IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

- and -

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW 1976

- between -

OPEN JOINT STOCK COMPANY "BELARUSKALI"

(the "Claimant")

and

THE REPUBLIC OF LITHUANIA

(the "Respondent" and, together with the Claimant, the "Parties")

(PCA Case No. 2024-03)

PROCEDURAL ORDER NO. 8

Request to change the seat of the arbitration

Tribunal

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)
Professor Azzedine Kettani (Arbitrator)
Professor Zachary Douglas KC (Arbitrator)

Tribunal Secretary: Dr Johannes Fahner

Registry: Permanent Court of Arbitration

16 September 2026

I. PROCEDURAL BACKGROUND

1. On 21 May 2024, the Parties and the Members of the Tribunal concluded the Terms of Appointment, which provided that "[t]he Tribunal will determine the seat of arbitration in accordance with Article 16 of the UNCITRAL Rules".

2. When the Tribunal consulted the Parties prior to making its determination on the seat, the Claimant initially proposed Hong Kong, but then shifted to Singapore, while the Respondent proposed The Hague, and alternatively Geneva.

3. On 20 June 2024, the Tribunal issued Procedural Order No. 2 (PO2), fixing Geneva as the seat of this arbitration.

4. In that order, the Tribunal took guidance from the UNCITRAL Notes on Organizing Arbitral Proceedings (2016), and the legal and factual criteria listed therein to inform the selection of the seat. It noted that "[t]he selection of a seat makes the (international) arbitration law of the seat applicable to the arbitration proceedings, gives jurisdiction to the local courts in aid and control of the arbitration, and determines the place where the award is deemed to have been made for purposes of enforcement".[1]

5. The Tribunal considered that it was "more natural to choose a seat in the part of the world where the parties and arbitrators are located rather than a seat situated on another continent".[2]

6. When addressing the choice of the seat, the Tribunal considered the Claimant's assertion that Geneva or The Hague could not be neutral seats because of sanctions imposed on it by the EU and Switzerland, and that the Members of the Tribunal would "have to comply with the sanctions regulations". In this respect, it found that Belaruskali had not explained the latter contention nor had it clarified how that would affect the conduct of the arbitration. Similarly, the Tribunal stressed that the Claimant had not substantiated in which manner sanctions imposed by the Swiss government could jeopardised the neutrality of Swiss courts, the more so as the Claimant had expressly stated that it had no doubt about the independence of these courts. In addition, in PO2, the Tribunal referred to the joint acknowledgment in the Terms of Appointment to the effect that "the Parties, the Tribunal,

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1 PO2, para. 3.3.

2 PO2, para. 3.6.

and the PCA do not currently expect that such sanctions will pose an obstacle to the conduct of the arbitration".[3]

7. When comparing Geneva and The Hague in PO2, the Tribunal reasoned that "Geneva may be a preferable choice because it is not located in the European Union, unlike The Hague, in the Netherlands, which is an EU Member State like Lithuania".[4] In addition, the Tribunal stressed that the "relatively fast and efficient annulment process in Switzerland compared to the Netherlands" weighed in favour of Geneva.[5]

8. Approximately two years after the issuance of PO2, on 6 July 2026, the Claimant requested the Tribunal "[t]o change the seat of arbitration from Geneva to [Dubai International Financial Centre] or Singapore" or, alternatively, "to any other neutral jurisdiction as the Tribunal finds appropriate" (the "**Application**").

9. By letter dated 21 July 2026, the Respondent requested the Tribunal to deny the Application and award the Respondent "all costs, including legal fees, incurred in connection with opposing Belaruskali's request" (the "**Response**").

10. On 28 July 2026, the Claimant sought admission into the record of Procedural Order No. 2 issued in PCA Case No. 2026-30, *Fridman v. the Netherlands*, noting that the Fridman tribunal, when determining the seat of the arbitration, had taken account of "the sanctions regimes applicable to the potential seats of arbitration", and arguing that this analysis might be "relevant and of assistance" to the Tribunal.

11. On 5 August 2026, the Respondent commented on the Claimant's request of 28 July 2026. Lithuania did "not object to the admission of the Fridman Procedural Order to the record", considering that the procedural order, although of limited relevance, only "reinforce[d] the arguments for dismissal" of the Application.

