

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko

v.

Republic of Serbia

(ICSID Case No. ARB/22/14)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Sir Daniel Bethlehem KC, Presiding Arbitrator

Mr. Andrés Jana, Arbitrator

Professor Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Oladimeji Ojo

Assistant to the Tribunal

Professor Philippa Webb

31 March 2023

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Introduction

The first session of the Tribunal was held on 22 March 2023, at 08.00 PST/11.00 EST/13.00 CLST/15.00 GMT/16.00 CET/17.00 EEST, by video conference. The session was adjourned at 10.03 PST/13.03 EST/15.03 CLST/17.03 GMT/18.03 CET/19.03 EEST.

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

Participating in the conference were:

Members of the Tribunal:

Sir Daniel Bethlehem KC, Presiding Arbitrator
Mr. Andrés Jana, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

ICSID Secretariat:

Mr. Oladimeji Ojo, Secretary of the Tribunal
Mr. Shay Lakhter, Paralegal

Attending on behalf of the Claimants:

Mr. Rostislav Pekař, Squire Patton Boggs
Mr. Matej Pustay, Squire Patton Boggs
Mr. Nenad Stanković, Stanković & Partners
Mr. William Archibald Rand, Party, Coropi Holdings Limited
Mr. Erinn Broshko, Party
Mr. Igor Markičević, Party, Kalemegdan Investments Limited

Attending on behalf of the Respondent:

Mr. Audley Sheppard KC, Clifford Chance
Dr. Moritz Keller, Clifford Chance
Ms. Sarah Lemoine, Clifford Chance
Ms. Monika Diehl, Clifford Chance
Dr. Vladimir Djerić, Mikijelj, Janković & Bogdanović
Ms. Senka Mihaj, Mihaj, Ilić & Milanović

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 3 March 2023; and
- The Parties' comments on the Draft Procedural Order received on 17 March 2023 and 20 March 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. Applicable Arbitration Rules
Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

2.1. The Tribunal was constituted on 25 January 2023 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on 25 January 2023.

2.3. In order for the Members of the Tribunal to fulfil their continuing disclosure obligations, the Tribunal seeks the cooperation of each Party in promptly drawing to the Tribunal's attention any such circumstances known to that Party in respect of which it considers that further information would be appropriate as soon as such circumstances become known to that Party.

2.4. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and

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Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

- 3.2. Pursuant to ICSID Administrative and Financial Regulation 14, under the Memorandum on Fees and Expenses, from 1 July 2022, each Tribunal Member is entitled to:
 - 3.2.1. US\$500 per hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings;
 - 3.2.2. US\$900 as a *per diem* for each day spent away from their city of residence while traveling in connection with a proceeding when overnight lodging is required. This covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation, laundry, personal communications and internet;
 - 3.2.3. US\$250 for each hour of travel and a *per diem* allowance of US\$200 for travel to and from a hearing on a day when lodging is not required. For work performed during travel, Members may charge the hourly rate for work (US\$500) in lieu of the hourly rate for travel. For day trips not requiring overnight lodging, Members are also entitled to a *per diem* of US\$200; and
 - 3.2.4. reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 3.3. Non-refundable expenses incurred due to postponement or cancellation of a hearing shall be reimbursed, e.g., the lesser of (a) actual non-refundable cost or (b) US\$900 per diem.
- 3.4. Each Tribunal Member shall submit his/her detailed claims for fees and expenses to the ICSID Secretariat on a quarterly basis or more frequently. Claims for work performed must be declared in a detailed, itemized format and appended to the Claim for Fees and Expenses form.
- 3.5. In the event of a cancellation or postponement of a hearing in consequence of a request or decision of the Parties less than one week prior to the scheduled start date of the hearing, or at any time during the hearing, the Tribunal may charge to the Parties 75% of its notional sitting rate based on an 8-hour day multiplied by the number of days reserved for the hearing. In the event of cancellation or postponement of a hearing in consequence of a request or decision of the Parties less than four weeks but more than one week prior to the scheduled start date of the hearing, the Tribunal may charge to the Parties 50% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing. In the event of a cancellation or postponement of a hearing in consequence of a

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request or decision of the Parties more than four weeks but less than 12 weeks before the scheduled start date, the Tribunal may charge to the Parties 30% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing. This paragraph is without prejudice to any decision by Tribunal on the award of costs, or the apportionment of costs where an event of a cancellation or postponement is at the instance of only one of the parties.

