

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

EMS Shipping & Trading GmbH

v.

Republic of Albania

ICSID Case No. ARB/23/9

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Prof. Stanimir Alexandrov, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

Secretary of the Tribunal

Ms. Izabela Chabinska

Assistant to the Tribunal

Ms. Laura Zimmerman

20 September 2023

Contents and Agenda for the First Session

1.	Applicable Arbitration Rules	3
2.	Constitution of the Tribunal and Tribunal Members' Declarations	3
3.	Fees and Expenses of Tribunal Members	3
4.	Presence and Quorum	3
5.	Rulings of the Tribunal	4
6.	Power to Fix Time Limits	4
7.	Secretary of the Tribunal.....	5
8.	Assistant to the Tribunal	6
9.	Representation of the Parties.....	6
10.	Apportionment of Costs and Advance Payments to ICSID – Division of Advances	7
11.	Place of Proceeding and Hearings.....	8
12.	Procedural Language, Translation and Interpretation	8
13.	Routing of Communications	9
14.	Number of Copies and Method of Filing of Parties' Pleadings	9
15.	Number and Sequence of Pleadings.....	10
16.	Production of Documents.....	11
17.	Submission of Documents.....	13
18.	Witnesses	14
19.	Experts	17
20.	Case Management Conferences	18
21.	Hearings	18
22.	Recordings of Hearings and Sessions	19
23.	Post-Hearing Memorials and Statements of Costs	19
24.	Transparency and Confidentiality	19
25.	Data Privacy and Cybersecurity.....	20
26.	Amicable Dispute Settlement.....	20
27.	Disability Inclusion	21
	Annex A – Electronic File Naming Guidelines	22
	Annex B – Procedural Timetable	24
	Annex C – Redfern Schedule	27

Introduction

The first session of the Tribunal was held on 18 September 2023 at 14:00 CET by videoconference. The session was adjourned at 14:55 CET.

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:

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Stanimir Alexandrov, Arbitrator
Prof. Albert Jan van den Berg, Arbitrator

ICSID Secretariat:

Ms. Izabela Chabinska, Secretary of the Tribunal

Assistant to the Tribunal:

Ms. Laura Zinnerman, Assistant to the Tribunal

On behalf of the Claimant:

Dr. Philipp K. Wagner, WAGNER Arbitration
Ms. Laura Halonen, WAGNER Arbitration
Mr. Petrit Elshani, WAGNER Arbitration

On behalf of the Respondent:

Mr. Odise Moçka, State Advocate's Office
Ms. Manuela Imeraj, State Advocate's Office

The Tribunal and the Parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on 25 July 2023; and
- The Parties' comments on the Draft Procedural Order received on 4 September 2023.

Following the session, the Tribunal now issues the present Order.

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

1.1. These proceedings are conducted in accordance with the procedural rules contained in the bilateral investment treaty concluded by the Federal Republic of Germany and the Republic of Albania on 31 October 1991 (“the BIT”), the ICSID Convention and the ICSID Arbitration Rules in force as of 1 July 2022.

2. Constitution of the Tribunal and Tribunal Members’ Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on 22 June 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 19(3)(b). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator’s appointment on 5 June, 9 June and 22 June 2023.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

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

4. Presence and Quorum

Arbitration Rule 33

4.1. The participation of all Members of the Tribunal by any appropriate means of communication is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal

Article 11(2) and Article 10(5) of the BIT; Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.
- 5.3. Orders, decisions and the Award may be signed electronically.
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. No reasons need to be provided for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal, will be dispatched electronically to the Parties. The certified copy of the Award will be dispatched to the Parties both electronically and via courier at the addresses indicated at §9.1.

6. Power to Fix Time Limits

Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.

- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in **Annex B** and (ii) the Tribunal is informed.
- 6.4. The Parties agree that a time limit shall be satisfied if a procedural step is taken or a document, written submission and/or correspondence is received by the Tribunal Secretary on the relevant date, or on the subsequent business day at the seat of the Centre if the time limit falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, 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 Ms. Izabela Chabinska, 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:

Ms. Izabela Chabinska
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 458-4374
Fax: + 1 (202) 522-2615
Email: imch@worldbank.org
Paralegal name: Ms. Ekaterina Minina
Paralegal email: eminina@worldbank.org
ICSID case address: arb/23/9@icsidcases.worldbank.org

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

Ms. Izabela Chabinska
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. By letter of 25 July 2023, the ICSID Secretariat, acting on instructions of the Tribunal, noted that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant, who would undertake the tasks described in that letter. In the same letter, the Tribunal proposed that Ms. Laura Zinnerman of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal. The proposed assistant's *curriculum vitae* and declaration of independence and confidentiality were distributed to the Parties on the same date.
- 8.2. The Parties consented to the appointment of Ms. Zinnerman as Assistant to the Tribunal on the terms set out in the letter referred to in the preceding paragraph. The Parties also agreed that the Assistant would receive US\$300 for each hour of work performed and reimbursement of reasonable actual expenses on the same terms as the arbitrators.
- 8.3. The contact details of the Assistant are:

Ms. Laura Zinnerman
Lévy Kaufmann-Kohler
3-5 rue du Conseil-Général
P.O. Box 552
CH-1211 Geneva 4
Switzerland
Email: laura.zinnerman@lk-k.com

9. Representation of the Parties
Arbitration Rule 2

- 9.1. The Parties are represented by the following counsel and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation:

For the Claimant

Dr. Florian Dupuy
Dr. Philipp K. Wagner
Ms. Sophie Eichhorn
Mr. Petrit Elshani
Ms. Laura Halonen
Wagner Arbitration Partnerschaft von
Rechtsanwälten mbB

For the Respondent

Mr. Odise Moçka
Ms. Manuela Imeraj
Ms. Florinda Ibrahim
State Advocate's Office /
Avokatura e Shtetit
Rr. "Abdi Toptani"
Nd.5, kati 4, Tiranë, Shqipëri

Hegelplatz 1
10117 Berlin
Federal Republic of Germany

Tel.: + 49 30 225027600

Email:
fd@wagner-arbitration.com
pw@wagner-arbitration.com
se@wagner-arbitration.com
pe@wagner-arbitration.com
lh@wagner-arbitration.com

Republic of Albania

Tel.: + 355 4 22 53 600

Email:
Odise.Mocka@avokaturashtetit.gov.al
Manuela.Imeraj@avokaturashtetit.gov.al
Florinda.Ibrahimi@avokaturashtetit.gov.al

- 9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a conflict of interest with one or more Members of the Tribunal.

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances

Article 11(2) and Article 10(5) of the BIT; Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50; Arbitration Rule 14

- 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. Following registration of the Request for arbitration, by letter of 12 April 2023, ICSID requested that the Claimant pay US\$150,000 to cover the initial costs of the proceeding through the first session. ICSID received the Claimant's payment on 24 April 2023. Upon the constitution of the Tribunal, by letter of 26 June 2023, ICSID requested that the Parties pay US\$300,000 to defray the estimated costs of the subsequent phase of the proceeding. Payment made by the Claimant on 24 April 2023 is considered a partial payment toward that sum. ICSID received the Respondent's payment on 5 September 2023.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 10.4. In application of Arbitration Rule 14, each Party shall, immediately upon concluding a third-party funding arrangement, disclose to the Centre, the Tribunal and the other Party, that it has third-party funding, provide the name and address of the third-party funder and, if the third-party funder is a juridical person, provide the names of the persons and entities that own and control it. For the purpose of this provision, the term "third-party funder" does not include shareholders, parent or affiliated entities of a Party.

- 10.5. Each Party shall have a continuing obligation to disclose any changes to the information referred to in the preceding paragraph, occurring after the initial disclosure, including termination of the third-party funding arrangement.

11. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Paris shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate after consultation with the Parties. It is agreed that hearings will be held at the World Bank in Paris, if available and if the hearing is not held online under §11.3. The method of holding a hearing will be determined in accordance with §11.3.
- 11.3. After consultation with the Parties, the Tribunal may determine that hearings will be conducted online through an appropriate videoconferencing platform. In such case, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 11.4. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English shall be the language of the arbitration.
- 12.2. Documents filed in a language other than in English shall be accompanied by a translation into English. Translated documents shall be submitted as separate electronic documents from the original. The original and the translation will bear the same exhibit number, but additionally indicate the language in the electronic title.
- 12.3. Translations of long documents can be limited to the relevant passages, provided the translated parts are sufficient for the reader to understand the context. The Tribunal may order a Party to provide a fuller or complete translation.
- 12.4. Translations need not be certified, unless the translation is disputed and the Tribunal orders a Party to provide a certified translation.
- 12.5. Documents drafted in a language other than English which are exchanged between the Parties in document production under §16 below need not be translated.

- 12.6. The Parties will notify the Tribunal, as soon as possible, and no later than at the case management conference for hearing organization, which witnesses or experts require interpretation.
- 12.7. The testimony of a witness called for examination who gives evidence in a language other than the language of the arbitration shall be interpreted simultaneously.
- 12.8. The costs of the interpreter(s) 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

Arbitration Rule 6

- 13.1. Written communications shall be transmitted by email or other electronic means to the Parties, the Tribunal Secretary, the Tribunal Members, and the Assistant.
- 13.2. Communications to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party, the Tribunal Members, and the Assistant, once she has received both Parties' communications.
- 13.3. The Tribunal Secretary, Tribunal Members and Assistant shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.
- 13.4. The email addresses of the Members of the Tribunal are:

Prof. Gabrielle Kaufmann-Kohler: gabrielle.kaufmann-kohler@lk-k.com

Prof. Stanimir Alexandrov: salexandrov@alexandrovlaw.com

Prof. Albert Jan van den Berg: ajvandenbergh@hvdb.com

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

Arbitration Rules 4, 5 and 9

- 14.1. By the relevant filing date, a Party shall:
 - 14.1.1. Submit by email to the Tribunal Members, Secretary, Assistant, and opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation (documents appended to the witness statements (in

accordance with §18.3.5) and to the expert reports, as well as factual exhibits, and legal authorities).¹

- 14.1.2. Within three business days following the relevant time limit, a Party shall upload the pleading with all the supporting documentation and index to the file sharing platform created by ICSID for purposes of this case (the “Electronic Filing Process”).²
- 14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).
- 14.3. All pleadings to be filed after the date of this Procedural Order No. 1 shall be accompanied by a cumulative index hyperlinked to 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 and follow the naming conventions contained in **Annex A**.
- 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 ICSID Secretariat so requests, the Parties shall (i) send to the ICSID Secretariat and to each Member of the Tribunal, as directed, 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; and (ii) upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file and consolidated hyperlinked index of all documents.³
- 14.5. A filing shall be deemed timely if a Party meets the requirements set in §14.1 by midnight, Central European Time (CET) (or Central European Summer Time (CEST)), as the case may be, on the relevant date.

15. Number and Sequence of Pleadings

Arbitration Rule 30

- 15.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.

