

**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)**

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**PROCEDURAL ORDER NO. 1**

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*Tribunal*

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)  
Professor Azzedine Kettani (Arbitrator)  
Sir Daniel Bethlehem KCMG KC (Arbitrator)

Tribunal Secretary: Dr Johannes Fahner

Registry: Permanent Court of Arbitration

**16 February 2024**

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The Tribunal, having consulted the Parties, issues the following Procedural Order.

## **1. PROCEDURAL CALENDAR**

1.1 The procedural calendar is set forth in Annex 1.

## **2. WRITTEN SUBMISSIONS**

2.1 The Parties shall file their written submissions within the time limits set out in the Procedural Calendar and in accordance with the rules set out below.

2.2 In the first exchange of submissions, the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specific and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party. Together with such submissions, each Party shall produce all the evidence upon which it wishes to rely, including documentary evidence, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.

2.3 In their second exchange of submissions, if any, absent showing of good cause, the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the preceding submission, or to address elements deriving from evidence obtained during the document production phase, unless new facts have arisen after the first exchange of submissions. New legal arguments may be raised in response to allegations of fact and legal arguments made by the other Party in the preceding submission. Together with the second exchange of submissions, the Parties may file additional documents, witness statements and expert reports only insofar as the relevance of such additional evidence has arisen as a result of the opposing Party's preceding submission (including the documents, witness statements and expert reports produced therewith) or the documents produced by the Parties during the document production phase.

2.4 Following each factual allegation, the Parties shall identify, whenever possible, the evidence adduced in support of that allegation. Following each legal argument, the Parties shall identify, whenever possible, the legal authority adduced in support of that argument.

2.5 All written submissions shall be divided into consecutively numbered paragraphs.

2.6 The written submissions (including the pleadings, factual exhibits, legal authorities, witness statements, expert reports, and the index of exhibits) shall be uploaded and transmitted through a Box platform administered by the Registry within the time limit set in the Procedural Calendar. The written submission is deemed to be filed in a timely manner if it is uploaded to the Box platform administered by the Registry by 23:59 (CET) of the day of the expiration of the relevant time limit.

- 2.7 Electronic versions of written submissions (including witness statements and expert reports) shall be submitted in searchable .pdf format, unless it is impossible or disproportionately burdensome to produce a particular document in such format.
- 2.8 Neither Party shall be permitted to submit additional documents after the filing of its last written submission, unless the Tribunal determines that special circumstances exist, based on a reasoned written request followed by observations from the other Party.
- 2.8.1 If a Party requests leave to file additional or responsive documents, that Party may not annex the documents that it seeks to file to its request.
- 2.8.2 If the Tribunal grants an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to submit its observations and any responsive documents relating to such a document.

### **3. DOCUMENTS**

- 3.1 Exhibits shall be consecutively numbered. Each fact exhibit submitted by the Claimant shall commence with "C-" followed by the applicable number. Each fact exhibit submitted by the Respondent shall commence with "R-" followed by the applicable number.
- 3.2 Legal authorities shall commence with "CLA-" for the Claimant and "RLA-" for the Respondent, followed by the applicable number.
- 3.3 Exhibits shall be arranged in chronological order or any other sensible order (such as the order of appearance). A comprehensive index mentioning each exhibit by number, date, type of document, author and addressee (if applicable) shall be put at the beginning of the volume(s) of exhibits. The index shall also be cumulative, meaning that it shall list all documentary evidence that a Party has submitted up to the date of that written submission.
- 3.4 Subject to Section 2.6 and 2.8, exhibits shall be annexed to the corresponding written submission.
- 3.5 The Parties shall submit exhibits in electronic format, which may be submitted in 'scanned' .pdf format, but shall, to the extent possible, be searchable. Each exhibit shall constitute a single electronic document. Electronic versions of exhibits shall commence by the appropriate letter and number, so that they may be ordered consecutively.
- 3.6 Exhibits and legal authorities shall be clearly referenced in the written submissions.
- 3.7 On a date to be determined by the Tribunal, the Parties shall submit an updated and hyperlinked version of their respective lists of exhibits.
- 3.8 Documents shall either be submitted in complete form or the submitting Party shall indicate in which respect a document is incomplete. All documents filed, including originals and copies, shall be deemed to be authentic and complete, unless disputed by the other Party.

