from obtaining these documents due to the "secrecy of the investigation", whereas the Respondent is free to cherry-pick criminal case file documents and present them into present case file).</p> <p>Request for Resolution</p> <p>11. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 13.</p>
E. Decision of the Tribunal	<p>The request is denied as excessively broad and vague, and its relevance and materiality have not been sufficiently demonstrated.</p>

Document Request No.	14
A. Documents or category of documents requested (requesting Party)	B. Documentation related to the criminal investigation of the 2018 Tender proceedings B.1. Documentation: (1) confirming whether any criminal investigation has been initiated against the Claimant and/or its legal affiliates before or after the 2018 Tender and in the past 10 years; (2) proving that the Claimant and/or its legal affiliates have been notified on the allegations of corruption or other illegal actions against them.
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 12, 110, 241-248 of the SoD, R-0063.</p> <p>(2) The requested documents are relevant to the case at hand because they will demonstrate that the Respondent has failed to discharge the burden of proof and will refute the allegations made by the Respondent that the Claimant has committed criminal offences (allegedly bribed the officers of the Respondent's authorities) (¶¶ 12, 110, 241-248 of the SoD). As alleged by the Respondent in ¶¶ 12, 110, 247 of the SoD, the Claimant's representatives repeatedly and secretly met with Respondent's officials involved in the 2018 Tender process, offering "very significant compensation" for rigging the tender in Claimant's favor. The Respondent did not submit any documentary evidence to prove that the GKNB or other Respondent's authority initiated criminal investigations against the Claimant and/or its legal affiliates.</p> <p>The requested documents are material to the outcome of the case at hand, because assessing the documents relating to the Respondent's baseless contention that the Claimant has committed criminal offences (allegedly bribed the officers of the Respondent's authorities) became important in light of the position the Respondent chose to take in its SoD (¶¶ 12, 110, 241-248 of the SoD, R-0063).</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Claimant unequivocally admits that the purpose of this document request is to "<i>demonstrate that the Respondent has failed to discharge the burden of proof and [to] refute the</i></p>

	<p><i>allegations made by the Respondent that the Claimant has committed criminal offences.”</i> This document request is thus not related to any of Claimant’s own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) This document request is not specific, is overly broad and fails to identify Respondent’s State organs that would be in possession of the requested documents</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such document request is impossible to comply with, which is another independent reason for it to be dismissed.</p> <p>(3) Grounds of special political or institutional sensitivity</p> <p>To the extent the requested documents make part of the case file of the (still ongoing) criminal investigation into the 2018 Tender corruption scheme, those documents are covered by the secrecy of investigation and cannot be produced.²⁴</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant’s response to the Respondent’s objection No. (1) to the Request No. 14</p> <ol style="list-style-type: none"> 1. Without prejudice to the below, Claimant agrees and does not dispute that it is Respondent who bears the burden of proof to prove its corruption allegations with direct, clear and convincing evidence. 2. However, Claimant objects to Respondent’s position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent’s arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent’s position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to substantiate its defenses. Therefore, rejection of the Request No. 14 could leave Claimant without the means to substantiate its defenses against Respondent’s ill-founded allegations that Claimant has committed criminal offences (allegedly bribed the officers of the Respondent’s authorities) (¶¶ 12, 110, 241-248 of the SoD). 3. Without any prejudice to the above, the standard of proof for criminal offences in arbitration practice is very high²⁵. It means that the Respondent is obliged to provide clear and direct evidence of the alleged offences. In the case at hand, there is even no <i>prima facie</i> evidence of the criminal offences alleged. However,

²⁴ Exhibit RLA-12, Criminal Procedure Code, Article 160(1). See also *ibid*, 251-254.

²⁵ Exhibit CLA-37.

	<p>Claimant cannot be restricted from substantiation of its defenses against Respondent's ill-founded allegations.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 14</p> <p>4. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder.</p> <p>5. Respondent can produce: (1) an extract from a particular criminal register or register of data on legal entities or (2) confirmation from the prosecuting authorities that no criminal case has been brought against Claimant and/or its legal affiliates in the last 10 years. Respondent will in principle have no problems in collecting and producing the requested documents, as the Respondent fully controls the authorities which collect these documents, as well as has all the resources to satisfy this Request No. 14. Therefore, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence on the granting of the Request No. 14. Respondent has the best ability to choose the particular authority which has the highest competence to produce the requested documents. Hence, the Request No. 14 is not in a breach of Article 3.2(c) of the IBA Rules.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 14</p> <p>6. Respondent failed to prove the requirements of the application of Article 9.2(f) of the IBA Rules. In particular, the Respondent failed to prove that under the national laws and regulations (1) the requested documents contain state or military secrets that have been classified as secret by a government or a public international institution and that (2) these documents contain sensitive political information for Respondent²⁶. In the light of this, there is no reason to presume that the information contained in the requested documents is subject to the cabinet privilege, deliberative process privilege or public interest immunity. Respondent has not substantiated the grounds for the application of Article 9.2(f) of the IBA Rules.</p> <p>7. Moreover, Respondent's arguments regarding the ongoing criminal proceedings do not prove that the requested documents could not be produced pursuant to Article 9.2(f) of the IBA Rules, as well as that the</p>
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²⁶ RL-206, para 12.295-12.296

