MANNHEIMER SWARTLING

Ministry of Foreign Affairs and
Natalia Gherman, DP Minister
European Integration of Moldova
80, 31 August 1989 Street

BY COURIER

Stockholm, 29 April 2014

Emergency Arbitration No. EA (2014/053): TSKINVEST LLC ve THE REPUBLIC OF MOLDOVA

Dear Madame,

On behalf of Kaj Hobér please find enclosed the Emergency Decision on Interim Measures.

Yours sincerely,

Evelina Strömberg
Assistant

29 04 14

ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE
P.O. Box 16050, SE-103 21 Stockholm, Sweden
Phone: +46 8 555 100 50, fax: +46 8 566 316 50
www.sccinstitute.com

Emergency Decision on Interim Measures

Made on 29 April 2014

in Stockholm, Sweden

in Emergency Arbitration No. EA(2014/053)

Claimant:	**TSIKINVEST LLC** at Room 103, Building 1, 8 Kovrov Lane, Moscow 109544, Russian Federation
Claimant's Counsel:	Mr. David Goldberg and Mr. Artem Doudko of White & Case LLP, 5 Old Broad Street, London EC2N 1DW, United Kingdom
Respondent:	**THE REPUBLIC OF MOLDOVA** at (1) Mr. Oleg Efrim, Minister of Justice, Ministry of Justice of the Republic of Moldova, 82, 31 August 1989 Street, Chisinau MD 2012, Republic of Moldova, (2) Ms. Natalia Gherman, Deputy Prime Minister, Minister of Foreign Affairs and European Integration, Ministry of Foreign Affairs and European and European Integration of the Republic of Moldova, 80, 31 August 1989 Street, Chisinau MD 2012, Republic of Moldova and (3) Mr. Emil Druc, Ambassador, Embassy of the Republic of Moldova in Sweden, Engelbrektsgatan 10, 3tr, 114 32 Stockholm, Sweden
Emergency Arbitrator:	Prof. Dr. Kaj Hobér

Emergency Decision

rendered in Stockholm, Sweden on the date set out above and rendered between the parties set out above (collectively hereinafter referred to as the "**Parties**").

1. INTRODUCTION

1.1 Emergency Arbitrator Application

1. This emergency decision on interim measures arises out of an application dated 23 April 2014 from Claimant to the Arbitration Institute of the Stockholm Chamber of Commerce (the "**SCC Institute**") for the appointment of an Emergency Arbitrator (the "**Application**"). Claimant requests the Emergency Arbitrator thus appointed to rule upon a request for interim relief made in the Application.

2. Claimant attached the following documents to its Application:

   (i) Confirmation of the payment of the fee of the Emergency Arbitrator in amount of EUR 12,000; and of the payment of application fee in amount of EUR 3,000;

   (ii) Treaty between the Government of the Russian Federation and the Government of the Republic of Moldova on the Promotion and the Reciprocal Protection of Investments, signed on 17 March 1998 (the "**Treaty**");

   (iii) Copy of the Power of Attorney 31 March 2014 on behalf of TSIKinvest LLC;

   (iv) Letter from Claimant to Respondent dated 31 March 2014;

   (v) Letter from Claimant to Respondent dated 16 April 2014;

   (vi) Notice of acquisition to the National Bank of the Republic of Moldova sent on or about 19 April 2012;

   (vii) Letter from the National Bank of the Republic of Moldova to Claimant dated 9 August 2012;

   (viii) Decision of the Administrative Council of the National Bank of the Republic of Moldova dated 5 February 2014;

   (ix) Preliminary application to the National Bank of the Republic of Moldova, sent by Claimant on or about 12 February 2014;

   (x) Decision of the Administrative Council of the National Bank of the Republic of Moldova dated 14 February 2014;

(xi) Letter from the National Bank of the Republic of Moldova to Claimant dated 21 November 2013;

(xii) Application to the Rîscani Court, Municipality of Chisinau, made on or about 25 February 2014; and

(xiii) Ruling of the Rîscani Court on 4 March 2014.