- 3.9 Exhibits, legal authorities, witness statements and expert reports shall be submitted in the original language together with a translation into English. Whenever long documents need to be translated, the translation may be limited to all relevant passages together with such other portions of the document necessary to put such passages in proper context, it being specified that the Tribunal, *proprio motu* or on request, may require a full translation of documents of particular importance to the dispute. Unless otherwise ordered by the Tribunal *proprio motu* or upon an objection raised by the other Party, translations will be presumed to be accurate.
- 3.10 Translations do not need to 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 of the whole translation or of the relevant parts. The Parties shall not submit unreviewed machine translations.
- 3.11 As a general principle, the cost of a translation shall be borne initially by the Party providing the translation, without prejudice to the decision of the Tribunal as to which Party or Parties shall ultimately bear those costs and in what amount.
- 3.12 The use of demonstrative exhibits (such as charts, graphs, tables, etc., compiling information that is in the record but is not presented in that form) shall be permitted at the hearing for oral argument and expert presentations, provided that such demonstrative exhibits contain no new evidence, that their sources in the record are referred to, and that they are submitted as ordered by the Tribunal. For the avoidance of doubt, PowerPoint slides are not considered as demonstrative exhibits, except to the extent that they contain charts, graphs, tables, etc. compiling information that is in the record but is not presented in that form.

#### **4. REQUESTS FOR DOCUMENT PRODUCTION**

- 4.1 Within the time limit set in Annex 1, a Party may request the other Party to produce documents or categories of documents, using the form of the “Redfern Schedule” in Annex 2 hereto, in both Word and .pdf format. The Tribunal recommends that the number of requests per Party do not exceed 20, including sub-requests. A Party wishing to exceed this number shall announce it two weeks before the submission of the Redfern Schedule, explaining the reasons and need for a number higher than recommended.
- 4.2 Each request for production shall:
- 4.2.1 identify with specificity:
- a. the type(s) or category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). Parties shall not use a generic formulation, such as “all documents” or “all records”, or use such formulation and then define it to “include” specific types of documents;

- b. the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be). A Party asserting that such identification is not possible must adequately substantiate such assertion; and
    - c. a date for individual documents or a narrow and proportionate period for a category of documents;
  - 4.2.2 describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;
  - 4.2.3 specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and
  - 4.2.4 explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.
- 4.3 If the Tribunal considers that a request lacks sufficient specificity, the presumption is that it will be rejected. The Tribunal may, however, on its own initiative order the production of a subset of the documents requested in the event that a relevant and narrow subset can be readily identified and the Tribunal considers that the lack of specificity of the initial request does not taint the putative disclosure.
- 4.4 Within the time limit set in Annex 1, the responding Party shall:
  - 4.4.1 where it has no objection, produce the documents requested;
  - 4.4.2 where it has an objection, provide the requesting Party with its objections to producing the requested documents, using the Redfern Schedule provided by the requesting Party (in both Word and .pdf format).
- 4.5 Within the time limit set in Annex 1, the requesting Party may reply to the other Party's objections in the same Redfern Schedule (in both Word and .pdf format). The reply shall answer specific objections and may not be used to re-formulate the initial request.
- 4.6 The Tribunal will, in its discretion, rule upon the production of the documents or categories of documents having regard to the legitimate interests of the other Party, and all of the surrounding circumstances. In deciding document production requests, the Tribunal may take guidance from the 2020 IBA Rules on the Taking of Evidence in International Arbitration.