	<p>requested documents are, in fact, kept in the criminal file. No argument in this regard has been presented by Respondent.</p> <p>8. In addition, Respondent's objection concerning the prohibition of production of criminal case materials is also rejected by the fact that Respondent has already provided approx. 30%+ of documents from this criminal case into the present case (see R-0034; R-0036-R-0037; R-0041-R-0052; R-0054-R-0059; R-0061-R-0066; R-0069; R-0078-R-0082; R-0084). This proves that the Respondent can produce the requested documents in the present case, and also proves that Respondent deliberately avoids producing the requested documents by trying to create imaginary pretext (it is simply incomprehensible that Claimant is allegedly barred from obtaining these documents due to the "secrecy of the investigation", whereas the Respondent is free to cherry-pick criminal case file documents and present them into present case file).</p> <p>Request for Resolution</p> <p>9. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 14.</p>
E. Decision of the Tribunal	<p>The request is granted. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant's defence.</p> <p>The Respondent has failed to demonstrate compelling reasons for why any information responsive to the Claimant's two limited requests will raise concerns related to special political or institutional sensitivity.</p>

Document Request No.	15
<p>A. Documents or category of documents requested (requesting Party)</p>	<p>B. Documentation related to the criminal investigation of the 2018 Tender proceedings</p> <p>B.2. Proof (documents) of alleged criminal offences (bribing the officers of the Respondent's authorities) executed by the Claimant and/or its legal affiliates, as well as the officers of the Respondent's authorities before, during or after the 2018 Tender:</p> <p>(1) Direct proof (documents) that 2018 Tender was procedurally rigged in the Claimant's favor on multiple occasions, i. e. that the Claimant and/or its legal affiliates have committed criminal offences in connection with the 2018 tender (bribed the officers of the Respondent's authorities).</p> <p>(2) Direct proof (documents such as bank statements, evidence of handing money over by the Claimant and etc.) which shows that the officers of the Respondent's authorities (Department, GRS, etc.) received money or other material benefits transferred to them directly by the Claimant and/or its legal affiliates and/or other persons for lobbying Claimant's interests.</p> <p>(3) Documentation confirming that the GKNB was indeed investigating whether the Claimant and/or its legal affiliates gave money or other material benefits to the officers of the Respondent's authorities.</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>(1) See ¶¶ 12, 83, 91, 241-248 of the SoD, R-0063.</p> <p>(2) The requested documents are relevant to the case at hand because they will demonstrate that the Respondent has failed to discharge the burden of proof and will refute allegations made by the Respondent that the Claimant has committed criminal offences (allegedly bribed the officers of the Respondent's authorities) (¶¶ 12, 83, 91, 241-248 of the SoD, R-0063). In support of its allegations, the Respondent has only submitted reports of highly questionable interrogations of witnesses and has not provided any direct evidence that criminal offences have in fact taken place (no evidence of money transfers, of instructions from the Claimant and/or its legal affiliates to lobby the Claimant's interests during the 2018 Tender, etc.).</p> <p>For the same reasons as specified above (Document Request No. 14), the requested documents are material to the outcome of the case at hand, because assessing the documents relating to the Respondent's baseless</p>

	contention that the Claimant has committed criminal offences (allegedly bribed the officers of the Respondent's authorities) became important in light of the position the Respondent chose to take in its SoD (¶¶ 12, 83, 91, 241-248 of the SoD, R-0063).
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant's Document Requests above. Claimant unequivocally admits that the purpose of this document request is to "<i>demonstrate that the Respondent has failed to discharge the burden of proof and [to] refute allegations made by the Respondent that the Claimant has committed criminal offences.</i>" Respondent notes specifically that documents potentially falling under the scope of parts (1) and (2) of this document request are actually subject of Respondent's Document Requests Nos. 5 and 6. This document request is thus not related to any of Claimant's own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) This document request is not specific, is overly broad and fails to identify Respondent's State organs that would be in possession of the requested documents</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such document request is impossible to comply with, which is another independent reason for it to be dismissed.</p> <p>(3) Grounds of special political or institutional sensitivity</p> <p>To the extent the requested documents make part of the case file of the (still ongoing) criminal investigation into the 2018 Tender corruption scheme, those documents are covered by the secrecy of investigation and cannot be produced.²⁷</p>
D. Response to objections and	Please see Claimant's response to the Request No. 14 (Claimant's arguments presented in part D of the Request No. 14 shall be applied <i>mutatis mutandis</i> to the Respondent's objection to this Request No. 15).

²⁷

Exhibit RLA-12, Criminal Procedure Code, Article 160(1). *See also ibid*, 251-254.

request for resolution (requesting Party)	Request for Resolution While taking into account arguments presented in part D of the Request No. 14, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 15.
E. Decision of the Tribunal	The request is denied as excessively broad and vague.

Document Request No.	16
A. Documents or category of documents requested (requesting Party)	B. Documentation related to the criminal investigation of the 2018 Tender proceedings B.3. Direct proof (documents) of criminal offences committed by Messrs. Sagyndykov and/or Tynaev as well as documents confirming that criminal proceedings have been initiated against them
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 86-87 of the SoD.</p> <p>(2) The requested documents are relevant to the case at hand because they will demonstrate that the Respondent has failed to discharge the burden of proof and will refute allegations made by the Respondent that Messrs. Tynaev and/or Sagyndykov allegedly committed “dire irregularities” in the 2018 Tender (¶¶ 86-87 of the SoD). In support of its allegations, the Respondent has only provided screenshots of message exchange between Messrs. Tynaev and Sagyndykov (R-0068) which, if read properly, do not prove any wrongdoing, however, the Respondent has not provided any direct evidence that Messrs. Tynaev and Sagyndykov committed any criminal offences in connection with the 2018 Tender.</p> <p>The requested documents are material to the outcome of the case at hand, because they will demonstrate that the Respondent failed to prove its position chosen to take in its SoD (¶¶ 86-87 of the SoD) that Claimant and or through its affiliates committed criminal offences in connection with the 2018 Tender.</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments with respect to Claimant’s Document Requests above. Claimant unequivocally admits that the purpose of this document request is to “<i>demonstrate that the Respondent has failed to discharge the burden of proof and [to] refute allegations made by the Respondent that Messrs. Tynaev and/ or Sagyndykov allegedly committed “dire irregularities” in the 2018 Tender.</i>” Respondent notes specifically that documents potentially falling within the scope of this document request are actually subject of Respondent’s</p>