1.2 Appointment of Emergency Arbitrator

3. Pursuant to the preamble of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "**SCC Rules**"), under any arbitration agreement referring to the SCC Rules the parties shall be deemed to have agreed that the rules in force on the date of the commencement of the arbitration shall be applied unless otherwise agreed by the parties. Accordingly, the rules to be applied to the Application are the SCC Rules in force as of 1 January 2010, including Appendix II thereof, which provides for the appointment of an Emergency Arbitrator upon the application of a party.

4. On 24 April 2014, the undersigned was appointed by the Board of the SCC Institute (the "**SCC Board**") as the Emergency Arbitrator in accordance with the SCC Rules. Prior to this appointment, the Emergency Arbitrator signed a statement confirming his independence and impartiality, and provided those statements to the SCC Institute. On the same day, the SCC Board decided that the seat of the emergency proceedings shall be Stockholm.

1.3 Emergency Arbitration Procedure

5. Pursuant to Appendix II, Article 8(1) of the SCC Rules, the Emergency Arbitrator is to rule upon the request for interim measures set forth in Claimant's Application no later than five days from the date on which the application was referred to the Emergency Arbitrator. In a letter from the SCC Institute dated 24 April 2014, the SCC Institute informed that the emergency decision was to be made by 29 April 2014.

6. The Emergency Arbitrator issued Procedural Order No. 1 on 24 April 2014 in order to establish a timetable under which the parties were invited to present their respective arguments with respect to Claimant's Application.

7. The Procedural Order No. 1 was sent to the Parties by email. With respect to Respondent, the email addresses used were the ones to which Claimant sent its letters dated 31 March 2014 and 16 April 2014 respectively, namely: secretariat@justice.gov.md and secdep@mfa.md. In addition, at Claimant's

request, the Procedural Order No. 1 was sent to the Embassy of the Republic of Moldova in Sweden at office@moldovaembassy.se and ambassador@moldovaembassy.se.

8. All the subsequent correspondence in these proceedings have been sent to the email addresses referred to above. Moreover, the SCC Institute sent the Application and its exhibits by courier to the respective addresses of the Ministry of Justice of the Republic of Moldova and the Ministry of Foreign Affairs and European Integration of the Republic of Moldova on 24 April 2014, as well as to the email addresses referred to above. Receipts of service of process with respect to the aforementioned couriers were submitted to the Emergency Arbitrator on 28 April 2014.

9. Under the provisional timetable set forth in the Procedural Order No. 1, Respondent was to have filed its response to Claimant's Application by 25 April 2014. However, Respondent has not submitted such a response, nor has it made any other contacts with the Emergency Arbitrator or the SCC Institute in these emergency proceedings.

10. On 26 April 2014, the Emergency Arbitrator sent an email to the Parties, inviting Respondent forthwith to submit its response to Claimant's Application. On the same date, Claimant sent an email to the Emergency Arbitrator (with copy to Respondent), asking for directions as to whether the Emergency Arbitrator would like Claimant to address any specific questions.

11. On 27 April 2014, the Emergency Arbitrator sent an email to the Parties asking (a) Claimant to provide further clarifications and explanations with respect to the interim relief sought and (b) both Parties to submit their claims for costs related to these emergency proceedings (if any), by 6 pm (CET) on 28 April 2014.

12. On 28 April 2014, Claimant sent a letter in response to the Emergency Arbitrator's email of 27 April 2014. In the letter, Claimant explained that it envisages submitting a request for arbitration in accordance with the provisions of the Treaty in relation to the Dispute and that Claimant requests, in the circumstances, for the stay of Decision 19 (as defined below) to continue until the final award on the merits is issued in the envisaged arbitration, but in any event in accordance with the provisions of Article 9(4) of Appendix II to the SCC Rules. In addition, Claimant submitted a claim for costs related to the emergency proceedings.