- 3.6. The preceding §3.5 shall not apply in the case of the cancellation of the hearing in consequence of *force majeure*, including as regards the Tribunal. Issues concerning fees, costs and other expenses associated with the cancellation of the hearing, and whether a matter falls within the scope of *force majeure* for purposes of this provision, shall be addressed by the Tribunal on an interlocutory basis after affording the Parties an opportunity to present their views.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that, where the matter is urgent, the presiding arbitrator may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft and issue all rulings within a reasonable time. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every month thereafter. If an award has not been issued within twelve months, the Tribunal will provide the Parties with status updates every three months thereafter.
- 5.4. The presiding arbitrator is authorized to sign Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically by letter or email.

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5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The presiding arbitrator may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the presiding arbitrator shall consult with the other Members of the Tribunal. If the matter is urgent, the presiding arbitrator may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

6.3. The Parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary by midnight, Washington, D.C. time, on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, with the day of such announcement being excluded from the calculation.

7. Secretary of the Tribunal
Administrative and Financial Regulation 28

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

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

Mr. Oladimeji Ojo
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 650-4651
Fax: + 1 (202) 522-2615
Email: oojo1@worldbank.org
Paralegal name: Mr. Shay Lakhter
Paralegal email: slakhter@worldbank.org

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

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Mr. Oladimeji Ojo
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Assistant to the Tribunal

- 8.1. The Tribunal considers that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. By letter of 6 March 2023, the presiding arbitrator, with the approval of the other Members of the Tribunal, proposed that Professor Philippa Webb be appointed as Assistant to the Tribunal. Professor Philippa Webb's *curriculum vitae* was provided to the Parties.
- 8.2. Professor Webb will (i) undertake only such specific tasks as are assigned to her by the presiding arbitrator, such as the marshaling of evidence, research of specific issues of law, organization of case documents, monitoring of the case correspondence, and similar matters; (ii) assist the Tribunal during its deliberations; (iii) undertake such tasks in support of the ICSID Secretary of the Tribunal as the Secretary of the Tribunal and the presiding arbitrator may consider appropriate. Professor Webb will not undertake any functions incumbent upon a Member of the Tribunal, nor duplicate the tasks of the ICSID Secretary of the Tribunal.
- 8.3. Professor Webb shall be subject to the same confidentiality obligations as the Members of the Tribunal and sign a declaration to that effect.
- 8.4. The Parties approved the appointment of Professor Webb as Assistant to the Tribunal.
- 8.5. Professor Webb shall receive: (a) US\$ 250 for each hour of work performed in connection with the case or pro rata; and (b) reimbursement of reasonable expenses related to the hearing on the same basis as applies to Members of the Tribunal. The fees and expenses of Professor Webb will be paid from the advance payments made by the parties.
- 8.6. Professor Webb's contact details are:

Twenty Essex
20 Essex Street
London WC2R 3AL
United Kingdom

pwebb@twentyessex.com

+44-20-7842-1200

9. Representation of the Parties

Arbitration Rule 18

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

Coropi Holdings Limited, Kalemegdan
Investments Limited and Erinn Bernard
Broshko

Mr. Rostislav Pekař

Mr. Matej Pustay

Squire Patton Boggs, s.r.o., advokátní
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and

Mr. Stephen Anway

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and

Ms. Monika Diehl
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00-660 Warsaw
Poland
Tel: +48 22429 9476
Email: monika.diehl@cliffordchance.com

10. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 28

- 10.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 10.2. Upon the constitution of the Tribunal, by letter of 25 January 2023, ICSID requested that the parties pay US\$400,000 to defray the estimated costs of the

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subsequent phase of the proceeding. ICSID received Claimants' and Respondent's payments on 21 February 2023.

- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding

Convention Articles 62 and 63; Arbitration Rule 13(3)

- 11.1. Washington, D.C. shall be the seat of the proceeding.
- 11.2. The Tribunal notes the Parties' strong shared preference that hearings should be in-person and should take place in Paris, France or, if this is not reasonably possible, in another European city to be determined by the Tribunal after consultation with the Parties. Once hearing dates have been identified, the Tribunal will endeavor to accommodate the Parties' preferences.
- 11.3. The Tribunal may hold remote or hybrid hearings in exceptional circumstances, subject to prior consultation with the Parties.
- 11.4. Hearings on procedural matters including case management conferences may be held remotely.
- 11.5. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language(s), Translation and Interpretation

Arbitration Rules 20(1)(b) and 22

- 12.1. English is the procedural language of the arbitration.
- 12.2. Documents filed in any other language must be accompanied by a translation into English.
- 12.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 12.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 12.5. Documents exchanged between the parties in a language other than English under §19 below (Production of Documents) need not be translated.

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- 12.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be simultaneously interpreted.
- 12.7. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §23 below), which witnesses or experts require interpretation.
- 12.8. The costs of interpretation will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

13. Routing of Communications

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. Each Party's written communications shall be transmitted by email to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 13.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal after having received the submissions from both Parties or after the relevant deadline has passed.
- 13.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

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

Arbitration Rules 20(1)(d) and 23

- 14.1. The Parties shall:

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

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

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- 14.1.2. within 3 business days from the relevant filing date, upload the pleading with all the supporting documentation and updated index to the file sharing platform that will be created by ICSID for purposes of this case.
- 14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be, to the extent possible, text searchable (i.e., OCR PDF or Word).
- 14.3. All pleadings shall be accompanied by a cumulative index of all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. The Parties shall follow the naming conventions contained in **Annex A**. The cumulative index shall be uploaded to the file sharing platform created by ICSID within 7 days after the relevant filing date.
- 14.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Claimants (in agreement with Respondent) shall courier to the ICSID Secretariat at the address indicated at §7.3 above and to each Member of the Tribunal (save Professor Douglas) at the addresses indicated at §14.5 below a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents. An identical copy of the entire case file shall also be uploaded to the file sharing platform. Professor Douglas will request a USB drive only in the event that there is a technical problem in downloading the case file from the file sharing platform.
- 14.5. The addresses of the Tribunal Members are as follows:

Sir Daniel Bethlehem KC



Mr. Andrés Jana



Prof. Zachary Douglas KC



- 14.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.7. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.

15. Bifurcation of Liability and Damages Phases of Proceedings
Convention Article 44; Arbitration Rules 20(1)(c) and 29

- 15.1 A determination of the question of the bifurcation of the liability and damages phases of the proceedings is deferred for decision by the Tribunal on a reasoned application, if any, to be submitted by the Respondent within one month of receipt of the Claimants' Memorial. In the event of such an application, the Claimant will be afforded a reasonable opportunity to submit observations in response.
- 15.2 The issue having been addressed in the First Session, and in written submissions filed by the Parties in advance thereof, the Claimants' Memorial may include, at the Claimants' discretion, evidence and argument on the question of damages, without prejudice to the determination of the question of bifurcation in due course.

16. Objections to Jurisdiction and/or Admissibility
Arbitration Rule 41

- 16.1. Subject to §§16.2 to 16.5 below, the Tribunal will be guided by ICSID Arbitration Rule 41 in respect of any objections to jurisdiction and/or admissibility.
- 16.2. Subject to §§16.3 to 16.5 below, objections to jurisdiction and/or admissibility that a Party wishes to raise shall be raised no later than the pleading subsequent to that in respect of which the objection is made.
- 16.3. Any objection that a Party contends should be heard as a preliminary matter shall be made as soon as possible and, in any event, not later than 2 months after receipt of the pleading subsequent to that in respect of which the objection is made. Such objection shall include a reasoned application for the matter to be addressed in a preliminary procedure.
- 16.4. The Tribunal shall determine whether any objections shall be heard as a preliminary matter after affording the Claimants an opportunity to present their views on this question in accordance with the timetable to be prescribed by the Tribunal in due course.
- 16.5. In the event that the Tribunal orders a preliminary procedure to address the Respondent's objections to jurisdiction and/or admissibility, the Claimants shall be afforded adequate time to submit written observations on the Respondent's preliminary objections. There shall thereafter be an opportunity for a reply by the Respondent and a rejoinder by the Claimant. The matter shall then proceed to a hearing. The timetable applicable to these proceedings shall be prescribed in due course.

