

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko

v.

Republic of Serbia

(ICSID Case No. ARB/22/14)

**PROCEDURAL ORDER NO. 3
(CONFIDENTIALITY ORDER)**

Members of the Tribunal

Sir Daniel Bethlehem KC, Presiding Arbitrator

Mr. Andrés Jana, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Oladimeji Ojo

Assistant to the Tribunal

Professor Philippa Webb

19 July 2023

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Background

1. Paragraph 27 of the Tribunal’s Procedural Order No. 1, addressing “Publication, Transparency and Confidentiality”, provides as follows:

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

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

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

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

2. Procedural Order No. 2, laying down the procedural timetable for the proceedings, was issued on 26 May 2023.

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3. Having regard to paragraph 27.3 of Procedural Order No. 1, following correspondence from the Tribunal Secretary on 27 June 2023, the Parties, by separate correspondence dated 28 June 2023, submitted agreed proposed wording for a Confidentiality Order to be issued by the Tribunal.
4. Having considered carefully the language proposed by the Parties, the Tribunal hereby issues the following Confidentiality Order in respect of these proceedings.

Confidentiality Order

A. *Application of Paragraph 27 of Procedural Order No. 1*

- (1) Paragraph 27 of Procedural Order No. 1 is incorporated as an integral part of this Confidentiality Order.

B. *Publication of Documents*

- (1) Pursuant and subject to Articles 27.1. and 27.2. of Procedural Order No. 1, and subject to Section D below, the following documents shall be made available to the public:
 - (a) the award and any order or decision of the Tribunal issued in the present proceeding;
 - (b) the principal pleadings of the Parties.
- (2) The documents to be made available to the public pursuant to paragraph B(1) shall be communicated by the Tribunal to the Repository referred to in Paragraph E below as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential information prescribed in Paragraph D below. The Repository shall make all documents available to the public in a timely manner, in the form and in the language in which it receives them.

C. *Hearings*

- (1) Pursuant to Article 27.4. of Procedural Order No. 1, public access to any hearing, including modalities applicable thereto, shall be addressed by the Tribunal, after consultation with the Parties, in advance of each hearing.

D. Confidential Information

- (1) Confidential information, as defined in paragraph D(2) below, and as identified pursuant to the arrangements referred to in paragraphs D(3) and D(4) below, shall not be made available to the public.
- (2) Confidential information consists of:
 - (a) Confidential business information;
 - (b) Information that is protected from publication, in the case of the information of the Respondent, under the Respondent's laws, and in the case of other information, under any law or rules determined by the Tribunal to be applicable to the disclosure of such information;
 - (c) Information the disclosure of which would impede law enforcement; or
 - (d) Information the disclosure of which would compromise the Respondent's essential security interests.
- (3) A Party shall give notice within 15 days of the issuance of a document mentioned in Paragraph B(1)(a) or the filing of a document mentioned in Paragraph B(1)(b) above that it seeks protection for confidential information in that document. In the absence of such notice, the Tribunal will authorise publication by the Repository.
- (4) A notice seeking protection for confidential information made in accordance with the preceding paragraph shall specifically identify the part (or parts) of the document sought to be designated as confidential and explain the reasons for the claimed confidentiality.
- (5) The other Party may make reasoned objections to the requested protection within 15 days from receipt of the notice. Absent such an objection, the Party making the notice shall provide a redacted version of the relevant document to the Tribunal within 15 days from the expiry of the deadline for making objections. The Tribunal will thereafter transmit that redacted document to the Repository for publication.
- (6) In the event of an objection, the Tribunal will decide whether the information identified is to be treated as confidential. If the Tribunal decides that the

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information is to be treated as confidential information, the Party who had filed the protected document shall provide a redacted version within 15 days of the Tribunal's decision. The Tribunal will thereafter transmit that redacted document to the Repository for publication.

- (7) If the Tribunal determines that the identified information is not to be treated as confidential information, the Party introducing the document into the record shall be permitted to withdraw all or part of the document from the record within 15 days of the Tribunal's decision.
- (8) The Tribunal may, on its own initiative or upon the application of a Party, after consultation with the Parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardise the integrity of the arbitral process for the reason, *inter alia*, that it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for Parties or members of the Tribunal, or in comparably exceptional circumstances.

E. Repository of Published Information

- (1) ICSID shall act as Repository of published information. The following rules shall apply in connection with the Repository:
 - (a) The Tribunal will be responsible for submitting the documents for publication (in redacted form if applicable) to the Repository;
 - (b) The Secretary of the Tribunal will receive the documents from the Tribunal and ensure publication in searchable electronic format (.pdf format);
 - (c) The Repository will publish information and documents on the ICSID website;
 - (d) The Repository will publish information and documents in the form and language in which it receives the information;
 - (e) The Tribunal will communicate with the Repository in English;
 - (f) The Tribunal will be released from its responsibility under this Confidentiality Order upon completion of its mandate under the ICSID

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Convention and Arbitration Rules, it being specified that such mandate extends to any interpretation or revision proceedings; and

- (g) Upon completion of these arbitration proceedings, all documents referred to in Paragraph B above shall continue to be made available to the public on the ICSID website in accordance with ICSID's usual practice. The rights and obligations of the Parties arising under Paragraph D above shall remain in force.

F. Applicable Instrument in Case of Conflict

- (1) This Confidentiality Order shall supplement the applicable arbitration rules. In the event of a perceived conflict between this Confidentiality Order and any applicable arbitration rule, a Party is at liberty to apply to the Tribunal to address the perceived conflict.
- (2) In the event that the Tribunal is *functus officio*, the terms of the Confidentiality Order shall prevail save in circumstances in which there is a conflict with an applicable arbitration rule from which no derogation is permitted.

On behalf of the Tribunal,

[signed]

Sir Daniel Bethlehem KC
President of the Tribunal

Date: 19 July 2023