2. Relevant Dispute Resolution Clause

13. The Application is made with reference to the Treaty described in paragraph 2(ii) above. Article 10 of the Treaty states that:

> *1. Any dispute between one Contracting Party and an investor of the other Contracting Party, which arose in relation to an investment, including disputes regarding the amount, conditions or procedure for the payment of compensation under Article 6 of this Treaty, or procedure for the payment of compensation under Article 6 of this Treaty, shall be subject to a written notice accompanied by detailed comments which the investor shall send to the Contracting Party, which is a party to the dispute. Parties to the dispute shall endeavor to resolve such a dispute by amicable means where possible.*
>
> *2. If the dispute is not resolved in such a manner within six months from the date of the written notice referred to in paragraph 1 of this article, it shall be submitted for consideration to [...]*
>
> *b) the Arbitration Institute of the Stockholm Chamber of Commerce [...]*
>
> *3. The arbitration award shall be final and binding on both parties to the dispute. Each Contracting Party undertakes to enforce such a decision in accordance with its laws.*

3. The Positions of the Parties

3.1 Claimant's Position

3.1.1 Background

14. Claimant is a legal entity incorporated in accordance with Russian laws in the Russian Federation. On or about 29 March 2012, Claimant acquired a number of shares (the "**Investment**") in the Moldovan bank BC Victoriabank SA (the "**Bank**"). Claimant's shareholding amounts to 4.16% in the share capital of the Bank. Claimant notified the National Bank of Moldova ("**NBM**") of its acquisition by letter on or about 19 April 2012. By letter dated 9 August 2012, NBM authorised Claimant to exercise its rights as the owner of a share of 4.16% in the share capital of the Bank.

15. On or about 21 November 2013, NBM requested Claimant to provide various information. Claimant provided NBM with responses on 20 December 2013, on or about 27 December 2013, on 31 January 2014, and on 3 February 2014. In addition, Claimant's beneficial owner provided information to NBM on 31 January 2014.

16. An extraordinary meeting of shareholders of the Bank took place on 6 February 2014. A representative of Claimant attended this meeting but, when attempting to register for the meeting, was informed by a Bank representative that NBM had issued a decision blocking Claimant's voting rights.

17. Claimant was then informed that one day earlier, on 5 February 2014, NBM had issued decision No 19 of the Administrative Council of NBM ("**Decision 19**") whereby NBM decided that:

(i) Claimant, Maxpower Invest Limited, Westex Management Limited and Folignor CC (together, the Decision 19 Investors") were acting in concert in respect of the Bank and had acquired a substantial share of 10.43% in the share capital of the Bank without NBM's permission;

(ii) the Decision 19 Investors are to be notified within a 5-day period of the suspension of their rights: to vote; to call and hold a general meeting of shareholders; to add questions to the agenda; to nominate candidates for the Council of the Bank, the management bodies and the audit committee; and to receive dividends; and

(iii) the Decision 19 Investors are within a 3-month period to dispose of their substantial share of shares in the Bank, which had been acquired without NBM's permission.

18. On or about 12 February 2014, the Claimant submitted to the Bank a preliminary application (the "**Preliminary Application**") requesting that Decision 19 be annulled. On 14 February 2014, NBM issued a further decision of the Administrative Council of NBM No 28. This decision was issued following Claimant's Preliminary Application to NBM to reconsider Decision 19. NBM decided that the Preliminary Application should be rejected as being without basis and that Decision 19 should remain in force. No additional reasons were provided by NBM in support of Decision 19.

19. On or about 25 February 2014, Claimant made an application to the Rîscani Court. On 4 March 2014 the Rîscani Court rejected the application.

20. On 31 March 2014, Claimant sent a Notice of Dispute to Respondent, pursuant to Article 10 of the Treaty. The Notice of Dispute requested Respondent to provide a response by 14 April 2014 in view of the urgency of the matter, but none was received by Claimant. The Notice of Dispute was received by Respondent as follows: by the Ministry of Justice of the Republic of Moldova – by email on 31 March 2014 and by courier on 2 April 2014; by the Ministry of Foreign Affairs and European Integration of the Republic of Moldova – by email on 31 March 2014 and by courier on 2 April 2014; and

by the Embassy of the Republic of Moldova to the United Kingdom – by email and fax on 31 March 2014 and by courier on 1 April 2014.

21. A follow-up letter was sent by Claimant to Respondent on 16 April 2014, to which Respondent also has failed to provide any response. The follow-up letter was received by Respondent as follows; by the Ministry of Justice of the Republic of Moldova – by email on 16 April 2014 and by courier on 18 April 2014; and by the Embassy of the Republic of Moldova to the United Kingdom – by email and fax on 16 April 2014 and by courier on 17 April 2014.