17. Provisional Measures

Convention Article 47; Arbitration Rule 39

17.1. The Tribunal may order provisional measures in accordance with the Article 47 of the ICSID Convention and ICSID Arbitration Rule 39.

18. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

18.1. The number and sequence of the Parties' pleadings shall be prescribed in a Procedural Order to be made in due course after affording the Parties a further opportunity to present their views.

19. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

19.1. The Tribunal takes note of the Parties' affirmation that, from the date of the commencement of the proceedings, they have taken all reasonable steps to preserve all documents relating to the matters in issue in this arbitration and their undertaking to take all necessary steps going forward to ensure the preservation of all documents relating to the matters in issue in this arbitration.

19.2. The Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) ("IBA Rules") in relation to document production in this case.

19.3. On a date to be determined in due course, each Party may serve a request for production of documents on the other Party. Such a request for production shall comply with the rules set forth in Article 3 of the IBA Rules. The request shall be made in the form of a Schedule on a template to be agreed by the Parties, in both Word and PDF format, and shall not be copied to the Tribunal or the Tribunal Secretary.

19.4. On the date to be determined in due course, the other Party shall, using the schedule provided by the first Party, provide the requesting Party with reasoned objections for its refusal to produce responsive documents.

19.5. On the date to be determined in due course, the other Party shall produce the requested documents to which it has not filed any objection.

19.6. On the date to be determined in due course, the requesting Party shall reply to the other Party's objections in that same schedule, and if disagreements cannot be resolved, shall submit the schedule to the Tribunal, with a copy to the other Party

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(in both Word and PDF formats).

- 19.7. The Tribunal will make its best efforts to rule on the objections in a timely manner.
- 19.8. Documents shall be communicated directly to the Requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the record unless and until a Party subsequently files them as exhibits in accordance with §20 below.
- 19.9. Neither Party shall be permitted to submit additional requests for the production of documents, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

20. Submission of Documents

Convention Article 44; Arbitration Rule 24

- 20.1. Save as may be varied in subsequent Procedural Orders, each phase of the proceedings shall in principle comprise two rounds of written submissions from each Party. This shall not apply to submissions on procedural applications.
- 20.2. In each phase, each Party shall in principle set out its arguments of fact and law, as well as relevant supporting evidence (including witness statements and expert reports), in its first round of written submissions.
- 20.3. The second round of written submissions shall set out any further arguments of fact and law, as well as relevant supporting evidence (including witness statements and expert reports) as may be appropriate in response to the first-round submissions of the opposing Party and as may emerge from the document production phase. A Party shall not be precluded from setting out new arguments of fact or law, as well as supporting evidence, in its second-round pleadings, provided that the opposing Party will have a reasonable and sufficient opportunity to respond and it is not otherwise prejudicial to the opposing Party to do so.
- 20.4. Save as the Tribunal may otherwise direct, upon application by a Party, a right of response to arguments and evidence advanced by a Party for the first time in its second round of written submissions shall be considered to be available if a reasonable and sufficient opportunity to respond is afforded in the course of oral submissions in a hearing.
- 20.5. Documents shall be submitted in the manner and form set forth in §14 above.
- 20.6. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by

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observations from the other Party.

- 20.6.1. Should a Party request leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
- 20.6.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.
- 20.7. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 20.8. The documents shall be submitted in the following form:
 - 20.8.1. The number of each Exhibit containing a document produced by Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 20.8.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-001” and “R-001,” and “CL-001” and “RL-001” respectively. The number of the Exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §20.8.4.
 - 20.8.3. Each Exhibit shall comprise of one document unless it is particularly difficult to separate the documents.
 - 20.8.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 20.9. The Parties shall number the paragraphs of their written pleadings consecutively.
- 20.10. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 20.11. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 20.12. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall

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number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and, if requested, hard copy format to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) prior to their use at the hearing at a time to be decided at the pre-hearing organizational meeting.

21. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 21.1. Witness statements and expert reports shall be filed together with the Parties' pleadings.
- 21.2. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other Party (following the procedure outlined in §20.6).
- 21.3. Each witness statement and expert report shall be dated and signed by the witness.
- 21.4. Witness statements shall be submitted in English or with a translation into English. Such a translation need not be certified unless requested in accordance with §12.4 above.
- 21.5. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.

22. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 22.1. Unless otherwise decided by the Tribunal, IBA Rules Articles 4, 5 and 8 apply to the examination of a Party's fact and expert witnesses, respectively.
- 22.2. The Tribunal may, in exceptional circumstances and after consultation with the Parties, order that part or all of the evidentiary component of the hearing will be conducted as a remote or hybrid hearing. In that event, the Tribunal shall consult with the Parties for purposes of addressing the arrangements for the remote hearing protocol.
- 22.3. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 22.4. No later than 6 weeks prior to the hearing, each Party shall notify to the other Party,

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with a copy to the Tribunal, which witnesses or experts it wishes to cross examine at the hearing.

- 22.5. Within 2 weeks after the Parties' notification, the Tribunal will indicate to the Parties whether it wishes any witnesses or experts who have not been designated to testify to appear at the hearing.
- 22.6. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party shall not be deemed established by the sole fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 22.7. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will ultimately decide upon the appropriate allocation of such costs.
- 22.8. As regards (i) the appearance and non-appearance of witnesses and experts and the consequences thereof; (ii) the availability of videoconference for witness testimony; and (iii) expert conferencing, the Tribunal will be guided by relevant provisions of the IBA Rules.
- 22.9. The Tribunal may consider the written statement of a witness who provides a compelling reason for failing to appear when summoned to a hearing, or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a compelling reason.
- 22.10. Subject to further discussion at the pre-hearing organizational meeting, the examination of each fact or expert witness shall proceed as follows at the hearing:
 - 22.10.1. Before giving evidence, fact witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and expert witnesses shall make the declaration in ICSID Arbitration Rule 35(3).
 - 22.10.2. Factual and expert witness statements shall stand as examination in chief of the witness at the hearing. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including about any corrections to be made to the written statement, and of addressing matters which have arisen after that witness's written statement was signed (direct examination). After consultation with the Parties, the Tribunal may also request expert witnesses to give a presentation, with a time-

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limit to be determined, before the start of their cross-examination summarizing their methodology, findings and conclusions.

- 22.10.3. The other Party may then cross-examine the witness on matters addressed in their witness statement and other matters within the knowledge or expertise of the witness, subject to control of the presiding arbitrator on behalf of the Tribunal.
- 22.10.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination (re-direct examination).
- 22.10.5. The Tribunal may allow the other Party to conduct re-cross examination, which shall be limited to the subject of the re-direct examination.
- 22.10.6. The Tribunal may examine the witness at any time, either before, during or after examination by a Party.
- 22.11. Subject to a different agreement of the Parties, or a different determination of the Tribunal upon application by a Party, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read any transcript of any oral testimony or argument, prior to his or her examination. Fact witnesses may be in the hearing room after completion of their testimony. This limitation does not apply to expert witnesses, who shall not be sequestered.
- 22.12. Paragraph 22.11 shall not preclude Parties or Party representatives who are also fact witnesses from being present during opening submissions and having access to a transcript. Save as may otherwise be directed by the Tribunal, upon application by a Party, such persons shall not be present in the hearing room after opening submissions, or read any transcript of any oral testimony or argument, prior to his or her examination.
- 22.13. The Tribunal shall, at all times, have complete control over the evidentiary hearing as set forth in IBA Article 8(3).