12. This Procedural Order rules on the Application.

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3 PO2, para. 3.7, quoting Terms of Appointment, para. 20.1.

4 PO2, para. 3.10.

5 PO2, para. 3.11.

II. POSITIONS OF THE PARTIES

A. The Claimant

13. The Claimant does not "dispute the conclusions of the Tribunal as stated in [PO2]",[6] and agrees that, at the time when PO2 was issued, "Switzerland could reasonably be regarded as a neutral, non-EU forum for the arbitration".[7]

14. However, Belaruskali contends that since the adoption of PO2, the circumstances have changed,[8] as "the sanctions restrictions adopted by Switzerland have evolved, imposing limitations directly affecting the resolution of disputes between investors and the States". It thus argues that there are "reasons to believe that Geneva may no longer be considered a neutral seat of arbitration".[9]

15. According to the Claimant, the changed circumstances derive from new sanctions measures adopted by the Swiss Federal Council in October 2025 (Ordinance of 29 October 2025; the "Swiss Ordinance"),[10] which it says are "similar" to the EU measures of July 2025 (Regulation 2025/1472 of 18 July 2025; the "EU Regulation").[11] Belaruskali specifies that pursuant to the Swiss Ordinance, "arbitral awards issued in investor-state proceedings outside Switzerland or an EEA Member State in favor of Belarus entities shall not be recognized or enforced".[12]

16. This being so, the Claimant considers the adoption of these measures relevant to these proceedings "regardless of [their] applicability to the present dispute".[13] It asserts that neither the EU Regulation nor the Swiss Ordinance are applicable to this arbitration, as "the Claimant's claims are not connected with" EU or Swiss sanctions measures,[14] and the Swiss Ordinance will not apply to an award issued outside Switzerland and the EEA Member States.[15] The Claimant nevertheless contends that the adoption of these new

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6 Application, para. 24.

7 Application, para. 34.

8 Application, para. 10.

9 Application, para. 5.

10 C-461. Ordinance on Measures against Belarus (SR 946.231.116.9), as amended by AS 2025 661 dated 29 October 2025.

11 R-226, Council Regulation (EU) 2025/1472 [18 July 2025] OJ L, 2025/1472.

12 Application, para. 29.

13 Application, para. 31.

14 Application, paras 28, 30.

15 Application, para. 30.

sanction packages "evidences two important issues relevant for the present proceedings".[16]

17. First, the new packages show "a consistent and close alignment" of Swiss and EU sanctions,[17] and an "almost unconditional and systematic implementation of EU sanctions by Switzerland".[18] Consequently, the Claimant adds, "the current seat is no longer insulated from the EU policy".[19]

18. Second, the new measures extend the reach of sanctions "to investment arbitration proceedings involving Belarusian investors".[20] In Belaruskali's submission, this extension suggests that "the legal environment of the current seat has evolved in a manner that creates even potential uncertainty as to the effectiveness and neutrality of the arbitral process".[21] The new measures also illustrate "a broader trend towards an increasingly restrictive sanctions environment for Belarusian persons".[22]

19. On this basis, Belaruskali sees "concrete risks" that Switzerland "may adopt further measures" that could require the setting aside of awards in favor of Belarusian investors, or that, even absent additional measures, the practice of Swiss courts might give existing sanctions "an increasingly expansive effect" and deem them relevant in annulment proceedings.[23] On the latter risk, it allegedly holds "a legitimate concern that Swiss courts may be required to assess any challenge to the award through the lens of the sanctions regime that is adverse to the Claimant".[24] Although the Claimant does not suggest that the Swiss Ordinance mandates the setting aside of an investment arbitration award issued in Switzerland in favor of a Belarusian party, its perceives a "real and material risk" that the sanctions framework "may affect the practical effectiveness and enforceability of the award in the future".[25]

20. In this context, the Claimant cites two recent Swiss Supreme Court judgments concerning the enforcement of an LCIA award rendered in favour of an award creditor controlled by

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16 Application, para. 31.