	<p>Document Requests Nos. 5 and 6. This document request is thus not related to any of Claimant's own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) This document request is not specific, is overly broad and fails to identify Respondent's State organs that would be in possession of the requested documents</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed.</p> <p>(3) Grounds of special political or institutional sensitivity</p> <p>To the extent the requested documents make part of the case file of the (still ongoing) criminal investigation into the 2018 Tender corruption scheme, those documents are covered by the secrecy of investigation and cannot be produced.²⁸</p>
D. Response to objections and request for resolution (requesting Party)	<p>Please see Claimant's response to the Request No. 14 (Claimant's arguments presented in part D of the Request No. 14 shall be applied <i>mutatis mutandis</i> to the Respondent's objection to this Request No. 16).</p> <p>Request for Resolution</p> <p>While taking into account arguments presented in part D of the Request No. 14, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 16.</p>
E. Decision of the Tribunal	<p>The request is granted in part, with respect to documents confirming that criminal proceedings have been initiated against Messrs. Sagyndykov and/or Tynaev.</p>

²⁸

Exhibit RLA-12, Criminal Procedure Code, Article 160(1). *See also ibid*, 251-254.

Document Request No.	17
A. Documents or category of documents requested (requesting Party)	<p>C. Documentation related to the 2012 Tender for passports</p> <p>C.1. Documentation related to the preparatory materials (see Document Request Nos. 1-2) and the execution of the <u>2012</u> Tender (see analogous requests for the 2018 Tender in Document Request Nos. 4-9) as well as all requests for the clarification of the 2012 Tender documentation issued by the bidders and answers of the procuring authority to these requests (see Document Request No. 3)</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 19-23 of the SoD, ¶¶ 71-76 of the SoC.</p> <p>(2) The requested documents are relevant to the case at hand because they will rebut the unfounded allegations made by the Respondent on the possible loss of the Claimant in the 2012 Tender (¶ 22 of the SoD). Also, the requested documents will support the Claimant's statements that the Claimant's bid was potentially the best (¶ 77 of the SoC).</p> <p>The requested documents are material to the outcome of the case at hand because they will demonstrate that the Respondent's SoD is unfounded (as regards the arguments concerning the 2012 Tender) and will allow the SoC (¶¶ (a) and (b) of its relief sought) to be satisfied in full.</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Requested documents are not relevant to this case nor material to its outcome</p> <p>Claimant fails to explain just how its unsuccessful participation in the 2012 Tender has any relevance to the issues at stake in this arbitration, which concern the 2018 Tender. It has not.</p> <p>(2) This request is not specific, is overly broad, and fails to identify Respondent's organs that would be in possession of the requested documents</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that</p>

	<p>would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed. Claimant's general cross-references to its other document requests obviously fall short of "<i>identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist</i>", as required by paragraph 12.2 of the Procedural Order No. 1.</p> <p>(3) Requested documents could contain commercially confidential information</p> <p>To the extent the requested documents include any information as to the details of the bids of Claimant's competitors that had participated in the 2012 Tender, as well as information on the evaluation and assessment of the said bids by the procuring entity, they are covered by commercial confidentiality and cannot be produced.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 17</p> <p>1. Claimant has sufficiently proved its arguments in Part B of this Request No. 17 concerning relevance of the requested documents to the case at hand and materiality to its outcome. The question of the execution of the 2012 tender occupies an important place in the procedural documents of the parties to this arbitration. The significance of this matter relates to the fact that Respondent has been subject to the influences of corruption, lobbying and other factors since 2012 [beginning of the 2012 Tender], which culminated at an extreme high point during the execution of the 2018 Tender. The Respondent's susceptibility to such factors destroyed the 2018 Tender, which Claimant legitimately won. Therefore, establishment of circumstances regarding failure of the 2012 Tender will evidence the pattern which occurred from 2012 to 2020 regarding tenders for e-passports.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 17</p> <p>2. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder.</p> <p>3. In addition, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence on granting the Request No. 17, given that Respondent has the best ability to</p>

	<p>choose a particular authority, which has the highest competence to produce the requested documents. Therefore, the Request No. 17 is not in breach of Article 3.2(c) of the IBA Rules.</p> <p>4. With regard to the collection period of the requested documents, this period covers 2010-2012 (approx. beginning of the preparation of the documentation for the 2012 Tender and end of 2012 Tender). This can be clearly understood from the dates of the events referred to in the Request and does not need to be indicated separately.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 17</p> <p>5. Please see Claimant's response to the Requests Nos. 1-2, 5, 7, 9 and 13 (Claimant's arguments presented in part D of the Requests Nos. 1-2, 5, 7, 9 and 13 shall be applied <i>mutatis mutandis</i> to the Respondent's objection to this Request No. 17).</p> <p>Request for Resolution</p> <p>6. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 17.</p>
E. Decision of the Tribunal	The request is denied, as its relevance and materiality have not been sufficiently demonstrated.