- 4.7 When ruling on production, the Tribunal will in particular take into account that a Party shall not be entitled to the production of a document:
- 4.7.1 seeking to establish a fact that is already proven by evidence on record;
  - 4.7.2 seeking to establish a fact for which the other Party bears the burden of proof;
  - 4.7.3 the search of which would be too burdensome, taking into consideration the added value of the document for the resolution of the dispute and the burden of the search efforts; and
  - 4.7.4 that is privileged and or otherwise protected, provided the legal basis for such claim of privilege or protection is set out in sufficient detail for the Tribunal to make an informed decision in case of objection.
- 4.8 Where a Party offers or where the Tribunal orders production, responsive documents shall be communicated directly to the requesting Party without copying the Tribunal. Documents so communicated shall not be considered part of the record unless and until the requesting Party subsequently files them as exhibits in accordance with Sections 2 and 3 above.
- 4.9 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 Section 3 above and shall be considered to be on record.

## **5. WITNESSES**

- 5.1 Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 5.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. A person who has not submitted a written witness statement shall not be heard as a witness, unless the Tribunal so determines in exceptional circumstances, upon a substantiated request of a Party including a list of facts in respect of which the person should testify.
- 5.3 Each witness statement shall state the witness's name, date of birth, current address, and involvement in the case. It shall contain an affirmation as to the truth of its contents, and be signed by the witness, indicating the date and place of signature.
- 5.4 In accordance with Section 2 above, each Party will submit its witness statements together with its written submission. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements of the same witness, the subsequent witness statement shall be identified as "Second".

- 5.5 It shall not be improper for counsel or a Party representative to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations. During the hearing, a witness shall remain sequestered until the testimony of the witness is complete.
- 5.6 Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. Accordingly, a witness who has not been summoned for cross-examination and whose appearance has not been ordered by the Tribunal will not be examined.
- 5.7 The fact that a Party does not call a witness whose statement has been submitted with the opposing Party's written submissions does not mean that it accepts the content of the witness statement. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances. The same applies in case of partial cross-examination of a witness in respect of elements that have not been the subject of the cross-examination.
- 5.8 Each Party shall be responsible for the practical arrangements, costs, and availability of the witnesses it offers. The Tribunal will decide upon the appropriate allocation of such costs in the final award.
- 5.9 The Tribunal may, having regard to all surrounding circumstances, summon to appear as a witness any person who may have knowledge of relevant facts and has not been proposed as a witness by the Parties.
- 5.10 If a witness fails to appear at a hearing (irrespective of whether he or she was called for cross-examination by the opposing Party or called for examination by the Tribunal), the Tribunal may in its discretion allow the witness to appear at a later time if the Tribunal is satisfied that (i) there was a compelling reason for the first failure to appear; (ii) the testimony of the witness appears to be relevant to the adjudication of the dispute; and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 5.11 The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear at a hearing (irrespective of whether he or she was called for cross-examination by the opposing Party or called for examination by the Tribunal), having regard to all the surrounding circumstances, including the fact that the witness was not subjected to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear without providing a valid reason. A witness who has not been called for cross-examination (or for examination by the Tribunal) has a valid reason not to appear, and a witness who has been authorized to testify by videoconference is deemed to have appeared.
- 5.12 In the event that the hearing is held in person, the Tribunal may allow a witness to appear and be examined by videoconference and will issue appropriate directions.



5.13 The order of appearance of fact witnesses during the hearing as well as the modalities of the examinations shall be determined during the pre-hearing conference.

## **6. EXPERTS**

6.1 The rules set out in Section 5 above shall apply by analogy to the evidence of experts.

6.2 Each Party may retain and produce evidence of one or more independent experts.

6.3 After having heard the Parties, the Tribunal may appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of a Party, take oral evidence of such expert(s). The Parties shall be afforded a reasonable opportunity to address the reports and evidence of any expert appointed by the Tribunal.

6.4 Expert reports shall be accompanied by documents or information upon which the experts rely, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient.

6.5 Non-legal experts may make presentations in lieu of direct examination of no more than 30 minutes.

## **7. HEARING**

7.1 On the date provided in Annex 1, each Party shall communicate the list of witnesses and experts of the other Party whom it intends to cross-examine during the hearing.

7.2 On the date provided in Annex 1, after consultation with the Parties, the Tribunal will determine (i) whether the hearing shall be held in person, online or in a hybrid format, and (ii) if applicable, where the hearing will be held, subject to any later change that the circumstances may require.