3.1.2 Breaches of Claimant's Rights

22. Claimant contends that the true reason for the issue of Decision 19 was to prevent Claimant and a number of other shareholders who were justifiably unhappy with the mismanagement of the Bank from exercising their legitimate rights and voting to replace the management of the Bank. Indeed an aim of the extraordinary general meeting of shareholders of the Bank, which took place on 6 February 2014 (a day after Decision 19 was made) was to have a vote on the change of the Bank's management. Claimant further contends that Decision 19 was aimed at forcing a number of shareholders in the Bank, including Claimant, to sell their shares in the Bank in circumstances where the sale price for the Bank's shares would be significantly lower than their true value and approaching the shares' nominal value.

23. The actions of Respondent in relation to Decision 19 amount to clear breaches of Claimant's rights in a number of ways, including but not limited to the breaches described below.

24. NBM does not have and is unable to demonstrate any basis for making Decision 19. Decision 19 states that the Decision 19 Investors were acting in concert in respect of the Bank and had acquired a substantial share of 10.43% in the share capital of the Bank without NBM's permission. Both of these accusations are wrong and are denied. The allegation of acting in concert is denied. Claimant disclosed a significant amount of information about itself and its owners to NBM, which demonstrates that Claimant is independent of and is not acting in concert with the other Decision 19 Investors. Even if the allegation of acting in concert were correct, which is denied, it would not be in violation of the provisions of the laws referred to in Decision 19 or any other laws of Respondent. As to acquiring a substantial share in the share capital of the Bank without NBM's permission, this allegation is wrong too.

Claimant received NBM's permission to own its shares in the share capital of the Bank by the letter dated 9 August 2012. As Claimant is not in any way connected to the other Decision 19 Investors, it is not aware when and in what circumstances they acquired their shares in the Bank.

25. NBM has failed to follow applicable laws and its own internal procedures in relation to Decision 19. Decision 19 states that it is based on Articles 3, 15, 15^2 and 15^3 of the Law on the Financial Institutions No. 550-XIII dated 21 July 1995 (the "**Law on Financial Institutions**") and the Annex to the Resolution of the Administrative Council of NBM No. 127 dated 27 June 2013 (Regulation of share ownership in the authorised share capital of banks) (the "**Regulation**").

26. Article 3 of the Law on Financial Institutions provides a number of definitions. The ones relied on in Decision 19 (as stated in the cover letter to Decision 19) are set out below:

a) *"'Person' means a natural person or legal entity, association or group of entities acting in concert, registered or unregistered":*
b) *"'Potential purchaser' means any entity that will subsequently acquire by any means, directly or indirectly, a substantial share in the capital of a bank or increase its substantial share in such manner that the proportion of its voting rights or participatory interest in the authorised capital reaches or exceeds 20, 33 or 50 percent, or in such manner that the bank becomes its branch";*
c) *"'Substantial share' means direct or indirect right of ownership, representing the equivalent of 5% or greater of the authorised capital of a business institution or its voting rights, which allows significant influence to be exercised on management or activity of the institution";*
d) *"'Beneficial owner' means a natural person who ultimately owns or controls the potential purchaser or the direct or indirect owner of a participatory interest in the authorised capital of the bank that is equal to or exceeds a substantial share"; and*
e) *"'Proposed acquisition' means any legal act or any legal action that results in acquisition of the potential purchaser status".*

27. Article 3 of the Regulation provides that persons acting in concert include, *inter alios*, the following:

a) persons whose identical exercise of rights conferred on them by securities issued by the bank, indicates common long-term policy in relation to the bank; and
b) persons who carried out or carry out joint economic operations.

28. Article 15(1) of the Law on Financial Institutions (and Article 4 of the Regulation) provides that "*No potential purchaser is entitled without prior written permission of the National Bank to acquire by any means a substantial share in the authorised capital of a bank or to increase its substantial share in such a manner that the proportion of its voting rights or participatory interest in the authorised capital reaches or exceeds 20, 33 or 50 percent, or in such a manner that the bank becomes its branch.*"

29. Article 15(2) of the Law on Financial Institutions (and Article 6 of the Regulation) provides, *inter alia*, that NBM must inform the person who has acquired a substantial share in the share capital of a bank without permission from NBM of the consequences of such an acquisition within five days of the date when it became aware of the acquisition.