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

² Supporting documentation shall be uploaded as individual files, not in .zip format.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

- 15.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 15.3. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts arisen after the filing Party's last submission.
- 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.5. All written submissions shall be divided into consecutively numbered paragraphs.
- 15.6. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The Tribunal and the Parties shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration.
- 16.2. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control, in the form of a Redfern Schedule as attached in **Annex C** hereto, in both Word and .pdf format. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
- 16.3. Each request for production shall:
 - 16.3.1. identify with specificity: (i) the type of documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as "all documents" or "all records", or use

Procedural Order No. 1 (2022 Rules)

such formulation and then define it to “include” specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be). A Party asserting that such identification is not possible must adequately substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;

- 16.3.2. describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;
 - 16.3.3. specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and
 - 16.3.4. explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.
- 16.4. The Tribunal recommends that the number of requests per Party does not exceed 20, including sub-requests. Specifications of documents within the meaning of §16.3.1 above shall not be understood as “sub-requests” for purposes of the present paragraph. A Party wishing to exceed this number shall announce it two weeks before the date for submission of the Redfern Schedule, explaining the reasons and need for a number higher than recommended.
- 16.5. Within the time limit set forth in **Annex B**, the other Party shall either produce the requested documents (to the opposing Party only, without copying the Tribunal, the Assistant or the Secretary consistent with §16.9 below) or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
- 16.6. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for the production of the documents sought and not produced, in which case it shall reply to the other Party’s objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
- 16.7. The Parties shall make no submissions in respect of the steps set out in §§16.2, 16.5, and 16.6 above other than those incorporated in the Redfern Schedules.

- 16.8. On or around the date set forth in **Annex B**, the Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the requirements of §16.3, the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof. If a request does not meet the requirements of §16.3, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative.
- 16.9. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal, the Secretary, and the Assistant. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.
- 16.10. In addition, the Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on record.
- 16.11. If a Party fails to produce documents ordered by the Tribunal, the Tribunal shall be entitled to draw such inferences from such failure to produce as it considers appropriate, in light of all circumstances and taking into account the reasons advanced by a Party to explain its inability to produce any given document.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. Documents, including exhibits and legal authorities, shall be submitted together with the memorial or written submission that refers to them in conformity with §§15.2 and 15.3 above.
- 17.2. Neither Party shall be permitted to submit additional or responsive documents after the filing of its last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.
- 17.2.1. Should a Party request leave to file additional or responsive documents, it may not annex the documents that it seeks to file to its request.
- 17.2.2. If the Tribunal grants such request, the Tribunal shall ensure that the other Party is afforded an opportunity to make its observations concerning such a document.

- 17.3. Documents shall be submitted in the following form:
- 17.3.1. The number of each exhibit containing a document produced by the Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.
 - 17.3.2. Factual and legal exhibits shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001”, respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the electronic file name in accordance with §17.3.3.
 - 17.3.3. Electronic files and the accompanying indices shall follow the naming conventions contained in **Annex A**.
- 17.4. 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.
- 17.5. 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.
- 17.6. Demonstrative exhibits, i.e. documents, including PowerPoint slides, compiling information in the record but not in the form presented, such as charts may be used at a hearing, provided they (i) contain no new evidence; (ii) identify their source in the record; (iii) are submitted to the other Party at the time specified in the relevant pre-hearing order; and (iv) are numbered consecutively with a number introduced by CD-, respectively RD-.

18. Witnesses

Convention Article 43(a); Arbitration Rule 38

- 18.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 18.2. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal, unless a person refuses or is unable to provide such a statement. A person who has not submitted a written witness statement may provide testimony to the Tribunal only in exceptional

circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.

- 18.3. Each witness statement shall be signed and dated by the witness and include:
 - 18.3.1. the witness's name, date of birth, and involvement in the case;
 - 18.3.2. a disclosure statement detailing any past and present relations of the witness with any Party, counsel or Member of the Tribunal;
 - 18.3.3. a description of the witness' position and qualifications, if relevant;
 - 18.3.4. a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
 - 18.3.5. any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as exhibits, not as a new group of numbered documents attached to a witness statement);
 - 18.3.6. a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing;
 - 18.3.7. a declaration regarding whether the witness received any form of compensation for his or her testimony; and
 - 18.3.8. an affirmation of the truth of the witness statement.
- 18.4. Witness statements shall be submitted in a searchable PDF format and have consecutive numbering on pages, headings and paragraphs.
- 18.5. Witness statements shall be submitted in English or with a translation into English.
- 18.6. In accordance with §§15.2 and 15.3 above, each Party will submit its witness statements together with its written submissions. Neither Party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second".

- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
- 18.8. On the date provided in **Annex B**, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine. A witness whose cross-examination is not sought shall not testify unless the Tribunal directs his or her appearance.
- 18.9. 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.
- 18.10. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the Award.
- 18.11. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.12. Whether in the context of an online hearing or otherwise, the Tribunal may hear witnesses by videoconference and will issue appropriate directions.
- 18.13. The Tribunal may consider the written statement of a witness who provides a valid 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 valid reason.
- 18.14. At the hearing, the examination of each witness shall proceed as follows, subject to further specifications to be addressed in a subsequent procedural order:
 - 18.14.1. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements;
 - 18.14.2. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge;

- 18.14.3. 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; and
- 18.14.4. The Tribunal may ask its questions at any time, likely mainly at the end.
- 18.15. Subject to other arrangements during the case management conference for hearing organization, (i) fact witnesses shall be examined prior to expert witnesses, the Claimant's fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimant's expert for each topic being examined first.
- 18.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions.
- 18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 18.17.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant;
- 18.17.2. Direct that a witness be recalled for further examination at any time; or
- 18.17.3. Provide that the witnesses may be examined together ("witness conferencing"), in which case it will give appropriate directions.

19. Experts

Arbitration Rule 38

- 19.1. Each Party may retain and produce evidence of one or more experts.
- 19.2. The Tribunal may order experts on the same subject matter on both sides to liaise before the hearing to identify disputed and undisputed issues, and to produce joint expert reports identifying disputed and undisputed issues.
- 19.3. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

- 19.4. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above. Spreadsheets prepared by experts and submitted as part of or accompanying their report(s) should also be submitted in their native format with all formulae visible.
- 19.5. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 19.6. After consultation with the Parties, the Tribunal may request non-legal experts to give a presentation summarizing their methodology and conclusions in lieu of direct examination.
- 19.7. Unless inconsistent with this Section, all the rules set forth in §18 above shall apply by analogy to experts.

20. Case Management Conferences

Arbitration Rule 31

- 20.1. A case management conference for purposes of discussing hearing organization and logistics will be held on the date provided in **Annex B** by way of videoconference.
- 20.2. The Tribunal may convene other case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 if necessary or appropriate.

21. Hearings

Arbitration Rule 32

- 21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 21.2. The hearing shall take place on the dates set in **Annex B**.
- 21.3. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.
- 21.4. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be

discussed at the case management conference for hearing organization and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.

22. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties, the Tribunal Members and the Assistant.
- 22.2. Verbatim transcripts in the procedural language shall be made of any hearing other than procedural sessions. 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.
- 22.3. The Parties shall agree on any corrections to the transcripts within a time limit to be determined at the end of the hearing. The agreed corrections may be entered in the transcript by the court reporter (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered in the revised transcript by the court reporter.

23. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 23.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal.
- 23.2. The Tribunal will issue directions on the Parties’ statements of costs at the end of the hearing.

24. Transparency and Confidentiality

Convention Article 48(5), Arbitration Rules 62-66

- 24.1. These matters will be dealt with in Procedural Order No. 2 (“PO2”).

25. Data Privacy and Cybersecurity

- 25.1. The Members of the Tribunal, the Assistant, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 25.2. 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 Tribunal for specific data protection measures to be put in place.
- 25.3. The Parties shall take appropriate measures for the secure transmission of documents, information and communications in this arbitration. If particular documents, information and/or communications require heightened security measures, the Parties will confer in order to take appropriate security measures for the transmission of such documents, information and/or communications. Unless instructed otherwise by the Parties, the Tribunal will not take any special measures beyond its standard procedures to safeguard the cyber security of arbitration-related information and the Parties confirm that communications may be sent by email.