Document Request No.	18
A. Documents or category of documents requested (requesting Party)	<p>C. Documentation related to the 2012 Tender for passports</p> <p>C.2. Documents related to the cancellation of 2012 Tender (notices, explanatory notes, communication, internal legal acts, etc.).</p>
<p>B. Relevance and materiality (requesting Party)</p> <p>(1) para. ref. to submissions</p> <p>(2) comments</p>	<p>(1) See ¶¶ 21-23 of the SoD, ¶¶ 71-76 of the SoC.</p> <p>(2) Additionally, to the arguments specified in Document Request No. 17, the requested documents are relevant to the case at hand because they will support the assertions made by the Claimant that the 2012 Tender was cancelled without any reasonable grounds (¶¶ 78-82 of the SoC). The Respondent did not refute the Claimant's position or provide any documentation on the justifiable grounds for terminating the 2012 Tender (¶ 22.3. of the SoD).</p> <p>The requested documents are material to the outcome of the case because they will demonstrate that the Respondent's SoD is unfounded (as regards the arguments concerning the 2012 Tender) and will allow the SoC (¶¶ (a) and (b) of its relief sought) to be satisfied in full.</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Requested documents are not relevant to this case nor material to its outcome</p> <p>Claimant fails to explain just how its unsuccessful participation in the 2012 Tender has any relevance to the issues at stake in this arbitration, which concern the 2018 Tender. It has not. Specifically, Claimant does not allege any violation of any investment protection standard by Respondent due to the cancellation of the 2012 Tender.</p> <p>(2) This request is not specific, is overly broad, and fails to identify Respondent's organs that would be in possession of the requested documents</p>

	Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged, as well as fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with and should be dismissed.
D. Response to objections and request for resolution (requesting Party)	<p>Please see Claimant's response to the Request No. 17 (Claimant's arguments presented in part D of the Request No. 17 shall be applied <i>mutatis mutandis</i> to the Respondent's objection to this Request No. 18).</p> <p>Request for Resolution</p> <p>While taking into account arguments presented in part D of the Request No. 17, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 18.</p>
E. Decision of the Tribunal	The request is denied, as its relevance and materiality have not been sufficiently demonstrated.

Document Request No.	19
A. Documents or category of documents requested (requesting Party)	<p>D. Documentation related to the 2020 Tender for passports</p> <p>D.1. Documentation related to the preparatory materials (see Document Request Nos. 1-2) and the execution of the <u>2020</u> Tender (see analogous requests for the 2018 Tender in Document Request Nos. 4-9) as well as all requests for the clarification of the 2020 Tender documentation issued by the bidders and answers of the procuring authority to these requests (see Document Request No. 3)</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶ 106 of the SoD; ¶¶ 253-261, 670-675 of the SoC.</p> <p>(2) The requested documents are relevant to the case at hand because they will demonstrate that the Respondent has failed to discharge the burden of proof and will rebut the allegations made by the Respondent (¶ 106 of the SoD) as well as supporting the Claimant's arguments that the Claimant was unreasonably precluded from participation in the 2020 Tender (¶¶ 258-259 of the SoC).</p> <p>As explained in Document Request No. 1, tender documentation is usually validated at the governmental level after the meetings of the authorised special commissions to negotiate the terms and conditions of the documentation. Thus, the requested documentation will shed light on the reasons (or lack of them) why the terms and conditions of the 2020 Tender were changed (increased).</p> <p>Additionally, the requested documentation will shed light on what aspects of the bidders' bids were considered by the tender commission and how the tender commission selected the winner of the 2020 Tender. Notably, the reasonableness of the selection of the winner of the 2020 Tender was a point of contention between the parties (¶ 261 of the SoC; ¶ 106.2 of the SoD). Further document production will provide clarity to fully and sufficiently substantiate the parties' positions in this regard.</p> <p>Thus, relevance of the requested documents to the case at hand is demonstrated.</p> <p>The requested documents are material to the outcome of the case inasmuch as the Claimant is entitled to damages that would put the Claimant in a position it would have been in had the Respondent not expropriated</p>

	the e-passports contract won by the Claimant in the 2018 Tender and had it not deliberately excluded the Claimant from the 2020 Tender (¶¶ 670-675 of the SoC, etc.).
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Requested documents are not relevant to this case nor material to its outcome</p> <p>Claimant fails to explain just how it not having been able to participate in the 2020 Tender has any relevance to the issues at stake in this arbitration, which concern the 2018 Tender. Claimant does not invoke any independent violation by the Republic of any investment protection standard stemming from the 2020 Tender. Thus, requested documents are irrelevant to this case and are not material to its outcome.</p> <p>(2) This request is not specific, is overly broad, and fails to identify Respondent's organs that would be in possession of the requested documents</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed. Claimant's general cross-references to its other document requests obviously fall short of "<i>identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist</i>", as required by paragraph 12.2 of the Procedural Order No. 1.</p> <p>(3) Requested documents could contain commercially confidential information</p> <p>To the extent the requested documents include any information as to the details of the bids of Claimant's competitors that had participated in the 2020 Tender, as well as information on the evaluation and assessment of the said bids by the procuring entity, they are covered by commercial confidentiality and cannot be produced.</p>
D. Response to objections and request for	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 19</p> <p>1. Claimant has provided its arguments in Part B of this Request No. 20 concerning relevance of the requested documents to the case at hand and materiality to its outcome. In addition, Claimant explains that Respondent</p>