17 Application, para. 33.

18 Application, para. 34.

19 Application, para. 36.

20 Application, paras 38, 43.

21 Application, para. 37.

22 Application, para. 40.

23 Application, paras 49-50.

24 Application, para. 42.

25 Application, paras 44-45.

a sanctioned Russian entity.[26] According to Belaruskali, these decisions show that "Swiss courts tend to give sanctions a decisive effect in arbitration-related matters, including treating sanctions as overriding mandatory rules".[27]

21. Although it acknowledges that the risks of new legislative measures or expansive court practice "have not yet fully materialized", the Claimant argues that it is preferable to pre-empt such developments given the current stage of the proceedings shortly before the hearing.[28]

22. Accordingly, the Claimant proposes that the seat be moved to the Dubai International Financial Centre or Singapore as "the most suitable options for [a] neutral seat".[29] Alternatively, the Claimant states that it is open to "any other neutral seat of arbitration outside the EU and sufficiently removed from the EU sanctions framework".[30]

B. The Respondent

23. The Respondent submits that an arbitral seat can only be changed on account of exceptional circumstances, which must be such that "the proceedings cannot continue at the original seat".[31]

24. According to Lithuania, such exceptional circumstances cannot be established when the concern raised by the party requesting a change of the seat "already existed, and was taken into account, in the decision designating the original seat".[32] In the present case, the Tribunal had already considered and rejected the Claimant's assertion that Switzerland could not be deemed a neutral seat due to sanctions applicable in Switzerland.[33]

25. The Respondent submits that the sanctions measures adopted by the EU and Switzerland in 2025 "do not bear on the suitability of Geneva as the seat of the arbitration".[34] As to the

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26 Application, paras 46-47, referring to C-468, Decision of the Swiss Federal Supreme Court No. 5A_172/2025 dated 28 January 2026; and C-467, Decision of the Swiss Federal Supreme Court No. 4A_305/2025 dated 13 March 2026.

27 Application, para. 48.

28 Application, para. 51.

29 Application, para. 54.

30 Application, para. 58.

31 Response, para. 8.

32 Response, para. 10.

33 Response, paras 11-13.

34 Response, para. 9.

EU Regulation, its prohibition on the recognition of ISDS awards applies as long as the seat is outside the EU, which means that Belaruskali's request to move the seat from one non-EU jurisdiction to another cannot be justified by the adoption of this Regulation.[35] Moreover, the Swiss Ordinance "does not on its terms extend to Swiss-seated arbitrations".[36]

26. Lithuania further argues that the Claimant's "vague argument" about a broader trend of increasingly restrictive sanctions measures and "potential future legal changes", the likelihood of which the Claimant has not established,[37] cannot warrant a change of seat, as the required exceptional circumstances must exist in the present rather than in an "uncertain future".[38] The Swiss case cited by Belaruskali is "irrelevant", as it concerned the impact of sanctions on recognition and enforcement, on which the seat of the arbitration "has no bearing".[39]

27. Finally, according to the Respondent, the Claimant's request to change the seat of arbitration is untimely because the Swiss sanctions measures referred to in the Application were introduced eight months before the Application was filed.[40] Changing the seat would also be "highly disruptive at this stage of the proceedings". It would generate "significant uncertainty" and "magnify[] the risk of procedural defects" due to a change of the *lex arbitri* midway through the arbitration.[41]

III. ANALYSIS

28. Article 176(3) of the Swiss Federal Act on Private International Law ("**PILA**"), which is part of the *lex arbitri* applicable to the present arbitration, provides that the Parties set the seat directly or by delegation to the relevant arbitral institution. Failing a designation by the Parties, the Tribunal is vested with the power to fix the seat:

> The seat of the arbitral tribunal is determined by the parties, or the arbitration institution designated by them, or, failing both, by the arbitral tribunal itself.

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35 Response, para. 15.

36 Response, para. 19.

37 Response, para. 23.

38 Response, para. 21.

39 Response, para. 24.

40 Response, para. 29.

41 Response, paras 30-31.

29. The arbitration rules chosen by the Parties, specifically Article 16(1) of the 1976 UNCITRAL Rules, also grant the Tribunal the power to choose the seat, unless the Parties agree on it:

> Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

30. Neither the PILA nor the UNCITRAL Rules specify whether the tribunal is empowered to change the seat. This being so, one can reasonably argue that such power is implied in the power to fix the seat. At the same time, because of the significant impact of a change of seat on the *lex arbitri* and the jurisdiction of the courts which control the arbitration, it makes sense that tribunals exercise that power only if compelling reasons so mandate.