26. Amicable Dispute Settlement

- 26.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. The Parties may agree to suspend the arbitration for this purpose.
- 26.2. At any time in the course of the arbitration, considering the circumstances of the dispute and the interests at stake, the Tribunal may suggest to the Parties to resort to mediation or other appropriate methods of amicable resolution.
- 26.3. Beyond making a suggestion to the Parties, the Tribunal will not become involved in mediation or other settlement attempts and will continue the proceedings if the Parties do not agree to follow the Tribunal's suggestion or if they agree but the attempt fails.

27. Disability Inclusion

- 27.1. At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

On behalf of the Tribunal,

[signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 20 September 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-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-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>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i> <i>MJ-0001</i>

EMS Shipping & Trading GmbH v. Republic of Albania
(ICSID Case No. ARB/23/9)

Procedural Order No. 1 – Annex A

Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	<i>LS-0002</i>
	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
OTHER APPLICATIONS	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
	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>	

Annex B – Procedural Timetable
(TO BE REPLACED BY CALENDAR ONCE FINALIZED)

Scenario 1: No request for bifurcation of preliminary objections

Event	Date	Interval (weeks)
Claimant’s Memorial on the Merits		
Respondent’s Counter-Memorial on the Merits (and Memorial on Jurisdiction)		
Parties’ Requests for Production of Documents		
Parties’ Production of Documents not Objected to or Responses and/or Objections to Requests for Production of Documents		
Parties’ Replies to Objections to Requests for Production of Documents		
Tribunal’s Decision on Objections to Requests for Production of Documents		
Parties’ Production of Documents ordered by Tribunal		
Claimant’s Reply on the Merits (and Counter-Memorial on Jurisdiction)		
Respondent’s Rejoinder on the Merits (and Reply on Jurisdiction)		
Claimant’s Rejoinder on Jurisdiction, if any		
Parties to identify witnesses and experts for cross-examination		
Pre-hearing CMC		
Hearing on Jurisdiction and Merits		

Scenario 2: Request for bifurcation filed but denied

Event	Date	Interval (weeks)
Claimant’s Memorial on the Merits		
Respondent’s Identification of Preliminary Objections and Request for Bifurcation		
Claimant’s Response to the Request for Bifurcation		
Tribunal’s Decision on Bifurcation (reasons to follow if necessary)		
Respondent’s Counter-Memorial on the Merits and Memorial on Jurisdiction		
Parties’ Requests for Production of Documents		
Parties’ Production of Documents not Objected to or Responses and/or Objections to Requests for Production of Documents		
Parties’ Replies to Objections to Requests for Production of Documents		
Tribunal’s Decision on Objections to Requests for Production of Documents		
Parties’ Production of Documents ordered by Tribunal		
Claimant’s Reply on the Merits and Counter-Memorial on Jurisdiction		
Respondent’s Rejoinder on the Merits and Reply on Jurisdiction		
Claimant’s Rejoinder on Jurisdiction, if any		
Parties to identify witnesses and experts for cross-examination		
Pre-hearing CMC		
Hearing on Jurisdiction and Merits		

Scenario 3: Request for bifurcation filed and granted

Event	Date	Interval (weeks)
Claimant's Memorial on the Merits		
Respondent's Identification of Preliminary Objections and Request for Bifurcation		
Claimant's Response to the Request for Bifurcation		
Tribunal's Decision on Bifurcation (reasons to follow if necessary)		
Respondent's Memorial on Jurisdiction		
Claimant's Counter-Memorial on Jurisdiction		
Parties to identify witnesses and experts for cross-examination, if any		
Pre-hearing CMC		
2-day Hearing on Jurisdiction		

If the Tribunal upholds its jurisdiction, a new calendar will be set for the merits phase.

Annex C – Redfern Schedule

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			