7.3 If applicable, the Tribunal will issue an online/hybrid hearing protocol following consultation with the Parties.

7.4 On the date provided in Annex 1, the Tribunal and the Parties will hold a pre-hearing conference to discuss any outstanding questions regarding the organization of the hearing, including oral arguments, examination of witnesses and/or experts, time allocation and logistics. The Tribunal may be represented by the President on this occasion.

7.5 The following arrangements shall apply to hearings, other than procedural conferences:

7.5.1 the hearing shall be sound recorded and transcribed verbatim in real time;

7.5.2 documents, such as exhibits, slides and demonstratives presented during the hearing shall be displayed on screens available to counsel and/or Party representative, each

Member of the Tribunal, the relevant witness/expert and the Secretary of the Tribunal;

- 7.5.3 electronic versions of the transcripts shall be uploaded or provided by email on the same day to the Parties and the Tribunal;
- 7.5.4 the transcript shall be taken in the language of the arbitration. Sound recordings shall be made in the language of the arbitration and in any other language used by a witness or expert; and
- 7.5.5 testimony in a language other than the language of the arbitration shall be interpreted simultaneously into the language of the arbitration.
- 7.6 In principle, each Party will have an equal time allocation for examinations and oral arguments at the hearing, subject to adjustments required or appropriate under the circumstances.
- 7.7 Unless otherwise agreed during the pre-hearing conference, the Parties shall make opening statements. At the pre-hearing conference, the Parties and the Tribunal will discuss the need and modalities for oral closing statements.
- 7.8 The Registry shall make the necessary arrangements for the reservation of the hearing rooms, breakout rooms, videoconferencing platform, if applicable, court reporters, interpreters and other logistics.
- 7.9 The expenses in connection with the hearing will initially be shared equally between the Parties, without prejudice to the Tribunal's decision on the costs of the arbitration.
- 7.10 If a hearing is to take place at a location where any Member of the Tribunal or the Secretary or representative or counsel of a Party requires a visa or other permission for entry or work purposes, each Party shall take the necessary action in a timely fashion to assist in obtaining such visa or permission.

## **8. POST-HEARING BRIEFS AND STATEMENT OF COSTS**

- 8.1 The need for post-hearing briefs, their content, length, format, and filing dates shall be discussed at the end of the hearing. Unless the Tribunal determines otherwise, the post-hearing briefs shall contain no new evidence or legal sources.
- 8.2 The Tribunal will issue directions on the Parties' statements of costs at the appropriate stage.

## **9. TIME LIMITS**

- 9.1 As a rule, the Parties shall endeavor to comply with time limits and avoid jeopardizing the hearing dates.

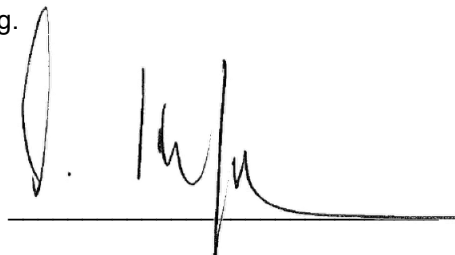
- 9.2 Subject to situations of emergency, the Parties shall only seek extensions from the Tribunal after having consulted the other Party. If the Parties are unable to reach agreement, the President of the Tribunal may extend time limits to the extent necessary.
- 9.3 The President will only grant the extension of a time limit as an exception and provided that the request is made without undue delay and before the time limit to be extended has lapsed.

## **10. DISABILITY INCLUSION**

- 10.1 At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

## **11. THIRD-PARTY FUNDING**

- 11.1 A Party shall disclose the name and address of any non-party from which the Party, its counsel or the Party representative, directly or indirectly, has received or will receive funds for the pursuit or defense of the proceedings through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.
- 11.2 A Party shall make the disclosure referred to in Section 11.1 with the Tribunal upon the issuance of this order or, if entered into thereafter, immediately upon concluding a third-party funding arrangement. The Party shall immediately notify the Tribunal of any changes to the information in the disclosure.
- 11.3 The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding.