31. Unsurprisingly, it is widely accepted that Swiss law permits a transfer of the seat, but only in the event of an exceptional and compelling change of circumstances that makes it impossible to maintain the proper conduct of the arbitration at the original seat.[42] Similarly, arbitral tribunals acting under the UNCITRAL Rules have held that this possibility exists but only in exceptional circumstances.[43]

32. There is a high bar for establishing a change of circumstances warranting a move of the seat because, as mentioned, the seat determines the legal framework governing the arbitration.[44] Changing that framework in the course of an arbitration may cause procedural difficulties linked to the transition from one legal order to the other, and to possible inconsistencies, overlaps, or gaps between the two. These potential difficulties create legal uncertainties that may jeopardize the predictability of the arbitral process and outcomes of annulment proceedings.

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42 Andreas Bucher, *Commentaire romand. Loi sur le droit international privé (LDIP)* (Helbing Lichtenhahn 2025) Art. 176, para. 15; Bernard Dutoit and Andrea Bonomi, *Droit international privé suisse. Commentaire de la loi fédérale du 18 décembre 1987* (Helbing Lichtenhahn 6th ed 2022) Art. 176 LDIP, para. 26; Daniel Pfiffner and Daniel Hochstrasser, Art. 176 IPRG, in Pascal Grolimund, Leander Loacker and Anton Schnyder (eds), *Basler Kommentar. Internationales Privatrecht* (Helbing Lichtenhahn 4th ed 2021) para. 25; Pierre Lalive, Jean-François Poudret and Claude Reymond, *Le droit de l'arbitrage interne et international en Suisse* (Payot 1989) Art. 176 LDIP, para. 13; Marco Stacher, Art. 176 IPRG, in 'Internationale Schiedsgerichtsbarkeit' in Simon Gabriel and Marco Stacher (eds), *Berner Kommentar. Bundesgesetz über das Internationale Privatrecht* (Stämpfli 2013) para. 104.

43 CLA-209, *Pope & Talbot v. Government of Canada*, Decision Concerning Investor's Motion to Change the Place of Arbitration dated 14 March 2002, para. 14; CLA-210, *Fridman v. Kingdom of the Netherlands*, PCA Case No. 2026-30, Procedural Order No. 2 dated 25 May 2026, para. 40, referring to the tribunal's "authority to modify the seat as a measure of last resort in the event of exceptional circumstances that could not otherwise be adequately addressed".

44 Stacher, para. 104.

33. In light of these difficulties and risks, a change of the seat can only be ordered on account of a change of circumstances entailing that maintaining the existing seat would significantly impair one or both parties' right to a fair trial.

34. In the present case, the Application primarily relies on two legislative developments: the adoption of the EU Regulation and of the Swiss Ordinance. None of these two instruments is directly relevant to the conduct of this arbitration, which Belaruskali acknowledges.[45] The EU Regulation is a measure adopted by the EU and is not applicable in Switzerland, while the Swiss Ordinance does not address the conduct of Swiss-seated arbitrations, but the recognition and enforcement of awards rendered outside of Switzerland.

35. In fact, Belaruskali does not seek to substantiate the Application by reference to the adoption of these instruments *per se*. Rather, it sees a "real and material risk" that further legislative measures "may affect the practical effectiveness and enforceability of the award in the future" or that "Swiss court practice will develop in a manner that gives existing sanctions an increasingly expansive effect".[46]

36. The inferences Belaruskali seeks to draw from the adoption of the Swiss Ordinance do not justify a change of the seat. The suggestion of a potential future legislative change in Switzerland towards measures that would directly affect this arbitration is speculative. If such circumstances were to materialise, the Claimant could still renew its application. Indeed, as stated earlier, no party should be forced to litigate in an environment in which its fundamental procedural rights are not guaranteed. Yet, this is not the situation presently before the Tribunal.

37. As an argument in favor of changing the seat, Belaruskali also puts forward "the current direction of the Swiss court's practice".[47] In respect of an UNCITRAL arbitration such as the present one, the only judicial function ancillary to arbitration that the Swiss courts may realistically be called upon to exercise is to rule on a request for annulment of the award, over which the Swiss Supreme Court has jurisdiction.