23. Pre-Hearing Organizational Meetings
Arbitration Rule 13

- 23.1. A pre-hearing organizational meeting shall be held on/at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference or videoconference between the Tribunal, or its presiding arbitrator (as appropriate), and the Parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

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- 23.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

24. Hearings

Arbitration Rules 20(1)(e) and 32

- 24.1. The oral procedure shall consist of a hearing for the presentation of oral arguments and the examination of witnesses and experts, if any.
- 24.2. Save as may be otherwise directed by the Tribunal after consultation with the Parties, the hearing shall be held in-person at a place to be determined in accordance with §11 above.
- 24.3. As far as practicable, a hearing shall take place not less than 4 weeks after the filing of the last written submission on a date to be determined in due course.
- 24.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 24.5. In principle, the Parties will have an equal time allocation to make oral arguments and examine witnesses (including experts) at the hearing, subject to adjustments by the Tribunal, after consultation with the Parties, to address a material imbalance in the number of witnesses to be cross-examined by each Party, the scope of such examination, or if due process otherwise requires, taking into account §20.4 above if relevant.

25. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 25.1. Sound recordings shall be made of all in-person and telephone hearings and sessions. Video and sound recordings shall be made of all remote video hearings. The recordings shall be provided to the Parties and the Tribunal Members.
- 25.2. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

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25.3. The Parties shall agree on any corrections to the transcripts within period to be agreed at the end of the hearing. The agreed corrections may be entered by the Parties or the court reporter in the transcripts, as determined by the Tribunal (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties or the court reporter, as determined by the Tribunal, in the revised transcripts.

26. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

26.1. The Parties having expressed a shared preference for Post-Hearing Briefs, the Tribunal will consult with the Parties on the timing and format of Post-Hearing Briefs and, as appropriate, will determine the additional details regarding such Briefs.

26.2. The Parties shall submit their cost submissions at a date agreed by the Parties in due course or as directed by the Tribunal.

27. Publication, Transparency and Confidentiality

Convention Article 48(5); Administrative and Financial Regulation 25; Arbitration Rule 48(4)

27.1. The Parties consent to publication by ICSID of the award and any order or decision of the Tribunal issued in the present proceeding. The reference herein to a “decision” of the Tribunal shall in principle include decisions or directions set out in Procedural Orders or otherwise styled by the Tribunal as “Decisions”, but shall not include decisions or directions addressed in correspondence.

27.2. Unless the Parties otherwise agree, the principal pleadings of the Parties shall be published on the ICSID website, subject to the redaction of confidential information. This shall in principle include the Parties’ written submissions in each phase of the proceedings and oral submissions advanced in hearings (as reflected in corrected transcripts), but shall not include the evidence relied upon therein. Nor shall it include communications or arguments advanced in correspondence or in procedural applications, save as the Tribunal may otherwise direct after consultation with the Parties.

27.3. The Parties shall endeavor to agree a draft Confidentiality Order addressing the scope of the direction given in the preceding paragraphs and modalities for its execution. A draft of such Order, or opposing proposals for such an Order, shall be presented to the Tribunal for consideration no later than one month after the adoption and transmission to the Parties of the Procedural Order setting down the procedural schedule and the number and sequence of the Parties’ pleadings.

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27.4. Public access to any hearing, including modalities applicable thereto, shall be addressed by the Tribunal, after consultation with the Parties, in advance of each hearing. The direction given in paragraph 27.2 hereof shall not be taken as giving rise to a presumption in favor of public access to any hearing.

28. Data Privacy

28.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

28.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the parties are invited to bring that to the attention of that other participant and/or to apply to the Arbitral Tribunal for specific data protection measures to be put in place.

On behalf of the Tribunal,

[signed]

Sir Daniel Bethlehem KC
President of the Tribunal
Date: 31 March 2023

Annex A – Electronic File Naming Guidelines

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

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

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

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-001-ENG</i>
	<i>C-002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-001-FR</i>
	<i>R-002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-001-ENG</i>	
<i>CL-002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-001-SPA</i>	

Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko v. Republic of Serbia
(ICSID Case No. ARB/22/14)

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	<i>RL-002-ENG</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-001 to C-023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-001 to RLA-023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	