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a series of loops and a long horizontal stroke extending to the right.

Gabrielle Kaufmann-Kohler  
(Presiding Arbitrator)

On behalf of the Tribunal

## ANNEX 1: PROCEDURAL CALENDAR

### SCENARIO 1: NO BIFURCATION REQUEST

No.	Procedural Step	By	Date
1.	Notice of Arbitration	Claimant	17 Oct 23
2.	Statement of Claim	Claimant	5 Jul 24
3.	Statement of Defense and Counterclaim	Respondent	19 Dec 24
4.	Request to produce documents	Parties	9 Jan 25
5.	Production of non-objected documents and/or objections to produce	Parties	6 Feb 25
6.	Consultation on hearing format	Tribunal	13 Feb 25
7.	Reply to objections to produce	Parties	27 Feb 25
8.	Decision on requests for production	Tribunal	13 Mar 25
9.	Production as ordered	Parties	27 Mar 25
10.	Reply	Claimant	1 Jul 25
11.	Rejoinder	Respondent	3 Nov 25
12.	Identification of witnesses and experts called to be cross-examined, if any	Parties	17 Nov 25
13.	Pre-hearing conference	All	1 Dec 25
14.	Hearing	All	23-27 Feb 26
15.	Post-hearing submissions, to be discussed at the end of the hearing	Parties	TBD at the end of the hearing
16.	Cost Statements	Parties	TBD at the end of the hearing

**SCENARIO 2: BIFURCATION REQUEST DENIED**

<b>No.</b>	<b>Procedural Step</b>	<b>By</b>	<b>Date</b>
1.	Notice of Arbitration	Claimant	17 Oct 23
2.	Statement of Claim	Claimant	5 Jul 24
3.	Request for Bifurcation	Respondent	16 Aug 24
4.	Response on Bifurcation	Claimant	13 Sep 24
5.	Decision on Bifurcation (possibly with reasons communicated later)	Tribunal	27 Sep 24
6.	Statement of Defense and Counterclaim	Respondent	31 Jan 25
7.	Request to produce documents	Parties	21 Feb 25
8.	Production of non-objected documents and/or objections to produce	Parties	21 Mar 25
9.	Consultation on hearing format	Tribunal	21 Mar 25
10.	Reply to objections to produce	Parties	4 Apr 25
11.	Decision on requests for production	Tribunal	18 Apr 25
12.	Production as ordered	Parties	2 May 25
13.	Reply	Claimant	31 Jul 25
14.	Rejoinder	Respondent	20 Nov 25
15.	Identification of witnesses and experts called to be cross-examined, if any	Parties	1 Dec 25
16.	Pre-hearing conference	All	5 Dec 25
17.	Hearing	All	23-27 Feb 26
18.	Post-hearing submissions, to be discussed at the end of the hearing	Parties	TBD at the end of the hearing
19.	Cost Statements	Parties	TBD at the end of the hearing

**SCENARIO 3: BIFURCATION REQUEST GRANTED**

<b>No.</b>	<b>Procedural Step</b>	<b>By</b>	<b>Date</b>
1.	Notice of Arbitration	Claimant	17 Oct 23
2.	Statement of Claim	Claimant	5 Jul 24
3.	Request for Bifurcation	Respondent	16 Aug 24
4.	Response on Bifurcation	Claimant	13 Sep 24
5.	Decision on Bifurcation (possibly with reasons communicated later) – followed by consultations on calendar	Tribunal	4 Oct 24

**ANNEX 2: MODEL SCHEDULE FOR DOCUMENT REQUESTS**

<b>Request No.</b>	
<b>Documents or category of documents requested (requesting Party)</b>	
<b>Relevance and materiality, incl. references to submission (requesting Party)</b>	<b>Comments</b>
	<b>References to Submissions, Exhibits, Witness Statements or Expert Reports</b>
<b>Reasoned objections to document production request (objecting Party)</b>	
<b>Response to objections to document production request (requesting Party)</b>	
<b>Decision (Tribunal)</b>	