30. Article 15(3) of the Law on Financial Institutions (and Article 7 of the Regulation) provides, *inter alia*, that a substantial share in the share capital of a bank that was acquired without permission from NBM is to be disposed of within three months of the date of the acquisition.

31. Article 15^2 of the Law on Financial Institutions (and Article 12 of the Regulation) provides, *inter alia*, that any potential purchaser shall submit an application for obtaining NBM's permission to acquire a substantial share in a bank or increase its substantial share to 20, 33 or 50 percent.

32. Article 15^3 of the Law on Financial Institutions (and Chapter IV of the Regulation) provides, *inter alia*, that in considering the application by a potential purchaser referred to in Article 15(2) NBM shall determine the potential purchaser's quality and establishes criteria for such determination.

33. As regards Articles 15(1), Article 15^2 and Article 15^3 of the Law on Financial Institutions (and Article 4, Article 12 and Chapter 4 of the Regulation):

a) Claimant acquired only 4.16% in the authorised capital of the Bank, which is below the 5% threshold for a substantial share, as defined in Article 3 of the Law on Financial Institutions, so Articles 15(1), Article 15^2 and Article 15^3 of the Law on Financial Institutions (and

Article 4, Article 12 and Chapter 4 of the Regulation) are not applicable to Claimant's share in the Bank.

b) In any case, Claimant received NBM's permission to own its shares in the share capital of the Bank by the letter dated 9 August 2012.

c) As Claimant is not in any way connected to the other Decision 19 Investors, it is not aware when and in what circumstances they acquired their shares in the Bank.

34. As regards Article 15(2) of the Law on Financial Institutions (and Article 6 of the Regulation):

a) Claimant acquired its 4.16% shareholding in the Bank in 29 March 2012, and NBM became aware or ought to have become aware of this not later than on 19 April 2012, when Claimant notified NBM of the acquisition and requested a list of documents necessary for obtaining permission to exercise its rights in relation to the shares.

b) Contrary to the provisions of Article 15(2) of the Law on Financial Institutions (and Article 6 of the Regulation), Claimant was only informed of the consequences of its alleged violation of the relevant rules in Decision 19, which was issued on 5 February 2014.

c) The letter to Claimant dated 21 November 2013 (received on 1 December 2013) does not and could not constitute the required notice from NBM under Article 15(2) of the Law on Financial Institutions, as it does not contain any allegation of the violation of the relevant rules; it merely requests information from Claimant, referring to NBM's right to do so as part of the process of assessing suitability of shareholders pursuant to Article 15^3 of the Article 15^5 of the Law on Financial Institutions.

d) As stated above, Claimant is not aware when the other Decision 19 Investors acquired their shares in the Bank. Neither does Claimant know when NBM became aware of such acquisitions.

35. As regards Article 15(3) of the Law on Financial Institutions (and Article 7 of the Regulation):

a) Claimant acquired its shares in the Bank on 29 March 2012, so, even if they were acquired in violation of the relevant rules, which is denied, NBM ought to have requested their disposal by 29 June 2012.

b) As stated above, Claimant is not aware when the other Decision 19 Investors acquired their shares in the Bank.

36. Pursuant to Article $75^2(4)$ of the Law on the National Bank of Moldova No. 548-XIII dated 21 July 1995 (the "**Law on the National Bank**"), any penalty shall be applied by NBM within six months of the date when the violation was established, and in any event within three years of the date of the violation, unless the law provides otherwise. As the alleged violation by Claimant was or ought to have been established not later than on 19 April 2012 (the date when NBM knew or ought to have known of Claimant's shareholding in the Bank), NBM ought to have applied a penalty against Claimant not later than 6 months after that date, i.e. on 19 October 2012. Contrary to these provisions, the penalty was applied by NBM on 6 February 2014.