<p>resolution (requesting Party)</p>	<p>has engaged in tactics to alienate Claimant's investment by creating further legal barriers (without any reasonable ground and legal analysis) against its participation in public procurement by increasing the 2020 Tender requirements, designated exclusively for Mühlbauer (for a company which failed to fulfil the 2018 Tender requirements but ironically won the 2020 Tender). Thus, the requested documents will prove that Respondent discriminated the Claimant and thus breached its obligations under the terms of the Agreement.</p> <p>2. Therefore, examination of the documentation related to the 2020 Tender for passports will enable the Claimant to prove its claims.</p> <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 19</p> <p>3. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder.</p> <p>4. In addition, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence on the granting of the Request No. 19, as well as Respondent has best ability to choose the particular authority which has the highest competence to produce the requested documents. Therefore, the Request No. 19 is not in breach of Article 3.2(c) of the IBA Rules.</p> <p>5. With regard to the collection period of the requested documents, this period covers 2019-2020 (end of 2018 Tender and end of 2020 Tender). This can be clearly understood from the dates of the events referred to in the Request and does not need to be indicated separately.</p> <p>Claimant's response to the Respondent's objection No. (3) to the Request No. 19</p> <p>6. Please see Claimant's response to the Requests Nos. 1-2, 5, 7, 9 and 13 (Claimant's arguments presented in part D of the Requests Nos. 1-2, 5, 7, 9 and 13 shall be applied <i>mutatis mutandis</i> to the Respondent's objection to this Request No. 19).</p>
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	Request for Resolution 7. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 19.
E. Decision of the Tribunal	The request is denied, as its relevance and materiality have not been sufficiently demonstrated.

Document Request No.	20
A. Documents or category of documents requested (requesting Party)	<p>E. Documentation related to the 2020 and 2021 Tender for excise stamps</p> <p>E.1. Documentation (public consultations, market overviews, reports by international experts, explanatory notes to the draft laws) reflecting the reasons for changes in the law on public procurement and implementation documents (decisions, decrees) of the Respondent's Government, whereby excise stamps became part of national security "special State blanks" (¶ 25.2 of the SoD) and their production was entrusted to state-owned companies (¶ 25.3 of the SoD)</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 25-27 of the SoD, R-0006 – R-0011.</p> <p>(2) The requested documents are relevant to the case at hand because they will refute allegations made by the Respondent that the changes in the laws of tenders for excise stamps are solely related to national security matters (¶¶ 25-27 of the SoD, R-0006 – R-0011) and do not relate to the Respondent's attempts to throw the Claimant off the board of these tenders. As the Claimant is aware from the media, the rationale for these changes in laws is questionable at best²⁹.</p> <p>The requested documents are material to the outcome of the case at hand inasmuch as the Claimant is arguing that the Respondent hastily cut off the Claimant's investments through participation in tenders by changing the laws in a way that would prohibit the Claimant to further investments in the Kyrgyz Republic and would rather allow the Respondent's politicians and high level officers and/or their family members to obtain resources from the Respondent's coffers. These circumstances are relevant for ¶¶ (a) and (b) of the Claimant's relief sought in this arbitration.</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Requested documents are not relevant to this case nor material to its outcome</p>

²⁹ https://24.kg/obschestvo/128726_popravki_vnbspzakon_laguoobspgoszakupkakraquo_ili_kak_deputaty_i_tseluyu_otrasl_ubili/

	<p>Claimant fails to explain just how a change in the Kyrgyz excise stamps production regulations has any relevance to the issues at stake in this arbitration, which concern the 2018 Tender relating to the production of e-passports. Claimant does not invoke any independent violation by the Republic of any investment protection standard stemming from this legislative change. The requested documents are thus irrelevant to this case and are not material to its outcome.</p> <p>(2) This request is not specific, is overly broad, and fails to identify Respondent's organs that would be in possession of the requested documents</p> <p>Claimant fails to specify the time period during which the responsive documents would have been created and/or exchanged and fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 20</p> <ol style="list-style-type: none"> 1. Claimant has sufficiently provided its arguments in Part B of this Request No. 20 concerning relevance of the requested documents to the case at hand and materiality to its outcome. In addition, the requested documents will prove that Respondent has engaged in tactics to alienate Claimant's investments by creating legal barriers (without any reasonable ground and legal analysis), i.e. elimination from participation in the public procurement tenders. This will, in turn, prove that Respondent breached its obligations under the terms of the Agreement. 2. Therefore, examination requested documents enable the Claimant to prove its claims. <p>Claimant's response to the Respondent's objection No. (2) to the Request No. 20</p> <ol style="list-style-type: none"> 3. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder. 4. Claimant has explicitly provided its extended arguments (explanations) on the permissible and reasonable scope of the requested documents in the part B of this Request No. 20. In addition, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence on the

	<p>granting of the Request No. 20 given that Respondent has best ability to choose a particular authority which has the highest competence to produce the requested documents. Therefore, the Request No. 20 is not in breach of Article 3.2(c) of the IBA Rules.</p> <p>5. With regard to the collection period of the requested documents, this period covers 2019-2021 (end of 2018 Tender and end of 2021 Tender). This can be clearly understood from the dates of the events referred to in the Request and does not need to be indicated separately.</p> <p>Request for Resolution</p> <p>6. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 20.</p>
E. Decision of the Tribunal	<p>The request is denied, as its relevance and materiality have not been sufficiently demonstrated.</p>

