

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**ACP Axos Capital GmbH**

**v.**

**Republic of Kosovo**

**(ICSID Case No. ARB/15/22)**

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**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Mr. Philippe Pinsolle, President of the Tribunal

Dr. Michael Feit, Arbitrator

Mr. J. Christopher Thomas QC, Arbitrator

***Secretary of the Tribunal***

Ms. Celeste Mowatt

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February 10, 2016

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## **Introduction**

The first session of the Tribunal was held on February 1, 2016, at 7:04 a.m. EST/ 1:04 p.m. CET, by telephone conference. The session was adjourned at 8:27 a.m. EST/ 2:27 p.m. 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 after the session.

Participating in the first session were:

### Members of the Tribunal:

Mr. Philippe Pinsolle, President of the Tribunal  
Dr. Michael Feit, Arbitrator  
Mr. J. Christopher Thomas QC, Arbitrator

### ICSID Secretariat:

Ms. Frauke Nitschke, Acting Secretary of the Tribunal

### Attending on behalf of the Claimant:

Dr. Dirk Hamann, Herbert Smith Freehills  
Mr. Andrew Cannon, Herbert Smith Freehills  
Ms. Naomi Lisney, Herbert Smith Freehills

### Attending on behalf of the Respondent:

Mr. Luka S. Misetic, Squire Patton Boggs  
Mr. Stephen Anway, Squire Patton Boggs  
Mr. Rostislav Pekař, Squire Patton Boggs

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on December 22, 2015, with the Respondent's request for a suspension of the proceeding being considered under "Other Matters" as confirmed by ICSID's letter of January 14, 2016.
- The Draft Procedural Order circulated by the Tribunal Secretary on December 22, 2015; and
- The parties' comments on the Draft Agenda and the Draft Procedural Order received on January 22, 2016, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, 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. The timetable is attached as Annex A.

1. Applicable Arbitration Rules  
*Convention Article 44*

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

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

2.1. The Tribunal was constituted on December 3, 2015 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). The ICSID Secretariat distributed copies of the declarations of Dr. Feit and Mr. Thomas to the parties on December 3, 2015 and the declaration of Mr. Pinsolle on December 9, 2015.

2.3. 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*

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

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
  - 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
  - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*
  - 4.1. Following consultations with the parties during the session and noting that the parties were unable to reach agreement on this point, the Tribunal decides that ICSID Arbitration Rule 14(2) applies. Hence, that the presence of two 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 President 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 all rulings, including the award, within a reasonable time period. 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.
  - 5.4. The President is authorized to issue 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 in the form of a letter or email.

6. Power to Fix Time Limits

*Arbitration Rule 26(1)*

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Ms. Celeste Mowatt, Legal Associate, 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. Celeste Mowatt  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 458-1535  
Fax: + 1 (202) 522-2615  
Email: [cmowatt@worldbank.org](mailto:cmowatt@worldbank.org)  
Paralegal: Ms. Phoebe Ngan, [sngan@worldbank.org](mailto:sngan@worldbank.org)

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

Ms. Celeste Mowatt  
701 18th Street, N.W. (“J Building”)  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 458-4567

8. Representation of the Parties

*Arbitration Rule 18*

- 8.1. 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.

For Claimant

Dr. Dirk Hamann  
Herbert Smith Freehills Germany LLP  
Berliner Freiheit 2  
10785 Berlin  
Germany

Tel: +49 30 2215 10400  
Fax: +49 30 2215 10499  
Email: [dirk.hamann@hsf.com](mailto:dirk.hamann@hsf.com)

Ms. Isabelle Michou  
Mr. Andrew Cannon  
Herbert Smith Freehills Paris LLP  
66 Avenue Marceau  
75008 Paris  
France

Tel: +33 1 53 57 70 70  
Fax: +33 1 53 57 70 80  
Email: [Isabelle.michou@hsf.com](mailto:Isabelle.michou@hsf.com)  
[Andrew.cannon@hsf.com](mailto:Andrew.cannon@hsf.com)

For Respondent

Mr. Luka S. Misetic  
Mr. Stephen Anway  
Squire Patton Boggs (US) LLP  
30 Rockefeller Plaza  
New York, New York 10112  
United States of America

Tel: +1 212 872 9838 (Mr. Misetic)  
+1 212 407 0146 (Mr. Anway)  
Fax: +1 212 872 9815  
Email: [luka.misetic@squirepb.com](mailto:luka.misetic@squirepb.com),  
[stephen.anway@squirepb.com](mailto:stephen.anway@squirepb.com)

Mr. Rostislav Pekař  
Squire Patton Boggs, v.o.s., advokátní  
kancelář  
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110 00 Prague 1  
Czech Republic

Tel: +420 221 662 289  
Fax: +420 221 662 222  
Email: [rostislav.pekar@squirepb.com](mailto:rostislav.pekar@squirepb.com)

- 8.2. Any change or addition to a party's representatives listed above shall be promptly notified in writing by that party to the other party and the Tribunal through the Tribunal Secretary.