37. Pursuant to Article $75^1(1)$ of the Law on the National Bank, a violation could only be established based on either a "*remote inspection*" or an "*on-site inspection*". Decision 19 appears to claim that the alleged violation by Claimant was established based on a remote inspection. In such a case, pursuant to Article $75^1(10)$ of the Law on the National Bank, NBM ought to have notified Claimant of the violations established as a result of the inspection and required that the violations be remedied. Contrary to these provisions, Claimant was not so notified and was not provided with an opportunity to clarify the situation or remedy the alleged violation. Instead, Claimant's rights as a shareholder were suspended immediately and Claimant was given an ultimatum to dispose of its shares in the Bank within three months.

38. The substance of Decision 19 is arbitrary and has no basis to it. NBM failed to provide any substantiated explanation or evidence on which it relied to reach Decision 19. The extent of NBM's reasons for Decision 19 amounts to bare allegations that the Decision 19 Investors promulgated a common long term policy, by utilising identical rights arising from the shares in the Bank and by the carrying out of joint economic operations.

39. As a result of Decision 19, Claimant has already suffered and continues to suffer serious harm and losses. To date Claimant has been unable to participate in general meetings of shareholders of the Bank or to exercise its other rights as a shareholder of the Bank. At present Claimant is required to dispose of its shares in the Bank by 5 May 2014, which will result in further irreparable losses to Claimant.

40. According to Article 1.1(b) of the Treaty, the definition of 'investor' under the Treaty extends to legal entities established in accordance with the laws of

one of the Countries which are party to the Treaty, provided that such legal entity is under the laws of its Country legally able to make investments within the territory of the other Country. Claimant is an 'investor' under the Treaty.

41. According to Article 1.2(b) of the Treaty, the definition of 'investment' under the Treaty extends to investments made by an investor from one Country within the territory of the other Country and include shares and other forms of participation. Claimant's share in the Bank is an 'investment' under the Treaty.

42. According to Article 2.2 of the Treaty, each of the Countries guarantees in accordance with its laws the full and unconditional legal protection of investments made by investors from the other Country. Respondent's actions amount to a breach of Article 2.2. of the Treaty.

43. According to Article 3.1 of the Treaty, each of the Countries shall provide within its territory to investments made by investors from the other Country and to activity related to such investments, a fair and equitable treatment, which excludes the application of discriminatory measures, which hinder the management and use of investments. Respondent's actions amount to a breach of Article 3.1 of the Treaty as it amounts to a discriminatory measure taken against the Decision 19 Investors, including Claimant.

44. According to Article 3.2 of the Treaty, the regime of fair and equitable treatment referred to in Article 3.1 shall be no less favourable, than a regime, which is afforded to investments and actions related to investments of the Country's own investors or investors from any other country. Respondent's actions amount to a breach of Article 3.2 of the Treaty as it has treated Claimant less favourably than other investors.

45. According to Article 6.1 of the Treaty, investments by investors of one of the Countries made within the territory of the other Country shall not be expropriated, nationalised or subject to measures, having the effect of expropriation. Expropriation is allowed in certain limited circumstances but must be accompanied by the payment of prompt, adequate and effective compensation. Respondent's actions amount to a measure equivalent to expropriation and are in breach of Article 6.1. Further, even assuming that Respondent's actions are a permitted expropriation, which is denied, Claimant has not been and will not be paid prompt, adequate and effective compensation or any compensation at all.

46. Taken individually and/or together, NBM's actions, which are attributable to Respondent constitute, *inter alia*, a denial of fair and equitable treatment, an impairment by arbitrary and discriminatory measures of the management and use of Claimant's investment, and measures tantamount to expropriation. These acts and omissions constitute violations of the Treaty from which Claimant shall be protected.

3.1.3 Interim relief sought

47. Claimant requests the Emergency Arbitrator to issue an emergency decision ordering Respondent to stay Decision 19, the effect of which is equivalent to the expropriation of Claimant's shares in the Bank, pending the resolution of the present Dispute by way of a final award on the merits in the envisaged arbitration between the Parties, but in any event in accordance with the provisions of Article 9(4) of Appendix II to the SCC Rules.