38. In support of its concerns about Swiss courts, the Claimant invokes two recent judgments of the Swiss Supreme Court. These do not relate to an application for annulment of an award issued in Switzerland, but to debt enforcement proceedings in Switzerland based on an LCIA award. These judgments show that obstacles due to sanctions to the

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45 Application, paras 28, 30.

46 Application, paras 45, 50.

47 Application, para. 48.

enforcement in Switzerland of an arbitral award rendered outside Switzerland will apply regardless of the (non-Swiss) seat of the arbitration.

39. The Tribunal does not see how these decisions could impact the Court's judgment on a request for annulment of a Swiss award in favour of a sanctioned party. If anything, the judgment of 13 March 2026 amended the lower court's ruling *to the benefit* of the sanctioned entity. The Supreme Court agreed with the lower court that the award debt could not be collected as long as the sanctions were in force, but, unlike the lower court, it did not find that enforcement had become permanently impossible. It held that enforcement was suspended until such time as the sanctions would be lifted, and that the suspension tolls the statute of limitations applicable to the enforcement claim.[48] That judgment, which considered "the well-understood interests of the parties" and intended to adopt a "fair solution for the parties involved in a legal relationship for the duration of the sanctions",[49] is difficult to reconcile with the fear that the Supreme Court might *annul* an award as a result of sanctions.

40. Consequently, the Tribunal reaches the conclusion that no change of circumstances has occurred that would require it to move the seat to avoid that the Parties and especially Belaruskali's procedural rights be impaired.

41. The Tribunal has taken note of Procedural Order No. 2 issued in *Fridman v. Kingdom of the Netherlands*, which the Claimant submits may be "relevant and of assistance in determining the pending Application".[50] The *Fridman* tribunal excluded Geneva as a seat because "it would not be appropriate to select a seat in a State that has adopted sanctions similar to those at issue in the present dispute, specifically against Mr. Fridman".[51] That rationale cannot be applied by analogy to the issue before the Tribunal. First of all, a procedural order rendered in other proceedings reflects the specific procedural context of that other case, as well as the exercise of that other tribunal's discretion in matters of procedure and case management. As such, such an order is of little value to other tribunals. Be this as it may, the *Fridman* tribunal was fixing the seat at the outset of the arbitration, it was not inquiring whether there had been a change of circumstances compelling a transfer of the seat. Further and more importantly, that tribunal considered that the Dutch measures which Mr. Fridman was challenging in the arbitration were

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48 C-467, Decision of the Swiss Federal Supreme Court No. 4A_305/2025 dated 13 March 2026, para. 5.3.1.3.

49 Ibid, para.5.3.1.3.

50 Email from the Claimant to the Tribunal dated 28 July 2026.

51 CLA-210, *Fridman v. Kingdom of the Netherlands*, PCA Case No. 2026-30, Procedural Order No. 2 dated 25 May 2026, para. 30.

"similar" to the ones Switzerland had imposed on him. There is nothing like this here. The impugned Lithuanian measures are not "similar" to those adopted in the Swiss Ordinance.

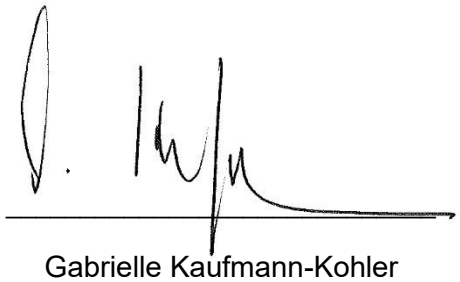
42. For the avoidance of doubt, the Tribunal notes that no application has been made to change the venue of the Hearing, which is and remains the Peace Palace in The Hague.[52]

IV. ORDER

43. On the basis of the reasons set forth above, the Tribunal:

i. denies the Claimant's Application to change the seat of the arbitration; and

ii. reserves the costs of the Application for a later decision.



Gabrielle Kaufmann-Kohler
(Presiding Arbitrator)

On behalf of the Tribunal

[52] Letter from the Tribunal to the Parties dated 29 December 2025.