9. Apportionment of Costs and Advance Payments to ICSID

*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

- 9.1. 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.

- 9.2. By letter of December 7, 2015, ICSID requested that each party pay US\$150,000 to cover the initial costs of the proceeding. ICSID confirmed receipt of the Claimant's payment on 8 January 2016 and of the Respondent's payment on 13 January 2016.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*
- 10.1. Paris, France shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.
11. Procedural Language(s), Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. 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.
- 11.4. 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.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.



- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. 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.

12. Routing of Communications  
*Administrative and Financial Regulation 24*

- 12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.
- 12.2. 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.
- 12.3. 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.
- 12.4. The email addresses of the Members of the Tribunal are:

Mr. Philippe Pinsolle  
[philippepinsolle@quinnemanuel.com](mailto:philippepinsolle@quinnemanuel.com)

Dr. Michael Feit  
[michael.feit@walderwyss.com](mailto:michael.feit@walderwyss.com)

Mr. J. Christopher Thomas QC  
[jcthomas@thomas.ca](mailto:jcthomas@thomas.ca)

13. Number of Copies and Method of Filing of Parties' Pleadings  
*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

- 13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,<sup>1</sup> and upload the pleading with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

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

- 13.2. On the next business day following the electronic filing, the parties shall courier to the Tribunal Secretary:
- 13.2.1. one unbound hard copy in A4/Letter format<sup>2</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);
  - 13.2.2. one hard copy in A5 format of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and
  - 13.2.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.
- 13.3. At the same time, the parties shall courier to the opposing party at the address(es) indicated at §8.1:
- 13.3.1. one hard copy<sup>3</sup> of the entire submission including the pleading, the witness statements, expert reports, and documents (but not including legal authorities); and
  - 13.3.2. one minimum USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.
- 13.4. At the same time, the parties shall courier to each Member of the Tribunal at the addresses indicated at §13.5 below:
- 13.4.1. one hard copy in A5 format of the entire submission including the pleading, the witness statements, and expert reports (but not including documents or legal authorities); and
  - 13.4.2. one minimum USB drive with full copies of the entire submission, including the pleading, the witness statements, expert reports, documents, and legal authorities.

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<sup>2</sup> The A4/Letter format is required for ICSID's archiving.

<sup>3</sup> The Claimant requests a hard copy in A4 format, and the Respondent requests a hard copy in A5 format.

13.5. The addresses of the Tribunal Members are as follows:

Mr. Philippe Pinsolle	Dr. Michael Feit	Mr. J. Christopher Thomas QC
Quinn Emanuel Urquhart & Sullivan LLP 6 rue Lamennais 75008 Paris France	Walder Wyss Ltd. Seefeldstrasse 123 P.O. Box 1236 8034 Zurich Switzerland	Centre for International Law National University of Singapore Level 2, Block B 469 Bukit Timah Road Singapore 259756
Tel.: +33 1 73 44 60 00	Tel.: +41 58 658 58 58	Tel.: +65 9626-9401

13.6. Exhibits and legal authorities shall be submitted to the Tribunal in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.7. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word).

13.8. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.

13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

14.1. The parties' positions as set forth in the Claimant's January 22, 2016 letter as well as in the Respondent's January 31, 2016 email regarding the number and sequence of pleadings were noted. In consultation with the parties, the Tribunal decided to adopt two alternative procedural calendars (Option A and Option B), depending on the Tribunal's ultimate decision whether or not to bifurcate the proceeding. These timetables, indicating the agreed number and sequence of pleadings and other procedural steps, the time limits within which pleadings and other materials are to be filed, are as set out in Annex A.

14.2. All Memorials should comprise the entire submission, including the pleading, witness statements and/or expert reports, documents and any legal authorities.

15. Production of Documents

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

- 15.1. The parties shall be permitted to file a request for document production at the time indicated in the procedural timetable. These requests shall take the form of a joint submission in tabular form (what is usually called a "Redfern Schedule") with two sections:
- (i) the Claimant's request(s) for the production of documents; and
  - (ii) the Respondent's request(s) for the production of documents.
- 15.2. The joint submission shall be presented in five columns, as follows:
- first column: identification of the document(s) or categories of documents that have been requested;
  - second column: short presentation of the reasons for each request;
  - third column: the objection by the other party to the production of the document(s) requested;
  - fourth column: the replies to the objections set out in the third column;
  - fifth column: left blank for the decision of the Tribunal.
- 15.3. Documents produced by a party to the other party, either voluntarily or under order of the Tribunal, shall not be sent to the Tribunal or otherwise entered in the record of the arbitration unless and until a party files it as an exhibit. Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances.
- 15.4. The parties shall make their best efforts to cooperate with one another regarding production of documents and evidence and shall attempt to resolve disagreements over such requests. In the case the parties cannot reach an agreement after reasonable attempts to resolve a disagreement over document or evidence production, the Tribunal will decide the matter.
- 15.5. The failure to produce documents as ordered by the Tribunal may result in adverse inferences being drawn by the Tribunal as regards the merits of the defaulting party's case.
- 15.6. For its decision, the Tribunal will be guided, but not bound, by Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration.
- 15.7. The parties agree that Convention Article 43(a) and Arbitration Rules 24 and 33-36 shall apply, as amended by the foregoing.