Document Request No.	21
A. Documents or category of documents requested (requesting Party)	<p>F. Documentation related to the actions of Mr. Idris Kadyrkulov (former chief of the GKNB) against the Claimant as well as 2018 Tender and his resignation from office.</p> <p>F.1. Details (information) on the: (1) meetings between Mr. Idris Kadyrkulov, Mr. Dastan Dogoyev, Ms. Alina Shaikova, and representatives of KBA-NotaSys before, during and after the 2018 Tender proceedings; (2) relationship between Mr. Idris Kadyrkulov and the representatives of KBA-NotaSys; (3) participation and role of Mr. Idris Kadyrkulov in the criminal investigation related to the 2018 Tender; (4) resignation of the Mr. Idris Kadyrkulov as the chief of the GKNB (official resignation requests, internal legal acts, documents, notices and all communication in that regard between the Respondent's authorities).</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 15-27, 228-251 of the SoC.</p> <p>(2) The requested documents are relevant to the case at hand because they will support the assertions made by the Claimant that: (1) the GKNB chief Mr. Idris Kadyrkulov was actively involved in lobbying for KBA-NotaSys's interests during the 2018 Tender, which planned to produce of documents of national importance in the Kyrgyz Republic (¶¶ 15-22 of the SoC); (2) GKNB's awareness of the details of this lobbying activity by its chief (¶ 21 of the SoC); (iii) the aftermath of the failure to achieve his own ill-gotten goals, Mr. Idris Kadyrkulov employed the GKNB to attack the 2018 Tender and the winner of the 2018 Tender – the Claimant, i. e. Mr. Idris Kadyrkulov, having ulterior motives, took an active role in the criminal investigation. Documents will also shed light on Kadyrkulov's conflict with Alina Shaikova (GRS) and his personal interests in the 2018 Tender.</p> <p>The requested documents are material to the case at hand because they will prove that 2018 Tender severely influenced and terminated illegally through unlawful acts undertaken by the corrupt chief of the GKNB, who, without legitimate grounds, negatively and severely affected the worldwide reputation of the Claimant through a criminal investigation and baseless allegations. This is directly relevant to the Claimant's case and understanding of the overall context of termination of the 2018 Tender.</p>

<p>C. Objections to document request (objecting Party)</p>	<p>Respondent objects to parts (1) – (3) of this document request as they are not specific, overly broad, and fail to identify Respondent’s organs that would be in possession of the requested documents.</p> <p>Claimant does not even try to give any particulars for parts (1) – (3) of this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed. Claimant’s general cross-references to its other document requests obviously fall short of “<i>identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist</i>”, as required by paragraph 12.2 of the Procedural Order No. 1.</p> <p>Furthermore, to the extent documents requested under parts (1) – (3) of this document request make part of any ongoing criminal investigation, they are protected by the secrecy of the investigation and cannot be produced.³⁰</p> <p>Respondent moreover objects to parts (1) – (2) of this document request as Claimant has failed to explain why it believes that requested documents would be in Respondent’s possession, custody or control.</p> <p>Finally, with respect to part (4) of this document request, Respondent is conducting searches and will produce any responsive internal documents, if they exist and are located.</p>
<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>1. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent’s Rejoinder.</p>

³⁰ Exhibit RLA-12, Criminal Procedure Code, Article 160(1). See also *ibid*, 251-254.

2. Without prejudice to the below, Claimant agrees and does not dispute that it is Respondent who bears the burden of proof to prove its corruption allegations with direct, clear and convincing evidence.
3. However, the Claimant has sufficiently provided its arguments in Part B of this Request No. 21 concerning relevance of the requested documents to the case at hand and materiality to its outcome. There is evidence in the present case (see ¶¶ 15-27, 228-251 of the SoC, C-6, C-8, CWS_Lukosevicius_1/34; CWS_Mieliauskas_1/34) that the chief of the GKNB (and other authorities (see Request No. 13)) has influenced the outcome of the 2018 Tender and the criminal proceedings were fabricated in order to expel the Claimant. Therefore, rejection of the Request No. 21 could leave Claimant without the means to examine the important influence of Mr. Idris Kadyrkulov (former chief of the GKNB) on the 2018 Tender and how this influence has affected the outcome of the 2018 Tender and the initiation of criminal proceedings. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to substantiate its claims and defenses.
4. Moreover, Claimant has explicitly provided its extended arguments (explanations) on the permissible and reasonable scope of the requested documents in the part B of this Request No. 21. In addition, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence over granting of the Request No. 21 (Yet Claimant explained that GKNB was fully aware of the details of lobbying activity by its chief (¶ 21 of the SoC), so it shall have the requested documents in its possession). Given that Respondent has the best ability to choose a particular authority which has the highest competence to produce the requested documents, the Request No. 21 is not in breach of Article 3.2(c) of the IBA Rules.
5. With regard to the collection period of the requested documents, this period covers 2018-2020 (end of 2018 Tender and end of 2020 Tender). This can be clearly understood from the dates of the events referred to in the request.
6. Finally, Respondent's arguments on the ongoing criminal proceedings do not prove that the requested documents could not be produced pursuant to Article 9.2(f) of the IBA Rules, as well as that the requested documents are, in fact, kept in the criminal case file. No argument in this regard has been presented by Respondent. In addition, Respondent's objection concerning the prohibition of production of criminal case materials is also rejected by the fact that Respondent has already provided approx. 30%+ of documents from this criminal case into the present case (see R-0034; R-0036-R-0037; R-0041-R-0052; R-0054-R-0059; R-0061-R-0066; R-0069; R-0078-R-0082; R-0084). This proves that the Respondent can produce the requested documents in the present case, and also proves that Respondent deliberately avoids producing

