

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ABH HOLDINGS S.A.

Claimant

v.

UKRAINE

Respondent

(ICSID Case No. ARB/24/1)

PROCEDURAL ORDER NO. 4

Members of the Tribunal

Prof. Bernard Hanotiau, President of the Tribunal
Mr. Francis Xavier SC, Arbitrator
Prof. Sean D. Murphy, Arbitrator

Secretary of the Tribunal

Mr. Yuichiro Omori

Assistant to the President of the Tribunal

Ms. Iris Raynaud

9 February 2026

1. This Procedural Order (“**PO**”) is issued in ICSID Case No. ARB/24/1, between ABH Holdings S.A. (“**ABHH**” or “**Claimant**”) and Ukraine (“**Ukraine**” or “**Respondent**”), initiated pursuant to the Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the Reciprocal Promotion and Protection of Investments, dated 20 May 1996, which entered into force on 27 July 2001 (“**Treaty**”).

I. ABRIDGED PROCEDURAL BACKGROUND

2. The Tribunal will describe below the procedural history of this case only insofar as it relates to the Parties’ document production requests.
3. On 11 December 2025, the Tribunal issued PO No. 3 ruling on the Parties’ document production requests. The Tribunal reserved its decision on several requests submitted by Claimant (“**Claimant’s Document Requests**”). Respondent objected to those requests on the grounds of, *inter alia*, governmental privilege, pre-trial secrecy, NBU secrecy, and banking secrecy, all under Ukrainian law (“**Respondent’s Privilege/Secrecy Objections**”).
4. In the same PO No. 3, the Tribunal: (i) directed Respondent to comment on Claimant’s replies to Respondent’s Privilege/Secrecy Objections and to clarify certain aspects of those objections; and (ii) granted Claimant an opportunity to submit final comments.
5. On 5 January 2026, Respondent filed its Supplemental Submission on Document Production (“**Supplemental Submission**”).
6. On 21 January 2026, Claimant filed its Reply to Respondent’s Supplemental Submission on Document Production (“**Reply to Supplemental Submission**”).

II. THE TRIBUNAL’S ANALYSIS AND DECISIONS

7. In PO No. 3, the Tribunal reserved its decision on several of Claimant’s Document Requests. This PO resolves only those requests (“**Tribunal’s Reserved Decisions**”). All other decisions in PO No. 3 remain unchanged.
8. The Tribunal’s Reserved Decisions regarding the Claimant’s Document Requests have been guided by § 16 of PO No. 1, which provides as follows:

“16.1. 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. Such a request for production shall identify each document

or narrow category of documents sought with precision, in the form attached in **Annex C** hereto (“**Document Production Schedule**”), in both Word and pdf format, specifying why the document sought is relevant to the dispute and material to the outcome of the case. The reasons for each request shall not exceed 250 words. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant to the President of the Tribunal.

16.2. The Tribunal recommends that the number of requests per Party shall be reasonable.

16.3. Within the time limit set forth in **Annex B**, the other Party shall either produce the requested documents or, using the Document Production Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).

16.4. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for the production of the documents requested sought and not produced, in which case it shall reply to the other Party’s objections in that same Document Production Schedule. At the same time, it shall submit the Word and pdf copies of the Document Production Schedule to the Tribunal.

16.5. The Parties shall make no submissions in respect of the steps set out in §§ 16.1 to 16.3 above other than those incorporated in the Document Production Schedules.

16.6. 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 legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof.

16.7. The Tribunal may for this purpose refer to the IBA Rules on the Taking of Evidence in International Arbitration 2020 in regard to matters concerning the gathering or taking of evidence, that are not otherwise covered by this procedural order or the Arbitration Rules. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.

16.8. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal. Documents so communicated shall not be considered to be on record unless and until the requesting Party subsequently files them as exhibits in accordance with § 17 below.

16.9. 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.

16.10. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may deem, in light of all circumstances including the reasons advanced by a Party to explain its inability to produce any given document, that the document is adverse to the interests of that Party.

16.11. 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”. [bold in the original and emphases added]

9. Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration 2020 (“**IBA Rules**”) provide as follows:

“Article 3 Documents

[...]

3. A Request to Produce shall contain:
- (a) (i) a description of each requested Document sufficient to identify it, or
(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
 - (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
 - (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.

[...]

7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 or 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.

[...]

Article 9 Admissibility and Assessment of Evidence

[...]

2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:
- (a) lack of sufficient relevance to the case or materiality to its outcome;
 - (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);
 - (c) unreasonable burden to produce the requested evidence;
 - (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
 - (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
 - (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
 - (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

[...]

4. In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:

[...]

- (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules". [italics and bold in the original; emphases added].

10. Based on the above, the Tribunal has carefully reviewed Claimant's Document Requests, Respondent's Privilege/Secrecy Objections, the replies, and the Parties' supplemental submissions.
11. In resolving the Tribunal's Reserved Decisions, the Tribunal has considered, on the one hand, the privilege and secrecy invoked by Respondent and, on the other hand, the need to ensure due process and equality between the Parties. The Tribunal has determined an appropriate balance between these considerations in making its decisions.
12. The Tribunal's Reserved Decisions on the Claimant's Document Requests are set forth in the document production schedule attached as **Annex A** to this PO.
13. In the Tribunal's Reserved Decisions set forth in Annex A, the Tribunal orders certain documents to be produced. Such documents may, where applicable, be produced in redacted form in accordance with the relevant decision in Annex A.

14. Any document produced in redacted form shall be identified in the Privilege Log attached as **Annex B** to this PO.
15. Respondent shall produce the responsive documents ordered by 23 February 2026.

On behalf of the Tribunal,

[signed]

Prof. Bernard Hanotiau
President of the Tribunal
Date: 9 February 2026

Annex A – CLAIMANT’S DOCUMENT PRODUCTION REQUESTS

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ABH Holdings S.A. v. Ukraine
(ICSID Case No. ARB/24/1)
Procedural Order No. 4

ANNEX B – PRIVILEGE LOG

Claimant's Document Request No. •						
No.	Document	Date	Description	Redacted Portion (page/line)	Nature of Redaction	Reason for Redaction