16. Submission of Documents

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

- 16.1. The Parties' written pleadings shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. 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 exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
  - 16.3.1. 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.
  - 16.3.2. 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.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
  - 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
  - 16.5.2. The number of each Exhibit containing a document produced by Claimant 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.
  - 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
  - 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
  - 16.5.5. Exhibits shall also be submitted in PDF format and start with the number "C-0001" and "R-0001," respectively.

16.5.6. 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.

16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.

16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall 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 hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports  
*Convention Article 43(a); Arbitration Rule 24*

17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

17.2. 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 following the procedure outlined in §16.3.

17.3. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts  
*Arbitration Rules 35 and 36*

18.1. The parties shall inform the witnesses and experts whose evidence they submit of the dates of the hearing at which they may be called to appear, in order to secure their presence at the hearing and avoid any disruption of the procedural calendar.

18.2. Each party will notify to the other party and the Tribunal the factual witnesses and expert witnesses of the opposing party (having submitted written statements and expert reports) whom it intends to cross-examine, and will do so 14 days following the receipt of the last memorial before the hearing at which the party intends to conduct such examination. Shortly after the parties' notifications, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question,

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if any. Any witness or expert so called shall be subject to cross-examination at the oral procedure. If a witness is not made available, the Tribunal shall decide, taking all circumstances into consideration, whether to accept or disregard a witness statement or expert report, and shall determine what weight, if any, to attach to the testimony of such witness or expert.

- 18.3. Any witness or expert not requested by the other party or by the Tribunal for cross-examination shall not give oral testimony, except upon a reasoned application granted by the Tribunal.
- 18.4. Each party shall be responsible for summoning its own witnesses and experts to the hearing(s). Each party shall advance the costs of appearance of its own witnesses. The Tribunal shall decide upon the appropriate allocation of such costs in any decision or the final award.
- 18.5. It shall not be improper for a party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
- 18.6. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.7. Witnesses and experts shall be examined by each party under the control of the Tribunal, unless otherwise provided by the Tribunal. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.
- 18.8. The witness statements and expert reports shall be sufficiently detailed so as to exempt witnesses and experts from direct oral examination. The direct examination at the hearing(s) shall be limited to no more than fifteen minutes, confirming the witness statement or expert report, to make any corrections to those documents, to explain briefly important aspects of their testimony or to address any new matters or evidence that have arisen or come to light since the submission of the witness' testimony.
- 18.9. The Tribunal shall have the right to organize the joint examination of two or more witnesses or experts if it deems it appropriate.
- 18.9. Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. Expert witnesses shall be allowed in the hearing room at any time.
- 18.10. The Tribunal shall have full discretion to assess all evidence, oral or written, including the written statements/expert reports of those witnesses/experts who have

not been called to appear for cross-examination. The fact that a witness or expert is not called by the opposing party or the Tribunal for cross-examination shall create no presumption as to the weight the Tribunal will give to that witness's statement or that expert's report.

18.11. Other matters regarding the examination of witnesses and experts may be addressed at the pre-hearing organizational meeting.

18.12. The Arbitral Tribunal will be guided, but not bound, by the IBA Rules of Evidence with regard to the submission of evidence by witnesses.

19. Pre-Hearing Organizational Meetings

*Arbitration Rule 13*

19.1. A pre-hearing organizational meeting shall be held no later than 4 weeks before the hearing, at a date determined by the Tribunal following prior consultation with the parties, by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

*Arbitration Rules 20(1)(e) and 32*

20.1. In accordance with the alternative timetables set forth in Annex A, it was agreed at the session to reserve dates for two hearings for the examination of witnesses and experts, if any, and for oral arguments. The number of hearings in this proceeding will be dependent on the Tribunal's ultimate decision on the bifurcation of the proceeding.

20.2. Any hearing shall be held in Paris, France at a place to be determined in accordance with §10 above.

20.3. In the event the Tribunal decides to bifurcate the proceedings, a 2-day hearing on jurisdiction and admissibility is scheduled to take place on Monday and Tuesday, January 9 and 10, 2017. Should the Tribunal decide to join the objections to jurisdiction and admissibility to the merits, a 10-day hearing on jurisdiction, admissibility and the merits is scheduled to be held from Monday, November 6, 2017 to Friday, November 17, 2017.