	<p>the requested documents by trying to create imaginary pretext (it is simply incomprehensible that Claimant is allegedly barred from obtaining these documents due to the “secrecy of the investigation”, whereas the Respondent is free to cherry-pick criminal case file documents and present them into present case file).</p> <p>Request for Resolution</p> <p>7. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 21.</p>
E. Decision of the Tribunal	<p>Parts 1-3 of the request are granted. With respect to part 4, takes note of the Respondent’s representation that is conducting searches for responsive documents, which will be produced if and when they are located.</p>

Document Request No.	22
A. Documents or category of documents requested (requesting Party)	<p>F. Documentation related to the actions of Mr. Idris Kadyrkulov (former chief of the GKNB) against the Claimant as well as 2018 Tender.</p> <p>F.2. Information on whether criminal or internal investigation has been initiated against Mr. Idris Kadyrkulov on the basis of his possible personal interests in the 2018 Tender, as well as his lobbying of the interests of the foreign entities in the territory of the Respondent during his tenure as chief of the GKNB (requests, internal legal acts, documents, notices, and all communication in that regard between the Respondent's authorities).</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶ 243 of the SoC.</p> <p>(2) In addition to what has been indicated in Document Request No. 21, the requested information is relevant to the case at hand and material to its outcome because it will shed further light on whether the Respondent has taken lawful measures in investigating the chief of the GKNB, his illegal actions against the Claimant and the 2018 Tender to lobby the KBA-NotaSys's interests in the territory of the Respondent.</p>
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) This document request is not specific, is overly broad, and fails to identify any Respondent's organs that would be in possession of the requested documents.</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed. Claimant's general cross-</p>

	<p>references to its other document requests obviously fall short of “<i>identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist</i>”, as required by paragraph 12.2 of the Procedural Order No. 1.</p> <p>(2) Grounds of special political or institutional sensitivity</p> <p>To the extent the requested documents make part of the case file of any ongoing criminal investigation, those documents are covered by the secrecy of investigation and cannot be produced.³¹</p>
D. Response to objections and request for resolution (requesting Party)	<p>Please see Claimant’s response to the Request No. 21 (Claimant’s arguments presented in part D of the Request No. 21 shall be applied <i>mutatis mutandis</i> to the Respondent’s objection to this Request No. 22).</p> <p>Request for Resolution</p> <p>While taking into account arguments presented in part D of the Request No. 21, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 22.</p>
E. Decision of the Tribunal	<p>The request is granted in part, with respect to documents confirming that criminal proceedings have been initiated against Mr. Idris Kadyrkulov on the basis of his possible personal interests in the 2018 Tender.</p>

³¹ Exhibit RLA-12, Criminal Procedure Code, Article 160(1). See also *ibid*, 251-254.

Document Request No.	23
A. Documents or category of documents requested (requesting Party)	<p>G. Direct proof (documents) of criminal offences committed by the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vitautas Mieliauskas:</p> <p>(1) Direct proof (documents) of alleged criminal offences (tax evasion, committing other types of crimes through Mafia structures) committed by Mr. Vytautas Vainikonis, which are specified in ¶ 29 of the SoD.</p> <p>(2) Direct proof (documents) of alleged criminal offences (tax evasion) committed by Mr. Vitautas Mieliauskas, which are specified in ¶ 29 of the SoD.</p> <p>(3) Direct proof (documents) of alleged criminal offences (illicit distribution of excise stamps to producers of counterfeit alcohol; fraud, forgery of documents and money laundering) committed by the Claimant, which are specified in ¶¶ 30-31 of the SoD.</p> <p>(4) Direct proof (documents) of alleged criminal offences (paying bribes, kickbacks and insider dealing to secure contracts around the world; tax fraud and money-laundering) committed by Semlex and Mr. Albert Karaziwan, which are specified in ¶¶ 34-37 of the SoD.</p>
B. Relevance and materiality (requesting Party) (1) para. ref. to submissions (2) comments	<p>(1) See ¶¶ 29-37 of the SoD.</p> <p>(2) The requested documents are relevant to the case at hand because they will demonstrate that the Respondent has failed to discharge the burden of proof and will refute allegations made by the Respondent that the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vitautas Mieliauskas allegedly committed criminal offences (¶¶ 29-37 of the SoD). In support of its allegations, the Respondent has only provided few Lithuanian press articles (see R-0012 – R-0013; R-0016; R-0018 – R-0019; R-0021 – R-0033) and excerpts from crime detectives (see R-0014 – R-0015). However, the Respondent has not provided any direct evidence that the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vitautas Mieliauskas committed criminal offences with which the Respondent accuses them.</p> <p>The requested documents are material to the outcome of the case at hand, because they will demonstrate that the Respondent failed to prove its position chosen to take in its SoD in relation to the unsubstantiated criminal</p>