3.1.4 Satisfaction of Requirements for the Granting of Interim Measures

48. Pursuant to Article 32(1) and Article 1(2) of Appendix II to the SCC Rules, an Emergency Arbitrator has the power to "*grant any interim measures it deems appropriate*". Although the term 'interim measures is not defined, it is by general consensus held to imply that the arbitral tribunal (or, in the present case, the Emergency Arbitrator) may construe those words as broadly as may be appropriate in the particular instance. It is accepted that the categorization 'interim measures' includes injunctions of all kinds and allows an Emergency Arbitrator to order or enjoin any particular course of conduct or make any other order that in the Emergency Arbitrator's opinion will be conducive of the proceedings, to preserve the integrity of the arbitration, to eliminate or reduce economic loss or other impairment of valuable rights and to provide reasonable safeguards for the preservation of the relief sought against improper or unwarranted conduct.

49. The purpose of interim measures is securing a claim or a future claim and safeguarding the applicant's rights. In other words, the purpose of interim measures is to preserve the possibility that the arbitration can proceed effectively and that any ultimate award will be capable of being given effect.

50. In this case, if the requested interim relief is not granted as a matter of urgency, Claimant will irrevocably lose its rights as a shareholder of the Bank (which are at the centre of the Dispute) and any subsequent award in Claimant's favour will be rendered effectively unenforceable.

51. Based on the above, in this case, the Emergency Arbitrator clearly has jurisdiction to grant the interim relief sought.

52. The SCC Rules do not expressly set out the standards to be met by a request for interim measures to an Emergency Arbitrator. Therefore, it is submitted that such requirements must be determined under Swedish law, which in Claimant's view is the applicable law of the seat of the arbitration.

53. In SCC Case No. 96/2011 it was held that "*The requirements under Swedish procedural law for granting interim measures in essence can be reduced to the two criteria that the petitioner prima facie must have proved his case and that there must be an urgent need for the requested interim relief*". In SCC Emergency Arbitration 170/2011 it was held that "*This statement reflects the universal consensus with regard to the requirements that need to be present when granting interim measures, e.g. prima facie establishment of a case; urgency; and, irreparable harm, or serious or actual damage if the measure requested is not granted*".

54. To establish its case *prima facie*, Claimant is required to demonstrate not that its case is likely to succeed on the merits but only that there is a reasonable possibility that it will so succeed. It is submitted that such a possibility has clearly been established in this application.

55. There is also an urgent and compelling need for the requested interim relief. Claimant continues to suffer harm and losses due to Decision 19 and NBM's and Respondent's continued failure to suspend the effect of Decision 19 pending the resolution of the present Dispute. Claimant is unable to exercise its rights as a shareholder of the Bank, such as its right to participate in general meetings of shareholders of the Bank or receive dividends.

56. By virtue of Decision 19 Claimant is required to dispose of its shares in the Bank by 5 May 2014, which will result in irreparable harm to Claimant, as it will be permanently deprived of its rights as a shareholder of the Bank, which will be irrevocable even if Decision 19 is eventually found to be flawed.

57. Granting the requested relief will be a proportional response to the threat faced by Claimant, as such a threat by far outweighs any harm that might be caused to Respondent by granting of such interim measures. In fact, if the requested interim relief is granted, in Claimant's submission Respondent will suffer no harm at all.

58. Article 10 of the Treaty provides, *inter alia*, for a period of six months during which a party to the Treaty and an investor from another party should endeavour, if possible, to resolve their disputes amicably before submitting them to arbitration (the "**Cooling-Off Period**").

59. Claimant has sent a Notice of Dispute as required by the Treaty. However, the Claimant submits that the Cooling-Off Period does not apply to the appointment of an Emergency Arbitrator or to an emergency decision on interim measures to be made by the Emergency Arbitrator in the present dispute for a number of reasons, *e.g.*: a) the Cooling-Off Period is limited, if at all applicable, to commencement of substantive arbitration proceedings, b) the Cooling-Off Period should not apply to the appointment of an Emergency Arbitrator because such application would be unequitable and procedurally unfair to Claimant, c) the Cooling-Off Period does not apply to the appointment of an Emergency Arbitrator (or an Arbitral Tribunal) in this case due to the effect of the most favoured nation ("**MFN**") clause in Article 3 of the Treaty; and d) Respondent has failed to engage in amicable settlement attempts despite Claimants efforts in this regard.

3.2 Respondent's Position

60. As described in paragraph 9 above, Respondent has not submitted a response to the Application, nor has it made any other contacts with the Emergency Arbitrator or the SCC Institute in these emergency proceedings.