20.4. At the latest 20 days prior to the hearing, the parties shall file a joint chronology of facts with references to the record. If the parties disagree regarding an event or its characterization, they can enter alternative characterizations with reference to the record.



- 20.5. 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.
- 20.6. The allocation of time between the parties at the hearing shall be agreed by the parties or determined by the Tribunal no later than the pre-hearing organizational meeting held in accordance with §19.
- 20.7. The Tribunal has noted the parties' respective positions in relation to the question whether hearings held in this proceedings be open to the public. In the absence of an agreement by the parties in this respect, the Tribunal decides that ICSID Arbitration Rule 32(2) applies and the hearing will not be open to the public. This ruling is without prejudice to any joint application made by the parties at a later date.

21. Records of Hearings and Sessions  
*Arbitration Rules 13 and 20(1)(g)*

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 21.3. Verbatim transcript(s) in the procedural language(s) 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 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.
- 21.4. The parties shall agree on any corrections to the transcripts within 7 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*

- 22.1. The due date for Statement of Costs and whether Post-Hearing Memorials will be required (and if so, the number of rounds and the due dates) will be addressed by the Tribunal, in consultation with the parties, at the pre-hearing organizational meeting or at the hearing.

23. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding.

24. Other Matters

24.1. The Respondent's January 8, 2016 request for a suspension of the proceeding is no longer maintained

[signed]

---

Mr. Philippe Pinsolle  
President of the Tribunal  
Date:

**Annex A – Provisional Timetable for the Arbitration**

Option A: Procedural calendar if the Tribunal decides to join the objections to jurisdiction and admissibility to the merits:

The following procedural calendar shall apply if the Tribunal decides to join the objections to jurisdiction and admissibility to the merits:

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
24 June 2016	Claimant	Memorial on Merits and Quantum
19 August 2016	Respondent	Objections to Jurisdiction and Admissibility, also addressing the issue of bifurcation
31 August 2016	Claimant	Claimant's submission on bifurcation
By 5 September 2016	Tribunal	Decision to join the objections to jurisdiction and admissibility to the merits
18 November 2016	Respondent	Respondent to file its Counter-Memorial on Merits and Quantum
9 December 2016	Parties	Claimant & Respondent to exchange requests for production of documents from each other in the form of a Redfern Schedule
6 January 2017	Parties	Production of uncontested documents, and exchange of objections to any document(s) requested, stating reasons therefor in the Redfern Schedule
20 January 2017	Parties	Exchange of responses to objections to any document(s) requested, stating reasons therefor in the Redfern Schedule – sent to Tribunal
31 January 2017	Tribunal	Ruling by Tribunal on document production disputes
14 February 2017	Parties	Production of documents ordered by the Tribunal

*ACP Axos Capital GmbH v. Republic of Kosovo*  
(ICSID Case No. ARB/15/22)

Procedural Order No. 1 – Annex A

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
12 May 2017	Claimant	Reply on Merits and Quantum and Counter-Memorial on Jurisdiction and Admissibility
4 August 2017	Respondent	Rejoinder on Merits and Quantum and Reply on Jurisdiction and Admissibility
1 September 2017	Claimant	Rejoinder on Jurisdiction and Admissibility
TBD	Parties/Tribunal	Pre-hearing Organizational Conference
6-17 November 2017	Parties/Tribunal	Hearing on Jurisdiction, Admissibility, Merits and Quantum
[TBD	Parties	Claimant & Respondent to file Post-Hearing Memorials, if any, and Statements of Costs]
[TBD	Parties	Claimant & Respondent to file Responses to Post-Hearing Memorials, if any, and Statements of Costs]

Option B: Procedural calendar if the Tribunal decides to address the objections to jurisdiction and admissibility as a preliminary matter:

The following procedural calendar shall apply if the Tribunal decides to join the objections to jurisdiction to the merits:

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
24 June 2016	Claimant	Memorial on Merits and Quantum
19 August 2016	Respondent	Objections to Jurisdiction and Admissibility, also addressing the issue of bifurcation
31 August 2016	Claimant	Claimant's submission on bifurcation
By 5 September 2016	Tribunal	Decision to address the Respondent's objections to jurisdiction and admissibility as a preliminary question
7 October 2016	Claimant	Counter-Memorial on Jurisdiction and Admissibility
4 November 2016	Respondent	Reply on Jurisdiction and Admissibility
2 December 2016	Claimant	Rejoinder on Jurisdiction and Admissibility
TBD	Parties/Tribunal	Pre-hearing Organizational Conference
9-10 January 2017	All	Hearing on Jurisdiction and Admissibility