	conviction of the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vitautas Mieliauskas (¶¶ 29-37 of the SoD).
C. Objections to document request (objecting Party)	<p>Respondent objects to this document request in its entirety for the following reasons:</p> <p>(1) Reversal of the burden of proof</p> <p>Respondent refers to its general comments to Claimant’s Document Requests above. Claimant unequivocally admits that the purpose of this document request is to “<i>demonstrate that the Respondent has failed to discharge the burden of proof and [to] refute allegations made by the Respondent that the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vitautas Mieliauskas allegedly committed criminal offences.</i>” In fact, document potentially falling within the scope of this document request are subject of Respondent’s Document Requests Nos. 1-3. This document request is thus not related to any of Claimant’s own arguments in this arbitration and must be rejected for this reason alone.</p> <p>(2) This document request is not specific, is overly broad, and fails to identify any Respondent’s organs that would be in possession of the requested documents.</p> <p>Claimant does not even try to give any particulars for this document request. Specifically: 1) Claimant fails to provide the time period during which the responsive documents would have been created and/or exchanged; 2) it fails to provide any details as to the types of documents or categories of documents it seeks to obtain; and 3) it fails to identify any organs of Respondent that would be in possession of the requested documents in violation of paragraph 12.2 of the Procedural Order No. 1. Such documents request is impossible to comply with, which is another independent reason for it to be dismissed. Claimant’s general cross-references to its other document requests obviously fall short of “<i>identifying in sufficient detail (including subject matter) particular documents or a narrow and specific category of documents that are reasonably believed to exist</i>”, as required by paragraph 12.2 of the Procedural Order No. 1.</p> <p>Finally, (3) Claimant has failed to explain just on what basis it believes that the requested documents would be in Respondent’s possession, custody or control. If the requested documents exist, it is Claimant that has control over them.</p>

<p>D. Response to objections and request for resolution (requesting Party)</p>	<p>Claimant's response to the Respondent's objection No. (1) to the Request No. 23</p> <ol style="list-style-type: none"> 1. Without prejudice to the below, Claimant agrees and does not dispute that it is Respondent who bears the burden of proof to prove its corruption allegations with direct, clear and convincing evidence. 2. However, Claimant objects to Respondent's position that the requested documents cannot be produced due to the fact that these documents refer solely and exclusively to Respondent's arguments and relate to its burden of proof. As Claimant pointed out in ¶¶ 1-3 of the part D of the Request No. 1, Respondent's position is incompatible with Article 27(1) of the UNCITRAL Rules, which enables Claimant to substantiate its defenses. Therefore, rejection of the Request No. 23 could therefore leave Claimant without the means to substantiate its defences against Respondent's ill-founded allegations that that the Claimant, Semlex and Mr. Albert Karaziwan, Mr. Vytautas Vainikonis, Mr. Vytautas Mieliauskas allegedly committed criminal offences (¶¶ 29-37 of the SoD). 3. Without prejudice to the above, the standard of proof for criminal offences in arbitration is very high³². It means that the Respondent is obliged to provide direct evidence of the alleged offences. In the case at hand, there is even no <i>prima facie</i> evidence of the criminal offences alleged, so the Claimant is restricted from substantiation of its defenses against Respondent's ill-founded allegations if the Request No. 14 would be rejected. <p>Claimant's response to the Respondent's objection Nos. (2)-(3) to the Request No. 23</p> <ol style="list-style-type: none"> 4. ¶ 11.3 of the PO1 requires the Parties to limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or discussing matters arising from evidence obtained in the document production phase. Thus, Claimant seeks to avoid exactly the situation envisaged in ¶11.3 of the PO1, i.e. Respondent withholding documents material to the case until submission of its Rejoinder, thus disabling Claimant to respond to new documents and allegations submitted with Respondent's Rejoinder. 5. With regard to the collection period of the requested documents, this period covers 2013 – to date (as it covered by Respondent in ¶¶ 29-37 of the SoD. This can be clearly understood from the dates of the events referred to in the Request and does not need to be indicated separately.
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	<p>6. Claimant has explicitly provided its extended arguments (explanations) on the permissible and reasonable scope of the requested documents in the part B of this Request No. 23. In addition, Respondent only declaratively disputes the scope of the requested documents, as Respondent has confirmed in part B of this Request No. 23 that it has filled same requests Nos. 1-3 in identical scope of the requested documents. It means that there is not, and cannot be, a dispute concerning the scope of the requested documents.</p> <p>7. Regarding the identification of the identify any organs (authorities) of Respondent, the precise identification by Claimant of the particular authorities which possess the requested documents has no influence on the granting of the Request No. 23 given that Respondent has best ability to choose a particular authority which has the highest competence to produce the requested documents. Therefore, the Request No. 23 is not in breach of Article 3.2(c) of the IBA Rules.</p> <p>8. Claimant also notes that Respondent actively presents arguments from crime novels or press articles concerning the alleged crimes of certain persons in its SoD (see ¶¶ 29-37 of the SoD, R-0012 – R-0016; R-0018 – R-0019; R-0021 – R-0033). However, if the Respondent does not possess the requested documents (proving in fact and law the alleged crimes), the Respondent should provide a clear confirmation on that.</p> <p>Request for Resolution</p> <p>9. While taking into account the above, and in accordance with ¶ 12.4(d) of the PO1 and Article 3.7. of the IBA Rules, Claimant hereby respectfully requests the Tribunal to order Respondent to produce the requested documents, which are set forth in the Request No. 23.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is granted. Pursuant to Article 24(1) of the applicable 1976 UNCITRAL Rules, the Claimant has the burden of proving the facts relied upon to support its defence, and the requested documents are sufficiently relevant and material for the Claimant's defence.</p>