4. Reasons

61. The Emergency Arbitrator, based on the submissions made by Claimant, reaches the initial conclusion that Claimant has demonstrated, *prima facie*, that it qualifies as an 'investor' under Article 1.1 of the Treaty and that its acquisition of the shares in the Bank qualifies as an 'investment' under Article 1.2 of the Treaty.

62. It is generally accepted that, for interim measures to be granted, the requesting party must satisfy the arbitral tribunal that there is a reasonable possibility that it will succeed on the merits of the claim. Having assessed the facts presented by Claimant and the underlying documentation submitted with the Application, the Emergency Arbitrator finds that there is a reasonable possibility that an arbitral tribunal would determine that the actions of NBM in relation to Decision 19 amount to a breach of the principle of fair and equitable treatment as set forth in Articles 3.1 and 3.2 of the Treaty, and/or a measure tantamount to an unlawful expropriation as set forth in Article 6.1 of the Treaty. This *prima facie* conclusion is based, *inter alia*,

on the fact that, based on the documents provided by Claimant, NBM does not appear to have presented any concrete evidence for its allegation that Claimant acted in concert with the other Decision 19 Investors. The Emergency Arbitrator therefore concludes that Claimant has established, *prima facie*, that there is a reasonable possibility that Claimant will succeed on the merits of its claim.

63. The Emergency Arbitrator also finds it generally accepted that, in addition to establishing a *prima facie* case, a party requesting interim measures must establish that the harm which is to be prevented by the interim measure is of an urgent or imminent nature. This is a requirement under many legal systems and is codified, for example, in Article 17(2)(b) of the UNCITRAL Model Law on International Commercial Arbitration, as amended in 2006.

64. Pursuant to Decision 19, Claimant is ordered to dispose of its shares in the Bank within three months from the decision, *i.e.* by 5 May 2014, which is less than a week from today. The Emergency Arbitrator accepts *prima facie* Claimant's contention that such disposal would result in Claimant being permanently and irrevocably deprived of its right as a shareholder of the Bank, even if Decision 19 is eventually found to be flawed. In addition, by virtue of Decision 19, Claimant currently seems to be unable to exercise its rights as a shareholder, including voting rights and the right to receive dividends.

65. Based on the foregoing, the Emergency Arbitrator is satisfied that urgent and imminent harm is likely to result unless interim relief is ordered. By comparison, the potential harm that might be caused to Respondent by granting the requested interim relief ought to be limited. In the view of the Emergency Arbitrator, the requested interim relief therefore constitutes an appropriate and proportional measure in this case.

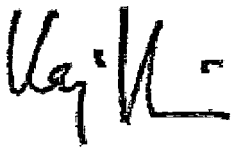
66. The Emergency Arbitrator further concludes that the Cooling-Off Period of six months set forth in Article 10 of the Treaty does not prevent Claimant from making the present Application. One of the reasons for this conclusion is that it would be procedurally unfair to Claimant and contrary to the purpose of the Emergency Arbitrator procedure to apply the Cooling-Off Period to the appointment of an Emergency Arbitrator or to an emergency decision on interim measures to be made by the Emergency Arbitrator, not least since Claimant seems to be facing a serious risk of suffering irreparable harm before the expiry of the Cooling-Off Period if interim measures are not granted.

67. The Emergency Arbitrator will not issue a cost order with respect to these emergency proceedings. At the request of a Party, the costs of the emergency proceedings may be apportioned between the Parties by an Arbitral Tribunal in a final award (Article 10(5) of Appendix II to the SCC Rules).

ORDER

1. For the reasons stated above, Claimant's Application for interim relief is granted, meaning that Respondent is hereby ORDERED to stay Decision 19 pending the resolution of the present Dispute by way of a final award on the merits in the potential arbitration between Claimant and Respondent referred to in paragraphs 12–46 above, but in any event in accordance with the provisions of Article 9(4) of Appendix II to the SCC Rules.

2. At the request of a Party, the costs of the emergency proceedings may be apportioned between the Parties by an Arbitral Tribunal in a final award.



Prof. Dr. Kaj Hobér

(Emergency Arbitrator)