

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Ipek Investment Limited**

**v.**

**Republic of Turkey**

**(ICSID Case No. ARB/18/18)**

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**PROCEDURAL ORDER No. 9**

***Members of the Tribunal***

Professor Campbell McLachlan QC, President of the Tribunal

The Hon. L. Yves Fortier QC, Arbitrator

Dr Laurent Lévy, Arbitrator

***Secretary of the Tribunal***

Ms Jara Mínguez Almeida

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Date of dispatch to the Parties: 24 December 2019

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**Whereas:**

- (1) On 15 November 2019, the Tribunal issued Procedural Order No 8 ('PO No 8') in which it decided the Parties' respective applications for production of documents;
- (2) By Annex B of PO No 8, the Tribunal ordered the Claimant to produce for inspection *inter alia* the two originals of the SPA (Respondent's Request No 15(a)); the original of the Consent Document (Respondent's Request No 15(g)); and the originals of the Koza Ipek Holdings share certificates (Respondent's Request No 22), the latter to be available for inspection in London ('the Original Documents');
- (3) By paragraph 2(e) of PO No 8, the Tribunal ordered that documents within the possession of a witness for either Party are to be treated as within the power or control of the Party to the extent that such documents came into the possession of the witness during the course of their employment by the Party or otherwise continue to be the property of the Party *but not otherwise*;
- (4) By paragraph 10 of PO No 8, the Tribunal provided that either Party might make an application as to any aspect of PO No 8, provided that it did so by 22 November 2019;
- (5) On 22 November 2019, the Respondent applied for certain further relief in relation to the production of documents from the Claimant, in particular as to the Original Documents ('the Application');
- (6) Pursuant to the President's directions, the Parties exchanged written submissions thereon: the Claimant responding on 28 November 2019; the Respondent replying on 2 December 2019 and the Claimant rejoining on 4 December 2019;

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- (7) On 10 December 2019, the Tribunal issued initial directions, ruling that the Application constituted in substance a new application and indicating that it would issue a further procedural order making specific provision for the inspection of the Original Documents under the supervision of an officer of the Tribunal and ruling on the other elements of the Application once all other document production was completed under the timetable originally specified in PO No 8 on 12 December 2019;
- (8) On 16 December 2019, the Respondent renewed its Application for forensic examination of Mr Ipek's computer insofar as it contains electronic information concerning the preparation of the SPA and Consent Document;
- (9) With the leave of the Tribunal given on 18 December 2019, the Claimant replied to the Respondent's renewed Application;
- (10) *Noting* that, pursuant to Article 43 of the ICSID Convention, the Contracting States confirm that '...the Tribunal may, if it deems it necessary at any stage of the proceedings (a) call upon the parties to produce documents or other evidence.'

**Now therefore the Tribunal orders that:**

- 1. The Claimant shall make the Original Documents available for forensic examination by experts appointed by the Parties at a date after 6 January 2020, subject to the terms and conditions of this Order;**
- 2. The Respondent may apply to the Tribunal Secretary for forensic examination of the Original Documents by its appointed experts at a specified location or locations on provision to the Tribunal Secretary of a written undertaking to the Tribunal from both the experts and the Respondent's counsel of record that they shall not mutilate, remove or otherwise tamper with the Original Documents and shall examine them only for the proper purposes of the present arbitration;**

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3. **On receipt of such application, the Tribunal Secretary shall fix an appointment for such forensic examination, in consultation with counsel for the Parties and the nominated experts;**
4. **The Claimant shall be responsible for the transport of the Original Documents to the specified location and shall at all times retain ownership and control of them;**
5. **Such examination may include the conduct of laboratory testing in the United States of America, Switzerland or the United Kingdom, provided always that the above undertaking is observed; that the Original Documents shall remain in the power of the Claimant's legal representative (who may be present during the examination); and that any such inspection is carried out in the presence of and subject to the supervision and direction of the Tribunal Secretary or her delegate;**
6. **The Tribunal reserves its decision on Respondent's application to inspect the computer of Witness 1 insofar as it contains electronic information regarding the preparation of the Original Documents in the event that, pursuant to PO No 4, the Claimant applies to adduce the evidence of Witness 1;**
7. **The Tribunal's decision on Respondent's application for forensic examination of the computer of Mr Hamdi Ipek is reserved for subsequent order;**
8. **The Respondent's application for an unredacted copy of the Ipek Investment Dormant Account email of 23 June 2016 is denied on the ground that the redacted name is not, on the evidence presently available for the Tribunal, material to the issues in the arbitration.**



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Professor Campbell McLachlan QC  
President of the Tribunal  
24 December 2019